

# CHAPTER I

## INTRODUCTION

### A. Background

Long before the 2011 Istanbul Convention, an international treaty established by European Union (EU) that aimed to eliminate gender – based violence was held, Turkey in 1986 under the leadership of Kenan Evren, showed the first step in its commitment to abolish sexism by following international and regional legal standards such as the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As an effort of gender mainstreaming and the manifestation of CEDAW ratification, in 1990, Directorate for Women’s Rights and Gender Equality or the General Directorate of Women’s Status or *Kadinin Statüsü Genel Mudurlugu* (KSGM) was established. Its main mission is to promote gender equality in Turkey by developing programs and policies to reduce all forms of gender – based discrimination. However, in 2011, KSGM was restructured as one of the main units under the Ministry for Family and Social Policies. The term of “women” also removed (Muftuler-Bac & Muftuler, 2021).

The European Union (EU) which acts as a pawn in the gender equality project in Turkey also gets a share of intervention in it. Efforts to enforce gender equality are supported by various elements, such as local and international women's organizations, ministries, international institutions such as the EU and supranational organizations such as the United Nations (UN). All these entities are synergistic in seeking the creation of gender equality in Turkey. Women's and gender issues that are the focus of resolution in the gender equality project in Turkey include issues of gender-based violence against women, reproductive health and opportunities to access education for girls.

2001, two years after EU recognized Turkey’s candidacy of EU membership in 1999, was a crucial period in which Turkey was admitted to the EU membership. It led to many amendments to several laws that were sexist and discriminatory against women. A total of 34 regulations were amended, especially regarding human rights and fundamental freedoms. Some of them are amendments to article 41 which are considered essential for women because article 41 redefined the family as an institution with an equal level between the two partners, which means that women are no longer in a subordinate position.

In 2004, article 10 was amended to guarantee the fundamental rights of women and the responsibility of the state in ensuring the continuity of the principle of equality in the practice of daily life and in society. Article 90 was amended to strengthen the supremacy of

international treaties as well as Turkey's commitment to ratify and comply with international treaties such as CEDAW (Gülel, 2021). Throughout 1999 – 2007 Turkey was aggressively amending various regulations. This was done to harmonize domestic regulations with regulations in force in the EU so that Turkey could meet the standards of the democratic climate adopted by the EU (Gülel, 2021). In addition, regulatory harmonization also aimed to provide protection for political rights, cultural rights, and human rights.

As an advocacy process of women's rights fulfilment, in 1998, 126 gender activists that united in a platform called *The Civil Code Women's Platform* started a campaign for a new civil code, the replacement of old civil code. Under the old code, the wife's place of residence was her husband. Wherever the husband goes, the wife is required to follow. These points were then replaced with a new code that gave the wife and husband the power to equally made decisions and equal fundamental rights to the marital bond, children, and property acquired during the marriage. It also offers women the right of residency. Women are also then given the same rights to the family home or what is known as an “annotation of the family's place of residence”.

The new civil code draft was then presented to parliamentary in 1999. A couple years later, in 2001, the new civil code was accepted by parliament. The implication is that women's voices and opinions are much more respected. Not only that, the new clause relating to property in marriage recognizes that domestic work done by housewives is a contribution to the marriage. Domestic work done by the wife is no longer considered an unproductive activity. It also means that any property acquired during the marriage should be divided equally between the spouses in the event of a divorce. The change to the new civil code clearly gave women freedom and economic empowerment, because the main purpose of advocacy is to change a policy to suit the wishes or interests of those who strive for the changes (Azizah, 2014).

The successful campaign from *The Civil Code Women's Platform* was then followed by the demand of penal code reformation. The penal code was based on the customs and women were seen as belongings of fathers, husbands and family only. The campaign of new penal code was done by *The Penal Code Women's Platform*, which were consisted of women organizations and LGBTQ+. The platform's reform campaign lasted for 3 years and submitted a penal code draft that recognized women's individuality, body integrity, sexual and bodily autonomy and rights. The parliament then favor the demand of penal code reformation. In 2004, the penal code became a law (Arat, 2010). The campaign of penal code

platform coincided with the AKP's first term in power, which was the period of AKP in convincing both secularists in Turkey and EU bureaucrats in Brussels to join the EU.

Both of the new civil code and new penal code advocacy carried out by the platform gave a significant escalation in eliminating the patriarchal construct in the legislation product. The differential treatment of women and children, sexist discrimination against women regarding marital status and the concept of virginity were dismissed. It also removed consent in articles that regulate sexual abuse of children, removed an article about mothers killing their newborn children, and removed articles that legitimize kidnapping and rape in the case of perpetrators who have married victims. The amendments have a crucial role in protecting, providing harsher penalties, and recognizing the sexual and bodily rights of women and children. The crime of gender - based violence were redefined based on individual rights and freedoms, sexual integrity, and autonomy (Gülel, 2021).

When AKP came to power for the first time in 2002, EU accession was part of Turkey's political agenda. In 2002 the priorities of the AKP government were integration with global markets and democratization through full accession to the EU. The talk of EU accession along with the movement demanding women's rights prompted the AKP government to make significant progress on laws on civil rights, women's work, and domestic violence between 2002 and 2012. The first 5 years since the AKP came to power in 2002, from 2002 to 2007, the AKP continued to issue progressive legal regulations on domestic violence and women's work.

In the last decade, combating violence against women has been officially claimed as a state policy that shown significant progress in the legal framework. In 2005 for example, a clause was added to the Law on Municipalities ordering metropolitan municipalities and municipalities with more than 100,000 inhabitants to build shelters for women and children who were victims of domestic violence. The Labor Laws (4857), passed in 2003, recognized the obligation to take the necessary steps to protect women workers from sexual harassment. To increase women's labor force participation, several legal initiatives were also carried out by the AKP government (Güneş-Ayata & Doğangün, 2017).

Under an amendment to the Unemployment Insurance Act (UU 4447), the government assigned the Unemployment Insurance Fund to pay insurance premiums for new employees (young men aged between 18 and 29 years and women older than 18 years) for the first five years of recruitment. Paid maternity leave was extended to 16 weeks and parental leave was increased to 10 days. Unpaid maternity leave for civil servants was extended to 24 months,

and increased breastfeeding intervals. This is enshrined in Law 6111. Meanwhile, the government and municipalities provide many training programs for women in public training centers. As for women's training, such as literacy, embroidery and sewing, elderly care, cooking, foreign languages, computers, and others (Güneş-Ayata & Doğangün, 2017).

With a series of changes between 2008 and 2010, which abolished the headscarf ban in universities, religious women and men have had equal chances of access to public resources. This change was presented as a democratic initiative for women to take their place in public space (Telseren, 2020). In 2009, the Committee on Equal Opportunities for Women and Men of the Grand National Assembly of Turkey was established to promote women's rights and promote gender equality. During the formation of Women and Men of the Grand National Assembly of Turkey formation, group of feminist women attempted to name the committee as 'Gender Equality Committee'. However, the government ignored these demands. This refusal could be seen as an early sign of the government's determination to limit its efforts and narrative of gender equality with equal opportunity.

The AKP seemed "allergic" and anti-gender equality narrative. This was because the AKP believed that the concept of gender equality was a denial of human nature. The issuance of laws, articles that seem pro-gender and committees that promote gender equality are indications of the AKP's alignment with the EU. Even so, the indications of the AKP's alignment with the EU are not entirely true. This was because the mechanism for harmonizing domestic regulations with the EU's democratic climate through the process of amending several regulations, was rejected by the AKP. AKP only wanted to adopt the reformation that helped to promote their political interest.

In a sense, the AKP did not agree with several points and the substance of the amended articles. For example, article 10 which regulates equality between women and men was deemed contrary to the AKP's agenda. In 2010 the AKP then amended Article 10. The amendment to article 10 only includes an acknowledgment that the action taken for children, the elderly, the disabled, widows and veterans is not a violation of the principle of equality before the law. Not only that, the authoritarian and conservative character of the AKP does not only stop at amending regulations related to gender equality (Gülel, 2021). As a result of the accession process to the EU, Turkey did enact various regulations regarding women and gender issues, that are non – discriminatory and sexist. But that does not mean that Turkish women are free from gender – based violence that oppresses systemically and culturally. President Erdogan's conservative framework make it more difficult for Turkish women to be liberated, to be free from the oppression.

From 2010 onwards, AKP began to remove the term of gender equality from national policy. Gender discourse was drawn into family issues, *fitrat* or the purpose of creation and the emergence of gender justice, as a counter – hegemony from gender equality. As part of this, state bureaucracies that were dealing with women’s issues have either been reorganized or dismissed. For instance, The Ministry of Women was disbanded and became the Ministry of Family and Social Policies then the Ministry of Family, Labour and Social Services’.

In the course of the establishment of the Istanbul Convention, Turkey has its strategic role. During 2009 – 2011, Turkey was actively involved in drafting the Convention. The origins of the 2011 Istanbul Convention were when the Council of Europe (CoE) ran a campaign to combat violence against women across Europe from 2006 to 2008 which exposed the differences between how different countries manage gender-based violence. In May 2011, Turkey also hosted a meeting of the Council of Europe Ministers in Istanbul, where the Convention was opened for signature.

May 2011, coinciding with the opening of the Istanbul Convention, Turkey which was then represented by the Minister of Foreign Affairs, Ahmed Davutoglu, officially signed the convention on the protection of women. The signing took place during a meeting of the Committee of Ministers in Istanbul, Turkey. Followed by representatives of 12 other countries, namely Austria, Finland, France, Germany, Iceland, Luxembourg, Montenegro, Portugal, Slovakia, Spain, and Greece. With the signing of this convention, Turkey is committed to ensuring legal action for violence against women and domestic violence (Dünya Gazetesi, 2011).

Turkey submitted its instrument of ratification of Istanbul Convention to the Secretariat of the Council of Europe on March 14, 2012. However, since this convention deals with the personal rights of individuals and results in amendments in Turkish law, it must first be adopted and approved by the Grand National Assembly of Turkey before it is officially enforced. This is based on the provisions of Article 90 of the Turkish Constitution sections three and four which stated that:

The ratification of treaties made with foreign countries and international organizations on behalf of the Republic of Turkey, must be adopted by the Grand National Assembly of Turkey through ratification. Agreements governing economic, commercial, and technical relations covering a period of not more than one year can be entered into by official announcement. As long as it does not require a financial commitment and does not violate the individual status or property rights of Turkish citizens abroad. In such a case, the agreement must be known by the Turkish Grand National Assembly within two months of being announced. Agreements regarding the implementation of international agreements in economic, commercial, technical, or administrative matters are concluded depending on the

authorization granted by law, not requiring the approval of the Grand National Assembly of Turkey. However, agreements made under the provisions of this paragraph and affecting the economic, commercial, and personal rights of individuals will not take effect unless officially announced. Agreements resulting in amendments to Turkish law are subject to the provisions of the first paragraph. International treaties that are enforced carry the force of law. There was no appeal to the Constitutional Court in relation to this agreement, on the grounds that the agreement was unconstitutional. If there is a conflict between agreements that have been enforced, regarding basic rights, freedoms, and laws due to differences in provisions, the provisions of the international agreement apply (Turkey, 1982).

This convention took two years before it finally came into force on 1 August 2014. However, this convention has already been implemented in national law which was officially published in Official Gazette No. 28329 on March 8, 2012, through Law no. 6284 concerning Family Protection and Prevention of Violence against Women, which was prepared by the Ministry of Family and Social Policy (Fatma Şahin, 2012). The enactment of Law no. 6284 is in order to complete the law which is also related to the protection of the family and prevention of violence against women, which include: Law No. 6284 included (i) Turkish Constitution No. 2709, (ii) Turkish Criminal Code No. 5237, (iii) Turkish Criminal Procedure Code No. 5271, (iv) Turkish Civil Code No. 4721, (v) Law No. 4857 concerning Labor, and (vi) Child Protection Law no. 5395. Law no. 6284 has several advantages, such as the law has the aim of protecting families and preventing violence against women, using the definition of violence against women promoted in the Istanbul Convention, and providing preventive and protective measures to help victims.

In drafting the 2011 Istanbul Convention, the result was that the CoE formed the Ad Hoc Committee to Prevent and Combat Violence Against Women and Domestic Violence in 2008 and spent two years drafting a convention. Any country in the world can sign the Convention even if they are not members of EU nor located in Europe, and many use the document as a guide on how to deal with gender-based violence (Rodriguez, 2021).

2011 Istanbul Convention requires the government to adopt a punishing bill of domestic violence, harassment, marital rape and female genital mutilation (FGM). Specific forms of violence against women (VAW) mentioned in the Convention are as follows: physical and psychological violence, coercion and arbitrary deprivation of liberty, violence and sexual harassment, stalking, forced marriage, female genital mutilation, abortion and sterilization coercion, as well as sexual crimes committed in the name of so-called “honour” (CETS, 2011).

It is further stipulated that the implementation of the Convention by the parties “must be guaranteed without discrimination on any grounds such as sex, race, color, language,

religion, politics, opinion, national, social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, health condition, disability, marital status, migrant or refugee status, or other status. 2011 Istanbul Convention provides a comprehensive set of obligations for signatory countries. Istanbul Convention is an international human rights treaty initiated by the European Union and specifically targets the elimination of gender-based violence especially violence against women and domestic violence. After two years of preparation and negotiations, the agreement was opened for signature in 2011 in Istanbul. Turkey's foreign minister became the first signatory to the Istanbul Convention in 2012.

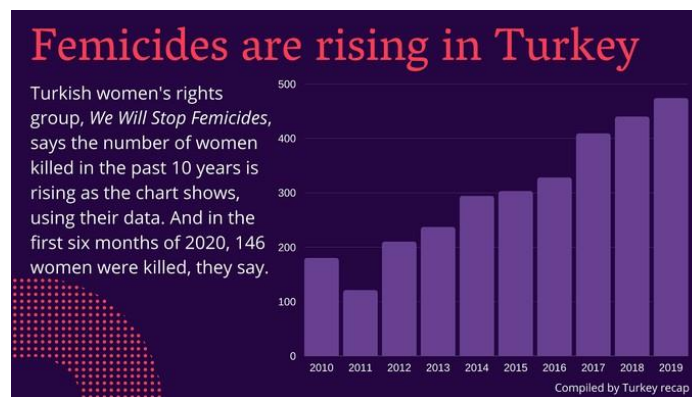
The Turkish parliament unanimously ratified the Istanbul Convention in 2012, the only piece of legislation that was unanimously approved during that legislative term. Turkish parliament stressed its full support for eradicating violence against women. On March 8 2012, Turkey also symbolically gave political support to commemorate International Women's Day and the parliament passed Law no. 6284 on gender – based violence. Turkey has officially ratified the Istanbul Convention. These obligations, apart from addressing all forms of violence against women and children within the framework of international human rights law, also include requiring state governments to invest in education, collecting data on gender- based crimes, and offering support services for victims (CETS, 2011).

As an international instrument, the Convention promotes and provides a legal basis for international cooperation in the protection of victims, in the investigation and prosecution of crimes covered by the Convention and in enforcement. The Convention also establishes a special monitoring mechanism (GREVIO) to ensure the effective implementation of its provisions by the parties. GREVIO is an independent expert body responsible for monitoring the implementation of the Council of Europe Convention on the Prevention and Eradication of Violence against Women and Domestic Violence or the 2011 Istanbul Convention by parties that have ratified it (GREVIO, 2017). 45 countries from the European Union have signed the Istanbul Convention, 34 of which have ratified the Istanbul Convention. Turkey was the first country to sign and ratify the Convention.

However, in March 2021, Turkey officially left the 2011 Istanbul Convention. Through a Presidential Decree contained in the Official Gazette Erdogan stated that Turkey was no longer ratifying the 2011 Istanbul Convention (Mada, 2021). Erdogan excluded the country he leads, Turkey, from the International Convention that prevents and combats violence against women and domestic violence, especially since the convention was held in Turkey.

Meanwhile, the 2011 Istanbul Convention is considered a progressive step and a steppingstone in international efforts to provide protection for women and children from sexual violence, especially in the domestic sphere. Instead, Turkey chose not to ratify it anymore regardless the fact that Turkey is shackled with all kinds of gender-based violence. Practically, Law 6284 on violence against women which was adopted on March 8, 2012, as part of the government's efforts to comply with the Istanbul Convention has not been effectively implemented. The Women's Committee of the Turkish Human Rights Association has called for abandoning the "policy of impunity" and fully implementing Law 6284. Erdogan promised that withdrawal from the Istanbul Convention would not impact the implementation of the existing law.

Unfortunately, it seems that there is no real political will to fight violence against women, even though Turkey is one of the countries with the highest femicide cases. The absence of political will from the Turkish government was further exacerbated by the attitude of Recep Tayyip Erdogan as the President of Turkey who declared Turkey to withdraw from the 2011 Istanbul Convention in March 2021. Erdogan's political promises only place more than 40 million Turkish women in a future full of uncertainty and shadows of repression. Therefore, this paper tried to examine and review why Turkey chose to leave the 2011 Istanbul Convention through the chosen theory.



**Figure 1 The Escalation of Femicide in Turkey**



## **B. Research Question**

Why did Turkey leave the 2011 Istanbul Convention?

## **C. Research Purpose**

This study aims to examine why Turkey no longer ratifies the 2011 Istanbul Convention.

## **D. Research Benefit**

The results of this study are expected to be a reference in research scientific works regarding Turkey's exit from the 2011 Istanbul Convention due to pressure from interest groups which were analysed using Structural Functional theory.

## **E. Theoretical Framework**

### **Structural – Functional by Gabriel Almond**

This approach that introduced by Almond is to understand the Political systems considered not only their structural components, the institutions but also their functions within the system. For Almond, a fuller understanding emerges only when one begins to examine how institutions act within the political process. In Almond's view, structural analysis can be demonstrated by the existence of interest groups, political parties, legislative bodies, executives, bureaucracies, and judicial bodies.

The functional analysis shows how these institutions and organizations interact to produce and implement a policy. The structural-functional approach is composed of several key components. As what Almond has described, interest groups served to articulate political issues; parties then aggregated and expressed them in a coherent and meaningful way; government in turn enacted public policies to address them; and bureaucracies finally regulated and adjudicated them (London, 2022).

According to Almond, the political system performs socio-political functions, recruitment, articulation of interests, aggregation of interests, policy making, implementation policies, policy settings, all of which is carried out by political communication. Political communication is not a stand-alone thing, but a delivery process of messages while other functions are running. This means that political communication runs inherent in every political system.

The application of government policies in output function affects economic life, structure social, and cultural from domestic society. The influence in society in turn, affected the subsequent demands in the political system and may increase or decrease the level of political allegiance to the public. In explaining the input and output functions of a political system, it is necessary to understand the existence of conversion as a process that marks the work of a political system.

In this conversion there is an interaction between political factors among individual, group, or organization. In line with the foregoing, Almond divides the functions into input and output functions (Sikander, 2015). Input function consists of political socialization and political recruitment, articulation of interests, aggregation of interests, political communication. Output function includes Policy making, implementation of policies, judgment policy.

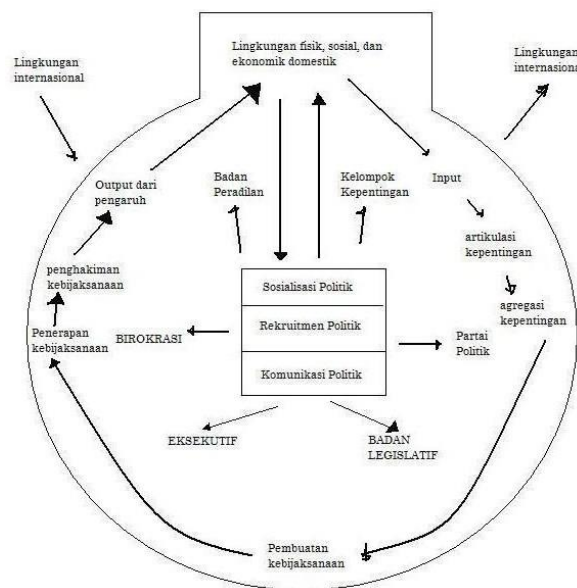
Political socialization is the process in which actual values are applied in society as well as ideal values instilled in certain objects. Political socialization in particular shapes political attitudes and behavior patterns of someone. In this case, political socialization acts as a means for a generation to convey their political beliefs to the next generations. Political socialization is a process by which a culture passes down civic values, beliefs, and habits of mind to succeeding generations. It refers to the largely unconscious process by which families, schools, communities, political parties, and other agents of socialization inculcate the culture's dominant political values. It is related to the effort of conservative in maintaining the status quo. To transmit political values, a means called agents of political socialization is needed.

Agent of political socialization include family, peer groups or close friends, schools, mass media, political parties, NGOs, government, and political organizations. Political recruitment is closely related to a person's political career. Through politics career, the person that is concerned is expected to undergo the selection process to fill the political and government positions.

Recruitment also refers to the ways by which citizens become active participants in the political system. Articulation of interests is basically a process that is pursued in order community needs and interests can be met. As a rule, needs and the public interest is expressed clearly through the organization and existing institutions. Aggregation of interests is a process whose function is to unite all interests of community members that have been articulated. The interests have articulated is combined and managed in such a way in the level

of manufacture decisions to produce a specific policy alternative. Political communication refers to the process of delivering messages or information politics from a source to a few message recipients. The message or information can be in the form of symbols, spoken or written words, as well as signals that can affect the position of someone who is at the top of a power structure certain.

Rulemaking is one of the output functions. Decision-making process consists of several the stage before it gives birth to certain policies. This stage includes articulation and interest aggregation. The application of a decision (rule application) is a process of undergoing existing regulations set. Typically, this function is carried out by the executive. Decision judgment or rule adjudication is the process of judging actions that are deemed deviant and violating predetermined rules. In essence, this function is intended to prevent fraud regulations implemented in community life. In accordance with the name then the institution authorized to carry out this function is an institution the judiciary (Fisher, 2018). Gabriel Almond's model of structural functional can be visualized as:



**Figure 2 Structural Functional Model**

## **F. Hypothesis**

Turkey withdrew from the 2011 Istanbul Convention because:

- Domestic factor: Pressure from conservative groups that succeeded in urging the AKP and Erdogan to exclude Turkey from the Istanbul Convention.
- International factor: Disappointment towards the European Union (EU), regarding:
  - Copenhagen criteria are against the norms and culture of Turkey
  - EU only gave an alternative partnership, instead of full accession
  - EU did not favor Turkey's demand about the extradition of Erdogan's political rival which is called as FETO (Fethullah Terrorist Organization).

## **G. Research Scope**

In the object of research, limitation of scope is needed in order to make the research specific and clear. The narrowing of the scope of research is also intended so that problems and studies do not widen from the discourse that has been set. In this thesis, the author will limit the research study by focusing on Erdogan's decision to no longer ratify the 2011 Istanbul Convention.

## **H. Research Methods**

In conducting this research, the author uses qualitative methods. The qualitative method was chosen because of its usefulness as an analytical tool to examine the decisions of Erdogan and the conservative ruling party, namely the *Adalet ve Kalkinma Partisi* (AKP) which no longer ratifies the 2011 Istanbul Convention. The data used in this research is secondary data, in which data collection techniques are obtained through the internet platform page belonging to the Human Rights group "We Will Stop Femicide", scientific journals, articles on the internet and physical books as well as electronic books (e-books). The data obtained were then analyzed using qualitative descriptive analysis techniques. These data were analyzed, then interpreted to obtain a complete picture of the answers to the problems studied.

## **I. Systematics of Writing**

### **Chapter I**

In this chapter, the author described the background, research question relevant to the background, theoretical framework, hypotheses, research scope, research objective, research methodology, and writing system.

### **Chapter II**

The chapter explained Turkey's decision to withdraw from the 2011 Istanbul Convention, the disappointment towards EU that was also triggered Turkey's exit from the Istanbul Convention, the views of interest groups and the AKP regarding LGBTQ+ and gender discourse. The author also elaborated the structural functional process of Gabriel Almond's model in the context of Turkey's exit from the Istanbul Convention.

### **Chapter III**

In this chapter, the author concluded the research that has written thoroughly.