

Information regarding the judgment of the Constitutional Court of the Republic of Latvia in case no. 2020-39-02 on the compliance of the Istanbul Convention with the Constitution of Latvia

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On 4 June 2021 the Constitutional Court of the Republic of Latvia (hereinafter – the Constitutional Court) adopted a judgment in case no. 2020-39-02 “On the Compliance of Article 3(c), Article 4(3), Article 12(1) of the Council of Europe Convention of 11 May 2011 Convention on preventing and combating violence against women and domestic violence with the preamble, Articles 1, 99, and 110 of the Constitution of the Republic of Latvia, of Article 4(4) with Article 91 of the Constitution of the Republic of Latvia, and of Article 14 with Article 112 of the Constitution of the Republic of Latvia” (hereinafter – the Judgment).

In 2011, the Council of Europe adopted the Convention on preventing and combating violence against women and domestic violence (hereinafter – the Istanbul Convention). Latvia signed the Istanbul Convention in 2016; however, for the Istanbul Convention to enter into force in Latvia, it has to be ratified by the Saeima (the Parliament). Twenty-one members of the Saeima (hereinafter – the Applicant) used the possibility, as provided for in law, to turn to the Constitutional Court with a request to assess the compliance of the Istanbul Convention with the Constitution of the Republic of Latvia (hereinafter – the Constitution) before the respective international agreement would be ratified

In the Judgment, the Constitutional Court assessed the constitutionality of several provisions of the Istanbul Convention and found that its provision concerning the implementation of special measures to protect women from violence complies with the Constitution, whereas the proceedings in the rest of the case are to be terminated.

Firstly, the Constitutional Court found that Latvia had signed the Istanbul Convention in line with the requirements set forth in the Vienna Convention on the Law of Treaties and in the law “On International Treaties of the Republic of Latvia”. In addition to that, the Constitutional Court determined the object and the purpose of the Istanbul Convention, recognising that all the obligations placed on the Member States by the Istanbul Convention apply solely within the scope of the Istanbul Convention as defined by its object and purpose, that is, as far as the issues pertaining to elimination of violence against women and domestic violence are concerned.

Secondly, the Constitutional Court found that both Christian values and the assertion that the family is the foundation of a cohesive society are part of the Latvian constitutional identity. That said, the mention of Christian values in the preamble of the Constitution is essentially a reference not to religion but to being part of the European or Western civilisation. The reference to family denotes that this form of social life is to be recognised morally and legally. These elements are extra-legal factors which derive from historical and sociological facts and do reflect certain values, but they are not binding legal norms in their own right. Hence, the claim regarding the compliance of the contested regulation with the Christian values and the assertion that family is the foundation of a cohesive society is not a claim regarding the compliance of the contested regulation with legal provisions of a higher legal force. Therefore, the Constitutional Court terminated the proceedings in the case insofar as it concerned the compatibility of the contested regulation with the preamble and Article 1 of the Constitution.

Thirdly, in assessing the compliance of the contested regulation with Article 99 of the Constitution (freedom of religion), that is, in establishing whether the contested regulation forces particular views upon individuals, the Constitutional Court acknowledged that the situation where the state forces a particular conviction upon an individual is unacceptable in a democratic state governed by the rule of law. However, being aware of every individual's right to the freedom of thought, conscience and religious beliefs, the state is obliged to implement extensive and comprehensive measures to minimise the society's tolerance for violence and to explain the consequences of violence to all people. It is an obligation of the state to present information about violence and the factors that cause it to reasonable and educated individuals, and thus to prevent such violence. This also applies to gender-based violence. The sole fact that individuals are presented with such information does not mean that the obligation to maintain a certain belief is being imposed upon them. Therefore, the Constitutional Court concluded that

the contested regulation does not restrict the individual's right, as enshrined in Article 99 of the Constitution, to the freedom of thought, conscience, and religious beliefs, and terminated proceedings in the case also insofar as it concerned the compatibility of the contested regulation with Article 99 of the Constitution.

Fourthly, in evaluating the compatibility of the contested regulation with Article 110 of the Constitution (protection of marriage and families), i.e., whether the contested regulation reduces protection for families consisting of a child and the child's mother and father, the Constitutional Court concluded that the obligations of the Istanbul Convention Member States, as provided for in the contested regulation, to secure in a non-discriminatory manner the eradication of such prejudices, customs, traditions and other practices which are based on the idea of the inferiority of women, does not in itself affect the state's obligation to ensure protection for families. Furthermore, the Constitutional Court pointed out that the scope of the Istanbul Convention only includes the elimination of violence against women and domestic violence, and the contested regulation does not make compulsory the acceptance or introduction of any specific forms of marriage or family. Therefore, the Constitutional Court held that the contested regulation does not affect the state's obligation to protect families which is enshrined in the first sentence of Article 110 of the Constitution, and terminated the proceedings in the case also insofar as it concerned the compatibility of the contested regulation with Article 110 of the Constitution.

The Applicant had also requested the Constitutional Court to evaluate the compliance of Article 4(4) of the Istanbul Convention with Article 91 of the Constitution (equality before law and prohibition of discrimination). The said provision of the Istanbul Convention provides that special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of the Convention. The Constitutional Court held that in the specific situation men and women are similarly situated, as Articles 93, 95, and 111 of the Constitution grant the right to protection from violence to both of these groups of individuals. However, Article 4(4) of the Istanbul Convention provides for a differential treatment of these groups of individuals as it allows for special measures being taken specifically in respect of women in order to protect them from gender-based violence.

The Constitutional Court concluded that gender-based violence is still present in Latvia, and it mostly affects women. In this situation, the implementation of special measures in respect of women is necessary, and it is aimed at achieving actual equality between men and women. Therefore, the Constitutional Court held that the differential treatment permitted by Article 4(4) of the Istanbul Convention has objective and reasonable grounds, and that the said provision is compatible with Article 91 of the Constitution.

The Applicant had also requested the Constitutional Court to assess the compliance of Article 14 of the Istanbul Convention with Article 112 of the Constitution (right to education). The Constitutional Court held that, until the legislature has assessed whether particular steps need to be taken in Latvia to transform the education system, and has taken the according steps, it is not possible to examine whether such steps are in accordance with the needs of the Latvian society, i.e., whether the content of education is compatible with Article 112 of the Constitution. The Constitutional Court thus found that Article 14 of the Convention does not in itself interfere with the right to education, as enshrined in Article 112 of the Constitution, for any group of individuals, and terminated the proceedings in the case also insofar as it concerned the compatibility of Article 14 of the Istanbul Convention with Article 112 of the Constitution.

The conclusion made in the Judgment is that certain provisions of the Istanbul Convention are compatible with the Constitution and are not contrary to the constitutional identity. The decision on whether the Istanbul Convention should be ratified in accordance with Article 68 of the Constitution and the Vienna Convention on the Law of International Treaties is to be made by the Saeima.

A judgment of the Constitutional Court is final and not subject to appeal; it enters into force on the day it is published. The text of the judgment is available on the website of the Constitutional Court in Latvian, and its English translation will be made available soon.

Linked case: [2020-39-02](#)