

## Review Article

# CONCLUSION ON THE CONSTITUTIONALITY OF THE ISTANBUL CONVENTION OF THE LITHUANIAN CONSTITUTIONAL COURT: CONTEXT, REASONING, AND LEGAL CONSEQUENCES

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## ABSTRACT

**Background:** On 14 March 2024, the Lithuanian Constitutional Court issued a conclusion on the constitutionality of certain provisions of the Istanbul Convention, becoming the fourth constitutional court in Eastern and Central Europe to rule on this issue. Thus, this conclusion reflects a broader trend in the region. This article aims to analyse this conclusion and reveal its similarities and differences with decisions made by other constitutional courts in the region on the same matter. To achieve this goal, the following objectives are addressed: 1) to reveal the context in which the Lithuanian Parliament submitted an inquiry to the Constitutional Court on the constitutionality of the Convention and the issues raised in this inquiry; 2) to analyse the arguments of the Lithuanian Constitutional Court in this conclusion; and 3) to reveal the legal consequences of this conclusion and the possible impact of this conclusion on the ratification of this treaty in Lithuania. These issues are examined in the broader context of the judgments of other constitutional courts in the region on the constitutionality of the Istanbul Convention.

**Methods:** To explore the theoretical and practical dimensions of the issue at hand, this article utilises a variety of methods. The document content analysis method was employed to examine relevant normative and jurisprudential research sources, focusing on identifying key terms and phrases within the text and linking them to existing statements in specialised literature. The paper relied heavily on systemic and logical analysis to examine nearly all issues discussed in the article. Comparative analysis was employed to compare the decisions of the constitutional courts on the constitutionality of the Istanbul Convention of other Eastern and Central European countries and the conclusion on this issue adopted by the Lithuanian Constitutional Court. The linguistic and teleological analysis methods were employed to clarify the content of provisions of the legal acts examined in this article, uncovering the true intentions of the creators of these provisions and the meaning of the concepts within these provisions.

**Results and conclusions:** *The article concludes that the Lithuanian Parliament's inquiry to the Lithuanian Constitutional Court regarding the constitutionality of the Istanbul Convention reflects a general trend in Eastern and Central Europe, as the Lithuanian Constitutional Court has been asked to address the constitutionality of essentially the same provisions of the Convention as other constitutional courts of the region. In assessing the constitutionality of the Convention's provisions, the Lithuanian Constitutional Court, like the constitutional courts of Latvia and Moldova, focused on the Convention's objective – eradicating violence against women and domestic violence by promoting gender equality. This approach has led to a similarity in the reasoning of these courts. The Lithuanian Constitutional Court became the third constitutional court in the region, which, like those in Latvia and Moldova, did not find the provisions of the Convention unconstitutional. The conclusion of the Lithuanian Constitutional Court has been met with mixed reactions in society, political, and academic circles; therefore, even after the conclusion regarding the constitutionality of the Istanbul Convention, this international treaty has still not been ratified in Lithuania. Nevertheless, the Constitutional Court is the only institution with the power to assess the compatibility of this international treaty with the constitutional provisions, so Parliament can no longer rely on the argument that this Convention is incompatible with the Constitution.*

## 1 INTRODUCTION

On 14 March 2024, the Lithuanian Constitutional Court (hereinafter: the Lithuanian CC) issued a conclusion<sup>1</sup> on the compatibility of some provisions of the Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter: the Istanbul Convention or the Convention)<sup>2</sup> with the Constitution of the Republic of Lithuania (hereinafter: the Constitution)<sup>3</sup> and became the fourth constitutional court in the Eastern and Central Europe to rule on this issue. The first in the region to examine the compatibility of the provisions of the Convention with the national constitution was the Bulgarian Constitutional Court (2018),<sup>4</sup> the second was the Latvian Constitutional Court (2021),<sup>5</sup> and the third was the Moldovan Constitutional Court (2022).<sup>6</sup> The Council of Europe's Commission for Democracy through Law (Venice Commission) has also issued opinions on the compatibility of the provisions of the Convention with national

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1 Conclusion no KT24-II/2024, case no 18/2023 (Constitutional Court of the Republic of Lithuania, 14 March 2024).

2 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) (11 May 2011) CETS 210.

3 Constitution of the Republic of Lithuania [1992] Valstybės Žinios 33/1014.

4 Decision no 13, case no 3/2018 (Constitutional Court of the Republic of Bulgaria, 27 July 2018).

5 Judgment no 2020-39-02 (Constitutional Court of the Republic of Latvia, 4 June 2021).

6 Decision on inadmissibility of complaint no 219a/2021 (Constitutional Court of the Republic of Moldova, 18 January 2022).

constitutions, often at the request of individual states.<sup>7</sup> The above-mentioned conclusion of the Lithuanian CC thus reflects a certain trend in Eastern and Central Europe. Unsurprisingly, the Convention has become a symbol of the cultural war in Central and Eastern Europe.<sup>8</sup> In these countries, those who support the Convention refer to gender equality, solidarity of Europe, and justice, while those who oppose it often invoke concerns about national identities and traditional lifestyles of these countries.<sup>9</sup> Thus, when society and politicians failed to agree on the ratification of the Convention, the impartial arbiters of this debate, the constitutional courts, had to bring a resolution to the debate.

This article aims to analyse the most recent example of this trend – the conclusion of the Lithuanian CC regarding the constitutionality of the Istanbul Convention – to reveal its similarities and differences with the judgments of other constitutional courts in the region on the same issue. To achieve this, the following objectives will be addressed: 1) to reveal the context in which the Lithuanian Parliament submitted an inquiry to the Lithuanian CC on the constitutionality of the Convention and the issues raised in this inquiry; 2) to analyse the arguments of the Lithuanian CC in its conclusion; and 3) to assess the legal consequences of this conclusion and its possible impact on the ratification of the Convention in Lithuania. These issues are examined in the broader context of judgments issued by other constitutional courts in the region regarding the constitutionality of the Istanbul Convention.

While some Lithuanian legal scholars have addressed issues of compatibility between the Istanbul Convention and the Lithuanian Constitution, their analyses were conducted prior to the adoption of the above-mentioned conclusion of the Lithuanian CC and/or focused mainly on the doubts raised about the constitutionality of the Convention rather than the assessment made by the Constitutional Court.<sup>10</sup> Some research works have also analysed the judgments of the constitutional courts of other states in the region

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7 Venice Commission, Opinion no 961/2019 'Armenia - On the Constitutional Implications of the Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)' (14 October 2019) <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)018-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)018-e)> accessed 10 September 2024; Venice Commission, Opinion no 1065/2021 'Republic of Moldova - Amicus curiae Brief for the Constitutional Court on the constitutional Implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)' (14 December 2021) <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)044-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)044-e)> accessed 10 September 2024.

8 Martin Dimitrov, 'The Convention of Discord' (*Friedrich Naumann Foundation*, 26 August 2022) <<https://www.freiheit.org/east-and-southeast-europe/convention-discord>> accessed 10 September 2024.

9 Elizabete Vizgunova and Elina Graudiņa, 'The Trouble with "Gender" in Latvia: Europeanisation through the Prism of the Istanbul Convention' (2020) 13(1) *Baltic Journal of Law & Politics* 131, doi:10.2478/bjlp-2020-0005.

10 Jolita Miliuvienė, 'Konstitucinės dvejonės dėl Stambulo konvencijos ratifikavimo: audra vandens stiklinėje?' [2023] *Viešoji teisė Lietuvos teisė: esminiai pokyčiai* 43, doi:10.13165/LT-23-01-02; Dovilė Pūraitė-Andrikienė, 'Stambulo konvencijos konstitucingumo klausimas Lietuvoje' (2024) 35(2) *Filosofija, Sociologija* 13, doi:10.6001/fil-soc.2024.35.2Priedas.Special-Issue.2.

concerning the constitutionality of this document.<sup>11</sup> However, the conclusion of the Lithuanian CC on this issue, its arguments, and its consequences remain unexamined in legal scholarship. Furthermore, there are no scholarly works analysing this topic in the broader context of the judgments of other constitutional courts in the region on the constitutionality of this international treaty.<sup>12</sup>

To explore the theoretical and practical dimensions of the issue at hand, this article utilised a variety of methods. The document content analysis method was employed to examine relevant normative and jurisprudential research sources, focusing on identifying key terms and phrases within the text and linking them to existing statements in specialised literature. The paper relied heavily on systemic and logical analysis to examine nearly all issues discussed in the article. Comparative analysis was employed to compare the judgments of constitutional courts in other Eastern and Central European countries on the constitutionality of the Istanbul Convention with the conclusion on this issue adopted by the Lithuanian CC. The linguistic and teleological analysis methods were employed to clarify the content of provisions of the legal acts examined in this article, uncovering the true intentions of the drafters and the underlying meaning of key concepts within these provisions.

## 2 CONTEXT AND ISSUES RAISED IN THE LITHUANIAN PARLIAMENT'S INQUIRY TO THE CONSTITUTIONAL COURT

In 2013, Lithuania signed the Convention. However, it has still not been ratified due to opposition from some groups of the population and politicians. Lithuania remains one of the few countries to have signed but not ratified the Convention.<sup>13</sup> The reasons for this opposition are varied, but in general, it can be stated that those who oppose the ratification

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11 Miriana Ilcheva, 'Bulgaria and the Istanbul Convention – Law, Politics and Propaganda vs. the Rights of Victims of Gender-Based Violence' (2020) 3(1) *Open Journal for Legal Studies* 49, doi:10.32591/coas.ojls.0301.04049i; Dovilė Pūraitė-Andrikienė, 'The Istanbul Convention in the Constitutional Jurisprudence of Central and Eastern European States' in Agnė Limantė, Artūras Tereškinas and Rūta Vaičiūnienė (eds), *Gender-Based Violence and the Law Global Perspectives and Eastern European Practices* (Routledge 2023) 60; Ruzha Smilova, 'The Ideological Turn in Bulgarian Constitutional Discourse: The Rise Against "Genders" in András Sajó and Renáta Uitz (eds), *Critical Essays on Human Rights Criticism* (Issues in Constitutional Law 10, Eleven Publishing International 2020) 177; Radosveta Vassileva, 'A Perfect Storm: The Extraordinary Constitutional Attack against the Istanbul Convention in Bulgaria' (2022) 68(1) *OER Osteuropa Recht* 78, doi:10.5771/0030-6444-2022-1-78.

12 It should also be noted that this paper will not present the objectives, achievements, and challenges of the Istanbul Convention. The article will also not present in detail the social context surrounding the Convention in Lithuania. These issues are covered in other academic works, see: Miliuviene (n 10); Pūraitė-Andrikienė (n 10); Pūraitė-Andrikienė (n 11). The focus of this paper is exclusively on the Lithuanian CC's conclusion of 14 March 2024, its arguments, and legal consequences.

13 Lithuania is one of the five EU countries that have signed but not ratified the Convention, along with Bulgaria, the Czech Republic, Slovakia and Hungary. Lithuania is also the only Baltic State that has not yet ratified the Convention.

of the Istanbul Convention in Lithuania are most often motivated by the following arguments: 1) the term "gender" enshrined in the Convention is alien to Lithuanian national law, allegedly eliminates differences between the sexes, and is incompatible with traditional values; 2) the Convention is seen as a legal act that would supposedly legalise same-sex marriage; 3) Lithuania's legal framework is supposedly sufficient to fight gender-based violence, and therefore ratification of the Convention is not necessary.<sup>14</sup>

Those in favour of ratifying the Convention argue that 1) Lithuania's legal framework is not sufficient to combat domestic violence; 2) ratification of this treaty would help to eliminate discrimination against women and would be a clear sign that this type of violence is not tolerated in Lithuania; 3) ratification of the Convention would also show Lithuania's solidarity with other EU countries against gender-based violence and would contribute to the improvement of the country's international reputation.<sup>15</sup> It is worth mentioning that similar arguments for and against ratification have been put forward by scholars from other countries in the region; for example, in Latvia, there was also a fierce debate in the run-up to the ratification of this treaty at the end of 2023.<sup>16</sup>

As in other countries in the region, controversies surrounding the Convention in Lithuania have led to doubts about its compatibility with the Lithuanian Constitution. Different opinions of Lithuanian constitutional law scholars have been presented on this issue until the Constitutional Court's conclusion on the constitutionality of the Convention. According to Žalimas, the Convention cannot be in conflict with the Constitution since it safeguards the same core values.<sup>17</sup> Similarly, Miliuvienė argued that the Lithuanian Constitution cannot be interpreted in such a way that it does not imply an obligation for the state to fight violence against women and domestic violence. The principle of equality between sexes and non-discrimination on any grounds, as emphasised in the Convention, is an important part of the constitutional principle of the rule of law, which underpins the entire legal system and the Constitution itself. There is no reason to believe that the principles of non-discrimination and equality protected by the Constitution and the Convention are different in scope or that they could conflict with one another.<sup>18</sup> However, Vaičaitis raised concerns about the Convention's alignment with constitutional provisions, specifically questioning its adherence to the principle of equality of individuals, the constitutional principle of

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14 For more on this issue see: Pūraitė-Andrikienė (n 10).

15 *ibid.*

16 Vizgunova and Graudiņa (n 9).

17 Dainius Žalimas, 'Venecijos komisijos sprendimas dėl Stambulo konvencijos, kuris svarbus ir Lietuvai' (*JARMO*, 10 December 2021) <<https://www.jarmo.net/2021/12/dainius-zalimas-venecijos-komisijos.html>> accessed 10 September 2024.

18 Miliuvienė (n 10) 61.

proportionality, parents' rights to educate their children according to their beliefs, and the constitutional autonomy of religious organisations.<sup>19</sup>

These discussions culminated in the Lithuanian Parliament approving the inquiry initiated by the Speaker of Parliament, requesting the Lithuanian CC to examine the Istanbul Convention. In October 2023, the Constitutional Court formally accepted the Seimas's inquiry, seeking a conclusion on the constitutionality of certain provisions of the Convention. In essence, it can be stated that in Lithuania, the Constitutional Court has been asked to resolve doubts about the constitutionality of this treaty rather than expecting the Lithuanian CC to declare this international document unconstitutional.

In neighbouring Latvia, a similar situation unfolded, as the request for the Latvian Constitutional Court (hereinafter: the Latvian CC) to assess the Convention was also viewed as a step that could lead to the Convention's ratification.<sup>20</sup> Members of the Latvian Parliament sought to find out whether the use of the term "gender" in the text of the Convention, the obligation of the State in the Convention to take measures to change gender-based patterns of behaviour in society, and the Convention's provisions on changing educational programs to combat gender stereotypes as early as school age were compatible with the provisions of the Constitution of Latvia.<sup>21</sup> The Latvian CC was asked to assess whether Arts. 3(c), 4(3), 12(1), and 14 of this international treaty conflict with the Latvian Constitution.<sup>22</sup>

The situation was different in Bulgaria. In this country, the ratification of this document was met with opposition from political circles and the Orthodox Church. Therefore, in 2018, 75 members of Parliament requested a constitutional review of the Convention.<sup>23</sup> They cited concerns over deep societal divisions and fears regarding introducing same-sex marriages and a "third sex" as key arguments for bringing the matter before the Court, arguing that the concept of gender was not recognised within the Bulgarian laws.<sup>24</sup> Thus, in Bulgaria, the referral to the Constitutional Court was initiated by opponents of the Convention, who claimed that Arts. 3(c) and 4(3) of this treaty were unconstitutional.

The Moldovan case stands out as unique because, unlike in Lithuania, Latvia, and Bulgaria, the question of the Istanbul Convention's compatibility with constitutional provisions was addressed after its ratification. Moldova ratified the international document in 2021. However, it was met with strong resistance from the Orthodox Church,

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19 Vaidotas A Vaičaitis, 'Kelios mintys dėl Stambulo konvencijos iš konstitucinės teisės perspektyvos' (*LRT*, 23 March 2021) <<https://www.lrt.lt/naujienos/nuomones/3/1370719/vaidotas-a-vaicaitis-kelios-mintys-del-stambulo-konvencijos-is-konstitucines-teises-perspektyvos>> accessed 10 September 2024.

20 Vizgunova and Graudiņa (n 9) 133.

21 Miliuviene (n 10) 49.

22 Judgment no 2020-39-02 (n 5).

23 See further: Smilova (n 11) 177.

24 *ibid.*

which holds significant influence in the country.<sup>25</sup> This situation mirrors that of Lithuania, where the Lithuanian Bishops' Conference issued a public statement after the President of the Republic's proposal to ratify the Convention, and has spoken out against the ratification of the Convention.<sup>26</sup>

In its appeal to the legislative and executive branches of government, the Orthodox Church of Moldova argued that the Convention "refutes the existence of a woman and a man." As a result, two parliament members requested the Moldovan Constitutional Court (hereinafter: the Moldovan CC) to review the constitutionality of the Law on the Ratification of this international treaty.<sup>27</sup> They claimed that Arts. 3(c), 14, 28, and 42 conflicted with Moldova's Constitution. The applicants argued that ratifying this treaty violated constitutional provisions that enshrine the freedom of conscience, the right to education, and the institution of the family.<sup>28</sup>

To return to the Lithuanian context, it should be noted that Parliament raised doubts regarding the compatibility with the Constitution of the term "gender" used in the Convention. The applicant's doubts as to the compatibility with the Constitution of the provisions of Arts. 3(c), (d), and 4(3) of the Convention were based on the fact that the aforementioned provisions of the Convention use the term "gender" to refer to socially constructed roles, behaviours, activities and traits which a particular society considers appropriate for women and men. The applicant argued that these provisions create a presumption of the elimination of the distinction between male and female genders, creating "legal presumptions that gender is a social construct," and threatens the Lithuanian language, as the provisions of the Convention imply a gender-neutral language in the public sphere, and the official Lithuanian language is not gender neutral. The applicant also contended that "the inherent differences between sexes are a given on which the family and society are based" and that the above-mentioned provisions of the Convention, including the terms used therein, therefore negate the concept of the family derived from Art. 38 of the Constitution, according to which family members are considered to be only men and/or women, and that marriage is only between a woman and a man in the biological, rather than the social, sense.<sup>29</sup>

Moreover, according to the applicant, the introduction of the "legal obligation to introduce education on non-stereotypical gender roles" in the curricula of all levels of formal education, as set out in Art.14 of the Convention, would deny a part of the population of Lithuania the right to be guided by the natural concept of sex and to educate their children

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25 Venice Commission (n 7).

26 Miliuvienė (n 10) 52.

27 Irina Criveț, 'Moldova, Mic-Drop!: A Long-Awaited Ratification of the Istanbul Convention' (*IACL-AIDC Blog*, 12 May 2022) <<https://blog-iacl-aidc.org/new-blog-3/2022/5/12/moldova-mic-drop-a-long-awaited-ratification-of-the-istanbul-convention>> accessed 10 September 2024.

28 Decision on inadmissibility of complaint no 219a/2021 (n 6).

29 Conclusion no KT24-II/2024 (n 1).



according to such a concept of sex, when education and training institutions, where education is compulsory according to the Constitution, would impart a different worldview from that according to which children are educated at home. The applicant also questioned whether the obligation under Art. 14 of the Convention to modify the curricula of education and training establishments to teach certain subjects would not infringe on the constitutional freedom of belief and restrict the autonomy of higher education institutions.<sup>30</sup>

The issues raised reflect a broader trend in the region, where opposition to the ratification of the Convention often centres around Arts. 3(c) and 4(3), which enshrine the concept of gender. There is also frequent criticism of Art. 12(1), which calls for measures to eliminate traditions and other practices based on stereotyped roles of different sexes. Additionally, Arts. 14(1) and (2) which address measures related to educational materials on non-stereotypical gender roles and equality between sexes, are also criticised.<sup>31</sup>

Thus, the constitutional courts in these countries have had to examine the constitutionality of basically the same provisions of the Convention, i.e. the concept of gender (Bulgaria, Latvia, Moldova, Lithuania), as well as the constitutionality of the Convention's provisions on the obligation to include in educational materials material on non-stereotypical gender roles and equality between sexes (Latvia, Moldova, Lithuania). It is worth mentioning that, unlike the constitutional courts of Latvia and Moldova, the Lithuanian CC has not been asked to examine Art. 12(1) of the Convention. It is also noteworthy that the Lithuanian Parliament's inquiry is distinguishable from the issues raised in other constitutional courts in the region in that, according to the applicant, the above-mentioned provisions of the Convention create conditions for the use of a sex-neutral language in the public sphere and violate Art. 14 of the Constitution, as the official Lithuanian language is not sex-neutral.<sup>32</sup>

In Lithuania, as in Latvia and Bulgaria, the compatibility with the constitutional provisions of this international treaty was addressed before the ratification of this document. In contrast, in Moldova, the CC was requested to review the law which ratified this international treaty. Notably, in Poland, the Constitutional Tribunal was called upon to review the compatibility of the Convention and the Polish Constitution five years after the treaty had been ratified. However, this Tribunal never resolved the issue, as the request was withdrawn following a change in political forces. In 2020, the head of government requested that the Constitutional Tribunal review this issue. However, in 2024, the new Prime Minister, Donald Tusk, firmly stated that “protecting women and children from violence was a matter above politics. He subsequently signed a document withdrawing the request from the Constitutional Tribunal”.<sup>33</sup>

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30 *ibid.*

31 Pūraitė-Andrikienė (n 11) 64.

32 Conclusion no KT24-II/2024 (n 1).

33 ‘Prime Minister Donald Tusk: Istanbul Convention is to Protect Women and Children from Violence’ (*Chancellery of the Prime Minister of Republic of Poland*, 30 January 2024) <<https://www.gov.pl/web/primeminister/prime-minister-donald-tusk-istanbul-convention-is-to-protect-women-and-children-from-violence>> accessed 10 September 2024.



### 3 THE ARGUMENTS OF THE CONCLUSION

Many of the answers to the questions raised by the Lithuanian Parliament were available in the above-mentioned judgments of the constitutional courts of Latvia and Moldova, the opinions of the Venice Commission, and the explanatory documents of the Istanbul Convention. However, to determine whether the provisions of the Istanbul Convention were compatible with the Constitution, the Lithuanian CC had to interpret the relevant provisions of the Constitution as well as the imperatives deriving from there.

In its conclusion dated 14 March 2024, to ascertain whether the provisions of the Convention invoked by the applicant are compatible with the Constitution, the Lithuanian CC first disclosed the purpose of the Convention and the object of its regulation. In its analysis of the meaning and content of the provisions of the Convention, the Lithuanian CC took into account the Explanatory Report on the Convention<sup>34</sup> (hereinafter: the Explanatory Report) adopted together with the Convention. The report states that the main purpose of the Convention is to protect women from all forms of violence, to prevent violence against women and domestic violence, and to prosecute perpetrators.<sup>35</sup>

Therefore, the Lithuanian CC highlighted the threefold impact of the Convention, which is sought by the ratifying countries: firstly, the prevention of violence against women and domestic violence; secondly, the protection of the victims of violence; and thirdly, the punishment of those responsible for the violence.

Before the Lithuanian CC began its review of the compatibility of the Convention's provisions with the Constitution, it emphasised the aspect of gender equality. The Lithuanian CC noted that the Convention also aims to eliminate all forms of discrimination against women and to promote substantive equality between women and men. The Explanatory Report points out that there is a direct link between gender equality and the elimination of violence against women. Thus, only real equality between women and men can make it possible to achieve the objectives of the Convention. The Lithuanian CC has also stressed that the provisions of the Convention imply that the States Parties to the Convention have the discretion to decide how the effective application of the provisions of the Convention will be ensured.

From a comparative perspective, it should be mentioned that equality between sexes was also highlighted in the decision of the Moldovan CC. In its analysis of the title and preamble of the Istanbul Convention, the Moldovan CC observed that the Convention

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34 Committee of Ministers of the Council of Europe, *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence: Explanatory Report* (LSI library 2011) <<https://documentation.lastradainternational.org/doc-center/2722/council-of-europe-convention-on-preventing-and-combating-violence-against-women-and-domestic-violence-explanatory-report>> accessed 10 September 2024.

35 *ibid.*

aims to “fight violence against women and domestic violence. The preamble of this treaty highlights that achieving equal rights and gender equality is a crucial factor in preventing violence against women”.<sup>36</sup> Similarly, the Latvian CC stressed the central purpose of this international treaty.<sup>37</sup>

Having clarified this, the Lithuanian CC concluded that all the provisions of the Convention, including those that raised concerns for the applicant, must be interpreted in light of the objectives pursued by the Convention. Thus, the Lithuanian CC, like its Latvian and Moldovan counterparts, addressed the question of the Convention's compatibility with the constitutional provisions in the context of the Convention's objectives. Contrary to the judgment of the Bulgarian Constitutional Court (hereinafter: the Bulgarian CC), in which the term "gender" was interpreted as the hidden "gender ideology",<sup>38</sup> the Lithuanian CC, along with its Latvian and Moldovan counterparts, focused on the core purpose of this international treaty – combating violence against women and promoting general equality.

The Lithuanian CC then turned to the interpretation of the concept of gender enshrined in the Convention. It should be noted that the search for a suitable term in the Lithuanian language has led to many different official translations of the Istanbul Convention. Terms such as "social sex", "the social dimension of sex", or "sex in its social aspect" were suggested. However, the alternations of this concept have not led to more clarity; on the contrary, they appear to have fueled further debate.<sup>39</sup> It was even suggested to translate "gender" in the same way as "sex" to avoid communicating the misleading message that the Convention was supposedly changing the traditional understanding of sexes.<sup>40</sup>

The Lithuanian CC noted that gender refers to the socially constructed roles, behaviours, activities, and traits that a particular society deems appropriate for women and men. The Constitutional Court noted that this is one of the characteristics that may be used to describe, within the meaning of the provisions of the Convention, the root causes of violence that the Convention seeks to combat. Specifically, in para. (d) of this Art. 3, the term "gender-based violence against women" explains against whom such violence may be directed, namely against a woman simply because they are women, i.e. because of the behaviour, activities and traits normally associated with womanhood, as well as the socially constructed roles attributed to women.

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36 Domnica Manole, 'Text of the Briefing given by the President of the Constitutional Court of Moldova Regarding the Istanbul Convention' (*Council of Europe Office in Ukraine*, 18 January 2022) <<https://www.coe.int/en/web/kyiv/-/text-of-the-briefing-given-by-domnica-manole-the-president-of-the-constitutional-court-of-moldova-regarding-the-istanbul-convention>> accessed 10 September 2024.

37 Judgment no 2020-39-02 (n 5).

38 Decision no 13, case no 3/2018 (n 4).

39 Miliuvienė (n 10) 54.

40 *ibid.*

Thus, the Convention contains, *inter alia*, provisions in Art. 3(c) and (d) that aim to combat, *inter alia*, violence that may be provoked by roles, behaviour, activities, or characteristics normally attributed to women. According to the Lithuanian CC, these provisions do not negate the binary concept of sex (female and male), nor do they imply the possibility of choosing a sex other than one's biological sex.

Similarly, the Latvian<sup>41</sup> and Moldovan<sup>42</sup> constitutional courts also stressed that the introduction of the concept of gender in the Convention was intended to emphasise that violence against women and domestic violence stem from gender stereotypes. When interpreting the term "gender", both courts followed the Explanatory Report.

Thus, unlike the Bulgarian CC, which interpreted the term "gender" as the hidden "gender ideology", according to which the individual choice of social roles is disconnected from biological sex,<sup>43</sup> the Lithuanian CC, along with its Latvian and Moldovan counterparts, referred to the Explanatory Report when interpreting the term. In this regard, similarly to these courts, the Lithuanian CC did not identify any "second layer" in the term "gender" or in the purpose of the Convention.

The Lithuanian CC has stated that the contested Art. 4 of the Convention is intended to ensure the principles of equality and non-discrimination when applying the Convention. The Court noted that this article establishes a non-exhaustive list of grounds for non-discrimination, thereby recognising that any person may be a victim of violence. Thus, according to Art. 4(3) of the Convention, States are required to give effect to the provisions of the Convention, particularly in protecting victims of violence, without discriminating against any person who has been or may be subjected to violence. This includes not discriminating on the basis of gender, the stereotypical roles, behaviours, activities and traits attributed to a particular gender by a section of the public, or on the grounds of gender identity.

In assessing the compatibility of Arts. 3(c), (d) and 4(3) of this treaty with the Constitution, the Lithuanian CC, recalling that the human rights and freedoms enshrined in the Constitution form an integral and coherent system, first interpreted the provisions of Art. 21 of the Constitution guaranteeing the inviolability of the person and the protection of human dignity.

The Lithuanian CC noted that the right to physical and mental integrity and dignity of the person, as enshrined in the Constitution, implies the State's obligation to ensure that no person is subjected to violence, coercion, or any interference with their mental and spiritual state and that their dignity is not violated. Physical, sexual, psychological or economic violence, or the threat of such violence, violates the physical and mental integrity of the

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41 Judgment no 2020-39-02 (n 5).

42 Decision on inadmissibility of complaint no 219a/2021 (n 6).

43 Decision no 13, case no 3/2018 (n 4).

person, causing fear, insecurity, and distress and degrading their dignity. Therefore, in implementing the above-mentioned constitutional obligation, the State must take measures to reduce violence in society and ensure that violence is not tolerated.

The Lithuanian CC has stated that the constitutional protection of human dignity is inseparable from the principle of equality of all persons enshrined in the Constitution. The Lithuanian CC has repeatedly stated that all human beings are by nature equal in dignity and rights. When a person's rights are restricted on the basis of their sex, race, nationality, language, origin, social status, religion, beliefs or opinions, the dignity of the person being discriminated against is also degraded. The Lithuanian CC also recalled that the list of grounds for non-discrimination in Art. 29(2) of the Constitution is not exhaustive.

In this case, the Lithuanian CC noted that gender-based violence not only violates the inviolability and dignity of the person, as guaranteed by the Constitution but also constitutes a form of discrimination based on sex, prohibited under Art. 29 of the Constitution, as well as any other form of discrimination based on a person's gender, gender identity and/or sexual orientation. Any acts of gender-based violence, threats of such acts, whether committed in public or private life and regardless of whether such acts are motivated by a person's gender or by a particular attitude in society that a person's behaviour, activities or traits are appropriate for women, constitute discrimination on the grounds of sex prohibited by Art. 29 of the Constitution.

In assessing the compatibility of Arts. 3(c), (d) and 4(3) of the Convention with Art. 29 of the Constitution, the Lithuanian CC noted that women are significantly more likely to be victims of violence, including violence in the domestic environment. It is, therefore, the sex of the woman that determines the prevalence of violence against women. Consequently, the provisions of the Convention are designed to combat violence against women, including violence provoked by certain roles, behaviours, activities or characteristics attributed to or inherent in women. These provisions call for the abandonment of societal stereotypes of certain socially constructed roles, behaviours, activities and traits deemed appropriate for different sexes, contributes to the reduction and prevention of gender-based violence, which is a form of discrimination prohibited by the Constitution.

The Latvian CC made a similar assessment, holding that the differential treatment allowed by Art. 4 of the Convention has reasonable justification and aligns with the Constitution. The Latvian CC noted that the provision of this international treaty allows for special measures to prevent and protect women from gender-based violence, which does not constitute discrimination under the Convention's terms. Since gender-based violence remains an issue in Latvia and predominantly affects women, the Latvian CC emphasised that implementing such special measures is essential to achieving real equality between men and women.<sup>44</sup> Academic literature has pointed out that it would be unusual for the Latvian

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44 Judgment no 2020-39-02 (n 5).

CC to conclude that the principle of equal treatment under the Latvian Constitution differs from the equal treatment guaranteed by the Istanbul Convention.<sup>45</sup>

In assessing the compatibility of the provisions of Arts. 3(c), (d) and 4(3) of the Convention with Art. 14 of the Constitution, which regulates the status of the official language, the Lithuanian CC noted that the Convention does not oblige the Lithuanian State to transpose into the national legal system concepts that would be incompatible with the Lithuanian language. The Convention also does not imply the need to establish new rules for the national language. The Convention defines a person only as "man" and "woman" and does not use any other form. Therefore, the Lithuanian CC concluded that the provisions of the Convention do not breach Art. 14 of the Constitution. As mentioned earlier, the assessment of the language issue is unique to the Lithuanian CC, as other constitutional courts in the region did not have to address this aspect.

In assessing the compatibility of these articles of the Convention with the provisions of Art. 38 of the Constitution, which enshrines the constitutional concept of the family, the Lithuanian CC noted that neither these nor any other provisions of the Convention regulate family or matrimonial legal relations. The Convention does not impose an obligation on the State to recognise families other than those provided for in the Constitution or to modify the constitutional concept of marriage in such a way that marriage is not freely agreed between a man and a woman. Ratification of the Convention and commitment to its international obligations would not entail any change in the constitutional concept of family or marriage.

The obligation of States under Art. 4(3) of the Convention to ensure equality between women and men, to prevent violence against women, and to combat societal stereotypes in society that assign certain roles, behaviours, and traits solely to women, in order to establish equality between women and men, precisely reflects and gives effect to the provision of Art. 38(5) of the Constitution. This provision states that the rights and duties of spouses in the family are equal. The Convention's objectives – promoting equality between women and men, mutual respect for each other and non-discrimination on any grounds – further reinforce the constitutional values, ensuring that the upbringing of children is based on the values enshrined in the Constitution. Accordingly, the provisions of Arts. 3(c), (d) and 4(3) of this international treaty are not in conflict with Article 38(1), (3), (5) and (6) of the Constitution either.

It is worth mentioning that the Moldovan CC also had to provide its own assessment of the compatibility of the provisions of the Convention with the family institution enshrined in the Constitution of that State. This Court stated that the "Istanbul Convention does not define the concept of family, address relationships between partners

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45 Miliuvienė (n 10) 50.

or same-sex couples, nor does it promote such relationships in any particular way.<sup>46</sup> The Convention only mentions marriage in the context of forced marriage and does not require countries to introduce same-sex marriage. Thus, this Court concluded that the Convention does not conflict with the national constitution, which defines marriage as a union between a man and a woman.<sup>47</sup> Similarly, the Latvian CC provided a comparable interpretation, affirming that the Istanbul Convention does not mandate enshrining any forms of marriage or family.<sup>48</sup>

The Lithuanian CC was also tasked with determining whether Art. 14 of the Convention conflicts with several provisions of the Lithuanian Constitution: Art. 25(1), which guarantees the right of individuals to hold and freely express their own convictions; Art. 26(5), which affirms that parents and guardians shall take care of their children's and wards' religious and moral education in accordance with their own convictions, without restrictions; Art. 38(6), which establishes the right and duty of parents to educate their children to be decent human beings and loyal citizens; Art. 40(3), which grants autonomy to higher education institutions; and Art. 41(1), which mandates compulsory education for persons under the age of 16.

In interpreting the content of the freedom of belief enshrined in Art. 25 of the Constitution, the Constitutional Court noted that a person's beliefs regarding behaviours, traits and social roles considered masculine or feminine fall within the person's freedom of belief, thought, and conscience. However, while it is not possible in a democratic state governed by the rule of law for the State to impose a compulsory system of attitudes or to seek to impose a particular belief, thought or worldview on individuals, the State has a duty under the Constitution to take measures to reduce incidents of gender-based violence. Such measures taken to change the prevailing prejudices, customs and traditions which give rise to and justify gender-based violence cannot be regarded as an interference with a person's freedom of belief, conscience, thought or faith. This is because the Constitution cannot protect freedoms that conflict with other constitutional values, such as encouraging or condoning violence, including gender-based violence.

In neighbouring Latvia, the Constitutional Court also stressed that the state must implement broad measures to reduce societal tolerance for violence and raise awareness about its consequences. This includes the responsibility to provide information to the public about violence and its underlying causes, with the goal of preventing such violence from occurring.<sup>49</sup>

In assessing the compatibility of Art.14 of the Convention with Art. 25(1) of the Constitution, the Lithuanian CC noted that the provisions of the Convention, *inter alia*,

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46 Manole (n 36).

47 Decision on inadmissibility of complaint no 219a/2021 (n 6).

48 Judgment no 2020-39-02 (n 5).

49 *ibid.*

Art. 14, enshrine the same values protected by the Constitution – namely, the equality of men and women, the inviolability of the person, and the protection of human dignity. Consequently, providing information on the upholding and promotion of these values cannot be regarded as interference with an individual's freedom of belief or an imposition of a particular ideology by the State. Whatever information on the subjects covered by the Convention is provided, *inter alia*, in educational and training institutions and adapted to the abilities of learners in formal and non-formal education, an individual's freedom to hold personal convictions and adopt their own worldview remains unimpaired.

In assessing the compatibility of the provisions of Art. 14 of the Convention with Art. 26(5), Art. 38(6) and Art. 41(1) of the Constitution, the Lithuanian CC noted that the right of parents to educate their children under their own beliefs, as a constitutional value, is to be interpreted in the context of other constitutional values. This right cannot be interpreted as granting parents the freedom to raise their children in a way that disregards the Constitution or ignores the values it protects, *inter alia*, by denying equality between women and men, encouraging or tolerating discrimination, and justifying or threatening gender-based violence.

Similarly, Moldovan CC also emphasised that this international document does not infringe upon the right of parents to educate their children according to their religious beliefs, as the Convention does not address this right. The Convention obliges incorporating educational materials promoting gender equality, non-stereotypical gender roles, mutual respect, and non-violent conflict resolution. It does not conflict with parents' rights to determine their children's education, as it allows states ample flexibility to uphold this right when implementing the relevant provisions.<sup>50</sup>

The Lithuanian CC also noted that the purpose of education and training institutions is to inculcate a worldview based on constitutional values, reduce society's tolerance of violence by educating learners from an early age about the consequences of violence, the factors contributing to the occurrence of violence against women and domestic violence, and ways to prevent it. The mere fact that under the Convention, education and training establishments must provide certain information to learners, which must be made available to all persons attending the establishments, does not mean that parents do not have the right to educate their children at home according to their convictions. Education in educational establishments is an integral part of the educational process, which is also strongly influenced by the family, society and family values, so education in public educational establishments based on an approved curriculum is not a substitute for parents' education in accordance with their convictions at home. Moreover, in implementing Art.14 of the Convention, Member States are not obliged to introduce specific curricula that are identical for all States Parties and that are incompatible with the culture and environment of a

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50 Decision on inadmissibility of complaint no 219a/2021 (n 6).



particular State, but rather they have a broad discretion to decide at what age the most appropriate type of information is to be provided to pupils of a particular age.

In deciding on the compatibility of Art. 14 of the Convention with Art. 40(3) of the Constitution, the Lithuanian CC noted that the obligation under the Convention to raise public awareness regarding the equality between men and women and of changes in the socio-cultural patterns of behaviour of women and men could in no way be regarded as inconsistent with the constitutional right of institutions of higher education to autonomy or the right of freedom of research, study and teaching. On the contrary, under the Constitution, education and training institutions must contribute to the development of fully educated personalities and to the inculcation and promotion of the values protected by the Constitution in society, including the real equality of women and men, the real realisation of which is ensured by the rejection of the stereotypical attitudes prevailing in a certain section of the population to the role of women and men in society.

The Moldovan CC expressed similar views in analysing whether the Convention's provisions allegedly contradict the constitutional provisions on freedom of conscience and the right to education. It noted that the Convention does not prescribe specific methods for implementing education on its issues.<sup>51</sup>

Thus, the Lithuanian CC, like the Moldovan and Latvian courts, in assessing the constitutionality of the Convention's provisions, focused on the Convention's objective. This approach has led to similar reasoning in the decisions of these courts. In this context, only one of the region's constitutional courts - Bulgarian - chose the concept of gender as the main object of its decision and considered this concept in isolation from the objectives of the Convention.<sup>52</sup> It is pointed out in the academic works that, after reading this reasoning of the Bulgarian CC, one gets the impression that the judges who decided the case were not aware of or did not fully understand the Explanatory Report of the Convention, which was adopted together with the Convention (although mentioned in the text of this judgment), and which repeatedly and explicitly stresses that the Convention does not intend to deny the commonly known binary concept of gender, it does not seek to abolish the distinction between men and women, and it refers only to stereotypical gender roles or to certain patterns of behaviour, character traits or qualities commonly attributed to women which men may also possess, with a view to avoiding the use of violence on this basis and ensuring that victims are recognised as victims of violence in the absence of discrimination.<sup>53</sup>

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51 *ibid.*

52 For more on this see: Pūraitė-Andrikienė (n 11).

53 Miliuvienė (n 10) 50.

## 4 LEGAL CONSEQUENCES OF THE CONCLUSION

In the light of the above arguments, the Lithuanian CC concluded that Arts. 3(c), 3(d), 4(3), and 14 of the Istanbul Convention are not in conflict with the Lithuanian Constitution. This Court thus became the third court in the region not to find the provisions of this international treaty unconstitutional. In 2021, the Latvian CC concluded that the Convention's provisions regarding the implementation of special measures to protect women from violence were in compliance with the constitutional provisions of this country.<sup>54</sup> In 2022, the Moldovan CC adopted a decision that concluded that the complaint did not fulfil the admissibility criteria. Nevertheless, the Moldovan CC sought an *amicus curiae* opinion from the Venice Commission regarding the constitutional implications of ratifying the Convention.<sup>55</sup> Only the Bulgarian CC has ruled in the opposite direction and concluded that the concept of gender defined in this Convention contradicted the Bulgarian constitutional provisions.<sup>56</sup>

Meanwhile, the Lithuanian CC, as well as the courts of Latvia and Moldova, having evaluated the provisions of the Convention in the context of the objectives pursued by the Convention, as mentioned above, have stated that both the Convention, which is aimed at combating violence against women and domestic violence by promoting true equality between men and women as a precondition for the reduction of violence against women, as well as the Constitution pursue the same universally significant objectives. The Lithuanian CC stressed that the Convention does not contain any provisions that are contrary to the Constitution and that, therefore, the obligations arising from the Convention, in so far as they relate to the application of the contested provisions of the Convention, cannot be regarded as incompatible with the provisions of the Constitution. Consequently, the provisions of the Convention governing human rights and freedoms, which are based on the same constitutional values of equality, personal integrity and respect for the dignity of every human being, can be applied in conjunction with the provisions of the Constitution.<sup>57</sup>

Taking into account the very open and friendly jurisprudence of the Lithuanian CC regarding international law, as well as the fact that this Court cannot apply in its official constitutional doctrine standards lower than those set by the generally recognised norms of international law, it was possible to anticipate the verdict of the Lithuanian CC regarding the constitutionality of this international treaty even before this conclusion.<sup>58</sup> This verdict could also have been predicted from the previously formulated official constitutional

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54 Judgment no 2020-39-02 (n 5).

55 Manole (n 36).

56 Decision no 13, case no 3/2018 (n 4).

57 Conclusion no KT24-I1/2024 (n 1).

58 Pūraitė-Andrikiėnė (n 10) 20.

doctrine in the interpretation of Arts. 38 and 29 of the Constitution and the other provisions and principles of the Constitution referred to in the Parliament's inquiry.<sup>59</sup>

It was also clear that, in assessing the compatibility of the Convention with the constitutional provisions, the Lithuanian CC would also take into account the aforementioned opinions of the Venice Commission on the constitutional implications of the ratification of the Convention, as well as the judgments of the constitutional courts discussed above. After all, those who question the constitutionality of the Convention make similar arguments in all the countries of the region. These assumptions led to the expectation that the Lithuanian CC (like the constitutional courts of Latvia and Moldova) would assess the constitutionality of the provisions of the Istanbul Convention in the context of the Convention's objective of eradicating violence against women through the promotion of gender equality, and would uphold the compatibility of the Convention with national constitutional provisions. The fact that the Lithuanian CC would make such a decision has been described in the works of Lithuanian constitutional lawyers, and the doubts raised about the constitutionality have been referred to as a "storm in a glass of water".<sup>60</sup>

In its decision, the Lithuanian CC referred to the above-mentioned opinions of the Venice Commission and briefly discussed the decisions of the Latvian CC and Moldovan CC. However, presumably to reinforce the consistency of its arguments, it did not mention the decision of the Bulgarian CC.<sup>61</sup> This is not surprising since this decision has been widely criticised by international institutions, the non-governmental sector, and academics. It should be noted that this Bulgarian CC judgment was accompanied by four dissenting opinions in which the judges stated that the Convention was compatible with the Bulgarian Constitution. However, the ruling of the Bulgarian CC led to the situation that now it is impossible to ratify the Istanbul Convention in Bulgaria. "The Council of Europe Human Rights Commissioner and the European Parliament expressed regret about the misinformation campaign surrounding the Istanbul Convention in Bulgaria."<sup>62</sup> In academic literature, this controversial judgment has also been heavily criticised.<sup>63</sup>

As regards the consequences of the decisions of the other constitutional courts in the region, it has been mentioned that the Moldovan CC, although it gave a rather detailed assessment of the treaty, refused to examine the applicant's request, which means that, formally, the decision did not make any difference, the Convention had already been ratified by the Moldovan State and therefore retained its legal force, but, beyond the formal aspect, it must be stated that this decision of the Moldovan CC was intended to dispel the doubts that had existed in Moldova as to the constitutionality of the treaty. The situation following the

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59 *ibid.*

60 Miliuvienė (n 10).

61 Pūraitė-Andrikienė (n 10) 19.

62 Vassiljeva (n 11).

63 *ibid.*; Smilova (n 11).

decision of the Latvian CC, which declared that the provisions of the Convention did not conflict with the Latvian Constitution in 2021, was different because this country did not ratify the Convention until 2023. It can, therefore, be assumed that the Latvian CC's decision was a strong factor contributing to the ratification of the Convention.

Turning to the Lithuanian context, it's worth mentioning that the conclusion of the Lithuanian CC has been widely discussed in society, political, and academic circles. For example, following the Constitutional Court's finding that the Istanbul Convention is not contrary to the Constitution, organisations working in the field of protection against violence have called for the Istanbul Convention to be ratified and for the problem of violence against women and children to be finally taken seriously.<sup>64</sup> However, despite the Constitutional Court's conclusion, the President of the State has expressed the opinion that 'the Istanbul Convention should not be ratified now, as it would change the education system'.<sup>65</sup> The Speaker of Parliament stated that Parliament should only return to ratifying the Convention when it is clear that the document will receive the necessary support from parliamentarians.<sup>66</sup> The opinion of a constitutional law scholar was also presented, disagreeing with the arguments and assessment presented in the conclusion of the Lithuanian CC,<sup>67</sup> as well as those who, on the contrary, supported the position of the Lithuanian CC.<sup>68</sup>

The Lithuanian Constitution provides that Parliament shall finally decide on the issues referred to in the third paragraph of Art. 105(3) of the Constitution on the basis of the conclusions of the Constitutional Court (*inter alia*, on the conformity of international treaties with the Constitution). Therefore, this conclusion does not oblige Parliament to ratify the Istanbul Convention. The Lithuanian Parliament took advantage of this opportunity and, despite the Constitutional Court's conclusion, did not include the issue of

64 'Apsaugos nuo smurto srityje dirbančios organizacijos: dėl Stambulo konvencijos Konstitucinis Teismas šiandien padėjo visus taskus ant "i"' (*Manoteisės*, 14 March 2024) <<https://manoteises.lt/straipsnis/apsaugos-nuo-smurto-srityje-dirbancios-organizacijos-del-stambulo-konvencijos-konstitucinis-teismas-siandien-padejo-visus-taskus-ant-i/>> accessed 10 September 2024.

65 'G Nausėda: Dabar nereikėtų ratifikuoti Stambulo konvencijos, ji keistų švietimo sistemą' (*BNS*, 15 March 2024) <<https://www.15min.lt/naujiena/aktualu/lietuva/g-nauseda-dabar-nereiketu-ratifikuoti-stambulo-konvencijos-ji-keistu-svietimo-sistema-56-2208616>> accessed 10 September 2024.

66 Gailė Jaruševičiūtė-Mockuvienė, 'V Čmilytė-Nielsen – apie KT išvadą dėl Stambulo konvencijos: sugrįšime prie šio klausimo, kai turėsime reikiamą palaikymą' (*Lrytas*, 14 March 2024) <<https://www.lrytas.lt/lietuvosdiena/aktualijos/2024/03/14/news/seimo-pirmininke-apie-kt-issvada-del-stambulo-konvencijos-sugrismisime-prie-sio-klausimo-kai-turesime-reikiama-palaikyma-30990711>> accessed 10 September 2024.

67 Vaidotas A Vaičaitis, 'Komentaras dėl Stambulo konvencijos ir Konstitucinio Teismo 2024 m kovo 14 d išvados "Dėl Stambulo konvencijos nuostatų suderinamumo su Konstitucija"' (*TeisėPro*, 3 April 2024) <<https://www.teise.pro/index.php/2024/04/03/v-a-vaicaitis-komentaras-del-stambulo-konvencijos-ir-konstitucinio-teismo-2024-m-kovo-14-d-issvados-del-stambulo-konvencijos-nuostatu-suderinamumo-su-konstitucija/>> accessed 10 September 2024.

68 Pūraitė-Andrikienė (n 10).

ratification of the Istanbul Convention in the Spring and Autumn 2024 sessions. Thus, even after the conclusion of the Lithuanian CC regarding the constitutionality of this international treaty, Lithuania has still not ratified the Convention. This trend shows that the doubts about the need to ratify this international document in the region are not only due to legal but also to the historical context of gender power and social inequalities. These factors have made it difficult for post-Soviet states to overcome the normalisation of domestic violence and achieve gender equality.<sup>69</sup>

However, the Lithuanian CC is the only institution empowered to assess the constitutionality of this international treaty in the country. Thus, the Court's conclusion regarding the Convention's provisions will undoubtedly help dispel any doubts about its constitutionality. With the Lithuanian CC's finding that the Convention is compatible with the Constitution, Parliament can no longer rely on the argument that this international treaty is incompatible with the country's supreme law. If Parliament decides not to ratify the Convention after all, it would no longer be able to base its refusal to do so on the argument that certain provisions of the Istanbul Convention are unconstitutional. Whatever Parliament's decision on the future of the Istanbul Convention, the question of the compatibility of its provisions with the Constitution has been settled.<sup>70</sup> As mentioned above, the ratification of the Convention in Latvia did not take place immediately after the decision of the Latvian CC on its constitutionality, but almost two years later, therefore, the Lithuanian Parliament may also ratify the Convention in the near future.<sup>71</sup>

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69 *ibid* 21.

70 Miliuvienė (n 10) 62.

71 In the context of this topic, it is also important to note that the Istanbul Convention was ratified by the European Union in June 2023. Researchers highlight what this ratification means for Lithuania: 1) once the EU has ratified the Istanbul Convention, it will apply to EU institutions and public administration structures. This means that the EU institutions will not only be able to take the Convention into account but will also be obliged to do so when considering any issues related to violence; 2) after ratification, the Istanbul Convention will apply to Member States in certain areas, even if they have not ratified the Convention. These are situations in which the EU has exclusive competence; 3) ratification constitutes a (further) invitation to Member States that have not yet done so to ratify the Istanbul Convention. Thus the Istanbul Convention is directly applicable in Lithuania only insofar as it concerns the EU institutions and in areas where the EU has exclusive competence. Therefore, it is still important for Lithuania to move towards comprehensive international human rights obligations. For more on this see: Laima Vaigė, 'Nuo spalio Stambulo Konvencija įsigalioja ES: ką tai reiškia Lietuvai?' (*TeisėPro*, 9 October 2023) <<https://www.teise.pro/index.php/2023/10/09/l-vaige-nuo-spalio-stambulo-konvencija-isigalioja-es-ka-tai-reiskia-lietuvai/>> accessed 10 September 2024.

## 5 CONCLUSIONS

The Lithuanian Parliament's inquiry to the Lithuanian CC regarding the constitutionality of the Istanbul Convention reflects a broader trend in Eastern and Central Europe, as the Lithuanian CC has been asked to address the constitutionality of essentially the same provisions of the Convention as in other countries in the region: the constitutionality of the concept of gender (in Bulgaria, Latvia, Moldova), as well as of the Convention's provisions on the obligation to include material on issues such as gender equality, non-stereotypical gender roles in educational material (in Latvia, Moldova). In Lithuania, as in neighbouring Latvia, the Court has been addressed more with a desire to dispel doubts about the compatibility of the Convention with the Constitution than with the expectation that the Constitutional Court will declare it unconstitutional.

In assessing the constitutionality of this international treaty, the Lithuanian CC, like the constitutional courts of Latvia and Moldova, focused on the Convention's objective. This approach has also led to similarities in the reasoning across these courts. After assessing the provisions of the Convention in the context of its objectives, the Lithuanian CC found that both the Convention, which seeks to combat violence against women by promoting substantive gender equality as a prerequisite for the reduction of violence against women, and the Constitution pursue the same universally relevant objectives. The Lithuanian CC also stressed that the provisions of the Convention governing human rights and freedoms, which are based on the same constitutional values of equality, personal integrity and respect for the dignity of every human being, can be applied in conjunction with the Constitution. In its conclusion, the Lithuanian CC also briefly discussed the judgments of the constitutional courts of Latvia and Moldova on the same issue.

The Lithuanian CC became the third constitutional court in the region, which, like those in Latvia and Moldova, did not find the Istanbul Convention unconstitutional. However, the conclusion of the Lithuanian CC has been met with mixed reactions in society, political, and academic circles, and as a result, even after this conclusion, the Convention has still not been ratified in Lithuania. Nevertheless, the Constitutional Court is the only institution with the power to assess the compatibility of this international treaty with the constitutional provisions, meaning that Parliament can no longer rely on the argument that this international treaty is incompatible with the country's Constitution. It is therefore considered that this conclusion of the Lithuanian CC will be an important step on the road to ratification of this Convention.

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## АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Оглядова стаття

### ВИСНОВОК КОНСТИТУЦІЙНОГО СУДУ ЛИТВИ ЩОДО КОНСТИТУЦІЙНОСТІ СТАМБУЛЬСЬКОЇ КОНВЕНЦІЇ: КОНТЕКСТ, АРГУМЕНТАЦІЯ ТА ПРАВОВІ НАСЛІДКИ

**Довіле Пурайте-Андрікенє**

#### АНОТАЦІЯ

**Вступ.** 14 березня 2024 року Конституційний суд Литви видав висновок щодо конституційності деяких положень Стамбульської конвенції та став четвертим конституційним судом у Східній та Центральній Європі, який ухвалив рішення з цього питання. Таким чином, цей висновок відображає певну тенденцію в цьому регіоні. Стаття має на меті проаналізувати цей висновок, а також виявити його схожість та відмінність із рішеннями інших конституційних судів регіону з цього ж питання. Для

досягнення мети необхідно виконати такі завдання: 1) виявити контекст, у якому парламент Литви подав запит до Конституційного суду щодо конституційності Конвенції та питання, порушені в цьому запиті; 2) проаналізувати аргументи Конституційного суду Литви в цьому висновку; 3) розкрити правові наслідки та можливий вплив цього висновку на ратифікацію зазначеного договору в Литві. Ці питання розглядаються в ширшому контексті рішень інших конституційних судів регіону щодо конституційності Стамбульської конвенції.

**Методи.** Для дослідження теоретичних і практичних аспектів розглянутого питання в цій статті використовуються різноманітні методи. Метод аналізу змісту документа, який був зосереджений на визначенні ключових термінів і фраз у тексті та їх зв'язку із наявними твердженнями у спеціальній літературі, використовувався для вивчення відповідних нормативних та юридичних джерел досліджень. У праці значною мірою автор покладався на системний і логічний аналіз, щоб розглянути майже всі питання, які обговорюються в статті. Порівняльний аналіз застосовувався для зіставлення рішень конституційних судів щодо конституційності Стамбульської конвенції інших країн Східної та Центральної Європи та висновку з цього питання Конституційного суду Литви. Методи лінгвістичного та телеологічного аналізу були використані для з'ясування змісту положень нормативно-правових актів, що розглядаються в цій статті, для виявлення справжніх намірів творців цих положень та значення понять, що містяться в них.

**Результати та висновки.** У статті зроблено висновок, що запит литовського парламенту до Конституційного суду Литви щодо конституційності Стамбульської конвенції відображає загальну тенденцію у Східній та Центральній Європі, оскільки Конституційний суд Литви попросили розглянути конституційність, по суті, тих самих положень Конвенції, що й інші конституційні суди регіону. Оцінюючи конституційність положень Конвенції, Конституційний суд Литви, як і конституційні суди Латвії та Молдови, зосередився на меті Конвенції – викоріненні насильства щодо жінок і домашнього насильства шляхом сприяння гендерній рівності. Такий підхід призвів до подібності в міркуваннях цих судів. Конституційний суд Литви став третім конституційним судом в регіоні, який, як і в Латвії та Молдові, не визнав неконституційними положення Конвенції. Висновок Конституційного суду Литви викликав неоднозначну реакцію в суспільстві, політичних та наукових колах, тому навіть після висновку щодо конституційності Стамбульської конвенції цей міжнародний договір досі не ратифікований Литвою. Тим не менш, Конституційний суд є єдиною інституцією, яка має повноваження оцінювати сумісність цього міжнародного договору з конституційними положеннями, тому парламент не зможе покладатися на аргумент про несумісність цієї Конвенції з Конституцією.

**Ключові слова:** Конституційний Суд, Стамбульська конвенція, конституційний контроль.