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**Main Legal Aspects of the Istanbul Convention from the  
Perspective of the Latvian Legal System**

The *Ordo Iuris* Institute for Legal Culture is an independent legal organization incorporated as a foundation in Poland. It gathers academics and legal practitioners aimed at the promotion of a legal culture based on the respect for human dignity and rights. *Ordo Iuris* pursues its objectives by means of research and other academic activity as well as advocacy and litigation. Third party interventions by *Ordo Iuris* have been accepted by Polish and international courts and institutions, e.g. Polish Supreme Court, the European Committee of Social Rights and the European Court of Human Rights. Institute submitted its opinions to the Venice Commission, Secretary General of the Council of Europe, Commissioner for Human Rights and the Committee on Political Affairs and Democracy of the PACE. *Ordo Iuris* Institute also has UN ECOSOC consultative status.

**I. Summary**

1. The Istanbul Convention (IC) is the first international treaty introducing a problematic and non-agreed definition of 'gender', understood as "the socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for women and men" (art 3 c). The definition makes it clear that the 'gender' of a person is a social construction and a variable, which is, in principle, independent of the biological reality (being male or female). Hence, this definition carries an ideological burden by building on the belief that a human is born as a neutral being, who can determine and/or change his or her gender in the course of life and under the influence of various factors, such as society,



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education, and self-determination<sup>1</sup>. Accepting this definition requires the identification with certain dogmas of gender anthropology that denies the existence of the natural differences between the two sexes<sup>2</sup>.

2. The Convention obliges States-Parties to abolish discrimination, not only on the basis of sex, but also on the basis of gender. In order to comply with this, Latvia sooner or later will need to begin to interpret Article 110 of the Constitution, as well as Article 35, Part 2, of the Civil Law according to the Convention's understanding of 'gender'. This means, i.a. potential pressure of international institutions on allowing same-sex marriages, even without changing Article 110 of the Constitution, which states that "The State shall protect and support marriage – a union between a man and a woman, the family, the rights of parents and rights of the child. The State shall provide special support to disabled children, children left without parental care or who have suffered from violence".
3. The Istanbul Convention clearly ignores Article 112 of the Constitution<sup>3</sup> and international provisions that guarantee the rights of the parents to choose the kind of education for their children. That right is codified in a number of international human rights treaties. 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.'<sup>4</sup>. Moreover, the Convention does not consider the freedom of parent's religion, which is inextricably linked with the right to educate their children according to their religious beliefs and philosophical principles.

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<sup>1</sup> See, e.g. Judith Butler, 'Gender Trouble: feminism and the Subversion of Identity' (Routledge, 2011)

<sup>2</sup> For more information see Francesco Agnello, 'A New "Gender" Approach Definition in International Law: The Convention on Preventing and Combating Violence against Women and Domestic Violence' [2014] (18) The Spanish Yearbook of International Law 87-114.

<sup>3</sup> "Everyone has the right to education. The State shall ensure that everyone may acquire primary and secondary education without charge. Primary education shall be compulsory", Latvian Constitution.

<sup>4</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) Article 26 (3), emphasis added.



4. The first paragraph of Article 12 of the Convention obliges the States to make changes to people social and cultural patterns of behavior.<sup>5</sup> Such a requirement is not in compliance with the Articles 99 and 100 of the Constitution, because every Latvian citizen has the right to think freely and to freely express their views, unless they affect the fundamental rights of others (Article 116 of the Constitution). The Article 1 of the Constitution, which declares Latvia as a democratic republic, prohibits the State to impose ideas, or postulates like the ideology of radical feminism that rules the Convention and implies forcing everyone to live only in accordance with this ideology. Moreover, the provision is not in compliance with the principle of the respect for universal human and Christian values, which is expressed in the preamble to Latvian constitution.
5. If Latvia joins the Istanbul Convention, it will be abandoned one of the most important fundamental rights in Latvia – the equality before the law, making men's discrimination – by deprivation of equal means of legal protection against violence – *a priori* legitimate, without any rational basis. Moreover, in this case, the discrimination would be based on biological sex, which shows one of the incoherencies of the document.
6. As regards the possible introduction of the Conventions' legal contents, each country must have the possibility to clearly identify and restrict the EU's competence, from the competences of the Member States in the cases to which the Istanbul Convention would be applied. It is also important here that two EU Member States - Latvia and the Czech Republic - have signed the Istanbul Convention, making a clear statement that a definition of competences would be necessary.
7. The paradigm of countering domestic violence introduced by the Istanbul Convention has been proven to be deeply ineffective. The countries which have implemented it prior to the ratification of the Convention, including Denmark, Finland and Sweden, according to

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<sup>5</sup> [T]ake the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.



the research conducted by the Fundamental Rights Agency, suffer from the highest rates of domestic violence in Europe. At the same time, FRA research proves that countries which did not implement the gender paradigm of countering violence prior to the ratification of the Convention, experienced lowest rates of domestic violence in Europe.

8. From a legal point of view, there is no reason why Latvia should sign an international treaty that does not comply with its basic law - the Constitution. Submission of a unilateral declaration, as did Poland and Lithuania, does not provide legal sound guarantees. It is not currently known, how these declarations in practice will affect the application of the Convention in Lithuania and Poland, as well as in their relations with the other signing States.

## II. The Istanbul Convention

### *Background, negotiations and adoption of the IC*

- The Istanbul Convention is a Council of Europe convention. In December 2008 the Committee of Ministers established an expert group, the ‘Ad Hoc Committee for preventing and combating violence against women and domestic violence’ or CAHVIO.<sup>6</sup> CAHVIO was assigned to prepare a draft convention on combating violence against women. The draft text of the Istanbul Convention was finalized by the end of 2010.<sup>7</sup>

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<sup>6</sup> ‘The Negotiations - Istanbul Convention: Action against violence against women and domestic violence’ (Council of Europe) <<http://www.coe.int/en/web/istanbul-convention/cahvio>> accessed 12 April 2016

<sup>7</sup> ‘Historical background - Istanbul Convention: Action against violence against women and domestic violence’ (Council of Europe) <http://www.coe.int/en/web/istanbul-convention/historical-background>, accessed 12 April 2016



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- The Istanbul Convention was adopted by the Council of Europe Committee of Ministers on 7 April 2011<sup>8</sup> on the basis of the draft prepared by CAHVIO<sup>9</sup> and was opened for signatures following the 121st session of the Committee of Ministers in Istanbul.<sup>10</sup> The IC into force on 1 August 2014.
- The IC was opened for signature in 2011, but the ten required ratifications (8 of which were required to be Council of Europe Member States) necessary to enter into force<sup>11</sup> was reached only in 2014. For the time being, less than half of the Members of the Council of Europe (29 out of 47) and half of the EU Member States (15 out of 28) have ratified it.<sup>12</sup> Two members of the Council of Europe have neither signed nor ratified the Istanbul Convention.<sup>13</sup>
- The drafting of the treaties and international conventions within the framework of the Council of Europe is based on the Council of Europe's practice and supplemented by Statutory Resolution (93) 27 on majorities required for decisions of the Committee of Ministers.<sup>14</sup> Article 20 (d) of the Statute of the Council of Europe establishes that the

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<sup>8</sup> 'Ministers' Deputies CM Documents CM(2011)49-final' (Council of Europe) <[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cd162](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cd162)> accessed 8 April 2016

<sup>9</sup> 'Historical background - Istanbul Convention: Action against violence against women and domestic Violence' (Council of Europe) [http://www.coe.int/en/web/istanbul-convention/historical\\_background](http://www.coe.int/en/web/istanbul-convention/historical_background) accessed 12 April 2016

<sup>10</sup> 'Draft agenda of 121st Session of the Committee of Ministers (Istanbul, 10-11 May 2011)' (Council of Europe)

<[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM\(2011\)OJ1&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM(2011)OJ1&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true)> accessed 8 April 2016 and 'CM121 Session of the Committee of Ministers' (Council of Europe)

<<https://wcd.coe.int/ViewDoc.jsp?p=&id=1770063&Site=CM&direct=true>> accessed 8 April 2016

<sup>11</sup> Istanbul Convention, Article 75 (3)

<sup>12</sup> For the updated list of signatures and ratifications see 'Chart of signatures and ratifications of Treaty', in:

<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>

210' (Council of Europe) <<http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>> accessed 30 May 2016.

<sup>13</sup> For the updated list of signatures and ratifications see 'Chart of signatures and ratifications of Treaty 210'

(Council of Europe) <<http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>> accessed 30 May 2016.

<sup>14</sup> 'Statutory Resolution (93) 27 of the Committee of Ministers of the Council of Europe (14 May 1993)'

(CVCE).

<[http://www.cvce.eu/en/obj/statutory\\_resolution\\_93\\_27\\_of\\_the\\_committee\\_of\\_ministers\\_of\\_the\\_council\\_of\\_europe\\_14\\_may\\_1993-en-3da7c44e-8125-4007-aad4-7c50b328e36e.html](http://www.cvce.eu/en/obj/statutory_resolution_93_27_of_the_committee_of_ministers_of_the_council_of_europe_14_may_1993-en-3da7c44e-8125-4007-aad4-7c50b328e36e.html)> accessed 8 April



adoption of treaties ‘require a two-thirds majority of the representatives casting a vote and of a majority of the representatives entitled to sit on the Committee’.<sup>15</sup>

- Unusually, the Istanbul Convention is the only Council of Europe convention where this requirement was not met. It was adopted without a vote due to both the short time available and to the Turkish government’s political calculation: Turkey’s chairmanship of the Committee of Ministers was coming to an end and it pressed for the adoption of the IC to send a political signal regarding its commitment to women’s equality as it seeks accession to the EU.<sup>16</sup>
- In October 2015 the EC published a Roadmap on ‘(A possible) EU Accession to the Council of Europe’s Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)’.<sup>17</sup> This commitment was further solidified in the 2015 Report on equality between women and men in the European Union, where the EC repeated its intention that the EU as a whole should accede to the Istanbul Convention.<sup>18</sup> This intention was materialized on 4 March 2016, when the EC communicated its proposal to ratify it.<sup>19</sup>

### *Latvia and the IC draft text*

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2016. The Istanbul Convention procedure was doubtfully lawful taking into account the 1<sup>st</sup> paragraph of Article 14 of the Vienna Convention.

<sup>15</sup> Statute of the Council of Europe (as amended) (adopted 5 May 1949, entered into force 3 August 1949) C.E.T.S. No. 001 (Statute of the Council of Europe) Article 20(d).

<sup>16</sup> For more information see Francesco Agnello, 'A New “Gender” Approach Definition in International Law: The Convention on Preventing and Combating Violence Against Women and Domestic Violence' [2014] (18) The Spanish Yearbook of International Law 87-114.

<sup>17</sup> European Commission, 'Roadmap on (A possible) EU Accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)' <[http://ec.europa.eu/smartregulation/roadmaps/docs/2015\\_just\\_010\\_istanbul\\_convention\\_en.pdf](http://ec.europa.eu/smartregulation/roadmaps/docs/2015_just_010_istanbul_convention_en.pdf)> accessed 12 April 2016.

<sup>18</sup> European Commission, 'Commission staff working document: 2015 Report on equality between women and men in the European Union' SWD (2016) 54 final 25 [http://ec.europa.eu/justice/genderequality/files/swd\\_2016\\_54\\_en.pdf](http://ec.europa.eu/justice/genderequality/files/swd_2016_54_en.pdf), accessed 12 April 2016.

<sup>19</sup> European Commission, 'Commission proposes EU accession to international Convention to fight violence against women' (Press Release Database, 4 March 2016) [http://europa.eu/rapid/pressrelease\\_IP-16-549\\_en.htm](http://europa.eu/rapid/pressrelease_IP-16-549_en.htm) , accessed 12 April 2016.



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During 6th to 8th of April 2009 a total of 9 working groups meetings were held. From 13<sup>th</sup> to 17th of December of 2010, the final text of the draft convention was adopted by consensus (pre-voted previously in the working groups); as a result it, was decided to send it for further consideration by the EP Committee of Ministers. Polish, Spanish and United Kingdom ad hoc workgroups delegations abstained from voting.<sup>20</sup> The last meeting of the working group was held in Strasbourg on January 18<sup>th</sup> to 21<sup>st</sup> of 2011, during that meeting the Explanatory Report of the Convention was adopted<sup>21</sup>.

The following persons represented Latvia in the working groups:

- 1st Working Group Meeting - WGM (April 6-8, 2009) - Kristaps Petermanis, Ministry of Children, Family and Integration Affairs, Head of the Policy Coordination and Family Policy Department; Inga Reine, Ministry of Foreign Affairs, Latvia Representative in International Human Rights Organizations in the Steering Committee for Human Rights (CDDH).
- 2<sup>nd</sup> WGM (May 25-27, 2009) - Lauris Neinkens, Ministry of Children, Family and Integration, Senior Specialist, Children and Family Policy Department.
- 3<sup>rd</sup> WGM (December 1-3, 2009) - Kristaps Petermanis, Ministry of Welfare, Head of Children and Family Policy Department; Inga Reine, Ministry of Foreign Affairs, Latvia Representative in International Human Rights Organizations in the Steering Committee for Human Rights (CDDH).
- 4<sup>th</sup> WGM (February 22-24, 2010) - Kristaps Petermanis, Welfare Ministry of Children and Family Policy; Inga Reine, Ministry of Foreign Affairs, Latvia Representative in International Human Rights Organizations in the Steering Committee for Human Rights (CDDH).

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<sup>20</sup> Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO). Report of the 8th meeting. Strasbourg, 13-17 December 2010, p.4, par. 9. See: [www.coe.int](http://www.coe.int)

<sup>21</sup> Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO). Report of the 9th meeting. Strasbourg, 18-21 January 2011, p. 2, para. 6. see: [www.coe.int](http://www.coe.int)



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- 5<sup>th</sup> WGM (June 29, 2010 - July 2, 2010) - Līga Āboliņa, Welfare Ministry of Children and Family Policy, Deputy Director; Inga Reine, Ministry of Foreign Affairs, Latvia Representative in International Human Rights Organizations in the Steering Committee for Human Rights (CDDH).
- 6<sup>th</sup> WGM (27-30 September 2010) - Zigmunds Dundurs, Ministry of Justice, Legal Adviser of the Criminal Law Department; Inga Reine, Ministry of Foreign Affairs, Latvia Representative in International Human Rights Organizations in the Steering Committee for Human Rights (CDDH).
- 7<sup>th</sup> WGM (November 8-10, 2010) - Līga Āboliņa, Ministry of Children and Family Policy, Deputy Director; Inga Reine, Ministry of Foreign Affairs, Latvian representative in international human rights organizations in the Steering Committee for Human Rights (CDDH).
- 8<sup>th</sup> WGM (December 13-17, 2010) - Līga Āboliņa, Welfare Ministry of Children and Family Policy, Deputy Director; Inga Reine, Ministry of Foreign Affairs, Latvian representative in international human rights organizations in the Steering Committee for Human Rights (CDDH).
- 9<sup>th</sup> working group meeting (January 18-21, 2011) - Zigmunds Dundurs, Ministry of Justice, Legal Counsel of the Department of Criminal Law.

It is not clear from the minutes of the meetings of the working groups if the position of the representatives of Latvia has been expressed, in favor or against the Convention's drafting process. The only thing that can be deduced from the minutes of the hearing of the 2nd working group regarding Latvia is the following: "It also agreed that the provisions of the Convention should be applied to all the victims of domestic violence. Considering that Latvia agreed with all the other delegations on the agreement reached, it expressed some reservations about the scope of the future Convention"<sup>22</sup>. It is not indicated in the protocol what were the specific reservations expressed by Latvia.

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<sup>22</sup> Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO). Report of the 2nd meeting. Strasbourg, 25-27 May 2009, p. 5, par. 6. See: [www.coe.int](http://www.coe.int)



It is important to note that the following non-governmental organizations participated in the ad-hoc working group as observers<sup>23</sup>:

- European Women's Lobby;
- Amnesty International;
- Women Against Violence in Europe (WAVE);
- International Lesbian, Gay, Bisexual, Transgender and Intersex Association ILGA-Europe (ILGA Europe);
- European Group of National Human Rights Institutions;
- European Gender Equality Institute (EIGE).

It's worth noting that none of these organizations represented the family and their policies.

On April 6<sup>th</sup> and 7<sup>th</sup> of 2011, the EP Committee of Ministers, at its 1111<sup>th</sup> meeting, adopted the Istanbul Convention<sup>24</sup>, for the first time in the history without being voted by the fourteen countries, and was opened for signature at the 121<sup>st</sup> session of the Committee of Ministers in Istanbul on 10<sup>th</sup> and 11<sup>th</sup> of May of 2011<sup>25</sup>.

### **III. Entry into force of the Istanbul Convention and ratification by the States**

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<sup>23</sup> See. CAHVIO Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence, Meeting Reports [www.coe.int](http://www.coe.int)

<sup>24</sup> Agnello, F. "A New 'Gender' Definition in International Law: The Convention on Preventing and Combating Violence against Women and Domestic Violence", in: Spanish Yearbook of International Law, 2013-2014, p. 102.

<sup>25</sup> On 11<sup>th</sup> of May 2011, the Convention was immediately signed by the following Member States: Austria, Finland, France, Germany, Greece, Iceland, Luxembourg, Montenegro, Slovakia, Spain, Portugal, Sweden, Turkey. It should be noted that by March 28<sup>th</sup> of 2018, not all these countries have ratified the Convention, but only about half of them: Austria, Finland, France, Montenegro, Portugal, Sweden, Turkey, Spain and Germany. See: CM/Del/Dec (2011) 1111, 2011, 11 April. Available at [www.coe.int](http://www.coe.int).



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The Istanbul Convention entered into force on 1<sup>st</sup> August 2014 (i.e., 3 years after its opening for signature), after being ratified by 10 countries, including at least 8 EP members (see Article 75, paragraph 3, of the Istanbul Convention).

As of March 28, 2018 the Istanbul Convention has been signed by 45 CoE Member States (14 of them are EU Member States), has been ratified by 29 CoE Member States (14 of them are EU Member States). The Convention has not been signed by 2 CoE (Azerbaijan, Russia), none of them EU Member States.

Following the signing of the Convention, three groups of countries can be distinguished:

- Country Group No.1 - Countries that signed the Convention on the day of the signature of the IC (May 11<sup>th</sup>, 2011.) These countries are: Austria, Finland, France, Germany, Greece, Iceland, Luxembourg, Montenegro, Portugal, Slovakia, Spain, Sweden, and Turkey.
- Country Group No 2 - Countries that signed the Convention between 2011 and 2013: Albania, Belgium, Italy, Malta, Monaco, Netherlands, Norway, Poland, Serbia, United Kingdom, Andorra, Bosnia and Herzegovina, Croatia, Denmark, Lithuania, Switzerland, Ukraine and Former Yugoslav Republic of Macedonia.
- Country Group No 3 - Countries that relatively recently signed the IC from 2014 to the present. These countries are: Cyprus, Estonia, Georgia, Hungary, Ireland, Romania, San Marino, Bulgaria and Switzerland.
- Country Group No. 4 - These are seven countries (including observers) and EU Member States, that have not signed the Convention: Azerbaijan, Russia, Canada, Holy See, Japan, Mexico, USA.



The Explanatory text states that the Recommendation (2002) 5 on the protection of women against violence constitutes a milestone in women's protection, as it is the first time in Europe to offer a comprehensive strategy on violence against women, as well as the protection of victims in all EP countries. So, the Convention was built upon this Recommendation Model.<sup>26</sup>

The Gender Equality Committee (GEC) published an Analytical Survey on the 4th Monitoring Report on the implementation of Recommendation (2002) 5 on the Protection of Women against Violence in the Member States of the Council of Europe ("Analytical study of the results of the 4th round of monitoring the implementation of Recommendation Rec (2002) 5 on protection of women against violence in the Council of Europe Member States"<sup>27</sup>). This Analytical Study also includes data on Latvia.

In February 2014, the EP published the "Council of Europe Gender Equality Strategy 2014-2017"<sup>28</sup>, in which it is stated as a key objective among others, to enforce an effective "Gender"-equality in the Member States through different activities. The overall goal of the Strategy is to make women move upwards and gain more power in society, as well as the effective realization of gender equality in the Member States of the Council of Europe by applying appropriate means, grouped around five strategic objectives:

1. Combating gender stereotypes and sexism;
2. Preventing and combating violence against women;
3. Guaranteeing equal access of women to justice;

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<sup>26</sup> Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence. (IC, p. 2, para. 9; p. 4, para. 21.).

<sup>27</sup> Analytical Study of the Results of the 4th Round of Monitoring the Implementation of the Recommendation Rec (2002) 5 on the Protection of Women against Violence in Council of Europe Member States. Prepared by Prof. Dr. Carol Hagemann-White, University of Osnabrück, Germany.

<http://www.coe.int/en/web/stop-violence-against-women-ukraine/publications/other>

<sup>28</sup> Council of Europe Gender Equality Strategy 2014-2017. Council of Europe, February 2014. <https://rm.coe.int/>



4. Achieving balanced participation of women and men in political and public decision-making);
5. Achieving gender mainstreaming in all policies and activities.

It is worth consideration the fact that violence against women is not included in the EP's strategy for criminal or human rights issues, but in the EP's Gender-equality strategy.

In October 2015 the EC published a Roadmap on '(A possible) EU Accession to the Council of Europe's Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)'.<sup>29</sup> This commitment was further solidified in the 2015 Report on equality between women and men in the European Union, where the EC repeated its intention that the EU as a whole should accede to the Istanbul Convention.<sup>30</sup> This intention was materialized on 4 March 2016, when the EC communicated its proposal to ratify it.<sup>31</sup>

#### IV. Objectives of the Istanbul Convention

The aims of the Istanbul Convention are mainly exposed in article 1 and in the Preamble of the Convention. As established by the 2<sup>nd</sup> paragraph of Article 31 of the Vienna Convention, the text of an international agreement (convention) also includes its preamble. In addition any international treaty is to be interpreted in good faith and in accordance with the general and ordinary meaning of the provisions of the treaty (convention), and in accordance with its

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<sup>29</sup> 8 European Commission, 'Roadmap on (A possible) EU Accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)' [http://ec.europa.eu/smartregulation/roadmaps/docs/2015\\_just\\_010\\_istanbul\\_convention\\_en.pdf](http://ec.europa.eu/smartregulation/roadmaps/docs/2015_just_010_istanbul_convention_en.pdf), accessed 12 April 2016.

<sup>30</sup> European Commission, 'Commission staff working document: 2015 Report on equality between women and men in the European Union' SWD(2016) 54 final 25 [http://ec.europa.eu/justice/genderequality/files/swd\\_2016\\_54\\_en.pdf](http://ec.europa.eu/justice/genderequality/files/swd_2016_54_en.pdf), accessed 12 April 2016.

<sup>31</sup> European Commission, 'Commission proposes EU accession to international Convention to fight violence against women' (Press Release Database, 4 March 2016) [http://europa.eu/rapid/pressrelease\\_IP-16-549\\_en.htm](http://europa.eu/rapid/pressrelease_IP-16-549_en.htm), accessed 12 April 2016.



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object and purpose (article 1, Vienna Convention). This means that the clarification of the purpose of the Istanbul Convention is important, since it affects the teleological interpretation of this Convention.

According article 1, par.1, the objectives of the IC are to:

- a) protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;
- b) contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;
- c) design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence;
- d) promote international co-operation with a view to eliminating violence against women and domestic violence;
- e) provide support and assistance to organizations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence.

On the other hand, from the preamble of the Convention, it is possible to infer the following goals:

- a) The IC constitutes an attempt to create a Europe free of violence against women and domestic violence;
- b) It aims at condemning all forms of violence against women and domestic violence;
- c) Considers that the main way of preventing violence against women is *de jure* and *de facto* the implementation of equality between women and men, and that the solution to this problem resides in establishing a gender paradigm.



It is important to note that the article 1, par. 2, of the Istanbul Convention explicitly provides that the Convention provides for a special monitoring mechanism to ensure that the Parties effectively implement its provisions. This monitoring mechanism is set out in Chapter IX (Articles 66-70), with the setting up of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). In accordance with Article 31, par. 3, b of the Vienna Convention, the international convention are to be interpreted, together with its text and context, with any subsequent practice in its application

As can be seen, while signing the Istanbul Convention, the States agreed not only with the establishment of GREVIO, but also with its authority regarding the interpretation of the IC, and the monitoring of States' implementation of it. The article 69 of the Convention, states that GREVIO may adopt general recommendations for the implementation of this Convention, while the European Parliament is invited to regularly evaluate its implementation, meaning also that GREVIO establishes a uniform interpretation of the Convention.

## **V. Preamble to the Istanbul Convention**

From the Preamble to the IC derives specific and important guidelines for its teleological interpretation, as it reflects the global objectives that the Member States looked for when signing the Convention.

The Preamble to the Istanbul Convention clearly states that the main objective of the Convention is the creation of a "non-violence against women" environment in Europe.<sup>32</sup> This pronouncement already calls for caution, as these kinds of utopian goals that humanity will

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<sup>32</sup> Explanatory Note to the Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul, 11.05.2011, p. 5, par. 25.



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never achieve (a completely free humanity from evil and aggressive individuals in no age or in any one in the context is not possible), evokes the desires of other totalitarian ideologies to create a "paradise on earth": a classless society without exploitation "in the communist ideology, a "racially pure society "in the ideology of the German national socialism, etc.

The Preamble states that violence against women is due to an historic unequal division of power between women and men, which results in men domination over women, discrimination against women, and obstruction to the full development of women. It's actually declaring that a man can only be a female abuser, and that men unquestionably dominate women and hamper the full development of women. From this, it can be concluded that each man is potentially corrupted only because he is a man, as well as that any man makes it difficult for any woman to reach fully development, as well as that, in the absence of men, there would be no violence against women and all women would have long ago been fully developed.

The Preamble immediately offers a solution to this "problem": to implement *de jure* and *de facto* equality between women and men, i.e. to establish gender equality, (understood as a holistic perspective that is based in a "constructed" self-defined sex regardless of any biological reference) other ways and means of reducing violence against women are not considered.

Here arose an immediate question: what is the basis of such statement, which is the base of the IC, moreover from which research it results? The Explanatory Report of the Convention states "the prevalence rates of violence against women are not known in Europe" but that "about 12% to 15% of all women have been in a relationship of domestic abuse after the age of 16."<sup>33</sup>

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<sup>33</sup> Explanatory Report, p. 1, par. 2 and 3. See also: McQuigg, R.J.A. What potential does the Council of Europe Convention on Violence against Women hold as regards domestic violence? *The International Journal of Human Rights*, Vol.16, No. 7, 2012, pp. 948, 949.



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The question that arose from the above paragraph is: if at the time of the preparation and adoption of the Convention the figures for the extent of violence against women were not known in Europe, then on what grounds the preamble used some indicators, and why the introduction of gender equality is offered as the only possible mean of combating violence. It is clear that the reference to a "prudent estimation" cannot be considered reliable as the basis for legislating.

On the contrary, the EU Agency for Fundamental Rights published a comprehensive study on violence against women in EU Member States in 2014. It is based on interviews with 42,000 women across the EU, who were asked about their experiences of physical, sexual and psychological violence, including incidents of intimate partner violence ('domestic violence'). The study found that the most severe violence against women is in the Nordic countries, where the concepts of gender equality and gender identity have been introduced many years ago:

- Denmark (52%);
- Finland (47%);
- Sweden (46%);
- The Netherlands (45%);
- France (44%);
- The United Kingdom (44%).

The average for the EU as a whole is 33%. The indicator for Latvia is 39% (for Estonia - 33%; and 31 % for Lithuania) So, Latvia has the highest rate among the Baltic States, but Latvia is considerably less vulnerable to violence against women than previously mentioned



countries, where violence is significantly higher. The lowest rate of violence is for Poland - 19%.

These data show that the introduction of gender equality is likely to have the opposite effect, namely that violence against women will only increase. The Istanbul Convention's authors have not even tried to find out the real causes of violence against women. A pre-determined observation of any adult's life suggests that the most widespread causes of violence are alcoholism, drug addiction, gambling, pornography, and the media-related violence in general. So, the essential cornerstone of the Istanbul Convention shows itself as completely false, simply because it is based on wrong data.

The following statement from the Preamble "Recognizing the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men", is not based in any study that would allow such conclusions to be drawn. In order to argue that women are at greater risk of violence and that domestic violence has a disproportionate impact on women, two studies should had been firstly be carried out: 1) on violence against women and 2) on violence against men. Just comparing the data of these two studies, it is possible to find out who - women or men - are more vulnerable to violence and are more affected. Such data have not been available at the time of drafting and adoption of the Convention. On the contrary, the research data collected in 2010 suggest that men in families suffer from real violence about as often as women.<sup>34</sup>

## VI. The possible reservations foreseen in the Istanbul Convention

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<sup>34</sup> Fiebert M. References Examining Assaults by Women on their Spouses or Male Partners: An Annotated Bibliography, *Sexuality and Culture*, 2010, No. 1, pp. 49-91.



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The article 78 of the IC determines which reservations the States that wish to accede to the Convention can make. The first paragraph of the same article provides that reservations may not be made in respect of the provisions of this Convention, except for those included in the second and third paragraphs of the same article. Namely, at the time of signing the Istanbul Convention (or depositing its instrument of ratification, acceptance, approval or accession), each State may declare in a declaration addressed to the Secretary General of the Council of Europe that it reserves the right not to apply or to apply only in specific cases or circumstances the content of:

- Article 30, 2<sup>nd</sup> paragraph (regarding the adequate compensation for all persons who suffered severe bodily injury or damage to health, to the extent not covered by indemnity received from other sources);
- Article 44, 1<sup>st</sup> paragraph, point (e), (3) and (4) (on jurisdiction);
- Article 55, 1<sup>st</sup> paragraph, in conjunction with Article 35 (*Ex parte* and *ex officio* proceedings, only regarding minor infringements);
- Article 58 in conjunction with Articles 37, 38 and 39 (Statute of limitation to begin a prosecution);
- Article 59 (residence status).

In addition, any country or EU may declare that it reserves the right to provide for penalties other than criminal penalties for the offenses referred to in Articles 33 and 34. The Istanbul Convention does not provide the possibility to make reservations regarding the definitions contained therein (for example, in article 3), and to other measures.

The States referred to in Article 78 (Reservations) are: Andorra, Cyprus, Denmark, Finland, France, Spain, Malta, Monaco, Poland, Serbia, Germany, Slovenia, Sweden and The Netherlands (for territorial application). Two countries, Lithuania and Poland, have added declarations that are not foreseen in the Convention itself, with regard to its application in accordance with the principles and rules laid down by its constitutions. In turn, two countries,



Sweden and Austria, have opposed in 2016 the Polish declaration regarding the requirement of respecting the Polish Constitution.

## VII. The ideology underlying the Istanbul Convention and the Constitution

### 1. "Gender" as social gender or gender identity, and the "gender" ideology

#### 1.1. A short overview of the "gender" ideology genesis and content

In the development of the "gender" theory, it can be found four stages<sup>35</sup>:

- The concept of gender in the 50s of the last century;
- the concept of "gender" as a theory developed at the universities of the United States and France in the 60s and 70s;
- the transformation of the concept of gender into a world-class cultural and political norm in the 1990s;
- the "gender" as the "global" "culture" of every human being.

*First stage:* In the late 1950s, the United States began to use the word gender with sociological and ideological purposes. It was introduced by the controversial sexologist John Money to designate a sexual identity that does not fit into the human biological sex. According to John Mania, the behavior and self-perception of women and men is not biologically dependent, but is shaped in the process of upbringing and teaching. In other

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<sup>35</sup> Peeters M.A. La théorie du gender, une norme politique mondiale. Grām. "La théorie du Gender". Vers une nouvelle identité sexuelle? Actes du colloque des 17 et 18 septembre 2011, Toulon: Lethielleux, 2012, p. 25.



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words, a boy can be created as a girl by upbringing; and vice versa. This is a theory that has never been scientifically proven.<sup>36</sup>

From the very beginning, the purpose of this term was ideological: the concept of "gender" was introduced in no way to distinguish anatomical differences from anthropological (non-anatomical) differences between men and women; such a difference would be complete legitimate, because it would allow people to better and deeper discover the essence of masculinity and femininity. Rather, this concept was introduced with the aim of dismantling the ontological unit of a human person and, in principle, detaching a person's personality from his body, whether it be a man's or a woman's body, just for the desire to "free yourself" to stand up against your own sexed body.<sup>37</sup>

*Second Stage:* Western postmodern intelligence during the 1960 and 1970 decades, rationalized the goals of the cultural revolution. The intellectuals were then, interested in peace, ecology, human rights, demographic control and an international perspective. This postmodern intelligence quickly established contacts with UN specialized organizations.

During the 1970 decade, gender studies began to be taught in some US universities.<sup>38</sup> This stage is often referred to as "gender feminism". This shift to a radical feminism was based on a non-narcissistic interpretation of history, according to which history is interpreted as a class struggle: a repressed class struggling against the oppressor, in such a way that the oppressed must revolutionized and achieved the dictatorship of the oppressed class over the oppressors. It will be then, when it would emerge a new society without classes and happiness for all. Radical feminists used the idea expressed in F. Engels "Family, Private Property and Country of Origin" (published in 1884), according

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<sup>36</sup> The use of the term "gender" in the Russian legislation. Analytical Report Document Code: RF-12-029-02. c. 2. Available in: [familypolicy.ru/rep/rf-12-029](http://familypolicy.ru/rep/rf-12-029)

<sup>37</sup> Peeters, M.A. La théorie du gender, une norme politique mondiale. Grām. "La théorie du Gender" Vers une nouvelle identité sexuelle?, Actes du colloque des 17 et 18 septembre 2011, Toulon: Lethielleux, 2012, p. 25.

<sup>38</sup> Firestone, S. The Dialectic of Sex, New York: Bantam Books, 1970., p.10; Alzamora Revoredo, O. Féministes du genre ou gender feminists. Grām. Gender. La controverse, Paris: Editions Téqui, 2011, pp. 55, 56.



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to which this first classes-antagonism coincided with the development of the antagonism between men and women associated with monogamous marriage ties, and the male adulation of women.<sup>39</sup>

This was, for example, the case of Shullamith Fairstone, who wrote in 1970: "mankind has begun to beat nature; we can no longer tolerate the continuation of the discriminatory attitude of the sexes"<sup>40</sup>.

The Feminist movement and its theory was inspired by slogans as "Let's free women!" and "Women - Get Rid!". These emancipation theories very often proceed from Marxists' emphasis on the proletariat liberation adapted to the idea of women liberation.<sup>41</sup>

In fact, the fate of women had never been a real feminist concern, since the radical feminism was directly interested in generating an antagonism between men and women by underlying the male domination over women<sup>42</sup>. Hence, radical feminism was not at all interested in improving the position of women, but in opposing and confusing women for men, as well as disassembling women's identification with the family.

Therefore, the interest of radical feminism is to offer programs to better implement the interests of homosexuals-lesbians-bisexuals-transsexuals (LGBTs), covered under their concern for women's safety from domestic violence.

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<sup>39</sup> Engels, F. *The Origin of the Family, Property and the State*, New York: International Publishers, 1972, pp. 65-66; Alzamora Revoredo, O. *Féministes du genre ou gender feminists. Gender: La controverse*. Paris: Editions Téqui, 2011, pp. 53, 54.

<sup>40</sup> Firestone, S. *The Dialectic of Sex*, New York: Bantam Books, 1970, p.10;

<sup>41</sup> Kūle M. *Feminisma ētika un klasiskās filosofijas koncepti*. Grām. *Dzimums, literārā konvencija un jaunrade. No baroka līdz postmodernismam*. Rīga: LU Akadēmiskais apgāds, 2015, 273.lpp.

<sup>42</sup> Hartmann H. *The Unhappy Marriage of Marxism and Feminism. Women and Revolution*, Boston: South End Press, 1981, p. 5; Firestone S. *The Dialectic of Sex*, New York: Bantam Books, 1970, p. 12; Alzamora Revoredo, O. *Féministes du genre ou gender feminists. Gender. La controverse*, Paris: Editions Téqui, 2011, p. 59.



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*Third Stage:* The next step in the advancement of the gender theory took place in the decade of 1990, when it achieves national consensus on a global scale. Particularly important to the promotion of the gender theory, was the UN Global Women's Conference held in Beijing in 1995. This Conference sought to incorporate the definition of the "gender" as a social theory into the Conference's documents. In fact, it was then when the gender theory was transformed into a world-class political norm. Consequently, gender equality since then has been regarded as an effective global priority in all policy areas and it served as the cornerstone for a new world ethos<sup>43</sup>: The Beijing Conference has made gender mainstreaming as a strategic priority.

*Fourth Stage:* Today, there is no longer any development program in the world better funded and supported, than those for the development of gender ideology. International monitoring mechanisms are being developed to monitor on-site the implementation of gender ideas in practice at all policy levels. This new "ethics" becomes normative, imperative and increasingly intolerant to other worldviews.

In the daily language, the word "gender" can be understood as a synonymous of the word "sex".<sup>44</sup> However, this understanding is already misleading, since the content of the concept of gender constantly changes. There are currently, at least two possible ways of interpreting the term gender:

- Moderate scheme (which is already beginning to be old), according to which gender is the secondary projection of the biological sex (man or woman) in the social life. This means that the society expects from women a feminine behavior, and from men a male one. In this sense, the concept of "gender" is neutral and even acceptable.
- Radical scheme, according to which "gender" is a pure social construct that does not have any biological cause or effects. Everyone can choose the appropriate "gender", regardless of his or her biological sex.

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<sup>43</sup> *Ibid*, p. 26.

<sup>44</sup> Использование термина «гендер» в российском законодательстве. Аналитический доклад Код документа: RF-12-029-02. с. 4, in: [familypolicy.ru/rep/rf-12-029](http://familypolicy.ru/rep/rf-12-029)



Within the framework of the "gender" identity theory or the "gender" social construction theory, there are currently several dozens of "gender" types that a person can choose for himself, regardless of his biological gender. For example, the social network Facebook users in the US are offered to choose among about 70 "gender" types, the majority of them are unknown in Latvia.

The UK based Gender Identity Research & Education Society (GIRES) even points out that the English version should replace the usual forms of the pronouns he/she, his/hers, may be replaced with more neutral pronouns such as: they, per, zie or fey; and the title Mx may be preferred to Mr, Mrs, Miss or Ms.<sup>45</sup>

## 1.2. Definition of "gender" in international treaties

The concept of "gender" in non-legally binding international documents began to be used only in the 1990s and was originally perceived as a synonymous of the word "sex".

The first major attempt to introduce the "gender" term in the international legal environment as a social word was in the "Beijing Declaration and Platform for Action" (1995), where the term "gender" is used approximately 233 times.<sup>46</sup> However, many national delegations resisted that social definition of "gender".<sup>47</sup> Consequently, the Beijing Platform for Action included in the Appendix IV<sup>48</sup>, the declaration of many countries specifying that the term

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<sup>45</sup> GIRES website: <http://www.gires.org.uk/terminology>. Accessed March 26th 2018.

<sup>46</sup> Agnello, F. A New "Gender" Definition in International Law: The Convention on Preventing and Combating Violence against Women and Domestic Violence, Spanish Yearbook of International Law, 2013-2014, p. 98; Charlesworth, H. Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations, Harvard Human Rights Journal. Vol. 18, 2005, p. 14.

<sup>47</sup> Charlesworth, H., *ibid.*, pp. 16-17; Alzamora Revoredo, O. *Féministes du genre ou gender feminists. Gender. La controverse*, Paris: Editions Téqui, 2011, p. 48.

<sup>48</sup> Statement by the President of the Conference on the commonly understood meaning of the term "gender". Annex IV, p. 218. [www.un.org/womenwatch/daw/beijing](http://www.un.org/womenwatch/daw/beijing)



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gender is to be understood, as a synonym of "sex", i.e. "the word "gender" is understood and used in its usual, generally accepted sense how it is used in many UN forums and conferences; without indication that any new understanding of this term or a different meaning from the previously adopted use would be included in the Platform for Action."<sup>49</sup>

Prior to the Istanbul Convention, the only legally binding international definition of gender is contained in the Rome Statute of the International Criminal Court (Rome Statute) of 1998, which uses gender in its classical sense, i.e. as a synonym for biological sex: 'For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the concept of society. The term gender does not indicate any other meaning different from the above.' Article 7, par. 3)<sup>50</sup>

From this source, it is clear that the international law had reached a national consensus on the concept of gender as synonymous with the words "sex". Nevertheless, nowadays the international law, without national consensus, is gradually moving to the radical understanding of the concept of "gender", namely gender understood as pure social construct.

The Istanbul Convention, however, states that 'gender' and 'sex' are not the same.

This is evident from Article 4 (3), which lists the protected grounds, among which the first two are 'sex' and 'gender'. Furthermore, according to Article 3 (c): "[G]ender" shall mean the socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for women and men.

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<sup>49</sup> *Ibid.*, par. 2.

<sup>50</sup> For the difference between definition contained (and agreed) in treaties, and definitions contained in other international instruments, see Francesco Agnello, 'A New "Gender" Approach Definition in International Law: The Convention on Preventing and Combating Violence Against Women and Domestic Violence' [2014] (18) The Spanish Yearbook of International Law 87-114.



The definition makes it clear that the 'gender' of a person is a social construct and a variable, which is, in principle, independent of biological reality (being male or female). As a consequence, this definition carries an ideological burden by building on the belief that a human is born as a neutral being, who can determine and/or change his or her gender in the course of life and under the influence of various factors, such as society, education, and self-determination.<sup>51</sup> Accepting this definition requires the identification with certain dogmas of gender anthropology that denies the existence of the natural differences between the two sexes.<sup>52</sup>

The inherently subjective nature of 'gender', according to this understanding, has powerful negative effects on the foreseeability and predictability of the Istanbul Convention, and blurs the exact content of the obligations of parties to the Istanbul Convention.

The definition of 'gender' provided by the Istanbul Convention runs contrary to the position of parties to the Council of Europe, which retains the classical definition of gender as a synonym of biological sex. Hence, as a response to the problematic definition present in the text, they drafted an Explanatory report to the Istanbul Convention.

## *2. Ideological legal norms in the Istanbul Convention and the Latvian Constitution*

As was already mentioned, the Istanbul Convention is based on the radical/"gender" feminist ideology, which is based on Marxist postulates, e.g. class struggle. This is also evident in the Preamble to the Convention. Therefore, it is important to ascertain whether

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<sup>51</sup> See, e.g. Judith Butler, 'Gender Trouble: feminism and the Subversion of Identity', Routledge, 2011.

<sup>52</sup> For more information see Francesco Agnello, 'A New "Gender" Approach Definition in International Law: The Convention on Preventing and Combating Violence Against Women and Domestic Violence' [2014] (18) The Spanish Yearbook of International Law 87-114.



the norms of the Istanbul Convention containing the postulates of the above ideologies are compatible with the Constitution of Latvia and its basic principles.

## 2.1. The Constitution and the Istanbul Convention

Before starting to analyze this issue, it is worth recalling the preamble of the Constitution:

*"The people of Latvia, in freely elected Constitutional Assembly, have adopted the following State Constitution:*

*The State of Latvia, proclaimed on 18 November 1918, has been established by uniting historical Latvian lands and on the basis of the unwavering will of the Latvian nation to have its own State and its inalienable right of self-determination in order to guarantee the existence and development of the Latvian nation, its language and culture throughout the centuries, to ensure freedom and promote welfare of the people of Latvia and each individual.*

*The people of Latvia won their State in the War of Liberation. They consolidated the system of government and adopted the Constitution in a freely elected Constitutional Assembly.*

*The people of Latvia did not recognize the occupation regimes, resisted them and regained their freedom by restoring national independence on 4 May 1990 on the basis of continuity of the State. They honor their freedom fighters, commemorate victims of foreign powers, condemn the Communist and Nazi totalitarian regimes and their crimes.*

*Latvia as democratic, socially responsible and national state is based on the rule of law and on respect for human dignity and freedom; it recognizes and protects fundamental human*



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*rights and respects ethnic minorities. The people of Latvia protect their sovereignty, national independence, territory, territorial integrity and democratic system of government of the State of Latvia.*

*Since ancient times, the identity of Latvia in the European cultural space has been shaped by Latvian and Liv traditions, Latvian folk wisdom, the Latvian language, universal human and Christian values. Loyalty to Latvia, the Latvian language as the only official language, freedom, equality, solidarity, justice, honesty, work ethic and family are the foundations of a cohesive society. Each individual takes care of oneself, one's relatives and the common good of society by acting responsibly toward other people, future generations, the environment and nature.*

*While acknowledging its equal status in the international community, Latvia protects its national interests and promotes sustainable and democratic development of a united Europe and the world.*

*God, bless Latvia!"*

It has been recognized in the jurisprudence that the Constitution should be applied in the light of its Preamble<sup>53</sup>, as well as the fact that it also includes legislative information (a political program) that reveals the values of the Constitution and the political landmarks.<sup>54</sup> The Preamble of the Constitution also helps to understand more clearly Latvia's possibilities in the context of further European integration.

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<sup>53</sup> Pleps J. Some thoughts about the preamble of the Constitution. *Jurista Vārds*, 22.10.2013, No. 43 (794), pp. 32-34.

<sup>54</sup> Balodis R. Konstitūcijas sastāvdaļa – preambula: tās loma un nozīme mūsdienu konstitucionālismā. *Grām. Tiesību efektīvas piemērošanas problemātika*. Rīga: LU Akadēmiskais apgāds, 2014, p. 303.



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The most important elements of the preamble in the context of the Istanbul Convention are as follows:

- "The people of Latvia did not recognize the occupation regimes, resisted them and regained their freedom". On the opposite the Preamble to the Istanbul Convention, states: "violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women." If the Preamble of the Constitution expressly sustains that the people of Latvia honor their freedom fighters, mentions the victims of foreign powers, then the people of Latvia can not agree with the statement in the International Convention implying that the men of Latvia dominate the Latvian women, and that the existing discrimination against women makes it difficult the fully advance of women. Without the freedom fighters of Latvia, who were mostly men of Latvia, the country would not exist currently. Though, it is impossible to honor the freedom fighters and, at the same time, say that they (historically) already made it difficult the fully advance of women, and that they dominated women. In the Preamble to the Constitution, the people of Latvia condemn expressly the communist regime and all its consequences, like the class-struggling approach, which is under the opposition between men and women that rules the gender ideology.

Therefore, why would the Latvian people support and praise the attempt to introduce in the Latvian legal system (and in all the aspects of life) ideologies so clearly against its Constitution and values?

- "The identity of Latvia in the European cultural space has been shaped by Latvian and Liv traditions, Latvian folk wisdom, the Latvian language, universal human and Christian values. Loyalty to Latvia, the Latvian language as the only official language, freedom, equality, solidarity, justice, honesty, work ethic and family are



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the foundations of a cohesive society. Each individual takes care of oneself, one's relatives and the common good of society by acting responsibly toward other people, future generations, the environment and nature". In this text it is unequivocally recognized that the family in Latvia is considered the basis the cohesive Latvian society; that everyone must take responsibility for future generations and take care of his/herself and their loved ones, as well as that the identity of the country has been formed by the Latvian sense of life, and tradition. The Preamble also considers the Christian and universal human values, like freedom, equality, solidarity, justice and work ethic and family as the cement of its cohesion.

## 2.2. The Istanbul Convention and the Constitution's Policies on Marriage and Family (article 110 of the Constitution)

### 2.1.1. Gender definition and family and marriage

According to the article 110 (1) of the Constitution, the Latvian State protects and supports marriage (understood as the union between a man and a woman), family, and the rights of both the parents and the children. In this article of the Constitution, as well as in all other regulatory acts, a woman and a man are meant in the biological sense. From the Preamble of the Constitution and the first sentence of the article 110 of it, read accordingly results clear that marriage is considered to be a union between a man and a woman, and that the family is the basis of a united society, and at the same time that the State of Latvia has a duty to protect it rather than to break it.

If Latvia, through the Istanbul Convention, will be forced to take over a concept that is unfamiliar to its legal system - gender, then the concepts of "woman" and "man",



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along with biological understanding will also include the social construct meaning. This would mean that the concepts of "woman" and "man" will no longer be self-evident and could also be translated into "gender". What would be the legal consequences of it? If a man and a woman will be considered according to their social feeling (not regarding to their biological characteristics), then the article 110 of the Constitution (without being reformed) will open up opportunities for same-sex marriages<sup>55</sup>; that is, two persons of the same biological sex will be able to get marriage, if one of them will feels socially as a man and the other as a woman.

It should be recalled here that in accordance with section 13 of the Law on International Treaties of the Republic of Latvia: "If an international treaty ratified by the Parliament contains different provisions than legal acts of the Republic of Latvia, the provisions of the international treaty shall apply." Consequently, the definition of "gender" from article 3 (c) of the Istanbul Convention will be directly applicable in Latvia, *inter alia*, in interpreting the existing Latvian legislation. For example, the impediment to marriage contained in the 2<sup>nd</sup> par. of article 35 of the Civil Law (hereinafter - CL) stating that "marriage to persons of the same sex" is prohibit, will be indirectly derogated.

It is important to note that Article 6 of the Istanbul Convention obliges the States to comply with gender identity norm, while the third par. of article 4 obliges the States to guarantee non-discrimination, not only on the basis of sex, but also on the basis of gender identity. In order to comply with this principle of non-discrimination, Latvia would need to change the interpretation of the article 110 of the Constitution, as well as of the article 35, second par., of the CL in the light of the theory of gender-identity.

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<sup>55</sup> Agnello, F. A New "Gender" Definition in International Law: The Convention on Preventing and Combating Violence against Women and Domestic Violence, *Spanish Yearbook of International Law*, 2013-2014, p. 106.



This statement is reinforced by the first part of article 12 of the Istanbul Convention, which obliges the States to “[T]ake the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.”

Consequently, even heterosexual marriages within the meaning of the Convention can be regarded as a practice or tradition to be eradicated, since they are also based on the idea of the role of women as wives and mothers, and men as husbands and fathers. Moreover, the article 12 of the Convention, together with the article 4, par. 3 and article 6, will require the elimination of the heterosexual marriages, as the only ones recognized by the State. Article 179 of the CL and other Latvian legal acts, would require that the words "father" and "mother" be replaced by neutral words (for example, "parent A" and "parent B"), without making any mention to the biological sex of them<sup>56</sup>, in order to avoid promoting the stereotypical understanding of the roles of women and men, since, according to the Convention, it is the cause of the violence against a woman in the family. In the future, it will also be needed to abandon the requirement to indicate the child's sex in the birth register or include the possibility of naming a neutral gender ("X").<sup>57</sup>

## 2.1.2. The concept of violence and the family

The article 3 of the Istanbul Convention defines three concepts of violence:

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<sup>56</sup> Mirkovic-Bertrand, A. Le coût juridique. Les conséquences de la théorie du gender sur la filiation. In: “La théorie du Gender”. Vers une nouvelle identité sexuelle? Actes du colloque des 17 et 18 septembre 2011, Toulon: Lethielleux, 2012, p. 61.

<sup>57</sup> Agnello, F. A New “Gender” Definition in International Law: The Convention on Preventing and Combating Violence against Women and Domestic Violence, Spanish Yearbook of International Law. 2013-2014, p. 108; German Personenstandsgesetz (PStG), § 22 (III), in: [www.gesetze-im-internet.de](http://www.gesetze-im-internet.de), accessed on 04/22/2016.



- Violence against women" (Article 3, par. a): "Violence against women" is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".

As we can see, violence against women in the Convention is classified as a violation of the human rights and as a discrimination against women. But in the classical sense, a human right, as every subjective right it is a legal instrument for the individual to be able to realize his interests against the State. If we consider that human rights system implies a legal relation of "citizen-State"<sup>58</sup> and, on the other hand, a claim against a State against third parties is admissible only in exceptional cases where the private law mechanism is manifestly inadequate<sup>59</sup>; so, the norms of the Istanbul Convention are further limited to civil law and criminal law procedures. But, it is clear from the Convention itself that violence against women is either a civil law (Articles 29-32) or a criminal law violation (paragraphs 33 to 58) so, it cannot be at the same time a violation of human rights. The violation of human rights by the State can only be said if the State refuses to protect an individual whose life and health are threatened with harm, against another one. As far as economic violence is concerned, there is no danger to women's life and health, so it is not coherent to call it a violation of a human right. Unlike the 1993 United Nations Declaration on the Reduction of Violence against Women, the Istanbul Convention also adds to economic violence.

The EU Fundamental Rights Agency in 2014 stated<sup>60</sup> that economic violence can be seen as a deterrent to women's decision-making on family finances, as well as the women imposed restriction from independent shopping or the prohibition of working outside the home. Economic violence, in the Istanbul Convention, is also considered a human rights violation. This understanding creates paradoxical

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<sup>58</sup> Human Rights in the World and in Latvia. I.Ziemele (red.), Riga, Ltd. Educational Steps, 2000, p. 24.

<sup>59</sup> Ibid, p. 29.

<sup>60</sup> Violence against women: A EU-wide survey. Main results. EU Agency for Fundamental Rights, 2014, p. 75. Available in: <http://fra.europa.eu>



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situations, e.g. if a State does not interfere and prevent a man from not allowing a woman to go shopping, then the State will be guilty of human rights violation.

In fact, Latvian CL determines family financial issues and, e.g. spouses' mutual economic relations; thus, family conflicts or disputes regarding the distribution of money are to be resolved by the civil law (without the intervention any law enforcement authority). In addition, an act that may cause economic suffering is also considered a violation of human rights. However, article 250 of the Latvian Civil Procedural Code<sup>61</sup> (CPL) also includes the economic violence as a form of domestic violence: "If a person is subjected to any physical, sexual, psychological or economic violence occurring between former or existing spouses or other related persons, regardless of whether the offender lives or has lived in the same household with the injured party, the court or judge may, on the basis of a person's motivated application or an application submitted through the police, decide on temporary protection against violence."

At the Latvian Courts were submitted in 2014, 251 applications for interim protection against violence; 679 applications in 2015; and in the first months of 2016, 221 applications. At the Appeal Court two complains were submitted in 2014, 32 in 2015, and 14 during the first months of 2016. On the other hand, the Latvian Courts decisions regarding interim protection against violence from March 29, 2016 to April 12, 2016, in only one case economic violence was considered.

From the above, can be concluded that Latvian jurisprudence has not fully developed yet the concept of economic violence. However, it is a legal notion already existing in the Latvian legislation independently of the rules of the Istanbul Convention.

- "Domestic violence" (Article 3, par. b): " "domestic violence" shall mean all acts of physical, sexual, psychological or economic violence that occur within the

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<sup>61</sup> Law "Amendments to the Civil Procedure Law". Adopted on 02/13/2014, No.41, Feb 26, 2014.

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family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”.

- "Gender-based violence against women" (Article 3, par. d): " gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately”.

## 2.2. Istanbul Convention and Education (Article 112 of the Constitution)

The article 112 of the Constitution provides that everyone has the right to education. The State must provide an opportunity for free basic and secondary education. The article 2 of the European Convention of Human Rights (ECHR) requires that “no person shall be denied the right to education. In the exercise of any functions, which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”.

Interpreting this provision, the European Court of Human Rights has established in its jurisprudence that it is prohibited for the State to indoctrinate, as the questions regarding religious and philosophical beliefs of the parents in a sensible issue. This is a limit that should not be changed. The State must also ensure that the public schools generally should apply a neutral in each particular school and regarding every teacher. The public authorities should ensure that the religious and philosophical beliefs of parents at this level would not be questioned by teachers' negligence, recklessness or inappropriateness.

The same obligation regarding the respect of the rights of the parents in the education of their children is also laid down in the part 2, 3<sup>rd</sup> par. of the article 13 of the United Nations International Covenant on Economic, Social and Cultural Rights, according to it “The



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States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

However, the article 14 of the Istanbul Convention regarding education, imposed to the States the following obligations to:

- 1) “take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education;
- 2) take the necessary steps to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.”

Consequently, the Istanbul Convention clearly ignores the rights of the parents in deciding how to educate their children, a right guaranteed by Article 112 of the Constitution and many international human rights instruments. Moreover, the freedom of the parents' religion, which is inextricably linked with the right to educate their children in accordance with their religious beliefs and philosophical principles, is also not taken into account. The article 14, paragraph 1, as mentioned-above explicitly includes the obligation for States to impose on all educational institutions to teach all the contents through the light of the theory of gender. This means that children will also be given the information about their right to choose the "gender" or gender identity, regardless of their biological gender, and the parents will have no right to object it.



### 2.3. The Istanbul Convention and freedom of thought and conscience (Articles 99 and 100 of the Latvian Constitution)

In accordance with the articles 99, and 1 of the Constitution, everyone has the freedom of thought, conscience and religion. Article 100, in turn, provides that everyone possesses freedom of expression, which includes the right to freely obtain, retain and distribute information and to express their views. Similar provisions are also found in the article 9 of the ECHR (freedom of thought, conscience and religion) and in the article 10 (freedom of expression).

On the contrary, the article 12, par. 1, of the Istanbul Convention obliges the States to “take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.”

The Exploratory Note of the Convention already clarifies which countries should do that, since according to the authors of the Convention draft, the current patterns of male and female behavior are often influenced by prejudices, gender stereotypes and gender discriminatory customs or traditions.<sup>62</sup> It's clear that the authors of the Convention (which obviously do not rely on any specific studies and data) thought there are sufficient grounds for encouraging changes in human thinking in all Member States. Such an attitude does not coincide with Articles 99 and 100 of the Constitution, since everyone has the right to think freely and to freely to express their views, unless they affect the fundamental rights of others (see Article 116 of the Constitution). Also in its article 1, Latvia declared itself as a democratic republic, and excludes the possibility for the State to impose on the people any

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<sup>62</sup> Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul, 11.05.2011, p. 10, para. 53. Available in: [www.coe.int](http://www.coe.int)



ideas and postulates resulting from an ideology, in this case the radical feminism and gender identity one.

Precisely a democratic State (article 1) is the one that ensures the free will of the people and the submission of the State institutions to the will of the people. The core of the Constitution protects the very essence of this supremacy.

In addition, the requirement in the article 12, 1<sup>st</sup> par. of the Istanbul Convention requires from the States to "take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs [and] traditions" may easily conflict with the freedom of conscience and religion. If the Member States begin to eradicate the traditions and ethics of society, and the civility customs, as well as certain rules of public order (for example, sex-separated public facilities, like showers, changing rooms, etc. making them common use), it is precisely the kind of behavior that can lead to the creation of an environment in which women will be endangered not only in the family, but in public places where so far they have felt safe. It seems that the authors of the Convention were not interested in women's views on this issue. Why nobody is thinking that making changes (in other words, breaking up harmony) in social environments and cultural, traditions and customs patterns of male and female behavior can in itself produce emotional and psychological (in some cases physical and sexual) violence? In summary, the provisions of the Convention can certainly conflict *de facto* with the objectives set out in the Preamble to the Convention.

#### 2.4. Discrimination and its prohibition (Article 91 of Latvian Constitution)

Article 91 of the Constitution expressly states that all people in Latvia are equal before the law and the courts, and that the human rights are to be exercised without any discrimination. This provision applies *inter alia* to women and men (in the biological sense). A similar



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standard of non-discrimination is found in article 2, par. 2 of the ECHR, according to which the exercise of the rights and freedoms set forth in this Convention is ensured without discrimination of any kind, regardless of gender, race, color, language, religion, political affairs or other beliefs, national or social origin, membership of a national minority, property status, birth or any other status.

But what is the paradigm of non-discrimination offered by the Istanbul Convention? As was above-mentioned, the third paragraph of the article 4 of the Convention, concerning the victims of violence (mostly women), prohibits any discrimination by adding to the criteria listed in the Article 2, par. 2 of the ECHR the "gender-identity", gender identity, health status, disability, marital status, migrant status or refugee status.

Even more interesting is the fourth paragraph of Article 4 of the Istanbul Convention, according to which the special measures necessary to prevent gender-based violence and to protect women from such violence are not considered as discrimination. In other words, the Convention does not consider this difference as a case of discrimination against men. According to the Explanatory Note to the Convention, such measures should only benefit women.<sup>63</sup>

According to the Understanding of the Latvian Constitution, there is a fundamental human right that the constitutional legislator cannot abolish, and it is the right to a fair trial, and equality.<sup>64</sup> If Latvia joins the Istanbul Convention, the legislator will have to abolish one of the most important democratic rights of Latvian Constitution: the equality before the law, accepting an *a priori* discrimination against men (and a discrimination based on the biological sex, that in the Convention is almost no recognize), without a rational basis.

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<sup>63</sup> Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul, 11.05.2011, p. 16, par. 85. Available in: [www.coe.int](http://www.coe.int)

<sup>64</sup> Opinion of the Constitutional Law Commission of the President of Latvia about the constitutional foundations of Latvia and the inviolable core of the Constitution. September 17, 2012, Riga, 314<sup>th</sup>, on page 111. Available at [www.president.lv](http://www.president.lv), accessed 24.04.2016.



## VIII. The European Union and The Istanbul Convention

### *1. The European Union's intention to accede to the Istanbul Convention*

The article 77 of this Convention rules the adhesion of the EU Member States to the Istanbul Convention. The EU had also participated as an observer in the meetings of ad hoc working groups on the drafting of the Istanbul Convention.

On 4 March 2016, the European Commission (hereinafter referred to as the EC or the Commission) published a proposal for a Council Decision on the signing, on behalf of the European Union, of the Council of Europe Convention on the Prevention of Violence Against Women and Violence in the Family (COM (2016) 109 final).

On April 19, 2016, the Cabinet of Ministers approved the National Position of the Republic of Latvia on the proposal for a Council decision on the signing, on behalf of the European Union, the Council of Europe Convention for the Prevention of Violence against Women and Violence in the Family, and on the proposal for a Council decision on the conclusion of the Istanbul Convention by the European Union.

According to the article 216 of the Treaty on the Functioning of the European Union (TFEU), The EU's has the right to conclude international agreements with international organizations. These agreements concluded by the Union are binding upon the institutions of the Union and on its Member States. It also follows from this article that the EU can conclude international treaties solely within the framework of its competences as set out in the TFEU. In accordance with Article 3 (6) TFEU, the Union aims to achieve its objectives by the appropriate means, depending on the extent of the competences conferred upon it by the Treaties.



In accordance with the article 5 TFEU, the competence not delegated to the Union by the Treaties remains on the Member States (article 4, par. 1 TFEU) and, in accordance with the principle of transfer of competence, the Union can act only within the limits of the competences conferred on it by the Member States through the required treaties in order to achieve the objectives goals. Hence, the competences not conferred on the Union by the Treaties remain with the Member States (Article 5, par. 2 TFEU).

In summary, from Article 5 of the TFEU, EU has the competences of difference kind:

- Exclusive competence (article 3 TFEU);
- shared competence (article 4 TFEU);
- coordination or complementary competences (article 6 TFEU);
- Specific areas of competence (TFEU, article 5).

The Union competences listed in the proposals referred to in Council Decisions (COM (2016) 109 final, COM (2016) 111 final) relate to the competences shared by the EU with the Member States. Both the area of freedom, security and justice (TFEU articles 78, 79, 81, 82, 83. 84) and social policy (article 157 TFEU) are part of a division of competences. In contrast, article 16 TFEU (personal data protection) applies to the Union principles; as well as, articles 18 and 23 on non-discrimination and UE citizenship.

However, education matters are not included in the shared competences, they only fall within the scope of coordination or complementary competences. Similarly, the EU does not have competence in family law and policy issues. Only, within the framework of questions of freedom, security and justice (in the field of civil justice), family law issues can only be addressed by the EU in the context of cross-border cooperation and under specific



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conditions that govern the role of the national parliaments of the Member States (Article 81, par. 3 TFEU).

As one of the EU's competences acquired through the Istanbul Convention, is the EU competence in the field of gender equality (see article 157 TFEU). But, on the other hand, article 147 TFEU states the "principle of equal opportunities and equal treatment of men and women in matters of employment and occupation". The term "gender equality" is not used at all in the TFEU; therefore, their secondary legislation (as the Council decision) is misleading. Equality between men and women is not the same as gender equality. In the area of gender equality in the European Union, no Member State (including Latvia) has ever conferred any competence! For this reason, the statement "gender equality" should be replaced by the legal terms "equal treatment of men and women" (as it precisely is the term used in the article 157 TFEU). If the EU institutions consider that the two terms are synonymous, then there is no need to use the terminology of Convention of Istanbul, being it an instrument of the Council of Europe, and not of the UE as such.)

In consequence, there is a need for the EU institutions to identify clearly and define the EU competence from the Member States' competences, in the possible case of the application of the Istanbul Convention. It seems that the EU shares competences with the Member States in the matters covered by the Istanbul Convention (shared competence), but not in other areas.

There is also no clear mechanism for the relations between Member States, GREVIO and the EU. It is necessary to clearly define these inter-functions.

Also, before discussing the EU's accession to the Istanbul Convention at all, an assessment of the relevance of this Convention should be completed, taking into account that, for example, several legal norms of the Istanbul Convention, as well as its underlying ideology,



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do not comply with the fundamental principles of the Constitution of Latvia and the fundamental human rights.

All the EU Member States have already signed the Istanbul Convention, and 29 countries have also ratified it (only 16 of them are EU Member States). As previously stated in this legal analysis, the ideology underlying the Istanbul Convention, as well as certain of its norms, do not comply with the basic principles of the Latvian Constitution and the fundamental human rights. The Istanbul Convention entered into force in 2014. To date, 11 Member States still have not ratified the Istanbul Convention.

The Council of Europe Convention on preventing and combating violence against women ('Istanbul Convention') is the first legally binding international instrument related to violence against women and girls at international level. It establishes a new legal and politic framework by incorporating the concept of gender-identity and gender-violence in an international treaty.

The Convention also provides for EU accession, to the extent of its competences. This would require the European Parliament's consent. In October 2015, the European Commission issued a roadmap on possible EU accession to the Istanbul Convention, in March 2016 the European Commission followed up the roadmap with two proposals for Council Decisions, one on the signing and the other on the conclusion (ratification), on behalf of the European Union, of the Istanbul Convention.

Following debates in the Council, it was decided that the draft decision on the signing of the Convention should be divided into two decisions, one covering judicial cooperation in criminal matters and the other asylum and non-refoulement. These two Council decisions were adopted in May 2017, following which the EU Commissioner for Justice, Consumers



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and Gender Equality, signed the Istanbul Convention on behalf of the European Union on 13 June 2017.

The signature is the first step in the process of the EU joining the Convention. Accession now requires the adoption of Council decisions on the conclusion of the Convention. At Council level, the framework for discussions on the legislative proposals is the working party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP), whose discussions are now focusing on a Code of Conduct defining how the EU and its Member States will cooperate on implementing the Convention.

Since first asking the European Commission to launch the procedure for EU accession, the European Parliament has consistently supported the idea.

Pending the conclusion of the current work in the Council and in advance of a formal request for Parliament's consent, it has again been considering the matter and has issued several positions and recommendations:

- On 24 November 2016, it adopted a resolution urging the Commission and Council to speed up negotiations and to ensure that Parliament is fully engaged in the Convention's monitoring process once the EU accedes.
- In March 2017, it adopted a resolution in which it supported EU accession to the Istanbul Convention without reservation, welcomed the Commission's proposals and once again called on the Council and the Commission to speed up negotiations on signing and concluding the Convention. It also welcomed the progress of the Member States in signing the Convention and urged the 14 Member States that have not yet ratified it to do so without delay.



- On 12 September 2017, it adopted an interim resolution on EU accession to the Istanbul Convention, taking account of the joint report by the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights and Gender Equality. The resolution welcomes the signature of the Convention by the EU, but regrets that it was limited to the areas of judicial cooperation in criminal matters and asylum and non-refoulement, as this raises legal uncertainties about the scope of the EU's accession and the implementation of the Convention, and calls for EU accession to the Convention to be broad and without limitations. It also asks the now-former Estonian Presidency to speed up EU ratification and the Commission to initiate an immediate dialogue with the Council and the Member States, in cooperation with the Council of Europe, so as to address reservations, objections and concerns expressed at national level, including misapprehensions about the concept of 'gender' employed in the Convention.
- On 21 November 2017, the Parliament's Committee on Women's Rights and Gender Equality held an Inter-parliamentary Meeting on the Istanbul Convention, focusing on monitoring of the Convention, developments at national level and EU accession.

## *2. Latvia Possible Actions*

The draft-law on the ratification of the IC is still in the Government (in the Cabinet of Ministers) and it does not seem to be sent to the Parliament in the near future. Church leaders have obtained that the Government (on 22 January 2018) postponed the review of the draft law on ratification, leaving it with no specific time limits for of any decision. Nevertheless discussions will continue.

Only one political party, the “Unity Party” (represented in the Government and in Parliament) is in favor of the ratification. The rest of the political parties are against it.



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The current Minister of Justice and his Party, the “National Union”, is absolutely against the ratification. He has made his statement on the main risks of the IC. Among others things, based on the negative Opinion of the Academy of Science of Lithuania regarding the term “Gender” and its ideological nature. This Opinion also helps to show and to prove the promotion of the gender ideology, reigning in the text of the Convention. Meanwhile, the Ministry of Justice prepared ten interpretative declarations on the IC, to be submitted if the ratification takes place.

The Heads of the four biggest Christian denominations have made several statements against the IC, including one open letter in 2016. They remain active all the time – with publications, interviews, conferences, etc. At the same time, they are following and observing this issue.

Also the civil society as such, is involved in the intent to avoid the ratification. Some family and NGO’s are very active, also 198 Christian teachers signed and submitted to Parliament an open letter against the IC.

In March of 2018, more 316 NGOs have also prepared and signed an open letter to the Executive Secretary of the Istanbul Convention; in the letter the NGOs explained the reason of their negative stance regarding the Convention, they explain that the provisions and obligations of the Istanbul Convention contradict the claim of the Council of Europe that the Istanbul Convention, as a binding international treaty, does not force “gender ideology” and does not include educational obligations regarding sexual orientation. Indeed, - the letter says - article 3, par. c of the Istanbul Convention advances a definition of gender as a social construct, which differs from the agreed definition of “gender equality” in EU Treaties, i.e. equality between women and men (article 2 of the TEU and article 8 TFEU). In fact, the Convention covers and contains obligations regarding gender identity, gender expression, and sexual orientation. Such obligations are evident from article 4 of the Istanbul Convention and the European Commission’s interpretation of “gender-based violence” in the Istanbul Convention.



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Also a citizens' initiative against the ratification were launched and already more than ten thousand signatures were collected, the next step is to submit this initiative to Parliament, showing that Latvian citizens' are against this Convention.

Moreover, the society is very active. There are many publications, articles, TV-shows, etc. Almost, every day there has been something published on this topic, which became a known matter for the majority of the Latvians.

A very important argument to oppose the ratification is the fact that almost 80 % of the IC has been already incorporated into Latvian legislation. The Criminal Code and the Civil Procedure Code have been amended, and the Ministry of Justice has prepared a new draft law on Protection of Victims. Therefore Latvia is getting very well prepared for the fight against violence and domestic violence.

On the contrary, the Minister of Welfare and his political party ("Unity Party") is for the ratification of the Convention, and he is determined to submit a draft of the law of ratification to the Constitutional Court in the near future. Also the social media, are massive taken by LGBT activists, therefore particularly Twitter is very hot almost every day. But if these groups do not present arguments, only outbursts and hysterical outcries. Also, the main mass media channels and newspapers are on the side of LGBT and feminist groups, getting slowly more and more towards neutrality.

### *3. Next Steps To Do*



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It is important to be ready for the moment that the case get to the Constitutional Court. It is planned by then by the Ministry of Justice to organize a conference on the topic of violence's issues. This conference will aim at preparing the political arena for the Constitutional Court.

More legal and scientific arguments are needed in Latvia. For example, one tactical challenge is to show that the main cause of violence against women is not gender inequality but there are other causes – and they must be exposed. By doing this it, the set of prevention measures may be destroyed. The second issue is the term “Gender” and its ideological (and not legal) nature. Therefore it must be proved and shown that in the IC there are ideological norms and for this we must have a methodology to identify these norms.

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As an independent country, it is important for Latvia to understand that, according to the article 6 of the Vienna Convention, every State has the capacity to conclude contracts, but not the obligation to do so. Latvia signed the Istanbul Convention in 2016. And so, if it is being ratified by the Latvian Parliament, it will enters into force and Latvia will be bound by this Treaty and will have to comply, according to the article 26 of the Vienna Convention: "Every existing treaty shall be binding on its members and shall be enforceable in good faith (*pacta sunt servanda*)".

From a legal point of view, there was no reason why Latvia should sign an international convention that not complies with its basic law - the Constitution. Latvia did not repeat what Lithuania and Poland did, when signed. In fact, both countries submitted unilateral declarations to the Secretary General of the European Parliament declaring that the Convention would apply in accordance with the principles and rules laid down in its constitutions. But as such unilateral declarations are not foreseen neither the Istanbul Convention nor the Vienna Convention, it will be difficult to interpret the Convention on



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these countries based on the declaration. So, it is not a good experience to be replicated by Latvia. Currently two countries have already objected to the Polish declaration (Sweden on 15<sup>th</sup> February 2016, and Austria on 11<sup>th</sup> April 2016), stating that they consider the declaration submitted by Poland to be equivalent to a reservation, and the Convention only admits reservation for specific articles (article 78).

Referring to the principles and rules of the Polish Constitution, Poland has in fact made a reservation regarding the general and clearly unidentifiable scope of the Convention, thus it is not clear to other Member States to what extent Poland has accepted the application of the Convention. Sweden has also indicated that it is in the common interest of the States to comply with the international treaties (including the objectives and objects) to which they have acceded.

Also needs to be consider how an eventual ratification of the Istanbul Convention with a unilateral declaration, could affect the work of the ECHR in complaints against Latvia? With regard to the ECHR, then, in accordance with the article 19 of the ECHR, its jurisdiction will be limited to the application of the ECHR itself and its additional protocols, so the ECHR does not have jurisdiction to interpret the Istanbul Convention and formally establish its violations. On the other hand, in interpreting the ECHR and its protocols, the ECHR constantly refers to other rules of international law in its case law, using it as ancillary sources, and uses both the conventions concluded by the European Parliament and other international multilateral agreements. This ECHR practice is based on the point c of the 3<sup>rd</sup> paragraph of article 31 of the Vienna Convention, which states that the interpretation of a contract must comply with "any rules of international law applicable in relations between members". Moreover, the ECT tends to act exceptionally freely in this regard even by invoking even international agreements, which are not binding on the defendant in question. It is sufficient if the contract in question reflects the "consensus" or the "emerging consensus" of the Member States, so that the ECHR can use it as an additional one. In case



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*Demir and Baykara v. Turkey*<sup>65</sup>, which fully reflects the current position of this court against the rules of other international treaties in the process of interpreting the ECHR, the Grand Chamber of the ECHR stated: “When the Court defines the meaning of terms and concepts in the text of the Convention, it may take into account and take into account other rules of international law outside the Convention, the interpretation of those provisions by the competent authorities, and European practices reflecting their common values.”<sup>66</sup>. A consensus emerging from specialized international instruments and from the practice of the Contracting States can be an important element in the interpretation of the Convention by the Court in specific cases.

In this context, it is not necessary for the defendant country to ratify all the contracts applicable in the particular area to which the case belongs. It is sufficient for the Court of Justice to ensure that the relevant international instruments reflect the constant evolution of the rules and principles applicable to international law and the domestic law of the Member States of the Council of Europe and debt the point of view of the contemporary societies on a particular issue.

The ECHR has already begun to actively use the Istanbul Convention as an aid to ECHR particularly the articles 3, 8, and 14 (respectively, prohibition of torture, inhuman or degrading treatment, and prohibition of discrimination) to rule that the respondent State has not respected its positive role in protecting women from violence. So far after the entry into force of the Istanbul Convention, the ECHR has used it in six judgments. In two of them - in *Y. v. Slovenia*<sup>67</sup> and *M.G. v. Turkey*<sup>68</sup> - the Istanbul Convention was used as an essential element of the judgment's motivation, although Slovenia had already signed but had not yet ratified it. In its four remaining judgments, *Rohlena v. the Czech Republic*<sup>69</sup>, *M. and M. v.*

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<sup>65</sup> *Demir and Baykara v. Turkey* [GC], no. 34503/97, 12 November 2008.

<sup>66</sup> Carreau D. *Droit international*. 8e édition. Paris: Pedone, 2004, p. 291.

<sup>67</sup> *Y. v. Slovenia*, no. 41107/10, § 72, 104, 28 May 2015.

<sup>68</sup> *M.G. v. Turkey*, no. 646/10, §§ 54, 93-94, 106, 116, 22 March 2016.

<sup>69</sup> *Rohlena v. the Czech Republic* [GC], no. 59552/08, §§ 38-39, 27 January 2015.



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*Croatia*<sup>70</sup>, *Civek v. Turkey*<sup>71</sup> and *M.G.C. v. Romania*<sup>72</sup> - The ECHR merely noted the existence of the Istanbul Convention, but did not use it in the further motivation. Here again, it should be noted that by the time of the Court decisions, the Convention had entered into force only in Turkey, while the Czech Republic has not even signed it, but that did not prevent the ECHR to mention it.

In view of the above, as well as the opposition of the two countries against Poland's unilateral declaration, Latvia should not ratify the Istanbul Convention even with the addition of a unilateral declaration.

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<sup>70</sup> *M. and M. v. Croatia*, no. 10161/13, §§ 100-101, 3 September 2015.

<sup>71</sup> *Civek v. Turkey*, no. 55354/11, § 32, 23 February 2016.

<sup>72</sup> *M.G.C. v. Romania*, no. 61495/11, § 40, 15 March 2016.