

To the Public Opinion of the Republic of Turkey

1 April 2021

With regard to the Presidential Decisions regarding
the Termination of Turkey's Commitment to the
Istanbul Convention and the Dismissal of the
Governor of the Central Bank of the Republic of
Turkey (CBRT)

Our association operates with the aim of always improving the judiciary, which has the greatest responsibility in realizing the rule of law, in the belief that it is possible to increase the welfare of our people, to make our country one of the most prosperous countries in the world and to increase our national income sustainably through the rule of law.

Two presidential decisions regarding the termination of Turkey's commitment to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, better known as the "Istanbul Convention", and the dismissal of the governor of the CBRT, Mr. Ağbal, are closely related to this aim. The decision to end the commitment to the Istanbul Convention directly concerns our social life, social peace, the rule of law and the international reputation of our country. The decision with regard to the CBRT directly affects the value of our national currency and

savings, our economy, international economic risk premiums, and the interest and additional obligations we bear to obtain loans from international markets, from which we borrow around 200 billion US dollars every year – and thus our national income and per capita income, and the welfare of the people.

Rule of Law Is the Key to Stability and Prosperity

Reactions observed in the national and international arena to the decisions regarding the termination of Turkey's commitment to the Istanbul Convention and the dismissal of the governor of the CBRT, the sudden depreciation of the Turkish lira and the rapid increase in our credit risk scores have shown vividly that events affecting social life, the legality of presidential decisions and the predictability of the decision-making process closely affect the economy. The rule of law brings stability in state administration, and stability increases welfare; conversely, instability causes national income and welfare to decrease.

Why Is the Istanbul Convention Important?

Turkey is far behind the world in terms of gender equality. In the 2020 Gender Gap Report published by the World Economic Forum, Turkey ranks 130th out of 153 countries. In this report, Turkey received very low scores, especially on women's participation in the economy and women's empowerment in politics.

According to 2020 data from the Turkish Statistical Institute, although the male–female ratio of the working-age population in Turkey (15–65 years) is almost equal, women's participation in employment is very low. According to the Women's Labor Report data published by DİSK/GENEL-İŞ Research Department in March 2020, 72.7% of the male population and only 34.2% of the female population participate in the workforce in Turkey. While the employment participation rate is 65.7% for men, it is 29.4% for women.

Turkey has a serious problem of domestic violence stemming from gender inequality. Four out of ten women experience physical and/or sexual violence at some point in their lives.

Domestic violence and violence against women are also serious rule-of-law issues. Although defined as crimes in our laws, these crimes are often outside the reach of justice; however, in exceptional cases, these crimes are submitted to the

judiciary. The basis for this is the social-cultural codes, the physical and economic weakness of the victims of the crime, and the fact that the victims are generally economically dependent on the criminals. It is clear that families where violence against women and children is practiced will not be healthy, that the family and its members will experience constant trauma due to the permanent presence or threat of violence, and that children who grow up in these environments will not be able to form healthy families in the future. The life story of the famous singer Müslüm Gürses, which is the subject of a movie, is a painful example of this social reality.

On the other hand, social-cultural codes such as “a woman’s place is right beside her husband,” “women walk seven steps behind men,” “he can beat, he can love” and similar views restrict women’s participation in social life and employment, and their contribution to the economy.

Women’s participation in employment at an equal rate with men would increase our national and household income by 30–40% immediately and would strengthen the economy at a higher rate. As a matter of fact, in UNDP’s Sustainable Development Goals No. 5, “Gender Equality,” it is stated that “It is proven repeatedly that the empowerment of women and girls creates a multiplier effect and accelerates economic growth and development in all areas.” In spite of this, in Turkey the cultural codes and violence we mentioned prevent women from benefiting from the equal opportunities they are born with and their economic development.

The fact that women have been pushed out of social and economic life and made economically and socially weak by gender discrimination and other methods and prejudices is one of the biggest causes of femicide and violence against women in our country.

A deep vortex, in which the fact that women are excluded from economic life causes domestic violence and violence against women, and that violence within the family and against women pushes women out of economic life, worsens the situation and prevents the economy from getting stronger.

It is possible to escape from this vortex and recover, by preventing domestic violence and violence against women, on the one hand, and ensuring gender equality by empowering women who are disadvantaged in society, on the other.

As befits the name, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence is an important step towards solving the problems summarized above.

The fact that the Grand National Assembly of Turkey enacted the Istanbul Convention, that our country took the initiative to execute this convention and proudly announced to the world that it was the first signatory, declared Turkey's determination to solve this problem. While it is possible to withdraw from the convention only with an annulment decision by the Grand National Assembly of Turkey, the president publishing the decision to end support for it has raised a legitimate concern both inside and outside the country that the already inadequate steps to prevent domestic violence and violence against women will be completely dysfunctional.

Procedure for Withdrawal from Multiple International Conventions

According to the provisions of international treaties and the Vienna Convention on the Law of Treaties, a country may withdraw from an international treaty of which it is a member, either in accordance with the provisions of the treaty or by obtaining the consent of the other parties.

A country that wants to withdraw must first reveal its will to withdraw in accordance with its own domestic law, and must then communicate its will to withdraw in accordance with the procedure stipulated in the convention.

In accordance with the "principle of parallelism in authority and procedure," a transaction is terminated by the same procedure with which it was established.

The Grand National Assembly of Turkey Enacted the Istanbul Convention

Authority for approving the ratification of international agreements and putting them into effect rests with the Grand National Assembly of Turkey, according to the Article 87 of the Constitution. Likewise, abolishing laws is the exclusive authority of the Grand National Assembly of Turkey.

The task of negotiating and joining international conventions on behalf of our country rests with the executive body, i.e. the president. In order for an international agreement ratified or joined by the president in this capacity as executive to become applicable in Turkey, first, the president must present it to the Grand National Assembly

of Turkey, the Assembly must enact a law on the approval of the international convention, then the president must approve this law of approval and have it published in the Official Gazette. In order to withdraw from an international convention that has become binding for our country, the Grand National Assembly of Turkey must enact a law with regard to the withdrawal. The president carries out the procedures for withdrawing from an international treaty that the Assembly has decided to withdraw from.

In 2011, the Grand National Assembly of Turkey approved the international Istanbul Convention, in which the executive participated on behalf of our country, with Law No. 6251, and this law was published in the Official Gazette and entered into force. With the approval of the Grand National Assembly of Turkey, the Istanbul Convention received the force of law in accordance with Article 90 of the Constitution. In withdrawing from the convention, the same procedure must be run backwards.

The Grand National Assembly of Turkey, which has enacted it, can decide to withdraw from the Istanbul Convention. To do this, the Grand National Assembly of Turkey would have to abolish Law No. 6251 by enacting a law to withdraw from the Istanbul Convention, this new law would have to be published in the Official Gazette and enter into force, and after that, the President would have to carry out the rest of the withdrawal process.

President's Incapacity and Limits of Authority

The position of president derives its powers from the Constitution; the limits of this authority are also drawn by the Constitution. The scope of the president's authority to issue decrees is clearly limited to "matters pertaining to executive power" in Article 104/17 of the Constitution: "The President can issue presidential decrees on matters pertaining to executive power. The President cannot issue a presidential decree on matters that are envisaged to be regulated exclusively by law in the Constitution. The President cannot amend the laws with the presidential decree, and in practice, priority belongs to the laws."

The president cannot repeal a law enacted by the Grand National Assembly of Turkey. The president cannot by executive decision withdraw from an international convention that has become a law. The president does not have the authority to terminate any international treaty or convention that the Grand National Assembly of Turkey has promulgated by enacting an approved law. Granting such a power to the

president against the clear provisions of the Constitution is not possible either. The president cannot authorize this by a decree issued by the president; and, pursuant to Decree No. 9, issued on “matters pertaining to executive power,” the president cannot authorize changes regarding the laws that are under the jurisdiction of the Grand National Assembly of Turkey.

For the reason that the Istanbul Convention is a treaty on women's rights, and therefore on human rights, in accordance with Article 104/17 of the Constitution, the president does not have the authority to act or issue a decree against it.

Indeed, in accordance with the first sentence of Paragraph 17 of Article 104 of the Constitution, “The President can issue presidential decrees on matters pertaining to executive power.” In the face of this clear provision, it is not possible for the president to be considered authorized and to exercise legislative powers based on the provisions of the aforementioned decree enacted by the Grand National Assembly of Turkey.

Moreover, the president has not been granted such authority in the Constitution, in Law No. 244 or in Article 3 of Presidential Decree No. 9. Within the scope of Article 104 of the Constitution and Article 5 of Law No. 244, the authority granted to the president is to “ratify and accede” international agreements. The executive duties and powers, which consist of determining the formalities and dates related to the implementation of these agreements and announcing them to the public, are regulated in the aforementioned Decree No. 9.

As a result, the president cannot terminate Turkey’s commitment to the Istanbul Convention, which has become Law No. 6251, by a presidential decision alone.

The Compliance with the Law of the President’s CBRT Decisions is Uncertain

The CBRT is independent in accordance with the law of establishment.

Maintaining the independence of the CBRT is of great concern to all of us, as it is the only institution that ensures confidence in the economy and protects the honor of our currency and the value of our savings, and it is recognized worldwide as being separate from politics. It is no longer even a matter of discussion that the short-term and controversial decisions taken about the CBRT are economically wrong and damaging, and that they damage legal and economic certainty.

Therefore, from an economic and a legal point of view, the president cannot and should not dismiss the governor of the CBRT.

However, with the interpretation that the provision in Constitution 104/9 that “The President appoints and dismisses the senior public administrators, and regulates the procedures and principles regarding their appointment with a presidential decree,” which states that the president is authorized to dismiss public officials, includes the governor of the CBRT, the presidency assumes that it does have this authority. Since neither the dismissed presidents nor civil society have brought the issue to the judiciary by action, this issue has not been examined by the judiciary and the current ambiguity has not yet been resolved by jurisprudence.

The President is Responsible for Ruling the State in a Stable Manner

Article 64 of the Constitution underlines the principle of “stability in the executive.” This provision must also be taken into account in presidential decisions. Likewise, the president is bound by law in accordance with Articles 8 and 10 of the Constitution. Being bound by law means that the president’s actions and decisions should be impersonal, scientific and objective.

Our country receives 200 billion US dollars in loans from international markets every year. However, as its credit risk score rises, it has to pay higher interest rates. Growing the economy is thus only possible by increasing our international debt and interest rate. It is in the best interests of Turkey to get rid of this vicious circle and to produce with high added value and attract as much investment as possible to our country. To achieve this, it is necessary to take predictable and foreseeable decisions internationally and domestically, and to play a dominant and leading role in the international arena. The only way to achieve this is to develop the democratic administration that our country adopted many years ago, and to increase the predictability of decisions and actions in relation to social and economic issues through the rule of law.

The rule of law requires, first and foremost, that the highest organs of the state strictly abide by the need for their decisions to comply with the law.

The unlawful termination of commitment to the Istanbul Convention by the use of an excess of power, and the interpretation of legally controversial issues in a way that would annul the independence of the CBRT, are perceived as disrupting the rule of

law both inside and outside our country and create a situation in which developments are not predictable.

This situation does not comply with the principle of “stability” as outlined in Article 64 of the Constitution.

The perception of instability in the top level of economic management of the state, in the economy, and in economic policies and decisions is to the disadvantage of our country and our people.

A high degree of sensitivity to the rule of law is the key to stability in administration and economy, and stability is the key to economic success and prosperity.

Respectfully presented to the public.