

# THE ISTANBUL CONVENTION

## An Overbroad and Unnecessary Treaty

### What is the Istanbul Convention?

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) is a comprehensive international treaty. Its declared goal is to combat violence against women and domestic violence. However, it goes much further than that admirable aim and raises a number of concerns.

### What is the Status of the Istanbul Convention?

The Istanbul Convention was opened for signature in 2011, but the number of ratifications required<sup>1</sup> for it to enter into force was not reached until 2014. As of January 2018, 28 out of 47 Members of the Council of Europe (CoE) and 17 out of 28 EU Member States have ratified it.<sup>2</sup> On 4 March 2016, the European Commission (EC) proposed that the European Union (EU) should accede to the Istanbul Convention.<sup>3</sup>

The Istanbul Convention is a mixed agreement, which means some of its content falls within domestic competence and other parts fall under EU competence. There have therefore been concerns that EU-wide accession could undermine national competence and create conflicts of competence, especially for those EU Member States that have not ratified the Istanbul Convention nationally.

On 11 May 2017, the EU Council adopted two decisions on the signing of the Istanbul Convention on behalf of the EU. Responding to some opposition, the EU decided to sign the Istanbul Convention solely within areas of exclusive EU competence, with a particular focus on asylum, non-refoulement and judicial cooperation in criminal matters.<sup>4</sup> On the basis of the two decisions, the EU signed the Istanbul Convention on 13 June 2017, expressing its intention to accede to the Istanbul Convention. Although the process of EU accession is ongoing and lengthy, the Council decisions on the scope of accession cannot be modified.

1 Out of the ten necessary ratifications, eight were required to be Council of Europe Member States. Council of Europe Convention on preventing and combating violence against women and domestic violence (adopted 7 April, entered into force 1 August 2014) C.E.T.S. No. 210 (Istanbul Convention), Article 75.

2 For the updated list of signatures and ratifications see 'Chart of signatures and ratifications of Treaty 210' (*Council of Europe*) <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>> accessed 18 January 2018.

3 European Commission, 'Commission proposes EU accession to international Convention to fight violence against women' (*Press Release Database*, 4 March 2016) <[http://europa.eu/rapid/press-release\\_IP-16-549\\_en.htm](http://europa.eu/rapid/press-release_IP-16-549_en.htm)> accessed 12 April 2016.

4 Articles 78 (2), 82 and 83 of the Treaty on the Functioning of the EU (TFEU).

## Concerns

A thorough analysis of the Istanbul Convention shows that accession would introduce a number of new legal challenges regarding content and competence rather than being focused on addressing violence against women.

### A controversial non-binary definition of gender

Article 3(c) of the Istanbul Convention codifies a controversial, non-consensual definition of 'gender' as a *social construct* that is independent of biological reality: 'gender shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men'. This understanding departs from the definition given to 'gender equality' in the EU Treaties, which refers to equality between men and women,<sup>5</sup> and in the Rome Statute (which has 123 States Parties).<sup>6</sup>

### A focus on changing behaviour and eradicating 'traditions'

In Article 12(1), the Istanbul Convention states its goal of 'promoting 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*.'

Based on this language, the historical binary view of mankind and of marriage, long held by all civilizations, may be stigmatized as a *tradition based on stereotyped gender roles* and thus something that should be opposed at all levels, including in law, policy, and education. Teaching manuals, social science, and public campaigns, which depict marriage between a man and a woman as the core unit of society within which children grow and best develop risk being targeted, based on the provisions of the Convention. This could spill over into a number of areas including the content of curricula, expectations or obligations on parents raising their children, and the freedom of religious organizations.

### A threat to parental rights

Parents have the primary right and responsibility to educate their children; this right is so fundamental it should not be abrogated or otherwise curtailed without the most compelling justification. Protection for parental rights has been codified in a number of international human rights treaties, such as the United Nations Convention on the Rights of the Child, Articles 5 and 18, and Article 2 of Protocol 1 of the European Convention on Human Rights. Article 26(3) of the Universal Declaration of Human Rights makes it clear that 'parents have a prior right to choose the kind of education that shall be given to their children.' Consequently, State institutions should *support* parents in the education process. Schools must seek

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parental cooperation and not artificially displace the rights of parents by imposing on children an education contrary to the one they receive from their parents.

In opposition to these well-established standards, mainstreaming gender as a social construct, combined with the Istanbul Convention's stated goal of eradicating customs and traditions could infringe upon parents' right to direct the upbringing of their children in accordance with their moral and religious convictions. Challenges to parental rights could occur in education, through teaching manuals that depict gender as a social construct, departed from biological reality, or through loose and wide interpretations of what psychological suffering might mean. The Istanbul Convention defines violence as 'all acts of gender-based violence that result in, or *are likely to result in* ... psychological ... harm or suffering'.<sup>7</sup> On this basis, starting from a young age, parents might risk losing the right to oppose and opt out of curricula that

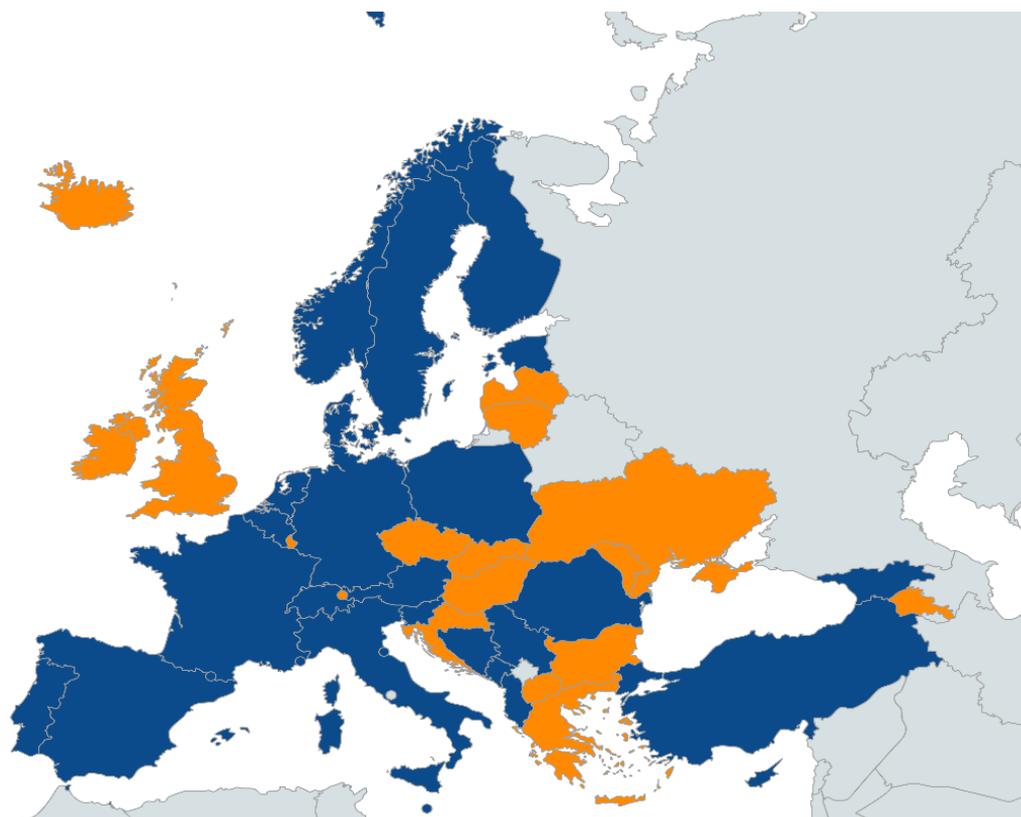
<sup>5</sup> Article 2 Treaty on EU, Article 8 TFEU.

<sup>6</sup> Rome Statute, Article 7(3).

<sup>7</sup> Istanbul Convention, Article 3 (a) (emphasis added).

## Status of the Istanbul Convention

- Ratified
- Signed



encourage children to embrace and explore different sexual orientations and gender identities. Recently, in the UK, parents were accused of neglect towards their female child when they refused, based solely on her wishes, to treat her as a boy or to administer hormonal treatment.<sup>8</sup>

## Why the Istanbul Convention is Unnecessary and Overbroad

Proponents of the Istanbul Convention have repeatedly pressured countries to prove their commitment to tackling violence against women by ratifying the Convention. However, it has not been shown how and to what extent the Istanbul Convention—with its redefinition of gender and fight against 'tradition'—is an effective tool to do this.

Moreover, according to the principle of subsidiarity, tasks should be performed at the most localized level possible. Countries have no need of yet another layer of legislation in this area. Indeed, most countries

already have Criminal Codes, a plethora of other legislation, State-run equality agencies, and numerous non-governmental organizations working together to combat violence against women and domestic violence in general.

Additionally, citizens of EU Member States have domestic laws transposing existing EU Directives in this area,<sup>9</sup> and access to the European Court of Human Rights and the Court of Justice of the EU. Instead of bringing added value to the legal landscape, the Istanbul Convention risks adding a layer of unnecessary complexity and confusion that would make the current norms less clear, and outcomes less foreseeable, and therefore less effective for victims. In Ukraine, for example, the Parliament adopted a new law seeking to combat domestic violence without the incorporation of problematic elements of the Convention.<sup>10</sup>

8 See 'UK parents accused of "neglect" for refusing daughter's request to be treated as a boy' (Life Site News, 25 October 2016) <<https://www.lifesitenews.com/news/british-parents-face-threat-of-intervention-over-14-year-old-daughters-desi>>.

9 For example, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

10 See 'Ukraine introduces measures against domestic violence, rejecting "gender" terminology' (IRF, 8 December 2017) <[http://www.irf.in.ua/eng/index.php?option=com\\_content&view=article&id=454:1&catid=34:ua&Itemid=61](http://www.irf.in.ua/eng/index.php?option=com_content&view=article&id=454:1&catid=34:ua&Itemid=61)>.



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## What You Can Do

### **Raise awareness**

Contact your Members of Parliament, Government officials, representatives of EU Permanent Representation and Members of the European Parliament, and raise awareness about the problems with the Istanbul Convention and the harmful consequences that will follow ratification.

### **Advance national legislation**

Advance legislative proposals and projects that specifically target violence against women without problematic and ideologically driven language relating to gender and tradition.

### **Build an alliance**

Identify a list of political actors, NGOs, academics, and journalists who share concerns regarding the Istanbul Convention and work with them to open a dialogue in your country.

### **Organize a hearing**

Together with Members of Parliament, organize a hearing at your national Parliament.

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