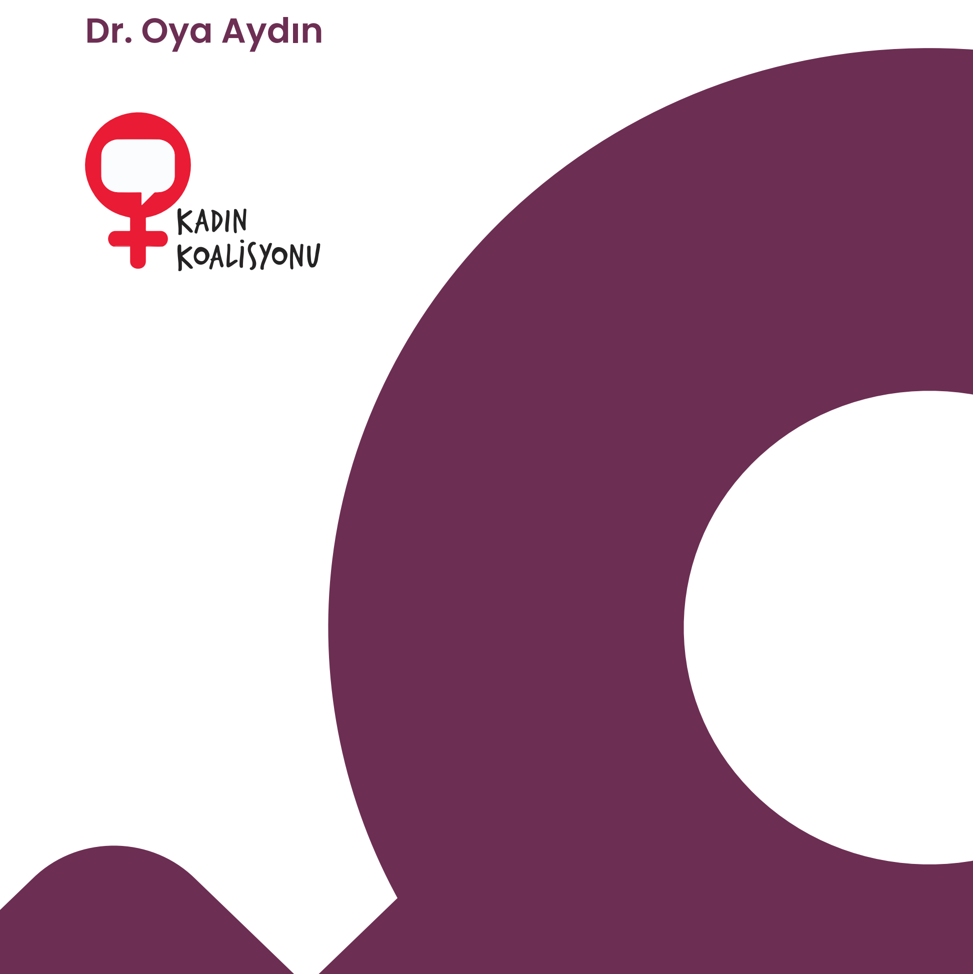
ISTANBUL CONVENTION: A GUIDE TO APPLICABILITY AND TÜRKİYE'S PRACTICE

Dr. Oya Aydın



ISTANBUL CONVENTION: A GUIDE TO APPLICABILITY AND TÜRKİYE'S PRACTICE

Dr. Oya Aydın

Dr. Oya Aydın

Translation: Alev Özsoy
Design: Pikan Ajans

/kadinkoalisyonu
/kadinkoalisyonu
/KadinKoalisyonu
/kadinkoalisyonu
/@KadnKoalisyonu

This publication was created and maintained with the financial support of the European Union provided under Etkiniz EU Programme. Its contents are the sole responsibility of the Women's Coalition and do not necessarily reflect the views of the European Union.

TABLE OF CONTENTS

LIST OF ABBREVIATIONS 03
WOMEN'S COALITION 04
FOREWORD 06
I. INTRODUCTION 10
I.1. IMPORTANCE OF THE ISTANBUL CONVENTION 10
I.2. THE PREMISE AND SCOPE OF THE STUDY 14
II. ENFORCEMENT OF THE ISTANBUL CONVENTION IN TÜRKİYE 18
II.1. ADOPTION AND TERMINATION OF THE ISTANBUL CONVENTION 18
II.2. THE RELATIONSHIP BETWEEN LAW No 6284 and ISTANBUL CONVENTION 20
II.3. IMPLEMENTATION OF THE ISTANBUL CONVENTION BY THE HIGHER COURTS 23
III. THE RELATIONSHIP BETWEEN THE ISTANBUL CONVENTION AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS 51
III. 1. THE LANDMARK JURISPRUDENCE ON THE BROAD INTERPRETATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AS A LIVING INSTRUMENT 51
III. 2. ISTANBUL CONVENTION – ECtHR JURISPRUDENCE 60
IV. CONCLUSION 95
V. ECtHR JUDGMENTS INVOLVING ISTANBUL CONVENTION AND VIOLENCE AGAINST WOMEN 97
V.1. GRAND CHAMBER JUDGMENTS 97
V.2. CHAMBER/SECTION JUDGMENTS 97
VI. APPLICATION TEMPLATE 102

LIST OF ABBREVIATIONS

EU:	European Union
ECtHR:	European Court of Human Rights
ECHR:	The European Convention on Human Right
AYM:	Constitutional Court
UN:	United Nations
CEDAW:	United Nations Convention on the Elimination of All Forms of Discrimination against Women

WOMEN'S COALITION

The Women's Coalition is an organization where women's organizations from all over Türkiye come together to join forces for equality, freedom, and justice. Since 2002, the Coalition has been advocating locally, nationally, and internationally for the equal participation of women in all areas of social, economic, and political life. It aims to strengthen women's participation in politics, to find different ways to participate in politics and the public sphere, and to develop tools for feminist intervention in local politics. It seeks to influence political processes in line with these objectives. To this end, it monitors and intervenes in local governments, municipalities, public administration, and the Committee on Equality of Opportunity for Women and Men in Parliament. It strives to influence the formulation, decision-making, and implementation of national and international gender policies. Additionally, it seeks to participate in the legislative process and drafts proposals and opinions on various laws, including the Constitution, the Law on Political Parties and Elections, the Law on Metropolitan Municipalities, the Law on Aid Collection, and the Law on Internal Security, among others. But its engagement is not limited to national law, it also takes into account the international aspects of the women's struggle. For example, it campaigned for the formulation and implementation of the Istanbul Convention, the most important international achievement in which women's organizations from Türkiye actively participated, and it reacted swiftly to Türkiye's decision to withdraw by conducting a systematic and comprehensive campaign.

Recognizing that the Istanbul Convention is not solely an international human rights treaty, but also the outcome of a multifaceted struggle that includes manifestations of the women's struggle in Türkiye and redefines violence against women through the Opuz case against Türkiye, the Women's Coalition has reminded at every occasion the political and legal importance of Türkiye's engagement with international struggles for rights and justice.

FOREWORD

Türkiye was one of the first countries to sign the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) and the first to ratify it on March 12, 2012. Since Türkiye held the Presidency of the Council of Europe at the time, procedurally the Convention was signed in Istanbul and named after the city where it was signed. The Ak Party, which was the ruling party at the time of the Convention's adoption and supported it, decided to withdraw from the Convention with a Presidential decision on 20 March 2021, when it was still in political power. In the wake of the withdrawal decision, the Women's Coalition launched an all-out struggle to ensure that the state reverses this decision, which amounts to a denial of equality and a refusal to recognize women's right to life and to protect the rights of millions of women, girls, and victims of domestic violence living in the country. Hundreds of women's organizations, including components and members of the Women's Coalition, bar associations, political parties, civil society organizations, and individuals have filed lawsuits with the Council of State claiming that the withdrawal decision is unconstitutional; several activities have been carried out to raise awareness about the importance of the Istanbul Convention; and strategies have been developed to ensure that policy and decision-makers at the international level, particularly the bodies of the Council of Europe, own up the Convention.

The Women's Coalition has always tried to pursue the same legal-political fight while expressing our demands regarding the Law on Political Parties and Electoral Law, following the cases at the Council of State, and saying "The Istanbul Convention is Ours, We Are Not Giving Up".

In this process, to give life to the slogan "The Istanbul Convention is ours, we don't give up", the idea was developed that the Istanbul Convention is still valid as one of the most fundamental human rights texts of the Council of Europe and as an integral part of the European Convention on Human Rights (ECHR), and efforts were made to spread this proposition among lawyers and other rights advocates, who are the most important interlocutors of the Convention and the critical subjects of the struggle for rights. To this end, a report based on this proposal was drafted in early 2023, and a seminar was held with relevant organizations and rights advocates. During this seminar, the case law of the European Court of Human Rights (ECtHR) was used to explain how the Convention can still be used as an effective tool despite the withdrawal decision, and an application template and texts of judgments were shared with the participants.

The feedback from the seminar showed that the study is considered very important and that there is a high level of interest and demand for petitions and related judgments, which led to the idea of updating the study and turning it into a guide.

Therefore, this text has been developed not only for the human rights advocates with whom we are in direct contact, but also for the actual practitioners of the Convention, namely members of the judiciary, higher courts, police, and social workers, as well as for individual lawyers, victims, and advocates, as a guide updated with more detailed information.

During the development of this guide, two important issues were highlighted: Firstly, in the ten years that the Convention has been in force, it has been used very little, and in particular, the higher courts and the Constitutional Court have been very reluctant to use the Istanbul Convention. Secondly, following Türkiye's decision to withdraw, there has been increased awareness of the Convention at the Council of Europe through the efforts of the women's and human rights movement in Türkiye, increased calls from the EU and Council of Europe institutions to ratify the Convention, and, most importantly, an increase in the number of ECHR judgments on the Istanbul Convention.

These two findings have encouraged this study to respond to the need both to understand the scope of the Convention and to expand its use as a requirement of the will to uphold the Convention. The Women's Coalition, through this guide, aims to ensure that the Istanbul Convention is put into practice as a legal and political text at every stage of advocacy and struggle for women's

rights, and to ensure that the guarantees of the Convention are implemented throughout the country. This guide therefore reflects a national-level effort to reconnect the struggle for women's rights in Türkiye with the international arena.

Given the continuity of this effort and the fact that it is a product of shared experience, sharing examples, problems, and suggestions encountered in practice as feedback (kadinkoalisyonu2002@gmail.com) will help to update the Guide and make it a better tool for practitioners.

This study on the importance, scope, and implementation of the Istanbul Convention in Türkiye to date, its place in our domestic law despite the decision to withdraw from the Convention, and its enforcement about the European Convention on Human Rights and the judgments of the European Court of Human Rights will be a useful guide for human rights advocates, academics, judges, prosecutors, police officers, social workers and especially members of the High Court in Türkiye, as well as for human rights advocates in other Council of Europe member states that have not ratified the Convention or have refrained from implementing it for similar reasons.

I. INTRODUCTION

I.1. IMPORTANCE OF THE İSTANBUL CONVENTION

Why is it so important to have the Istanbul Convention? Because the Istanbul Convention saves lives.

The Istanbul Convention is the most comprehensive, legally binding international convention to combat violence against women and domestic violence that imposes direct obligations on states and specifies those obligations step by step.

The Istanbul Convention imposes an obligation on states to protect all women and girls, lesbian, bisexual, and transgender women, intersex women, migrant women, and "all those who face deep-rooted prejudice and hostility as well as domestic violence throughout Europe" without discrimination.

Most notably, the Istanbul Convention recognizes the unequal power relations at the root of violence against women and affirms that violence will not end until this inequality is addressed.

The debate on the Istanbul Convention, recognized as a landmark agreement in Europe to end violence against women, has been diverted from its purpose by the term "gender", especially by right-wing conservative politicians, indicating that there is still a long way to go in the fight

against violence against women and inequality. However, the real threat to "family values" is not the term "gender" in the Convention, but those who protect perpetrators of violence these unjust discourses targeting LGBTI+ individuals.

This resistance to the Convention calls for more work in advocacy and its implementation. The first step is to disseminate information about what the Convention means and why it is important.

The Council of Europe provides the following information on the Convention on its website, which is constantly updated with the latest developments concerning the Convention:

"The Convention on Preventing and Combating Violence against Women and Domestic Violence" is a major human rights treaty establishing comprehensive legal standards to ensure women's right to be free from violence. Resulting from the Council of Europe's continuous efforts since the 1990s to prevent violence against women and domestic violence, this European legal instrument was negotiated by its 47 member states and adopted on 7 April 2011 by its Committee of Ministers. It is known as the Istanbul Convention after the city in which it opened for signature on 11 May 2011. Three years

To date, 34 member states of the Council of Europe have ratified the Istanbul Convention and must adopt measures to fulfill their commitment to preventing and combating violence against women and domestic violence. In addition, 12 member states have signed it – along with the European Union. One of its first state parties, Türkiye, notified its withdrawal from the convention in March 2021, which will take effect on 1 July 2021. Other member states of the Council of Europe are actively working towards ratification, and countries outside of the Council of Europe region have expressed their interest in joining, which is a possibility under the convention.

The Istanbul Convention recognizes violence against women as a violation of human rights and a form of discrimination against women. It covers various forms of gender-based violence against women, which refers to violence directed against women because they are women or violence affecting them disproportionately. Gender-based violence against women differs from other types of violence in that the fact that these are perpetrated against a woman is both the cause and the result of unequal power relations between women and men that lead to women's subordinate status in the public and private spheres which contributes to making violence against women acceptable.

Under the convention, the use of the term “gender” aims to acknowledge how harmful attitudes and perceptions about roles and behavior expected of women in society play a role in perpetuating violence against women. Such terminology does not replace the biological definition of “sex”, nor those of “women” and “men”, but aims to stress how much inequalities, stereotypes, and violence do not originate from biological differences, but from harmful preconceptions about women’s attributes or roles that limit their agency. Hence, the convention frames the eradication of violence against women and domestic violence in the advancement of equality between women and men.” [1]

[1] More information about the scope and the purposes of the Istanbul Convention can be found in the following leaflet: https://www.coe.int/en/web/istanbul-convention/key-factsn E.T.10.1.2.2023

I.2. THE PREMISE AND SCOPE OF THE STUDY

Following the President's decision to withdraw from the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) unlawfully, effective as of 1 July 2021, prosecutors, judges, and other public officials have begun issuing decisions on cases related to violence and discrimination, indicating that the Istanbul Convention has entirely ceased to apply in Türkiye. Although the Istanbul Convention was not widely embraced even when it was in force, this trend seems to have been reinforced by the dismissal of the lawsuits against the decision by the Council of State.[2] In this study, we claim that after the decision to withdraw from the Istanbul Convention, the perseverance embodied in the slogan "The Istanbul Convention is Ours; We Do not Give Up" has a legal basis. This argument is based on the fact that the Istanbul Convention, together with the European Convention on Human Rights, remains an integral part of domestic law through the ECtHR jurisprudence and should therefore be applied in both domestic law and applications to the ECtHR.

The main justification for this argument is that the European Court of Human Rights considers the European Convention on Human Rights as a living instrument and interprets the protected rights broadly in its jurisprudence,

[2] https://www.aa.com.tr/tr/gundem/turkiyenin-istanbul-sozlesmesinden-cekilme-kararari-hukuken-kesinlesti/2778146 E T.: 22.12.2024

referring to the Istanbul Convention even in applications from countries that have not ratified the Istanbul Convention. Secondly, even if the respondent State Party in question had not yet ratified the Convention at the time of the application or at the time of the events, the European Convention on Human Rights is interpreted based on the Istanbul Convention, taking into account the fact that the country ratified the Convention after the application was filed. In some cases, although the Istanbul Convention is not directly mentioned when examining the application, the facts and legal grounds are discussed in the light of landmark judgments based on the Istanbul Convention.

Before analyzing the relevant ECtHR judgments in order to concretize this claim, which is a regular consequence of the ECHR system, we will first look at examples of judgments in which the ECtHR has made other human rights conventions part of the human rights protection system when determining the content of fundamental rights and freedoms on the principle that the ECHR is a living instrument. We will then discuss the main jurisprudence on the Istanbul Convention. In particular, we will analyze judgments on how the Istanbul Convention has been used by the ECtHR in cases brought against states that are not parties to the Convention or in cases concerning events that occurred before the ratification of the Convention.

In addition, landmark judgments will be discussed on how the Istanbul Convention can be used more effectively not only in cases of violence, but also in cases of other violations of rights related to practices that discriminate against women. Thus, we aim to demonstrate, with examples from ECtHR judgments, that the Istanbul Convention is still a part of the domestic law, and therefore to encourage rights advocates to bring this argument before all judicial and administrative authorities in their petitions. Especially because 2/3 of the applications to the Constitutional Court filed with the allegation of violation of rights within the scope of Law No. 6284 are not filed by women who have been subjected to violence, but by men who are alleged to have perpetrated violence, the importance of human rights advocates filing more applications and using the Istanbul Convention as a tool in their applications becomes apparent in terms of combating violence and discrimination.

Cassation to achieve this goal, the study examined all the judgments of the Court of Appeals (99 judgments) and the Constitutional Court (4 judgments involving the Istanbul Convention, 105 judgments involving the Law No. 6284) from the date of entry into force of the Istanbul Convention until 31 January 2024, to reveal Türkiye's decade-long experience of the Istanbul Convention at the level of the higher courts; in addition, all judgments of the European Court of Human Rights involving the Istanbul Convention

(2 Grand Chamber judgments and 73 Chamber judgments) were examined, particularly critical decisions, which many rights advocates could not access due to the lack of Turkish translation, were summarized, and the guiding case-law was explained. To demonstrate that the Convention is not limited to domestic violence, judgments involving other rights and freedoms that draw attention to the discrimination at the root of violence and promote gender equality are also included. The list of judgments is given at the end of the study. Finally, a petition template is attached that can be used when applying to the ECtHR and the Constitutional Court, in accordance with the way these two courts handle cases.

Before moving on to the examples, the place of the Istanbul Convention in the Turkish legal system, its relationship with Law No. 6284, and how it has been understood/implemented so far, limited to the High Courts, will be briefly examined. This will help to understand why the Istanbul Convention has not been effectively implemented, what impact it has had on current cases, and how it can be used in the future when filing applications.

II. ENFORCEMENT OF THE ISTANBUL CONVENTION IN TÜRKİYE

II.1. ADOPTION AND TERMINATION OF THE ISTANBUL CONVENTION

Türkiye was one of the first countries to sign the Istanbul Convention. It became the first country to ratify the Convention on 12 March 2012, after the Turkish Grand National Assembly passed Law No. 6251 on ratification on 24 2011, with 246 out of 247 deputies voting in favor and 1 deputy abstaining.

Türkiye is the first and only country to withdraw from the Convention after ratifying it. With the Presidential decision of 20 March 2021, Türkiye decided to withdraw from the Convention and notified the Council of Europe, and the decision to withdraw from the Istanbul Convention was officially announced on 1 July 2021.

It was argued, and almost all constitutional lawyers agree, that the decision to withdraw was contrary to Articles 104, 90, 13.10 and 2 of the Constitution

In this context, the following arguments were presented:
- According to Article 104, paragraph 17, subparagraphs 2, 3, 4 and 5 of the Constitution, "fundamental rights, individual rights and duties under the first and second sections of the second part of the Constitution and political rights and duties under the fourth section" cannot be regulated by a presidential decision,

- Presidential Decree No. 9 on Procedures and Principles for Ratification of International Treaties, which is cited as the basis for the decision to withdraw, constitutes self-authorization and has no legal basis;

- Moreover, this decision contradicts Article 1 of Law No. 6284 on the Protection of the Family and Prevention of Violence against Women which provides that "...the Constitution of the Republic of Turkey and the international conventions to which Turkey is a party, in particular the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and other applicable legal regulations shall be taken as a basis",
- There is a clear excess of authority under the Constitution."

Appeals were filed with the General Assembly of the Administrative Chambers of the Council of State and to the Constitutional Court against the decision of the Council of State. The Constitutional Court has not yet made a decision.

II.2 THE RELATIONSHIP BETWEEN LAW No 6284 and ISTANBUL CONVENTION

The Istanbul Convention aims to identify best practices at the national level, as well as internationally recognized standards, jurisprudence, and developments, and to ensure that these are given greater weight and implemented more comprehensively. Therefore, a very brief assessment of whether Law No. 6284 is conducive to ensuring the implementation of the Istanbul Convention will help to paint a clearer picture of the country. Before discussing the judgments of the higher courts on how the Istanbul Convention is applied in domestic law, it is important to touch upon the relationship, similarities, and differences between Law No. 6284 on the Protection of the Family and Prevention of Violence against Women and the Istanbul Convention to show whether and to what extent the government's argument that "we already have a sufficient law instead of the Convention" [3] is correct.

Following the Opuz4 judgment of the ECtHR, which confirmed that Law No. 4320 on the Prevention of Domestic Violence, which was enacted during the CEDAW process, was inadequate and that state institutions were not providing the necessary and adequate response to the ever-increasing violence against women, Türkiye, as one of the first countries to sign the Istanbul Convention,

[3] https://www.iletisim.gov.tr/turkce/haberler/detay/cumhurbaskani-erdogan-kadina-yonelik-siddetle-mucadeleyi-aileyi-yuceltme-mucadelemizin-ayrilmaz-bir-parcasi-olarak-goruyoruz E.T.21.01.2024.

[4] ECtHR, Communication No: 33401/02, Judgment Date: 2009.

adopted Law No. 6284 on 8 March 2012 to ensure that the Convention was applied in domestic law and to take effective measures against violence. This law, which is more comprehensive than Law No. 4320 and directly refers to the Istanbul Convention, has broadened the definition of violence, strengthened protection mechanisms and aims to provide a wider protection network by covering not only the family but also non-family relationships and domestic violence. Despite all these positive changes, it is known that Law No. 6284 is far from fulfilling all the requirements of the Istanbul Convention, as the government claims and as women's organizations often claim.

First of all, the proposal to address gender inequality, which was emphasized in the report of the Justice Commission, was not included in the law, and the law was born incomplete without the spirit of the Istanbul Convention. The Istanbul Convention points out that it is impossible to eliminate violence against women and domestic violence without ensuring gender equality, emphasizes the importance of holistic policies and aims to establish gender equality policies. Law No. 6284, on the other hand, emphasizes the family and was drafted with the aim of providing concrete and case-by-case protection against violence. The law does not include the goal of developing comprehensive and holistic policies that covers education, the media, and the private sector to eliminate gender stereotypes.

The law's definition of violence is also narrower than the Convention's; it does not adopt a broader perspective such as restriction of freedom or feeling oppressed. In particular, the judicial and economic measures to be taken in the prosecution of violence are inadequately regulated in Law No. 6284; there are many gaps, there is no regulation for holistic policies.

Beyond a simple narrowness of scope, this discrepancy is a far cry from the core of the Istanbul Convention, "which is firmly based on the premise that violence against women cannot be eradicated without investing in gender equality and that in turn, only real gender equality and a change in attitudes can truly prevent such violence." In this faraway place, hundreds of femicides are committed in Türkiye every year, the perpetrators go unpunished in cases that are not covered by the media, and Türkiye is ranked 129th out of 146 countries, lagging far behind, according to the World Economic Forum's Global Gender Gap (2023) report.[5]

[5] https://ceidizler.ceid.org.tr/WEF-Kuresel-Toplumsal-Cinsiyet-Ucurumu-Endeksi-2023-d396 04.02.2024.

II.3 IMPLEMENTATION OF THE ISTANBUL CONVENTION BY THE HIGHER COURTS

II.3.1. CONSTITUTIONAL COURT

All judgments of the Constitutional Court concerning the Istanbul Convention have been scanned on its website. There are a total of 8 (eight) judgments directly referring to the Istanbul Convention over a twelve-year period until 31 January 2024.6 In two of these judgments, the court referred directly to the Istanbul Convention and found a violation by citing the applicable provisions of the Convention in the context of international law; in three judgments, the court merely mentioned the full name of the Convention without using the phrase "Istanbul Convention" under the heading "Relevant Law". In two of the other three judgments, the Convention was cited as a basis for the annulment judgment in the separate opinion of one member in relation to discrimination on the basis of gender identity, and in another case concerning dismissal based on sexual orientation, the Istanbul Convention was cited in the dissenting opinion.

[6] A search on the Constitutional Court website for the Istanbul Convention yields six judgments, two of which are of different nature. Canan Yüce and Others (2020/37789), concerns the claim that the imposition of administrative fines on the applicants on the grounds that they participated in a press statement (We are on Watch to Protect the Istanbul Convention) without permission violated the right to freedom of assembly and demonstration. The other application, Cengiz Kahraman and Kenan Özyürek Application (2013/8137), is on the Istanbul Protocol, not the Istanbul Convention.

There may be many reasons why there are so few judgments regarding the Convention, but it is clear from the number of applications to the Constitutional Court regarding Law No. 6284 that one of the reasons is the reluctance of the Constitutional Court to refer to the Istanbul Convention. A search for the phrase "Istanbul Convention" in the Constitutional Court Judgments Bank yielded six judgments (two judgments were identified in a detailed search as they did not include the phrase "Istanbul Convention" but instead included the full name of the Convention), while a search for Law No. 6284 yielded 105 (one hundred and five) judgments. The fact that the Constitutional Court did not mention the Istanbul Convention, which is explicitly referred to in Article 1 of Law No. 6284, when dealing with applications related to Law No. 6284 is considered to be a sign of the Constitutional Court's reluctance to implement the Istanbul Convention. The Constitutional Court, in two judgments on the normative review of Law No. 6284, rejected the claim for annulment but did not refer to the Istanbul Convention in its reasoning.

On the other hand, there is unfortunately insufficient data on the extent to which the Convention is used at the local level, in courts of first instance, and by law enforcement agencies. However, the low number of applications received by the Constitutional Court suggests that the Istanbul Convention is not/cannot be used very effectively by lawyers.

II.3.1.1. CONSTITUTIONALITY REVIEW BY THE CONSTITUTIONAL COURT

The appeals to the Constitutional Court to dismiss the lawsuits filed against the judgment to withdraw from the Istanbul Convention are still pending. There are two judgments of the Constitutional Court on the constitutionality review of Law No. 6284, which is directly related to and refers to the Istanbul Convention.

Original judgment; File (Esas) No: 2013/119; Judgment No: 2013/141; Judgment Date: 28.11.2013; O.J. Date-No: 27.3.2014-28954 constitutional review judgment.7

The Constitutional Court rejected the application of the Çaldıran Civil Court of First Instance that the rule of "preventive detention" in case of violation of the injunction decision under Article 13 of Law No. 6284 is contrary to the principle of "Right not to be tried or punished twice in criminal proceedings for the same criminal offence (ne bis in idem)" and thus to the constitutional rule of law. The judgment reasons that "the preventive detention imposed on the person who violates the injunction is a kind of disciplinary measure, not a punishment, and the challenged rule, which aims to effectively protect the victim of violence by forcing the victim to comply with the requirements of the injunction and to achieve the purpose of the law, is within the discretion of the legislature.

[7] https://normkararlarbilgibankasi.anayasa.gov.tr/Dosyalar/Kararlar/KararPDF/2013-141-nrm.pdf E.T.22.12.2023.

Second judgment; File (Esas) No: 2013/64; Judgment No: 2013/142; Judgment Date: 28.11.2013; O.J. Date-No: 27.3.2014-28954 normative review judgment.8

In this application, which was filed with the Constitutional Court by the Söğüt Civil Court of First Instance, it was stated that if the provision of Article 10, paragraph 5, of the Law, which states that the failure to notify or deliver the order to the persons concerned shall not constitute an obstacle to the execution of the injunction, is applied, the person can be taken under preventive detention for violation of the order even if the judgment is not notified, and it was argued that this is in contradiction with Articles 2, 12, 13, 17, 19, 36 and 40 of the Constitution. The claim of unconstitutionality of the rule that the failure to notify or deliver the injunction decision to the person concerned shall not constitute an obstacle to the execution of the decision was discussed.

In its judgment, the Constitutional Court stated that the purpose of Law No. 6284 is to ensure that an effective and expeditious method is followed for the protection of the family and the prevention of violence against women and that the victim of violence is protected without delay. The Constitutional Court ruled that since the purpose of the law is to ensure that an effective and expeditious method is followed for the protection of the family and the prevention of violence against women and that the victim of violence is protected without delay, it would be incompatible with the purpose of the law to wait for the notification of the relevant persons to implement the orders.

The Constitutional Court did not refer to the Istanbul Convention in this judgment either.

[8] https://normkararlarbilgibankasi.anayasa.gov.tr/Dosyalar/Kararlar/KararPDF/2013-142-nrm.pdf E.T.2.2.2024.

II.3.1.2. INDIVIDUAL APPLICATION DECISIONS ISSUED AS REQUIRED BY THE ISTANBUL CONVENTION

When reviewing individual applications, the Constitutional Court sometimes lists the instruments of "National Law" and "International Law" under the heading "Relevant Law", in parallel with the ECtHR's method of review, albeit in a narrower scope, and then gives examples from some reports. The Court mostly refers to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) under the heading "International Law", in addition to the ECHR.

In an application on child sexual abuse and child marriage (Z.C. Application, 2013/3262. 11. 5. 2016), the Constitutional Court referred to other international conventions, the ECtHR's Opuz judgment, and even the Council of Europe's [2014] Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse [Lanzarote Convention], but insistently did not mention the Istanbul Convention. However, the Convention has very detailed provisions in this regard.

There are eight judgments in total, where there is a reference to the Istanbul Convention. In two of these judgments, the Court referred directly to the Istanbul Convention and found a violation by citing the applicable provisions in the context of international law;

[9] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/3262 E.T. 22.1.2024.

in three judgments, the Court merely mentioned the full name of the Convention without using the phrase "Istanbul Convention" under the heading "Relevant Law", In two of the other three judgments, the Istanbul Convention was referred to in the separate opinion of one member about discrimination based on gender identity and in the dissenting opinion in a case of dismissal based on sexual orientation. In the two cases in which the Constitutional Court ruled on the violation by directly referring to the Istanbul Convention and relying on the applicable provisions in the context of international law, the Constitutional Court's acceptance of the applicability of the Convention to events until July 2021, although incomplete and incorrect, is considered an important judgment and has paved the way for applications made under the Istanbul Convention for events that occurred until that date.

II.3.1.2.1. CONSTITUTIONAL COURT JUDGMENTS DIRECTLY REFERRING TO THE ISTANBUL CONVENTION.

SEMRA ÖZEL ÜNER APPLICATION (Application Number: 2014/12009, Judgment Date: 26.10.2016) The Constitutional Court referred to the Istanbul Convention for the first time in response to Semra Özel Üner application.

The application concerns the allegation that the right to respect family life has been violated by the failure to allocate the applicant and her child a common residence by Law No. 6284 of 8/3/2012 on the Protection of the Family and the Prevention of Violence against Women.

However, in this judgment, where no violation was found, only the name of the Convention was mentioned in the " Relevant Law" section.

20. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, ratified by the decision of the Council of Ministers of 24/11/2011number 6251 and published in the Official Journal of 8.3.2012, number 28227 (repeated). 10

[10] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2014/12009 E.T.21.1.2024.

Ö.T: APPLICATION (Application Number: 2015/16029, Judgment Date: 19.02.2019)

The application concerns the claim that the right to protect and improve corporeal and spiritual existence was violated as a result of the denial of the request for the imposition of preventive detention. In this judgment, where no violation was found, only the name of the Convention was mentioned in the 18th paragraph under the " Relevant Law" section.11

K.Ş. APPLICATION (Application No: 2016/14613 Judgment Date: 17/7/2019, O.J. Date ve Number: 10/9/2019-30884)

The application concerns the claim that the right to protect and improve corporeal and spiritual existence was violated when a woman who was a victim of violence was denied her request to change her workplace as part of the protective measures. In this judgment violation was found, and only the name of the Convention was mentioned in the 24th paragraph under the " Relevant Law" section.12

[11] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2015/16029 E.T.21.1.2024.

[12] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/14613?Dil=tr E.T.21.1.2024.

FATMA GÜNEŞ APPLICATION, (Application No: 2016/8300, Judgment Date: 3/6/2020.)

The application relates to the allegations that a death occurred as a result of the failure of the public authorities to conduct an effective investigation into and take the necessary measures to prevent an act of domestic violence, thereby violating the right to life and the principle of equality, and the Constitutional Court only mentioned the name of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence under the section on International Law, but the application was dismissed in contradiction with the standard jurisprudence in the ECtHR judgments.14

T.A. APPLICATION (Application Number: 2017/32972, Judgment Date:29/09/2021). O.J. 2.12.2021-31677

The application concerns an allegation that the right to life was violated because death occurred as a result of the failure to effectively implement protective and

[13] The original English version of the Convention uses the phrase "domestic violence," which is correctly translated into Turkish as "ev içi şiddet," not "aile içi şiddet," which is translated into English as "intrafamilial violence." However, since the Court's judgment and other directly cited judgments use this phrase, the word "aile" is used in the quote in the Turkish version.

[14] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/8300?KelimeAra%5B0%5D=ya&page=49 E.T.22.1.2024.

preventive measures against violence against women due to the negligence of public officials, the failure to prosecute the negligent public officials, and the failure to impose proportionate punishment on the perpetrator.

This case, in which the Constitutional Court found a violation, is the first judgment of the Constitutional Court to explicitly refer to the articles of the Istanbul Convention, explaining its purpose and including its applicable rules.15

Paragraph 89 of the Judgment deals with the applicability of the Convention:

> *The ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), signed on 11 May, 2011, was approved with Law No. 6251 of November 24, 2011, on the Approval of the Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), and the Istanbul Convention was ratified by the judgment of the Council of Ministers, published in Official Journal No. 28227 of March 8, 2012. The Istanbul Convention was terminated for the Republic of Türkiye by the Presidential decision of 19.3.2021, number 3718, published in the Official Journal of 20.3.2021, number 31429.*

[15] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/32972 E.T.21.1.2024

The termination entered into force in July 2021 in accordance with Article 80 of the Istanbul Convention. Although the Convention is not currently in force, its provisions should be included in the "Relevant Law" section, as it was in force at the time of the event that is the subject of the alleged violation and during the legal proceedings that followed the event.

Regrettably, the Constitutional Court stated that the withdrawal decision entered into force in July 2021 under Article 80 of the Istanbul Convention was not in force in the current situation, and stated that it would rely on the Convention as it was in force at the time of the alleged violation and throughout the legal proceedings following the event.

Paragraph 90 of the judgment refers to the text of Article 1 on the purpose of the Convention and Articles 50 to 53 on law enforcement:

"Article 1 of the Istanbul Convention provides that that one of the purposes of the Convention is to "protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;" whereas Article 2 provides that it "shall apply to all forms of violence against women, including domestic violence, which affects women disproportionately." Article 3 describes violence against women as " a violation of human

rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;" and Articles 4, 5, and 12 imposes an obligation to contracting states to "take the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere; take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence; take the necessary legislative and other measures taking into account and address the specific needs of persons made vulnerable." Furthermore, Articles 50 and 53 of the Istanbul Convention provide that contracting states "shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims; that appropriate restraining or protection orders are available to victims of all forms of violence."

NURİYE AYHAN ALTINER (Application Number: 2020/1327, Judgment Date: 4/10/2023) O.J. 16/1/2024-32431.

The application concerns the claim that the right to protect and improve corporeal and spiritual existence was violated by the denial of the request for preventive measures of a woman who claimed that she had been threatened. The Court held that there had been a violation.

The Nuriye Ayhan Altıner judgment has attracted a lot of attention as it is the most recent judgment of the Constitutional Court on this issue and the second one that directly refers to the Istanbul Convention. As in the T.A. application, the Court cited the Istanbul Convention as one of the sources of law applicable to the complaint, noting the purposes of the Convention and the rules set out in Articles 50 and 53 with which law enforcement officials must comply.

However, regrettably, as in the case of the T.A. the Court commented in paragraph 23 on the applicability of the Convention, stating that it was no longer in force, and paragraph 24 on its purpose and the rules applicable to it16

[16] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2020/1327 E.T.21.1.2024.

II.3.1.2.2. CONSTITUTIONAL COURT JUDGMENTS REFERRING TO THE ISTANBUL CONVENTION IN THE DISSENTING OPINIONS AND THE SEPARATE OPINIONS

H.K: APPLICATION (Application Number: 2019/42944, Judgment Date: 17.6.2021) OJ:22/09/2021 31666

The application concerns the claim that the right to respect private life was violated by the rejection of the request to change their name by their sexual orientation. The Court ruled that the applicant's right to a name by their sexual orientation was violated, but the Court only cited ECHR articles and ECtHR judgments under the heading " Relevant International Law" in its reasoning.

In contrast, one member who wrote a "Separate Opinion" cited the Convention as the basis for his argument:

> *"3. Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe to Member States on measures to combat discrimination on the grounds of sexual orientation or gender identity recognizes that "member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and*

*accessible way."3 The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence also recognizes that gender identity is covered by the prohibition of discrimination."*17

TURGAY KARACA JUDGMENT (Application Number: 2018/34343), Judgment Date: 27/1/2021)

Just like the H.K. application, this application also concerns the claim that the right to respect private life was violated by the rejection of the request to change their name in accordance with their sexual orientation. The Constitutional Court, under the heading **"International Law"**, referred to the case law of the ECHR and the ECtHR in the same way as H.K.'s application, but did not mention the Convention. A violation was found on the following grounds:

44. The applicable law also requires gender reassignment surgery to change the gender information in the civil registry. Given this requirement, it would be an undue burden on the person to be forced to consent to an intervention on his/her physical integrity to obtain a name that would make him/her feel better in his/her psycho-social situation.

[17] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/42944 E.T. 21.1.2024.

The member who wrote a separate opinion linked the violation judgment to the Istanbul Convention:

> *"Article 4(3) of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which Türkiye was the first country to sign (2011) and ratify (2014), recognizes that gender identity is also covered by the prohibition of discrimination."*18

Z.A. APPLICATION (Application Number: 2013/2928, Judgment Date: 18/10/2017) O.J. Date and Number: 6/3/2018-30352.

The Constitutional Court dismissed the application of the applicant, who claimed that their dismissal from their teaching job was an intervention in private life. The dissenting opinion of one member referred to the Convention:

> *"Article 4(3) of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which Türkiye was the first country to sign (2011) and ratify (2014), recognizes that gender identity is also covered by the prohibition of discrimination."*

[18] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/34343 E.T.21.1.2024.

[19] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/2928 E.T.21.1.2024.

II.3.1.3. EXAMPLES OF DECISIONS OF THE CONSTITUTIONAL COURT ON INDIVIDUAL APPLICATIONS UNDER LAW NO. 6284

The Judgments Bank of the Constitutional Court has a total of 105 (one hundred and five) judgments on Law No. 6284.[20] Seventy-five (75) of these judgments were brought before the Constitutional Court by male applicants. 16 (sixteen) applications were filed by women victims in the context of protection of women against violence. The other applications are related to the protection of privacy, protection of personal data, sexual abuse of minors, custody, and personal relationship with the child. Interestingly, an average of 70% of the applications under Law No. 6284 were filed by men accused of violence. The overwhelming majority of these judgments, with the exception of a few in custody, were based on two grounds against the judgments made on the objection to the injunction. Some of the applications claimed that the right to a fair trial had been violated by the lack of reasoned judgments and the failure to consider objections and that the presumption of innocence and/or the right to privacy under the protection of honor and dignity had been violated by the use of the term "perpetrator of violence" in the injunctions. This shows that the Istanbul Convention is not being used sufficiently by women's rights advocates as a tool to combat violence against women.

[20] A search using the number "6284" returned 106 judgments, but one of these judgments (application number: 2017/26283) contained this phrase for a different reason and was unrelated to the subject matter. https://kararlarbilgibankasi.anayasa.gov.tr/Ara?KelimeAra%5B0%5D=6284&KararBulteni=1&page=2 E.T.2.2.2024

Some examples from the Constitutional Court's judgments on 6284 are briefly summarized below to illustrate the Court's point of view.

EYLEM ÇETİN DEMİR APPLICATION (Application Number: 2014/2302), Judgment Date: 9/11/2017)

The applicant claimed that the State's obligation to protect her and her family under Article 17 of the Constitution had been violated by the annulment of the judgment not to allow Y.A. to come closer than 1 km to her and her family and by the annulment, on appeal, of the orders for Y.A.'s preventive detention. However, the Constitutional Court declared the application inadmissible, stating that the state's duty to protect cannot be interpreted in such a way as to require public authorities to adopt a particular measure preferred by the individual and that reasonable and practical measures were taken in light of the existing risk. This judgment did not refer to ECtHR judgments and the Istanbul Convention.

GAMZE ARMAĞAN APPLICATION (Application Number: 2013/8840, Judgment Date: 15.12.2015.)

In this case, due to the incident that occurred between the applicant Gamze Armağan and her colleague named H.Y. and A.Y., who is the husband of this person, A.Y. filed a complaint against his wife H.Y. and the applicant (Gamze Armağan) with the competent law enforcement agency

and requested a preventive injunction.

The court decided on some measures in favor of the complainant A.Y. under Article 5 of Law No. 6284 because "the complainant A.Y. filed a complaint with the police for protection against H.Y. and Gamze Armağan, against whom a preventive and protective injunction was requested, and that no evidence of violence is required to issue a preventive and protective injunction and that the injunction should be issued immediately.". Subsequently, the plaintiff Gamze Armağan filed an appeal against the preventive injunction decision issued against her; the Istanbul Anatolian 17th Family Court, which reviewed the appeal, decided to dismiss the appeal, stating that the challenged decision was by the law and the purpose protected by the law, that Law no. 6284 authorizes the Family Judge to take all kinds of measures as soon as possible, that the Family Judge issued a preventive injunction decision according to the current situation and the scope of the file, and that no evidence or documents were required by paragraph 3 of Article 8 of Law No. 6284. The Constitutional Court dismissed the appeal, stating that "Law 6284 authorizes the Family Judge to take all kinds of measures as soon as possible, the Family Judge issued a preventive injunction decision according to the current situation and the scope of the file, and decided to reject the appeal, stating that no evidence or documents were required by paragraph 3 of Article 8 of Law 6284,

therefore the allegations were met in the aforementioned decision, therefore it cannot be said that the decision was unjustified.

Although the Constitutional Court's judgment is favorable in terms of the Istanbul Convention and 6284, the review in this judgment was not conducted at the ECtHR standard and no reference was made to ECtHR judgments and the Istanbul Convention.

SALİH SÖYLEMEZOĞLU APPLICATION (Application Number: 2013/3758, Judgment Date: 6.1.2016).

Shortly after the 2015 judgment summarized above, the Constitutional Court ruled that the unjustified rejection of the appeal against the injunction violated the right to a fair trial under Article 36 of the Constitution.

There was no reference to the Istanbul Convention in the judgment.

The judgment made in the application filed by Salih Söylemezoğlu that the right to a reasoned judgment guaranteed under Article 36 of the Constitution of the male applicant against whom an injunction was granted was violated is used as a reference judgement in all subsequent applications.

“39. Since the injunction decisions regulated by Law No. 6284 can be executed as soon as they are made, it is clear that the "urgent intervention" aimed at by the law is achieved at this stage, and to achieve this goal, a more flexible approach can be adopted for explaining how the conviction of violence exists i.e. the reasoning, but it is also necessary to determine the limit of this approach at a level that does not violate the fundamental principles of the right to a reasoned judgment according to the nature of the events. Accordingly, in the reasoning provided for these judgments, it will be sufficient to determine whether the claim has the basic elements to be recognized under the applicable law, according to the alleged risk of harm and the facts.

40. On the other hand, at the appeal stage, when the element of urgency disappears and the applicant is unable to present his objections orally, as in the present case, the court must assess the appropriateness of the measures imposed on the basis of a unilateral claim, taking into account the

balance of rights and interests envisaged for both parties within the framework of the statements and evidence submitted by the appellant".

*"41. ...it is understood that there was no mention of the files specified by the applicant in her petition and the documents and statements in the contents of these files and the witnesses requested to be heard, that the plausibility of the factual basis of the injunction was not discussed, that if there was a reasoning in the injunction decision on the merits, it could be considered reasonable to make an assessment by referring to that decision, that in the decision of the appellate authority, which is the subject of the alleged violation, the connection between the evidence presented in the case file and the result and the reason for the rejection of the challenge to the unjustified injunction decision were not even minimally explained.*21

In the judgment it is stated that based on the reasoning of the law, evidence and documents on the fact of violence should be sought for preventive injunctions to prevent any abuse of the right. It is believed that this judgment and similar subsequent judgments may be discouraging both to women and to judges who issue preventive injunctions in a country where violence against women is at such an alarming level and where the number of applications is very low.

[21] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/3758 E.T.22.1.2024.

ERCAN ŞAHİN AND OTHERS APPLICATION (Application Number: 2018/8030, Judgment Date: 2/2/2022 OJ: 22/4/2022 - 318178.

Finally, it is observed that following this judgment, many similar applications were made to the Constitutional Court claiming that the right to a reasoned judgment was violated due to the failure of the appellate authority to meet the substantive claims against the injunction decision issued by the family courts. The Constitutional Court reviewed some of these applications (seven applications) together and decided by a majority of votes that the applicants' right to a fair trial had been violated.

In the judgment, there were frequent references to the Salih Söylemezoğlu judgment, but no mention of the Istanbul Convention.

The dissenting opinions of the two dissenting members do not refer to the Istanbul Convention. However, they make very important observations.

> *"8.It is clear that the right to a reasoned judgment plays a very important role in the protection of individual rights and freedoms in a state governed by the rule of law. However, it may be necessary for the court of first instance to immediately issue a preventive order to prevent one party from using violence against the other, as* ***there may be a threat to the right to life and physical integrity of the other party, who is most likely to be a woman. Under these circumstances, expecting the court to strictly adhere to***

***the right to a reasoned judgment that we seek under normal circumstances** may delay the prevention of a party from becoming a victim of violence and may have unintended consequences.*

*9. Preventive injunctions are intended to protect the right to life and physical integrity of the relevant persons, almost all of whom are women. However, it is also undeniable that preventive injunctions issued by the courts severely restrict the personal rights and freedoms of their addressees. A conflict exists between the right of one side to the protection of life and physical integrity and the right of the other side to a reasoned judgment. **It seems very difficult to balance these rights. There is no hierarchy or level of importance between rights. However, it may sometimes be necessary to prioritize one right over another. Such is the case with the present application and other applications in that connection.** Since the exercise of rights depends on the protection of the right to life, the right to life takes precedence over other rights".*[22]

Another noteworthy detail in the aforementioned judgment is that the Ministry, which expressed its opinion against the application, referred to the the judgment of the Constitutional Court in the Salih Söylemezoğlu case (B. No.: 2013/3758, 6/1/2016) where it is stated that " ...since the injunction decisions regulated by Law No. 6284 can be executed as soon as they are made, it is clear that the "urgent intervention" aimed at by the law is achieved

[22] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/8030 E.T.22.1.2024.

at this stage, and to achieve this goal, a more flexible approach can be adopted for explaining how the conviction of violence exists i.e. the reasoning..” , and took a position in support of the applicant's claims. This is in contrast to the Ministry's usual position, which is to present arguments against the applicant in applications to the Constitutional Court.

T.K. APPLICATION: Application Number: 2017/27041, Judgment Date: 11/12/2019)

This is an example of an application filed by a male applicant against whom an injunction was issued as an alleged perpetrator of violence, claiming "violation of the right to honor and reputation ***due to the statements made in the decision of the authority that issued the injunction and in the decision of the appellate authority,*** and violation of the right to a reasoned judgment due to the failure of the appellate authority to respond to the substantive allegations".

Having decided that the applicant's complaint that the use of the term "perpetrator of violence" to define the applicant, violated his personal rights should be examined within the framework of the right to honor and reputation, the Constitutional Court concluded that this term, which is clearly included in the law, violated the right to honor and dignity of the persons against whom the injunction decision was issued.

44. Rather than using the term "perpetrator of violence" as a template for such injunctions, it should be evaluated by the court or other judicial authorities in the context of each specific case, and a careful approach should be adopted.

Although the term "perpetrator of violence" is included in the law, there is no provision that requires practitioners to use this term in every case. In fact, in some injunctions issued by courts and competent authorities, the term "perpetrator of violence" is replaced by other appropriate terms such as "alleged perpetrator of violence", "person alleged to be at risk of committing violence" or "person against whom an injunction is sought". ***In practice, it is observed that the term "perpetrator of violence" is generally considered a problematic one that can affect the corporeal and spiritual existence of the person.***

45. Considering that, in the terminology of Law No. 6284, violence has a broader meaning than the concept of crime, and that the concept of perpetrator of violence is a technical term that includes persons who do not commit violence, but who are at risk of committing violence, it is concluded that the use of the concept of perpetrator of violence to define the applicant, in the circumstances of the concrete case, is of such a nature as to violate the applicant's personal rights and to violate the positive obligations of the State regarding the protection of the right to honor and reputation".

II.3.2. ISTANBUL CONVENTION IN THE JUDGMENTS OF THE COURT OF CASSATION

The judgments of the Court of Cassation on the Istanbul Convention were reviewed using data from the judgment bank of the Court of Cassation. A search using the full name of the Convention name and the words "Istanbul Convention" yielded 99 (ninety-nine) judgments in total. One of the judgments is on the Istanbul Protocol and has been left out. Apart from criminal cases, there were no applications or references concerning the right to property, education, inheritance, social welfare and similar issues. All ninety-eight judgments were issued by the relevant chambers of the Court of Cassation in criminal cases, such as domestic violence, sexual abuse, and femicide, during a period between February 2019 and May 2019. In all of these judgments, references to the Istanbul Convention were limited to the discussion of whether the file should be reported to the competent ministry. In these judgments, the Convention was used in a way that was not in favor of women, but rather to their detriment, and with a mere literal quotation. The Istanbul Convention has been linked to Law No. 6284, and the provision regarding the notification of the existing criminal case file to the competent ministry has been perceived as a mandatory procedural rule, although it is not, and annulment judgments have been issued on the basis of violation of this rule. Unfortunately, because these reversals overturned the convictions, the process resulted in the release of many male perpetrators of violence.

An application was filed with the Grand General Assembly for Unification of the Case Law of the Court of Cassation to resolve the conflict between the different jurisprudence issued due to the opinions that such an obligation does not exist. With the Judgment dated 13.12.2019 of the Grand General Assembly of the Court of Cassation Unification of Jurisprudence, it was definitively decided that in criminal cases brought for crimes falling within the scope of Law No. 6284, which is interpreted within the framework of the Istanbul Convention, it is not obligatory for the court to inform the Ministry of Labor and Social Services about the case during the prosecution phase. No judgment on the Istanbul Convention was found in the Judgments Database system after that date.

III. THE RELATIONSHIP BETWEEN THE İSTANBUL CONVENTION AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

III. 1. THE LANDMARK JURISPRUDENCE ON THE BROAD INTERPRETATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AS A LIVING INSTRUMENT

The basic premise of our argument that the Istanbul Convention is enforceable regardless of whether Türkiye is a party to it or not is based on the ECtHR's judgments that the precise obligations imposed on States parties by the substantive provisions of the ECHR may be interpreted in the light of applicable international conventions, such as the United Nations Convention on the Rights of the Child, the European Convention on the Adoption of Children, ILO Conventions, and the like. In these judgments, the ECHR decides in accordance with the relevant conventions, directives and instruments, whether or not the State concerned is a party to the Convention, recognizing that it interprets fundamental rights and freedoms in the light of current conditions and in accordance with developments in international law and the need for ever higher standards in the protection of human rights, based on the principle that "the Convention is a living instrument". The main point emphasized by the ECtHR in these judgments is that, as a requirement of the democratic order of society, it is necessary to be stricter in assessing violations of the fundamental values of the European Union.

The Grand Chamber explained the historical rationale for this approach in Demir-Baykara v Türkiye:

> *The Legal Committee of the Consultative Assembly of the Council of Europe foresaw in August 1950 that "the Commission and the Court [would] necessarily [have to] apply such principles" in the execution of their duties and thus considered it to be "unnecessary" to insert a specific clause to this effect in the Convention (Documents of the Consultative Assembly, working papers of the 1950 session, vol. III, no. 93, p. 982, paragraph 5).*

TYRER v. THE UNITED KINGDOM

Tyrer v. The United Kingdom was the first explicit reference to the ECHR as a living instrument. The Court considered in 1978 whether, in the Isle of Man, a territory of the United Kingdom with its own government, legislature and courts and its own administrative, financial and legal systems, the corporal punishment inflicted on children and prisoners in the form of "birching", the beating with a bundle of twigs tied together, constituted degrading punishment within the meaning of Article 3. The United Kingdom argued that judicial corporal punishment of children was abolished in England, Wales and Scotland in 1948 and in Northern Ireland in 1968, but that in the Isle of Man, where the punishment was imposed, the community and the public did not consider it a degrading act.

However, the ECtHR for the first time commented that **"the Convention is a living instrument"** and found that Article 3 of the ECHR had been violated, stating that such a method of punishment was not acceptable in Europe in the light of social and historical developments.[23]

DUDGEON v. THE UNITED KINGDOM

In the case of the applicant, a resident of Northern Ireland who had been detained on the grounds of homosexuality, the ECHR considered the Government's arguments that there were profound differences in attitudes and public opinion between Northern Ireland and Great Britain on moral issues, that Northern Irish society was more conservative and gave greater weight to religious factors, but, unlike in the Sunday Times and Handyside judgments, it issued an innovative judgment holding that society's sense of morality was not sufficient to justify the continued operation of the challenged legislation:

> *"Although members of the public who regard homosexuality as immoral may be shocked, offended or disturbed by the commission by others of private homosexual acts, this cannot on its own warrant the application of penal sanctions when it is consenting adults alone who are involved."*[24]

[23] Tyrer v. United Kingdom, 25 April 1978.

[24] Application no. 7525/76, 26.10.1981

The ECtHR found that the prohibition of homosexuality violated Article 8 of the ECHR, emphasizing that it was for the national authorities to make the initial assessment of the pressing social need in each case; accordingly, a margin of appreciation is left to them, however, their judgment remains subject to review by the Court.

> *53. Finally, in Article 8 (art. 8) as in several other Articles of the Convention, the notion of "necessity" is linked to that of a "democratic society". According to the Court's case-law, a restriction on a Convention right cannot be regarded as "necessary in a democratic society"*

MARCKX v. BELGIUM

In Marckx v. Belgium, the ECtHR relied on the ECHR as well as two international conventions of 1962 and 1975, which Belgium, like other States parties, had not yet ratified at the time, concerning the legal status of children born out of wedlock.

The ECtHR stated that the non-signature of these conventions should not be taken into account given that the domestic law of the great majority of the member States of the Council of Europe has evolved and is continuing to evolve, in company with the relevant international instruments, towards full juridical recognition of the maxim "mater semper certa est".[25]

[25] Marckx v. Belgium, Application No: 6833/74, 13 June 1979.

SOERING v. THE UNITED KINGDOM

In this significant ruling on Article 3 of the European Convention on Human Rights (ECHR) in relation to deportation to third countries, the European Court of Human Rights (ECtHR) considered the principles enshrined in texts of universal scope, namely the International Covenant on Civil and Political Rights of 1966 and the American Convention on Human Rights of 1969. The ECtHR concluded that the prohibition of treatment contrary to Article 3 of the ECHR is an internationally recognized standard. Secondly, the Court determined the scope of Article 3 in accordance with the universal human rights standard. It was emphasized that the fact that the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits the deportation of a person to another State where he or she may be subjected to torture does not mean that a substantially similar obligation does not already exist in Article 3 ECHR.[26]

[26] TSoering v United Kingdom, Application No: 14038/88, 19 January 1989.

GLASS v. THE UNITED KINGDOM

In the case involving parents who were in conflict with hospital authorities over their son's treatment and refused to consent to it, the ECtHR referenced the standards outlined in the **Oviedo Convention on Human Rights and Biomedicine** of 4 April 1997. This convention, though not ratified by all States Parties to the ECHR, was considered by the Court when interpreting Article 8 of the ECHR.[27]

TAŞKIN AND OTHERS v. TÜRKİYE

The European Court of Human Rights (ECtHR) has concluded its jurisprudence on Article 8 of the European Convention on Human Rights (ECHR) regarding the protection of the environment. This is largely based on the principles enshrined in the **Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)**(ECE/CEP/43), to which Türkiye is neither a signatory nor a party.[28]

[27] Glass v. United Kingdom, Application no. 61827/00,

[28] Taşkın and Others v. Türkiye, Application no. 49517/99, 4 December 2003

DEMİR-BAYKARA v. TÜRKİYE

The most illustrative example of the European Court of Human Rights' interpretation of the Convention as a "living instrument" may be the Demir-Baykara v. Türkiye judgment, which addressed the violation of the right to collective bargaining for civil servants.[29]

In this judgment, **ECtHR referenced Articles 5 and 6 of the European Social Charter, which Türkiye has not ratified, as well as other international conventions. The Court stated that it is not necessary for the State Party to ratify all instruments applicable to the subject matter of the case in question when determining the content of the convention.** The Court has emphasized that the convention in question can be applied regardless of whether the state has signed and ratified it, provided that it demonstrates a continuous evolution in the norms and principles applied in international law or in the domestic law of the majority of member states of the Council of Europe.

In its appeal to the Grand Chamber, the Government argued that international conventions other than the ECHR, and in particular those which Türkiye had not ratified, were not applicable to it.

[29] Demir and Baykara v. Türkiye, Application no. 34503/97, 12 November 2008.

As to the first objection, the Government contended that the Court, by means of an interpretation of the Convention, could not create for Contracting States new obligations that were not provided for in the Convention In particular, considering that the Chamber had attached great importance to the European Social Charter (Articles 5 and 6 of which had not been ratified by Türkiye) and to the case-law of its supervisory organ, they requested the Grand Chamber to declare the application inadmissible as being incompatible ratione materiae with the Convention, in view of the impossibility of relying against the Government on international instruments that Türkiye had not ratified.

The Grand Chamber rejected this appeal. In this landmark judgment of the Grand Chamber, which is regarded as the most pivotal in the history of the ECtHR in terms of the interpretation of the ECHR, it was underscored that the ECtHR has never considered the provisions of the ECHR as the exclusive framework for the interpretation of the rights and freedoms safeguarded by the ECHR.

Since the Convention is first and foremost a system for the protection of human rights, the Court must interpret and apply it in a manner which renders its rights practical and effective, not theoretical and illusory. The Convention must also be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions."

The Grand Chamber cited Soering v. The United Kingdom judgment and emphasized that **Convention** is a **living instrument** and must be interpreted in the light of present-day conditions, and taking account of evolving norms of national and international law in its interpretation of Convention provisions.

> *"The precise obligations that the substantive provisions of the Convention impose on Contracting States may be interpreted, firstly, in the light of relevant international treaties ... as the Court indicated in the Golder case the relevant rules of international law applicable in the relations between the parties also include* **"general principles of law recognised by civilized nations"** *(see Article 38 § 1 (c) of the Statute of the International Court of Justice).*
>
> **The Court observes in this connection that in searching for common ground among the norms of international law it has never distinguished between sources of law according to whether or not they have been signed or ratified by the respondent State."**

(Konstantin Markin v. Russia [GC], no. 30078/06, § 127, 2012[30]

[30] Konstantin Markin v. Russia [GC], no. 30078/06, 22/03/2012

III. 2. ISTANBUL CONVENTION - ECtHR JURISPRUDENCE

Finally, the Istanbul Convention, which has also been ratified by the European Union, is considered a human rights convention to which the Council of Europe attaches particular importance and to which it constantly calls upon States to implement and raise awareness, as well as a human rights convention that is always referred to in the judgments of the European Court of Human Rights in cases of violence against women and gender discrimination. **The Kurt v. Austria judgment of the Grand Chamber of the ECtHR is the landmark judgment in which the Istanbul Convention is discussed in the broadest terms and its content is explained.** The judgment states that the Convention will be applied in all cases of violence against women and that the obligations of the state will be included. Furthermore, it is indicated that GREVIO reports will be taken into account in the country assessment.[31]

The Council of Europe maintains a website dedicated to the Istanbul Convention, where it posts judgments from the European Court of Human Rights (ECtHR) on the Convention, country reports, and other developments related to the Convention.[32] The website provides a comprehensive list of all judgments rendered by the ECtHR on violence against women and gender discrimination. All of the judgments in question have been reviewed and classified. The judgments concerning the countries that are and are not parties to the Convention, the countries that were not parties to the Convention at the time of the incident, and Türkiye as a country that has withdrawn from the Convention have been summarized as follows:

[31] Kurt v. Austria, Grand Chamber, Application no. 62903/15, 15.6.2021.

[32] https://www.coe.int/en/web/istanbul-convention/home 1.2.2024.

III. 2. 1. THE ROAD TO THE ISTANBUL CONVENTION: OPUZ v TÜRKİYE JUDGMENT

The ECtHR's interpretation of a living instrument has been employed with considerable effectiveness in cases of violence against women and discrimination, particularly over the past decade. This approach offers applicants a comprehensive perspective. The Opuz v. Türkiye judgment marks a significant turning point in addressing domestic violence. In this case, the applicant had repeatedly sought help from public authorities and requested protection due to prolonged violence. Despite her efforts, the authorities failed to take necessary measures, resulting in the applicant being injured and her mother being killed by the violent husband. This judgment has reinforced the principles of the Istanbul Convention, highlighting the importance of effective protection against domestic violence.[33]

The ECtHR, which has previously found violations in relation to violence against women, has, for the first time with the Opuz judgment, provided the most comprehensive definition of violence to date, addressed the social roots of violence against women, drew attention to the inequality at the root of violence, and recognized the importance of the state's responsibility in preventing violence, in addition to noting the systematic nature of violence against women.

[33] Opuz v Türkiye, Application No: 33401/02, Date of Judgment Date: 6.9.2009

Therefore, it not only found a violation under Article 2 on the protection of the right to life, but also under Article 14 on the prohibition of discrimination, noting that violence against women is a fundamental form of discrimination. Thus, by underscoring the interconnection between violence and gender discrimination, it was established that the eradication of violence depends on the achievement of equality.

When reviewing the application, the ECtHR comparatively analyzed the legal systems of all member states of the Council of Europe regarding the fight against violence against women, and took into account the relevant international conventions, particularly CEDAW, Council of Europe documents; reports prepared by non-governmental organizations including Mor Çatı, KAMER from Türkiye, Amnesty International; and even the judgments of the International American Court interpreting the Belém do Pará Convention.

III. 2. 2. APPLICATION OF THE ISTANBUL CONVENTION BY THE ECtHR TO COUNTRIES THAT ARE NOT PARTIES TO THE CONVENTION

III. 2. 2.1. RUSSIAN FEDERATION

The Russian Federation has not signed the Istanbul Convention. Nevertheless, the ECtHR examined the applications against Russia that are given below and included in the annexed list on the basis of the Istanbul Convention, despite the fact that Russia is not a party to it.

VOLODINO v. RUSSIAN FEDERATION

In an application against the Russian Federation alleging that the State had failed to provide the applicant with the necessary protection against violence, blackmail and death threats from her partner, the ECHR found in favor of the applicant and concluded that the State party had violated Articles 3 and 14 of the ECHR.

In this judgment, the ECtHR noted that the Russian Federation had not signed the İstanbul Convention, criticized the lack of a specific law and procedure to fight violence against women, and applied the Istanbul Convention by quoting the definition of violence directly from the Convention.

In its judgment, the Court referred to both the Istanbul Convention and CEDAW, as well as other relevant documents, reports and previous ECtHR judgments. Paragraph 60 of the Istanbul Convention reads as follows:

> *"60. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ("the Istanbul Convention") was released for signing on 11 May 2011 and entered into force on 1 August 2014. Russia is one of the two member States that have not signed the Istanbul Convention. The definition of "violence against women" in Article 3 is identical to that in paragraph 1 of Recommendation Rec (2002)5. "Domestic violence" is defined to include "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim".*[34]

[34] Volodina v. Russian Federation, Application no: 41261/17, 9.7.2019.

PRYANISHNIKOV v. RUSSIAN FEDERATION

In another case involving the Russian Federation, the ECtHR found a violation of the applicant's right to freedom of expression. The applicant had faced a criminal investigation on charges of producing and distributing pornography. However, the investigation was eventually dropped, and an apology was issued, as it was determined that there was no criminal element to his actions. Judge Pinto de Albuquerque wrote a separate opinion, noting that the issue of pornography should be addressed within the holistic approach of the Istanbul Convention, and underlining that Article 17 of the Convention obliges Parties to encourage the private sector, the information and communication technology sector and the media, with due respect for freedom of expression and their independence, to participate in the elaboration and implementation of policies and to set guidelines and self-regulatory standards to prevent violence against women and to enhance respect for their dignity.

> *Thirdly, I find it particularly timely for the Court to deal with the question of pornography, including pornography for adult consumption, in a principled manner, in the light of the fresh impetus which has been given to the Council of Europe's work in the area of violence against women by the Council of*

Europe Convention on preventing and combating violence against women and domestic violence. The Istanbul Convention requires the States Parties to respond to the phenomenon of violence against women with a holistic approach, which necessarily involves tacking the particularly negative impact of violent and extreme pornography on women."[35]

B. v. RUSSIAN FEDERATION

In an application concerning a young girl who experienced secondary victimization during criminal proceedings for a sexual assault, the ECtHR referenced the Istanbul Convention under the heading "Relevant International Law." This was notable even though the Russian Federation is not a party to the Istanbul Convention. [36]

KONSTANTIN MARKIN v. RUSSIAN FEDERATION

This application was filed in May 2006 by a male applicant. The Grand Chamber made its decision in 2012. Even at that time, when the Istanbul Convention had not yet entered into force, the ECtHR found a violation of the father's rights under Articles 8 and 14 of the ECHR when applying for parental leave, including under European

[35] Pryanishnikov v. Russian Federation Application no. 25047/05, 10.9.2019

[36] Case Of B v. Russia, Application no. 36328/20, 7 February 2023

Union directives to which the Russian Federation is not a party. The father, who works in the army, requested 3 years of parental leave to be near and take care of his children in another city where his wife, whom he divorced on the day of the third child's birth, had settled, but his request was rejected on the grounds that national law only allows 3 years of parental leave to be granted to the mother.

In this judgment, the ECtHR reiterated that ***the promotion of equality between men and women is now a fundamental objective of the member states of the Council of Europe and that, therefore, very substantial reasons must be demonstrated for such a difference in treatment to be considered compatible with the Convention.***

The "Relevant International Law" cited by the Court is listed as follows.

"A. UN Documents

- *The Convention on the Elimination of All Forms of Discrimination against Women*
- *International Labour Organisation (ILO) documents*
- *Article 1 of International Labour Organisation (ILO) Convention No. C111 concerning Discrimination in Respect of Employment and Occupation*
- *Article 3 § 1 of ILO Convention No. 156 concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities*

B. Council of Europe documents

- *Article 27 of the Social Charter and all Recommendations on parenthood adopted by the Committee and Parliamentarians; (For instance: 1274/2002)*

C. European Union Documents

- *Directives (for instance Council Directive 96/34/EC of 3 June 1996 on the parental leave, Council Directive 2010/18/EU of 8 March 2010 on parental leave between BUSINESSEUROPE, UEAPME, CEEP and the ETUC .*
- *Case-law of the European Court of Justice*

D. Comparative Law"

As the above template illustrates, the ECtHR indicates the establishment of a common order in Europe by citing examples of conventions, directives, and other countries' legislation and practices under the heading of "International Law."

Secondly, the measure at issue did not constitute a permissible advantage given to women with a view to improving their ability to compete on the labour market and to pursue a career on an equal footing with men. On the contrary, the fact that only a woman whose status was that of an employed

person could take that leave, whereas a man with the same status could not, was liable ***o perpetuate a traditional distribution of the roles of men and women by keeping men in a role subsidiary to that of women in relation to the exercise of their parental duties.*** *To refuse entitlement to the leave … could have as its effect that the mother would have to … bear the burden resulting from the birth of her child alone, without the child's father being able to ease that burden. Consequently, a measure at issue could not be considered to be a measure eliminating or reducing existing inequalities in society, nor as a measure seeking to achieve substantive as opposed to formal equality by reducing the real inequalities that could arise in society…"*[37]

[37] Konstantin Markin v. Russian Federation, Application no: 30078/06, 2012.

III. 2. 2.2. BULGARIA

On 21 April 2016, Bulgaria signed the Istanbul Convention. In January 2018, the government proposed that parliament ratify it. However, following a controversy over some of the Convention's provisions on the terms "sex" and "gender," a group of deputies voted against it. The government then requested the Constitutional Court to determine whether the Convention is compatible with the Constitution. The government sought to determine whether the Convention was compatible with the Constitution through the preliminary consultation procedure provided for in Article 149 § 1 (4) of the Constitution. The Constitutional Court ruled in July 2018, by eight votes to four, that the Istanbul Convention was contrary to the Bulgarian Constitution. Consequently, the government withdrew the ratification law.

Nevertheless, the ECtHR examined the applications below and those against Bulgaria in the annexed list on the basis of the Istanbul Convention, despite the fact that Bulgaria is not a party to it.

Y AND OTHERS v. BULGARIA

The ECtHR ruled that Article 2 of the ECHR had been violated in the application filed by the relatives of the woman who had reported to the police both verbally and in writing that her abusive husband had violated the injunction and was killed by her husband in a café a few hours later.

The applicant claimed that Bulgarian law did not provide adequate protection against this type of violence, that statistics were insufficient and unreliable, and that adequate protection was not provided because of the decision to block ratification of the Istanbul Convention.

In response, the government argued that violating the injunction was a criminal offense and that the killing could not have been prevented even if the Istanbul Convention had been ratified.

The ECtHR noted that it was mindful of that Convention's importance for raising the standard in the field of protection of women from domestic violence and thus also for the realization of de jure and de facto equality between women and men, therefore the refusal to ratify the Istanbul Convention could be seen as lack of sufficient regard for the need to provide women with effective protection against domestic violence, but it was not prepared in this case to draw conclusions from Bulgaria's refusal to ratify that Convention in 2018. It also noted that it is in any event not for the Court, whose sole task under Article 19 of the Convention is to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols there to", to pronounce, directly or indirectly, on whether a Contracting State should ratify an international treaty, which is an eminently political decision.

However, it also noted that, in a resolution of 28 November 2019 (P9_TA(2019)0080), the European Parliament called on Bulgaria, The Czech Republic, Hungary, Latvia, Lithuania, Slovakia and The United Kingdom to ratify the Istanbul Convention "without delay"[38]

In this judgment, the ECtHR relied on its previous judgments on the Istanbul Convention, particularly the principles set forth in Kurt v. Austria, which represents the landmark judgment for the Istanbul Convention.

AE v. BULGARIA

The case concerns complaints under Articles 3 and 14 of the ECHR alleging that the authorities responded inadequately, both in law and in practice, to the applicant's complaints that she was a victim of domestic violence.[39]

Unlike the previous Y and Others v. Bulgaria, the ECtHR emphasized that this was the third case against Bulgaria and explicitly expressed its conviction that the legal provisions in force in Bulgaria could not adequately respond to domestic violence or violence against victims (minors or others) who were not in a position to initiate and pursue legal proceedings themselves. It found that the relevant law in the context of this application requires

[38] Y and Others / Bulgaria Application no. 9077/18 22 March 2022

[39] AE v. Bulgaria Application, Application no. 53891/20, 23 May 2023.

repeated instances of domestic violence before the State can step in, that a de facto marital relationship is only present when both victim and offender in a domestic violence context are adults who have lived together for more than two years, therefore a number of cases of violence against women by their partners is excluded from public prosecution.

The ECtHR noted that relevant principles concerning the meaning of discrimination in the context of domestic violence could be traced back to the Court's judgment in the case of Opuz and Volodina, summarized the Bulgaria's poor record in cases of violence against women and stressed that one of the most important indicators of the Bulgarian authorities' failure to take the necessary measures to combat violence was that Bulgaria had still not ratified the Istanbul Convention.

> *"121. In addition, **while the Court reiterates that its role is not to pronounce on whether a Contracting State should ratify an international treaty, that being an eminently political decision (see Y and Others v. Bulgaria, cited above, § 130), the refusal of the Bulgarian authorities to ratify the Istanbul Convention (see paragraph 54 above) can still be seen as indicative of the level of their commitment to fighting effectively domestic violence.**"*

The Court referred to its Kurt v. Austria ([GC], no. 62903/15, §§ 76) judgment, setting out Article 3(b) of the Council of Europe Convention on preventing and combating violence against women and domestic violence ("the Istanbul Convention"), which defines domestic violence as "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim", and concluded that there had been a violation of Article 14 of the Convention, read in conjunction with Article 3.

III. 2. 2.3. THE UNITED KINGDOM

J.D. and A v. THE UNITED KINGDOM

One of the most striking examples regarding the Istanbul Convention is the ECtHR's *J.D. and A v. the United* Kingdom judgment. This case concerns the right to property and the prohibition of discrimination.[40]

The United Kingdom had, at the time of the judgment, signed the Istanbul Convention, but had not ratified and put it into force. Therefore, it was not a party of the Convention. However, in this judgment, the ECtHR defined the content of the applicable ECHR article by referencing both the Istanbul Convention and its previous judgments based on the Istanbul Convention.

The direct reference to Article 18 of the Istanbul Convention in paragraphs 50 and 51 of the judgment concerning the applicant, who, after leaving her abusive ex-partner, was living with her child in a three-room council flat and faced a 14 percent reduction in her housing benefit due to the number of rooms, is highly significant.

[40] D. and A V. The United Kingdom, Application no: 32949/17 and 34614/17, 2020.

"Article 18 – General obligations
Parties shall take the necessary legislative or other measures to protect all victims from any further acts of violence.

– aim at the empowerment and economic independence of women victims of violence; – allow, where appropriate, for a range of protection and support services to be located on the same premises; – address the specific needs of vulnerable persons, including child victims, and be made available to them."

"The provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator."

The ECtHR emphasized that the Istanbul Convention aims to protect women against all forms of violence and to prevent, prosecute and eliminate violence against women and domestic violence; it also aims to contribute to the elimination of all forms of discrimination against women and to promote fundamental equality between women and men, including by empowering women and ensuring their economic independence.

The ECtHR established an important case law in this case by defining the prohibition of discrimination under Article 14 in both negative and positive terms.

Thus, "the prohibition of discrimination covers not only the treatment of persons in the same situation differently without objective and reasonable justification, but also the failure of States to treat persons and groups with identifiable differences without objective and reasonable justification and for a legitimate purpose.

In addition to the civil society organizations, the UK's National Equality and Human Rights Commission (EHRC) also filed a third party application in this case, citing other international instruments and the Istanbul Convention, including the report of the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), regardless of the country's ratification.

III. 2. 2.4. UKRAINE

LEVCHUK v. UKRAINE (Application no. 17496/19)

Ukraine was not a party to the Istanbul Convention at the date of the application and judgment, and ratified the Convention on 18 July 2022.

On 22 June 2016, the applicant applied to the court for the eviction of her divorced husband, with whom she lived in the same social housing unit, on the grounds that he drank alcohol, abused and threatened her children, insulted her and sometimes physically abused her.
The applicant's witnesses who were heard at trial corroborated the applicant's testimony, the defendant's witnesses testified in favor of the defendant, and the applicant presented previous police reports and enforcement documents showing that the defendant had not paid alimony. The court of first instance granted the request for eviction on the grounds that **the defendant's presence in the same house** put the applicant at risk of physical violence and psychological harassment. However, the higher court accepted the defendant's objection that the violence was occasional rather than continuous, and overturned the decision on the grounds that eviction was a severe sanction.

In this case, after noting that Ukraine had signed the Council of Europe Convention on Preventing and

Combating Violence against Women and Domestic Violence (Istanbul Convention) on 7 November 2011, but had not yet ratified it, the ECtHR summarized the general climate of violence against women in Ukraine and gave extensive coverage to national and international reports, including a letter of 14 November 2017 from N. Muiznieks, the Council of Europe Commissioner for Human Rights, addressed to Mr A. Parubiy, the Speaker of the Ukrainian Parliament, inviting him to facilitate the process of the ratification of the Istanbul Convention.

The Court has held, in particular, that where an individual makes a credible assertion of having been subjected to repeated acts of domestic violence, however trivial the isolated incidents might be, it falls on the domestic authorities to assess the situation in its entirety, including the risk that similar incidents would continue.

> *" Moreover, in context of Article 2 the Court has noted that, in domestic violence cases, perpetrators' rights cannot supersede victims' human rights, in particular, to physical and mental integrity. (See. OPUZ judgment). The fair balance between all the competing private interests at stake has therefore not been struck. The response of the civil courts to the applicant's eviction claim against her former husband has accordingly not been in compliance with the State's positive obligation to ensure the applicant's effective protection from domestic violence. There has therefore been a breach of Article 8 of the Convention in the present case.*

III. 2. 3. The ECHR'S APPLICATION OF THE ISTANBUL CONVENTION IN CASES PRIOR TO THE COUNTRY BEING PARTY TO THE CONVENTION

BALŞAN v. ROMANIA, (APPLICATION NO. 49645/09, 2017)

The Istanbul Convention was not yet in force at the time of the application. Romania became a party to the Convention in 2016.

One of the earlier judgments cited by the ECtHR in the UK judgment is Bălșan v. Romania (Application no. 49645/09, 2017), which dealt in detail with the Istanbul Convention and found a violation against Romania. In reference to this judgment, the Court noted that it must have regard, in addition to the more general meaning of discrimination as determined in its case-law, **to the provisions of more specialised legal instruments and the decisions of international legal bodies on the question of violence against women.**

MRAOVIĆ v. CROTIA

The Convention has not yet entered into force when the application was made. Crotia ratified the Convention on 12 June 2018.

This judgment, based on an individual application by a male applicant, is an important jurisprudence

establishing general principles, especially in criminal cases involving women as victims.[41]

The applicant, a famous basketball player, was arrested and tried for the alleged offense of sexual abuse. On 13 September 2007, at the first retrial hearing, he requested that the proceedings be held in open court. He argued that OSCE representatives had attended the Court hearing and that the victim had made numerous statements to the media about the case. He emphasized that he was constantly stigmatized by the media during the trial due to the "exclusion of the public from the trial" and the "failure of the media to convey the true and objective state of the evidence presented". The public defender disagreed with the applicant's request, emphasizing that the grounds for public exclusion still existed. Both parties were heard on this matter. The applicant reiterated his request for the proceedings to be held in open court at the next hearing on 3 December 2007. He noted that I.J. had since given four interviews to the media in which she provided various details about his personal life and the incident in question.

In the first trial, the defense requested the exclusion of the public in order to protect the private and family life of the defendant, and the courts accepted this request and decided to exclude the public.

[41] Mraović v. Croatia, Application No:30373/13, Judgment Date: 9.4.2021

In the retrial, however, the defense changed its position to ensure that the trial would be open to the public in order to "de-stigmatize" the defendants and facilitate impartial media coverage.

In light of the foregoing, the Court held that there was no material (absolute) violation of the rules of criminal procedure set forth in Article 367(1)(4) of the Code of Criminal Procedure, as alleged in the appeal, because the public was excluded from the trial in order to protect the victim's privacy in accordance with the law.

The ECtHR relied heavily on **Articles 49 and 56 of the Istanbul Convention** when reviewing the application and made detailed references to these Articles.

> *"Article 49 - General obligations*
> *"1. Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while **taking into consideration the rights of the victim**, during all stages of the criminal proceedings.*
>
> *2. Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention*

Article 56 - Protection measures
"1. Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:
(a) providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;
(f) ensuring that measures may be adopted to protect the privacy and the image of the victim;
(i) enabling victims to testify, according to the rules provided by their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available."

The ECtHR also relied on Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe to Member States on assistance to victims of crime, adopted on 14 June 2006:

"Article 2: "States should ensure the effective recognition of, and respect for, the rights of victims with regard to their human rights; they should, in particular, respect the security, dignity, private and family life of victims and recognise the negative effects of crime on victims..."

JURČIĆ v. CROTIA

Croatia had not yet ratified the Istanbul Convention at the time of the application.

The application concerns IVF treatment and the right to work.[42]

On 17 December 2009 an ultrasound confirmed that the applicant was pregnant with twins. On 28 December 2009 the applicant filed a request for payment of compensation for loss of salary during her sick leave on account of pregnancy-related complications.

On 30 March 2010, the Central Office of the Croatian Health Insurance Fund dismissed the applicant's appeal, holding that although pregnancy in itself could not be a reason for not taking up employment, the particular circumstances of the applicant's case suggested that her employment could be considered fictitious and aimed solely at obtaining the compensation for loss of salary granted to employed persons.

[42] Jurčić v. Crotia, Application no: 54711/15, 4.2.2021.

In the administrative action filed by the applicant, the national court concluded that on the day she entered into the employment contract [the applicant] had been unfit to work and, in that most sensitive phase of a twin pregnancy, had been unfit to fulfil the obligations arising from her employment within the meaning of section 3(1) of the Labour Act, according to which the employee is to personally perform the activities for which he or she has entered into an employment contract, in the [applicant's] case administrative tasks in a city some distance from her place of residence, entailing an obligation to travel within the country and abroad. "These facts lead to the conclusion that the employment was not entered into with a view to fulfilment of the mutual obligations of the employer and employee but that the present case concerns an employment contract entered into solely in order to benefit from statutory social security benefits. In this court's view, such a contract cannot be a basis for obtaining the status of insured person." Thus, the administrative action was dismissed relying on the above justification.

The ECtHR summarized the applicable legal framework and practice and cited all international instruments. One of these instruments is the Istanbul Convention.

"**44.** *Article 12 § 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence ("the Istanbul Convention"), which entered into force in respect of the respondent State on 1 October 2018, provides as follows:*

"Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men."

Council Directives:

33. The relevant provisions of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation and ***the Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding read as follows:***

"Whereas the risk of dismissal for reasons associated with their condition may have harmful effects on the physical and mental state of

pregnant workers, workers who have recently given birth or who are breastfeeding; whereas provision should be made for such dismissal to be prohibited;

Moreover, provision concerning maternity leave would also serve no purpose unless accompanied by the maintenance of rights linked to the employment contract and or entitlement to an adequate allowance;

Judgments of the Court of Justice:

" 23. It is clear from the case-law of the Court of Justice that unfavourable treatment of a woman related to pregnancy or maternity constitutes direct discrimination on grounds of sex. Such treatment should therefore be expressly covered by this Directive.

37. The CJEU further held that any unfavourable treatment directly or indirectly connected to pregnancy or maternity constituted direct discrimination on grounds of sex.

In the Webb judgment (14 July 1994, C-32/93, EU:C:1994:300), the CJEU found that the situation of a pregnant woman could not be compared with that of a man who was absent because of illness. The applicant in the Webb case found out that she was pregnant a few weeks after being hired to replace a worker who had herself become pregnant. She was dismissed as soon as the employer found out about her pregnancy. The CJEU ruled as follows:

24. First, in response to the House of Lords' inquiry, there can be no question of comparing the situation of a woman who finds herself incapable, by reason of pregnancy discovered very shortly after the conclusion of the employment contract, of performing the task for which she was recruited with that of a man similarly incapable for medical or other reasons.

25. As Mrs Webb rightly argues, pregnancy is not in any way comparable with a pathological condition, and even less so with unavailability for work on non-medical grounds, both of which are situations that may justify the dismissal of a woman without discriminating on grounds of sex. Moreover, in the Hertz judgment, cited above, the Court drew a clear distinction between pregnancy and illness, even where the illness is attributable to pregnancy but manifests itself after the maternity leave. As the Court pointed out (in paragraph 16), there is no reason to distinguish such an illness from any other illness.

50. It is true that workers of both sexes can be temporarily prevented from carrying out their work on account of the medical treatment they must receive. Nevertheless, the treatment in question in the main proceedings – namely a follicular puncture and the transfer to the woman's uterus of the ova removed by way of that follicular puncture immediately after their fertilisation – directly affects only women. It follows that the dismissal of a female worker essentially because she is undergoing that important stage of in vitro fertilisation treatment constitutes direct discrimination on grounds of sex."

Relevant parts of United Nations Convention on the Elimination of All Forms of Discrimination against Women ("the CEDAW"):

> ***Article 5.***
> *"States Parties shall take all appropriate measures:*
> *(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women ..."*
>
> ***Article 11***
> *"1. "1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular.*

Maternity Protection Convention 2000 (No. 183), adopted by the General Conference of the International Labour Organization (ILO) on 15 June 2000:

> ***Benefits, Article 6***
> *"1. Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leave referred to in Articles 4 or 5 [maternity leave and leave in case of illness or complications].*

5. Each Member shall ensure that the conditions to qualify for cash benefits can be satisfied by a large majority of the women to whom this Convention applies.

8. In order to protect the situation of women in the labour market, benefits in respect of the leave referred to in Articles 4 and 5 shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. An employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer's specific agreement except where:

> *(a) such is provided for in national law or practice in a member State prior to the date of adoption of this Convention by the International Labour Conference; or*
>
> *(b) it is subsequently agreed at the national level by the government and the representative organizations of employers and workers."*

Article 8, Employment protection and non-discrimination

"1. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing.

The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.

Recommendation CM/Rec(2019)1 of the Council of Europe's Committee of Ministers to member States on preventing and combating sexism, adopted on 27 March 2019:

> *"For the purpose of this Recommendation, sexism is:*
> *Any act, gesture, visual representation, spoken or written words, practice or behaviour based upon the idea that a person or a group of persons is inferior because of their sex, which occurs in the public or private sphere, whether online or offline, with the purpose or effect of:*
> *v. maintaining and reinforcing gender stereotypes."*

In conclusion, the ECtHR found a violation, accepting the applicant's claim that, she had been discriminated against, as a pregnant woman who had undergone in vitro fertilization, on account of the revocation of her status as an insured employee, contrary to Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 to the Convention.

BUTURUGA v. ROMANIA

Romania was not a party to the Istanbul Convention at the time of the application.

In its 2020 judgment, the ECtHR **recognized cyberbullying as a form of domestic violence for the first time.** The Court also determined that the unanswered and unprotected complaints of the applicant, who had repeatedly claimed that she had been subjected to domestic violence and cyberbullying by her former spouse in violation of the confidentiality of communications, violated the right to respect for private and family life in terms of the prohibition of inhuman treatment and the confidentiality of communications. It concluded that Romania had failed to fulfill its positive obligations under Articles 3 and 8 of the Convention.[43]

The applicant repeatedly asserted that she had been subjected to violence by her former spouse and that he had gained unauthorized access to her electronic accounts, including her Facebook account, and copied her private communications, documents, and photographs. However, the local courts failed to accord the requisite consideration to these complaints. They asserted that the purported breach of confidentiality of correspondence was irrelevant to the allegation of domestic violence. In particular, the Court determined that the domestic authorities had not considered domestic violence as a factor during the investigation, thereby failing to provide an adequate response to the serious allegations made by the applicant.

[43] Buturuga v. Romania, Application no. 56867/15, 10.02.2020.

The Court reaffirmed that cyberbullying is recognized as a form of violence against women and girls and takes various forms, including invasion of privacy, intrusion into the victim's computer, and the seizure, sharing, and falsification of data and images, including personal data.

According to the ECtHR, which found a violation under the Istanbul Convention, "First, the authorities did not address the facts of the present case from the perspective of marital violence." The judgment was based on the articles of the criminal code which punish violence between individuals, and not on the provisions of that code which punish more severely marital violence.

Secondly, the specific nature of domestic violence as recognized in the Istanbul Convention must be taken into account in the context of domestic proceedings. However, these specific aspects were not taken into account in the present case."

"Given that the protection order was issued for a period subsequent to the incidents, the effects of this order had no impact on the effectiveness of the criminal investigation carried out in her case."

N.Ç. v. TÜRKİYE

The N.Ç. application was made before the Convention entered into force.

The judgment listed the Istanbul Convention, as well as other instruments of the Council of Europe and the United Nations, under the relevant law.

> *The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (also known as the Istanbul Convention) was ratified by Türkiye on 14 March 2012. This Convention imposes an obligation on the Contracting Parties to adopt measures and requirements for the protection of the rights and interests of victims, particularly measures to protect victims from the risk of intimidation and secondary victimization. The aforementioned measures will permit victims to be heard, to appear in person, to express their needs and concerns to those involved in medical examinations, and, where permitted by applicable domestic law, to make statements without the alleged perpetrator being present.*[44]

[44] N.Ç v. Türkiye, Application No: 40591/11, 9.2.2021.

IV. CONCLUSION:

As can be seen from all these examples and explanations, the Istanbul Convention can be implemented in Turkish domestic law regardless of whether Türkiye is a party or not.

As evidenced by the examples presented in the study, the ECtHR frequently employs a purposive interpretation technique, whereby it refers to international conventions and European Union instruments to ascertain the meaning of numerous rights and freedoms enshrined in the Convention.The Istanbul Convention is an international convention that has been endorsed by the Council of Europe, ratified by the European Union, and adopted by a majority of Council member states. This has led to a growing political awareness of its importance. Therefore, the European Court of Human Rights frequently refers to the applicable articles of the Istanbul Convention in its judgments. The Istanbul Convention is referenced not only in the context of the right to life, prohibition of ill-treatment, and the right to privacy protected under Article 8, but also in every instance where there is an allegation of discrimination, including the right to property. We can rely on the Istanbul Convention in all forms of discrimination, from the right to social security, to dismissal, to differences in pay. For instance, the courts and the Constitutional Court should ensure that victims of discrimination in the workplace on the grounds of sexual orientation are afforded the protection of the Istanbul Convention.

The assertion that "Türkiye has now withdrawn from the Istanbul Convention; therefore, it is not binding on Türkiye" is erroneous. As is well known, the European Convention on Human Rights takes precedence over domestic legislation in accordance with Article 90 of the Constitution. Particularly after the power to file individual applications with the Constitutional Court was granted, the judiciary and all state organs must accept that not only the text of the European Convention on Human Rights, but also its interpretative rulings, must now be applied as part of our domestic law.

V. ECtHR JUDGMENTS INVOLVING ISTANBUL CONVENTION AND VIOLENCE AGAINST WOMEN

V.1. GRAND CHAMBER JUDGMENTS

- Domestic violence, murder of a child: Kurt v. Austria [GC], 2021
- Sexual violence, lack of effective remedies: O'Keeffe v. Ireland [GC], 2014.

V.2. CHAMBER/SECTION JUDGMENTS

- Vučković v. Croatia, 2023 – sexual violence in the workplace
- Luca v. the Republic of Moldova, 2023 - child custody, domestic violence
- Bîzdîga v. the Republic of Moldova, 2023 - child custody, domestic violence
- Germano v. Italy, 2023 - stalking, police barring order
- Gaidukevich v. Georgia, 2023 – domestic violence, murder, discrimination
- A.E. v. Bulgaria, 2023 – child victim of domestic violence
- B. v. Russia, 2023 – child victim of rape, secondary victimization
- S.F.K. v. Russia, 2022 – forced abortion
- M.M. and Z.M. v. Ukraine, 2022 – domestic violence
- Ivashkiv v. Ukraine, 2022 – domestic violence
- C. v. Romania, 2022 – sexual harassment at the workplace

- J.I. v. Croatia, 2022 – rape, death threats
- Malagic v. Croatia, 2022 – domestic violence, restraining order
- G.M. and Others v. the Republic of Moldova, 2022 - forced abortion, forced sterilization
- I.M. and Others v. Italy, 2022 – domestic violence, custody and visitation rights
- Landi v. Italy, 2022 – domestic violence, custody and visitation rights, murder of child
- De Giorgi v. Italy, 2022 – domestic violence
- Y and Others v. Bulgaria, 2022 – domestic violence
- M.S. v. Italy, 2022 – domestic violence
- A and B v. Georgia, 2022
- Tapayeva and Others v. Russia, 2021 – children kidnapped, gender stereotypes, patrilineal practices
- Tunikova and others v. Russia, 2021 – domestic violence, gender-based discrimination
- J.L. v. Italy, 2021 – rape, secondary victimisation
- Tkhelidze v. Georgia, 2021 - domestic violence, murder, gender-based discrimination
- Jurcic v. Croatia, 2021 – discrimination of a pregnant woman
- Penati v. Italy, 2021 – domestic violence, murder of a child, custody and visitation rights
- N.Ç. v. Türkiye, 2021 – sexual abuse of a child, secondary victimisation
- Volodina v. Russia (No. 2), 2021 – domestic violence, cyberviolence

- Galovic v. Croatia, 2021 – criminal law provisions re domestic violence
- Lesnykh v. Russia, 2021 – suspicious death of a woman, ineffective investigation
- Levchuk v. Ukraine, 2020 – domestic violence
- Tërshana v. Albania, 2020 – acid attack
- Association Innocence en danger et Association Enfance et Partage c. la France, 2020 – domestic violence, murder of child
- Buturugă v. Romania, 2020 – cyberviolence as a form of domestic violence
- Z v. Bulgaria, 2019 – rape of a child
- J.D. and A v. The United Kingdom, 2019 – social housing for domestic violence victim
- A and B v. Croatia, 2019 – sexual abuse of a child
- E.B. v. Romania, 2019 – rape, secondary victimisation
- Volodina v. Russia, 2019 – domestic violence
- O.C.I. v. Romania, 2019 – domestic violence, child custody and visitation rights
- D.M.D. v. Romania, 2018 – domestic violence against a child
- Carvalho Pinto de Sousa Morais v. Portugal, 2017 – gender-based discrimination
- Bălșan v. Romania, 2017 – domestic violence
- B.V v. Belgium, 2017 – rape, ineffective investigations
- Z.B. v. Croatia, 2017 – domestic violence
- Talpis v. Italy, 2017 – domestic violence, murder of child
- Halime Kilic v. Turkey, 2016 – domestic violence
- M.G. v. Turkey, 2016 – domestic violence

- M.G.C v. Romania, 2016 – rape of a child
- Civek v. Turkey, 2016 – domestic violence, murder
- Y. v. Slovenia, 2015 – rape, secondary victimisation
- Durmaz v. Turkey, 2014 – domestic violence, suspicious death
- T.M. and C.M. v. the Republic of Moldova, 2014 – domestic violence
- W. v. Slovenia, 2014 - rape
- D.J v. Croatia, 2013 - rape
- N.A. v. the Republic of Moldova, 2013 - rape
- B v. the Republic of Moldova, 2013 -domestic violence against mother and children
- Mudric v. the Republic of Moldova, 2013 – domestic violence
- Eremia and Others v. the Republic of Moldova, 2013 – domestic violence
- Valiuliene v. Lithuania, 2013 – domestic violence
- Kalucza v. Hungary, 2012 – domestic violence
- Yazgül Yılmaz v. Turkey, 2011 – sexual harassment
- V.C v. Slovakia, 2011 – forced sterilisation
- Hajduová v. Slovakia, 2010 – domestic violence
- A. v Croatia, 2010 – domestic violence
- E.S. and other v. Slovakia, 2009 – domestic violence
- Opuz v. Turkey, 2009 – domestic violence
- Branko Tomašić and others v. Croatia, 2009 – domestic violence
- Bevacqua and S. v. Bulgaria, 2008 – domestic violence
- Kontrova v. Slovakia, 2007 – domestic violence
- M.C. v. Bulgaria, 2004 – rape and sexual violence

- Aydın v. Turkey, 1997 – rape of a minor in police custody
- X and Y v. the Netherlands, 1985 – rape of a minor with disabilities

For additional information on the Judgments and the Convention, see. :
https://www.coe.int/en/web/istanbul-convention/publications

VI. APPLICATION TEMPLATE

One of the primary objectives of the study is to guarantee the implementation of the Istanbul Convention and to create an application template in accordance with the format of the ECtHR judgments. This will facilitate the admissibility of applications by the Constitutional Court and the ECtHR. A general application template has been prepared to ensure that the Constitutional Court and courts of first instance incorporate relevant international regulations and human rights reports, particularly the Istanbul Convention, into their judgments.

SCOPE OF THE APPLICATION TEMPLATE

1. HISTORICAL BACKGROUND OF THE INCIDENT

2. INTERNATIONAL LAW APPLICABLE TO THE INCIDENT

ISTANBUL CONVENTION

UN DOCUMENTS/REPORTS

- *CEDAW*
- *ILO*
- *DOCUMENTS ON THE CONFLICT*

EUROPEAN COUNCIL DOCUMENTS/REPORTS

- *THE EUROPEAN CONVENTION ON HUMAN RIGHTS*
- *ECtHR JUDGMENTS*

EU DOCUMENTS/REPORTS

- *JUDGMENTS OF THE EUROPEAN COURT OF JUSTICE*
- *DIRECTIVES AND GUIDELINES*

3. RELEVANT INTERNATIONAL AND NATIONAL REPORTS

- *CEDAW*

- *GREVIO*
- *AMNESTY INTERNATIONAL*
- *CIVIL SOCIETY REPORTS*
- *TGNA COMMISSION REPORTS*
- *EU PROGRESS REPORT*
- *STATISTICS AND CONTEXT*

These reports provide insight into the general political and social context of the country, thereby reducing the risk of legal interpretation based on abstract and general rules.

4. DOMESTIC LAW

- *CONSTITUTION*
- *LAW NO. 6284*
- *CIVIL CODE*
- *CRIMINAL CODE...*
- *RELEVANT SPECIFIC LAWS, REGULATIONS ETC.*

5. APPLICATION OF INTERNATIONAL AND NATIONAL LAW TO THE CASE AT HAND

In this section, it should be explained that the fundamental rights protected by the European Convention on Human Rights as a living instrument should be evaluated under the Istanbul Convention in Türkiye, a member of the Council of Europe, in line with Article 90 of the Constitution, and that national law should be considered from this perspective. Moreover, the relevant Constitutional Court judgments and other relevant ECtHR and ECtHR judgments, particularly Kurt v. Austria and Opuz v. Türkiye, should be discussed as the main reference.

6. CONCLUSION AND REQUEST:

/kadinkoalisyonu /kadinkoalisyonu /KadinKoalisyonu
/kadinkoalisyonu /@KadnKoalisyonu