



DISPUTES REGARDING THE RATIFICATION OF THE ISTANBUL CONVENTION IN EUROPE

Sporovi oko ratifikacije Istambulske konvencije U Evropi

ABSTRACT: *The Istanbul Convention adopted in 2011 increasingly represents a subject of ideological, political and legal disputes in Europe. The author first analyzes the content of the convention and the novelties it brings, highlighting the points that have become the subject of conflict and dispute. Then the ratification process is analyzed, which showed that there is serious resistance to its adoption and implementation in Eastern Europe. The paper provides an overview of the situation in individual countries and explains why the document has not been ratified there. The situation is also presented in the countries that have ratified the Convention, but its implementation is still marked by sharp conflicts.*

KEYWORDS: *Istanbul Convention, gender equality, Europe, conservatism, violence.*

APSTRAKT: Istambulska konvencija usvojena 2011. godine sve više predstavlja predmet ideoloških, političkih i pravnih sporova u Evropi. Autor najpre analizira sadržaj Konvencije i novine koje ona donosi, izdvajajući tačke koje su postale predmet sukoba i sporova. Zatim se analizira proces ratifikacije koji je pokazao da postoji ozbiljan otpor njegovom usvajanju i primeni u istočnoj Evropi. U radu se daje pregled stanja u pojedinim zemljama i objašnjava zašto dokument tamo nije ratifikovan. Prikazano je i stanje u zemljama koje su ratifikovale Konvenciju, ali je njena primena i dalje obeležena oštrim sukobima.

KLJUČNE REČI: *Istambulska konvencija, rodna ravnopravnost, Evropa, konzervativizam, nasilje.*

The Council of Europe Convention on preventing and combating violence against women and domestic violence, better known as the Istanbul Convention, is a human rights treaty of the Council of Europe. It was signed on May 11, 2011 in Istanbul, Turkey (CETS, 2011). So far, 46 countries have signed it and 36 have ratified it. It entered into force on August 1, 2014. Both supporters and opponents of the Convention agree that it is an extremely important, borderline document. Dubravka Hrabar believes that this is the first international document that introduces gender and gender identity as a basis of discrimination. (Hrabar, 2018: 32)

Eleven years after its signing, it seems that the convention became the subject of increasingly sharp divisions and disputes in Europe, but also within individual European states. While for some it is a symbol of the emancipation and progress of European countries, an umbrella document marking the process for establishing equality on the European continent, for others it is a symbol of decadence, ruin, destruction of the family, and even Western exploitation of poor societies. There are member states of the Council of Europe that did not sign the convention (Azerbaijan and Russia); a number of other members refused to ratify it, and Turkey, after being the first to sign and ratify it in 2012, became the first country to completely withdraw from the Convention in 2021. Poland has also started a process in which it is considering how to do the same in the least painful and harmful way for its international reputation (in 2018, it declared a reservation on the basis of which the Convention will be applied in accordance with the Polish Constitution), and Hungary passed a special declaration in 2020 in which it not only refused to ratify this document, but the parliament invited the government to continue a policy that will go in a completely different direction. Due to the refusal of a large number of EU members to ratify and apply the Convention, the EU, as a body that signed the document in 2017, is unable to ratify it, and there is a lot of debate about another document with similar content that the Commission would adopt as binding on the territory of the entire Union². In 2019, the European Parliament passed a special resolution calling on countries to complete the ratification process (European Parliament, 2019/2855 (RSP)).

However, what is especially striking if one takes a look at the map of Europe and follows the ratification process, is that all the countries of Western Europe, except the UK, which did so only this year, ratified the convention relatively easily, without major social, political and legal disputes. However, the majority of Eastern European countries refused to ratify it, and even in a number of countries where the process was finalized, great battles were fought, and ratification was very difficult. Croatia is perhaps the most obvious example. In this sense, this article is polemical in relation to the theses of Lidija Balogh, who tries to equate the process in Eastern Europe with the opposition to the Convention in the countries of Western Europe (Balogh, 2020: 21). She is right to locate the beginnings of the resistance against this document in anti-

2 <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-eu-accession-to-the-istanbul-convention>

feminist and anti-liberal developments (intellectual and activist) in Western countries, primarily in Germany and France. But the practical reach of these movements has a qualitatively and quantitatively different range in the countries of Eastern Europe, where, to begin with, churches and religious communities are far more conservative and active than in Western countries (this also applies to the developments within the Roman Catholic Church itself), and anti-gender movements and parties have a majority in parliament and can decisively shape the legal, political and social framework based on their beliefs. That is unthinkable in the West at the moment.

In this article, we will first present the content of the Convention itself with the most important stipulations in it. Next, we will show the most important examples of the rejection of its ratification – sometimes it was the Parliament that made such a decision, sometimes the Constitutional Court, and sometimes failure to ratify it was the result of a general assessment that there was not enough support in society.

Next, we will look at the most important arguments used by the opponents of the Convention and see how the proponents of the Convention respond to them.

As we indicated, there is also a clear religious dimension to the entire process, which needs to be addressed, too. While in Western Europe, the Protestant and even significant parts of the Roman Catholic Church held very liberal positions, as de facto supporters and promoters of the Convention, in Eastern Europe, all Christian denominations, but also Muslim communities, appeared as harsh critics of the Convention and actively participated in the fight against its ratification. An illustrative example is Latvia, where the representatives of all three Christian denominations joined forces to prevent its ratification³.

However, it should be noted that the opponents of these measures are not only religious communities and their members, or only conservatives and populists, but also proven supporters of freedom, the rule of law and the true legal equality of people before the law. Those people who dreamed of the Western world as ordered and rooted in the rule of law, freedom and equality, such as the former president of the Czech Republic, Vaclav Klaus, increasingly see in such documents what they fought against during the reign of communism (Havlik and Mocek, 2017, Hrabar, 2018: 47). In her valuable analysis, Lidija Balogh, in addition to conservatives, also mentions feminist and libertarian critics and their arguments against the Convention (Balogh, 2021: 2–8). A feminist critique of the Convention is given by Magali Thill (Thill, 2017). Here, however, we will focus primarily on the conservative forms of criticism that had the greatest practical impact.

In the methodological sense, we use a legal analysis of the Convention, an overview of the relevant literature, both theoretical and related to public and political polemics in certain countries, and also direct conversations and interviews conducted by the author with some of the actors in these events.

3 At the end of August 2018, I had an opportunity to interview the Archbishop of Riga, Mr. Zbigniew Stankiewicz, who led this coordinated action.

The war in Ukraine has currently pushed to the fringes all ideological and cultural wars in Europe, but there is every chance that, after its end, this line of division that crystallized on the occasion of the ratification of the Istanbul Convention will reemerge as one of the most important determinants of the European continent in the future.

Analysis of the Convention

The convention was adopted on May 11, 2011, and at that time, only two member states of the Council of Europe refused to sign it – Azerbaijan and Russia. It is interesting, however, that not only member countries of the CE but also some others participated in the process of writing and adopting of this document. Mexico, Canada, Japan, and the Vatican were also involved in its writing for various reasons, but none of those countries have yet ratified the convention either. Of the important western countries, the UK and the USA also did not do it until this year, when the UK finally did it in July after the fall of the Johnson government, albeit voicing reservations about Article 59, which refers to immigration issues⁴.

The document itself has an interesting Preamble and 81 articles divided into 12 chapters (CEST, 2011)⁵. As expected, the preamble lists the relevant international documents but with no reference to the Universal Declaration of Human Rights (UDHR), which one would arguably expect to see as the first document listed. It is possible to interpret that this is due to Article 16. The first two paragraphs of this article determine the right to freely enter into marriage and emphasize the equal rights of the spouses. However, the third position, on which today the *World Congress of the Family* and pro-family movements build their strategy, defines that the family is „a natural and fundamental unit of society and as such has the right to protection from society and the state“ (UNHR, 1948).

Critics of the Convention, which we will discuss in the rest of the text, believe that this is a clear sign that the entire project is directed against the family as a natural unit, and that this is why writers avoid mentioning something that is considered the fundamental civilizational document of the modern world. It should be remembered that the Obama administration tried to launch initiatives to change the UN declaration because it saw the document as too Christian.

In the preamble, however, there is a reference to the statute of the International Criminal Court (Hague Tribunal), which also does not help its ratification because it implicitly suggests that domestic violence can be raised to the level of international criminal punishment. Then an intriguing distinction between *violence against women* and *domestic violence* is introduced, which is

4 <https://www.ibanet.org/Violence-against-women-UK-ratifies-Istanbul-Convention-but-excludes-protection-for-migrants>

5 Hrabar, 2018 provides a very useful legal analysis of the content of the Convention and clarifies certain provisions.

established in the Spanish language as the difference between *violencia de genero* and *violencia domestica*. The next paragraph, however, talks about equality between women and men – some critics⁶ have argued that these two paragraphs contradict each other, and that the introduction of positive discrimination means that men are not treated equally. This is confirmed by the next paragraph, which expressly talks about the inherited male dominance that led to discrimination against women and which therefore needs to be addressed. This is mitigated at the end of the preamble, when it is mentioned that men can also be victims of domestic violence, but the wording is nonetheless repeated, distinguishing domestic violence from gender-based violence against women. Using basic logic, one might ask why violence by women against men is treated differently than male-on-female violence.

The first chapter offers the goals, general obligations, and definitions of terms, talks about the need to empower women, introduces monitoring mechanisms, and, in Article 3, which is the subject of great controversy, in addition to physical and sexual violence, introduces psychological and economic violence – the United Kingdom, for example, did not ratify the convention for a long time, among other things, because of this concept of psychological violence⁷. Paragraph b, which extends the regulation to former or current wives and partners, is also disputed, regardless of whether or not the perpetrator lives in the same home as the victim.

The following paragraph (c) is the most contested because it explains that gender means socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for women and men. This, as we will see, is the subject of the heaviest resistance: the fact that instead of biological sexes, gender is introduced as a social construct.

Article 4 repeats the wording on positive discrimination.

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- 6 There is already serious literature that indicates that affirmative action towards women leads to the systematic violation of men's rights. David Benatar calls this „second sexism“ (Benatar, 2003), giving numerous examples that implicitly adopt the view that men do not have the same rights as women. An obvious example from local court practice is that, in almost 90% of divorces, custody of any children the spouses have is assigned to the mother. This phenomenon is also covered in the book *Legalization of Misandry* by Paul Nathanson and Katherine Young (2006, 125-155), in which numerous other examples of discrimination against men are presented. Stephen Baskerville, in his classic study *Taken into Custody*, (Baskerville, 2007), showed numerous examples of the real war against fathers in the US. The enormous popularity of the Canadian professor Jordan Peterson (over 6 million people follow him on YouTube), who advocates the defense of masculinity and men, should first of all be understood as a rebellion against such tendencies.
- 7 The introduction of these two new categories of violence, which are much more difficult to determine and therefore more liable to abuse, also goes against the classic liberal approach to punishment, where offenses and crimes must be clearly defined, limited and then consistently implemented in the practice of suppressing them. Also, this obviously leads to the expansion of state paternalism and opens up additional opportunities for the state to interfere in private and family relationships. This shows an increasing dominance of feminist ideology in family legislation at the expense of classical liberal theory and practice, reflecting the principle that „the private is political“. (Olsen, 1993)

Article 6 is again a broad general commission that mandates the gendering of all policies, i.e., gender mainstreaming, which has caused concern in many countries, primarily about the potential reform of education (Ilcheva, 2020)⁸.

Chapter II deals with integrated policies and data collection. Article 8 mandates the recognition, encouragement and support of non-governmental organizations that combat violence against women and the establishment of effective cooperation with these organizations. In practice, this is an obligation to involve them in the process of drafting and implementation of legislation. In some countries, such as Serbia, certain NGOs undertake a significant part of the work of educating officials and enforcing laws instead of civil servants. Professor Hrabar (2018: 35) also writes about this order to transfer the powers of institutions to NGOs, and similar voices were heard in other countries.

In the third chapter, Prevention, Article 12 contains the following wording, which was also the subject of serious disputes: „Parties shall take the necessary measures to promote changes in the social and cultural patterns of behavior of women and men with the view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of inferiority of women or on stereotyped roles for women and men“. For example, as a result of this wording, in a number of countries, the creation of new words for women's occupations is imposed, the language is changed, and there are initiatives to ban important parts of culture such as folk songs because they are „too sexist“. Such a broad formulation makes it possible to request the abolition of different colors in clothing, playing with dolls and cars, etc., along with the introduction of gender-neutral education and raising children, which was the subject of unsuccessful experiments in Sweden (Barry, 2018). Paragraph 5 opens space for the suppression of honor-based violence against women.

The greater part of this chapter deals with education, so Article 14 introduces the obligation to introduce in schools materials for, among other things, teaching non-stereotypical gender roles. It also mandates education and other types of treatment for perpetrators of violence. Article 17 requires the private sector to be involved in this education process.

Chapter IV deals with protection and support. It prescribes an integrated system that requires taking into account the relationships of family members (but without mentioning that term), that the approach be based on a gender understanding of violence against women, and it encourages economic independence and empowerment of women.

Paragraph 4, which introduces state paternalism, has given rise to many problems: the provision of services is not dependent on the will of the victim to file a lawsuit or testify against the accused. Therefore, the person's right to freedom of choice and his/her assessment of whether one wants or has grounds to file a lawsuit are disregarded. In practice, this often meant suppressing the

8 In a review article (Kuhar, Zobec, 2017), they also provide an overview of general arguments against the introduction of gender theories in schools and specific examples from individual European countries.

practice of mediation between couples, i.e., encouraging them to end their marriage, which was also one of the objections. There are known cases from the town of Niš⁹ when men reported their wives to the authorities, and they were removed from their home for a month. In the meantime, they renewed contact with their husbands, reconciled and returned home. They informed the court about this, which, however, ordered that the women be placed in prison for violating the restraining order. This has been interpreted as counterintuitive and directly aimed at encouraging divorce, which, as a rule, leads to impoverishment and adversely affects the couple's children. Related to this is Article 48, which explicitly calls for a ban on the introduction of the obligation of mediation and other forms of work on reconciliation and conflict resolution.

Article 20 introduces the valuable obligation to help vulnerable women, victims, in every way to improve their situation, ranging from psychological and health counseling to solving housing and employment issues. Obligations to provide shelters, telephone counseling and other types of assistance for rape victims are also listed, for example. But there is the controversial Article 28, which mandates that professionals (e.g., psychotherapists) are allowed to break confidentiality and report cases in which they suspect a possible serious case of sexual violence in the past or think that such an offense might have been committed. Besides violating confidentiality, this is also a paternalistic measure because it can override a person's right to decide for oneself. Paternalism (Scoccia, 2018) is reiterated and reinforced in Article 55, which allows the authorities to continue the process even if the victim withdraws his/her testimony or lawsuit.

Chapter V deals with substantive law. Article 29 mandates the possibility for the victim to sue the state services if they failed to react adequately in terms of protection and prevention measures. The counterargument claims that this leads directly to the intimidation of social workers and police officers who are required to act at all costs or risk fines and losing their jobs. Article 30 introduces the right to adequate compensation. Article 32 suppresses forced marriage, as does Article 37, and Article 33 introduces a provision on psychological violence which, as we have shown earlier, is potentially very problematic and subject to abuse.

Article 34 prohibits stalking. Article 36 refers to sexual violence, and most objections take issue with the unclear wording of the phrase sexual consent¹⁰. In a number of countries, as with accusations of violence, the burden of proof is on the accused, not the accuser. This again goes against the basic postulate of the rule of law that a person is innocent until proven guilty. Here, after the

9 <https://www.sd.rs/vesti/hronika/porodicno-nasilje-u-nisu-pretukle-muzeve-ali-onda-se-desilo-nesto-neverovatno-2017-12-04>

10 In Spain, reflecting the spirit of the Convention, recently (July 19, 2022), the obligation to request explicit verbal consent from a woman before engaging in sexual intercourse was legally introduced. Where there is none, there will always be a risk of a rape charge. From the standpoint of classical nineteenth-century liberalism, this is an unthinkable state intrusion into privacy that leads to a husband or wife having to seek the explicit consent from their partner before attempting to make love with her or him. See <https://www.danas.rs/svet/spanija-uvela-obavezu-eksplicitnog-izrazavanja-pristanaka-u-seksualnim-odnosima/>

accusation, you are immediately declared and treated as guilty, and you have to prove that you are not, a practice known mainly from totalitarian systems. This is a very common argument in Eastern European countries that lived under communism and are very sensitive to such things.

Articles 38 and 39 prohibit female genital mutilation, that is, mutilation and forced abortion and sterilization. Article 40 brings a very broad definition of sexual harassment. Article 48, which reiterates the prohibition of honor-based violence, together with Article 38, caused reactions from a part of the Muslim population and Ulama, but no official protests.

In paragraph 2, Article 45 also contains controversial wording regarding the withdrawal of parental rights in the best interest of the child, if safety cannot be ensured in other ways.

Regardless of the fact that some authors insist on the importance of informal ties and relationships in welfare policies in Eastern Europe (Polese, Morris, Kovacs, Harboe, 2014), it should be pointed out that social services in a number of Eastern European countries struggle with heavy corruption. There are serious allegations of abuse of position and especially of the measures available to social workers¹¹. There are accusations and evidence of abducting of children so that they can literally be handed over to couples from richer countries for adoption as a result of corruption. The second problem is the handover of children to foster families due to the parents' poverty: in a series of cases, children whose parents were unable to provide for them were placed in foster families, which then received money to cover their child-related expenses instead of the same funds being given to the biological parents themselves. If a foster family takes in two or three children, the compensation they receive from the state will be quite substantial compared to the average salary, and people see this as one of the big problems and sources of corruption. In Serbia, the film *Father (Otac, 2020)*, based on a true story, was recently filmed, which caused an outrage because it enabled broad sections of the population to be informed about these types of abuse. Social services tend to have a very bad reputation in transition countries¹².

Chapter VI deals with investigation, prosecution and procedural laws. Article 52 provides for emergency barring orders and Article 53 for restraining orders, which makes it possible to evict a person from a house or apartment even though it is his/her property, even in the case of an unproven accusation. From

11 In Armenia, the incentive program for the return of children to their biological families has failed because, according to some reports, the directors of orphanages for neglected children use corruption to ensure that children are brought to their institutions because additional funds are allocated for each child. See Abrahamyan, 2012. Serious studies on such abuses in Serbia have yet to be done, but there are plenty of indications and news in the media like the following text: <http://region-nish.pokretisvetlo.com/otimanje-dece-u-srbiji-je-unosan-izvoznicki-biznis/>.

12 But even in regulated systems, like the British, similar problems nonetheless arise. There are about 65,000 children in foster care, many of whom were taken from their parents under the charge of „risk of emotional abuse.“ There are cases where judges have overturned the decisions of social workers. See <https://goodmenproject.com/featured-content/foster-care-sjbn/>

the legal point of view, the introduction of this stipulation, regardless of other legal measures, is problematic because it suspends legal procedures, property and other rights.

Article 56, which advises avoiding confrontation in court, was also criticized.

One of the main reasons for the dispute is Chapter VII, which refers to migration and asylum. There are three related articles that refer to the issue of not having residential status, gender-based requests for asylum and non-refoulement. Basically, it is mandated that persons who report themselves as victims of violence automatically, regardless of their residence status and even any ongoing deportation processes, receive an extension of their stay and all kinds of protection like any resident. For example, a woman who came to a country on the basis of family reunification, even after divorce, gets full residence status. Also, women victims of violence cannot be deported to any country where their life, integrity and other rights could be violated. Eastern European countries, as is well known, stood up against the placement of immigrants on their territory in 2015 and, in accordance with that, received these provisions negatively. The same argument was heard in the UK, but also in some Western European countries that ratified the Convention.

The following chapters are of a purely procedural nature, referring to international cooperation, monitoring mechanisms, procedures for establishing the GREVIO group of experts, and mechanisms for ratification and withdrawing from the Convention (Article 80), the mechanism that Turkey used. Professor Hrabar has huge objections to the supranational status of GREVIO and the enormous monitoring and information-collecting powers that this European agency received (Hrabar, 2018: 43), and she is also concerned about its influence on the spread of “gender ideology” and the reshaping of the legal system of the Republic of Croatia.

Resistance to ratification in Eastern European countries

So, we said that there are several categories of states depending on their treatment of the Convention. We have the non-members of the Council of Europe that participated in its writing but did not sign it; the member states of the Council of Europe that did not sign it; those that signed but did not ratify it; those that have ratified it, but are encountering big problems in its implementation; and finally, those that have ratified it, but are now trying to withdraw from the Convention. Before presenting individual cases, we will make a few general observations.

The first thing that catches the eye, from a legal point of view, is that there is no sanction for false reporting and no obligation to compensate falsely accused perpetrators even when it is established that they were victims of false reports. In practice, this enables a man or, more commonly, a woman to inflict humiliation on his former or current partner without any consequences in the form of mandatory arrest and detention in prison for at least 24 hours, the possibility

of moving out of their home for a month or more, immaterial damage to reputation, business activities and business reputation for which one will also not be compensated; at the same time, it accords significant privileges and benefits to the alleged victim while the process lasts, which again he/she does not have to return if the accusation is shown to be false. Such is the system, for example, in Spain. This causes a general feeling of insecurity and can be an incentive for spouses to accuse each other in order to get a better starting position during the divorce process, should it come to that.

It is important to note that resistance to the Convention grew over time (Balogh, 2020: 13). Turkey, which was the first to sign and ratify it and also the first to withdraw from the Convention, is the most illustrative example, but there are many others. In Serbia, for example, when the Convention was ratified in 2014, there was not even elementary awareness in society and the community of what that document means and entails. It was only later that right-wing organizations began to be formed and institutions were activated that started to speak about potential problems and fight against the draft Law on Gender Equality as a logical consequence of the ratification of the Convention. For example, the Constitution of Serbia does not recognize the category of *gender*, but only *sex*, and this can be one of the biggest problems, since the law that was adopted in 2021, on the third attempt, is now in the process of being examined before the Constitutional Court to establish whether it is consistent with the Constitution of the Republic of Serbia¹³.

In one of the few comprehensive books that focuses on resistance to the ratification and implementation of the Convention, Andrea Krizsán and Connie Roggeband (Krizsán, Roggeband, 2021) take four Eastern European countries that saw very strong resistance – Croatia, Bulgaria, Poland and Hungary. In Poland, resistance started as early as 2012 and intensified after the return of the Law and Justice Party (PIS) to power. In Croatia, it started in 2016, in Hungary in March 2017 and in Bulgaria in September of the same year, when the public debate about ratification began. This suggests that a wave spread in the period 2016–2018 and has not stopped since then.

There were sporadic cases of resistance in the West as well, in France, Belgium, Spain and the Netherlands, but other countries, except the UK, ratified the Convention without any major problems. In the UK, which normally at the parliamentary level regularly follows reports on the progress of this convention in Europe, ratification was stopped due to three key arguments (Horne, 2021). The first was the introduction of the psychological violence category, which legal experts have concluded is contrary to English legislation, although in 2015, certain types of psychological abuse in the form of continued verbal violence were declared criminal. Another is the introduction of extraterritorial trial: this would allow British citizens to be tried in countries other than their own for

13 The initiative for the evaluation of the constitutionality of the Law was submitted first by the Radić law office and then by several other entities. See <https://www.novosti.rs/drustvo/vesti/1003252/vozacica-trenerka-idu-pred-ustavni-sud-proveru-tek-usvojenog-zakona-rodnoj-ravnopravnosti-traze-advokati-lingvisti>

charges in this category. Legal procedures to overcome these two problems were initiated, but it turned out that the third argument, namely the three articles from Chapter VII on immigration and asylum, was an insurmountable obstacle to ratification. Boris Johnson's government, which implemented Brexit, in order to, among other things, stop or radically reduce immigration, was expressly against it, believing that it encouraged and facilitated immigration and circumventing the law. After the fall of his government on July 7, 2022, the UK ratified the Convention, with reservations about the immigration issue.

The countries that have not ratified the Convention are: Armenia, Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania and Slovakia. Recently, after having long refused to do so, due to a change of regime, Moldova ratified it, and it entered into force on May 1, while Ukraine ratified it on June 20 to get EU candidate status. But first, we will explain the reasons why these countries did not ratify the Convention and how the rejection process unfolded.

Let's start with Ukraine, where the proposal for ratification was flatly rejected in 2016. This is interesting because, during the ongoing war, many Western media claim that Ukraine is defending Western values in this conflict. The attempt to ratify this document first fell through in the parliament, Rada, in 2016. In 2020, 25,000 citizens submitted a petition to the president, and certain laws were adopted, such as the Law on Prevention and Suppression of Violence in 2018, but the Convention was still not ratified¹⁴. In its views on these issues, Ukraine was much closer to the country it is at war with now, Russia, than to the EU countries – in 2017, Russia passed a new law that softened the legislation on domestic violence to the extent that critics argue that it decriminalized domestic violence. The last interesting step in this saga is that this year, due to the war, the EU granted Ukraine candidate status for accession as a sign of support. Thus, on June 20, the President of Ukraine and the Parliament nevertheless adopted this document due to pressure from Brussels, and three days later, the country received EU candidate status.

In the text "Six common myths about the Istanbul Convention"¹⁵, issued by the Center for Strategic Communications of Ukraine, which was created as part of an attempt to change negative attitudes about the Istanbul Convention in the country, these 6 common arguments are stated as follows: 1. Ukraine already has its own legislation to combat domestic violence and therefore does not need the Convention, 2. The preparation of the Convention and the ideology pushed through it have nothing to do with violence against women, 3. The Convention discriminates against men and blames only them for domestic violence, 4. The Istanbul Convention is imposed by the West, 5. The Istanbul Convention leads to the destruction of the traditional family in Ukraine, and 6. The Istanbul Convention calls for the legalization of same-sex marriages and the

14 A good overview of everything that happened in Ukraine in connection with the Istanbul Convention until 2020, including the adoption of certain laws and other measures, can be seen in the Report of February 3, 2020, which was prepared by two Ukrainian non-governmental organizations as CEDAW monitoring.

15 <https://spravdi.gov.ua/en/6-most-common-myths-about-the-istanbul-convention/>

establishment of new approaches to gender identities. These views are generally dominant in other countries that refuse ratification, as we will now show.

Lithuania is among the six EU member states that have not ratified the convention. In 2021, the debate started again. In the end, due to resistance in the public sphere, it was decided to exclude the issue of ratification of the Convention from the spring session of the parliament. President Gitanas Nauseda welcomed the decision of the ruling coalition, arguing that, since the concept of social gender can affect the national education system and freedom of expression, the ratification of the Convention warrants a deeper discussion. Here, in particular, the idea of gender as a social construct caused tremendous resistance (Balogh, 2020, Linkeviciute, 2021).

In Latvia, the joint action of three Christian denominations directed at the parliament and the public stopped the ratification. But 21 members of parliament used this as an opportunity to ask the Constitutional Court for an interpretation of the Convention's compliance with the country's constitution. In June of last year, the Court announced that it was in accordance with the Constitution. But the churches say that the convention contradicts the Constitution and allows Latvia to impose a project of social change based on gender ideology. The leading parties are against ratification and all are happy to put the issue aside for the time being (Balogh, 2020, Mühlbauer, 2022).

In 2020, Hungary had a debate in the Parliament, after which the Parliament decided to stop the ratification and not introduce the Convention into its legal system. The main objections were related to gender determination and asylum. The Parliament actually passed a special declaration stating that Hungary already protects women's rights, but the parliament refuses to introduce the term „gender“ into the legal system (a bill currently in parliament seeks to remove it from the civil registry as well, which would make gender recognition for trans people impossible) and claims that the recognition of gender-based violence as a form of persecution in asylum procedures (according to Article 60 of the Convention) threatens Hungarian culture, laws, traditions and national values, and therefore calls on the Government to reject the ratification of the Convention and to oppose it in all EU forums (Balogh, 2020: 12, 13)

This country, along with Poland, is leading the struggle against the Brussels value system. In 2018, they launched an entire campaign to remove women's studies and the entire concept of gender from the higher education system. They formed a commission of distinguished scholars, but due to pressure from the EU, the entire action was suspended.

In Bulgaria, ratification was blocked in 2018. In February, a number of deputies launched an initiative to assess the constitutionality of this document. The arguments claimed that, by including gender equality, the convention aims to encourage homosexuality and warned that this could lead to „calling into question the traditional values of Bulgarian society“. In an eight-to-four ruling, the Constitutional Court declared that the convention uses „gender“ as a social construct and that this contradicts the Bulgarian Constitution, which specifies a binary understanding of „sex“ – male and female – which is „determined

by birth“.

Although the Bulgarian Constitution protects against discrimination based on sex, the court says that this „does not mean equal treatment of both sexes“; as biological differences must be taken into account. (Vassileva, 2018, Darakchi, 2019)

In Slovakia, the parliament rejected proposals to ratify the Convention on several occasions in 2019 and 2020, offering very similar explanations. One of the basic arguments is that the convention contradicts the Constitution, which defines marriage as the union of a man and a woman (Očenášová, 2021, Guasti, 2021). The convention was not ratified by the neighboring Czech Republic, which is considered one of the most liberal European countries. The objections in the parliament concerned the so-called gender ideology and the undermining of the traditional family, and the Ministry of the Interior made strong objections to the stipulations on the rights of immigrants and asylum seekers (Guasti, 2021).

Then there are the countries that have ratified the Convention but continue to have serious disputes about its implementation. These are the cases of Romania, Serbia, for example, and above all Poland. Poland, which ratified the Convention in 2015, announced in July 2020 that it was considering the possibility of withdrawing from it (Wiszanowska, 2020). A way to do this without deepening the conflict with Brussels is being sought, as Poland is already under financial sanctions over the treatment of the judiciary. The arguments put forward by the government and the parliament are that the Brussels gender ideology is worse than communism (Korolczuk, Graff, 2017), that genderism is actually teaching children homosexuality and that the Convention is in conflict with and disrespectful of religion. Poland passed a law banning sex education in schools and a number of more restrictive laws on abortion. Five regions (duchies) declared themselves “LGBT-free” zones. There is a proposal in the parliament to adopt the declaration *YES to family, NO to gender*. BIRN reported last year that the government was preparing a new law that would ban abortion and same-sex marriage (Ciobanu, 2021).

Romania ratified the Convention in 2016. In 2020, however, disputes broke out over the Law on Sexual Education, when deputies completely changed the essence of the proposal with amendments¹⁶. A special law that discusses gender ideology and prohibits the separation of gender from biological sex was also passed¹⁷. The president was against it, so the matter ended up at the Constitutional Court, which overturned that law in December of the same year. However, at the initiative of a group of Hungarian deputies, a law was proposed in early 2022 that would limit the content of sexual education and prevent „offensive gender ideology“ and accept only the sex assigned at birth¹⁸.

16 <https://balkaninsight.com/2020/06/03/romania-bows-to-church-scraps-mandatory-sex-education/#:~:text=Parliament%20in%20Romania%20has%20amended%20a%20recently%20passed,Bucharest%2C%20April%203%2C%202020.%20Archive%20photo%3A%20EPA-EFE%2FROBERT%20GHÉMENT>

17 <https://www.senat.ro/legis/PDF/2020/20L087LP.pdf>, 2011 Law on Amendments to the Law on Education.

18 <https://balkaninsight.com/2022/02/16/romanian-hungarians-advocate-laws-to-stop-gender-ideology-assault/>

This country is also interesting because of the case *Coman and Others vs. Romania*, regarding the issue of the recognition of homosexual marriages concluded outside the territory of that country. The ECJ made a positive decision (Tryfonidou, 2019), which Romania still refuses to implement because it is considered to be in conflict with the Romanian constitution. In 2018, a referendum was held with the question of changing the Constitution in order to define marriage as the union of a man and a woman. Although 3 million signatures were collected, the referendum failed because only 21% of voters turned out.

In 2018, the ratification of the Convention caused a veritable war of words in Croatia, with the involvement of both lay people and the Catholic clergy (Hrabar, 2018). The bishops' conference sharply protested against ratification and pointed out that one can only talk about biological sex and not about gender as a social construct. There were attempts to collect signatures for a referendum, which ultimately failed. The ruling HDZ party, traditionally close to the Church, was at the time experiencing internal strife, and some deputies came out against it, but in the end, the majority decided to ratify the Convention, arguing that Croatia does not thereby assume the obligation to introduce „gender ideology“ into its system¹⁹.

Finally, in Serbia, the ratification passed very easily and quickly in the parliament, but there was a big dispute over the adoption of the Law on Gender Equality. It was rejected twice, to be adopted only in 2021, during the Covid-19 pandemic, with great opposition from the public, language experts, leaders of the Muslim minority, and the broad Coalition for the Natural Family. The Serbian Orthodox Church has come out publicly against the proposed Law on Same-Sex Unions, a move it has rarely resorted to since participating in the debate on the proposal of the Law on Combating Discrimination in 2009. It should be mentioned that certain bishops, such as Nikanor of Banat, and many priests participated in the fight against the adoption of the Civil Code and a number of other documents adopted in the spirit of the Istanbul Declaration. However, this was now the clear and official position of the Synod and the Patriarch of the Serbian Orthodox Church. In this, they received the support of the Roman Catholic Bishop of Subotica, Mr. Slavko Večerin, and as a result, this bill was withdrawn, as well as Article 18 of the new Law on Prohibition of Discrimination. But they stopped there and avoided using the same authority to prevent the adoption of the Law on Gender Equality and the radicalized Law on Combating Discrimination. The former mufti Muamer Zukorlić, who closely cooperated with the Christian Coalition for the Natural Family, participated most seriously in this.

Conclusion

Apart from the standard arguments described above, there is great concern in Eastern Europe about the region's sharp population decline. In the second

19 <https://www.politika.rs/sr/clanak/401880/Hrvatski-Sabor-usvojio-osporavanu-Istanbulsku-konvenciju>

half of the 1990s, it was noticed that the fertility rates in these countries fell dramatically. Rychtarikova (Rychtarikova, 1999, 26) provides data for the Czech Republic, where it fell from 1.7 to 1.2 in just four years, from 1992 to 1996. This trend continued, and with the great emigration of the population to the west for work and study, these countries lost about a third of their population in the thirty years of transition (Moldova, Bulgaria, Latvia, for example²⁰). Apart from migration to the west, a large chunk of the blame is assigned to the value system coming from Brussels, which does not adequately defend the traditional family, does not respect Christianity, which is very important to the people in those areas, and does not encourage childbirth. It is believed that the entire system of neoliberalism, with its corporations, promotion of sexual freedom, hedonism, consumption and the destruction of the traditional family diminishes the population and leads to its disappearance. We should not forget that these are nations that have spent centuries under different empires and only recently got sovereign and free states, and that they are therefore very worried about their survival. Hence the resistance to radical migrations and the arrival of a population that could change the demographic map and make the domicile people (again) lose their own state.

There are also arguments that introduce the center-periphery relationship, which come from Immanuel Wallerstein's world system theory, presented in a book first published in 1974 (Wallerstein, 2004). It is an argument that claims that with such laws the periphery suffers the most because young people continue to move to the center, and, in this way, the periphery fails to rebuild. The median age in a number of these countries is around 43 or 44, which really gives cause for concern.

The West and Brussels have not responded adequately to these objections and have failed to address the issues that concern ordinary people. This suggests that the Istanbul Convention and the fight for women's rights have somehow become a victim of the all-pervasive mistrust between the East and the West and the growing differences concerning tradition, religion and understanding of what future societies should look like. To all these justified or unjustified remarks, which should be viewed in their local social and economic contexts, the European elite reacts very inadequately, treating them as a reflection of backwardness, lack of education, the attitudes of supporters of conspiracy theories, etc., and trying to replace the governments of these countries with those that would be more likely to adopt the Convention and the related solutions or to accept them due to a certain type of blackmail, like Ukraine.

All this hints at an even greater divergence and growing resistance in the East against the Convention and solutions associated with it.

20 In the meantime, the census has become a serious political issue, and the number of countries in which the results cannot be taken as reliable is increasing. This is also due to the circular migrations of a part of the population, which, for example, spends half the year in the country and half at work abroad, but also due to political relations in multi-ethnic societies such as BiH, North Macedonia, Montenegro, Bulgaria or Latvia.

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