

DISCOURSES ON UNIVERSALISM AND CULTURAL RELATIVISM IN
CRIMINAL CASES OF HONOUR-BASED VIOLENCE IN MIGRATION
CONTEXT: CASE OF GERMANY

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**DISCOURSES ON UNIVERSALISM AND CULTURAL RELATIVISM IN
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CONTEXT: CASE OF GERMANY**

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ABSTRACT

This dissertation examines the intersection of culture and law in cases of “honour-based violence” committed by male immigrants against female immigrants from Türkiye living in Germany. Drawing on feminist thinker Susan Moller Okin’s work on the tension between feminism and multiculturalism, the study aims to understand how culture is invoked and elaborated in cases of “honour-based violence” against women of immigrant background by examining two cases in Germany in detail. Debates around cultural relativism and the universality of human rights, multiculturalism and feminism, cultural defence, “honour-based violence”, femicide, “honour killings”, and gender-based violence, the international human rights framework provides the lens through which I look at these cases more closely. Using a document analysis and case study approach, the research closely examines two fatal cases of gender-based violence against women with immigrant backgrounds in Germany. The study scrutinises the stories of these two women and the cultural contexts in which their experiences unfolded by examining an auto/biography and a case file supported by different materials. Of the two cases in question, Zeynep was killed by her ex-husband, whereas Aylin Korkmaz miraculously survived an almost fatal attack. The study aims to understand how the law deals with culture in those cases. The extensive investigation of Aylin Korkmaz’s and Zeynep’s cases provides significant insights into the difficulty of dealing with honour-based violence within the context of migration in the German legal system. They highlight the dissertation’s main finding: While cultural narratives are undoubtedly invoked and part of the context, the legal system’s tendency to focus narrowly on the final act and specific legal definitions of motive (*Mord* vs *Totschlag*) frequently fails to recognise and adequately respond to the broader patterns of control, abuse, and violence rooted in patriarchal honour codes that unfold over time.

Keywords: Women’s Human Rights; Femicide; Honour-Based Violence; Cultural Justification; Cultural Offence

ÖZ

Bu tez, Almanya’da yaşayan ve Türkiye’den gelmiş erkek göçmenlerin kadın göçmenlere uyguladığı “namusa dayalı şiddet” vakalarında kültür ve hukukun kesişimini incelemektedir. Feminist düşünür Susan Moller Okin’in feminizm ile çokkültürlülük arasındaki gerilime ilişkin çalışmalarından hareket eden çalışma, Almanya’daki iki vakayı detaylı bir şekilde inceleyerek, göçmen kökenli kadınlara yönelik namusa dayalı şiddet vakalarında kültüre nasıl başvurulduğunu ve kültürün nasıl detaylandırıldığını anlamayı amaçlıyor. Kültürel görecelik ve insan haklarının evrenselliği, çokkültürlülük ve feminizm, kültürel savunma, “namusa dayalı şiddet”, kadın cinayetleri, “namus cinayetleri” ve toplumsal cinsiyete dayalı şiddet etrafındaki tartışmalar, uluslararası insan hakları hukuku çerçevesi bu vakalara daha yakından bakmamı sağlayan merceği oluşturuyor. Belge analizi ve vaka çalışması yaklaşımı kullanan araştırma, Almanya’da göçmen kökenli kadınlara yönelik toplumsal cinsiyete dayalı iki ölümcül şiddet vakasını yakından incelemektedir. Çalışma, bir oto/biyografi ve bir dava dosyasını inceleyerek ve farklı materyallerle destekleyerek bu iki kadının hikâyelerini ve deneyimlerinin ortaya çıktığı kültürel bağlamları irdelemektedir. Söz konusu iki vakadan Zeynep eski eşi tarafından öldürülürken, Aylin Korkmaz neredeyse ölümcül bir saldırıdan mucizevi bir şekilde sağ kurtulmuştur. Çalışmanın amacı bu durumlarda hukukun kültürü nasıl ele aldığını anlamaktır. Aylin Korkmaz ve Zeynep’in davalarının kapsamlı incelemesi, Alman hukuk sistemi içinde, göç bağlamında namus temelli şiddeti ele almanın zorluğuna dair önemli veriler sunuyor. Bunlar, tezin ana bulgusunu vurgulamaktadır: Kültürel anlatılar ele alınırken ve bağlamın bir parçasıyken, hukuk sisteminin dar bir şekilde nihai eyleme ve belirli saik tanımlarına (*Mord* ve *Totschlag*) odaklanma eğilimi, zaman içinde ortaya çıkan ataerkil namus kodlarında kök salmış daha geniş kontrol, taciz ve şiddet kalıplarını tanımada ve bunlara yeterli şekilde yanıt vermede sıklıkla başarısız olmaktadır.

Anahtar Kelimeler: Kadınların İnsan Hakları; Kadın Cinayetleri; Namusa Dayalı Şiddet; Kültüre Dayalı Meşrulaştırma; Kültürel Suç



*To my parents, Huriye and Mustafa Kemal Eryılmaz, for bringing me into this world
and making me who I am.*

*To my buddy in life and in the sea, Sabri Sevensör, and
My miracle daughter, Ela Deniz Sevensör, for the love and joy...
for all the moments of love and joy in this world...*

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LIST OF ABBREVIATIONS

AfD:	[<i>Alternative für Deutschland</i>] Alternative for Germany
BGH:	[<i>Bundesgerichtshof</i>] The German Federal Court of Justice
BKA:	[<i>Bundeskriminalamt</i>] The Federal Criminal Police Office
CDU:	[<i>Christlich Demokratische Union Deutschlands</i>] Christian Democratic Union of Germany
CEDAW Committee:	Committee on the Elimination of Discrimination against Women
CEDAW:	Convention on the Elimination of All Forms of Discrimination against Women
CEFM:	Child Early Forced Marriage
CoE:	Council of Europe
COST:	European Cooperation in Science and Technology
djb:	[<i>Deutscher Juristinnenbund</i>] The German Women Lawyers Association
ECtHR:	European Court of Human Rights
EIGE:	European Institute for Gender Equality
ENGv:	European Network on Gender and Violence
EŞİK Platform:	[<i>Eşitlik İçin Kadın Platformu</i>] Women's Platform for Equality
EU:	European Union
FGC:	Female genital cutting
FGM:	Female genital mutilation
GA:	General Assembly
GREVIO:	Group of Experts on Action against Violence against Women and Domestic Violence
HBV:	“Honour-Based Violence”
HRC:	Human Rights Council
HRV:	“Honour-Related Violence”
ICCPR:	International Covenant on the Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights

IKWRO:	Iranian and Kurdish Women's Rights Organization
Istanbul Convention:	Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence
KOÇ-KAM:	The Center for Gender Studies at Koç University
PKS:	[<i>Polizeiliche Kriminalstatistik</i>] Police Crime Statistics
SPD:	[<i>Sozialdemokratische Partei Deutschlands</i>] Social Democratic Party of Germany
StGB:	[<i>Strafgesetzbuch</i>] German Penal Code
StPO:	[<i>Strafprozessordnung</i>] German Code of Criminal Procedure
UDHR:	Universal Declaration of Human Rights
UK:	United Kingdom
UN:	United Nations
UNDESA:	United Nations Department of Economic and Social Affairs
UNHCR:	United Nations High Commissioner for Refugees
UNICEF:	United Nations Children's Fund
UNODC:	United Nations Office on Drugs and Crime
UNSRVAW:	UN Special Rapporteur on Violence against Women, Its Causes and Consequences
US:	United States
USA:	United States of America
VAW:	Violence Against Women
WGDAWG:	Working Group on discrimination against women and girls
WHO:	World Health Organization

INTRODUCTION

This dissertation critically examines the concept of “honour-based violence” (HBV) within the framework of women’s human rights and the discourse surrounding cultural defence arguments. Focusing on both theoretical and practical dimensions, I employed qualitative research to analyse two criminal cases of gender-based violence against women with immigrant backgrounds in Germany. I elaborated on the socio-legal challenges regarding cultural relativism and universal human rights approaches. The research is grounded in the theoretical tensions between multiculturalism and feminism, universal human rights and cultural relativism, and the notions of cultural offence and cultural defence, which collectively inform the analytical approach.

The research does not intend to make generalisations about the patterns of HBV. Instead, it focuses on two specific cases to demonstrate how the culturally embedded notion of honour shaped the judicial decision-making process. Focusing on particular cases enables us to show how honour-based violence remains ambiguous in judicial decisions, media reports, and public perceptions. For this reason, a case-study methodology is adopted, as it facilitates an in-depth examination of intricate social, cultural, legal and ethical conflicts. This approach allows for a comprehensive analysis of intersecting factors such as gender, ethnicity, migration status, and legal frameworks, all essential for a nuanced understanding of HBV.

In 2017, the United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW Committee) adopted General Recommendation No. 35, which provides comprehensive guidance for accelerating the elimination of gender-based violence against women¹. This document recognises the prohibition of gender-based violence as a principle of customary international law, expanding the understanding of

¹ UN CEDAW Committee. 2017. *CEDAW General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19*. Accessed March 1, 2023. <https://docs.un.org/en/CEDAW/C/GC/35>.

such violence to encompass violations of sexual and reproductive health rights and underscoring the obligations of states to exercise due diligence in preventing, investigating, and punishing acts of violence. At the regional level, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) stands as another comprehensive regional human rights instrument². It obliges states parties to prevent gender-based violence, protect the victims, prosecute and punish perpetrators, and develop comprehensive policies aimed at the elimination of violence against women and domestic violence.

Aylin and Zeynep³, the two immigrant women whose stories are explored in this study, endured distinct forms of gender-based violence at various stages of their lives. During their marriages and following their divorces, they experienced violence from their husbands (later ex-husbands), including physical, emotional/psychological, sexual and economic abuse. Coercive control and stalking also existed in their narrative (Stark, 2007; Stark, 2013; Stark and Hester, 2019). They were subjected to pressure rooted in traditional moral values and gender norms. At the same time, they sought to integrate into the host society by learning the language and engaging in employment. Despite their efforts to live free from violence, both ultimately faced fatal attacks. Aylin survived, whereas Zeynep died because of the attack. Their vulnerabilities, including limited access to social and legal support mechanisms, the challenges posed by their migrant and residence status, and initial skill deficits such as language barriers, disempowered them and perpetuated the cycle of violence. These factors align with existing research findings on violence against immigrant women (Menjívar and Salcido, 2002; Sokoloff and Dupont, 2005; Sokoloff, 2008; Thiara et.al., 2011).

The criminal justice processes for these two fatal crimes were analysed using epistemologically different resource materials. In Aylin's case, she survived. She was able to participate in the court process as a co-plaintiff represented by two lawyers. She publicly told her story (TV programs, interviews, news reports, documentaries, etc.) and

² Council of Europe, 2011. *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*. Accessed March 1, 2023. <https://rm.coe.int/168008482e>.

³ For reasons of confidentiality and ethical research practice, the name of the victim has been changed. From here onwards, the pseudonym 'Zeynep' Zeynep will be used to denote the same person.

published a book to share her experience, from her childhood until after the crime. Her ex-husband was sentenced to 13 years in prison for attempted murder but was released after 6,5 years and extradited to Türkiye as a free man. In Zeynep's case, the perpetrator was sentenced to 7,5 years for manslaughter. This dissertation will examine the judicial discourse surrounding these two cases, investigating whether judges, prosecutors, and lawyers recognised the crimes as gender-based violence within the framework of honour-based violence. Additionally, the study will analyse references to "culture", "tradition", "archaic values", and "gender norms" within the legal proceedings.

The prohibition of gender-based violence under CEDAW General Recommendation No. 35 and the Council of Europe Convention (Istanbul Convention), along with the "due diligence" obligation on states, has established a robust framework for protection, prevention, prosecution, and policy development to combat violence against women. However, in practice, the language used in case analysis, and frequent references to the traditions and cultural practices of immigrant families and communities, often obscure the core issue of "honour crimes." These crimes are frequently rooted in patriarchal cultural motivations, which, as affirmed by international human rights treaties and related jurisprudence, cannot serve as legitimate excuses for violence against women. Despite the legal framework, there remains a widespread pattern of injustice and indirect "impunity" for perpetrators, as cultural justifications are sometimes allowed to mitigate or overshadow accountability. This dissertation challenges prevailing narratives by critically examining how social science perspectives and legal reasoning intersect, arguing that the boundaries between these disciplines must be eroded to more effectively address the underlying gendered dynamics of HBV. By doing so, it seeks to refocus attention on the core principle that cultural motivations cannot justify crimes against women, as established in international human rights law. It argues that an effective legal and policy response to HBV must move beyond simplistic binaries such as "modern" versus "traditional," "culture" versus "rights", "us" versus "them", "minority" versus "majority", "immigrant" versus "host." Instead, it should address the deeper structural, relational, and moral dynamics that sustain gender-based violence against women in all societies. International standards emphasise that HBV is not confined to any one community or culture; rather, it is a manifestation of gender inequality and discrimination,

which must be tackled through comprehensive measures. Crucially, I reiterate that there is no justification for gender-based violence, including HBV. Legal responses should ensure that “honour” is never accepted as a defence or a mitigating factor, and that all victims are protected and perpetrators held fully accountable, regardless of the cultural context in which the violence occurs.

1.1. Global and Local Context

Following the Second World War, the international community adopted a set of universal human rights norms to safeguard human dignity and promote the well-being of all individuals. However, the human rights framework has been subject to sustained critique, particularly regarding the implicit assumptions embedded within its conception of the “human” and the cultural values upon which these rights were constructed. Feminist scholars and activists have persistently interrogated the extent to which women have been recognised as full rights-bearing subjects within this paradigm. The international women’s movement played a crucial role in advocating for the inclusion of women’s gender-specific needs and lived experiences in the development of human rights norms. This advocacy culminated in the adoption of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979⁴. Coming into force in 1981, CEDAW has since functioned as the “Constitution” to protect and promote women’s human rights.

Conversely, the assertion that universal human rights are fundamentally grounded in Western liberal thought has generated scholarly debate concerning the inherent tension between universalism and cultural relativism. This tension became increasingly salient in the post-Cold War era, as identity politics gained prominence and foregrounded questions of cultural specificity and group-based rights. These debates are particularly pronounced in the context of women’s rights, where various forms of gender-based violence are

⁴ United Nations. 1979. *Convention on the Elimination of All Forms of Discrimination against Women*. Accessed March 1, 2023. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

frequently legitimised through appeals to cultural traditions, social norms, or religious beliefs. Different forms of gender-based violence against women are often justified based on cultural traditions and social norms even though Article 4 of the United Nations Declaration on the Elimination of Violence (1993) obligates that “States should condemn violence against women and should not invoke any *custom, tradition or religious consideration* to avoid their obligations concerning its elimination.”⁵ CEDAW General Recommendation No. 35 on gender-based violence, which was adopted by the CEDAW Committee in 2017 and updated General Recommendation 19 (1992) on violence against women⁶, declared that the prohibition of gender-based violence has evolved into a principle of “customary international law.”⁷

For the past twenty years, my colleagues and I have been working to strengthen women’s human rights in Türkiye through our work at the Human Rights Law Research Center of Istanbul Bilgi University. Since 2005, I have been actively involved in various projects promoting gender equality and struggling with discrimination against women. My work has focused on training legal professionals, conducting research and promoting international human rights standards for women at the domestic level.

I have contributed to various projects, including training seminars on women’s human rights for lawyers, judges, and prosecutors in Türkiye alongside my colleagues. We designed and organised seminars with distinguished speakers on gender equality, violence against women, and international human rights mechanisms. Additionally, we conducted research and disseminated our findings through publication. The training seminars primarily focused on the international standards of women’s human rights, preventing discrimination and violence against women. We also compiled the international standards

⁵ United Nations. 1993a. *Declaration on the Elimination of Violence against Women*. Accessed March 1, 2023. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women>.

⁶ In 1992, the CEDAW Committee made the definition of violence against women as “violence which is directed against a woman because she is a woman or that affects women disproportionately” and declared that it constituted a violation of their human rights. Please see UN CEDAW Committee. 1992. *CEDAW General Recommendation No. 19 on Violence against Women*. Accessed March 1, 2023. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FGEC%2F3731&Lang=en.

⁷ (UN CEDAW Committee, 2017).

of women’s human rights in thematic chapters as an open-source reference book in Turkish in 2010.

Our goal is to improve the understanding of international norms regarding women’s human rights among legal professionals. We aim to encourage the application of these norms in actual instances of discrimination and gender-based violence, ensuring that human rights instruments function as guiding principles in legal practice.

Our compass is the last paragraph of Article 90 of the Constitution of the Republic of Türkiye, stating that:

“International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. (Sentence added on May 7, 2004; Act No. 5170) In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.”⁸

Since Türkiye is a State Party to the main international human rights conventions under the United Nations (UN) and the Council of Europe (CoE)⁹ framework, this constitutional provision provides a basis to interpret the cases from a broader perspective.

Despite this constitutional provision empowering legal practitioners in Türkiye to refer to international conventions on fundamental rights and freedoms, there remains a significant knowledge gap among legal professionals in international norms and standards on gender equality and a reluctance to use international human rights documents in their reasoning. It was surprising for us to meet with young female lawyers in our training seminars who had not been well-informed about the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is generally accepted as the Constitution of women’s human rights, during their formal undergraduate legal education, even though CEDAW came into effect for Türkiye since 1985.

⁸ Republic of Türkiye, Department of Laws and Resolutions. 2019. *Constitution of the Republic of Türkiye*. Ankara: GNAT Printing House. Accessed March 1, 2024. <https://cdn.tbmm.gov.tr/TbmmWeb/Icerik/Dosya/2e5836e4-4d42-4255-92ff-7e749130096c.pdf>.

⁹ Developments regarding the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) will be explained in the following pages.

The deficiency in acknowledging gender issues and incorporating international standards of women's human rights into legal education¹⁰ is a significant gap in the curriculum of law faculties. This substantial omission in the curriculum of law faculties has endured despite the contributions made by various feminist law instructors to the academic area through their essays, books and lectures that adopt the standpoint of feminist legal theory. Additionally, established gender stereotypes prevalent among legal professionals – such as judges, prosecutors, and lawyers, who are as deeply involved in and influenced by patriarchal societal norms as the other members of society – further hinder the adoption of international standards that advocate for women's rights.

Gender, as defined in Article 3 (c) of the Istanbul Convention, refers to the roles, behaviours, activities, and attributes that society considers appropriate for women and men. These roles are recognised as socially constructed rather than innate. The drafters of the Istanbul Convention provide further explanation on “gender” in the Explanatory Report of the Istanbul Convention and state that to overcome such gender roles, Article 12 (1) obligates the signatories to *eradicate prejudices, customs, traditions and other practices which are based on the idea of the inferiority of women or stereotyped gender roles as a general obligation to prevent violence*.¹¹ The drafters also emphasised the gendered nature of the violence against women and domestic violence, which means that these complex problems need to be addressed, *bearing the prevailing inequality between women and men in mind*.¹² Thus, they point out the complex and mutually reinforcing relationship between gender equality and violence against women.

Similarly, Article 5 (a) of the CEDAW is about changing gender roles. It obligates State Parties “to modify the social and cultural patterns of conduct of men and women, with a

¹⁰ Özge Yücel from Atılım University Faculty of Law scanned the course catalogues of all law faculties in Türkiye in 2017 – 2018 academic year through the official websites within the scope of her research and found out that at least one course on gender was offered to law students in only 21 law faculties out of 62. (Yücel 2020, 847). Since in one of the faculties the course was not actively offered at the time of the research, a course on gender was identified only in 20 law faculties.

¹¹ Council of Europe. 2011. *Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*. Accessed March 1, 2023. <https://rm.coe.int/ic-and-explanatory-report/16808d24c6>. *Italic by the author*.

¹² Council of Europe. 2011. *Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*. Accessed March 1, 2023. <https://rm.coe.int/ic-and-explanatory-report/16808d24c6>, paragraph 43. *Italic by the author*.

view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”.

All human rights conventions, especially CEDAW and its Optional Protocol¹³ and the Istanbul Convention, are the primary texts we used as a compass in our training seminars. However, we focused not only on legally binding documents but also soft-law texts such as General Recommendations and General Comments by the relevant human rights mechanisms explaining specific articles or topics, such as gender-based violence or gender equality within the family, as well as the Concluding Comments made by CEDAW Committee on State Party Reports and Shadow Reports provided by NGO’s.

Istanbul Convention was opened for signature at the Council of Europe meeting held in Istanbul on 11 May 2011. Therefore, it was briefly named as the Istanbul Convention. Türkiye was the first to sign the Convention, and the Convention was accepted unanimously in the Turkish Grand National Assembly on 24 November 2011; thus, Türkiye became the first country to ratify the Istanbul Convention in its parliament with Law No. 6251 published in the Official Gazette numbered 28127 dated 29 November 2011.¹⁴ Following this approval, it impacted many domestic legal regulations, especially Law No. 6284 on the Protection of the Family and the Prevention of Violence Against Women and the Turkish Penal Code No. 5237, and it became a part of domestic law. The Convention entered into force on 1 August 2014 for all ratifying states after ten signatories completed the process of becoming a party to the Convention.

Two years before the Istanbul Convention was signed by Türkiye, on 9 June 2009, the European Court of Human Rights (ECtHR) had a landmark judgement on the issue of domestic violence against Türkiye. In the *Opuz v. Türkiye* case, the ECtHR identified that the Turkish authorities had failed to protect Nahide Opuz and her mother from the

¹³ United Nations. 1999. *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*. Accessed March 1, 2023. <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-elimination-all-forms>.

¹⁴ The Istanbul Convention was approved by a decision of the Council of Ministers dated 10 February 2012, numbered 2012/2816, published in the Official Gazette dated 8 March 2012 and numbered 28227 (Repeated), clearly referring to the Approval Law No. 6251.

violent attacks of her husband for years. Despite numerous complaints and criminal charges against the husband, both the police and the judiciary displayed a lack of due diligence in preventing further abuses, finally resulting in the death of Opuz's mother. The case revealed a pattern of escalating violence against Nahide Opuz and her mother. In its 2009 judgement, the Court held that Türkiye had violated Article 2 (right to life) and Article 3 (prohibition of torture) in conjunction with Article 14 (prohibition of discrimination) of the European Convention on Human Rights.

The case was pivotal in recognising gender-based violence as a manifestation of discrimination and that the State has a positive obligation to take active measures in preventing and responding to such violence. The Court, for the first time, acknowledged that the failure to address gender-based violence constitutes a violation of Article 14 of the Convention, which relates to non-discrimination. The Court noted that:

“...the general and discriminatory judicial passivity in Türkiye, albeit unintentional, mainly affected women...the violence suffered by the applicant and her mother may be regarded as gender-based violence, which is a form of discrimination against women. Despite the reforms carried out by the Government in recent years, the overall unresponsiveness of the judicial system and impunity enjoyed by the aggressors, as found in the instant case, indicated that there was insufficient commitment to take appropriate action to address domestic violence.”¹⁵

This judgement had extensive consequences for the protection of victims of domestic violence in all member states of the Council of Europe. As a sign of Türkiye's commitment to zero tolerance of domestic violence and violence against women, Türkiye was the first country to sign and ratify the Istanbul Convention.

Despite widespread protests by women's rights organisations, Türkiye announced its withdrawal from the Istanbul Convention by Presidential Decree on the night of 20 March 2021. The decision became official on 1 July 2021 and marked a serious setback for legal safeguards against gender-based violence. Soon after the official withdrawal, the murderer of Pınar Gültekin¹⁶ announced that “it was good to cancel the Istanbul

¹⁵ European Court of Human Rights. 2009. *Case of Opuz v. Türkiye, Application No. 33401/02, Judgment of 9 June 2009, para. 200*. Accessed March 2, 2023. <https://hudoc.echr.coe.int/tur#%7B%22itemid%22%3A%22001-92945%22%7D>.

¹⁶ Pınar Gültekin was a female university student murdered in Muğla province of Türkiye by Cemal Metin Avcı brutally. He strangled her, put her body in a barrel, set fire by using gasoline and put concrete to get rid of the body. It was later found out that she was alive when she was burned. The perpetrator was

Convention”.¹⁷ It was just one example of how the perpetrators of violence against women and domestic violence have been encouraged by the withdrawal from the Convention. Years before the withdrawal from the Istanbul Convention, in 2015, one man in Kayseri killed his wife, who wanted to get divorced from him, and answered the journalist who asked why he killed his wife: “I used my right to kill, I learned such a right recently”.¹⁸ The troubling question arises: What aspects of the state’s policies – or lack thereof – or what kind of judicial practices¹⁹ contribute to a social mindset where some men believe they have the entitlement to kill their partners and to express it without any hesitation? The withdrawal from the Istanbul Convention, therefore, exacerbated the situation.

Both before and after the withdrawal, there have been continuous discussions and debates in Türkiye over the consequences for women’s rights and protection of women; the withdrawal had repercussions in the international arena. The primary stakeholder in this debate is the women’s movement in Türkiye, which has been active since the 1980s. Women’s rights organisations, academics, and activists formed an alliance in Türkiye titled Women’s Platform for Equality (*EŞİK Platform – Eşitlik İçin Kadın Platformu*). The Platform came together initially in 2020 as a response to the debates on amnesty attempts for the perpetrators of child sexual abuse at the parliament as Turkish Penal Code 103 Women’s Platform (*TCK 103 Kadın Platformu*). Then, the debates on withdrawal started, and the Platform continued with a name with broader connotations and changed its name to EŞİK Platform as of 1 August 2020. Since then, the EŞİK Platform has

sentenced to aggravated life imprisonment, but then the lower court applied provisions of unjust provocation and decreased his sentence to 23 years.

The Appeal Court in Izmir lifted the reduced sentence and sentenced him to aggravated life imprisonment. On February 2, 2025, the judgement was overturned by the Court of Cassation. The reasoning for the judgement by the Court of Cassation was that the act was not committed premeditated and with cruel intent and ‘unjust provocation’ clause should be applied in the case (BirGün, 2025).

¹⁷ Gazete Duvar. 2024. “Gültekin’i Katleden Avcı: İstanbul Sözleşmesi’nin İptal Edilmesi İyi Oldu.” *Gazete Duvar*. Accessed May 5, 2024. <https://www.gazeteduvar.com.tr/gultekini-katleden-avci-istanbul-sozlesmesinin-iptal-edilmesi-iyi-oldu-haber-1528356>.

¹⁸ Milliyet. 2015. “‘Öldürme Hakkımı Kullandım’ Demisti.” *Milliyet*, January 26, 2015. Accessed May 5, 2024. <https://www.milliyet.com.tr/gundem/oldurme-hakkimi-kullandim-demisti-2004149>. The perpetrator was sentenced to aggravated life imprisonment.

¹⁹ Eylem Ümit Atılgan calls this judicial practice as “masculinist complicity” in her meticulous study on “unjust provocation” (Atılgan-Ümit, 2024: 1497).

conducted many campaigns to safeguard women's rights in Türkiye, which is under threat in many places worldwide. One of the campaigns was on the decision to withdraw from the Istanbul Convention. As women's rights organisations, I claim that the Istanbul Convention is still an important reference document in cases of violence against women and domestic violence in Türkiye.

In the official declaration published by the Presidency of the Republic of Türkiye, Directorate of the Communications, the justification for the withdrawal was announced as follows:

“The Istanbul Convention, originally intended to promote women's rights, was hijacked by a group of people attempting to normalise homosexuality – which is incompatible with Türkiye's social and family values. Hence the decision to withdraw.”

The official declaration continued that Türkiye was not the only country to have serious concerns about the Istanbul Convention.²⁰ It was mentioned that six EU countries (Bulgaria, Hungary, Czechia, Latvia²¹, Lithuania, and the Slovak Republic) did not ratify the Convention. Poland has taken steps to withdraw from it. The official declaration reflected the trend of the “backlash” against women's rights globally; in many countries, there were moves to cancel the positive steps taken in terms of women's rights. As identified in the position paper on gender equality and gender backlash of the Working Group on Discrimination against Women and Girls (WGDAGW) in 2020:

“..., there has been a significant backlash in recent years against women's rights and use of the term gender. The term gender was originally conceptualised to explain and challenge the systematic oppression of women and, after the Beijing Conference, was considered one of the key concepts in international human rights. Now, twenty-five years later, not only has the term gender been attacked as imposing ‘gender ideology,’ many of the hard-won victories for women, particularly in the area of sexuality and reproduction, gender-sensitive education and even gender-

²⁰ Presidency of the Republic of Türkiye, Directorate of Communications. 2021. *Statement Regarding Türkiye's Withdrawal from the Istanbul Convention*. March 22, 2021. Accessed May 5, 2024. <https://www.iletisim.gov.tr/english/haberler/detay/statement-regarding-turkeys-withdrawal-from-the-istanbul-convention>.

²¹ Latvia later ratified the Convention on 10 January 2024, and it came into effect in Latvia as of 1 May 2024. Please see Council of Europe. n.d. *Chart of Signatures and Ratifications of Treaty 210: Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*. Accessed March 1, 2023. <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty=210>.

based violence, are at risk. The COVID pandemic and measures taken by some states in response, have only worsened the situation”.²²

In 2024, the WGDAGW prepared an annual thematic report on the escalating backlash against gender equality and the urgency of reaffirming substantive equality and the human rights of women and girls:

“Since its establishment in 2010, the Working Group has underlined that progress in advancing gender equality has not been linear and has noted both positive reforms and regressions. In 2018, on the basis of what it was able to observe and document during its first six years of work, the Working Group warned about the resurgence of a conservative and retrogressive narrative in international forums and at the national level, accompanied by attempts to reinstate policies or legislation that are harmful to women and girls, especially in the areas of family life and bodily autonomy. Six years later, it is with the greatest concern that the Working Group observes that the backlash against women’s and girls’ human rights is intensifying and has reached extreme proportions in certain countries”.²³

The WGDAGW gave the example of Iran’s hijab law as an example that can amount to gender apartheid. Afghanistan is another case where practices that amount to gender apartheid, like the racial apartheid period in South Africa.

On June 24, 2022, the Supreme Court in the United States (US) issued a landmark decision in *Dobbs v. Jackson Women’s Health Organisation*, which essentially changed the legal framework governing abortion rights in the United States. The decision

²² In 2010, during its fifteenth session, the Human Rights Council adopted by consensus resolution 15/23 to establish a Working Group on the issue of discrimination against women in law and in practice. The mission name was modified from the Working Group on discrimination against women in law and practice to the Working Group on discrimination against women and girls when it was renewed in June 2019 via resolution 41/6. The mandate was extended in June 2022 with resolution 50/18.

One of the issues in focus of the WGDAGW is gender equality and gender backlash. For the full text of the guidance document of the WGDAGW on “gender equality and gender backlash” please see United Nations Human Rights Council, Working Group on Discrimination against Women and Girls. 2024. *Gender Equality and Gender Backlash: Guidance Document of the Working Group on Discrimination against Women and Girls, A/HRC/WG.11/41/2*. Geneva: United Nations General Assembly. October 31, 2024. Accessed February 1, 2025. <https://docs.un.org/en/A/HRC/WG.11/41/2>. The WGDAGW also prepares thematic reports within its mandate. For more information about the mandate please see United Nations Human Rights Council. n.d. *Working Group on Discrimination against Women and Girls*. Accessed February 1, 2025. <https://www.ohchr.org/en/special-procedures/wg-women-and-girls>.

²³ United Nations Human Rights Council, Working Group on Discrimination against Women and Girls. 2024. *Escalating Backlash against Gender Equality and Urgency of Reaffirming Substantive Equality and the Human Rights of Women and Girls: Report of the Working Group on Discrimination against Women and Girls, A/HRC/56/51*. Geneva: United Nations General Assembly. May 15, 2024. Accessed February 1, 2025. <https://docs.un.org/en/A/HRC/56/51>.

overturned the precedents set by *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992), which had established and maintained the constitutional right to an abortion for nearly five decades.

Almost 50 years after *Roe v. Wade*, in 2022, the majority of the Supreme Court held that abortion is neither a constitutional right nor a fundamental right implied by the concept of liberty. Individual states of the US are allowed to regulate any aspect of abortion based on their judgment. The ruling immediately affected laws across the states. Some states had laws designed to ban or severely restrict abortions as soon as the Supreme Court overturned *Roe v. Wade*. As a result, access to abortion varies significantly from one state to another, and in some states, it is largely restricted.

After the *Dobbs* ruling by the US Supreme Court, UN High Commissioner for Human Rights Michelle Bachelet reiterated the importance of human rights safeguards for abortion and criticised the negative consequences the decision will have on the fundamental rights of millions of individuals, particularly those with low incomes or from racial and ethnic minority groups, drawing attention to the intersectionality of the ruling's effects. The UN Committee on the Elimination of Racial Discrimination expressed deep concern regarding the verdict in *Dobbs* and advised the United States to tackle the unequal consequences the decision will have on individuals belonging to racial minority groups, Indigenous communities, and those with limited financial resources.

The decision caused widespread protests and significant public debate. It also became a central issue in political campaigns. The judgment is a stark example of the fragility of women's rights. The right to abortion is directly linked to women's sexual and reproductive health and freedom. The decision made by nine judges of the US Supreme Court, only three of whom were women, has had far-reaching repercussions not only in the US but also as a global indicator of the backlash against women's human rights.

On the other hand, in France, the Congress guaranteed the right to abortion within the French Constitution in March 2024. The right to abortion was incorporated into the French Constitution as a sign of commitment to reproductive rights. The abortion issue, as a toy of law and politics, swings like a pendulum on women's bodies.

Deniz Kandiyoti offers the concept of “masculinist restoration” (*eril restorasyon*) instead of “backlash” discourse (Kandiyoti, 2016; 2025a; 2025b). Kandiyoti emphasises that the attack on feminist gains is not reactionary, but the patriarchal norms and male dominance are restated in a more systematic process (Kandiyoti, 2025a; 2025b). She explains how political, economic, and social changes have provoked a reassertion of “traditional masculinity” and “male dominance”, particularly in response to perceived threats to patriarchal structures.

We are talking and thinking about these issues at a time when humanity is exploring new destinations in the universe to inhabit, with recent advancements exceeding our imagination. Research is underway on the dark side of the moon and Mars, another planet in the solar system. The rapid development of artificial intelligence will likely significantly impact all areas of society soon. Yet, despite such technological progress, it is striking that humanity fails to prevent the deaths of women simply because of their gender.

How can we continue to grapple with issues like child marriages, early and forced marriages and female genital mutilation? As Yakın Ertürk expressed in her report on the intersection between culture and violence against women, “culture has often been used as a cloak to disguise violence against women and girls. Culture must be critically examined, not romanticised” (Ertürk 2007). As highlighted in the report, I take culture not as static or essential but historically constructed and dynamic, shaped by political, economic and social contexts.

After completing my Political Science and International Relations studies, I began my career at the Human Rights Law Research Centre. I have been working with the graduates and members of the Faculty of Law. This experience allowed me to gain insight into the perspective of legal professionals, both as academics and practitioners. I have long been fascinated by the interplay between law and politics and their intersection with sociology.

Despite initial warnings from my colleagues about the challenges ahead -advice that “the best dissertation is a finished one”- I could not abandon this topic. Without any knowledge of German and lacking a law degree, I embarked on this dissertation. As it turned out, my

colleagues were correct; completing this dissertation became a long and tiring journey. I must also admit that engaging with women's painful stories was compelling psychologically as well. As a feminist female researcher, I deeply felt the injustices they faced.

Completing this dissertation took almost 14 years. The idea for this research began to take shape in the second half of 2011. It was sparked by reading Susan Moller Okin's work on multiculturalism and feminism, coupled with the attempted murder case of Aylin Korkmaz in Germany, who had an immigrant background from Türkiye. I should note that this journey has not ended, though it has reached a specific milestone for now. The issue I focused on continues to pose a dilemma for contemporary societies and their actors.

Our world is characterized by diversity and plurality, with no society existing as a truly homogeneous entity. This reality creates a profound paradox: despite international human rights normative frameworks designed to protect women from discrimination and violence, women and girls continue to experience severe rights violations (including threats to their right to life and freedom from violence) often within their own homes, at the hands of those closest to them. This contradiction is particularly troubling when examining the gap between normative standards and lived experiences. International instruments like CEDAW and regional conventions establish clear obligations for states to protect women from violence. Yet implementation remains deeply problematic across diverse legal and cultural contexts and the role of states in this ongoing crisis is particularly concerning. The consequences are severe: widespread injustice for women victims and impunity for perpetrators, which means that plural legal systems can sometimes operate to women's disadvantage, particularly when patriarchal institutions maintain the status quo without adapting to contemporary human rights standards.

Patriarchal practices may be employed differently in each culture. It can take place on a vast spectrum, from ending a woman's life to suppressing the talents of an exceptionally gifted woman for the rest of her life. While a woman in Batman, Türkiye, is forced to commit suicide by her family, a talented German woman in Berlin has the freedom to go to a bar but her talents may be ignored for the rest of her life. Patriarchy permeates every

culture, as well as the realms of law, politics, and the economy. Much like Agent Smith in *The Matrix*, it disguises itself by assuming the appearance of those it infiltrates, rendering itself invisible as it subtly embeds within cultural norms, political systems, economic structures, and legal frameworks.

There are diverse and context-specific ways in which patriarchy operates. In line with this diversity, women develop diverse strategies:

“Different forms of patriarchy present women with distinct “rules of the game” and call for different strategies to maximize security and optimize life options with varying potential for active or passive resistance in the face of oppression” (Kandiyoti, 1988: 274).

Despite these strategies, one consistent and devastating outcome remains: the widespread prevalence of violence against women and girls. Violence against women and girls is the most widespread human rights violation in the world. According to the World Health Organization (WHO), one in three women globally has been subjected to sexual or physical violence by a partner or a family member at least once in their lifetime, or sexual violence by someone they are not in a close relationship with, or both.²⁴ The rate of gender-based violence increases to 70% for women in conflict, war or crisis zones. According to UN Women data, a woman was killed every 10 minutes in the world in 2023, globally reaching 85.000 women and girls. 60% of these homicides (51.100) were committed by their partners or family members in 2023.²⁵

Amartya Sen stated in an article published in 1990 that more than 100 million women were “missing” worldwide. Sen’s calculations indicated that the female population was lower than anticipated in specific locations, because of gender discrimination, as indicated by demographic data:

“These numbers tell us, quietly, a terrible story of inequality and neglect leading to the excess mortality of women.

²⁴ World Health Organization. 2024. *Violence against Women: Key Facts*. March 25, 2024. Accessed February 1, 2025. <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

²⁵ UN Women. 2024. “One Woman or Girl Is Killed Every 10 Minutes by Their Intimate Partner or Family Member.” *UN Women*, November 25, 2024. Accessed February 1, 2025. <https://www.unwomen.org/en/news-stories/press-release/2024/11/one-woman-or-girl-is-killed-every-10-minutes-by-their-intimate-partner-or-family-member>.

...

To account for the neglect of women, two simplistic explanations have often been presented or, more often, implicitly assumed. One view emphasizes the cultural contrasts between East and West (or between the Occident and the Orient), claiming that Western civilization is less sexist than Eastern...

The other simple argument looks instead at stages of economic development, seeing the unequal nutrition and health care provided for women as a feature of underdevelopment, a characteristic of poor economies awaiting economic advancement.

There may be elements of truth in each of these explanations, but neither is very convincing as a general thesis" (Sen, 1990).

The claim that "Western civilisation" is less sexist than Eastern cultures overlooks the deeply rooted sexism and misogyny that have been present throughout Western culture and history. For instance, just the recent Gisèle Pelicot case exposed how systemic and pervasive sexism is in Western cultures. According to the investigations, Pelicot was subject to rape by 50 men more than 200 times in an unconscious state for over 10 years. Medical institutions and actors did not capture Pelicot's suffering for nearly a decade. Despite numerous medical appointments for symptoms of abuse, no physicians suspected drug-facilitated sexual violence. Her husband meticulously coordinated and documented the crimes. Pelicot reversed the narrative of shame by choosing to go public and reveal the full suffering in public court, thus requiring that perpetrators bear the responsibility, rather than victims, which was a groundbreaking act on the side of the victims of gender-based violence.²⁶

The argument that it is because of "underdevelopment" that women are neglected is also negated by the following quotation from the UNSRVAV Report on the intersections of culture and gender-based violence:

"Throughout the Western world, the widespread portrayal of women as sexual objects in the media and unrealistic female beauty ideals that trigger harmful self-imposed practices, which may result in life-threatening diseases such as anorexia or bulimia, are rarely seen as cultural phenomena, but are regarded as questions of market dynamics and free choice" (paragraph 48; Ertürk 2007).

²⁶ Walt, Vivienne. 2025. "Gisèle Pelicot Is Galvanizing a Movement for Survivors of Sexual Violence." *Time*, February 20, 2025. Accessed February 21, 2025. <https://time.com/7216401/gisele-pelicot-rape-case/>.

As it is shown in these quotations, gender inequality and violence against women are global issues that transcend every boundary. The profoundly diffused sexism and misogyny continue in both Eastern and Western cultures.

In 2025, we are at the thirtieth Anniversary of the Beijing Platform for Action (1995). The Beijing Declaration and Platform for Action, agreed in 1995 by 189 countries, elaborates actions under 12 critical areas for concern. Ending violence against women is one of these key areas, but it is still far from being achieved. Even though we have a robust international human rights framework for the human rights of women, many women suffer from gender-based violence including “honour-based violence”. This thesis tries to understand how culture is invoked in criminal cases of “honour-based violence” against women with immigrant backgrounds in Germany. However, this problem is neither limited to Germany nor to “honour-based violence”. It is also not limited to the timeframe of the cases analysed within this dissertation (2001 – 2010).

For example, a 10-year-old Roma girl gave birth in southern Spain in 2010.²⁷ In the news, it was written that the father of the baby is also a child, a 13-year-old boy who was in Romania. This case is at the intersection of children’s rights, gender equality and minority culture. The case reflects deeply gendered and racialized inequality. The case involves discussions of migration, cultural relativism, and the international human rights framework.

In two more recent cases from Spain ²⁸, cultural factors were taken into consideration by the courts in child sexual abuse cases (a Gypsy girl who was 12 years old, has been raped by a 20-year-old man). It is reported in the news that even though Spanish law prohibits minors under 16 from giving consent to sex, the court ruled that the man should be granted a legal exception:

²⁷ BBC News. 2010. “Baby Born to Romanian Girl, 10, in Spain.” *BBC News*, November 3, 2010. Accessed March 19, 2024. <https://www.bbc.com/news/world-europe-11684854>.

²⁸ Mesa, Jesus. 2024. “Outrage in Spain After Child Rape Verdicts Consider ‘Cultural Context.’” *Newsweek*, June 3, 2024. Accessed July 19, 2024. <https://www.newsweek.com/spain-child-rape-sex-assault-verdicts-acquittal-romani-roma-gypsy-1907576>.

“The court found the intercourse was “consensual,” justifying the decision by stating, “in Romani culture, this is normal behaviour.”

The news report also highlights criticism from Sara Giménez, the head of Spain’s Gypsy Secretariat Foundation, regarding the ruling in Castilla y León. She stated that Gypsy culture does not condone abuse or the violation of rights. She added that while there may be exceptional cases involving relationships between minors, these rulings perpetuate harmful stereotypes that are profoundly damaging.

The court rulings from Spain, while limited to the reports in the newspaper, illustrate how the criminal justice system can reinforce patriarchal practices and gender-based violence by invoking “culture” as justification. It is important to note that the responsibility for changing the patriarchal culture that endangers and entraps the lives of women and girls rests not solely with the criminal justice system and its agents. However, legal practitioners, policymakers, and advocates must collaborate to establish frameworks that prioritise the safety and enjoyment of the rights of women over cultural justifications for violence.

This thesis claims that when there is a violation of the rights of women and children, including their right to dignity, bodily autonomy and safety, the analysis should be made from the international human rights and feminist legal theory perspectives. Therefore, the issue should be analysed through a process of “de-culturalization”. In that way, judicial and administrative actors – such as judges, prosecutors, lawyers, and social service officials – should rely upon international human rights law rather than invoking cultural relativism as a basis for legal and ethical reasoning. When structural inequalities are ignored and the judges take a cultural relativist perspective, they take “culture” as something which cannot be questioned, which is “essential”, “fixed” and “static”. This view conceals the “dynamic” nature of cultural practices. As mentioned by Yakın Ertürk in her report:

“... despite the fact that the international community has recognised the universality of rights, identity politics and cultural relativist paradigms are increasingly employed to constrain, in particular, the rights of women. Essentialized interpretations of culture are used either to justify violation of women’s rights in the name of culture or to categorically condemn cultures “out there” as being inherently primitive and violent towards women. Both variants of cultural essentialism ignore the universal dimensions of patriarchal culture that subordinates, albeit differently, women

in all societies and fails to recognize women's active agency in resisting and negotiating culture to improve their terms of existence" (paragraph 68, Ertürk 2007).

Therefore, it is crucial to hear the voices of women. I listened to the scream of the female victim in my second case through the court case file and saw her struggle to integrate into Germany by taking part in a language and employment course. Even though she had a very heavy baggage of traumas of different episodes of gender-based violence throughout her life cycle, as a young woman, she was trying to stick to life by enjoying the company of her friends – in contrast to the very first phase of migration when she was totally isolated and had a suicide attempt out of which she started therapy period. There is always a healing possibility for the victims of gender-based violence, only if they can survive. However, her right to life was violated, and there is no harsher reality in life than death. As part of their daily routine, judges, prosecutors and lawyers may become alienated easily in femicide cases. However, that was not my case. In the court case file, it was reported from the witness accounts that when the neighbours came for help, they told her to breathe and she was still alive. However, she passed away at the hospital.

Maybe her scream led me to think about the concepts of "honour", "honour-based violence", "honour crimes", "so-called honour killings", "honour-related violence". I am trying to understand the case in Germany, but it is discussed in the United Kingdom (UK), Canada, the Netherlands, the USA, Australia, and Türkiye.

In the UK, British Member of Parliament (MP) from the Conservative Party, Nusrat Ghani, addressed the parliament in her speech to support the Crime (of Aggravated Murder and Violence against Women) Bill she proposed at the end of January 2017. She was suggesting that the term 'honour killing'²⁹ should be banned in the official documents since the use of the term 'honour' justified the crime. Moreover, she underlined that it put the victims at risk as the officials did not want to be involved, for fear of being accused of racism, in domestic violence cases where 'honour' is involved.

²⁹ Since the term "honour" is socially constructed and contested concept, I prefer to use it in quotation marks. The same holds for "honour-based violence" or "honour killing". The complexity of the term deepens more since it implies justification for violent acts. I understand "honour-based violence" as a form of gender-based violence which violates human rights of women. Men can also rarely become victims of "honour-based violence".

She also suggested other measures with this Bill to prosecute honour-based crimes committed overseas by UK nationals towards other UK nationals. She referred to the case of Seeta Kaur, who was born in the UK but died in India. Kaur was coerced to travel to India by her husband, and although her death was suspicious, her case was closed without investigation. Ghani emphasised that “there was no clear record of how many British women are taken overseas by their families to be abused or killed”, and for this reason, she was also suggesting extraterritorial jurisdiction over domestic violence.

In her speech, Ghani powerfully stated:

“Language matters. The use of the term “honour” to describe a violent criminal act—sometimes committed against a man, but more often against a woman—can be explained only as a means of self-justification for the perpetrator. *It diminishes the victim and provides a convenient excuse for what in our society we should accurately and simply call murder, rape, abuse or enslavement.* I want us in this House to send a clear message that the excuses end here. Even more than that, the term assumes that violence, in particular against women, is culturally sensitive—*a sensitivity that allows the perpetrator to use further coercion to prevent the victim from seeking help and to intimidate the agencies of the state to stop them pursuing and prosecuting these violent crimes.* The principles that *every victim should be treated equally and with dignity* and that our law enforcement agencies should respond to every crime with equal vigour are threatened when *a separate set of cultural norms and practices is accepted for some victims of domestic violence.* We have one law in our country—one law that applies to everyone, regardless of their heritage or faith” (UK Parliament, 2017). (*Excerpt from the speech of Ms. Nusrat Ghani at the United Kingdom Parliament, emphasis in italics by me.*)³⁰

Nusrat Ghani’s speech in the UK parliament offers a critique of the term “honour” as used to describe violent crimes, particularly those committed against women. Ghani firmly rejects this concept, asserting that murder, rape, abuse, and enslavement should be recognised as such, regardless of the cultural context in which they occur. Ghani’s speech urges to reject cultural relativism in cases of violence against women and to maintain the principle of one law for all.

However, her proposal did not go unchallenged. Some representatives of women’s organisations, survivors, activists, professionals, and academics did not agree with Ms. Nusrat Ghani about the prohibition of the term ‘honour’. Iranian and Kurdish Women’s

³⁰ UK Parliament. 2017. *Crime (Aggravated Murder of and Violence against Women)*. House of Commons Hansard, Volume 620, January 31, 2017. Accessed March 19, 2024. [https://hansard.parliament.uk/commons/2017-01-31/debates/7CF70A7D-13DB-451F-AD94-C239FE72BF18/Crime\(AggravatedMurderOfAndViolenceAgainstWomen\)](https://hansard.parliament.uk/commons/2017-01-31/debates/7CF70A7D-13DB-451F-AD94-C239FE72BF18/Crime(AggravatedMurderOfAndViolenceAgainstWomen)).

Rights Organisation – IKWRO – and 66 experts and survivors wrote a letter to Ms. Ghani demanding the withdrawal of the Bill (IKWRO, 2017). They opposed her Bill, although they mentioned that they understood the “good intentions behind the attempt made by Nusrat Ghani”.

Their critique rested on a legal and strategic rationale. Experts and survivors underlined that ‘honour-based violence’ (HBV) is recognized in international human rights law and standards as a specific form of gender-based violence and it is important to recognize it to combat it properly; to implement policies for prosecution, prevention and provide sufficient support and access to justice for its victims.”

Experts and survivors rightly emphasized the development of the international legal documents that address HBV. Both at the level of the UN and the Council of Europe as well as the European Union, HBV attracted attention as a form of gender-based violence.

They also acknowledged the terminology dilemma Ghani raised. Honour is defined as “great respect, esteem, or reverence received, gained, or enjoyed by a person or thing; glory, renown, fame; reputation, good name” by Oxford English Dictionary. How can a word like “honour” with positive connotations, be related to killing, murder, abuse, and violence? This is an oxymoron.³¹

To address this contradiction, they explained that they tried to overcome this problem by either using quotation marks (“honour”) or by saying “‘so-called’ honour” or ‘in the name of honour’”, because there is nothing honourable in ‘honour’ crimes.

Ultimately, Nusrat Ghani withdrew her Bill proposal.³² Although she had to withdraw her proposal and although as a women’s activists and the survivors, I cannot entirely agree

³¹ As the title of the article by (Meetoo and Mirza 2007) suggests “There is nothing ‘honourable’ about ‘honour killings.’”

³² The Iranian and Kurdish Women’s Rights Organization (IKWRO) (<https://ikwro.org.uk>) is an organization that offers guidance and assistance to women and girls from the Middle East, North Africa and Afghanistan who are living in the UK, and have either experienced, or are in danger of experiencing any type of abuse based on ‘honour’, such as forced marriage, child marriage and female genital mutilation (FGM), or domestic abuse. IKWRO declared that they were happy that their campaign opposing Nusrat Ghani’s MP’s Bill has succeeded and it has been withdrawn ahead of its second reading on Friday 24th March 2017.

with the proposal, I am mainly interested in two issues that Ms. Ghani raised in her speech. To emphasize these two issues that she raised and to denote the dilemma of the terminology, I wanted to make the quotation.

Firstly, she underlined how this terminology caused the victim to diminish. It is not only in ‘honour’ killing cases but in all femicide³³ cases in general that the victim does not

IKWRO – Iranian and Kurdish Women’s Rights Organisation. 2017. “Campaign Success: Nusrat Ghani MP Withdraws Bill.” *IKWRO*, March 22, 2017. Accessed April 13, 2024. <https://ikwro.org.uk/2017/03/22/campaign-success-nusrat-ghani-mp-withdraws-her-bill-which-proposed-to-ban-the-term-honour-based-violence-and-conflate-it-with-domestic-violence/>.

³³ Femicide is used here to denote “*kadın cinayetleri*”. The term is translated into Turkish as “*cinskırım*” and “*kadınkırım*” as well to imply its similarity to the concept of “genocide” which translates into Turkish as “*soykırım*” because women’s rights organisations emphasize that at least three women are killed every day in Türkiye which means ‘*cinskırım*’.

The word “femicide” denotes the killing of women or girls because of their gender. Diana E. Russell used the term for the first time in 1976 during the first International Tribunal on Crimes against Women. The debate over the use of the term is going on, and the scope of this definition has not precisely been set, but it includes various forms of violence against women and girls that may result in their death (Academic Council on the United Nations System, 2013). These include killings of intimate partners, killings of women accused of sorcery or witchcraft, so-called honour killings, killings during armed conflict, killings related to dowries, killings of indigenous and aboriginal women, and killings because of sexual orientation or gender identity, among other reasons.

The former UN Special Rapporteur on Violence against Women, Its Causes and Consequences (UN SRVAW) Dr. Dubravka Simonovic uses femicide or gender-related killing of women and girls as synonymous. She emphasizes that the variations in terminology and discrepancies among criminal justice systems should not delay the collection of specific administrative data on femicide or gender-related killings of women and girls. However, it should be underlined, as put forward in the report by the European Institute for Gender Equality (EIGE), that ‘valuable information on femicide/feminicide is frequently lost within the general data on homicides’ and a ‘global conceptualisation as well as an operationalisation’ of the concept of femicide is needed’ (European Institute for Gender Equality - EIGE 2021, 4).

The term feminicide was also incorporated into the discussion of the killing of women in Latin America to highlight the role of the states in the death of women due to their failure to take these killings seriously. In this way, the states facilitated gender related killings implicitly and explicitly.

In 2022, approximately 89,000 women and girls were intentionally killed globally, the highest annual total recorded in the past two decades. While overall homicide rates began to decline in 2022 after increasing in 2021, the number of female victims remains high. Notably, over half of these homicides (48,800) were committed by intimate partners or family members, averaging 133 women or girls killed daily within their own homes. This alarming statistic underscores that for many women and girls, home is not a safe place. While most homicide victims recorded globally are men and boys, women and girls are, in every region of the world, disproportionately affected by homicide in the home (United Nations Office on Drugs and Crime and UN Women, 2023: 3).

The theme of one of the COST (European Cooperation in Science and Technology) Actions was Femicide across Europe (COST Action IS1206) which was conducted between 2012 and 2017 as the first pan-European coalition on femicide with researchers. (European Cooperation in Science and Technology. n.d. *COST Action IS1206: Femicide across Europe*. Accessed September 15, 2021. <https://www.cost.eu/actions/IS1206/>.) A central task of the *COST Action IS1206* on ‘Femicide across Europe’ was to clarify and set up a definition of femicide.

have a voice in the courtroom to tell her version of the story regarding what happened exactly before the event and at that moment of the event. That holds for all murder and manslaughter cases, regardless of gender. None of the victims can speak. But in femicide cases, can we see the power relation between the offender and the victim? It is this gendered nature of the crime of “femicide” that the criminal law, with its neutral language, does not consider. When husbands kill their wives, it is not equal to a wife killing a husband. There is a qualitative difference, as all the research has shown (Dobash and Dobash, 1979; Dobash et. al., 1992). Since the relationship status can be independent of marriage status, “intimate partner violence” is used as well, we should keep that it is also a “neutral” language which oversees the fact that violence is the cause and effect of the hierarchical power relations between man and woman (DeKeseredy, 2021; Hunnicutt, 2009)

Unless there is a prosecutor, lawyer, police official, any public official acting with due diligence or a women’s NGO who can speak on behalf of women, the process usually ends up with injustice for women. This fact bothers me a lot as a researcher, thus I tried to provide a basis for voicing these invisible women.

I would argue that trainings for the judges, prosecutors and lawyers – as defined within the scope of Article 15 of the Istanbul Convention³⁴ on training of professionals – should be organised regularly so that these professionals are well-informed on issues such as gender equality, gender-based violence, violence against women, domestic violence, intimate partner violence, coercive control, femicide, “honour-based violence”, different types of violence against women and so on.

I participated in the Training School on “Policy and Practice to Reduce and Prevent Femicide: Innovation and Sustainability of Actions and Research”, organized within the framework of *COST Action 1206* by the *Seconda Università Degli Studi di Napoli, Dipartimento di Psicologia*, in Rome between 20 and 24 July 2015.

³⁴ Article 15 of the Istanbul Convention – Training of professionals

1. Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation.
2. Parties shall encourage that the training referred to in paragraph 1 includes training on co-ordinated multi-agency co-operation to allow for a comprehensive and appropriate handling of referrals in cases of violence covered by the scope of this Convention.

The second matter that Ghani pointed out is that this terminology assumes that violence against women is a culturally sensitive issue. When violence against women is understood as such, then justifications for violence could be made on this basis, even though it is mentioned in international documents on the human rights of women that those justifications of violence against women based on culture are not acceptable.

This concern leads to a broader issue. I think the problems that Ghani mentioned are related not much to how this phenomenon is called but rather to how it is perceived and understood by the society in general and by the service providers such as social services, health officials, police, gendarmerie, judges, prosecutors, lawyers, and all other relevant parties.

These two issues – the invisibility of victims of “honour-based violence” and the danger of cultural essentialism – are among the key themes that I would like to focus on in my research.

Istanbul Convention, which is the legally binding convention on the prevention of domestic violence and violence against women, addresses “honour-based violence”. In the preamble of the Istanbul Convention, crimes committed in the name of so-called ‘honour’ and genital mutilation are listed with grave concern among the severe forms of violence such as domestic violence, sexual harassment, rape and forced marriage. So-called ‘honour’, religion, culture, tradition, and custom are cited within the scope of the Article 12 on general obligations under the title of Prevention in the Istanbul Convention. These shall not be considered as justifications for any act of violence. Article 42 under the section of substantive law (Chapter V) also deals with the unacceptable justifications for crimes, including crimes committed in the name of so-called ‘honour’.

“Honour-based violence” encompasses criminal acts such as murder, attempted murder, bodily harm, coercion to suicide, assault, and unlawful confinement carried out with intentions linked to notions of honour, customs, and traditions. While the Convention does not establish a distinct criminal offense for honour crimes, it explicitly prohibits justifying criminal conduct on the grounds of culture, tradition, or honour. Its primary objectives are to prevent gender-based violence, safeguard victims, and prosecute

offenders, establishing legally binding norms to combat violence against women and domestic abuse.

The Convention mandates the implementation of comprehensive and coordinated strategies by national entities for prevention, prosecution, policy development, and victim protection, including the clear definition and criminalization of various forms of violence against women. It aims to eradicate impunity for individuals who perpetrate violence against women under the guise of ‘honour’, ensuring that family or community members cannot cite cultural, religious, or traditional justifications in legal proceedings. By discouraging lenient sentencing based on claims of cultural or traditional motives, the Convention strives to ensure accountability for perpetrators of “honour-based violence”.

1.2. The Research Question

My study aims to understand how culture is elaborated in the criminal cases of “honour-based violence” perpetrated by male immigrants from Türkiye against female immigrants from Türkiye living in Germany. By immigrant, I refer to people who live in a country other than the country where they or their parents were born. Even though they become “the citizen” of the country they moved into, I count them as “immigrants” within the scope of this study. By “honour-based violence”, I mean the specific form of gender-based violence in the continuum of patriarchal structural violence in the context of honour cultures. Honour-based or honour-related violence refers to physical, sexual or emotional violence or abuse motivated by perceived violations of “honour” (Korteweg and Yurdakul 2010).

The fundamental problem of this research is the legal and cultural repercussions of “honour-based violence” in transnational communities. The way “culture” is invoked and interpreted during judicial proceedings. This study aims to comprehend the intersection of cultural narratives and legal reasoning in cases of HBV involving individuals of Turkish origin by examining a selection of criminal case files and legal discourse in Germany.

There is a lack of consensus on the definition of HBV and how it can be identified from other forms of violence (Bhanbhro, Cronin de Chavez, and Lusambili 2016). Definitions of honour are most often linked to the regulation and control of women's sexuality and behaviour to maintain family reputation and to avoid deviation – real or perceived – from social and gender norms and traditions. I understand “honour killing” as the most extreme form of “honour-based violence” and in this case, the right to life of the victim is violated. Other forms of “honour-based violence” involve physical violence, threats, or coercion committed to protect or defend the honour of an individual, family, or community due to the alleged breaches of gendered behaviour codes. It is usually performed against women; however, men can also rarely become victims of “honour-based violence”. It can include physical abuse, psychological pressure, forced suicide, and “honour killings”.

Tuuli Hong's 2014 study, “Discourses on Honour-Related Violence in Finnish Policy Documents,” finds that Finland has addressed honour-related violence (HRV) relatively late compared to other Nordic countries. The study analyses how HRV is framed in Finnish policy documents, revealing the ways in which the issue is constructed and understood within the Finnish policy context. Hong highlights that these discourses shape the recognition, prevention, and intervention strategies related to HRV, reflecting broader societal and political attitudes toward gender, culture, and immigration. The study underscores the challenges in addressing HRV in policy due to its complex intersections with cultural norms and minority communities (Hong, 2014).

Forced marriage is usually associated with “honour-based violence” as well. The two phenomena are usually linked. There are examples of “honour-based violence” in the cases where the girl was subject to “honour-based violence” when she rejected a forced marriage or got divorced after a certain period because of forced marriage. Female genital mutilation (FGM) ³⁵ is also linked to the “honour-based violence” in the literature,

³⁵ Female genital mutilation (FGM) is the cutting of the genital organs of women. The World Health Organization (WHO) defines female genital mutilation as “all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons” (World Health Organization, 2025).

“Female genital mutilation is classified into four types. Type I: Also known as clitoridectomy, this type consists of partial or total removal of the clitoris and/or the hood of clitoris. Type II: Also known as excision, the clitoris, and labia minora are partially or totally removed, with or without excision of the

because it is also a sign of keeping the girl and her family honourable. “honour-based violence” can encompass a range of offences including murder, rape, assault, and domestic abuse. In this thesis, “honour-based violence” in the form of “honour killing” or attempted killing will be in focus. Honour is a patriarchal tool that legitimizes gendered violence cloaked in cultural justification.

The journey to write this dissertation started in 2011 when I encountered the book titled “*Is Multiculturalism Bad for Women?*” . This work is a compilation of essays, with the opening article, which shares the same title as the book, written by Susan Moller Okin and originally published in *Boston Review* (1 October 1997)³⁶. The book includes responses from several distinguished scholars, including Will Kymlicka, Abdullahi An-Na’im, Saskia Sassen, Bhikhu Parekh. In the concluding section, Okin offers a final response to the contributions made by these authors. The book presents a rich and

labia majora. Type III: The most severe form, it is also known as infibulation or pharaonic type. The procedure consists of narrowing the vaginal orifice with the creation of a covering seal by cutting and appositioning the labia minora and/or labia majora, with or without removal of the clitoris. The appositioning of the wound edges consists of stitching or holding the cut areas together for a certain period (for example, girls’ legs are bound together), to create the covering seal. A small opening is left for urine and menstrual blood to escape. Infibulation must be opened either through penetrative sexual intercourse or surgery. Type IV: This type consists of all other procedures to the genitalia of women for non-medical purposes, such as pricking, piercing, incising, scraping and cauterization”. (End FGM European Network. n.d. *What Is FGM?* Accessed February 14, 2018. <https://www.endfgm.eu/female-genital-mutilation/what-is-fgm/>.)

Isabelle Gunning proposes the use of the word “female genital surgeries” instead of “genital mutilation,” which conveys an immediate negative moral judgement, or “female circumcision,” which implies a minor procedure comparable to male circumcision (Gunning, 1992). Even though I would rather not look at social problems from an “arrogant” point of view, the practice of female genital cutting, especially when girls are in question, is unacceptable in my opinion. However, Gunning puts the puzzle in a delicate manner: “As I analysed the practice and my reactions, I was confronted with two major problems: 1) by what right did I, as a Western feminist, have to criticize as right or wrong the practices of an entirely different culture? and 2) should and can law, with its attribution of right and wrong, exoneration and punishment, be used to eradicate a cultural practice?” (Gunning, 1992, p. 189). Even though Gunning might be right to question herself for Orientalism, the answer should be sought if the minors are harmed by the practice. The moral question lies there for all of us, I think. Regarding her question on the role of the law for eradicating these practices, I totally agree with her. Law is not able to eradicate these practices. We see many examples where law was not able to eradicate these traditional practices. The most important question is changing the mentality of the people who would like to continue this practice. Awareness raising should go hand in hand with legal regulations.

³⁶ Okin, Susan Moller. 1997. “Is Multiculturalism Bad for Women?” *Boston Review*, October/November 1997. Accessed September 1, 2024. <https://www.bostonreview.net/forum/susan-moller-okin-multiculturalism-bad-women>.

thought-provoking dialogue on the complex and often contentious relationship between feminism and multiculturalism.

Feminist thinker Susan Moller Okin claims that there is a tension between feminism and multiculturalism. Okin defines feminism in her article as “the belief that women should not be disadvantaged by their sex, that they should be recognized as having human dignity equal to that of men, and that they should have the opportunity to live as fulfilling and as freely chosen lives as men can” (Okin, 1999: 10). After mentioning that multiculturalism is harder to identify, Okin underlines that the particular feature of multiculturalism that concerns her is “the claim, made in the context of basically liberal democracies, that minority cultures or ways of life are not sufficiently protected by the practice of ensuring individual rights of their members and as a consequence these should also be protected through special *group* rights or privileges” (Okin, 1999: 10–11).

Although both feminism and multiculturalism aim at equality within the society in terms of gender and in terms of ethnicity, respectively, how can they not support or complement each other but be in tension? Okin challenges the prevalent assumption that multiculturalism and feminism are mutually supportive, arguing instead that group rights for cultural minorities often conflict with the principles of gender equality. Her work is particularly relevant to the analysis of how cultural relativism can sometimes undermine the rights of women within minority communities.

In her article, Okin raised the following question: “What should be done when the claims of minority cultures or religions clash with the norm of gender equality that is at least formally endorsed by liberal states (however much they continue to violate it in their practices)?” (Okin 1999, 9). This question is quite important even today, more than 20 years after Okin raised this question. I ask the same question in a lot of cases of violations of women’s human rights that I encounter in the newspapers, such as polygyny³⁷, child abuse, “child marriage”, early and forced marriage etc. in culturally diverse settings.

³⁷ Here I preferred to use polygyny rather than polygamy because in practice the widespread version of polygamy is polygyny which is the condition or practice of having more than one wife at one time.

Okin later mentioned in another article – titled “*Multiculturalism and Feminism: No simple question, no simple answers*” – her answer to the question “is multiculturalism bad for women?” is not a simple and unqualified “yes” (Okin, 2005). In this article, Okin states that most political theorists who have written on multiculturalism and feminism recently also admitted that there are quite serious tensions between multiculturalism and feminism. Given the wide array of beliefs and practices regarding the status and roles of women both within and among the cultures, it seems unavoidable that there will be conflicts between the goals of supporting and preserving diverse cultures and promoting equal dignity and respect for women.

Okin gives examples of the headscarf issue, the polygamy problem, and female genital mutilation (FGM) among some African communities living in France as examples of cultural practices that reflect this tension between multiculturalism and feminism. She explains how the French government ignored women’s views on polygamy and officially recognized it in the earlier migration phase. However, the French government decided later to annul all the other marriages and recognized only marriage with one wife when polygamy became a burden on the welfare system. So, she mentions that it was not the “gender equality” norm that stimulated the French government when it developed policies on polygamy practice within immigrant communities.

Okin continues by giving the examples of four crimes: kidnap and rape, wife murder, murder of children, and clitoridectomy³⁸ as cases where cultural defence is used to justify these acts and charges against the perpetrators are dropped or reduced because of the defendant’s cultural background (Okin, 1999: 18).³⁹ She asserts that by accepting cultural defence, women’s and children’s rights have been violated in these cases. The questions Okin raised, along with the examples she provided, have been on my mind ever since. The concept of cultural defence and its legal implications has particularly resonated with me. For instance, the case of a Chinese immigrant in New York who killed his wife for committing adultery, and then used cultural defence, has stuck with me. This case

³⁸ Clitoridectomy is one type of female genital mutilation. Please see footnote 35 for further information on FGM.

³⁹ The first three examples are from the United States of America (USA), and the last example is from France. More information about these cases will be given in Chapter II.

reminded me of “honour killing” cases in Türkiye, where perpetrators use the “unjust provocation” defence to get reduced sentences.

The research focuses primarily on Germany as it offers an ideal context to analyse the tension between Susan Moller Okin’s critique of multiculturalism and the discourse surrounding cultural defence, using the Aylin Korkmaz case as a focal point. Germany hosts a substantial diaspora originating from Turkish and Kurdish backgrounds, creating deeply intertwined transnational spaces shaped by ongoing migration. These spaces encompass social, cultural, economic, and legal networks that transcend national borders. My analysis shows that the cases of Aylin and Zeynep extend beyond German territorial boundaries, reflecting broader transnational patterns rooted in sustained social connections and cultural and legal relationships between Germany and Türkiye. According to the research of Ayhan Kaya (2001) and Thomas Faist (2000), these transnational social spaces facilitate the movement of identities, norms, and practices between two countries. A comprehensive understanding of these cases requires analysing both German legal and social frameworks alongside Turkish legal systems and cultural patterns, as the interplay between these elements is crucial to grasping the complexity of the issues involved.

The development of these transnational spaces facilitates continuous connections between migrants and their homeland, influencing identity formation, political engagement, and interactions with legal systems in both Türkiye and Germany. Consequently, legal reforms in one country often have concrete implications within the immigrant communities. For instance, the 2005 reforms to the Turkish Penal Code, which introduced significant changes regarding discriminatory provisions against women, attracted considerable attention among German legal practitioners. On the other hand, Germany’s criminalisation of forced marriage⁴⁰ has impacts on the lived realities of its immigrant populations from Türkiye.

⁴⁰ **Strafgesetzbuch (StGB)**
§ 237 Zwangsheirat

(1) Wer einen Menschen rechtswidrig mit Gewalt oder durch Drohung mit einem empfindlichen Übel zur Eingehung der Ehe nötigt, wird mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren bestraft.

For this reason, even though the focus will be on Germany, references to the domestic legal regulations will be made. A comprehensive understanding of these dynamic, transnational legal influences is essential to grasp how migration reshapes legal consciousness and socio-legal practices across borders. Therefore, I would like to mention the reform of the Turkish Penal Code, especially the change on “unjust provocation, the implementation of which is still problematic, which has repercussions on the debate between “customary” and “honour killing.”

Before the Turkish Penal Code was reformed in 2005, judges interpreted “unjust provocation” more broadly, often justifying “honour killings” or femicides. Thanks to the efforts of the women’s movement in Türkiye during the reform of the Turkish Penal Code, many discriminatory gender-based provisions were abolished. One significant change involved the regulation of unjust provocation, now addressed in Article 29 of the revised Turkish Penal Code (Law No: 5237). According to Article 29 of the Turkish Penal Code, “if a person commits an offense in a state of anger or severe distress caused by an unjust act, the sentence he/she will get is reduced.” In the earlier version of Turkish Penal Code (Law No: 765) unjust provocation was covered under Article 51, which referred to “unjust provocation” rather than “an unjust act”. The lawmakers noted that their inclusion of this phrase was intended “to prevent the misuse of unjust provocation in cases of

Rechtswidrig ist die Tat, wenn die Anwendung der Gewalt oder die Androhung des Übels zu dem angestrebten Zweck als verwerflich anzusehen ist.

- (2) Ebenso wird bestraft, wer zur Begehung einer Tat nach Absatz 1 den Menschen durch Gewalt, Drohung mit einem empfindlichen Übel oder durch List in ein Gebiet außerhalb des räumlichen Geltungsbereiches dieses Gesetzes verbringt oder veranlasst, sich dorthin zu begeben, oder davon abhält, von dort zurückzukehren.
- (3) Der Versuch ist strafbar.
- (4) In minder schweren Fällen ist die Strafe Freiheitsstrafe bis zu drei Jahren oder Geldstrafe.

Section 237

Forced marriage

- (1) Whoever unlawfully, by force or threat of serious harm causes a person to enter into a marriage incurs a penalty of imprisonment for a term of between six months and five years. The act is unlawful if the use of force or the threat of harm is deemed reprehensible in respect of the desired objective.
- (2) Whoever, for the purposes of committing an offence under subsection (1), by force or threat of serious harm or through deception takes that person or causes that person to travel to a territory outside the territorial scope of this statute or prevents that person from returning from there incurs the same penalty.
- (3) The attempt is punishable.
- (4) In less serious cases, the penalty is imprisonment for a term not exceeding three years or a fine.

‘killings based on custom or honour killings’ in our country.”⁴¹ In the rationale for Article 29, they even provided to clarify for legal practitioners that unjust provocation cannot be invoked in cases where a father or brother kills his daughter or sister since she has been raped. The lawmakers emphasized that the woman who is raped – the victim – is not the one who committed the unjust act. Therefore, if her father or brother kills her for being raped, then the perpetrators will not receive any reduction in their sentence. This example is particularly striking since, in the past, perpetrators in similar cases often received reduced penalties.

The rationale also states that an unjust act must be one that the legal system does not approve of. The person who conducted the unjust act must be the victim of the crime to implement unjust provocation. Although the new regulation for unjust provocation taken into consideration together with the rationale of the provision clarified that there should be an unjust act by the victim for unjust provocation to be applicable, it is still questionable how prosecutors and judges interpret “unjust act”: for instance, taking birth control pills⁴², or wearing white tights⁴³ were interpreted as unjust acts that instigated the killing of or the attempt to kill women. As a result, perpetrators got reduced sentences. Neither taking birth control pills nor wearing white tights can be interpreted as an “unjust act” that is not approved by the legal order.

Another significant change in the Turkish Penal Code Reform was the inclusion of a new provision in Article 82 that regulates the qualifying circumstances of an intentional killing. In paragraph (k) of Article 82 of the Turkish Penal Code “motive of custom” was

⁴¹ Türk Hukuk Sitesi. n.d. *5237 Sayılı Türk Ceza Kanunu, Madde 29: Haksız Tahrik – Madde Gerekeçesi*. Accessed April 20, 2018. <https://www.turkhukuksitesi.com/serh.php?did=965>.

⁴² Şakir Er, who confessed that he killed his ex-wife – Alev Er – (and put her corpse into the refrigerator) because she had a piercing in her belly and because he found half-used birth pills in her bag, got a reduction in his sentence since his lawyer used “unjust provocation defence” in 2007. Habertürk. 2007. “Bu Nasıl Adalet? Karısını Öldürüp Buzdolabına Koydu, Doğum Kontrol Hapı Tahrik Nedeni Sayıldı.” *Habertürk*, September 20, 2007. Accessed March 13, 2018. <https://www.haberturk.com/haber/haber/36971-bu-nasil-adalet>.

⁴³ Halil İbrahim Uçan killed his partner, Oya Can, since she was wearing white tights and white T shirt and he got a reduction in the sentence based on unjust provocation Hürriyet. 2007. “Beyaz Tayt ve Tişört Giydiği İçin Öldürdüm.” *Hürriyet*, November 9, 2007. Accessed March 13, 2018. <http://www.hurriyet.com.tr/gundem/beyaz-tayt-ve-tisort-giydigi-icin-oldurdum-7658815>.

defined as a basis for increasing the sentences.⁴⁴ Although the implementation of the new Turkish Penal Code is still questionable, it could be said that the textual contents of Article 29 and Article 82, together with the rationale of these provisions certainly, limited the applicability of unjust provocation in femicide cases. According to the rationale of Article 82 paragraph (k), there should not be an unjust provocation to give increased sentences to the perpetrators under the conditions mentioned in paragraph (k).⁴⁵ I will explain the situation in Türkiye in the following pages, but now I would like to continue with why I have chosen Germany for my case study.

While I was reading the book “Is Multiculturalism Bad for Women?” and thinking about unjust provocation’s similarity to cultural defence, I have heard the case of Aylin Korkmaz. She joined a live TV program by phone around February 2011 and told us her story. Her story struck me. Aylin Korkmaz, a woman of Turkish background living in

⁴⁴ Article 82 of the Turkish Penal Code is as follows: “Article 82 (1) If the act of intentional killing is committed: a) With premeditation, b) Brutally or through torment; c) By causing fire, flood, destruction, sinking, bombing or by using nuclear, biological or chemical weapons; d) Against a direct ascendant, direct descendant, spouse or sibling; e) Against a child or against somebody who cannot protect himself physically or mentally; f) Against a pregnant woman, in knowledge of such pregnancy; g) Against a person because of the public service he performs ; h) In order to conceal an offence, destroy evidence, facilitate the commission of another offence or prevent apprehension;10 i) (Added on 29 June 2005 – By Article 9 of the Law no. 5377) Out of frustration for not being able to commit another offence;11 j) With the motive of a blood feud; k) With the motive of tradition the offender shall be sentenced to aggravated life imprisonment.”

Council of Europe, Venice Commission. 2016. *Penal Code of Turkey: CDL-REF(2016)011*. Strasbourg: European Commission for Democracy through Law (Venice Commission), February 15, 2016. Accessed March 1, 2018. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)011-e).

“Madde 82- (1) Kasten öldürme suçunun;

a) Tasarlayarak, b) Canavarca hisle veya eziyet çektirerek, c) Yangın, su baskını, tahrip, batırma veya bombalama ya da nükleer, biyolojik veya kimyasal silah kullanmak suretiyle, d) Üstsoy veya altsoydan birine ya da eş veya kardeşe karşı, e) Çocuğa ya da beden veya ruh bakımından kendisini savunamayacak durumda bulunan kişiye karşı, f) Gebe olduğu bilinen kadına karşı, g) Kişinin yerine getirdiği kamu görevi nedeniyle, h) Bir suçu gizlemek, delillerini ortadan kaldırmak veya işlenmesini kolaylaştırmak ya da yakalanmamak amacıyla, i) (Ek:29/6/2005 - 5377/9 md.)Bir suçu işleyememekten dolayı duyduğu infialle, j) Kan gütme saikiyle, k) Töre saikiyle, İşlenmesi halinde, kişi ağırlaştırılmış müebbet hapis cezası ile cezalandırılır.”

Türk Ceza Kanunu [Turkish Penal Code], Law No. 5237. Accessed March 1, 2018. <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5237&MevzuatTur=1&MevzuatTertip=5>.

Töre is translated into English as “tradition” in most of the translations of the Turkish Penal Code. However, I would prefer “custom” instead of “tradition”.

⁴⁵ Türk Hukuk Sitesi. n.d. 5237 Sayılı Türk Ceza Kanunu, Madde 82: Nitelikli Kasten Öldürme – Madde Gerekçesi. Accessed April 20, 2018. <http://www.turkhukuksitesi.com/serh.php?did=1106>.

Germany, had been subjected to the brutal violence of her ex-husband in Germany and survived miraculously.

Born in Adana Türkiye, in 1972, she lost her father at the age of six. At 18, she entered an arranged forced marriage and moved to Germany, where she had three children by the age of 24. Over the years, she suffered severe domestic violence but endured it for the sake of her children until she could no longer bear it. In 2003, she divorced her husband. After the divorce, her ex-husband began threatening her life, even saying he would cut off her head. Korkmaz has shared in her story that these threats were not taken seriously by the German police.

Her ex-husband, M.K.⁴⁶, attacked Aylin Korkmaz while she was working on November 21, 2007, in Baden-Baden at the petrol station. M.K. came with two knives when Aylin was resting during the coffee break. He grabbed her by the hair, dragged her into the tiny locker room and locked the door. Then he stabbed her 26 times, 18 times in the face and head. He left her aside when her colleagues came to the door to help Aylin after hearing her screams. M.K. was sure that she was dead. According to the police protocol, he hit his head four times against the wall when he learned she was alive. The doctors had operated on her all through the night and she had a chance of 30 % to live, according to the doctors. Although she was severely wounded and stayed in a coma for more than three weeks, Aylin Korkmaz survived. She had deep scars on her face and neck, which repeatedly reminded her of the event every day. She had to undergo many surgeries and had 250 stitches all around her face, neck, and body.

Then the trial started. Aylin Korkmaz was alleging that her ex-husband got a lower sentence (13 years for attempted murder with serious injury) because he came from a

⁴⁶ The initials of the name of the perpetrator are used all through the text, as the specific identity of the perpetrator—whether X, Y, or Z—is not relevant to the scholarly objectives of this work. The use of the full name is omitted in accordance with the principles of 'the right to be forgotten' and 'the protection of personal data.' These principles represent recent legal developments that warrant further discussion. Since this discussion is beyond the focus of this thesis, and disclosing the full name does not add any significant scientific value, it is deemed unnecessary.

different cultural background. She thought that he had to be imprisoned for life for attempted murder. She expresses that her ex-husband threatened her even from prison.

When I heard the case, she was trying to conduct a campaign with the support of *Terres des Femmes* (a women's rights organization in Germany) so that her ex-husband would not be released from prison before 13 years had passed. Based upon Article 456a of the German Code of Criminal Procedure⁴⁷ (*StPO – Strafprozessordnung*) M.K. would be deported to Türkiye and would be free after six and a half years.⁴⁸ A signature campaign was organised to prevent the early release of M.K.. The text that the supporters signed was as follows⁴⁹:

“With your signature, you request the public prosecutor Baden-Baden:

- Not to release the perpetrator, M. K., early, but to make him serve the entire prison time in Germany.
 - To grant no reduced sentences to the perpetrators of ‘honour crimes’ on ‘cultural reasons’
 - Not to release perpetrators who pose a threat to others for being released early.
- The signatures are expected to be presented in December 2010 to the public prosecutor Baden-Baden.

⁴⁷ Section 456a of the German Code of Criminal Procedure is as follows:

“[Dispensing With Execution in the Case of Extradition or Expulsion]

- (1) The executing authority may dispense with execution of a prison sentence, default imprisonment or a measure of reform and prevention if the convicted person is to be extradited to a foreign government for another offence, or transferred to an international criminal court of justice, or if he is expelled from the territorial scope of this Federal statute.
- (2) Execution may take place subsequently if the extradited or expelled person returns. Section 67c subsection (2) of the Criminal Code shall apply mutatis mutandis to subsequent execution of a measure of reform and prevention. On dispensing with execution, the executing authority may, at the same time, order subsequent execution in the event of the extradited or expelled person's return, and to this end it may issue a warrant of arrest or a placement order as well as order the necessary search measures, in particular issuance of an arrest notice; Section 131 subsection (4) as well as Section 131a subsection (3) shall apply mutatis mutandis. The convicted person shall be so informed.”

Bundesministerium der Justiz. n.d. *Code of Criminal Procedure (StPO) – English Translation*. Accessed February 15, 2018. https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p2591.

⁴⁸ Within the timeframe that I conducted my research for my thesis, in 2014, he was already released from prison, and he was deported to Türkiye. He served only 6,5 years of imprisonment.

⁴⁹ The original text that supporters signed was as follows:

“Mit Ihrer Unterschrift fordern Sie die Staatsanwaltschaft Baden-Baden auf:

- den Täter M. K. nicht vorzeitig zu entlassen, sondern ihn die gesamte Haftzeit in Deutschland verbüßen zu lassen
 - den Tätern von “Ehrverbrechen” keinen Strafnachlass aus “kulturellen Gründen” zu gewähren
 - Täter, die eine Gefahr für Dritte darstellen, nicht vorzeitig aus der Haft zu entlassen.
- Die Unterschriften werden voraussichtlich im Dezember 2010 der Staatsanwaltschaft Baden-Baden überreicht.

Unterstützen Sie unsere Aktion jetzt direkt online!”

- Support our action directly online now!⁵⁰

On 10 December 2010, *Terres des Femmes* handed over more than 10.000 signatures to prevent the early release of *M.K.* to the public prosecutor's office.⁵¹ However, this action did not prevent the early release of *M.K.*. Aylin Korkmaz continued the campaign until her ex-husband was released from prison. Her primary concern was to raise awareness on this issue and prevent similar cases that other women, especially immigrant women, might face. In 2012, Aylin Korkmaz told the following in a meeting:

“He was beating me, and afterward he told me that he loved me so much. After getting divorced, the situation became more serious. I went to the police many times and told them that he threatened to cut my head off. They did not take me seriously. Finally, I was nearly dead. The prosecution started. Since I was alive, since I was not dead there was a reduction in his sentence because of the cultural difference. While we were expecting a life-long sentence he was sentenced to 13 years of imprisonment. A few months ago, I learned that he would be deported on 19 May 2014. My ex-husband, who wanted to kill me, does not regret what he had done. He continues to threaten. He says that he has done what a man had to do. He is even proud of what he has done. When he is deported to Türkiye, he will be free. My family in Türkiye will be in danger. He may come to Germany with fake documents. I fear. I think those who use violence should get heavier sentences so that the punishment can be deterring. Victims should be under protection before sad events occur. Women should be informed about their rights and the support services... I left the hospital before my injuries were healed. When I went to the Youth Service to take my children, they told me their father's approval was needed. After three years of effort, I was taken into the protection program. On the one hand, I have been in therapy for five years, and on the other hand, I've been fighting violence against women. I wrote a book to become the help cry of those victims who share the same fate with me. I just want to live free. The German legal system protects the attacker much more than the victim.”⁵²

⁵⁰ https://frauenrechte.de/online/index.php?option=com_content&view=article&id=383:aufruf-zur-unterschriftenaktion-fuer-aylin-korkmaz&catid=153:aktuelles-gewalt-im-namen-der-ehre-zwangsheirat&Itemid=214, Access: 15 February 2018.

⁵¹ Can, Ayhan. 2010. “10 Bin İmza Toplandı.” *Hürriyet Avrupa*, November 26, 2010. Accessed March 14, 2024. <https://www.hurriyet.com.tr/avrupa/10-bin-imza-toplandi-751240>.

⁵² “Eşim dövüyor, dövdükten sonra beni çok sevdiğini söylüyordu. Boşandıktan sonra durum daha ciddileşti. Sürekli tehdit ediyordu. Birçok kez polise giderek, boşandığım eşimin tehlikeli olduğunu ve kafamı kesmekle tehdit ettiğini söyledim. Beni ciddiye almadılar. Sonunda neredeyse öliyordum. Dava açıldı. Hayatta kaldığım, ölmediğim için ve kültürel farklılık nedeniyle kendisine verilen cezada indirim yapıldı. Ömür boyu ceza beklerken 13 yıl hapis cezası verildi. Birkaç ay önce de, 19 Mayıs 2014'de sınır dışı olacağını öğrendim. Beni öldürmek isteyen eski eşim yaptığından pişman falan değil. Tehditlerini sürdürüyor. Bir erkeğin yapması gerekeni yaptığını söylüyor. Yaptıklarından gurur duyuyor adeta. Türkiye'ye gönderildiğinde serbest kalacak. Türkiye'de ailem tehlikede. Sahte belgelerle Almanya'ya gelebilir. Korku içindeyim. Şiddet uygulayanlara daha büyük cezalar verilmeli ki caydırıcı olsun. Kurbanlar da üzücü olaylar yaşanmadan koruma altına alınmalı. Kadınlara yardım olanakları ve hakları anlatılmalı...Hastaneden yaralarım iyileşmeden çıktım. Gençlik dairesine gidip çocuklarımı almak istediğimi söylediğimde bana 'babalarından izin gerek' dediler. Üç yıllık bir uğraştan sonra koruma programına alındım. 5 yıldır bir taraftan terapi görüyorum öte yandan kadına karşı şiddete karşı mücadele veriyorum. Benimle aynı kaderi paylaşan şiddet kurbanlarının imdat çılgılığı olmak için bir

Her story was published as a book in 2010 in German. The book's name is "*Ich schrie um mein Leben: Ehrenmord in der mitten Deutschland*", meaning "I Screamed for my Life: Honour Killing in the Middle of Germany". As elaborated above the definition of "honour killing" is contested, and every actor uses this concept to denote different phenomena. Aylin Korkmaz uses the term "honour killing" in the title because she has grown up in an honour culture environment. Although Aylin Korkmaz suffered severe psychological consequences from the murder attempt of her ex-husband, she counted herself as fortunate to be alive. On the other hand, every day, we read the stories of women who have been killed by their partners/husbands/ex-partners/ex-husbands and/or other family members. In most femicide cases, the perpetrator is somebody known to women.

The interest in "honour-based violence" increased in many European countries with migrant populations – including the United Kingdom, Germany, Sweden, and the Netherlands – especially after some "honour" killing cases attracted significant media attention. The Fadime Şahindal Case in 2002 in Sweden, the Hatun Sürücü Case in 2005 in Germany, and the Banaz Mahmud Case in 2006 in the United Kingdom are just a few examples of the "honour killings" that have attracted enormous media attention. However, the reflection of "honour killings" in the media has also contributed to the stigmatization of immigrant communities. Fadime Şahindal became the symbol of "honour killings" in Sweden after her father killed her in January 2002. She was the daughter of a Kurdish family that migrated from Maraş to Sweden in 1981. She was seven years old when her family arrived in Sweden, and she lived there until her death at the age of 25.⁵³

kitap yazdım. Artık özgür yaşamak istiyorum. Alman hukuk sistemi saldırganı kurbandan daha çok koruyor".

Poyraz, Oya. 2012. "26 Kez Bıçakladı 5 Yılda Serbest Kaldı." *Hürriyet Avrupa*, December 1, 2012. Accessed December 8, 2017. <https://www.hurriyet.com.tr/avrupa/26-kez-bicakladi-5-yilda-serbest-kaldi-1335474>.

⁵³ Koç, Handan. 2014. "Fadime'nin Onuru Bizim Onurumuzdur." *Bianet*, November 1, 2014. Accessed April 28, 2018. <https://m.bianet.org/biamag/diger/159600-fadime-nin-onuru-bizim-onurumuzdur>; Uysal, Tandoğan. 2002. "Töre Cinayeti İsveç'i Karıştırdı." *Hürriyet*, January 28, 2002. Accessed March 1, 2018. <https://www.hurriyet.com.tr/gundem/tore-cinayeti-isveci-karistirdi-51076>.

She fell in love with a half Swedish half Iranian man and wanted to marry him. Her family opposed her marriage, and her father and brother threatened to kill her. She made complaints about these threats, and the public knew her case. After a short while she left her family, her boyfriend died in a car accident. Then she moved to another town in Sweden and studied social services. Four months before her death, she made a speech in the Swedish Parliament explaining what she had experienced. She also underlined the problems of the migrant policies of Sweden. She was killed by her father when she was saying goodbye to her mother and sister just before going to Kenya for her studies. Her father was given a lifelong sentence after the trials. Unni Wikan, professor of social anthropology from Oslo University, wrote a book on Fadime Şahindal's story and the "honour-based violence" problem in Sweden: *"In Honour of Fadime: Murder and Shame"*. She called the father of Fadime who killed his daughter as the "victim" of culture himself (Wikan, 2008: 16). Sweden is one of the European countries trying to develop policies against "honour-based violence". It is noted that "in 2004, Swedish county administrative boards estimated that between 1.500 and 2.000 girls and young women were exposed to violence and oppression in the name of honour, and that 10–15 per cent of them required sheltered accommodation" (Government Offices of Sweden, 2007: 14).

The mass media presents stories of "honour killings" in relation to cultural norms and values. Ethnic and religious groups are stigmatised by essentialist rhetoric in the public sphere. There is a separation in the communities between "us" and "them" or "others". Others are portrayed as aliens and as troublesome groups with "primitive" and "archaic" customs. On the other hand, violence against women statistics in the world clearly show that it is a widespread phenomenon based on the "patriarchal" culture diffused in all societies. Along with this work, many other questions came to mind. What is culture? What is the distinction between honour cultures and dignity cultures? What is 'honour killing' and how can it be defined? Are "honour killings" crimes committed collectively, in all cases, with the decision of the family council? Can the court file I chose be considered as an "honour killing", even though it has been classified as an "honour killing" by the website www.ehrenmord.de, which compiles news from the media about "honour killings" in Germany by years, and by women's organisations in Germany? What is the reason for the Court not considering this murder/manslaughter as an "honour

killing” in its judgement? How does the perception of honour crimes based on culture (and called as culture-based violence) by the cultural relativistic view in Western societies where immigrants live, and seeing the ‘other’ as a problem, cause other problems such as racism and stigmatisation of immigrant societies? How does the cultural relativistic view play a legitimising role in women’s rights violations in general?

1.3. State of The Art

This thesis consists of six chapters. After the Introduction, in Chapter 2, I focused on the tension between universalism and cultural relativism, which is also parallel to the tension between feminism and multiculturalism posed by Okin (1999) which provoked me to this research. In Chapter 3, I emphasised the concept of cultural offence and cultural defence, which are also connected to the tension between multiculturalism and feminism. In Chapter 4, the context in Germany is explained, whereas in Chapter 5, the cases are described in detail based on the material I have. In the Conclusion, the two cases are compared and acknowledging the limitations, findings are discussed in relation to the theoretical discussions. .

Feminist theorist Susan Moller Okin critiques multiculturalism for clashing with feminism, primarily when cultural relativism is used to excuse gender-based violence. She argues that supporting group rights in multicultural societies may conflict with women’s individual rights, particularly in legal defences where cultural practices are cited to justify violence (Okin, 1999). In the U.S., cultural defence has been invoked since the mid-1980s in criminal cases, often resulting in reduced sentences for perpetrators.

The notion of cultural defence, where a defendant claims that their actions were consistent with their cultural norms and thus should not result in full criminal liability, is central to the article. Magnarella (1991) defines this as a defence mechanism for minority individuals whose actions conflict with the dominant legal culture. (Van Broeck 2001) further elaborates on “cultural crime” as acts considered acceptable or even endorsed in one’s culture but criminalised in the host country.

Renteln (2005) advocates formalising cultural defence across legal systems, suggesting standardised criteria for courts to assess such claims: the individual's ethnic identity, the existence of the claimed tradition, and the defendant's adherence to it at the time of the act. However, critics like Coleman (1996) warn that this undermines women's rights, prioritising the perpetrator's cultural background over the victim's protection, especially in cases of domestic and sexual violence.

Cases from Canada, the U.S., and Australia reveal how courts have reduced sentences in cases of rape, child abuse, or domestic violence, based on cultural values around female chastity or family honour. These judgements often rest on Orientalist and patriarchal assumptions, reinforcing structural inequalities and stereotypes about "non-Western" cultures being inherently more violent or misogynistic. Leti Volpp, on the other hand, emphasised in her papers that this binary hierarchical positioning of the cultures is very problematic (Volpp, 1994, 1996, 2000, 2001). Literature on honour-based violence itself is wide-ranging. Korteweg and Yurdakul (2010) have critically examined how HBV is represented in Western media and policy discourse, pointing to the racialised and gendered dynamics that accompany such representations.

1.4. The Rationale of The Research

We organised seminars for legal professionals in projects related to women's human rights at BİLGİ Human Rights Law Research Center. My observations during the seminars based on international standards on women's rights and the contradictions between the international legal framework and practice on the elimination of violence and discrimination against women are among the fundamental reasons that personally pushed me to this subject. Even though it is very recent compared to human rights development, there is still a well-developed framework of women's human rights.

Regarding the observations during the seminars, among the very different attitudes of the judges on the implementation of Law No. 4320, Law on the Protection of the Family, which was the former law on domestic violence in Türkiye, one of them was very striking to me. Law No. 4320 is a one-page text on the measures to be taken in cases of domestic

violence, and during the seminars we held, the judges interpreted and applied this one-page text very differently from each other.⁵⁴

Since the title of the Law had the phrase “protection of the family”, some judges defined the family as unions recognised as a family according to the Civil Code. As a result, some judges gave injunctions only in cases of violence against women who were married officially. Some judges gave an injunction to those exposed to violence in religious marriage unions. But some other judges were critical of that position, since they believed that it would cause damage to the values of the Republic by officially recognising religious marriage unions. However, a judge working in Şanlıurfa, a province in Anatolia with diverse communities (different ethnic and religious communities of Arab, Kurdish and Turkish populations) was of another view and he said that the purpose of the Law is to prevent violence against women (which was defined as such in the justification of the Law), that polygamous marriages are widespread in the region where he works and that he made a prudent decision by ordering injunctions in cases where women who are married unofficially through religious marriages are exposed to domestic violence. He was even telling that “The man beats both his official wife and unofficial wife. Shall I give a protection order for the official wife and not for the unofficial wife?”. He interpreted and applied the Law in this way, providing justice for the woman who was married to the man by a religious ceremony only.

The Law was changed in 2011 and was replaced by Law No. 6284, the Law on the Protection of the Family and Prevention of Violence Against Women. Although some aspects did not change much in practice, the new Law brought important changes in clarifying some definitions, including who the victim of violence is. Still, the narrative of

⁵⁴ Later in that project, in 2010, my colleagues and I conducted a research on how the judges, prosecutors and lawyers understand and implement the Law on the Protection of the Family (Law No. 4320) and we published our findings in a book, please see Gökçeçişek Ayata, Sevinç Eryılmaz and Seda Kalem (2011) Who and What is Protected by the Law on the Protection of the Family: Narratives of the Judges, Prosecutors and Lawyers, (*Ailenin Korunmasına Dair Kanun Kimi ve Neyi Koruyor: Hakim, Savcı ve Avukat Anlatıları*, published in Turkish), Istanbul: Istanbul Bilgi University Press. The full-text is available at <https://insanhaklarimerkezi.bilgi.edu.tr/tr/publication/32-ailenin-korunmasna-dair-kanun-kimi-ve-neyi-koruyor-hakim-savc-avukat-anlatlar/>.

the judge from one of the provinces in Anatolia is an example of how culture plays a role for legal professionals.

Another very striking example of how culture is interpreted in gender equality issues is a judgement from the Constitutional Court of Türkiye on the annulment of paragraph (5) and (6) of Article 230 of Turkish Penal Code, which regulates the crimes of marrying by arranging religious ceremony without executing official marriage transactions and conducting such a religious ceremony. This judgment is also very controversial from the feminist legal point of view.⁵⁵

In her seminal 1990 article “Feminist Legal Methods,” Katharine T. Bartlett outlines three core approaches to criticize “conventional methods of doing law” which, she argues, “silently and without justification” disregard the perspectives of women: asking the woman question, adopting feminist practical reasoning, and engaging in consciousness raising. Ruth Heather Wishik (1985: 65) similarly highlights that feminist jurisprudence rejects the false notion of “neutral legal reasoning” because it recognises that all legal interpretations demonstrate social positions and power dynamics:

“Feminist jurisprudence is a form of feminist theory-making. Feminist theory-making is a form of feminist political activity. Both as theory-making and as political practice, feminist jurisprudence must be self-conscious about its visions and methods. This Article is an exploration of the questions we are asking, how these recent questions differ from the conventional questions asked about women and the law, and what methods we may need in the future to formulate our questions well. Feminist jurisprudence has links to several strands of legal scholarship. It shares with “law and social sciences” scholarship frequent emphasis on the connections between law and society and the ways in which law is non-autonomous.”

This perspective overlaps with standpoint theory and critical legal studies because both reject objectivity as a false premise that supports dominant hierarchies (Harding, 1991).

Having spent too much time with legal professionals in our seminars between 2005 and 2011 and teaching Women’s Human Rights Course at the L.L.M. in Human Rights Program of Istanbul Bilgi University between 2011 and 2019, I had encountered too many

⁵⁵ Constitutional Court of the Republic of Türkiye. 2015. *Press Release Nr: Plenary 2/15 – Judgment on Marrying by Religious Ceremony or Conducting Such a Religious Ceremony*. May 29, 2015. Accessed March 1, 2018. <https://www.anayasa.gov.tr/en/news/constitutionality-review/judgement-on-marrying-by-religious-ceremony-or-conducting-such-a-religious-ceremony/>.

examples where culture, gender and law intertwined. I always stayed sceptic about legal argumentations as well, based on my feminist legal positioning. There are always cases that raise questions in my mind about the effect of taking culture into account in implementing and interpreting legal regulations shaped by the values of the dominant society.

My initial interest in international migration and citizenship, explored in my master's thesis and inspired by Yasemin Nuhoğlu's "Limits of Citizenship: Migrants and Postnational Membership", has long drawn me to the complexities of migration. In this study, I aim to investigate how culture is constructed and interpreted in German courts in criminal cases involving violence against immigrant women from Türkiye, specifically focusing on cases of murder/manslaughter and attempted murder related to HBV. Germany provides a particularly compelling context for this research, given its significant Turkish and Kurdish diaspora and the transnational social, cultural, and legal ties that connect Germany and Türkiye. The case of Aylin Korkmaz, which I encountered during my theoretical readings, serves as a focal point for analysing the intersection of multiculturalism critique and cultural defence discourse within the German legal system. By concentrating on these cases, my research seeks to understand not only the legal responses to HBV but also how cultural narratives are constructed and mobilized in court, shaping the experiences and outcomes for immigrant women facing violence in Germany.

In 1994, the book titled *Human Rights of Women: National and International Perspectives*, edited by Rebecca Cook was published. The book was the product of a collaboration of lawyers from Africa, the Americas, Asia, Australia, and Europe on Women's International Human Rights held at the Faculty of Law, University of Toronto between 31 August – 2 September 1992. One of the fundamental questions discussed throughout the consultation was: "How can universal human rights be legitimized in radically different societies without succumbing to either homogenizing universalism or the paralysis of cultural relativism?" (Cook 1994, 7).

As a lawyer from Sri Lanka, Radhika Coomaraswamy, who served as the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences⁵⁶ between 1994 and 2003, she examined the barriers to “indigenizing” rights in South Asia in her contribution to the book. She highlighted the need to avoid the “*Orientalist trap*” of dividing the world into bipolar categories:

“The barriers to the implementation of human rights are two-fold. First, the lack of proper implementation machinery to make rights real in the lives of women is an obstacle, as is women’s lack of awareness of the rights machinery that would empower them. The second and more formidable barrier is the refusal to accept the values in and of themselves: an ideological resistance to human rights for women.

In saying this I do not want to get caught in what is called the “Orientalist trap.” It is easy to divide the world into bipolar categories: the West is progressive on women’s rights and the East is barbaric and backward. The reverse of this argument from the eastern point of view is to accept the distinction, but to say that the east is superior, more communal, and less self-centered with no place for this “adversarial” concept of rights. I would argue that in South Asia both traditions exist. There are examples of personal laws and women’s rights that informed issues such as no-fault divorce and the best interest of the child centuries before the West considered them” (Coomaraswamy 1994, 40).

The issue of “homogenizing universalism” and “paralysis of cultural relativism” is a fundamental challenge for women’s human rights. The members of the judiciary, politicians, social workers, scholars, journalists, activists, health officials face the dilemma in their everyday work.

⁵⁶ On March 4, 1994, the United Nations Commission on Human Rights designated a Special Rapporteur to specifically address the issue of violence against women, encompassing both its causes and consequences. As per the founding resolution of the mandate, the Special Rapporteur presents thematic findings on an annual basis to the session of the United Nations Human Rights Council (HRC) in June (formerly known as the Commission on Human Rights), as well as to the United Nations General Assembly (GA) in October. Since 2007, the Special Rapporteur has been providing oral reports to the Commission on the Status of Women. Since 2017, the Special Rapporteur has the possibility to hold consultations or participate in the work of the Commission on Crime Prevention and Criminal Justice of the United Nations Office on Drugs and Crime. The Special Rapporteur carries out country visits to evaluate the state of human rights and the prevalence of violence against women inside the respective nations. Between 1994 and 2003 Ms. Radhika Coomaraswamy from Sri Lanka, between 2003 and 2009 Professor Yakın Ertürk from Türkiye, between 2009 and 2015 Ms. Rashida Manjoo from South Africa and between 2015 and 2021 Ms. Dubravka Simonovic from Croatia served as the Special Rapporteur on violence against women. Ms. Reem Alsalem from Jordan is the Special Rapporteur on violence against women since 2021.

1.5. Methodology and Challenges

This research is based on fieldwork carried out in Germany with two study visits supported by the Center for Gender Studies at Koç University (KOÇ-KAM) via the KOÇ-KAM Research Fund of 2011. The first visit occurred from 6 November to 4 December 2012 in Freiburg and was succeeded by a period in Berlin from 4 December to 31 January 2013. The second study visit took place from 25 November to 24 December 2013 in Freiburg. I was a visiting researcher at the Max Planck Institute for the Study of Crime, Security and Law (previously known as the Max Planck Institute for Foreign and International Criminal Law) in Freiburg in these two periods.

For understanding the field, I conducted informal interviews with Prof. Dr. Dietrich Oberwittler and Dr. Julia Kasselt⁵⁷, Emeritus Professor Dr. Werner Schiffauer, Dr. Anna Caroline Cöster⁵⁸, Prof. Dr. Monika Schröttle⁵⁹, Diplom Psychologin Corinna Ter-Nedden from PAPATYA, lawyers Carsten Ilius, Gülşen Çelebi and Esma Çakır Ceylan from Germany.

Collecting qualitative data is crucial to research culture, “honour-based violence”, law and gender. Qualitative research methods enable the researcher to capture the details of cultural norms, the feelings of women who have been affected by “honour-based violence” and the legal perceptions that sustain or undermine gender equality. How honour codes affect behaviour of women and men, which defence strategies are used by the perpetrators of “honour-based violence” in the legal process and how different actors understand and interpret “honour-based violence”.

⁵⁷ The issue of “homogenizing universalism” and “paralysis of cultural relativism” is a fundamental challenge for women’s human rights. The members of the judiciary, politicians, social workers, scholars, journalists, activists, health officials face the dilemma in their everyday work.

⁵⁸ Dr. Cöster wrote her dissertation on *Ehrenmord in Deutschland* (Honour-Killings in Germany).

⁵⁹ She invited me to the Annual Conference of the European Network on Gender and Violence (ENGv) in 2013 in Vienna. I participated in the conference between 17 and 19 April 2013, and since then, I have been a member of the ENGv.

On the other hand, intersectionality⁶⁰ provided another valuable lens since migrant women have different intersecting vulnerabilities. When migrant women are subject to any form of gender-based violence ranging from domestic violence to honour-based violence, interaction between different identity grounds such as gender, ethnicity, religion, and migration status (refugee, asylum seeker, migrant for economic reasons, student, legal, illegal, trafficking victim, etc.) makes the situation more complicated for the victims (Crenshaw, 1989).⁶¹ These intersectional identity markers contribute to an

⁶⁰ Intersectionality is a conceptual framework developed by Kimberle Crenshaw to study how different forms of oppression such as racism, sexism, class and xenophobia create interconnected experiences for marginalized women of colour. Intersectionality challenges the common practice of legal and feminist discourse which separates identity categories and their corresponding oppressions while treating them as independent elements.

The intersectional framework shows that honour-based violence in migration context stems from patriarchal control, however, becomes more complex because of legal exclusions and cultural essentialism and socio-economic marginalization. This approach is indispensable for understanding the complex realities of migrant women facing both cultural stigmatization and structural inequality within host societies.

⁶¹ In a controversial decision by a Frankfurt judge, who referenced the Quran during a divorce proceeding, was not subject to any disciplinary consequences. According to the Hessian Ministry of Justice, the judge acted within the core scope of judicial independence.

The judge had cited “a supposed right of the husband to discipline his wife” in the Moroccan cultural context to justify delaying a divorce before the legally required one-year separation period, despite the woman reporting abuse. However, the judge did assign the marital home to the woman and prohibited the husband from approaching her.

The Quran reference appeared only in a ruling related to legal aid, not in a formal decision or verdict. This sparked a broader debate on values, with some politicians, particularly from the CDU, accusing the judge of prioritizing Islamic Sharia law over German law. While the Justice Minister ordered a disciplinary review, no violations were found. The judge later expressed regret over the Quran citation and clarified she did not intend to condone domestic violence.

Frankfurter Allgemeine Zeitung. 2007. “Gewalt in der Ehe: Frankfurter Koran-Entscheidung ohne Folgen für Richterin.” June 6, 2007. Accessed March 4, 2020. <https://www.faz.net/aktuell/rhein-main/frankfurt/gewalt-in-der-ehe-frankfurter-koran-entscheidung-ohne-folgen-fuer-richterin-1433974.html>.

In this case, the woman with Muslim background was grown up in Germany. The judge was also a woman. This case is illustrative of how multiple layers of vulnerability operates in gender-based violence cases of women with migrant background. Culture, religion, ethnicity interact and are used interchangeably for stereotypical assumptions and discrimination based on these different layers of identity. A judge is independent and decides according to the rule of law and his/her conscience. However, are not there any moral obligations for the judges to arrive at “justice”?

Please see United Nations Office on Drugs and Crime (UNODC) Bangalore principles (Strengthening Basic Principles of Judicial Conduct: Independence, impartiality, integrity, propriety, equality, competence and diligence) for the judges for further information:

United Nations Office on Drugs and Crime. 2018. *The Bangalore Principles of Judicial Conduct*. Vienna: United Nations. Accessed February 1, 2025. <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf>.

All the values are relevant for the above-mentioned case, but I would like to point out the explanation of the value of equality which is as follows:

“Equality Principle

increased and more complex vulnerability, and both violence experiences and access to protection or justice become more complicated.

This dissertation implements a qualitative interdisciplinary research approach that combines feminist legal methods with an intersectional approach to understand how universalism and cultural relativism discourses operate in German legal and political responses to honour-based violence among migrants. Donna Haraway's (1988) concept of "situated knowledge" underlines that all knowledge comes from specific social and historical contexts and reflects partial, not objective, perspectives. Additionally, postcolonial feminist theory (Spivak 1993; Abu-Lughod 2002) provides essential insights to analyse how orientalist representations of violence and essentialization of migrant communities. The research aims to identify how institutional narratives both maintain existing power structures and challenge them.

For the selection of cases, first, I spotted the cases that have been documented as "honour killings" between 2001 and 2010 in Berlin through the website www.ehrenmord.de. The website documented the media reports of femicide/homicide or attempted femicide/homicide cases that they categorised as "honour killings". This website

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Application

- 5.1. A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status, and other like causes ("irrelevant grounds").
- 5.2. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3. A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.
- 5.4. A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
- 5.5. A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy." (UNODC, Bangalore Principles, 2018: 14 – 15).

continued to document media links regarding the cases that they categorise as “honour killings” until recently, and it was closed at the end of 2023.⁶²

I had the hardcopy report “Verbrechen im Namen der Ehre in Deutschland: Zeitraum 1996-1/2013” (*Crimes in the Name of Honour in Germany: Period 1996-1/2013*), compiled and published by PAPATYA as well and for the same period I have chosen the cases that happen to be both in the report and on the website. PAPATYA is an anonymous crisis shelter for girls and young women with a migration background. It offers help and protection to girls and young women with a migration background who have fled home because of cultural and domestic conflicts and who are under threat from their families. I listed 12 cases that existed in both sources and asked the Prosecutor’s Office of Berlin Criminal Court for these 12 cases.

The process of obtaining access to case files posed significant challenges. My initial request was rejected by the Berlin Criminal Court. At the end of almost one year of correspondence with the Public Prosecutor’s Office I finally got a positive answer. However, I was informed that only three case files out of the 12 were available in the archives, as some cases were probably either outside the jurisdiction of Berlin or still ongoing.

I obtained the case files for the three femicide cases (that have been identified as “honour killing” by the Ehrenmorde website and PAPATYA report)⁶³ during my second stay from

⁶² The following explanation was announced through the website: “What started out as a small voluntary organisation was no longer manageable at some point. We therefore closed the ehrenmord.de archive on 31 December 2023. As the archive contains an exceptionally large amount of data on “honour killings” in Germany from 1981 to 2023, we are leaving the archive open for research purposes and for interested parties. Old cases will be added. New ones will no longer be included.” www.ehrenmord.de, Access: 19 Mart 2025.

⁶³ I would like to note here that the cases were initially identified as instances of “honour killing” by the website www.ehrenmord.de and the organisation PAPATYA. However, upon obtaining and reviewing the court files, I found that in all three cases, the respective courts explicitly stated in their judgments that these were not classified as “honour killing” cases. This discrepancy reflects a broader problem: the definition of “honour killings” varies significantly depending on the actor involved. Journalists, non-governmental organisations, judges, prosecutors, lawyers, social workers, victims, perpetrators, and academic researchers all contribute to an ongoing debate regarding the “operational definition” of honour killings.

Persistent questions remain as to whether the term should be limited to acts formally sanctioned by family councils as part of traditional practices, or whether it should also encompass individual acts carried out by persons motivated by concepts of honour. The judicial system introduces further

November 25 to December 24, 2013, in Freiburg. I was a visiting researcher, at the Max Planck Institute for the Study of Crime Security and Law (previously known as the Max Planck Institute, for Foreign and International Criminal Law). The case files obtained from the Berlin Criminal Court comprised approximately 2,500 pages for these three femicide cases. Given my upper-intermediate level of German⁶⁴ and lack of formal legal training, navigating the legal terminology and complex case documents presented additional challenges.

The most challenging aspect of working with the case files was not linguistic or technical aspects but the emotionally distressing content. Finally, I decided to select the case of Zeynep from these three case files,⁶⁵ who unfortunately did not survive and does not have a “voice”, and the case of Aylin Korkmaz, who miraculously survived the fatal attack. Reflecting the voice of a deceased woman through the case file increases my responsibility.

The responsibility of conveying Zeynep’s voice weighed so heavily on me that it often left me speechless; parts of the narrative were written with a sense of breathlessness. Zeynep, a young woman with an immigrant background, was murdered within just three years after getting married and moving to Germany. She was so lonely that after her death, her body was transported back to Türkiye by a friend she had met during her internship at a patisserie—a friend who, in the aftermath, received threats from unknown sources that the police were unable to verify. I also read that Zeynep attempted suicide one year after her arrival. There cannot be a bigger scream than suicide. I heard her scream, both when she attempted suicide and when she was attacked with a knife. In the other cases, the women also had a lot of different vulnerabilities. The other two women had children,

complexity into this debate. The German Federal Court of Justice (BGH) requires that perpetrators be assessed against the normative values of the host society, thereby limiting the strategic invocation of “honour” as a mitigating cultural defence. In criminal proceedings, references to honour-based motivations by defendants are largely disregarded by judges and do not typically result in a reduction of sentencing. Consequently, the legal and academic discussions concerning the definition, interpretation, and judicial treatment of honour killings remain highly contested.

⁶⁴ I completed German language course until the end of C1.3 Level.

⁶⁵ For the details of the other cases, see Eryılmaz (2016). It is sufficient to note that in all the three judgements it was noted that these cases were not an “honour killing” and in all three files Section 212 Totschlag was used. Courts judgments are based on “manslaughte”.

but Zeynep did not have. She was so lonely, and she suffered different forms of gender-based violence.

Even though I did not have Aylin Korkmaz's case file, her autobiography provided detailed information regarding the court proceedings. In 2015, I reached Ms. Aylin Korkmaz by telephone. Since her ex-husband was freed and expelled to Türkiye in 2014, she was totally upset. However, in July 2024, for the final stage of my thesis, I contacted Ms. Aylin Korkmaz again to get confirmation for citing her name throughout the Dissertation. This time, she put me in contact with one of her lawyers, Mr. Dirk Dohr.⁶⁶

I think hearing women's voices in these cases is extremely valuable in femicide cases. Therefore, even though it was a challenging task, I insisted comparing the cases of Aylin Korkmaz, who survived a murder attempt and Zeynep, who unfortunately did not survive.

The case file regarding Zeynep's death is composed of three folders with approximately 900 pages. This document includes police reports (such as crime scene investigation report, house search report, witness testimonies and police reports on some interviews with witnesses etc.), psychological report⁶⁷ about the accused, other medical reports,

⁶⁶ Mr. Dohr kindly shared the court judgment and supporting documents. I also had a meeting with him in August 2024. I did not include the court judgment in this study because of time constraints.

⁶⁷ At the initial stages of the prosecution, the Court decided that an expert report should be prepared on the following basis within a certain amount of time: "The accused shall be examined to determine whether, at the time of the offense, he was suffering from a pathological mental disorder, a profound disturbance of consciousness, imbecility or another severe mental abnormality that could have precluded or diminished his or her capacity for insight or inhibition. The expert opinion shall also cover whether the requirements for

- placement in a psychiatric hospital (Section 63 of the Criminal Code)
- placement in addiction treatment facility (Section 64 of the Criminal Code) are met."

The relevant provisions of the German Criminal Code are below:

Section 63 Placement in psychiatric hospital

If a person has committed an unlawful act in a state of **criminal irresponsibility (section 20)** or in a state of **diminished responsibility (section 21)**, the court orders that person's placement in a psychiatric hospital if the overall evaluation of the offender and of the offence reveals that, due to the offender's condition, he or she represents a danger to the general public on account of it being expected that he or she will in future commit serious unlawful acts which will result in the victims of the offence suffering or being exposed to the considerable danger of severe emotional trauma or physical injury or which will cause serious economic damage. If the unlawful act which has been committed is not an offence as referred to in sentence 1, the court only makes such an order if special circumstances justify the expectation that, due to the offender's condition, the offender will in future commit such serious offences.

autopsy report of the victim, prosecutor's indictment, court judgements including the final judgment and administrative papers such as the invoices of payments made to the translators, the correspondence with lawyers etc.

In addition to Zeynep's case file, I also explored the story of Aylin Korkmaz, a survivor of an attempted murder by her ex-husband. Although her case file was unavailable, Korkmaz documented her experiences, including the court proceedings, in her book *Ich Schrie um mein Leben: Ehrenmord mitten in Deutschland* (I Screamed for My Life: Honor Killing in the Heart of Germany). Her survival and testimony offered valuable insights into similar cases.

Section 64 Placement in addiction treatment facility

If a person has an addiction to alcoholic drinks or other intoxicating substances and is convicted of an unlawful act which was committed in a state of intoxication or as a result of an addiction, or the person is not convicted only on account of the finding of a lack of criminal responsibility or the lack of criminal responsibility cannot be ruled out on the evidence, the court is, as a rule, to order placement in an addiction treatment facility if there is a danger that said person will in future commit serious unlawful acts as a consequence of this proclivity. Such order is only to be made if there is a sufficiently reasonable prospect that the person can be cured within the period referred to in section 67d (1) sentence 1 or 3 by way of placement in an addiction treatment facility or that a relapse into addictive behaviour and the commission of serious unlawful acts caused by that proclivity can be prevented for a substantial period of time.

Section 20 Lack of criminal responsibility due to mental illness

Whoever, at the time of the commission of the offence, is incapable of appreciating the unlawfulness of their actions or of acting in accordance with any such appreciation due to a pathological mental disorder, a profound disturbance of consciousness, mental deficiency or any other serious mental abnormality is deemed to act without guilt.

Section 21 Diminished responsibility

If the offender's capacity to appreciate the unlawfulness of the act or to act in accordance with any such appreciation is substantially diminished at the time of the commission of the offence due to one of the reasons indicated in **section 20**, the penalty may be mitigated pursuant to **section 49 (1)**.

Section 49 Special mitigating circumstances established by law

(1) If the law requires or allows for mitigation under this provision, the following applies:

1. Imprisonment for life is substituted by imprisonment for a term of at least three years.
2. In cases of imprisonment for a fixed term, no more than three quarters of the statutory maximum sentence may be imposed. In case of a fine, the same applies to the maximum number of daily rates.
3. Any increased minimum statutory term of imprisonment is reduced as follows:
 - in the case of a minimum term of ten or five years, to two years,
 - in the case of a minimum term of three or two years, to six months,
 - in the case of a minimum term of one year, to three months,
 - in all other cases to the statutory minimum.

1.6. Limitations and Challenges

Having two different bodies of sources is an epistemological challenge on the one hand, but it also shows how the narrative from the voice of the victim contributes. Since the victim cannot speak on her own behalf in Zeynep's case, the prosecutor should look for the voice of the victim in the witness testimonies.

The research project faced its first major challenge because starting without German language proficiency made the research process long and difficult. I overcame the language barrier by taking a language course. As a researcher who did not grow up in Germany and who could only stay in Germany for a short time, I had difficulties following up on the developments. On the other hand, access to the court files was restricted for non-German researchers who are outside Germany. It took me one year to finally have access to the files. I was able to get a copy of the court case files by being a visiting researcher at a research institution in Germany and by signing a very strict document that included many provisions of the Penal Code.⁶⁸ It has taken me quite some time to become competent in reading legal documents and socio-legal discourse in its original language. Not being a lawyer is at times a challenge, at times an advantage.

The topic required handling multiple layers of literature because it combines gender with law, culture, migration, crime and political theory in an interdisciplinary way. The extensive amount of complicated literature caused intellectual confusion through its overwhelming density.

The emotionally intense nature of dealing with gender-based violence and honour-related killings in this context was also difficult. The emotional power of the research material made it challenging to maintain critical distance as a scholar because it frequently merged scholarly analysis with emotional engagement. The research challenges influenced both the research process structure and my methodological approach, which focused on positionality and vulnerability and ethical requirements for violence research.

⁶⁸ I signed a document named "*Verschwiegenheitsverpflichtung*" (Obligation to maintain confidentiality), 4 November 2013.

Having different materials to analyse is one of my challenges throughout this dissertation's long journey. However, even though this challenge created disadvantages for me as a researcher, I dared to take this path since I find it worth showing how valuable it is when women can tell their stories in femicide cases.



CULTURAL RELATIVISM AND WOMEN'S HUMAN RIGHTS: "HONOUR-BASED VIOLENCE" AS A FORM OF GENDER-BASED VIOLENCE

"Where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm, or office where he works. *Such are the places where every man, woman, and child seek equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.* Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world."

Eleanor Roosevelt⁶⁹, "In Our Hands"

(1958 speech delivered on the tenth anniversary of the Universal Declaration of Human Rights)

The Universal Declaration of Human Rights (UDHR) comprises 30 articles that proclaim the fundamental human rights of all individuals, regardless of gender,⁷⁰ across the world. Although it is not a binding document like a convention, it remains a powerful political document. On December 10, 2024, the international community commemorated the 76th anniversary of the UDHR's adoption by the United Nations General Assembly. However, the debate on the universality versus cultural relativity of human rights, which began with the drafting of the UDHR, has not subsided. On the contrary, it continues to be a pressing issue on the global agenda, influenced by shifting political circumstances around the world.

A policy report titled "*The March of Universality? Religion-Based Reservations to the Core UN Treaties and What They Tell Us About Human Rights and Universality in the 21st Century*," authored by Başak Çalı and Mariana Montoya for Universal Rights Group

⁶⁹ Eleanor Roosevelt chaired the first United Nations (UN) Human Rights Commission that drafted the UDHR.

⁷⁰ Even though the UDHR refers to "every person", international women's movement claimed that it was drafted with the needs and experiences of "male person" in mind. Consequently, in 1979, the United Nations adopted the Convention on the Elimination of All Forms of Discrimination against Women, which specifically addresses the needs and experiences of women.

in 2017, analysed the implications of all reservations to the core human rights conventions adopted within the framework of the United Nations. Since these reservations directly affect the obligations of the States under international law, when they become Party to any human rights convention, States may hold reservations for the provisions they do not wish to be bound by, provided the convention allows such reservations. The authors of the report underlined that “the presence of reservations reinforces the arguments of cultural relativists; while the withdrawal of reservations, or the decision of a certain State to accede to a convention without reservations in the first place, is a powerful indicator of ‘the march of universality.’” (Çalı and Montoya 2017, 2).

Çalı and Montoya explain why reservations to the core human rights conventions offer an invaluable barometer of the universality of human rights. When there is an incompatibility between the rights enshrined in these conventions and the cultural and/or religious norms of States, these States often enter reservations. It is noteworthy that the highest number of religion-based reservations is to the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁷¹ mainly to the Article 16 of the Convention which regulates the equality between women and men within the family, or to put it differently, the gender equality in the private realm. This is, in my view, in contradiction with the aim of the CEDAW, since the Convention ultimately aims at the elimination of all forms of discrimination against women and for this purpose in Article 5 of the Convention, States are obliged “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and *customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.*” However, the Convention permits ratification subject to reservations, provided that the reservations are not incompatible with the object and purpose of the Convention. The CEDAW Committee asks the States to re-examine and remove the reservations. The religion-based reservations are mostly from Muslim-majority States, however, it is underlined in the

⁷¹ According to the report, CEDAW has attracted the highest overall number of reservations (440 reservations) and over 60% (274 reservations) of these are inspired by religion or belief. (Please see page 18 of the report).

report that reservations are also declared by Catholic-majority States from Western Europe, Eastern Europe, Latin America, and the Pacific, as well as by Jewish-majority, Hindu-majority, and Buddhist-majority countries from Asia and the Middle East. When it comes to women's equality with men, "culture" intertwined with "religion" poses an impediment in most of the countries of the world.

In her 2017 report to the United Nations General Assembly, Karima Bennouna, the former UN Special Rapporteur on cultural rights, highlighted that fundamentalist and extremist ideologies, among other factors, are major threats to women's human rights globally. These ideologies pose a threat because they reject gender equality and the universality of human rights, often invoking "cultural relativist excuses" that some State Parties to the CEDAW Convention use to justify their actions (A/72/155). Despite the progress achieved in women's human rights thanks to the tireless efforts of the global women's rights movement, women's rights continue to face persistent threats and backlash worldwide.

The debate between universalists and cultural relativists is crucial for women's human rights since many violations of women's human rights, and especially violence against women and gender-based violence, are still justified on the basis of cultural relativism, even though universal human rights norms require the States not to "invoke any custom, tradition or religious consideration to avoid their obligations with respect to [the elimination of violence against women]" (Article 4 of the United Nations Declaration on the Elimination of Violence against Women). On the other hand, the Istanbul Convention further elaborates the obligations of States on "culture" in Articles 12(1) and 12(5) regarding general obligations and Article 42 regarding unacceptable justifications for crimes, including crimes committed in the name of so-called "honour".⁷²

⁷² Article 12(1) Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.

Article 12(5) Parties shall ensure that culture, custom, religion, tradition or so-called "honour" shall not be considered as justification for any acts of violence covered by the scope of this Convention.

Article 42(1) Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of

The dilemma between the universal normative framework of women's human rights and the real violations of women's human rights in practice is bothering me as a researcher, who has spent almost 20 years trying to raise awareness among legal professionals about the universal framework of women's human rights in Türkiye. For this reason, I find the meaning of the quotation at the beginning of this chapter of vital importance for the lives of women, whose right to life and right to a life free from violence have been violated. In other words, even though the right to life is proclaimed among the universal human rights, the right to life of a lot of women in the world is violated every day in small places, exactly in their homes, just because they are women.

2.1. The Debate on the Universality of Human Rights and Cultural Relativism

Are human rights universal or culturally relative? This question has been raised ever since the discussions started on the proposed text of the UDHR. In June 1947, the Executive Board of the American Anthropological Association sent a letter to the Human Rights Commission of the United Nations and raised the following issue for the members of the Commission based on the diversity of the ways of life of societies: "How can the proposed Declaration be applicable to all human beings, and not a statement of rights conceived only in terms of the values prevalent in the countries of Europe and Northern America?" (The Executive Board of the American Anthropological Association, 1947: 539).

The American Anthropological Association Executive Board underlined that group customs shape individuals' behaviour, thoughts, and moral values. Consequently, an individual's right to develop their personality is rooted in the culture of their society. In this context, the Executive Board's statement rejected the notion of universal implementation of international human rights norms.

this Convention, culture, custom, religion, tradition or so-called "honour" shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.

Article 42(2) Parties shall take the necessary legislative or other measures to ensure that incitement by any person of a child to commit any of the acts referred to in paragraph 1 shall not diminish the criminal liability of that person for the acts committed.

In parallel to the letter of the Executive Board of the American Anthropological Association, the Saudi Arabian delegation at the United Nations objected particularly to Article 16 on the right to marriage and Article 18 on the freedom of religion when the UDHR was being drafted:

“The authors of the draft declaration had, for the most part, taken into consideration only the standards recognized by Western civilization and had ignored more ancient civilizations which were past the experimental stage and the institutions of which, for example marriage, had proved their wisdom through centuries. It was not for the Committee to proclaim the superiority of one civilization over all other[s] or to establish uniform standards for all countries of the world” (Ignatieff 2001, 59).

The objection of the Saudi Arabian delegation also underlines that the authors of the draft declaration did not consider other cultures. The justification for Saudi Arabia’s objection was that “Muslims may not marry someone of another faith according to the Sharia,” whereas the delegations of other Muslim countries such as Syria, Iran, Türkiye voted for the UDHR (Morsink, 1991, p. 248; Morsink, 1999, p. 124). The objection raised by the Saudi Arabian delegation exemplify the Islamic challenge to the concept of universality of human rights. Despite these objections, the United Nations General Assembly proceeded to adopt the UDHR. The vote resulted in 48 countries supporting the Declaration, while 8 countries, including Saudi Arabia, abstained, and two were absent (Charlesworth, 2008; Cerna, 1994, p. 742).⁷³

Cerna maintains that all states are willing to accept the universality of a specific core group of rights which are called “*jus cogens*” or listed as “non-derogable” rights in human rights treaties. She gives the following “*jus cogens*” norms as the least controversial examples: “prohibition of the use of force, the law on genocide, the principle of racial non-discrimination, crimes against humanity and rules prohibiting trade in slaves and piracy...” by quoting from Ian Brownlie on the principles of public international law (Cerna, 1994: 744). On the other hand, she mentions the challenge to the concept of the universality of human rights, especially that is coming from Asia, is about “private” rights which are relevant for the private sphere or the personal life of the individual.

⁷³ The other members that abstained are as follows: Belarus, Czechoslovakia, Poland, South Africa, the Soviet Union, Ukraine and Yugoslavia. Yemen and Honduras were absent.

Cerna states that “private sphere deals with issues such as religion, culture, the status of women, the right to marry and divorce, the question of choice as regards family planning and the like, is a domain in which the most serious challenges to the universality of human rights arise” (Cerna, 1994: 746).⁷⁴ As Cerna puts it, the issues that the universality of human rights is debated are mostly related to and therefore affect women’s rights.

Jack Donnelly states that human rights should be universal (Donnelly 1998). He maintains that human rights are universal and almost all states accept them, and he calls this international legal universality (Donnelly, 2013: 94). In general, universalists claim that the implementation of international human rights norms should go beyond any cultural boundaries and particularities. On the other hand, cultural relativists claim that human rights cannot be universal because cultures contain different rules and therefore conceptualize human rights differently from each other (Sloane, 2001: 531).

Ignatieff points to three distinct sources of cultural challenges to the universality of human rights: Islamic, Asian, and Western challenges. Each of these challenges has different dimensions. However, according to Ignatieff, they call the legitimacy of human rights norms into question (Ignatieff, 2001: 58). Ignatieff states that the Islamic challenge to human rights has started from the beginning, as indicated above in Saudi Arabia’s objection to the text of the UDHR. However, he argues that since the 1970s, when the Islamic Revolution in Iran occurred, the challenge coming from Islamic religious grounds has grown more hostile. Practices such as polygamy or purdah, imposed on women through Islamic governments, are confronted by universal human rights.⁷⁵ Ignatieff

⁷⁴ Okin (1999: 13) mentions that “religious or cultural groups often are particularly concerned with “personal law”—the laws of marriage, divorce, child custody, division and control of family property, and inheritance.

⁷⁵ Iran is not a State Party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); however, Afghanistan and Saudi Arabia for instance, are State Parties to the CEDAW. CEDAW is a text that sets the universal standards for the human rights of women. Iran has not signed and ratified it since Sharia is not compatible with the rights guaranteed under CEDAW. Saudi Arabia and Afghanistan, on the other hand, are State Parties to CEDAW with reservations about the articles that are not compatible with Sharia.

Prof. Feride Acar, former chairwoman and member of the CEDAW Committee, mentioned in a seminar that even though these States that are governed by Sharia rules are State Parties to the CEDAW with reservations, it is still important that they are State Parties, because they become open to the international monitoring system of the CEDAW, and they submit reports every 4 years.

claims that Asian values are based on the community and family rather than the individual, as the subject of the human rights discourse (Ignatieff, 2001: 59–63). The critique from the West has different grounds, but the most significant challenge comes from the anthropological critique of western imperialism.

Zechenter, on the other hand, maintains that the influence of cultural relativism, multiculturalism, and postmodernism slowly undermines the universalism of human rights. She highlights two extreme positions of universalism and cultural relativism by referring to Terence (163 B.C.), who claimed that “I am human and nothing human is alien to me,” and to Renato Rosaldo (in 1984), who claimed that “my own group aside, everything human is alien to me” (Zechenter, 1997: 319). She lists numerous groups that have raised firm challenges to the ideal of universal human rights: Asian and Islamic governments; multiple Third World regimes; representatives of newly organized indigenous groups; many social scientists and philosophers; persons who value human diversity and who view human rights as an extension of the Western sphere of influence; and those who fear interventions in culture based on human rights universalism (Zechenter 1997, 322–23).

The debate between universalists and cultural relativists has also been at the centre of the discussions at the second UN World Conference on Human Rights held in 1993 in Vienna. Cerna states that the priority of the Western states in the Vienna Conference was to issue a strong confirmation of the universality of human rights and reject the idea that human rights are measured differently in different countries because they have different social and cultural backgrounds (Cerna 1994, 741).

So, the human rights system can also challenge local practices and in some cases, it can result in changes. For instance, when Türkiye signed and ratified CEDAW in 1985 and 1986, respectively, the Civil Code in effect then included the provision that “the husband is the head of the household.” Therefore, Türkiye had reservations about Article 16 of the CEDAW, which is about the equal rights of spouses within marriage. As a result of the campaigns by the women’s movement that used CEDAW and its monitoring mechanism as leverage, the Civil Code was changed in 2002, and a lot of discriminatory provisions based on gender were changed. Türkiye lifted all its reservations in 1999, even though the Civil Code Reform was in draft mode. In that respect, even the critics of universalism admit that international monitoring and sanction provided by universalism can bring about internal dialogue and internal cultural transformation within societies and thus provide the needed leverage to improve the human rights situation within those countries (An-Naim, 1992).

The universality of human rights has been repeatedly acknowledged in the Vienna Declaration and the Programme of Action adopted at the end of the UN World Conference on Human Rights in 1993. In paragraph 1, it was stated that “the universal nature of these rights and freedoms is beyond question,” and in paragraph 5, it was declared that:

“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms” (United Nations, 1993).

In this paragraph, the universality of human rights has been underlined, whereas national and regional differences were also recognised.

The universality of the human rights of women was reaffirmed in the Vienna Declaration and the Programme of Action. In paragraph 18, it was stated that “the human rights of women and of the girl-child are an inalienable, integral, and indivisible part of universal human rights.” Even though the universality of human rights has been emphasized repeatedly in documents like this, the debate is not over.

The two sides of this debate—universalists and cultural relativists—cannot be easily reconciled. One side of the debate claims that the international standards of human rights that have been developed since the adoption of the UDHR and have been guaranteed through a human rights system do not reflect all cultural traditions and result from Western cultural imperialism. They argue that international human rights law principles are based on Western values and not on those of other parts of the world.

Others argue that the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), both of which were adopted at the United Nations in 1966. Together with the UDHR they are titled the International Bill of Human Rights; they set the general framework of human rights; and the texts of the human rights conventions were the result of discussions and agreement by almost all governments and therefore reflected the highest level of universality. Another argument that the universalists raise is that everyone has human rights by virtue of being human. Universalists also claim that cultural relativism might be

used in the justification of violations of human rights and therefore pose a threat to the human rights framework.

Donnelly differentiates between radical cultural relativism and radical universalism, which he calls the two extreme positions on the two ends of a continuum. He contends that there are different levels of mixes of universalism and cultural relativism between those two extreme forms. He distinguishes between weak and strong forms of cultural relativism and universalism and defends a weak cultural relativist or strong (but not radical) universalist position (Donnelly, 1984: 401; Donnelly, 2007: 292). A weak cultural relativist position allows limited deviations from the universal human rights standards (Donnelly, 1984: 400–402). Donnelly claims that weak cultural relativism is embedded in the International Bill of Human Rights. Weak cultural relativism is “an approach that views human rights as *prima facie* universal but recognizes culture as a limited source of exceptions and principles of interpretation” (Donnelly, 1984: 402). Therefore, he maintains that basic human rights are “relatively universal” (Donnelly, 1984: 419; Donnelly, 2007).

Within the framework of this dissertation, I would argue that even though it might not be easy to find a solution in some of the cases where the universality of rights and the right to culture come into conflict, one should take an empowering position for women whenever women’s rights are at stake. When it is a woman’s right to life or to bodily integrity that is to be violated because of violence against women, there should not be any discussion or justification based on culture.

There are various forms of women’s human rights violations that stem from cultural practices. The theme and focus of this dissertation will be on the practices related to “honour-based violence”. However, other types of cultural practices violate women’s human rights based on patriarchal culture, such as female genital mutilation (FGM) or female genital cutting (FGC), *sati*⁷⁶ (widow burning), dowry deaths, son preference over girls, polygamy, forced marriage, early marriage, foot binding, and such. These practices

⁷⁶ *Sati* means “chaste woman” and “good and devoted wife” in Hindi and Sanskrit texts. Women were expected to believe that their destiny lay in committing their lives to their husbands even after death.

continue in many parts of the world. Some of these practices continue in Europe in countries with immigrant populations. In recent years, polygamy, forced marriage, FGM, and veiling have been discussed in these countries to develop policies that also included legal regulations.

Most of the liberal states in Europe claim that gender equality is one of the core principles of their democracies. So even though in the human rights documents gender equality is guaranteed and the liberal states of the West are seemingly committed to putting gender equality into practice, women's human rights violations continue in many places. Therefore, it is very important to always keep in mind what Eleanor Roosevelt said years ago: rights have meaning at the level of the individual women, men, and children.

2.2. Cultural Relativism

The cultures in the world are diverse. Different societies have various practices. For example, male polygamy is an acceptable form of marriage in Saudi Arabia, but not in many other parts of the world, at least not anymore on legal terms. In Tibet, sky burial, in which the dead body of a person is presented to vultures, is the most popular funeral practice, whereas it is unthinkable in many other countries in the world as a form of funeral. On the other hand, burial on earth is viewed as a form of disgrace in Tibet.

Female genital mutilation is a traditional practice that continues in Sub-Saharan Africa and, in some cases, in European countries with immigrant populations even today despite a lot of efforts put into stopping this practice. Sati in India and foot binding in China are traditional discriminatory practices against women that do not continue anymore and will not hopefully rise again.

In the beginning of the British rule, the colonisers followed a non-interference policy and made no effort to stop sati and similar practices in India. As long as women were not coerced and chose this act wilfully as an act of devotion, there was no problem. The British colonial rulers primarily relied on religious texts and sought approval from Hindu

court pundits⁷⁷ to demonstrate the legitimacy and perpetuation of the practice of sati. In 1829 on the other hand, the British banned sati. British handling of sati transformed the matter into a question of colonialism and anti-colonialism and consequently it turned into a way of “subaltern disobedience” against British colonisers. The supporters of the practice based their arguments on the preservation of local customs and notions of nationalism. The debate was based on religious texts, traditional practices, and colonial impact, and women’s perspectives were disregarded.

The last known sati case is the case of *Roop Kanwar* in India, and this case is a striking example of the discussions on cultural practices and cultural relativism. Roop Kanwar was burnt alive at the age of eighteen on the funeral pyre of her husband in 1987. She was married for a couple of months when her husband died because of an illness at a young age. After this incident, a huge outcry by the women’s movement in India turned this incident into a battle between religious and cultural orthodoxy and women’s rights. Following her death, Sati Prevention Act came into existence in 1987, which included punishment for the glorification of sati. Sati also became a symbolic battleground against colonialism. Questions such as the following were raised on this issue: to what extent can colonisers or outsiders understand and regulate a nation’s culture? Do women have agency in sati and other traditional, cultural, and religious practices? Should sati be legal or not?

Gayatri Chakravorty Spivak examines the case of Roop Kanwar as an illustrative case within the wider framework of her investigation of the subaltern. Spivak employs the incident to exemplify the complexities and difficulties of portraying the perspectives of marginalized women. The act of self-immolation by Roop Kanwar was seen differently by numerous organizations and individuals, each providing their own viewpoints based on their cultural, social, and political backgrounds. Spivak’s main argument in analysing

⁷⁷ The term ‘pundit’ originated from the Sanskrit word ‘pandit’ and referred to individuals who provided guidance to English courts regarding Hindu law during the colonial era in India. The task that a pundit performs is very similar to the “cultural experts” who are asked to provide information in cultural offense and/or cultural defence cases.

Roop Kanwar is to emphasize the challenge of comprehending the motivations and agency of women like her within the established frames of prevailing discourses.

She contends that the Western feminist rhetoric, which may criticize such behaviours as oppressive towards women, could oversimplify the matter by disregarding the complexities of cultural and social situations. Moreover, Spivak critiques the inclination to perceive the women participating in customs like sati as mere passive victims and therefore neglecting to recognize the autonomy and agency they may exercise within their respective social and cultural circumstances. The discussion of Roop Kanwar serves as an entry point for Spivak to examine how the voices and agency of subaltern women are often obscured or misinterpreted in discussions about practices like sati (Spivak, 1993).

The list of the examples of different cultural practices can be multiplied. How are we going to assess these practices? Are they moral or immoral? Who is going to decide or make a judgement about these practices and on what basis? Are there universal moral rules that would guide us whether any practice is right or wrong? Is right and wrong or morality relative to culture and varies with culture? Is there a common human nature which bound all the humans together? What will happen when cultural practices are violating criminal law?

According to cultural relativism, every action a person takes should be interpreted considering their cultural background and should be understood relative to their cultural context. According to some cultural relativists, non-Western civilizations do not uphold human rights; rather, they reflect Western norms and values. Cultural relativists argue that civilizations and cultures shouldn't be assessed and then punished for violating human rights based on relative Western standards (Mayer 1994, Renteln, 2005).

Kant's student, Johann Gottfried Herder, who lived between 1744 and 1803, is often cited as the ancestor of modern cultural relativism. Herder argues that various communities and time periods hold distinct systems of belief regarding what is good and bad, right, and wrong, and that there is no objective, transhistorical, or transcultural criteria for judging between these systems. For some of his critics, Herder's idea was the starting point of

Nazism because he asserted that people are separated into different types whose members inevitably see the world in different ways.

In the anthropological research, cultural relativism was established by Franz Boas at the beginning of the 20th century. “Civilization is not something absolute but is.... relative, and ... our ideas and conceptions are true only so far as our civilization goes.”

One of the counter arguments to test cultural relativism is that if there are no objective criteria for ethical judgement, then it is not possible to judge the Nazis.

2.3. Cultural Relativism and Women’s Human Rights

“The firm belief that the personality of a human being can only develop in terms of culture and understanding that there are no values or standards by which we can judge and evaluate cultures underpins the cultural relativist position which in recent years has strongly challenged the framework of rights that governs much of our thinking about women’s emancipation.”(Coomaraswamy 2002, 1–2)

The United Nations Commission on Human Rights appointed a Special Rapporteur on violence against women, including its causes and consequences, on March 4, 1994 (UN Resolution 1994/45). Professor Yakın Ertürk, former Special Rapporteur on the violence against women, its causes, and consequences, mentioned in her 2007 report on intersections between culture and violence against women (A/HRC/4/34) that:

“Since their inception, the universality of human rights and their validity in a given local context have been continuously contested through relativist discourses that brand them as external impositions that are incompatible with local culture.”⁷⁸ On the other hand, cultural practices that

⁷⁸ The arguments put forward to justify the presidential decision to withdraw from the Istanbul Convention of Türkiye is a striking example of these relativist discourses. On 20 March 2021, the presidential decision which declared that Türkiye would withdraw from the Istanbul Convention unilaterally, was published in the Official Gazette and as of 1 July 2021, Türkiye is no longer a State Party to the Istanbul Convention. The judicial process against this presidential decision continues. However, it should be emphasized that the arguments used to justify the presidential decision referred to “*our culture*” and “*our traditions*” whereas as Oder and Altan Olcay put forward, the backlash against gender equality is transnational “even though it is based on the claims of unique, homogeneous community identities”. Please see Altan-Olcay, Özlem, and Bertil Emrah Oder. 2021. “Why Turkey’s Withdrawal from the Istanbul Convention Is a Global Problem.” *openDemocracy*, June 2, 2021. Accessed June 2,

discriminate against women are frequently regarded as belonging to “others”, whether they live in developing countries or belong to local immigrant communities. Embedded into this practice of “othering” is a trend towards isolating violence against women from the wider political and economic environment and the overall concern for women’s rights, empowerment, and equality” (Ertürk, 2007: 2).

Yakın Ertürk identified “culture-based identity politics” as a major challenge to the achievement of gender equality and the elimination of violence against women in her reports on “towards an effective implementation of international norms to end violence against women” (E/CN.4/2004/66) and on “the due diligence standard as a tool for the elimination of violence against women” (E/CN.4/2006/61). In her report on “the intersections between culture and violence against women” she elaborated further on this point (Ertürk, 2007: 8).

The former Special Rapporteur, Radhika Coomaraswamy, also underlined in her report in 2003 (E/CN.4/2003/75) that “the greatest challenge to human rights comes from the doctrine of cultural relativism where women’s issues play a vital part” (Coomaraswamy, 2003: 21) and she also put forward that “in the next century, the problems posed by cultural relativism, and the implications for women’s rights, will be one of the most important issues in the field of international human rights” (Coomaraswamy, 2002: 7).

Cultural relativism is frequently used as an excuse to permit discriminatory practices against women in the community that are in contradiction with the dignity of women, despite clear provisions in many human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women, according to which States parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of all forms of discrimination against women (Article 5).

2022. <https://www.opendemocracy.net/en/can-europe-make-it/why-turkeys-withdrawal-from-the-istanbul-convention-is-a-global-problem/>.

The authors also refer to a poll conducted by KONDA on the Istanbul Convention in 2020, which shows that the support for “*namus*” (so called “honour”) – the belief that women’s behaviour should be controlled in order to protect “family honour” – has decreased from 45 to 21 % in the last ten years. So, who is going to define “our culture” and “our traditions” especially when women’s rights are concerned? Is it going to be the right-wing politicians or the women themselves? And how did change happen? The answer to these questions relies on politics and power relations.

In her report on the cultural practices in the family that are violent towards women in 2002, Coomaraswamy listed female genital mutilation, “honour killings”, the pledging of girls for economic and cultural appeasement, witch hunting, caste, marriage, discriminatory laws, son preference, restrictive practices, practices that violate women’s reproductive rights, beauty and incest as examples of cultural practices that discriminate against women and that are violent toward and harmful for women (E/CN.4/2002/83) and she explained all these practices in detail (Coomaraswamy, 2002). She emphasized that these practices and similar other practices violate women’s human rights, and they constituted a form of domestic violence but have escaped from national and international examination since they are seen as “cultural practices which deserve tolerance and respect”. Both Special Rapporteurs call attention to the tolerance and respect provided for these cultural practices which violate the right to bodily integrity of women and harms the right of women to equality and equal dignity.

Yakın Ertürk explained in her article in 2009 that we could talk about a “clash of masculinities” rather than a “clash of civilizations”. She depicted “the civilizing” intervention of the American military in Afghanistan as an illustrative clash between alternative masculine claims for power where women became the “war zone” in which Taliban claimed to protect women from Western corruption whereas American military claimed to protect women from Taliban’s “archaic brutality” (Ertürk, 2009: 63-64). She underlines the same issue in her report in 2007 where she mentioned identity politics has made culture the site of contestation and the notion of culture a tool of new forms of oppression by explaining that “women, particularly from the Global South, find themselves entangled in these ideological contests as they are reduced to “weak victims” and are left with the “choice” of joining forces with imperialist/hegemonic projects or compliance with oppressive practices” (Ertürk, 2007: 2-3).

Kaya points to some events connected to the changing perception of migrants with Muslim backgrounds (Kaya 2009, 4). Even though the perception of Muslims started to change with events like the Iran Revolution (1979), the 9/11 attacks (2001) in the USA were a decisive turning point. The trend to merge Islam with violent extremism accelerated following the Madrid (2004) and London (2005) bombings. Kaya argues that

the fear of migrants and migrants with Muslim background is “a constructed and fabricated fear, serving the interests of nation-states which are no longer equipped with the tools to redistribute justice and peace relatively equally” (Kaya, 2009, p. xiv.). The way Muslims are perceived by the public is shaped by the “clash of civilizations” thesis:

“Muslims are increasingly represented by the advocates of the same thesis [*clash of civilizations thesis*] as members of a ‘precarious transnational society’, in which people only want to ‘stone women’, ‘cut throats’, ‘be suicide bombers’, ‘beat their wives’ and ‘commit honour crimes’.... Recently, it has become inevitable for some people in the West to have the urge to defend the Western civilization against this ‘enemy within’, who is culturally and religiously dissimilar with the ‘civilized’ Western subject” (Kaya, 2009: 5).

Cultural diversity is a sign of pluralism and therefore it is something desirable for liberal democracies. However, the beliefs, practices, and values of some of the cultural groups might clash with either those of the dominant group or with one another. What happens when certain minority practices and values clash with the practices and values of the dominant majority group? In cases where such a “cultural clash” occurs, this poses a puzzle for liberalism. In cultural conflict situations, different groups in a society have different norms of conduct in the same situation.

Which cultural customs and traditions of indigenous or immigrant minority communities will be supported and permitted and how will the decisions be made? In what ways may a state allow or accept cultural customs? Lambrecht calls this “the question of cultural diversity” and he emphasizes that the question of cultural diversity must be addressed by modern liberal states (Lambrecht, 2023: 563). The question of cultural diversity refers to the challenge that contemporary states face in accommodating and permitting the cultural practices of diverse cultural groups while maintaining stability and liberal values. This challenge is about reconciling differences and equality.

Fatmagül Berktaş wrote that the society we need is one that can be comprised of differences and equality. However, she underlined that we must be careful with “any blanket deference to culture, to the institution of the family or privacy rights within the family, because it has disastrous consequences for women”:

“I said we need both difference and equality, but this does not mean that we should applaud an uncritical argument of difference. Any blanket deference to culture, to the institution of the family or privacy rights within the family has disastrous consequences for women. The discriminatory

and terrible practices such as stoning, genital mutilation, suttee⁷⁹, bride burning, “honour killings”, passion killings, rape, domestic violence, etc. are all part and parcel of a universal web of violence against women. These acts are assaults to life, dignity and personal integrity of women and they are all political in the broad sense because they manifest and at the same time reinforce patriarchal values” (Berkta, 2019: 1).

Whereas none of the practices mentioned above could be directly and exclusively linked to Islam, the perception of the public has been shaped by this idea:

“On the other hand, defining and limiting crimes of “honour” or more generally crimes related to religious and cultural practices to minority groups, religious communities and linking them to this or that area (the Middle East, for example) identifies these as “problematic” groups or cultures and rests upon a homogenized interpretation of culture. In this approach, a certain culture is assumed to be given, monolithic which uniformly condones such practices, and thereby builds a wall between the (homogenised) members of that culture and those outside it and constructs the problematized group/culture as a backward “other”. Often the “outsiders” are assumed to be equipped with an ability to criticise whereas the dissent among “insiders” is not recognized. This inevitably strengthens the hands of the conservatives within such cultures. What we should aim at is just the opposite: Listening to and hearing the voices of the dissenters in these cultures and forging alliances with them. We also need to stress that states have responsibility for unlawful actions and for failure to provide remedies for unlawful actions. It is clear that failing to provide adequate protection of women’s human rights the State assumes responsibility for the violation of the human rights experienced by women in the home or for the violence legitimized by cultural and/or religious traditions” (Berkta, 2019: 2).

In this dissertation, the research question is “How is culture elaborated in criminal cases regarding violence against immigrant women in Germany limited to murder/manslaughter and attempted murder cases due to “honour-based violence” crimes against women who have immigrated from Türkiye?”.

“Honour-based violence” is framed by the media in most of the Western states as a cultural practice among minority communities, and therefore as an “imported phenomenon” (Aujla and Gill, 2014; Gill, J.K., 2022, Shier and Shor, 2016)

The definition of the term “honour-based violence” and its extreme form as “honour-killing” is very much contested and highly debated in the literature, but from my point of view, seeing the problem of “honour-based violence” as a cultural practice of minority communities or to put it differently as a cultural practice of the “other” is problematic.

⁷⁹ The conventional transcription of the Sanskrit word for the widow would be *sati*. The early colonial British transcribed it *suttee*.

Gender-based violence is intertwined with unequal power relations between men and women. Understanding “honour-based violence” as a cultural phenomenon existing only in some “backward” immigrant communities without looking at the social and historical context and without understanding the unequal power relations does not provide any solution to the problem, on the contrary this perspective perpetuates stereotypes about immigrant communities and racism.

This perspective resembles very much to the differentiation between “customary killings” (*töre cinayetleri*) and “honour killings” in Türkiye and in the Turkish legal interpretation. As Türkan Yalçın Sancar (2007) and Recep Doğan (2016) put forward, calling these crimes as “customary killings” results in limiting this practice to the Kurdish community, seeing the problem as limited to the Southeastern and/or Eastern parts of Türkiye. In Europe looking at the issue from a cultural essentialist point of view, similarly, results in seeing the problem as limited to the Muslim minority communities, which in fact, does not reflect the reality.

How are honour-related violence, “honour killings”, forced marriage and other similar cultural practices that are attributed to the minority communities discussed and framed in the media? How are these issues debated in the parliaments of immigrant receiving countries? Which policies are developed? Which discourse is prevalent in immigrant receiving countries?

Aisha Gill analysed how the British media’s portrayal of honour crimes has misrepresented the perception of ethnic minorities and stimulated a feeling of moral superiority within the mainstream society. She questioned the impact of media coverage on honour crimes on the general public’s opinion of ethnic minority communities, which has resulted in the emergence of racism (Gill 2006).

Korteweg and Yurdakul analysed media and policy discourses regarding religion, culture and honour related violence in the Netherlands, Germany, Britain and Canada in a comparative manner and they found out three main discursive trends:

- i) “discussions that link honour killing to Islam and/or the backwardness of immigrant communities in ways that lead to the stigmatization of entire immigrant communities;

- ii) culture-blind portrayals of honour-related violence as domestic violence or violence against women that do not pay attention to cultural specificities; and
- iii) debates that are contextually specific, framing honour-related violence as a contextually informed form of violence against women that occurs within particular immigrant communities but where this violence does not essentialize the culture and practices of those communities as a whole” (Korteweg and Yurdakul, 2010, iii).

Although in varying degrees, stigmatization of Muslim communities was existent in the media and policy debates in all the four countries, Korteweg and Yurdakul argue that German media and political debates were particularly stigmatizing suggesting no alternative ways of policy making. Korteweg and Yurdakul underline that neither the policies that stigmatize immigrant communities nor the policies that ignore the culture-specific aspect of gendered violence within communities will be effective and suggest that the policies that consider the social, political, cultural context while seeing the problem not as a foreign issue but as part of the new social relations (Korteweg and Yurdakul 2010). In line with Korteweg and Yurdakul, I also argue that when devising policies for preventing honour related violence the fact that gender-based violence is prevalent in every society, throughout the life cycle, and across all socio-economic and cultural differentiations; that “honour-based violence” is a form of gender-based violence and that all societies are patriarchal with different tones, should be kept in mind.

Violence against women is a worldwide phenomenon, and it is one of the most widespread forms of human rights violations. CEDAW General Recommendation 19 on VAW underlines that gender-based violence is a form of discrimination that constitutes a serious obstacle in the enjoyment of human rights and fundamental freedoms by women. This topic has been in the focus of research for quite a long time. The World Health Organisation (WHO) research shows that one out of every three women has experienced violence at least once in their lifetime mostly by an intimate partner (WHO, 2021: XVI).

Thanks to the efforts of the women’s movement, violence against women has become a key topic in international human rights conventions and documents and national legal instruments. The main documents UN produces are as follows: The 1993 United Nations Declaration on the Elimination of Violence against Women, the 1995 Beijing Platform for Action which came out of the Fourth World Conference on Women, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) General

Recommendation No. 35 (in 2017) on gender-based violence against women, updating General Recommendation No. 19 (in 1992). General Recommendation No. 35 declares that the prevention of gender-based violence has become part of international customary law.

On the other hand, regional conventions that are binding for the State Parties were developed to struggle with violence against women: the 1994 Belém do Pará Convention (the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women), the 2003 Maputo Protocol (the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa) which went into effect in 2005 and the 2011 Istanbul Convention which came into force in 2014.

As mentioned above, the United Nations Commission on Human Rights appointed a Special Rapporteur on violence against women, on 4 March 1994 (resolution 1994/45). The mandate was most recently renewed in 2019 by Resolution 41/17.

Article 1 of the 1993 United Nations Declaration on the Elimination of Violence against Women defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”.

Istanbul Convention, which is a binding instrument for the State Parties, defines violence against women in Article 3 as follows: “violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Istanbul Convention expands the definition of violence against women and incorporates economic violence as well into the definition.

There are different theories of explanation for violence against women. Kıymaz-Bahceci (2012: 8 - 12) summarizes these theories as follows: mental illness approaches, biological/evolutionary approaches, social learning approaches and feminist

understanding. She points out that the mental illness approach explains violence against women due to of a mental illness or psychological disorder. Therefore, according to this approach, this form of behaviour can be cured with treatment. Biological/evolutionary approach stresses the role of the male hormones in the emergence of violence against women. According to social learning approaches both males and females learn a culture of violence from their environment, men as perpetrators and women as victims. Feminist approach, on the other hand, underlines that violence against women occur because of patriarchal social structure and at the same time it strengthens the patriarchal structure through positioning women in a secondary status. In short, feminist approach claims that violence against women is the direct consequence of the power hierarchy between men and women.

2.4. Multiculturalism versus Feminism

Susan Moller Okin emphasized just in the beginning of her article “Is multiculturalism bad for women?” in 1999 that “assimilationist” expectations are viewed as oppressive and new policies that are more responsive to cultural differences were to be developed:

“Until the past few decades, minority groups—immigrants as well as indigenous peoples—were typically expected to assimilate into majority cultures. This assimilationist expectation is now often considered oppressive, and many Western countries are seeking to devise new policies that are more responsive to persistent cultural differences. The appropriate policies vary with context: countries such as England, with established churches or state-supported religious education, find it difficult to resist demands to extend state support to minority religious schools; countries such as France, with traditions of strictly secular public education, struggle over whether the clothing required by minority religions may be worn in the public schools. But one issue recurs across all contexts, though it has gone virtually unnoticed in current debate: what should be done when the claims of minority cultures or religions clash with the norm of gender equality that is at least formally endorsed by liberal states (however much they continue to violate it in their practices)?” (Okin 1999, 9) (*italics by me*).

The concept of multiculturalism acknowledges the presence of diverse cultural, religious, or ethnic groups within a society, supported by public policies and collective group rights. Unlike assimilationist “melting pot” models that aim to blend different cultures into a homogeneous whole, multiculturalism strives to maintain distinct identities within a shared societal framework. The degree of multiculturalism varies, with the strongest form (cultural pluralism) granting autonomous rights to groups like indigenous peoples who

seek separation from the mainstream, while the weakest form integrates minority traditions within existing institutions, a common approach for immigrant populations.

States employ various strategies to manage multicultural diversity, such as legal exemptions and limited jurisdiction in civil or religious matters. However, the emergence of “cultural offenses”—actions that conflict with dominant societal norms due to cultural obligations—underscores the challenges of balancing justice and cultural context. Legal scholar Jeroen Van Broeck proposes criteria for recognizing these offenses, including cultural motivation, group consensus, and substantial cultural conflict.

While some international organizations have adapted their procedures to align with local cultures in post-conflict zones, the primary focus of this discussion is on national policies designed to bridge the legal gaps between host countries and the cultural frameworks of minority groups. These policies aim to foster social cohesion and promote equality while respecting cultural diversity.

However, the implementation of multiculturalism is not without its challenges. Critics argue that excessive accommodation of minority cultures can lead to the fragmentation of society and the erosion of shared values. There are also concerns that multiculturalism may perpetuate gender inequalities and human rights violations within minority communities, as some cultural practices may conflict with the principles of gender equality and individual autonomy.

To address these concerns, policymakers must strike a delicate balance between respecting cultural diversity and upholding fundamental human rights. This may involve promoting dialogue and mutual understanding between different cultural groups, as well as implementing targeted interventions to address specific issues such as forced marriage, female genital mutilation, and honour-based violence.

Moreover, the recognition of cultural offenses should not be seen as a *carte blanche* for impunity. While cultural context should be considered in the administration of justice, it should not override the fundamental principles of human rights and the rule of law. Legal systems must develop nuanced approaches that consider cultural factors while still holding individuals accountable for their actions.

In conclusion, multiculturalism is a complex and multifaceted concept that seeks to balance the preservation of cultural diversity with the promotion of social cohesion and equality. While it presents challenges, particularly in the realm of justice and human rights, it also offers opportunities for dialogue, mutual understanding, and the creation of more inclusive societies. By carefully navigating the tensions between cultural accommodation and the protection of fundamental rights, policymakers can work towards building societies that celebrate diversity while upholding the principles of justice and equality for all.

After referring to the then path-breaking book of Roger Brubaker, *Citizenship and Nationality in France and Germany*, in which Brubaker applauded republican regimes of citizenship, integration and migration in France, while heavily criticizing those in Germany, Ayhan Kaya put forward that in fact the opposite of what Brubaker claimed has been realized. French republican model of citizenship that aims integration by manufacturing equal political citizens irrespective of ethnic, religious, racial and gender differences is challenged by migrants of all origins, Algerian, Moroccan, Tunisian and Turkish (Kaya 2009, 2). The equalitarian model of the nineteenth century is called as “assimilationist” and “exclusionist” by migrants. However, Germany hardly produced any policy of integration until the late 1990s, because the official discourse of Germany emphasized that migrants, especially those coming from Türkiye, were “*Gastarbeiter*” (Guest worker), “*Ausländer*” (foreigner) and/or “*Mitbürger*” (*co-citizen*) who were expected to return to their homeland after a certain period. Later, Germany faced with the reality that guest workers stayed and second and third generations were born in Germany in 1990s. Then, the policies implemented by the Social Democrat - Green coalition in Germany from 1994 to 2005 have had a substantial impact on the democratization of immigration and integration policies. Kaya claimed that these policies have transformed Germany into a country that promotes integration rather than segregation (Kaya 2009, 30).

Assimilationist policies are still viewed as oppressive. On the other hand, many politicians declared that “multiculturalism” or “multicultural policies” that respect

cultural differences and that are viewed as the opposite of oppressive assimilationist policies, have failed.

The German Chancellor, the French President, and the British Prime Minister have gained global attention by stating that their countries' policies of multiculturalism have proven to be unsuccessful. Frequently, discussions about multiculturalism, as well as arguments in foreign policy and human rights in non-Western nations, centre around the treatment of women. However, defining and addressing the problems presented by traditions such as veiling, polygamy, and other cultural practices that are considered oppressive to women according to Western norms is quite difficult. Feminism has been puzzled by the intricate notion of "culture." This deadlock is harmful to both the advancement of women's equality and the preservation of cultural autonomy.

Spinner-Halev (2006) claims that multiculturalism as a political theory and policy can be reconciled with social justice and equality despite the criticism and the challenges that it faces. Spinner-Halev offers some solutions to the challenges of reconciling cultural diversity with social justice and equality. Adopting a moderate multiculturalism that emphasizes the relevance of shared democratic principles and civic citizenship, individual rights over group rights and making sure that cultural practices do not infringe upon fundamental human rights or cause harm to vulnerable members of the cultural groups, democratic deliberation as a way to bridge the cultural differences, promoting respect and understanding between people, and complementing multiculturalism with other policies that will deal with the social and economic inequalities.

Adopting a "moderate multiculturalism" that stresses the relevance of shared democratic principles and civic citizenship while also appreciating cultural variety is one way to find a solution. Prioritizing individual rights over group rights and making ensuring that cultural practices do not infringe upon fundamental human rights or cause harm to vulnerable members of cultural groups are two further ways to address this issue. Additionally, Spinner-Halev contends that democratic discussion and debate can aid in bridging cultural divides and advancing respect and understanding between people. Lastly, he makes the case that other laws and initiatives that deal with the underlying

social and economic injustices that frequently serve as the foundation for intercultural disputes should be implemented in addition to multiculturalism.

Anne Phillip's main argument is for a "multiculturalism without culture", which dispenses with the reified notions of culture that feed stereotypes and instead focuses on addressing inequalities between cultural groups. The author argues that the language of cultural difference should no longer give hostages to fortune or sustenance to racists, but also no longer paralyze normative judgment. The author maintains that many writing on multiculturalism have exaggerated not only the unity and solidity of cultures, but the intractability of value conflict as well and often misrecognized highly contextual political dilemmas as if these reflected deep value disagreement.

But when devising policies that are more responsive to cultural differences, one issue that should always be borne in mind is what kind of an effect these policies will have on gender equality. Therefore, as I emphasized in the introduction, the question raised by Okin regarding what should be done when the claims of minority cultures or religions clash with the norm of gender equality is quite significant. Is it possible for the state simultaneously respect deep cultural differences and to protect the hard-won citizenship rights of vulnerable group members, in particular women?"

Leti Volpp criticizes the article written by Dorian Lambelet Coleman titled "Individualizing Justice Through Multiculturalism: The Liberals' Dilemma" throughout her article titled "Talking 'Culture': Gender, Race, Nation, and the Politics of Multiculturalism" in 1996. Both authors wrote on the concept of cultural defence. Volpp calls the article of Coleman is one of the examples of the backlash in the legal scholarship and summarizes the arguments put forward by Coleman as follows:

"Non-European immigrants, particularly those from Asia and Africa, bring patriarchal customs to the United States, such as parent-child suicide, wife beating and killing, marriage by capture, and female genital mutilation. As demonstrated by these "practices," the cultural space inhabited by non-European immigrants is comparable "to a place European American women began leaving in the mid-to-late nineteenth century." In deference to multiculturalism, however, some courts have allowed consideration of cultural evidence in cases involving immigrant defendants. Allowing consideration of this evidence results in the "liberals' dilemma": an inherent tension between the values of feminism and multiculturalism. This dilemma must be solved by barring cultural evidence because admitting cultural evidence discriminates against the victims of immigrant defendants, violating the Equal Protection Clause anti-discrimination principle. Applying a

balancing test yields the conclusion that the interests of immigrant victims should trump the interests of immigrant defendants.

Further, allowing culture in the courtroom risks 'balkanization' and the recreation of 'gender or racial apartheid.' Nothing, including multiculturalism, can be permitted to 'pervade the law'" (Volpp, 1996: 1575).

Volpp criticizes Coleman's position on "cultural defences" since it is based on the notion that non-European immigrant women are subsumed in patriarchal culture. According to Volpp, Coleman depicts feminism as "Euro-American", and non-European culture as defined by men and thus she fails to take into consideration "intersectionality" which resulted in the conclusion that the goals of multiculturalism and feminism are antithetical (Volpp 1996). She mentions that Coleman's article presents a version of feminism reproducing the colonialist feminism of a century ago, which has been assessed as imperialist and racist.

Coleman asserts that when non-European immigrant women come to the United States, they enter a society that "is a better place for women from the Western perspective" (Coleman, 1996: 1158). She underlines that the "patriarchal values brought to our country [i.e. *the United States*] by some immigrants serve as a barrier to the advancement of women from these cultures" (Coleman, 1996: 1140).

Volpp underlines that Coleman's perspective assumes that women immigrating to the United States are moving into a more liberated, enlightened, and emancipated society than the one from which they have come. According to Volpp, the result of this position is describing the immigrant culture as "male" and feminism as "American" (Volpp, 1996: 1577). She stresses that this perspective ignores the fact that "Western" or "American" culture is also patriarchal, and non-European immigrant women are also feminists (Volpp, 1996: 1577). Volpp also adds that conceptualising non-European culture as solely patriarchal, thus seeing the women as "victims", subject to complete cultural determination.

2.5. The Conceptual Ambiguity of “Honour” and “Honour-Based Violence” as Gender-Based Violence

The term “honour” functions as a disputed concept. In her article titled “Tradition Discourses and Naturalisation of Power: The Case of Honour Killings” (*Gelenek Söylemleri ve İktidarın Doğallaşması: Namus Cinayetleri Örneği*), Dicle Koğacıoğlu underlined that “honour killings represent the extreme point within a continuous series of patriarchal practices – in other words, they are merely the visible tip of the iceberg” (Koğacıoğlu, 2009).

Koğacıoğlu explores how the ambiguous concept of “honour” shapes our lives, choices, and even the clothes as well as the manner we behave as women:

“As women living in Türkiye, we all confront the concept of *honour* through countless questions about what we *can* and *cannot do with our own bodies*. Some of us are killed in the name of honour, some are beaten for the length of our skirts; others are warned by workshop or office owners about how they sit, and if seen as dishonourable, they are sexually harassed. Some are denied custody of their children during divorce, while others live in fear that they will be. One is looked at suspiciously in the factory where she works, another is not allowed to work at all for fear she *will* be looked at that way. It’s all too easy to multiply these examples. We all know that if we don’t behave ‘properly’ when it comes to honour, something bad might happen to us. Even if we try to downplay the role of honour in our lives, we constantly adjust our behaviour to it. Despite all the differences and inequalities among us, honour influences how we sit and stand, where we go, which parts of the city we access, what modes of transport we choose, and even when we decide to have sex. **We live in a system where women’s bodies are disciplined through the discourse of honour, and where women themselves internalise and reproduce this discipline**” (Koğacıoğlu, 2009: 92).

Koğacıoğlu compellingly articulates the complex interplay between patriarchy and notions of honour. Her analysis underscores how honour-based violence is not an isolated cultural phenomenon but rather a manifestation of broader patriarchal structures. I concur with this perspective, as it highlights the structural commonalities in the forms of oppression experienced by women, irrespective of their individual awareness or cultural context. At its core, this shared subjugation is rooted in the regulation and control of women’s bodies and sexual autonomy, which remains a fundamental mechanism of patriarchal power across diverse societies. Koğacıoğlu also reveals the role of state institutions in reproducing the gendered power relations as well as “custom”, “honour” and “tradition” (Koğacıoğlu, 2004).

“Honour”, “custom”, and “tradition” are all contested and fluid concepts, defined differently by different actors. Even though “honour” norms are both for men and women, the burden of honour is also gendered. “Honour killings” are defined differently by various actors according to Nükhet Sirman. She categorises these definitions and their proponents into three distinct categories. The first group consists of those who adhere to the “honour code” and believe that violence is necessary to protect “virginity” and “gender-related values”. The second group, comprising those who work to combat such crimes, views honour killings and the associated value systems as tools for controlling women and their bodies. The third group, representing the dominant political forces in these societies, tends to interpret honour killings as remnants of a traditional order that will eventually be eradicated through education and modernisation (Sirman 2006).

The meaning of “honour” can change from culture to culture; in some cultures the meaning can change through time.

“Although women are killed in the name of ‘honour’ across the globe—from East to West, North to South — ‘honour killings’ are consistently framed as belonging to the ‘Other,’ geographically and culturally displaced to the East. This rhetorical manoeuvre serves to manipulate the phenomenon by rendering it a problem of specific cultures or regions. Yet, the very nature of the act—murder—reveals a fundamental truth: the control over women’s bodies and sexuality is not confined to any one geography. It is a global, structural issue, and the universality of the violence itself exposes the myth of its cultural or regional specificity” (Yıldırım et.al., 2020).

The use of “honour” concept in the legal and media narratives results in the racialization of gender-based violence. Lama Abu-Odeh (1997) opposes the basic East-West distinction between honour and passion by showing that legal systems use emotional reasoning to control gender conduct. The legal frameworks she examines originate from a common objective to control female sexuality and maintain male authority, which destroys the orientalist separation between HBV and Western culture. The courts in Türkiye also show inconsistencies in their sentencing of honour-related violence through their treatment of “custom/töre” and “honour” cases, even though they sometimes merge these definitions. The inconsistent sentencing practices support cultural essentialism and sustain the incorrect belief that HBV exists exclusively within non-Western societies (Doğan 2016).

Since the early 2000s, the phenomenon of honour-based violence and honour killings has increasingly become the focus of scholarly research, particularly within the fields of gender studies, criminology, sociology, and legal studies, as part of a broader inquiry into culturally specific forms of gender-based violence and their treatment within national and international legal frameworks (Mojab and Abdo, 2004; Luopajarvi, 2004; Welchmann and Hossain, 2005; Idriss and Abbas, 2011; Gill, Strange and Roberts 2014; Idriss, 2015; Grzyb, 2016; Gill, 2017; Abji, Korteweg and Williams, 2019; Abji and Korteweg, 2021; Villacampa, 2024). This dissertation would like to contribute to this literature with in-depth analysis of two criminal cases of “honour-based violence” in Germany, committed against women with immigrant background from Türkiye.

CULTURAL OFFENSE – CULTURAL DEFENSE

The global human population reached 8 billion people in mid-November 2022. According to the Population Division of the United Nations Department of Economic and Social Affairs (UNDESA), as of 1 July 2020, the global number of international migrants was estimated to be 281 million.⁸⁰ International migrants comprise some 3.5 per cent of the global population, compared to 2.8 per cent in 2000 (<https://www.un.org/en/global-issues/migration>). Therefore, there has been an increase in the total number of migrants in the last two decades; more people than ever live in a country other than the one in which they were born. This increase is not just an increase in the total number of migrants, but as identified by Steven Vertovec in his article “Super-diversity and its implications” in 2007 and later developed in his book “Superdiversity: migration and social complexity” in 2023, the diversification processes are multidimensional (Vertovec, 2007, 2023).

Migration has been a recurring phenomenon over the course of history. Individuals migrate in pursuit of improved economic prospects, to reunite with their relatives, or to pursue educational opportunities. They may also flee from areas of conflict or persecution, where severe human rights abuses occur. Additionally, people may seek

⁸⁰ Almost half of these migrants (around 145 million) live in Europe and North America. Around 87 million live in Europe scattered to different countries (The total population of migrants in Europe is very close to the total population of Türkiye in 2023). Recent conflicts in Ukraine (started in February 2022) and Gaza (started in October 2023) have also influenced the number of people who are internationally relocated but were not included in these estimations of 2020.

United Nations Department of Economic and Social Affairs, Population Division. 2020. *International Migrant Stock 2020*. Accessed November 10, 2023. <https://www.un.org/development/desa/pd/content/international-migrant-stock>.

On the other hand, according to the data provided by United Nations High Commissioner for Refugees (UNHCR) 108.4 million people (35.3 million refugees, 62.5 million internally displaced people, 5.4 million asylum seekers) worldwide were forcibly displaced because of persecution, conflict, violence, human rights violations, and other serious events disturbing public order. This denotes an increase of 19 million people compared to the end of 2021. In 2022, 5.7 million people fled Ukraine and 4.4 million other nationalities, primarily Afghans and Venezuelans, also fled their countries.

United Nations High Commissioner for Refugees (UNHCR). n.d. *Figures at a Glance*. Accessed November 10, 2023. <https://www.unhcr.org/about-unhcr/who-we-are/figures-glance>.

refuge in safe havens to shield themselves from the adverse effects of climate change, natural disasters, and other environmental factors. Nevertheless, individuals carry a myriad of aspects with them as they traverse national boundaries, encompassing their cultural heritage, historical background, ethnic and religious affiliations, socio-economic challenges, and personal narratives.

Because of mass migration flows, contemporary states are composed of a wide variety of ethnic, religious, and cultural groups with diverse practices and beliefs. In other words, because of the global migration, cultural diversity is inevitable. How to deal with this cultural diversity is one of the main challenges of contemporary states and societies. Do the states implement exclusionary, assimilationist, multicultural or discriminatory policies for immigrants? This question can also be posed in a different way: do the states implement exclusionary, assimilationist, multicultural or discriminatory policies for minorities – not only for immigrants coming from other countries but also for indigenous peoples who were already there but have different ethnic, religious, or cultural attributes than the dominant majority groups. How do these policies shape the perception and the behaviour of the institutions and actors of the state, the community, and the immigrants?

The socio-political context in the world and the specific socio-political context of the countries with minority populations from different cultural, ethnic, and religious groups influence the policies that are carried out in managing cultural diversity. The policies of citizenship, integration, and migration, in turn, also impact the societies.

In many societies today, groups of people with diverse cultures live side by side. Rigoni explains this diversity by citing three factors that have primarily influenced the pluralization of modern societies over the past few centuries. Firstly, the colonization process initiated by European settlers in the late 15th century resulted in the destruction of indigenous cultures and justice systems in various parts of the world. Efforts were subsequently made to repair the damage caused by this conquest. Secondly, there were later colonization processes in sub-Saharan Africa, which introduced a two-layer system of state law (European) and customary law. Lastly, the large migration flows towards European and North American states following the Second World War led to a diversification of the population in these countries and an increase in cultural clashes. The

colonization process that European settlers began at the end of the 15th century, and which had an impact on indigenous people's cultures and justice systems in various parts of the world; later colonization processes in sub-Saharan Africa; and the establishment of a two-layer system of state law and customary law. (Rigoni, 2018: 3). Migration flows continue due to conflicts in different parts of the world and for economic reasons, contributing to the diversity of societies.

Even though both the colonial processes and post-colonialism affected law and culture relationships mostly in the relevant societies, what concerns me the most within the framework of this thesis is the last factor that Rigoni emphasized: i.e. massive migration flows at the end of the Second World War and the diversity of cultures that is formed as a result of migration.

In the context where people with different cultures live together, cultural conflicts are unavoidable. Multicultural conflicts are on the agenda in many European countries (Hellgren and Hobson 2008, 385) and many other parts of the world, such as the United States of America, Canada, and Australia.

These conflicts may also result in criminal offenses when the cultural practice violates existing criminal law of the society which is prepared by considering the values of the dominant culture. As a result, a clash of cultures can become the subject matter of the civil and criminal courts. There are striking case examples of such cultural conflicts.

Thorsten Sellin wrote on *Culture Conflict and Crime* in 1938, claiming that conflict of norms can arise when a member of a particular culture moves into a cultural norm system that is foreign to him or her. Conflict of norms arises because the system of order in the host country may contradict one's value system. Because of this conflict of norms, there is an increased risk that immigrants will violate the criminal laws of the host country. This conflict would be extreme in the first phase of residence. After a phase of orientation and adaptation, this tension would decrease and thus, the crime rate would decline (Sellin 1938).

These conflicts may result in criminal offences when the cultural practice violates existing criminal law of the society which is prepared by considering the values of the dominant

culture in the society. As a result, a clash of cultures can become the subject matter of the civil and criminal courts. There are striking case examples of such cultural conflicts, some of which will be mentioned in the following pages. However, before the examples, I would like to touch upon the concepts of cultural offence (also called culturally motivated crimes) and cultural defence.

Van Broeck points out the immense amount of literature on cultural offense and cultural defence. He also underlines that there is a different approach to the matter by the continental writers who focus primarily on cultural offense and the authors from the common law countries, mainly from the United States, who focus on the problem of cultural defence. Van Broeck mentions that legal clash of cultures occurs not only in the countries of migration but also in the countries where ‘a cultural gap exists between the ruling elite and a part of the population’. He gives the example of dowry-related murders in India. Dowry murders occur when the dowry demands of the groom have not been met. Even though the Dowry Prohibition Act was passed in 1961 to prevent dowry murders, the cultural practice continues in some parts of India. Similarly, ‘sati’ is another traditional practice in India, demanding that the widow be burnt with her dead husband. Although sati is also repeatedly prohibited by the Indian government, it was also a practice that continued until recent times (Van Broeck, 2001: 6).

Van Broeck refers to Türkiye as another example where the foreign legal rules that did not overlap with the values of at least some parts of the society were introduced by Atatürk. Van Broeck mentions that some of the population will conform to these regulations. However, others from the rural parts of Türkiye will not (Van Broeck, 2001: 6). This example about Türkiye reminded me of the ‘polygamy in practice’ cases in Türkiye. The new Turkish Civil Code banned polygamy as soon as it was introduced; there are some parts of Türkiye where it continues as a common practice.

The problem of cultural conflict within a criminal law framework was expressed in the comment in Harvard Law Review as follows:

“The values of individuals who are raised in minority cultures may at times conflict with the values of the majority culture. To the extent that the majority’s values are embodied in the criminal law, these individuals may face the dilemma of violating either their cultural values or the criminal law” (Anonymous, 1986: 1293).

Van Broeck defines cultural offense ‘as an act by a member of a minority culture, which is considered an offence by the legal system of the dominant culture’. That same act is nevertheless, within the cultural group of the offender, condoned, accepted as normal behaviour, and approved or even endorsed and promoted in the given situation” (Van Broeck, 2001: 5).

The essential element in this definition of cultural offense is that the minority culture does not condemn the act in question. In contrast, it breaks a rule of the dominant culture, and in some circumstances, this act may be supported or even required by the minority culture.

Cultural defence is ‘the practice of presenting cultural arguments in court to negate or mitigate criminal responsibility or to reduce punishment’ (Tomer-Fishman, 2018: 464). One of the debates on cultural defence is whether and to what extent cultural background should mitigate criminal responsibility and punishment. Tomer-Fishman argues that one of the reasons to consider cultural defence is multiculturalism, and the other one is individual justice (Tomer-Fishman, 2010: 477 – 478). Song also mentions that even though most of the defenders of multiculturalism have not explicitly defended cultural defence, multiculturalism has the rationale for it since otherwise immigrant defendants are denied equal access to justice in criminal cases (Song, 2007: 88). In that respect, it is not surprising that both Susan Moller Okin and Doriane Lambelet Coleman who point at the tension between feminism and multiculturalism have discussed cases that involved cultural defences (Okin, 1999; Coleman, 1996).

One central topic discussed in the literature on cultural defence is the official recognition of cultural defence. Some authors argue that there are already options in criminal law that enable taking the cultural background of the perpetrator into account. However, these are used in highly differentiated ways by the actors of the judiciary. If the cultural defence is recognized formally, a legal perspective can be incorporated for analysing the cultural offenses. To date, no state has recognized the cultural defence as a legal defence in the general part of its criminal law (Tomer-Fishman, 2018: 464; Song, 2007: 87). However, cultural arguments can be asserted through defences such as provocation, mistake of fact, and self-defence.

Renteln's *The Cultural Defense* offers one of the most comprehensive outlines of the possible application of the concept of culturally motivated crimes in both the criminal and civil processes (Renteln, 2004). Renteln, one of the proponents of the cultural defence, provides an extraordinary range of cases in which individuals have attempted to raise a cultural defence. She mentions that the legal disputes in which individuals ask the court to consider their cultural background include cases of homicide and rape prosecutions, child abuse cases, drug use cases, the treatment of animals, custody battles, employment discrimination suits. Renteln argues that the cultural defence may reduce criminal and civil responsibility in case a cultural argumentation is provided (Renteln, 2004: 5 – 7). She claims that to overcome the judicial system's structural inequality, there should be a place for cultural evidence to ensure the equal application of the law to all citizens (Renteln, 2004: 187). She maintains that without cultural context, there is a great risk of miscarriage of justice. Therefore, she holds the view that anthropologists and other social scientists play a crucial role by offering the cultural background and cultural context necessary for the jurists to investigate and understand the conduct of an individual from a minority or Indigenous community (Renteln, 2022)

She asserts that the main obstacle to introducing the culture in the courtroom is the judges' attitude, which she calls 'presumption of assimilation', which expects individuals from other cultures to adapt to a national standard. According to her, based on this presumption, judges often exclude evidence about cultural background, claiming that it is 'irrelevant'.

3.1. Case of 'Zij Poj Nam' (Marriage By Capture), Hmong Case

One of the most cited cases in the literature on cultural defence among United States scholars is *People v. Moua Case* (Case No. 315972-0, Fresno Cnty. Super. Ct., Feb. 7, 1985) (Lyman, 1986; Sams, 1986; Van Broeck, 2001; Song, 2007). The case is related to the Hmong community in the United States of America. The Hmong are Laotian mountain tribesmen who helped the United States as allies in the Vietnam War. About 60,000 of these tribesmen have resettled in the United States, with one-third residing in California after the Vietnam War.

Defendant Kong Pheng Moua was charged with kidnapping and rape. He was a 23-year-old Hmong man who had lived in the United States for six years. He kidnapped a 19-year-old Hmong woman from the Fresno City College campus and forced her to have sex with him. The woman, Xeng Xiong, later called the police and accused the defendant of kidnapping and rape.

Moua claimed he was performing the traditional ‘marriage by capture’ (zij poj niam) practice as a cultural defence. According to this practice, the tribesmen kidnap the ‘bride-to-be’ and have ‘sexual intercourse’ to complete the marital union. It is a tradition that the woman resists, weeps, and moans to show that she is virtuous. In his defence, Moua claimed that he had not understood that Xiong resisted because she did not consent, shows how virtuous she was in his culture. The Court dismissed the rape and kidnapping charges after hearing the testimonies and reviewing a doctoral dissertation on Hmong marriage rituals. The judge reduced the sentence from 180 days to 120 days in jail, and he had to pay a 1.000 USD fine. This case happened in 1984. Moua raised a ‘mistake of fact’ defence in which he explained the cultural background of the action.

When Kong Moua is prevented from raising a mistake of fact defence, because, according to modern legal doctrine, his mistaken belief that Xeng Xiong consented to go with him was not ‘objectively reasonable,’ he is denied equal protection under the law (Renteln, 2004: 185).

Van Broeck expressed that by performing this marriage by capture, there was an apparent reference to a normative cultural background. The cultural background was the cause and motivation for his actions. His actions, nevertheless, were given a completely different interpretation in the American context, and this caused a clash of legal norms.

3.2. Kimura Case, ‘Oyako-Shinju’ (Parent-Child Suicide) Case

In the Kimura case, also repeatedly referred to as an example of cultural defence, the criminal liability of a Japanese mother living in the United States was discussed. When she learned about her husband’s adultery, she tried to commit suicide with her two children. She went into the Pacific Ocean with her children. As a result, her two children

died, but she was rescued and survived. She claimed at the Court that, according to her culture, her husband's cheating was a disgrace to her. To regain her honour, she must commit suicide. To save her children from disgrace and not leave them motherless behind, she took them with her to die. She was accused of the double murder of her two children.

When she was in the trial, more than twenty-five thousand American citizens of Japanese origin sent petitions to the Attorney General. Petitions reaffirmed Kimura's claims and stated that, according to Japanese culture, it was much worse to leave the two children motherless with disgrace behind than to take them to death when committing suicide. Experts also testified that this practice was part of Japanese culture. In the end, the accused was sentenced to one year in prison and five years of supervision. The court in Kimura refused to consider Mrs. Kimura's Japanese culture and instead decided to base its judgment on 'lack of sanity' and 'associated emotional illness'.

3.3. Male Circumcision

In recent years, male circumcision in Germany has been discussed in this respect. Even though male circumcision is practised in countries where most of the population is Muslim or Jewish, without becoming a legal question, it was the topic of legal concern in Germany, where Muslim and Jewish communities are in the minority. A ruling by the Cologne Regional Court⁸¹ discussed the circumcision of boys in May 2012 (Spiegel, 2012). In this way, traditional religious practice for the Jews and Muslims was assessed by the Court legally if it was a criminal act or not.

A doctor (originally from Syria but practising in Germany for years) who had circumcised a four-year-old-boy at the request of his Muslim parents from Tunisia, has on November 4, 2010, was put on trial since the prosecutor's office claimed that he violated the boy's bodily integrity. The doctor conducted the intervention and had four stitches. Two days

⁸¹ Date: 07.05.2012, Case No: 151 Ns 169/11. Landgericht Köln. 2012. *Urteil vom 7. Mai 2012 – 151 Ns 169/11.* Justizportal Nordrhein-Westfalen. Accessed February 1, 2025. https://nrwe.justiz.nrw.de/lgs/koeln/lg_koeln/j2012/151_Ns_169_11_Urteil_20120507.html.

later, her mother took the boy to the hospital emergency service because of bleeding. When the hospital informed the prosecutor's office, the doctor was prosecuted based on Section 223/1 and Section 224/ 1 and 2 of the German Penal Code, which are about bodily harm and dangerous bodily harm.⁸²

At the end of the trial, the doctor was acquitted. However, the prosecutor's office appealed the judgment because, according to the prosecutor's office, the consent given by the parents cannot make circumcision a legal act. The doctor was acquitted by the Cologne Regional Court as well. Even though the Court did not hold the doctor criminally liable for the act he conducted, this judgment created many discussions because of its reasoning (Göztepe, 2013: pp. 284–285).

When the judgment became public around June 2012, it caused discussions among all the stakeholders, including the Muslim and Jewish communities in Germany, and other parts of the world, politicians and law professionals discussed the topic. The judgment claimed that the right of the parents to decide on the upbringing of the child and the freedom of religion came into conflict with the child's right to physical integrity.

The Court identified that the parents were Muslims, and even though there was no medical requirement, they allowed the doctor's medical intervention on religious grounds. The expert acknowledged during the court process that the medical procedure was performed without any application error. Even though the Court admitted that the doctor acted in

⁸² German Penal Code Division 17 Offences against physical integrity, Section 223 is about bodily harm, and it is as follows: (1) Whosoever physically assaults or damages the health of another person, shall be liable to imprisonment not exceeding five years or a fine. (2) The attempt shall be punishable. German Penal Code Section 224 is about dangerous bodily harm (1) Whoever causes bodily harm 1. by administering poison or other substances which are harmful to health, 2. using weapon or other dangerous implement, 3. by means of treacherous assault, 4. acting jointly with another party to the offence or 5. using methods which pose a danger to life incurs a penalty of imprisonment for a term between six months and 10 years, in less serious cases imprisonment for a term between three months and five years. (2) The attempt is punishable.

Bundesministerium der Justiz. n.d. *Criminal Code (StGB) – English Translation*. Accessed May 11, 2018. https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1873.

good faith and by mistake of law within the context of Article 17 of the German Penal Code.⁸³

It was discussed that male circumcision is not legal in the judgment's reasoning. A mistake of law was unavoidable in that case since there is no unanimity on the complex legal problem, neither in the case law nor in theory.

Göztepe commented on the Cologne case law. She mentioned that in its legal reasoning, the Court stated its opinion on the parents' right on the children's religious education. Göztepe claims that the Court did not follow the logical consequences of its explanations on this right. She asserts that the parents should also have to be prosecuted on complicity to bodily injury if the Court thinks that the parents cannot give consent for circumcision as a religious ritual and this is a violation of the right of the child to physical integrity should be superior and central (Göztepe, 2013: pp. 286–287).

In his article on the issue, Widmann (2014) refers to the articles of a law professor, Professor Holm Putzke from Passau University, since he has started the discussion on the issue of male circumcision around 2008 in his academic writings and the court ruling was based on his ideas. Professor Putzke argues that “circumcisions are not in the child's best interest unless they are medically indicated. Hence, the parents' consent to a religiously motivated circumcision would not save a medical doctor, a Jewish *mohel* or Turkish *sünnetçi*⁸⁴ from being sentenced under the provisions of Article 223 of the German Penal Code that refers to physical injury” (Widmann, 2014: 3).

⁸³ German Penal Code Section 17 is about mistake of law, and it is as follows: If, at the time of the commission of the offence, the offender lacks the awareness of acting unlawfully, then the offender is deemed to have acted without guilt if the mistake was unavoidable. If the mistake was avoidable, the penalty may be mitigated pursuant to section 49 (1).
Bundesministerium der Justiz. n.d. *Criminal Code (StGB) – English Translation*. Accessed November 1, 2022. https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p2021.

⁸⁴ A *mohel* is a person who performs ritual Jewish circumcisions (Merriam Webster Dictionary). Merriam-Webster. n.d. “Mohel.” Merriam-Webster.com Dictionary. Accessed February 13, 2025. <https://www.merriam-webster.com/dictionary/mohel>
A *sünnetçi* is a person who circumcises children. (Turkish Language Institution Dictionary)
Türk Dil Kurumu. n.d. *Türkçe Sözlük*. Accessed February 13, 2025. <https://sozluk.gov.tr>.

On the other hand, due to public debates and reactions from the Jewish and Muslim communities, a new provision was added to the German Civil Code through legislation by the parliament to make male circumcision a legal act. The new provision⁸⁵, which passed in December 2012, granted parents the right to authorize circumcision by a trained practitioner, who can be a person appointed by the religious group (Please see paragraph 2 (1) of the new provision).

However, the debate is still not over. According to the news report by Fraczek the opponents of circumcision claim that the procedure is not conducted in safe conditions, and sufficient pain relief is not provided for boys that undergo this operation. On the other hand, a man brought a case before the Constitutional Court because he was circumcised by someone without medical training in 1991 when he was six years old. However, the judges dismissed the case because he was not currently directly affected by the new law (Fraczek, 2013).

In one of the cases in Berlin, an NGO (Mogis) for the victims of sexual abuse and sexual violence pressed charges against the father and grandfather of a Jewish boy. However, the prosecutors dropped the case because no criminal responsibility could be proven against the boy's relatives, and the circumciser lived abroad and so was outside German jurisdiction. Mogis claims that the law violates the child's physical integrity and his sexual self-determination (Fraczek, 2013).

On the other hand, discussions on the new provision also continue in the academic field. Merkel and Putzke claim that non-therapeutic circumcision violates boys' right to bodily

⁸⁵ German Civil Code Section 1631d Circumcision of the male child

- (1) The care for the person of the child includes the right to give consent to the medically unnecessary circumcision of a male child who is not capable of reasoning and forming a judgment, if this is to be carried out in accordance with the rules of medical practice. This does not apply if the circumcision, even considering its purpose, jeopardises the best interests of the child.
- (2) In the first six months after the child is born, circumcision may also be performed pursuant to subsection (1) by persons designated by a religious group to perform this procedure if these persons are specially trained to do so and, without being a physician, are comparably qualified to perform circumcisions.

Bundesministerium der Justiz. n.d. *Civil Code (BGB) – English Translation*. Accessed November 1, 2022. https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p5749.

integrity and self-determination (Merkel and Putzke, 2013: 444). According to Merkel and Putzke, neither parental rights nor religious liberty legally justify the ‘impermissible risk’ that circumcision creates for boys. As for the risks, they give the following as examples, among others: the intervention is not painless; the medical advantages of the intervention are not verifiable; there can be negative consequences for the psychosexual development of the boys. They ask if parental rights to raise, educate and care for one’s children cover the circumcisions that are not medically indicated on boys who cannot legally consent to the procedures because of their age.

By referring to the famous Yoder case from the United States of America, they underline the broad authority of the parents in liberal constitutional traditions. In *Wisconsin v. Yoder* case, parents from the ‘Old Order Amish’, a tradition-oriented Christian sect, limit their children to two years fewer compulsory education. The parents aimed to safeguard children’s simple, modest, and unintellectual life as the only way to an Amish. Merkel and Putzke refer to Joel Feinberg, who called this practice a violation of ‘the child’s right to an open future’ and mention that they agree with him on ethical grounds. In the Yoder case, the Supreme Court of the United States of America ruled that the limitation of children’s education was a parental right warranted by the law. Even though Merkel and Putzke disagree with the Court’s ruling, they admit that ‘legally speaking, the case is a borderline case with a rather extended grey area’ (Merkel and Putzke, 2013: 444).

Merkel and Putzke argue that in the boys’ circumcision case, the child’s bodily integrity problems are different. They claim that body is protected, not just as a facilitator for the child’s mental well-being. Merkel and Putzke maintain that one would have to show that circumcision is in the best interest of the child’s well-being for valid parental consent. However, according to them there are no medical advantages to male circumcision. Concerning religious freedom, they assert that male circumcision should be executed only on someone competent to give consent for himself (Merkel and Putzke, 2013: 446).

Merkel and Putzke also mention that they did not propose an overall prohibition of religious circumcisions, but they suggest marking the end limits of religious freedom. Merkel and Putzke draw attention to the fact that granting parents legal permission to circumcise their sons also prevents the legislators from outlawing milder forms of female

genital cutting since the clear-cut verdict regarding FGM is for “severe forms” of it. Another argument put forward by Merkel and Putzke against male circumcision is that it contradicts the right to self-determination of the child to adopt any particular religion since the parents permanently mark their children’s bodies with a symbol of religious affiliation.

When it comes to the question of the criminal liability of the parents and the person who conducts the operational procedure, Merkel and Putzke differentiate between the unlawful nature of the act (giving bodily harm to the child) and performing the act without the consciousness of its being unlawful (“*mens rea*”) (Merkel and Putzke, 2013: 447). Therefore, they claim that criminal charges should have abstained based on “excuses” but not based on “justifications”.

Merkel and Putzke emphasize that the second paragraph of the new provision almost exclusively relates to Jewish ritual circumcisions implemented on new-borns. Therefore, the political support given by the parliament to this new regulation was political due to the “grave historical guilt” regarding the Nazi era in Germany (Merkel and Putzke, 2013: 448). Merkel and Putzke criticize the new provision as a “legislative concession ... to a tacit but powerful pressure by a religious community” (Merkel and Putzke, 2013: 447 – 448). The authors think that there is no ideal solution to this political problem. They underline that it is an ethical as well as a legal problem.

The issue of circumcision of boys was discussed in Nordic countries like Iceland and Denmark as well in February and June 2018. Some NGO initiatives called for bringing about a minimum age requirement for performing a circumcision of boys to protect the children’s rights. However, as of September 2020, the government of Denmark refused to ban the ritual circumcision of boys. On the other hand, Denmark banned the circumcision of girls since the beginning of the 2000s, and there is no tolerance. It is also illegal for parents to travel abroad to perform a circumcision for girls (CPH Online).

The topic is debated in Iceland as well. In 2018 a bill that seeks the criminalization of circumcision on minor males was proposed. In Iceland, female genital cutting has been illegal since 2005. The MP who proposed the ban on minor male circumcision claimed

that similar legislation should exist for males. After a three-month national debate, the bill was dismissed. Although Iceland is a small country, it created a considerable debate between the supporters and opponents of the bill (Reykjavik Grapevine).

3.4. Female Genital Mutilation

Even though both male circumcision and female genital mutilation are discussed in the literature, female genital mutilation is powerfully prohibited in international human rights law. Istanbul Convention has a specific provision on FGM:

Article 38 – Female genital mutilation

Parties shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalized:

- a) excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris;
- b) coercing or procuring a woman to undergo any of the acts listed in point a;
- c) inciting, coercing or procuring a girl to undergo any of the acts listed in point a.

Whereas most Council of Europe member states do not have specific legislation on FGM, it is a crime in Germany. According to Section 226a on female genital mutilation of the German Penal Code: (1) Whoever mutilates the external genitalia of a female person incurs a penalty of imprisonment for at least one year. (2) In less severe cases, the penalty is imprisonment for six months and five years.

The convention requires all state parties to introduce FGM as a criminal offence when such an act is committed intentionally, whether or not medical professionals perform it. This includes pressuring or coercing a girl or a woman to undergo the procedure “voluntarily”. Even if the practice is performed in a third country, the State Parties to the Istanbul Convention have the jurisdiction to prosecute these crimes.

In 1997, a case involving a minor who had undergone FGM was judged by the Juvenile Court of Piedmont and Aosta Valley and Ordinary Criminal Court in Turin (for civil and criminal issues, respectively) in Italy. An FGM operation was performed on a girl in Nigeria, but she was admitted to the hospital in Italy because of complications. The Juvenile Court immediately ordered that the child should be removed from her parent's custody and charged the parents with serious bodily injury. However, later the juvenile

Court decided to re-assign the girl to her parents' custody because of the care they showed to the girl despite the forced removal. The judicial authorities called on an Italian expert in cultural mediation and the Frantz Fanon Center, which provides counselling services to support immigrants' psychological and social health. The expert from Frantz Fanon Center explained that "the Edo people believe a baby born to a non-circumcised woman is in great danger in that, if the baby's head touches the mother's clitoris, he or she might die. According to the expert's report, female circumcision was fully accepted by the Nigerian Edo community to which the girl and her family belonged, and it was not prohibited by local authorities (on the contrary, the surgery had been carried out in a state hospital). The Court concluded that the defendants had acted to meet a mandatory requirement of Edo society and that their actions were also permitted under Nigerian law. Therefore, there were no elements of injurious or criminal behavior" (Ciccozzi and Decarli 2019).

3.5. Other Examples of Cultural Conflict

In another example of cultural conflict, a Turkish family in Switzerland refused to send their two daughters, at the ages of 7 and 9, to the swimming pool for compulsory mixed-gender swimming lessons as part of the school curriculum. The authorities did not make any exemption. The family claimed that sending their daughters to mix-gender swimming lessons contradicted their religious beliefs and paid a fine of 1,400 Swiss francs. They applied to the European Court of Human Rights (ECtHR). They claimed that this practice violated Article 9 of the European Convention on Human Rights, which is about the freedom of thought, conscience and religion (Osmanoğlu and Kocabaş v. Switzerland).

The Court held that there had been no violation of Article 9 and made its judgement public on January 10, 2017. The ECtHR claimed that "while religious rights were at issue, the children's education, and successful social integration 'according to local customs and mores' took precedence over the parents' desire to have their daughters exempted from swimming lessons". The Court considered the factor that the girls did not reach the age of puberty. The ECtHR also mentioned that the authorities had provided sufficient

flexibility to the parents, including options for their daughters to wear “burkinis” or to undress in unmixed areas.

The Court noted that the applicant’s right to manifest their religion was an issue and observed that the authorities refused to grant them an exemption from swimming lessons had been an interference with the freedom of religion. However, that interference was prescribed by law and pursued a legitimate aim: protecting foreign pupils from any form of social exclusion.

Foblets gives several examples of cultural conflicts in different European countries in her article (Foblets 1998). She points to the French case in 1983 in which the father of a girl was convicted under the French Penal Code for female genital mutilation. Another example she gives is a Turkish father living in the Netherlands who forced his 16-year-old daughter to marry her cousin in return for a bride price. In another example of a cultural conflict that she pointed out, two brothers from Turkish background assaulted their sister’s friend in the Netherlands since he forced her to lose her virginity before the marriage. In another case from the Netherlands, a young Turkish man killed his half-sister because he thought she brought dishonour to the family. In Belgium in the early 1980s, a young mother of African origin threw her new-born albino baby into the water and caused the baby to drown (Foblets 1998). All these cases are examples in which immigrants perpetrated a practice that conflicted with the dominant society’s values.

Another similar case occurred recently in Türkiye. A 13-year-old Syrian girl was forced to get married by a religious ceremony (*imam nikahı*) with her 26-year-old cousin Abdulkerim J. According to Article 124 of the Civil Code of Türkiye, which was reformed in 2002, the minimum age for marriage is 17 years old, both for men and women. When the girl became pregnant, and the authorities at the Training Center for the Health of Immigrants in Alemdağ became aware of this situation, they informed the judiciary, and the judicial process was initiated. Abdulkerim J. was prosecuted for the aggravating circumstance of sexual abuse of the child and the deprivation of liberty. On the other hand, the girl’s mother, Emani B. was prosecuted for being an accomplice in this crime. Both Abdulkerim J. and Emani B. claimed they did not know the laws in Türkiye. They mentioned that it was legal for girls aged 13 to get married in Syria. Fatma C., the 13-

year-old girl, did not make official complaints and told in her statement that she consented to the marriage. The prosecutor claimed that the perpetrators were ignorant of the law and did not intend to commit the crime and therefore should be acquitted. In the end, both the girl's cousin and her mother were acquitted (TR Sputnik News, 2018).

Another example given by Van Broeck: "A Hindu was caught while throwing 'garbage' in a river in the Netherlands. According to Dutch regulations, this was a form of pollution. The defendant argued that the 'garbage' was the burned leftovers (wood and flowers) of a ceremony to remember a dead person and that these, according to Hindu custom, needed to be thrown into a stream" (Van Broeck, 2001: 4).

As the cases above illustrate, an offense committed based on culture is called a cultural offense. In predominantly immigrant-receiving societies or societies where aboriginal people, natives, or other minorities whose culture diverges from the dominant culture, "culture-based crimes" come to the focus of discussion. In these societies, a sub-culture is created that preserves the original customs and traditions of migrants' home countries.

SETTING THE CONTEXT IN GERMANY

Recent political developments in Germany have shaped the broader context in which gender-based violence is understood and addressed. For this reason, I begin this chapter by outlining the most recent policy and political changes in chronological order. Following a brief discussion of these developments, particularly those related to the prevention of gender-based violence, I will turn to the academic literature on “honour killings” and “honour-based violence” in the German context.

While finalising this chapter, federal parliamentary elections were held in Germany on 23 February 2025. Although the outcome was largely anticipated—partly foreshadowed by the results of the European Parliament elections in the summer of 2024—it nonetheless marks a significant political shift. The Christian Democratic Union (CDU) returned to power, and the far-right Alternative for Germany (AfD) nearly doubled its share of the vote compared to the previous national election. The electoral defeat of the Social Democratic Party (SPD) was widely attributed to growing public concern over immigration and economic instability. These results are likely to influence future reforms in Germany’s immigration and citizenship policies, developments which may, in turn, impact discourses surrounding gender-based and honour-related violence.

Another recent development before the election was the adoption of the Violence Assistance Act (*Gewalthilfegesetz*)⁸⁶. The Bundestag passed the Violence Assistance Act on 31 January 2025. The Bundesrat also approved the law on 14 February. Violence Assistance Act provides a legal entitlement to protection and counselling in cases of gender-based and domestic violence against women and children. The law will come into force on 1 January 2032. The law ensures that individuals affected by violence have

⁸⁶ Bundesministerium für Familie, Senioren, Frauen und Jugend. 2025. *Gesetz für ein verlässliches Hilfesystem bei geschlechtsspezifischer und häuslicher Gewalt*. Accessed February 28, 2025. <https://www.bmfsfj.de/bmfsfj/service/gesetze/gesetz-fuer-ein-verlaessliches-hilfesystem-bei-geschlechtsspezifischer-und-haeuslicher-gewalt-251160>.

access to needs-based assistance or counselling. The law also guarantees financial support with contributions from the federal government.

Even though the long period of adaptation for the new law raises questions on the side of women's NGOs, as an effort to comply with the Istanbul Convention, the adoption of the Violence Assistance Act is a significant step for protecting victims of gender-based violence and preventing acts of violence. On the other hand, almost two months before the election, in November 2024, a comprehensive report on gender-based crimes prepared by the *Bundeskriminalamt* was made public, and it denoted the alarmingly high rates of gender-based crimes against women and girls.

Federal Minister of the Interior and Community (*Die Bundesministerin des Innern und für die Heimat*) Nancy Faeser, together with Federal Minister for Family Affairs, Senior Citizens, Women and Youth (*Die Bundesministerin für Familie, Senioren, Frauen und Jugend*) Lisa Paus and former Vice President of the Federal Criminal Police Office (*Vizepräsident beim Bundeskriminalamt*) Michael Kretschmer⁸⁷ presented Germany's first comprehensive situation report (*Bundeslagebild "Geschlechtsspezifisch gegen Frauen gerichtete Straftaten 2023"*) on gender-based crimes directed against women on 19 November, 2024. The report aims to create a "meaningful, nationally standardised, cross-sectional, and longitudinal database on gender-based criminal offences against women for policymakers, academia and researchers, civil society, and the general public," as *Bundeskriminalamt* noted in the 2024 report.

The 59-page report compiles data from several resources: the Criminal Police Reporting Service in Cases of Politically Motivated Crime (KPMD-PMK, *Kriminalpolizeilichen Meldedienstes in Fällen Politisch motivierter Kriminalität*) and the Police Crime Statistics (PKS – *Polizeiliche Kriminalstatistik*). The report provides general information about the misogynistic crimes within politically motivated crimes as well as crimes that are committed predominantly against women or primarily affect women in Germany. The study demonstrates that gender-based violence against women and girls has increased

⁸⁷ Michael Kretschmer, who had been Vice President of the Federal Criminal Police Office since 2015 retired at the end of 2024 and Helen Albrecht succeeded him as of 2 January 2025.

dramatically in Germany in recent years. The document defines “gender-based crimes”, extending its application to physical and digital spaces. The report uses a two-dimensional definition for gender-based crimes: hate crimes based on misogynistic prejudice and certain crimes that mainly affect women.

The report put forward that hate crimes within the context of gender-based crimes “can be committed against any person if the misogynistic prejudices are the basis for the offence” (*Bundeskriminalamt BKA*, 2024: 1). These prejudices entail the refusal of equal value and rights of women. Moreover, the victims’ perspective plays a role in determining the motive for the crime. The second category of gender-based crimes is the crimes that mainly affect women or affect them more significantly. These crimes comprise any criminal offence of punishable acts that cause physical, psychological or economic harm. Furthermore, they usually entail sexualised violence, which shows that such crimes are gendered.

The report shows that there has been a significant rise in crimes against women and girls solely based on their gender. It offers a detailed discussion of different types of gender-based violence: femicide (attempted and completed homicide), sexual violence, domestic violence, digital violence (cyberstalking, harassment), human trafficking, sexual exploitation, and misogynistic hate crimes. In 2023, 938 women and girls were victims of homicide or attempted homicide, which was 1.0 per cent more than in 2022, when 929 cases were recorded (*Bundeskriminalamt BKA*, 2024). The situation report is a significant step in the struggle against gender-based violence in Germany. It shall serve as an essential resource for policymakers, police forces, and victim support services in the future.

There are references to “honour crimes” under the heading of femicide in the situation report. For example, the report states that some of the violent crimes against women occur within “patriarchal family structures or communities, where men predominantly commit crimes against women to restore what they perceive as the family’s or man’s honour”⁸⁸

⁸⁸ “In Deutschland treten unter anderem Tötungsdelikte zum Nachteil von Frauen sowohl in Form von Tötungen aus Frauenhass (Misogynie) als auch als Trennungstötung bzw. als Delikte auf, **„die im Kontext patriarchalisch geprägter Familienverbände oder Gesellschaften vorrangig von**

(*Bundeskriminalamt BKA*, 2024: 36). The report highlights that such killings are part of femicide, that it defines as “intentional killings of women because they are women, rooted in gender-based inequality” referring to the definition made by World Health Organisation (*Bundeskriminalamt BKA*, 2024: 36 - 37). HBV crimes can also be listed as “misogynistic hate crimes” since the motive of the crime is based on the disbelief in gender equality and equal worth of genders. One of the challenges, as the situation report noted, is that a nationwide definition for femicide is lacking and categorising “honour killings” separately within the set of femicide is also problematic since the data from the Police Crime Statistics (PKS) does not note the motivation behind killings. In the report, offences against women that are included in the definition of gender-based offences against women are quantified as femicide: murder (also in connection with sexual offences), manslaughter, and less serious cases of manslaughter, as well as assault resulting in death.

Furthermore, the homicide offences against women in familial and partner relationship contexts are presumed to be motivated by gender-based factors. As the motivation for the offence of ‘murder in connection with robbery’ is not based on the killing of the woman, it is not assigned to the femicide category. The report underlines that there is an urgent need for research on the theme of femicide since, as the public debates on this issue show, it is still not clear which offences will be taken as femicide. According to the report, there is a need for clarification and differentiation for this crime type.

“Honour killing” (*Ehrenmord*), “so-called honour killings” (*so-genannte Ehrenmord*), “violence in the name of honour” (*Gewalt im Namen der Ehre*), “honour crimes” / “crimes of honour” (*Ehrverbrechen*) or “honour-based violence” (*ehrenbasierte Gewalt*) have been discussed by the media, the politicians, the judiciary, academia and the public for so many years in Germany as well as in other countries of Europe and the topic is still on

Männern an Frauen verübt werden, um die aus Tätersicht verletzte Ehre der Familie oder des Mannes wiederherzustellen”. International ist der Begriff „Femizide” bereits vielfach in Verwendung. Die Weltgesundheitsorganisation (WHO) definiert Femizide als allgemeine Bezeichnung vorsätzlicher Morde an Frauen, weil sie Frauen sind” (*Bundeskriminalamt*, 2024: 36-37)

The report refers to the research report on “honour-killings in Germany” conducted for *Bundeskriminalamt* in 2011, for the definition (Oberwittler and Kasselt, 2011). On the other hand, World Health Organisation definition for femicide is taken.

the agenda. There are discussions on the use of the word “*Ehrenmord*” (“honour killing”), similarly to the discussions conducted in the UK, as I referred to in the Introduction. *Ehrenmord* was selected second among the “un-words” (*Unwörter*)⁸⁹ of the year in 2005 in Germany and the jury of the *Unwörter* declared in their press release that by using this paradoxical word, “the murder of usually female family members can be relativised by invoking an archaic ‘family honour’ that is absolutely unacceptable in our culture”.⁹⁰

The question of whether the use of the word ‘honour’ together with killing causes a justification for these murders or the stigmatization of migrant communities is very complex. The puzzle an “honour killing” creates is not an easy one to solve. The puzzle is always there for the judges, prosecutors, lawyers, social workers, and health professionals as well.

I have been following the German media on this issue for quite a long time. In one of the latest cases that was reported by the media, Maryam H., a 34-year-old Afghan woman, was killed in Germany by her brothers in 2021. According to the reports in the media, she was forced to marry in Afghanistan at the age of 16 to a man who was ten years older than her at that time and who lived in Germany. She had two children and then moved to Berlin with her children in 2013. Almost four years after she arrived in Germany, she got divorced from her husband because of domestic violence and moved to a refugee centre together with her children. On 13 July 2021, she suddenly disappeared. Based on the investigations, it was found out that she was killed by her two younger brothers brutally. She was locked in the house of one of her brothers. She was throttled and her throat was cut. The two brothers, then put the body of the woman in a foetal position to transport her in a suitcase to the direction of München on a train. Her body was later discovered in an illegal garbage area near a forest in Bavaria, bound and tied up with duct tape.

The brothers did not admit their crime in the beginning. The court proceedings lasted almost one year and in February 2023, both brothers had life-long imprisonment sentence.

⁸⁹ The linguist Horst Dieter Schlosser started the ‘Unword of the Year’ initiative in 1991 to promote language criticism in civil society.

⁹⁰ Unwort des Jahres Jury. 2005. *Unwort des Jahres 2005*. Accessed February 20, 2024. <https://www.unwortdesjahres.net/wp-content/uploads/2021/06/2005.pdf>.

According to the media news reports, the judge and the criminal chamber saw the event the same way as the prosecutor:

“It was a ‘deeply despicable murder’, said presiding judge Thomas Groß, addressing the two defendants directly: ‘That is why you must serve life imprisonment.’

The verdict in the trial against the two Afghan brothers Yousuf and Mahdi H. took almost two hours on Thursday. The 22nd Criminal Chamber is convinced that the 28 and 24-year-old men murdered their sister Maryam H. in Berlin in summer 2021 and brought the body to Donauwörth in Bavaria in a suitcase on an ICE train. The body, buried there alone by the older brother Yousuf, was found three weeks later by the Berlin homicide commission (*Mordkommission*). Tied up, strangled and with his throat cut.

The trial lasted almost a year and the case caused a sensation far beyond Berlin. In the end, the criminal court chaired by Groß (*the judge my note*) agreed with the public prosecutor: 34-year-old Maryam H. had to die because her behaviour did not conform to the brothers’ moral standards.

Groß’s reasons for the judgement leave nothing to be desired in terms of clarity. It was not a question of what values applied in the archaic family structures of the accused, but what applied in Germany: ‘human rights, not alleged concepts of honour’. Both defendants had lived here long enough to know the local customs and traditions”⁹¹ (<https://taz.de/Urteil-im-Mordfall-Maryam-H/!5916639/> , Access: 20 February 2024).

In the same news report, it was underlined that “according to their family, women were supposed to be chaste and not allowed to think for themselves”. When the two brothers realized that they were starting to lose their power over their sister, they planned this crime. Another detail mentioned in the news report was that the presiding judge also relied on the expert opinion of an Islamic scholar Christine Schirrmacher, who had been heard during the trial. She emphasized that “this archaic way of thinking is not rooted in Islam

⁹¹ “Es sei „ein zutiefst verabscheuungswürdiger Mord”, sagt der Vorsitzende Richter Thomas Groß und wendet sich direkt an die beiden Angeklagten: „Deswegen müssen Sie lebenslang in Haft.

Nahezu zwei Stunden dauert die Urteilsbegründung am Donnerstag im Prozess gegen die beiden afghanischen Brüder Yousuf und Mahdi H. Die 22. Strafkammer ist überzeugt, dass die 28 und 24 Jahre alten Männer ihre Schwester Maryam H. im Sommer 2021 in Berlin ermordet und die Leiche in einem Koffer im ICE nach Donauwörth in Bayern gebracht haben. Der dort vom älteren Bruder Yousuf allein vergrabene Leichnam war drei Wochen später von der Berliner Mordkommission gefunden worden. Gefesselt, erdrosselt und mit durchgeschnittener Kehle.

Fast ein Jahr hatte das Verfahren gedauert, der Fall erregte weit über Berlin hinaus Aufsehen. Die Strafkammer unter Vorsitz von Groß sieht es am Ende so wie die Staatsanwältin: Die 34-jährige Maryam H. hat sterben müssen, weil ihr Verhalten nicht den **Moralvorstellungen der Brüder** entsprach.

In der Urteilsbegründung lässt es Groß nicht an Deutlichkeit zu wünschen übrig. Es gehe nicht darum, welche Wertvorstellungen in den archaischen familiären Strukturen der Angeklagten gälten, sondern was in Deutschland gelte: „das Menschenrecht, nicht vermeintliche Ehrbegriffe”. Beide Angeklagten hätten lange genug hier gelebt, um die hiesigen Sitten und Gebräuche zu kennen.” <https://taz.de/Urteil-im-Mordfall-Maryam-H/!5916639/> , Access: 20 February 2024.

but dates back to pre-Islamic times”. The question if the “honour killings” stem from Islam or not is one of the debated questions in the literature as well.

Maryam H. Case was not the first spectacular cases of “honour killings in Germany”. The Hatun Sürücü Case that happened in 2005 raised huge public attention on this topic.

4.1. Guest Workers’ Migration into Germany and the Migration in the 2000s

The migration history between Türkiye and Germany constitutes the background of the debates around gender, culture, and violence in Germany. Following World War II, the Federal Republic of Germany faced acute labour shortages during its economic recovery period. In response, Germany signed bilateral recruitment agreements with several countries, most notably with Türkiye in 1961. Initially intended to supply temporary “guest workers” (*Gastarbeiter*), these programs evolved into lasting settlement processes as many migrants chose to remain permanently (Abadan-Unat 1976). Between the 1950s and 1970s, the Federal Republic of Germany signed recruitment agreements with some countries. Most guest workers came from Türkiye⁹², Italy, Greece, Portugal, Spain, and the former Yugoslavia. The policymakers expected the guest workers to return to their countries; over time, however, migration dynamics shifted from labour recruitment toward family reunification and community formation, leading to the emergence of large, second- and third-generation Turkish-origin populations within Germany. Thomas Faist (2000) conceptualised this development through the notion of “transnational social spaces,” emphasising how migrants maintained durable ties across borders, influencing both their home and host societies. Parallel to this development, the number of immigrants would increase in the upcoming years. In 1970, the total number of non-Germans in Germany was 2.737.905, whereas the same number increased to 12.234.195 in 2022; the total population of Germany was 61.001.164 in 1970 and 84.358.845 in 2022,

⁹² The labour recruitment agreement between Germany and Türkiye was signed on 30 October 1961. The 60th Anniversary of the labour migration to Germany was commemorated in 2021. This agreement resulted in Türkiye being a “sending country” in the international migration process after World War II. Even though it was expected that the process would be finalized with a definitive return of migrants, migration continued at different times in different forms, transforming and being shaped by transformations of the two countries.

respectively.⁹³ On the other hand, in 2022, the number of people with a migration background in Germany⁹⁴ increased to 23,8 million or 28,7 % of the population. Almost half of the people with a migration background (around 12.191.000) have German citizenship and around 6.873.000 of those acquired German citizenship by being born in Germany. Most of the immigrants from Türkiye to Germany and their descendants came during the recruitment period.⁹⁵

Migration played a crucial role in contributing to the economies of Western Europe. Especially during the 1960s, the perception of migration and migrants in Europe was much different than the perception of migrants in Europe today. Since then, immigration has had economic, political, and social impacts and receiving countries have inevitably been transformed by immigrant-origin populations. On the other hand, the global socio-political landscape has evolved in a way that has given rise to social problems such as racism, exclusion, discrimination, xenophobia, Islamophobia, poverty, and unemployment. Ayhan Kaya (2009) critically examined how discourses around migration, particularly post-9/11, have become increasingly securitised, framing Muslim-origin populations through lenses of cultural essentialism and security risks, rather than addressing issues of systemic inequality, racism, and exclusion. He argues that the security discourse obscures the underlying reality that the ethnic and religious identity claims of migrants, as well as their resistance to integration, stem from the existing structural issues such as poverty, unemployment, discrimination, xenophobia, and racism (Kaya, 2009: 8)

⁹³ [https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Bevoelkerungsstand/Tabellen/deutsche-nichtdeutsche-bevoelkerung-nach-geschlecht-deutschland.html?view=main\[Print\]](https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Bevoelkerungsstand/Tabellen/deutsche-nichtdeutsche-bevoelkerung-nach-geschlecht-deutschland.html?view=main[Print]).

⁹⁴ The official statistics institution of Germany, *Destatis – Statistisches Bundesamt*, defines a person with immigration history as a person who they himself has or both of their parents have immigrated to Germany since 1950. The definition of migration background is as follows:
“A person has a migration background if he/she himself/herself or at least one of his/her parents does not have German citizenship by birth.”

⁹⁵ The literature on migration from Türkiye to Germany is extensive reflecting the long and complex history of movement between the two countries. See, for instance, Moritz Orendt, “The Integration of the Turks into German Society: Turks on Their Way to Parallel Societies or to True Integration.” *Bilge Strateji* 2 (3), 2010: 165-182.

These structural, discursive, and socio-economic conditions profoundly influence the experiences of migrant women in Germany today, particularly regarding gender-based and honour-related violence.

4.2. Research on “Honour-Based Violence” in Germany

Hatun Sürücü was murdered in 2005 by her brother. This murder sparked a significant public debate in Germany concerning integration policies, multiculturalism, and women’s rights. As Ercan (2015) persuasively argues, the discussions following her death marked a significant shift in the public discourse, bringing issues of forced marriage, HBV, and the challenges faced by immigrant women to the forefront of national attention. HBV was no longer merely a ‘criminal act’. Still, it became a symbol of ‘failed multiculturalism’. Within this discourse, immigrant “Muslim” communities, particularly those of Turkish and Kurdish origin, were constructed as “inherently patriarchal”, “backward”, and “resistant to gender equality” (Ercan 2015: 2–3). This perception towards the “Other” became a ground for exclusionary policies. As Yurdakul and Korteweg (2013, 2019) demonstrate, Germany has often used gender equality as a tool of political exclusion, where the apparent incompatibility between Muslim values and German liberal norms is invoked to legitimise assimilationist integration policies. Feminist and civil society actors, including Terre des Femmes, on the other hand, attempted to reframe HBV within the broader context of violence against women, arguing that the discourse should move away from “essentialising cultural explanations toward recognising systemic gendered oppression” (Ercan 2015; Böhmecke 2011).

In their foundational large-scale empirical study pertaining to the years between 1996 and 2005, Oberwittler and Kasselt (2011) identified 78 court cases as honour killings. While underlining the difficulty of determining “honour killing” cases because of the ambiguity in its definition, they analysed in detail the pattern of the motivations, offender-victim constellations and judicial outcomes. Accordingly, most of the perpetrators were identified as “poorly integrated men from patriarchal familial contexts”, most victims were young women challenging family control. The court judgments were inconsistent:

Some courts accepted “cultural motives” (such as honour) as mitigating factors, while others rejected them outright. This judicial ambivalence was emphasized in Erbil’s legal critique (2008) as well. She has rejected the use of “culture” as a sentencing mitigation and warned that such legal relativism can legitimise patriarchal violence at the expense of the equality principle central to liberal democracies. The Federal Court of Justice’s (BGH) decision in 2002 further guaranteed this universalist stance, ruling that “base motives” (niedrige Beweggründe) must be judged by the normative values of the German legal community—not by cultural particularities (BGH 5 StR 538/01).

Oberwittler and Kasselt also wrote an article that explores how German criminal courts interpret “honour killings” and whether they adhere to the jurisprudence of the German Federal Court of Justice (BGH) by convicting perpetrators of murder for base motives under § 211 of the German Criminal Code (StGB). They also conducted a comparative sentencing analysis of honour killings and intimate partner killings. Their findings reveal that between 1996 and 2005, German criminal courts imposed varying punishments on perpetrators of honour killings, with significantly harsher sentences, particularly more life sentences from 2002 onwards. The quantitative comparison of the two homicide case samples indicates that intimate partner killings were punished more leniently. Notably, no positive or negative trend was observed for intimate partner killings during the examined timeframe, suggesting that there is no general tendency towards harsher sentences in homicide cases in Germany. Instead, the increase in sentencing for honour killing cases is likely due to a change in the jurisprudence of the German Federal Court of Justice regarding the penalisation of such cases.

Multiple scholars such as Foljanty and Lembke (2021), and Çakır-Ceylan and Erbil (2009) argue that German criminal law and public discourse assign patriarchy to the minority communities. “Honour killings” by migrants are racialised and seen as culturally motivated, while similar killings (e.g., femicides or separation killings) by German men are treated as “tragic”, “family drama” and “individual acts of passion”.

The German Women Lawyers Association (*Deutscher Juristinnenbund - djb*) and the Deutsches Institute für Menschenrechte 2024 Monitor Report echo this concern. Both criticised the leniency of German courts toward non-immigrant femicides, while HBV is

often used as a litmus test of immigrant civility. Lembke and Foljanty emphasise that this double standard reinforces a discursive construction of ‘us’ vs. ‘them’, where “our violence” is humanised and “theirs” is demonised (Foljanty and Lembke, 2021).

Crime data analysis has likewise underscored the gravity of gender-based violence. The Federal Criminal Police Office (BKA) introduced a specialized national crime report titled *Bundeslagebild Geschlechtsspezifisch gegen Frauen gerichtete Straftaten* (Federal Situation Report on Gender-Based Violence against Women) starting in 2022 (BKA 2024). According to the latest findings, women continue to constitute the vast majority of victims in cases of intimate partner violence, homicide, and sexual assault. Particularly striking is the fact that the risk of femicide is significantly higher for women with migrant backgrounds.

Moreover, several high-profile cases, such as the murder of Maryam H., a young Afghan woman killed in Berlin by her brothers, continue to provoke public debates on the intersection of migration, gender, and violence. These cases illustrate how gender-based violence is frequently racialized in public discourse, often framing migrant communities as inherently patriarchal and culturally violent, while overlooking systemic factors like poverty, marginalization, and lack of protection infrastructure.

The murder of Hatun Sürücü in Berlin in 2005 marked a watershed moment in German public consciousness regarding honour-based violence. This act of femicide, committed by Sürücü’s brother under the pretext of restoring family honour, intensified debates over integration, gender equality, and cultural conflict (Oberwittler and Kasselt 2011, 1; Oberwittler and Kasselt 2012, 167).

Empirical research by Dietrich Oberwittler and Julia Kasselt (2011, 2012, 2014) has provided foundational insights into the patterns and judicial treatment of honour killings in Germany. Their study of 60 cases between 1996 and 2005 showed that German courts generally punished honour killing perpetrators more severely than those involved in other forms of intimate partner homicides (Oberwittler and Kasselt 2014, 210–213).

Further detailed analysis by Kasselt (2016) confirmed these findings. Comparing 63 convictions for honour killings with 91 for other intimate partner killings, Kasselt found

that after 2002, life sentences were imposed in 38% of honour killing cases, compared to 23% in non-honour partner killings (Kasselt 2016, 286–288). This shift reflects a growing judicial recognition that honour killings, as acts motivated by patriarchal control over women’s autonomy, warrant harsher punishment.

One of the key legal developments contributing to this shift was the Federal Court of Justice’s 2002 clarification that honour-related motives must be assessed based on German legal and cultural standards, not the perpetrator’s cultural background. Thus, honour killings generally fulfil the criteria of base motives (*niedrige Beweggründe*) under §211 of the German Criminal Code, qualifying them as murder (Kasselt 2016, 140; Oberwittler and Kasselt 2014, 207).

Nevertheless, Kasselt and Oberwittler also documented inconsistencies in judicial reasoning. Some courts, particularly before 2002, failed to explicitly identify the honour motive as a base motive or, in rare instances, treated cultural socialisation as a mitigating factor (Oberwittler and Kasselt 2014, 212; Kasselt 2016, 285).

In terms of defendant profiles, Kasselt’s (2016) study highlighted those lower levels of integration—such as limited German language proficiency—were sometimes correlated with slightly more lenient sentencing, although this was not a dominant trend (Kasselt 2016, 295). Furthermore, regional differences across *Bundesländer* did not produce statistically significant variations in sentencing patterns (Kasselt 2016, 302).

Adding to this empirical base, Julia Habermann’s (2023) study on partner killings across Germany further complicates the picture. Habermann found that while partner killings were often classified as manslaughter rather than murder, they were not sentenced more leniently than other homicides overall (Habermann 2023, 409). However, courts frequently failed to properly recognise the underlying structures of patriarchal control that characterise these crimes. Judges tended to explain partner killings in terms of “individual emotional despair” or “situational rage” rather than acknowledging them as manifestations of gendered structural violence (Habermann 2023, 406–410). Prior incidents of domestic violence were often overlooked during sentencing (Habermann 2023, 417), and cultural stereotypes occasionally influenced judicial reasoning, with

“foreign” perpetrators more likely to face harsher murder convictions (Habermann 2023, 411).

In contrast to the empirical findings showing the need for stricter responses to gender-based violence, some legal scholars, such as former Federal Constitutional Court judge Winfried Hassemer, have advocated for a more culturally sensitive approach to honour killings. In a 2009 interview, Hassemer argued that courts should consider the “social context and socialization” of perpetrators, suggesting that individuals raised under different normative systems might merit milder sentencing (Hassemer 2009). He cautioned against what he viewed as an overly rapid and abstract classification of honour killings as murders.

However, this position must be critically evaluated. As Kasselt’s (2016) empirical study demonstrates, German courts initially struggled to consistently recognise the “base motives” inherent in honour killings, and only after major jurisprudential shifts post-2002 did appropriate punishment trends emerge. Treating cultural socialisation as a mitigating factor risks downplaying the systematic patriarchal violence at the core of these crimes. Feminist critiques further argue that recognising honour motives as base motives is essential to uphold constitutional principles of human dignity and gender equality. Thus, while Hassemer’s concerns reflect a fear of cultural insensitivity, his position risks undermining the protection owed to women subjected to honour-based violence within Germany’s multicultural society.

However, this approach was gradually abandoned, culminating in a decisive jurisprudential shift by the Federal Court of Justice (*Bundesgerichtshof, BGH*) in 1994. The court declared that the value system underlying German criminal law must remain the standard for evaluating motives, regardless of the perpetrator’s cultural background. Thus, since the mid-1990s, cultural explanations no longer diminish the perceived moral reprehensibility of honour-related killings; rather, honour killings have been considered clear cases of “base motives” under §211 StGB (German Penal Code) (Foljanty and Lembke 2014, 300–302).

This transition coincides with a growing political and public emphasis on integration and the defence of the “German legal community” against perceived cultural relativism. As Foljanty and Lembke (2014) show, the legal discourse surrounding honour killings is heavily loaded with constructions of “the Other,” portraying migrant perpetrators as fundamentally “foreign” and culturally bound to “archaic”, “patriarchal honour codes”, in contrast to a supposedly “modern”, “individualistic” German society. Honour killings thus become a battleground for broader encounters of multiculturalism, integration, and national identity.

Further critical reflections on the use of cultural arguments in German criminal law are provided by Erol Rudolf Pohlreich. Analysing decisions of the Federal Court of Justice, Pohlreich (2011) shows that cultural backgrounds were inconsistently considered, sometimes leading to mitigation for perpetrators of honour-based violence or sexual crimes. He criticises the tendency to portray immigrant cultures in stereotypical ways and highlights how such practices risk applying double standards to immigrant and non-immigrant defendants. Pohlreich argues that cultural evidence should only be considered where it fits universal legal categories, such as impaired capacity, and not based on “cultural difference” per se (Pohlreich 2011). His critique strengthens the argument that honour-based violence must be judged through the lens of individual rights and human dignity, without resorting to cultural essentialism.

Despite ratifying the Istanbul Convention in 2017, Germany continues to be criticised over its inconsistent judicial approaches. Both the GREVIO Concluding Report (2022) and (2024) reports underline the need for: “a legal definition of femicide, rejection of cultural justifications for gender-based crimes, intersectional protections for migrant and refugee women, uniform national coordination and training for the judiciary and law enforcement. These calls reflect a universalist human rights framework, demanding that no woman, regardless of cultural or immigration status, be subjected to violence justified by notions of “tradition” or “honour.”

While finalising this chapter, federal parliamentary elections were held in Germany on 23 February 2025. Although the outcome was largely anticipated—partly foreshadowed by the results of the European Parliament elections in the summer of 2024—it nonetheless

marks a significant political shift. The Christian Democratic Union (CDU) returned to power, and the far-right Alternative for Germany (AfD) nearly doubled its share of the vote compared to the previous national election. The electoral defeat of the Social Democratic Party (SPD) was widely attributed to growing public concern over immigration and economic instability. These results are likely to influence future reforms in Germany's immigration and citizenship policies, developments which may, in turn, impact discourses surrounding gender-based and honour-related violence.

The federal government's commitment to gender-based violence prevention was reflected in several initiatives preceding the election. Germany signed and ratified the Council of Europe's Istanbul Convention on preventing and combating violence against women and domestic violence. Although GREVIO's 2022 Baseline Evaluation Report praised Germany for important legal frameworks and support measures, it also highlighted significant gaps in the protection of migrant and minority women (GREVIO 2022). More recently, the 2024 GREVIO Monitoring Report reiterated concerns that structural inequalities, precarious legal statuses, and language barriers disproportionately limited access to protection for migrant women (GREVIO 2024).

AYLIN AND ZEYNEP: TWO WOMEN WITH IMMIGRANT BACKGROUNDS SUBJECTED TO GENDER-BASED VIOLENCE IN GERMANY

In this chapter, cases regarding two women with immigrant backgrounds who were subjected to fatal gender-based violence in Germany will be scrutinised closely through a magnifying lens to understand how culture is elaborated in these cases. As mentioned in the methodology section, I have different materials to analyse these cases: an auto/biography and a case file. Having different materials to analyse is one of my challenges throughout this dissertation's long journey. However, even though this challenge created disadvantages for me as a researcher, I dared to take this path since I find it worth showing how valuable it is when women can tell their stories in femicide or femicide attempt cases.

Even though Aylin Korkmaz has survived, she repeatedly mentioned in her interviews that she is not afraid of death anymore, because she was once dead anyway. In the TV program, lawyer Gülşen Çelebi said that Aylin was alive thanks to the successful medical intervention she had in Germany. The court documents also mention that she had scars all over her body that could be seen on the corpses. When the Criminal Law deals with this matter as a legal issue to be solved, it takes the person as an “alive” person, and therefore the category of the crime changes. Instead of “murder”, it becomes “attempt to murder” independent from the intent of the perpetrator.

In both cases, their ex-husbands attacked these women with immigrant backgrounds. These two cases have similarities, but they are not identical. However, one difference is striking: In one of the cases, the woman was dead, whereas in the other one, the woman was almost killed but survived as a miracle and was able to tell her story. Therefore, I follow the traces of their respective stories from qualitatively different materials and voices.

In Aylin Korkmaz's case, the victim was able to speak up at the court during trials, campaign against the early release of her ex-husband from prison together with a women's rights organization in Germany, *Terre des Femmes*, to write an auto/biography

and to become a public figure who was invited to TV programs and public events to tell her story and to talk about violence against women.

Aylin wrote her auto/biography, including the fatal attack she survived, with Tanja Moser. The auto/biography was published as a book in 2010 by Fackelträger Verlag GmbH in Köln. The book is 250 pages long, and it includes a preface and 12 Chapters: “A Princess in Türkiye”, “The End of Childhood”, “The Burden of Virginity”, “The Foreign Groom”, “Welcome to Germany”, “Fanaticism Abroad”, “Escape to Türkiye”, “Secret Divorce”, “26 Knife Stabs”, “Rude Awakening”, “The Trial”, and “Steps Back into The Life”. In all these chapters, Aylin wrote her life story, starting from her childhood to her arranged-forced marriage, her migration to Germany, how she decided to have children, domestic violence, divorce, the murder attempt, and its aftermath, including the trial process, problems with the right to custody and youth welfare centre, and her disappointments regarding sentencing. Aylin also shared twelve photos from different moments of her life in eight non-numerated pages (between pages 72 and 73) and eleven photos after the attack, which show the scars from the attack in her face, in six non-numerated pages (between pages 168 – 169).

The name of the book also denotes that she was able to use her voice and scream: “I Screamed for My Life: Honour Killing in the Middle of Germany - *Ich schrie um mein Leben: Ehrenmord mitten in Deutschland*”. She screamed literally for her life when her ex-husband attacked her with two knives and all the witnesses in her case report about the scream. As underlined by the book’s name, it is written in the first-person pronoun: “I”, which is a clear sign of the agency of Aylin Korkmaz as well. She did not only speak at the court but also used her own voice to raise awareness on the issue for the women who go through similar experiences. She screamed once again with her book in order to let the world what kind of gender-based violence she underwent as a woman.

Aylin’s story was also told in a 43-minute-59-second documentary – “*Lebenslinien: Aylin*” (Lifeline: Aylin).⁹⁶ Aylin also participated in one of the Reinhold Beckmann

⁹⁶ <https://www.ardmediathek.de/video/lebenslinien/aylin/br-fernsehen/Y3JpZDovL2JyLmRlL3ZpZGVvL2M0Y2I1Mjc5LWQzODAtNDZjYS1iZWl3LWZjMjI2OWQ0Nzhzhg>, Access: 24 February 2024.

Talkshow⁹⁷ programs in December 2008, one year after the attack. In this program, there were other guests, such as Rahel Holz from *Terres des Femmes* and Gülşen Çelebi, a lawyer, to speak on her case and “honour killings” in Germany. As the moderator, Reinhard Beckmann asked each guest questions on “honour killings”, specifically on Aylin’s case, and one of the mainstream media channels in Germany broadcasted the program.⁹⁸

There was a brief news report on the ARTE channel on “honour killings” in Germany. Together with the Hatun Sürücü case (in 2005), Aylin’s case (in 2007) was also handled. In the written media in German and Turkish, such as *Frankfurter Allgemeine Zeitung*, *Spiegel*, *Süddeutsche Zeitung*, *Welt*, *Hürriyet*, and *Radikal*, there were news regarding Aylin’s case, the trial process, and the publication of her book.

In Aylin’s case, the perpetrator, Aylin’s ex-husband M., was sentenced to 13 years of imprisonment for attempted murder (*Mordversuch*) even though the prosecutor asked for a lifelong sentence. Aylin was disappointed with the judgement. Later, she was even more disappointed because she found out that after six and a half years of imprisonment, M. would be deported to Türkiye.

She claimed that ‘her ex-husband’s cultural origin was used as an argument for mitigation in the punishment by lawyers and courts’. Her claim attracted my attention to her case for the thesis. She wrote in the foreword of her auto/biography:

“A good Turkish wife does not expose her family problems to the outside world. A good Turkish wife does not defend herself against her *kismet* (‘fate’); she accepts it. That is how I was raised and what my ex-husband demanded of me. **I remained silent. Too long, as I now know. But most of all, I was ashamed.** ‘If only people knew what was happening in our house,’ my oldest daughter Melanie often told me. Hardly anyone had any idea what our lives looked like. Most people did not want to know either, as the appearance of normality is much more pleasant than the uncomfortable truth. My children were fashionable; I liked to wear short skirts. From the outside, we looked like a modern Turkish family that had arrived in Germany. But my freedom did not extend beyond my closet. I carried the heavy burden of honour with every step I took outside the door. It was for my ex-husband alone to judge whether I behaved honourably or was a disgrace to him. However, his judgement was shaped less by an Islamic understanding of morality

⁹⁷ Reinhold Beckmann Talkshow was broadcasted every week between 1999 and 2014. Aylin was invited to this program in December 2008, one year after the attack.

⁹⁸ The recording of the program is accessible in three parts in the following links: <https://www.youtube.com/watch?v=IJuOA7tqnqM>; <https://www.youtube.com/watch?v=x2g8-BoARRo>; <https://www.youtube.com/watch?v=0EREb7hwLrM>, Access: 24 February 2024.

than by his whims and ambivalent character. Irascibility, despair, and excessive euphoria constantly alternated. My ex-husband was by no means a strict believer, but he could be even more fanatical when it came to his Kurdish origins.

Violence against women is not an Islamic phenomenon. But the concept of honour is still, and all too readily, misused as a justification. A concept that seems so powerful to many Muslims that it is still used by lawyers and courts as an argument for mitigating punishment. This was so in my case even justify murder and, moreover, embarrass democratic jurisprudence. The 'cultural origin' of the perpetrator case.

That's why I don't want to hide any longer but speak for the women who no longer have a voice. Because I am lucky to be still alive" (Korkmaz and Moser, 2010: 12-13).⁹⁹

One point I want to underline is that autobiographies are valuable information sources, particularly for historians and social science researchers. As Nazan Aksoy mentions in the foreword of her book on women's autobiographies (Constructed Selves: Autobiography, Woman, Republic - *Kurgulanmış Benlikler: Otobiyografi, Kadın, Cumhuriyet*), they are an essential source of scrutiny in feminist research (Aksoy, 2009: 11).

In contrast to fictional narrative forms, autobiographies assert that they have documented events as they happened in the past. They are based on the testimonies of the essential figures. It is unavoidable that the memory filters some elements while selecting others to put together.

⁹⁹ "Eine gute türkische Ehefrau trägt ihre familiären Probleme nicht nach außen. Eine gute türkische Ehefrau wehrt sich nicht gegen ihr *kismet* («Schicksal»), sie nimmt es an. So bin ich erzogen worden, und so hat es mein Ex-mann von mir verlangt. Ich habe geschwiegen. Zu lange, wie ich heute weiß. Aber vor allem habe ich mich geschämt. »Wenn die Leute wüssten, was bei uns zu Hause los ist«, sagte mir meine älteste Tochter Melanie oft. Kaum jemand ahnte, wie unser Leben tatsächlich aussah. Die meisten wollten es auch nicht wissen, ist doch der Schein der Normalität viel angenehmer als die unbequeme Wahrheit. Meine Kinder waren modisch gekleidet, ich selbst trug gern kurze Röcke. Nach außen hin wirkten wir wie eine moderne türkische Familie, die in Deutschland angekommen war. Doch mein Freiraum reichte nicht über meinen Kleiderschrank hinaus. Mit jedem Schritt, den ich vor die Tür setzte, trug ich die zentnerschwere Last der Ehre mit mir. Allein meinem Exmann stand es zu, darüber zu urteilen, ob ich mich ehrenhaft verhielt oder eine Schande für ihn war. Sein Urteil war allerdings weniger von einem islamischen Verständnis von Moral geprägt als vielmehr von seinen Launen, von seinem ambivalenten Charakter. Jähzorn, Verzweiflung und übermäßige Euphorie wechselten sich stetig ab. Mein Exmann war keineswegs strenggläubig, aber er konnte umso fanatischer sein, wenn es um seine kurdische Herkunft ging.

Gewalt gegenüber Frauen ist kein islamisches Phänomen. Aber der Begriff der Ehre wird noch immer und nur allzu gern als Rechtfertigung missbraucht. Ein Begriff, der für viele Muslime so mächtig scheint, dass er sogar Mord rechtfertigt und darüber hinaus eine demokratische Rechtsprechung in Verlegenheit bringen kann. Noch immer wird die »kulturelle Herkunft« des Täters von Anwälten und Gerichten als Argument für Strafmilderung ins Feld geführt. So war es auch in meinem Fall.

Deshalb will ich mich nicht länger verstecken, sondern für die Frauen sprechen, die keine Stimme mehr haben. Denn ich habe das Glück, noch am Leben zu sein." (Korkmaz and Moser, 2010: 12 – 13).

Aksoy's book deals with the autobiographies of elite women in a specific period, as they witnessed the modernization process in the founding years of the Republic of Türkiye as women. However, Aylin Korkmaz has become an essential figure as an ordinary woman in her feminist struggle against the injustice she faced through the criminal justice system in Germany after the fatal attack by her ex-husband. She reveals her life story in the context of the patriarchal culture in her family in Türkiye, of her marriage full of memories of domestic violence as well as of "the criminal justice system that protects the perpetrator rather than the victim in Germany", as Korkmaz put it.

Uyan-Semerci and Silahdaroğlu discuss the contribution of biographic research to social science as "making the invisible visible". The authors also underline the importance of qualitative research methods for feminist research:

"Feminist research examines the position of women in patriarchal society, best demonstrated through an interrogation of the dynamic interplay between the social and the personal. Whether they reflect women's obedience or rebellion, women's personal stories convey the human experience to the researcher from the standpoint of the marginal, excluded, silent or inaudible. Therefore, using qualitative methods in feminist research is a much stronger need for feminist theory and leads to fruitful conclusions. Feminist studies, as examples of good use of qualitative methods, have made significant gains in including excluded and unheard groups in social science, especially by allowing in-depth research" (Uyan-Semerci and Silahdaroğlu, 2005: 268).

As the authors further put forward, the qualitative method aims to understand human experience and illustrate structural problems through these experiences. In my study also, both the auto/biography and the case file provide the life stories of two women with immigration backgrounds who were subjected to severe gender-based violence that was dealt with by the German criminal justice system.

In the second case, which is under scrutiny, the victim does not exist anymore, and I am trying to tell her story, which would not be uncovered if not mentioned in this thesis. I tried to combine the puzzle pieces from the police records, indictment, and similar documents in Zeynep's case. However, Zeynep is the third personal pronoun – "She" – in the case file. We do not encounter her words in any part of the case file. There are the testimonies of the witnesses, each of whom witnessed just a period of her life story.

In media interviews and the book, Aylin Korkmaz has repeatedly underlined that she raises her voice because she would like to give courage to women in similar situations.

Aylin mentions that she had been silent for years; she did not share being subjected to domestic violence, even with her own family. She wrote that she had kept it a secret because she felt ashamed. However, this always caused an escalation in her husband's attacks on her, which even reached the point where he tried to kill her in a murder attempt after she got divorced. For this reason, by telling her story, she wanted to encourage women in similar situations not to be silent. She expressed that she was lucky and stayed alive, but many women died. Therefore, she wanted to be the voice of the women who had passed away. With a similar purpose to Aylin, I want to give a voice to Zeynep, and I will use the court materials to tell the story of Zeynep. 'Giving women a voice' is the subject of thousands of pieces, mostly written by feminists. The women who were killed cannot speak out against femicide.

Shalva Weil put forward that femicide has received little attention in sociological studies despite the extensive focus on gender issues and the desire to give women a voice. She refers to Carol Gilligan's ground-breaking work, *In A Different Voice*, in 1982, which highlighted the value of hearing women's viewpoints (Gilligan, 1982). She adds that, however, femicide remains largely unexamined or ignored in part because the victims are unable to speak for themselves, and she brought the 'invisibility of the femicide' into the fora (Weil, 2016, p. 1133). In agreement with Weil and Uyan-Semerci and Silahdaroğlu, I also think it is essential to make 'the invisible visible' and hear the 'inaudible' from a social science perspective.

5.1. Suspicious Femicide Cases and Hearing the Voice of the Inaudible

In some cases, where the female victims survive the murder attempt, the truth can be radically different from what the perpetrator says. For instance, in 2021, a woman was choked by her husband; she fainted and was thrown from the balcony of an apartment on the third floor in Van, in the eastern part of Türkiye. She stayed in a coma for two months, and when she woke up, she learned that her husband had told the investigators that she had committed suicide. When she regained consciousness, she clarified that her husband had thrown her from the balcony, not herself. The woman is now paralysed; she cannot

move, and she must live bedridden. These developments led to the prosecution of the case as a murder attempt rather than a suicide case.¹⁰⁰

In another case, again in 2021, a woman was shot in the head just a couple of weeks after her wedding, and her husband claimed that she committed suicide. She survived the event even though the doctors told her family that the probability that she would survive was only two per cent. Therefore, it was like a miracle for her family that she woke up. Upon awakening, she informed the police officers that her husband, a professional police officer, had shot her. Following the trials, the court sentenced him to 31 years, with 19 years for attempted murder against a spouse and 12 years for aggravated sexual assault. The Court of Appeal even increased his sentence to 37 years, four months, since he used the gun that was provided to him by the state because of his duty as a police officer. The Court of Appeal had applied no mitigation to the sentence.¹⁰¹

In yet another case that attracted considerable public attention, a 23-year-old university student named Şule Ket was thrown out of the window of a tall building and died in 2018. The perpetrators claimed that she committed suicide. The women's movement in Türkiye closely watched the case. Thanks to expert opinions that asserted the impossibility of a woman committing suicide and positioning herself on the ground in that way, the case's trajectory shifted from suicide to murder and sexual abuse, resulting in heavy sentences for the perpetrators.¹⁰²

The above cases are examples of murder or attempted murder cases that were tried to be disguised as suicide cases. There might also be forced suicide cases. UN Special Rapporteur Yakın Ertürk conducted a mission visit to investigate the statistical anomalies

¹⁰⁰ Dalmaz, Behçet, and Orhan Aşan. 2021. "Eşinin Balkondan Atıp 'İntihara Kalkıştı' Dediği Çiğdem: Felç Kaldım, Adalet İstiyorum." *Hürriyet*, August 31, 2021. Accessed April 12, 2022. <https://www.hurriyet.com.tr/gundem/esinin-balkondan-atip-intihara-kalkisti-dedigi-cigdem-felc-kaldim-adalet-istiyorum-41884704>.

¹⁰¹ Cumhuriyet. n.d. "Sevginur'u Vuran Polis Eşin Cezasında Beylik Tabancası Artırımı." *Cumhuriyet*. Accessed February 22, 2024. <https://www.cumhuriyet.com.tr/turkiye/sevginuru-vuran-polis-esin-cezasinda-beylik-tabancasi-artirimi-1953893>.

¹⁰² Karakaş, İsmet. 2022. "Yargıtay, Şule Çet Davasında Sanıklara Verilen Cezaları Onadı." *Anadolu Ajansı*, December 23, 2022. Accessed April 12, 2023. <https://www.aa.com.tr/tr/gundem/yargitay-sule-cet-davasinda-saniklara-verilen-cezalari-onadi/2770960>.

of female suicide rates in some provinces of Türkiye in 2006. In her report, she claimed that a “psychological autopsy”, in addition to forensic investigations, should be performed in suspicious “suicide” cases. This method is employed to ascertain the mental state of a victim. It may reveal whether third parties have influenced the decision to commit suicide. Psychologists and psychiatrists conduct psychological autopsies by interviewing friends, family, and other professionals who had intimate contact with the suicide victim in-depth. (Ertürk, 2006, A/HRC/4/34/Add.2, par. 43).

In summary, when a woman dies unnaturally and suspiciously, the prosecutor of the relevant case should act diligently since the woman cannot talk on her behalf and cannot tell the story from her perspective. In addition to the prosecutors, the parties who could speak for the right to life of that woman (such as the relatives or acquaintances of the woman, experts, women’s rights organizations, etc.) should be able to get involved in the justice process. However, most criminal justice systems have complicated and limited intervention methods. As the above cases of attempt to murder show, when women can continue to breathe and are able to tell their stories, it can have a tremendous effect. In Zeynep’s case, nobody could speak for her.

5.2. Aylin’s Case

Aylin was born in 1973 in Adana, in southern Türkiye. Her father worked as an interpreter for the US Army at Incirlik Air Base in Adana. When Aylin was almost six years old, her father died in a car accident in 1978. The loss of the father figure affected Aylin and her whole life dramatically.

She starts her auto/biography with a lovely summer day around her sixth birthday in Adana, filled with memories of her father. Four days after her birthday, the death notice of her father came, and she mentioned that she had never celebrated her birthday from that time onwards. The first change in their lives was that they moved into her grandparents’ house. She describes how the patriarchal family structure of her mother shaped this process as follows:

“A week after the funeral, my grandparents demanded obedience from their daughter again. ‘You are going to move in with us; that is best for you.’ Now, it was up to the parents again to decide what was right and wrong for her. Without a husband, her honour is in danger. Her reputation could be damaged, and that would have fatal consequences. My mother submitted to the *kader* (“entanglement”) what that fate had planned for her. She had no other choice. A happy wife became a desperate widow. And a mother of two turned into a daughter under her parents’ supervision. Her honour returned to the family” (Korkmaz and Moser, 2010: 27–28).¹⁰³

When Aylin’s mother became a widow with two infants, she had to return to the house of her own parents and became subject to the “patriarchal control” of her own father again. Without the “marital bond” her honour was perceived as in danger. A mother of two herself, she became the daughter again, losing her autonomy. She submitted to her fate, losing agency. There should be a male guardian anyway for protecting her honour, in that “honour culture” that shapes the gender norms, which requires obedience. Without autonomy and agency, strictly controlled by the family, she was under “patriarchal” and “coercive” control.

A couple of months after the funeral of her father, her 26-year-old widowed mother married again. It was an arranged marriage by the grandparents. Aylin was very frustrated about this marriage and described how it comforted her grandparents:

“The wedding took place in the close family circle and in the presence of a *hoca* (“scholar”) who sealed the marriage. This time, there was no emphasis on guests. My grandparents were already satisfied that their daughter, as a mother of two children, had found a husband. ‘How lucky,’ the relatives said complacently, that ‘she is an extraordinary beauty; otherwise, no man would have been interested in her’” (Korkmaz and Moser, 2010: 37).¹⁰⁴

¹⁰³ “Eine Woche nach der Beerdigung forderten meine Großeltern von ihrer Tochter wieder Gehorsam ein. »Du wirst zu uns ziehen, das ist das Beste für dich.« Jetzt war es wieder an den Eltern, darüber zu bestimmen, was richtig und falsch für sie war. Ohne Ehemann sei ihre Ehre in Gefahr. Ihr Ruf könne beschädigt werden, und das würde fatale Konsequenzen mit sich bringen. Meine Mutter fügte sich ihrem *kader* (»Verhängnis«), welches das Schicksal für sie vorgesehen hatte. Sie hatte keine andere Wahl. Aus einer glücklichen Ehefrau wurde so eine verzweifelte Witwe. Und aus einer zweifachen Mutter wieder eine Tochter, die unter der Aufsicht ihrer Eltern stand. Ihre Ehre war in die Familie zurückgekehrt.” (Korkmaz and Moser, 2010: 27–28).

¹⁰⁴ “Die Trauung fand im engsten Familienkreis und in Anwesenheit eines *hocas* (»Gelehrter«) statt, der die Ehe besiegelte. Auf Gäste wurde dieses Mal kein Wert gelegt. Meine Großeltern waren schon zufrieden damit, dass ihre Tochter als Mutter von zwei Kindern überhaupt noch einen Ehemann abbekommen hatte, »Welch ein Glück«, urteilte die Verwandtschaft selbstgefällig, »dass sie eine außergewöhnliche Schönheit ist, sonst hätte sich sicherlich kein Mann mehr für sie interessiert.«“ (Korkmaz and Moser, 2010: 37).

As a young and beautiful woman, Aylin's mother married again in a short time. The marriage was not official, but it was a religious ceremony. Her relatives made emphasis on her "beauty" because otherwise she would not be worth to be married. There is a commodification of the woman.

Her stepfather was a wealthy farmer with an estate. Aylin expressed that since the stepfather lived in the countryside, her mother did not want to move into his house because she wanted her children to attend a school near the city centre. For this reason, her stepfather agreed to move into one of the apartments in Aylin's grandparents' house to live with her mother, Aylin, and her two-year-old brother.

Aylin's mother had two more children with her stepfather. Then, the 1980 coup occurred. Aylin wrote that her stepfather was always away when she was eight, and her mother was sad. Aylin's mother got divorced when she was ten years old in 1983. Aylin wrote how the divorce affected their lives at the end of the second chapter of her book, which had the title "The End of Childhood":

"My mother filed for divorce in 1983. A monstrosity for my family, the reasons were of no interest. In fact, they were ignored. For her, the divorce was a big problem because, once again, there was no man who could guarantee her honour. Again, my mother's reputation was in danger. It was many years later that I learned the truth about the separation: my stepfather demanded that my mother accept a second wife. According to Islamic law, a man is allowed to marry four women provided he can support them. "Only over my dead body," I heard her shout during an argument with my stepfather. Today, I can understand my mother.

Shortly afterwards, my mother made the following bold move: after the divorce, she managed to continue living in the apartment with her four children, but without a husband. The relatives snubbed her, but my mother did not care. 'I have proven throughout my life that I am a decent, honourable woman,' she emphasized. I soon sensed what that meant: my mother was no longer greeted by her relatives on the street, and invitations were not forthcoming. It also has not escaped my notice that my mother no longer dyed her hair. The focus of her interest was now increasingly on me. It was my fate that I was not only the oldest child but a girl who was beginning to mature into a young woman" (Korkmaz and Moser, 2010: 44-45).¹⁰⁵

¹⁰⁵ "1983 reichte meine Mutter die Scheidung ein. Eine Ungeheuerlichkeit für meine Familie. Die Gründe interessierten dabei nicht. Viel mehr: sie wurden ignoriert. Für sie galt die Scheidung als großes Problem, denn abermals war kein Mann da, der ihre Ehre garantierte. Wieder war das Ansehen meiner Mutter in Gefahr.

Viele Jahre später erst sollte ich die Wahrheit über die Trennung erfahren: Mein Stiefvater verlangte, dass meine Mutter eine zweite Frau neben sich akzeptierte. Nach islamischem Recht ist es dem Mann erlaubt, vier Frauen zu heiraten, vorausgesetzt, er kann sie versorgen. »Nur über meine Leiche«, hörte ich sie damals im Streit mit meinem Stiefvater schreien. Heute kann ich meine Mutter verstehen.

As the quotation shows, Aylin's mother got divorced because of the "polygamy ultimatum" by her husband. After the divorce, she had to cope with the pressure from her surroundings due to the honour culture. Likewise, her mother, raising the children alone, also pressured Aylin as she was becoming a young woman. In the book's third chapter, Aylin explained this pressure as "the burden of virginity" and "the burden of honour". After the divorce, her mother's "honour" would be in danger again. Aylin's mother was isolated by the relatives since she was a widow again without the guardianship of a male. Here, Aylin's mother justifies that she is an "honourable" woman and she passed this pressure on her to her oldest daughter, Aylin as well.

Aylin wrote of an embarrassing memory when her mother freaked out to see one of her male friends who came for a math tutorial at their apartment. The mother sent the boy back to his home, and she gave messages to Aylin regarding the boundaries of her relationship with male friends:

"Now it was clear: it was about my virginity, which she [her mother] considered to be in great danger. 'What are the neighbours supposed to think,' she repeated over and over again. And I understood: my honour would be preserved if I remained chaste until I was married" (Korkmaz and Moser, 2010: 48).¹⁰⁶

Virginity, or to remain chaste before marriage, is one of the expectations of honour cultures from women. Even Aylin's coming together with a male friend in a private space to study was perceived as a transgression of the boundaries of patriarchal control. Aylin had to be aware of the "surveillance" of the neighbours, of the community. Aylin wrote in the upcoming pages of her auto/biography how important it was for the family of her husband to see the proof that she entered the marriage as a virgin.

Kurz darauf erlaubte sich meine Mutter die nächste Frechheit: Sie setzte nach der Scheidung durch, mit ihren vier Kindern, aber ohne Mann in der Wohnung weiter zu leben. Die Verwandtschaft war brüskiert, aber meine Mutter gab nichts darauf. »Ich habe mein Leben lang bewiesen, dass ich eine anständige, ehrenhafte Frau bin«, betonte sie. Was das bedeutete, spürte ich bald: Meine Mutter wurde von ihren Verwandten auf der Straße nicht mehr begrüßt, Einladungen blieben aus. Mir entging auch nicht, dass meine Mutter ihre Haare nicht mehr färbte. Dafür lag der Fokus ihres Interesses nun zunehmend auf mir. Es war mein Schicksal, dass ich nicht nur das älteste Kind war, sondern ein Mädchen, das zur jungen Frau heranzureifen begann." (Korkmaz and Moser, 2010: 44 – 45).

¹⁰⁶ "Nun war es heraus: Es ging um meine Jungfräulichkeit, die sie in höchster Gefahr erachtete. »Was sollen nur die Nachbarn denken«, wiederholte sie wieder und wieder. Und ich verstand: Meine Ehre wurde gewahrt, wenn ich keusch blieb, bis ich verheiratet war." (Korkmaz and Moser, 2010: 48).

Aylin was sent to a private high school, taken to the school, and back by a taxi that the same trustworthy driver drove. *Altay Abi*, the driver, soon became not only a driver but an “*Abi*”, as if a family member. He always pacified Aylin’s mother’s fears by ensuring that he supervised 14-year-old Aylin. Again Aylin was under the surveillance of a male guardian. Aylin mentioned how it hurt her that “her mother’s concern for her was less about her integrity and more about the inviolability of her hymen” (Korkmaz and Moser, 2010: 50).¹⁰⁷

Aylin studied hard and had good school reports. She was dreaming of studying further after finishing high school:

“Learning was my quiet revolution; I imagined the future in bright colours, and the dream of studying law inspired me. Shortly after graduating from school in June 1989, I turned 17. However, the central entrance exam score was insufficient for studying at the renowned University of Ankara. Although disappointed, I did not want to admit defeat so easily. I finally applied to the private Doğu Akdeniz University in the Turkish part of Cyprus in Nicosia (Turkish: *Lefkoşa*), where I should have better chances with my grades. My mother also busily made plans for my future, which I would soon find out about. However, they went in the opposite direction of what I was hoping for” (Korkmaz and Moser, 2010: 52-53).¹⁰⁸

In her situation, Aylin was aware that the only way out of this traditional patriarchal structure was to continue her education. She was hoping to study out of the country, but unfortunately, she was not able to do so.

5.2.1. Arranged Forced Marriage and Migration to Germany

Her life took a somewhat different path than Aylin had dreamed of. Aylin got married at the age of 18. She told in a TV program that it was an arranged marriage. However, her

¹⁰⁷ “Es verletzte mich aber, dass es meiner Mutter in ihrer Sorge um mich weniger um meine Unversehrtheit als um die Unantastbarkeit meines Jungfernhäutchens ging.” (Korkmaz and Moser, 2010: 50).

¹⁰⁸ “Das Lernen war meine stille Revolution, die Zukunft malte ich mir in bunten Farben aus und der Traum von einem Jurastudium beflügelte mich. Kurz nach dem Schulabschluss im Juni 1989 wurde ich 17 Jahre alt. Die Punktzahl der zentralen Aufnahmeprüfung aber reichte nicht aus, um an der renommierten Universität von Ankara zu studieren. Ich war zwar enttäuscht, aber so leicht wollte ich mich nicht geschlagen geben. Ich bewarb mich schließlich an der privaten Universität Dogu Akdeniz im türkischen Teil Zyperns in Nikosia (türkisch: Lefkosa), wo ich mit meinen Noten bessere Chancen haben sollte. Auch meine Mutter schmiedete eifrig Pläne für meine Zukunft, von denen ich schon bald erfahren sollte. Sie liefen allerdings in die entgegengesetzte Richtung dessen, was ich mir erhoffte.” (Korkmaz and Moser, 2010: 52 – 53).

aunt and her mother constructed her consent in a manipulative way. When she rejected the idea of marriage, her mother ensured that her future husband would offer her “a good life in Germany” and that “he said Aylin could study there”. Therefore, it was a forced marriage, or “an arranged forced marriage”, as mentioned in a newspaper¹⁰⁹, even though it seems that she gave her consent.¹¹⁰ She did not know her husband before the marriage; she spent time with him only a few times before the engagement. She did not even know that her husband had gotten married before and had a daughter in Germany after that marriage. She saw the photo of the child in the family photo album of M. at his parent’s home, and when she asked M. who this child was, she found out about this fact.

Aylin’s sister also married at 18, but Aylin emphasizes in the book that she married “a man she chose”. Aylin’s mother told later in the documentary prepared after the attack that she thought that ‘this man [M. – Aylin’s ex-husband] lived in Europe, he went to Germany when he was very young and has improved himself there’¹¹¹, and she just wanted that Aylin would be fine. She mentioned that it was her fate, and she regretted hundred thousand times for Aylin’s marriage in the documentary. Aylin put forward in the book that she blamed her mother for her marriage:

“‘I did not want to make the same mistake with Asli as with you,’ my mother said embarrassedly. ‘After all,’ I commented spitefully, ‘my marriage at least served a purpose.’ My mother grinned maliciously at me. ‘Your marriage cannot be that terrible; after all, you already have three children. Nobody forced you into it, or do you want to blame me for that, too?’ I did not have an answer

¹⁰⁹ “She also spoke of an arranged ‘forced marriage’. She had only broken away from traditional notions of a divorce ‘ban’ in June 2007 with the complete separation from her ex-husband.”

“Sie sprach zudem von einer arrangierten “Zwangsehe”. Aus traditionellen Vorstellungen eines Scheidungs-“Verbots” habe sie sich erst im Juni 2007 mit der völligen Trennung von ihrem Ex-Mann gelöst.”

Rheinische Post, 26 June 2008, Gepeinigter Türkin sagt gegen Ex-Mann aus: ‘Derartige Verletzungen sonst nur bei Leichen’

<http://www.rp-online.de/panorama/deutschland/derartige-verletzungen-sonst-nur-bei-leichen-aid-1.2024955>, Access: 14 February 2018.

¹¹⁰ As Yakin Ertürk rightly puts forward in her report on Türkiye in 2006, the boundary between arranged and forced marriages is very fluid. She underlines that “intense psychological pressure, veiled threats and when necessary, complete social isolation are used to subjugate a woman who refuses the groom chosen by her family”. She also emphasizes that there is a transnational dimension of the problem (par.29).

¹¹¹ <https://www.ardmediathek.de/video/lebenslinien/aylin/br-fernsehen/Y3JpZDovL2JyLmRlL3ZpZGVvL2M0Y2I1Mjc5LWQzODAtNDZjYS1iZWl3LWZjMjI2OWQ0NzhzZg, 10:39 Minute>.

and rushed out of the room. The delicate bond of peace between my mother and me has torn once again” (Korkmaz and Moser, 2010: 151-152).¹¹²

The quotation shows clearly that Aylin’s mother (as a woman herself) make the patriarchal bargain in return for protection of her daughter. There is a blurred line between arranged marriage and forced marriage. In transnational spaces, it is not surprising that the brides are imported from the “home country”. Here Aylin was deceived by way of convincing for the sake of her hope for continuing her education. On the other hand, she was deceived that a key information that her husband had already married and had a daughter was kept as secret until she has found out after marriage.

5.2.2. Learning German and Motherhood

When Aylin married and went to Germany in 1991, things turned out to be somewhat different from what she expected. Aylin did not know the language and was all alone. She was isolated.¹¹³ However, after they rented a house, she tried to communicate with the neighbours’ children using body language. Then, she took a language course and quickly learnt basic German. Her ex-husband did not speak German as well as Aylin, even though he had been in Germany for over 20 years.¹¹⁴ After learning the primary German language, Aylin researched if she could study law. She found out that it would not be possible for her to go to another city to study law. As a result, to deal with the isolation she experienced there, she decided to have children. She wrote that she dreamed of a big family and always wanted her children, unlike herself, to be raised by a father.

Aylin’s immigration to Germany was contingent upon “family union”. Even though her husband was in Germany for years before her, he did not need to integrate or did not learn

¹¹² “»Ich wollte bei Aslı nicht denselben Fehler wie bei dir begehen«, sagte meine Mutter verlegen. »Immerhin« kommentierte ich gehässig, »hat meine Ehe wenigstens einen Zweck erfüllt.« Meine Mutter grinste mich hämisch an. »So schrecklich kann deine Ehe nun auch wieder nicht sein, immerhin hast du bereits drei Kinder. Niemand hat dich dazu gezwungen. Oder willst du mir auch dafür die Schuld in die Schuhe schieben?« Ich wusste keine Antwort und hastete aus dem Raum. Das feine Band des Friedens zwischen meiner Mutter und mir war einmal mehr gerissen.” (Korkmaz and Moser, 2010: 151-152).

¹¹³ She was very lonely, with a foreign man, with a foreign language, in a foreign country.

¹¹⁴ He used an interpreter during trials at the court.

German. Aylin, on the other hand, tried to learn the language, and search for education opportunities, however when she realized that she would not be able to continue her education, she decided to become a mother. Her life path took a total distinct direction. Within the traditional honour culture, she did not have many options.

When she was pregnant with her first child, M. was obliged to do his military service in Türkiye for one month. Aylin's brother[*the name omitted*] came to accompany her as a male relative during M.'s military service:

“As a pregnant woman and above all as a Turkish woman, I could not stay behind alone. ‘Then your brother[*the name omitted*] should come to us,’ M. decided. My heart jumped with joy, and I could not quite believe what I was hearing. ‘I know how much he means to you. So you can see how much I love you,’ M. purred. I immediately recognized his guilty conscience for the slap. And the intention behind the favour.[*the name omitted*] was only 14 years old, but he was a man. A woman alone in a foreign country without a male family member - is unthinkable according to M.'s understanding of honour” (Korkmaz and Moser, 2010: 133).¹¹⁵

When Aylin became pregnant and her husband went to complete his military service, her younger stepbrother, ...[*the name omitted*], who was 14 years old, would accompany her. Again, she would be under the control and surveillance of a male relative. The fact that he is much younger did not make any difference, because his existence was proof that she is an “honourable” woman.

She became the mother of three children, until she was 24. In the meantime, she became subjected to domestic violence. Because of the shame, she kept the fact that she was subjected to domestic violence a secret, even from her own family. She later admitted that she did not know her rights in Germany well. She forgave her husband continuously.

In just six years, she gave birth to three children. After she had children, she emphasized that domestic violence occurred. She did not know her rights in cases of violence, and she kept this as a secret and did not make an official complaint.

¹¹⁵ “Als Schwangere und vor allem als türkische Frau konnte ich dennoch nicht allein zurückbleiben, »Dann soll dein Bruder[*the name omitted*] zu uns kommen«, beschloss M.. Mein Herz hüpfte vor Freude, und ich konnte nicht recht glauben, was ich da hörte. »Ich weiß doch, wie viel er dir bedeutet. Damit du siehst, wie sehr ich dich liebe«, säuselte M.. Ich erkannte sofort sein schlechtes Gewissen für die Ohrfeige. Und die Absicht hinter der Gefälligkeit.[*the name omitted*] war zwar erst 14 Jahre alt, aber er war ein Mann. Eine Frau ohne ein männliches Familienmitglied allein in der Fremde - nach M.s Verständnis von Ehre undenkbar.” (Korkmaz and Moser, 2010: 133)

5.2.3. Employment

Aylin wanted to work. In the documentary, she said that when she mentioned her desire to work, her sister-in-law and mother-in-law always told her that “he worked and he earned money”, “that she was a woman, she must stay at home and look after the children and housework”, “that the other people would think that he could not earn sufficient money”, “she needed not to work”. However, she did not give up.¹¹⁶

Aylin wanted to work. Both her desire to learn the language and her desire to work are signs of her desire to integrate. However, women in the family of her husband within the extended traditional family structure in the transnational space, reminded her about gender roles, and limited her place to the private space: “being a mother”, “looking after the children”, “care work”. If she were to work at a formal job, this would also show the community that her husband was not able to perform his masculinity as a “breadwinner”. Even though she was pressurized to make “patriarchal bargains”, she insisted to work outside.

She saw an advertisement for an outpatient care service for seniors and quickly agreed with the supervisors. However, when she told M. about the job, she was subjected to violence. Then, M. told her that she could work only at the petrol station where he also worked. He thought if she worked in the same workplace, then she would be under his control:

“Even if my dream of becoming a geriatric nurse did not come true, I had still achieved a small partial success. I was allowed to work. After all, I had already proven to myself in Türkiye that I could stand on my own two feet. And that was probably what scared M.. He saw my independence as a danger; it made me uncontrollable for him” (Korkmaz and Moser, 2010: 168).¹¹⁷

¹¹⁶ <https://www.ardmediathek.de/video/lebenslinien/aylin/br-fernsehen/Y3JpZDovL2JyLmRlL3ZpZGVvL2M0Y2I1Mjc5LWQzODAtNDFjYS1iZWl3LWZjMjI2OWQ0NzhZg, 19:42 Minute.>

¹¹⁷ “Auch wenn sich mein Traum von der Altenpflegerin nicht erfüllen sollte, so hatte ich doch einen kleinen Teilerfolg erzielt. Ich durfte arbeiten. Immerhin hatte ich mir bereits in der Türkei bewiesen, dass ich auf eigenen Beinen stehen konnte. Und das war es wohl auch, was M. ängstigte. Meine Unabhängigkeit sah er als Gefahr an, Sie machte mich unkontrollierbar für ihn.” (Korkmaz and Moser, 2010: 168).

Aylin searched for a job independently. She even was admitted as care personnel to a geriatric service. However, her husband prevented her thus exerting economic violence as well as physical violence to reassert his dominance and authority. However, when he saw that Aylin was determined and instead of submission she resisted within this cultural framework, he accepted that she could work in the same place he worked. M. was working at the petrol station. When Aylin would be in the same place, she would be within his reach and control. On the other hand, Aylin mentions that “she was allowed to work” in the text. Until the Civil Code Reform in Türkiye, the right to work for a woman, was legally based upon the permission of the head of the household, who is the “father”, “husband”. Even after the legal reform, there are still provisions, that are consistent with the gender roles. Within one year of marriage, the woman can quit her job and get her benefits, although the male employee does not have the same right. It is clearly stated both within the legal provision, as well as judicial interpretation that the woman is responsible for the housework. Another part which should be underlined in the text is that Aylin was able to stand on her feet, when for a short while, she returned to Türkiye because of domestic violence and found a job and lived with her mother. That was a challenge for her husband, and he saw the power of Aylin. On the other hand, Aylin was aware that to have economic independence was also effective for her personal dignity and self-sufficiency. Her father-in-law convinced her to come back to Germany and Aylin continued her marriage even though there were cases of domestic violence.

Aylin worked at the petrol station until her ex-husband attacked her there.

5.2.4. Domestic Violence and Violence in Public Spaces: Divorce

Aylin was subjected to domestic violence many times throughout her marriage. Her ex-husband threatened her with an axe once; she had the fear of death then, too. Aylin regretfully wrote that she used her toddler as a shield that night. However, she never informed the police; she did not share this even with her family.

There were a lot of anecdotes of physical violence, psychological violence, sexual violence, and economic violence in her book. Among all these anecdotes, a particularly

striking one reflects M.'s understanding of honour. In that case, Aylin was subject to both psychological violence and physical violence, and it resulted in Aylin's obedience. Aylin lived isolated for quite a long time. When she had the opportunity to meet with other women through the kindergarten of her first child, then her husband prevented her from getting acquainted with a divorced woman. As the quotation regarding Aylin's mother when she got divorced, M. also perceived a divorced woman as a "threat" and prevented her from seeing her friend by using violence, Aylin saw no other option and obeyed:

"Apart from M.'s acquaintances, I had hardly any connections to the outside world. It was not until Melanie started kindergarten in September 1996 that I made contact with other women. The kindergarten Caritas in Briegelacker was a kindergarten for various nationalities. The German children were even in the minority.

....

A Turkish single mum called Sibel soon grew close to my heart. Her adventurous spirit knew no bounds. Unlike me, she had lived in Germany since she was a child and was well integrated. 'No moping around now, come on, put on something nice, we are going into town.' At her side, I felt like a teenager again, just like when I was at school when I sat in the café with my classmates in the afternoons. 'You are only in your early twenties; you cannot just sit at home like an old housemother; you have a right to enjoy your life,' she cheered me up when I started to feel guilty. 'Oh, Aylin, you are always thinking about what other people might think of you, your husband, your family. Think about yourself, too!'

Encouraged by Sibel's words, one evening I dared to approach M.: 'Do you think I could go to the disco with Sibel?' I tried to make the question sound as trivial as possible while I was cutting bread for dinner.

M. freaked out. 'That w...., I will not tolerate it,' he hissed. 'You have no right to talk about her like that,' I shouted. My husband jumped out of his chair, flushed with anger, and I felt his fist in my abdomen. 'She is divorced!' What M. meant: A divorced woman had no honour, no decency. That was his idea of tradition. My mother also experienced this flaw of a divorced woman. For M., divorced women were a step below and, therefore, not worthy of his wife. 'I never want to see Sibel in my house.' I cried. But that made him even angrier. 'Why are you crying?' he shouted at me. 'I love you; I only want the best for you. Otherwise, people will talk badly about you. Don't you understand?' I nodded silently, as he expected me to. Above all, I wanted to avoid any further trouble with him. How was I supposed to explain that to Sibel?" (Korkmaz and Moser, 2010: 144-146).¹¹⁸

¹¹⁸ "Bis auf M.s Bekannte hatte ich kaum Verbindungen zur Außenwelt. Erst als Melanie im September 1996 in den Kindergarten kam, knüpfte ich Kontakte zu anderen Frauen. Der Kindergarten der Caritas in Briegelacker war ein Ort der unterschiedlichsten Nationalitäten. Die deutschen Kinder waren sogar in der Minderheit.

...

Auch eine türkische, alleinerziehende Mutter namens Sibel sollte mir schon bald ans Herz wachsen. Ihre Unternehmungslust kannte keine Grenzen. Im Gegensatz zu mir lebte sie schon seit ihrer Kindheit in Deutschland und war bestens integriert. »Jetzt wird kein Trübsal geblasen, komm, zieh dir was Schickes an, wir gehen in die Stadt.« An ihrer Seite fühlte ich mich wieder wie ein Teenager. So wie zu meiner Schulzeit, als ich mit meinen Klassenkameradinnen nachmittags im Café saß. »Du bist erst Anfang zwanzig, du kannst doch nicht wie ein altes Hausmütterchen zu Hause sitzen, du hast ein Recht darauf, dein Leben zu genießen«, munterte sie mich auf, als ich ein schlechtes Gewissen bekam. »Ach

This excerpt emphasizes how Aylin internalized the patriarchal surveillance herself. Even though she was a young beautiful woman, she did not go out. She asks for “permission” to go to the disco with her acquaintance from the kindergarten, a divorced woman who grew up in Germany. She was subjected to domestic violence again. M. is the one who decides whom Aylin can become friends with and socialize.

Finally, in February 2002, when the violence occurred in a public space, in a restaurant, she decided to get divorced. One final case of physical violence occurred in a public space, at the restaurant of M.’s brother on the carnival night.

On that occasion, she helped M.’s brother, Erdal¹¹⁹, in his restaurant on German carnival night. When she danced upon M.’s request, a male tablemate joined her on the dance floor. M. attacked both the man she danced with and Aylin:

“Later, I sat down next to him and tapped my feet to the beat of the cheerful carnival music. ‘Come on, dance,’ M. demanded complacently. I jumped up delightedly and wiggled my hips, laughing. M.’s table neighbour joined me, and we did a few laps on the dance floor. Exuberantly, I fell back into the chair and clapped my hands enthusiastically. ‘You can be proud of your wife,’ my dance partner whispered in M.’s ear. His facial expression suddenly darkened. I only saw it out of the corner of my eye when he started shouting, ‘What do you want from my wife? Leave her alone!’ M. bawled as if out of his mind. ‘M.!’ My dance partner’s wife tried to intervene, but M.’s palm was already hitting the man’s ear. M. turned to me and dragged me by my hair into a side room. He hit me in the face again and again. I tried to hide under a corner bench, but M. held me in his grasp and kicked my abdomen.

In my memories, I can still only find fragments of that night. I suppressed most of it. I remember people rushing into the room, screaming and trying to calm him down. ‘That’s my right, that’s my

Aylin, du denkst ständig daran, was andere über dich denken könnten, dein Mann, deine Familie. Denk doch auch einmal an dich!«

Ermutigt von Sibels Worten wagte ich eines Abends einen Vorstoß bei M.: »Meinst du, ich könnte mit Sibel in die Disco gehen?«, versuchte ich die Frage so belanglos wie möglich klingen zu lassen, während ich Brot für das Abendessen schnitt.

M. flippte aus. »Diese H..., ich dulde das nicht«, zischte er. »Du hast kein Recht, so über sie zu reden«, schrie ich. Mein Mann sprang voller Zornesröte vom Stuhl, da spürte ich auch schon seine Faust in meinem Unterleib. »Sie ist geschieden!« Was M. meinte: Eine geschiedene Frau hatte keine Ehre, keinen Anstand. Das war seine Vorstellung von Tradition. Auch meine Mutter hatte diesen Makel einer geschiedenen Frau erlebt. Für M. waren geschiedene Frauen eine Stufe tiefer gestellt und damit seiner Frau nicht würdig. »Ich will Sibel nie in meinem Haus sehen.« Ich weinte. Doch das machte ihn noch wütender. »Warum weinst du?«, herrschte er mich an. »Ich liebe dich doch, ich will doch nur das Beste für dich. Sonst reden die anderen schlecht über dich. Verstehst du nicht?« Ich nickte stumm, wie er es von mir erwartete. Vor allem aber wollte ich mir weiteen Ärger mit ihm ersparen. Wie nur sollte ich das Sibel erklären?“ (Korkmaz and Moser, 2010: 144 – 146).

¹¹⁹ Anonymous name was used by Aylin in her book. Erdal ran a small restaurant.

wife,' I still hear M.'s voice. I do not remember how I got home" (Korkmaz and Moser, 2010: 174).¹²⁰

"‘I want a divorce,’ I stammered into the phone. A few hours later, I sat in the lawyer’s office, completing the necessary paperwork. Everything happened as if I were in a trance; I felt nothing and knew I was doing the right thing. However, I did not mention that M. hit me; I was embarrassed. I also believed it was none of my lawyer’s business. I only mentioned our arguments, the unhappiness I felt. I claimed that the bruises on my face were the result of a fall I had caused myself. I did not want to accuse M., as he was the father of my children. I just wanted to be free of him. Free at last" (Korkmaz and Moser, 2010: 175).¹²¹

When the people in the restaurant intervened, M. claimed that he had a right to use violence since Aylin was his wife.

Finally, physical attack came at a restaurant, at the public space, which was also a humiliating experience for Aylin. He attacked both Aylin and a stranger man with whom she danced with the joy of carnival. In this episode of her life, we see the intersection of culture and gendered violence as mentioned by Yakın Ertürk in her report.

M. claims that she belongs to him as his wife. In another excerpt, Aylin emphasizes that she should function as a wife within this marriage like any other item that M. had, like his telephone or television. When she decided to get divorced and went to the lawyer’s

¹²⁰ "Später setzte ich mich neben ihn und wippte mit den Füßen im Takt der fröhlichen Fasnachtsmusik, »Komm, tanze doch«, forderte M. selbstgefällig. Ich sprang erfreut auf und wackelte lachend mit den Hüften. M.s Tischnachbar gesellte sich dazu, und wir drehten ein paar Runden auf der Tanzfläche. Ausgelassen ließ ich mich zurück auf den Stuhl fallen und klatschte begeistert in die Hände. »Du kannst wirklich stolz auf deine Frau sein«, raunte mein Tanzpartner M. ins Ohr. Schlagartig verfinsterte sich sein Gesichtsausdruck. Ich sah es nur aus den Augenwinkeln, da brüllte er auch schon los, »Was willst du von meiner Frau? Lass sie in Ruhe!«, keifte M. wie von Sinnen. »M.!« Die Frau meines Tanzpartners versuchte noch dazwischenzugehen, doch M.s Handfläche knallte schon auf das Ohr des Mannes, M. drehte sich nach mir um und zerrte mich an den Haaren in einen Nebenraum. Wieder und wieder schlug er mich ins Gesicht. Ich versuchte mich unter einer Eckbank zu verstecken, doch M. hielt mich im Klammergriff und trat gegen meinen Unterleib.

In meinen Erinnerungen finde ich noch heute lediglich Versatzstücke dieser Nacht. Das meiste habe ich verdrängt. Ich erinnere mich, wie Menschen schreiend ins Zimmer stürmten und ihn zu beruhigen versuchten. »Das ist mein Recht, das ist meine Frau«, höre ich bis heute M.s Stimme. Wie ich nach Hause gekommen bin, weiß ich nicht mehr." (Korkmaz and Moser, 2010: 174)

¹²¹ "»Ich will mich scheiden lassen«, stotterte ich ins Telefon. Wenige Stunden später saß ich im Büro des Anwalts und füllte die nötigen Papiere aus. Es geschah alles wie in Trance, ich fühlte nichts, ich wusste nur, dass ich das Richtige tat. Dass M. mich schlug, erwähnte ich allerdings nicht, es war mir peinlich. Ich war auch der Meinung, dass es meinen Anwalt nichts anging. Ich erwähnte lediglich unsere Streitereien, Das Unglück, das ich empfand. Ich behauptete, dass ich mir die blauen Flecken im Gesicht bei einem selbst verschuldeten Sturz zugezogen hatte. Ich wollte M. nicht anklagen, war er doch der Vater meiner Kinder. Ich wollte lediglich frei von ihm sein. Endlich frei" (Korkmaz and Moser, 2010: 175).

office, she felt so embarrassed that she could not mention about the sufferings she had been through. Requesting divorce is an act of resistance. All the research on gendered violence shows that the risk of being attacked increases most at the time of separation. Then, the man understands that he is losing the control and the woman is going beyond the boundaries drawn for her by the “patriarchal honour culture”. Therefore, the alarm bells start ringing.

Aylin got divorced in 2003. After a couple of months, she let M. into the house for financial reasons, but then they came to live as a couple again. Even though M. was kind at the beginning of the new period, he soon became offensive.

In Chapter 9 of her autobiography, the title of which is ‘26 Knife Stabs’, she wrote how the fatal attack from her husband started to evolve from a couple of months before. The deadly attack occurred in November 2007. However, the signals of this attack began in another violent assault in June 2007. Aylin went to Türkiye in June to celebrate her birthday with her sister. At that time, Aylin and M. were divorced, but they lived together since Aylin had let him into the house again after the divorce. She did not tell him the truth that she would go to Türkiye because of his jealousy. She told him that she would visit her great-aunt in another city in Germany. When she returned from the 3-day trip, her ex-husband attacked her, questioning if she stayed alone in a hotel in Türkiye. Aylin locked herself in a room and called the police officers. Her ex-husband threatened to kill Aylin in Turkish when police officers were still with them:

“And then I heard M.’s hatred put into words. ‘Do not worry, I will not hurt you’. ‘Not yet,’ he threw after me as he walked away. He spoke in Turkish so the officers could not understand him, ‘I am not stupid. I am waiting for the right time. And then I will cut your head off.’ My stomach clenched. ‘He threatened to kill me.’ My voice trembled with terror. ‘Ms. Korkmaz, he probably only said that out of anger,’ the officers tried to reassure me. But I understood: M. meant exactly what he said. There was no doubt about that. One of the two officers stayed for a moment. ‘We have now issued a ban; your ex-husband is not allowed to approach you for the next two weeks. But you should quickly contact the public order office in Baden-Baden. The employees there will tell you how you can best protect yourself’ (Korkmaz and Moser, 2010: 189-190).¹²²

¹²² “Und dann hörte ich M.s Hass in Worte geformt. »Keine Angst, ich tu dir nichts. Jetzt noch nicht«, warf er mir im Gehen nach. Er sprach auf Türkisch, damit ihn die Beamten nicht verstehen können, »Ich bin nicht blöd. Ich warte den richtigen Zeitpunkt ab. Und dann schlage ich dir deinen Kopf ab,« Mein Magen krampfte sich zusammen. »Er hat mir mit dem Tod gedroht.« Meine Stimme bebte vor Entsetzen.

Aylin later told in the documentary that the threats were not taken seriously by the police.

When Aylin went to the Office of the Public Order in Baden-Baden, the officers told her to contact a lawyer to get a long-term protection order. She was also advised to get help from the women's shelter. A few hours later, the local women's shelter employee supported Aylin. Women's consultation centres and shelters are some of the most important support mechanisms for women who are subjected to violence.

“‘You are not alone. You can talk to me about anything; it will remain confidential,’ she [local women's shelter employee] said calmly. And then it all burst out of me. ‘He threatened to kill me,’ I cried. ‘I know M. well enough,’ I stuttered. ‘This time, there was no empty phrase, no axe in my face. This time, he was serious. He will kill me, you know. He will do it.’ Kathrin took me in her arms. ‘I am scared, so scared,’ I cried, wetting her blouse. Kathrin believed me. But she also confirmed what the police officers had suggested. By law, their hands were tied. Nothing more than a ban on approach and contact could be obtained. Because, as macabre as it may sound, he had not done anything to me yet. It was despairing. ‘Do I have to be dead to be believed?’ But the conversation with the employee at the women's shelter was good for me; for the first time, I got rid of everything. All the anger, despair, and fear that I had bottled up inside me. And for the first time, I received help from people I did not know. I no longer felt alone” (Korkmaz and Moser, 2010: 191).¹²³

Aylin wrote that talking to the employee of the women's shelter relieved her. She regretted that she could not access the information Kathrin [the employee at the women's shelter] provided earlier. Empowerment of women through knowledge about their legal rights is of utmost importance for the prevention of domestic violence and the protection

»Frau Korkmaz, das hat er sicher nur aus Wut gesagt«, versuchten die Beamten mich zu beruhigen. Aber ich hatte verstanden: M. meinte es genau so, wie er es gesagt hatte. Daran gab es keinen Zweifel. Einer der beiden Beamten blieb noch einen Moment. »Wir haben jetzt einen Platzverweis ausgesprochen, Ihr Exmann darf sich Ihnen in den nächsten zwei Wochen nicht nähern. Aber sie sollten sich rasch an das Ordnungsamt in Baden-Baden wenden, die Mitarbeiter dort werden Ihnen sagen, wie Sie sich am besten schützen können.«“ (Korkmaz and Moser, 2010: 189 – 190).

¹²³ “»Sie sind nicht allein. Sie können mit mir über alles reden, es bleibt vertraulich«, sagte sie ruhig. Und dann brach alles aus mir heraus. »Er hat mir mit dem Tod gedroht«, weinte ich. »Ich kenne M. gut genug«, stotterte ich. »Dieses Mal war es keine Floskel, kein Beil vor meinem Gesicht. Dieses Mal meinte er es ernst. Er wird mich umbringen, wissen Sie. Er wird es tun.« Kathrin nahm mich in den Arm. »Ich habe Angst, so schreckliche Angst«, weinte ich ihre Bluse nass. Kathrin glaubte mir. Doch auch sie bestätigte, was die Polizeibeamten angedeutet hatten. Von Rechts wegen waren ihnen die Hände gebunden. Mehr als ein Annäherungs- und Kontaktverbot ließ sich nicht erwirken. Denn, so makaber es klingen mag, noch hatte er mir nichts angetan. Es war zum Verzweifeln. »Muss ich erst tot sein, damit man mir glaubt?«

Doch das Gespräch mit der Mitarbeiterin des Frauenhauses hatte mir gutgetan, zum ersten Mal war ich alles losgeworden. All die Wut, Verzweiflung und Angst, die ich in mich hineingefressen hatte. Und zum ersten Mal erfuhr ich Hilfe von Menschen, die ich noch nicht einmal kannte. Ich fühlte mich nicht mehr allein” (Korkmaz and Moser, 2010: 191).

of victims. Aylin underlines the fact that if she were well-informed about her rights, she would not endure the suffering within the marriage:

“Today, I believe that if I had learned about my rights as a woman in Germany earlier, perhaps I would not have forgiven M. again and again. Maybe then I would have been braver. Perhaps. But who could have informed me about the possibility of being expelled or the Violence Protection Act - due to M.’s pathological jealousy, I was virtually cut off from the outside world, except for my daily work in the petrol station at the Baden-Baden motorway service station” (Korkmaz and Moser, 2010: 192).¹²⁴

“Today, I know that domestic violence against women is no exception, not even in Germany, that there is no shame in talking about it openly and that it is even more important to seek help. Today, I know that the hope I had back then that after the tenth stroke, my husband would not do it again for the eleventh time was just wishful thinking. I longed too much for love and security. ‘It is better to have a bad husband than no husband at all,’ an aunt once told me shortly before the wedding. Today, I know better, but back then, my fear was greater than my courage” (Korkmaz and Moser, 2010: 182).¹²⁵

Another social support she got from the system in Germany, this time after the attack, was the family assistant assigned by the youth welfare office. The women’s shelters and the youth welfare office are social support mechanisms that have empowered Aylin.

“Ms. Hummel was also at my side. The youth welfare office assigned her to me as a family assistant. I reluctantly agreed but wanted to avoid further trouble with the youth welfare office. And I quickly came to trust the nice, helpful woman. She took care of all the paperwork and listened to me for hours. She was there when I needed her. She was a real confidant to me and still is today” (Korkmaz and Moser, 2010: 223-224).¹²⁶

¹²⁴ “Heute glaube ich: Hätte ich schon früher von meinen Rechten als Frau in Deutschland erfahren, vielleicht hätte ich M. nicht wieder und wieder verziehen. Vielleicht wäre ich dann mutiger gewesen. Vielleicht. Aber wer hätte mich schon über die Möglichkeit eines Platzverweises oder das Gewaltschutzgesetz aufklären können - durch M.s krankhafte Eifersucht war ich, bis auf meine tägliche Arbeit in der Tankstelle an der Autobahnraststätte Baden-Baden, von der Außenwelt so gut wie abgeschnitten” (Korkmaz and Moser, 2010: 192).

¹²⁵ “Heute weiß ich, dass häusliche Gewalt an Frauen keine Ausnahme ist, auch in Deutschland nicht, Dass es keine Schande ist, darüber offen zu sprechen, und es umso wichtiger ist, sich Hilfe zu suchen. Heute weiß ich, dass die Hoffnung, die ich mir damals machte, dass mein Mann nach dem zehnten Schlag es ein elftes Mal nicht mehr tun würde, reines Wunschdenken war. Zu sehr sehnte ich mich nach Liebe und Geborgenheit, »Lieber einen schlechten Ehemann als gar keinen«, hatte mir einmal eine Tante kurz vor der Hochzeit gesagt. Heute weiß ich es besser, aber damals war die Angst größer als mein Mut” (Korkmaz and Moser, 2010: 182).

¹²⁶ “Auch Frau Hummel stand mir zur Seite. Das Jugendamt hatte mir sie als Familienhelferin zugeteilt. Ich hatte nur widerwillig zugestimmt, aber ich wollte mir weiteren Ärger mit dem Jugendamt ersparen. Und ich fasste rasch Vertrauen zu der netten, hilfsbereiten Frau. Sie regelte für mich den ganzen Papierkram, der anfiel, und hörte mir stundenlang zu. Sie war da, wenn ich sie brauchte. Sie war mir eine echte Vertraute - und sie ist es noch heute” (Korkmaz and Moser, 2010: 223 – 224).

However, she had difficult times with the youth welfare office before the attack and just after it. M. made a complaint about Aylin to the youth welfare office, claiming that she was a bad mother who was neglecting her children. The officials investigated these claims, and the children's teachers and her supervisor were interrogated. The claims were refuted; however, Aylin wrote that the shame lingered. M. also used his argument that 'Aylin was a bad mother' at the trials for the murder attempt later.

After the divorce, M. used every way to disturb Aylin:

"My ex-husband was never tired of making my life hell. The fact that I fought back only seemed to make him even madder. But what would have been the alternative? I knew he would only give peace if I returned to him. But that was out of the question. I had given in too many times. Forgiving him out of fear and hoping he would change. I had finally buried this hope. It was enough" (Korkmaz and Moser, 2010: 193).¹²⁷

M. continued to harm Aylin in every way that he could; it turned into a typical stalking case: taking her car and selling it out very cheap; breaking into her apartment and vandalizing her room; spreading rumours about her:

"I only wanted one thing: peace. But the more I longed for it, the more perfidious M.'s attacks on my soul became. He spread rumours, and acquaintances suddenly stopped greeting me on the street. Soon, absurd lies reached my ears. They said I was having a secret affair. His acquaintances' version was that I was unfaithful, so I flew to Türkiye in June. From then on, I was considered a leper - by my countrymen" (Korkmaz and Moser, 2010: 194).¹²⁸

In the meantime, Aylin wrote about how the community, friends, and acquaintances – both from Kurdish and Turkish backgrounds – reacted to her decision to break up with M.. Kurdish friends were even angry that Aylin had the protection order and took legal steps regarding alimony. They suggested implementing 'parallel justice' to solve the relationship problems:

¹²⁷ "Mein Exmann wurde nicht müde, mir das Leben zur Hölle zu machen. Dass ich mich gegen ihn wehrte, schien ihn nur noch rasender zu machen. Aber was wäre die Alternative gewesen? Ich wusste, er würde nur Ruhe geben, wenn ich zu ihm zurückkehrte. Aber das kam nicht infrage. Ich hatte schon zu oft nachgegeben. Ihm verziehen aus Angst und in der Hoffnung, er würde sich ändern. Diese Hoffnung hatte ich endgültig zu Grabe getragen. Es war genug" (Korkmaz and Moser, 2010: 193).

¹²⁸ "Ich wollte nur noch eines: Frieden. Doch je mehr ich mich danach sehnte, umso perfider wurden M.s Angriffe auf meine Seele. Er verbreitete Gerüchte, Bekannte grüßten mich auf der Straße plötzlich nicht mehr. Schon bald drangen absurde Lügen an meine Ohren. Ich hätte eine heimliche Affäre, hieß es. Ich sei untreu gewesen, deshalb sei ich im Juni in die Türkei geflogen, lautete die Version seiner Bekannten. Ich galt fortan als Aussätzige - bei meinen eigenen Landsleuten" (Korkmaz and Moser, 2010: 194).

“Kurdish acquaintances were at my door again. ‘How can you allow German judges to interfere in our affairs?’ they shouted. ‘We will solve this between ourselves. If M. hits you again, we will kill him. Give him another chance,’ they urged. This request was downright absurd. ‘No, then he must kill me,’ I shouted at them and pushed them out of the apartment. ‘You do not understand me?’ I called after them. ‘I do not want your life; I want to be free. ‘Don’t you understand?’ I shouted and slammed the door behind me.

From that day on, M.’s acquaintances cut me off. The news of my resistance had spread like wildfire. Even some Turkish neighbours stopped greeting me. In their eyes, I had violated the family’s honour. In their eyes, I was now a dishonourable person who no longer had any dignity. How naive I was to believe that morality was not a question of outward appearances, but a matter of the heart. Reality showed me otherwise” (Korkmaz and Moser, 2010: 197).¹²⁹

On the other hand, he did not pay the alimony. The day before the fatal attack, a settlement for M.’s underpayments for the alimony was reached. Aylin was relieved since she would not need to communicate with him anymore. She took a deep breath when the lawyers reached an agreement:

“I would rather pay his debts than communicate with him. Beaming joyfully, I stepped out of the courthouse and squinted at the sun, whose rays broke through the cloud cover. I felt great relief and took a deep breath. No more beatings. No more arguments; now I wanted to start all over again. These were to be the last hours of my life that I spent without pain” (Korkmaz and Moser, 2010: 198).¹³⁰

The children were supposed to spend time with their fathers on the day of the attack. However, third child had essential training, and her two daughters would study at the Caritas Youth Centre. Therefore, they needed to postpone the appointment. Aylin went to the petrol station as usual, as on any other day:

“I put on the shirt with the petrol station logo and hurried out of the apartment to the car. Five hours of work lay ahead of me. The job as a cashier meant more to me than just a secure income.

¹²⁹ “Wieder standen kurdische Bekannte vor meiner Tür. »Wie kannst du es zulassen, dass sich deutsche Richter in unsere Angelegenheiten einmischen?«, hetzten sie, »Wir lösen das unter uns. Wenn M. dich noch einmal schlägt, werden wir ihn umbringen. Gib ihm noch eine Chance«, drängten sie. Diese Bitte war geradezu absurd. »Nein, dann muss er mich schon töten«, schrie ich ihnen entgegen und schob sie aus der Wohnung. »Versteht ihr mich nicht?«, rief ich ihnen hinterher. »Ich will euer Leben nicht, ich will frei sein. Könnt ihr das nicht verstehen?«, schrie ich und knallte die Tür hinter mir zu.

Von jenem Tag an schnitten mich M.s Bekannte. Die Nachricht von meinem Widerstand hatte sich wie ein Lauffeuer verbreitet. Selbst einige türkische Nachbarinnen grüßten mich nicht mehr. In ihren Augen hatte ich die Familienehre verletzt. In ihren Augen war ich nun eine Ehrlose, Eine, die keine Würde mehr besaß. Wie naiv war ich doch zu glauben, Moral sei keine Frage von Äußerlichkeiten, sondern eine Sache des Herzens. Die Realität führte mir anderes vor” (Korkmaz and Moser, 2010: 197).

¹³⁰ “Lieber zahlte ich seine Schulden, als mit ihm zu kommunizieren. Freudestrahlend trat ich aus dem Gerichtsgebäude und blinzelte der Sonne entgegen, deren Strahlen sich durch die Wolkendecke brachen. Ich fühlte große Erleichterung und nahm einen tiefen Atemzug. Nie wieder Schläge. Nie wieder Streit, jetzt wollte ich von vorn anfangen. Es sollten die letzten Stunden in meinem Leben sein, die ich ohne Schmerzen verbrachte” (Korkmaz and Moser, 2010: 198).

It was my confirmation that I had arrived in Germany as a wife and mother. I wanted to care for myself and my children with my own hands” (Korkmaz and Moser, 2010: 199).¹³¹

5.2.5. Attempt to Murder

The deadly attack occurred on 21 November 2007. Her ex-husband came to Aylin’s workplace, a petrol station on the motorway in Baden-Baden. Her ex-husband came with two knives while Aylin was in the changing room for a coffee break. He locked the room and prevented any help, and for more than 10 minutes, he used brutal violence against Aylin. He cut all through her face and body. He left her because he thought she was dead. Aylin wrote in Chapter 10, titled Rude Awakening:

“I have no memories of the hours of my agony. What happened was too cruel. I later learned the full extent of the crime from the court minutes and the statements of police officers and witnesses. Even today, it seems to me as if I am talking about a stranger, when I read these sentences: ‘At 6:50 p.m., the defendant entered the sales area of the Baden-Baden petrol station and rest area. He carried an 18.5-centimetre-long switchblade with a red handle and a tapered blade. He made sure that Aylin Korkmaz was not in the sales area. He walked purposefully and swiftly through the shop towards the opposite swinging door behind the checkout area and bumped into two customers. He entered the aisle in the administration wing and, looking for his ex-wife, first glanced into the kitchen area. His gaze fell on the knife lying there - a bread knife with a serrated edge and a blade length of 17 centimetres. The defendant noticed that his divorced wife was in the changing rooms and took the bread knife. At 6:51 p.m., he entered the front area of the changing rooms and locked the door from the inside. He immediately attacked Aylin Korkmaz and made a twenty-centimetre-long cut into her neck with the bread knife, severing it from the tip of her chin to the back of her neck at the level of the jugular vein. The victim began to scream loudly in pain and horror. The defendant also shouted at her. In the following ten minutes, he inflicted a total of 25 further cuts and stab wounds on her with the two knives’” (Korkmaz and Moser, 2010: 203-204).¹³²

¹³¹ “Ich streifte mir das Hemd mit dem Logo der Tankstelle über und eilte aus der Wohnung zum Auto. Fünf Stunden Arbeit lagen vor mir, Der Job als Kassiererin bedeutete für mich mehr als nur ein gesichertes Einkommen. Er war meine Bestätigung, dass ich als Frau und Mutter in Deutschland angekommen war. Ich wollte mit meinen eigenen Händen für mich und meine Kinder sorgen” (Korkmaz and Moser, 2010: 199).

¹³² “Ich habe keine Erinnerungen mehr an die Stunden meines Todeskampfes. Zu grausam war das Geschehene. Aus dem Gerichtsprotokoll und durch die Aussagen von Polizisten und Zeugen erfuhr ich später das ganze Ausmaß des Verbrechens. Noch heute erscheint es mir, als wäre von einer fremden Person die Rede, wenn ich diese Sätze lese:
»Um 18 Uhr 50 betrat der Angeklagte den Verkaufsraum der Tank- und Rastanlage Baden-Baden. Er führte ein 18,5 Zentimeter langes Springmesser mit rotem Griff und spitz zulaufender Klinge mit sich. Er vergewisserte sich, dass Aylin Korkmaz sich nicht im Verkaufsraum aufhielt. Gezielt und zügig durchschritt er den Shop in Richtung der gegenüberliegenden Schwingtür hinter dem Kassensbereich und rempelte dabei zwei Kundinnen an. Er betrat den im Verwaltungstrakt liegenden Gang und warf auf der Suche nach seiner Exfrau zunächst einen Blick in den Küchenbereich. Sein Blick fiel auf das dort offen herumliegende Messer — ein Brotmesser mit Wellenschliff und einer Klingenslänge von 17

Aylin read and wrote in her book about the murder attempt directly taken from the case file as follows:

“The court minutes continues: Aylin Korkmaz’s desperate cries of pain alerted her colleague working at the cash register and other customers in the sales area of the petrol station to what was happening. The colleague picked up the phone to notify the police. However, she was so disturbed and shocked by the persistent screaming that she was unable to use the phone. She (instead) ran into the hallway to the changing rooms, whose door she found locked. As a result, several customers present in the petrol station tried to open the door by force. After several attempts, an eyewitness finally managed to kick in the door. The defendant, M.K., noticed this and then interrupted his attack on Aylin Korkmaz, who was already lying on the ground covered in blood and had stopped screaming. The witness fled back into the salesroom, and then M.K. turned back to his ex-wife, who began to scream again in pain and torment. The defendant continued his crime. Another customer present at the petrol station took pepper spray out of her car and gave it to her partner. He entered the changing room, spoke to the defendant, who was leaning over Aylin Korkmaz, and sprayed the pepper spray in his direction. It briefly distracted M.K., who stood up and walked towards the witness with the bread knife in his hand from his victim. After the witness ran back into the sales room (out of fear), M.K. continued his attack on his ex-wife. The motorway police, who had now been alerted by an emergency call, arrived shortly before 7 p.m. Since the police officers had been told that the crime was taking place around the guest toilets, they first drove to the back of the building and only then went to the sales rooms of the petrol station. At 7:01 p.m., the two police officers, instructed by the eyewitnesses present, entered the corridor to the changing rooms.

M.K., who was sure at the time that he had done everything necessary to kill his ex-wife, approached the two police officers with the two blood-smeared knives in his hands. One of the two officers asked him what he had done. The defendant replied that he had killed his wife.

After being asked by one of the officers, M.K. threw the blood-smeared knives to the ground and allowed himself to be arrested without resistance. One of the two officers looked at Aylin Korkmaz, who was lying in a large pool of blood and was still wheezing. The emergency doctor was called immediately. When the officers explained to the defendant, who was arrested with handcuffs and appeared relaxed and detached, that his ex-wife was still alive, he screamed ‘No’ several times in horror and hit his head against the wall four times. In this context, he also said it did not matter if he had to go to prison now; it was the law. He should have done it in Türkiye instead” (Korkmaz and Moser, 2010: 204-206).¹³³

Zentimetern. Der Angeklagte bemerkte, dass seine geschiedene Ehefrau sich in den Umkleideräumen aufhielt und nahm das Brotmesser an sich. Um 18 Uhr 51 betrat er den vorderen Bereich der Umkleideräume und verschloss die Tür von innen. Er ging sofort auf Aylin Korkmaz los und versetzte ihr mit dem Brotmesser einen zwanzig Zentimeter langen Schnitt in den Hals, der diesen von der Kinnschuppe bis hin zum Nacken in Höhe der Drosselvene auftrennte. Das Opfer begann vor Schmerzen und Entsetzen laut zu schreien. Auch der Angeklagte schrie auf sie ein. In den folgenden zehn Minuten fügte er ihr mit den beiden Messern insgesamt 25 weitere Schnitt- und Stichwunden zu“ (Korkmaz and Moser, 2010: 203 – 204).

¹³³ “Im Gerichtsprotokoll heißt es weiter: »Durch die verzweifelten Schmerzensschreie von Aylin Korkmaz wurden ihre an der Kasse arbeitende Kollegin sowie weitere im Verkaufsraum der Tankstelle anwesende Kunden auf das Geschehen aufmerksam. Die Arbeitskollegin griff zum Telefon, um die Polizei zu benachrichtigen, Sie war aufgrund der anhaltenden Schreie jedoch so verstört und erschrocken, dass sie das Telefon nicht zu bedienen vermochte, Sie lief (stattdessen) nun in den Gang zu den Umkleideräumen, deren Tür sie verschlossen fand. In der Folge versuchten mehrere anwesende Kunden in der Tankstelle, die Tür gewaltsam zu öffnen. Einem Augenzeugen gelang es nach mehreren Versuchen schließlich, die Tür einzutreten. Der Angeklagte M.K. bemerkte dies und unterbrach

As the above excerpt shows, Aylin wrote the attack in detail from the case file in her book. The perpetrator attacked Aylin with two knives when she was on a coffee break at her workplace. The attack lasted around ten minutes, and Aylin was stabbed 26 times, 18 times in the face. The witnesses could not stop the attack even though they tried to interrupt the attack by breaking into the locked door and spraying pepper gas on the perpetrator. The perpetrator stopped for a while twice and then continued his action. He left the changing room because he thought she was dead. The reaction coming from the perpetrator upon the news that the victim was alive was noted in the case file. He was so sure that she was dead, therefore he was shocked. He also underlined that “he should have done it in Türkiye” instead of Germany.

Aylin lost 4 litres of blood, and 20 litres were transfused. The doctors operated to save Aylin for eight hours. She had 230 stitches for her wounds. The court record states that it was thanks to “chance” and immediate medical attention that Aylin was still alive. She stayed for eight days in a coma. She found out from the records of the court that none of

daraufhin seinen Angriff auf Aylin Korkmaz, die bereits blutüberströmt am Boden lag und zu schreien aufgehört hatte. Der Zeuge flüchtete zurück in den Verkaufsraum. Sodann wandte sich M.K. seiner Exfrau erneut zu, die vor Schmerzen und Qualen wieder zu schreien anfang. Der Angeklagte setzte seine Tat fort. Eine weitere anwesende Kundin in der Tankstelle holte ein Pfefferspray aus ihrem Auto und gab es ihrem Lebensgefährten. Dieser betrat damit den Umkleideraum, sprach den über Aylin Korkmaz gebeugten Angeklagten an und versprühte das Pfefferspray in seine Richtung. Das brachte M.K., der aufstand und mit dem Brotmesser in seiner Hand auf den Zeugen zuing, erneut kurz von seinem Opfer ab. Nachdem der Zeuge (aus Angst) in den Verkaufsraum zurückgelaufen war, setzte M.K. seinen Angriff auf seine Exfrau fort. Die inzwischen per Notruf alarmierte Autobahnpolizei traf kurz vor 19 Uhr ein. Da den Polizeibeamten berichtet worden war, die Tat fände im Bereich der Gästetoiletten statt, fuhren sie zunächst zur Rückseite des Gebäudes und suchten erst danach die Verkaufsräume der Tankstelle auf. Um 19 Uhr 01 betraten die beiden Polizeibeamten, von den anwesenden Augenzeugen eingewiesen, den Gang zu den Umkleideräumen.

M.K., der zu dieser Zeit sicher war, alles zur Tötung seiner Exfrau Erforderliche getan zu haben, kam den beiden Polizeibeamten mit den beiden blutverschmierten Messern in seinen Händen entgegen. Einer der beiden Beamten fragte ihn, was er gemacht habe. Der Angeklagte antwortete sinngemäß, er habe seine Frau getötet.«

M. soll laut Zeugen ebenfalls geäußert haben: »Jetzt geht es mir gut, jetzt kann ich das erste Mal wieder schlafen. Ich habe fünf Monate nicht mehr geschlafen.« Dies wurde allerdings nicht festgehalten.

Und weiter heißt es im Gerichtsprotokoll: »Nach Aufforderung durch einen der Beamten warf M.K. die blutverschmierten Messer zu Boden und ließ sich widerstandslos festnehmen. Einer der beiden Beamten sah nach Aylin Korkmaz, die in einer großen Blutlache lag und sich noch röchelnd bewegte. Es wurde sofort der Notarzt gerufen. Als die Beamten den mit Handschellen festgenommenen, entspannt und gelöst wirkenden Angeklagten erklärten, dass seine Exfrau noch am Leben sei, schrie dieser mehrfach entsetzt >Nein< und schlug viermal mit dem Kopf gegen die Wand. In diesem Zusammenhang äußerte er auch: Wenn er jetzt ins Gefängnis müsse, sei ihm dies egal, das sei Gesetz. Er hätte es doch lieber in der Türkei machen sollen« (Korkmaz and Moser, 2010: 204 – 206).

the witnesses called the ambulance because they thought she was dead. It was the police who realized that she was alive and informed the emergency service:

“I do not remember screaming for my life. Even if they say I was conscious the whole time. Only later did I find out that none of the witnesses on site called the emergency doctor” (Korkmaz and Moser, 2010: 206).

Aylin was transferred to the hospital. She was registered at the hospital with a fake name, and information was kept secret to protect Aylin from further attacks from M.’s family. However, when she woke up after a couple of days, she learned that her children had been taken to the youth centre and the signature of the perpetrator was needed to get them because of the shared custody. Aylin underlines the contradiction of the German bureaucracy; she calls this the 27th stroke of the knife:

“Except for my mother, my lawyers Mr. Dohr and Ms. Gerhard, Mr. Schuster from the youth welfare office and a psychologist, no one came to see me. One of the nurses explained to me that they had imposed an information blackout to protect me and my children from possible further attacks from M.’s family. I was officially registered at the hospital as Mrs. Meyer, but weeks later, I discovered that even my work colleagues were not allowed to know my situation” (Korkmaz and Moser, 2010: 212).

“Mr. Schuster [from the youth welfare office] showed no emotion; he continued in a matter-of-fact voice: ‘The fact is: you have shared custody. We need his signature first.’ I trembled: ‘Mr. Schuster, why are you doing this to me?’ He simply replied: ‘We live in a constitutional state, and he, too, has rights.’

I felt dizzy with anger, and the room began to spin, ‘He almost killed me, and now I need his permission to see my children again?’ I could not believe it. The brutal pain had not brought tears to my eyes, and even now, I wanted to grit my teeth and be brave. But now it burst out of me. I cried uncontrollably into my pillow. I could hardly calm down. Again, I was a victim; again, my ex-husband, my murderer, was supposed to determine my life.

It was not M.; this time, the youth welfare office had stabbed me. It gave me the 27th stab. And it hit right in the middle of my heart” (Korkmaz and Moser, 2010: 216-217).

Aylin’s lawyer tried to overcome this problem by getting an emergency order for sole custody from the family court, but she was unsuccessful. Aylin explained how this situation created a security problem for herself and her children:

“She [her lawyer, Ms. Gerhard] then tried to obtain an emergency order for sole custody from the family court. Without success. ‘Unnecessary,’ said the judge in charge. In his opinion, since I had already taken care of my children alone, permission from the father would not be necessary. However, the judge’s verbal request was insufficient for the youth welfare office. But he was not ready for more in such a short time.

I was devastated. The German bureaucracy had bitterly disappointed me. In fact, the youth welfare office obtained my ex-husband’s signature in the following days. It was a farce: with the signature, my tormentor also found out that I was feeling better, that I would even be released home and that

my children would live with me again from then on. That still makes me shake my head today: What was the purpose of this information block from the police and the hospital, which was imposed to protect my children and me? Not even my work colleagues or acquaintances were allowed to find out whether I was still alive. My children were brought to school and picked up again by the caregivers at the youth centre. After all, there was a real risk that M.'s family could kidnap them. But the German bureaucracy handed him all the information that must be kept secret on a silver platter. To this day, I still find it incomprehensible how this could have happened" (Korkmaz and Moser, 2010: 217-218).

After three weeks at the hospital, Aylin went home, got her children from the youth centre, and started her new life. Whenever she looked in the mirror, she got depressed because of the scars on her face. She wanted to undergo cosmetic surgery, but the doctor told her she should wait for at least six months. The doctor told Aylin that it was a miracle that she lived:

"All doctors and nurses in the department came into the treatment room. As if frozen into pillars of salt, they stood in rows, their eyes glued on me. 'Does my face look that bad?' I said, breaking the eerie silence. Dr Bertovic laughed: 'No, we do not look at your face. We only gave you a thirty per cent chance of survival back then. And now, after four weeks, you come walking in here, you are a miracle, Ms. Korkmaz'" (Korkmaz and Moser, 2010: 220).

After the attack, her ex-husband continued to threaten Aylin, even from prison through his family. Aylin claimed that he wanted to isolate her by spreading rumours about her and to make the Kurdish community harm her:

"Although M. was in custody, his arm reached out to freedom. His brother Erdal, who lived in Düsseldorf in the meantime, returned to Baden-Baden. What else did M.'s family want from me? Did they still not have enough? It finally had to be over. My whole body shook when I learned about it in early February 2008. My mother found it difficult to calm me down; even sedatives hardly helped. The first rumours soon reached my ears. He would have urged the Kurdish community to cut me" (Korkmaz and Moser, 2010: 224-225).

Aylin decided to make her case public. The idea came from an acquaintance and two women from a Kurdish women's rights organization:

"Then an acquaintance called me who I knew from Briegelacker but with whom I had only fleeting contact until then. 'Can you please come over?' Pervin asked. After a few minutes, I stood in front of her door. 'Erdal [M.'s brother] was there,' she jumped out at me, and I saw two women sitting in her living room. 'He threatened me. The two women are from a Kurdish women's rights organization.' Fear paralyzed me; I was unable to respond. 'You have to defend yourself!' demanded Pervin. The two women on the sofa nodded. 'We want to help you,' they said kindly. 'But what should I do?' 'You must go public; that's your only protection. The more people know you, the harder it is for his family to spread lies about you and isolate you.' I did not know what to do. I felt endlessly tired; I just wanted rest. And now also to the public?" (Korkmaz and Moser, 2010: 225).

A journalist from Yeni Özgür Politika persuaded her to write an article about her case. The journalist ensured that Aylin would be able to read the article and give her consent before publication. She kept her promise. After the article's publication, she was in public. M.'s family also read the article.

Because of the seriousness of the crime, the public prosecutors' office took the main action. Aylin decided to get involved in the trial process as co-plaintiff. She read through the indictment handed over by her lawyer:

"... I fought back the tears and read the indictment through clenched teeth: '... among other things, the victim's nose was cut, and her left cheek slit open ... Stitching the severed part of the auricle failed ... the spleen had to be removed ... the victim will remain permanently disfigured by numerous scars ... the defendant is accused of having directly set out to kill a human being with base motives and cruelty.' Finally, my gaze caught the following passage: 'The public prosecutor's office states for the record that such injuries would otherwise only be found on corpses'" (Korkmaz and Moser, 2010: 227).

M.'s family offered Aylin 40.000 Euros to withdraw from being a co-plaintiff. Aylin did not accept, of course. M.'s family wanted to silence Aylin, but they were unsuccessful:

"And then M.'s clan intercepted me on the street. They offered me 40,000 euros if I would resign as a co-plaintiff. Strangely, I was not afraid; I was completely calm when I looked M.'s relatives in the eyes: 'No', I said calmly. And then the word flashed across my lips: 'honour.' 'I still have honour; I will never accept your blood money, no matter how much you offer.' They stared at me, irritated. Honour, yes, that was what I had - but not in its dusty definition. I was proud and honourable even as a single woman, and they did not seem to recognize that attitude. This attitude was alien to them. But it was not my job to enlighten them either. I would not be able to change their thoughts anyway. But I also did not want to be afraid anymore. What should I be afraid of? What worse could happen to me? No, I did not want to be afraid anymore. Never again" (Korkmaz and Moser, 2010: 229).

Later, Terres des Femmes asked a question about this blood money in an interview with Aylin. Aylin compares the concept of "honour" in her act of not accepting the money M.'s family offered her:

"TDF: You survived M.'s attack: for the doctors treating you, it was a minor medical miracle. The trial was coming up, in which you were to testify as a co-plaintiff. In your book, you talk about a meeting with M.'s relatives, who offered you 40,000 Euro to 'convince' you not to appear as a co-plaintiff. You refused: 'I still have honour in me...' you told them. It is an entirely different concept of 'honour' than the one that almost cost you your life. Can you say a few words about that?
Aylin Korkmaz: Of course, I could accept the money, but that would mean I would remain silent about the grey deed and run away from a coward perpetrator. But that is precisely what I do not want to do. I could just as easily move away from Baden-Baden or take on a new identity, but that would mean running away. That is my understanding of 'honour'. With my book 'I Screamed for My Life', I want to help the women affected to find a way out of their situation and, above all, to

give a voice to the many victims who can no longer speak. This voice is not for sale, even if it hurts.”

www.zwangsheirat.de - Newsletter 1/10 - Januar 2010

<https://www.zwangsheirat.de/images/downloads/Aktuelles/interviewakorkmaz.pdf>,

https://www.zwangsheirat.de/images/pdf/newsletter/2010_Nr._1_komprimiert.pdf,

Access: 15 February 2023.

The first trial would be at the end of June 2008. While waiting for the trial, a woman named Kamile reached Aylin. She learned about Aylin’s case through the article in the newspaper. After Aylin talked with Kamile on the phone a couple of times, she decided to contact a women’s organization in Germany, Terre des Femmes, of which Kamile was a member, to raise awareness of women in similar situations. Aylin came together with Terre des Femmes, and they planned the ‘no violence against women: solidarity with Aylin’ campaign together:

“In the following weeks, I became increasingly restless. The court hearing was set for the end of June. And I was tired of being a victim.

Then, the chance came to my aid. A woman named Kamile, who read the article in *Yeni Özgür Politika*, contacted me. She turned out to be a real angel. Kamile, who had experienced a lot of suffering and is now in a relationship with a committed German campaigner for women’s rights, drew my attention to Terre des Femmes, the non-profit human rights organization for women and girls, of which she was a member. We had many conversations on the phone, and I became determined to do something to help other women in a similar situation, even if it was just to encourage them. I wanted to make something meaningful from the senseless thing that had happened to me” (Korkmaz and Moser, 2010: 229-230).

“A few weeks later, I travelled with Ms. Hummel and my mother to the main office of Terre des Femmes in Tübingen. We were welcomed with open arms. I wanted to contribute, but at the same time, I was offered help for the upcoming court case against my tormentor. We soon developed an action plan together, consisting of signature lists and lectures, intended not only to raise awareness but also to shake up politicians. The campaign ‘No violence against women. Solidarity with Aylin’ was born (Korkmaz and Moser, 2010: 230).

Aylin became engaged in action against domestic violence and violence against women together with Terre des Femmes and gave lectures on her case in Stuttgart, Bonn, Köln and Düsseldorf. Aylin continued to take part in organizations after her book was published. In cooperation with Terre des Femmes, Aylin’s publishing house organised several readings in München, Baden-Baden, Tübingen, Hamburg, Berlin and Cologne, among other places. In this way, Aylin constituted herself as a self-conscious, speaking subject rather than a victim:

“I talked about my life in a firm voice. I refrained from making comments about my ex-husband. I just told what I felt, what I experienced, and how I thought. Admittedly, sometimes I no longer understood how I could think and act like that - how I could be so submissive. I have endured so much. But that was also part of my story. There would be no tragedies if we always did everything right. And I did a lot of things wrong. I forgave too often, remaining silent in the wrong moments. I had made mistakes, too, but they did not justify violence” (Korkmaz and Moser, 2010: 231).

5.2.6. Court Process

The first trial for the attempted murder was set on 26 June 2008, seven months after the event. Aylin wrote that M.’s family members, even distant relatives, came from Türkiye to support him in the courtroom. She noted that the family members kissed M.’s hand at the court as a sign of respect. M. K. wore a black suit, purple shirt, and pink tie in the courtroom just as the perpetrators of femicide in Türkiye do:

“M.’s family stood behind him. The family members came especially from Türkiye, and even distant relatives came to the trial. A Terre des Femmes employee who attended the trial as a listener recorded her impressions in writing. I still get shivers today when I read the minutes. M.’s clan greeted him with a kiss on the hand. What is called *el öpmek* in Turkish is a ritual in which you hold the back of the other person’s right hand in your hands, kiss it and briefly place your forehead on it—a sign of particular respect. In Türkiye, it is mainly shown to older people. This gesture shows them respect. However, people in high positions and with respect are also valued in this way.

It was a sheer mockery that M.’s family performed this ritual in the courtroom. In my opinion, pure provocation. It should show that no matter what you German judges decide, no matter what German society thinks, our world has its own laws. And after these, M. restored his honour” (Korkmaz and Moser, 2010: 236-237).

Another point Aylin noted was M.’s use of an interpreter in the courtroom. She expressed that even though M. has been in Germany for 30 years, he could not express himself in German:

“We waited three hours, and then Ms. Kiechle [Aylin’s lawyer] entered the room. ‘Your testimony will be postponed until tomorrow; it will not happen today.’ I later learned that M.’s testimony had dragged on for hours. He just had not stopped talking. M. also had an interpreter at his side who had to translate everything because M. claimed he did not speak enough German. That was sheer mockery. A man who had lived in Germany for thirty years was not even able to articulate himself in the language of his long-time homeland” (Korkmaz and Moser, 2010: 233).

During Aylin’s statement, the questions posed by the defence lawyer of M. had racist and sexist implications. For example, he asked why she had a tattoo as a Muslim woman. Aylin had an angel tattoo on her upper arm after she got divorced. On the other hand, the defence lawyer also tried to provoke Aylin by asking about their financial situation and

raising her breast reduction operation. Aylin wrote about how the existence of her psychologist, family assistant, and lawyers gave her power during this problematic questioning. Even though she tried to stay calm during questioning, according to the news report, she reacted to the question regarding tattoos:

“The excitement then gave way to tense calm. And after the public prosecutor’s statements, M.’s defence attorney started. The questioning was supposed to last three hours. My psychologist and my family assistant sat next to me and held my hands, ‘Do not let yourself be provoked,’ they whispered to me when the defence attorney directed his questions to me. Oh, there were so many, so painful and hurtful. For example, why I would have a tattoo as a Muslim. There was a hail of insinuations and attacks. Once, I did not understand one of his questions. The defence attorney tried to blame this on the excessive distraction of my psychologist and my family assistant. I started to stutter. Then, my family lawyer, Ms. Gerhard, jumped into the audience. ‘I did not understand the defence attorney’s question either.’ Again laughter. At the end, I was led past the judge’s table and into the judge’s room. They wanted to save me from having to walk past M.’s table to the main exit. I took a deep breath. It was over” (Korkmaz and Moser, 2010: 233-234).

“Only once did she ‘explode briefly’ when the defence attorney questioned her about a tattoo that she had gotten after the divorce - even though M. K. had forbidden her from doing so.”¹³⁴

In a newspaper article on Aylin’s trial, it was written that the public prosecutor linked this crime to the ‘archaic concept of honour’ in his plea. According to the public prosecutor, the perpetrator wanted to give a message that his ex-wife belonged to him even after the divorce. The public prosecutor continued that the perpetrator not only wanted to kill the human being Aylin but also the woman Aylin, whom he perceived as his property. He also underlined that the defendant had little education and had a farming background:

“In his plea on Thursday, the public prosecutor attributed the crime to an archaic concept of honour: ‘The perpetrator wanted to express that his wife belongs to him even after the divorce.’ Because there was no interruption during the crime, there can be no doubt that they were ‘steps to kill’. Aylin Korkmaz is only still alive because her former husband narrowly missed the jugular vein. ‘The defendant is a simple-structured man with little education and has a farming background,’ said the prosecutor. ‘He did not just want to kill the human being Aylin; he wanted to kill the woman Aylin, whom he viewed as his property.’ The couple’s difficult financial situation put additional strain on their relationship” (Soldt, Rüdiger (2008, 31 July).¹³⁵

¹³⁴ (Jüttner, Julia (2008, 3 July). “Prozess um Mordversuch: ‘Ich werde dir den Kopf abschneiden’”, Spiegel) [“Attempted murder trial: ‘I will cut off your head’”, Spiegel]
<http://www.spiegel.de/panorama/justiz/prozess-um-mordversuch-ich-werde-dir-den-kopf-abschneiden-a-563528.html>, Access: 14 February 2018.

¹³⁵ “Ehrenmordversuch: Sie sollte sein Eigentum bleiben, bis zum Schluss”, Frankfurter Allgemeine Zeitung) [“Attempted honour killing: She should remain his property until the end”]
<http://www.faz.net/aktuell/gesellschaft/kriminalitaet/ehrenmordversuch-sie-sollte-sein-eigentum-bleiben-bis-zum-schluss-1664955.html>, Access: 14 February 2018.

“M. K. is charged with attempted murder and causing grievous bodily harm. Public prosecutor Michael Klose considers the attack to be a ‘particularly cruel act’ and attributes it to an ‘archaic concept of honour’. M. K. wanted to kill his wife, whom he regarded as his property, said Klose in his plea and demanded the maximum sentence” (Jüttner, Julia (2008, 7 August) “Prozess um Mordversuch ‘Sie war ihm überlegen’”, Spiegel).

Aylin also wrote in her book how her ex-husband saw her as one of his properties during the marriage as well:

“The doctors say it is a miracle that I am still alive. The stab in the neck alone was life-threatening, they say. The father of my three children thought I deserved it. When I married twenty years ago, I became his property, like his car, phone, or television. And I had to function the same way” (Korkmaz and Moser, 2010: 12).

“M.K. (49) stabbed Aylin, whom he called ‘my honour’, with a knife at her workplace last November. The husband, who sat in the defendant’s seat in the case that started the other day in Baden-Baden, tried to justify himself by saying, ‘In our culture, there are fights and arguments within the family,’ as if all he had done was not enough.”

The discussions reflected on this case by the media during the trials were centred around whether this crime was an “honour killing” attempt or not. There were different viewpoints. For example, Cem Özdemir, as a politician from the Green Party, followed the court process of the Aylin case closely to support her and commented on the case as follows, emphasizing the role of tradition:

“Özdemir considers much of what the 49-year-old [M. K.] said in his defence is ‘cheap excuses’. ‘He is trying to justify his intention to murder. It is not just a man on trial here, but a tradition of violence with pretended reasons of honour,’ he said.”¹³⁶

On the other hand, one of Aylin’s lawyers, Brigitte Kiechle, claimed that the honour killing motive did not play a role in Aylin’s case, but it is men’s claims to power over¹³⁷ women. A representative from Terres des Femmes stated that Aylin’s lawyer did not talk about “honour” since she was afraid that it might cause a justification in the sentence as it happened in the past.

¹³⁶ Jüttner, Julia (2008, 25 June). “Ehrenmord-Anschlag: Als Aylin K. um ihr Leben schrie”, Spiegel) [“Honour killing attack: When Aylin K. screamed for her life”] <http://www.spiegel.de/panorama/justiz/ehrenmord-anschlag-als-aylin-k-um-ihr-leben-schrie-a-562065.html>, Access: 14 February 2018.

¹³⁷ Radikal, Namus meselesi Almanya’da [Honour issue in Germany] <http://www.radikal.com.tr/turkiye/namus-meselesi-almanyada-896054/>, Access: 14 February 2018.

“The 36-year-old is the victim of a so-called honour killing, even if her lawyer rejects the term. ‘Like many other women, my client has experienced terrible violence,’ Brigitte Kiechle tells SPIEGEL ONLINE. ‘Only Germans call it a ‘family tragedy’; in other cultures, it is called an ‘honour killing’. But this case stands for all women who are subjected to violence.’”¹³⁸

The discussions over “honour killing” cases in the criminal justice system are concentrated around whether it makes the sentences higher or lower. As mentioned in the Section on Setting the Context in Germany, there were times when the “honour” or “culture” defence caused a reduction in the sentence. However, the Hatun Sürücü case mostly changed this tendency. It is decisive if these cases are held as “Mord”/murder or “Totschlag”/manslaughter. Especially with cases in the grey zone, cases in between intimate partner femicide and “honour killing”, this is controversial.

“The motive ‘honour killing’ plays no role for her in this case. ‘As in other cases in which the perpetrators are German, it is about men’s tough claims to power over women. Nothing else” Brigitte Kiechle, Aylin’s lawyer (Jüttner, Julia (2008, 3 July) ¹³⁹

The defence lawyer, Wolfgang Vogt, claimed that M. K. was the actual victim, according to a report about the case by Spiegel. He argued that it was not an attempted “honour killing” but an emotional event:

“...The public prosecutor demanded the maximum sentence, but the defence lawyer pleaded for attempted manslaughter: he saw the perpetrator as the actual victim.

...

In his two-hour plea, he [Wolfgang Vogt, the accused’s defence lawyer] explained that his client was the ‘pawn victim’ of a trial ‘overlaid with propaganda’ and that the offence was an ‘emotional event’, the terrible culmination of a conflict-ridden partnership. The bloody attack could not be assessed without its background. One had to ask oneself what had motivated a ‘friendly, calm, almost submissive man’ like M. K. to do this.

The Freiburg defence lawyer provided the answer himself: The crime did not fall into the category of ‘attempted honour killing’. Quite the opposite: ‘Aylin K. was not only superior to him, but she also did pretty much everything she wanted with him,’ emphasised Vogt. His client could barely read and write, and communication with him was difficult. During the marriage and afterwards, Aylin K. had managed the joint finances and ‘juggled with credit cards’: ‘M. K. is not intellectually capable of doing that.’ He increasingly lost his footing and ‘became more and more the inferior one’.

(Jüttner, Julia (2008, 7 August) “Prozess um Mordversuch ‘Sie war ihm überlegen’, Spiegel)

¹³⁸ Jüttner, Julia, 2008, 25 June. “Ehrenmord-Anschlag: Als Aylin K. um ihr Leben schrie <http://www.spiegel.de/panorama/justiz/ehrenmord-anschlag-als-aylin-k-um-ihr-leben-schrie-a-562065.html>

¹³⁹ “Prozess um Mordversuch: ‘Ich werde dir den Kopf abschneiden’, Spiegel) <http://www.spiegel.de/panorama/justiz/prozess-um-mordversuch-ich-werde-dir-den-kopf-abschneiden-a-563528.html>, Access: 14 February 2018.

<http://www.spiegel.de/panorama/justiz/prozess-um-mordversuch-sie-war-ihm-ueberlegen-a-570707.html>, Access: 14 February 2018.

In Aylin's case, the chamber used "their right to mitigate" in every direction. Even though the chamber knows Aylin will "permanently" remain disfigured and have to endure the significant psychological burden of the offence – every day looking at the mirror will remind her of the attack – they used the mitigation option because she stayed alive and the perpetrator was unsuccessful:

"In the judgement for the ex-husband, the court used the right to mitigate the sentence if you look at it, 13 years instead of 15 years instead of life imprisonment...: 'The chamber took into account the surprisingly minor consequences of the offence for the victim, [that sounds cynical, there is no other way to put it (told by Reinhold Beckmann)], who will remain permanently disfigured and will have to struggle with the considerable psychological burden of the offence (...) The fact that she can continue to live with her children, however (...), and that the offence has therefore not been successful, ultimately prompted the chamber to make use of the mitigation option'" [Reinhold Beckmann Talkshow, Das Verbrechen an Aylin Korkmaz, Teil 3, 3:15-3:58 Minutes].

Aylin perceived the court's argumentation as a guillotine.

"But the court's reasoning was equivalent to a guillotine. The prosecution's request for a life sentence had not been granted. M. received 13 years; with good behaviour, the sentence would be reduced to eight years (should he be allowed to serve his remaining sentence in Türkiye, this would presumably reduce the time of imprisonment a further time). The court's reasoning for the sentence: the murder criteria of cruelty and insidiousness were met, but the defendant had not acted from base motives" (Korkmaz and Moser, 2010: 237).

"The files literally say: 'Based on an overall assessment of all external and internal motivations for the defendant's actions, the chamber determined whether the defendant's motives were at the lowest level according to general moral assessment and appeared particularly reprehensible and despicable relevant factors. It used the ideas of the legal community of the Federal Republic of Germany as a basis for assessing the defendant's motives. However, they considered the special views and values of the defendant, who had lived in Germany since 1978 but was still strongly attached to his Kurdish-Turkish roots, in the overall assessment. Above all, consideration was given to ... the defendant's expressed claim to ownership, who - demonstrated by stabbing her nipples - also wanted to destroy the victim as a woman and deny her the right to shape her life on her own responsibility" (Korkmaz and Moser, 2010: 237 - 238).

"This still sounds like mockery to me today. Ultimately, his act was 'justified' by the fact that, due to the 'conflict-ridden history of the relationship,' he was able to claim 'the sadness, anger, disappointment and humiliation based on it as the main motives for his act' - which therefore also considered his personality and living conditions could not be portrayed as being at the lowest moral level and particularly despicable.

What hit me hardest was the court's final justification for the decision against a life sentence: 'On the other hand, the chamber considered the surprisingly minor consequences of the crime for the victim, who will remain permanently disfigured and will have to deal with the considerable psychological stress Act will have to fight. Nevertheless, in view of the defendant's actions and the resulting injuries, significantly worse consequences were conceivable. For example, the loss

of freedom of movement, vision, the extremities and - due to the high blood loss - organic brain damage or the onset of a vegetative state. The victim will have to live with the serious consequences of the crime. The fact that she can actually continue to live with her children and that the crime was not successful ultimately led the chamber to make use of the reduction option. In other words, he has only 13 years in prison and less if he behaves well since he is considered a first-time offender” (Korkmaz and Moser, 2010: 238 - 239).

“I was so hoping to be able to breathe a sigh of relief after the verdict was announced. I could not do it. Again, I could hardly breathe. Exhausted, I set off home with my entourage. ‘At least you will have peace from him for the next 13 years,’ my mother comforted me. Yes, if he was not released earlier. But did that bring me back my face? I felt no satisfaction. But I wanted to make the best of it. Live in freedom, finally be free from fear” (Korkmaz and Moser, 2010: 239).

The concept of honour is about controlling women and their sexuality. In the below excerpt, Aylin states that “her freedom did not extend beyond her closet”. She was wearing a miniskirt. But all through her marriage, she felt the burden of honour:

“A good Turkish wife does not externalize her family problems. A good Turkish wife does not resist her kismet (‘fate’); she accepts it. This is how I was raised, and this is how my ex-husband demanded it of me. I kept silent. Too long, as I know today. But above all, I was ashamed. ‘If only people knew what was going on at home,’ my oldest daughter Melanie often told me. Anyone had hardly any idea what our lives were like. The most did not want to know either since the appearance of normality is much more pleasant than the uncomfortable truth. My children were fashionably dressed, and I liked to wear short skirts. We looked like a modern Turkish family arriving in Germany to the outside world. But my freedom did not extend beyond my closet. I carried the heavy honour burden with every step I took outside the door. It was for my ex-husband alone to judge whether I behaved honourably or was a disgrace to him.” (Korkmaz and Moser, 2010: 12-13).

“I was so hoping to be able to breathe a sigh of relief after the verdict was announced. I could not do it. Again, I could hardly breathe. Exhausted, I set off home with my entourage. ‘At least you will have peace from him for the next 13 years,’ my mother comforted me. Yes, as long as he wasn’t released earlier. But did that bring me back my face? I felt no satisfaction. But I wanted to make the best of it. Live in freedom, finally be free from fear” (Korkmaz and Moser, 2010: 239).

5.3. Zeynep’s Case File

The story of Zeynep is told in the case file from the event of the killing backwards. The case file starts with a criminal complaint form, which describes the event of the killing, and then we learn the background of the event. It is like a film scene that starts with the event, and then the background of the event is told step by step in the police reports and other documents.

The court reconstructs the truth based on the documents such as crime scene investigation report, house search report, witness testimonies and police reports on some interviews with witnesses etc., psychological reports about the accused, other medical reports, autopsy report of the victim and taking into the relevant provisions of the German Criminal Code consideration. Having read through all the documents, including the police reports regarding the prosecution, what was quite striking was that the victim's voice was missing from the case file since she did not exist anymore. The judgement of the court is mainly based on the statements of the accused¹⁴⁰, as usually done in other femicide cases as well. Some witnesses were talking on behalf of the victim, though very few. But overall, as in all femicide cases, the woman cannot speak for herself; she cannot tell the story from her perspective. Therefore, the "truth" is reflected mainly from the perspective of the perpetrator. Indeed, we will never be able to hear the whole story from Zeynep. Does this influence the sentence/punishment that the perpetrator gets? We cannot know that if she were alive/survived and could tell the story from her perspective, the sentence would be different, but at least she would be able to "speak for herself," and at least we would hear her. The judicial blindness to non-existing women in femicide cases is a barrier to women's access to justice.

In the previous case, Aylin mentioned that she would speak up for women who no longer have a voice. It could be argued that even though Aylin spoke up during the trials and later while campaigning against the early release of her ex-husband, she could not succeed.

"But the court's reasoning was tantamount to a guillotine. The prosecution's request for a life sentence had not been granted. M. received 13 years; with good behaviour, the sentence would be reduced to eight years (should he be allowed to serve his remaining sentence in Türkiye, this would presumably reduce the time of imprisonment a further time). The court's reasoning for the sentence: the murder criteria of cruelty and insidiousness were met, but the defendant had not acted from base motives" (Korkmaz and Moser, 2010: 237).

¹⁴⁰ I also used "perpetrator" to denote the same person, since at the end of the trials it was declared also by the court that he committed the crime. But in the court documents he was referred to as "the accused"/ "defendant" (*Angeklagte*), therefore I used these words interchangeably at some parts just to be in line with the court documents, but they all refer to the same person: ex-husband of Zeynep.

So, does it make any difference for women to speak up for their rights? Because patriarchy is so powerful, it is also in the judiciary, and as a result, in most cases, women end up with injustice. But again, from my point of view, it is this struggle that will undermine patriarchy bit by bit, although at a languid pace. Of course, it will be a long process full of disappointments, but again, it is something precious that Aylin could breathe, talk, and tell her story. Zeynep did not have that chance.

In Zeynep's case, the perpetrator was sentenced to seven years and six months imprisonment at the end of the trials and the amount of time that will be spent in prison for taking the right to life of another person not seemed just. However, in Germany, the relevant provisions of the crimes of homicide are defined in Section 211 (murder under specific aggravating circumstances - *Mord*), Section 212 (murder - *Totschlag*) and Section 213 (less serious case of murder).¹⁴¹ For a homicide crime to be called murder under specific aggravating circumstances in the German context and to be severely punished with life imprisonment, some characteristics of murder must exist. Since these characteristics did not exist according to the legal reasoning of the court, the perpetrator was not a murderer (*Mörder*) in Zeynep's case.

¹⁴¹ **Section 211**

Murder under specific aggravating circumstances (*Mord*)

- (1) Whoever commits murder under the conditions of this provision incurs a penalty of imprisonment for life. (2) A murderer under this provision is someone who kills a person out of a lust to kill, to obtain sexual gratification, out of greed or otherwise base motives, perfidiously or cruelly or by means constituting a public danger or to facilitate or cover up another offence.

Section 212

Murder (*Totschlag*)

- (1) Whoever kills a person without being a murderer under the conditions of section 211 incurs a penalty of imprisonment for a term of at least five years. (2) In especially serious cases, the penalty is imprisonment for life.

Section 213

Less serious case of murder

Whoever kills a person under the conditions of section 212 without any fault on their own part on account of being provoked to rage by ill-treatment of or serious insult to themselves or a relative by the person killed and being immediately carried away by that rage to commit the offence, or in the event of an otherwise less serious case, the penalty is imprisonment for a term of between one year and 10 years. https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1945, Access: 14 April 2022.

5.3.1. Criminal Sanction System in Germany and Zeynep's Case in the Police Files

Albrecht mentions that the German criminal sanction system is simple and provides only two penal sanctions: day fines and imprisonment. Day fines range from a minimum of five-day penalties and a maximum of 360-day fines; prison sentences, in general, may vary from one month to fifteen years. Life imprisonment is almost only limited to murder, and the minimum period to be served before a person convicted for life imprisonment may be paroled is set at fifteen years (Albrecht, 2013: 215). Albrecht continues by saying that the extent of reasons given in writing for a criminal sentence must correspond to the seriousness of the sentence. He concludes that when the sentence is closer to the maximum penalty allowed by the offence statute, the reasons in writing must be more detailed (Albrecht, 2013: 235).

Albrecht put forward that the sentencing and criminal sanctions system implemented in Germany includes substantive and procedural elements. The substantive elements are found in the criminal penalties provided in the criminal code, as well as their minimum and maximum ranges, as well as criminal offence statutes carrying each minimum and maximum penalty. In the case of Zeynep, the court also relied on the relevant provisions to determine the sentence.

The first thing in the case file is a police form, which includes information regarding the act of killing and is composed of four pages. We learn from this document the identities of the victim and the accused and their relationship, the date and exact timing of the event, the address of the event, the relevant provision of the German Criminal Code (it was mentioned as Article 212 regarding murder in the form) that will apply to the case, that a knife was used in the event, a summary of the case, a progress report which tells precisely the event minute by minute with every detail (such as the time the police received the call and the time they arrived at the crime scene etc.) and other relevant information. We learn that the victim has Turkish citizenship, but the accused has German citizenship even though he was initially from Türkiye. We also learned from the detailed progress report that the press representatives came to the crime scene.

In the form, police officers described the crime scene in summary. The first two groups of police officers, composed of two officers each, arrived at the crime scene four minutes after they were ordered to go there. The neighbours of Zeynep informed the police on the night of the event that they heard the screams of a woman, and while the police were going to the crime scene, they learnt through a radio message that there was “a female person lying in the hallway with a knife in her back”.

When the police arrived at the crime scene, they ran up the stairs to the first floor, and they saw the female person with a broken knife in her back lying on her stomach. She was still alive when the police officers arrived there. According to the report of one of the police officers in the following pages, the victim was trying to pull herself to turn to her back. Still, two police officers tried to prevent her movement because, otherwise, the knife could have gone deeper into her shoulder. In the meantime, one of the police officers asked her questions, but he could not get any answers. When he asked her to blink her eyes if she could understand him, she immediately did so. This is the only direct expression of the victim herself in the case file. After this, the police were not able to ask more questions because the ambulance came at that moment, and after first aid, the victim was transported to the hospital. An hour later, she died at the hospital because of her injuries.

At the time that they were near the victim, the police officers heard the help cries of a male person outside the house over the bushes. When the three of them went to the house’s backyard, they saw a male person lying there. His hands and clothes were covered with blood. The police officer asked him if he had jumped from the balcony of the house at the crime scene, and he confirmed this. He was the accused person for killing Zeynep. The accused was hurt, and he was taken to the hospital as well in the accompany of police officers.

As a complementary of the form, another form officially shows the accused has a migration background (*Migrationshintergrund*). He was born in Türkiye, but he holds German citizenship.

The testimonial statements of the police officers follow this form. They described the event as they observed in detail just after it (they noted the timing of the statement). Each of them described the event as they witnessed it. All of them told the same story but in their own words. One described how they identified the accused person lying in the bush near the house. He was mourning with pain and crying for help. There was blood on his hands and all over his clothes. He has confirmed that he jumped from the balcony of the house at the crime scene.

Subsequently, he was told that he would be deprived of his liberty and was handcuffed. The police officer searched him, and his identity card was found in his belly bag. The police officer told Ahmet¹⁴² that he was accused of an alleged crime of stabbing a woman and that this was a felony/major crime (*Kapitalverbrechen*). The police officer noted in his report that “Ahmet admitted that he had stabbed the woman, but that this was *not a capital offence* because it was *just his wife*¹⁴³ that he stabbed.” The same expression of the perpetrator is reported in all the reports of the police officers who have been there and heard the statement. The witness statement report of another police officer is quoted directly with the approximate words of the perpetrator: “Yes, I stabbed her in the back. Why a capital offence? That’s just my wife.”¹⁴⁴ Both this statement itself and the fact that the police officers noted it are significant since this statement was also reflected in the judgment of the court:

“In particular, the witnesses (*the police officers, my note*) recounted how the defendant, after being legally instructed, stated that he had stabbed his wife, but that this did not constitute a capital offence because it was only his wife.”

The court continued to write on this issue by making sure that the accused did not have any language problems and that his statement was not based on a misunderstanding of what the police officers told him:

“There were no indications that the defendant might not have correctly understood the instruction and the reference to the fact that he was suspected of manslaughter and that this constituted a capital offence. In particular, by questioning the witnesses in detail, the Chamber ruled out the

¹⁴² For reasons of confidentiality and ethical research practice, the name of the perpetrator has been changed. From here onwards, the pseudonym ‘Ahmet’ will be used to denote the same person.

¹⁴³ I wrote these words in italic in order to emphasize.

¹⁴⁴ “Ja, ich habe sie in den Rücken gestochen. Wieso Kapitalverbrechen? Das ist ja nur meine Frau”.

possibility that the defendant could have misunderstood the designation of the charge as a ‘capital offence’ in the sense of an economic offence. The witnesses have stated that they did not speak of a capital offence in isolation, but in each case, they first made the accusation of the knife attack and then described this as a capital offence. In addition, the witnesses plausibly described how the defendant had defended himself precisely against this accusation of a capital crime by stabbing with a knife by saying that he had indeed stabbed, but the victim was ‘only’ his wife. This spontaneous statement would not make sense if he had been defending himself against the accusation of a property crime.”

This expression of the perpetrator is a direct consequence of his patriarchal understanding, and it connotes that he has “property rights” to his wife and he can do whatever he wants, including stabbing her. Similarly, Aylin Korkmaz underlines in the foreword of her novel that her ex-husband saw her as one of his “properties”:

“The doctors call it a miracle that I am still alive. The stab in the neck alone was life-threatening, they say. The father of my three children thought I deserved it. When he married me twenty years ago, I became his property, just like his car, telephone, or television. And I had to function in the same way” (Korkmaz and Moser, 2010: 12).

The police reports regarding the event in the case of Zeynep are more than 50 pages. Each police officer reports the case based on how they witnessed it. Hospital records, photos of the crime scene, pictures of the body of the deceased woman, and the image of the knife that was used in the crime are all included in these reports. Some police reports also included the brief statements of other witnesses – neighbours – on the spot regarding how they became aware of the event and what they had heard and/or seen.

On the following pages, we learn from the police records that the accused person was the woman’s ex-husband and had two criminal records as “accused” earlier. One of these criminal records is regarding the bodily injury of a male person. From my point of view, the other criminal record is vital for the case file, and more information and witness statements about it are also included on the following pages of the case file.

The second criminal record of the perpetrator is for marital rape¹⁴⁵ and serious sexual assault. We learn from the document that the victim had made a criminal complaint

¹⁴⁵ Marital rape is sexual intercourse forced on a woman by her husband, knowingly against her will. The prevalence of sexual assault is significantly underestimated in official data due to the underreporting of such incidents to law enforcement authorities. Incidents of marital rape are reported less frequently than other forms of domestic violence and even less frequently than incidents of rape perpetrated by strangers. Marital rape is deemed a more hidden crime, usually taking place in private settings and

against her ex-husband when they were already married (but just about nine months ago before she was killed) about marital rape. She reported the complaint in the company of a consultant from the women's counselling centre (*Frauenberatungsstelle*). She went to the shelter after making the criminal complaint with the help of the women's counselling centre. The name of the women's organization was TARA (*Frauenberatung TARA*). However, after a short while (a few days later), Zeynep mentioned that she would use her right to refuse to testify (*Zeugenverweigerungsrecht*) since she did not want to harm her then-husband. She explained further that she had reported him because she was humiliated by him, and she lived at that time in a sheltered apartment since she had psychological problems because of a problematic situation at home. Because of the victim's statements, the case was discontinued based on Article 170, paragraph 2 of Germany's Criminal Procedural Law (*Strafprozessordnung*). According to this provision, the public prosecutor shall discontinue since there are insufficient grounds for public prosecution and filing an indictment.

without other witnesses, and victim statements are therefore very important in such cases possibly combined with forensic medical evidence.

The data from the British crime survey has revealed that intimate partner (including ex-husband, ex-boyfriend, ex-cohabitee) rape may account for approximately 50% of all reported rape cases. Furthermore, there has been an observed upward trend in the proportion of intimate partner rape incidents that are reported to the police.

In their study, Gregory and Lees (1996) conducted a detailed analysis of intimate partner rape, specifically focusing on cases involving ex-husbands, ex-boyfriends, and ex-cohabitees. This category of rape accounted for 17% of the total reported rapes in their sample obtained from the London police. The researchers found out that intimate partner rape exhibited the highest level of attrition (drop out from the criminal justice system) with approximately two-thirds of the cases not being classified as "crimes" by the police. Furthermore, none of these cases progressed to the stage of prosecution or conviction. In their study, Gregory and Lees underlined that at the policing state the decisions were made whether an offense appears to have been committed and if the case should be referred to the Crown Prosecutors Service (CPS) for prosecution. Secondly, the CPS decided whether or not to prosecute and at the final stage it was decided if there will be a conviction or not (Gregory & Lees, 1996).

While Gregory and Lees (1996) found less than one in five cases involved an intimate partner or ex-partner, Hester and Lilley found out in 2017 that more than a quarter of cases involved rape by intimate partners. This reflects the greater public awareness and policy developments since the 1990s regarding domestic violence and increase in reporting of domestic violence to the police. In Gregory and Lees' study, intimate partner rapes had the greatest attrition with fewest cases deemed crimes by the police and none proceeding to prosecution or conviction. By contrast, Hester and Lilley found that such rapes were most likely to be crimed and result in arrest, indicating the seriousness with which they are now treated, although these cases had proportionately fewest convictions as victims were highly likely to withdraw due to fear and threats from the suspect (Hester & Lilley, 2017).

Marital rape is relatively recently recognized and introduced as a criminal act in many countries because of the efforts of the feminist women's movement. In some countries, it is still not recognized as a crime. Since marriage and family are perceived as belonging to the "private" sphere in most cultures, it was left out of the intervention of law. However, this situation has started to change in the 1970s. Marital or spousal rape is defined as the husband's sexual intercourse with his wife by force or without her consent. Any unwanted sexual act committed by a spouse without the consent of the other spouse is marital rape.

Until very recently, the perception of law was that a husband cannot rape his wife since the marriage contract is supposed to entail consent to sexual intercourse. This understanding started to change because of the women's rights movement. However, it is not sufficient to have a provision regarding marital rape, as the case of Zeynep shows. It is challenging to prosecute these crimes since they are not prosecuted ex officio but depend on the victim's complaint. In most cases, social pressure, threat or otherwise coercion by perpetrators deter victims from pursuing their complaints.

5.3.2. Marital Rape

There are three crucial issues to note about the marital rape story within the case of Zeynep. The first is that the German legal system recognizes marital rape as a crime. In its Baseline State report submitted to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) Committee (which is prepared because of being a State Party to the Istanbul Convention), Germany mentioned that criminalisation of marital rape was introduced "around the turn of the millennium". The criminalisation of marital rape was introduced in Germany in 1997. Women organisations have lobbied for this for about 25 years. In the Baseline Report of Germany, it is mentioned that:

"German criminal law today also meets the demand for undivided protection against sexual assault or sexual coercion in marriage or partnership. In the version of Section 177 StGB, valid until 4 July 1997, at first, only extramarital sexual intercourse performed by force or by threat of present danger to life or limb was punishable as an offence involving rape. Forced conjugal intercourse was only punished as coercion under Section 240. In the version in force since 5 July 1997, sexual

self-determination in marriage or partnership is now also equally subject to protection under criminal law in that the former constituent component of the offence of extramarital sexual acts, which constituted a criminal offence under Section 177 StGB, no longer applies” (Baseline State Report to GREVIO by Germany, p. 50).

The second point to note about the marital rape story within this case is that Zeynep, as an immigrant woman with only three years of stay in Germany and with minimum German language abilities¹⁴⁶, was able to make a criminal complaint about marital rape in Germany. The empowering role of the women’s counselling centres and shelters should be underlined here. It is noted in the police document that a staff member of the women’s counselling centre accompanied her while she was making the complaint about marital rape. Women’s counselling centres provide information as well as legal and psychological aid to women who are exposed to any form of violence. From another witness statement in the following pages of the case file, it was understood that the person who accompanied Zeynep while she was making the complaint provided a translation for her. With this empowerment, she was able to overcome her language drawback. Again, from the document, we understand that she was offered shelter after making the complaint. Shelter is another empowering institution for women. Not having anywhere safe to go is a deterring factor for many women who are subject to violence. Shelters provide safe accommodation for victims/survivors of violence.

The third point to note is that Zeynep uses “her right to refuse to testify” a couple of days later, and the charge against the perpetrator drops. The prosecution stopped, as noted above. I learned later when I dove into the depths of the case file that “marital rape” existed in almost all narratives of the witnesses on behalf of the victim. Sexual violence suffered by the victim during the marriage was a central theme in the narratives of the witnesses who came to know Zeynep. Therefore, we will never understand why she gave up on continuing the complaint. However, in most cases of violence against women, victims give up continuing the case since they are threatened or otherwise pressured by the perpetrators or their relatives. Even though it was such a key theme within the case

¹⁴⁶ I learnt these details later from the case file.

file, there existed no marital rape from the perspective of law because there existed no complaint and no prosecution.

The first police interview with the perpetrator took place at the hospital. Interestingly, this interview was recorded in the handwriting of a police officer (it was not easily readable), and it is eight pages long. Ultimately, the perpetrator did not sign it since he mentioned that he did not feel well.

The conversation lasted approximately one and a half hours, and it started with the question of the perpetrator: "What about my wife?". The police officer replied that his wife had passed away in the meantime, and for this reason, they were with the perpetrator at that moment. The police officer informed the perpetrator that he was accused of homicide and that he would be transferred to the prison hospital later that day. He continues by telling the perpetrator that he would be visited by the judge the next day and that the judge will decide about custody. He explained that he was there with his colleague to hear him about the crime. He reminds him of his rights as an accused. He asked the perpetrator if he understood, and the perpetrator confirmed. The police officer started by asking how the perpetrator was, and he mentioned that he was in pain. The police officer asked how well the perpetrator understood him. The perpetrator replied that he would not usually need a translator. The police officer asked if it was OK that he took a picture of the perpetrator, and he explained that the photos would serve for comparative purposes and to document his condition. The police officer noted in parentheses that the perpetrator considered and replied that it was OK for him.

When the police officer asked the perpetrator if he was ready to talk about the course of the crime, reminding him of his rights, the perpetrator said that he did not think so and that he felt so weak. The police officer repeated the question in another way and asked if it was possible to clarify a few short questions about the course of the crime. The perpetrator mentioned that he did not know, and everything goes through each other in his head, and they have argued.

Then the following questions were asked: "Then why were you in your wife's house?", "How did the knife come into playyesterday ?", "Where did the knife come from?", "How

was this knife?”, “Did your wife say something special that made you go crazy?”, “on the spot, we found a jewellery box and some money. What does it have to do with the crime?” and “Please describe how your own injuries occurred.”. The perpetrator answered some questions but said he did not feel well and stopped responding. The police officers who took part in this interrogation wrote a report on this conversation with the perpetrator. The report is two pages long and summarises the information the perpetrator provided. In the report, it is mentioned that:

“The accused reacted hesitantly at first, but then he told on his own initiative that an argument preceded the crime. In response to the following questions about the facts of the case, the defendant essentially only agreed to answer questions about the marital problems that preceded the crime and certain details of the pre- or post-offence phase. ... explained quite eloquently that he had always tried to do everything right for his wife, but that she had only taken advantage of him., on the other hand, evaded questions about the actual crime or repeated information about his efforts in the marriage with the victim. He seemed, on the one hand, very self-centred and, on the other hand, very fixated on his idea that the relationship with ... [the victim] should have worked out because, from his point of view, he was ready to do everything for it” (Pages 84 and 85 of the first folder of the case file).

In the case file, all the individual police reports have been summarized in four pages in a special police report sent to the prosecutor’s office. Then, the prosecutor’s office wrote the arrest warrant (*Haftbefehl*) (Pages 75-76 of the first folder of the case file). Both in the police document and in the prosecutor’s file, Article 212 of the German Criminal Code regarding murder (*Totschlag*) is mentioned.¹⁴⁷

The prosecutor wrote a two-page arrest warrant. In this document, the perpetrator was accused of “stabbing his wife, who was living separately from him, more than 20 times with a knife during a verbal argument in the apartment of his wife, to kill her”. The prosecutor mentions that the urgent suspicion arises from the confession of the accused, the statements of the witnesses, the murder weapon that was found as well as the preliminary autopsy result. Risk of flight (Article 112, paragraph 2) and risk of the suppression of evidence (Article 112, paragraph 3) of the German Code of Criminal Procedure (*Strafprozessordnung – StPO*) are mentioned as grounds for arrest. The prosecutor’s document is followed by the judge’s decision to arrest.

¹⁴⁷ Please see footnote 141 above.

An arrest warrant was ready just the day after the murder. The judge saw the accused at the hospital, informed him of the charges against him and told him that he did not need to make a statement and could also seek legal assistance. The prosecutor wrote to the police department to continue the investigation.

The police department informed the Turkish Embassy about the crime with an official letter. In its message to the Embassy, the police department mentioned that the victim died because of an act of violence, and a preliminary investigation for murder against the ex-husband of the victim has started. The police also mentioned that they had contacted the parents of the victim by phone and informed them about the death of their daughter and that they would contact them again the following week. (Page 86 of the first folder of the case file)

5.3.3. Support Mechanisms such as Shelters

Then comes the autopsy report in the case file. General information is written at the entrance, and then under the heading “external post-mortem” (*Ausere Leichenschau*), it is mentioned that most of the knife strikes (ten - 15 times) were in the upper respiratory and thorax region. It is also noted that the handle of the knife was broken. The knife was approximately 15 cm. long and was the crime’s instrument. Finally, it was pointed out that it was a non-natural death; the knife wounds injured vital organs and resulted in bleeding internally and externally. (Page 87 – 88 – 89 of the first folder of the case file)

There is a man within the case file who is a friend of the victim. He showed up within the case file first when he contacted the police to confirm the information that the victim’s family in Türkiye had called him and asked him to confirm. He came to the police the following day of the homicide at night and told that he was one of the acquaintances of the victim. He asked the police if the police had really called the family of the victim and if the information that the victim was killed was accurate. The police confirmed this information. (Page 91 of the first folder of the case file)

The police reached one of the women’s organizations with which the victim was in touch through her residence address when she was sheltered. The information provided by the

women's organisation's officer is critical. When the police shared that the woman was the victim of a homicide, the officer at the women's organization asked immediately if it was her husband who killed her. The police confirmed this information, and then the officer said that "he was very oppressive to the victim". She further mentioned that the victim went to Türkiye a couple of months ago to get divorced. She said that the victim suffered from the violence of her husband, who had also raped her.

The officer mentioned that "even though the victim had ended the relationship, the husband had continued to harass her because he did not want to accept the end of the marriage. Even the man's family had interfered with the victim to persuade her to give the husband a new chance. She had no relatives or close friends of her own in Berlin". She further explained that the victim had had difficulties in distancing herself from the accused, as she was afraid of upsetting him so much that he would do something terrible to her again. She had, therefore, tried to talk to him when he stalked her. She added that more information about the background of the problem can be found in the documents about her at the women's organization (ZUFF e.V.). The officer at the women's organization checked the victim's file for her last stay at the shelter. From this document, she provided the name and contact information of the victim's parents.

(Page 93 of the first folder of the case file)

With the help of the translator, the mother of the victim was contacted, and she was informed that a violent crime committed against her daughter had been investigated. She immediately asked if her ex-husband had done something to her. The mother of the victim said that the victim called her at noon on the day she was killed and told her that her ex-husband was still harassing her, and she was afraid of him. Since the mother could not talk further, the stepfather of the victim was called, and he was informed about the death of the victim. Another appointment was made to speak with the mother and the stepfather of the victim. (Page 94 of the first folder)

Within the case file, all the documents are crucial. However, especially the two medical reports about the perpetrator (65 pages long and 13 pages long, respectively, Page 37 – 135 of the third folder second part) that assess the psychological situation of the

perpetrator and evaluates the culpability of the perpetrator, the prosecutor's indictment (11 pages long – Page 337 – 348 of the first folder, Page 40 – 52 of the second folder) and the court's judgement (26 pages long, Page 136 – 166 of the third folder second part) about the perpetrator were the most important documents.

5.3.4. The Judgment

The judgment is composed of 26 pages. It is as follows: “The defendant is sentenced for manslaughter to imprisonment for seven (7) years and six (6) months”. Applied penal provisions were mentioned as Section 212 (Murder /Totschlag), Section 213 (Less serious case of Murder) and Section 21 (diminished responsibility) StGB¹⁴⁸. Three judges and two “*Schöffen*”¹⁴⁹ were in the court proceedings, besides the prosecutor, lawyer and court officer.

The biography of the accused mentioned that the perpetrator was born in Türkiye and grew up in a large family. He was the fourth of six children. His father, who had his second marriage with the mother of the accused, was polygamous and had another wife

¹⁴⁸ Please see footnote 141 for Section 212 and Section 213 of the German Criminal Code. The relevant provisions of the German Criminal Code are as follows:

Section 21

Diminished responsibility

If the offender's capacity to appreciate the unlawfulness of the act or to act in accordance with any such appreciation is substantially diminished at the time of the commission of the offence due to one of the reasons indicated in section 20, the penalty may be mitigated pursuant to section 49 (1).

Section 49

Special mitigating circumstances established by law

(1) If the law requires or allows for mitigation under this provision, the following applies:

1. Imprisonment for life is substituted by imprisonment for a term of at least three years.
2. In cases of imprisonment for a fixed term, no more than three quarters of the statutory maximum sentence may be imposed. In case of a fine, the same applies to the maximum number of daily rates.
3. Any increased minimum statutory term of imprisonment is reduced as follows:
 - in the case of a minimum term of ten or five years, to two years,
 - in the case of a minimum term of three or two years, to six months,
 - in the case of a minimum term of one year, to three months,
 - in all other cases to the statutory minimum.

¹⁴⁹ *Schöffe* is honorary judge, who has not studied law but who take part in decision making process regarding the crime and the punishment in the criminal court.

within the household. The family of the perpetrator was described as a patriarchal family in which traditional gender roles were clearly defined:

“The father dominated his family as a patriarch and despot and cared little about the children’s upbringing. After drinking alcohol, assaults on his wife and children sometimes occurred. In contrast, the defendant’s mother was the family’s cohesive and loving part, caring for the children.”

One of the themes that could be related to culture in the judgement was that his mother intended to leave his father during the childhood of the perpetrator at least once, but she was prevented from doing so by her parents. Her parents forbade her from returning to her family of origin. This reflects the traditional honour culture of the defendant’s family.

The perpetrator had to leave the school and became a child worker in the sixth grade, but he started working when he was seven. As an adolescent, he was engaged against his will with her mother’s niece, his cousin. He was subject to an early and forced marriage. However, he refused to marry because he grew up with his mother’s niece. He felt her more like a sister than a possible intimate partner, so he fled to Istanbul. Afterwards, he completed his military service. In the judgement, it was mentioned that “from this point on, at the latest, a chain of personal and professional failures runs through the defendant’s life, the sum of which gave him the feeling of being both inefficient and sexually unattractive.”

He started a business with a partner, but then, although the firm flourished, he was forced by his partner to leave the company with a lot of debt. He went to Saudi Arabia for one year to work there and paid his debts to his brothers. Later, he went to Germany, where he had relatives and married a German woman. However, this first marriage did not work because he wanted a child, but his wife rejected this. She tried to secure her livelihood. As a result, they got divorced. After the divorce, he also lost his job because of extended illness leave. He tried entrepreneurship again by opening an internet cafe, but he failed. Later, he started to live on unemployment benefits, and he had an illegal job at a casino.

The biography section in the judgement finishes with a strong emphasis on the failure of the defendant to have close relationships with women:

“Even after his marriage to his German wife, the defendant found it very difficult to establish a close relationship with women, despite his pronounced desire for a family and children. Several attempts to find a partner and marry her failed in ways that were sometimes very humiliating for the defendant. Overall, his efforts in the interpersonal field gave the defendant the feeling that he was not attractive, especially sexually. This feeling was intensified by the fact that he has suffered from hair loss since early manhood and also, in this respect, feels himself to be inferior.”

The second sub-section of the personal circumstances is relatively very short, almost half a page long. The second part reveals the medical and psychiatric findings regarding the defendant. It identifies that there was no indication of a severe psychiatric illness or psychosis at the time of the crime. It also mentions that the defendant was physically healthy. The third sub-section of the personal circumstances is even shorter, and it briefly states that the defendant has been in prison since the day of the crime and has no previous criminal record. Even though in the prosecution process there were earlier records of the perpetrator at the police stations, since there was no conviction because of these complaints, there was no criminal record in terms of the criminal law in the judgement.

The second part deals with the findings and the truth of the crime, which are reconstructed starting from the history of the events leading up to the crime, the actual crime, and the story of what happened after the crime.

The defendant (then 38 years old) met the victim, 21, living in Türkiye via the internet. Both were in the same “chat room”, where the victim was exposed to provocations by a third party and the defendant “chivalrously” stood by her. Afterwards, they talked and told each other about their previous lives. The defendant fell in love with her without having met her in person. Later, “he contacted the parents and family of the victim both via the internet and by telephone to make their acquaintance and to persuade the victim in the traditional manner”.

The victim was 17 years younger than the perpetrator. According to the testimony of the mother of the victim, “she hoped to be treated well by a more experienced, mature man” because several years ago, she married a man of the same age for several months. Still, she was subject to violence continuously, and therefore she got divorced. The neighbours of the victim, who witnessed the event day, mentioned in their testimonies that they were not familiar with the victim since she had moved into the apartment a couple of months

ago and that they sometimes saw the victim with an older man and thought he was her father.

The court identified the educational and cultural differences between the perpetrator and the victim and set these differences as the causes of conflict within the marriage from the beginning. In this section of the judgement, there are references also to how the woman is positioned within Turkish society in a traditional framework:

“The victim had graduated from high school and came from a rather urban-bourgeois milieu and a higher educational class than the barely educated and rural defendant. Therefore, the connection between the two represented a pronounced mesalliance¹⁵⁰ from the beginning. However, the victim had already been married once for a short time, which made her seem rather unattractive as a wife according to traditional Turkish ideas. In addition, she had a severe psychological condition - due, among other things, to abuse by her first husband - and her hands and arms sometimes shook badly.”

The “unattractiveness of a woman as a wife after first marriage” can be related to the traditional idea that “a woman must be a virgin at the time of marriage” within honour cultures. This issue is also underlined in the upcoming pages of the judgement regarding the unacceptance of this marriage and the victim by the family of the defendant and the destructive relationship between the victim and the defendant’s family. In the passage quoted above from the judgement, the abuse suffered by the victim in her first marriage and the severe psychological harm caused consequently in the victim have also been underlined.

It was not only the first marriage of the victim but living together with another man without marriage after her divorce that would make her “immoral” in the eyes of the defendant’s family:

“Finally, the victim made a marriage proposal to the defendant after she had previously reported to him that she had already lived together with another man for a while after her divorce without being married. The defendant agreed to the marriage but made it a condition that his family should not find out about her past life. The reason for this was the fear of rejection of the ‘immoral’ victim by his family.”

However, the victim told an acquaintance of the defendant’s family about her previous experiences with marriage. The defendant’s family strictly rejected the marriage when

¹⁵⁰ A marriage with a person of inferior social position (Merriam-Webster Dictionary).

they learnt that she was divorced and subsequently had a “wild” marriage. Despite the rejection by the family, they married. It is emphasized in the judgement that the defendant, who was very attached to his family, suffered from the rejection of his marriage, which was concluded after many years of searching for a partner in his family. After the wedding, the victim lived with the defendant’s family for a while:

“In the first period after that, the victim lived with the defendant’s family for some time to be recognized there. However, she failed in this, among other things, because her rather Western lifestyle - such as going out in the evenings without male company - was not accepted there but was seen as further evidence of her immorality.”

The perception of the victim by the defendant’s family as an “immoral” woman resulted in the rejection of the victim by the family. The relationship between the victim and the defendant’s family did not get any better during the marriage. On the contrary, it was among the causes of the severe psychological harm the victim suffered during the marriage. In testimonies provided by the doctor who gave psychiatric treatment to Zeynep, the problems with the defendant’s family were identified as one of the main problems. However, there were other issues between the couple:

“Already at the beginning of the marriage, as soon as both spouses lived together in Berlin, differences arose between them. The victim soon made it clear that - contrary to the defendant’s expectations - she did not want to have children yet but preferred to learn the German language and to gain a foothold in the world of work.”

As reflected in the quoted part above, the victim did not want children; instead, she wanted to learn German and have a job. Even though the case file is full of with a lot of different witnesses’ testimonies on behalf of the victim, in which the story of the marital rape is told, in the below quotation, the situation is summarized from the perspective of the perpetrator:

“The couple’s sex life also turned out to be difficult from the beginning of the marriage. The defendant, with his strong desire for children and family life and rather rude sexual preferences, was confronted by the victim with a pronounced sexual aversion - caused by earlier bad experiences, possibly also a rape - who perceived even normal interpersonal physical touching as sexually charged and reacted to it with harsh rejection. This gave the defendant, who felt rejected yet again, the renewed feeling of being sexually unattractive. In addition, there were family problems. The victim felt that she was not sufficiently protected from the defendant’s family, who continued to reject her, while the defendant criticized her lack of effort.”

Just within one year after the marriage, the victim attempted suicide by cutting her wrist severely after drinking alcohol. After outpatient treatment, she stayed in psychiatric treatment from this time until her death. She was treated twice also as an inpatient at different stages. Getting into contact with institutions in Germany through suicide is an important milestone for the victim. She did not have any acquaintances in Berlin, did not speak any German and was also isolated by the defendant's family. From the documents in the case file, it is also understood that she was subject to sexual violence within the marriage from the very early stages onwards. All these factors together might have led to her suicide attempt. Therefore, contact with doctors for psychiatric treatment paved the way for her to reach other available institutional help mechanisms within Germany.

It was not only through psychiatric treatment that she contacted institutions, but she also got in contact with women's organizations and shelters. At the end of XXXX, she went to a women's shelter for a while but returned to the defendant. According to the psychological report of the defendant:

"He was very surprised that she had been at the women's shelter in XXXX. He did not understand how she had found out about it in such a short time. She had two friends in the integration course who were divorced and were not concerned with integration but were sent by the employment office. He suspected that they told her about it."

Even though the perpetrator claimed that the victim might have learnt about the women's organizations and shelter at the integration course, according to the psychological report, it is understood that she started the integration course after she stayed at the shelter from the section of the judgement on the previous events up to the crime. Integration course targeted at women with a migration background. Her teacher noticed her intelligence during the integration course. She started to learn German and had the chance to socialize and interact with people during the integration course. According to the testimony of her teacher at the integration course, she had progressed very well until she had problems at home with her husband, which resulted in a lack of her ability to concentrate.

The defendant claims that there was no rape within the marriage. It was written in the psychological report prepared for him as such. He described the events as follows in the psychological report (reported by the doctor who prepared the report):

“In January XXXX, he extended her residence permit for three years. About two to three weeks later, they had sexual intercourse. Three days later, she filed a complaint for rape. She came home with the police, got her clothes, and left. This was a black mark. He had not raped her; such an act was undignified and dishonourable. (Why did she accuse him?) He did not solve it. She had an extended residence permit. To be able to leave, she had denounced him. She wanted to teach him a lesson. He had also been sad in the meantime. He needed a doctor. He had felt very bad. He had talked to her mother, mostly about the fact that she had experienced bad things in the past. He had not had so many friends and relatives here in Berlin. They had only had close contact with a niece and his friend.”

The complaint regarding rape by the victim is told in the judgement in a parallel narrative by relating it to the residence permit as said by the perpetrator:

“After the defendant, who is German, had the victim’s residence permit extended for three years in January XXXX, she went to the women’s shelter again in XXXX. Accompanied by an employee of the XXXX women’s counselling centre, she filed a criminal complaint against the defendant for rape on XXXX. On XXXX, she exercised her right to refuse to testify to the police and emphasized that she had only filed the complaint to hurt her husband, whereupon the investigation was dropped on XXXX.”

Another aspect of the story, as presented in the judgment from the perpetrator’s perspective, concerns the perpetrator’s appropriation of the passport and cell phone during their travel to Türkiye to obtain a divorce. This is articulated in the judgment as follows:

“The uncomplicated and speedy nature of the divorce proceedings greatly surprised the defendant. To prevent the victim from leaving him immediately, the defendant temporarily obtained her passport and cell phone in Türkiye.”

In the judgment, the perpetrator’s appropriation of the victim’s passport and cell phone was romanticized, portrayed as if it were a “normal” response to the expedited divorce proceedings. This portrayal is reminiscent of the justifications often made by judges in so-called “crimes of passion,” where the reasoning follows a disturbing logic: “She was loved so much that she deserved to die”.

However, the same part of the story is told in the testimony of the mother of the victim, the psychiatrist who took care of the victim and the teacher at the integration course differently. They said in their testimonies that the victim was subject to violence, and the perpetrator took her cell phone and passport as a form of violence. According to the police report on the testimony of the victim’s mother, after they got divorced:

“He [*the perpetrator, my note*] then flew back to Germany, and she stayed with her mother for a few days. In [*the name of the place, my note*], he took away her passport and her cell phone. However, she managed to get both things back. She was left alone and without money in Türkiye.”

The mother called a good friend of the victim in Berlin. This man had transferred money to the victim, and she was able to buy a return ticket to Germany. The mother said in her testimony that this friend of her daughter always supported the victim in Berlin. For this reason, he was threatened and insulted by the perpetrator’s family. She also added that she had not wanted her daughter to return to Germany after the divorce, but her daughter and this friend of hers had convinced the mother that she would be in good hands in Berlin.

The legal assessment of the court regarding the homicide of Zeynep is relatively short. It is almost one page long. In the legal assessment, the court first ruled out the murder criterion of insidiousness (*Heimtücke*) as follows by referring to the open confrontation between the perpetrator and the victim, at least before the first act with intent to kill began:

“According to the facts established above, the defendant is guilty of murder (*Totschlag*) pursuant to Section 212 (1) of the Criminal Code.

The defendant, on the other hand, is not guilty of murder (*Mord*) under § 211 of the Criminal Code because he did not fulfil any of the elements of murder.

The murder criterion of insidiousness (*Heimtücke*) is not applicable since the killing was the result of an open confrontation. Hence, the victim was already aware of an attack on her physical integrity - at least not in a way that could be ruled out - before the first act with intent to kill began. All the less did the defendant consciously take advantage of the victim’s defenselessness and the resulting defenselessness.”

Secondly, the court ruled out the murder criterion of cruelty (*Grausamkeit*) even though it underlined the brutality of the crime by considering the large number of stabs:

“Similarly, there is no cruelty (*Grausamkeit*) in the sense of § 211 StGB. It is true that the crime is particularly brutal due to the large number of stabs. There are no indications that the defendant would have deliberately wanted to inflict pain or agony of a physical or mental nature on the victim, the intensity or duration of which exceeds that required for the killing, is not evident. The obvious painfulness of the many stabs alone cannot support this conclusion - especially in view of the defendant’s considerably reduced capacity for inhibition and control.”

Lastly, in the legal assessment part, the court mentioned that it did not interpret this homicide as an “honour killing” and made the following legal assessment:

“In the opinion of the chamber, the defendant also did not have any other base motives within the meaning of Section 211 of the Criminal Code.¹⁵¹ The chamber is convinced that the defendant also acted based on his impaired sense of honour. Within the framework of the bundle of motives that dominated him, however, the feelings of anger, rage and helplessness in the face of the situation predominated. Even if the chamber, in agreement with the expert, assumes an archaic thinking and a traditional family and self-image of the defendant, the will to ‘sanction’ the victim - for example, in the sense of an ‘honour killing’ - was in any case not the guiding factor in his actions.”

From a feminist perspective, the chamber’s interpretation is deeply problematic. Feminist scholars have long argued that acts of violence against women, particularly those linked to notions of honour, are not merely personal emotional outbursts but expressions of deeply rooted patriarchal power structures (Abu-Lughod, 2011; Korteweg and Yurdakul, 2009). By framing the defendant’s actions primarily as a product of emotional turmoil - anger, rage, and helplessness- rather than as a deliberate exertion of patriarchal control, the judgment, however, apparently minimized the gendered nature of violence. The court acknowledged the defendant’s “archaic thinking” and “traditional family and self-image”, yet it distanced these beliefs from the act itself, as if such ideologies do not underpin the violence. Furthermore, by rejecting the classification of the act as an “honour-killing” the chamber seems to sidestep the critical issue of how patriarchal norms legitimate control over women’s lives and bodies. The defendant’s worldview inherently placed women in subordinate roles, making any act of violence against a woman a political act of enforcement, not merely an emotional lapse. In this respect, feminist legal theorists argue that criminal law must be cautious not to depoliticize gender-based violence by attributing it solely to personal emotions rather than structural inequalities (MacKinnon, 1989). In doing so, the judgment obscures the systematic patterns of violence that feminism seeks to expose and dismantle.

¹⁵¹ Please see footnote 141 above for the definition and conditions of murder with aggravating circumstances according to the German Criminal Code.

CONCLUSION

This dissertation embarked on a journey to scrutinise the intricate interplay of culture and law within the context of “honour-based violence” (HBV) committed by male immigrants against female immigrants from Türkiye living in Germany. Drawing on feminist scholarship, particularly the tension between feminism and multiculturalism as explored by Susan Moller Okin (1999), this study aimed to scrutinise how culture is invoked and interpreted in the criminal justice process of such cases. Through a qualitative research approach, focusing intensely on two specific cases rather than seeking generalisable patterns, the research sought to reveal the socio-legal challenges arising from debates surrounding cultural relativism and the universality of human rights. The international human rights framework, encompassing concepts like universalism, cultural relativism, cultural defence, HBV, femicide, and gender-based violence, served as the critical lens through which these cases were examined.

The core of this research rests on the detailed examination of two distinct yet connected cases of severe gender-based violence against women with immigrant backgrounds in Germany: the fatal case of Zeynep and the attempted murder case of Aylin Korkmaz. These cases offered a unique opportunity to explore the intersection of cultural narratives and legal reasoning within the German legal system, particularly given Germany’s significant Turkish and Kurdish diaspora and the transnational ties between Germany and Türkiye. The methodological challenge and, arguably, a considerable strength of this study lay in using qualitatively different resource materials for each case – an autobiography published by Aylin Korkmaz for her story and a criminal case file for Zeynep’s story. This difference highlighted the impact of the victim’s ability to narrate her experience, making the invisible visible and giving a voice to the inaudible.

6.1. The Case of Aylin Korkmaz: A Survivor's Voice Against Violence and Its Legal Aftermath

Aylin Korkmaz miraculously survived a brutal, almost fatal attack by her ex-husband. Her story is particularly significant because she was able to speak out, challenge the legal outcomes, and publicly campaign against the perceived leniency shown towards the perpetrator. Aylin's experience, meticulously documented in her autobiography, provided a direct account of her life, the gender-based violence she endured for the sake of her children, her cultural inability to disclose domestic violence until it happened in the public space, and her perspective on the criminal justice process.

The attack on Aylin was ruthless; she was stabbed 26 times in the locker room for approximately 10 minutes with only two minor interruptions so that the witnesses of the case could divert the attention of the perpetrator, with 18 stabs to her face. The perpetrator even cut her nipples, which is a clear sign of being subjected to such violence because the victim is a woman. Her survival was made possible due to the effectiveness of the emergency medical intervention in Germany at the time of the crime. She was transferred by helicopter to a hospital in another city, where she received multiple litres of blood to stabilise her condition. She had extensive surgery and stayed in a coma for days. After so many years since the attack, she still has minor plastic surgeries to erase the scars the attack caused on her face. Her ex-husband, M., was sentenced to 13 years' imprisonment for attempted murder despite the prosecutor requesting a lifelong sentence. A key point that drew research attention to her case was Aylin's belief that her ex-husband's "cultural origin was used as an argument for mitigation (*Strafmilderung*) in the punishment by lawyers and courts". This claim of Aylin directly connected her lived experience to the theoretical debates around cultural defence and the potential for cultural relativism to undermine universal human rights standards in legal contexts.

Aylin's decision to go public, supported by organisations like *Terre des Femmes*, involved participating in TV programs, interviews, and public events, culminating in her autobiography and a documentary prepared for a mainstream TV channel. She explicitly stated her motivation: "to speak for the women who no longer have a voice because I am

lucky enough to be still alive”. She was able to take part in the judicial proceedings as a co-plaintiff. Despite attempts by her ex-husband’s family to dissuade her from participating—reportedly through monetary offers (she declined these efforts) — she participated in the court process.

Her decision to testify and articulate her experience as a “victim of attempted femicide” during the hearing represents a significant act of “agency”. It contributes meaningfully to the visibility of gender-based violence within legal discourse. As an immigrant woman who learned the host country’s language and had the chance to express herself, it is an essential sign of her access to justice. She participated in the court process and faced the provocative “misogynist” questions of the defence lawyer, which were based on gender stereotypes. Her narrative also echoed the feminist research imperative to include marginalised voices and make their experiences central to understanding systemic issues.

I managed to reach Aylin Korkmaz twice during the research process. The first time that I reached her by telephone was in 2015. We talked over the phone “off the record”; she was upset that the campaign did not prevent her ex-husband’s early release. I asked if she could share the judgment or the case file. She told me that the content of the judgment included disturbing details of her medical situation after the attack. She told me it would have been better for my health if I had not read the report. I did not insist and did not get the judgment then. Since then, she preferred not to be in public, and she is in the victim protection program (*Opferschutzprogram*), according to what she told me.

Towards the final stages of the thesis process, to get a confirmation for using the names as they are in the book (*Ich schrie um mein Leben: Ehrenmord mitten in Deutschland*) in July 2024, I contacted Aylin Korkmaz for the second time. This time, she was in a better mood, gave consent for the use of the names as they are in the book and shared the contact information of her lawyer so that I could directly get the judgment from him. Later, I got the judgment from her lawyer and had an interview with him in August 2024. Aylin Korkmaz conveyed that her case had been incorporated into specific legal academic courses as a case study. She further noted that, although television channels continued to express interest in interviewing her after so many years of the attack, she had recently chosen to withdraw from public engagement. She sent me voice messages and told me

the story she had after the court process¹⁵², mentioning that she had a lot of things to say, and one of the most important things that she told me was that German society took care of her.¹⁵³

Her account of the court process highlighted critical points. The public prosecutor, according to a newspaper report on the trial, linked the crime to the “archaic concept of honour” in his plea, arguing the perpetrator wanted to assert “ownership” over his ex-wife. This aligns with the understanding of HBV as rooted in controlling women’s sexuality and maintaining family honour, often through patriarchal tools. Aylin herself described feeling like her ex-husband’s property during their marriage, “like his car, phone, or television”.

However, the judicial outcome in Aylin’s case illustrates the complexities and potential inconsistencies in the criminal justice system’s approach to such violence. The court’s reasoning for mitigating the sentence from the maximum possible (life imprisonment for murder) to 13 years for attempted murder and the subsequent reduction to 8 years with good behaviour felt like a “guillotine” to Aylin. The court cited the “surprisingly minor consequences of the offence for the victim” as a factor in mitigation, which Aylin and others found cynical despite her permanent disfigurement and psychological trauma. The court emphasised that because she survived and could continue living with her children, the crime was “not successful,” which prompted the use of the mitigation option. This reasoning appears to prioritise the outcome (victim’s survival) over the perpetrator’s intent and the severity of the act, potentially overlooking the underlying patriarchal motive as a “base motive” under Section 211 StGB. Under German criminal law, a ‘base motive’ (*niedrige Beweggründe*) can justify a life sentence in cases of murder. Gendered motives rooted in patriarchal control, such as asserting ownership over a former spouse, could be handled as a ‘base motive’, as feminist legal scholars have argued. Even though “the ownership over a former spouse” was noted as a negative attitude in both cases, that did not have much impact on the sentences.

¹⁵² The issues she underlined may be the theme of another research.

¹⁵³ Voice messages from Aylin Korkmaz on 23 and 24 July 2024.

Aylin's story also exposed bureaucratic hurdles and systemic failures, such as the initial difficulty in regaining custody of her children from the youth welfare office without her attacker's signature due to shared custody arrangements. Her experience demonstrated that even for a survivor actively engaged in seeking justice and protection, the path is fraught with challenges. The legal requirements which seem "neutral" on paper can, in turn, serve to sustain the abuser's control over the victim.

The eventual early release and deportation of M.K. as a free man to Türkiye after serving only 6.5 years further underscores the gap between the severity of the crime and the perceived consequences for the perpetrator, raising questions about the effectiveness of the criminal justice system in delivering adequate punishment and ensuring victims' safety. For protecting the victims, opting for anonymous names for victims as if they are the criminals who provoked the violence exerted on them, instead of isolating the perpetrator, raises further questions regarding justice.

Aylin's case, therefore, serves as a powerful example of the lived reality of gender-based violence in a migration context, highlighting not only the brutal nature of the attacks but also the ongoing struggle within the criminal justice system to adequately address the underlying patriarchal motivations and ensure justice for victims. Her voice, which she shared through her book and public appearances, became a critical counter-narrative to biased interpretations during the legal proceedings.

The various forms of gender-based violence that Aylin endured throughout her marriage (ranging from physical, psychological, sexual, and economic abuse to coercive control and post-divorce stalking) constitute clear indicators of escalating violence. However, the criminal justice system often tends to minimise such early warning signs, drawing sharp distinctions between seemingly "minor" acts, such as a "slap", and more severe forms of physical harm, such as attacks involving weapons.

This tendency was illustrated during one of our seminars for the judges and prosecutors on the dynamics of violence and the "circle of violence", in which a senior judge questioned the notion of treating a slap and a knife attack with equal seriousness: "Are you suggesting that we should handle only a slap and bodily harm with a knife equally?"

In response, a female prosecutor asked pointedly, “Sir, how would you feel if you were slapped?” Her question elicited a moment of silence, reflecting the discomfort and resistance within institutional contexts to fully acknowledge the cumulative nature of gender-based violence as well as the equal right of women to “human dignity”. This exchange underscores the broader issue: dismissing so-called “minor” acts of violence may contribute to their escalation. Risk assessment processes must, therefore, take prior acts of violence, regardless of perceived severity, into serious consideration. Awareness-raising activities that would inform the public that “gender-based violence is a violation of human rights and there is no justification whatsoever” should be continuously publicised as well.

Another aspect that I would like to draw on is assessing risk in cases of “honour-based violence”. Abji, Korteweg and Williams (2019) explore in “Culture Talk and the Politics of the New Right: Navigating Gendered Racism in Attempts to Address Violence against Women in Immigrant Communities” how cultural narratives intersect with gendered violence, racialised politics, and immigration policy. The authors first examine the 2015 *Zero Tolerance for Barbaric Cultural Practices Act* in Canada, introduced under Prime Minister Stephen Harper of the conservative government. This Act framed violence against women, particularly in immigrant communities, as a cultural issue linked to “barbaric” practices such as forced marriage and “honour killings”. This framing perpetuated xenophobia and stigmatised racialised communities. The Act exemplifies the right-wing strategy of “cultural essentialism”, where violence is racialised, and immigrant cultures are depicted as inferior to “civilised” Western norms. The authors argue that labelling violence against women as a “cultural problem” within immigrant communities contributes to a racialised discourse. This “culture talk” serves to exclude and racialise immigrants while reinforcing stereotypes of “cultural backwardness”. In their study, the authors analyse interviews with service providers working with South Asian immigrant women, highlighting how these providers resist the essentialist framing of violence as cultural while navigating structural inequalities, immigration policies, and racial biases. The authors use post-colonial feminist theories and criticise “culture talk” since it essentialises violence as intrinsic to non-Western cultures, erasing structural factors like colonialism, racism, and economic inequality.

On the other hand, Abji and Korteweg (2021) define culture not as a fixed or monolithic entity but as dynamic, situated processes through which individuals and communities create meaning. This contrasts with problematic “culture talk” that treats culture as static, ahistorical, and deterministic, often leading to stigmatisation and racialisation of minority communities, especially in public and media discourses about HBV and GBV.

As the article’s authors, I also take culture as a dynamic process of interpretation. Cultural shifts in this respect show how culture can change over time. Anne Phillips gave the example of “Magdalene Laundries” in Ireland, which operated during the 1950s and 1960s¹⁵⁴. These institutions served as places where families, often in consultation with priests, sent their daughters who had transgressed “social sexual norms” and become pregnant out of marriage; the girls were locked up in the laundries. The practice was rooted in the firmly held belief that “sex outside of marriage” was a sin¹⁵⁵. Phillips emphasises that it was never the case that all fathers locked up their daughters when they were troubled by sexual transgressions, highlighting the flexibility within cultural practices.

Abji and Korteweg suggest a multiscalar approach to culture for understanding “gender-based” and “honour-based violence”. In their research, Abji and Korteweg examine how definitions of culture influence efforts to address so-called honour-based violence (HBV) as a form of gender-based violence (GBV). Their analysis shows how to talk about culture as a key ingredient shaping multiscalar violence, regardless of whether that violence occurs in majority or minority communities (Abji and Korteweg, 2019: 74). The authors show how the forms of GBV that service providers described were “multiscalar”, and in

¹⁵⁴ In the Podcast Program titled “Philosophy Bites”, Anne Phillips was the speaker in an episode on “Multiculturalism” from July 3, 2007, and she explained what she understood from multiculturalism.

¹⁵⁵ Traditional harmful cultural practices base their justification on either religious or cultural grounds which are frequently used interchangeably. I understand these practices as direct consequence of the patriarchal structures and gendered power relations. Patriarchal systems appear through religious teachings such as Catholicism in the Magdalene Laundries of Ireland and through what are called “honour cultures” found in Mediterranean and Middle Eastern regions as well as Latin America and parts of Asia and Africa where different religious traditions exist. Please see *Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women / General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices*. For further information (Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child, 2019)

so doing, they develop a conceptualization of violence as structured by multiple and intersecting forces of family, society, economy, and the state. From this perspective, viewing culture as complex processes of meaning-making influenced by social and political contexts, patterns of violence can be interpreted as emerging at the intersections of gender, race, ethnicity, religion, and the cultural, social, political, and legal practices of an immigrant-receiving society — essentially, as multiscalar phenomena imbued with specific meanings (Abji and Korteweg, 2021: 88).

This approach addresses structural inequalities and supports survivors in a contextually informed way. Abji and Korteweg claim that blaming certain cultural groups for violence (particularly South Asian communities in Canada) obscures the complex, multiscalar nature of violence and hinders effective responses by reinforcing stereotypes and impeding access to support for survivors. In parallel with this view, I also think that culture should be considered at the prevention and protection level in order to provide help for the victims. Still, at the prosecution level, “culture” talk could only serve to understand the context, not for any justification directly or indirectly.

6.2. The Case of Zeynep: The Silent Victim in the Case File

In stark contrast to Aylin, Zeynep could not survive the attack by her ex-husband. Her story is told through the impersonal language of a criminal case file – police reports, witness testimonies, medical assessments, and the court’s judgment. As the dissertation notes, in Zeynep’s case, the victim is the “third-person pronoun – ‘She’ – in the case file,” her own words absent. This fundamental difference underscores a critical challenge in femicide cases: the truth, as presented and interpreted by the court, is constructed mainly from the perspective of the perpetrator and other witnesses, leaving the victim’s story untold and unheard. This fact is true for all murder cases, including the cases where a man is killed by another man. However, in femicide cases, the relationship between the victim and the offender and the power aspect of this relationship are missing when the victim is not able to speak up during the court process.

Her ex-husband killed Zeynep within three years of marrying him and moving to Germany. He was sentenced to seven years and six months imprisonment for manslaughter (Totschlag) under Section 212 of the German Criminal Code rather than murder (Mord) under Section 211. The court's legal reasoning determined that the specific aggravating circumstances required for a murder conviction, such as "base motives", "insidiousness," or "cruelty" (*die Mordmerkmale*: "*niedrige Beweggründe*", "*Heimtücke*" and "*Grausamkeit*" were not present according to their assessment.

The case file, despite the absence of Zeynep's direct voice, contains bits and fragments of her experience of gender-based violence through witness testimonies documented as police reports. These resemble a puzzle with tiny pieces. The court documents reveal a history of violence and control preceding the fatal attack. Notably, the perpetrator had a prior record of a complaint about 'marital rape' and serious sexual assault against Zeynep. However, the charges were dropped, and the prosecution did not continue when Zeynep exercised her right to refuse to testify. This history of sexual violence within the marriage was a central theme in the narratives of witnesses who knew Zeynep, even if not very closely. Yet, it did not result in a conviction or seemingly play a decisive role in the final judgment for her killing, illustrating how legal technicalities (the dropped complaint) can erase the documented reality of abuse from the judicial consideration of the final crime.

Furthermore, witness accounts and the judgment itself documented the perpetrator's attempts to control Zeynep, such as "his appropriation of her passport and cell phone" when they travelled to Türkiye for divorce. While the judgment framed this action somewhat neutrally as a reaction to the speedy divorce, witness testimonies described it as a form of gender-based violence. This disparity in interpretation highlights how the judicial narrative, often reliant on the perpetrator's account and focused narrowly on the immediate events of the killing, can fail to capture the continuum of patriarchal violence as suggested by Liz Kelly (1988) and the context of violence experienced by the victim.

Zeynep's aspirations in life— her desire to learn German, gain employment, and delay having children – were at odds with her husband's expectations. Her attempts to assert her autonomy were met with controlling behaviour and, ultimately, violence. The perpetrator's statement to the police, noted in the judgment, that stabbing his wife was

“not a capital offence because it was only his wife” starkly reflects a possessive, patriarchal mindset that views a spouse as property.

The court’s decision to classify Zeynep’s killing as manslaughter rather than murder, based on ruling out specific motives like “base motives”, suggests that the patriarchal mindset and potential honour-related motivations, while present in the background and witness testimonies, were either not recognised or not deemed legally sufficient to elevate the crime to murder. This aligns with the dissertation’s argument that while explicit cultural defence arguments might be disregarded for sentencing mitigation in German courts, the broader context of honour codes and gendered power dynamics often remains “invisible within the judicial reasoning” when the focus is solely on the immediate motive at the moment of the final act.

Zeynep’s case embodies the silence of victims in femicide, emphasising the vital need for legal systems to actively seek and value alternative forms of evidence and narrative that can illuminate the victim’s experience and the whole trajectory of the violence beyond just the perpetrator’s account and the immediate circumstances of the death. The judiciary’s failure to account for these “non-existent women” constitutes a profound obstacle to realising justice. In this context, the method of psychological autopsy—advocated by Yakın Ertürk in her report following a study visit to Türkiye—presents a valuable tool that prosecutors could employ while conducting investigations with the requisite standard of due diligence. Public prosecutors must fulfil this duty by rigorously avoiding gender bias and critically reflecting on the influence of gender stereotypes in their assessments and prosecutorial strategies.

6.3. Linking Cases to Theory: Universalism, Cultural Relativism, Feminism, and the Law

The stories of Aylin and Zeynep are powerful illustrations of the theoretical tensions explored in this dissertation. The central dilemma lies in navigating the demands of multiculturalism – respecting cultural diversity – with the imperative of feminism and

universal human rights – protecting the fundamental rights of women, especially their right to life, dignity, and freedom from violence.

The debates around cultural relativism versus universalism are directly relevant. While human rights are reaffirmed as universal and inalienable, particularly women's human rights, challenges arise when cultural practices appear to conflict with these rights. International standards should empower women when their rights are at stake, especially concerning their right to life and bodily integrity.

The concept of cultural defence, though often explicitly rejected or disregarded for sentence reduction in German courts, implicitly surfaces in interpreting motives and classifying the crime. While judges in Germany may not explicitly cite “honour” as a mitigating factor for sentencing (unlike historical examples or practices in other legal systems that allowed “unjust provocation” defences in Türkiye), the debate about whether HBV should be treated as “murder” with its associated harsher penalties (Section 211 StGB) or “manslaughter” (Section 212 StGB) often hinges on the court's interpretation of the motive and whether it qualifies as “base”. If the court fails to recognise honour-related motivations or patriarchal control as “base motives,” the crime is downgraded, resulting in a lesser sentence, as seen in Zeynep's case. Aylin's claim that cultural origin was used for mitigation, even if not explicitly stated as a legal defence, points to the potential for cultural background to influence perceptions or interpretations within the courtroom environment.

The tension between multiculturalism and feminism, highlighted by Okin, is acutely relevant. The cases show how cultural norms related to honour and gender roles within specific immigrant communities can clash violently with universal principles of gender equality and individual autonomy. The dissertation argues that when women's rights are violated, the analysis should prioritise international human rights and feminist legal theory, advocating for a “de-culturalization” of the analysis. This means judicial actors should rely on universal human rights law rather than invoking cultural justifications. However, the cases reveal that cultural narratives can still influence legal reasoning, sometimes subtly, by shaping how motives are understood or how a history of violence is framed.

The concept of “gender-based violence” is fundamental here. HBV is explicitly recognised as a form of gender-based violence. The cases demonstrate the continuum of violence that constitutes gender-based violence, ranging from psychological and economic abuse to physical assault, sexual violence, and, ultimately, homicide or attempted homicide. The sources emphasise that this violence is rooted in patriarchal structures and gender norms that consider certain roles, behaviours, activities, and attributes appropriate for men and women, often based on ideas of inferiority or superiority of one sex.

The feminist legal methods perspective is crucial for analysing these cases. Feminist jurisprudence challenges the idea of “neutral legal reasoning,” arguing that legal interpretations reflect social positions and power dynamics. By “asking the woman question,” feminist methods reveal how seemingly neutral laws or legal interpretations can disadvantage women. In Zeynep’s case, the legal system’s reliance on the case file, which lacks the victim’s voice and frames events based on available documentation (including the perpetrator’s statements and dropped complaints), exemplifies how the system can fail to capture the reality of gendered power dynamics and the continuum of violence from the victim’s standpoint. In Aylin’s case, the court’s reasoning for mitigating the sentence, focusing on the “unsuccessful” outcome rather than the perpetrator’s motive or the victim’s suffering, can also be critiqued from a feminist perspective for failing to fully acknowledge the patriarchal intent behind the attempted murder.

Furthermore, the discourse surrounding HBV in Western societies, including Germany, is often intertwined with issues of racism and stigmatisation of immigrant communities. HBV is sometimes used as a “litmus test of immigrant civility,” reinforcing an “us vs. them” narrative where “our violence” is humanised and “theirs” is demonised. This problematic framing can obscure the fact that gender-based violence exists across all societies and can lead to policies that are either overly stigmatising or that ignore the specific dynamics within communities, neither of which is effective. The cases, while focusing on the legal process, exist within this broader societal and political context.

The international human rights framework, including CEDAW, the Istanbul Convention, and judgments from the ECtHR like *Opuz v. Türkiye*, provides crucial standards and highlights states' positive obligations to prevent, protect, prosecute, and punish gender-based violence. *Opuz v. Türkiye*, in particular, recognised gender-based violence as a manifestation of discrimination and affirmed the state's duty to take active measures. The cases of Aylin and Zeynep, viewed through this lens, expose the significant gap between these international normative standards and the challenges in their implementation within a national legal system, leading to injustice for victims and potential impunity for perpetrators.

The debate about the definition and terminology used for HBV (such as “honour killing,” “so-called honour killing,” “femicide”, “intimate partner femicide”) also plays a role. The ambiguity in definition and the lack of consensus on how to categorise such crimes (whether as specific “honour killings” or within broader categories like intimate partner femicide) can influence judicial decisions and data collection. The dissertation highlights the need for clarification and differentiation of this crime type. It also argues for moving away from essentialising cultural explanations and towards recognising the systemic gendered oppression at play.

The German legal system's inconsistent approach, criticised by reports like GREVIO, highlights the ongoing struggle to consistently apply universal human rights principles and reject cultural justifications for gender-based crimes. The call for a legal definition of femicide, rejection of cultural justifications, and uniform training for the judiciary reflects the demand for stronger adherence to a universalist human rights framework.

Conducting qualitative research, particularly interviews with judges, prosecutors, and lawyers, could provide valuable insights into their views, perceptions, and the challenges they face when navigating situations involving cultural intricacies and gender-based violence. Such research would contribute to a more nuanced understanding of the factors influencing legal decision-making and help identify areas for improvement in the criminal justice system's response to femicide, honour-based violence (HBV) and other culturally framed crimes. By establishing clear definitions and conceptual frameworks, researchers and policymakers can work towards developing more effective interventions (European

Institute for Gender Equality [EIGE], 2021). The lack of consensus on the definition of HBV and its distinction from other forms of violence continues to hinder effective data collection and policy development.

The issue of how culture is invoked in HBV-related criminal cases transcends Germany and the 2001–2010 timeframe analysed in this dissertation. Comparative and longitudinal research—especially in countries with significant immigrant populations—would allow scholars to identify evolving trends in how culture is interpreted in legal contexts. Such studies could also reflect broader societal changes, including shifts in immigration patterns, legal reforms, and cultural attitudes (Abji and Korteweg, 2021).

Legal reforms, while well-intentioned, do not always yield positive outcomes. For example, the 2021 amendment to Section 46(2) of the German Criminal Code included gender-based motivation as an aggravating factor in sentencing, recognising hostility toward groups defined by sex, gender identity, or sexual orientation as a relevant consideration (Bundesministerium der Justiz, 2021).¹⁵⁶ While this represents a major step

¹⁵⁶ I want to note that as of yet, the English translation of the provision in the internet is not updated. The former version of the provision is as follows:

Section 46

General principles

- (1) The offender's guilt provides the basis on which the penalty is fixed. The effects which the penalty can be expected to have on the offender's future life in society are to be taken into account.
- (2) When fixing the penalty the court weighs the circumstances which speak in favour of and those which speak against the offender. The following, in particular, may be taken into consideration:
the offender's motives and objectives, **in particular including racist, xenophobic, antisemitic or other motives evidencing contempt for humanity**,
the attitude reflected in the offence and the degree of force of will involved in its commission,
the degree of the breach of the offender's duties,
the modus operandi and the consequences caused by the offence to the extent that the offender is to blame for them,
the offender's prior history, personal and financial circumstances, and
the offender's conduct in the period following the offence, in particular efforts to make restitution for the harm caused as well as efforts at reconciliation with the victim.
- (3) No consideration may be given to circumstances which are already statutory elements of the offence. Please note the difference in the English and German versions of the provision as marked in bold. The English version of the provision still do not include "gender-based" and "against sexual orientation" yet, since the translation has not been updated yet.

Strafgesetzbuch (StGB)

§ 46 Grundsätze der Strafzumessung

- (1) Die Schuld des Täters ist Grundlage für die Zumessung der Strafe. Die Wirkungen, die von der Strafe für das künftige Leben des Täters in der Gesellschaft zu erwarten sind, sind zu berücksichtigen.
- (2) Bei der Zumessung wägt das Gericht die Umstände, die für und gegen den Täter sprechen, gegeneinander ab. Dabei kommen namentlich in Betracht:

in addressing the gendered nature of violence, it remains essential to monitor how the change is implemented in judicial practice, particularly in HBV cases. Future studies should assess whether the amendment contributes to more consistent sentencing aligned with the gravity of gender-based crimes.

Another area for future research involves evaluating the effects of cultural competency training for legal professionals. Judges, prosecutors, and lawyers equipped with a more nuanced understanding of cultural dynamics and HBV may be less prone to cultural stereotyping and better prepared to apply the law in culturally sensitive ways (Abji, Korteweg, and Williams, 2019).

This dissertation has also highlighted the methodological and conceptual challenges of studying HBV. These include difficulties in generalising from specific cases, the emotional toll of engaging with traumatic materials, and the limitations posed by incomplete or one-sided case files—especially where the victim’s voice is absent. Furthermore, the legal system’s tendency to focus on isolated incidents rather than cumulative abuse obscures the full scope of HBV. The conceptual ambiguity surrounding HBV further complicates data collection, legal classification, and prevention efforts (Gill, 2009; Welchman and Hossain, 2005).

Finally, utilising existing data archives and conducting longitudinal research would shed light on the long-term effects and escalation of violence in HBV contexts. By addressing these research areas, scholars can contribute to a more complete understanding of the intersection between culture, gender, and law, and to the development of effective, rights-based legal responses and victim support systems.

die Beweggründe und die Ziele des Täters, **besonders auch rassistische, fremdenfeindliche, antisemitische, geschlechtsspezifische, gegen die sexuelle Orientierung gerichtete oder sonstige menschenverachtende,**

die Gesinnung, die aus der Tat spricht, und der bei der Tat aufgewendete Wille, das Maß der Pflichtwidrigkeit,

die Art der Ausführung und die verschuldeten Auswirkungen der Tat,

das Vorleben des Täters, seine persönlichen und wirtschaftlichen Verhältnisse sowie

sein Verhalten nach der Tat, besonders sein Bemühen, den Schaden wiedergutzumachen, sowie das Bemühen des Täters, einen Ausgleich mit dem Verletzten zu erreichen.

(3) Umstände, die schon Merkmale des gesetzlichen Tatbestandes sind, dürfen nicht berücksichtigt werden.

6.4. Conclusion: The Ongoing Struggle for Justice

The extensive investigation of Aylin Korkmaz's and Zeynep's cases provides significant, painful insights into the difficulty of dealing with honour-based violence in migration context inside the German legal system. They highlight the dissertation's main finding: While cultural narratives are undoubtedly invoked and part of the context, the legal system's tendency to focus narrowly on the final act and specific legal definitions of motive (Mord vs Totschlag) frequently fails to recognise and adequately respond to the broader patterns of control, abuse, and violence rooted in patriarchal honour codes that unfold over time.

Aylin's survival allowed her to become a powerful advocate, demonstrating the vital importance of women's voices in challenging injustice and shaping public discourse. Her experience highlights that even survival does not guarantee full justice, as evidenced by the "perceived leniency" of the sentence and the perpetrator's early release.

Zeynep's case, told through the limited lens of a case file, tragically illustrates the silencing effect of femicide and the challenge of reconstructing a victim's experience and motivations when her voice is absent. The judicial outcome in her case, classifying the killing as manslaughter, raises questions about the recognition of "gendered" and potentially "honour-related motives" as "base motives" for murder and points to the need for legal actors to look beyond the surface of the immediate incident to understand the full context of the violence. The history of marital rape and the framing of the perpetrator's controlling actions in the judgment further exemplify how the victim's narrative of violence can be minimised or erased in legal proceedings.

Both cases reveal the significant gap that can exist between international human rights standards and their implementation in practice. They demonstrate the urgent need for legal practitioners, policymakers, and advocates to collaborate on frameworks that consistently prioritise the safety and rights of women over cultural justifications for violence. The analysis should rely on international human rights law and feminist legal theory, aiming for a "de-culturalization" of the analysis that does not essentialise cultural explanations but recognises systemic gendered oppression. The judges are impartial and

independent in their judgments; however, they should be aware of their gender or racial bias. Especially in cases of gender-based violence, they should look deeper into the background of the final act. In Zeynep's case, she was killed in the end, but before she died, she had a "torture" like life in isolation in the beginning period.

Criminal law practitioners may contend that this thesis oversimplifies the legal framework and departs significantly from foundational principles and interpretative methods within criminal law. Nonetheless, I have deliberately chosen not to engage extensively with specific legal conceptual frameworks, such as culpability, *mens rea*, and *actus reus*, within the scope of this thesis. This decision stems from the fact that a detailed focus on these concepts would have impeded the articulation of the core issue I seek to address.

The two cases examined herein both reveal a tension between "legal justice" and "substantive justice". It may be asserted that, in each case, the existing legal provisions were precisely applied, with due consideration given to both the perpetrator and the victim. Indeed, I assume if the two cases were to be reviewed by international human rights bodies, such as the CEDAW Committee, the arguments that would be raised by the State Party would emphasize this very adherence to legal norms.

However, when these cases are examined through the lens of human rights and gender equality, particularly in relation to the right to life, the right to human dignity, and the right to live free from violence, they reveal a profound injustice. The experiences of violence endured by the two women in question highlight a deeper harm that transcends the formal legal analysis. As such, I am compelled to acknowledge the pain reflected in these cases—pain that resonates across the collective experience of women—and to express my concern over the systemic issues they expose. Breathing is vital for women, just as the neighbours told Zeynep when she fell over the floor with the broken knife in front of them: "Breathe in".

Ultimately, the stories of Aylin and Zeynep, analysed through the theoretical lenses of this dissertation, underscore that the fight for justice for victims of gender-based violence, including HBV, is an ongoing struggle against deeply entrenched patriarchal structures, complex legal interpretations, and societal biases. Making women's voices central,

recognising the continuum of violence, and consistently applying universal human rights principles are crucial steps towards ensuring that justice is not only theoretically available but tangibly realised for all women, regardless of their cultural background or migration status.



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