

## **PROBLEMS AND PROPOSED SOLUTIONS IN THE**

### **“IMPLEMENTATION OF THE ISTANBUL CONVENTION (COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE) AND THE LAW NO. 6284 ON THE PROTECTION OF THE FAMILY AND THE PREVENTION OF VIOLENCE AGAINST WOMEN AND OTHER LEGISLATION; RECOMMENDATION REPORT ON “LEGAL AND ADMINISTRATIVE MEASURES TO BE TAKEN TO INCREASE THE EFFECTIVENESS OF MECHANISMS FOR THE PREVENTION OF VIOLENCE AGAINST WOMEN, THE ROLE OF NGOS IN THE IMPLEMENTATION OF THE ISTANBUL CONVENTION AND IN COMBATING VIOLENCE AGAINST WOMEN”**

Association for Struggle Against Sexual Violence, Women for Women’s Human Rights – New Ways Association and The Foundation for Women’s Solidarity, Commission of Equal Opportunities for Women and Men’s , Sub-Committee of the “Effective Implementation and Monitoring of the Istanbul Convention”, the Istanbul Convention Turkey Monitoring Platform<sup>1</sup>, which exactly matches the name of this commission recommends that it actively involve independent Non-Governmental Institutions representing the NGOs in its work and develop holistic and sustainable cooperation through face-to-face and regular meetings instead of written reports.

In this sense, regarding the legal and administrative measures to be taken in the implementation of the mentioned Istanbul Convention and the Law No. 6284, and the role of NGOs; All recommendations made in the Shadow Report submitted to GREVIO in September 2017 by organizations representing the Istanbul Convention Turkey Monitoring Platform should be evaluated and taken into account by the KEFEK Subcommittee.

Problems and proposed solutions: (Legal and administrative measures and proposals on the role of CSOs are given together.)

#### ***Part I - Purposes, definitions, equality and non-discrimination, general obligations***

1) The news in the media include statements given by state representatives at various levels that, contrary to the convention’s articles, men and women are not equal, the concept of gender harms social values, the right to alimony is inappropriate according to the religious rules, and women’s participation in professional life harms the family. Ultimately, steps were taken by the Ministry of National Education to remove gender equality from the curriculum and also to abolish Gender Equality Project by The Council of Higher Education (YÖK). The legal rights in the national legislation related to women’s rights were targeted by various groups, there were attacks from various groups against the protection law no.6284, poverty alimony and civil rights, the concept of gender equality, the Istanbul Convention, and it is observed that the state does not demonstrate sufficient will for the protection of women’s rights and to ensure gender equality.

<sup>1</sup> See [https://cinselsuygulemucadele.org/wp-content/uploads/2018/01/Istanbul\\_Soz\\_TR\\_Izleme\\_Platformu\\_Golge\\_Rapor.pdf](https://cinselsuygulemucadele.org/wp-content/uploads/2018/01/Istanbul_Soz_TR_Izleme_Platformu_Golge_Rapor.pdf)

**Proposal:** Turkey, should not bring into question in any way an international human rights treaty while being the first signatory and opened it for signature in its own country, and should strive to fulfill its obligations under international law. In this context, public institutions should emphasize and defend the concept of Gender Equality in all grounds and representations and include gender in their education. As the Istanbul Convention is a domestic law text in accordance with Article 90 of the Constitution and as the State is under the obligation to fulfill the requirements of the law with all its institutions, it should be widely disseminated and adopted by all institutions of the State. Projects with concrete aims on gender equality should be carried out together with experienced women's and LGBTI+ rights organizations, in order to achieve the targeted impact and not to waste public resources. (See. Shadow report p.13-14-15)

**Proposal:** The state's perspective that does not see the diversity of groups affected by violence against women, should be renounced as soon as possible and ignoring the discrimination which occurs in practice, that women face in accessing services and justice due to their ethnic identity, gender identity, sexual orientation, disability and similar situations, should be abandoned. In terms of solving the problems experienced in the effective implementation of the Convention, it is key that the state recognizes lesbian, bisexual, trans women and children which are not mentioned in any of its official records, and ensures that no woman feels left out, unsupported or left behind. ( See. Shadow report p.19-20) In this context, in line with the principle of equality expressed in Article 10 of the Constitution, in order to ensure the effective implementation of the Convention, discrimination against all women, especially disabled, foreign, refugee and asylum seekers, sex workers and LGBTI+ women should be prevented, and practices that lead to hate speech and discrimination should be investigated effectively.

2) Statements made and actions taken by the representatives of the state in cases of sexual violence and sexual abuse that cause public outrage are inconsistent with the implementation of the Istanbul Convention, as well as creating rights violations against women and child survivors.<sup>2</sup>

**Proposal:** Authorities representing the Turkish state, after incidents that caused public outrage, should not spread the false belief that sexual violence and sexual abuse are one-off, exceptional and isolated; should not make statements blaming and judging women/children who are survivors of sexual violence; should not take actions that protect perpetrators and institutions responsible for cases of sexual violence and should play an active role in raising public awareness on this issue by confronting as soon as possible the fact that sexual violence is a social problem stemming from power relations based on inequality.<sup>3</sup> In this regard, the approaches and discourses of rights-based non-governmental organizations and the materials they produce should be examined and taken as an example, and if necessary, consultancy on public communication should be obtained from these NGOs. (See. Shadow report p.16)

**Proposal:** Institutions representing the Turkish state should move from the position of defense to the position of taking responsibility in cases of sexual violence and abuse that cause public outrage. It should not be insisted on not receiving criticism from civil institutions and international stakeholders.<sup>4</sup> Attempts in 2016 to bring amnesty to the child abusers in case of marriage should never be repeated, and attempts to bring this issue, which is a clear violation of children's rights, to the agenda of the parliament again and again under the name of omnibus bill or judicial reform package should be abandoned. The understanding, which

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2 [http://www.cumhuriyet.com.tr/haber/turkiye/659440/Basbakanliktan\\_\\_mirildanma\\_\\_davasi.ht](http://www.cumhuriyet.com.tr/haber/turkiye/659440/Basbakanliktan__mirildanma__davasi.ht)

3 <https://www.facebook.com/watch/?v=1721498721219799>

4 <https://insanhaklarimerkezi.bilgi.edu.tr/media/uploads/2018/11/13/grevio-raporuna-iliskin-turkiye-yanitlari.pdf>

fails to appreciate the value of these criticisms and rejects them as a whole, unfortunately prevents the measures to be taken to ease the public conscience regarding the criticisms. The Ministry of Family, Labor and Social Security should inform the public about its obligations in preventing crime, rather than being involved in cases of sexual violence and abuse as the "affected by crime". In cases where the Ministry is involved, the Ministry should ensure that the institution lawyers are present in the cases without excuses and actively participate in the proceedings. Civil society institutions and members of the press should be provided with the opportunity to follow such cases freely, and the internalization by members of the judiciary of the fact that non-governmental organizations as 'affected by crime' should be encouraged and the obligations establishing the freedom of press and expression, which support public awareness, should be fulfilled.

## ***Part II - Holistic policies and data collection***

3) Information, documents, practices and data necessary for civil society to effectively fulfill its role in monitoring public services and giving feedback on them are, above all, far from being accessible, traceable, auditable and accountable.<sup>5</sup>

**Proposal:** It is seen that public institutions and organizations, especially the MoFLSS, which are obliged to work within the framework of implementing gender equality, do not show the necessary will and desire in communication and cooperation with rights-based NGOs, and that concrete steps are not taken and mechanisms are not developed to improve the participation and cooperation of these organizations. As we mention above in this document, our primary proposal is that public institutions conduct concrete cooperation and share information with rights-based NGOs.

**Proposal:** Public institutions should include research and statistics to collect segmented data on sexual violence and violence against women in their budgets, and take concrete measures to collect these data. (See. Shadow report p.26-27-28-29). While conducting these researches and making the obtained data accessible is an obligation arising from international law, we hope that the Ministry of Justice removed the previous years' data on sexual violence cases from its website accidentally or for the purpose of improvement, and we demand that the data be made accessible again as soon as possible, including 2018.<sup>6</sup> In the creation of the aforementioned data, not only the crimes that have been prosecuted, but also the complaints and denunciations made to all kinds of public institutions should be taken into account, and in this context, it is necessary to examine the best examples from around the world on the models of creation of the abovesaid data.

**Proposal:** NGOs and the public sector cannot monitor whether the objectives set out in the government's strategy documents and action plans are achieved. In the reports of 3. THE NATIONAL ACTION PLAN ON COMBATING VIOLENCE AGAINST WOMEN (2016-2020), it is stated that an action is planned by the Ministry of Health to open sexual violence crisis centers. Regular and up-to-date monitoring and evaluation reports of targeted activities should be issued and declared to the public.

**Proposal:** Efforts should be made towards rights-based reporting of sexual violence in the media and social media; RTÜK (the supreme board of radio and television) should apply deterrent penalties to news, TV series, movies, entertainment programs and all broadcasts

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<sup>5</sup> See. Grevio Shadow report Part II

<sup>6</sup> See. <https://t24.com.tr/haber/adalet-bakanligi-2018-yili-cinsel-istismar-suc-istatistikleri-yayimlamadi,844522>

that contain or encourage all kinds of violence, insults, discrimination and victim-blaming against women and female survivors.

### ***PART III - Prevention***

4) Turkey does not develop integrated and sustainable preventive practices on sexual violence. Defects about this are exemplified on pages 30-37 of the Shadow report.

**Proposal:** Public institutions should take the necessary measures not to give the impression that they support the discourses and judicial decisions that legitimize sexual violence against women and sexual abuse against children.

**Proposal:** In order to prevent the social learning and reproduction of language and behaviors of sexual violence within society, preventive works such as comprehensive sexuality trainings and awareness trainings on sexual violence, as routine work, in formal education and for public employees should be included in national targets and action plans, implemented, monitored and impact measurement should be made. Of course, it is of key importance to benefit from the expertise of independent rights-based non-governmental organizations in order to structure these training contents in a way that does not reinforce women's roles formed by gender norms and does not reproduce the myths about sexual violence. (See. Grevio shadow report pp.30-35, and also above, Part 2 Proposal 1)

**Proposal:** The state's use of concepts such as sexual violence, sexual abuse, dating violence is a protective-preventive work that defines violence and does not ignore it, thus increasing awareness in society about that type of violence. Public institutions are advised to mention clearly and concretely the types of violence in their statements, websites and public relations work. Similarly, the name "Women's Monitoring Centers" should be referred to with the names of rights-based and empowering support units, taking into account the fact that women are being monitored and stalked by men. With the mention of sexual violence, the units should convey the message "there is this violence and I am with you" in order to deter the perpetrators and empower the survivors.

**Proposal:** Effective work should be carried out in the fields of sexual health, physical rights and gender equality for children and youth, trainings should be organized on dating violence, especially among young people, and cooperation should be made with non-governmental organizations and experts working in this field.

**Proposal:** Psychological support and supervision should be provided to public employees serving in the field of violence, and state guarantee should be given to protect their privacy. The psychological support and supervision for the police, who are the first to receive applications for violence, should not be optional, it should be standardized. It should be taken into account that the concerns about the state's access to public officials' personal data or it may have a negative effect performance evaluations, may cause them not to demand the psychological support and supervision they need.

5) In Turkey, there is no effective prosecution and investigation in the legal proceedings of sexual crimes, and it is insufficient to develop effective mechanisms for judicial processes.

**Proposal:** Prosecution and police units which are specific to sexual crimes and that only follow up on these crimes should be established.

**Proposal:** Legal support and counseling units specializing in sexual violence should be established, and qualified counseling should be provided for the survivors' frequently asked questions and problems such as proving the crime, reporting the crime, statute of limitations for sexual abuse, rights for crimes committed in the public sphere.

**Proposal:** Measures should be taken to protect the privacy of survivors of sexual violence and to facilitate the reporting of crime. Many women in our country still do not report sexual assaults because they don't want their families and friends to hear about it. Public institutions should be more active in promoting the reporting of sexual violence. Women should be able to anonymously document the sexual assault they have experienced without being compelled to file a formal complaint, and have the evidence of the assault recorded and retained in evidence kits until they decide to file a complaint.

**Proposal:** Members of the judiciary should not give the impression that they are in favor of judicial decisions that legitimize sexual violence and abuse against women. Members of the judiciary should be given regular training and supervision, including examples of good legislation and practice on sexual violence crimes, based on universal rights.

**Proposal:** Women in Turkey, who are under threat as a result of stalking by men and who have been subjected to physical and sexual violence, request help and solidarity from social media instead of going to public institutions. This situation also indicates the distrust in public institutions. In many cases, it is observed that public institutions intervene about the perpetrator of violence or support the survivor, only after it becomes visible on social media. It has become common for women to try to make their voices heard on social media in order to get be saved from male violence, and this situation raises the question of why the state cannot show effective and quick reflexes with all its resources, against the violence against women and the threats posed by men on women. Public institutions should investigate what tools women use in cases of violence, why they use them or not (for example, the KADES button) and should develop urgent measures for results. In this regard, it is recommended that it benefits from the experience of women and LGBTI+ organizations.

**Proposal:** In order for different and less visible forms of sexual violence against women and children to be visible, crimes resulting from stalking and discrimination should be concretized in the legislation and defined in more detail by looking at external examples.

**Proposal:** Similarly, definitions of sexual crimes such as sexual assault and rape should be revised on the basis of universal rights, and these crimes should be defined on the basis of consent without being limited to "physical coercion". Less visible and less known forms of sexual violence should be defined in the law, and the definitions of rape and other forms of sexual violence should be expanded; It should be opened to public discussion without ignoring discrimination against women and taking into account situations such as the construction of consent. The opinions of qualified lawyers and experts in Turkey should be utilized.

**Proposal:** In cases of sexual violence, as a result of examining the private lives and sexual history of the women survivors, which are unrelated to the crime, and of questioning their "morals", the survivors are assigned as having consent, secondary traumas are experienced and the public conscience is injured. The law known as the "rape shield law" in the world, which restricts the members of the judiciary to ask questions only about the crime in question, with the aim of preventing victim blaming and of providing a fair trial process; should be regulated in the legislation over the crimes of rape, sexual assault and murder committed against women.

#### ***Part IV - Protection and support***

6) Specialized and qualified support services are not provided for women and children who have survived sexual violence types in Turkey.

**Proposal:** Units that provide specialized services regarding sexual violence should be opened as soon as possible by fulfilling the requirements of the convention, and the expertise of independent feminist organizations, which are the most experienced in protecting the rights and interests of women who have been subjected to violence, should be utilized in the operation of these units. (see Page 50)

**Proposal:** Again, in accordance with the Istanbul Convention, a 24/7 phone line that only provides services for violence against women should be created and it should provide service in all necessary languages throughout the country.

**Proposal:** Public institutions are deficient in informing about support services for different forms of sexual violence. It has been observed that qualified and adequate answers could not be obtained in some examples of applications on obtaining information from public institutions. In order for post-sexual violence support services standards to be established and implemented in coordination, the information about the service must be shared and consulted with all stakeholders in a clear and understandable manner.

**Proposal:** Public institutions should make it easier for women survivors of sexual violence and violence against women to access support services and allocate more resources to the promotion of service units.

7) The state is insufficient to take concrete measures to prevent women exposed to sexual violence from experiencing secondary victimization.

**Proposal:** Public institutions should establish equal relations with women while providing support services, and should support women's and NGOs advocating women's rights' participation and cooperation in decision-making processes related to public services. The awareness of the fact that support services are the duty of the state and the right of women should be undertaken and should be disseminated to the public. Post-violence support services are not a favor, a help or a generosity; It should be presented as a right that women have within the scope of the legal obligations of the state, and it should be structured within this institutional framework.

#### ***Part VII- Immigration and Asylum***

8) Immigrants who can have a legal status in Turkey but do not have it, or who cannot register a temporary protection identity card, experience difficulties in accessing fundamental rights. Especially when women and LGBTI+s are exposed to violence, if they do not have an ID, they are not able to apply to support and complaint mechanisms in order to take necessary measures.

**Proposal:** In this case, it is essential to carry out the necessary registration procedures for all immigrants, especially women, LGBTI+ and children, which we can call as a "sensitive" and "fragile" group.

**Proposal:** The right of the above-mentioned "sensitive" and "fragile" groups, who are irregular

immigrants in Turkey without being able to have any legal status, to make the necessary applications against violence and participate in the prosecution process without fear of deportation should be protected. Where necessary, the right of residence stemming from the Istanbul Convention and other international conventions should be respected, and if violence is to be faced in the country of origin due to the violence experienced here, the principle of non-refoulement should be applied. In addition, if there is a history of violence in the country of origin of the "sensitive" and "fragile" groups that are to be sent back, this should be taken into account.

9) As of August 2019, the practice of the Ministry of Interior regarding the sent back of immigrants to the provinces where they first registered creates serious problems for immigrant women and LGBTI+s. Immigrant women and LGBTI+'s who have settled in other provinces and established their lives by fleeing from the people they have been subjected to violence from the province where they are registered will be exposed to violence again when they are sent back to the provinces where they are registered. Immigrant women and LGBTI+s who are not in the province where they are registered cannot go to the support and complaint units when they experience violence.

**Proposal:** For this reason, sensitivity and policy should be developed regarding the different problems of immigrant women and LGBTI+'s under the coordination of the Directorate General of Migration Management, in coordination with the relevant ministries.

**Proposal:** The services provided by the state and the current needs identified should be reconstructed from a gender perspective, based on gender-focused data.

**Proposal:** The emergency support button application called the Women's Support System (KADES) by the Ministry of Interior applies to only Turkish citizens. Considering that immigrant women also need such emergency support systems, this practice is deficient in this respect. All of state's mechanisms to prevent gender-based and/or sexual violence should be regulated and developed in a way that includes immigrant women and LGBTI+'s.

**Proposal:** Effective and sustainable shelter models should be created for migrant women and LGBTI+'s who are exposed to violence, by providing multilingual services and preventing and monitoring violence. As an exemplary recommendation; for women who are not at high security risk, but are vulnerable to violence due to poverty, to stay in employment-oriented shelters. In the existing shelters, inclusive arrangements should be made for immigrants. Migrant women may be helpless to avoid violence because they do not want to stay in shelters that do not have language support and where special measures cannot be taken to resolve conflicts based on possible ethnic discrimination. Shelters for LGBT+ individuals are not provided anyway.

**Proposal:** The camps where the Syrian refugees live should be made open to the monitoring channels of the civil society.

**Proposal:** It should be ensured that independent non-governmental organizations with a focus on gender equality have easier access to the resources allocated to the humanitarian aid.

**Proposal:** Non-governmental organizations working with a focus on humanitarian aid should consider gender equality and the fight against gender-based violence not as a part of "humanitarian aid" but as a "main area" and arrange their support organization accordingly.

**Proposal:** Migrant women and LGBTI+'s who are survivors of violence are not able to apply to

the necessary authorities due to the lack of interpreters, and therefore preventive measures cannot be implemented. In order to solve this problem, it is necessary to provide adequate and accessible interpreter services in all public institutions. In order to solve the problem of access to information, the number of translators in institutions should be increased and the translators who will work with survivors of violence should be given the necessary training on the terminology and approach in this field.

**Proposal:** Women who want to learn Turkish should be provided with free education focused on daily life, effective, non-formal, pre-school child care support, and existing education modules should be reviewed and reconstructed accordingly. In addition, the way to live social life in the native language should be rendered possible, and multilingual services should be expanded starting from the regions where immigrants are densely populated.

**Proposal:** Trainings on international refugee law, gender, sexual orientation and gender identity should be organized for personnel working in the Directorates of Migration Management, personnel working in repatriation centers and experts who will conduct status determination interviews, and these trainings should be repeated at regular intervals in cooperation with independent non-governmental organizations.

**Proposal:** It should be ensured that the applications of migrant women and LGBTI+s who are exposed to violence are evaluated as accelerated in accordance with international refugee law standards, and state officials who refuse to receive applications and/or fail to deliver their applications to the relevant authority should be investigated in a timely and effective manner.

**Proposal:** A suitable environment should be prepared in which immigrant women and LGBTI+s who are exposed to violence can express their sensitivities and special situations, both in government institutions and in non-governmental organizations working in the field of migration, and their privacy should be respected.

**Proposal:** Adequate budget should be allocated for the shelters of women's organizations, whose activities were terminated in 2016 and which have been serving women who have been exposed to human trafficking for many years with their experience and knowledge in the field, and the shelters that were closed should be reopened; It should be ensured that the state develops cooperation with and supports independent women's organizations in the field of human trafficking as well as in the field of migration and refugees.