



**Honour Killings in Turkey: Women's Rights, Feminist
Approaches and Domestic Legislation at Crossroads**

A Thesis Submitted for the Degree of Doctor of Philosophy

by

Ayşe Kulahli

**Brunel Law School
Department of Politics, History and Law
Brunel University London**

2017

Abstract

So-called ‘honour killings’ have become an issue of concern for the international community. In Turkey, in particular, the practice still exists despite the adoption of the relevant human rights instruments. This study evaluates how effective current international human rights law, and in particular the recent Istanbul Convention, have been in eradicating so called ‘honour killings’ on Turkey. The thesis argues that the improvement of the status of women in Turkey in accordance with gender equality as well as the application of the principle of state due diligence, both requirements of the Istanbul Convention and international human rights law, are fundamental means towards eradicating the killing women in the name of ‘honour’. The study looks at the application of such standards as well as the current obstacles using the feminist approaches, in particular the intersectionality approach. Through such lens, the study discusses the strengths and weaknesses of the Turkish Constitution, Turkish Civil Code, Turkish Penal Code and Law to Protect Family and Prevent VAW and questions the judicial approach to the implementation of the women’s right to life. It identifies the lacunae in the Turkish legislation that allow inadequate legal protection for women and the inconsistency of the judicial approach to the definition of the so-called honour killings in the judgements. The study then recommends some concrete amendments to the relevant legal provisions in order to better reflect the international framework and the feminist approaches.

Declaration

I declare that the work presented in this thesis is my own and has not been submitted for any other degree or professional qualification.

The copyright of this thesis remains with the author. No quotation from it should be published without her prior consent and information from it should be acknowledged.

Ayse Kulahli
Brunel Law School
London
October 2017



Table of Contents

Abstract.....	i
Declaration.....	ii
Table of Contents.....	iii
List of Abbreviations.....	vii
Acknowledgements.....	ix
Chapter 1: Introduction.....	1
1.1. Introduction	1
1.2. Scope and Purpose.....	2
1.3. Objectives/Aims of Research.....	3
1.4. Contribution to Knowledge	4
1.5. Structure of the Thesis	5
1.6. Research Methodology	8
1.7. Advantages and Limitations.....	10
Chapter 2: Theoretical Framework:	13
Analysis of ‘Honour Killings’ in the Context of Feminist-Legal Theory	13
2.1. Introduction	13
2.2. Feminist-Legal Analysis of So-called ‘Honour Killings’	14
2.2.1. Equality in Human Rights: Liberal feminism.....	14
2.2.2. Patriarchal Male dominance: Radical Feminism	17
2.2.3. Contrasting the ‘Othering’: Poststructuralist feminism.....	19
2.2.4. Passion Killings v. Honour Killings	23
2.2.5. Controlling Women’s Sexuality: ‘Honour’ Patterns and Patriarchy	26
2.3. Feminist Critiques of International Human Rights Law.....	30
2.3.1. The Role of International Human Rights for Establishment of ‘Male’ Rights...	32
2.3.2. The Public/Private Dichotomy Based on Gender	33
2.3.3. The Issue of Essentialism	37
2.4. Intersectionality within Feminist Legal Theory	41
2.5. Women’s Rights: Feminism in Turkey	46
2.5.1. The First Wave of Feminism: State Feminism.....	47
2.5.2. The Second Wave of Feminism: Raising Awareness of VAW.....	50
2.5.3. The Third Wave of Feminism: Women in Different Identities	52
2.5.3.1. The Struggles of Kurdish Women within and outside the Home	54
2.5.3.2. The Collaboration of Feminists in Turkey against VAW	57

2.5.3.3. Defining ‘Honour Killing’ in the Turkish Context	58
2.5.3.4. Statistical Analysis of Honour Killing	60
2.5.3.5. Intersectionality within Feminist-Legal Theory in the Turkish Context.....	62
2.6. Conclusion	63
Chapter 3:	64
Analysis of Honour Killings within the Context of International Legislation: From CEDAW to the Istanbul Convention	64
3.1. Introduction	64
3.2. VAW within the Process of the CEDAW Convention	65
3.2.1. Honour Killings within the Context of the UN	72
3.2.2. The International Norms of Equality and Non-Discrimination: A Conceptual Analysis and Feminist Critiques.....	77
3.2.2.1. Analysis of Honour Killings: Article 1 of the CEDAW	81
3.2.2.2. Analysis of Honour Killings: Articles 2 (c) (e) and 16 (1) of the CEDAW ...	83
3.2.2.3. Analysis of Honour Killings: Articles 2(f) and Article 5(a) of the CEDAW.	88
3.2.3. A Conceptual Study of the ‘Due Diligence’ Principle	91
3.2.3.1. The Principle of ‘Due Diligence’ in the Context of International Human Rights Law	94
3.2.3.2. The Standard ‘Due Diligence’ to Address Honour Killings.....	97
3.2.3.3. Evaluating the CEDAW Committee’s Communications on VAW	100
3.3. The Istanbul Convention: A New Instrument to Eradicate Violence against Women	104
3.3.1. The Process of Adopting the Istanbul Convention	106
3.3.1.1. An Inclusive Strategy for the Way of Adopting of the Istanbul Convention: Rec (2002)5.....	108
3.3.1.2. Last Stage of Adopting the Istanbul Convention: The Task Force	110
3.3.2. The Principles of Equality and Non-Discrimination in the Istanbul Convention	112
3.3.2.1. The Istanbul Convention and the CEDAW	113
3.3.2.2. The Istanbul Convention and the ECHR.....	116
3.3.3. The Principle of ‘Due Diligence’ in the Context of the Istanbul Convention....	118
3.3.4. ‘Honour Killings’ within the Istanbul Convention Framework	122
3.3.4.1. General State Obligations to Prevent Honour Killings	125
3.3.4.2. The Unacceptable Justifications for Crimes Committed in the Name of ‘Honour’	127
3.3.4.3. Protecting Women and Girls at Risk of Honour Killings	131
3.3.4.4. Feminist Critiques of Articles 12 and 42 of the Istanbul Convention	133
3.3.5. GREVIO as a Strong Monitoring Mechanism.....	134
3.4. Conclusion	137
Chapter 4:	139

The Challenges of the Turkish Legislation on ‘Honour Killings’ Prior to Ratification of the Istanbul Convention.....	139
4.1. Introduction	139
4.2. The Turkish Legal Framework.....	140
4.2.1. The Constitution of the Republic of Turkey	140
4.2.2. The Turkish Civil Code.....	147
4.2.2.1. Challenges of the ‘Age for Marriage’	150
4.2.2.2. Challenges of the ‘Family Name’	152
4.2.3. The Family Protection Law	153
4.2.3.1. Challenges of Law No. 4320	156
4.2.3.2. The State’s Reluctance to Act with Due Diligence to Enforce Law No. 4320	159
4.2.4. The Turkish Penal Code	163
4.2.4.1. The Previous Turkish Penal Code (TCK).....	163
4.2.4.1.1. Discriminatory Provisions on Women’s Sexuality	164
4.2.4.1.2. Sentence Reductions for Murderers of Honour Killings	166
4.2.4.2. A Step Forward to Promote Gender Equality: The Revised TCK	170
4.2.4.2.1. A Step Back: Discriminatory Provisions on Women’s Sexuality	171
4.2.4.2.2. Limitation of Ruling Crimes Committed in the Name of ‘Honour’	173
4.2.4.2.2.1. Vagueness of Terminology: Honour (Namus) and Custom (Töre) Crimes.....	174
4.2.4.3. Inconsistent Interpretation of ‘Honour Killings’ by the Supreme Court of Appeals.....	177
4.2.4.3.1. Sole Criterion: The ‘Family Council Decision’ regarding ‘Honour Killings’	178
4.2.4.3.2 ‘Unjust Provocation’ to ‘Honour Killings’	181
4.2.4.4. Female Suicides in the Name of ‘Honour’	185
4.3. Fragile Measures: The Government’s Circulars on Honour and Custom Killings	188
4.3.1. Prime Ministry’s Circular	188
4.3.2. The Ministry of Internal Affairs Circular.....	190
4.3.3. Limitations of Implementing the Circulars.....	192
4.4. Conclusion	194
Chapter 5:	196
Legal Implications of Turkey’s Accession to the Istanbul Convention: Challenges to Preventing ‘Honour Killings’	196
5.1. Introduction	196
5.2. The State’s Significant Step: Strengths of the Law to Protect Family and Prevent Violence against Women.....	197
5.2.1. Strength No. 1: Aim and Scope of Law No. 6248.....	197
5.2.2. Strength No. 2: Definitions in the Context of Law No. 6248.....	201
5.2.3. Strength No. 3: Protective Measures for Victims	204

5.2.4. Strength No. 4: Preventive Measures.....	208
5.2.5. Strength No. 5: Preventive Imprisonment.....	211
5.2.6. Strength No. 6: Violence Prevention and Monitoring Centres (ŞÖNİM)	214
5.2.7. Strength No. 7: Adopting Victim-Reporting Processes.....	216
5.3. Weaknesses of the Law to Protect Family and Prevent Violence against Women .	219
5.3.1. Challenges to the Women’s Role	219
5.3.2. Challenges to ‘Vulnerable Women’	221
5.3.3. Challenges to the Eradication of So-called ‘Honour Killings’.....	222
5.3.4. Omission to Prohibit Mandatory Alternative Dispute Resolution.....	224
5.4. The Implementation Gap.....	228
5.4.1. Reporting on the Implementation Gap.....	228
5.4.2. The State’s Reluctance to Exercise Due Diligence to Protect Women at Risk of Death	232
5.4.3. Ineffective Training of Law Enforcement Officers on VAW	233
5.5. Judicial Interpretation and ‘Honour Killings’: Continuing Inconsistency	237
5.5.1. Juvenile Criminal Liability in So-called ‘Honour Killings’	237
5.5.2. Recognition of the Vague Terminology of Article 82(k) of the TCK.....	239
5.5.3. A New Criterion on ‘Honour Killings’	241
5.6. Contrasting State Policy: ‘Women’s Role in Family’ v. ‘Gender Equality’	246
5.7. Conclusion	248
Chapter 6:	249
Recommendations and Conclusions	250
6.1. Introduction	250
6.2. Legislative Additions to the Turkish Penal Code	252
6.3. Legislative Additions to the Law to Protect Families and Prevent VAW	253
6.4. Adoption of Effective Training for Law Enforcement on Gender Equality and VAW	254
6.5. Establishment of Special Task Force Police Units to Combat ‘Honour Killings’ ...	254
6.6. Establishment Special Women Killings Investigation Units	255
6.7. Striving for a Strong Political Will to Eliminate Gender Stereotypes and Patriarchal Attitudes	256
6.8. Strengthening Cooperation between the State and Women’s Rights NGOs	256
6.9. Final Remarks.....	257
BIBLIOGRAPHY	258

List of Abbreviations

ACHR - American Convention on Human Rights

BIANET - Independent Communication Network

CAHVIO - Ad hoc Committee on Preventing and Combating VAW and Domestic Violence

CEDAW - Convention on the Elimination of All Forms of Discrimination against Women

CoE - Council of Europe

Convention of Belém do Pará - Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women of 1994

DEVAW - Declaration on the Elimination of Violence against Women

ECHR - European Convention on Human Rights

ECtHR - European Court of Human Rights

ESI - European Stability Initiative

EU- European Union

GR – General Recommendation

GREVIO - Group of Experts on Action against VAW and Domestic Violence

IACtHR - Inter-American Court of Human Rights

ICCPR - International Covenant of Civil and Political Rights

ICERD - International Convention on the Elimination of All Forms of Racial Discrimination

ICESCR - International Covenant on Economic, Social and Cultural Rights

Istanbul Convention - Council of Europe Convention to Prevent and Combat Violence against Women and Domestic Violence

KAMER - Women's Centre NGO

KSGM - General Directorate of Women's Status

Maputo Protocol - The Protocol to the African Charter on Human and People's Rights on the Rights of Women

NGOs - Non-Governmental Organisations

PACE – Parliamentary Assembly of Council of Europe

ŞÖNİM - *Şiddet Önleme ve İzleme Merkezi* /Violence Prevention and Monitoring Centres

TBMM – Turkish Grand National Assembly

TCK – Turkish Penal Code

UDHR – Universal Declaration of Human Rights

UN – United Nations

UNFPA - United Nations Population Fund

UNGA - United Nations General Assembly

UNHRC – United Nations Human Rights Committee

UNTS – United Nations Treaty Series

WAVE - Women against Violence Europe

VAW – Violence against Women

Acknowledgements

I am very thankful to Almighty Allah through whose mercy this thesis has been completed.

I wish to express my sincere gratitude to my supervisors, Professor Alexandra Xanthaki, Eleni Polymenopoulou and Professor Javaid Rehman for providing me with constant guidance at each step of the academic journey.

Alexandra Xanthaki, thank you for your precious guidance and support as a supervisor and a friend for giving me your priceless supervision with patience at all times. Without your guidance and constant feedback this PHD would not have been achieved.

I wish to express my very special thanks and deep appreciation to my devoted mum and dad for their endless love, support, and encouragement. I am also very thankful to my siblings: Aynur, Gokcen, Mustafa Oguz and my brothers-in-law: Levent and Yucel for supporting me spiritually throughout writing this thesis.

I am especially thankful to my beloved one, Alper for your caring support and constant encouragement for my work. You are always there cheering me up and convincing me to see the brighter side of things.

Many thanks to my friends Caglar, Meltem, Serkan, Zeynep, Reza, Rafia, Dr. Maizatul Farisah, Dr. Rim, Dr. Cansu Aykota, Sercan, Yasemin, Ertugrul and Gamze for your endless support and encouragement throughout my PhD journey.

I gratefully acknowledge the funding received towards my PhD (4 years) from Republic of Turkey Ministry of National Education. Additionally, I am indebted to the School of Law at Brunel University for their support and assistance.

Chapter 1: Introduction

1.1. Introduction

As a very specific phenomenon of violence against women (VAW), ‘honour killings’ occur from the domicile to the trans-national arena in the everyday and every night lives of women all around the world.¹ According to the United Nations Populations Fund (UNFPA), as many as five thousand women and girls are killed in the name of ‘honour’ throughout the world every year.² A “plague that affects every country”,³ honour killing is most prevalent in the Middle East and South Asia; reports from Latin America and Europe are less common but they do happen. Turkey has so far failed to adequately prevent honour killings despite taking significant measures to address this phenomenon.⁴ The situation of ‘honour killings’ in Turkey, therefore, is under international scrutiny in order to eradicate such practice in line with the obligations of the Convention on the Elimination of All Forms of Violence against Women (CEDAW) and the Council of Europe Convention on preventing and combatting violence against women and domestic violence (Istanbul Convention).

Honour killing is gender-based VAW within the family⁵ that results to a violation of human rights—it entails murdering a daughter or wife within a family when she is perceived to have devastated the reputation or honour of the family.⁶ The victims are mostly women and girls because society, or a portion of it, has a strong belief that a woman’s ‘misbehaviours’, such as adultery, divorce, rape, and sexual violation, abuse the family dignity.⁷ It is accepted that the

¹ Yakin Erturk, ‘Violence in the Name of Honour within the Context of International Regimes’, in Shahrzad Mojab and Nahla Abdo (eds.), *Violence in the Name of Honour: Theoretical and Political Challenges* (Istanbul: Istanbul Bilgi University Press, 2006) 166.

² United Nations Population Fund, ‘UNFPA in the News: Killings in the Name of Honor’ (11–17 December 2004) <<http://www.unfpa.org/news/coverage/december11-17-2004.htm>> accessed: 12/11/2014.

³ It is stated by UN High Commissioner for Human Rights Navi Pillay, UN News Centre, ‘Impunity for domestic violence, ‘honour killings’ cannot continue’ (2010) *UN News Centre* <http://www.un.org/apps/news/story.asp?NewsID=33971#.WOuuoFKZP_Q> accessed 23/03/201

⁴ UN Committee on the Elimination against Women, ‘Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey’ (2016) CEDAW/C/Tur/Co/7 (25 July 2016) para. 34; Amnesty International ‘Turkey: Women Confronting Family Violence’ (June 2004) 17, <<https://www.amnesty.org/download/Documents/96000/eur440132004en.pdf>> accessed: 4/11/2014.

⁵ Nicole Pope, ‘Honour Killings: Instruments of Patriarchal Control’, in Shahrzad Mojab and Nahla Abdo (eds.), *Violence in the Name of Honour: Theoretical and Political Challenges*, (Istanbul: Istanbul Bilgi University Press, 2006) 102.

⁶ Lama Abu-Odeh, ‘Crimes of Honour and the Construction of Gender in Arab Societies’, in Mai Yamani (ed.), *Feminism and Islam: Legal and Literary Perspectives* (New York University Press, 1996) 141-194.

⁷ Sharon K. Araji, ‘Crimes of Honor and Shame: Violence against Women in Non- Western and Western Societies’ (2000) 8 *The Red Feather Journal of Postmodern Criminology*, <<http://www.critcrim.org/redfeather/journal-pomocrim/vol-8-shaming/araji.html>> accessed: 12/03/2016.

so-called ‘honour killings’⁸ are the most extreme practice of the patriarchal mechanism.⁹ ‘Honour’ is used as an excuse and justification for men to wield control over women’s social, familial, and sexual roles, and is dictated by a traditional family ideology.¹⁰ In many cases female victims are subjected to virginity examinations, forced/arranged marriages, and early marriages; when they fail these examinations or reject these marriages, women/girls are killed in the name of ‘honour’.¹¹ Hence, the crime is committed because of the patriarchy that upholds a social system in which the man holds significant power and privilege while the rights of women are often constrained. As a form of gender-based violence, so-called ‘honour killings’ are often described as an extreme form of honour-based violence¹² that violates women’s human rights.¹³

This research attempts to evaluate the relationship between so-called ‘honour killings’ and international human rights law, particularly the Istanbul Convention, using feminist-legal and intersectionality perspectives and focusing on Turkey. Studying the role of gender equality in Turkey in order to make suggestions for establishing stronger legal protection for women against violence will hopefully contribute to preventing women’s subordination under institutionalised male power and women’s killings committed in the name of ‘honour’.

1.2. Scope and Purpose

Recent discussions of women’s killings in the name of ‘honour’ in Turkey have been held by the national and international women’s rights organisations on violence against women (VAW) in the international human rights law framework. However, the issue has been a long-

⁸ Honour is a positive term and thus cannot be used as a justification for violating women’s rights. I will sometimes refer honour killings as ‘so-called’ to imply the absence of ‘honour’ in these crimes. This is also preferred to use so-called “honour” by the UN, the Council of Europe and women’s organisations. See: Council of Europe Parliamentary Assembly, ‘So-called Honour Killings’, Resolution 1327 (2003).

⁹ Nicole Pope, ‘Honour Killings: Instruments of Patriarchal Control’, in Shahrzad Mojab and Nahla Abdo (eds.), *Violence in the Name of Honour: Theoretical and Political Challenges* (Istanbul: Istanbul Bilgi University Press, 2006) 102.

¹⁰ UNCHR, ‘Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences: Integration of the Human Rights of Women and the Gender Perspective Violence against Women’ (10 March 1999) UN doc. E/CN.4/1999/68, para.18.

¹¹ Sara Hossain and Lynn Welchman, ‘Introduction: ‘Honour’, Rights and Wrongs’, in Sara Hossain and Lynn Welchman (eds.), *‘Honour’: Crimes, Paradigms, and Violence against Women* (London & New York: Zed Books 2005) 4-5.

¹² Honour-based violence is defined as any ‘actual, attempted or threatened physical harm, including forced marriages, with honour as the motive’. It therefore includes early and forced marriages, coerced suicide, female genital mutilation, the sisters and daughters being sold into slavery, the deprivation of freedom, education, or friendship. Aisha Gill, ‘Patriarchal Violence in the Name of ‘Honour’’ (2006) 1(1) *International Journal of Criminal Justice Sciences* 1.

¹³ United Nations General Assembly (UNGA) ‘Global Violence against Women in the Name of ‘Honour’ (February 2014) Human Rights Council, 25th Session, A/HRC/25/NGO/X. <https://iheu.org/newsite/wp-content/uploads/2014/03/433_A_HRC_25_NGO_Sub_En_IHEU_Honour.pdf> accessed: 23/09/2015.

standing one and the so-called ‘honour killings’ in Turkey have been on the international human rights law agenda since 2000s.¹⁴

This research is based on the hypothesis that despite Turkey’s positive recent attempts to eradicate so-called ‘honour killings’, legislative and other initiatives are weakened by prevailing cultural stereotypes and perceptions—the latter constituting the main hindrances to the application of legal provisions that prioritise women’s right to life and gender equality. The foremost intention of this thesis is to prove this hypothesis and proceed to making practical recommendations for eliminating the obstacles to eradicating VAW in Turkey, particularly the so-called ‘honour killings’.

1.3. Objectives/Aims of Research

This research aims primarily to consider women’s rights, freedom from violence, and in particular honour killings in the context of Turkey. It will do so by analysing some of the principal national and international human rights laws, and ascertaining and evaluating the gaps in the conceptualisation of gender equality and due diligence within the domestic and international legal frameworks. This thesis is timely because of the many recent improvements in the prevention of VAW and honour killings at the national and international level.¹⁵ The main argument underpinning the thesis is that the uplifting of the status of women in coherence with the principle and standards of gender equality and the principle of the state due diligence applied on so-called honour killings, are fundamental means towards eradicating the killing women in the name of ‘honour’.

This research also seeks to identify the recent obstacles to preventing so-called ‘honour killings’ by looking at the effects of the international human rights law agenda on the development of women’s rights and the importance of the combatting VAW in Turkey. This thesis maintains that the universal women’s rights discourse is an invaluable basis for challenging discriminatory and oppressive social norms. It aims to illustrate the relevance of this discourse for Turkish women in their consistent struggle for equality and to be free from all discriminatory practices, particularly ‘honour killings’.

Crucially, the thesis argues that the Istanbul Convention, which mainly prioritises the principle of gender equality and the due diligence duty of State law enforcement practitioners,

¹⁴ UNGA Resolution 55/66, ‘Working towards the Elimination of Crimes Committed in the Name of Honour’ (31 January 2001) UN doc. A/RES/55/66.

¹⁵ These comprise the Istanbul Convention (2014) at the international level, and the Turkish Penal Code 2005, and the Law to Protect Family and Prevent VAW (2012) at the domestic level.

has been an important helping hand for Turkey and its policy on the prevention honour killings as gender-based VAW. This approach highlights Turkey's determination to combat VAW by ratifying the Istanbul Convention, by enacting the Law to Protect Family and Prevent VAW, and by examining the legal developments adopted through the contributions of the international law and women's rights NGOs. Some of the strengths and weaknesses of the Law to Protect Family and Prevent VAW, advocates integrating and responding to gender-related issues in a more detailed gender-sensitive manner within a feminist lens since Turkey is obliged to follow a majority of key international human rights treaties.¹⁶

However, a fundamental goal of this research is also to identify and isolate the shortcomings in the Turkish Penal Code and Law to Protect Family and Prevent Violence against Women that prevent their full compliance with the Istanbul Convention. This thesis therefore substantiates the need for amendments to develop a robust legal infrastructure for preventing women killings in the name of 'honour'. To delineate the current situation in Turkey, the research uses well-regarded international statements, including the CEDAW Committee Observation Reports, Shadow NGOs reports, CEDAW Committee Communications, women NGOs' reports and views, European Commission progress reports, legal amendments initiated by the process for EU membership and continued by the Istanbul Convention, national and ECtHR jurisprudence, and academic discussions.

1.4. Contribution to Knowledge

The thesis identifies and discusses the obstacles in the domestic and international prevention systems against so-called 'honour killings' by evaluating such systems and their inter-relation. Importantly, this thesis is filling the gap in the legal literature on the prevention 'honour' killings in Turkey after the adoption of the Istanbul Convention. I see honour killings as part of a wider issue of women's subordination and I analyse this using a range of legal and international feminist perspectives and being informed by sociological approaches. I have chosen this approach to the existing literature to emphasise how so-called 'honour killings' are a form of gender-based violence arising from the roots of the gender inequality between women and men and the prevailing male-dominated mentality in Turkish society.

The Turkish State's failure to examine its due diligence duty regarding the prevention, protection, and prosecution of all forms of VAW and its application is one of the main challenges in eliminating so-called 'honour killings'. Another challenge for the Turkish state

¹⁶ Such as CEDAW, ICERD, ICCPR, and ICESCR, available at: http://www.bayefsky.com/pdf/turkey_t1_ratifications.pdf accessed: 13/08/2016.

has been its failure to see honour killings as a form of gender-based violence with links to multiple and intersecting forms of discrimination in the country. This intersectionality within feminist-legal approach therefore offers a comprehensive evaluation of international instruments, related women's rights (CEDAW and Istanbul Convention), and Turkish legal provisions that adopted international standards to prevent violations of women's rights. In view of this evolution, the research offers relevant suggestions for legal amendments designed to change the male-dominated traditional mentality in the institutions and also to make the prevention of 'honour killings' in Turkey as a one of requirements of the Istanbul Convention.

1.5. Structure of the Thesis

Chapter 1 presents the overall scope of the thesis, its significant components, and the proposed contribution of the research.

Chapter 2 focuses on the preferred specific theoretical frameworks of 'honour killings'. The chapter will analyse the so-called 'honour killings' through the lens of feminist-legal theory in international human rights law. This analysis considers three main themes: 1) the discrimination between women and men reviewed from liberal feminist perspectives, 2) the root of male domination/patriarchy analysed using radical feminist patterns, and 3) the experiences of violence against women that are multiple, fluid, and unstable by applying poststructuralist feminist legal theory.

Feminist critiques of international human rights comprise three issues:

- international human rights established as 'male' rights.
- international law, which runs in the public, male world, eliminates 'private' concerns; therefore, violence against women is seen as 'private' concern.
- the issue of *essentialism* is introduced by third-wave feminists, who accuse Western feminists and international human rights bodies of essentialising women in their own image as white, Western, and heterosexual, and of over-sensationalising cultural practices, such as honour killings.

This section will demonstrate how these critiques of international human rights law have fed Turkish feminism. The concept of 'honour killings' in Turkey is defined under the concept of 'custom/töre killings', which raises the question of specifying honour killings in the Kurdish culture. I will employ the intersectionality approach to help identify how some women, for

instance Kurdish women in Turkey, are more vulnerable to violations of women's rights, such as honour killings, because of traditional patriarchal family units, their ethnicity, and gender.

Chapter 3 explores the main issues underpinning the phenomenon of 'honour killings', discussing the reasons why it is a violation of many human rights and analysing how this phenomenon of so-called honour killings came to the attention of the UN. The act of honour killing entails discrimination against women as a private matter rather than public problem; this means that its analysis requires a feminist critique.

This thesis will analyse the obligations to construct equality between women and men and to exercise the State's due diligence duty as a positive obligation to address 'honour killings' in line with the contexts of the CEDAW and the Istanbul Convention. I will argue that the Istanbul Convention brings more detailed global standards to combatting and preventing VAW by regulating 'honour killings' as a specific provision (Article 42) that further develops the CEDAW Convention principles and standards.

Singling out the reasons of honour killings as merely symptoms of religion or culture has led feminist critics to the Istanbul Convention. Therefore, Chapter 3 concludes that the Istanbul Convention mirrors all UN core treaties, especially the CEDAW and its General Recommendations; yet, it offers more detailed standards to combating and preventing all forms of VAW, in particular so-called 'honour killings', by enumerating, complementing, and reinforcing global CEDAW principles.

Chapter 4 discusses the Turkish legal framework regulating 'honour killings' before the ratification of the Istanbul Convention. It looks into the posed by first the Turkish Constitution, then the Turkish Civil Code, the Family Protection Law, and the Turkish Penal Code prior to the ratification of the Istanbul Convention. Assessing the application of the legislation before the legal amendments allows the comparison before and after the Istanbul Convention and the evaluation of the legislation within the Turkish feminist lenses.

The vague language is one of the main obstacles to the effective application of the Turkish Penal Code; this will be demonstrated in case studies of the judicial review which indicates the need for clarification of vagueness sounding the concepts of 'honour killings' and 'töre/custom killings', which are regulated by the Turkish Penal Code—the effects of this vagueness are evident in the inconsistent interpretation of judgements on killings committed in the name of 'honour'. This is a matter of concern in CEDAW reports, EU progress reports,

and ECtHR judgements on Turkey in line with the principles of equality and non-discrimination and the duty of ‘due diligence’.

I argue that, despite Turkish Legislation regulated to prevent ‘honour killings’, the societal challenges have prevented the efficacy of the law before the ratification of the Istanbul Convention.

Chapter 5 critically examines the legal implications of Turkey’s accession to the Istanbul Convention with the challenges of preventing so-called ‘honour killings’. I will analyse the Law to Protect Family and Prevent VAW enacted in 2012, and will discuss its compatibility with the Istanbul Convention.

This chapter zooms into the influence of the Istanbul Convention on the Turkish legislation to combat VAW. It therefore interrogates the violations of women’s gender equality guaranteed by the Constitution and the violations of state law enforcement officers’ due diligence duty (preventing honour killings, protecting women’s life at risk, and punishing defendants who committed VAW in the name of ‘honour’) guaranteed by the Law to Protect Family and Prevent VAW and the Turkish Penal Code.

I will advocate for the need for further legal amendments and the need to eliminate the male-dominated mentality of the all areas of the State institutions and society by instituting effective training as a means of adopting and translating the improvements of the Istanbul Convention into sustainable action.

Chapter 6 is a conclusion that offers applicable suggestions constructed on the theoretical and practical applications based on the four main chapters back; it also presents a brief summary of the thesis. In the **Conclusions**, I introduce practical recommendations based on the foundations of my feminist analyses in the main chapters. Assessing the significance of substantial legal reform to eliminate honour killings is an obligation imposed by the Istanbul Convention. Making amendments to the Turkish Penal Code—including the term of ‘honour killings’ as an unacceptable justification and the motive of ‘honour’ as an aggravating circumstance—will prevent the inconsistent interpretations by the judiciary of women killings committed in the name of ‘honour’. Instituting effective training to law enforcement personnel and forming a special police task to combat and investigate ‘honour killings’ throughout Turkey will indicate the political will to eliminate honour killings.

1.6. Research Methodology

Obstacles to preventing the violation of women's human rights constitute not only a legal fact but also a phenomenon that is socially entrenched.¹⁷ This analysis is driven by a doctrinal methodology underpinning this thesis, so it focuses on the first aspect but is also informed by the second aspect.

Doctrinal methodology posits that the keys and answers to every legal problem may be obtainable in the fundamental logic and structure of rules that can be revealed by examining the relevant legal instruments. The doctrinal methodology analyses, evaluates and assesses the legal norms pertaining to each challenge. Here, I will apply the doctrinal methodology in my evaluation of legal provisions in the CEDAW, the Istanbul Convention, the Turkish Constitution, the Turkish Civil Code, the Law to Protect Family and Prevent VAW, and the Turkish Penal Code. The objective of this approach is not only to categorise and define the legal rules as main legal sources, nor only to identify the core issues in the Turkish legislation which affects women's right to life, but most importantly, to find the weaknesses of both the law and its implementation that results in the inability to eliminate women killings in the name of 'honour'.

This thesis uses international rules of statutory interpretation as set forth in Article 31-33 of the Vienna Convention on the Law of Treaties (VCLT).¹⁸ Article 31 of the VCLT introduces to three forms of interpretation: literal or textual interpretation, systematic or contextual interpretation and a teleological interpretation that focuses on the object and purpose of a treaty.¹⁹ I will use all three forms of interpretation to analyse the instruments. I will analyse the texts and language of the relevant instruments. I will also use the context, the sociological background on the basis of which these texts were adopted and created and implemented.

Finally, particular emphasis will be given to the teleological interpretation method, as I will identify the purpose and the objective of the international agreements (such as CEDAW and the Istanbul Convention for this research) and of the impact of this purpose on the interpretation of its proper law.

The aim of this later approach is to interpret a treaty in a way that gives scope to the

¹⁷ Shazia Qureshi, 'Research Methodology in Law and Its Application to Women's Human Rights Law' (2015) 22(2) *Journal of Political Studies*, 634.

¹⁸ The Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT).

¹⁹ Antonio Cassese, *International Law* (2nd Edition, Oxford University Press 2005) 179.

fundamental reason or problem it was supposed to address.²⁰ Swart points out that “the ‘object and purpose’ criterion is intertwined with the principle of effectiveness and specifically with ‘la regle de l’efficacite’”, i.e. the rule that the instrument as a whole, and each of its provisions, must be taken to have been intended to achieve some end and that an interpretation that would make the text ineffective to achieve the object in view is *prima facie* suspect.”²¹ The teleological interpretation in this analysis assesses the application and implication of statutes, legal documents, international conventions (the CEDAW and the Istanbul Convention), and Turkish and ECtHR jurisprudence. This research also evaluates the Istanbul Convention and its application of the Turkish legislation regarding the prevention of VAW, the protection of women from violence, and the prosecution of offenders committing ‘honour killings’. Entailing a systematic study of the evolution of the statutory provisions using doctrinal research and applicable legal concepts, this approach serves to ascertain and pinpoint the efficacy of these laws and thereby determine if there any loopholes existing in the past and current laws in answering ‘honour killings’.

It is crucial for feminist critiques of international law to “employ a doctrinal approach to clarify the nature of law before proceeding to critique its strengths and weaknesses”.²² Therefore, based on my research question, teleological interpretation is useful in analysing ‘object and purpose’ of the current national and international laws and policies to reach better recommendations regarding the the protection of women against violence and the prevention of honour killings in Turkey; these perspectives help us better understand the different forms of women’s rights violations and measure the role of legal intervention in the international arena. I therefore aim to delineate the precise impact of the law in action on the role of policy of the State in relation to its obligation under international law to prevent honour killings in Turkey. Analysing the consistency between the language of the law and its application exposes a failure of the Turkish judiciary to adopt the feminist-legal and human rights approaches. This approach also provides a basis for recommending legal amendments and a transformation toward a more rights-based implementation of the law in concert with the international human rights approach.

²⁰ David J. Bederman with Christopher J. Borgen and David A. Martin, *International Law: A Handbook for Judges* (American Society of International Law 2003).

²¹ Mia Swart, ‘Is There a Text in This Court? The Purposive Method of Interpretation and the ad hoc Tribunals’ (2010) 70 *ZAORV* 767, 781, cited in E. Papastavridis, ‘Interpretation of Security Council Resolutions Under Chapter VII: In the Aftermath of the Iraq Crisis, (2007) 56 *ICLQ* 103.

²² Tamara Hervey, Robert Cryer, Bal Sokhi-Bulley, Alexandra Bohm, *Research methodology in EU and international law* (UK: Hart Publishing, 2011).

1.7. Advantages and Limitations

Doctrinal legal research, which includes analysis of legal concepts, principles, and doctrines, affords the researcher with practical tools for the analysis of legislation, case-law, statutory provisions, and judicial statements into a consistent body of doctrine.²³ Moreover, it provides a streamlined understanding of law, legal concepts, and legal processes in a way that facilitates the exposure of (in)consistencies, loopholes, gaps, and ambiguities in substantive law and the proposal of recommendations for amending or replacing the law. In light of my analysis of so-called ‘honour killings’, the compatibility between the Turkish legislation and the Istanbul Convention establishes a solid foundation for revealing these gaps and proposing amendments within the feminist-legal theoretical discussions of international law.

The thesis takes as its fundamental starting point that the principles of equality, non-discrimination, and the standard of ‘due diligence’ are inherent values in labelling honour killings as gender-based violence. Accordingly, my analysis emphasises the gaps between the legislative aims and the social reality, although it is not socio-legal research per se. The poor implementation of the law reveals judicial passivity and ineffectiveness of law enforcement officers in preventing VAW, particularly honour killings. Although this research also indirectly evaluates legal frameworks of other countries where women suffer honour killings, this thesis focuses on Turkey’s legal framework. Moreover, men killed in the name of ‘honour’ are not under consideration in this research. Men, especially homosexual males, are also killed in the name of honour, but it is women who are mostly killed in the name of ‘honour’. Thus, the research only directly evaluates women and girls’ honour killings rather than men’s honour killings under the scrutiny of gender inequality in patriarchal/male-dominated mentality of Turkish communities.

The research does not conduct empirical research on the data of honour killings. Instead, it relies on data provided by international and national advocacy groups and state’s statistics, such as UNFPA, Amnesty International, Turkish Presidency Statistics, and the Ministry of Family and Social Policies’ Research on VAW. However, as this thesis does not employ a quantitative method to study the problem of prevent honour killings, the matter of obtaining correct statistics, though significant, is not the main purpose of this research. Rather, the premise of this thesis focuses on the analysis and the efficiency of Turkey’s Legislation in

²³ Khushal Vibhute and Filipos Aynalem, *Legal Research Methods* (Justice and Legal System Research Institute, 2009) 81-82.

eliminating women's honour killings to illustrate the weaknesses of national law and its compatibility with the Istanbul Convention.

This thesis does not purport to identify directly every manifestation of the reasons for honour killings, such as religion. Thus, the research directly applies a feminist-legal approach to identify the relationship between women's subordination and male domination in the Turkish patriarchal family units—a relationship that can be traced to the implications of Turkish legislation.

It is noteworthy that most statutory provisions in the Turkish Legislation in relation to violence against women and honour killings and the books dealing with this crime in Turkey are fortunately written in English. However, most books, cases, parliament commission debates, and reports on honour killings are only available in Turkish. Therefore, English translations of the Turkish texts have been undertaken by the author of this thesis.

I have got interested in this topic while doing LLM at University of Sussex. I chose 'Women's Rights and International Human Rights Law' module which broadened my horizons on the women's positions and touched on the practice of honour killings. Honour killings are very top topic in the last two decades in Turkey, because almost every day, people read 'woman killed in the name of honour by their husband, father or male relative' in newspapers and in the news. Focusing on this issue seems rather personal, as I myself am a woman in a country where such practice is still on-going. I have been raised in a state with traditional values, so the feminist approaches were particularly of interest to me. At the same time, honour killings were always viewed as happening in a very specific culture, different to the mainstream culture; hence the difference between passion killings and honour killings. This research challenged my own understandings and confronted my own prejudices. It was hard for me to be critical of my own state in international for a where I was asked difficult questions: "Does Turkey criminalise honour killings?" or "Do most honour killings happen in the Kurdish community?" or "Does Turkey implement the laws despite taking preventive measures to eliminate such crimes?" or "Does Turkey enforce international law obligations on the elimination of such crimes?" or more particularly, "Whether patriarchal culture of Turkey is supported by the government?". In this study, I have tried to address all such questions and have been faced with the on-going challenges women still face in Turkey from patriarchal male-dominated mentality which is still supported by both the society and the state. At the same time, being a researcher researching about my own identity had its strengths: I know

how the legal system operates; in fact, I have a law degree and know the sources of domestic law. I also speak the language which has been invaluable for this research.



Chapter 2: Theoretical Framework:

Analysis of ‘Honour Killings’ in the Context of Feminist-Legal Theory

2.1. Introduction

Feminist-legal theories are important for this research as so-called ‘honour killings’ are gender-based discrimination against women and girls. This chapter will examine so-called ‘honour killings’ through the feminist lenses and critiques of international human rights law and Turkish feminism by applying the intersectionality approach. The exclusion of women’s rights and their voices from international human rights standards, processes, and institutions is the main concern of feminist-legal theory. Although feminist scholars agree that addressing the concerns of women’s rights could be done more under international human rights law, they have agreed less on the reasons for women’s exclusion and how the system could be reformed to be more inclusive, or even whether it is capable of being transformed.²⁴ Hence, the fundamental aim is to empower women by challenging unequal power relations in society.

The feminist theories on international human rights perspectives are categorised differently by various feminist scholars. Karen Engle categorises feminist theory in three stages: liberal inclusion (1985–1990), structural bias (1987–1995), and Third World feminist critiques.²⁵ In contrast, Charlesworth and Chinkin split feminist theories of law into five categories: liberal, radical, cultural, postmodern, and third world feminism.²⁶ I will first review the main feminist legal theories (liberal, radical and poststructuralist feminism) in relation to ‘honour killings’ and then focus on feminist critiques of international law. Applying the intersectional theory to supporting the feminist-legal theory and the international human rights approach supports the notion of honour killing as a form of gender-based violence shaped within the intersections of the race, age, gender, sexual orientation, religion, culture, tradition, ethnicity, and class.

The second part of this chapter examines so-called honour killings in the context of the Turkish women’s movement and feminism in the context of violence against women. My

²⁴ Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge University Press, 2010) 36.

²⁵ Karen Engle, ‘International Human Rights and Feminisms: When Discourses Keep Meeting’, in D. Buss and A. Manji (eds.), *International Law: Modern Feminist Approaches* (Oxford: Hart Publishing 2005) 47.

²⁶ Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000) Chapter 2.

theoretical framework employs the main feminist theories as the basis of my original contribution to the discourse on VAW and particularly honour killings in Turkey.

2.2. Feminist-Legal Analysis of So-called ‘Honour Killings’

I have chosen these three aspects of feminism (liberal, radical, and poststructuralist feminism) because they are the most widely applied and relevant to the concept of so-called honour killings for my research:

- 1) **liberal feminism** explains the abuse of the principle equality/non-discrimination between women and men as a fundamental reason for women’s killings in the name of honour.
- 2) **radical feminist norms** explain male supremacy/domination or patriarchy as the root of gender inequality in the honour-based societies.
- 3) **poststructuralist feminism** addresses the varied manifestations of honour killings in different honour-based communities throughout the world because of its refusal to accept universal standards and values and singular truths in favour of multiple narratives related to individuals’ unique experiences.

2.2.1. Equality in Human Rights: Liberal Feminism

As the first wave of feminism, liberal feminism has had a key role in questioning and criticising the numerous bases of inequality and is concerned with the fight for equal rights between women and men. As rational and autonomous beings, men and women should be treated equally. Because women and men have equal capabilities for rational thought and action, any status-based discrimination founded on the statement that “women are less capable than men is irrational and unfairly discriminatory” for liberal feminists.²⁷ Women should not be excluded from training that capacity in professional work and political life by being restricted to the domestic sphere under the authority of their husbands; women should also “have equal rights with men to education and access to training and work, to the representation of their political interests by means of vote, and to personal autonomy with rights over property, divorce etc.”.²⁸

²⁷ Margaret Davies, ‘Unity and Diversity in Feminist Legal Theory’ (2007) 2(4) *Philosophy Compass* 650, 653.

²⁸ John S. Mill, ‘On Liberty with the Subjection of Women’ in Stefan Collini (ed.), *J. S. Mill on Liberty and Other Writings*, (Cambridge: Cambridge University Press 1989), cited in Kate Nash, ‘Liberal Feminism’, Lorraine Code (ed.) *Encyclopedia of feminist theories* (Routledge 2002) 302-305.

The aim of liberal feminism in international law is to include women in human rights protections guaranteed under international law in order to obtain equality with men in all areas of human endeavour.²⁹ Liberal feminists maintain that “women were protected from rape in armed conflict by humanitarian law of law, protected from domestic violence and clitoridectomy by international human rights law, and guaranteed economic and social rights such as right to health”.³⁰ The understanding among liberal feminists is that the subordination of women is instigated by legal and social obstacles that prevent them from accessing the public sphere of politics and economics; they demand that the doctrines of universal human rights and equality are upheld and call for the equal treatment of women and men.³¹ They demand the change of the law and the “dismantling” of “legal barriers to women being treated like men in the public sphere, and they criticise any legal recognition of ‘natural’ differences between women and men”.³² If each of the tenets of inclusion in the doctrine is not being used to protect women’s rights, the reason is not a lack of law but a lack of enforcement.³³

Liberal feminist-legal theorists’ aim is to accomplish equality and fair treatment between women and men in the public sphere, namely “political participation and representation and equal access to and equality within paid employment market services and education,”³⁴ by advocating the removal of legal obstacles to this equity. Hence, they interrogate any legal recognition of ‘natural’ distinctions between women and men.³⁵ Although their efforts have led to crucial improvements in the 1960s and 1970s regarding employment, education, and politics, and though they have been comparatively effective “in challenging explicitly discriminatory laws and ‘unreasonable classifications’, their tactics were less successful in challenging laws where different treatment was justified on the basis of purportedly ‘real’ differences”.³⁶ These discriminatory laws are based firmly on the notion that women and men

²⁹ Karen Engle, ‘International Human Rights and Feminisms: When Discourses Keep Meeting’, in D. Buss and A. Manji (eds.), *International Law: Modern Feminist Approaches* (Oxford: Hart Publishing 2005) 51.

³⁰ *ibid.* 52.

³¹ Ivana Radacic, ‘What is Feminism and Feminist Jurisprudence?’ (2008) <www.zenskamreza/Izjave/feminist_legal_theory.Doc> accessed: 12.08.2016

³² Hilary Charlesworth and Christine M. Chinkin, *The boundaries of international law: A feminist analysis* (Manchester University Press, 2000) 39.

³³ Karen Engle, ‘International Human Rights and Feminisms: When Discourses Keep Meeting’ in D. Buss and A. Manji (eds.), *International Law: Modern Feminist Approaches*, (Oxford: Hart Publishing 2005) 51.

³⁴ Hilary Charlesworth, and Christine M. Chinkin. *The boundaries of international law: A feminist analysis* (Manchester University Press, 2000) 38-39.

³⁵ *ibid.*

³⁶ Ivana Radacic, ‘What is Feminism and Feminist Jurisprudence?’ (2008) <www.zenskamreza/Izjave/feminist_legal_theory.Doc> accessed: 12.08.2016

are not in the same situation owing to physical differences or structural deficits.³⁷ The concepts of 'similar treatment' and 'equal treatment' in liberal feminism require women to agree with the male oriented world.³⁸ Ivana Radacic points out that:

Liberal feminists have not challenged legal concepts nor have they sought transformation of law, they only asked for its gender-neutrality. However, if laws reflect only (or mostly) male experiences, making laws gender-neutral does not help women much; it least helps those most disadvantaged women whose life experiences least resemble men's. Moreover, equal treatment of socially unequal individuals does not result in 'real' equality and in many cases only exaggerate the disparities.³⁹

The foundation of more radical feminist criticisms of liberal feminism is the liberal recognition of socio-economic relations that condone the discrimination of the sexes.⁴⁰ Socialist feminists, for instance, admonish the empty formalism of rights that do not allow women to reach substantive equality and the way the public/private dichotomy fundamental to liberalism obscures women's subordination in the domestic sphere.⁴¹ The public/private distinction is crucial for liberals who obscure women's oppression in the home and state intervention is just legal in the public sphere; and individual rights to privacy against state are significant for.⁴²

Kate Nash argues that critics of liberal feminism recognise this separation as a main feature of liberalism: "it divides society into the political and non-political, reinforcing the idea that relations between sexes are 'natural' and therefore outside the law in self-perpetuating system of oppression. The refusal to treat domestic violence seriously, for example, defines the limits of the state regulation of marriage and the legal status of a wife as subordinate".⁴³ Liberal feminists do therefore not adequately accommodate issues specific to women.

Liberal feminists view equality as the main concept of human rights and consequently view the problem of the legal instruction of honour killings to be discriminatory. Social mores are

³⁷ Hilary Charlesworth and Christine M. Chinkin, *The boundaries of international law: A feminist analysis*, (Manchester University Press, 2000) 39.

³⁸ *ibid.*

³⁹ Ivana Radacic, 'What is Feminism and Feminist Jurisprudence?' (2008) <www.zenskamreza/Izjave/feminist_legal_theory.Doc> accessed: 12.08.2016

⁴⁰ *ibid.*

⁴¹ *ibid.*

⁴² John S. Mill, 'On Liberty with the Subjection of Women' in Stefan Collini (ed.), *J. S. Mill on Liberty and Other Writings* (Cambridge: Cambridge University Press, 1989), cited in Kate Nash, 'Liberal Feminism', Lorraine Code (ed.) *Encyclopaedia of feminist theories* (Routledge 2002) 302-305.

⁴³ Kate Nash, 'Liberal Feminism', Lorraine Code (ed.) *Encyclopaedia of feminist theories* (Routledge, 2002) 302-305.

more permissive of men's extramarital sexual conduct, so men are rarely murdered in the name of honour. Thus, liberal feminists accept that the existence of women's disadvantage is the reason for the denial of equal rights to women and the sexist attitudes which act to sustain the situation.⁴⁴ As a whole, society has sexist perspectives towards women, according to liberal feminists' beliefs, so the goal of reaching gender equality is fundamentally problematic.

2.2.2. Patriarchal Male Dominance: Radical Feminism

Radical feminism focuses on most sex-differentiated abuses of women such as violence against women, including sexual harassment, rape, domestic violence against women and children, prostitution, and pornography. Women's sexuality is regarded as a central instrument of male dominance in the context of radical feminism. Radical feminists have approached defining patriarchy as a widespread tendency of men to control women, asserting the patriarchal domination of women "as the first and the most important form of subjugation, preceding the accumulation of wealth".⁴⁵ The premise of this argument is that the system of knowledge production is predominantly controlled by patriarchal politics, thus the image of women's history endorsed by social science is broadly one sided, distorted, and inherently flawed.⁴⁶

Furthermore, patriarchy is perceived as intrusively institutionalised within the cultural principles and practices and clearly demonstrated in all aspects of everyday life.⁴⁷ Controlling sexuality and reproductive powers of women is the most domineering manifestation of patriarchy-centred life.⁴⁸ A central premise of radical feminism is that women's oppression is produced by social and cultural arrangements that require women to submit to men because of their sex.⁴⁹ As a most vital form of oppression, gender inequality between women and men is the way in which men dominate, and women must obey it.⁵⁰

Catharine MacKinnon, a proponent of this approach, observes a mutual weakening of theories that connect equality with equal treatment using a male yardstick: "women are either the same

⁴⁴ Sylvia Walby, *Theorizing patriarchy*, (Basil Blackwell, 1990) 4.

⁴⁵ Aysan Sev'er, *Honourless Killings: Honour-based Cultures, Patriarchal Murders of Women in Turkey and in the West* (Lexington Books, 2010) 44.

⁴⁶ Voichita Nachescu, 'Racial Feminism and the Nation: History and Space in the Political Imagination of Second Wave Feminism' (2009) 3(1) *Journal for the study of Radicalism* 29, 33.

⁴⁷ Mary O'Brien, *The Politics of Reproduction* (London: Routledge & Kegan 1981)

⁴⁸ Susan Brownmiller, *Against Our Will: Men, Women and Rape*. (New York: Simon and Schuster 1975).

⁴⁹ Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, MA: Harvard University Press, 1987) 3.

⁵⁰ *ibid.* 3.

as or different from a male norm”.⁵¹ For women to confirm difference—when difference means dominance as it does with gender—means to confirm “the qualities and characteristics of powerlessness”.⁵² Once women are powerless, women cannot speak differently for themselves. She thus concludes: “Take your foot off our necks, then we will hear in what tongue women speak”.⁵³

MacKinnon focuses on sexuality as a fundamental reason for women’s oppression. She views that all women experience oppression at the hands of patriarchal power in the form of “male laws”⁵⁴ that relegate women as subordinate humans based on preserving a hierarchical position that defines women based on gender and sex.⁵⁵ She has thus argued for an alternative legal analysis of inequality, asking whether the strategy or practice in question is conducive to maintaining a disadvantaged position because of gender or sex.⁵⁶ For her, the feminist project in law should be to make the law identify the real harms women suffer such as pornography⁵⁷ and sexual harassment^{58,59}. In this manner, relationships between men and women can be gradually changed. However, her theory of sexuality has been extensively criticised as one-dimensional as has her representation of women as victims. Hence, lesbian feminists warn the larger feminist community not to base their views on the experiences of heterosexual women alone.⁶⁰ Her work therefore has been read as approving an essentialist position for women without regard to other impacts such as ethnicity, race, class, or sexuality.⁶¹

Radical feminists also pay attention to the notion of public/private distinctions shared among liberal theorists who describe the dichotomy’s tendency to “operate generally and naturally with respect to individuals”.⁶² The main point in liberalism is the protection of individual freedom by “non-regulation of the ‘private’”.⁶³ Critically, these claims have been challenged

⁵¹ *ibid.* 34.

⁵² *ibid.* 39.

⁵³ *ibid.* 45.

⁵⁴ Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press, 1989) 157-170.

⁵⁵ Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, MA: Harvard University Press, 1987) 205.

⁵⁶ *ibid.* 40-45.

⁵⁷ *ibid.* 127-213.

⁵⁸ Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (Yale University Press, 1979).

⁵⁹ Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, MA: Harvard University Press, 1987) 104.

⁶⁰ Patricia A. Cain, ‘Feminist Jurisprudence: Grounding the Theories’ (1989-1990) 4 *Berkley Women’s L.J.* 191.

⁶¹ Angela P. Harris, ‘Race and Essentialism in Feminist Legal Theory’ (1990) 42 *Stanford Law Review* 590-601.

⁶² Hilary Charlesworth, and Christine Mary Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000) 43-44.

⁶³ Katherine O’Donovan, *Sexual Divisions in the Law* (London: Weidenfeld and Nicholson 1985) 7-8.

by feminists, who argue that this distinction often aims both to cover up and legitimate women's subordination by men, depriving the position of women by upholding the gendered character of liberal public/private distinctions.⁶⁴

Violence against women—including sexual harassment, rape, women battering, genital mutilation, child sexual abuse, and honour killings—dominates legal agendas in many countries because of radical feminists' efforts⁶⁵ to expose and analyse all forms of violence against women. However, the main criticism raised against radical feminism is its identification of gender as a sole analytical type and its propensity to see women as victims rather than agents of change. Radical feminism ignores the significance of intersecting forms of violence such as race, religion, ethnicity, and sexual orientation.⁶⁶

2.2.3. Contrasting the 'Othering': Poststructuralist Feminism

Feminist poststructuralism is a method of knowledge production that practices "poststructuralist theories of language, subjectivity, social processes and institutions to understand existing power relations, and to identify areas and strategies for change".⁶⁷ Poststructuralism can offer a beneficial and creative basis "for understanding the gendered mechanisms of power in society and the possibilities for transforming patriarchal power relations".⁶⁸ Poststructuralist feminists criticise the tendency of feminist theory to accept universalising principles.⁶⁹ They assert that narratives are non-universalising and agree on cultural and historical specificity.⁷⁰ From this perspective, they reject the liberal and radical understanding of the oppression of women as only voicing the concerns of white, western, middle class, heterosexual women.⁷¹ In this way, the principles of poststructuralist feminism share a mutual basis with postcolonial, postmodern, and Third World feminism in international human rights law.

⁶⁴ Hilary Charlesworth, and Christine Mary Chinkin, *The Boundaries of International Law: A feminist analysis* (Manchester University Press, 2000) 43-44.

⁶⁵ Kathleen Mahoney, 'Theoretical Perspectives on Women's Human Rights and Strategies for Their Implementation' (1995-1996) 21(3) *Brook J. Int'l L.* 799, 825-826.

⁶⁶ Christine Chinkin, Shelley Wright, and Hilary Charlesworth, *Feminist Approaches to International Law: Reflections from Another Century* (Hart Publishing Ltd., 2005) 632.

⁶⁷ Chris Weedon, *Feminist Practice and Poststructuralist Theory* (Blackwell Publishers 1987) 40-41.

⁶⁸ Adrienne Elise Barnett, *Contact at All Costs? Domestic Violence, Child Contact and the Practices of the Family Courts and Professionals* (DPhil thesis, Brunel University 2014) 15.

⁶⁹ Chris Weedon, *Feminist Practice and Poststructuralist Theory* (Blackwell Publishers 1987) 40-41.

⁷⁰ *ibid.* 21-27.

⁷¹ Marija Urlich, 'Short Topology of Feminist Legal Theory' (1992) 7 *Auckland UL Rev.* 483, 487.

Poststructuralist feminists insist that knowledge and power are integrally linked and that “the knowledge is partial both incomplete and representing particular interests”.⁷² Moreover, they refuse the probability of absolute truth and objectivity. Knowledge is socially constructed and also “transient and inherently unstable—there are few, if any, universal truths”.⁷³ Consequently, there are multiple truths and realities regarding poststructuralist understanding.⁷⁴ Knowledge is instituted through language, which is subjective and thus neither fixed nor essential⁷⁵ but rather “always bound up with historically specific regimes of power and, therefore, every society produces its own truths which have a normalising and regulatory function”.⁷⁶ The relationship between knowledge, truth and power is essential to the poststructuralist approach.⁷⁷

Poststructuralist feminists also deconstruct the hierarchy of subjectivity and language.⁷⁸ Marija Urlich points out that “in this system the individual's knowledge and her/his subjectivity will not be lost when s/he enters the discourse of language”.⁷⁹ The dominant male discourse, “which controls the meaning, can be altered by the meanings that the subjective commentator gives to language, meanings that reflect her own personal experience”.⁸⁰ Poststructuralist concepts of knowledge produced and preserved through this discourse (and in this context, by the social sciences and the legal system on violence against women) can be challenged and deconstructed. Hence, poststructuralist feminism contrasts with the exact knowledge on male violence against women and analyses the power relations supported by such structures.

Foucault clarifies this as “a system of ordered procedures for the production, regulation, distribution, circulation and operation of statements” that represent a standpoint or an assertion to truth.⁸¹ Poststructuralist feminists, therefore, argue that repressive gender relations are instituted, reproduced, and challenged through a multitude of temporally, socially, and

⁷² *ibid*

⁷³ Nicola Gavey, ‘Feminist Poststructuralism and Discourse Analysis’ in Mary M. Gergen and Sara N. Davis (eds.) *Toward a new psychology of gender* (Routledge: London and New York 1990) 53.

⁷⁴ *ibid*

⁷⁵ *ibid.*

⁷⁶ Lois McNay, *Foucault and Feminism: Power, Gender and the Self* (Polity Press 1992) 25.

⁷⁷ Susan Boyd, ‘Backlash and the Construction of Legal Knowledge: The Case of Child Custody Law’ (2001) 20 *Windsor Yearbook of Access to Justice* 141, 147.

⁷⁸ Chris Weedon, *Feminist Practice and Poststructuralist Theory* (Blackwell Publishers 1987) 40-41.

⁷⁹ Marija Urlich, ‘Short Topology of Feminist Legal Theory’ (1992) 7 *Auckland UL Rev.* 483, 488.

⁸⁰ *ibid.*

⁸¹ Michel Foucault, ‘Truth and Power’ in Colin Gordon (ed.) *Power/Knowledge: Selected Interviews and Other Writings 1972-1977* (Pantheon Books 1980) 133.

culturally available discourses.⁸² Fairclough and Wodak explain how these relations contribute to the creation of social identities and objects of knowledge and thereby maintain and reproduce the status quo by forming and reproducing unequal relations of power such as class and gender.⁸³ As a tool for analysis, focusing on gender reveals that “most women are still excluded from the production of forms of thought, images and symbols in which their experiences and social relations are expressed and ordered”.⁸⁴ Positing gender as an analytical tool allows the displacement of hierarchical divisions such as male/female and public/private dichotomies that construct gender power relations.⁸⁵ This addresses the criticisms to international human rights law by feminist-legal academics.⁸⁶

Feminist poststructuralism is mostly interested in the discursive reproduction of meaning that build and reinforce gender-based power relations that oppress women.⁸⁷ However, women are not only defined by discourses that construct violence; they are also defined by their subject position through other discourses. Hence, a woman’s subjectivity is fluid, multiple, and unstable, dependent on the various discourses within a specific social, cultural, and historical context.⁸⁸ The third wave of feminists in international human rights law review Western feminists whose main concern is ‘essentialised women’; this limited perspective undermines the intersections of sex, gender, ethnicity, and other parts of world.⁸⁹ In the contexts of honour killings, women are seen as the key symbol of ‘honour’; hence, their behaviours and acts are linked to their male partners, fathers, and other male and female relatives in their traditional family unit. Women and girls face different harmful practices depending on their own geographical location, their family’s socio-economic positions, and their dominant regional culture.⁹⁰ For instance, according to Gill’s research on honour-based violence, women’s choices in education or work are also linked to their family’s honour in some Kurdish

⁸² Chris Weedon, *Feminist Practice and Poststructuralist Theory* (Blackwell Publishers 1987) 33.

⁸³ Norman Fairclough and Ruth Wodak, ‘Critical Discourse Analysis’ in Teun A van Dijk (ed.) *Discourse Studies: A Multidisciplinary Introduction Vol 2* (Sage Publications Ltd, 2004) 358.

⁸⁴ Vanessa Munro, *Law and Politics at the Perimeter: Re-Evaluating Key Debates in Feminist Theory* (Hart 2007) 128.

⁸⁵ Adrienne Elise Barnett, ‘Contact at All Costs? Domestic Violence, Child Contact and the Practices of the Family Courts and Professionals’ (DPhil thesis, Brunel University 2014) 17.

⁸⁶ See Section 2.3 in this chapter.

⁸⁷ Sara Willott, ‘An Outsider within: A Feminist Doing Research with Men’ in Karen Henwood, Christine Griffin, and Ann Phoenix (eds.), *Standpoints and Differences: Essays in the Practice of Feminist Psychology* (Sage Publications Ltd, 1998) 174-190.

⁸⁸ *ibid.*

⁸⁹ I will analyse this critique in Section 2.3.3 in this Chapter.

⁹⁰ Rebecca Dobash and Russell Dobash, ‘The Politics and Policies of Responding to Violence against Women’, in Jalna Hanmer and Catherine Itzen (eds.) *Home Truths about Domestic Violence: Feminist Influences on Policy and Practice—A Reader* (London: Routledge 2000) 37-58.

families; daughters or sisters who work outside the home can cause shame in others.⁹¹

Poststructuralist feminists asserts on the social construction of gender in discourse, a social construction which involves desire, the unconscious and conscious emotional life.⁹² Weedon stresses that the nature of women's experience is shaped by the constituents of women as subjects on the historic and social bases of precise discourses, but "women have differential access to the discursive field which forms gender, gendered experience and gender relations of power" in patriarchal society.⁹³ While women are directed as subjects of patriarchal morals and principles, men serve patriarchal benefits that allow more authority to men in the social construction of society. In the long history of the patriarchal silencing of women, it is significant that "women speak out for ourselves and occupy resistant subject positions while men work to deconstruct masculinity and its part in the exercising of patriarchal power".⁹⁴

In my research, the notion of honour applies to both women and men but place differentiated obligations upon the genders such as that "men are encouraged to be generous, hospitable and responsive to threats to their honour, displaying strength, power and toughness in the face of potential shame."⁹⁵ The concept of 'honour' contains the preservation of strict codes of gendered behaviour for women in order to control notions of 'shame' and 'property'.⁹⁶ 'Honour' is upheld through the regulation of women's behaviour. This rests on two basic premises; first, historically women were (and still are, for the purposes of honour crimes) property owned by men. Second, women are virtuous at birth, and this must be maintained throughout their lives because a stain on a woman's chastity is a reflection of disobeying the male relatives of the family. As such, the dual notions of 'honour' and 'shame' are intrinsically linked: any stains on honour will naturally result in bringing shame to the family name.⁹⁷

⁹¹ Aisha K. Gill, 'Feminist Reflections on Researching So-called 'Honour' Killings' (2013) 21(3) *Feminist Legal Studies* 241, 243.

⁹² Chris Weedon, *Feminist Practice and Poststructuralist Theory* (Blackwell Publishers 1987) 167.

⁹³ *ibid.*

⁹⁴ *ibid.* 173.

⁹⁵ Aisha K. Gill, 'Introduction: 'Honour' and 'Honour'-Based Violence: Challenging Common Assumptions', in Aisha K. Gill, Carolyn Strange, and Karl Roberts (eds.) *'Honour' Killing and Violence* (Palgrave Macmillan UK, 2014) 5.

⁹⁶ Nootash Keyhani, 'Honour Crimes as Gender-Based Violence in the UK: A Critical Assessment' (2013) 2 *UCLJLJ* 255, 260.

⁹⁷ *ibid.*

Therefore, a woman's status and acceptance to the tribe, clan, or family is linked to their honour, and the 'honour' depends on the female's behaviours.⁹⁸ As individuals, women do not assert honour that is separate from their roles within a family, clan, or tribal unit, and their actions.⁹⁹ Honour is seen as a male prerogative. Women have shame; men have honour. Hence, women must know how to behave in the community and must obey the rules in order to avoid shame. In the case of shame, women can throw the family into dishonour, and this may become a justification for murder. Uni Wikan analyses the notion of honour within patriarchal power structures:

To save the honour of the immediate or extended family is a collective duty: the family's rights rank above the individual's, and the individual must be ready to submit. There must be patriarchal power, giving men in the family the right and duty to control female sexuality. There must be a rigid hierarchy of authority that is respected and followed; the young must obey their elders.¹⁰⁰

Honour killings are related to structures and systems of patriarchal societies; however, women in this construction of the world are all different with their diverse background and identities. Hence, poststructuralist feminism is a helpful and useful approach for my research to explore honour killings given that it acknowledges 1) the impact of constructed knowledge (language) on various forms of 'honour killings' and 2) the subjectivity of woman in various cultures. It is an important theory that challenges and deconstructs hegemonic patriarchies and the way their oppressive regimes are preserved in socially, historically, and culturally placed discourses. In the next section, I will identify how the definitions of passion killings and honour killings are constructed within the different discourses throughout the world applying the perspectives of liberal, radical and poststructuralist feminism.

2.2.4. Passion Killings v. Honour Killings

This section argues to what is the difference between the "passion killings" and "honour killings". It discusses on why are honour killings labelled as part of the Eastern countries while passion killings as part of Western culture?¹⁰¹ I will define the difference between these

⁹⁸ Sharon K. Araji, 'Crimes of Honor and Shame: Violence against Women in non-Western and Western Societies' (2000) 8 *The Red Feather Journal of Postmodern Criminology*, 1-12.

⁹⁹ *ibid.*

¹⁰⁰ Unni Wikan, *In Honor of Fadime: Murder and Shame* (University of Chicago Press, 2008) 33.

¹⁰¹ Lama Abu-Odeh, 'Comparatively Speaking: The Honor of the East and the Passion of the West' (1997) *Utah L. Rev.* 287, 293; Nadera Shalhoub-Kevorkian, 'Reexamining Femicide: Breaking the Silence and Crossing 'Scientific' Borders' (2003) 28(2) *Signs* 581, 590; Nahla Abdo, 'Honour Killing, Patriarchy and the State:

crimes and then analyse them from liberal, radical, and poststructuralist feminist perspectives. The explanation of the differences is essential to defend why I have undertaken honour killings as the subject of my research.

Pitt-Rivers defines 'honour' as "the value of a person in his own eyes, but also in the eyes of his society. It is his estimation of his own worth, his *claim* to pride, but it is also the acknowledgement of that claim; his excellence recognized by society—his *right* to pride".¹⁰² Notably, the concept of honour is associated with the universal understanding of humankind, but as Unni Wikan explains:

[...] a universal concept of honour does not help us to grasp what is at stake in the special cases, that is, in societies or groups where honour is above all a matter of how you are seen by others and where women are not allowed honour in their own right. In such societies honour does not come by degrees: it cannot be portioned out (you cannot have more or less honour). Honour is an absolute and not subject to compromise.¹⁰³

Honour killings are categorised through codes of honour in which one's honour is reliant on the behaviour of others in the community, and thus is controlled.¹⁰⁴ To respect a person as an obligation of the community is follows the code of honour. When this code is breached, the person and his family loses his and his family's honour,¹⁰⁵ means dishonouring or losing honour built on the justification of "collective injury".¹⁰⁶ The social roles of honour killings have changed because of international reactions, changed perceptions of what is honourable and dishonourable behaviour in the community, and changed sexual practices.¹⁰⁷

In contrast, passion killings are commonly regarded as crimes committed by one partner, mostly husbands and lovers, against their female partners or spouses in cases of adultery. According to liberal feminists, passion killings are seen as different from honour killings; the prior involves a man killing his wife or his lover instantly upon finding her in bed or having

Women in Israel', in Shahrzad Mojab and Nahla Abdo (eds.) *Violence in the Name of Honour, Theoretical and Political Challenges* (Istanbul Bilgi University Press, 2004) 57.

¹⁰² Julian Pitt-Rivers, 'Honour and Social Status' in J.G. Peristiany (ed.), *Honour and Shame: The Values of Mediterranean Society* (Chicago: Chicago University Press 1966) 19-77.

¹⁰³ Unni Wikan, *In Honor of Fadime: Murder and Shame* (University of Chicago Press, 2008) 64.

¹⁰⁴ Katja Luopajarvi, 'International Accountability for Honour Killings as Human Rights Violations' (2004) 22 *Nordisk Tidsskrift for Menneskerettigheter* 2, 3.

¹⁰⁵ *ibid.*

¹⁰⁶ Lama Abu-Odeh, 'Comparatively Speaking: The Honor of the East and the Passion of the West' (1997) *Utah L. Rev.* 287, 293.

¹⁰⁷ *ibid.* 288.

sexual intercourse with someone, while the latter involves a father/other male relative killing his daughter/sister/cousin to clean the shame brought upon family.¹⁰⁸ Lama Abu-Odeh states that “an honour killing is instrumental in nature: it is calculated murder to avoid shame. Passion, in contrast, is driven by jealousy and rage, and is inherently involuntary.”¹⁰⁹

Despite these different impulses, according to radical feminists, honour killings are the same as passion killings because both are indications of the regime of male supremacy¹¹⁰—it does not make difference whether the reason for the murder is the passion of jealousy or the shame of dishonour. In both cases, subordinating women is the key concept of “acting out of the societal script of male dominance”;¹¹¹ this script is not restricted to Muslim, Middle Eastern, and South Asian countries but rather operates in all areas of the world:¹¹²

Some feminist activists in the Islamic world find this brand of feminism (radical feminism) appealing because of its insistence on the universality of male violence. It frees them from the sense of shame they might feel toward their own culture’s practice of honour killings and its peculiar form of control of women’s sexuality. Since passion crimes do occur in less sexually repressive cultures in the West, and since according to radical feminism passion is the same as honour, then one culture cannot hold itself morally superior to the other. We are all victims of male violence.¹¹³

Shalhoub-Kevorkian discusses that “naming femicide as ‘crimes of passion’ in the West and ‘crimes of honour’ in the East is one reflection of the discriminatory constructions of frames of analyses, which build a simplistic system that hides the intersectionality among political, economic, cultural and gender factors.”¹¹⁴ The arguments on honour killings also frequently assist a separation in which borders between immigrants and the majority society are pinched.¹¹⁵

¹⁰⁸ Lama Abu-Odeh, ‘Honor: Feminist Approaches to’ in Suad Joseph and Afsana Nagmabadi (eds.) *Encyclopedia of Women and Islamic Cultures: Family, Law and Politics*. (Vol. 2. Brill 2003) 225-227.

¹⁰⁹ *ibid.*

¹¹⁰ *ibid.*

¹¹¹ *ibid.*

¹¹² Nancy V. Baker, Peter R. Gregware, and Margery A. Cassidy, ‘Family Killing Fields Honor Rationales in the Murder of Women’ (1992) 5(2) *Violence against women* 164, 174.

¹¹³ Lama Abu-Odeh, ‘Honor: Feminist Approaches to’ in Suad Joseph and Afsana Nagmabadi (eds.) *Encyclopedia of Women and Islamic Cultures: Family, Law and Politics* (Vol. 2. Brill 2003) 225-227.

¹¹⁴ Nadera Shalhoub-Kevorkian, ‘Reexamining Femicide: Breaking the Silence and Crossing ‘Scientific’ Borders’ (2003) 28(2) *Signs* 581, 590.

¹¹⁵ Anna C. Korteweg, and Gokce Yurdakul, ‘Islam, Gender, and Immigrant Integration: Boundary Drawing in Discourses on Honour Killing in the Netherlands and Germany’ (2009) 32(2) *Ethnic and Racial Studies* 218, 218.

Unlike radical feminists, poststructuralist feminists do not consider passion and honour killings as the same; they also deconstruct the liberal understanding of the difference between honour (seen as “instrumental and rational”) and passion (seen as “driven by the irrational rage of jealousy”).¹¹⁶ Poststructuralist feminism emphasises that the concepts of passion and honour have a dissimilar influence on the culture of sex: “which kind of rules a particular regime picks to award which kind of excuses to which kind of men will distribute power and sexual subjectivities differently between men and women. The difference makes a difference.”¹¹⁷

Although the different nature of honour killings and passion killings is significant, international human rights bodies consider any violence committed by private people as a human rights abuse. For them, condoning the state’s failure to duty of due diligence deriving from these acts is the fundamental issue. The UN Special Rapporteur on extrajudicial, summary, and arbitrary executions covers both passion killings and honour killings, and calls for governments “to investigate promptly and thoroughly cases of killings committed in the name of passion or in the name of honour [...] as well as other cases where a person’s right to life has been violated.”¹¹⁸ Justifying honour killings by applying unjust provocation as a mitigating sentence in the East coincides with a longstanding exercise of justifying passion killings as a basis for unpremeditated crime. Therefore, both crimes constitute a violation of women’s right to life. However, these crimes are different in their natures, but some passion killings share similar aspects with honour killings in different cases.

The following section aims to discuss the patterns of ‘honour’ as a tool of controlling women’s sexuality in the patriarchal traditional society. In this way, it identifies the definition of ‘patriarchy’ within the feminist lenses.

2.2.5. Controlling Women’s Sexuality: ‘Honour’ Patterns and Patriarchy

Honour killing is mostly associated within patriarchal society in the context of violence against women in general and domestic violence in particular. This section firstly identifies the meaning of ‘patriarchy’ within different elements. Secondly, it discusses how women’s sexuality is shaped by the patriarchal morals in the honour-based communities. It further argues how liberal, radical and poststructuralist feminists perceive the context of ‘patriarchy’

¹¹⁶ Lama Abu-Odeh, ‘Honor: Feminist Approaches to’ in Suad Joseph and Afsana Nagmabadi (eds.) *Encyclopedia of Women and Islamic Cultures: Family, Law and Politics* (Vol. 2. Brill 2003) 225-227.

¹¹⁷ *ibid.*

¹¹⁸ UNCHR, ‘UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions’ (2001) E/CN.4/2001/167 - E/2001/23, 23 April 2001, para. 7.

in traditional societies related to my research on the ‘honour killings’.

The initial definition given for ‘patriarchy’ by Sylvia Walby is that it is “a system of social structures, and practices, in which men dominate, oppress and exploit women”.¹¹⁹ She argues that patriarchy constitutes six elements: a) the patriarchal relations in paid work, b) the patriarchal relations in the state, c) the patriarchal relations in sexuality, d) male violence, e) the patriarchal mode of production and f) the patriarchal relations in cultural institutions.¹²⁰ Dobash and Dobash similarly focus on one crucial part of patriarchy, namely “the hierarchical relationship between the husband and wife” and the perpetuation of the foundation of male supremacy and of the subordination of women in the community and in marriage.¹²¹ Hooks defines ‘patriarchy’ as the “political-social system that insists that males are inherently dominating, superior to everything and everyone deemed weak, especially females, and endowed with the right to dominate and rule over the weak and to maintain that dominance through various forms of psychological terrorism and violence.”¹²² Scholars demonstrate that this hierarchical relationship is accompanied by an ideology that preserves the cultural explanations of patriarchal beliefs. Kandiyoti introduces the term ‘patriarchal bargains’ to describe the dominant impact on the formation of “women’s gendered subjectivity” and “the nature of gender ideology”. Patriarchal bargains have an impact on “both the potential for and specific forms of women’s active or passive resistance in the face of their oppression”.¹²³

The patriarchal character of gender relations is a known phenomenon that creates inequalities between the sexes; men use power to control women’s sexuality and ability to reproduce, and the reputation and honour of a man comes to be principally connected with women’s behaviour.¹²⁴ Patriarchy is then socially constructed and manifested in legal, economic, and political institutions. In the name of patriarchal morals, honour killings are explicitly linked women’s sexuality and bodies. Family honour belongs to male members who have to control the behaviour of its female members according to the notion of the traditional family unit. As an individual, a woman’s actions, particularly her sexual ‘misconduct’, can bring disgrace and

¹¹⁹ Sylvia Walby, *Theorizing Patriarchy*, (Basil Blackwell, 1990) 19-21.

¹²⁰ *ibid.*

¹²¹ Rebecca E. Dobash and Russell Dobash, *Violence against Wives* (New York: The Free Press, 1979) 45.

¹²² Bell Hooks, ‘Understanding Patriarchy’ (2013) *Louisville Anarchist Federation. Louisville Lending Library* 1, 1.

¹²³ Deniz Kandiyoti, ‘Bargaining with Patriarchy’ (1988) 2(3) *Gender & society* 274, 275. Kandiyoti explains that the term ‘patriarchal bargain’ is intended to indicate the existence of set rules and scripts regulating gender relations to which both genders accommodate and acquiesce, yet which may nonetheless be contested, redefined, and renegotiated.

¹²⁴ Yakin Erturk, ‘Violence in the Name of Honour within the Context of International Regimes’ in Shahrazad Mojab and Nahla Abdo (eds.), *Violence in the Name of Honour: Theoretical and Political Challenges* (Istanbul: Istanbul Bilgi Universitesi Yayinlari, 2004) 165.

shame to the family.¹²⁵

The perpetrators of honour killings are often the father, cousin, brother, or husband who is living in a traditional patriarchal community; the purpose behind the honour killings is to control and subordinate his female relative. This pattern maintains patriarchy in traditional societies. According to liberal feminists, the problem of the legal standing of honour killings is the continuing discrimination between the sexes. Social practices are more indulgent of men's extramarital sexual conduct; hence men are rarely murdered in the name of honour. Thus, liberal feminists accept that the existence of patriarchy is the reason for the denial of equal rights to women in education and in employment; this denial is crucial to maintain the subordination of women in patriarch society.¹²⁶ The problem of sexist perspectives towards women in society, according to liberal feminists' beliefs,¹²⁷ can be solved by working for equality between the genders.

Radical feminists perceive the context of patriarchy as an institutional, rather than individual, manifestation of cultural values and practices.¹²⁸ The worst indicator of patriarchy is the control of female sexuality and reproductivity.¹²⁹ MacKinnon emphasises in the notion of patriarchy "the male pursuit of control over women's sexuality—men not as individuals or as biological beings, but as a gender group characterised by maleness as socially constructed, of which this pursuit is definitive."¹³⁰ Patriarchy is male power constructing women's sexuality. Therefore, radical feminists emphasise the structural underpinnings of patriarchy that cannot be eradicated just by eradicating the discrimination between women and men, as liberal feminists claim.

Similarly, radical feminists treat honour killings as an indication of a larger system of patriarchy or male dominance over women.¹³¹ Abu-Odeh states that:

These killings are not an instance, singular and unique, of particular cultures, but are on a par with and similar to other forms of violence inflicted on women by men, universally and in all cultures. Coercing minors to marry, domestic abuse, rape,

¹²⁵ Nancy V. Baker, Peter R. Gregware, and Margery A. Cassidy, 'Family Killing Fields Honor Rationales in the Murder of Women' (1992) 5(2) *Violence against women* 165.

¹²⁶ Sylvia Walby, *Theorizing Patriarchy* (Basil Blackwell 1990) 4.

¹²⁷ *ibid.*

¹²⁸ Mary O'Brien, *The Politics of Reproduction* (The London: Routledge and Kegan 1981) 131.

¹²⁹ Susan Brownmiller, *Against Our Will: Men, Women and Rape* (Open Road Media 1975).

¹³⁰ Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989) 112.

¹³¹ Lama Abu-Odeh, 'Honor: Feminist Approaches to' in Joseph, Suad, and Afsana Nagmabadi (eds.) *Encyclopedia of Women and Islamic Cultures: Family, Law and Politics* (Vol. 2. Brill 2003) 226.

polygamy, are all acts of male violence against women and are on a continuum with the crime of honour. In a sense, they are all crimes of honour. Each culture has its own peculiar variation of male acts of violence.¹³²

Controlling women's sexuality has great value in an honour system in which a woman's identity is solely defined as a male's wife, daughter, mother, or sister. In contrast to viewing a woman only in relation to a male, the man himself has natural identity; therefore, he is responsible for his and his female relatives' acts and behaviours. For instance, for a father, having a virgin daughter, or for a husband, having a chaste wife has crucial value in honour-based societies.¹³³ According to Gill, a woman's virginity and chastity is strictly monitored and controlled by their family members for the sake of honour.¹³⁴ In the case of acts seen as shameful, the women are condemned and killed to save the family's name. To preserve virginity before marriage is important both for a woman as an individual and for her family in the honour-based societies.

Virginity is a strict moral rule that affects only girls. El-Saadawi notes that "one would think that the first criterion of a moral rule, if it is indeed to be moral should be that it applies to all without exception, and does not yield to any form of discrimination whether on the basis of sex, colour and class."¹³⁵ To protect virginity, many families opt to marry their daughters at an early age to avoid the responsibility of keeping their daughters virtuous; they are also less likely to protest, elope, or commit suicide. A woman's virginity is considered a responsibility and property of her father before marriage, then is given as a gift to her husband.¹³⁶ El-Saadawi states that "the man's honour is safe as long as the female members of his family keep their hymens intact."¹³⁷ This is also the case in Turkish and Middle-eastern cultures, where women's virginity before marriage is an asset not only for the individual woman but also for her family since it is a manifestation of male reputation. According to Cindoglu:

Virginity is not only an asset for the individual woman, but for the whole family. In a culture, women's purity before marriage is not only an individual choice, but a family

¹³² *ibid.*

¹³³ Fatima Mernissi, 'Virginity and Patriarchy' (1982) 5(2) *Women's Studies International Forum* 183–91.

¹³⁴ Aisha Gill, 'Voicing the Silent Fear: South Asian Women's Experiences of Domestic Violence' (2004) 43(5) *The Howard Journal* 465–483.

¹³⁵ Nawal El Saadawi, *The Hidden Face of Eve: Women in the Arab World* (London&New York: Zed Books, 2007) 41.

¹³⁶ Andrea Parrot and Nina Cummings, *Forsaken Females: The Global Brutalization of Women* (Rowman & Littlefield, 2006) 175.

¹³⁷ Nawal El Saadawi, *The Hidden Face of Eve: Women in the Arab World* (London&New York: Zed Books, 2007) 47.

matter. Therefore, women's bodies are controlled by the family. The virginity of the women is not a personal matter, but a social phenomenon.¹³⁸

Contrary to liberal and radical feminism, poststructuralist feminism focuses on the concept of 'difference' that exists in the social world. Poststructuralist feminists emphasise that human beings are all different with their particular 'identities' shaping their politics and everyday life and separating them from all other human beings.¹³⁹ The context of patriarchy is not a universal notion, contrary to liberal and radical feminist understandings. Poststructuralist feminists argue that "gender oppression is too particular to be the target of struggle of women and men even within a single country".¹⁴⁰ Nevertheless, while such feminists share the same understanding of male dominance with radical feminists, they see male dominance as only one aspect of a system of power that comprises numerous forms of resistance universally by both men and women.¹⁴¹ Poststructuralist feminists replace the concept of domination with the notion of difference.

The following section will attempt to identify that different feminist theories cannot be positioned in distinct and clear cut classifications; their limitations are permeable, and their theoretical domains overlap. Cryer finds nothing inherently unsuitable in applying different theoretical methods to the same research problem, and thus scholars will employ different feminist theories for their research.¹⁴² This view is even more recognisable and identifiable when feminist analyses are applied to international law, which should be formed in a manner more responsive to the needs for women and more reflective of the interests or concerns of women from diverse nationalities and geographical locations throughout the world. Thus, feminist critiques of international human rights law should be multi-faceted to incorporate women who represent diverse social, ethnic, cultural, political, and religious settings in the world.

2.3. Feminist Critiques of International Human Rights Law

The primary concern of any argument on women issues is the extent to which constructions of

¹³⁸ Dilek Cindoglu, 'Virginity Tests and Artificial Virginity in Modern Turkish Medicine' (1997) 20(2) *Women's Studies International Forum* 253, 254.

¹³⁹ Shahrzad Mojab, 'The Particularity of 'Honour' and the Universality of 'Killing': From Early Warning Signs to Feminist Pedagogy' in Shahrzad Mojab and Nahlo Abdo (eds.) *Violence in the Name of Honour: Theoretical and Political Challenges* (Istanbul: Istanbul Bilgi University Publishing 2004) 25.

¹⁴⁰ *ibid.* 26.

¹⁴¹ Lama Abu-Odeh, 'Honor: Feminist Approaches to' in Joseph, Suad, and Afsana Nagmabadi (eds.) *Encyclopedia of Women and Islamic Cultures: Family, Law and Politics* (Vol. 2. Brill 2003) 227.

¹⁴² Robert Cryer, Tamara Hervey, and Bulley-Sokhi Bal, *Research Methodologies in EU and International Law*, (Hart Publishing, 2011) 14.

international human rights are useful for women and inclusive of their concerns. When referring to national law, some feminist scholars have suggested that movements for women's legal rights are "at best a waste of energy and at worst positively detrimental".¹⁴³ They have maintained that, while the creation of equality rights may be a useful first step to improve the position of women, they are not at the core of ensuring the improvement of their situation. According to Engle, the literature on international women's rights rarely refers to feminist critiques of rights.¹⁴⁴ Critics note that "women's experiences and concerns are not easily translated into the narrow, individualistic language of rights, or rights discourse overly simplifies complex power relations and their promise is constantly thwarted by structural inequalities of power; and particular rights, such as the right to freedom of religion or to the protection of the family, can in fact justify the oppression of women".¹⁴⁵ As far as women's rights across the world are concerned, the inclusion of the women's movements and campaigns in human rights may play a key role to advancing women's equality.

Women's rights are human rights from the point of international law. The Third World critique of international law and insistence on diversity/difference (linked to poststructuralist feminist understanding) may well have prepared the philosophical base for feminists. This is particularly true in the recognition of violence against women. Violence against women, whether in the family or in society, in war time and peacetime, is "an affront to women's physical and moral integrity and to their dignity as human beings".¹⁴⁶ Stamatopoulou argues that "the artificial barriers between the private and the public spheres have to be removed, and the shield of silence that protects cultural, religious, or other traditions and prejudices must be broken, so that acts such as the beating and raping of women, widow burning, and sexual mutilation, are clearly recognised and averted or punished for what they are: human rights violations".¹⁴⁷ This is interpreted as a success of radical feminism's awareness-raising campaigns in international human rights law.

In this section, I review the feminist critiques (liberal, radical, poststructuralist feminist) of international human rights law. The exclusion of women from the human rights discourse and

¹⁴³ Hilary Charlesworth and C. Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000) 208.

¹⁴⁴ Karen Engle, 'International Human Rights and Feminisms: When Discourses Keep Meeting' in D. Buss and A. Manji (eds.), *International Law: Modern Feminist Approaches* (Oxford: Hart Publishing, 2005) 47.

¹⁴⁵ Hilary Charlesworth and C. Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000) 208.

¹⁴⁶ Elissavet Stamatopoulou, 'Women's Rights and the United Nations' in Julie Peters, and Andrea Wolper (eds.) *Women's Rights, Human Rights: International Feminist Perspectives* (Psychology Press, 1995) 39.

¹⁴⁷ *ibid.*

the lack of women's voices in the international law making process is the first feminist critique. Addressing the public and private dichotomy that privileges the public over the private is the second feminist critique, which discovers the way the realities of men's lives are advantaged while women's experiences are ignored in international human rights law discourse. The third critique specifies how the international human rights system has treated women as a collective group with a single gender identity under the essentialised women title.

2.3.1. The Role of International Human Rights for Establishment of 'Male' Rights

According to feminist scholars, international human rights law is defined and understood as the rights of men, largely ignoring women's rights under its instruments. It is argued that "both the structures of international law making and the content of the rules of international law privilege men; if women's interests are acknowledged at all, they are marginalized."¹⁴⁸ As a radical feminist, Mackinnon states that "Human rights have not been women's rights – not in theory or in reality, not legally or socially, not domestically or internationally."¹⁴⁹ Friedman argues that while "law respects and reinforces the interests of particular group in society, these interests have always been pre-dominantly male." Hence, feminists' critiques of international law strongly refuse the notion of law as objective and dismiss the characterisation of the legal system as neutral, apolitical and unbiased.¹⁵⁰ This is due to the absence of gender equality in law.

Waring quotes the sexist language of the Universal Declaration on Human Rights (UDHR) that human beings "should act towards one another spirit of brotherhood" according to Article 1. She discusses that:

Men make the rules and the law, and decide their scope and application. Men also determine the nature and scope of justice, whether from their overwhelming presence in academia, on the bench, in international tribunals, or on human rights committees. [...] International law, law itself, is defined by patriarchs, and it is patriarchal society which sanctions changes, however they occur.¹⁵¹

International human rights law and its institutions are a product of dominant men, thus the

¹⁴⁸ Hilary Charlesworth, Christine Chinkin, and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85 *The American Journal of International Law* 613, 613-614.

¹⁴⁹ Catharine A. MacKinnon, 'Rape, Genocide, and Women's Human Rights' (1994) 17 *Harv. Women's LJ* 5, 5.

¹⁵⁰ Sandra Friedman, *Women and the Law* (Clarendon Press. UK. 1997) 2.

¹⁵¹ Marilyn Waring, 'Gender and International Law: Women and the Right to Development' (1988-89) 12 *Australian Year Book of International Law* 177, 179.

language of the law reflects their aspirations, interests, and values. Brems points out that:

Human rights are not what they claim to be, feminists say. They are product of the dominant male half of the world, framed in their language, reflecting their needs and aspirations. Whereas the “rights of man” as originally conceived by the great liberal thinkers were not intended to include women, today’s “universal human rights” still overlook them as a matter of fact.¹⁵²

For cultural or Third World Feminists, the discussion is not only that women as a group are excluded from the protection of human rights law but also that non-Western women and their experiences and values are absent from the argument.¹⁵³ While Western feminists criticise the human rights system as a set of male rights, non-Western feminists criticise, paradoxically, Western feminists who accept ‘women’ as “white, Western/Northern European, Judaeo-Christian, heterosexual, propertied, educated, women.”¹⁵⁴ This critic echoes the basis of poststructuralist feminism understanding on the subjectivity of women and their experiences.¹⁵⁵

2.3.2. The Public/Private Dichotomy Based on Gender

The second feminist critique of international human rights law is the emphasis of the distinction between the public and private spheres. Feminists such as Radacic have noted that the public/private distinctions concern sex and gender in international law.¹⁵⁶ She questions what should come within the concerns of international regulation (‘public’) and what should remain exclusively within the state’s sovereign powers (‘private’), and the extent to which “the divide determines those interests that should be defined as human rights.”¹⁵⁷ The second application entails specifying “whether relationships between individuals properly come within the human rights framework.”¹⁵⁸ While relations between the state and individuals defined within the ‘public sphere’ have come within the margins of human rights law,

¹⁵² Eva Brems, ‘Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse’ (1997) 19(1) *Human Rights Quarterly* 136, 137.

¹⁵³ *ibid.* 136, Angela P. Harris, ‘Race and Essentialism in Feminist Legal Theory’ (1990) 42 *Stanford Law Review* 581.

¹⁵⁴ Berta E. Hernandez-Truyol, ‘Women’s Rights as Human Rights—Rules, Realities and the Role of Culture: A Formula for Reform’ (1996) XXI(3) *Brooklyn Journal of International Law* 605, 651.

¹⁵⁵ See Section 2.2.3 for further reading.

¹⁵⁶ Celina Romany, ‘State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law’ in Rebecca J. Cook (ed.), *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press, 1994).

¹⁵⁷ Ivana Radacic, ‘Feminism and Human Rights: The Inclusive Approach to Interpreting International Human Rights Law’ (2008) 14 *UCL Jurisprudence Rev* 238, 241.

¹⁵⁸ *ibid.* 241-2.

relations between individuals and the supervision of the 'private' spheres of family have mainly been left to the decision of states.¹⁵⁹

According to Charlesworth and Chinkin, international law, which runs in the public, male world, eliminates 'private' concerns from its area. The international legal system nevertheless affects these concerns—one form of these effects is the fact that 'private' concerns are left to national rather than international law.¹⁶⁰ While the main subject of international law is the state, international human rights law is "an exception to the horizontal application of international law as governing relations between states" by introducing a "quasi-vertical system of state responsibility for individual rights."¹⁶¹ The system has paid sole attention to state action toward individuals in place of 'private' violations against women in their homes or in other private settings.¹⁶² The outcome of dividing the public and private spheres has practically deemphasised the many violations against women experienced in private.¹⁶³ The international human rights agenda ignores private or family realities in which women face many human rights violations. Romany states that:

Women are everyday subjects of a system of familial terror that includes diverse modalities of violence. Yet the human rights discourse of protection has not been available to women. Women are the paradigmatic alien subjects of international law. To be an alien is to be *an- other*, to be an *outsider*. Women are *aliens* within their states, *aliens* within an international exclusive club that constitutes international society.¹⁶⁴

Many violations committed against women by men arise without direct state awareness. The oppression of women is so culturally engrained that it is perceived as natural rather than as a politically constructed truth preserved by patriarchal benefits, institutions, and systems.¹⁶⁵ Hence, Bunch defines "the physical territory of this political struggle as being women's

¹⁵⁹ *ibid.*

¹⁶⁰ Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000) 56.

¹⁶¹ Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge University Press, 2010) 65.

¹⁶² *ibid.*

¹⁶³ Gayle Binion, 'Human Rights: A Feminist Perspective' (1995) 17(3) *Human Rights Quarterly* 509, 515–516.

¹⁶⁴ Celina Romany, 'Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law' (1993) 6 *Harv. Hum. Rts. J.* 87, 87.

¹⁶⁵ Charlotte Bunch, 'Transforming Human Rights from a Feminist Perspective' in Julie Peters and Adriane Wolper (eds.), *Women's Rights, Human Rights: International Feminist Perspectives* (New York: Routledge, 1995) 14.

bodies”.¹⁶⁶ In the same way, male supremacy over women, manifested as “marital rape, the place of battery, and women’s exploited labour”, has been maintained by the legal concept of privacy.¹⁶⁷ Thus, it should be expressed that the issue of violence against women has been implicitly facilitated by the public/private dichotomy.

Engle argues that emphasising the public/private dichotomy may exclude crucial parts of women’s experiences and that speaking in such dichotomies supposes that the “‘private’ is bad for women, whereas it has some benefits for women.”¹⁶⁸ She evaluates the public/private divide accordingly:

Either women’s rights advocates argue that public international law, and particularly human rights theory, is flawed because it is not really universal. That is, because international law excludes from its scope the private, or domestic, sphere—presumably the space in which women operate—it cannot include them. Or advocates argue that international law does not really exclude the private, but rather uses the public/private divide as a convenient screen to avoid addressing women’s issues.¹⁶⁹

Charlesworth and Chinkin reconceptualise violence against women within the framework of international law, pointing out that it is acknowledged not merely as abnormal behaviour but also as a part of the structure of the universal subordination of women.¹⁷⁰ Bunch states that such violence is caused by “the structural relationships of power, domination and privilege between men and women in society. Violence against women is central to maintaining those political relations at home, at work and in all public spheres.”¹⁷¹ For instance, the UDHR defines the family as “entitled to protection by society and the state” pursuant to Article 16 (3),¹⁷² which expresses that violence against women in the private sphere is not perceived in human rights terms as an infringement of civil rights: “Everyone [...] entitled to all the rights

¹⁶⁶ *ibid.*

¹⁶⁷ Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, MA: Harvard University Press, 1987) 101.

¹⁶⁸ Karen Engle, ‘After the Collapse of the Public/Private Distinction: Strategizing Women’s Rights’ in D.G. Dallmeyer (ed.), *Reconceiving Reality: Women and International Law* (American Society of International Law, 1993) 143.

¹⁶⁹ *ibid.*

¹⁷⁰ Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000) 235.

¹⁷¹ Charlotte Bunch, ‘Transforming Human Rights from a Feminist Perspective’ in Julie Peters and Adriane Wolper (eds.), *Women’s Rights, Human Rights: International Feminist Perspectives* (New York: Routledge, 1995) 11-17.

¹⁷² V. Spike Peterson, and Laura Parisi, ‘Are Women Human? It’s not an Academic Question’ in Tony Evans (ed.), *Human Rights Fifty Years on: A Reappraisal* (Manchester University Press, 1998) 145.

and freedoms set forward in this Declaration” is a man.¹⁷³

The feminist approach to the international legal system, therefore, pushes for the incorporation of women and their concerns and the collapse of gendered public/private dichotomies. As Lacey notes, while the ‘private’ is the sphere from which people can be removed from public scrutiny, women’s experiences should not automatically be excluded or marginalised by the use of public/private dichotomies.¹⁷⁴ The majority of ‘private’ matters have public dimensions “either because they are subject to regulation under law (the problem is often how they have been regulated rather than a lack of regulation) or because they are grounded in public systems of oppression, patriarchy, or gendered international relations.”¹⁷⁵ Thus, the public/private dichotomy of international feminist theory in effect preserves women’s status in the ‘private’ and ignores their roles and contributions in public places.¹⁷⁶ Although the ‘private’ domain has been viewed as advantageous for women regarding women’s sexuality, abortion, or reproductive health, this dichotomy has been false in the context of women’s interests in general. Engle notes that “if the critiques of the public/private distinction make women’s lives potentially a part of international law, they will have done a great service. But the critiques only provide the beginning. [...] With the inclusion of women in international law (if even only slightly) comes responsibility. The task ahead is to recognise and sometimes even facilitate the multiple ways that women live their lives.”¹⁷⁷

Particularly, culture and religion are perceived as ‘private’ issues and are invoked to justify ‘traditional’ practices contributing to the subordination of women.¹⁷⁸ Culture has been accepted as a private issue, just like religion; however, cultural rights were often used to justify the subordination of women. Rao argues that no other group has experienced greater violations of its human rights in the name of culture.¹⁷⁹ Female genital mutilation, dowry deaths, forced marriages, and honour killings are examples of the violation of women’s

¹⁷³ *ibid.* 147.

¹⁷⁴ Nicola Lacey, ‘Theory into Practice-Pornography and the Public/Private Dichotomy’ (1993) 20(1) *JL & Society* 110.

¹⁷⁵ Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge University Press, 2010) 71.

¹⁷⁶ *ibid.*

¹⁷⁷ Karen Engle, ‘After the Collapse of the Public/Private Distinction: Strategizing Women’s Rights’ in D.G. Dallmeyer (ed.), *Reconceiving Reality: Women and International Law* (American Society of International Law, 1993) 152.

¹⁷⁸ V. Spike Peterson and Laura Parisi, ‘Are Women Human? It’s not an Academic Question’ in Tony Evans (ed.), *Human Rights Fifty Years on: A Reappraisal* (Manchester University Press, 1998) 147-150.

¹⁷⁹ Arati Rao, ‘The Politics of Gender and Culture in International Human Rights Discourse’ in Julie Peters and Adriane Wolper (eds), *Women’s Rights, Human Rights: International Feminist Perspectives* (Routledge, New York 1995) 167-175.

human rights in the name of culture. This issue has brought into account the discussions on cultural relativism v. universalism within the international human rights law due to the serious human rights violations against women in the name of culture, tradition or religion. This will be argued in the issue of essentialism on violence against women in the following section.

2.3.3. The Issue of Essentialism

The third feminist critiques of international law is the issue of ‘essentialism’—the conceptualisation of women as having an established ‘essence’ or set of features.¹⁸⁰ Grosz defines essentialism—and its cognates, ‘biologism’, ‘naturalism’, and ‘universalism’—as “a term which is rarely defined or explained explicitly in feminist context and refers to the attribution of a fixed essence of women.”¹⁸¹ Women’s essence is naturally given, universal, and is mostly, though not essentially, recognised with women’s biology and ‘natural’ characteristics.¹⁸² Feminists claim that this concept reproduces patriarchal values and asserts that women’s social roles and positions are the effects of their essence, nature, and universal social position.¹⁸³

The gender-based approaches to international human rights law assume that women share common experiences and identities; this is maintained by the various international human rights treaty bodies.¹⁸⁴ Essentialising women results in the essentialising of men, who are observed as the binary opposite of women, and hence it has negative outcomes for the deconstruction of gender in general. The argument on essentialising gender is not only that women individually and as a group are excluded from the protection of human rights law but also that non-Western women and their experiences and values are mostly absent.¹⁸⁵ Higgins criticises Western feminists for ‘essentialising’ women in their own image as white, Western, European, and heterosexual.¹⁸⁶ Similarly, feminists in general criticise the fundamentals of international law as ‘normalising’ maleness.¹⁸⁷ Moreover, feminist scholars are criticised for constructing a category of ‘women’ in absence of other identity-based features that affect and

¹⁸⁰ Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000) 52.

¹⁸¹ Elizabeth Grosz, ‘A Note on Essentialism and Difference’ in Sneja Gunew (ed.), *Feminist Knowledge: Critique and Construct* (Routledge, 1990) 334.

¹⁸² *ibid.*

¹⁸³ *ibid.* 335.

¹⁸⁴ Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge University Press, 2010) 72.

¹⁸⁵ Tracey E. Higgins, ‘Anti-Essentialism, Relativism, and Human Rights’ (1996) 19 *Harv. Women’s L. J.* 89, 89.

¹⁸⁶ *ibid.*

¹⁸⁷ Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge University Press, 2010) 74.

form their lives¹⁸⁸ and for asserting a common experience of all women in all cultural contexts.¹⁸⁹

Indeed, Third-wave feminists have accused Western feminists and international human rights bodies for over-sensationalising practices such as honour killings, dowry murders, female genital mutilation. These particular forms of violence against women are linked to cultural practices or religious norms that raise the question of cultural relativism under international human rights law. The tension between universalism and cultural relativism is well-known in human rights discourse. Culture is accepted as a problem rather than a resource.¹⁹⁰ Cultural relativists describe the human rights system as a product of Western liberalism. The aspects of human rights mostly attacked as 'Western' are its individualism, abstractness, and concept of rights.¹⁹¹ Therefore, cultural relativists claim that international human rights law is inappropriate when considering non-Western cultures. They argue that rationalising cultural traditions, customs, and practices in conflict with international human rights standards are usually made by states in connection to women's rights because these same disputes would not be tolerated by non-gender specific rights.¹⁹² Additionally, cultural relativists say that "members of one society may not legitimately condemn the practices of societies with different traditions, denying that there can be valid external critiques of culturally-based practices and claiming that no legitimate cross-cultural standards for evaluating the treatment of rights issues exist", while the universal position proclaims human rights as inalienable and held by all members of the 'human family'.¹⁹³

On the other hand, violence against women committed in the name of custom, culture, tradition, or religion is ongoing and prevalent. The very concept of gender inequality is challenged once established interpretations of culture or projections of 'their' cultures are used to justify acts of discrimination and violence against women, thereby undermining the

¹⁸⁸ Chandra Talpade Mohanty, 'Under Western Eyes: Feminist Scholarship and Colonial Discourses' (1988) 30 *Feminist Review* 61, 61.

¹⁸⁹ Karen Engle, 'Female Subjects of Public International Law: Human Rights and the Exotic Other Female' (1992) 26 *New England L. Rev.* 1509, 1509.

¹⁹⁰ Sally Merry Engle, 'Constructing a Global Law – Violence against Women and the Human Rights System' (2003) 28(4) *L. & Soc. Inquiry* 941, 947.

¹⁹¹ Eva Brems, 'Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse' (1997) 19(1) *Human Rights Quarterly* 136, 145.

¹⁹² Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge University Press, 2010) 58.

¹⁹³ Ann Elizabeth Mayer, 'Cultural Particularism as a Bar to Women's Rights: Reflections on the Middle Eastern Experience' in Julie Peters, and Andrea Wolper (eds.) *Women's Rights, Human Rights: International Feminist Perspectives* (New York, NY, USA: Routledge 1995) 176.

obligations of international human rights by States.¹⁹⁴ Likewise, essentialising traditional cultures of the Global South is also seen as a harmful to women; in this context, international human rights law has been perceived as an instrument to eradicate harmful traditional practices.¹⁹⁵ Nevertheless, it is not every form of cultural difference that is relevant under international human rights law, which does not dismiss culture or religion but refuses those practices being harmful to equal relations or to the psychological, physical, and sexual security of women.¹⁹⁶

Yet essentialism does not offer an explanation for the historical and social differences between women of different cultures.¹⁹⁷ Relying on a particular ‘essence’ of women is said to fail to identify the intersection of sex/gender and other identity-based characteristics such as ethnicity, class, poverty, religion, race, or sexuality.¹⁹⁸ As Mohanty observes, “women are constituted as women through the complex interaction between class, culture, religion and other ideological institutions and frameworks. They are not “women”—a coherent group—solely on the basis of a particular economic system or policy.”¹⁹⁹ Such over-simplifications are hegemonic in their characterisation of the problems of privileged women, who are often White, western, middle-class, and heterosexual.²⁰⁰ Hence, gender essentialism is criticised for ignoring Black, Eastern, Asian, and lesbian women by anti-essentialist feminists (poststructuralist, postmodern, postcolonial, and Third World feminists). Higgins argues that this is what makes ‘woman’ a ‘troublesome term’ in feminism and in law.²⁰¹

Essentialism influences all women—and also men. It is unclear what characteristics women would reveal if they were not controlled by patriarchal mores.²⁰² Charlesworth states that “patriarchy and the devaluing of women, although manifested differently within different

¹⁹⁴ UNGA, ‘Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Yakin Erturk: Intersections between Culture and Violence against Women’ (17 January 2006) UN doc. A/HRC/4/34, para. 19.

¹⁹⁵ *ibid.* para. 20.

¹⁹⁶ Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge University Press, 2010) 76.

¹⁹⁷ Hilary Charlesworth and C. Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000) 52.

¹⁹⁸ Johanna E. Bond, ‘International Intersectionality: A Theoretical and Pragmatic Exploration of Women’s International Human Rights Violations’ (2003) 52 *Emory L.J.* 71, 76.

¹⁹⁹ Chandra Talpade Mohanty, ‘Under Western Eyes: Feminist Scholarship and Colonial Discourses’ (1988) 30 *Feminist Review* 61, 74.

²⁰⁰ *ibid.*

²⁰¹ Tracy Higgins, ‘By Reason of Their Sex: Feminist Theory, Postmodernism and Justice’ (1995) 80 *Cornell L. Rev.* 1536, 1537.

²⁰² Catharine A. MacKinnon, ‘From Practice to Theory, or What is a White Woman Anyway?’ (1991) 4 *Yale J. L. and Feminism* 13.

societies, are almost universal.”²⁰³ She notes that “we can speak ‘as women’ in an international context. It is possible to describe women as having ‘a collective social history of disempowerment, exploitation and subordination extending to the present.’”²⁰⁴ Violence against women is seen in many different cultures as having shared basic origins in patriarchy, oppression, and gender inequality. The issue for international human rights agenda is not whether women are all same or whether they experience violence in the same way but “whether this issue is able to accommodate the diversity of women and women’s lives without compromising its strength that lies in its appeal to universality and the promotion of gender equality.”²⁰⁵ On the contrary, Engle²⁰⁶ states that, despite human rights law being universal, some doctrinalists²⁰⁷ oppose the reality that specific rights are not universally agreed on by violators or victims, especially in some countries where the violations are most widespread. However, strength of the doctrinalist approach is that it accepts cultural variations as potential impediments to achieving women’s rights among women’s rights supporters.²⁰⁸ Spivak proposes ‘strategic essentialism’ in the sense that “there is no shared or essential reality”, so feminism should not reject the rhetoric and ideology of women altogether.”²⁰⁹ Nevertheless, this contradiction is the basic cost of feminism and the women’s movement for refusing a collective identity, possibly portending the end of feminism as a theory or method.²¹⁰

For these reasons, Edwards argues that, despite the exclusion of women from any meaningful participation in international human rights systems, shared oppression is still the fundamental uniting power of feminism:

²⁰³ Hilary Charlesworth, ‘Human Rights as Men’s Rights’ in Julie Peters and Andrea Wolper (eds.) *Women's Rights, Human Rights: International Feminist Perspectives* (New York, USA: Routledge 1995) 103.

²⁰⁴ *ibid.*

²⁰⁵ Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge University Press, 2010) 76.

²⁰⁶ She analyses female genital mutilation/clitoridectomy deeply as rooted in culture within the various notions of women’s subjectivity. She prefers to use the term ‘clitoridectomy’ because of its anatomical specificity. She also uses the term ‘Exotic Other Female’ to indicate those women who practise clitoridectomy within culture. Karen Engle, ‘Female Subjects of Public International Law: Human Rights and the Exotic Other Female’ (1992) 26 *New England L. Rev.* 1509-1513.

²⁰⁷ Her analysis of women’s rights encompasses three broad approaches which she has labelled “doctrinalist, institutionalised and external critique”. According to the doctrinalist approach, “international human rights law focuses on one practice that they believe violates a particular right here the practice of female circumcision”. Karen Engle, ‘Female Subjects of Public International Law: Human Rights and the Exotic Other Female’ (1992) 26 *New England L. Rev.* 1513-1515.

²⁰⁸ Karen Engle, ‘Female Subjects of Public International Law: Human Rights and the Exotic Other Female’ (1992) 26 *New England L. Rev.* 1514-1515.

²⁰⁹ Gayatri C. Spivak, ‘Subaltern Studies: Deconstructing Historiography’ in R. Guha and G. Spivak (eds.), *Selected Subaltern Studies* (New York: Oxford University Press, 1988) 25.

²¹⁰ Ngaire Naffine, ‘In Praise of Legal Feminism-Butterworths Inaugural Legal Studies Lecture’ (2002) 22 *Legal Stud.* 71, 72.

Women may experience oppression differently or be subjected to different types of violence in different societies, communities, or cultures, but nowhere have women attained gender equality with men on equal terms (or on women's terms), and nowhere are women free from violence, including in 'northern' locations. If one studies the manifestations of violence across communities, the experiences are marked by their similarities rather than their differences.²¹¹

Speaking with one voice enables the ability to find common threads of experience while still respecting women's various experiences under international human rights law and under feminist-legal theories. Patriarchy and the devaluing of women, even though manifested differently within different communities, are almost universal.²¹²

However, I agree with the feminist critiques to the essentialised women from reading of poststructuralist feminism and its subjective treatment of women in different contexts. Linked to my research, the so-called honour killings faced by women in many countries are indeed manifested in many ways in different cultures; however, I also agree that although the main reasons for such killings are gender-based discrimination against women and male-dominated patriarchal mentality that are universal, the women's subjectivity and experiences are different rather than same. Using intersectionality within feminist legal theories helps us to understand the particularities in women's different experiences without losing sight of the universality of violence against women (and honour killings in particular) that I will analyse in the next section.

2.4. Intersectionality within Feminist Legal Theory

Feminist critiques of the deficiencies of the international human rights approach to the experiences of women have enabled a significant and necessary bridge between the gender equality and human rights within the context of violence against women. These critiques have taken into account the acknowledgement that women's rights are human rights and that the concept of VAW represents the patriarchal oppression of women universally. In conjunction with the anti-essentialist context, the international women's human rights focus on 'women'—at the exclusion of other identity sets such as ethnicity, race, religion, class, and sexual orientation with the exception of some voices from non-Western women—has caused

²¹¹ Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge University Press, 2010) 83.

²¹² Hilary Charlesworth, 'Human Rights as Men's Rights' in Julie Peters and Andrea Wolper (eds.) *Women's Rights, Human Rights: International Feminist Perspectives* (New York, NY, USA: Routledge 1995) 103.

a narrow understanding of the violation of women's human rights.²¹³ Intersectionality offsets this narrow understanding by intersecting multiple systems of oppression that equally touch women. Women experience multiple forms of violence (such as domestic violence, dowry-related violence, honour killings, and forced marriages) in different ways depending on issues such as age, race, ethnicity, and sexuality. In the context of honour killings, for instance, minority women throughout the world may struggle to access the legal system in order to escape the violation of their right to life.

Intersectionality entails interactions “between gender, race, and other sets of difference in individual lives, social practices, institutional arrangements, and cultural ideologies and the outcomes of these interactions in terms of power.”²¹⁴ Intersectionality has developed as the primary theoretical tool intended to fight hierarchy, hegemony, and exclusivity within feminism.²¹⁵ Moreover, intersectionality addresses the experiences and difficulties of women of colour raised in both feminist and anti-racist discourses.²¹⁶ Intersectionality was first highlighted by Crenshaw and has come into women's studies as the “most important contribution” in conjunction with the acknowledgement of differences among women.²¹⁷ Crenshaw argues that theorists need to demonstrate how gender and race interact to form the various aspects of Black women's experiences.²¹⁸ Hence, intersectionality addresses the matter of differences among women by running a “handy catchall phrase that aims to make visible the multiple positioning that constitutes everyday life and the power relations that are central to it.”²¹⁹

Although Crenshaw first coined intersectionality to address how Black women's experiences have been marginalised within feminist theory, feminists criticised that the issues of Black women's experiences shaped by race and gender already existed in feminist theory. Davis argues that intersectionality does so with a new twist:

While feminist theories of race, class and gender and poststructuralist feminist theory

²¹³Johanna E. Bond, ‘International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations’ (2003) 52 *Emory Law Journal* 73.

²¹⁴ Kathy Davis, ‘Intersectionality as Buzzword A Sociology of Science Perspective on What Makes a Feminist Theory Successful’ (2008) 9(1) *Feminist theory* 67, 68.

²¹⁵ Leslie McCall, ‘The Complexity of Intersectionality’ (2005) 30(3) *Signs* 1771.

²¹⁶ Kimberle Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) *U. Chi. Legal F.* 139.

²¹⁷ Leslie McCall, ‘The Complexity of Intersectionality’ (2005) 30(3) *Signs* 1771.

²¹⁸ Kimberle Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Color’ (1997) 43(6) *Stanford Law Review* 1241, 1242-43.

²¹⁹ Ann Phoenix and Pamela Pattynama, ‘Intersectionality’ (2006) 13(3) *European Journal of Women's Studies* 187.

shared many of the same concerns, there were also some theoretical and methodological incompatibilities. To begin with, the theorists had slightly different motivations. Postmodern feminist theorists were inspired by the postmodern project of deconstructing modernist philosophical traditions, while the race, class, and gender theorists were motivated by contemporary feminist politics. For many poststructuralist feminists, the essentialism of gender was the main problem.²²⁰

Jennifer Nash makes an important critique to Crenshaw's work, where the experience of Black women is the central while stating that intersectionality provides significant perceptions that "identity is complex, subjectivity is messy, and that personhood is inextricably bound up vectors of power".²²¹ However, according to Ben Smith, this critique is false one:

Crenshaw focuses on the experience of black women because she is a black woman, responding in part to the litigation strategies of black women, but there is nothing in her writing that precludes the expansion of intersectionality. No one writer can address all identities directly in a single piece of work, what is needed is recognition of a plurality of voices in mainstream scholarship.²²²

Joanne Conaghan also argues that the concept of intersectionality "has reached its limits of its theoretical potential", despite accepting its important contribution to the feminist movement.²²³ Yet, for her, this concept focuses on the 'identity' and does not fully address the phenomenon of 'inequality' which is multi-dimensional and sophisticated.²²⁴ Moreover, McCall discusses that even broad structures of inequality (such as gender, race, nationality and class) must have an impact on individuals, "they do not determine the complex texture of day-to-day life for individual members of the social group under study, no matter how detailed the level of disaggregation".²²⁵ Hence, overemphasising on the effect structural forces

²²⁰ Kathy Davis, 'Intersectionality as Buzzword A Sociology of Science Perspective on What Makes a Feminist Theory Successful' (2008) 9(1) *Feminist theory* 67, 73.

²²¹ Jennifer Nash, 'Re-thinking Intersectionality' (2008) 89 *Feminist Review* 13.

²²² Ben Smith, 'Intersectional Discrimination and Substantive Equality: A Comparative and Theoretical Perspective' (2016) 16 *The Equal Rights Review* 73, 76.

²²³ Joanne Conaghan, 'Intersectionality and the Feminist Project in Law' in Grabham et al. (eds), *Intersectionality and Beyond: Law, Power and the Politics of Location* (2009) 21

²²⁴ *ibid.*

²²⁵ Leslie McCall, 'The Complexity of Intersectionality' (2005) 30(3) *Signs* 1771, 1782.

on an individual may attribute to the misguided presumption that intersectionality contributes to a compounded negative impact.²²⁶

On the other hand, international human rights law as a system has failed to consider the intersections of gender-based subordination with any other systems of oppression based on, inter alia, age, ethnicity, class, sexuality, or sexual orientation.²²⁷ According to Bond, the UN would not have achieved an intersectional approach to human rights because the gender mainstreaming perspective within its system falls short in two respects:

First, intersectionality requires more than the proverbial “adding women to the mix”. [...] Gender mainstreaming tends to be essentialist in that it treats women as a monolithic group, rather than encouraging examination of how different systems of oppression intersect and affect groups of women in different ways. Second, although laudable, some of the efforts to inject a gender perspective into the work of U.N. institutions and NGOs flow not from an understanding of intersectionality and the fluid, complex nature of the self, but from a desire to merely comply with a “top-down” directive to “gender mainstream”.²²⁸

However, over the past two decades, the UN has incorporated intersectionality in its agenda. For instance, Coomaraswamy, the Special Rapporteur of the UN on violence against women, pointed out that the term ‘intersectionality’ had become remarkably widespread and, in the resolution on the human rights of women, “recognized the importance of examining the intersection of multiple forms of discrimination, including their root causes from a gender perspective.”²²⁹ Intersectionality has also been implemented in a limited way in the Council of Europe’s VAW agenda. The introduction to the Recommendation notes that “women are often subjected to multiple discrimination on ground of their gender as well as their origin, including as victims of traditional or customary practices inconsistent with their human rights and fundamental freedoms.”²³⁰ However, this introduction does not specify the forms of discrimination being referred to; thus the meaning of intersectionality as outlined in the rest of

²²⁶ Pok Yin S. Chow, ‘Has Intersectionality Reached its Limits? Intersectionality in the UN Human Rights Treaty Body Practice and the Issue of Ambivalence’ 2016 16(3) *Human Rights Law Review* 453, 472.

²²⁷ Johanna Bond, ‘International Intersectionality: A Theoretical and Pragmatic Exploration of Women’s International Human Rights Violations’ (2003) 52 *Emory Law Journal* 71, 124.

²²⁸ *ibid.*

²²⁹ UNHRC, ‘Resolution on the Integration of the Human Rights of Women and the Gender Perspective’ (16 April 2002) *UN doc. E/CN.4/2002/L.59*.

²³⁰ Council of Europe, ‘Explanatory Memorandum of the Recommendation No R (2002) 5 of the Committee of Ministers to Member States on the Protection of Women against Violence’ (2002) Introduction.

the text is restricted to recommendations linked to residency claims by immigrant women, victims of genital mutilation, and violence in conflict and post-conflict conditions.²³¹ This limited application of intersectionality to these particular groups of women and specific forms of violence in the recommendation are proof of “an approach to intersectionality which is ultimately exclusionary in nature by exacerbating dichotomies between cultures and contributing to the construction of a cultural “other”.”²³² Although some exclusionary language is employed such as ‘customary’ and ‘traditional’, Choudhry states that “this does not occur in the main body of the recommendation and the recommendations on areas with which this type of terminology has been associated such as genital mutilation, ‘honour’ killings and early marriage have been drafted without specific reference to any one particular religious or cultural community.”²³³ Therefore, the terminology employed in the recommendation includes the intersectionality approach within the framework of VAW in general as a universal gender equality concern. Erturk expresses the intersectional approach within the universal conceptualisation on VAW as follows:

The intersectional approach is a powerful conceptual tool that allows us to see the particularities in women’s diverse experiences without losing sight of the universality of VAW. This is particularly important in understanding the experiences of women in indigenous, minority and immigrant communities, where gender inequality intersect with other systems of inequality, such as class, ethnicity, warring parties, immigrant regimes and the like, to create multiple forms of exclusion and discrimination for women of different groups, putting them at risk of multiple forms of violence.²³⁴

Regarding so-called ‘honour killing’ seen in Western countries, there is a necessity for an intersectional approach that pays attention to multiple social categories such as gender, sexual orientation, citizenship status, and religion.²³⁵ Sets of difference and inequality such as gender, race, ethnicity, nationality, sexuality, and religion should be not be considered in isolation but rather in relation to each other.²³⁶ Korteweg and Yurdakul argue that honour

²³¹ Shazia Choudhry, ‘Towards a Transformative Conceptualisation of Violence Against Women—A Critical Frame Analysis of Council of Europe Discourse on Violence Against Women’ (2016) 79(3) *The Modern Law Review* 406, 430.

²³² *ibid.* 431.

²³³ *ibid.*

²³⁴ Yakin Ertürk, ‘Towards a Post-patriarchal Gender Order: Confronting the Universality and the Particularity of Violence against Women’ (2009) 46(4) *Sociologisk forskning* 61, 63.

²³⁵ Mieke Verloo and Sylvia Walby, ‘Introduction: The Implications for Theory and Practice of Comparing the Treatment of Intersectionality in the Equality Architecture in Europe’ (2012) 19(4) *Social Politics* 433–445.

²³⁶ Nira Yuval-Davis, ‘Intersectionality and Feminist Politics’ (2006) 13(3) *European Journal of Women's*

killings and honour-based violence as a form of gendered violence in the immigration context need to be understood in relation to the history of immigrant communities' ethnic and religious background.²³⁷ According to intersectional theory's binary interpretation of honour killing and honour-related violence as either cultural or patriarchal, so-called 'honour killings' is a form of gender-based violence "that is shaped within the intersections of the race, gender, sexual orientation, religious, ethnic and class dynamics of the immigrant-receiving country."²³⁸

The next section will aim to identify how so-called 'honour killings' are 'different' for women in Turkey by applying the principles of liberal, radical, and poststructuralist feminism. My research will also reveal how these patterns of feminist-legal discourse improve the impact of feminism in Turkey and how intersectionality within the feminist-legal approach affects women in Turkey positively.

2.5. Women's Rights: Feminism in Turkey

Women's rights have been a significant topic since the establishment of the Turkish Republic in 1923. Turkish women have fought for their civil, social, political, and economic rights. As a case-study, Turkey is specifically important because it unites "Islamic and secular, modern and traditional and democratic but authoritarian tendencies that shape the stats of women around the world."²³⁹ The Turkish women's movement dates back to the nineteenth-century Ottoman Empire, which started a reform strategy influenced by Europe and addressed women's matters, which were seen part of "modernisation".²⁴⁰ The "woman question" as a political agenda was questioned during the reforms of 'Tanzimat'²⁴¹ or the Ottoman

Studies 193–209.

²³⁷ Gokce Yurdakul and Anna C. Korteweg, 'Gender Equality and Immigrant Integration: Honor Killing and Forced Marriage Debates in the Netherlands, Germany, and Britain' (2013) 41 *Women's Studies International Forum* 204, 205.

²³⁸ Anna C. Korteweg and Gokce Yurdakul, *Religion, Culture and the Politicization of Honour-Related Violence: A Critical Analysis of Media and Policy Debates in Western Europe and North America* (United Nations Research Institute for Social Development, 2010) 4.

²³⁹ Yakin Ertürk, 'Turkey's Modern Paradoxes: Identity Politics, Women's Agency, and Universal Rights' in Myra Marx Ferree, and Aili Mari Tripp (eds.) *Global feminism: Transnational Women's Activism, Organizing, and Human Rights* (NYU Press, 2006) 79.

²⁴⁰ Zuhail Yesilyurt Gündüz, 'The Women's Movement in Turkey: From Tanzimat towards European Union Membership' (2004) 9(3) *Perceptions: Journal of International Affairs* 113, 113.

²⁴¹ The term *Tanzimat* (literally 'the reforms') refers to a period that began in 1839 and ended by 1876 in Ottoman history. "While reformist initiatives proliferated in this period to a degree that defies summary, they cohere around certain themes: legislation; education and elite formation; expansion of government; intercommunal relations; and the transformation of the political process". See Carter Vaughn Findley, 'The Tanzimat' in Resat Kasaba (ed.) *Turkey in the Modern World Volume 4* (Cambridge University Press, 2008) 11–37.

modernisation, starting in 1839.²⁴² As early as in 1911, Nesibe, an Ottoman feminist, gave a series of lectures about the new concept of women's rights, referring to John Stuart Mill's 'The subjection of Women', to Istanbul's socially elite women.²⁴³ With respect to women's oppression, she stated that "law, tradition, pleasure, indulgence, property, power, appreciation, arbitration [...] are all favourable to men."²⁴⁴ The defenders of the Ottoman women's movement asserted that education and the 'liberation' of women were preconditions for the success of modernity; they were therefore committed to overcome traditional gender role ideology in the attempt to advance the nation according to modern principles.²⁴⁵ However, an obstacle to the modernisation of the Empire was the patriarchal culture of the nation. In this section, I analyse how Turkish feminism has evolved following the declaration of the Republic of Turkey. Then, I demonstrate how feminists have been influenced by pioneers of the feminist movements (liberal, radical, poststructuralist, postmodern, Third World feminism) across the world and transferred their principles of feminist-legal approach into the Turkish context. This analysis will demonstrate the roots of subordination of women in the form of VAW and particularly honour killings in Turkey.

2.5.1. The First Wave of Feminism: State Feminism

Following the declaration of the Turkish Republic, the emancipation of women was pushed forward by Mustafa Kemal Atatürk between the years 1924 and 1934, which liberated Turkey from the influence of Shari'a/Islamic law.²⁴⁶ Kemalist reforms²⁴⁷ sought the "emancipation of women" included in the amendment to the Constitution regarding the political rights of women, their status in society, educational access, and labour force participation.²⁴⁸ The new 1926 Turkish Civil Code, adopted from the Swiss Civil Code, banned polygamy, instituted civil marriage, allowed the initiation of divorce proceedings by either partner, and granted women equal rights before the law. Most notably, women gained the right to vote on 5

²⁴² Deniz Kandiyoti, 'End of Empire: Islam, Nationalism and Women in Turkey' in Deniz Kandiyoti (ed.) *Women, Islam and the State* (USA: Temple University Press 1991) 23.

²⁴³ European Stability Initiative (ESI), *Sex and Power in Turkey: Feminism, Islam and the Maturing of Turkish Democracy* (European Stability Initiative 2007) 1.

²⁴⁴ Aynur Demirdirek, 'In Pursuit of the Ottoman Women's Movement' in Zehra Arat (ed.) *Deconstructing Images of 'The Turkish Women'* (Palgrave 1999) 78.

²⁴⁵ Nilüfer Gole, *Modern Mahrem: Medeniyet ve Örtünme /The Forbidden Modern: Civilization and Veiling* (Istanbul: Metis Yayınları, 1993).

²⁴⁶ European Stability Initiative (ESI), *Sex and Power in Turkey: Feminism, Islam and the Maturing of Turkish Democracy* (European Stability Initiative 2007) 3.

²⁴⁷ 'Kemalism' is an ideology and the foundational principles of the Turkish Republic. Those six principles, also called six-arrows, are nationalism, republicanism, populism, laicism, revolutionism, and statism. See: E. J. Zürcher, *Turkey: A Modern History* (New York: I. B. Taurus, 2004).

²⁴⁸ Simel Esim and Dilek Cindoglu, 'Women's Organizations in 1990s Turkey: Predicaments and Prospects' (1999) 35(1) *Middle Eastern Studies* 178, 178.

December 1934. In this manner, Turkey became the only Islamic country that guaranteed social, legal, and political rights to women in the twentieth century²⁴⁹ and, being ahead of even many Western countries, “perhaps pre-empted the emergence of a women’s movement.”²⁵⁰

The issue of women’s rights in Turkey was “taken as a symbol of being modernised and as a radical break from traditional life”.²⁵¹ But as Kandiyoti qualifies, Turkish women are “emancipated but unliberated”.²⁵² Indeed, in spite of the many rights Turkish women gained, serious difficulties continue to prevail for the liberation of Turkish women. Turkish feminists, including Yesim Arat, Deniz Kandiyoti and Sirin Tekeli, assert that despite modernisation and legal changes, Turkish women are still suppressed by the patriarchal system,²⁵³ which was, is, and will be regarded as an enormous problem in the expression of human rights. Ilkkaracan points out that:

Despite the apparently opposing views of modernists and Islamists on women’s role in society, they in fact competed in their zeal to construct a patriarchal ideal of female sexuality and to maintain and reconstruct mechanisms aiming to control women’s sexuality and bodies. The modernists/nationalists attempted to confront the social anxieties triggered by women’s participation in the public sphere through the construction of the modern Turkish woman: emancipated and active in the founding of the new republic as mother, teacher and political activist, yet also modest and chaste.²⁵⁴

Berktaý observes that, on the one hand, there is a significant improvement in terms of the situation of women and their rights from the last period of Ottoman Empire to Republic of Turkey; on the other hand, there is continuity on the basis of patriarchy—it is just that the nation-state patriarchy took the place of Islamic patriarchy.²⁵⁵ She makes the remarkable point

²⁴⁹ Meltem Müftüler-Bac, ‘Turkish Women’s Predicament’ (1999) 22(3) *Women’s Studies International Forum* Pergamon, 303.

²⁵⁰ Yesim Arat, *The Patriarchal Paradox: Women Politicians in Turkey* (London and Toronto: Associated University Press, 1989) 33.

²⁵¹ Omer Caha, *Women and Civil Society in Turkey: Women’s Movements in a Muslim Society* (Ashgate Publications 2013) 46.

²⁵² Deniz Kandiyoti, ‘Emancipated but Unliberated? Reflections on the Turkish Case’ (1987) 13(2) *Feminist Studies* 317, 324.

²⁵³ Pinar Ilkkaracan, ‘How Adultery almost Derailed Turkey’s Aspirations’ in Pinar Ilkkaracan (ed.) *Deconstructing Sexuality in the Middle East: Challenges and Discourses* (Routledge, 2008) 44.

²⁵⁴ *ibid.*

²⁵⁵ Fatmagül Berktaý, ‘Osmanlı’dan Cumhuriyet’e Feminizm/ *Feminism from the Ottoman through the Republic*’ in M. O. Alkan (ed.) *Modern Türkiye’de Siyasal Düşünce: Tanzimat ve Meşrutiyet’in Birikimi/ Political Thought in Modern Turkey: The Accumulation of the Tanzimat and Meşrutiyet* (İstanbul: İletişim Yayınları, 2001) 348-361.

that “while the invisibility of women in the public realm was the norm in the former, their visibility became the new norm in the latter, both of which were fed by the same framework, that is, patriarchy.”²⁵⁶ Hence, the only change is in the form of ‘patriarchy’.²⁵⁷ Similarly, Durakbasa states that even though Kemalism is a progressive ideology that encouraged women’s involvement in education and professions, it did not change patriarchal rules of morality and in fact preserved the basic cultural conservatism about male and female interactions despite its radicalism in opening a space for women in the public realm.²⁵⁸

The difficulty between Islam and modernisation is still taking place through the battleground of women’s bodies, which are considered a mechanism for the protection of the cultural borders according to Gündüz.²⁵⁹ The state and social institutions of families, courts, and cultural traditions in the Kemalist framework continue to have authority over women’s sexual behaviour.²⁶⁰ Kemalist women served as ‘feminist’ symbols, the ‘daughters of the Republic’, and were used in ‘state-supported feminism’ yet failed to question patriarchal gender roles within Turkish society.²⁶¹ According to Durakbasa, the Kemalist notion of the hierarchical tradition of the father-daughter relationship continued the pattern of sanctioned oppression. She states that “the achievements of Kemalist reform encouraged women to take part in public sphere in several ways but the moral codes related to “family honour and dignity” continued to control them.”²⁶² She continues that the fathers of Kemalist women desired to raise perfect republican girls and wanted their daughters to get a modern education; in contrast, they followed their tradition in terms of sexual morality and family honour.²⁶³ In this manner, Ilkaracan states, the Islamic and customary laws, norms, and discourses were simply translated into a new language entrenched in the 1926 Turkish Penal Code, subsumed under a notion of public morality constructed around values such as *namus* (honour), *ırz* (purity,

²⁵⁶ *ibid.*

²⁵⁷ *ibid.*

²⁵⁸ Ayşe Durakbasa, ‘Kemalism as Identity Politics in Turkey’ in Zehra Arat (ed.) *Deconstructing Images of the Turkish Woman* (Routledge, 1998) 140.

²⁵⁹ Zuhul Yesilyurt Gündüz, ‘The Women’s Movement in Turkey: From Tanzimat towards European Union Membership’ (2004) 9(3) *Perceptions: Journal of International Affairs* 113, 124.

²⁶⁰ *ibid.*

²⁶¹ *ibid.* 116-117.

²⁶² Ayşe Durakbasa, ‘Cumhuriyet Döneminde Modern Kadın ve Erkek Kimliklerinin Oluşumu: Kemalist Kadın Kimliği ve “Münevver Erkekler”/ *The Construction of Modern Women and Men Identities in Republican Period: Kemalist Woman Identity and “Enlightened Men”*, in Ayşe Berkay Hacimirzioglu (ed.) *75 Yılda Kadınlar ve Erkekler* Hacimirzaoğlu/Men and women in the 75 years (Istanbul: Türkiye İş Bankası&İMKB&Tarih Vakfı 1998) 29-50.

²⁶³ *ibid.*

honour), iffet (chastity), haya (shame), or müstehcenlik (obscenity).²⁶⁴

While the Republican gender equality policy encouraged a female presence in the public sphere and women's professional achievement, the 'gender equality' notion was mostly limited to the formal equality of women and men.²⁶⁵ The gender equality policy assumed an imagined 'sameness' of all citizens, including women, so far as the public sphere was concerned and was blind to cultural, religious, and social class differences and identities.²⁶⁶ This reveals how the principle of liberal feminism, which is the treatment of women and men in the public sphere, influenced women in Turkey through the rise of the first wave of Turkish feminism. Women in Turkey have been granted social, political, and legal rights as a result of contributions of the first wave of Turkish feminism.

2.5.2. The Second Wave of Feminism: Raising Awareness of VAW

While the impact of the military coup in 1980 left important marks on Turkish political history, leftist and socialist women's organisations have been efficient in structurally changing the scene of the women's movement.²⁶⁷ According to Kilic, after the coup, Turkey witnessed the emergence of organisations that defined themselves as 'feminist' for the first time.²⁶⁸ Hence, the women's movement in the aftermath of the 1980 coup is seen as a milestone in the history of Turkey by many feminist authors.²⁶⁹

As a democratic state facing the West and as a 'civilised nation', Turkey has emphasised the symbolic importance of modernised women, yet the 'state feminism' of the Republic period has been criticised.²⁷⁰ Feminists have argued that the Republican reforms for women did not really target women's freedom as such but rather "essentially defined breeders and educators

²⁶⁴Pinar Ilkcaracan, 'How Adultery almost Derailed Turkey's Aspirations' in Pinar Ilkcaracan (ed.) *Deconstructing Sexuality in the Middle East: Challenges and Discourses* (Routledge, 2008) 44.

²⁶⁵ Feride Acar and Gulbanu Altunok, 'Understanding Gender Equality Demands in Turkey: Foundations and Boundaries of Women's Movements', in Saniye Dedeoglu and Adem Y.Elveren(eds.), *Gender and Society in Turkey: The Impact of Neoliberal Policies, Political Islam and EU Accession* (I.B. Tauris & Co Ltd. 2012) 35.

²⁶⁶ *ibid.*

²⁶⁷ Saime Ozcurumez and Feyda Sayan Cengiz, 'On Resilience and Response beyond Value Change: Transformation of Women's Movement in Post-1980 Turkey' (2011) 34(1) *Women's Studies International Forum* 20, 24.

²⁶⁸ Zülal Kılıç, 'Cumhuriyet Türkiye'sinde Kadın Hareketine Genel Bir Bakış/A general account of the women's movement in the Turkish Republic' in A. B. Hacımirzaoglu (ed.), 75. *Yılda Kadınlar ve Erkekler/Men and women on the 75 years* (İstanbul: Tarih Vakfı Yayınları 1998) 347–360.

²⁶⁹ Nukhet Sirman, 'Feminism in Turkey: A Short History' (1989) 3 *New Perspectives on Turkey* 1-34, Pinar Ilkcaracan, 'How Adultery almost Derailed Turkey's Aspirations' in Pinar Ilkcaracan (ed.) *Deconstructing Sexuality in the Middle East: Challenges and Discourses* (Routledge, 2016) 45, Yesim Arat, 'Democracy and Women in Turkey: In Defense of Liberalism' (1999) 6(3) *Social Politics* 370–387.

²⁷⁰ Ayse Durakbasa and Aynur Ilyasoglu, 'Formation of Gender Identities in Republican Turkey and Women's Narratives as Transmitters of 'Herstory' of Modernization' (2001) 35(1) *Journal of Social History* 195, 195.

of the new generations, i.e. ‘enlightened moth nation’”.²⁷¹ Women’s roles in the community were questioned by the mostly urban, middle-class, well-educated, professional women.

The most important issue for which women’s organisations took to the streets as part of their political agenda was violence against women.²⁷² In 1987, after a demonstration in Istanbul, around 3000 women organised and launched a campaign to raise awareness on the issue of violence against women.²⁷³ The demonstration started because of a judicial decision to refuse the divorce application of a pregnant woman with three children who was beaten by her husband.²⁷⁴ The judge referred to a proverb saying: “You should never leave a women’s back without a stick and her womb without a colt.”²⁷⁵

Within the context of changing political structures under military rule and the rise of liberalism, the new Turkish feminists of the 1980s voiced the famous slogan of second wave feminist in the West (radical feminism)—“The private/personal is political”—indicating that the matters of relations between men and women are not only in the public field but also in the private field.²⁷⁶ This slogan was used widely to denote that domestic violence is not an individual matter but a political issue.²⁷⁷ This brought into account human rights violations against women in the private sphere to public consideration for the first time in Turkey,²⁷⁸ indicating that the second wave Turkish feminists has transferred the radical feminists’ criticism of international human rights law to the ‘public/private distinction’ in the Turkish context.

Further, this feminist wave examined and challenged the long-existing Republican conception of gender equality. The feminist critique, which took shape in academic and civil society circles, approached gender inequality based on the structural characteristics of patriarchy in

²⁷¹ *ibid.*

²⁷² Cagla Diner and Sule Toktas, ‘Waves of Feminism in Turkey: Kemalist, Islamist and Kurdish Women’s Movements in an Era of Globalization’ (2010) 12(1) *Journal of Balkan and Near Eastern Studies* 41, 45.

²⁷³ *ibid.*

²⁷⁴ Nadjé Al-Ali, *Women’s Movements in the Middle East: Case Studies of Egypt and Turkey* (Geneva: United Nations Research Institute for Social Development, 2002) 29, Sirin Tekeli, ‘The Turkish Women’s Movement: A Brief History of Success’ (2010) 7 *Quaderns de la Mediterrània= Cuadernos del Mediterráneo*, 119, 121; Cagla Diner and Sule Toktas, ‘Waves of Feminism in Turkey: Kemalist, Islamist and Kurdish Women’s Movements in an Era of Globalization’ (2010) 12(1) *Journal of Balkan and Near Eastern Studies* 41, 45.

²⁷⁵ *ibid.*

²⁷⁶ Sirin Tekeli, ‘The Turkish Women’s Movement: A Brief History of Success’ (2010) 7 *Quaderns de la Mediterrània= Cuadernos del Mediterráneo*, 119, 120-121.

²⁷⁷ Cagla Diner and Sule Toktas, ‘Waves of Feminism in Turkey: Kemalist, Islamist and Kurdish Women’s Movements in an Era of Globalization’ (2010) 12(1) *Journal of Balkan and Near Eastern Studies* 41, 45.

²⁷⁸ Pinar Ilkcaracan, ‘How Adultery almost Derailed Turkey’s Aspirations’ in Pinar Ilkcaracan (ed.) *Deconstructing Sexuality in the Middle East: Challenges and Discourses* (Routledge, 2016) 45.

the 1980s.²⁷⁹ ‘Patriarchy’ as a central tool of male dominance and as the main theme of radical feminism also affected these feminists. Hence, sexual freedom meant that women could take control of their own bodies, and this control became the main issue of the Turkish feminist movement in the same period.²⁸⁰ Some cases such as domestic violence, sexual harassment in the public place, violence against women, and the so-called ‘virginity tests’ required by single female job seekers in the public sector were put forward by feminists as signs of male domination of women’s bodies.²⁸¹ Feminist campaigns against domestic violence followed campaigns against sexual harassment and sexual violence, causing on a crucial legal reform—“Article 438 of the Turkish Penal Code, which reduced by one third the sentence given to rapists if the victim were a sex-worker, was repealed by the Grand National Assembly in 1990.”²⁸² In 1990, Article 159 of the Turkish former Civil Code, which stated that a married woman must have her husband’s implicit or explicit consent to work, was announced as unconstitutional by the Constitutional Court as an outcome of a landmark case brought to court through the advocacy efforts of women’s groups.²⁸³ Nevertheless, the initial accomplishment of the new feminist movement to publicise subjects linked to women and women’s sexuality fell short because of the dramatic rise of political Islam and the rise of militarism and nationalism, “spurred to a large extent by the armed conflict between Turkish security forces and the separatist Kurdistan Worker’s Party (PKK) that started in 1984.”²⁸⁴

2.5.3. The Third Wave of Feminism: Women in Different Identities

In the 1990s, the rise of identity politics consumed both Western and Turkish feminism.²⁸⁵ The essentialised women critiques²⁸⁶ (by poststructuralist, postmodern, and Third World feminists) of international human rights have a similar basis to the Kurdish and the Islamist feminists’ criticisms of Turkish feminists “for being ethno-centric and exclusionary of other

²⁷⁹ Feride Acar and Gulbanu Altunok, ‘Understanding Gender Equality Demands in Turkey: Foundations and Boundaries of Women’s Movements’ in Saniye Dedeoglu and Adem Y. Elveren (eds.), *Gender and Society in Turkey: The Impact of Neoliberal Policies, Political Islam and EU Accession* (I.B. Tauris & Co Ltd. 2012) 37.

²⁸⁰ Omer Caha, ‘The Transition of Feminism from Kemalist Modernism to Postmodernism in Turkey’ (2011) 2(1) *Turkish Journal of Politics* 5, 18.

²⁸¹ Sirin Tekeli, ‘The Turkish Women’s Movement: A Brief History of Success’ (2010) 7 *Quaderns de la Mediterrània*= *Cuadernos del Mediterráneo*, 119, 121.

²⁸² Pinar Ilkcaracan, ‘How Adultery almost Derailed Turkey’s Aspirations’ in Pinar Ilkcaracan (ed.) *Deconstructing Sexuality in the Middle East: Challenges and Discourses* (Routledge, 2016) 45.

²⁸³ *ibid*, cited in Sibel Ozbudun, *Turkiye’de Kadin olmak/Being a Woman in Turkey* (Istanbul: Yazın Dergisi Yayinlari, 1994)

²⁸⁴ *ibid*.

²⁸⁵ Cagla Diner and Sule Toktas, ‘Waves of Feminism in Turkey: Kemalist, Islamist and Kurdish Women’s Movements in an Era of Globalization’ (2010) 12(1) *Journal of Balkan and Near Eastern Studies* 41, 47, Omer Caha, ‘The Kurdish Women’s Movement: A Third-Wave Feminism within the Turkish Context’ (2011) 12(3) *Turkish Studies* 435, 441.

²⁸⁶ See Section 2.3.3 in this chapter.

identities”.²⁸⁷ According to Ilkcaracan, the Turkish women’s movement was separated into three conflicting groups of feminists: the secular or Kemalist feminists, the radical feminists, and the so-called Islamic feminists at the beginning of the 1990s.²⁸⁸ The Kemalist feminists recognised the rise of the Islamic movement as a principal threat and perceived the women campaigners in the Islamic movement “as their enemies”.²⁸⁹ They would reduce them to ignorant “beings used as instruments by the male activists of the Islamic movement.”²⁹⁰ Nevertheless, women in the Islamic movement used the ‘space of opportunity’ issued by Kemalist feminists to restructure traditional gender roles and deal with the Islamic prohibitions on women. As Gole states, “Islam does not stand against modernity; rather, it acts as a compass of life and as a means of management with modern society.”²⁹¹ For the Islamic feminists, it was important to fight against the ban of wearing headscarves at universities and in public. Importantly, they would see themselves as fighting against “the secular interpretations of their rights, but also against patriarchy that is legitimised by sacred authority within the confines of Islam.”²⁹² Finally, radical feminists were accepted by the rest of the feminists “as the ones who “dare” to criticise the present status of women in Turkey – a criticism beyond the issue of liberalism” whether they support the Kemalist ideology or Islamism.²⁹³ Although the number of radical feminists in Turkey is low, the women who attended anti-violence campaigns and Duygu Asena, the first prominent feminist journalist who established a number of women’s magazines, have been identified as radical feminists.²⁹⁴ On the other hand, radical Islamist feminists have not concentrated on the role of women in Islam but rather the unfulfilled promises of Kemalism or capitalism.²⁹⁵

This discussion recognises that the various strands of feminism in Turkey have approached women’s problems from different perspectives and with different agendas and obstacles. Among them, Kurdish feminism will help my contribution to the literature by asking whether

²⁸⁷ Sule Toktas, ‘Waves of Feminism in Turkey: Kemalist, Islamist and Kurdish Women’s Movements in an Era of Globalization’ (2010) 12(1) *Journal of Balkan and Near Eastern Studies* 41, 47.

²⁸⁸ Pinar Ilkcaracan, *A Brief Overview of Women’s Movement(s) in Turkey and the Influence of Political Discourses* (Women for Women’s Human Rights, 1997) 8.

²⁸⁹ *ibid.*

²⁹⁰ *ibid.*

²⁹¹ Nilufer Gole, *The Forbidden Modern: Civilization and Veiling* (University of Michigan Press, 1996) 138.

²⁹² Yesim Arat, ‘Feminists, Islamists, and Political Change in Turkey’ (1998) 19(1) *Political Psychology* 117, 128.

²⁹³ Pinar Ilkcaracan, *A Brief Overview of Women’s Movement(s) in Turkey and the Influence of Political Discourses* (Women for Women’s Human Rights, 1997) 8-9.

²⁹⁴ *ibid.*

²⁹⁵ *ibid.*

the so-called ‘honour killings’ is simply a Kurdish women issue in Turkey. I therefore will seek to answer this question by analysing the Kurdish women’s movement during this period.

2.5.3.1. The Struggles of Kurdish Women within and outside the Home

Kurdish people in Turkey mostly live in the south-eastern part of Turkey, comprising a majority of the population in the provinces of Mardin, Siirt, Hakkari, Mus, Diyarbakir, Birtlis, Agri, and Van.²⁹⁶ In the beginning of the 1990s, independent Kurdish women’s groups started to make their voices heard with the rise of identity politics that resulted in a polarisation and fragmentation within Turkish feminism.²⁹⁷

Kurdish women’s lives are shaped by patriarchal practices, traditions, and customs in south-eastern and eastern Turkey.²⁹⁸ Hence, Kurdish women, “who used to stay in their houses and be fully obedient to their husbands, today stand upon their rights, struggle for their languages, cultures and identities, and all these things create an individual consciousness and an independent personality in them.”²⁹⁹ They are respected as mothers or wives but never as ‘individuals’ in their own right.³⁰⁰ Turkish women have been also keeping intact the culture that perceived women as the symbol of honour of the family and nation.³⁰¹ Ilkcaracan and Ercevik note that “the majority of women are not allowed the space to be an individual whether in the legal, social, economic or cultural domains. Rather, they are constantly faced with norms and practices forcing them to resign their right to be an individual and instead live

²⁹⁶ Michael M. Gunter, *The Kurds in Turkey: A Political Dilemma* (Boulder CO, Westview Press, 1990).

²⁹⁷ Cagla Diner and Sule Toktas, ‘Waves of Feminism in Turkey: Kemalist, Islamist and Kurdish Women’s Movements in an Era of Globalization’ (2010) 12(1) *Journal of Balkan and Near Eastern Studies* 41, 48.

²⁹⁸ *ibid.* See also: Pinar Ilkcaracan, ‘Exploring the Context of Women’s Sexuality in Eastern Turkey, Reproductive Health Matters’ (1998) 6(12) *Taylor & Francis* 66, 67, Nuket Kardam, *Evaluation Report: Women for Women’s Human Rights – New Ways: Women’s Human Rights Training Program 1995-2003* (WWHR, 2003) 6; Kurdish Human Rights Project, ‘European Parliament Project: The Increase in Kurdish Women Committing Suicide’ (June 2007) 8 <[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2007/393248/IPOLFEMM_ET\(2007\)393248_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2007/393248/IPOLFEMM_ET(2007)393248_EN.pdf)> accessed: 8/5/2017; Pinar Ilkcaracan, ‘How Adultery almost Derailed Turkey’s Aspirations’ in Pinar Ilkcaracan (ed.) *Deconstructing Sexuality in the Middle East: Challenges and Discourses* (Routledge, 2016) 53; Feride Acar, Gulbanu Altinok, and Elif Gozdasoglu, *Report Analysing Intersectionality in Gender Equality Policies in Turkey and in the EU, QUING Project* (Institute for Human Rights, Vienna, 2008) 15; Necla Mora, ‘Violence as a Communicative Action: Customary and Honor Killings’ (2009) 6(2) *International Journal of Human Sciences* 499, 509; Hilal Onur Ince, Aysun Yarali, and Dogancan Ozel, ‘Customary Killings in Turkey and Turkish Modernization’ (2009) 45(4) *Middle Eastern Studies* 537, 544.

²⁹⁹ Omer Caha, ‘The Kurdish Women’s Movement: A Third-Wave Feminism Within the Turkish Context’ (2011) 12(3) *Turkish Studies* 435, 438.

³⁰⁰ Martin van Bruinessen, ‘From Adela Khanun to Leyla Zana: Women as Political Leaders in Kurdish History’ in Shahrzad Mojab (ed.), *Women of Non-State Nation: The Kurds* (Mazda Publishers, 2001) 104, cited in Fatma Karahan, ‘Kurt Kadini olmak: Sosyo-ekonomik Yapı İçinde Kurt Kadınının Statüsü/To be a Kurdish Woman: the Kurdish Woman’s Status within the Socio-economic Structure’ (1991) *Deng* 13.

³⁰¹ Zehra Arat, ‘Introduction: Politics of Representation and Identity’, Zehra F. Arat (ed) *Deconstructing Images of “The Turkish Woman”* (Palgrave, 2000) 26.

as secondary citizen in the service of their families, as a ‘girl-child’, ‘wife’ or ‘mother’.”³⁰²

The women’s movement in Turkey has been acting autonomously to challenge their cultural shaping and ordering. Caha states that Kurdish women must develop a feminist awareness and outlook, borrowing from the Turkish feminist movement that has encouraged Kurdish feminist groups to present themselves and struggle for their interests.³⁰³ On the other hand, Kurdish feminism has generated two considerable criticisms in Turkey:

One is against the patriarchal structure of Kurdish society and the status and treatment of women within this structure. Kurdish women were critical of the dominance of men within the Kurdish movement and argued that this was a consequence of the patriarchal culture in Kurdish society. The other criticism has been against Turkish feminism, which has ignored the Kurdish question and the problems of those women who lived in conflict zones populated mostly by Kurds.³⁰⁴

Kurdish women have challenged Turkish feminism, dominated by urban, Western, middle-class, ethnically Turkish, and educated women. They reject the perception of ‘essentialised women’ in Turkey. Poststructuralist feminist criticism of international human rights on the subjectivity of women has also been reflected in the concerns of Kurdish women in Turkey. Their subjectivity is subordinated not only by their male-dominated community but also by the State, which ignores their ethnicity and their socially and culturally structured differences.

The Kurdish women’s movement has pushed feminists to question how they relate to the State and Kemalist ideology.³⁰⁵ Kurdish feminists question the homogenised understanding of what being a woman means, which was characterised by Turkish, white, educated, feminist-oriented, middle-class women in the 1990s. The Turkish feminist’s hegemonic analysis has continued to define and group together these different women in terms of ‘shared oppression’ and their singular patriarchy³⁰⁶—similar to the Western ahistorical feminist model that accepts

³⁰² Pinar Ilkcaracan and Liz Ercevik Amado, ‘Human Rights Education as a Tool of Grassroots Organizing and Social Transformation: A Case Study From Turkey’ (2005) 16(2) *Intercultural Education* 115, 115.

³⁰³ Omer Caha, ‘The Kurdish Women’s Movement: A Third-Wave Feminism Within the Turkish Context’ (2011) 12(3) *Turkish Studies* 435, 447.

³⁰⁴ Cagla Diner and Sule Toktas, ‘Waves of Feminism in Turkey: Kemalist, Islamist and Kurdish Women’s Movements in an Era of Globalization’ (2010) 12(1) *Journal of Balkan and Near Eastern Studies* 41, 49.

³⁰⁵ *ibid.*

³⁰⁶ Cihan Ahmetbeyzade, ‘Kurdish Nationalism in Turkey and the Role of Peasant Kurdish Women’ in Tamar Mayer (ed.) *Gender Ironies of Nationalism: Sexing the Nation* (Routledge, 2000) 193-4.

women as the 'other', formed within a homogenous group of oppressed women.³⁰⁷ Hence, Turkish feminists have failed to consider Kurdish women, who have different historical, social, and cultural experiences of their shared oppression. Turkish feminists have ignored Kurdish women's constructed identities as plural, collective, and contradictory in the fight against the effects of State dominance while living under tribal and patriarchal authority.³⁰⁸

According to Kurdish feminists, feminist theory and practice include not only gender-specific female politics, but they take other forms of oppression into consideration like ethnicity and class-specific differences among women.³⁰⁹ In the 1990s and 2000s, Kurdish women came to be increasingly regarded as symbols and agents of the Kurdish nationalist movement in the political struggle of this ethnic group. Arat evaluates the Kurdish feminist's critique of the Turkish Government as follows:

During the decades that saw the development of feminist activism and the Kurdish conflict in the country, Kurdish women demanded recognition. They opposed state policies towards the Kurds and towards women and positioned themselves against secular Turkish feminists, who were dismissive of ethnicity, as well as against the Kurdish patriarchy, which was dismissive of women's rights. Kurdish nationalism helped Kurdish women identify themselves as Kurds, who had problems unique to their history and tradition. Yet Kurdish nationalists and those who spoke in the name of Kurdish traditions, which cultivated Kurdish nationalism, viewed women as inferior to men.³¹⁰

Another main critique "is the availability of education only in Turkish and the state limitations on the use of the Kurdish language. Yet, learning Turkish can empower Kurdish women because it expands their access to the public realm, which is defined predominantly in Turkish. However, many Kurdish activists see Turkish as a threat to the Kurdish community, as it bounds usage of Kurdish and weakens the transmission of the language to a new

³⁰⁷ Deniz Kandiyoti, 'Emancipated but Unliberated? Reflections on the Turkish Case' (1987) 13(2) *Feminist Studies* 317, 324.

³⁰⁸ Cihan Ahmetbeyzade, 'Kurdish Nationalism in Turkey and the Role of Peasant Kurdish Women' in Tamar Mayer (ed.) *Gender Ironies of Nationalism: Sexing the Nation* (Routledge, 2000) 198-9.

³⁰⁹ Anil Al-Rebholz, 'Gendered Subjectivity and Intersectional Political Agency in Transnational Space: The Case of Turkish and Kurdish Women's NGO Activists' in Wilson Angelia (ed.) *Situating Intersectionality* (Palgrave Macmillan US, 2013) 262; Omer Caha, 'The Kurdish Women's Movement: A Third-Wave Feminism Within the Turkish Context' (2011) 12(3) *Turkish Studies* 435, 443-444.

³¹⁰ Yesim Arat, 'Contestation and Collaboration: Women's Struggles for Empowerment in Turkey' in Resat Kasaba (ed.), *The Cambridge History of Turkey Volume 4: Turkey in the Modern World* (Cambridge, 2008) 414.

generation.”³¹¹ Acar and Altunok argue that “within Kurdish movement in the early phases, women’s suffering from direct and indirect consequences of state policies was emphasised more than discrimination they faced from community-based patriarchal beliefs and practices” such as honour killings.³¹² Hence, Kurdish feminists fight against State policies toward them as an ethnic group as well as against the Kurdish patriarchy, which was dismissive of women’s rights. However, simplified formulations of patriarchal practices, such as honour killings, arranged marriages, or forced marriages reduce them to victims and ignore the dynamic strategies with which they combat oppression.³¹³ Therefore, poststructuralist feminists’ understanding of women’s subjectivity needs to be transferred onto Turkish feminists, who need to recognise the identities of Kurdish women within multiple forms of patriarchy and multiple forms of resistance to patriarchal structures (State, familial, and tribal oppression).³¹⁴ Turkish feminists, therefore, need to listen Kurdish women’s voices and recognise their multiple, fluid positions within patriarchal institutions in order to fight all forms violence against women and particularly ‘honour killings’.

2.5.3.2. The Collaboration of Feminists in Turkey against VAW

The collaboration between Turkish and Kurdish feminists has improved since the second half of the 1990s. They were engaged in consciousness raising and bottom up activism on hitherto untouched questions of women’s rights. For instance, since 1998, women’s institutes and societies throughout the country that combat violence against women have met annually to examine matters connected to women’s shelters and to frame policy proposals.³¹⁵ Moreover, the Islamist and feminist women’s movements shared an opposition to the State and its definition of the common good in denial of women’s subjective choices and preferences.³¹⁶ As the number and influence of Kurdish women’s organisations has increased, and as occasions for interaction between the two groups have arisen, the responses to issues raised by Kurdish feminists have diversified.

Despite women’s mitigation of the separations that bisect Turkish society, comprising

³¹¹ *ibid.* 415.

³¹² Feride Acar and Gulbanu Altunok, ‘Understanding Gender Equality Demands in Turkey: Foundations and Boundaries of Women’s Movements’ in Saniye Dedeoglu and Adem Y. Elveren (eds.), *Gender and Society in Turkey: The Impact of Neoliberal Policies, Political Islam and EU Accession* (I.B. Tauris & Co Ltd. 2012) 225.

³¹³ Cihan Ahmetbeyzade, ‘Kurdish Nationalism in Turkey and the Role of Peasant Kurdish Women’ in Tamar Mayer (ed.) *Gender Ironies of Nationalism: Sexing the Nation* (Routledge, 2000) 202.

³¹⁴ *ibid.* 202-3.

³¹⁵ Cagla Diner and Sule Toktas, ‘Waves of Feminism in Turkey: Kemalist, Islamist and Kurdish Women’s Movements in an Era of Globalization’ (2010) 12(1) *Journal of Balkan and Near Eastern Studies* 41, 49.

³¹⁶ Yesim Arat, ‘Contestation and Collaboration: Women’s Struggles for Empowerment in Turkey’ in Resat Kasaba (ed.), *The Cambridge History of Turkey Volume 4: Turkey in the Modern World* (Cambridge, 2008) 408.

Islamist-secular women groups or Kurdish-Turkish groups, conflicts persist.³¹⁷ Nevertheless, the international context and the process of EU membership have galvanised feminists toward the same goals such as eliminating gender inequality and violence against women. Domestic violence affects almost all Turkish women and “remains rooted in traditional patriarchal conceptions of femininity and the proper role of women” and is a prominent problem in the South-eastern part of Turkey.³¹⁸ Their collaboration has revealed that violence against women and particularly honour killings are an omnipresent problem in Turkey, and the State needs to take action to eliminate this scourge. They form a unified front against violence against women, driven by the principles of gender equality and a stand against the male-dominated mentality in the State and in society. After this evaluation of the improvement of feminism in Turkey, the following section now demonstrates how the definition of ‘honour killing’ comprises different terms (*namus*, *şeref*) and how feminist academics identify this practice in the Turkish context.

2.5.3.3. Defining ‘Honour Killing’ in the Turkish Context

Before defining this practice, I will explicate the meaning of ‘honour’ in Turkish literature. There are many words related to ‘honour’ in Turkey, the most common being *namus* and *şeref*. The notion of ‘honour’ is directly related to a woman’s physical body, sexuality, and behaviour; apparently, this notion addresses an absence of a woman’s control over her own sexuality and body. A man’s honour includes two main components: his reputation, which is determined by his own actions in the community (*Seref*), and the chastity or virtue of the female members of his family (*Namus*).³¹⁹ While *namus* relates to the purity of women and girls, *şeref* means the ‘statue’, ‘prestige’, and ‘standing’ of men.³²⁰

The term of ‘honour’ (*namus*) makes sense for men and women in present-day Turkey. This term connotes the ability of the person to live up the standards of masculinity and femininity as formed by Turkish society.³²¹ According to this concept, a dishonourable man is not trustworthy and therefore unable to control his own sexuality and that of the women for whom

³¹⁷ *ibid.* 417.

³¹⁸ Kurdish Human Rights Project, ‘European Parliament Project: The Increase in Kurdish Women Committing Suicide’ (June 2007) 9 <[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2007/393248/IPOL-FEMM_ET\(2007\)393248_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2007/393248/IPOL-FEMM_ET(2007)393248_EN.pdf)> accessed: 8/5/2017

³¹⁹ Carin Benninger-Budel and Lucinda O’Hanlon, *Violence against Women in Turkey: A Report to the Committee against Torture* (World Organisation against Torture (OMCT), 2014) 352.

³²⁰ Clementine van Eck, *Purified by Blood: Honour Killings amongst Turks in the Netherlands* (Amsterdam University Press, 2002) 18-19.

³²¹ Nukhet Sirman, ‘Kinship, Politics and Love: Honour in Post-Colonial Contexts—The Case of Turkey’ (2004) in Shahrzad Mojab and Nahlo Abdo (eds.) *Violence in the Name of Honour: Theoretical and Political Challenges* (Istanbul: İstanbul Bilgi University Publishing 2004) 44.

he is responsible.³²² A woman's honour is directly related to her sexuality; thus, if her honour is damaged, she brings shame to the male relatives of the family—while shame belongs to women, honour tends to be a male aspect.³²³ This distinction emerged in the system of 'an ideology of power' that rationalises male dominance over women throughout the world.³²⁴

As an extreme form of VAW, 'honour killing' in the Turkish context is defined as a murder of a woman "suspected of having transgressed the limits of sexual behaviour as imposed by traditions; for example, engaging in a premarital relationship with someone of the opposite sex or having extra-marital affairs."³²⁵ Often honour killings occur when a married woman has a relationship with another man, or is considered to have such a relationship, or when a girl has or is thought to have a pre-marital relationship. Such crimes are often related to cases of forced marriage, polygamy, kidnapping and raping married women, and in cases when a man feels he is under socio-cultural pressures.³²⁶ Other reasons are blood feuds and clashes between two large families.³²⁷ Even requesting a song from the radio³²⁸ or talking with the boys (seen as a sexual act) have been reasons for so-called 'honour killings',³²⁹ reflecting extreme cases of 'patriarchy' in which women are "under the close inspection of not only their fathers, brothers and husbands, but also all men in their close circles."³³⁰

The girl or woman is not seen as a victim, but the man must follow a rule that entails killing the woman to reinstate the family honour.³³¹ Kogacioglu states that the main reason why the violations are still widespread in Turkey is the 'tradition effect'.³³² Many Turkish citizens,

³²² *ibid.*

³²³ Nicole Pope, *Honor Killings in the Twenty-first Century* (Palgrave Macmillan, 2012) 26.

³²⁴ *ibid.*

³²⁵ Ela Anıl, Canan Arın, Ayşe Berkay Hacımırzaoglu, Mehves Bingöllü, Pınar Ilkkaracan, and Liz Ercevik Amado, *Turkish Civil and Penal Code Reforms from a Gender Perspective: The Success of Two Nationwide Campaigns* (Women for Women's Human Rights-New Ways, 2005) 62.

³²⁶ Turkish Prime Ministry Human Rights Presidency, '2007 Honour Killings Report' (2008) 3-4, <https://rojwomen.files.wordpress.com/2010/05/honour_killings_report_by_govt_2007.pdf> accessed: 3/3/2015; See also the original report from: Basbakanlik Insan Haklari Baskanligi, *Töre ve Namus Cinayetleri Raporu Report on Custom and Honour Killings* (28 June 2008) <http://www.tihk.gov.tr/www/files/tore_namus_cinayetleri_raporu_06_08_2008.pdf> accessed: 3/3/2015 (author's translation)

³²⁷ *ibid.*

³²⁸ Justin Huggler, 'Women Killed to Save Male Face' (6 May 1999) *The Independent* <http://www.independent.co.uk/news/women-killed-to-save-male-face_1092004.html> accessed: 06/04/2016 See also: Nicole Pope, *Honor Killings in the Twenty-first Century* (Palgrave Macmillan, 2012) 81.

³²⁹ Leyla Pervizat, 'In the Name of Honour' (2003) 20 *Human Rights Dialogue* 30, 31.

³³⁰ Kurdish Human Rights Project, 'European Parliament Project: The Increase in Kurdish Women Committing Suicide' (June 2007) 13.

³³¹ Leyla Pervizat, 'Lack of Due Diligence Judgements of Crimes of Honour in Turkey' in Mohammed Mazher Idriss and Tahir Abbas (eds.) *Honour, Violence, Women and Islam* (Routledge 2010) 144.

³³² Dicle Kogacioglu, 'The Tradition Effect: Framing Honor Crimes in Turkey' (2004) 15(2) *Differences: a Journal of Feminist Cultural Studies* 119, 120.

including Turkish judges and the international community, attribute honour killings to the “tradition effect”, which favours the idea that the occurrence of honour crimes is distinct from institutions.³³³ When violence against women is framed as a matter of tradition, a distinction is established between, on the one hand, *traditions* (which are seen to be native, timeless, and unchanging) and *institutions* (which appear as contemporary and timely).³³⁴ This is a clear point on tradition’s role in the Turkish mentality regarding honour killings.

2.5.3.4. Statistical Analysis of Honour Killing

Honour killings are legitimised across the cultures of Turkey. It remains a salient issue, which disproportionately touches Kurdish women in Turkey.³³⁵ Although there are not many reports on the numbers of ‘honour killings’, the Turkish Government published two reports concerning the victims of honour killings. First, according to the police statistics published titled ‘Custom and Honour crimes’, 1091 people have been murdered in the name of ‘honour’ over the past five years, and 65 percent of these murders took place in 2006.³³⁶ According to this report, 45 percent of the honour killings were committed by perpetrators who originate from south-eastern and eastern Turkey.³³⁷ Secondly, as part of a report on ‘honour and customary killings’ published by the Human Rights Office of the Turkish Prime Ministry, Turkey has witnessed 1100 honour killings between the years 2003 and 2008, and over 200 people are murdered in the name of honour every year.³³⁸ Many cases took place either in the Kurdish Region (south-east or east part of Turkey) or among internally displaced Kurdish refugee families in metropolitan cities of Turkey.³³⁹ In detail, the report demonstrated that:

Ethics and honour killing, which is the heaviest violation of human rights, unfortunately, still happens in our country and is a serious communal problem. Every year, over 200 people are killed in this scope. According to reports of Boards in 81

³³³ Rebecca E. Boon, ‘They Killed Her for Going Out with Boys: Honor Killings in Turkey in Light of Turkey’s Accession to the European Union and Lessons for Iraq’ (2006) 35 *Hofstra L. Rev.* 815, 842.

³³⁴ Dicle Kogacioglu, ‘The Tradition Effect: Framing Honor Crimes in Turkey’ (2004) 15(2) *Differences: a Journal of Feminist Cultural Studies* 119, 120.

³³⁵ Kurdish Human Rights Project, ‘Submission and List of Issues to be Taken Up in Connection with the Consideration of Turkey’s Initial Report Concerning the Rights Covered by Article 1-15 of the ICESCR’ (May 2010) para.40

<http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/TUR/INT_CESCR_NGO_TUR_44_10184_E.pdf> accessed: 8/5/2017

³³⁶ Kadınin Statüsü Genel Mudurluđu (KSGM)/ General Directorate for the Status of Women, ‘Töre ve Namus Cinayetleri ve Kadınlara ve Çocuklara Yönelik Sıddetin Sebeplerinin Araştırılarak Alınması Gereken Önlemlerin Belirlenmesi Amacıyla Kurulan TBMM Araştırma Komisyonu Raporu/ Report of Parliamentary Research Commission on Prevention of and Measures to Combat Violence against Women and Children, and Custom and Honour Crimes’ (2006) C.122 *TBMM Tutanak Dergisi* 114-115 (author’s translation)

³³⁷ *ibid.* 116.

³³⁸ Turkish Prime Ministry Human Rights Presidency, ‘2007 Honour Killings Report’ (2008) 9.

³³⁹ *ibid.*

provinces, there is no serious change between 2006 and 2007. Number of victims in 2003 is 159, in 2006 233, in 2007 231. In last 5 years, total amount of these victims became over 1100.³⁴⁰

Honour killings do not only occur in the south-eastern and eastern part of Turkey populated by Kurdish and Arabic minorities but take place mostly in big cities. This report revealed that the highest number of honour crimes, which is 167 (15%), happened in Istanbul.³⁴¹ However, it also stated that, despite this trend, almost half of the defendants/murderers originally migrated from the south-eastern part of Turkey where traditional patriarchal communities are strong.³⁴² It explains these killings as a reflection of the struggles from immigration such as “insufficient sheltering, uneducated people, unemployment, destitution, crowd families”.³⁴³ These alarming numbers are also being noticed by international and national women’s rights advocacy groups. According to the woman’s rights NGO Flying Broom (Uçan Süpürge), although it is extensively believed that honour killings are more common in the less developed eastern regions of Turkey, where the feudal dynamics and tribal relations strengthen the problem, honour-related violence is not unique to the eastern rural regions but is also committed in the larger metropolis.³⁴⁴ This illustrates that honour killings in Turkey are not just violations of Kurdish women’s right to life but also exist as violations of Turkish women’s rights across the country.

Despite these official numbers, it has been argued that many such killings go unreported and undocumented, and even that some such as suicide cases are not filed or are filed as ‘accidental’. The Ministry of Justice published a report on the rate of women murders/femicide, which has increased 1400% from 2002 to 2009.³⁴⁵ Official statistics reveal that honour killings are not restricted to Kurdish communities—they comprise as well murders in the name of ‘honour’ that are not decided by ‘family council’ or ‘tribal elders’ but rather by men individually who decide for themselves to kill women in the name of ‘honour’ throughout Turkey. Thus, crimes in the name of honour have disproportionality affected

³⁴⁰ *ibid.*

³⁴¹ Basbakanlik Insan Haklari Baskanligi, *Töre ve Namus Cinayetleri Raporu/ Report on Custom and Honour Killings* (28 June 2008) <http://www.tihek.gov.tr/www/files/tore_namus_cinayetleri_raporu_06_08_2008.pdf> accessed: 3/3/2015 (author’s translation)

³⁴² *ibid.*

³⁴³ *ibid.*

³⁴⁴ Suruchi Thapar-Bjorkert and Carin Persson, *State Policy, Strategies and Implementation in Combating Patriarchal Violence, Focusing on ‘Honour Related’ Violence* (Integrationsverkets stencilserie, 2007) 59.

³⁴⁵ NTV, ‘Kadin Cinayetleri Yuzde 1400 Artis Gosterdi/ Women Murders Has Raised %1400’ (24 November 2009) NTV News <http://www.ntv.com.tr/yasam/kadin-cinayetleri-yuzde-1400-artis-gosterdi,gTy3YNnHUKS_bLGuT-XfeQ> accessed: 12/01/2017

women in Turkey intersecting ethnicity, gender, tradition/culture. The following section will therefore argue that intersectional approach will allow us to help eliminate such crimes by demolishing the existence of structural inequalities toward women in Turkey.

2.5.3.5. Intersectionality within Feminist-Legal Theory in the Turkish Context

The concept of intersectionality has recently arrived in the Turkish context and has received some attention by feminist scholars. The intersectionality approach acknowledges the existence of structural inequalities such as ethnicity in honour killings, age in forced and early marriages, and marital status, income level, and citizenship status in trafficking—these are the axes of inequality.³⁴⁶ Similar to its interrogation of gender-based violence such as domestic violence, early or forced marriages, and sexual abuse in its various forms, the intersectionality approach to gender and ethnicity appears crucial in the matter of honour killings, which are defined as a customary practice in South-eastern and Eastern part of Turkey, where a significant portion of the population is of Kurdish ethnic origin.³⁴⁷ Arat-Koc discusses that this analysis tends to externalise the problem, attaching honour killings to tradition or ethnicity as a product of Kurdish or feudal culture in South-eastern Turkey.³⁴⁸ She also points out that in analysing honour killings, “the problems of ‘the other Turkey’ and ‘other women’ are externalised, gender problems or matters that ‘white Turk’ women face in gender relations are often invisible or at best depoliticised in the way they are analysed.”³⁴⁹ Nevertheless, the intersectionality of inequalities disables the tendency to create static classifications of the ‘other’, recognising instead the shifting correlations among intersecting divisions (gender, ethnicity). This has been proven in the women’s rights NGOs’ campaign to reform the penal and civil code; in addition, recently, the Law to Protect Family and Prevent VAW unites all women’s NGOs irrespective of ethnicity, class, and sexuality against the discriminatory Turkish legal system.

Therefore, the intersectionality approach allows us to see that even though gender-based violence is a threat to all women, its impact on the everyday lives of Turkish and Kurdish women is changing. While the gender element varies according to the respective relations

³⁴⁶ Feride Acar, Gülbanu Altunok, and Elif Gözdaşoğlu-Küçükalioglu, *Report Analysing Intersectionality in Gender Equality Policies for Turkey and the EU* (QUING Project, Vienna: Institute for Human Sciences (IWM), 2008) 41.

³⁴⁷ *ibid.*

³⁴⁸ Sedef Arat-Koc, ‘(Some) Turkish Transnationalism(s) in an Age of Capitalist Globalization and Empire “White Turk” Discourse, the New Geopolitics, and Implications for Feminist Transnationalism’ (2007) 3(1) *Journal of Middle East Women's Studies* 35, 50.

³⁴⁹ *ibid.*

between women and men to the State, the intersectionality approach to Turkish and Kurdish women takes into account their unique obstacles such as language, access to education, poverty, and limits to accessing State services such as seeking State protection from honour killings.

Intersectionality helps us identify women in Turkey who may be more vulnerable to violence such as honour killings and hence, brings all different streams of feminism together in Turkey. Women who are victims of discrimination but also of a specific ethnicity and socio-economic status are especially vulnerable to honour killings. In this way, intersectionality helps us argue that some women are more vulnerable to violations of human rights (such as honour killings) than others. Therefore, international human rights law and particularly Turkish legislation need to take action on the elimination of so-called honour killings.

2.6. Conclusion

Feminist lenses (liberal, radical, and poststructuralist) and their critiques to international law indicate that violence against women to protect honour stems from socially constructed notions of patriarchy and gender inequality. Eradicating the male-dominated mentality from socially, culturally, and politically structured honour-based communities enables gender equality between women and men. Honour killing is an omnipresent violence against women that appears across the country, mostly in traditional family units; it exists as an accepted form of gender-based violence that differs from other traditional practices such as FGM, forced marriage. International human rights law, using Turkey as a case study, takes into account so-called honour killings as a universal phenomenon by intersecting women's diverse experiences with other systems of inequality such as gender and ethnicity.

In the next chapter, I evaluate how so-called 'honour killings' are attracted attention by international human rights law and examine this phenomenon through intersectionality within feminist lenses in relation to the CEDAW Convention and the Istanbul Convention according to the principles of equality/non-discrimination, and due diligence. I also aim to discuss so-called 'honour killings' within the context of the Istanbul Convention which is first legally binding document establishing structural connection between VAW and gender inequality, as complementing the CEDAW.

Chapter 3:

Analysis of Honour Killings within the Context of International Legislation: From CEDAW to the Istanbul Convention

3.1. Introduction

In the previous chapter, I demonstrated that analysing the concept of ‘honour’ within feminist discourses reveals that women’s sexuality and liberal behaviours come under strict scrutiny because they embody the honour of husbands, fathers, brothers, and male relatives within patriarchal societies. Moreover, this analysis reveals that, although such crimes appear in male-dominated, honour-based communities within specific social, political, and cultural contexts, they are a universal phenomenon in that they intersect women’s varied experiences with other systems of inequality. In this way, so-called ‘honour killings’ is a universal phenomenon, embedded in different cultures that violate women’s rights.

As a form of VAW, honour killings are located within the sphere of gender-based violence and can cover a wide range of acts intended to control women’s behaviour.³⁵⁰ So-called honour killings of women and girls are seen in many countries, and this phenomenon has been attracting attention mainly from 1990s in the international law framework. So-called honour killings are crimes under the national laws of most countries; however, the main problem is not the law but the systematic failure by states to prevent and investigate these crimes and to punish the perpetrators. For this reason, so-called ‘honour killings’ are and should be on the international human rights agenda. So-called ‘honour killings’ violate many human rights such as the right to equality and non-discrimination, the right to life, the prohibition against torture and inhuman treatment, and the right to personal liberty or security of person.

This chapter first argues how the UN system has gradually taken into consideration all forms of VAW as a violation of human rights and how so-called honour killings has grabbed the attention of feminists during this process. Second, the chapter focuses on the principles of equality and non-discrimination against women in light of the Convention on the Elimination

³⁵⁰ Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (Cambridge University Press, 2013) 475-482; Aisha Gill, ‘Patriarchal Violence in the Name of ‘Honour’’ (2006) 1(1) *International Journal of Criminal Justice Sciences* 1-12; Sara Hossain and Lynn Welchman, *Honour: Crimes, Paradigms and Violence against Women* (Zed Books, 2005); Aisha Gill, ‘Reconfiguring ‘Honour’-Based Violence as a Form of Gendered Violence, in Mohammad Mazher Idriss, and Tahir Abbas (eds.) *Honour, Violence, Women and Islam* (London (Routledge 2011) 218-231; Phyllis Chesler, ‘Worldwide Trends in Honor Killings’ (2010) 17(2) *Middle East Quarterly* 3-11; Joanne Payton, ‘“Honor,” Collectivity, and Agnation: Emerging Risk Factors in “Honor”-Based Violence’ (2014) 29(16) *Journal of interpersonal violence* 2863-2883.

of All Forms of Violence against Women (CEDAW)³⁵¹ and the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)³⁵². Finally, the chapter establishes the extent to which states have an obligation to prevent killings, to protect women, and to punish perpetrators within the principle of ‘due diligence’ in the context of so-called honour killings.

I thereby argue that the Istanbul Convention applies more detailed global standards to combating and preventing VAW, particularly honour killings, by further developing the CEDAW Convention principles and standards. This chapter exposes the extent to which Turkey’s participation in the Istanbul Convention advanced Turkish Legislation in the context of honour killings regarding the principles of gender equality/non-discrimination and ‘due diligence’.

3.2. VAW within the Process of the CEDAW Convention

VAW is one of the most direct expressions of the unequal power balance between men and women. It encompasses different forms of violence that appear in different cultures, nations, and age groups as a worldwide phenomenon with no boundaries. Violence can affect all parts of society and all individuals regardless of gender. However, women and girls are the most at risk because of the unequal power relations between men and women throughout history.³⁵³ VAW is gender-based violence with links to multiple and intersecting forms of discrimination.³⁵⁴ This section explains the incorporation of VAW on the UN agenda by analysing the conferences, resolutions, recommendations, reports, and contributions of feminists.

VAW has been on the international women’s agenda for many years. The first UN World Conference on Women was the World Conference of the International Women’s Year in Mexico City, which addressed the questions of dignity, equality, and conflict within the family.³⁵⁵ These concerns were also addressed at the World Conference of the UN Decade for

³⁵¹ UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, (18 December 1979, entered into force 3 September 1981) 1249 UNTS.

³⁵² The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Law, CETS No.210, 11 May 2011(entered into force on 1 August 2014)

³⁵³ Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (Cambridge University Press, 2013) 475-482.

³⁵⁴ UNHRC, ‘Special Rapporteur on Violence against Women, Its Causes and Consequences, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural, Including the Right to Development, Ms. Rashida Manjoo’ (2nd May 2011) UN doc. A/HRC/17/26.

³⁵⁵ World Conference on Women, ‘Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace’, Mexico, 1975, UN Doc. E/Conf.66/34, (2 July 1975).

Women: Equality, Development, and Peace in Copenhagen in 1980.³⁵⁶ These three terms reflected the tenets of feminist understanding. Bunch points out that “equality was seen primarily as a feminist issue coming from Western industrialised countries; Peace was included at the request of the Eastern Socialist Bloc; and Development was perceived as key to the improvement of women’s lives in Third-World countries.”³⁵⁷ The three ideals (Equality, Development, and Peace) shaped a more sophisticated origin for women’s human rights and are perceived as “internally interrelated and mutually reinforcing, so that the advancement of one contributes to the advancement of the others.”³⁵⁸

As a result of these three objectives, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly in 1979.³⁵⁹ The Convention describes discrimination as any distinction, exclusion, or restriction that precludes the equal application by women of human rights and fundamental freedoms in the economic, political, social, cultural, civil, or any other field in accordance with Articles 1, 2, and 3.³⁶⁰ Concerning social, economic, and cultural rights, the majority of the articles of CEDAW are rooted in the understanding of liberal feminism that relies on the principle of equality and non-discrimination before the law. However, the liberal interruptions of women’s rights failed in two concepts: the male-dominated construction of human rights and the continuation of the false dichotomy between the public and private spheres.³⁶¹ These critiques were directed to international human rights law by the radical feminists, who argued that both failures were embedded in patriarchy.³⁶² Thereby, some of articles and the preamble of CEDAW addresses further concerns of radical and Third World feminists.³⁶³ Significantly, the CEDAW recognises the need to end the distinction between public and private spheres,

³⁵⁶ World Conference on Women, ‘Equality, Development and Peace’, Copenhagen, (1980) UN Doc. A/CONF.94/35 (19 September 1980).

³⁵⁷ Charlotte Bunch, ‘Women’s Human Rights: The Challenges of Global Feminism and Diversity’ in Marianne Dekoven (ed.) *Feminist Locations: Global and Local, Theory and Practice* (Rutgers University Press 2001) 134-135.

³⁵⁸ Laura Parisi, ‘Feminist Praxis and Women’s Human Rights’ (2002) 1(4) *Journal of Human Rights* 571, 575-576, cited in H. Pietila and J. Vickers, *Making Women Matter: The Role of the United Nations* (3rd edition, London and New Jersey: Zed Books, 1996).

³⁵⁹ UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, (18 December 1979, entered into force 3 September 1981) 1249 UNTS. I will refer to this convention as the CEDAW or the Women’s Convention throughout this dissertation.

³⁶⁰ Elizabeth Evatt, ‘Eliminating Discrimination against Women: The Impact of the UN Convention’ (1991) 18 *Melb. UL Rev* 435, 435. By recognising particular areas of discrimination of special concern to women, the Convention on Civil and Political Rights (ICCPR) and the Covenant on Economic, Social and Cultural Rights (CESCR) are augmented by the CEDAW. Article 3 of the ICCPR, Article 3 of the CESCR.

³⁶¹ Laura Parisi, ‘Feminist Praxis and Women’s Human Rights’ (2002) 1(4) *Journal of Human Rights* 571, 577.

³⁶² See sections 2.2.2, 2.2.5, 2.3.1., and 2.3.2 in the Chapter 2 for further readings.

³⁶³ I will evaluate some of these articles as addressing the analysis of honour killings within CEDAW in section 3.2.1 in this chapter.

asserting that women's oppression is rooted in the maintenance of traditional gender roles. In other words, although the liberal ethos is embedded in most articles of the CEDAW, the interventions of radical and Third World feminists on the CEDAW recognise the need of the dissolve public/private distinction. Nevertheless, the CEDAW failed by not mentioning and referring 'VAW' explicitly as a form of discrimination in its text.

At the 1985 Third World Conference on Women in Nairobi, many women's rights activists disavowed this division between public and private and urged an approach that intersected them at the conference in Nairobi³⁶⁴.³⁶⁵ This movement sparked feminist reassessments, which united feminists toward revising 'women's rights' as 'human rights' in 1990.³⁶⁶ Otto states that "the hope was that making universal human rights more responsive to women's specific human rights violations would not only impact on human rights law, but also provide a new focus for women-in-development agenda."³⁶⁷ A 1988 UN Report noted that "in the late of twentieth century, violence as an ordinary form of behaviour may be becoming more public, common and frequent."³⁶⁸ It concluded that women are murdered, threatened, assaulted, sexually abused, and humiliated in their houses and that these actions are not unusual and uncommon around the world.³⁶⁹ Some reports and research on VAW emphasise many forms of human rights abuses against women between 1975 and 1990 including acid attacks, dowry death, bride burning, forced marriages, rape and abuse of women in custody, torture, harassment, sex tourism, and pornography.³⁷⁰ Partially in response to the absence of

³⁶⁴World Conference on Women, 'Report of the World Conference to Review and Appraise the Achievement of the United Nations Decade for Women: Equality, Development and Peace', Nairobi (United Nations publication, 15-26 July 1985, Sales No. E.85.IV.10). The final conference report recognised that:

Violence against women exists in various forms in everyday life in all societies. Women are beaten, mutilated, burned, sexually abused and raped. Such violence is a major obstacle to the achievement of peace and the other objectives of the Decade and should be given special attention. Women victims of violence should be given particular attention and comprehensive assistance. To this end, legal measures should be formulated to prevent violence and to assist women victims. National machinery should be established in order to deal with the question of violence against women within the family and society.

The Advocates for Human Rights. *UN Conference Documents*. (15 Haziran 2006). <http://www.stopvaw.org/UN_Conference_Documents3.html> accessed on: 9/8/2015

³⁶⁵ Elizabeth Evatt, 'Eliminating Discrimination against Women: The Impact of the UN Convention' (1991) 18 *Melb. UL Rev.* 435, 435.

³⁶⁶ Charlotte Bunch, 'Women's Rights as Human Rights: Toward a Re-Vision of Human Rights' (1990) 12 *Human Rights Quarterly* 486, 486.

³⁶⁷ Dianne Otto, 'Disconcerting 'Masculinities': Reinventing the Gendered Subject(s) of International Human Rights Law' in Doris Buss and Ambreena Manji (eds.) *International Law Modern Feminist Approaches* (Hart Publishing, 2005) 121.

³⁶⁸ UN Secretary General, '1988 Report for the Commission on the Status of Women to Eradicate Violence against Women within the Family and Society' (1989) UN doc. E/CN.6/1988/6 in the 32th Session of the Commission of the Status of Women (CSW) 7-8.

³⁶⁹ *ibid.*

³⁷⁰ Elizabeth Evatt, 'Eliminating Discrimination against Women: The Impact of the UN Convention' (1991) 18 *Melb. UL Rev.* 435, 435, cited in Amnesty International 'Women in the Front of Line: Human Rights Violations

the explicit reference to ‘violence’ in the Convention, the Committee adopted the General Recommendation (GR) No. 12³⁷¹ urging consideration of the issue and requiring statistics on gender violence.³⁷² The GR No.12 called on State parties “to act to protect women against violence of any kind occurring in the family, at the workplace or in any other area of social life.”³⁷³ Thus, state parties are required to explain in their reports to the CEDAW details of action taken to eradicate violence against women. VAW as a violation of anti-discrimination found more complete expression in General Recommendation No.19 adopted by the CEDAW Committee.³⁷⁴ The Recommendation explicitly calls “gender-based violence” as a form of discrimination³⁷⁵ and articulates a “due diligence standard”³⁷⁶ for VAW for the first time in international law. CEDAW General Recommendations are not legally binding in the same way as the terms of CEDAW but they are considered to confirm states their obligations when they are not stated or not adequately explained in the Women’s Convention itself.³⁷⁷

As a result of years dedicated to campaigning by women’s rights activists on violence, in 1993 the Vienna World Conference on Human Rights recognised that “the human rights of women and of the girls are an inalienable, integral and indivisible part of universal human rights” and that states should exercise due diligence to prevent, protect, prosecute, and provide compensation with respect to the problem.³⁷⁸ The Vienna Declaration reflected women’s united efforts in diverse contexts against different forms of gender-based violence such as rape, FGM, battery, and trafficking and raised awareness of these as human rights violations.³⁷⁹ Many women’s NGOs from around the world also exposed the international

against Women’ (1991) and International League for Human Rights, ‘Human Rights Abuses against Women: A Worldwide Survey. A Compilation of Experts from the US Department’s 1990 Country Reports on Human Rights Reports’ (1990).

³⁷¹ UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘CEDAW General Recommendation No. 12: Violence against women’, (1989) CEDAW/C/GC/12.

³⁷² Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice*. (University of Chicago Press, 2009) 76.

³⁷³ UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘CEDAW General Recommendation No. 12: Violence against women’, (1989) CEDAW/C/GC/12.

³⁷⁴ UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘CEDAW General Recommendation No. 19: Violence against women’ (1992) CEDAW/C/GC/19.

³⁷⁵ *ibid.* para. 1.

³⁷⁶ *ibid.* para. 9.

³⁷⁷ Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice*. (University of Chicago Press, 2009) 75

³⁷⁸ United Nations, ‘World Conference on Human Rights: The Vienna Declaration and Programme of Action’ (25 June 1993) A/CONF.157/23, section i, para.18. The World Conference set the stage for notable outcomes. Some of these, especially regarding gender-based violence, the International War Crimes Tribunal (with respect to violations in the former Yugoslavia and the Tribunal that was to be created about Rwanda) preceded the final remarks on the Conference.

³⁷⁹ Charlotte Bunch, ‘Women’s Human Rights: The Challenges of Global Feminism and Diversity’ in Marianne Dekoven (ed.) *Feminist Locations: Global and Local, Theory and Practice* (Rutgers University Press 2001) 136,

community's historical disregard for women's lack of enjoyment of human rights.³⁸⁰ Accordingly, almost fifty years after its creation, the United Nations finally officially acknowledged women's rights as human rights and interpreted violence against women as a human rights violation through the Vienna Declaration.

The GR No. 19 and the Vienna Declaration became the basis for adaptation of the Declaration on the Elimination of Violence against Women (DEVAW)³⁸¹. The DEVAW, for the first time, defined "violence against women" broadly to contain violence perpetrated by the state, in the community, and in the home.³⁸² It also explains how the inequality of women results from historically unequal power relations between women and men that are perpetuated, inter alia, by gendered violence.³⁸³ It confirms that states are responsible for eliminating such violence at the national level and for guaranteeing that women who suffer from violence have access to mechanisms of justice. They should also develop "preventative approaches to gender-based violence to ensure re-victimisation does not occur because of laws insensitive to gender considerations."³⁸⁴ Although the Declaration is not legally binding but a political commitment for States, it offers an authoritative interpretation of present human rights obligations that take into consideration the specific concerns of women with a general understanding of human rights.³⁸⁵ However, as Otto evaluates, "the DEVAW fell short of recognising VAW as a violation of human rights because of states' concerns that to do so would water down their universality."³⁸⁶ This argument left women victims of gendered violence still outside the boundaries of human rights.

The fact that the DEVAW focused for the first time on gendered violence in its numerous forms opened the potential for its comprehensive response to women's various experiences of violence. Women's diverse experiences of gendered violence take many forms, but some

United Nations, 'World Conference on Human Rights: The Vienna Declaration and Programme of Action' (25 June 1993) A/CONF.157/23, section ii (b), para. 38.

³⁸⁰ Jane Connors, 'United Nations Approaches to 'Crimes of Honour'' in Sara Hossain and Lynn Welchman (eds.) *"Honour": Crimes, Paradigms, and Violence against Women* (London & New York: Zed Books 2005) 25.

³⁸¹ UN General Assembly, 'Declaration on the Elimination of Violence against Women 1993 (DEVAW)', (20 December 1993) GA res. A/RES/48/104.

³⁸² The DEVAW, Art. 2.

³⁸³ The DEVAW, Preamble, cl 6.

³⁸⁴ The DEVAW, Art. 4 (d), (f).

³⁸⁵ Anette Funk, James L. Lang, and Juliane Osterhaus, 'Ending Violence against Women and Girls: Protecting Human Rights Good Practices for Development Cooperation. Good Practices in Ending Violence Against Women' (2005) *Deutsche Gesellschaft für Technische Zusammenarbeit (GIZ) GmbH*. 23.

³⁸⁶ Dianne Otto, 'Violence Against Women—Something Other Than a Violation of Human Rights?' (1993) 1(1) *Australian Feminist Law Journal* 159, 159.

practices such as genital surgeries³⁸⁷ and dowry murders³⁸⁸ have been gaining more explicit condemnation in Third World countries than reports that restrict themselves to ‘Western’ forms of VAW.³⁸⁹ The second aim of the women’s-rights-are-human-rights approach was to refocus attention back on the international human rights instruments by promoting ‘gender mainstreaming’ of women’s rights.³⁹⁰ This strategy encourages collaboration between feminist NGOs, state governments, and international institutions. This goal met with success at conferences and was repeated at the Beijing World Conference on Women in 1995.³⁹¹ Similarly, in 1994, meetings focusing on interrelations between women’s empowerment and autonomy in the context of gender-based violence were held at the International Conference on Population and Development in Cairo.³⁹² In 1995, the Fourth World Conference on Women in Beijing acknowledged 12 critical areas of concern in need of urgent action to succeed in the aim of gender equality.³⁹³ Gender mainstreaming as a global strategy for promoting gender equality was established under the Beijing Declaration. Moreover, the Platform indicates that some groups of women, such as women migrant workers, indigenous women and minority women, are particularly vulnerable while making clear that all women in all countries, without considering class, culture, or income, are at risk of gender-based violence.³⁹⁴ However, the Beijing Declaration emphasised forms of VAW not explicitly mentioned in the DEVAW, especially systematic rape, murder, sexual slavery, forced pregnancy during armed conflict, forced sterilization, forced abortion, female infanticide, and pre-natal sex selection.³⁹⁵ This progress on VAW within the UN is significant, but lingering concerns about the effectiveness of the CEDAW remained. One of the criticisms made towards the Women’s Convention was that it needed to adopt an individual complaint mechanism on VAW to improve its effectiveness for State members.

³⁸⁷ Isabelle R. Gunning, ‘Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries’ (1991) 23 *Colum. Hum. Rts. L. Rev.* 189, 189.

³⁸⁸ Ratna Kapur, ‘The Tragedy of Victimization Rhetoric: Resurrecting the ‘Native’ Subject in International/Post-Colonial Feminist Legal Politics’ (2002) 15 *Harv. Hum. Rts. J.* 1, 13-18.

³⁸⁹ Dianne Otto, ‘Disconcerting ‘Masculinities’: Reinventing the Gendered Subject(s) of International Human Rights Law’ in Doris Buss and Ambreena Manji (eds.), *International Law Modern Feminist Approaches* (Hart Publishing, 2005) 122.

³⁹⁰ *ibid.* 123.

³⁹¹ World Conference on Women, Beijing Declaration and Platform for Action, UN Doc. A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

³⁹² International Conference on Population and Development, Cairo Programme of Action (5-13 September 1994).

³⁹³ World Conference on Women, Beijing Declaration and Platform for Action, UN Doc. A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995) paras. 113-6.

³⁹⁴ *ibid.*

³⁹⁵ *ibid.* paras. 114-5.

As a reply to the ineffectiveness of the previous struggles to eliminate gender discrimination, the UN adopted an Optional Protocol to the Women's Convention (OP)³⁹⁶, providing individual women or groups the right to apply to a United Nations Committee to implement their rights if their governments fail to do so.³⁹⁷ The process of individual complaints and inquiry formed under the OP to the CEDAW, which only apply to those countries that ratified or acceded to both, give the CEDAW Committee additional tools to improve jurisprudence on VAW committed by private individuals and to interpret the responsibilities of state parties from different socio-cultural perspectives.³⁹⁸ The OP was finally presented, addressing the absence of a complaints mechanism for rights preserved in the CEDAW Convention after many years of pressure by the international women's movement. Even though the OP to the Women's Convention is not crucially stronger than the existing treaty complaints instruments, the availability of the procedure strengthens the force of the Convention.³⁹⁹ It permits women in states that ratify the OP to invoke international standards once domestic laws are insufficient.⁴⁰⁰

The 23rd special session of the General Assembly on "Women 2000: gender equality, development and peace for the twenty-first century" adopted a Political Declaration and outcome document entitled "further actions and initiatives to implement the Beijing Declaration and Platform for Action".⁴⁰¹ An international zero-tolerance campaign on VAW, as well as support for public awareness of the unacceptability and social costs of such violence, was held at the Beijing+5 Conference. In conjunction with the policy of gender mainstreaming into human rights law, the Human Rights Committee and Committee on Economic, Social, and Cultural Rights accepted General Comments that integrate VAW into the ICCPR⁴⁰² and ICESCR.⁴⁰³ These international instruments institute a series of practical measures taken by governments to prevent and respond to VAW. These measures are advanced by the Human Rights Council, notably the work of the Special Rapporteur on VAW

³⁹⁶ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, (adopted 6 Oct. 1999), GA Res. 54/4, U.N. GAOR, 54th Sess., Agenda Item 109, U.N. Doc. A/RES/54/4, 2131 UNTS, 83.

³⁹⁷ The Optional Protocol to the CEDAW, Art. 2.

³⁹⁸ Carin Benninger-Budel, *Due Diligence and Its Application to Protect Women from Violence* (Brill, 2008) 7.

³⁹⁹ Hilary Charlesworth and Christine Chinkin. *The Boundaries of International Law: A feminist Analysis*. (Manchester University Press, 2000) 245.

⁴⁰⁰ *ibid.*

⁴⁰¹ UNGA, 'Beijing+5, Further Actions and Initiatives to Implement the Beijing Declaration and Programme for Action' (2000) UN Doc. A/RES/S-23/3.

⁴⁰² UN Human Rights Committee, 'General Comment 28, Equality of Rights between Men and Women, Article 3' (29 March 2000) UN doc. CCPR/C/21/rev.1/Add.10 para. 11.

⁴⁰³ Committee on Economic, Social, and Cultural Rights, 'General Comment No.16, Article 3', (13 May 2005) UN doc. E/C.12/2005/3, para. 27.

in exploring the causes and consequences of such violence.⁴⁰⁴ In line with these developments, the UN had for almost after fifty years put different forms of VAW on its agenda but neglected to identify directly so-called honour killings as gender-based violence. Thus, I will determine when and how so-called honour killings directly grabbed the attention of the international human rights law agenda within the above-mentioned process of the CEDAW.

3.2.1. Honour Killings within the Context of the UN

Despite the absence of clauses that directly criminalise this phenomenon within the CEDAW, references to so-called ‘honour killings’ first appeared in international conferences held in Mexico City, Nairobi, and Copenhagen that advocated for “dignity, equality and security in the family and the need for the provision of assistance in the solution of the family.”⁴⁰⁵ Recognising domestic violence as “an intolerable offence to the dignity of human beings”, the Copenhagen Conference reported on “battered women and violence in the family”.⁴⁰⁶ With the CEDAW, concern about the persistent practice of female circumcision and other traditional practices harmful to the health of women was stated in GR No.14.⁴⁰⁷ Similarly, GR No.19, commenting on Articles 2 (f), 5 and 10 (c) of the CEDAW Convention, states that:

Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.⁴⁰⁸

⁴⁰⁴ UN Commission on Human Rights, ‘Special Rapporteur on Violence against Women, Its Causes and Consequences (SR-VAW)’, (4 March 1994) UN doc. E/CN.4/RES/1994/45.

⁴⁰⁵ World Conference on Women, ‘Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace, Mexico, 1975’ (2 July 1975) UN doc. E/Conf.66/34, World Conference on Women, Equality, Development and Peace, Copenhagen (19 September 1980) UN doc. A/CONF.94/35, World Conference on Women, ‘Report of the World Conference to Review and Appraise the Achievement of the United Nations Decade for Women: Equality, Development and Peace’, Nairobi (United Nations publication, 15-26 July 1985, Sales No. E.85.IV.10)

⁴⁰⁶ World Conference on Women, Equality, Development and Peace, Copenhagen (19 September 1980) UN doc. A/CONF.94/35, para. 67.

⁴⁰⁷ UN Committee on the Elimination of Discrimination Against Women (CEDAW), ‘CEDAW General Recommendation No. 14: Female Circumcision’ (1990).

⁴⁰⁸ UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘CEDAW General Recommendation No. 19: Violence against women’. (1992) CEDAW/C/GC/19, para. 11,

Pursuant to the GR No. 19, the CEDAW Committee abolished the defence of honour as an option in cases involving the murder of a family female member or assault as a measure to overcome family violence.⁴⁰⁹ Significantly, the DEVAW clarifies that States should not invoke any custom, tradition, or religious consideration to avoid their obligations to eliminate gender-based violence against women.⁴¹⁰ They should modify the social and cultural patterns of conduct between men and women and eliminate prejudices and customary practices that subjugate women.⁴¹¹ The Sub-Commission on the Promotion and Protection of Human Rights has brought into account a list of harmful traditional practices, including honour crimes, requiring study. As a Special Rapporteur on traditional practices affecting the health of women and girls, Warzazi mainly focused on female circumcision or genital mutilation in her reports.⁴¹² However, her reports have also touched on the issue of honour killings since 1999.⁴¹³ This issue was also taken up by the Committee on the Elimination of Discrimination Against Women in its general recommendations and then in its constructive dialogue with States Parties.⁴¹⁴

In 1997, the CEDAW Committee criticised the Turkish Penal Code for permitting lenient sanctions and penalties for ‘honour killings’.⁴¹⁵ This, the Committee said, breached the principle of respect for human life and the security of all persons that is protected under international human rights laws.⁴¹⁶ Israel was also identified as needing to take decisive measures to eliminate practices such as honour killings, forced marriages, female genital mutilation, and polygamy.⁴¹⁷ Similar issues were also raised regarding the Jordanian Penal

⁴⁰⁹ *ibid.* para. 24 (r) (ii).

⁴¹⁰ The DEVAW, Art. 4.

⁴¹¹ The DEVAW, Art. 4 (j).

⁴¹² UN (Sub-Commission) on the Promotion and Protection of Human Rights, ‘Women and Human Rights: Third Report on the Situation Regarding the Elimination of Traditional Practices Affecting the Health of Women and the Girl Child, prepared by Ms. Halima Embarek Warzazi’, UN doc. E/CN.4/Sub.2/1999/14.

⁴¹³ UN (Sub-Commission) on the Promotion and Protection of Human Rights, ‘Women and Human Rights: Third Report on the Situation Regarding the Elimination of Traditional Practices Affecting the Health of Women and the Girl Child, prepared by Ms. Halima Embarek Warzazi’, UN doc. E/CN.4/Sub.2/1999/14 paras. 69-71; UN doc. E/CN.4/Sub.2/2000/17, paras. 69-77; Fifth report, E/CN.4/Sub.2/2001/21, paras. 84, 94-102; and Sixth report, UN doc. E/CN.4/Sub.2/2002/32, paras. 28-32, 50; Seventh report, UN doc. E/CN.4/Sub.2/2003/30, paras. 76-80.

⁴¹⁴ Jane Connors, ‘United Nations Approaches to ‘Crimes of Honour’ In (eds.) Sara Hossain and Lynn Welchman *“Honour”: Crimes, Paradigms, and Violence against Women* (London & New York: Zed Books 2005) 29.

⁴¹⁵ The (old) Turkish Penal Code 1926/765. See section 4.2.4.1 in Chapter 4 for further readings.

⁴¹⁶ UN Committee on the Elimination against Women, ‘Report of the Committee on the Elimination on the Discrimination against Women’ (1997) General Assembly, Fifty-Second Session, Supplement No.38 A/52/38/Rev.1, para. 178.

⁴¹⁷ UN Committee on the Elimination against Women, ‘Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Israel’ (1997) U.N. Doc. A/52/38/Rev.1, Part II. para. 178.

Code's Article 340, which "excuses a man who kills or injures his wife or his female kin caught in the act of adultery"; the State party was urged to take necessary measures to make honour killings unacceptable and to repeal Article 340.⁴¹⁸

In 1998, when Leyla Pervizat, who is a Turkish women's rights activist and lawyer, worked for the United Nations Commission on Human Rights calling for lobbying on honour crimes, the issue of "honour killings" was starting to attract more attention at the UN due to rising awareness of women's rights.⁴¹⁹ During the Beijing+5 meeting, Turkey raised awareness on the subjects of 'honour killings' and 'forced marriages'.⁴²⁰ For the first time within the General Assembly (GA), honour killings were taken up in the context of extrajudicial executions. The Special Rapporteur, Asma Jahangir, drew attention to certain traditional practices constituting violations of the women's right to life.⁴²¹ Regarding honour killings reports by some countries, she highlighted that the perpetrators had gone unpunished after killing their wives, daughters, or sisters as defending the honour of family.⁴²² She had received accounts of such cases that had occurred in Turkey and urged States to end this unacceptable practice.⁴²³ Accordingly, the GA called for States to investigate promptly and thoroughly killings committed in the name of honour or in the name of passion; perpetrators should be brought to justice before an independent and impartial judiciary.⁴²⁴ In this context, Turkey had and still has officially indicated its support for the efforts of the UN to remove the practice of 'honour killings' by voting in favour of both GA resolutions.

The first internationally accepted text on crimes of honour is 'Working towards the Elimination of Crimes Committed in the Name of Honour', drafted during the Beijing+5 meetings, which is part of the Outcome Document of the 23rd Special Session of the United Nations General Assembly in 2000.⁴²⁵ This document gives State parties the responsibility to

⁴¹⁸ UN Committee on the Elimination against Women, 'Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Jordan' (1997) U.N. Doc. A/55/38 (1997) para. 178.

⁴¹⁹ Leyla Pervizat, 'An Interdisciplinary and a Holistic Attempt to Understand the Honor Killings in Turkey', in Mariza Correa and Erica Renata de Souza (eds.), *Family Life a Comparative Perspective on "Crimes of Honor"* (UNICAMP, 2006) 309.

⁴²⁰ *ibid.* 310.

⁴²¹ UNCHR, 'Extrajudicial, Summary or Arbitrary Executions Report of the Special Rapporteur, Ms. Asma Jahangir' (1999) UN doc. E/CN.4/1999/39, 6 January 1999, para. 74.

⁴²² *ibid.*

⁴²³ *ibid.* paras. 74-75.

⁴²⁴ UNGA Resolution 55/111, "Extrajudicial, Summary and Arbitrary Executions" (4 December 2000) UN doc. A/RES/55/111, 2000, para. 7.

⁴²⁵ UNGA Resolution 55/66, 'Working towards the Elimination of Crimes Committed in the Name of Honour' (31 January 2001) UN doc. A/RES/55/66.

exercise due diligence to prevent, investigate, and punish the perpetrators of such crimes and to enable protection for the victims.⁴²⁶ The GA also called upon States:

To implement their relevant obligations under international human rights law and to implement specific international commitments, [...] to intensify efforts to prevent and eliminate crimes against women committed in the name of honour, which take many different forms, by using legislative, educational, social and other measures, [...] to encourage, support and implement measures and programmes aimed at increasing the knowledge; [...] to establish, strengthen or facilitate, where possible, support services to respond to the needs of actual and potential victims, [...] to create, strengthen or facilitate institutional mechanisms so that victims and others can report such crimes in a safe and confidential environment, [...] to gather and disseminate statistical information on the occurrence of such crimes.⁴²⁷

The draft resolution was accepted by 146 member states with 26 abstentions. One of the abstentions was Qatar; the reason given was that these crimes are not confined to any particular people or region or religion.⁴²⁸ In the same year, Ms. Jahangir continued to receive reports on honour killings of women and pointed out that the practice is more common in (although not limited to) States where the majority of the population is Muslim.⁴²⁹ Incidentally, a number of Islamic leaders and scholars have condemned this practice and made clear that it has no religious basis.⁴³⁰ In 2000, Secretary to the General Assembly Kofi Annan observed that “there has been worldwide mobilisation against harmful traditional practices such as so-called ‘honour killings’”, which he prefers to call “shame killings”.⁴³¹

In 2002 the Secretary General issued the report, “Working towards the elimination of crimes against women committed in the name of honour”.⁴³² He emphasised that honour killings are

⁴²⁶ *ibid.*

⁴²⁷ *ibid.* paras. 4 (a) (b) (c) (d).

⁴²⁸ Statement by Mr. Al-Mohannadi (Qatar), GA 55th Session, 81st Plenary meeting, 4 December 2000, UN doc. A/55/PV. 81, p. 6.

⁴²⁹ UNCHR, ‘Extrajudicial, summary or arbitrary executions Report of the Special Rapporteur, Ms. Asma Jahangir’ (2000) UN doc. E/CN.4/2000/3, para. 78.

⁴³⁰ *ibid.*

⁴³¹ General Assembly Special Session ‘Women 2000: Gender Equality, Development and Peace for the Twenty-first Century’ on 5 June, Press Release SG/SM/7430 WOM/1203 <<http://www.un.org/News/Press/docs/2000/20000605.sgsm7430.doc.html>> accessed: 23/12/2016.

⁴³² UNGA Res. 57/169, ‘Working towards the Elimination of Crimes against Women Committed in the Name of Honour, Report of the Secretary General (2002) UN doc. A/57/169, 2 July 2002. Further, the Assembly stated “deep concern at the persistence of various forms of violence and crimes against women in all parts of the world, including crimes committed in the name of honour and crimes committed in the name of passion; stressed that all forms of violence against women, including crimes identified in the outcome document, were obstacles to the

irreconcilable with all religious and cultural values and that, despite the fact such crimes have taken greater international and national attention, they require greater effort and commitment by governments, NGOs, and the international community for their elimination.⁴³³ In line with this report, some States, such as Belarus and Croatia, stated that, while they had no record of honour killings and no specific articles in accordance with honour killings, “measures aimed at preventing violence against women defined such violence and underscored their inadmissibility.”⁴³⁴ Turkey was also reported as one of the many countries having honour killings, demonstrating that in some regions where the traditional lifestyle was still predominant, “the concept of honour was associated with women’s bodies and that mentality constituted the pretext for crimes against women committed in the name of honour.”⁴³⁵ Turkey has taken a very supportive stance in international efforts against so-called ‘honour killings’. Among those countries in which honour killings reported, Turkey has been the only state to be a co-signatory of the resolution against honour killings.⁴³⁶ During the GA’s 59th session, Resolution 59/165⁴³⁷ on honour crimes adopted in 2004 highlights the necessity to recognise and effectively address the root reasons of VAW, in particular crimes committed in the name of honour.⁴³⁸

The inequality between women and men is the most solid reason of why so-called honour killings are still ongoing problem, and to what extent international human rights law takes measures to eliminate such crimes. States have been lax in implementing and enforcing the law. They must exercise the ‘due diligence’ standard as a positive obligation to prevent women’s killings committed in the name of ‘honour’, protect women from violence, and punish the perpetrators. In the following section, I analyse honour killings within the principles of equality and non-discrimination and the ‘due diligence’ standard in the context of the CEDAW in international human rights law. I first use conceptual analysis and feminist

advancement and empowerment of women; and reaffirmed that violence against women both violated and impaired or nullified the enjoyment by women of their human rights and fundamental freedoms”. *ibid.* para. 18.

⁴³³ *ibid.* paras. 7-9.

⁴³⁴ *ibid.* para. 3.

⁴³⁵ *ibid.* para. 5.

⁴³⁶ Canan Arın, ‘Violence against Women’, in Yildiz Ecevit (ed.), *Bridging the Gender Gap in Turkey: A Milestone towards Faster Socio-economic Development and Poverty Reduction* (World Bank Report, 2003) 184

⁴³⁷ UNGA Res. 59/165, ‘Working towards the Elimination of Crimes against Women Committed in the Name of Honour’ (2005) UN doc. A/59/165, 10 February 2005. Recalling its Resolutions 57/179 of 18 December 2002 and 58/147 of 22 December 2003: UNGA Res. 57/179, ‘Working towards the Elimination of Crimes against Women Committed in the Name of Honour’ (2002) UN doc. A/57/179, 30 January 2003, and UNGA Res. 58/147, ‘Elimination of Domestic Violence against Violence’ (2003) UN doc. A/58/147, 22 December 2003.

⁴³⁸ UNGA Res. 59/165, ‘Working towards the Elimination of Crimes against Women Committed in the Name of Honour’ (2005) UN doc. A/59/165, 10 February 2005, 2.

critiques then reveal how some of the clauses of the CEDAW are linked and applicable to the phenomenon of so-called honour killings in relation to these international norms.

3.2.2. The International Norms of Equality and Non-Discrimination: A Conceptual Analysis and Feminist Critiques

As the most crucial principle of the human rights concept⁴³⁹, equality has been asserted to be “one of the most frequently declared norms of international human rights law” and the “dominant and recurring theme of international human rights law”.⁴⁴⁰ The concepts of equality and non-discrimination between women and men and equal protection before the law are among the fundamental principles regulating the implementation and enjoyment of human rights.⁴⁴¹ Human beings are considered equal, and this equality is recognised by law.⁴⁴² As a fundamental human right, equality between men and women is endorsed by the UN Charter.⁴⁴³

The concept of discrimination is provided in Article 26 ICCPR and Article 1 CEDAW, stating the “effect and purpose” of the discrimination provision, which can be classified as direct/indirect discrimination and institutionalised/non-institutionalised discrimination—both of which are forbidden.⁴⁴⁴ Direct discrimination is centred on the idea of formal equality and can be defined “as less favourable or detrimental treatment of an individual or group of individuals on the basis of a prohibited characteristic or ground such as race, sex, or disability”.⁴⁴⁵ Thus, direct discrimination is an explicit discrimination built on the comparable conditions of sex and gender. On the other side, indirect discrimination is gender-neutral discrimination per se, but its outcome disfavours a person on the grounds of sex or gender.⁴⁴⁶ In other words, indirect discrimination arises “when a practice, rule, requirement or condition is neutral on its face but impacts disproportionately upon particular groups, unless that

⁴³⁹ Wouter Vandenhole, *Non-discrimination and equality in the view of the UN human rights treaty bodies* (Intersentia, 2005) 1.

⁴⁴⁰ Anne Bayefski, ‘The Principle of Equality or Non-Discrimination in International Law’ (1990) 11 *Human Rights Law Journal* 1, 1- 2.

⁴⁴¹ *ibid.*

⁴⁴² Universal Declaration of Human Rights (adopted by the United Nations General Assembly on 10 December 1948), G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948) Art. 1.

⁴⁴³ Charter of the United Nations (entered into force 24 October 1945) 1 UNTS 16, Art. 1(c), Art. 8, Art. 55(c)

⁴⁴⁴ Merja Pentikainen, *The Applicability of the Human Rights Model to Address the Status and Concerns of Women* (Erik Castrén Institute, Research Reports 1999) 30.

⁴⁴⁵ Kanen Frostell, ‘Gender Difference and the Non-Discrimination Principle in the CCPR and the CEDAW’ in L. Hannikainen & E. Nykanen (eds.) *New trends in discrimination law – international perspectives* (Publications of Turku Law School, 1999) 33-34.

⁴⁴⁶ *ibid.*

practice, rule, requirement or condition is justified”.⁴⁴⁷ However, a State needs to consider relevant diversities between groups in cases of prohibitions of indirect discrimination.⁴⁴⁸

The concept of equality in the Women’s Convention obviously develops beyond formal *de jure* equality to address unintentional, systemic forms of discrimination and equality of result. This is despite the many provisions that states women to be treated the equal as men in similar circumstances.⁴⁴⁹ Additionally, the Women’s Convention ascertains the generic, structural bases of inequality such as culture, customs, and norms as possible obstacles to women’s enjoyment of equality.⁴⁵⁰ Byrnes states how the drafters identify the concept of discrimination against women:

They saw that the inequality of women and discrimination against them were complex phenomena, reflected in and perpetuated by laws, customs and traditions, beliefs about what it meant to be a woman or a man, social and economic institutions, and power relations within and between societies and between women and men. Discrimination took many forms- exclusion from or limited rights to participate in the political and public spheres of community life, [...] inequality in the family, violence against women in the community and in the family.⁴⁵¹

The concept of equality is acknowledged by the State parties having a significant, active role to play in achieving gender equality in the CEDAW. Equality for women, legally defined, is understood in the Aristotelian sense of ‘treating like alike’ in. In other words, the rules of equality require that “likes be treated alike and permit unalikes to be treated differently” or “equality law is a law of sameness and difference”.⁴⁵² This view has the problem in that it does not address what differences are applicable in identifying whether individuals are equal or unequal.⁴⁵³ It is also an obstacle for women as their social experience includes “systemic

⁴⁴⁷ Kevin Kitching, *Non-Discrimination in International Law- A Handbook for Practitioners* (Interights 2005) 20-21.

⁴⁴⁸ *ibid.* 21.

⁴⁴⁹ Kathleen Mahoney, ‘Canadian Approaches to Equality Rights and Gender Equity in the Courts’ in Rebecca J. Cook (ed.) *Human Rights of Women, National and International Perspectives* (University of Pennsylvania Press, Philadelphia 1994) 439.

⁴⁵⁰ *ibid.* 439.

⁴⁵¹ Andrew Byrnes, ‘Article 1’ in Marsha A. Freeman, Christine Chinkin, and Beate Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press 2012) 52.

⁴⁵² *ibid.* 442.

⁴⁵³ Warwick McKean, *Equality and Discrimination under International Law* (Oxford: Clarendon Press, 1983) 2

deprivation of power, resources, and respect”.⁴⁵⁴ Thus, this view of equality, which effectively translates into national modern laws as ‘formal equality’, has been criticised by feminists.⁴⁵⁵

Liberal feminists’ advocacy for equal participation in education, employment, or the economy represents formal equality such as equal rights or equality before the law.⁴⁵⁶ Nevertheless, these are criticised by other feminists for ignoring difference. Krill discusses the ‘women difference’ as follows:

women are entitled to all the rights and freedoms specified by the Conventions. Accordingly, any discriminatory measure which does not result from the application of the Conventions is prohibited. However, the prohibition of discrimination is not a prohibition of differentiation. It is for this reason that distinctions are prohibited only to the extent that they are unfavourable. Equality could easily be transformed into injustice if it were to be applied to situations which are inherently unequal and without taking into account circumstances relating to the state of health, the age and the sex of protected persons.⁴⁵⁷

Thus, differences in equal treatment had to be justified and supported in relation to actual differences between the sexes. This approach to gender inequality proposes that “failure to accord women the benefits and privileges afforded to men” is only an issue of discrimination.⁴⁵⁸ The CEDAW includes extending prohibitions on discrimination since discrimination is defined in terms of unequal rights in conjunction with Article 1, but the Convention will not force a broader, non-rights-based examination of female subordination.⁴⁵⁹ Although the Convention promises women all rights on a basis equal to men pursuant to Article 1,⁴⁶⁰ this concept of equality fails to acknowledge that “equality is not freedom to be

⁴⁵⁴ Kathleen Mahoney, ‘Canadian Approaches to Equality Rights and Gender Equity in the Courts’ in Rebecca J. Cook (ed.) *Human Rights of Women, National and International Perspectives* (University of Pennsylvania Press, Philadelphia 1994) 442.

⁴⁵⁵ Peter Weston, ‘The Empty Idea of Equality’ (1982) 95 *Harv. L. Rev.* 537, 537.

⁴⁵⁶ See section 2.2.1. in Chapter 2 for further reading.

⁴⁵⁷ Francoise Krill, ‘The Protection of Women in International Humanitarian Law’ (1985) 249 *Int’l Rev. Red Cross* 337, 339-340.

⁴⁵⁸ Margareth Etienne, ‘Addressing Gender-Based Violence in an International Context’ (1995) 18 *Harv. Women’s L. J.* 139, 147.

⁴⁵⁹ Jennifer L. Ulrich, ‘Confronting Gender-Based Violence with International Instruments: Is a Solution to the Pandemic Within Reach?’ (2000) 7(3) *Indiana Journal of Global Legal Studies* 629, 643.

⁴⁶⁰ Margareth Etienne, ‘Addressing Gender-Based Violence in an International Context’ (1995) 18 *Harv. Women’s L. J.* 139, 148.

treated without regard to sex but freedom systematic subordination because of sex”.⁴⁶¹ As a result of this conceptual problem intrinsic in the language of the Convention, women do not receive special protection against harms specific to their experiences as women.⁴⁶²

Addressing women’s structural disadvantage, particularly on the private sphere, has replaced the aim of formal equality with the perspectives of substantive equality, which brings into account not just formal equality but also ‘effective and genuine’ equality.⁴⁶³ From this perspective, sameness/difference equality fails by ignoring the reality of women’s experiences according to radical feminists.⁴⁶⁴ MacKinnon argues that “the equality of this movement is not premised on being the same as men, but on ending violation and abuse and second-class citizenship because one is women.”⁴⁶⁵ She also gives instances of women’s reality regarding the concept of equality, which is a question of hierarchy rather than sameness/difference. For example, African women oppose clitoridectomy; Brazilian and Italian women protest domestic violence and a male excuse for killing women in the name of ‘honour’. For MacKinnon, these aspects of women’s reality are silenced by the ‘sameness’ definition of equality broadly because almost every woman faces these issues.⁴⁶⁶ Moreover, MacKinnon answers the question, “What is an equality question a question of?”:

An equality question is a question of dominance and subordination. Inequality is a question of hierarchy. The fundamental issue of equality is not whether one is the same or different; it is not the gender difference; it is the difference gender makes.⁴⁶⁷

Deficiency of the sameness/difference equality model to cope with fundamental social disadvantage or sexual hierarchy puts women in the same place as men without deconstructing institutional systems that strengthen that equality.⁴⁶⁸ Additionally, this model

⁴⁶¹ Hilary Charlesworth, Christine Chinkin, and Shelley Wright, ‘Feminist Approaches to International Law’ (1991) 85:4 *The American Journal of International Law* 632.

⁴⁶² Margareth Etienne, ‘Addressing Gender-Based Violence in an International Context’ (1995) 18 *Harv. Women’s L. J.* 139, 148.

⁴⁶³ Alice Edwards, *Violence against Women under the International Human Rights Law* (Cambridge University Press 2010) 144, cited in *Minority Schools in Albania, Greece v. Albania* (Advisory Opinion), PCIJ, Ser. A/B, No. 64 (6 April 1935) 21.

⁴⁶⁴ See section 2.2.2 in the Chapter 2 for further reading.

⁴⁶⁵ Catharine A. MacKinnon, ‘Equality Remade’ in C. A. MacKinnon, *Are Women Human? And Other International Dialogues* (Cambridge, MA: Harvard University Press, 2006) 108.

⁴⁶⁶ Catherine A. MacKinnon, ‘Making Sex Equality Real’ in C. A. MacKinnon, *Are Women Human? And Other International Dialogues* (Cambridge, MA: Harvard University Press, 2006) 73.

⁴⁶⁷ *ibid.* 74.

⁴⁶⁸ Alice Edwards, *Violence against Women under the International Human Rights Law* (Cambridge University Press 2010) 148.

advances men's experience rather than women's realities and experiences in the context.⁴⁶⁹ Moreover, existing equality laws need to adopt a broad view of equality as social injustice or social disadvantage, oppression, or hierarchy to identify women's experiences and to adopt policies and programs around that reality.⁴⁷⁰ Women's experiences therefore would be structured according to their differing social, political, and cultural discourses, and the distinction between power and gender would expose the obvious hierarchy that results in women's subordination.⁴⁷¹

The section above argues that substantive equality should be provided to prevent discrimination against women through equality laws, policies, and programs in societies, institutions, and countries. Thus, the CEDAW shapes and addresses substantive equality, which is a key component of its potential strength in the field of women's rights. I next argue which grounds of honour killings can be measured as a form of discrimination according to the clauses of the CEDAW.

3.2.2.1. Analysis of Honour Killings: Article 1 of the CEDAW

As a form of discrimination against women, honour killings fit the definition of discrimination against women compatible with Article 1, for this crime is a form of "distinction, exclusion, or restriction on the basis of sex" and committed against women and girls. This form of crime harms women's enjoyment of human rights, most crucially their right to life. Women and girls killed in the name of honour by their family members experience discrimination because they are women. The phrase 'on the basis of sex' covers situations where sex is explicitly mentioned as a basis of differential treatment (direct discrimination) or where the application of a 'neutral' criterion or a particular practice results in a negative impact on women, namely indirect discrimination.⁴⁷² Thus, this article is very crucial in the context of honour killings because such human rights violations mainly take place in the private sphere of the family.⁴⁷³

The definition of sex discrimination in the context of provisions of the CEDAW is parallel to that of race discrimination in the ICERD:

⁴⁶⁹ *ibid.*

⁴⁷⁰ *ibid.*

⁴⁷¹ See section 2.2.3. in Chapter 2 for further reading.

⁴⁷² Andrew Byrnes, 'Article 1' in Marsha A. Freeman, Christine Chinkin, and Beate Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press 2012) 59.

⁴⁷³ See section 2.3.2 in Chapter 2 for the analysis of the public/private distinction discussions in international human rights law.

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁴⁷⁴

While there is no universally accepted common definition of discrimination or equality under the international human rights treaties, the portions of the ICERD concerning racial discrimination and the CEDAW focusing on gender discrimination have a specific definition of discrimination. Apart from this, according to Byrnes, the critical difference between the definitions of the ICERD and the CEDAW is evident in the final phrase of each: “the ICERD definition of racial discrimination applies to the specific fields enumerated as well as to ‘any other field of public life’, while the CEDAW applies to those same fields, but also applies to the ‘civil or any other field.’”⁴⁷⁵ This is especially important for the phenomenon of honour killings and represents a positive evolution of international law.

While Article 1 emphasises which grounds are not tolerated on the issue of discrimination, the ‘any other field’ language is interpreted such that discrimination against women will not be tolerated in the private sphere, including family relations.⁴⁷⁶ Hence, Article 1 addresses not only the realm of public life but also the fundamental inequalities that women experience in the private sphere.⁴⁷⁷ Zearfoss states that “extending the Convention’s reach to private spheres by use of the ‘any other field’ language is uniquely important, though, to a convention meant to eradicate discrimination against women. [...] That the Convention did not distinguish between public and private in structuring and shaping the substantive rights it addresses is a key element of its potential strength in the field of women’s rights.”⁴⁷⁸ She indicates harms of the distinction between the public and private sphere. Because the distinction of a private family sphere for women strengthens a hierarchical model of the family and thereby increases

⁴⁷⁴ The CEDAW, Art. 1. Articles 2 (1) and 3 of the International Covenant on Civil and Political Rights, and Articles 2 (2) and 3 of the International Covenant on Economic, Social, and Cultural Rights all require substantive equality in the enjoyment of rights between men and women.

⁴⁷⁵ Andrew Byrnes, ‘Article 1’, in Marsha A. Freeman, Christine Chinkin, and Beate Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press 2012) 57.

⁴⁷⁶ Julie A. Minor, ‘An Analysis of Structural Weaknesses in the Convention on the Elimination of All Forms of Discrimination against Women’ (1994) 24 *GA. J. INT’L & COMP. L.* 137, 139.

⁴⁷⁷ Kasuko Hirose, ‘Article 1: Definition of Discrimination against Women’ in Japanese Association of International Women’s Rights (ed.), *Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Bunkyo: Japanese Association of International Women’s Rights, 1995) 46-47.

⁴⁷⁸ Sarah C. Zearfoss, ‘Note, the Convention for the Elimination of All Forms of Discrimination against Women: Radical, Reasonable, or Reactionary’ (1990) 12 *Mich. J. Int’l L.* 903, 908-909.

patriarchy, force, and coercion against women.⁴⁷⁹ This causes the continuance of the so-called honour killings in the society. Moreover, the phrase ‘irrespective of their marital status’ is also problematic. Some countries’ protection laws could protect only married women against discrimination, but honour killings occur also among single women, couples without marriage contracts including religious marriages that some countries ban.⁴⁸⁰

The definition of ‘discrimination against women’ extends to discrimination in the enjoyment of human rights and fundamental freedoms in any field. GR No.19 includes a number of rights not specifically stated in the Convention to address the subjection of women to violence in the family, in the community, or at the hands of the State.⁴⁸¹ The definition also appears in the Committee’s concern of intersectionality, which addresses the position of particular groups of women, such as ethnic minorities or indigenous peoples, which may be subject to multiple forms of discrimination.⁴⁸² It is also stated that “intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2” in the CEDAW Committee GR No.28 in 2010.⁴⁸³ This is an example of how intersectionality using a feminist-legal approach is partly adopted in the text.⁴⁸⁴

3.2.2.2. Analysis of Honour Killings: Articles 2 (c) (e) and 16 (1) of the CEDAW

Pursuant to Article 2 coupled with Article 1, the CEDAW imposes obligations upon state parties to condemn discrimination against women in all its forms and calls on authorities to take all appropriate measures to eradicate discrimination against women ‘by any person, organization or enterprise’.⁴⁸⁵ Thus, within the CEDAW context, discriminatory laws connected to honour killings may be seen as a breach of Article 2(c) in cases where courts unequally apply and interpret the law in their penal codes, particularly in passion and defence of honour crimes. Article 2(c) obliges state parties to “establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and

⁴⁷⁹ Celina Romany, ‘Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law’ (1993) 6 *Harv. Hum. Rts. J.* 87, 87-88.

⁴⁸⁰ I will analyse whether women in Turkey are protected from violence, particularly honour killings, regardless of their marital status. See sections 4.2.3 in Chapter 4 and 5.2.1 in Chapter 5 for further analysis.

⁴⁸¹ Andrew Byrnes, ‘Article 1’ in Marsha A. Freeman, Christine Chinkin, and Beate Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press 2012) 67.

⁴⁸² *ibid.*

⁴⁸³ UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘CEDAW General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the CEDAW’ (2010) CEDAW/C/GC/28, para. 18.

⁴⁸⁴ See section 2.4 in Chapter 2 for the analysis of the Intersectionality within Feminist Legal Theory.

⁴⁸⁵ The CEDAW, Art. 2.

other public institutions the effective protection of women against any form of discrimination.”⁴⁸⁶ This section builds a strong connection between women’s human rights and the state parties’ judicial system. It also stipulates a strong obligation to states to protect women actively and effectively from all forms of discrimination by administering laws that treat men and women equally.⁴⁸⁷ However, some domestic penal codes provide reduced punishment only for men of crimes committed in the name of so-called ‘honour’ although these countries such as Pakistan, Jordan and Lebanon have abolished the defence of honour.⁴⁸⁸ This is a denial of women’s rights on an equal basis with men pursuant to Article 2(c).

Article 2(c) is also relevant in cases of indirect discrimination as an obligation for state parties to guarantee the protection of women against any form of discrimination. In this context, the application of the law can have discriminatory effects. For example, Jordan is in violation of Article 2 of the CEDAW because of court application of Article 98 (which reduces penalties for murders committed in a fit of fury), Article 99 (which halves a perpetrator’s sentence when he is excused by the victim’s family) in the Penal Code. The Committee calls Jordanian government on its concern regarding Article 340 (which reduces penalties for murders that are viewed as “honour” crimes), of the Penal Code:

to amend, without delay, applicable provisions of the Penal Code to ensure that perpetrators of “honour” crimes do not benefit from a reduction of penalty under article 340; that perpetrators of premeditated “honour” crimes do not benefit from a reduction of penalty under article 98; and that article 99 is not applicable to “honour” crimes or other cases where the victim is related to the perpetrator. The Committee also urges the State party to ensure that “honour” crimes are treated as seriously as other violent crimes in regard to investigation and prosecution, and that effective prevention efforts are put in place.⁴⁸⁹

Arnold states that the significance of Article 2(c) cannot be presented concerning honour killings in Jordan because the courts are liable for implementing and interpreting Jordanian

⁴⁸⁶ The CEDAW, Art. 2(c).

⁴⁸⁷ Jo Lynn Southard, “Protection of Women's Human Rights under the Convention on the Elimination of All Forms of Discrimination against Women” (1996) 8 *Pace Int'l L. Rev.* 1, 42.

⁴⁸⁸ Amin A. Muhammad, *Preliminary Examination of so-called “Honour Killings” in Canada*, (Department of Justice Canada= Ministère de la justice Canada, 2013) 5.

⁴⁸⁹ UN Committee on the Elimination against Women, ‘Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Jordan’ (2007) CEDAW/C/JOR/CO/4 (10 August 2007) paras. 23-24.

law governing honour killings.⁴⁹⁰ After the amendment of the Jordanian Penal Code in 2010, which ensures that perpetrators of so called honour killings cannot benefit from mitigating circumstances,⁴⁹¹ the Committee has been still reiterated its concern about the discriminatory provisions (Articles 98, 99, 308, and 340) and calls the State to ensure that ‘so-called honour crimes are seriously investigated and that perpetrators do not benefit from mitigating circumstances, and thus are prosecuted and punished accordingly.’⁴⁹²

In accordance with the violation of Article 2(c), Gupta evaluates honour killings in India, which is a state adhering to CEDAW:

State parties have to take appropriate measures to eliminate prejudices and customary practices, such as “crimes of honour”, “which are based on the idea of the inferiority or the superiority of either of the sexes”. Creating statutes that criminalize the different types of acts that fall within the ambit of “crimes of honour”, while essential, is certainly not adequate if there is no systematic enforcement of the statutes. Active prosecutions are one of the means to achieve the practical realization of eliminating discriminatory principles such as “crimes of honour”, in order to ensure that state parties meet their obligations to “take all appropriate measures to eliminate discrimination against women.”⁴⁹³

In 2010, The CEDAW Committee GR No.28 obliges the States parties to initiate criminal proceedings, bring the criminals to trial and impose appropriate penal sanctions, where discrimination against women constitutes an abuse of other human rights, such as the right to life and physical integrity in, for example, cases of domestic and other forms of violence, including honour killings.⁴⁹⁴

Article 2(e) obliges state parties to “take all appropriate measures to eliminate discrimination

⁴⁹⁰ Kathryn Christine Arnold, ‘Are the Perpetrators of Honor Killings Getting Away with Murder? Article 340 of the Jordanian Penal Code Analyzed under the Convention on the Elimination of All Forms of Discrimination against Women’ (2000) 16 *Am. U. Int’l L. Rev.* 1343, 1380.

⁴⁹¹ UN Committee on the Elimination against Women, ‘Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Jordan’ (2012) CEDAW/C/JOR/CO/5 (23 March 2012) paras. 27-28.

⁴⁹² UN Committee on the Elimination against Women, ‘Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Jordan’ (2017) CEDAW/C/JOR/CO/6 (9 March 2017) para. 34.

⁴⁹³ Nidhi Gupta, ‘Honour Killing and Women’s Rights’ (2015) 28(1) *Prof. Vibhuti Patel, Safe Cities and Gender Budgeting Peoples Reporter* 326, 334.

⁴⁹⁴ UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘CEDAW General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the CEDAW’ (2010) CEDAW/C/GC/28, para. 34.

against women by any person, organization or enterprise.”⁴⁹⁵ In other words, this paragraph establishes an obligation of State Parties to eradicate discrimination by any public or private actor, confirming “the practical realisation of the elimination of discrimination against women and women’s equality with men”.⁴⁹⁶ Cook and Cusack’s categorisation of non-state actors into the family, the community, and the market might assist in the application of Article 2(e).⁴⁹⁷ The first group is the family: “non-state actors in this category include family members who engage in or are parties to domestic violence, child abuse, honour killings or, for example, who facilitate forced or child marriages, and trafficking or girl children.”⁴⁹⁸ The community comprises “religious, traditional, educational, and comparable institutions that create or perpetuate modesty, chastity, or obedience codes that inhibit or prevent women from developing their own codes of conduct in a manner that suits their perceptions of their individual best interests and circumstances, or exercising their political freedoms.”⁴⁹⁹ The market is “typified by companies, including multinational corporations, whose advertising flaunts images of women’s bodies, or whose hiring practices perpetuate wrongful gender stereotypes.”⁵⁰⁰ So-called honour killings fall into first two of categories, concerning tribal councils’ decisions to murder women or girls in their community. This provision forces states to “prevent and deter private acts of discrimination, to investigate and negate the harmful consequences of private acts, to provide for compensation or sanctions.”⁵⁰¹ States faced with honour killings may be deemed weak to take appropriate measures to eradicate discrimination since honour killing is perceived as gender-based discrimination against women.

Because Article 16 precisely relates to state obligations to abolish discriminatory laws against women, it is also applicable to family relations in the context of honour killings: “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations [...]”.⁵⁰² Women who live in honour-based communities face many violations of the right to marriage and family recognised under Article 16. In honour-based communities, the family unit has been rooted in patriarchal

⁴⁹⁵ The CEDAW, Art. 2(e)

⁴⁹⁶ UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘CEDAW General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the CEDAW’ (2010) CEDAW/C/GC/28, para. 36.

⁴⁹⁷ Rebecca Cook and Simone Cusack, *Gender Stereotyping Transnational Legal Perspectives* (University of Pennsylvania Press, 2010) 89-90.

⁴⁹⁸ *ibid.*

⁴⁹⁹ *ibid.*

⁵⁰⁰ *ibid.*

⁵⁰¹ Rebecca J. Cook, ‘State Responsibility for Violations of Women’s Human Rights’ (1994) 7 *Harv. Hum. Rts. J.* 125, 166.

⁵⁰² The CEDAW, Art. 16 (1).

understanding, and States have supported male authority over women as wives and daughters, seeing them as the property of men in the name of protecting family honour. Freeman observes that “patriarchal traditions and attitudes inform laws, policies, and customs relating to all aspects of marriage and family life. For purposes of implementing the Convention, as underscored in GR No. 21 paragraph 13⁵⁰³, the core issue is the elimination of discrimination against women within the family, regardless of its size and membership.”⁵⁰⁴ Refusing forced/arranged/early marriages is also one of the reasons to kill women and girls in the name of so-called honour. In accordance with Article 16(1), the denial of women’s free choice of spouse or ‘free and full consent’ to marriage is condemned. In cases where a woman rejects a forced marriage, she may be threatened with force, including death, exiled from the family, or even killed in the name of honour. In 2005, its concluding observations on Turkey, the CEDAW Committee expressed the following concerns in its Report:

[...] the pervasiveness of patriarchal attitudes and deep-rooted traditional and cultural stereotypes regarding the roles and responsibilities of women and men in society, which continue to cast women in a position of inferiority. It expresses its concern that these attitudes contribute to the perpetuation of violence against women, including in the form of “honour killings”, [...] concerned about the persistence of certain traditional and cultural practices that are discriminatory to women, such as early marriage, forced marriage and polygamy, notwithstanding the relevant provisions in the Civil Code.⁵⁰⁵

State parties are obligated to take specific positive measures to protect women from discriminatory actions by spouses and other family male members including the enactment of relevant regulations and laws. These laws and regulations should ensure equality in decisions relating to marriage, *de facto* relationships, and their dissolutions; enforce an individual’s free consent to marriage and especially forbid child/forced/arranged marriages; and provide for

⁵⁰³ UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations’ (1994) CEDAW/C/GC/21, para.13.

⁵⁰⁴ Marsha A. Freeman, ‘Article 16. in Marsha A. Freeman, Christine Chinkin, and Beate Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press 2012) 417.

⁵⁰⁵ UN Committee on the Elimination against Women, ‘Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey’ (2005) UN doc. A/60/38 (2005), 32nd Session, para. 367. See: UN Committee on the Elimination against Women, ‘Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Jordan’ (2017) CEDAW/C/JOR/CO/6 (9 March 2017) paras. 55-56.

equality between women and men.⁵⁰⁶ In addition, actions by family members that harm women in the name of honour are required to be prohibited via laws and regulations and prevented by State parties in accordance with Article 16.

This section assesses the status of honour killings according to these particular clauses of the CEDAW to reveal feminist lenses that ensure substantive equality between women and men, the eradication of the public/private divide, and the elimination of patriarchal traditions and cultures in the target communities. The following section argues how the CEDAW obliges State parties to abolish discriminatory laws and to modify social and cultural patterns to eliminate gender stereotypes and cultural/traditional practices such as honour killings.

3.2.2.3. Analysis of Honour Killings: Articles 2(f) and Article 5(a) of the CEDAW

Article 2(f) is the fundamental provision in relation to honour killings for requiring States to ‘modify and abolish’ discriminatory laws, regulations, customs, and practices. This provision is closely related to the obligations in Article 5(a)⁵⁰⁷. Article 2(f) calls on state parties “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”⁵⁰⁸ Further, Article 5(a) obliges State parties to take the following measures:

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.⁵⁰⁹

These issues addressed under both Article 2(e) and Article 2(f) have been taken with Article 5(a) to enforce State parties to “intervene positively in the activities and practices of religious,

⁵⁰⁶ Marsha A. Freeman, ‘Article 16’ in Marsha A. Freeman, Christine Chinkin, and Beate Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press 2012) 440, UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations’ (1994) CEDAW/C/GC/21, para. 16.

⁵⁰⁷ Similar provisions can be found in Article 8 (b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women of 1994 (Convention of Belém do Pará), and in Article 4 of the 2003 Protocol to the African Charter on Human and People’s Rights on the Rights of Women. See also Article 4 (j) of DEVAW and General Recommendation No. 19: Violence against Women (eleventh session, 1992), UN Doc. A/47/38, para. 11, of the Committee on the Elimination of Discrimination against Women.

⁵⁰⁸ The CEDAW, Art. 2(f).

⁵⁰⁹ The CEDAW, Art. 5(a),

cultural, or ethnic groups that either directly or indirectly discriminate against women.”⁵¹⁰ Crucially, Article 5(a) obliges States to eliminate all harmful practices grounded on hierarchical positions of the sexes. Thus, it addresses radical feminist reading on the idea of the inferiority or the superiority of either of the sexes.⁵¹¹ For instance, in honour-based communities, patriarchal traditions place women as the inferior state, constructing them as the ‘other’ to justify male domination.⁵¹² Volpp argues that the important issue is not whether communities or customs are patriarchal but how they are differently.⁵¹³ Viewed through poststructuralist feminist lenses, women in honour-based communities differ from each other according to their varied experiences as structured in different discourses; this multiple and fluid subjectivity may manifest in multiple violations in different forms. Therefore, the important issue is to ascertain how patriarchal communities, with their unique traditions and customs, function differently in their own geographical contexts.⁵¹⁴ Although the Women’s convention refers to sex-based discrimination, interpreting Article 1 with Articles 2(f) and 5(a) demonstrates that the Convention covers gender-based discrimination against women.⁵¹⁵ Thus, the social positioning women and men have different aspects in different cultures, communities and countries.

‘Customs’ refer to the ways traditional cultural patterns are perpetuated in a community, and the incorporation of Articles 2(f) and 5(a) gives greater strength to women’s equality with men in cases of conflict with cultural customs and practices.⁵¹⁶ Hence, traditional, customary, cultural, or religious ideas, beliefs, rules, and practices that are detrimental to women’s roles in public and private life are replaced by a positive appreciation of women’s participation in

⁵¹⁰ Andrew Byrnes, ‘Article 1’ in Marsha A. Freeman, Christine Chinkin, and Beate Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press 2012) 91.

⁵¹¹ See section 2.2.2. for analysis of the radical feminism in the Chapter 2.

⁵¹² Rikki Holtmaat, ‘Article 5’ in Marsha A. Freeman, Christine Chinkin, and Beate Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press 2012) 146.

⁵¹³ Letti Volpp, ‘Feminism versus Multiculturalism’ (2001) 101 *Columbia L Rev* 1181, 1217.

⁵¹⁴ See section 2.2.3 for the analysis of poststructuralist feminism in the Chapter 2.

⁵¹⁵ UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘CEDAW General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the CEDAW’ (2010) CEDAW/C/GC/28, para. 5. The GR. No.28 identifies the terms of sex and gender: “while the term ‘sex’ refers to biological differences between men and women, the term ‘gender’ refers to socially constructed attributes, identities and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women”.

⁵¹⁶ Frances Raday, ‘Culture, Religion, and CEDAW’s Article 5 (a)’ in Hanna-Beate Schöpp-Schilling and Cees Flinterman (eds.), *The Circle of Empowerment: Twenty-five Years of the UN Committee on the Elimination of Discrimination against Women* (Feminist Press, 2007) 74.

society.⁵¹⁷ However, culture mostly contributes to ‘negative gender stereotypes’ or ‘fixed parental gender roles’ that stand in the way of women’s equality and dignity and lead to discrimination against them.⁵¹⁸ Sepper discusses that the Committee both formed a substantive obligation under Article 5(a) and connected the negative cultural norm of violence against women to the awareness of their rights under the Convention.⁵¹⁹ The Committee coupled Article 5(a) with Article 2(f) to clarify exclusively violence against women as a negative cultural pattern. This constrains women’s ability to achieve substantive equality under GR No.19, which instructs States to “identify the nature and extent of attitudes, customs and practices that perpetuate VAW and the kinds of violence that result.”⁵²⁰ This interpretation identifies some of cultural practices that result in discrimination against women and violations of women’s rights in their patriarchal communities. Therefore, States need to take action on the prevention of cultural/traditional discriminatory attitudes and beliefs.

Article 5(a) also indicates that State parties take obligatory measures to change harmful discriminatory attitudes. In this way, cultures should not be seen as a monolithic, unchangeable, unambiguous, and static.⁵²¹ Culture comprises both commonly held meanings that permit the maintenance of everyday practices as well as competing meanings that galvanize change over time.⁵²² In a similar vein, culture involves aspects that make it both sustainable and simultaneously amenable to change.⁵²³ Eliminating social origins and roots of discrimination against women within their territories and changing patriarchal attitudes towards women are some of the obligations for State parties to prevent honour killings.⁵²⁴ Article 5(a), therefore, exemplifies what may also be regarded as the principle of cultural

⁵¹⁷ Rikki Holtmaat, ‘Article 5’ in Marsha A. Freeman, Christine Chinkin, and Beate Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press 2012) 142.

⁵¹⁸ *ibid.* 150.

⁵¹⁹ Elizabeth Sepper, ‘Confronting the ‘Sacred and Unchangeable’: The Obligation to Modify Cultural Patterns under the Women’s Discrimination Treaty’ (2008) 30 *University of Pennsylvania Journal of International Law* 585, 609.

⁵²⁰ UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘CEDAW General Recommendation No. 19: Violence against women’ (1992) CEDAW/C/GC/19 para. 24 (e).

⁵²¹ Rikki Holtmaat and Jonneke Naber, *Women’s Human Rights and Culture: From Deadlock to Dialogue* (Intersentia, 2011) 51.

⁵²² UNCHR, ‘Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences: Intersections between Culture and Violence against Women’ (2007) UN doc. A/HRC/4/34 para. 17

⁵²³ Rikki Holtmaat and Jonneke Naber, *Women’s Human Rights and Culture: From Deadlock to Dialogue* (Intersentia, 2011) 51.

⁵²⁴ Lama Abu-Odeh, ‘Crimes of Honour and the Construction of Gender in Arab Societies’ in Mai Yamani (ed.), *Feminism and Islam: Legal and Literary Perspectives* (New York University Press, 1996) 141-194

change.⁵²⁵

The section above argued the relevant articles of the CEDAW to the honour killings based on equality/non-discrimination directly or indirectly as promoting the change patriarchal cultural/traditional attitudes towards women. The following section examines how the principle of ‘due diligence’ has advanced within the UN’s agenda and addresses States’ obligations to eliminate different forms of gender-based violence whether they are committed by State agents or private parties. I assess whether the ‘due diligence’ principle available under international human rights law is an effective tool to combat all forms of VAW. This concept is helpful to my research on whether States or individuals can be held accountable for the prevention of honour killings. Answering this question is impacted by the Istanbul Convention, which also highlights this principle as one of the fundamental elements to combatting VAW.

3.2.3. A Conceptual Study of the ‘Due Diligence’ Principle

The State has both negative and positive responsibilities to state law enforcement officers in both respecting the law and refraining from acts of VAW themselves and protecting individuals from acts perpetrated by non-State actors. The public/private dichotomy on VAW does not enable States to provide positive responsibilities to address gender-based violence against women. This dichotomy challenges the States’ duty of due diligence on the prevention and protection women from violence in domestic situations. Hence, asserting this dichotomy is one of the challenges to protecting women’s rights. The ‘due diligence’ principle reveals the challenge “to bridge the gap between the formal commitments and the lived experience of the women of the region, and between what the law says and how it is applied in practice.”⁵²⁶ I argue that the ‘due diligence’ concept resolves the conflicts posed by the public/private divide and that the legal framework (both regional and national) provides better resources to fight all forms of gender-based VAW.

‘Due diligence’ is the standard frequently used to decide whether the State imposes a responsibility to take positive actions to address violence. Human rights activists increasingly put into effect this standard as a tool to address gender violence within the international

⁵²⁵ Rikki Holtmaat and Jonneke Naber, *Women’s Human Rights and Culture: From Deadlock to Dialogue* (Intersentia, 2011) 28.

⁵²⁶ Elizabeth A.H. Abi-Mershed, ‘Due Diligence and the Fight Against Gender-Based Violence in the Inter-American System’ in Carin Benninger-Budel (ed.) *Due Diligence and Its Application to Protect Women from Violence* (2008) 137.

human rights agenda.⁵²⁷ The concept of due diligence has been used as a measure to consider whether the State has met its obligations notably concerning different forms of gender-based violence, whether such acts are committed by State agents or private parties, or whether they occur in the public or private sphere.⁵²⁸ Crucially, much violence against women is committed in the private sphere by private actors and comprises a wide range of individuals and entities such as intimate partners and other family members; “casual acquaintances and strangers; neighbourhood and community institutions; criminal gangs, organizations and business enterprises.”⁵²⁹ The use of the standard of due diligence emphasises the State’s duty to protect women effectively from such violence. Hence, States have an obligation to take positive actions to prevent violence, protect victims, punish perpetrators of violent acts, and compensate victims of violence.⁵³⁰ Erturk explains that “once an illegal act has occurred, the State’ inaction and failure to investigate, prosecute or punish the act perpetrated by a private actor amounts to neglect of the State obligation to be duly diligent.”⁵³¹ Thus, international human rights institutions and some States’ national courts recognise the due diligence standard in their policy discourse and evaluations.⁵³²

Significantly, Goldscheid and Liebowitz argue that the principle of due diligence enlarges the concept of State responsibility in a number of crucial ways, making its application to cases gender-based violence especially promising for a number of reasons.⁵³³ First, the public/private dichotomy clearly challenges the due diligence obligation because the resulting construction of the public/private divide has served to marginalise women’s experiences in international human rights law.⁵³⁴ Emphasising that the dichotomy is one of the main barriers to protecting women’s rights, Erturk explains that:

⁵²⁷ Julie Goldscheid and Debra J. Liebowitz, ‘Due Diligence and Gender Violence: Parsing its Power and its Perils’ (2015) 48 *CORNELL INT’L L.J.* 301, 302.

⁵²⁸ UNHRC, ‘UN Special Rapporteur on Violence against Women, its Causes and Consequences, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women. The Due Diligence Standard as a Tool for the Elimination of Violence against Women’ (20 January 2006) E/CN.4/2006/61, para. 14.

⁵²⁹ UN Secretary-General, ‘In-depth Study on All Forms of Violence against Women’, (July 6, 2006) UN doc. A/61/122/Add.1 para. 256.

⁵³⁰ UNCHR, ‘15 Years of the United Nations Special Rapporteur on Violence Against Women: Its Causes and Consequences (1994-2009) A Critical Review’ (2009) 25.

⁵³¹ *ibid.*

⁵³² UN Secretary-General, ‘In-depth Study on All Forms of Violence against Women’, (6 July 2006) UN doc. A/61/122/Add.1 73-89.

⁵³³ Julie Goldscheid and Debra J. Liebowitz, ‘Due Diligence and Gender Violence: Parsing its Power and its Perils’ (2015) 48 *CORNELL INT’L L.J.* 301, 306-311.

⁵³⁴ Carin Benninger-Budel, *Due diligence and Its Application to Protect Women from Violence* (Brill, 2008) 1-2.

The due diligence standard has helped to challenge the liberal doctrine of State responsibility with regard to violation in the “private sphere”. This meant that the State, by failing to respond to intimate/domestic violence, can be held responsible for not fulfilling its obligation to protect and punish in a non-discriminatory way and can be charged as an accomplice to private violations. On the other hand, using due diligence to filter private acts through State responsibility has left the individual perpetrator of an act of private violence not directly responsible under international law, thus maintaining a separate regime of responsibility for private as opposed to public acts.⁵³⁵

Manjoo also addresses the requirement to move away from this divide in the context of VAW, arguing that “categorising some forms of violence against women as part of private sphere tends to have a normalising effect, and it makes States’ intervention seem to be different in such situations, as opposed to where there are “public” incidents of “violence”.”⁵³⁶

Second, although some scholars such as Chinkin and Otto view the due diligence concept as positively addressing a broad range of concerns in the international human rights law context, it has also drawn some criticism. Scholars such as Gormley, Edwards, and Kamminga have questioned whether due diligence is an important concept. For example, Kamminga observes that the due diligence obligation is based on the resources accessible to the State:

It is understandable that States that are accused of having taking insufficient measures to prevent abuses by private actors on their territory defend themselves with the argument that they have exercised due diligence to prevent such abuses. It is difficult to understand, on the other hand, why human rights groups should insist that due diligence is the test by which the conduct of States should be judged.⁵³⁷

Edwards interrogates the due diligence standard, which she calls the ‘due diligence test’

⁵³⁵ UNHRC, ‘UN Special Rapporteur on Violence against Women, its Causes and Consequences, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women. The Due Diligence Standard as a Tool for the Elimination of Violence against Women’ (20 January 2006) E/CN.4/2006/61, para. 61.

⁵³⁶ UNHRC, ‘Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Rashida Manjoo’ (2013) A/HRC/23/49, para. 18.

⁵³⁷ Menno Kamminga, “‘Due diligence’ mania: The Misguided Introduction of an Extraneous Concept into Human Rights Discourse”, in Ingrid Westendorp (ed.), *The Women’s Convention Turned 30* (Maastricht Faculty of Law Working Paper No 2011/07, 2012)

requiring States to take ‘reasonable’ steps to eliminate violence against women.⁵³⁸ Hence, for her, this concept is grounded on the standard of reasonableness, which her argument is insufficient “as the benchmark for the protection women from violence, not least because it is not yet clear how to measure such failure.”⁵³⁹ The Council of Europe explains that the due diligence principle is formed as an obligation of means—not an obligation of result.⁵⁴⁰ In other words, it is not the existence of a particular violation that illustrates the failure to apply due diligence but rather an absence of reasonableness in measures of prevention or an absence of seriousness in measures of response.⁵⁴¹

Accordingly, due diligence obligations within international human rights laws are “relative, not absolute.”⁵⁴² The prevention obligations are not guaranteed “that an event will not occur; rather, they are inherently obligations to take all reasonable or necessary measures to ensure that event does not occur.”⁵⁴³ However, the due diligence standard puts not only the state but also its agents (comprising the law implementation bodies and officers) under an obligation to treat violence against women in the same way regardless of whether the violence is committed in the public or private domain. Hence, it is significant measurement for States that must take positive responsibilities for eliminating VAW and particularly honour killings. It gives States a legal framework to provide better responses to gender-based violations against women. In the following section, I first trace the emergence of the due diligence principle and its application in specific cases involving international human rights law. Second, I examine its specific application to honour killings.

3.2.3.1. The Principle of ‘Due Diligence’ in the Context of International Human Rights Law

States’ duty to act with due diligence to protect individuals against human rights violations committed by not only States but private persons has been interpreted positively within international human rights law.⁵⁴⁴ I now analyse how the duty of due diligence regarding State

⁵³⁸ Alice Edwards, *Violence against Women under the International Human Rights Law* (Cambridge University Press 2010) 314.

⁵³⁹ *ibid.* 315.

⁵⁴⁰ Council of Europe, ‘Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence: Explanatory Report to the Istanbul Convention’ (2011) para. 59.

⁵⁴¹ Elizabeth A. H. Abi-Mershed, ‘Due Diligence and the Fight Against Gender-Based Violence in the Inter-American System’ in Carin Benninger-Budel (ed.), *Due Diligence and Its Application to Protect Women from Violence* (2008) 137.

⁵⁴² *ibid.*

⁵⁴³ James Crawford, *State Responsibility: The General Part* (Cambridge University Press, 2013) 227.

⁵⁴⁴ Joanna Bourke-Martignoni, ‘The History and Development of the Due Diligence Standard in International Law and Its Role in the Protection of Women against Violence’ in Carin Benninger-Budel (ed.), *Due Diligence and Its Application to Protect Women from Violence* (2008) 52.

responsibilities for non-State acts entered into human rights discourses. The concept of due diligence was drawn from the 1988 judgment of the Inter-American Court of Human Rights (IACtHR) in *Velasquez Rodriguez v. Honduras*.⁵⁴⁵ In its landmark judgement in this case, the court reinforced the doctrine of due diligence:

An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.⁵⁴⁶

The IACtHR found that the State's failure to prevent Velasquez's disappearance and its failure to punish the perpetrators was a violation of its obligation to ensure all persons "the free and full exercise of [...] rights and freedoms" pursuant to Article 1 of the American Convention on Human Rights (ACHR).⁵⁴⁷ This case shows how the reality of women's subordination can be factored into the examination of State responsibility for private sphere violence.⁵⁴⁸ The nature of State responsibility is significant in acknowledging the prevention of women's rights violations in the context of VAW.

The concept of due diligence is applicable in all core UN human rights instruments to different extents.⁵⁴⁹ The duty of due diligence regarding human rights treaty obligations has been adopted, explicitly and implicitly, by the respective monitoring mechanisms⁵⁵⁰ and has also been addressed by regional bodies.⁵⁵¹ Crucially, the due diligence standard in the context

⁵⁴⁵ *Velásquez Rodríguez v State of Honduras*, (1988) Inter-American Court of Human Rights (IACtHR). See also *Gonzalez et al (Cotton Field) v Mexico*, (2009) Inter-American Court of Human Rights, Preliminary Objection, Merits, Reparations and Costs, Series C No. 205, Judgment, 16 November 2009.

⁵⁴⁶ *ibid.*, paras. 166- 172.

⁵⁴⁷ American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969, (entered into force 18 July 1978) (ACHR) Art. 1(1). See also Celina Romany, 'State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law' in Rebecca Cook (ed.), *Human Rights of Women: National and International Perspectives* (1994) 101.

⁵⁴⁸ Celina Romany, 'State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law' in Rebecca Cook (ed.), *Human Rights of Women: National and International Perspectives* (1994) 101.

⁵⁴⁹ International Covenant on Economic, Social and Cultural Rights 1966, 993 UNTS 3 (ICESCR) Art. 2(1), the CEDAW, Art. 2 (e), (f), (g) and Art. 5(a) and (b), Convention on the Rights of the Child 1989, 1577 UNTS 3 (CRC), Art. 2(1) and (2); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, 1465 UNTS 85 (CAT), Article 16; International Covenant on Civil and Political Rights 1966, 999 UNTS 171 (ICCPR) Art. 2(1) and Art. (3), .

⁵⁵⁰ The Committee on Economic, Social and Cultural Rights, General Comment No. 3 (1990) 'The nature of States parties' obligations (art. 2, para. 1, of the Covenant)' paras. 3-4; the Committee Against Torture, General Comment No. 2 (2007) 'Implementation of Article 2 by State Parties' para. 18.

⁵⁵¹ *Velásquez Rodríguez v State of Honduras*, (1988) Inter-American Court of Human Rights (IACtHR) paras.

of VAW has come into account for the first time with the Committee's GR No.19.⁵⁵² Similarly, the DEVAW calls States to exercise due diligence pursuant to Article 4(c).⁵⁵³ This provision was reiterated in paragraph 125(b) of the Beijing Platform for Action.⁵⁵⁴ Moreover, as regional treaties, Belem do Pera and the Maputo Protocol have adopted the due diligence standard.⁵⁵⁵

The Special Rapporteurs on VAW have also recognised the due diligence standard in their reports from 1999. Erturk explicates this principle more precisely in her 2006 report, which is devoted to this subject and provides a mechanism for promoting better State accountability for eliminating VAW.⁵⁵⁶ This report also indicates non-discrimination as a basic value in applying the due diligence standard to prevent, protect, punish, and provide remedies for acts of VAW.⁵⁵⁷ Thus, Erturk recommends that fighting gender-based discrimination requires several distinct aspects of intervention (individual women, the community, the State and the transnational level).⁵⁵⁸ If we push the limits of due diligence standards in demanding the full compliance of States with international law and hold non-State actors accountable for their acts, "we will move towards a conception of human rights that meets our aspirations for a just world free of violence."⁵⁵⁹

The due diligence standard was further involved in a series of international instruments in

166 and 172. ECtHR also confirmed that States oblige to exercise due diligence obligations in cases of violence against women. *Osman v. e United Kingdom*, Application No. 87/1997/871/1083 (ECtHR, 28 October 1998) para. 101; *M. C. v. Bulgaria*, Application no. 39272/98, (ECtHR, 4 December 2003), *Opuz v Turkey*, Application No.33401/02, (ECtHR, 9 June 2009); *Ebcin v Turkey*, Application no. 19506/05, (ECtHR, 1 February 2011).

⁵⁵² Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 19, 'Violence against Women'' (1992), UN Doc. A/47/38, para. 9. This principle was also noted in the Human Rights Committee, 'General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004), CCPR/C/21/Rev.1/Add.13, para. 8.

⁵⁵³ UNGA, 'Declaration on the Elimination of Violence against Women 1993 (DEVAW)', GA res. A/RES/48/104, (20 December 1993) Art. 4(c).

⁵⁵⁴ World Conference on Women, Beijing Declaration and Platform for Action, UN doc. A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

⁵⁵⁵ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 'Convention of Belem do Pera' (1994) Art. 7(b) states "apply due diligence to prevent, investigate and impose penalties for violence against women." The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) Art. 4 (2) (b), which entered into force on 25 November 2005, also put 'the due diligence standard' in its scope, incorporating in several provisions: Article 4, para. 2 (b), broadly directs States to adopt any other measures necessary to ensure the prevention, punishment, and eradication of all forms of VAW, ACHR, Art. 25 and Art. 26.

⁵⁵⁶ UNCHR, 'UN Special Rapporteur on Violence against Women, its Causes and Consequences, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women. The Due Diligence Standard as a Tool for the Elimination of Violence against Women' (20 January 2006) E/CN.4/2006/61, para. 36.

⁵⁵⁷ *ibid.* paras. 35-36.

⁵⁵⁸ *ibid.* para. 102

⁵⁵⁹ *ibid.*

relation to VAW. For instance, UN General Assembly Resolution 64/137,⁵⁶⁰ the Committee on Economic, Social and Cultural Rights,⁵⁶¹ and the Commission on the Status of Women⁵⁶² have also reaffirmed that all States must exercise due diligence on the eradication of VAW. The due diligence standard becomes a significant obligation to the States examining all forms of VAW. Most recently, the CEDAW Committee adopts GR No.35 on gender-based VAW, updating general recommendation No.19 in 2017, asserting States parties are under the obligation of due diligence to “take all appropriate measures to prevent as well as to investigate, prosecute, punish and provide reparation for acts or omissions by non-State actors which result in gender-based VAW at the legislative, executive and judicial levels.”⁵⁶³

In the prior discussion, I reveal how the due diligence standard has emerged and become available under international human rights law. To sum up, this standard obliges States to take positive measures to prevent violations before they arise and to efficiently protect women from violence, prosecute and punish perpetrators, and compensate them once they have occurred. In the next section, I analyse how so-called honour killings are addressed using the ‘due diligence’ standard.

3.2.3.2. The Standard ‘Due Diligence’ to Address Honour Killings

Establishing the legal-cultural contexts of so-called honour killings makes these different forms of State responsibility and/or failure to act with due diligence more solid.⁵⁶⁴ Impunity for crimes and the differential in State involvement in circumstances of so-called honour killings differ among groups and countries depending on pertinent cultural patterns.⁵⁶⁵ With regard to honour killings, Abu-Odeh describes two key areas of difference, which are the situations in which can the claim of honour be made and determining who can benefit from the excuse used to justify the killings (the husband, the son, the father, or the brother).⁵⁶⁶

⁵⁶⁰ UN General Assembly, ‘Resolution 64/137 entitled Intensification of Efforts to Eliminate all Forms of Violence against Women’, UN General Assembly Resolution 64/137, 27 October 2009, preamble.

⁵⁶¹ UN Committee on Economic, Social and Cultural Rights, Article 3 ‘General Comment No. 16’, (13 May 2005) UN doc. E/C.12/2005/3.

⁵⁶² UN Commission on the Status of Women, ‘Report on the fifty-seventh session’ (4-15 March 2013), E/CN.6/2013/11, para. 16.

⁵⁶³ Committee on the Elimination of Discrimination against Women, ‘General Recommendation No. 35 on gender-based violence against women, updating general recommendation no. 19’ (2017) CEDAW/C/GC/35, para. 24(b).

⁵⁶⁴ Susana T. Fried, ‘Controlling Women’s Sexuality, Sustaining Dominant Culture(s), Legitimising Gender-Based Violence: The Case for Due Diligence’, in Carin Benninger-Budel (ed.), *Due Diligence and Its Application to Protect Women from Violence* (Brill, 2008) 257.

⁵⁶⁵ *ibid.*

⁵⁶⁶ Lama Abu-Odeh, ‘Crimes of Honor and the Construction of Gender in Arab Societies’ in Mai Yamani (ed.), *Feminism and Islam: Legal and literary perspectives* (New York University Press, 1996) 141.

However, the States are responsible in those cases where it reduced punishments or made legal exemptions for honour killings. Thus, the State has failed to protect women and neglected its due diligence duty. In other cases, a failure to investigate, prosecute, or punish demonstrates the State's failure to fulfil its protection measures.⁵⁶⁷ In other words, States fail to exercise the due diligence standard to prevent such crimes committed in the name of so-called honour and to protect women at risk to death.

The systematic failure of States to protect women from honour killings, prevent or investigate these crimes in depth, and punish the murderers under their domestic criminal laws is a default negligence in their exercise of due diligence. Byrnes and Connors have perceived that many of the violations against women occur at the hands of individuals, and this recognition ought not to distract attention from violations by the State.⁵⁶⁸ States breach the human rights of women by upholding discriminatory laws and practices.

In honour killings cases, the "honour" defence is accepted in some parts of the world as a mitigating circumstance embodied in law, thus murders committed in the name of honour go unpunished, receive reduced sentences, or are exempted from prosecution because of the justification of 'honour'.⁵⁶⁹ As an example of the unjustified claims of the 'defence of the conjugal honour or the honour of the accused' in Latin America, legal professionals used the legal defence to legitimate defence of honour, trying to justify the crime and guarantee impunity or the mitigation of penalty.⁵⁷⁰ In another example, pursuant to Article 562 of the Lebanese Penal Code, the penalty was reduced, giving the murderer "the excuse of exemption that exempts him from punishment in the first case and the excuse of mitigation highly

⁵⁶⁷ Susana T. Fried, 'Controlling Women's Sexuality, Sustaining Dominant Culture(s), Legitimising Gender-Based Violence: The Case for Due Diligence' in Carin Benninger-Budel (ed.), *Due Diligence and Its Application to Protect Women from Violence* (Brill, 2008) 258.

⁵⁶⁸ Andrew Byrnes and Jane Connors, 'Enforcing the Human Rights of Women: A Complaints Procedure for the Women's Convention?' (1995-1996) 21 *Brooklyn Journal of International Law* 679, 734, cited in Dorothy Thomas, 'Acting Unnaturally: In Defense of the Civil and Political Rights of Women' in Margaret A. Schuler (ed.) *From Basic Needs to Basic Rights: Women's Claims to the Human Rights* (Washington, DC: Women, Law & Development International, 1995) 41.

⁵⁶⁹ Carin Benninger-Budel, *Due diligence and Its Application to Protect Women from Violence* (Brill, 2008) 14-15.

⁵⁷⁰ Silvia Pimentel, Valeria Pandjarian, and Julia Belloque, "'Legitimate Defense of Honor" - Illegitimate Impunity of Murders - A Critical Study of the Legislation and the Case Law in Latin America' in Mariza Correa and Erica Renata de Souza (eds.), *Family Life a Comparative Perspective on "Crimes of Honor"* (UNICAMP, 2006) 150.

reduces the penalty in the second case.”⁵⁷¹ In 2011, Article 562, which was used to mitigate the sentences of people who claimed they killed or injured their wife, daughter, or relative to protect the family honour, was repealed.⁵⁷² However, women’s organisations in Lebanon discussed that enacting a comprehensive law for protecting women from family violence was an effective policy to prevent killings of women in the first place.⁵⁷³ Using the defence of honour as an excuse to prevent or mitigate the punishment of perpetrators is a tragic instance of State complicity in and responsibility for human rights violations.⁵⁷⁴ The due diligence standard needs the existence of “reasonable measures of prevention that a well administered government could be expected to exercise under similar circumstances.”⁵⁷⁵

The UN treaty bodies reported that honour-related crimes are often unreported, rarely investigated, and usually go unpunished.⁵⁷⁶ The absence of a legally binding instrument on VAW prevents “the articulation of the issue as human rights violations in or of itself, comprehensively addressing all forms of violence against women and clearly stating the obligations of States to act with due diligence to eliminate violence against women.”⁵⁷⁷ The UN report elaborates:

There are many “soft law” documents that address the issue, including the Vienna Declaration and Programme of Action, the Declaration on the Elimination of Violence against Women, the Beijing Declaration and Platform for Action, and general comments and recommendations of treaty bodies. However, although soft laws may be influential in developing norms, their non-binding nature effectively means that States cannot be held responsible for violations.⁵⁷⁸

⁵⁷¹ Daniella Hoyek, ‘Crimes of Honor in Lebanon’ in Mariza Correa and Erica Renata de Souza (eds.), *Family Life a Comparative Perspective on “Crimes of Honor”* (UNICAMP, 2006) 335.

⁵⁷² Human Rights Watch, ‘Lebanon: Law Reform Targets Honor Crimes’ (August 2011).

⁵⁷³ UNHRC, ‘Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Rashida Manjoo’ (2012) A/HRC/20/16, para. 96, cited in A. Baydoun, ‘Killing of Women in the Name of Honour: An Evolving Phenomenon in Lebanon’, paper presented at the Expert Group Meeting on gender-motivated killings of women. Convened by the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, (New York, 12 October 2011)

⁵⁷⁴ Celina Romany, ‘State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law’ in Rebecca Cook (ed.), *Human Rights of Women: National and International Perspectives* (1994) 102-103.

⁵⁷⁵ *ibid.*

⁵⁷⁶ UNHRC, ‘Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Rashida Manjoo’ (2012) A/HRC/20/16, para. 49. Rashida Manjo reported gender-related killings of women, which are defined such as femicide, feminicide, honour killings, and crimes of passion.

⁵⁷⁷ UNHRC, ‘Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Rashida Manjoo’ (2014) A/HRC/26/38 para. 68.

⁵⁷⁸ *ibid.*

Thereby, honour killings are seen as a crime to cope with under domestic legal frameworks—and also a violation of international human rights law when States methodically fail to exercise due diligence in preventing and investigating crimes in the name of honour and in punishing criminals. In the next section, I trace the chronological development of the due diligence standard in the jurisprudence of the CEDAW Committee's communications on VAW.

3.2.3.3. Evaluating the CEDAW Committee's Communications on VAW

The CEDAW Committee has ruled a State's due diligence obligation to eliminate gender discrimination in its communications. In its first communication on VAW, the Committee criticises Hungary regarding a domestic violence case, *A.T. v Hungary*, for “failing to take appropriate measures to protect A.T. from repeated attacks by her common law husband, L.F., despite her many attempts to seek protection from the authorities.”⁵⁷⁹ Gormley argues on the issue of effectiveness of the legal concepts of due diligence in this case: “the CEDAW has answered in the case of *A.T. v Hungary* specially in terms of follow-up assessments: that the duty of due diligence is breached until the women applicant has full remedy.”⁵⁸⁰ It also addressed the matter of traditionally stereotyped gender roles as reasons for VAW:

⁵⁷⁹ *A.T. v. Hungary*, CEDAW Committee Communication No. 2/2003, views adopted 26 January 2005.

⁵⁸⁰ Lisa Gormley, ‘Violence against Women by Non-State Actors, a Responsibility for the State under Human Rights Law: Amnesty International's Work on Domestic Violence’ in Carin Benninger-Budel (ed.), *Due Diligence and its Application to Protect Women from Violence* (Brill, 2008) 178.

[...] addressed articles 5 and 16 together in its General Recommendation No.19 in dealing with family violence [...] has stated on many occasions that traditional attitudes by which women are regarded as subordinate to men contribute to violence against them [...] concerned about “the persistence of entrenched traditional stereotypes regarding the role and responsibilities of women and men in the family[...].The Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the rights of the author under article 2 (a), (b) and (e) and article 5 (a) in conjunction with article 16 of the CEDAW[...].⁵⁸¹

However, the Committee failed to recognise that Austria is in a violation of Articles 2(f) and 5(a) for the lack of due diligence to eradicate gender stereotypes.⁵⁸²

Regarding the State responsibility for failure to protect women against violence by their husbands/partners, Austrian authorities repetitively failed to guarantee women’s safety in *Goekce v. Austria*⁵⁸³ and *Yildirim v. Austria*⁵⁸⁴. Both cases encompass a series of violent incidents in which two women, Sahide Goecke and Fatima Yildirim, were killed by their husbands despite reporting the violence to the police and obtaining protection orders. In both cases, Austria had a comprehensive model to address domestic violence that includes legislation, criminal and civil-law remedies, awareness raising, education and training, shelters, counselling for victims of violence and work with perpetrators.”⁵⁸⁵

However, in *Goekce v. Austria*, Austria was found “liable for the failure on the part of the Austrian police to respond to an emergency call, which led to the death by shooting of the complainant at the hands of her husband.”⁵⁸⁶ Thus, the CEDAW Committee considered the issue of Austria’s accountability to the due diligence obligation:

The Committee considers that given this combination of factors [which included increasing frequency of violent incidents by the husband over a three-year period], the police knew or should have known that Sahide Goekce was in serious danger; they

⁵⁸¹ *A.T. v. Hungary*, CEDAW Committee Communication No. 2/2003, views adopted 26 January 2005, paras. 9.4, and 9.6.

⁵⁸² Rebecca Cook and Simone Cusack, *Gender Stereotyping Transnational Legal Perspectives* (University of Pennsylvania Press, 2010) 159.

⁵⁸³ *Sahide Goekce (deceased) v. Austria*, CEDAW Committee Communication No. 5/2005, views adopted 6 August 2007.

⁵⁸⁴ *Fatma Yildirim (deceased) v. Austria*, CEDAW Committee Communication No. 6/2005, views adopted 6 August 2007.

⁵⁸⁵ *ibid.*, para. 12.1.2.; *Sahide Goekce (deceased) v. Austria*, CEDAW Committee Communication No. 5/2005, views adopted 6 August 2007; 12.1.2.

⁵⁸⁶ *Sahide Goekce (deceased) v. Austria*, CEDAW Committee Communication No. 5/2005, views adopted 6 August 2007, para. 12.1.4.

should have treated the last call from her as an emergency, in particular because [her husband] had shown that he had the potential to be a very dangerous and violent criminal. The Committee considers that in light of the long record of earlier disturbances and battering, by not responding to the call immediately, the police are accountable for failing to exercise due diligence to protect Sahide Goekce.⁵⁸⁷

In *Yildirim v. Austria*, the Committee determined that “the police knew or should have known of the extreme danger faced by Fatma Yildirim, and its failure to arrest and detain Irfan Yildirim constituted a failure of its due diligence obligation to protect her.”⁵⁸⁸ Byrnes and Bath advise that “the upshot of this appears to be that in a case where there was preventable violence that has occurred because of the State’s failure to fulfil its duty of due diligence, prosecution of the offender will not in itself be enough to cure the earlier violation, though it may be necessary to avoid a further violation.”⁵⁸⁹

In contrast to these cases, the Committee applied for the first time due diligence in *Karen Tayag Vertido v. The Philippines* in relation to the State duty to eliminate gender stereotypes.⁵⁹⁰ Karen Vertido was a rape victim who claimed that the trial judge’s decision was “grounded in gender-based myths and misconceptions about rape and rape victims of violation of article 5(a) of the Convention [...] without which the accused would have been convicted.”⁵⁹¹ She further claimed that “a decision grounded in gender-based myths and misconceptions or one rendered in bad faith can hardly be considered as one rendered by a fair, impartial and competent tribunal.”⁵⁹² Due to the Philippines’s failure to protect women against discrimination by public authorities, involving the judiciary, the Committee stated that “the compliance of the State party’s due diligence obligation to banish gender stereotypes on

⁵⁸⁷ *ibid.*

⁵⁸⁸ *Fatma Yildirim (deceased) v. Austria*, CEDAW Committee Communication No. 6/2005, views adopted 6 August 2007, para. 12.1.4.

See also: *VK v Bulgaria*, CEDAW Committee Communication No. 20/2008, views adopted 25 July 2011, para. 3.4; and *Jallow v Bulgaria*, Communication No.: 32/2011, views adopted 23 July 2012, para. 8.4.

⁵⁸⁹ Andrew Byrnes and Eleanor Bath, ‘Violence against Women, the Obligation of Due Diligence, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women — Recent Developments’ (2008) 8 *Human Rights Law Review* 517, 525.

⁵⁹⁰ Anna Sledzinska-Simon, ‘Making Progress in Elimination of Gender Stereotypes in the Context of Gender-Based Violence-The role of the CEDAW Committee’ (2013) 16(1) *Tijdschrift voor Genderstudies* 41, 46.

⁵⁹¹ *Karen Tayag Vertido v The Philippines*, CEDAW Committee Communication No. 18/08, CEDAW/C/46/D/18/2008 (2010) paras. 3.4.-3.5.

⁵⁹² *ibid.* para. 3.6.

the grounds of Articles 2(f) and 5(a) needs to be assessed in the light of the level of gender sensitivity applied in the judicial handling of the author's case."⁵⁹³

Similarly, in *V.K. v. Bulgaria*⁵⁹⁴ the Committee determined that in many cases the "traditional attitudes by which women are regarded as subordinate to men contribute to violence against them" and questioned of "whether the decisions of the Plovdiv courts were based on gender-stereotypes."⁵⁹⁵ Pursuant to Article 16(1) of the CEDAW Convention, the Committee reiterated the obligations of all State parties and agents that "can be responsible for judicial decisions which violate the provisions of take appropriate measures to modify and abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women, while the State party must take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations."⁵⁹⁶ The Committee further found in the interpretations of national courts a lack of gender sensitivity and a persistently accepted notion that domestic violence is a private matter falling within the private sphere and therefore not subject to State control.⁵⁹⁷ In concert with the decision of the Vertido case, the Committee asserts that stereotyping affects women's right to a fair trial and that the judiciary must be vigilant not to form inflexible standards grounded on preconceived concepts of what constitutes gender-based violence. Thus, the State party was found to have violated the due diligence standard in conjunction with Articles 2(d), (f), and 5(a) of the CEDAW Convention on eliminating gender stereotypes.⁵⁹⁸

The last communication also revealed that Spain infringed the CEDAW in *Gonzalez Carreno v Spain*.⁵⁹⁹ The Committee recalled the State's obligation to abolish or amend not only existing laws and regulations but also customs and practices that constitute discrimination against women.⁶⁰⁰ Hence, the Committee reiterated its concern to the State party that in order for a female victim of domestic violence to see the principle of non-discrimination and substantive equality in practice and thereby enjoy her human rights and fundamental

⁵⁹³ *ibid.* para. 8.4.

⁵⁹⁴ *V.K. v Bulgaria*, Communication No.20/2008, CEDAW Committee Communication No. CEDAW/C/49/D/20/2008 (2011)

⁵⁹⁵ *ibid.* para. 9.11.

⁵⁹⁶ *ibid.*

⁵⁹⁷ *ibid.* para. 9.12.

⁵⁹⁸ *ibid.*

⁵⁹⁹ *Gonzalez Carreno v. Spain*, CEDAW Committee Communication No.47/2012, CEDAW/C/58/D/47/2012 (2014)

⁶⁰⁰ *ibid.* para. 9.7.

freedoms, “the political will expressed by that model must have the support of public officials who respect the obligations of due diligence.”⁶⁰¹

The CEDAW Convention’s treaty regime articulates a clear link between gender-based violence and *de jure* and *de facto* discrimination. It also establishes a causal link between negative gender stereotypes that place women in a lower position in the community and the occurrence of VAW.⁶⁰² As Simon observes, the eradication of the former will assist to eliminate the latter. These cases are exclusively significant in the context of those countries that should develop and have developed their existing laws, policies, and regulations in the area of VAW and domestic violence. However, it also demonstrates that State parties have failed in their duty of due diligence obligations to meet these criteria.

The first part of this chapter discussed firstly how the phenomenon of so-called ‘honour killings’ had grabbed attention from 1990s within the international human rights agenda. It also revealed that the relevant articles of the CEDAW to so-called ‘honour killings’ based on equality/non-discrimination directly or indirectly as promoting the change patriarchal cultural/traditional attitudes towards women. It further argued that the due diligence principle is an effective tool to combat all forms of VAW and particularly honour killings regarding responsibilities either States or individuals can be held accountable for the prevention of such crimes.

I next argue that the Istanbul Convention provides a concrete basis for eradicating VAW, particularly so-called honour killings, by enumerating and developing the CEDAW standards and obligations to State parties in its text.

3.3. The Istanbul Convention: A New Instrument to Eradicate Violence against Women

Section 3.2 argues that the principles of equality/non-discrimination and due diligence are important within the context of the CEDAW. Despite non-binding nature of case law, State parties have failed and have still fail in eliminating all forms of VAW, evident in the Committee’s concluding observations and communications. A new legally-binding tool has arrived on the international law agenda. The Istanbul Convention offers adequately more detailed standards to combating VAW by developing the CEDAW Convention’s principles.

⁶⁰¹ *ibid.* para. 9.8, *Sahide Goekce (deceased) v. Austria*, CEDAW Committee Communication No. 5/2005, views adopted 6 August 2007, para. 12.1.2.

⁶⁰² Anna Sledzinska-Simon, ‘Making Progress in Elimination of Gender Stereotypes in the Context of Gender-Based Violence-The role of the CEDAW Committee’ (2013) 16(1) *Tijdschrift voor Genderstudies* 41, 46.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention or the Convention) was introduced and adopted by the Committee of Ministers of the Council of Europe on 11 May 2011 and came into force on 1 August 2014.⁶⁰³ The Convention provides a set of comprehensive obligations for dealing with all forms of VAW within the legal framework of international human rights.⁶⁰⁴ It has a zero-tolerance policy for such violence and is making Europe and beyond a safer place to live. The Convention enhances the context provided by the CEDAW along with the European Convention on Human Rights (ECHR) and the European Court of Human Rights (ECtHR).

Moreover, the Convention reconfirms fundamental rights and protections stated by the Convention of Belem do Para, which is the first legally binding document on VAW. It enlarges the latter document in many ways such as the definition of VAW and its different outlawed types.⁶⁰⁵ In addition, the Maputo Protocol is also taken into consideration while acknowledging several forms of VAW such as eliminating harmful practices, the right to be free from violence in situations of armed conflict and peace, and recognising economic violence within the scope of VAW.⁶⁰⁶ Further, the Convention is complimented for its comprehensive and holistic approach, incorporating simultaneously the prevention of VAW, the protection of victims, the prosecution of the perpetrators, and integrated policies that are the so-called “4 Ps”.⁶⁰⁷ It has a strong monitoring mechanism called the Group of Experts on Action against VAW and Domestic Violence (GREVIO), which is in charge of monitoring the implementation of the Convention by the Parties.⁶⁰⁸ It should also be praised for its unique pioneering role: “for the first time in the world, an international convention recognises a specific role for national parliaments in the context of the monitoring procedure.”⁶⁰⁹

⁶⁰³ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Law, CETS No.210, 11 May 2011(entered into force on 1 August 2014)

⁶⁰⁴ Kevat Nousiainen and Christine Chinkin, *Legal Implications of EU Accession to the Istanbul Convention* (Luxembourg: Publications Office of the European Union, 2016) 37.

⁶⁰⁵ Mridula Shrestha, ‘Istanbul Convention Poised to Enhance Global Efforts to Eradicate Violence against Women and Domestic Violence’ (2015) 19(4) *ASIL Insights*.

<<https://www.asil.org/insights/volume/19/issue/4/istanbul-convention-poised-enhance-global-efforts-eradicate-violence>> accessed: 20/08/2016.

⁶⁰⁶ *ibid.*

⁶⁰⁷ Jose Mendes Bota, ‘Opinion on the Draft Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence: Rappporteur Jose Mendes Bota’ (2011) Committee on Equal Opportunities for Women and Men, Doc. 12530, 24 February 2011, para. 11.

⁶⁰⁸ The Istanbul Convention, Art. 66.

⁶⁰⁹ Jose Mendes Bota, ‘Opinion on the Draft Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence: Rappporteur Jose Mendes Bota’ (2011) Committee on Equal Opportunities for Women and Men, Doc. 12530, 24 February 2011, para. 12.

The Convention develops a legally binding definition of VAW as a violation of human rights and as a form of discrimination against women. It also provides definitions of “gender”, “gender-based VAW”, “domestic violence”, and the “due diligence” standard.⁶¹⁰ Significantly, despite setting apart domestic violence as distinct from violence against women (raised as a concern by researchers), the Convention ensures that States outlaw specific manifestations of VAW such as stalking, forced marriage, FGM, forced sterilization and unacceptable justifications for crimes, including crimes committed in the name of so-called ‘honour’. While the Convention identifies domestic violence as a gender-neutral phenomenon—not given a gender-specific definition since perpetrators of domestic violence can be women as well as men—it acknowledges that domestic violence affects women disproportionately.⁶¹¹ This also explains why domestic violence is separated from other types of VAW.

As indicated above, the Istanbul Convention is an important treaty for developing and contributing to the international human rights law framework regarding VAW, particularly honour killings. I therefore first indicate how this treaty emerged in Europe and has proceeded beyond it. Second, I discuss how it applies the principles of equality/non-discrimination and ‘due diligence’. Third, I identify how so-called ‘honour killings’ are regulated under the Convention and the extent to which it obliges State parties to prevent such killings, ensure the protection women and girls at risk of death, and punish their perpetrators.

3.3.1. The Process of Adopting the Istanbul Convention

The prior section discusses how the Istanbul Convention contributes to the CEDAW and other treaties to fight all forms of gender-based violence more generally. This should be analysed deeply within the process of the Istanbul Convention, demonstrating why it is a comprehensive legal document with global implications. This section argues how the Convention adopts feminist-legal theories and the intersectionality approach in its text and process on preventing and combatting all forms of VAW.

She states that “in fact, parliamentary monitoring will be twofold: it will be ensured by national parliaments at national level and, at the European level, by the Parliamentary Assembly, which will be called to regularly take stock of the implementation of the convention.”

⁶¹⁰ Dubravka Simonovic, ‘Global and Regional Standards on Violence against Women: The Evolution and Synergy of the CEDAW and Istanbul Conventions’ (2014) 36(3) *Human Rights Quarterly* 590, 606.

⁶¹¹ Renee G. Romkens, ‘Reflections on Domestic Violence as Gender-based Violence in European Legal Developments’ in Maznah Mohamad and Saskia E. Wieringa (eds.), *Family Ambiguity and Domestic Violence in Asia: Concept, Law and Process* (Sussex Academic Press, 2014) 205.

VAW emerged in the context of the Council of Europe in the 1990s, especially in its Steering Committee for Equality between Women and Men (CDEG). In 1993, the Ministers of the States participated in the Third European Ministerial Conference on Equality between Women and Men dedicated to “Strategies for elimination of violence against women in the society: the media and other means”.⁶¹² Ministers adopted a declaration recommending the drafting and implementation of a Plan of Action to combat VAW.⁶¹³ This document essentially emphasises two predominant but separate framings on VAW as ‘gender inequality’ and ‘human rights’ but a number of crucial statements are made in the text that view VAW in both concepts of gender equality and human rights issue; infrequently are they acknowledged as interdependent concepts.⁶¹⁴ The declaration confirms that VAW “constitutes an infringement of the right to life, security, liberty, dignity, and integrity of the victim and, consequently, a hindrance to the functioning of a democratic society, based on the rule of law”⁶¹⁵ without any reference to right to freedom from discrimination or gender inequality. Without including this statement within the context of human rights, the document highlights that VAW “can be seen as a means of controlling women, originating from the unequal power relationship still prevailing between men and women, and is therefore an obstacle to the achievement of genuine equality between women and men.”⁶¹⁶

The document also recognises the application of a form of due diligence: “Noting that the responsibility of States [...] may also be engaged with regard to private acts of violence if the State does not take action with sufficient diligence to prevent the violation of rights or investigate acts of violence, to sanction them and provide for the victims.”⁶¹⁷ Nevertheless, Choudhry argues that despite this artificial separation as a missed opportunity in policy terms to achieve the aims of the document, the analysis of the problem has “at least shifted from one confined to the private sphere and within the family unit, to a fundamental issue between men

⁶¹² Council of Europe, ‘The Third European Ministerial Conference on Equality between Women and Man, Strategies for elimination of violence against women in the society: the media and other means’ (1993) MEG-3(93) para. 22.

⁶¹³ *ibid.*

⁶¹⁴ Shazia Choudhry, ‘Towards a Transformative Conceptualisation of Violence Against Women—A Critical Frame Analysis of Council of Europe Discourse on Violence Against Women’ (2016) 79(3) *The Modern Law Review* 406, 427.

⁶¹⁵ Council of Europe, ‘The Third European Ministerial Conference on Equality between Women and Man, Strategies for elimination of violence against women in the society: the media and other means’ (1993) MEG-3(93) 3, para. 6.

⁶¹⁶ *ibid.* para. 13.

⁶¹⁷ *ibid.* para. 18.

and women, of concern to the whole of society and which engages human rights.”⁶¹⁸ Further, this document identifies VAW as a “universal phenomenon which is present in all social strata and societies, independent of their level of development, political stability, culture or religion.”⁶¹⁹ This proves that the Istanbul Convention adopts a universal approach to VAW through the intersectionality approach using feminist-legal concepts rather than a cultural relativist approach.⁶²⁰

After this document was adopted, the Committee’s research on VAW was reported in Europe, where one woman in five was a victim of violence every day in 2000.⁶²¹ The Parliamentary Assembly expressed strong disapproval of honour killings in some member states committed to preserving ‘honour’ and emphasised the urgency of taking action to punish all criminal offences in the name of tradition or religion.⁶²² These concerns have notably precipitated a recommendation constituting and establishing the Istanbul Convention, which I discuss in the next section.

3.3.1.1. An Inclusive Strategy for the Way of Adopting of the Istanbul Convention: Rec (2002)5

The initiatives discussed above resulted in the adoption of the Council of Europe Recommendation Rec (2002)5 of the Committee of Ministers to member states on the protection of women against violence.⁶²³ Rec (2002)5 underscores that violence is the consequence of an inequality of power between men and women that enables the discrimination against the female sex both within society and the family.⁶²⁴ It also recommends that drafters of the Rec (2002)5 adopt and implement a set of 85 practical measures (in the manner they consider the most appropriate in the light of national

⁶¹⁸ Shazia Choudhry, ‘Towards a Transformative Conceptualisation of Violence Against Women—A Critical Frame Analysis of Council of Europe Discourse on Violence Against Women’ (2016) 79(3) *The Modern Law Review* 406, 428.

⁶¹⁹ Council of Europe, “The Third European Ministerial Conference on Equality between Women and Men, Strategies for elimination of violence against women in the society: the media and other means” (1993) MEG-3(93), para. 10.

⁶²⁰ See section 2.3.3 in Chapter 2.

⁶²¹ Council of Europe, Committee on Equal Opportunities for Women and Men, ‘Violence against Women in Europe, Report of Rapporteur: Mrs Ruth-Gaby Vermot-Mangold, Switzerland, Socialist Group’ (2000) Doc. 8667.

⁶²² *ibid.* para. 6.

⁶²³ Council of Europe, ‘Recommendation Rec (2002)5 of the Committee of Ministers to Member States on the Protection of Women against Violence’, the Committee of Ministers, 30 April 2002, 794th meeting of the Ministers’ Deputies (2002). Drafting a Recommendation was given the responsibility a Group of Specialists for the Protection of Women and Young Girls (EG-S-FV) from 1998 to 2000.

⁶²⁴ *ibid.*

circumstances and preferences), which are described in an appendix to this recommendation.⁶²⁵

In the Explanatory Report to the Istanbul Convention, Rec (2002)5 is defined as a European milestone because of its inclusive strategy “for the prevention of violence against women and the protection of victims in all Council of Europe members states.”⁶²⁶ Moreover, for the first time, there is the illustration of an intersectional approach to VAW that balances such an intersectionality approach against the risk of marginalisation.⁶²⁷ In its introduction, Rec (2002)5 notes “with concern that women are often subjected to multiple discrimination on ground of their gender as well as their origin, including as victims of traditional or customary practices inconsistent with their human rights and fundamental freedom.”⁶²⁸ The perspective of intersectionality is provided in the Explanatory Memorandum concerning assistance for and protection of victims:

must be able to benefit from the measures listed in the recommendation without any discrimination [...] These are: age, sex, sexual orientation, level of education, language, religion, physical and mental capacity, cultural and ethnic origin of the victims. Other forms of discrimination could also be prohibited depending on the case.⁶²⁹

Despite the forms of discrimination that are unspecified within the document, the meaning of intersectionality as outlined in the rest of the text is restricted to recommendations linked to “residence claims made by immigrant women, victims of genital mutilation and violence in conflict and post-conflict situations.”⁶³⁰ Hence, by restraining the application of intersectionality to these specific groups of women and specific types of violence, Rec (2002)5 offers an ‘exclusionary’ intersectional approach that worsens clashes between cultures and contributes to the construction of a cultural ‘other’.⁶³¹ In this way, the CoE

⁶²⁵ *ibid.* section VIII.

⁶²⁶ Council of Europe, ‘Convention on Preventing and Combating Violence Against Women and Domestic Violence: Explanatory Report to the Istanbul Convention’ (2011) para. 9.

⁶²⁷ Shazia Choudhry, ‘Towards a Transformative Conceptualisation of Violence Against Women—A Critical Frame Analysis of Council of Europe Discourse on Violence Against Women’ (2016) 79(3) *The Modern Law Review* 406, 430- 431.

⁶²⁸ Council of Europe, ‘Recommendation Rec (2002)5 of the Committee of Ministers to Member States on the Protection of Women against Violence’, the Committee of Ministers, 30 April 2002, Introduction.

⁶²⁹ Council of Europe, ‘Explanatory Memorandum of the Recommendation No R (2002) 5 of the Committee of Ministers to member states on the Protection of Women against Violence’, (2002) paras. 44 and 71.

⁶³⁰ Shazia Choudhry, ‘Towards a Transformative Conceptualisation of Violence Against Women—A Critical Frame Analysis of Council of Europe Discourse on Violence Against Women’ (2016) 79(3) *The Modern Law Review* 406, 430- 431.

⁶³¹ *ibid.*

needed to evaluate whether measures were taken by State parties to combat and prevent VAW.

3.3.1.2. Last Stage of Adopting the Istanbul Convention: The Task Force

With regard to combating VAW, the Council of Europe Task Force to Combat VAW, including the Domestic Violence (Task Force), was established as a part of the Action Plan⁶³² adopted by the CoE Third Summit of Heads of State and Government.⁶³³ The purpose of the Task Force was to clarify measures that have been evidenced at international and national levels in preventing and combating VAW, including domestic violence, and to make recommendations to member states at large.⁶³⁴ Throughout this campaign, administrations, parliaments, and local or regional authorities made decisive progress on the lives of women across Europe. The magnitude of the problem was divulged, but also a wide range of good practices and initiatives in many member states was clarified in Europe.⁶³⁵ The Task Force recognised that member states are at different stages in implementing Rec (2002)5 and urged further action to make important progress.⁶³⁶

The outcome document prepared by the Task Force was the blueprint for the Council of Europe Campaign whose aims are to raise awareness among CoE members that VAW is a human rights violation, to urge members to show political will to eradicate VAW, and to promote the implementation of effective measures for combating and preventing VAW and the implementation of Rec (2002)5.⁶³⁷ As stated in former documents, this document also stipulates that VAW is a result of inequality between women and men, constitutes discrimination against women, and is a human rights violation.⁶³⁸ Nonetheless, the use of

⁶³² Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005) Action Plan CM (2005)80 final 17 May 2005.

⁶³³ Council of Europe, 'The Council of Europe Task Force to Combat Violence against Women, including Domestic Violence (EG-TFV)' Gender Equality and Anti-Trafficking Division Directorate General of Human Rights and Legal Affairs, Strasbourg, September 2008. The campaign was formulated and undertaken from 2006 to 2008.

⁶³⁴ *ibid.*

⁶³⁵ Carlo Chiaromonte, 'Council of Europe: Working towards a Convention on Preventing and Combating Violence against Women and Domestic Violence' <http://www.coe.int/t/dghl/standardsetting/violence-against-women/Flyer_CAHVIO_en.pdf> accessed 10/9/15

⁶³⁶ Carol Hegemann-White and Sabine Bohn, *Protecting women against violence: Analytical study on the effective implementation of Recommendation Rec (2002)5 on the protection of women against violence in Council of Europe member States Directorate General of Human Rights and Legal Affairs*, (Council of Europe Strasbourg, 2007).

⁶³⁷ Council of Europe, 'Blueprint of the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence, Committee of Ministers, EG-TFV' (2006) 8 rev 5, 21 June 2006, Section IV.

⁶³⁸ *ibid.* Section I: Introduction. The document states that "violence against women is the result of an imbalance of power between women and men, leading to serious discrimination against women, both within society and the family [...] Violence against women is a violation of human rights, the very nature of which deprives women of their ability to enjoy fundamental freedoms."

human rights as part of both the diagnosis and the prognosis affirms the superiority of a human rights framing of VAW.⁶³⁹ This is articulated in an introductory section, which delineates how member States can lessen the occurrence of VAW by complying with their obligations.⁶⁴⁰ One of three headline aims of the campaign raises awareness of VAW as a human rights violation.⁶⁴¹ Notably, missing the point gender equality or discrimination within the scope of aims of the document threatens the significance of human rights patterns in VAW at the expense of marginalising a gendered understanding of the phenomenon.⁶⁴² Furthermore, the intersectional approach of VAW appears to be expressed as categories of vulnerability in the document, including ‘ethnic minority’, ‘refugee and migrant women’, ‘socially excluded women’, and ‘those with disabilities’.⁶⁴³

The Task Force fulfilled an evaluation of national measures to address VAW, and the results of the campaign its Final Activity Report indicated the different responses of Member States in the fields of prevention, protection, and prosecution.⁶⁴⁴ This demonstrated the necessity of

⁶³⁹ Shazia Choudhry, ‘Towards a Transformative Conceptualisation of Violence Against Women—A Critical Frame Analysis of Council of Europe Discourse on Violence Against Women’ (2016) 79(3) *The Modern Law Review* 406, 433.

⁶⁴⁰ Council of Europe, ‘Blueprint of the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence, Committee of Ministers, EG-TFV’ (2006) 8 rev 5, 21 June 2006, Introduction, para. 2.

States have a responsibility to respect, protect and fulfil the human rights of all their citizens. Therefore, states must ensure that they have taken all reasonable measures to prevent, investigate and punish all forms of violence against women, including in the family and domestic unit. Violence against women is a complex issue, particularly when it occurs within the home, which can be compounded by the response of authorities to whom women turn for help.

⁶⁴¹ *ibid.* Section IV: Aims of the campaign. It states:

The aims of the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence are:

- 1-To raise awareness across the Council of Europe member states that violence against women is a human rights violation and encourage every citizen to challenge it;
- 2-To urge states to demonstrate political will by providing adequate resources to deliver concrete results in ending violence against women;
- 3-To promote the implementation of effective measures for preventing and combating violence against women, through legislation and national action plans for the implementation of Recommendation Rec (2002)5 of the Committee of Ministers and to regularly monitor the progress achieved.

⁶⁴² Shazia Choudhry, ‘Towards a Transformative Conceptualisation of Violence Against Women—A Critical Frame Analysis of Council of Europe Discourse on Violence Against Women’ (2016) 79(3) *The Modern Law Review* 406, 434.

⁶⁴³ Council of Europe, ‘Blueprint of the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence, Committee of Ministers, EG-TFV’ (2006) 8 rev 5, 21 June 2006,

Section V: Objectives, para. (a): *Legal and policy measures* Member States “ensure that immigration laws and administrative procedures do not prevent women from leaving violent relationships due to fear of deportation, loss of legal status or revoked custody over the children”; Section V: Objectives, para. (b): *Support and protection for victims*, Member States “provide adequate support and advocacy services, that meet quality standards, to all victims of violence and empower women and ensure that services are accessible to all women, including socially excluded women and recent migrants, refugees, women from ethnic minority groups and those with disabilities.”

⁶⁴⁴ Council of Europe, ‘Final Activity Report, Task Force to Combat Violence against Women, including Domestic Violence (EG-TFV) 6’ (2008).

binding convention on preventing and combating VAW. Thus, the Committee of Ministers of the CoE established an Ad hoc Committee on Preventing and Combating VAW and Domestic Violence (CAHVIO) and entrusted it to prepare a more legally binding tool “to prevent and combat domestic violence including specific forms of violence against women, other forms of violence against women, and to protect and support the victims of such violence as well as prosecute the perpetrators.”⁶⁴⁵ After nine meetings through 2009-2010, the CAHVIO approved a draft report in December 2010 called the “Convention on Preventing and Combating Violence against Women and Domestic Violence”.⁶⁴⁶ The Council of Ministers Meeting of CoE for the signing of the Convention took place in Istanbul on 11 May 2011.⁶⁴⁷ Turkey was the first signatory to the Convention and convinced the Committee Ministers to decide to open the Convention for ratification. The Convention finally came into force on 1st August 2014 after it was ratified by more than ten countries. As of July 2017, Turkey was the first country for ratification on 14 March 2012; it was signed by 47 countries and ratified by 24 countries.⁶⁴⁸

Accordingly, the Istanbul Convention is first ever legally binding document that forms structural connection between gender equality and VAW. It is a multifaceted treaty in that it is a human rights treaty, a criminal law treaty, and a treaty advocating effective gender equality. The following section therefore discusses the principles of equality and non-discrimination in the Istanbul Convention, applying the CEDAW.

3.3.2. The Principles of Equality and Non-Discrimination in the Istanbul Convention

Earlier this thesis has analysed the requirement of the principle of equality and non-discrimination in the CEDAW.⁶⁴⁹ It has argued that the concept of equality and non-discrimination is the root cause of the so-called honour killings that will be eliminated

⁶⁴⁵ *ibid.*

⁶⁴⁶ Council of Europe, ‘CAHVIO Interim Report’ CAHVIO (2009) 4 FIN, Strasbourg, 27 May 2009; Council of Europe, ‘CAHVIO Report of the 2th Meeting’ CAHVIO (2009) 31, Strasbourg, 15 June 2009 ; Council of Europe, ‘CAHVIO Report of the 3th Meeting’ CAHVIO (2009) 34 , Strasbourg, 7 January 2010 ;Council of Europe, ‘CAHVIO Report of the 4th Meeting’ CAHVIO (2010) 1 rev, Strasbourg, 16 April 2010; Council of Europe, ‘CAHVIO Report of the 5th Meeting’ CAHVIO (2010) 11 Strasbourg, 15 July 2010; Council of Europe, ‘CAHVIO Report of the 6th Meeting’ CAHVIO (2010) 18, Strasbourg, 25 October 2010; Council of Europe, ‘CAHVIO Report of the 7th Meeting’ CAHVIO (2010) 21 rev bis, Strasbourg, 12 January 2011; Council of Europe, ‘CAHVIO Report of the 8th Meeting’ CAHVIO (2010) 27 rev, Strasbourg, 12 January 2011; Council of Europe, ‘CAHVIO Report of the 9th Meeting’ CAHVIO (2011) 8, Strasbourg, 25 January 2011

⁶⁴⁷ Convention on Preventing and Combating Violence against Women and Domestic Violence, *opened for signature* 11 May 2011, Council of Europe, C.E.T.S No. 210 (the Istanbul Convention).

⁶⁴⁸ Chart of signatures and ratifications of Treaty 210. <<http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=210&CM=&DF=&CL=ENG>> accessed: 12/06/2017

⁶⁴⁹ See section 3.2.2 in this Chapter.

provided substantive equality between women and men is reached. It has also been argued that this requirement has arisen to eliminate gender-based discrimination between women and men and their subservient roles in the family and society.⁶⁵⁰ The Istanbul Convention has explicitly taken these principles into account to promote substantive equality and thereby eliminate VAW and accomplish gender equality in law and in fact. It has also been argued that the Istanbul Convention sets a solid legal link between gender equality and human rights violations in the effort to combat all forms of VAW, particularly honour killings, using much improved intersectional grounds and cooperated feminist-legal approaches. I therefore examine how the Istanbul Convention adds the principles of equality and non-discrimination in its text and offers a more exclusive clause than the CEDAW, DEVAW, and ECHR provide.

3.3.2.1. The Istanbul Convention and the CEDAW

The Istanbul Convention has combined gender equality and human rights frameworks by explicitly using the concept of substantive equality. The nexus between achieving gender equality and eliminating VAW established in the Preamble proves the use of substantive equality. The Convention recognises the fundamental nature of VAW in the DEVAW's manifestation of historically unequal power relations between women and men.⁶⁵¹ It explicitly defines VAW as a form of discrimination against women; this was first framed in CEDAW GR No.19 and elaborated in DEVAW's Article 3(a):

“violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.⁶⁵²

As one of the objectives of the Convention, Article 1 (b) stipulates that the Convention will work to eliminate all forms of discrimination against women and encourage substantive equality in eliminating VAW and accomplishing gender equality in law and in fact.⁶⁵³ In line with the definition of VAW, it should be noted that the term ‘discrimination against women’

⁶⁵⁰ See section 3.3.2.1 in this Chapter.

⁶⁵¹ Council of Europe, ‘Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence: Explanatory Report to the Istanbul Convention’ (2011) para. 25.

⁶⁵² The Istanbul Convention, Art. 3 (a).

⁶⁵³ Council of Europe, ‘Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence: Explanatory Report to the Istanbul Convention’ (2011) para. 31.

has the same meaning as that provided in Article 1 of the CEDAW.⁶⁵⁴ Article 4(2) advocates that “States condemn all forms of discrimination against women and take ‘without delay’ legislative and other stages to prevent it”, particularly by:

- embodying in their national constitutions or other appropriate legislation the principle of equality between women and men and ensuring the practical realisation of this principle;
- prohibiting discrimination against women, including through the use of sanctions, where appropriate;
- abolishing laws and practices which discriminate against women.

Thus, the Convention establishes the legal link between gender equality and combating VAW.⁶⁵⁵ The absence of substantive equality is the main reason VAW persists as a form of discrimination against women; therefore, according to the drafters of the Convention, the only way to prevent and combat VAW is to promote ‘substantive equality’.⁶⁵⁶ Article 4(2) articulates the principle of substantive equality:

[...] between women and men by requiring Parties to not only condemn all forms of discrimination against women, but to enshrine the principle of equality in law, ensure its practical realisation as well as prohibit discrimination by law and abolish any discriminatory legislation and practices. It recognises that the enjoyment of the right to be free from violence is interconnected with the Parties’ obligation to secure equality between women and men to exercise and enjoy all civil, political, economic, social and cultural rights as set out in the human rights instruments of the Council of Europe, particularly the ECHR and its Protocols and the European Social Charter, and other international instruments, particularly CEDAW, to which they are Parties.⁶⁵⁷

Following the wording of Article 2 of the CEDAW, the Convention includes the most inclusive equality and non-discrimination clause in international law to date in accordance with Article 4(3). This list of forbidden grounds for discrimination encompasses gender

⁶⁵⁴ *ibid.* para. 25.

⁶⁵⁵ Kevat Nousiainen and Christine Chinkin, *Legal Implications of EU Accession to the Istanbul Convention*, (Luxembourg: Publications Office of the European Union, 2016) 39.

⁶⁵⁶ Council of Europe, ‘Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence: Explanatory Report to the Istanbul Convention’ (2011) para. 49.

⁶⁵⁷ *ibid.*

identity, age, sexual orientation, migrant or refugee status, and disability.⁶⁵⁸ Article 4(3) states that:

The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.⁶⁵⁹

Hence, the Istanbul Convention's crucial addition to the non-discrimination provision is "its applicability to migrant and refugee women", for "CEDAW General Recommendation No. 28 does not explicitly include these women although 'other status' may encompass them."⁶⁶⁰ Additionally, this paragraph evidences that the Convention shows a much-improved intersectional approach to the matter. Further, these classifications are not only broader than the list in the explanatory memorandum of Rec (2002)5—they are contained in the core text of the treaty. Most recently, after the Istanbul Convention's enactment, the CEDAW Committee updates its GR No.19, referring to the Istanbul Convention on 14 July 2017.⁶⁶¹ CEDAW General Recommendation No. 35 puts more detailed inclusive intersecting forms of discrimination against women, acknowledging that gender-based violence may affect some women to different degrees, in different ways, so appropriate legal and policy responses needed."⁶⁶² These other factors include:

ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability, property ownership, being lesbian, bisexual, transgender or intersex, illiteracy, trafficking of women, armed conflict, seeking asylum, being a refugee, internal displacement, statelessness, migration, heading households, widowhood, living with HIV/AIDS, deprivation of

⁶⁵⁸ Olga Jurasz, 'The Istanbul Convention: A New Chapter in Preventing and Combating Violence against Women' (2015) 89(9) *Australian Law Journal* 619, 623.

⁶⁵⁹ The Istanbul Convention, Art. 4(3).

⁶⁶⁰ Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 28: On the State's Core Obligations' (2010) CEDAW/GC/C/28, para.18

⁶⁶¹ Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 35 on gender-based violence against women, updating general recommendation no. 19' (2017) CEDAW/C/GC/35

⁶⁶² *ibid.*, para.12.

liberty, being in prostitution, geographical remoteness and stigmatisation of women fighting for their rights, including human rights defenders.⁶⁶³

Despite the CEDAW's significant improvement with its GR No.35, addressing gender-based violence intersecting multiple forms of violations of women's rights is affected by States parties' reservations to the Women's Convention, particularly to Article 2.⁶⁶⁴ On the other hand, pursuant to Articles 78 and 79 of the Istanbul Convention, reservations are possible on a restricted number of provisions (this is for a period of five years) and Article 4 may not be applied for the reservation by the State parties.⁶⁶⁵ To sum, the Istanbul Convention guarantees comprehensive the non-discrimination provision in the international human rights law, restraining States parties' reservations to the Convention.

3.3.2.2. The Istanbul Convention and the ECHR

The meaning of discrimination and the list of non-discrimination grounds are essentially identical to those given in Article 14 of the ECHR and the Optional Protocol No. 12 of the ECHR.⁶⁶⁶ It should be noted that the ECtHR has applied Article 14 to discrimination grounds not clearly stated in that clause (for instance, in *Salgueiro da Silva Mouta v. Portugal* concerning sexual orientation).⁶⁶⁷ Protocol No. 12 was criticised for not expanding the list of protected grounds.⁶⁶⁸ Its drafters stated the reason for the absence of such grounds in their explanatory report:

This solution was considered preferable over others, such as expressly including certain additional non-discrimination grounds (for example, physical or mental

⁶⁶³ *ibid.* CEDAW Committee here refers to its GR No. 15 on women and AIDS, GR No. 18 (1990) on women with disabilities, GR No. 21(1994) on equality in marriage and family relations, GR No. 24 (1999) on women and health, GR No. 26 (2008) on women migrant workers, GR No. 27 (2010) on older women, GR No. 28 (2010) on the State's Core Obligations, GR No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations; GR No. 31 (2014) on harmful practices; GR No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women; GR No. 33 (2015) on women's access to justice; and GR No. 34 (2016) on the rights of rural women.

⁶⁶⁴ Reservations to CEDAW, <<http://www.un.org/womenwatch/daw/cedaw/reservations.htm>> accessed: 12/06/2017

⁶⁶⁵ The Istanbul Convention, Articles 78 and 79.

⁶⁶⁶ Optional Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No.177, Rome, 04/11/2000, (came into force 01/04/2005) Art.1, and ECHR Art. 14. Article 14 of the ECHR:

the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

⁶⁶⁷ *Salgueiro da Silva Mouta v. Portugal*, Application no. 33290/96, (Council of Europe: European Court of Human Rights, 21 December 1999).

⁶⁶⁸ Mark W. Janis, Richard S. Kay, and Anthony Wilfred Bradley, *European Human Rights Law: Text and Materials* (Oxford University Press, USA, 2008) 517.

disability, sexual orientation or age), not because of a lack of awareness that such grounds have become particularly important in today's societies as compared with the time of drafting of Article 14 of the Convention, but because such an inclusion was considered unnecessary from a legal point of view since the list of non-discrimination grounds is not exhaustive, and because inclusion of any particular additional ground might give rise to unwarranted *a contrario* interpretations as regards discrimination based on grounds not so included.⁶⁶⁹

Nevertheless, the inclusion of new forbidden grounds of discrimination in the clause marks their significance.⁶⁷⁰ Arnardottir indicates that “the influence that such discrimination grounds were subject to stricter scrutiny”, and in effect, Article 1 leaves it up to “the court to develop the protection of the different discrimination grounds.”⁶⁷¹ The extent of the prohibitions on discrimination encompassed in Article 4(3) of the Istanbul Convention is therefore much more restricted than the scope of Article 4(2). While Article 4(3) obliges State parties to refrain from discrimination in the enforcement of the provisions of this Convention, Article 4(2) calls on State parties to condemn discrimination in areas beyond the remit of the Convention.⁶⁷²

Similar to the CEDAW, which allows for positive discrimination by defining discrimination as “distinction with adverse consequences”⁶⁷³ and its provision for “temporary special measures”,⁶⁷⁴ Article 4(4) of the Istanbul Convention refers to “special measures which a Party may wish to take to enhance the protection of women from gender-based violence – measures which would benefit women only.”⁶⁷⁵ The drafters of the Convention state that this is compatible with the concept of discrimination in its case law regarding the ECtHR in Article 14 ECHR.⁶⁷⁶ For example, in the *Abdulaziz, Cabales and Balkandali v. the United Kingdom*⁶⁷⁷ decision, the Court states that, “for the purposes of Article 14, a difference of

⁶⁶⁹ Council of Europe, ‘Explanatory Report to the Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms’ (2000), European Treaty Series (ETS) No. 177, para. 20.

⁶⁷⁰ Oddny Mjoll Arnardottir, *Equality and Non-Discrimination under the European Convention on Human Rights* (The Hague: Martinus Nijhoff Publishers, 2003) 35.

⁶⁷¹ *ibid.*

⁶⁷² Council of Europe, ‘Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence: Explanatory Report to the Istanbul Convention’ (2011) para. 54.

⁶⁷³ The CEDAW, Art.1.

⁶⁷⁴ The CEDAW, Art. 4 (1).

⁶⁷⁵ Council of Europe, ‘Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence: Explanatory Report to the Istanbul Convention’ (2011) para. 55.

⁶⁷⁶ *ibid.*

⁶⁷⁷ *Abdulaziz, Cabales and Balkandali v. The United Kingdom*, Application No: 15/1983/71/107-109 (Council of Europe: European Court of Human Rights, 24 April 1985).

treatment is discriminatory if it ‘has no objective and reasonable justification’, that is, if it does not pursue a ‘legitimate aim’ or if there is not a: ‘reasonable relationship of proportionality between the means employed and the aim sought to be realised’.”⁶⁷⁸ In this case, the UK’s reaction to the judgment was to ‘level down’ by removing the advantageous treatment accorded to men under the immigration rules rather than by improving the treatment of women.⁶⁷⁹ The fact that women experience gender-based violence to a crucially wider extent than men can be measured as an objective and reasonable justification to engage resources and take special measures for the advantage of female victims only.⁶⁸⁰

3.3.3. The Principle of ‘Due Diligence’ in the Context of the Istanbul Convention

Earlier this thesis analysed the duty of due diligence in the context of CEDAW. It was argued that eliminating the public/private dichotomy provides State parties that act with due diligence to protect women against violations of human rights committed by not only State but private persons. It was further argued that this requirement is an important obligation to State parties because they have failed to exercise the duty of due diligence to protect women from honour killings, to prevent or investigate such crimes in depth, and to punish the murderers under domestic penal codes. The Istanbul Convention has taken this perspective into account since Rec (2002)5 and has also considered the judgements of ECtHR. It has adopted the principle of due diligence as a one of pillars to prevent, investigate, punish, and provide reparation for acts of violence, particularly so-called ‘honour killings’ perpetrated by non-State actors.

The principle of due diligence is largely combined with the definition of gender-based violence under UN instruments such as CEDAW GR No. 19, the DEVAW. These numerous mechanisms point out a series of detailed, practical measures to be taken by State parties in preventing and responding to VAW. Although the ECHR has no provision on gender-based violence, it has drawn upon the work of the CEDAW Committee in interpreting and applying its jurisprudence of the ECtHR that integrated VAW into Article 3 (prohibition against torture, inhuman or degrading treatment) and Article 8 (respect for private and family life).⁶⁸¹

⁶⁷⁸ *ibid.* para. 72.

⁶⁷⁹ Mark W. Janis, Richard S. Kay, and Anthony Wilfred Bradley, *European Human Rights Law: Text and Materials* (Oxford University Press, USA, 2008) 464.

⁶⁸⁰ Council of Europe, ‘Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence: Explanatory Report to the Istanbul Convention’ (2011) para. 55.

⁶⁸¹ Kevat Nousiainen and Christine Chinkin, *Legal Implications of EU Accession to the Istanbul Convention* (Luxembourg: Publications Office of the European Union, 2016) 38.

The duty of due diligence used to combat VAW in the family in the form of explicit guidance to member States came into account in Europe with the Council of Europe Rec(2002)5 by the Committee of Ministers.⁶⁸² Crucially, Rec 2002(5) accepts that “states have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims.”⁶⁸³ Although the (2002)5 Recommendation is not a legally binding tool, it has provided the ECtHR with a theoretical and legal background to determine if a State has acted with due diligence in a concrete case of VAW. Thus, it has contributed to the coordination of national legislations of State Parties of the ECHR.⁶⁸⁴ For instance, the ECtHR reviewed the significant cases of *Bevacqua and S. v. Bulgaria*⁶⁸⁵ and *Opuz v. Turkey*,⁶⁸⁶ signifying pivotal decisions for ECHR and international law in 2008 and in 2009. The courts approved the obligation of due diligence as a principal concept for state responsibility for VAW committed by private actor.

In *Bevacqua and S. v. Bulgaria*, the Court held that Bulgaria had not exercised due diligence to protect and investigate the violence against the plaintiff in order to review the incorporation of the international benchmark, compromising the judgements of IAtHR, the Special Rapporteur’s report.⁶⁸⁷ Thus, the Court considered that “the authorities’ duty under Article 8 to secure respect for the right to private and family life of both applicants – parent and child – required the examination of the interim measures application with due diligence and without delay.”⁶⁸⁸ One of the most detailed analyses of the scope of a State’s due diligence duty to prevent the right of life within the jurisdiction of ECtHR pertains to *Opuz v. Turkey*.⁶⁸⁹ Here the Court held that Turkey violated provisions of the ECHR, following a history of an abuser’s intensifying violence, the victims’ repeated requests for police protection, and finally the abuser’s murder of plaintiff’s mother. In this landmark case, the ECtHR adopted the due diligence standard, stating that “the legislative framework preventing effective protection for

⁶⁸² Council of Europe, ‘Recommendation Rec (2002)5 of the Committee of Ministers to Member States on the Protection of Women against Violence’ Adopted by the Committee of Ministers on 30 April 2002 at the 794th meeting of the Ministers’ Deputies (2002).

⁶⁸³ *ibid.* Section II.

⁶⁸⁴ Magaly Thill, ‘States’ Duty to Prevent and Eliminate Violence against Women in the European Union’ (2014) 21 *RUE: Revista universitaria europea* 43, 53.

⁶⁸⁵ *Bevacqua and S. v. Bulgaria*, Application No. 71127/01 (Council of Europe: European Court of Human Rights, 12/09/2008).

⁶⁸⁶ *Opuz v. Turkey*, Application No. 33401/02 (Council of Europe: European Court of Human Rights, 09/09/2009).

⁶⁸⁷ *Bevacqua and S. v. Bulgaria*, Application No. 71127/01 (Council of Europe: European Court of Human Rights, 12/09/2008), paras. 52-53.

⁶⁸⁸ *ibid.* para. 73.

⁶⁸⁹ *Opuz v. Turkey*, Application No. 33401/02 (Council of Europe: European Court of Human Rights, 09/09/2009).

victims of domestic violence aside, the Court must also consider whether the local authorities displayed due diligence to protect the right to life of the applicant's mother in other respects.”⁶⁹⁰

The ECtHR also advanced a comprehensive, positive interpretation of the State's role, holding that the State's duty to secure the right to life by creating effective criminal law provisions “extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.”⁶⁹¹ In this context of a case concerning the risk to the right to life, the court contemplated a robust, positive role for State intervention: “[...] it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge.”⁶⁹² Concordantly, the Court examined whether the State authorities fulfilled their positive obligation to take preventive measures to protect the applicant's mother's right to life:

it must establish whether the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of the applicant's mother from criminal acts by H.O. As it appears from the parties' submissions, a crucial question in the instant case is whether the local authorities displayed due diligence to prevent violence against the applicant and her mother, in particular by pursuing criminal or other appropriate preventive measures against H.O. despite the withdrawal of complaints by the victims.⁶⁹³

The Court decided that “the national authorities cannot be considered to have displayed due diligence” and therefore “failed in their positive obligation to protect the right to life of the applicant's mother within the meaning of Article 2 of the Convention.”⁶⁹⁴ Moreover, the concept of risk in the Opuz case is incorporated into Article 51 of the Istanbul Convention, which provides that “State Parties shall ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide coordinated safety and

⁶⁹⁰ *ibid.* para. 146.

⁶⁹¹ *ibid.* para. 128.

⁶⁹² *ibid.* para. 130.

⁶⁹³ *ibid.* para. 131.

⁶⁹⁴ *ibid.* para. 149.

support.”⁶⁹⁵ Furthermore, in light of the facts of the *Opuz* case, in which the applicant’s mother was shot, the drafters pointed out that very serious cases of violence against women are committed with the use of firearms throughout the world.⁶⁹⁶ Article 51(2) is an essential provision to oblige States to ensure that “such assessment referred to in paragraph 1 duly takes into account, at all stages of the investigation and application of protective measures, the fact that perpetrators of acts of violence covered by the scope of this Convention possess or have access to firearms.”⁶⁹⁷ Thereby, the principle of positive obligations of the State to protect an individual in cases of violation of human rights by private parties, advanced by the jurisprudence of the ECtHR, is closely interconnected with the principle of due diligence as a State responsibility for violence committed by private actor.

The principle of due diligence has become one of the pillars of the Istanbul Convention, providing legally binding standards on preventing violence, protecting victims against violence, and prosecuting widespread forms of gender-based violence. The State has an obligation to guarantee that “their authorities, officials, agents, institutions and other actors act on behalf of the state refrain from acts of violence against women.” To be in conformity with Article 5(1), paragraph 2 of Article 5 establishes parties’ positive obligation to “exercise due diligence in relation to acts covered by the scope of this Convention perpetrated by non-state actors.”⁶⁹⁸

As discussed above, the principles of equality/non-discrimination and due diligence are critical to combatting all forms of VAW and particularly so-called honour killings, which are introduced explicitly by the Istanbul Convention. The Istanbul Convention develops these specific standards from the CEDAW and ECHR in concert with intersectionality and feminist-legal perspectives. It further codifies ‘soft law’ (CEDAW GR No. 19, GR. No.35) and case-based jurisprudence (*Opuz v. Turkey*). In the following section, I first examine how so-called ‘honour killings’ have been a rising issue among CoE State parties. Second, I reveal how the State obligations to prevent, protect, and prosecute such crimes are regulated in the context of the Istanbul Convention.

⁶⁹⁵ The Istanbul Convention, Art. 51 (1).

⁶⁹⁶ Council of Europe, ‘Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence: Explanatory Report to the Istanbul Convention’ (2011) para. 263.

⁶⁹⁷ Article 51 (2) of the Istanbul Convention:

Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention [meaning violence against women] that are perpetrated by non-State actors.

⁶⁹⁸ Council of Europe, ‘Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence: Explanatory Report to the Istanbul Convention’ (2011) para. 57.

3.3.4. ‘Honour Killings’ within the Istanbul Convention Framework

Honour killings have been identified as a form of VAW since the adaptation process of the Istanbul Convention. This section demonstrates that the CoE State members and the drafters of the Convention have evaluated the origins of honour killings, their causes, and what their perpetrators are trying to achieve with this kind of violence. The Convention indicates that crimes committed in the name of honour are commonly “crimes that have been part of the criminal law landscape of the CoE member states for a very long time: murder, manslaughter, bodily injury.”⁶⁹⁹

So-called honour killings appeared in CoE Rec (2002)5. The Committee of Ministers added such crimes in its framework as a form of VAW, which includes but is not limited to the following:

violence occurring in the family or domestic unit, including, inter alia, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages.⁷⁰⁰

In light of this inclusion, CoE Rec (2002)5 obliged member States to:

penalise all forms of violence against women and children committed in accordance with the custom of “killings in the name of honour”; take all necessary measures to prevent “killings in the name of honour”, including information campaigns aimed at the population groups and the professionals concerned, in particular judges and legal personnel; penalise anyone having deliberately participated in, facilitated or encouraged a “killing in the name of honour”; support NGOs and other groups which combat these practices.⁷⁰¹

Subsequently, in 2003, the Parliamentary Assembly also published a Resolution (1327) naming so-called “honour crimes” and pointed to increasing numbers of “honour crimes”, which constitute a violation of human rights founded on archaic, unjust cultures, and

⁶⁹⁹ Council of Europe ‘Crimes committed in the name of so-called honour crimes’ <www.coe.int/conventionviolence> accessed: 13/08/2015

⁷⁰⁰ Parliamentary Assembly Council of Europe (PACE), ‘Recommendation Rec (2002)5 of the Committee of Ministers to member States on the Protection of Women against Violence’ (2002) Appendix to the Recommendation Rec (2002)5 para. 1(a).

⁷⁰¹ *ibid.* paras. 80-83.

traditions.⁷⁰² This report states that, despite honour killings having no clear connection with religious roots, the majority of reported cases in Europe have been amongst Muslim or migrant Muslim communities.⁷⁰³ Moreover, it criticises the insufficiency of adequate data recording on honour killings and the strategies of some States that do not maintain such statistics.⁷⁰⁴ The Resolution also calls the Council of Europe countries to take legal measures to prevent and prosecute so-called honour crimes.⁷⁰⁵ This resolution revealed the seriousness of such crimes as an arising issue in Europe and beyond despite inadequate data.

Three years after the resolution adopted, an Iraqi Kurdish woman, Banaz Mahmud was murdered in the name of so-called honour by her father and uncle in London, by becoming involved in a relationship with someone in the United Kingdom.⁷⁰⁶ In addressing this case, the members of the Parliamentary Assembly pointed out:

[...] a young woman of twenty was recently killed by her father and uncle, for the “reason” that she was in love with a man her family had not chosen. Her previous complaints to the police had not been taken seriously. This is far from being an isolated case. According to a woman human rights lawyer, so-called “honour crimes”, both those which involve killing and those which do not, are on the increase, not only in the United Kingdom, but also in other European countries.⁷⁰⁷

Because Banaz’s requests for help were ignored and disregarded by the authorities, significantly, this case was taken under consideration among the member States of the Council of Europe charged with investigating ways to respond to this issue.⁷⁰⁸ Thus, the Parliamentary Assembly has devoted attention to so-called honour killings, which are getting worse even in Europe and mainly affect women in patriarchal and fundamentalist communities and societies.⁷⁰⁹ Austin notably defines ‘honour crimes’ as any form of violence

⁷⁰² Parliamentary Assembly Council of Europe (PACE), ‘Resolution 1327 (2003): So-called ‘Honour Crimes’’ (4 April 2003) para. 1.

⁷⁰³ *ibid.* para. 4.

⁷⁰⁴ *ibid.* para. 8.

⁷⁰⁵ *ibid.* para. 10.

⁷⁰⁶ Ravi K. Thiara and Aisha K. Gill, *Violence Against Women in South Asian Communities: Issues for Policy and Practice* (London: Jessica Kingsley Publishers, 2010) 110; Aisha Gill, ‘Crimes of Honour’ and Violence against Women in the UK’ (2008) 32(2) *International Journal of Comparative and Applied Criminal Justice* 243, 251-252, James Sturcke, ‘Father guilty of daughter’s ‘honour’ murder’ (11 June 2007) *The Guardian* <<https://www.theguardian.com/uk/2007/jun/11/ukcrime.jamessturcke>> (accessed on: 27/12.2016).

⁷⁰⁷ Parliamentary Assembly Council of Europe, ‘The Urgent need for Action on So-called “Honour Crimes”’, (2007) Motion for Resolution, Doc. 11348, 4 July 2007.

⁷⁰⁸ *ibid.*

⁷⁰⁹ Parliamentary Assembly Council of Europe, ‘The Urgent need for Action on So-called ‘Honour Crimes’’, Report of the Committee on Equal Opportunities for Women and Men, Rapporteur: Mr Austin, Doc. 11943, 8 June 2009, Draft Resolution, para. 1.

against women and girls in the name of traditional codes of honour.⁷¹⁰ In other words, diminishing this form of violence from other types of violence against women is rooted in the name of traditional codes of honour. While Austin acknowledges that the main reason behind honour crimes is to control women's sexuality and reproductive rights within a family context, he clarifies that punishments for women's attempts to enjoy their right to individual self-determination take many forms:

the women may be disowned by their families, cut off from their social surroundings or exposed to exploitation. They may be confined, abducted or threatened. Many of them are tortured, mutilated and disfigured for life. Others are burnt with acid, burnt to death or otherwise killed. In extreme situations, yet others have no choice but to commit ritual suicide or to kill themselves.⁷¹¹

Notably, the Assembly announced in 2009 that “there is no honour in so-called honour crimes.”⁷¹² The Committee of Ministers was asked to devise a comprehensive policy based on the elimination of every form of legislative justification for diminishing or removing the criminal responsibility of the perpetrators of ‘honour crimes’ to put a stop to so-called honour crimes in 2009.⁷¹³ This strategy advances the cause of eradicating the social acceptance of ‘honour crimes’ and highlights the fact that no religion advocates ‘honour crimes’.⁷¹⁴ The Committee of Ministers fully agrees with the Assembly about the need to take action to combat gender-based violence, including the abduction of women and girls and so-called honour killings, and supports the argument that “there can be no justification based on custom, religion, tradition or honour for acts of violence against women.”⁷¹⁵

These perspectives have been adopted in the text of the Istanbul Convention. The following section examines how these approaches have been integrated. It also aims to argue that the Istanbul Convention explicitly identifies so-called honour killings as an unacceptable justification and obliges State members to prevent such crimes, protect women at risk of honour killings, and punish the perpetrators. So-called honour killings are regulated

⁷¹⁰ *ibid.*

⁷¹¹ *ibid.* paras. 5-7.

⁷¹² Parliamentary Assembly Council of Europe, ‘The Urgent need for Action on So-called ‘Honour Crimes’’, Resolution 1681 (8 June 2009) paras. 1-3.

⁷¹³ Parliamentary Assembly Council of Europe, ‘The Urgent need for Action on So-called ‘Honour Crimes’’, Recommendation 1881 (26 June 2009) para. 2.

⁷¹⁴ *ibid.*

⁷¹⁵ Parliamentary Assembly Council of Europe, ‘Action to Combat Gender-based Human Rights Violations, including Abduction of Women and Girls—The Urgent Need for Action on So-called ‘Honour Crimes’’, Reply to Recommendation 1868 (2009), Committee of Ministers, Doc.12206, 16 April 2010.

comprehensively within the original text of the Convention. I therefore indicate general State obligations to prevent honour killings, punish honour killings murderers, and protect women at risk from honour killings.

3.3.4.1. General State Obligations to Prevent Honour Killings

The prior section argues that the Council of Europe has put so-called honour crimes on its agenda following the resolutions, recommendations, and reports in the 2000s. It should be considered that the Istanbul Convention introduced in 2011 acknowledges that such crimes have different and distinct aspects from other forms of VAW and regulates honour killings as a specific crime within this context. The Istanbul Convention obliges State members to take necessary measures to prevent such crimes with due diligence. These binding measures indicate an important development in international human rights law. Therefore, this section advocates that eradicating gender stereotypes by promoting changes in the social and cultural notions of the behaviour of women and men will help to prevent such crimes at the country level.

A binding duty to eradicate gender stereotypes is articulated in Article 12(1) of the Istanbul Convention: “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.”⁷¹⁶ This paragraph includes obligations based on existing notions of behaviour of women and men; these notions are often influenced by prejudices, gender stereotypes, and gender-biased customs or traditions.⁷¹⁷

Nevertheless, this Article outlines a weaker obligation to ‘promote a cultural change’ rather than to enforce or affect it.⁷¹⁸ This paragraph does not go into detail and thereby serves as a general obligation to propose precise measurements to take, leaving the decision to the discretion of the Party: “Parties to the Convention are therefore required to take measures that are necessary to promote changes in mentality and attitudes. The purpose of this provision is to reach the hearts and minds of individuals who, through their behaviour, contribute to perpetuate the forms of violence covered by the scope of this Convention.”⁷¹⁹ In her analysis

⁷¹⁶ The Istanbul Convention, Art. 12 (1).

⁷¹⁷ Council of Europe, ‘Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence: Explanatory Report to the Istanbul Convention’ (2011) para. 85.

⁷¹⁸ Anna Sledzinska-Simon, ‘Making Progress in Elimination of Gender Stereotypes in the Context of Gender-based Violence—The role of the CEDAW Committee’ (2013) 16(1) *Tijdschrift voor Genderstudies* 46, 47.

⁷¹⁹ Council of Europe, ‘Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence: Explanatory Report to the Istanbul Convention’ (2011) para. 85.

of feminicide/femicide or intimate partner violence, Popa argues that while legal frameworks are crucial to requires a broad range of measures to raise awareness of the gender-based nature of the killings of women by men, “real change cannot come about without changing hearts and minds, that is, the attitudes and beliefs that perpetuate violence against women, including its most extreme forms, such as killing a woman because she is a woman.”⁷²⁰ The goal of Articles 12(1) and 12(2) is therefore to reach the minds of individuals to ensure changes in mind-sets, attitudes, and beliefs towards women, their role and status in society, their sexuality, as well as women’s agency.⁷²¹ In this manner, changing the behaviour of men and women helps to prevent violence committed in the name of culture, tradition, or so-called honour.

Although the exact wording of Article 12(1) of the Istanbul Convention is not same as that of Article 5(a) of the CEDAW Convention, the Group of Experts on Action against VAW and Domestic Violence (GREVIO)’s interpretation of the duty to “promote changes in the social and cultural patterns of behaviour of women and men” replicates the CEDAW Committee’s interpretation of the duty “to modify the social and cultural patterns of conduct of men and women.” However, Simon argues that the language of Article 12(1) follows the same ambiguous language of Article 5(a) of the CEDAW Convention as “giving the impression that national measures ‘promoting a change’ in cultural and social patterns of behaviours fall in the ‘margin of appreciation’ of the States.”⁷²² However, the Istanbul Convention goes beyond necessitating only behavioural change by detailing that no culture, custom, religion, tradition, and so-called honour can be measured as a justification for any forms of violence within the Convention.⁷²³ Hence, State parties must take legislative and other measures to prevent all forms of violence, and the scope of Convention emphasises that culture, religion, tradition, custom, and so-called honour shall not be considered as justifications for any acts of

⁷²⁰ Raluca Popa, ‘Using the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence to Address Femicide/Feminicide’ 7th Conference on Feminicide in Europe and Latin America, Brussels, 6 March 2014, in Simona Domazetoska, Michael Platzer, and Gejsi Plaku (eds.), *Feminicide*, (Academic Council on the United Nations Systems (ACUNS, 2014) 57.

⁷²¹ Marianne Hester and Sarah J. Lilley, *Preventing Violence against Women: Article 12 of the Istanbul Convention. A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence* (Strasbourg: Council of Europe, 2014) 7.

⁷²² Anna Sledzinska-Simon, ‘Making Progress in Elimination of Gender Stereotypes in the Context of Gender-based Violence—The role of the CEDAW Committee’ (2013) 16(1) *Tijdschrift voor Genderstudies* 46, 47.

⁷²³ Kevat Nousiainen and Christine Chinkin, *Legal Implications of EU Accession to the Istanbul Convention* (Luxembourg: Publications Office of the European Union, 2016) 40.

violence.⁷²⁴ The drafters of the Convention analysed the extent to which honour-based societies tackle adopt a preventive stance toward these potential justifications:

Parties to the Convention are therefore obliged to ensure that their national laws do not contain loopholes for interpretations inspired by such convictions. Moreover, this obligation extends to the prevention of any official statements, reports or proclamations that condone violence on the basis of culture, custom, religion, tradition or so-called “honour”. This provision also establishes a key principle according to which the prohibition of any of the acts of violence set out in the Convention can never be invoked as a restriction of the perpetrator’s cultural or religious rights and freedoms. This principle is important for societies where distinct ethnic and religious communities live together and in which the prevailing attitudes towards the acceptability of gender-based violence differ depending on the cultural or religious background.⁷²⁵

This article therefore removes these forms of VAW linked to cultural, traditional, and religious practices from the cultural relativist lens under international human rights law.⁷²⁶ The Istanbul Convention instead adopts a universal approach within the intersectional feminist-legal lens⁷²⁷ to restrict the perpetrator’s cultural or religious rights and freedoms if their expression or manifestation invokes or condones violence.

3.3.4.2. The Unacceptable Justifications for Crimes Committed in the Name of ‘Honour’

The prior section argues that all forms of VAW related to culture, tradition, or religion have been considered within the Istanbul Convention, which obliges States to prevent such violence by eradicating gender stereotypes within the community or society. This should be considered with respect to women and girls who face these violations throughout their lives. In my opinion, the Istanbul Convention offers adequate measures for preventing honour killings by asserting that the reasons for these crimes are rooted in local community cultures, traditions, or religious observances. In this section, banning these aspects as justifications for such crimes set out as an obligation for State parties within their criminal law and criminal

⁷²⁴ The Istanbul Convention, Art. 12 (5).

⁷²⁵ Council of Europe, ‘Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence: Explanatory Report to the Istanbul Convention’ (2011) para. 89.

⁷²⁶ See section 2.3.3 in the Chapter 2.

⁷²⁷ See section 2.4 in the Chapter 2.

procedure law. This section reveals how Article 42 restates in mandatory, directive language this particular area of criminal law articulated in Article 12(5) of the Istanbul Convention.

The drafters of the Convention analysed the elements of so-called honour crimes in detail, considering the reasons for honour crimes and perpetrators' intentions behind this violence. So-called 'honour crimes' have been part of the criminal law landscape of Council of Europe member States for very long time: murder, manslaughter, bodily injury, etc.⁷²⁸ Thus, the drafters of the Convention abandoned the original idea of introducing a separate criminal offence for so-called 'honour crimes' and decided instead to forbid any attempts to excuse criminal behaviour on the roots of culture, religion, tradition, or so-called 'honour'.⁷²⁹ In line with this interpretation, the unacceptable justifications for crimes, including crimes committed in the name of so-called "honour", are a significant provision for killings of women in the name of so-called "honour" in accordance with Article 42 of the Istanbul Convention.⁷³⁰ The Convention includes the general principle: "nobody under jurisdiction of the courts of one of the parties to this convention will be allowed to validly invoke what he or she believes to be an element of his or her culture, religion or other personal reason to justify the commission of what is simply an element of a criminal offence, that is, VAW."⁷³¹

Consequently, this Article articulates the obligations of State parties that are in need of revising their criminal law and criminal procedural law so that they "do not allow as justifications statements of the accused justifying his or her acts as committed to prevent or punish a victim's suspected, perceived or actual transgression of cultural, religious, social or traditional norms or customs of appropriate behaviour."⁷³² Moreover, this paragraph obliges State parties to confirm that "personal convictions and individual beliefs of judicial actors do not lead to interpretations of the law that amount to a justification on any of the above-mentioned grounds."⁷³³ Thus, the general preventative obligation in Article 12(5) of the Istanbul Convention is restated in mandatory language in Article 42(1), which reinforces this particular area of criminal law.

⁷²⁸ Organization of American States and Council of Europe, 'Regional Tools to Fight Violence Against Women—The Belem do Para and Istanbul Conventions' (2014) 102. <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680465f70>> accessed: 2/1/2017.

⁷²⁹ *ibid.*

⁷³⁰ The Istanbul Convention, Art. 42.

⁷³¹ Council of Europe, 'Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence: Explanatory Report to the Istanbul Convention' (2011) paras. 216-8.

⁷³² *ibid.*

⁷³³ *ibid.*

The legal system cannot close its eyes to the killing of women and girls in the name of so-called honour. While there are many instances of lenient punishments given to honour killers from different States, mainly from the 1990s, the Istanbul Convention demands harsher punishments if the honour killing is committed by a family member or more people acting together rather than allowing judges to lessen punishments.⁷³⁴ Thus, pursuant to Article 46, aggravating circumstances should be considered once deciding sentences in such cases.⁷³⁵ Although some countries have given perpetrators lenient punishments for so-called honour killings, there are some remarkable cases in which harsher punishments were decided. For instance, when Sadia Sheikh, a twenty-year-old woman, was shot by her brother for rejecting to marry a Pakistani man and for having a relationship with a Belgian man in 2007, this crime was the first of its kind to receive attention by policy-makers in Belgium.⁷³⁶ The criminal court of Belgium found Sadia's brother, mother, and father guilty of being perpetrators of premeditated murder with the aggravating circumstance of the crime being an act of gender-based violence. Her father was also convicted for an attempt at forced marriage in 2012.⁷³⁷

The Istanbul Convention also encompasses cases involving child or young offenders who commit honour killings: "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."⁷³⁸ The Convention effectively avoids liability for criminals who are children below the age of responsibility. Because of the harsher punishments, families force their daughters, wives, or female relatives to commit suicide. Given these scenarios, States have an obligation to investigate rigorously crimes committed in the name of 'honour'.⁷³⁹

In light of the Istanbul Convention, the CEDAW Committee and the Committee on the Rights of Child publish joint general recommendation on harmful practices in 2014.⁷⁴⁰ Although

⁷³⁴ Council of Europe. 'Crimes committed in the name of so-called honour crimes' <www.coe.int/conventionviolence> accessed: 13/08/2015.

⁷³⁵ The Istanbul Convention Art. 46.

⁷³⁶ Chia Longman and Gily Coene, 'Harmful Cultural Practices and Minority Women in Europe: From Headscarf Bans to Forced Marriages and Honour Related Violence' in Chia Longman and Tamsin Bradley (eds.), *Interrogating Harmful Cultural Practices: Gender, Culture and Coercion* (Ashgate Publishing, 2015) 60.

⁷³⁷ *ibid.*

⁷³⁸ The Istanbul Convention, Art. 42 (2).

⁷³⁹ I will discuss this issue in section 4.2.4.3.3. in Chapter 4.

⁷⁴⁰ UN Committee on the Elimination of Discrimination against Women and Committee on the Rights of Child, 'Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women and General Comment No. 18 of the Committee on the Rights of the Child on harmful practices' (14 November 2014) CEDAW/C/GC/31-CRC/C/GC/18.

there is no universally accepted definition on honour killings in the documents and Resolutions, even in the Istanbul Convention, for the first time, crimes committed in the name of so-called ‘honour’ are characterised:

acts of violence that are disproportionately, although not exclusively, committed against girls and women because family members consider that some suspected, perceived or actual behaviour will bring dishonour to the family or community. Such forms of behaviour include entering into sexual relations before marriage, refusing to agree to an arranged marriage, entering into a marriage without parental consent, committing adultery, seeking divorce, dressing in a way that is viewed as unacceptable to the community, working outside the home or generally failing to conform to stereotyped gender roles. Crimes in the name of so-called honour may also be committed against girls and women because they have been victims of sexual violence.⁷⁴¹

In addition, this document emphasizes the States Parties’ application for the defence of honour allows resulting in reduced sanctions in practice, and the Committee calls the States parties to abolish all legislation that accepts the defence of honour.⁷⁴² However, it does not mention child or young offenders of the crimes committed in the name of honour in comply with the Istanbul Convention.

Crucially, as a new soft document, while the CEDAW Committee GR. No.35 sets out comprehensive obligations of States parties to eliminate all forms of gender-based VAW, general legislative obligations recommend parties to repeal:

Discriminatory evidentiary rules and procedures, including procedures allowing for women's deprivation of liberty to protect them from violence, practices focused on 'virginity' and legal defences or mitigating factors based on culture, religion or male privilege, such as the so-called ‘defence of honour’, traditional apologies, pardons from victims/survivors’ families or the subsequent marriage of the victim/survivor of sexual assault to the perpetrator, procedures that result in the harshest penalties, including stoning, lashing and death being often reserved to women, as well as judicial

⁷⁴¹ *ibid.*, para.29.

⁷⁴² *ibid.*, paras. 30 and 55(c)

practices that disregard a history of gender-based violence to the detriment of women defendants.⁷⁴³

The CEDAW Committee GR No.35 introduces more inclusive obligations to the States Parties on the elimination of so-called honour killings. Nevertheless, this document also fails to mention children's criminal liability on the crimes of so-called honour killings. After the Istanbul Convention's enactment in 2011, these new attempts on eliminating VAW and particularly harmful practices within the context of the CEDAW (GR No.31 and No.35) reveal the necessity of new obligations that should be taken by the States parties due diligently. Most recent adaptation of the CEDAW Committee GR. No. 35 notably, updating GR. No.19 proves that the Istanbul Convention is legally binding document on eliminating and combating all forms of VAW, referring to the Convention.⁷⁴⁴

3.3.4.3. Protecting Women and Girls at Risk of Honour Killings

The prior section argues that the Istanbul Convention introduces adequately crimes committed in which honour, culture, or tradition that cannot be used as justifications under the States' parties' criminal law, introducing recent adopted CEDAW Committee GR No. 31 and No.35. State parties should consider this critical provision in order to prevent any legal loopholes that might facilitate interpretations in the punishments of honour killers. To prevent such crimes, State members must take proactive measures to protect women and girls at risk of harm. The Istanbul Convention offers adequate restraining and protection orders as an efficient, expeditious legal remedy to protect women at risk of any form of violence covered by the extent of the Convention.⁷⁴⁵ For instance, a young woman who has reason to believe her family is planning her murder or who has a death threat from her family because they reject her chosen relationship or lifestyle should be given the application for a protection or restraining order against her family members.⁷⁴⁶ As a new standard in the domain of so-called honour killings, the Convention presents orders to keep women and girls at risk safe from

⁷⁴³ Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 35 on gender-based violence against women, updating general recommendation no. 19' (2017) CEDAW/C/GC/35, para. 31(b)

⁷⁴⁴ *ibid.*, 2, footnote 3.

⁷⁴⁵ The Istanbul Convention, Art. 53. See also: Council of Europe, 'Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence: Explanatory Report to the Istanbul Convention' (2011) para. 268.

⁷⁴⁶ Organization of American States and Council of Europe 'Regional Tools to Fight Violence Against Women - The Belem do Para and Istanbul Conventions' (2014) 103. <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680465f70>> (accessed: 2/1/2017).

harm.⁷⁴⁷ Moreover, the Convention provides additional provisions to prevent such crimes that State parties are required to follow such as providing legal and psychological counselling services and a safe place to live.⁷⁴⁸ Similarly, the joint general recommendation on harmful practices introduces protective measures to keep women and girls at risk to death.⁷⁴⁹

Furthermore, Article 51 of the Istanbul Convention stipulates that when any such risk assessment is determined for women and girls under threat, all authorities, not just the police, should take all measures to save their lives such as devising a safety plan for them. For this reason, State members must ensure that a multi-agency network of professionals is established to protect high-risk victims.⁷⁵⁰ Article 51 is crucial for woman and girls who ask for protection from police officers, who usually neglects these cases. Under this provision, police and prosecutors (law enforcement officers) need to ensure women and girls' lives are safe by conducting regular risk assessments and adopting measurement policies. However, the lack of such multi-agency policies continues to threaten women's lives.⁷⁵¹ The significance of the immediate risk assessment and protection orders, including a range of effective measures are considered in light of the CEDAW Committee GR. No.35.⁷⁵²

The prior discussion reveals that protecting women and girls at risk of so-called honour killings was given attention by the drafters of the Istanbul Convention and most recently the CEDAW Committee GR No. 35. Both documents adopt intersectionality approach, asserting that these protective measures should be accessible to all women affected by intersecting forms of discrimination. State members are therefore obliged to ensure women's right to life by administering restraining and protection measures instead of handing them over to their abusers or murderers. Therefore, the Istanbul Convention highlights explicitly the role of law enforcement officers who must secure immediate and adequate protection for women and girls at risk of honour killings.

⁷⁴⁷ *ibid.*

⁷⁴⁸ The Istanbul Convention, Art. 22 and Art. 24.

⁷⁴⁹ UN Committee on the Elimination of Discrimination against Women and Committee on the Rights of Child, 'Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women and General Comment No. 18 of the Committee on the Rights of the Child on harmful practices' (14 November 2014) CEDAW/C/GC/31-CRC/C/GC/18, para. 83.

⁷⁵⁰ The Istanbul Convention, Art. 51.

⁷⁵¹ See section 4.3.2.2 in Chapter 4 and section 5.2.3 in Chapter 5 for the evaluation of case of Turkey.

⁷⁵² Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 35 on gender-based violence against women, updating general recommendation no. 19' (2017) CEDAW/C/GC/35, para. 40.

3.3.4.4. Feminist Critiques of Articles 12 and 42 of the Istanbul Convention

This section discusses feminist critiques of the Istanbul Convention through third-wave of feminist (poststructuralist, postmodernist, post-colonial, and Third World feminist) lenses in relation to its wording, highlighting language referring to culture, tradition, religion, so-called ‘honour’ in relation to the violations of women’s human rights.

One feminist criticism of the text of the Convention is its overemphasis on culture or religion in relation to the unacceptable justifications for crimes committed in the name of so-called honour killings (Article 42). The importance of culture not only informs and constructs law but also informs and constructs our identities and our experiences and therefore should not be ignored.⁷⁵³ However, this is not explained that we are wholly determined by our culture or the cultures of others.⁷⁵⁴ Hence, stressing the significance of culture and religion in the phenomenon of honour killings is the kind of cultural essentialism that is problematic for feminist and intersectional approaches.⁷⁵⁵ In other words, this reiterates a part of former criticism to the CEDAW by third-wave feminists that does not take into account women’s diversity through the complex interaction between class, culture, or religion frameworks and that thereby obscures other characteristics of a women’s identity such as ethnicity. Blaming culture or religion for VAW, especially so-called honour killings, arises in cases of VAW affecting certain groups of women such as migrant, non-Western women whose fluid, unstable, and multiple subjectivity has been undermined. Feminists’ engagement with intersectionality also takes into consideration multiple forms of discrimination that affects women’s lives. Mohanty points out that “women are constituted as women through the complex interaction between class, culture, religion and other ideological institutions and frameworks. They are not ‘women’ – a coherent group – solely on the basis of a particular economic system or policy.”⁷⁵⁶ Thus, women face different harmful practices depending on

⁷⁵³ Anna Carline, ‘Honour and Shame in Domestic Homicide a Critical Analysis of the Provocation Defence’ in Mohammad Mazher Idriss and Tahir Abbas (eds.), *Honour, Violence, Women and Islam* (Routledge, 2010) 91, cited in Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton University, 2002).

⁷⁵⁴ Judith Butler, *Bodies that Matter: On the Discursive Limits of Sex* (London: Routledge, 1993).

⁷⁵⁵ See sections 2.3.3 and 2.3.4 in Chapter 2.

⁷⁵⁶ Chandra Talpeda Mohanty, ‘Under Western Eyes: Feminist Scholarship and Colonial Discourses’ in M. Mohanty, A. Russo, L. Torres(eds.), *Third World Women and the Politics of Feminism* (Bloomington, IN, Indiana University Press, 1991) 74.

their own geographical location, their family's socio-economic positions, and their dominant regional culture.⁷⁵⁷

However, this connection between so-called “honour killings” and religion reiterates the feminist criticism of singling out the reasons for honour killings in international human rights law. The Convention does not single out some types of VAW assumed to be caused by some ‘cultures’ such as forced marriage and FGM, nor does it place with them a frame that emphasises their cultural particularities.⁷⁵⁸ The text stays clear of the ‘harmful cultural practices’ domain that has been criticised for singling out forms of VAW believed to be ‘caused’ by certain ‘cultures’ or ‘traditions’ (minority, non-Western, migrant women).⁷⁵⁹

In my opinion, some of these criticisms are valid in these grounds, such as not referring to the diversity of women's experience within the text of the Convention. However, the Istanbul Convention adopts intersectionality within its context in many ways such as supporting the universality of such crimes. The intersectional approach is a powerful tool because it allows us to see the particularities of women's diverse experiences without losing sight of the global picture of VAW.⁷⁶⁰ Highlighting culture, tradition, or religion as reasons for some forms of VAW can be questionable; however, these aspects should be applied and cannot be used as an acceptable excuse for the perpetrators in the context of so-called ‘honour killings’. Therefore, integrating these aspects in some clauses of the Convention, such as Articles 12 and 42, is key to combatting so-called honour killings efficiently. State members should also refer to these aspects in their criminal laws to prevent inconsistent judgements because of loopholes in their judicial codes.⁷⁶¹

3.3.5. GREVIO as a Strong Monitoring Mechanism

The prior section analyses the status of so-called honour killings in the context of the Istanbul Convention, arguing that aspects of tradition, culture, or religion in the name of ‘honour’ are not acceptable justifications for such forms of VAW within the intersectional/feminist-legal framework. The Istanbul Convention offers a monitoring mechanism for examining its

⁷⁵⁷ Rebecca Dobash and Russell Dobash, ‘The Politics and Policies of Responding to Violence against Women’ in Jalna Hanmer and Catherine Itzen (eds.) *Home Truths about Domestic Violence: Feminist Influences on Policy and Practice—A Reader* (London: Routledge 2000) 37-58.

⁷⁵⁸ Lourdes Peroni, ‘Violence against Migrant Women: The Istanbul Convention Through a Postcolonial Feminist Lens’ (2016) 24(1) *Feminist Legal Studies* 49, 50.

⁷⁵⁹ *ibid.* 59.

⁷⁶⁰ See section 2.4 in Chapter 2.

⁷⁶¹ This is a problem in the Turkish Criminal Code. I will discuss this in Chapter 4 and Chapter 5 under the sections titled “Turkish Penal Code”.

implementation among State members. In this section, I argue that although this strong monitoring mechanism adopts a broader, more dynamic approach to enabling positive change to any aspect of State fulfilment of the Convention, it shares common procedures with the CEDAW Committee process. This section also reveals that the GREVIO does not possess an individual complaint mechanism related to all forms of women's human rights violations.

Once the Convention came into force on 1st August 2014, State parties were monitored by the GREVIO, which monitors the implementation of the Convention by member Parties. Members of GREVIO are expected to be highly qualified specialists in the fields of human rights, VAW, domestic violence, gender equality, criminal law, and means of assisting and protecting victims of VAW and domestic violence.⁷⁶² GREVIO's main monitoring system is grounded on a reporting procedure that entails the preparation of a document by State parties on legislative and other measures relating to the Istanbul Convention that they submit to the Secretary General of CoE.⁷⁶³ In accordance with Article 68(3), GREVIO will investigate specific provisions for monitoring and examine States' compliance with these specific aspects rather than consider the entire Convention. According to McQuigg, this procedure comprises some distinct functions,⁷⁶⁴ one of which is to support the compliance of States selected for monitoring in depth.⁷⁶⁵ GREVIO is permitted to achieve its work efficiently, unencumbered by "the substantial backlogs in the consideration of reports that have caused major difficulties for the UN human rights treaty bodies."⁷⁶⁶

One of the crucial principles of GREVIO's monitoring process is working with civil society, NGOs, as well as the national institutions for the protection of human rights charged with providing information on the implementation of the Convention.⁷⁶⁷ This practice parallels UN bodies' solicitation of "shadow reports" from civil society and NGOs. GREVIO is strategically resourceful in its use of any existing sources of information such as reports from the CEDAW Committee, the Council of Europe Commissioner for Human Rights, and the Parliamentary Assembly "to avoid unnecessary duplication of work and activities already carried out in other instances."⁷⁶⁸ GREVIO analyses all the collected information then prepare

⁷⁶² The Istanbul Convention, Art. 66 (4) (a).

⁷⁶³ The Istanbul Convention, Art. 68 (1).

⁷⁶⁴ Ronagh J. A. McQuigg, 'What potential does the Council of Europe Convention on Violence against Women hold as regards domestic violence?' (2012) 16(7) *The International Journal of Human Rights* 947, 955.

⁷⁶⁵ *ibid.*

⁷⁶⁶ *ibid.*

⁷⁶⁷ The Istanbul Convention, Art. 68 (5).

⁷⁶⁸ Council of Europe, 'Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence: Explanatory Report to the Istanbul Convention' (2011) para. 354.

a draft report that the State Party evaluates.⁷⁶⁹ The State Party can present comments and suggestions on the draft, and GREVIO takes these observations into account while drafting the final report for enhanced implementation by the State Party.⁷⁷⁰ This process mostly parallels UN human rights treaty practice of issuing Concluding Observations on the steps that State parties should undertake with the provisions of the agreements in question.⁷⁷¹ Under this procedure, if GREVIO receives insufficient information or a particular issue requires immediate attention, it will travel to the country in question for an inquiry.⁷⁷² After analysing the findings of inquiry, GREVIO transfers these findings to the State concerned and, where applicable, to the Committee of the Parties and the Committee of Ministers of the Council of Europe together with any comments and recommendations.⁷⁷³ Despite the fact that the Istanbul Convention includes an inquiry procedure under its framework, it does not have an individual complaints tool as established under the Optional Protocol to CEDAW and the Inter-American Commission on Human Rights. This remains one of its deficiencies. McQuigg discusses the drawbacks of the Convention's lack of an individual complaint mechanism:

the enforcement of the ECHR depends primarily on litigation. A litigation strategy can of course be problematic when dealing with an 'unseen crime' such as domestic violence, which victims are often reluctant to report. In addition, judges must confine themselves to dealing only with the specific question in the case that is before them. This obviously places limits on the role that litigation can play in promoting change. In making recommendations to states, a body such as GREVIO can take a much broader approach. Nevertheless, litigation still has an important role to play. It is crucial that there is a mechanism whereby a victim of domestic violence may take a case at the European level to assert that her rights have been violated. The case law of the ECtHR will therefore remain of substantial importance in this context.⁷⁷⁴

Although GREVIO follows almost the same procedures as the CEDAW Committee, a possible struggle arises concerning the issue of enforcement. CEDAW has been criticised for having weak monitoring and enforcement mechanisms despite its adoption of the Optional

⁷⁶⁹ The Istanbul Convention, Art. 68 (10)

⁷⁷⁰ The Istanbul Convention, Art. 68 (11)

⁷⁷¹ Ronagh JA McQuigg, 'What Potential does the Council of Europe Convention on Violence against Women Hold as Regards Domestic Violence?' (2012) 16(7) *The International Journal Of Human Rights* 947, 955.

⁷⁷² The Istanbul Convention, Art. 68 (13) (14),.

⁷⁷³ *ibid.*, Article 68 (15),

⁷⁷⁴ Ronagh J. A. McQuigg, 'Domestic Violence as a Human Rights Issue: *Rumor v. Italy*' (2015) 26(4) *Eu J Int Law* 1009, 1025.

Protocol give the Committee a more prominent role on enforcement of the law.⁷⁷⁵ Nevertheless, the adoption of the procedure has remained restrained, and the implementation of decisions creates a significant challenge in practice.⁷⁷⁶ Basically, it is very difficult to enforce States to comply with their obliged duties.

The prior section advocates a monitoring body established by the Istanbul Convention. Although GREVIO adopts a broader, more dynamic approach to enabling positive change to any aspect of State fulfilment with the Convention, it fails to bring into account individual complaints of human rights violations related to VAW and domestic violence. GREVIO also does not intervene in legal procedures. The duty of individual complaint mechanism is given the only Council of Europe body titled ECtHR. Significantly, ECtHR has recently referred to the Istanbul Convention within its judgements such as *Halime Kılıç v. Turkey*, despite these criticisms.⁷⁷⁷

3.4. Conclusion

Violence against women, which takes many forms and levels, is a fundamental problem throughout the world and affects women at least one in their lives. VAW committed in the name of honour started to command global attention in the late 1990s. The Istanbul Convention provides an important perspective for its member States, including its reference to CEDAW Committee GRs No. 12 and No. 19, and the DEVAW. In other words, the Convention expands the CEDAW scope and framework, organising and further increasing CEDAW standards and establishing synergies between them.⁷⁷⁸ The Convention represents a modern, inclusive tool engendered and constructed on a universal approach; it contains prevention of violence, protection of victims, prosecution of perpetrators, and comprehensive policies following the due diligence standard. It endorses the achievement of substantive equality between the genders and the elimination of discrimination against women in both the public and private sphere. It contributes substantially to the international law agenda by providing more detailed standards on VAW and domestic violence, including honour killings, as complementing and strengthening global CEDAW standards and other regional treaties.

⁷⁷⁵ Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (Cambridge University Press, 2016) 498.

⁷⁷⁶ *ibid.*

⁷⁷⁷ I argue such cases in Chapter 5.

⁷⁷⁸ Dubravka Simonovic, 'Global and regional standards on violence against women: the evolution and synergy of the CEDAW and Istanbul Conventions' (2014) 36(3) *Human Rights Quarterly* 590, 590.

Although most of the measures referred to in the Convention regarding VAW (particularly honour killings) have been previously articulated in UN documents, such as those devised by the CEDAW Committee, they are not legally binding. Therefore, in this chapter, I argue that while the Istanbul Convention mirrors all the UN core treaties, especially CEDAW and its General Recommendations, it adopts more detailed standards to combating and preventing all forms of VAW, including ‘honour killings’, by enumerating, complementing, and reinforcing global CEDAW principles. In light with adaptation of the Istanbul Convention, the CEDAW Committee has published several new general recommendations (particularly the joint GR No.31 of the CEDAW Committee and GR No.18 of the Committee Rights of the Child on harmful practices and GR No.35 of the CEDAW Committee on gender-based VAW, updating its GR. No.19) on eliminating all forms of VAW since 2011.

In the next chapter, I examine the extent to which Turkish Legislation before the ratification of the Istanbul Convention prevents women from honour killings, protects women at risk of death, and punishes perpetrators of murders committed in the name of honour. Accordingly, I analyse the Turkish Constitution, Turkish Penal Code, Turkish Civil Code, and Family Protection Law according to the principles of gender equality/non-discrimination and due diligence. I also assess their compatibility with the CEDAW Convention. I analyse the concept of ‘honour’ through feminist lenses, indicating how gender inequality and discriminative language in the law eradicated by the success of women’s NGOs and the process of EU candidacy of Turkey. Further, the vague language referring to honour killings in Turkish legislation and challenges to the implementation of Turkish Penal Code will reveal the inconsistency of court judgments in ‘honour killings’ cases. The State’s failure to prevent such crimes and to protect women from killings is examined in detail.

Chapter 4:

The Challenges of the Turkish Legislation on ‘Honour Killings’ Prior to Ratification of the Istanbul Convention

4.1. Introduction

The previous chapter argues how so-called ‘honour killings’ have been formulated, discussed, and perceived as a form of gender-based violence within the contexts of the CEDAW Convention and the Istanbul Convention on the grounds of the principles of equality/non-discrimination and due diligence. The Istanbul Convention identifies all forms of gender-based violence separately and puts ‘honour killings’ under the title of “unacceptable justifications for crimes committed in the name of so-called ‘honour killings’”, pointing the aspects of culture, tradition, and religion within its scope. The Convention therefore institutes more detailed standards to combatting and preventing all forms of VAW, particularly so-called honour killings, thereby complementing and codifying the CEDAW principles.

The feminist-legal interventions within the contexts of the Istanbul Convention and the CEDAW are also analysed in the former chapter. So-called ‘honour killings’ are held under international scrutiny regarding their ties to aspects of customs, traditions, culture, and religion; these ties are especially stressed in the Istanbul Convention. Although the Convention is criticised for overemphasising these aspects, it adopts a positive, intersectionality approach informed by feminist-legal theory to support the universality of all forms of VAW and to distinguish the particularities of women’s diverse experiences. Thus, the Convention is noteworthy for its recognition of women who face multiple violations of human rights, depending on their own geographical location or their dominant regional culture, and for intersecting their different experiences with other systems of inequality.

This chapter discusses how Turkey’s legal system existed before the ratification of the Istanbul Convention and its gradual change through the feminists’ movements and the process of Turkey’s accession to the EU. It also shows how cultural relativism has played an important role in understanding women’s position in the system. It further argues that although changes such as the revised Turkish Penal Code, Turkish Civil Code, and Turkish Constitution were initiated even before the ratification of the Istanbul Convention, they were the outcome of society’s and state’s reflections on the universalism adopted by the CEDAW and other human rights monitoring processes. Despite this progress, these changes and the

wave of universalism were not enough to garner solid results on eradicating honour killings in Turkey. This chapter pinpoints the weaknesses of the Turkish legal system that directly or indirectly facilitate the perpetuation of honour killings in the country.

4.2. The Turkish Legal Framework

The Turkish State took significant measures to eliminate the serious problem of VAW, particularly honour killings, before the ratification of the Istanbul Convention. When Turkey signed and ratified the CEDAW Convention in 1985, it made many changes to its legal framework to eliminate gender-based violence against women, particularly so-called ‘honour killings’. Pressure from women’s rights organisations, Turkish feminists, the CEDAW Committee, the Council of Europe, and the EU accession process catalysed these changes. Nevertheless, obstacles to the elimination of so-called honour killings in Turkey still remain.

In this section, I first examine the relationship between the Turkish legal framework (Turkish Constitution, Turkish Civil Code, the Family Protection Law and Turkish Penal Code) and the CEDAW Convention, especially regarding the principles equality and non-discrimination and the due diligence standard. Then, I analyse how Turkish Penal Code introduced a vague definition of ‘custom killings’ rather than so-called ‘honour killings’. While evaluating this obfuscation, I indicate how Turkish jurists interpret whether a crime is an ‘honour killing’ or a ‘custom killing’ and how they make judgements based on ‘collectivistic/family council decisions’ or ‘individualistic decisions’ in cases of honour killings. Lastly, I explore Circulars regarding the prevention of VAW and honour killings and how they exhibit the weaknesses of the legal system.

4.2.1. The Constitution of the Republic of Turkey

This section argues that Turkey made its most crucial legal amendments to Article 10 of the Turkish Constitution of 1982⁷⁷⁹ in 2001, 2004, and 2010 for securing equality between women and men. It further shows that, although the Constitution provides substantive equality for women as it contains the possibility to adopt positive measures in line with the CEDAW Convention, it has not adopted an anti-discrimination law. Additionally, this section advocates that Article 90 of the Turkish Constitution accepts the supremacy of international law over domestic law to secure women’s human rights.

The Turkish Constitution of 1982⁷⁸⁰ articulates the concept of equality pursuant to Article 10:

⁷⁷⁹ The Constitution of the Republic of Turkey no. 2709 (7/11/1982) s 3(148).

⁷⁸⁰ The Constitution of the Republic of Turkey will be referred to as “the Turkish Constitution” and/or “the

- (1) Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds.
- (2) (Paragraph added on May 7, 2004; Act No. 5170) Men and women have equal rights. The State has the obligation to ensure that this equality exists in practice. (Sentence added on September 12, 2010; Act No. 5982) Measures taken for this purpose shall not be interpreted as contrary to the principle of equality.
- (3) (Paragraph added on September 12, 2010; Act No. 5982) Measures to be taken for children, the elderly, disabled people, widows and orphans of martyrs as well as for the invalid and veterans shall not be considered as violation of the principle of equality.
- (4) No privilege shall be granted to any individual, family, group or class.
- (5) State organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all their proceedings.⁷⁸¹

The first sentence of the clause establishes the general principle of equality before the law for all Turkish citizens. It shall prohibit any discrimination based on grounds such as sex, race, language, colour, religion, or any such grounds. The ‘any such grounds’ language implies that discrimination between sexes will not be tolerated not only in the public sphere but also in the private sphere.⁷⁸² This is compatible with Article 1 of the CEDAW Convention.⁷⁸³ For the purpose of specifying the equality between women and men in a more explicit manner in the Constitution, the second paragraph was added to Article 10 in 2004.⁷⁸⁴ Prior to this amendment, the equality provision was based on the understanding that women and men have the same rights and that men and women are the same in terms of sex. This understanding mirrors the notion of formal equality in liberal feminist-legal theory.⁷⁸⁵

Instead of changing the text of Article 10 in the direction of gender-specific language, an equality clause was included in Article 41 of the Constitution:

Constitution” throughout the thesis.

⁷⁸¹ The Constitution of the Republic of Turkey 1982, s 1 (10).

⁷⁸² See section 3.2.2.1 in Chapter 3 for further analysis.

⁷⁸³ *ibid.*

⁷⁸⁴ Rabia Ilay Akbulur Peerzada, ‘Gender Equality in Turkish Law: Victims v. Heroes’ (2014) 8(3) *Human Rights Review* 177, 181.

⁷⁸⁵ See section 3.2.2 in Chapter 3 for further analysis of the CEDAW Convention.

(1) (Paragraph added on October 3, 2001; Act No. 4709) The family is the foundation of the Turkish society and based on the equality between the spouses.⁷⁸⁶

This amendment does not affect other constitutional provisions indirectly relating to women's rights. In other words, in line with the general equality principle of Article 10 and the protection of the family contained in Article 41, there are some provisions on rights and responsibilities of individuals that can be used to support women's rights. These include Article 12 (on the nature of fundamental rights)⁷⁸⁷, Article 17 (on personal inviolability, material, and spiritual integrity)⁷⁸⁸, and Articles 49 and 50 (on the right and responsibility to work)⁷⁸⁹.

The new amendment to Article 41 rejects the husband's superiority to wives in the family circle. Article 41 is designed to be consistent with Article 16 of the CEDAW Convention and the General Recommendation No. 21 titled "Equality in marriage and family relations".⁷⁹⁰

⁷⁸⁶ The Constitution of the Republic of Turkey no. 5982 (7/11/1982), s 2 (41) 1.

Article 41 continues:

(2) The state shall take the necessary measures and establish the necessary organisation to ensure the peace and welfare of the family, especially where the protection of the mother and children is involved, and recognising the need for education in the practical application of family planning.

(3) (Paragraph added on September 12, 2010; Act No. 5982) Every child has the right to adequate protection and care and the right to have and maintain a personal and direct relation with his/her parents unless it is contrary to his/her high interests.

(4) (Paragraph added on September 12, 2010; Act No. 5982) The State shall take measures for the protection of the children against all kinds of abuse and violence

⁷⁸⁷The Constitution of the Republic of Turkey 1982, s 2 (12):

Article 12-Everyone possesses inherent fundamental rights and freedoms, which are inviolable and inalienable. The fundamental rights and freedoms also comprise the duties and responsibilities of the individual to the society, his/her family, and other individuals.

⁷⁸⁸The Constitution of the Republic of Turkey no. 5170 (7/11/1982) s 2 (17).

Article 17- Everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence. The corporeal integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; and shall not be subjected to scientific or medical experiments without his/her consent. No one shall be subjected to torture or mal-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.

(As amended on May 7, 2004; Act No. 5170) The act of killing in case of self-defence and, when permitted by law as a compelling measure to use a weapon, during the execution of warrants of capture and arrest, the prevention of the escape of lawfully arrested or convicted persons, the quelling of riot or insurrection, or carrying out the orders of authorized bodies during martial law or state of emergency, do not fall within the scope of the provision of the first paragraph.

⁷⁸⁹The Constitution of the Republic of Turkey no. 4709 (7/11/1982), s 3 (49) (50)

Article 49- Everyone has the right and duty to work. (As amended on October 3, 2001; Act No. 4709) The State shall take the necessary measures to raise the standard of living of workers, and to protect workers and the unemployed in order to improve the general conditions of labour, to promote labour, to create suitable economic conditions for prevention of unemployment and to secure labour peace.

Article 50- No one shall be required to perform work unsuited to his/her age, sex, and capacity. Minors, women, and physically and mentally disabled persons, shall enjoy special protection with regard to working conditions. All workers have the right to rest and leisure. Rights and conditions relating to paid weekends and holidays, together with paid annual leave, shall be regulated by law

⁷⁹⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW), 'CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations' (04/02/1994) CEDAW/C/GC/21, para. 13.

However, it confirms simultaneously that Turkish society is still willing to affirm women's rights in an equal manner only in the family environment as a 'wife' or 'mother' but not as an individual person.⁷⁹¹ In other words, labelling women as mothers or wives in society thereby endorses and replicates prevailing gender stereotypes and the country's hierarchal model in the private sphere that causes and perpetuates VAW.

According to the second amendment made to Article 10 in 2004, the State was made responsible for ensuring that men and women are treated equally: "Men and women have equal rights. The State has an obligation to ensure that this equality exists in practice."⁷⁹² The Grand National Assembly of Turkey (TBMM) explains that the justification for the amendment is the EU integration process: "in the 2003 Accession Partnership, there is an expectation that, in line with the international agreements that Turkey is a party to, securing the full legal and actual full enjoyment of all human rights and fundamental freedoms without distinction by sex."⁷⁹³ However, the justification for this amendment does not consider women's organisations' contributions; it only refers to the European Charter of Fundamental Rights and the EU Accession Partnership with Turkey.⁷⁹⁴ This provision also gives the State responsibility for ensuring the principle of equality in practice. While the State ensures the obligation to realise this equality in life or practice, it should also take measures to prevent discrimination against women as a proactive obligation.⁷⁹⁵ This topic was reargued by women's organisations while contributing to the process of drafting an amendment to Article 10 in 2010, which mirrors the radical legal-feminist perception of substantive equality that entails not just "formal equality" but also "effective and genuine equality".⁷⁹⁶

Before the amendment to Article 10, the Law for the Equal Opportunities Commission for Women and Men⁷⁹⁷ was adopted and an Equal Opportunities Commission was formed in the TBMM in 2009. Law no. 5840 was a significant improvement for gender equality in Turkey

⁷⁹¹ Hilal Elver, 'Gender Equality from a Constitutional Perspective: The Case of Turkey', in Beverley Baines and Ruth Rubio-Marin (eds.), *The Gender of Constitutional Jurisprudence* (Cambridge University Press, 2005) 286.

⁷⁹² The Constitution of the Republic of Turkey no. 5170 (7/11/1982) s 10 (10) 2.

⁷⁹³ Grand National Assembly of Turkey (TBMM), 'Proposal for the Law on the Amendment of Certain Articles of the Constitution of the Republic of Turkey and the Constitutional Commission Report (2/278)' (2003) <<https://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss430m.htm>> accessed: 27/01/2017.

⁷⁹⁴ The Council of EU, 'Council Decision of 19 May 2003 on the Principles, Priorities, Intermediate Objectives and Conditions Contained in the Accession Partnership with Turkey' 398/EC, 19 May 2003. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003D0398>> accessed: 27/01/2017.

⁷⁹⁵ Mesut Gulmez, 'Insan Haklarinda Ayrimcilik Yasakli Esitlik Ilkesi: Aykiri dusunceler/ *The Principle of Equity with Prohibited Discrimination in Human Rights: Contradictory Ideas*' (2010) 2 *Calisma ve Toplum* 217, 236, Ali Kuyaksil, 'Turk Anayasalarinda Kadin Haklari ve Gelismisi/ *Women's Rights and Its Development in the Turkish Constitutions*' (2009) 6(11) *Mustafa Kemal Universitesi Sosyal Bilimler Enstitüsü Dergisi* 328, 347.

⁷⁹⁶ See section 3.2.2. in the Chapter 3 for further analysis.

⁷⁹⁷ The Equal Opportunities Commission for Women and Men no. 5840 (February 2009)

“because having a Commission at this level means that legal proposals and amendments prepared by the government and/or parliamentary commissions are analysed by the Commission from a gender equality perspective.”⁷⁹⁸ The Commission confirms the compatibility of Turkish Legislation with Turkey’s international obligations such as CEDAW.⁷⁹⁹ In this way, the third amendment made to Article 10 in 2010, stipulates that “measures taken for this purpose shall not be interpreted as contrary to the principle of equality” added in the second paragraph.⁸⁰⁰ The State thereby strengthened the principle of non-discrimination based on sex with its positive obligations and guaranteed equality between women and men. This amendment also addresses positive discrimination to women and substantive equality. Moreover, Article 10(2) raises the numbers of victim categories of positive discrimination, encompassing “children, the elderly, disabled people, widows and orphans of martyrs as well as for the invalid and veterans.”⁸⁰¹ However, this amendment establishes that the function of the equality principle is to fulfil the requirement of equity and social justice; this stipulation demonstrates that there is effectively no equality between women and men unless the *de facto* inequalities are avoided and removed.⁸⁰² The CEDAW Committee addressed this issue in its Concluding Observations in 2010:

while noting that general principles of equality and non-discrimination are guaranteed in article 10 of the Constitution and contained in domestic legislation, continues to be concerned at the lack of a specific prohibition of discrimination against women in all areas of life in its national legislation in line with articles 1 and 2 of the Convention. It also notes the absence of comprehensive anti-discrimination legislation in the State party.⁸⁰³

Marin evaluates that, after Turkey added these amendments, the country found “itself in a crossroads regarding women’s constitutional status, and more broadly speaking, the

⁷⁹⁸ Meltem Muftuler Bac, *Gender Equality in Turkey* (Brussels, European Parliament, 2012) 6.

⁷⁹⁹ *ibid.*

⁸⁰⁰ The Constitution of the Republic of Turkey no. 5982 (7/11/1982) s 1 (10) 2.

⁸⁰¹ Bulent Yucel, ‘Anayasa Mahkemesi Kararlarında Eşitlik İlkesinin Yorumlanması ve Cinsiyet Ayrımcılığına Yargısal Bakış / *The Interpretation of the Principle of Equality in the Judgements of the Constitutional Court and Judicial Review on the Gender Discrimination*’ in Ozan Ergul (ed.), *Anayasa Hukukunda Yorum ve Norm Somutlaşması* (TBB Yayınları, 2013) 233, Devrim Ulucan, ‘Eşitlik İlkesi ve Pozitif Ayrımcılık/ *The Principle of Equality and Positive Discrimination*’ (2014) 15 *Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi* 369, 372.

⁸⁰² Selda Caglar, ‘Anayasa Mahkemesi Kararlarında Eşitliğin Dar Yorumu / *Comments in Supreme Court Decisions that Narrow Equality*’ (2012) 3 *Ankara Barosu Hukuk Dergisi* 43, 49.

⁸⁰³ UN Committee on the Elimination against Women, ‘Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey’ (2010) CEDAW/C/Tur/Co/6 (30 July 2010) para. 10.

constitutional gender order.”⁸⁰⁴ Thus, the Constitution includes an equality provision, which makes a clear obligation to substantive equality, containing the possibility to adopt positive measures.⁸⁰⁵ The equality provision of the Constitution was amended in line with Article 4(1) of the CEDAW Convention and its recommendation.⁸⁰⁶ However, this is still criticised by the Turkish women’s organisations and feminists. They argue that the principle of equality should be modified and extended to prohibit discrimination on the grounds of ethnicity, gender identity, sexual orientation, and marital status to ensure *de facto* equality.⁸⁰⁷ The CEDAW Committee notes that:

Article 10 of the Constitution provides for temporary special measures. It is concerned, however, that the State Party’s understanding and use of such measures appears to be limited to monetary transfers to women who find themselves in disadvantaged situations. [...] recommends that the State party implement temporary special measures in accordance with article 4(1) of the Convention and the Committee’s general recommendation No. 25 (2004) on the subject in order to accelerate substantive equality of women and men in all areas in which women are underrepresented or disadvantaged, including education, the labour market and political and public life. [...] that the State party provide capacity-building programmes to familiarise relevant officials with the concept of temporary special measures.⁸⁰⁸

A notable amendment to Article 90 was made in 2004: “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.”⁸⁰⁹ This clause demonstrates that international human rights treaties supersede Turkish laws in cases where they conflict. In cases where the CEDAW and the Istanbul Convention conflict on the infringement of women’s human rights,

⁸⁰⁴ Ruth Rabio Martin, ‘The Constitutional Status of Women at a Crossroads: Reflections from Comparison’ <http://verfassungsblog.de/constitutional-status-women-turkey-crossroads-reflections-comparison/#_ftn14> accessed: 18/01/2017.

⁸⁰⁵ *ibid.*

⁸⁰⁶ UN Committee on the Elimination of Discrimination Against Women (CEDAW), ‘General Recommendation No. 25: Article 4(1) of the CEDAW on Temporary Special Measures’ (2004) CEDAW/C/GC/25, para.31.

⁸⁰⁷ Kadınin İnsan Hakları Yeni Cozumler Derneği / Women’s for Women’s Rights—New Ways, ‘Anayasal Haklarımız/ Our Constitutional Rights’ <<http://www.kadinininsanhaklari.org/kadinin-insan-haklari/yasalardaki-haklarimiz/anayasa-ve-anayasal-haklarimiz/>> accessed: 23/01/2017.

⁸⁰⁸ UN Committee on the Elimination against Women, “Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey” (2016) CEDAW/C/Tur/Co/7 (25 July 2016) paras. 26-27.

⁸⁰⁹ The Constitution of the Republic of Turkey no. 5170 (7/11/1982) s 3 (90) 5.

Turkish courts must apply the provisions of the CEDAW and the Istanbul Convention. However, in practice, Turkish first instance courts have not implied this clause effectively because of “their conservative legal approach or their lack of technical knowledge about the provisions of the European Convention on Human Rights”⁸¹⁰ or other international treaties. Other obstacles include the lack of information about court proceedings containing direct individual applications to the Constitutional Court,⁸¹¹ a persistent unawareness of international treaties in society in general (and among women in particular), and insufficient knowledge among the judiciary of the Convention despite the provision of training programmes by the Justice Academy.⁸¹² Thus, the CEDAW Committee recommends that:

The State party enhance capacity-building programmes for judges, prosecutors, lawyers and law enforcement officials on the application of international legal norms and standards relating to women’s human rights, including the Convention and the jurisprudence of the Committee, and make information on those instruments available to all women and girls, inter alia by posting translations in the national and local languages of the Convention, the Optional Protocol thereto and all general recommendations issued by the Committee on the relevant government websites.⁸¹³

This section traces the Turkish Constitution’s advancement of gender equality between women and men with the amendments made in 2001, 2004, and 2010 in compliance with the CEDAW Convention. It further argues that, despite these amendments, the principle of equality in the Constitution should be extended to prohibit discrimination on grounds such as sexual orientation, gender identity, ethnicity, and marital status to ensure *de facto* equality between women and men. In other words, this provision should adopt an intersectional approach to prevent discrimination against women. The absence of specific prohibitions of discrimination against women/non-discrimination was a hindrance for Turkish women in all

⁸¹⁰ Ayse Ozkan Duvan, ‘The Judicial Application of Human Rights Law in Turkey’ (2015) 3(1) *Journal of Penal Law & Criminology* 59, 60, cited in Kemal Baslar, *Türk Mahkeme Kararlarında Avrupa İnsan Hakları Mahkemesi/ European Court of Human Rights in the Turkish Courts’ Judgements* (October 2007) Council of Europe European Commission 9.

⁸¹¹ The Constitution of the Republic of Turkey no. 2709 (7/11/1982) s 3(148)

Based on the 2010 legal reform, individual applications to the Constitutional Court are allowed and come into effect in September 2012. See Huseyin Ekinci and Musa Saglam, *Individual Application to the Turkish Constitutional Court* (Publications of Constitutional Court of Turkey, 2015), Tolga Sirin, ‘Ucuncu Yilda Bir Bilanco: Turkiye Anayasa Mahkemesi’nin Bireysel Basvuru (Anayasa Sikayeti) Usulunun ve Kararlarinin Degerlendirilmesi/Balance Sheet in the third year: Evaluation of individual application to the Turkish Constitutional Court procedures and decisions’ (2015) Marmara University Law Faculty 1.

⁸¹² UN Committee on the Elimination against Women, ‘Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey’ (2016) CEDAW/C/Tur/Co/7 (25 July 2016) para. 16.

⁸¹³ *ibid.* para. 17.

areas of life, particularly VAW and so-called honour killings, especially before the ratification of the Istanbul Convention.

4.2.2. The Turkish Civil Code

This section discusses how the Civil Code of Turkey has advanced from its discriminatory laws to gender equality with the success of advocacy by first to third wave feminist movements in Turkey,⁸¹⁴ Turkey's accession process to the EU, and Turkey's obligations to the CEDAW. It also reveals how gender stereotypes and the patriarchal, male-dominated approach to women that existed in the previous civil code were abolished in 2001.

The Turkish Civil Code of 1926,⁸¹⁵ adopted from the Swiss Civil Code, was driven by a patriarchal sensibility, despite the legal gender equality provided in its several articles. In line with Turkey's EU adoption process and its obligations to meet the gender equality provisions in international treaties such as the CEDAW and the Convention on the Rights of the Child, a new Civil Code was enacted in 2002.⁸¹⁶ However, Ilkcaracan asserts that the new Civil Code's passage was not a result of Turkey's candidacy for EU membership, for the reform "has come as a result of decades of advocacy of the women's movement."⁸¹⁷ Thus, succeeding the founding of the Commission to work on a new Turkish Civil Code, some women's NGOs, such as Women for Women's Human Rights and the Turkish Women's Union, campaigned to bring full equality with men in the new Civil Code.⁸¹⁸ The new Civil Code adopted "a new approach to the family and to women's role in the family" by replacing the former approach, which "assigned women a legislatively subordinate position in the family with rights and duties defined in respect to the husband"; with one that describes "the family as a union based on equal partnership."⁸¹⁹ Numerous legal changes to gender equality constitute the Civil Code reforms and constitutional amendments (Articles 10, 41, and 66). These provisions for settling gender equality within the family and before the law are part of the success of the Turkish feminist movement. This section therefore first examines how the

⁸¹⁴ See section 2.5 in the Chapter 2 for further analysis.

⁸¹⁵ Turkish Civil Code 1926/743. It will be referred to as "the previous civil code" throughout the thesis.

⁸¹⁶ Turkish Civil Code 2002/4721.

⁸¹⁷ Zuhale Yesilyurt Gündüz, 'The Women's Movement in Turkey: From Tanzimat towards European Union Membership' (2004) 9(3) *Perceptions* 115, 23.

⁸¹⁸ Feride Acar, Göksel, Asuman, Dedeoğlu-Atılğan, Saniye, Altunok, Gülbanu, and Elif Gözdaşoğlu-Küçükalioglu, *Issue Histories Turkey: Series of Timelines of Policy Debates* (QUING Project, Vienna: Institute for Human Sciences (IWM) 2007) 42-43.

⁸¹⁹ Ela Anıl, Canan Arın, Ayşe Berkay Hacımırzaoglu, Mehveş Bingöllü, Pınar İlkaracan, Liz Erçevik Amado, *Turkish Civil and Penal Code Reforms from a Gender Perspective: The Success of Two Nationwide Campaigns* (Women for Women's Human Rights—New Ways, 2005) 8.

previous civil code supported patriarchy/male-dominance and gender inequality in the family through the lens of Turkish feminist movements.

The previous Civil Code, which allowed women a legislatively secondary position in the family with rights and duties defined in respect to the husband, was abandoned in favour of one that defines the family as a union based on equal partnership.⁸²⁰ Although the previous Civil Code granted rights to women, men are still deemed to hold a superior position in many areas of life. The State privileged men by allocating sovereignty as heads of family and family leaders. They benefitted from this privilege provided they remained faithful to the State. The family was the basic unit of the State; family members had to be loyal to both the State and the family as its core unit. Thus, men were the undisputed dominant sex in the family.⁸²¹

The discriminatory clauses in the previous Civil Code contradicted the principle of equality. For example, Article 152(1) granted the husband as a head of the family, and the second paragraph enabled him the final say over the choice of domicile and children.⁸²² The husband represented the marriage union pursuant to Article 154. Giving consent for a wife to work outside the home was granted to her husband, but this provision⁸²³ was abolished because it contradicted Article 10 of the Constitution.⁸²⁴ This was advanced by the Turkish Constitutional Court's judgement in 1990 and feminist advocacy efforts.⁸²⁵ These discriminatory provisions in the previous Civil Code were also criticised by women's organisations and lawyers. Second-wave feminists criticised the persistent patriarchal approach that underpinned the previous Civil Code.⁸²⁶

The discriminatory provisions under the scope of the previous Turkish Civil Code conflicts with Article 16(1) of the CEDAW Convention. However, Turkey made reservations to Article 15(2), (4), Article 16(1)(c), (d), (f), and (g), and Article 29(1) of the CEDAW in 1986.⁸²⁷

⁸²⁰ Serpil Sancar and Ayca Bulut, *Final Report: Turkey: Country Gender Profile* (Ankara, 2006) 22.

⁸²¹ Nükhet Sirman, 'Kinship, Politics, and Love: Honour in Post-colonial Contexts—The Case of Turkey' in Shaharзад Mojab and Nahla Abdo (eds.), *Violence in the Name of Honour: Theoretical and political challenges* (Istanbul Bilgi University Publications, 2004) 40-56.

⁸²² The Turkish Civil Code 1926/743, Art. 152 (1) (2).

⁸²³ *ibid.*, Art. 159.

⁸²⁴ *Anayasa Mahkemesi / The Constitutional Court of Turkey*, Decision no. 1990/31, File no. 1990/30, judgment given 29/11/1990.

⁸²⁵ See Section 2.5.2. titled "Second-wave Feminism in Turkey" in Chapter 2 for further reading.

⁸²⁶ *ibid.*

⁸²⁷ Turkey Official Gazette No. 18898. <<http://www.hukukturk.com/en/official-gazette-of-tr?Sayi=18898>> accessed: 21/01.2017. See also CEDAW Conventions reservations made by States. <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> accessed: 21/01/2017.

The original reservation reads as follows:

Reservations of the Government of the Republic of Turkey regarding the articles of the Convention dealing with family relations which are not completely compatible with the provisions of the Turkish Civil Code, in particular, article 15, paragraphs 2 and 4, and article 16, paragraphs 1 (c), (d), (f) and (g), as well as with respect

These reservations arose to these clauses of the CEDAW in relation to marriage and family relations because of the provisions of the previous civil code.⁸²⁸ Turkey withdrew its reservations regarding Article 15(2), (4) and Article 16(c), (d), (f), and (g) on 20 September 1999.⁸²⁹ Most of the discriminatory provisions were amended regarding the principle of non-discrimination; in November 2001 the Turkish Parliament adopted a new Civil Code, which came into force in January 2002.⁸³⁰

The new Civil Code abolishes the man's hegemony in marriage and gives equal rights to spouses in several ways in compliance with the CEDAW Convention. For instance, spouses are equal partners in the decision-making process⁸³¹ and the family abode,⁸³² have equal rights over property acquired during the marriage,⁸³³ and have equal representative powers⁸³⁴. Clauses in the new Civil Law concerning VAW are the result of second-wave feminist advocacy.⁸³⁵ These are briefly stated by the General Directorate of Women's Status⁸³⁶ (KSGM):⁸³⁷

The partner may file the marriage to be annulled, if she/he is forced into marriage by threatening her/his or her/his relatives' lives, health or honour;⁸³⁸

Either one of the spouses can file for divorce if the other has plotted against her/his life, has treated her/him very badly or in a way which is severely detrimental to her/his honour;⁸³⁹

to article 29, paragraphs 1. In pursuance of article 29, paragraphs 2 of the Convention, the Government of the Republic of Turkey declares that it does not consider itself bound by paragraph 1 of this article.

⁸²⁸ Nazan Moroglu, 'Kadınların İnsan Hakları Bildirisi ve Ek İhtiyari Protokol / Declaration on the Women's Human Rights and the Optional Protocol' in Nazan Moroglu (ed.), *Prof. Dr. Erdoğan Moroglu's 65th Anniversary Gift* (İstanbul Üniversitesi Hukuk Fakültesi Yayınları, 2003) 892.

⁸²⁹ See Turkey's reservations to CEDAW see: <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> accessed: 21/01/2017.

⁸³⁰ Turkish Civil Code 2002/4721, Official Gazette No.24607 (08.12.2001).

⁸³¹ *ibid.*, Art. 186.

⁸³² *ibid.*

⁸³³ *ibid.*, Articles 202, 203 and 205.

⁸³⁴ *ibid.*, Art. 193.

⁸³⁵ See Section 2.5.2 in Chapter 2 for further analysis.

⁸³⁶ The General Directorate of Women's Status/KSGM was established in 1990 to prevent discrimination against women, protect and improve women's rights, and to provide women with equal access to rights and opportunities wherever available across all fields of social life. It was restructured with the Decree Law No. 633 on "Establishment of the Ministry of Family and Social Policies" in 2011. (published in the Official Gazette of 08.06.2011 with No.27958)

⁸³⁷ KSGM/General Directorate of Women's Status, *Kadına Yönelik Aile İçi Şiddetle ilgili Ulusal ve Uluslararası Yasal Düzenlemeler/National and International Legal Framework on Domestic Violence against Women* (Ankara: KSGM, 2008).

⁸³⁸ The Turkish Civil Code 2002/4721, Article 151.

⁸³⁹ *ibid.*, Art. 162.

In case divorce was filed, throughout the case, the judge takes temporary measures especially related to the accommodation and subsistence of the partners, management of the estates, and care and protection of the children;⁸⁴⁰

Filing for divorce on the grounds of infidelity entitles the injured party to claim general damages;⁸⁴¹

This section argues that the enactment of the new civil code has taken significant steps toward equality between women and men. It further maintains that the new Civil Code does not include discriminatory and sexist rulings based on the previous Civil Code that afforded men superiority over women. Further, traditional and patriarchal stereotypes are eliminated under its scope in compliance with the CEDAW Convention. Nevertheless, the new Civil Code still includes hindrances on the principle of equality/non-discrimination. The following sections identify the challenges of ‘age of marriage’ and ‘family name’ to demonstrate the lingering discrimination against women in the new Civil Code.

4.2.2.1. Challenges of the ‘Age for Marriage’

Article 16 of the CEDAW provides for equality between women and men in all aspects of marriage, prohibits child marriages, requires State parties to set a minimum age for marriage, and obliges marriage registration.⁸⁴² Moreover, when Article 16 is interpreted with Articles 2, 5, and 24, State parties are required to prohibit discrimination and to address gender stereotyping and customary and religious laws and practices that support persistent gender inequality in the family.⁸⁴³ For instance, Article 88 of the previous Civil Code sets the minimum marrying age for men at 18 and 16 for women.⁸⁴⁴ Nevertheless, in cases involving justifiable reasons, a court can approve the marriage of a 15-year-old man and a 14-year-old woman with the parents’ permission.⁸⁴⁵ This provision breaches Article 16(1)(a) of the CEDAW, although Turkey had not expressed a reservation on this provision.

Pursuant to Article 124 of the new Civil Code, Turkey has raised and equalised the minimum age of marriage as 17 for women and men. In cases of minors who are 16, parents’ or legal

⁸⁴⁰ *ibid.*, Art. 169.

⁸⁴¹ *ibid.*, Art. 174.

⁸⁴² Marsha A. Freeman, ‘Article 16’ in Marsha A. Freeman, Christine Chinkin, and Beate Rudolf (eds.), *The UN on the Elimination of All Forms of Discrimination against Women, A Commentary* (Oxford University Press, New York, 2012) 410.

⁸⁴³ *ibid.* 411. See also Section 3.2.2.1 in Chapter 3 for further analysis.

⁸⁴⁴ The Turkish Civil Code 1926/743, Article 88.

⁸⁴⁵ Seda Irem Cakırca, ‘Turkish Civil Code and CEDAW: Never Shall the Twain Meet?’ (2013) 45(62) *Annales de la Faculté de Droit d’Istanbul* 145, 169-170.

guardians' permission and a judge of the Court of Peace's decision are required.⁸⁴⁶ Nevertheless, the Shadow NGO Report on Turkey argues that the age of marriage must be raised to 18.⁸⁴⁷ While the new Civil Code ensures *de jure* equality to spouses entering marriage, women's *de facto* enjoyment of their right to enter marriage is still limited by religious and customary practices and social attitudes.⁸⁴⁸ For instance, religious marriages and early/child/arranged/forced marriages are still an ongoing problem in Turkey. However, both previous Civil Code and new Civil Code provides civil marriage as one of the fundamental principles and criminalises religious or early/child/arranged marriages complying with Article 16(1)(b) of the CEDAW Convention.

The Shadow NGO reports that "forced and early marriages are still prevalent in mainly Eastern and South-eastern Turkey where Kurdish and Arab families live mostly."⁸⁴⁹ Kurdish feminists fight against these patriarchal practices against women, whose complex experiences and identities intersect a multiple range of ethnicities, marital status, income levels, and ages that form the axes of inequality.⁸⁵⁰ This is also in violation of Article 16 of the CEDAW; therefore, the State needs to take special measures to eliminate such practices in collaboration with Kurdish feminist women's organisations.

Although the legal age for marriage is 17, "some girls are married only with a religious ceremony when they are between 13 and 15 years of age and cannot benefit from the rights conferred by civil marriage."⁸⁵¹ Concern about this is reiterated in the 2016 CEDAW Committee Concluding Observation, which calls on Turkey to "continue to take all measures necessary to eradicate polygamous and child marriages, including such unregistered religious marriages, and to ensure the civil registration of all marriages so as to guarantee the rights of all married women and their children."⁸⁵² Women who are married before the legal age of

⁸⁴⁶ The Turkish Civil Code 2002/4721, Articles 126 and 128,

⁸⁴⁷ The Executive Committee for NGO Forum on CEDAW-Turkey, 'Shadow NGO Report on Turkey's Seventh Periodic Report to the Committee on the Elimination of Discrimination against Women', 64th Session to CEDAW (July 2016) 4.

⁸⁴⁸ Seda Irem Cakırca, 'Turkish Civil Code and CEDAW: Never Shall the Twain Meet?' (2013) 45(62) *Annales de la Faculté de Droit d'Istanbul* 145, 170.

⁸⁴⁹ The Executive Committee for NGO Forum on CEDAW-Turkey, 'Shadow NGO Report on Turkey's Seventh Periodic Report to the Committee on the Elimination of Discrimination against Women, 46th Session to CEDAW' (July 2010) 24.

⁸⁵⁰ See Sections 2.5.3.1 and 2.5.3.6 in Chapter 2 for further analysis.

⁸⁵¹ The Executive Committee for NGO Forum on CEDAW-Turkey, 'Shadow NGO Report on Turkey's Seventh Periodic Report to the Committee on the Elimination of Discrimination against Women, 46th Session to CEDAW' (July 2010) 24.

⁸⁵² UN Committee on the Elimination against Women, 'Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey' (2016) CEDAW/C/Tur/Co/7 (25 July 2016) para. 54(a).

marriage are subject to violence more than women who are not. 26 percent of women were married before the legal age of marriage according to Turkish government research on domestic violence in 2015.⁸⁵³ Laws and regulations must be drafted to eliminate these patriarchal traditional attitudes/practices that contribute to the perpetuation of VAW, including so-called honour killing, especially given that the Civil Code violates Article 16 of the CEDAW Convention.

The following section discusses another aspect of the new Civil Code that is also partly in violation of Article 16 based on ECtHR judgments against Turkey—the right to choose a family name.

4.2.2.2. Challenges of the ‘Family Name’

The new Civil Code has also partly failed to be compatible with Article 16(1)(g) of the CEDAW Convention on the right to choose a family name; this article enables a married woman to keep her maiden name. Article 153 of the previous Civil Code rules that a wife must use her husband’s name for her entire life. The Constitutional Court of Turkey revised Article 153, permitting a woman to use her surname before her husband’s surname in 1998.⁸⁵⁴ This article retains Article 187 of the 2002 Civil Code.⁸⁵⁵ Nevertheless, this provision violates Articles 10, 41, and 90 of the Turkish Constitution, Article 16 of the CEDAW Convention, as well as ECtHR on the grounds of the principle of equality between women and men. The ECtHR states explicitly in *Ünal Tekeli v. Turkey* that:

the obligation on married women, in the name of family unity, to bear their husband’s surname – even if they can put their maiden name in front of it – has no objective and reasonable justification. Society may reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the name they have chosen.⁸⁵⁶

Moreover, the Court pointed out that “the objective of reflecting family unity through a joint family name cannot provide a justification for the gender-based difference in treatment

⁸⁵³ Republic of Turkey Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, ‘Research on Domestic Violence against Women in Turkey: Summary Report’ (2015) 14.

⁸⁵⁴ *Anayasa Mahkemesi / The Constitutional Court*, Decision no. 1998/359, File no. 1997/61, judgment given 29/09/1998. Official Gazette No.22996 (22.05.1997) <<http://www.hukukturk.com/en/official-gazette-of-tr?Sayi=22996&Tarih=22%2f05%2f1997>> accessed: 21/01/2017.

⁸⁵⁵ The Turkish Civil Code 2002/4721, Art. 185.

⁸⁵⁶ *Ünal Tekeli v. Turkey*, Application No. 29865/96 (Council of Europe: European Court of Human Rights, 16 November 2004) para. 67.

See also *Leventoglu Abdulkadiroglu v. Turkey*, Application No.: 7971/07 (Council of Europe: European Court of Human Rights, 28 May 2013).

complained of in the instant case.”⁸⁵⁷ Hence, the difference in treatment in question breaches Article 14 in conjunction with Article 8 of the ECtHR.⁸⁵⁸ Most recently, in 2013, the ECtHR has reiterated its judgement on *Gulizar Tuncer Güneş v. Turkey*,⁸⁵⁹ in which there is a violation of Article 14 of the Convention in conjunction with Article 8.⁸⁶⁰ As a consequence of these rulings of the ECtHR, Article 187 of the new Civil Code needs to be amended. This was held also by the CEDAW Committee in 2016:

despite the ruling of the European Court of Human Rights in 2013, instructing the State party to permit married women to maintain their own surname, article 187 of the Civil Code remains in place, and married women must resort to court proceedings to realize the right to maintain their own surname.⁸⁶¹

Although Turkey has focused on the attainment of *de jure* equality for women and men with the amendments made in Turkish Civil Code 743 and the Turkish Civil Code 4721, it still needs to achieve substantive equality between women and men. The CEDAW Committee requests far more from the government than the achievement of formal equality. In other words, the CEDAW envisions a much broader guarantee of substantive equality: “the abolition of *de jure* discrimination is a first step toward and a precondition of this progressive vision-it demonstrates the political will necessary for the realisation of the fundamental human right to sex equality.”⁸⁶²

In concluding, Turkey should achieve substantive equality in practice through political will, which plays a considerable role in the application of the principles of equality and non-discrimination in the new Civil Code.

4.2.3. The Family Protection Law

This section discusses the Family Protection Law, which establishes the correlation between eliminating VAW and eradicating the public/private distinction as a matter of State responsibility. It identifies the strengths and weaknesses of the law in its aim to prevent and

⁸⁵⁷ *Ünal Tekeli v. Turkey*, Application No. 29865/96 (Council of Europe: European Court of Human Rights, 16 November 2004) para. 68.

⁸⁵⁸ *ibid.*

⁸⁵⁹ *Tuncer Güneş v. Turkey*, Application No. 26268/08 (Council of Europe: European Court of Human Rights, 3 December 2013).

⁸⁶⁰ *ibid.* para. 20.

⁸⁶¹ UN Committee on the Elimination against Women, ‘Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey’ (2016) CEDAW/C/Tur/Co/7 (25 July 2016) para. 53 (b).

⁸⁶² Jessica Neuwirth, ‘Inequality before the Law: Holding States Accountable for Sex Discriminatory Laws under the Convention on the Elimination of All Forms of Discrimination against Women and through the Beijing Platform for Action’ (2005) 18 *Harv. Hum Rts. J.* 19, 54.

protect women against violence based on the principles of equality/non-discrimination and due diligence. It further analyses the effectiveness of Turkish legislation on combatting and preventing all forms of VAW including so-called ‘honour killings’. Because of its weaknesses, the Family Protection Law was abolished with the enactment of the new code after the ratification of the Istanbul Convention in 2012.

Since the ratification of the CEDAW Convention, Turkey enacted Law No. 4320 on the Protection of the Family,⁸⁶³ which was the first law in Turkey. It identifies violence within the family not only a private matter but also a public matter and gives responsibility to the government to protect women against violence. Acar observes that the CEDAW Committee’s response to the report submitted by Turkey influenced government representatives:

The domestic violence act promulgated in 1998 was influenced by CEDAW in terms of not only the inspiration and ideology that promoted and legitimated women’s human rights and obliged the State to take action to protect women from violations of their human rights but also with regard to the timing of governmental efforts for purposing this law.⁸⁶⁴

Although Law No. 4320 was originally intended to prevent and eliminate violence against women, it was called the Law on the Protection of the Family rather than the ‘protection of women and prevention of violence against women’. This wording reflects the traditional and patriarchal values shared by the law’s drafters.⁸⁶⁵ The name of the law has led to the appraisal of the applications made in this context and the removal of many women from its protection.⁸⁶⁶

One of the strengths of this law is its provision of a mechanism for protecting victims and punishing perpetrators. The law protects the person who is a spouse or child or another member of the family living under the same roof; in case of abuse, the notification is made

⁸⁶³ Family Protection Law 1998/4320 will be referred to as “Law No. 4320” throughout the thesis. Law No. 4320 was enforced until 2012 and abolished by the enactment of Law No. 6248 (Law to Protect Family and Prevent VAW).

⁸⁶⁴ Feride Acar, *Country Papers: Turkey, the First CEDAW Impact Study*, The Centre for Feminist Research (York University and the International Women’s Rights Project, York University 2002) 212.

⁸⁶⁵ TBMM Kadın Erkek Eşitliği Komisyonu / *Grand National Assembly of Turkey, The Committee on Equal Opportunity for Women and Men*, ‘Toplumsal Cinsiyet Açısından Anayasa Konulu Komisyon Raporu / Committee Report on the Constitution in Terms of Gender’ (Ankara: TBMM Yayınları, June 2012) 68.

⁸⁶⁶ Seher Kirbas Canikoglu, ‘Siddetin ve Evici Sıddetin Onlenmesine Dair Ulusal ve Uluslararası Mevzuat (İstanbul Sözleşmesi ve 6284 Sayılı Kanun) / International and National Legislation for Preventing Violence against Women and Domestic Violence (the Istanbul Convention and the Law Numbered 6284)’ (2015) 3 *Ankara Barosu Dergisi* 357, 361.

either by the Public Prosecutor or by the victim.⁸⁶⁷ It also provides a means whereby a person subjected to abuse can apply for a protection order from a family court directly through a prosecutor.⁸⁶⁸ In line with Article 1, the protection order can be ruled by the judge, and the accused spouse can be ordered:

1. Not to use violence or threatening behaviour against the other spouse or children (or another member of the family living under the same roof);
2. To leave the abode shared with the spouse or children, if there are any, and not to approach the abode occupied by the spouse or their places of work;
3. Not to damage the property of the spouse or children (or of others living under the same roof);
4. Not to distress to the spouse or children (or others living under the same roof);
5. To surrender a weapon or other similar instruments to the police;
6. Not to arrive at the shared abode while under the influence of alcohol or other intoxicating substances nor to use such substances in shared abode.

These measures prohibit the perpetrator from the victim's vicinity for a period not exceeding six months, and the defendant could be penalised from three to six months imprisonment if he or she does not follow these rules.⁸⁶⁹ In addition, the law also states that "the judge can rule on maintenance payments in accordance with the standard of living of the victim."⁸⁷⁰ According to Article 2 of Law No.4320, the court entrusts a copy of the protection order to the Public Prosecutor, who monitors the order through the police.

Another strength is that all family members facing violence, living under the same roof, can fall under the protection order.⁸⁷¹ Arın comments that:

This is particularly salient because violence against women can be exercised not only by husbands and partners but also by fathers, brothers, sons, fathers or mothers-in-law or brothers- and sisters-in-laws. In the rural areas, many families are extended, with many relatives living under the same roof. Often, the young bride ranks at the bottom

⁸⁶⁷ Family Protection Law 1998/4320, Article 1,

⁸⁶⁸ *ibid.*

⁸⁶⁹ *ibid.*

⁸⁷⁰ Canan Arın, 'Violence against Women' in Yildiz Ecevit (ed.), *Bridging the Gender Gap in Turkey: A Milestone towards Faster Socio-economic Development and Poverty Reduction* (World Bank Report, 2003) 189.

⁸⁷¹ *ibid.*, 189-9.

of the family hierarchy and is the weakest person in the household. In the patriarchal and patrilocal set up of the extended family she is called “daughter of stranger” and is expected to serve and obey the members of the family. Her slightest disobedience can incite violence against her.⁸⁷²

This provision significantly provides protection to all members of family who can face violence in the home. This section indicates the general strengths of Law No. 4320; however, its loopholes are discussed in the following sections.

4.2.3.1. Challenges of Law No. 4320

The prior section argues the strengths of Law No. 4320—the first law to protect women against violence and to provide protection to all family members who face domestic violence. This section demonstrates the weaknesses/challenges of the law that resulted in its amendments in 2007 in the form of Law No. 4320.

First, Law No. 4320 does not explicitly include the definition of violence, thus it could protect women against many forms of violence, but unfortunately it did not. The law was also criticised for including only four articles and for being very simple and undetailed. Even though the law was not aimed at punishing the perpetrator of the violence, its enactment, nevertheless, signifies an important change from previous legislation, which offered no option for women being victimised by their relatives. In fact, women were themselves liable for provoking the violence.⁸⁷³

Second, the law’s aim is to protect ‘family’ rather than the ‘individual’, and couples living together without marriage are not defined as ‘family’. This revealed some hindrances to decisions regarding protective and preventive orders given to women based on their marital status. Law No. 4320 does not protect women who are separated from their partners/husbands, couples without marriage contracts, or couples in a religious marriage⁸⁷⁴ (viewed as ‘illegal’). In practice, while some judges enforced the law only in cases of legal marriages, others were not concerned whether the marriages were legal or not.⁸⁷⁵ This distinction was not helpful in deciding cases involving the protection of women against violence. The implementation of the decisions of the ECtHR and international agreements,

⁸⁷² *ibid.*

⁸⁷³ Barbara L. Rodriguez, ‘Justice through Domestic Violence Legislation: Improving the Implementation of Turkey’s Law 4320 on the Protection of the Family’ (2009) 20(1) *Journal of Public & International Affairs* 27, 34.

⁸⁷⁴ Religious marriage is also referred to as an Imam wedding ceremony. Turkey still has religious marriages in rural parts. This also causes polygamous marriages, which are illegal under the law.

⁸⁷⁵ The Committee on Equal Opportunity for Women and Men, “Report about Early Marriages” (2009) 10.

particularly the CEDAW, protect all women, regardless of their marital status; the State is responsible for this.⁸⁷⁶ This article of Law No.4320 violates Article 1 of the CEDAW, which asserts “irrespective of their marital status” in the definition of the term of ‘discrimination against women.’⁸⁷⁷ It also fails to protect women married in a religious ceremony—women at risk of killings in the name of ‘honour’.

Even though some scholars affirm that women married in a religious ceremony cannot benefit from the law,⁸⁷⁸ others justifiably assert that ‘imam marriages’ and other forms of cohabitation should be included in cases of unmarried or divorced women within the scope of the law.⁸⁷⁹ Human Rights Watch reports that interviews with judges, prosecutors, and law enforcement officers in Van, Diyarbakir, Izmir provinces have revealed that the law has sometimes been interpreted flexibly to endow protection orders to divorced, unmarried, and religiously married women.⁸⁸⁰ According to Karinca, this distinction is baseless, owing to the regulation in a question affecting the consequences of a relationship rather than the reason for it.⁸⁸¹

The third challenge is the implementation of Law No. 4320. In her UNHRC report, Special Rapporteur on VAW Yakin Erturk draws attention to the serious obstacles to implementing the Family Protection Law:

In practice, the law has not lived up to the high expectations and seems to be rarely used. In Batman, for instance, there were only 20 applications for a protective order in all of 2005. The lawyers I spoke with explained that the courts regularly fail to enforce such orders. Clear breaches of the terms of a protective order often result in mere warnings to the perpetrators. Therefore, lawyers often advise their female clients to file for divorce and find a new home rather than seek an ineffective protective order

⁸⁷⁶ Mehmet Erdem, ‘Aile İçi Şiddet ve 4320 Sayılı Ailenin Korunmasına Dair Kanun / Domestic Violence and the Law No. 4320 on Family Protection’ (2007) 73 *Türkiye Barolar Birliği Dergisi* 46, 73; Mustafa Ateş, ‘4320 Sayılı Ailenin Korunmasına Dair Kanun ve Bu Kanundaki Değişiklikler Üzerine Düşünceler / The Family Protection Law No. 4320 and Thoughts on Amendments in the Law’ (2007) 65(3) *Ankara Barosu Dergisi* 161, 162.

⁸⁷⁷ See Section 3.2.2.1 in Chapter 3 for further analysis.

⁸⁷⁸ Emel Badur, ‘Ailenin Korunması Alanındaki Son Gelişmeler / Recent Developments in the Field of Protection of Family’ (2009) 84 *TBB Dergisi / Union of Turkish Bar Associations Review* 63, 73.

⁸⁷⁹ Eray Karinca, *Kadına Yönelik Aile İçi Şiddete İlişkin Hukusal Durum ve Uygulama Örnekleri / Legal Status and Implementation Examples regarding Domestic Violence against Women* (Ankara: KSGM, 2008) 50.

⁸⁸⁰ Human Rights Watch, ‘He Loves You, He Beats You: Family Violence in Turkey and Access to Protection’, (4 May 2011) ISBN: 1-56432-765-5, 34.

< <http://www.refworld.org/docid/4dcd04552.html> > accessed: 18 October 2014.

⁸⁸¹ *ibid.*

and further aggravate the conflict with the perpetrator.⁸⁸²

The fourth challenge is the lack of women's shelters throughout the country. This is deemed by the Special Rapporteur as evidence that "by and large this law has not been implemented."⁸⁸³ The enactment of this law was a breaking point because it showed that domestic violence in Turkey was regarded as a problem by the State.

In 2007, these legal loopholes and the limitations of implementing Law No. 4320 precipitated an amendment with pressure from women's organisations.⁸⁸⁴ In response to the many deficiencies of the 2007 amendment to Law No. 4320 after 10 years of being in effect, the Turkish government introduced an implementing regulation.⁸⁸⁵ It defines violence against women as "physical, sexual, psychological, verbal, or physical, including social or special occasions, including the possible acts of the family member resulting in physical, sexual, economic or psychological harm or suffering, and threats and oppression, and all kinds of economic behaviour."⁸⁸⁶ This definition complies with Articles 1 and 2 of the DEVAW, which defined VAW for the first time.⁸⁸⁷

In line with this amendment, the definition of a victim subject to abuse is broadened to include "a family member regarding to whom a court decision on divorce has been rendered or who has the right to live separately or who is factually living separately despite being married."⁸⁸⁸ Despite this widened definition, Law No. 4320 still does not protect women who live without marriage contract. Thus, it does not protect all women from violence. Protection orders are issued for a maximum of six months; some require the offender to "leave the family home, to stay away from the home or the school of the victim, surrender weapons that he possesses, refrain from violence, threat, property damage, contacting the victim, using substances within the family home."⁸⁸⁹ Family court judges can renew them for six months in situations where new violence against the victim is discovered.⁸⁹⁰ The protection order is submitted to the Chief Public Prosecutor's Office that monitors the application of the order

⁸⁸² UNHRC, 'Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Yakin Erturk, Addendum: Mission to Turkey' (2007) A/HRC/4/34/Add.2, para. 65.

⁸⁸³ *ibid.* para. 66.

⁸⁸⁴ The Family Protection Law 4320/5636, (26/4/2007, Official Gazette, No. 26512).

<<http://www.resmigazete.gov.tr/eskiler/2007/05/20070504-2.htm>> accessed: 12/12/2014

⁸⁸⁵ Implementing Regulation of the Law 4320 on the Protection of the Family, Official Gazette 26803, March 2008.

⁸⁸⁶ *ibid.*, Article 4 (e).

⁸⁸⁷ See Section 3.2 in the Chapter 3 for further analysis.

⁸⁸⁸ The Family Protection Law 4320/5636, (26/4/2007, Official Gazette, No. 26512), Article 1.

⁸⁸⁹ Implementing Regulation of the Law 4320 on the Protection of the Family, Official Gazette 26803, March 2008, Article 14(1).

⁸⁹⁰ *ibid.*

through the police.⁸⁹¹ However, in practice police monitoring often failed since the duty of due diligence was not obliged by state officers to protect women from violence, prevent VAW, or investigate acts in detail.

This section argues that the challenges of the Family Protection Law largely stem from an enduring societal acceptance of gender stereotypes and traditional patriarchal mores and structures in Turkish society and its institutions. This sensibility, which cannot see a woman as an ‘individual’, is still prevalent in some parts of the country. Despite the contributions of Turkish feminists, a new amendment (in 2007) and the implementing regulation of Law No. 4320 (in 2008) still faced problems within the scope of law. The following section therefore analyses how the perspectives of law enforcement officers cause the shortcomings of amended Law No. 4320.

4.2.3.2. The State’s Reluctance to Act with Due Diligence to Enforce Law No. 4320

Turkey has an obligation to exercise due diligence to prevent, investigate, and punish acts of VAW in the contexts of General Recommendation No. 19, the DEVAW, and the Beijing Declaration.⁸⁹² Reports and research reveal that the State’s governmental officers, such as police, judges, and prosecutors, cannot meet the due diligence standard when implementing Law No. 4320. According to a Human Rights Watch report, some examples of problems at the stage of protection are that police can be too slow to make decisions regarding emergency measures, judges may demand medical evidence that is not required, or judges can grant after taking too long decide a case.⁸⁹³ In special circumstances, a judge can give a protection order when a person is abused, and both the victim and the public prosecutor make an announcement:

If the Magistrate's Court considers that there is a possibility of the victim again being subject to abuse, then it can pass an order immediately after the application without need for witnesses or hearing from the other side. Those who have suffered abuse are not responsible for proving to the court the possibility of being subjected to abuse.⁸⁹⁴

However, some judges or prosecutors who ask for evidence are criticised for handling protection order processes as if they are criminal proceedings according to Human Rights

⁸⁹¹ Turkish Family Protection Law 1998/4320, Article 2.

⁸⁹² See Section 3.2 in Chapter 3 for further information.

⁸⁹³ Human Rights Watch, ‘‘He Loves You, He Beats You’’: Family Violence in Turkey and Access to Protection’ (4 May 2011) ISBN: 1-56432-765-5, 17.

⁸⁹⁴ Family Protection Law 1998/4320, Corollary to the Clauses of the Law.

Watch interviews with lawyers from Istanbul, Diyarbakir Bar Association's Women's Rights Commission, and UNFPA Ankara's gender program coordinator.⁸⁹⁵

Protection orders are issued by police and gendarmerie that are responsible for informing the respondent and are obligated to conduct regular visits to the home once a week and have contact with neighbours, first-degree relatives, and the Muhtar (head of neighbourhood).⁸⁹⁶ If the order is violated, the spouse or family member can be sentenced to three to six months' imprisonment.⁸⁹⁷ However, the enactment of this order remains particularly limited. According to Ayata, Eryilmaz, and Kalem, adjudicators cannot monitor the orders they enforce, and police do not follow the regulations; if a victim makes a report, the authorities note a breach of the order.⁸⁹⁸ Moreover, in cases of violation, prosecutors open cases whose results are not known, mostly concerning interviews with prosecutors.⁸⁹⁹ Further, women and children who have been abused are not aware of the law. Altınay and Arat reveal that while 61% of women living in central and western regions of the country have heard of the law, only 35% of women in the East have.⁹⁰⁰ A 2007 European Stability Initiative (ESI) report indicates that this is especially so in tribes in eastern Turkey where traditional patriarchal culture is still strong:⁹⁰¹

There are few applications from women in rural areas, according to local prosecutors, because transport and communications are so poor. Prosecutors are often reluctant to use their power to intervene, fearing that they may trigger an escalation of violence. The informal power of tribes remains strong.⁹⁰²

The traditional mentality of law enforcement officers has been an additional hindrance to implementing Law No. 4320. The law and amendments may not easily be put into practice because of persistent patriarchal values that these officers share. The prosecutors, judges, attorneys, and government representatives generally cannot think in terms of international

⁸⁹⁵ Human Rights Watch, 'He Loves You, He Beats You': Family Violence in Turkey and Access to Protection', (4 May 2011) ISBN: 1-56432-765-5, 36-37.

⁸⁹⁶ Implementing Regulation of the Law 4320 on the protection of the family, Official Gazette 26803, March 2008, Art. 15.

⁸⁹⁷ Family Protection Law No. 4320, Art. 2.

⁸⁹⁸ Gökçek Ayata, S. Eryilmaz, and S. Kalem, *Ailenin Korunmasına Dair Kanun Kimi ve Neyi Koruyor? Hâkim, Savcı, Avukat Anlatıları / Who and What are protected by Family Protection Law? Narratives from Judges, Prosecutors, and Lawyers* (Istanbul: Bilgi Üniversitesi Yayınları/Bilgi University Publications 2011) 39-41.

⁸⁹⁹ *ibid.* 104.

⁹⁰⁰ Ayşe Gül Altınay and Yeşim Arat, *Violence against Women in Turkey: A Nationwide Survey* (Punto, 2009) 57-59.

⁹⁰¹ See Section 2.5.3.1 in Chapter 2 for further analysis.

⁹⁰² European Stability Initiative (ESI), *Sex and Power in Turkey: Feminism, Islam and the Maturing of Turkish Democracy* (2007) 24.

standards on human rights and women rights and their obligations to Turkey simultaneously. In other words, they prioritise cultural patterns and models in society rather than ‘women’s rights’. For instance, their reactions are generally: “When a protection order is issued for a husband, where will he stay?” or “When the husband is imprisoned for violence to his wife, who will look after the wife and the children?” or “Those rules cannot be applied everywhere because economic and cultural realities are different in different parts of Turkey.”⁹⁰³ As to the implementation of Law No. 4320, women’s NGOs also regularly emphasise a weak support structure within State institutions and a strongly entrenched traditional perspective that focuses on the family union instead of protecting the women from violence.⁹⁰⁴

In *Opuz v. Turkey*, the ECtHR ruled against Turkey regarding law enforcement officers’ failure to uphold their due diligence duty to prevent the killing of the applicant’s mother.⁹⁰⁵ The State stated that the law enforcement officers had taken the necessary steps in response to the complaint but that they had been prevented from acting since the domestic law stipulated that withdrawal of the complaint by the victims had the result that the law enforcement officers had to terminate the proceedings, otherwise they would violate the private life of the victims.⁹⁰⁶ The ECtHR observed the matter of the victim’s withdrawal and noted that there was no general consensus between the States regarding “the pursuance of the criminal prosecution against perpetrators of domestic violence when the victim withdraws her complaints”.⁹⁰⁷ In other words, the ECtHR concluded from this practice that the more serious the offence or the greater the risk reoffending, “the more likely that the prosecution should continue in the public interest, even if victims withdraw their complaints”.⁹⁰⁸ Therefore, the law enforcement officers had not given more attention, preferring considering the problem as family matter. Law No. 4320 was inadequately implemented in the decision of *Opuz v. Turkey*:

There appear to be serious problems in the implementation of Law no. 4320, which was relied on by the Government as one of the remedies for women facing domestic violence. The research conducted by the above-mentioned organisations indicates that when victims report domestic violence to police stations, police officers do not

⁹⁰³ *ibid.*

⁹⁰⁴ Helin Uçar, ‘Women’s Rights in Turkey: Interaction of State and Non-State Actors in the Implementation of Judicial Equality’ (2009) 15 *Friedrich-Ebert-Stiftung Fokus Türkei* 1, 9-10.

⁹⁰⁵ See Section 3.3.3 for further evaluation of case of *Opuz v. Turkey* in the Chapter 3.

⁹⁰⁶ *Opuz v. Turkey*, Application No. 33401/02 (Council of Europe: European Court of Human Rights, 09/09/2009), para. 137.

⁹⁰⁷ *ibid.* para. 138.

⁹⁰⁸ *ibid.* para. 139.

investigate their complaints but seek to assume the role of mediator by trying to convince the victims to return home and drop their complaint. In this connection, police officers consider the problem as a “family matter with which they cannot interfere”.⁹⁰⁹

The general outcome from this judgement is that Law No. 4320 was inadequate to protect victims of violence, because the law enforcement officers were expected to act with due diligence to prevent the death of the applicant’s mother, regarding the fact that there was immediate and real risk to life.

One year after the judgment of *Opuz v. Turkey*, the CEDAW Committee maintained its concern:

about the continuing prevalence of violence against women, including domestic violence, which affects 39 per cent of women in the territory of the State party. The Committee notes the existence of Law No. 4320 on the Protection of the Family, but also notes the absence of a comprehensive national law on violence against women. The Committee also notes the limited number of shelters (57 available throughout the State party) and is concerned that such shelters may lack proper facilities and resources.⁹¹⁰

The Committee also commended Turkey for continuing to prioritise the adoption of comprehensive measures to address VAW in accordance with CEDAW Committee GR No. 19.⁹¹¹ Their concerns with Turkey’s failure to protect women from violence or prevent killings in the name of ‘honour’ have prompted discussions on new legislation urged by women’s rights activists and feminists. The signing of the Istanbul Convention in 2011 was empowered by these discussions and catalysed the Turkish government into enacting new laws to protect women from violence. Turkey was the first country to sign and ratify the Istanbul Convention in 2011. Then, in 2012, after Turkey’s ratification of the Istanbul Convention, the Family Protection Law was revoked with the enactment of the Law to Protect Family and Prevent Violence against Women (No. 6284).⁹¹²

⁹⁰⁹ *ibid.* para. 195.

⁹¹⁰ UN Committee on the Elimination against Women, ‘Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey’ (2010) CEDAW/C/Tur/Co/6 (30 July 2010) para. 22.

⁹¹¹ *ibid.* para. 23.

⁹¹² I evaluate Law No. 6248 in section 5.2 in the Chapter 5.

This section locates the obstacles to implementing Law No. 4320 in the domain of a prevailing patriarchal/male-dominated mentality in Turkish society and government institutions. This includes the mentality of law enforcement officers who breach the principles of gender equality/discrimination and due diligence on VAW and particularly honour killings. These hindrances to the efficacy of law and its implementation are concerns shared among international institutions to prove Turkey's infringement of the CEDAW and the ECHR. The following section examines the Turkish Penal Code regarding the punishment of perpetrators of honour killings.

4.2.4. The Turkish Penal Code

This section analyses the Turkish Penal Code, which is the law most used to punish perpetrators of so-called 'honour killings'. It then evaluates how the previous and new Turkish Penal Codes regulate the concept of 'honour killings'. I discuss how the Supreme Court of Appeals' judgements have changed when deciding the crime of '*töre*'⁹¹³ (custom) killings' and the crime of 'honour killings'. This critiques the Code's vague terms that sometimes allow its arbitrary use. This analysis reveals how the language of law and the judges' decisions and interpretations of cases of honour killings changed as an outcome of society's and the State's shift from a cultural relativist to the understanding of universalism.

4.2.4.1. The Previous Turkish Penal Code (TCK)

The previous TCK was based on the Italian Penal Code of 1889, adopted by Turkey in 1926.⁹¹⁴ The previous TCK mirrored a concept of sexuality, women's sexuality in particular, as a potential threat to public order and morality, and hence views it as in need for legal regulation.⁹¹⁵ The understanding of patriarchal morality is clearly seen in the provisions of the previous TCK, which refer to "morality, honour, and justice" under its scope. The code comprised sexual crimes under the section "Crimes against Society" in a sub-section titled "Crimes against Traditions of Morality and Family Order" (*Adab-i Umumiye ve Nizam-i Aile*) rather than crimes against individuals.⁹¹⁶ For instance, crimes such as rape, sexual abuse against women, and abduction were designated under "Crimes against Society". This is "a reflection of the social anxiety about a perceived need for stricter state control of sexuality in

⁹¹³ "Töre" means the sum of the ways of behaviour and living, rules, customs and traditions, shared habits, and means adopted by and established within the community. See the meaning of "tore" at Turkish Language Association.

<http://www.tdk.gov.tr/index.php?option=com_gts&arama=gts&guid=TDK.GTS> accessed: 23/05/2016.

⁹¹⁴ The Turkish Penal Code 1926/765 will be referred to as "the previous TCK" throughout the thesis.

⁹¹⁵ Pinar Ilkkaracan, 'How Adultery Almost Derailed Turkey's Aspirations' in Pinar Ilkkaracan (ed.) *Deconstructing Sexuality in the Middle East: Challenges and Discourses* (Routledge, 2008) 45.

⁹¹⁶ *ibid.*

the context of the liberalising impact of the Kemalist⁹¹⁷ revolution, including the abolition of religious laws, the participation of women in the public sphere, and the implementation of Western dress codes.”⁹¹⁸ Feminist academic Berktaý evaluates the comprehensive patriarchal understanding of the previous TCK. She states that the woman is not an autonomous human being, but her father’s or husband’s property; in cases of her abduction or rape, she is not the victim, but society accepts that her father or husband is the victim.⁹¹⁹ In the same way, Arat also comments that:

Pervasive patriarchal norms and values lie at the core of this issue. Regardless of their constitutional equality and legal position as equal citizens, culturally women are treated as dependents of, or “minors” under the custody and protection of, men. Thus, violations of women’s rights by men who are responsible for them and care for them are not seen as violations or are not treated seriously.⁹²⁰

This section critiques the discriminatory and sexist provisions against women within the scope of the TCK. It further discusses pervasive patriarchal patterns that structure women as the property of her father or her husband, who must be responsible for her behaviours and sexuality. The following section discusses how the previous TCK labels women’s sexuality within its discriminatory provisions, such as categorising women as virgins or non-virgins in the language of law.

4.2.4.1.1. Discriminatory Provisions on Women’s Sexuality

Virginity, which is not an individual choice, constitutes a corollary to non-virginity in traditional patriarchal communities; within this dichotomous construct, non-virgins face social isolation and marginalisation unless they have followed prescribed protocols.⁹²¹ Living under this regime leads to invasive procedures such as families taking even their young children to the hospital for a virginity test. It is in later life that women have vocalised how humiliating the test was—that it made them feel ashamed and fear the consequences of being sexually active.⁹²² Many young girls are still ashamed because of false rumours and gossip; just walking in the street with friends seems to be enough of a reason for a virginity test.⁹²³

⁹¹⁷ See Section 2.5.1 in the Chapter 2 for further analysis.

⁹¹⁸ Pinar Ilkcaracan, ‘How Adultery Almost Derailed Turkey’s Aspirations’ in Pinar Ilkcaracan (ed.) *Deconstructing Sexuality in the Middle East: Challenges and Discourses* (Routledge, 2008) 45.

⁹¹⁹ Fatmagül Berktaý, *Tarihin Cinsiyeti / Gender of History* (Istanbul: Metis Yayınları, 2006) 101.

⁹²⁰ Zehra F. Arat, ‘A Struggle on Two Fronts’ (2003) 2(10) *Human Rights Dialogue*.

⁹²¹ Zuhul Yesilyurt Gündüz, ‘The Woman’s Movement in Turkey: From Tanzimat towards European Union Membership’ (2004) 9(3) *Perceptions: Journal of International Affairs* 115, 124.

⁹²² *ibid.*

⁹²³ *ibid.*

Women carry the honour of the family. They were viewed as non-autonomous human beings—satellites of their families and male relatives.

Discriminatory provisions in the previous TCK violate some provisions of the CEDAW. The previous TCK did not directly address ‘virginity exams’, but a woman’s status as a virgin/non-virgin or married/unmarried woman plays a crucial role in the case of a crime against her.⁹²⁴ These sexist divisions in the previous TCK were criticised for allowing the abduction of single and married women, criminalising adultery, and discriminating rape of virgin or non-virgin women, all of which contradict Article 2(f)⁹²⁵ of the CEDAW Convention.⁹²⁶ Many sex offences were defined regarding their impact on women’s honour and virginity. Sexual assaults against women were categorised by law as “Felonies against Public Decency and Family Order”; these include rape⁹²⁷ and engaging in sexual intercourse in public.⁹²⁸ This contradicts the spirit of the CEDAW Convention and contravenes the dignity of the person because the law categorises violence as “crimes against public decency and family order”.⁹²⁹ This specifies that all forms of sexual crimes committed against women and girls were sued in the name of the society because the community/society’s honour is damaged (rather than the integrity of the individual victim). Thus, the cultural background and traditional patriarchal mentality directly informed the drafters of the previous TCK.

Moreover, this provision on virginity testing violates Article 17 of the Turkish Constitution, which states that “the corporeal integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; and shall not be subjected to scientific or medical experiments without his/her consent.”⁹³⁰ In other words, no one’s bodily integrity may be violated apart from medical requirements and circumstances outlined in the Constitution. Arin evaluates that “relevant authorities have used various provisions in the law to justify forced virginity testing.”⁹³¹ For instance, Article 423 of the previous TCK defined the rape of a virgin aged 15 or over in which the perpetrator has promised to marry the victim as a crime; anyone removing the virginity of a girl above 15 years of age with the promise of

⁹²⁴ Ayşe Parla, ‘The ‘Honor’ of the State: Virginity Examinations in Turkey’ (2001) 27(1) *Feminist studies* 65, 79.

⁹²⁵ See Section 3.2.2.2 in Chapter 3 for further analysis.

⁹²⁶ UN Committee on the Elimination against Women, ‘Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey’ (1997) UN doc. A/52/38/Rev.1 para. 177.

⁹²⁷ Turkish Penal Code 1926/765, Articles 414, 415, and 416,

⁹²⁸ *ibid.*, Art. 419.

⁹²⁹ UN Committee on the Elimination against Women, ‘Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey’ (1997) UN doc. A/52/38/Rev.1 para. 181.

⁹³⁰ The Constitution of the Republic of Turkey no. 5170 (7/11/1982) s 2 (17)

⁹³¹ Canan Arın, ‘Violence against Women’ in Yildiz Ecevit (ed.), *Bridging the Gender Gap in Turkey: A Milestone towards Faster Socio-economic Development and Poverty Reduction* (World Bank Report, 2003) 191.

marrying her shall be sentenced to between 6 months and 2 years of imprisonment.⁹³² It also stated that if the man marries the woman, the case and the punishment will be deferred. However, if the couple divorces within five years, legal proceedings are initiated, and the husband is found guilty, the punishment is implemented.⁹³³ This provision asserted that the crime was only punishable if the victim was a virgin at the time of the rape. This clause pressured a woman into marrying her rapist to preserve her family's 'honour', thus punishing the victim while acquitting the perpetrator.

The section assesses the way women's sexuality is defined within the discriminatory provisions of the previous TCK; the following section reveals how the perpetrators of honour killings received lighter sentences in the name of saving 'family honour' or 'his honour' under the old TCK.

4.2.4.1.2. Sentence Reductions for Murderers of Honour Killings

Although the previous TCK was subject to many amendments, so-called 'honour killings' was not clearly defined under the code. Regarding intentional killing, Article 449(1) stated that 'If committed against wife, husband, sibling, foster father, foster mother, foster child, stepmother, stepfather, stepchild, father-in-law, mother-in-law, bridegroom and brides', the perpetrator would get higher punishments.⁹³⁴ In cases of honour killings, perpetrators received lighter sentences because the previous TCK comprises certain articles that support the notion of tradition, including the view that women should be punished or killed when they brought dishonour to the family. In addition, the previous TCK legally gave adjudicators options to provide sentence reductions to murderers who commit honour crimes, and many judges did not choose certain Articles over others to avoid sentence reductions and implement increased penalties.⁹³⁵ For example, Articles 462 and 51 enabled sentence reductions of up to seven-eighths in cases of provoked homicide; these were activated and reduced murderers' sentences to one-eighth once the killers admitted that they committed the crime to protect the family honour in cases of rape, impregnation, and adultery. Article 462 stated that:

If the acts mentioned in the two sections above are committed, against a husband or a wife or a sister or one of the children or the common perpetrator or both who were eye witnessed on the act of adultery or at the moment he/she was having illegitimate

⁹³² Turkish Penal Code 1926/765, Art. 423 (1).

⁹³³ *ibid.*, Art. 423 (2).

⁹³⁴ Turkish Penal Code 1926/765, Art. 449 (1).

⁹³⁵ Dicle Kogacioglu, 'The Tradition Effect: Framing Honor Crimes in Turkey' (2004) 15(2) *Differences: a journal of feminist cultural studies* 119, 131.

sexual intercourse or if it appears without doubt that he/she committed adultery or had illegitimate sex, by a wife or a husband or one of the parents or a brother or a sister, the determined punishment for the act is reduced by one eighth and transformed into heavy imprisonment.⁹³⁶

The ambiguous term ‘illegitimate sexual intercourse’ in this provision was strongly criticised because the penalty was reduced more than the general mitigation (Article 51) provision allowed. Thus, in cases of so-called honour killings, when the term “honour” is used in Turkey, it is understood as women’s sexuality.⁹³⁷ Article 462 reduced punishments because women are viewed as belonging to men, and they are seen as violating one of the sexual morality rules. Further, this provision indicated that the understanding of ‘sexuality’ is only justifiable in the context of family relations. While a brother who catches his sister in an adulterous or otherwise illegitimate sexual intercourse killed her in the name of ‘honour’, he benefits from the penalty reduction, but the sister who catches her brother in the same act cannot make use of this mitigating factor.⁹³⁸ This was another criticism of discriminatory clauses in Article 462 in the previous TCK.

Article 462 largely treated honour killing as homicides committed in the heat of passion.⁹³⁹ Despite the lapse in time between the affair and the murder, perpetrators were acquitted by a combination of Articles 462 and 51.⁹⁴⁰ Almost 63% of cases in which these articles were relevant were granted provocation defences.⁹⁴¹ Article 462 was further applied with Article 51 to offer a general mitigation article, which reduced punishment by up to two-thirds if a suspect committed murder because of “uncontrollable grief” or as a consequence of provocation.⁹⁴² Arin evaluates this article:

Article 462 of the Turkish Penal Code grants a reduction in a murder sentence if the murder is committed by a relative of the person who has been caught immediately before or during adultery. The punishment for the murderer is reduced from a life

⁹³⁶ Turkish Penal Code 1926/765, Article 462.

⁹³⁷ See Section 2.5.3.4 titled ‘Defining the ‘Honour Killing’ in the context of Turkey’ in Chapter 2 for further analysis.

⁹³⁸ Turkan Yalcin Sancar, *Türk Ceza Hukukunda Kadın/Women within the scope of the Turkish Penal Code* (Ankara: Seckin Yayinlari, 2013) 178.

⁹³⁹ Bethany A. Corbin, ‘Between Saviors and Savages: The Effect of Turkey’s Revised Penal Code on the Transformation of Honor Killings into Honor Suicides and Why Community Discourse is Necessary for Honor Crime Eradication’ (2014) 29 *Emory Int’l L. Rev.* 277, 305.

⁹⁴⁰ *ibid.*

⁹⁴¹ *ibid.* cited in Ceren Belge, ‘Whose Law?: Clans, Honor Killings, and State-Minority Relations in Turkey and Israel’ (Jan. 1, 2008) (unpublished Ph.D. dissertation, University of Washington) (on file with the University of Washington library) 73.

⁹⁴² Canan Arin, ‘Femicide in the Name of Honor in Turkey’ (2001) 7(7) *Violence against women* 821, 824.

sentence to four to eight years of imprisonment, or from the death penalty to five to ten years imprisonment. Other penalties are reduced to one-eighth of the original sentence. Although honor killings are premeditated murders and are not committed immediately before or during a woman's extra-marital sexual activity, many times this article continues to be wrongly applied to such killings. In any case, the above-mentioned article is designed for "passion crimes" not for "honor killings".⁹⁴³

Other offences in the previous TCK relating to 'the motive of saving her honour' were leaving an illegitimate child to die and killing an illegitimate child. In cases involving provocation, sentences were reduced as a consequence of "leaving an illegitimate child to die within a period of five days following birth for the sake of protecting one's own or wife's or mother's, or a descendant's or sister's honour and chastity in line with Article 475 and a mother's killing of a new born illegitimate baby for the sake of protecting her own honour, resulted of perpetrator's punishment five to ten years imprisonment in accordance with Article 453."⁹⁴⁴ Article 453 was amended several times; the final version took into account the "psychological condition experienced by women pre or postpartum."⁹⁴⁵ It stated that "If the act of murder is committed by the mother against the new-born child with the motive of saving her honour, the perpetrator is sentenced from 8 to 12 years imprisonment."⁹⁴⁶ With the new penal code, the term of murder of infants was buried in the Article 82 addressing the crime.

By the same token, the judge was allowed his or her sole discretion to reduce the defendant's punishment by one-sixth in accordance with Article 59.⁹⁴⁷ These reductions were usually combined with age reductions in cases where a younger member of the family committed the crime against a victimised woman or girl to receive a lesser punishment.⁹⁴⁸ If the perpetrator was 16 years of age or under, the penalty was reduced by a half.⁹⁴⁹ This was a reason why

⁹⁴³ Canan Arın, 'Violence against Women' in Yildiz Ecevit (ed.), *Bridging the Gender Gap in Turkey: A Milestone towards Faster Socio-economic Development and Poverty Reduction*, (World Bank Report, 2003) 191.

⁹⁴⁴ Nurhan Süral, 'Legal Framework for Gender Equality' in Yildiz Ecevit (ed.), *Bridging the Gender Gap in Turkey: A Milestone towards Faster Socio-economic Development and Poverty Reduction* (World Bank Report, 2003) 20, Canan Arın, 'Violence against Women' in Yildiz Ecevit (ed.), *Bridging the Gender Gap in Turkey: A Milestone towards Faster Socio-economic Development and Poverty Reduction* (World Bank Report, 2003) 190.

⁹⁴⁵ Turkish Penal Code 1926/765, Art. 453.

⁹⁴⁶ Turkish Penal Code 1926/765, (amended article, July 2003, Act No. 4928), Art. 453.

⁹⁴⁷ Aysan Sev'er, *Patriarchal Murders of Women: A Sociological Study of Honour-Based Killings in Turkey and in the West* (Lewiston: The Edwin Mellen Press, 2013) 182.

⁹⁴⁸ Turkish Penal Code 1926/765, Articles 53, 54, 55. Dicle Kogacioglu, 'The Tradition Effect: Framing Honor Crimes in Turkey' (2004) 15(2) *Differences: a journal of feminist cultural studies* 119, 123.

⁹⁴⁹ Turkish Penal Code 1926/765, Art. 54.

killers are generally selected from among the youngest members of the family; these are sometimes the sons of the victim.

Even though Article 462 was abolished after pressure from the EU in 2003, the implementation of sentence reductions has remained incapable of protecting women at risk of death.⁹⁵⁰ Article 462 could be applied to both men and women; however, in practice, it was applied to male perpetrators, so honour killings were effectively legitimated in Turkey. Article 462, at least its language, did not distinguish between women and men; it was a law prepared and written by a male's hand and his logic.

With the abolishment of Article 462 and the previous TCK that supported lessening sentences to murderers of honour killings, Asma Jahangir, who was the Special Rapporteur, told stakeholders in the Turkish Government to amend legislation and bring it into conformity with international standards.⁹⁵¹ By emphasising the significance of the rights of life, security, and liberty, Ms Jahangir pointed out that the absence of political will by governments is the main reason for the continuation of so-called 'honour killings'.⁹⁵² She urged governments to take judicial precautions to confirm that "such killings receive no discriminatory treatment under the law and sensitize their judiciary to gender issues."⁹⁵³ During her mission to Turkey, she noted "with concern that apart from a few women's rights organisations, all other non-governmental organisations dealing with human rights were of the opinion that honour killings were not a concern for human rights advocates" and were considered a social rather than human rights issue.⁹⁵⁴ Moreover, women's rights organisations indicated that only a few cases of honour killings were reported—a large number were not:

Reports from women's rights groups confirm that only a few cases come to light, as the local authorities and society in general condone the crime. A large number of cases go unreported and the few that are reported hardly ever reach the trial stage. The

⁹⁵⁰ Aysan Sev'er, 'In the Name of Fathers: Honour Killings and Some Examples from South-eastern Turkey' (2005) 30(1) *Atlantis: Critical Studies in Gender, Culture & Social Justice* 129, 133.

⁹⁵¹ UNCHR, 'Extrajudicial, summary or arbitrary executions Report of the Special Rapporteur, Ms. Asma Jahangir' (2000) UN doc. E/CN.4/2000/3, para. 82.

⁹⁵² *ibid.*

⁹⁵³ UNCHR, 'Extrajudicial, summary or arbitrary executions Report of the Special Rapporteur, Ms. Asma Jahangir' (2001) UN doc. E/CN.4/2001/9, paras. 41-117; UNCHR, 'Extrajudicial, summary or arbitrary executions Report of the Special Rapporteur, Ms. Asma Jahangir' (2002) UN doc. E/CN.4/2002/74, paras. 52-147; UNCHR, 'Extrajudicial, summary or arbitrary executions Report of the Special Rapporteur, Ms. Asma Jahangir' (2003) UN doc. E/CN.4/2003/3, para.59; UNCHR, 'Extrajudicial, summary or arbitrary executions Report of the Special Rapporteur, Ms. Asma Jahangir' (2004) UN doc. E/CN.4/2004/7, para. 96.

⁹⁵⁴ UNCHR, 'Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Ms. Asma Jahangir, Addendum: Mission to Turkey' (2002) UN doc. E/CN.4/2002/74/Add.1, paras. 64-66.

exceptional cases brought to trial and ending in convictions receive a token punishment.⁹⁵⁵

This section argues that although the previous TCK does not have any clause criminalising ‘honour killings’, it includes provisions such as Article 462 (adultery) to reduce punishments of honour killers, ‘heavy provocation’ (Article 51), and judge’s sole discretion (Article 59) to reduce sentences for the perpetrators of honour killings. The discriminatory provisions in the previous TCK as well as the cultural relativist tenets underpinning the law contributed to the persistence of honour killings and the strong traditional patriarchal culture that condones and enables them. This persistence is in spite of Turkey’s obligation to adopt universalism under international law, particularly the CEDAW, and to harmonise human rights principles with national laws.

4.2.4.2. A Step Forward to Promote Gender Equality: The Revised TCK

So-called ‘honour killings’ have attracted attention within the UN since the 1990s; the previous TCK has been singled out for enabling lenient punishments to honour killers.⁹⁵⁶ Reports from Special Rapporteurs on “VAW” and “Extrajudicial, summary and arbitrary executions”, the CEDAW Committee’s Concluding Observations and the Council of Europe Parliamentary Assembly resolutions, and EU progress reports call on Turkey to eliminate such crimes and punish perpetrators by revising the previous TCK. This section analyses the revised TCK to reveal its limitations in litigating crimes committed in the name of ‘honour’. It continues to address the principle of gender equality since women’s sexuality is still problematically handled in the new TCK. It also uses statistics and research to analyse the ways women are forced to commit suicide to cleanse the family honour.

The new Turkish Penal Code⁹⁵⁷ came into force in 2005, the result of the Working Women Group’s campaigns and EU pressure.⁹⁵⁸ It provides the principle of equality/non-discrimination within its scope. Alongside Article 3 of the TCK, it states that “no discrimination shall be made between persons in respect of race, language, religion, sect, nationality, colour, sex, political or other opinion, philosophical belief, national or social background, birth, economic and other social status and no one shall be granted any privileges

⁹⁵⁵ *Opuz v. Turkey*, Application No. 33401/02 (Council of Europe: European Court of Human Rights, 09/09/2009), para. 121.

⁹⁵⁶ See Section 3.2.1 in the Chapter 3 for further information.

⁹⁵⁷ Turkish Penal Code 2005/5237 will be referred to as “TCK” throughout the thesis.

⁹⁵⁸ The Law No. 5237 New Turkish Penal Code, published in the Official Gazette on October 12, 2004, No. 25611.

in implementation of the Penal Code.”⁹⁵⁹ Additionally, the TCK has more significant changes to promote gender equality, including more than 35 amendments that imply a drastic change in legal discourse from “the law as the protector of the nation’s morality” to “the law as the protector of people’s sexual and bodily integrity.”⁹⁶⁰ All references to patriarchal constructs and traditional perceptions such as chastity, honour, morality, shame, and virginity are abrogated from the law.⁹⁶¹ These improvements enable the TCK to comply with Articles 2(e)(f) and 5(a) of the CEDAW Convention. Discrimination against unmarried and non-virgin women is eradicated from the TCK:

The new Turkish Penal Code classifies sexual offences under the section ‘crimes against individuals’, subsection ‘crimes against sexual inviolability’, instead of ‘crimes against society’, subsection ‘crimes against moral customs’, signifying a ground-breaking shift. The notions that women’s bodies and sexuality are commodities of men and of society, and that sexual offences are to be regulated in reference to patriarchal constructs such as ‘society’s traditions of morality’, ‘chastity’, and ‘honour’ were stamped out. The TCK brings first-time legal recognition of women’s ownership of their bodies and a notion of gender quality concerning the inviolability of the body.⁹⁶²

Further, provisions for legitimising rape and abduction in cases in which the perpetrator marries the victim are abolished. Despite these improvements, the TCK still contains discriminatory provisions that breach the CEDAW Convention. The following sections indicate how these provisions perpetuate the male-dominated mentality that causes honour killings to endure.

4.2.4.2.1. A Step Back: Discriminatory Provisions on Women’s Sexuality

During the process of TCK amendments in 2004, the government’s unwillingness to end controlling women’s sexuality had to diminish to some extent because of pressure from the women’s rights NGOs and the EU. Instead of using the term ‘virginity testing’, Article 287 of the TCK is titled “Genital Controls”. This provision is regulated under the section titled “Offenses against the Judicial Bodies or Court”, which states that:

⁹⁵⁹ Turkish Penal Code 2005/5237, Article 3.

⁹⁶⁰ Pinar Ilkkaracan, ‘How Adultery Almost Derailed Turkey’s Aspirations’ in (ed.) Pinar Ilkkaracan, *Deconstructing Sexuality in the Middle East: Challenges and Discourses* (Routledge, 2008) 12.

⁹⁶¹ Serpil Sancar and Ayca Bulut, *Turkey: Country Gender Profile* (Ankara 2006) 22.

⁹⁶² Pinar Ilkkaracan, ‘Reforming the Penal Code in Turkey: The Campaign for the Reform of the Turkish Penal Code from a Gender Perspective’ (2007) *Institute of Development Studies (IDS)* 1, 26.

(1) if the offender sends a person to a genital control without a judge's decision, he or she can be sentenced to between three months to one year of imprisonment,

(2) The provisions of above subsection may not be applicable with regard to controls to be accomplished pursuant to the laws and by-laws for protection of public health against infectious disease.⁹⁶³

This article is unclear because it does not make direct reference to “virginity examination” and does not mention the consent of women for genital control. Thus, Article 287 causes different interpretations in cases by judges and prosecutors. The first paragraph of the provision seeks the authorisation of a judge and prosecutor for a woman's genital examination. However, this provision does not seek the decision of judges or prosecutors for genital examinations to protect public health against infectious diseases. The extent of the phrase “to protect public health” in the regulation is uncertain. In practice, women are forced to arbitrarily genital control by law enforcement, school administration, and families.⁹⁶⁴ Most important, the woman's approval is not required. Without the approval of the woman, an examination made by decision of the judge and the prosecutor is also a forcible examination, and a forcible examination leads to new trauma for the woman and girl. This is a discriminatory provision that still exists in the TCK. It is also criticised in the Shadow NGOs reports of 2010 and 2016:

Article 287 of the Penal Code should be rephrased to include the expression “conducting virginity testing” is forbidden; if in a given case a judge or prosecutor authorizes the exam; the consent of the woman should be a mandatory prerequisite.⁹⁶⁵

Article 287 of the Penal Code should be rephrased to include the expression “conducting virginity tests is forbidden; in the event that a judge or prosecutor authorizes an examination, the consent of the woman should be a mandatory prerequisite.”⁹⁶⁶

⁹⁶³ Turkish Penal Code 2005/5237, Article 287 (1).

⁹⁶⁴ Meryem Erdal, *Kadınlara Yönelik Devlet Kaynaklı Cinsel Şiddet/State-based sexual violence against women* (Ankara Barosu Yayınları, 2006) 193.

⁹⁶⁵ The Executive Committee for NGO Forum on CEDAW-Turkey, ‘Shadow NGO Report on Turkey's Seventh Periodic Report to the Committee on the Elimination of Discrimination against Women, 46th Session to CEDAW’ (July 2010) 9.

⁹⁶⁶ The Executive Committee for NGO Forum on CEDAW-Turkey, ‘Shadow NGO Report on Turkey's Seventh Periodic Report to the Committee on the Elimination of Discrimination against Women, 64th Session to CEDAW’ (July 2016) 6.

Although the CEDAW Committee called on Turkey to eliminate discriminatory provisions in its Penal and Civil Code in 2010 and reiterated its call in 2016, remarkably specifying Article 287 of the TCK, Turkey has not yet amended this provision. The Committee recommends Turkey to “amend the Penal Code and abolish the provision allowing for genital examinations, including virginity testing, to be performed on a woman or girl without her consent. It also recommends that the State party ensure that no woman or girl is pressured into giving such consent.”⁹⁶⁷

This section argues that women’s virginity and chastity is controlled not only by their families but also by government officials given that male dominance underpins the system of power that has shaped Turkish politics from a poststructuralist feminist perspective.⁹⁶⁸ A woman’s virginity is a personal issue rather than a social phenomenon, hence this provision (Article 287) should be amended to provide gender equality and to eliminate discriminatory provisions in the law.

4.2.4.2.2. Limitation of Ruling Crimes Committed in the Name of ‘Honour’

This section discusses the TCK provisions that regulate crimes committed in the name of honour. It briefly argues that Article 82’s vague language still hinders the penalisation of honour killers in Turkey. Article 81 of the TCK handles felonious homicide, stating that “any person who unlawfully kills a person is sentenced to life imprisonment.”⁹⁶⁹ Article 82 regulates aggravated forms of homicide titled “qualified forms”, stating that such homicide is perpetuated as follows:

- (1) In case of commission of this offence; a) Premeditated, b) Ferociously or brutality, c) By use of nuclear, biological or chemical weapons which cause explosion or result with fire, flood, destruction, sinking etc., d) Against any one of the antecedents or descendants, or spouse or brother/sister, e) Against a child or a person who cannot protect himself due to physical or mental disability, f) Against a pregnant woman, g) By virtue of public office, h) With the intention of concealing or facilitating commission of an offence, or destroying the evidences, or i) Blood feud, j) Ethical reasons, k) Töre (Custom), the offender is sentenced to heavy life imprisonment.⁹⁷⁰

⁹⁶⁷ UN Committee on the Elimination against Women, ‘Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey’ (2016) CEDAW/C/Tur/Co/7 (25 July 2016) para. 19 (a).

⁹⁶⁸ See Section 2.2.5 in Chapter 2 for further reading.

⁹⁶⁹ Turkish Penal Code 2005/5237, Art. 81.

⁹⁷⁰ *ibid.*, Art. 82,

Notwithstanding the success of women's campaigns, 'honour killings' are unambiguously defined as aggravated homicide in the Code with the purpose of including all such killings in the name of honour, not just those in the name of custom.⁹⁷¹ The TCK includes honour killings in the category of customary killings, creating a condition of a juridical exception that favours honour killers.⁹⁷²

Instead of adding the word 'honour' (*namus*), Article 82 uses the term 'custom' (*töre*). This term creates confusion as to what constitutes custom and whether the provision includes honour crimes in sentencing murders in the name of 'custom'.⁹⁷³ This incorporation allows the application of extraordinary measure, the "unjust provocation" article, as a mitigating condition. Ahmetbeyzade states that the new penal code enables the criminal prosecution to only consider the victim of honour killings and spare the defendant by limiting his criminal liability; this permits lighter sentencing.⁹⁷⁴ For instance, concerning honour crimes, 46 cases among 56 were finalised with reduced sentences because the violence was considered to have been committed under provocation, according to Diyarbakir lawyers' research.⁹⁷⁵ This reveals that when enforcing the TCK, some judges have still applied unjust provocation to lighten the punishments of perpetrators of murder committed in the name of 'honour'.

The following sections first identify the vague language in the TCK referring to killings committed in the name of honour or custom. Second, they assess how this ambiguous language is interpreted by judges when deciding cases of 'honour killings', revealing inconsistent judgements and their application of the 'unjust provocation' provision.

4.2.4.2.2.1. Vagueness of Terminology: Honour (Namus) and Custom (Töre) Crimes

The term of 'honour' (*namus*) refers to women's sexuality, physical appearance, and behaviour.⁹⁷⁶ On the other hand, *töre*/custom is not a word that is based on a woman's own body and sexuality. The notion of custom, which is measured quantitatively by acts of honour killing, is a totem symbol of the togetherness and sacredness of "a particular society"; in other

⁹⁷¹ Feride Acar, Göksel, Asuman, Dedeoğlu-Atılğan, Saniye, Altunok, Gülbanu, and Elif Gözdaşoğlu-Küçükalioglu, *Issue Histories Turkey: Series of Timelines of Policy Debates* (Vienna: Institute for Human Sciences (IWM) 2007) 70.

⁹⁷² Cihan Ahmetbeyzade, 'Gendering Necropolitics: The Juridical-Political Sociality of Honor Killings in Turkey' (2008) 7(3) *Journal of Human Rights* 187, 196.

⁹⁷³ Turkish Penal Code 2005/5237, Art. 82 (1) (k).

⁹⁷⁴ Cihan Ahmetbeyzade, 'Gendering Necropolitics: The Juridical-Political Sociality of Honor Killings in Turkey' (2008) 7(3) *Journal of Human Rights* 187, 196.

⁹⁷⁵ Nuket Kardam, *Assessment of National Women's Machineries in Turkey* (Euromed Role of Women in Economic Life Programme, 2006) 18.

⁹⁷⁶ See Section 2.5.3.4 in Chapter 2 for further reading.

words, it is a cultural value.⁹⁷⁷ *Namus*/honour is characterised as a man's social reputation dependent on obeying rules of *töre*/custom. In this context, according to Iskender, the terms 'custom', 'honour', and 'dignity' consist of the same meanings; when honour crimes are committed in the name of custom, perpetrators murder victims not just for their honours but also to preserve their society's dignity.⁹⁷⁸ Thus, custom killings comprise honour killings.⁹⁷⁹ Recognising the extent of social pressure driving honour crimes, particularly in large families or tribal communities in south-eastern part of Turkey,⁹⁸⁰ exposes in relief situations in which perpetrators make fatal decisions despite social pressure. This is a convenient way to recognise counter processes but should not be interpreted as a means of removing perpetrators' personal responsibility for their crimes.⁹⁸¹

However, some academics assert that the concepts of honour and custom killings should be differentiated. For instance, Pervizat points out that feminist activists such as the Women's Platform, unfortunately, have been unsuccessful because they could not have imposed honour killings and custom killings which are not identical to the drafters of the TCK. She separates honour killings from custom killings based on the victim's sex; while men murder other men in custom killings that include vendetta killings, killings within tribes, or killings between tribes, honour killings are committed against mostly women.⁹⁸² Ilkcaracan states that custom killings pertain to practices more predominant in eastern and south-eastern Turkey in the context of semi-feudal traditional economies and among Kurdish communities.⁹⁸³ These practices cause women's deaths to be issued by the so-called extended family because of accusations of dishonouring the family.⁹⁸⁴ Ilkcaracan analyses custom killings and honour killings as follows:

⁹⁷⁷Salih Zeki Iskender, *Ogreti ve Yargisal Kararlar Isiginda Töre Saikiyle Insan Oldurme Sucu (Namus Cinayetleri) / Custom Killings in the Light of Judiciary Decisions (Honour Killings)* (Yetkin Yayinlari, 2011) 52.

⁹⁷⁸ *ibid.*

⁹⁷⁹ *ibid.*

⁹⁸⁰ See Section 2.5.3.1 in the Chapter 2 for further reading.

⁹⁸¹ Filiz Kardam, Zeynep Alpar, I. Yuksel, and E. Ergun, *The Dynamics of Honor Killings in Turkey* (United Nations Population Fund Ankara, 2005) 63-64.

<http://www.unfpa.org/upload/lib_pub_file/676_filename_honourkillings.pdf> accessed: 12/11/ 2014.

⁹⁸² Leyla Pervizat, 'An Interdisciplinary and a Holistic Attempt to Understand the Honor Killings in Turkey' in Mariza Correa and Erica Renata de Souza (eds.), *Family Life a Comparative Perspective on "Crimes of Honor"* (UNICAMP, 2006) 299.

⁹⁸³Pinar Ilkcaracan, 'How Adultery Almost Derailed Turkey's Aspirations' in Pinar Ilkcaracan (ed.), *Deconstructing Sexuality in the Middle East: Challenges and Discourses* (Routledge, 2008) 53

⁹⁸⁴*ibid.*; Hilal O. Ince, Aysun Yarali, and Doğançan Özel, 'Customary killings in Turkey and Turkish modernization' (2009) 45(4) *Middle Eastern Studies* 537, 538. ("In Turkey, customary killings commonly occur in villages or large enclaves where Arabian or Kurdish clans exist."); Aysan Sev'er and Gökçeçişek Yurdakul, 'Culture of Honor, Culture of Change: A Feminist Analysis of Honor Killings in Rural Turkey' (1999) 7(9) *Violence against Women: An International and Interdisciplinary Journal* 964, 970.

While ‘custom killings’ are also ‘honour killings’, honour killing is a broader term that entails any act of murder motivated by the male perception that his honour has been blemished by the actions of female relative. Thus, the term honour killing includes both so-called ‘crimes of passion’, arises from feeling of hurt and jealousy or passion on the part of a spouse, as well as the more traditional customary practice.⁹⁸⁵

Contrary to the preconceived notion that custom killings are only seen in eastern or south-eastern provinces, they also occur in the Black Sea Region where people do not accept the term ‘töre/custom killing’ and do not need the decision of a family council. In cases of suspected or actual adultery, women are murdered in the name of so-called honour by their husbands rather than their brothers or fathers:

In Istanbul, we found that people differentiated ‘töre’ killings [meaning those with family council decisions] from other honour killings. They had a strong tendency to distance themselves from ‘töre’ killings by describing them as a problem concerning a certain region and its people. People who migrated to Istanbul from the Black Sea Region insistently stated that they had honour crimes but not ‘töre’ killings in their region.⁹⁸⁶

This argument parallels the ‘essentialised women’ critique of international law.⁹⁸⁷ Because, while international human rights law makes the distinction between so-called honour killings and so-called passion killings, it sidesteps these fatal practices from the understanding of cultural relativism in favour of the concept of universalism. Contrarily, the anti-essentialism understanding of many feminist groups (in my research these constitute poststructuralist feminists) asserts that international law ignores ‘other women’ whose experiences are structured in varying discourses in their specific regions.⁹⁸⁸ Hence, using the intersectionality approach within feminist legal theory helps international human rights law see women’s different experiences.⁹⁸⁹

The distinction between ‘honour killings’ and ‘töre/custom killings’ shows us the necessity of adopting the intersectionality approach in Turkey. Hence, the concept of honour includes both the motive of ‘custom’ and the motive of ‘passion’ in Turkey. Some honour killings cases in

⁹⁸⁵ Pinar Ilkcaracan, ‘How Adultery Almost Derailed Turkey’s Aspirations’ in Pinar Ilkcaracan (ed.), *Deconstructing Sexuality in the Middle East: Challenges and Discourses* (Routledge, 2008) 53.

⁹⁸⁶ Filiz Kardam, Zeynep Alpar, I. Yuksel, and E. Ergun, *The Dynamics of Honor Killings in Turkey* (United Nations Population Fund Ankara, 2005) 63-64.

⁹⁸⁷ <http://www.unfpa.org/upload/lib_pub_file/676_filename_honourkillings.pdf> (accessed: 12/11/ 2014).

⁹⁸⁸ See Section 2.3.3 in Chapter 2 for further analysis.

⁹⁸⁹ See Section 2.2.3 in Chapter 2 for further discussions.

⁹⁸⁹ See Section 2.4 in Chapter 2 for further analysis.

Turkey constitute what most western countries would regard as so-called ‘passion killings’.⁹⁹⁰ The distinguishing element of so-called ‘*töre*/custom killings’ is a “family council decision” or a “collective decision” to murder the women or girls who dishonour the family name and break the rules of the society.⁹⁹¹ While *töre*/custom killings mostly take place in the eastern and south-eastern parts of Turkey, ‘honour killings’ are seen throughout Turkey. Thus, the distinction between ‘honour killings’ and ‘*töre*/custom killings’ shows us the necessity of adopting the intersectionality approach in the context of Turkish Legislation.

This section argues how academics have analysed the vagueness surrounding the concept of ‘custom’ within and beyond the domain of ‘honour killings’. Honour killing is called ‘custom killing’ in south-eastern and eastern parts of Turkey where women are more vulnerable due to their subordinate gender and ethnic status within strong patriarchal family units.⁹⁹² On the other hand, honour killings are seen in other parts of Turkey where women are also victims because of their gender and the pervasiveness a male-dominated mentality in society.

The following section analyses the vagueness of the concept of the ‘*töre*/custom motive’ as an aggravating circumstance in the TCK and thereby an obstacle to the enforcement of laws against VAW. The inconsistent understanding of ‘honour killings’ is exposed by analysing the varying criteria used in the Supreme Court of Appeals’ judgements of so-called honour killings.

4.2.4.3. Inconsistent Interpretation of ‘Honour Killings’ by the Supreme Court of Appeals

The application of international rules at national and local levels remains elusive, and when it comes to implementation, there have always been gaps between the global norms and local responses.⁹⁹³ Moreover, implementing the new laws with due diligence, evaluating the effect of the new regulations, and adjusting the penal code on honour-based crimes are still awaiting completion.⁹⁹⁴ Even though the Turkish Constitution enables an independent judiciary, the judiciary is sometimes influenced by external factors. For instance, judges interpret rules in

⁹⁹⁰ Aydın Findikçi, *Töre Cinayetler Kurd Kulturunun bir parçası mı? / Are So-called ‘Töre(custom) Killings’ a Part of Kurdish Culture?* (Ankara: İmaj Yayınları, 2010) 109.

⁹⁹¹ Turkan Yalcin Sancar, *Türk Ceza Hukukunda Kadın / Women within the Scope of the Turkish Penal Code* (Ankara: Seckin Yayınları, 2013) 257.

⁹⁹² See section 2.5.3.1 in Chapter 2 for further analysis.

⁹⁹³ Filiz Kardam, Zeynep Alpar, I. Yuksel, and E. Ergun, *The Dynamics of Honor Killings in Turkey* (United Nations Population Fund Ankara, 2005) 30.

<http://www.unfpa.org/upload/lib_pub_file/676_filename_honourkillings.pdf> accessed: 12/11/ 2014.

⁹⁹⁴ Leyla Pervizat, ‘Lack of due diligence’ in Mohammad Mazher Idriss and Tahir Abbas (eds.), *Honour, violence, women and Islam* (Routledge, 2010) 142.

ways that privilege ‘family honour’. Turkish civil court judges are in fact open and upfront about their value of family honour and how they take it into account daily when deciding cases. According to Kogacioglu:

They said they were certainly against the victimisation of women in these cases, yet they sympathised with their colleagues in the criminal courts who routinely ordered reduced punishments for perpetrators of honour crimes. Civil Court judges saw their colleagues as “appropriately” taking social norms into consideration when judging.⁹⁹⁵

The State, represented by men, legally defends customary patriarchal and traditional norms that condone the murder of women in the name of honour. For instance, the Sanliurfa Criminal Court from south-eastern Turkey acknowledges that the “judiciary and our court do not have the responsibility to intimidate the public to prevent customary and honour killings.”⁹⁹⁶ Ahmetbeyzade points out that “the state’s representatives, elected officials, and legal authorities” organise their authority, not for retributive justice but to allow and develop a patriarchal form of justice for anticipating future cases of honour crimes.⁹⁹⁷ As radical feminists asserted, the male-dominated mentality in government institutions—from judges to all legal officers—firstly has to be eliminated to meet their obligations to the CEDAW and other international human rights treaties. The following sections reveal how this mentality functions in the judiciary and its judgements. They first discuss the inconsistent criterion of the ‘family council decision’ then how judges apply the ‘unjust provocation’ provision because of the TCK’s vague language.

4.2.4.3.1. Sole Criterion: The ‘Family Council Decision’ regarding ‘Honour Killings’

The term *töre* with its ethnic connotation underpins the ‘family council decision’ as an element of the Court of Appeals’ litigation of so-called ‘custom killings’. The Court of Appeals enacts the condition that a customary killing is committed after the family council decision in its judgments according to Article 82(k).⁹⁹⁸ The Supreme Court of Appeals takes into consideration decisions on custom crimes cases involving perpetrators who claim to have

⁹⁹⁵ Dicle Kogacioglu, ‘The Tradition Effect: Framing Honor Crimes in Turkey’ (2004) 15(2) *Differences: a journal of feminist cultural studies* 119, 124.

⁹⁹⁶ Vildan Yirmibesoglu, *Topraga Dusen Sevdalar - Töre ve Namus Gerekcesiyle islenen cinayetler / Love Fallen into the earth – Murders Committed with the Reasoning of Customs and Honour* (Istanbul: Hurriyet Yayinlari 2007) 228.

⁹⁹⁷ Cihan Ahmetbeyzade, ‘Gendering Necropolitics: The Juridical-Political Sociality of Honor Killings in Turkey’ (2008) 7(3) *Journal of Human Rights* 187, 200.

⁹⁹⁸ Mazhar Bağlı and Ertan Özensel, *Türkiye’de Töre ve Namus Cinayetleri. Töre ve Namus Cinayeti İşleyen Kişiler Üzerine Sosyolojik Bir Araştırma / Custom and Honour Killings in Turkey. A Sociological Research on Moral and Honour Killers* (Istanbul: Destek Yayınevi, 2011) 61-62.

cleansed his honour and saved his family's dignity. In such decisions, there should be evidence that the family council took the decision of killing within the scope of custom killing.⁹⁹⁹ The Turkish Supreme Court of Appeals' decisions follow an abstract notion of 'family council verdict when giving judgements on killings committed in the name of 'custom'. For instance, the Supreme Court of Appeals takes family council verdicts themselves into consideration in its judgements. According to its judgment number 2008/1986 of 14 March 2008, the crime was not committed in the name of 'custom' because there is no definite and convincing evidence for the murder of the child victim known to be pregnant, having been committed as result of a family council decision.¹⁰⁰⁰ The evaluation on this ruling is in the 2010 Shadow NGO Report on Turkey:

Moreover, in a ruling issued in 2008, the Supreme Court of Appeals sought the existence of a — family assembly verdict, a rather abstract notion which is almost impossible to prove, in order to sentence the accused with aggravated homicide. This ruling nullifies Article 82/k of the Penal Code, which foresees — aggravated punishment for the perpetrators of killings in the name of custom. Furthermore, women's organizations' demands to be granted intervener status in such cases are constantly rejected, leaving the chair of the intervener — who is supposed to protect the rights of the victim against the defendant — unattended.¹⁰⁰¹

In its judgment number 2008/3340 of 25 April 2008, the Turkish Supreme Court of Appeals sought the existence of a family council decision.¹⁰⁰² Hatice was murdered by her brother Dursun. She was previously married and divorced and continued to live with her parents. During this period, she had sexual relationship with Remzi Yılmaz, her sister Ayten's husband, and became pregnant. She had an abortion, and her father and brothers were informed. A month before her murder, Remzi and Hatice moved away together, and the defendants who had learned of the incident gathered and planned to kill her resulting family council decision. The defendants (Musa, Mehmet, Yüksel, and Hayati), who learned where Remzi and Hatice lived, brought her into their town, and then her brother killed her. There is

⁹⁹⁹ Seher Cesur-Kılıçaslan, 'Honor Killings in Turkey' (2013) 7(3) *The International Journal of Interdisciplinary Cultural Studies* 27, 29.

¹⁰⁰⁰ The Supreme Court of Appeal of Turkey, Case No: 2007/6700, Decision No: 2008/1986, Judgement given: 14.03.2008. (author's translation).

¹⁰⁰¹ The Executive Committee for NGO Forum on CEDAW-Turkey, 'Shadow NGO Report on Turkey's Seventh Periodic Report to the Committee on the Elimination of Discrimination against Women, 46th Session to CEDAW' (July 2010) 7.

¹⁰⁰² The Supreme Court of Appeal of Turkey, Decision No: 2008/3340, File No: 2007/8437, Judgement given: 25.04.2008. (author's translation).

no doubt that Dursun aimed to kill her, and the Supreme Court decided that the crime constituted a qualified form of felonious homicide because of the grounds of the motive of ‘custom’. However, the judge from the lower court who decided Dursun’s punishment applied a mitigated sentence because of the ‘unjust provocation’. In conformity with Article 82(1)(k), the Supreme Court discarded this decision because of the involvement of a family council that condoned her murder in the name of ‘custom’.¹⁰⁰³ This case indicates that the decisions of lower courts still apply unjust provocation as a mitigating circumstance to lessen perpetrators’ punishments.

There are some examples of so-called ‘honour killings’ or ‘customary killings’ resulting from family councils in conformity with Article 82(1)(k) verdicts. Some cases form in which the victim had a sexual relationship with her cousin/brother-in-law or was raped, became pregnant, and had an abortion, and so her father and brothers killed her.¹⁰⁰⁴ Another involves a woman who ran away with her boyfriend and when forced to return home, her brother killed her.¹⁰⁰⁵ In such cases the court seeks evidence that a family council decision was made to commit the murder so the brothers/fathers could cleanse their honour and restore family dignity.¹⁰⁰⁶ However, such judgements lead to unpunished members of the family councils.

This narrow understanding of ‘family council decisions’ in court judgements of so-called honour killings raises the question of whether so-called honour killings without family council decisions do not constitute murder with the motive of custom or honour. In other words, the Court of Appeals gives judgements in which they consider honour-based families/tribes that have cultural and traditional norms controlling women’s behaviours/sexualities via patriarchal patterns. This brings into account whether such crimes are committed exclusively in the tribal communities of eastern and south-eastern Turkey. The same issue has been raised when questioning whether so-called ‘honour killings’ are only seen in migrant/minority or Muslim families in the West.¹⁰⁰⁷

This section argues that the Supreme Court of Appeals has used the sole criterion of the ‘family council decision’ when deciding honour killing cases. The criterion’s use reveals the

¹⁰⁰³ *ibid.*

¹⁰⁰⁴ The Supreme Court of Appeal of Turkey, Decision No: 2010/3340, File No: 2009/8437, Judgement given: 25.04.2008. (author’s translation).

¹⁰⁰⁵ The Supreme Court of Appeal of Turkey, Decision No: 2010/605, File No: 2009/8861, Judgement given: 01.02.2010. (author’s translation).

¹⁰⁰⁶ Mahmut Koca, ‘Türk Ceza Hukukunda Töre Saikiyle Öldürme / Custom Killings in the Turkish Penal Code’ in Adem Sozuer (ed.), *Academic Program and Films of Second International Crime and Punishment Film Festival: Violence and Discrimination against Women* (Istanbul Universitesi Yayinlari, 2012) 232.

¹⁰⁰⁷ See Section 2.2.4 in Chapter 2 and Sections 3.2.1 and 3.3.4 in Chapter 3 for further analysis.

inconsistency of punishments given to honour killers. This section further analyses the concept of ‘family council’ as a basic principle of defining honour killings, especially in families from South-eastern of Turkey that follow the collective decision-making mechanism of condoning murder.¹⁰⁰⁸ Nevertheless, so-called ‘honour killings’ involve not only killings in the extended family seen in eastern Turkey but also killings with the motive of ‘honour’ without a family council decision. In the Turkish context, women who are murdered because of jealousy (supervised and controlled by their husbands/ex-husbands or lovers/ex-lovers with the motive of individual honour) should be assessed also under the context of so-called ‘honour killings’.

4.2.4.3.2 ‘Unjust Provocation’ to ‘Honour Killings’

This section argues how Article 29 of the TCK is applied ‘unjust provocation’ to so-called ‘honour killings’ because of the unambiguous language of Article 82(k). It further demonstrates how some perpetrators of honour killings get reduced punishments while the perpetrators of custom killings do not apply Article 29 of the TCK.

Under the TCK, custom and honour killers are sentenced to heavy prison terms, although the term of ‘custom’ instead of ‘honour’ may result in less severe sentences. Article 29 regulates “Unjust Provocation” as follows:

A person committing an offence with an effect of anger or asperity caused by the unjust act is sentenced to imprisonment from eighteen years to twenty-four years instead of heavy life imprisonment, and to imprisonment from twelve years to eighteen years instead of life imprisonment. In other cases, the punishment is abated from one-fourth up to three-thirds.¹⁰⁰⁹

The main reason why ‘unjust provocation’ is interpreted by the drafters of the TCK is that if the unjust provocation is brought into cases where the perpetrator acted out of anger or asperity prompted by an unjust act, and the perpetrator was found to have acted under this influence, this provision permits considering the perpetrator’s psychological state at the time of the killing.¹⁰¹⁰ The justification of Article 29 states that sentence reductions do not apply to customary killings; however, its justification qualifies that “this may not be the case in all of

¹⁰⁰⁸ See Section 2.4.3.5 in Chapter 2 for further analysis.

¹⁰⁰⁹ Turkish Penal Code 2005/5237, Art. 29.

¹⁰¹⁰ TBMM, ‘Turk Ceza Yasa Tasarisi ve Adalet Komisyon Raporu / The Draft of Turkish Penal Code and Justice Commission Report’ *TBMM Tutanak Dergisi / Turkish Grand National Assembly Account of Proceedings* Period 22 Legislation Year 1 Meeting No.66
<<https://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss664m.htm>> accessed: 12/02/2016 (author’s translation).

honour killings.”¹⁰¹¹ This permits the opportunity for, in some cases, the mitigation defence to be applied. However, the justification of Article 29 also emphasises that Article 29 should not be applied to reduce the punishment of a brother or father who murders a woman who was sexually abused.¹⁰¹²

These justifications of Article 29 raise the same complex issue in the application of the crime committed in the name of ‘honour’ or ‘custom’. The vague language of Article 82, which includes aggravating conditions for homicide and has been amended to ‘killings in the name of custom’ instead of including ‘honour’, results in a narrower scope for the provision’s applicability.¹⁰¹³ Boon states that while these improvements are crucial steps in the right direction, they do not entirely eradicate the probability of sentence reductions for so-called ‘honour killings’.¹⁰¹⁴

While the Supreme Court of Appeals asserts that murders committed in the name of ‘custom’ are a product of a collective decision/family council decision, there are other cases where ‘unjust provocation’ are not applied; for instance, a woman can be killed by her husband/brother/lover/father in a planned manner because of her lifestyle, preferences, behaviours, and thoughts.¹⁰¹⁵ In these cases, the judge sentences life imprisonment to the murderer pursuant to Article 82(1)(k), suggesting that the Supreme Court of Appeals interprets the terms ‘honour’ and ‘custom’ identically in its judgements.¹⁰¹⁶ This interpretation enables us to infer that the provision of ‘unjust provocation’ therefore cannot be applied to a crime committed in the name of ‘honour’ as an individual act. For instance, in its judgment number 2009/293 of 30 January 2009, the defendant murdered Gulsen because of gossip that she was cheating on him thereby bringing shame on his ‘honour’. The defendant knew that his wife, Gulsen, was pregnant and that the time for giving birth was approaching. When Gulsen was sleeping, the defendant stabbed her 9 times with a knife; 4 stab wounds were enough to kill her. The act of killing was carried out as an individual decision according to the Court.

¹⁰¹¹ Devrim Aydin, ‘Yeni Türk Ceza Kanunu’nda Haksız Tahrik / *Unjust Provocation in the new Turkish Penal Code*’ (2005) 54(1) *AÜHFD* 225, 226.

¹⁰¹² TBMM, ‘Türk Ceza Yasa Tasarısı ve Adalet Komisyon Raporu / *The Draft of Turkish Penal Code and Justice Commission Report*’ *TBMM Tutanak Dergisi* / *Turkish Grand National Assembly Account of Proceedings* Period 22 Legislation Year 1 Meeting No.64 <<https://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss664m.htm>> accessed: 12/02/2016 (author’s translation).

¹⁰¹³ Rebecca E. Boon, ‘They Killed Her for Going Out with Boys: Honor Killings in Turkey in Light of Turkey’s Accession to the European Union and Lessons for Iraq’ (2006) 35 *Hofstra L. Rev.* 815, 834.

¹⁰¹⁴ *ibid.* 835.

¹⁰¹⁵ Turkan Yalcin Sancar, *Türk Ceza Hukukunda Kadın/Women within the scope of the Turkish Penal Code*, (Ankara: Seckin Yayinlari, 2013) 284.

¹⁰¹⁶ Recep Dogan, ‘Yargıtay Kararlarında Töre Saikiye Oldurme Sucu / *Understanding the Concept of Customary Killing in the Light of Rulings of the Appeal Court*’ (2016) 126 *TBB Dergisi* 123, 138.

This case entails the murder of a person who was heavily pregnant and could not defend herself. Thus, the motive of the murder was premeditated with the motive to restore family 'honour'.¹⁰¹⁷ This is an example of a case involving “*namus ve serefini eksiltme*” (bringing shame on his reputation and honour of family). In this case, the judge states that “because of the rumour on Gulsen’s cheating her husband, the relationships between the two families are completely broken. She is accused of bringing shame of the family’s reputation and honour or misbehaving of the family honour.”¹⁰¹⁸ In this context, the crime of killing with the motive of custom is measured against so-called honour killings, which is not the place for the application of unjust provocation provisions. According to this approach, the crime of *töre*/custom killings can also be litigated in the event of sudden anger since the judge here applies Article 82(k).

However, other judgements reveal the use of ‘unjust provocation’ used as a mitigating circumstance to reduce punishments. The ECtHR also argued the practice of the criminal courts in Turkey in its landmark judgement of the case of *Opuz v. Turkey*. In murderer defence submissions the accused (the applicant’s husband) claims to have killed his mother-in-law to protect his honour:

Because she had induced his wife to lead an immoral life, like her own, and had been taking his wife and children away from him. He further alleged that on the day of the incident, when he asked the deceased where she was taking the furniture and where his wife was, the deceased had replied “F... off, I will take away your wife, and sell [her]”. He stated that he had lost his temper and had shot her for the sake of his honour and children.¹⁰¹⁹

The Diyarbakir Assize Court sentenced him to life imprisonment, but considering the fact that the perpetrator had committed the offence as a result of provocation and had good conduct during trial, the Court mitigated the original sentence, “changing it to 15 years and 10 months’ imprisonment and a fine of 180 new Turkish liras. In view of the time spent by the convict in pre-trial detention and the fact that the judgment would be examined on appeal, the court

¹⁰¹⁷ The Supreme Court of Appeals of Turkey, Decision no. 2009/293, File no. 2008/10901, Judgement given 30 January 2009 (author’s translation).

¹⁰¹⁸ The Supreme Court of Appeals of Turkey, Decision no. 2009/293, File no. 2008/10901, Judgement given 30 January 2009 (author’s translation).

¹⁰¹⁹ *Opuz v. Turkey*, Application No. 33401/02 (Council of Europe: European Court of Human Rights, 09/09/2009), para. 56.

ordered the release of H.O.”¹⁰²⁰ Thus, the ECtHR stated that “it was the general practice of the criminal courts in Turkey to mitigate sentences in cases of ‘honour crimes’.”¹⁰²¹ In cases concerning ‘honour crimes’, criminal courts impose very lenient punishment or no punishment at all on the perpetrators of such crimes.”¹⁰²²

In its judgment number 2010/3058 of 28 April 2010, the victim, who was separated from her husband, opened a divorce case. When she started to live with someone else, she was killed by her husband and children. Although the defendants’ motive was clearly the same, the Supreme Court of Appeals decided in favour of the husband because the victim did not comply with her loyal obligation to her husband as stated in Article 185¹⁰²³ of the Turkish Civil Code. According to the Supreme Court of Appeals, the unjust provocation provision should have been enforced because there was no motive behind the crime in the name of *töre*/custom in this context by the lower court. Nevertheless, the Supreme Court of Appeals decided in favour of her children that there was no loyalty obligation in conformity with Article 185 of the Turkish Civil Code. The motive behind their action was to save their family’s honour/custom. Thus, while her children killed in the name of *töre*/custom and are not subject to the unjust provocation provision, her husband can apply the unjust provocation principle with the motive of killing in the name of honour,¹⁰²⁴ although he openly acted with the same motive as his children. Based on this case, we can infer that if a woman commits adultery, it can constitute an unjust act in the defence case. Pursuant to Article 29 of the TCK, the penalty of imprisonment from 18 to 24 years in cases of unjust provocation applied, but the lower court sentenced him 18 years’ imprisonment. Thus, the Supreme Court of Appeals discarded the decision on the punishment of the defendant of husband sentenced less punishment as jailed 18 years.¹⁰²⁵ This case demonstrates that judges from the lower court tend to sentence defendants using the lower-limit penalty. Their use of the ‘loyalty principle’ exhibits the continuing legacy of a patriarchal male-dominated mentality in the judiciary that still regards wives as the property of their husbands. This contradicts the abolishment of

¹⁰²⁰ *ibid.* para.57.

¹⁰²¹ *ibid.* para. 121.

¹⁰²² *ibid.*

¹⁰²³ Turkish Civil Code 2001/4721, Art. 185.

Article 185:

by getting married, union of marriage is constituted between spouses. Spouses, are liable to provide happiness of that union with cooperation and bestow diligence to care, education and custody of children together. Spouses are obliged to live together, be loyal and be helpful to each other.

¹⁰²⁴ The Supreme Court of Appeals of Turkey, Decision no. 2010/3058, File no. 2009/6772, Judgement given 28 April 2010 (author’s translation).

¹⁰²⁵ *ibid.*

adultery's criminal status in the 2005 TCK. Hence, the patriarchal mentality has always found a way to persist its control women and their sexuality in society and in government institutions in implicit (the purposefully vague language of 'custom' rather than 'honour') and explicit (judges applying the 'loyalty principle') ways.

In its judgment number 2010/111 of 11 May 2010, the General Assembly of the Court of Appeals attempted to resolve this ambiguity by introducing three standards:¹⁰²⁶ 1) the perpetrator acts with 'belief of having a duty' in the crime of so-called 'custom'; 2) 'unjust provocation' cannot be applied if the crime is committed in the name of 'custom'; 3) in case of provocation, the crime's qualified form shall be changed to so-called 'honour killing'.¹⁰²⁷ However, the Supreme Court of Appeals finds it difficult to enforce these standards because there is no overarching standard on unjust provocation provisions to be applied in cases. This hindrance is analysed in the following chapter to reveal how these criteria have affected the punishments of killings committed in the name of 'honour' and 'custom' after Turkey's application to the Istanbul Convention.¹⁰²⁸

4.2.4.4. Female Suicides in the Name of 'Honour'

The prior section argues that despite legal regulations in accordance with Article 82(k) of the TCK and Article 29 (June 2005), the language of law on the concepts of 'honour' or 'custom' reflects the judgements of the Supreme Court of Appeals. It further analyses how the patriarchal mentality of judges prevents the Turkish system from eliminating so-called 'honour killings'. This section addresses female suicides in the name of 'honour' as another manifestation of preserving traditional norms, particularly in southern Turkey. The UN Special Rapporteur and academic studies of this region report high numbers of such suicides. This demands more responsibility of law enforcement officers to investigate these cases diligently, punish criminals, and thereby eliminate such crimes in the region and country.

As an alternative method of preserving traditional principles, the increase in 'honour suicides' has constituted the collateral damage of stricter laws and harsher punishments.¹⁰²⁹ However, judges rarely impose harsher sentences on honour killers, and police officers do not apply the due diligence principle to homicides, suspicious deaths, disappearances of women, or

¹⁰²⁶ The General Assembly of the Supreme Court of Appeals, Decision no. 2010/111, File no. 2009/1-56, Judgement given 11 May 2010 (author's translation).

¹⁰²⁷ *ibid.*

¹⁰²⁸ See Section 5.5 in Chapter 5 for further analysis.

¹⁰²⁹ See Sections 4.3.2.1 and 4.3.2.2 in this chapter.

extraordinary ‘accidents’.¹⁰³⁰ Self-inflicted violence, especially increasing rates of suicidal behaviour, is seen in one of the South-eastern provinces of Turkey, such as Batman.¹⁰³¹ To evade the provisions of the TCK concerning honour killings, people in Batman are making the victim kill herself instead of committing murder.¹⁰³² From the beginning of 2000, the provinces of Batman and Urfa have been drawn attention to women’s suicides forced by their families in the name of ‘honour’.¹⁰³³

The Special Rapporteur Yakin Erturk reported her initial findings on women suicides linked to honour killings after visiting Batman and Sanliurfa in South-eastern Anatolia in 2007.¹⁰³⁴

A 2005 survey conducted among 336 men and 94 women from South-eastern Anatolia by Prof. Aytekin Sir of Dicle University showed that 37.4 per cent of all respondents believed that murder was justified if a wife had committed adultery. The General Directorate of Security recently conducted a most commendable survey of 1,091 *töre* murders that were committed in urban districts under police jurisdiction between 2000 and 2006: 480 of the total 1,190 victims were women; 710 were men. Nearly one third of the murders were categorized as honour-related, another third concerned intrafamily conflict, 10 per cent were blood feuds and the remaining cases involved rape, disputes over marriage arrangements, etc. The study also showed that while the vast majority of the murders were committed in areas which receive high levels of migration (such as Ankara, Istanbul, Izmir), the birthplace of 50 per cent of the suspects and victims was an eastern province.

Based on these statistics, we can infer that the possible causes of women suicides could be that families are forcing victims to commit suicide or disguising the murder as a suicide; another reason might be (as mentioned before) that the reformed Penal Code provides higher penalties for customary killings, encouraging many families to disguise honour murders as suicides.¹⁰³⁵ Links between patriarchal oppression and human rights violations, especially forced and early marriages, domestic violence, incestuous rape, and denial of reproductive

¹⁰³⁰ Clara Rubin, ‘Between Traditional Practice and Secular Law: Examining Honor Killings in Modern Turkey’ (2011) 11.

<<http://middlab.middlebury.edu/files/2111/04/Honor-Killings-essay1.pdf>> accessed: 12/11/2014.

¹⁰³¹ Naile Bilgili and Gulsen Vural, ‘The Heaviest Way of Violence against Women: Honor Killings’ (2011) 14(1) *Journal of Anatolia Nursing and Health Sciences* 66, 68.

¹⁰³² *ibid.*

¹⁰³³ *ibid.*

¹⁰³⁴ UNCHR, ‘Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Yakin Erturk, Addendum: Mission to Turkey’ (2007) UN doc. A/HRC/4/34/Add.2, para. 31.

¹⁰³⁵ *ibid.* para. 37.

rights have contributed to female suicides in the province.¹⁰³⁶ For instance, Sev'er and Bagli's research on the family members of 31 suicide victims in Batman in 2001 shows that "a whopping 84% of the female victims had to get special permission or arrange for a chaperone to go to a park, or to attend a social event; two thirds of the victims' families we polled were totally opposed to allowing their female children in mixed-sex peer groups; ninety percent of the guardians of those who died were opposed to having their daughters/sisters acquire a boyfriend."¹⁰³⁷ Consequently, women's honour is more significant than their lives in patriarchal societies.¹⁰³⁸ Erturk also points out in her report:

There have been many misleading statements about suicides of women in Southeast Turkey and Batman specifically. Between 2000 and 2005, there were 105 suicides in Batman: 61 victims were women, 44 were men. In 2006, there have been so far 7 suicides: 5 women and 2 men and 53 suicide attempts of which 36 are women and 17 men [...] in which there were reasonable grounds to believe that the suicide was instigated or that a so-called honour killing was disguised as a suicide or an accident. Some of these cases have been referred to the courts for prosecution.¹⁰³⁹

Families force female family members to kill themselves to save their young male family members from being sent to jail. Families close a girl in a room for a long period without giving her any food, but give her a gun, a rope, or poison, saying 'clean our shame'.¹⁰⁴⁰ Victims are forced to commit suicide to cleanse their families' shame; however, after deep investigation, we see that murders are committed in the name of honour, not suicide.

There are some cases in which perpetrators have been sentenced life imprisonment after a deep investigation. For instance, pursuant to the Supreme Court of Appeals' judgment number 2002/613 of 4 March 2002,¹⁰⁴¹ Nayime, who was 13 years old, was forced to marry an old man for a dowry payment. She escaped her husband and fled to Izmir. After her family asked the police to take measures to have her return, she was delivered to her family; this act was

¹⁰³⁶ *ibid.* paras. 45-50.

¹⁰³⁷ Mazhar Bagli and Aysan Sev'er, 'Female and male suicides in Batman, Turkey: poverty, social change, patriarchal oppression and gender links' (2003) 2(1) *Women's Health and Urban Life: An International and Interdisciplinary Journal* 60, 78.

¹⁰³⁸ Aysan Sev'er and Gökçeçek Yurdakul, 'Culture of Honor, Culture of Change: A Feminist Analysis of Honor Killings in Rural Turkey' (1999) 7(9) *Violence against Women: An International and Interdisciplinary Journal* 964, 998.

¹⁰³⁹ UNHRC, 'Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Yakin Erturk, Addendum: Mission to Turkey' (2007) UN doc. A/HRC/4/34/Add.2, para. 59.

¹⁰⁴⁰ Rebecca E. Boon, 'They Killed Her for Going Out with Boys: Honor Killings in Turkey in Light of Turkey's Accession to the European Union and Lessons for Iraq' (2006) 35 *Hofstra L. Rev.* 815, 842.

¹⁰⁴¹ The Supreme Court of Appeals of Turkey, Decision No: 2002/613, File No: 2001/4973, Judgment given: 04 March 2002 (author's translation).

repeated many times. Finally, she was caught engaging in prostitution and delivered to her family who murdered her by throwing her off a bridge in Istanbul. The perpetrators claimed that Nayime committed suicide, as she reportedly told her family, “I could not look at your face and could not deserve this family since I had sexual intercourse with lots of men.” After the investigation, the First Instance Court ruled that her family killed her in the name honour by throwing her off a bridge, and the Supreme Court of Appeals affirmed the decision of the lower court, sentencing the perpetrators to life imprisonment.¹⁰⁴² In its judgement number 2010/246 of 22 January 2010,¹⁰⁴³ Rahime was murdered by her mother, stepfather, cousin, and two other relatives because the defendants believed that she was not a virgin and had a relationship with a man. Her family informed the police that this case was a suicide, but after someone informed police that this was not a suicide case, police could identify the murderer. The perpetrators were sentenced the crime of *töre*/custom killing.¹⁰⁴⁴ This case emphasises the significance for law enforcement officers, prosecutors, and judges to investigate each suicide case diligently.

4.3. Fragile Measures: The Government’s Circulars on Honour and Custom Killings

Before the Istanbul Convention came into effect on the international law agenda, Turkey had taken crucial measurements to tackle ‘honour killings’ through its Circulars on prevent custom and honour killings and VAW and children. The Circulars are also crucial, solid examples of the collaboration between women NGOs and government institutions to eliminate VAW, particularly so-called ‘honour killings’, in Turkey. However, the following sections discuss that although some measures have been partially put into place, most of them are deficient in practice for eliminating such crimes. They further discuss that despite these attempts to prevent honour killings, political will also plays a crucial role in eliminating social, traditional, institutional, and cultural practices that perpetuate VAW and honour killings. The following section analyses the circulars and the challenges of enforcing them.

4.3.1. Prime Ministry’s Circular

One of the significant State policies on honour killings was the establishment in 2005 of A Parliamentary Commission Inquiry¹⁰⁴⁵ that formed “Precautions to be taken to Prevent

¹⁰⁴² *ibid.*

¹⁰⁴³ The Supreme Court of Appeals of Turkey, Decision No: 2010/246, File No: 2009/1759, judgement given: 22.01.2010 (author’s translation).

¹⁰⁴⁴ *ibid.*

¹⁰⁴⁵ The Turkish Grand National Assembly adopted Decision no 849 on May 18, 2005.

Custom and Honour Killings and Violence against Children and Women”.¹⁰⁴⁶ The aim of the Commission was to understand the reasons for honour and custom killings and explore different measurements of violence against women and children. According to the report, preventive and protective measures should be taken because of the disadvantages facing women in a male-dominated social structure. These measures include textbooks, daily speech, visual and written press, films, and academic studies designed to transform the systemic mentality.¹⁰⁴⁷ Moreover, on the issue of preventing *töre*/custom killings, the Department of Religious Affairs should preach to raise public awareness by explaining the harms and disadvantages of the patriarchal family structure and traditional gender roles.¹⁰⁴⁸ The State should work with NGOs and local authorities to organise common campaigns on the prevention of honour killings.¹⁰⁴⁹ This report reiterates Article 5(a) of the CEDAW Convention, stating the need to change harmful discriminatory attitudes toward women and to promote cultural change that will eliminate destructive cultural attitudes and thereby indicate Turkey’s willingness to eliminate such crimes.

The Prime Ministry’s Circular¹⁰⁵⁰ issued in July 2006 and prepared by the Commission marks another turning point:

The Prime Ministry’s Circular is one of the most positive, concrete examples of interaction and cooperation between women’s organizations and state institutions [...] gives voice to a significant portion of women’s demands [...] not only prescribes various protective and deterrent measures in the struggle against violence against women, assigning duties in this regard to both the Turkish Parliament’s General Directorate for the Status of Women and various service institutions, but also describes in detail further measures to be taken in the fields of education, health, and law to this end.¹⁰⁵¹

This circular is a significant document because it explicitly labels the primitive approaches to killing human beings with the notions of honour and morality, focuses on searching for the

¹⁰⁴⁶ Kadinin Statüsü Genel Mudurluğu (KSGM) / General Directorate for the Status of Women, ‘Töre ve Namus Cinayetleri ve Kadınlara ve Çocuklara Yönelik Sıddetin Sebeplerinin Araştırılarak Alınması Gereken Önlemlerin Belirlenmesi Amacıyla Kurulan TBMM Arastırma Komisyonu Raporu / *Report of Parliamentary Research Commission on Prevention of and Measures to Combat Violence against Women and Children, and Custom and Honour Crimes*’ (2006) C.122 TBMM Tutanak Dergisi (author’s translation).

¹⁰⁴⁷ *ibid.*, 132-33.

¹⁰⁴⁸ *ibid.*

¹⁰⁴⁹ *ibid.*

¹⁰⁵⁰ Prime Ministry Circular No: 2006/17, Official Gazette No: 26218, 4 July 2006.

¹⁰⁵¹ Ayşe Gül Altınay and Yeşim Arat, *Violence against Women in Turkey: a Nationwide Survey* (Punto, 2009) 69.

reasons behind honour killings,¹⁰⁵² and emphasises the need for a collaborative approach among institutions and organisations to fight honour killings and domestic violence. Hence, it requires the listed units and institutions to report cases of VAW to the *Sosyal Hizmetler ve Çocuk Esirgeme Kurumu* / Social Services and Child Protection Agency for violence against children and to *Kadının Statüsü Genel Müdürlüğü* / General Directorate for the Status of Women (KSGM) every three months.¹⁰⁵³ The circular requests the Ministry of Justice, Ministry of Health, Ministry of National Education, Ministry of Interior, Ministry of Agriculture and Rural Affairs, Social Services and Child Protection Agency, State Planning Organization, KSGM, universities, municipalities, and several NGOs to collect relevant data and to report the measures taken four times a year.¹⁰⁵⁴ As a State programme, these measures include:

instituting a permanent Commission for the Equality of Men and Women at the Turkish Grand National Assembly; founding a Violence Against Women Watch Committee under the leadership of the General Directorate for the Status of Women; creating a special fund for women to set up a new life after leaving shelters; instituting a national 24/7 hotline; providing financial support for independent shelters established by civil society organizations; and gender mainstreaming in decision-making processes.¹⁰⁵⁵

As per the circular, the Violence against Women Monitoring Committee was set up under the State President in response to the KSGM's determination to prevent VAW and custom/honour killings.¹⁰⁵⁶

4.3.2. The Ministry of Internal Affairs Circular

In line with the Prime Ministerial Circular, the Ministry of Internal Affairs Circular on Coordination of Measures to be taken to Prevent Custom / Töre and Honour Killings¹⁰⁵⁷ was issued on January 2007 and has provided measures to combat violence against women and children and prevent honour and custom crimes. Among these measures, applications by women and children to police (or made directly by law enforcement) will be handled

¹⁰⁵² Eray Karinca, *Kadına Yönelik Aile İçi Sıddete İlişkin Hukuksal Durum ve Uygulama Örnekleri / Legal Status and Implementation Examples regarding Domestic Violence against Women* (KSGM, 2008) 54.

¹⁰⁵³ *ibid.*, 55.

¹⁰⁵⁴ *ibid.*

¹⁰⁵⁵ Ayşe Gül Altınay and Yeşim Arat, *Violence against Women in Turkey: A Nationwide Survey* (Punto, 2009) 3.

¹⁰⁵⁶ KSGM, *National Research on Domestic Violence against Women in Turkey* (KSGM, 2010) 23.

¹⁰⁵⁷ Interior Ministry Circular No: 2007/8 (EGM 2007/6), 11.01.2007.

immediately in a humanitarian approach with contributions by female officers.¹⁰⁵⁸ In such cases, the judicial process will take place in the frame of Family Protection Law (No. 4320), Criminal Procedure Law (No. 5271), and Child Protection Law (No. 5395).¹⁰⁵⁹ In addition, committees are formed with representatives comprising Province Governors, District Governors, local administrations, social services, provincial directors of national education and representatives of NGOs, and other institutions for the prevention of honour and custom crimes.¹⁰⁶⁰ Moreover, privacy principles of women and children who face honour killings or domestic violence and are under protection in shelter houses will rise to the top level.¹⁰⁶¹ In places where there is a lack of women's shelters, law enforcement officers or police will take victims under protection and provide them with a place to live until they are moved to a shelter.¹⁰⁶² In brief, this circular aims to provide fast and efficient activation of the duties and responsibilities stated in the Prime Ministerial Circular and details the works required to be achieved in eradicating acts of violence against women and children and honour and custom killings.¹⁰⁶³

With the cooperation of KSGM and UNFPA, the “Stop Violence against Women Campaign” has been formed to improve the social sensitivity and awareness of men through education developed via public institutions, media organisations, and local administrations.¹⁰⁶⁴ The project was financed by the European Union (EU) and received technical support from the United Nations Population Fund (UNFPA). In addition, the civics course program has been enriched with subjects such as gender equality, women's human rights, violence against women, and prevention of custom and honour killings for inductees in the military service.¹⁰⁶⁵ Moreover, the Ministry of Justice has enforced training service for judges and public prosecutors. Further, Psycho-social Assistance and Crises Intervention Centres have been formed to prevent suicide cases as part of the Ministry Health Program, and the “Help Line 183 for Counselling Women and Children” assists victims under the risk of violence.¹⁰⁶⁶

¹⁰⁵⁸ *ibid.* para. 1.

¹⁰⁵⁹ *ibid.* para. 2.

¹⁰⁶⁰ *ibid.* para. 4.

¹⁰⁶¹ *ibid.* para. 5.

¹⁰⁶² *ibid.* paras. 7-8.

¹⁰⁶³ Banu Akadli Ergocmen, Sunday Oner and Elif Kurtulus Yigit, ‘Introduction’ in KSGM (ed.), *National Research on Domestic Violence against Women in Turkey* (KSGM, 2010) 22-23.

¹⁰⁶⁴ KSGM, *Combating Domestic Violence against Women National Action Plan 2007-2010* (KSGM, 2007) 14-17.

¹⁰⁶⁵ *ibid.*

¹⁰⁶⁶ *ibid.*

These developments are significant steps to eliminating VAW and so-called honour killings in Turkey, especially the principle of due diligence as an active responsibility of law enforcement officers to implement these steps efficiently. However, the next section discusses the limitations of these circulars identified in EU reports and a national survey report, specifically concerning crime prevention, the protection women and girls at risk of death, and the prosecution and punishment of perpetrators of honour killings.

4.3.3. Limitations of Implementing the Circulars

The circulars remain deficient because of the lack of sanctions to efficiently enforce their measures and a budget for their implementation.¹⁰⁶⁷ Additionally, victims of domestic violence who apply to law enforcement agencies or complain are conveyed to judicial authorities. However, complaints by victims are not considered ‘family protection’, and the authorities provide the address of the shelter to the victim’s spouses and relatives. For these reasons, the Ministry of Justice, to guarantee more efficient implementation of Law No. 4320, communicated Circular No. 35¹⁰⁶⁸ to all judges and public prosecutors in 2006.¹⁰⁶⁹

These are very crucial attempts that show Turkey’s determination to eliminate honour killings, but the EU Commission states that:

Implementation of the national action plan on gender equality and violence against women lacks sufficient human and financial resources. The action plan does not contain firm and measurable targets. A number of members of the judiciary were trained on gender issues under the protocol signed between the Directorate-General for Women's Status and the Ministry of Justice. However, additional national resources are required to sustain this training. A comprehensive approach to women’s rights has yet to be adopted, with the participation of women’s organisations.¹⁰⁷⁰

Despite these important legal attempts and the formation of enforcement bodies to protect women and children against violence, Turkey is usually criticised with the same statement by the Commission of the European Communities: “Honour killings, early and forced marriages

¹⁰⁶⁷ Ayşe Gül Altınay and Yeşim Arat, *Violence against Women in Turkey: A Nationwide Survey* (Punto, 2009) 3.

¹⁰⁶⁸ The Ministry of Justice, Circular No: 2006/35, 01.01.2006.

¹⁰⁶⁹ Banu Akadli Ergocmen, Sunday Oner and Elif Kurtulus Yigit, ‘Introduction’ in KSGM (ed.), *National Research on Domestic Violence against Women in Turkey* (KSGM, 2010) 22.

¹⁰⁷⁰ European Commission, ‘Turkey Progress Report SEC (2010) 1327’, Brussels, 9 November 2010, 26.

and domestic violence against women remain serious problems.”¹⁰⁷¹ Moreover, Interior Ministry Circular No. 2007/8, not established under the law, is criticised:

After an initial improvement in cooperation between public institutions, brought about by the Prime Ministerial Circular on combating honour killings and domestic violence against women, concerns arose about this issue over the reporting period. The local coordination boards envisaged in the circular from the Ministry of the Interior have not been established as provided under the law. There is reportedly lack of awareness among law enforcement forces and public administrations of the Ministry of the Interior’s circular on violence against women and children.¹⁰⁷²

The absence of shelters has also been stated as another problem with the enforcement of the laws. Pursuant to Article 14(a) of the Law on Municipalities,¹⁰⁷³ all municipalities with a population bigger than 50.000 are obligated to open shelters for women and children. However, in 2012 Article 14(a) was amended to “a population bigger than 100.000 municipalities are obliged to open shelters.”¹⁰⁷⁴ As of December 2008, according to a woman rights NGO, the Purple Roof’s research,¹⁰⁷⁵ officers running their mutual shelter with the Governorship of Beyoglu (in Istanbul) stated that they cannot be paid by the State based on a decision made after the two-year funding provided by the World Bank had expired. So, one good instance of state-civil society partnerships in running shelters is now a dead project.¹⁰⁷⁶ The EU Commission also comments that:

This provision is not being fully implemented and the number of shelters and other protective and preventive mechanisms falls well short of needs. This puts victims at risk. There is still no effective oversight of the work of shelters and of municipalities and no sanctions are laid down for municipalities which fail to provide shelters.¹⁰⁷⁷

The Ministry of Interior targeted to establish 8 shelters for maltreated women by the end of 2009 with technical support from the UNFPA and financial support from the EU. Moreover, training of staff in the Presidency of Religious Affairs started in 2008, and because this type

¹⁰⁷¹ European Commission, ‘Turkey Progress Report SEC (2010) 1327’, Brussels, 9 November 2010, 26. See European Commission, ‘Turkey Progress Report SEC (2009) 1334’, Brussels, 14.10.2009, 23. European Commission, ‘Turkey Progress Report SEC (2008) 269’, Brussels, 5.11.2008, 20.

¹⁰⁷² European Commission, ‘Turkey Progress Report SEC (2009) 1334’, Brussels, 14.10.2009, 29.

¹⁰⁷³ The Municipal Law No: 5393, published in the Official Gazette on 13 July 2005, No. 25874.

¹⁰⁷⁴ The Municipal Law 2005/5393, Art. 14(a).

¹⁰⁷⁵ Ayşe Gül Altınay and Yeşim Arat, *Violence against women in Turkey: a nationwide survey* (Punto, 2009) 70.

¹⁰⁷⁶ *ibid.*

¹⁰⁷⁷ European Commission, ‘Turkey Progress Report SEC (2010) 1327’, Brussels, 9 November 2010.

of collaboration between relevant parties is quite recent, its effect on the implementation process has not yet been determined.¹⁰⁷⁸ However, the number of shelters remains inadequate, and the implementation of the Law on Municipalities is still incomplete.

This section indicates that the circulars showcase a significant improvement of political will. However, it also underscores the limitations of the circulars in their application of EU Commission reports and academic research—evident in shortfalls such as the insufficient numbers of shelters, the ineffective training of law enforcement officers, and a multi-agency government task force that still fails to prevent so-called honour killings and protect women at risk of death with due diligence.

4.4. Conclusion

This chapter evaluates Turkish Legislation that worked toward providing gender equality and abolishing discriminatory provisions in the system before the ratification of the Istanbul Convention. The system has advanced legislation by amending and enacting new laws that apply contributions by feminists in Turkey and international obligations of the CEDAW and EU. This chapter indicates that the Turkish Civil Code and Turkish Constitution play a significant role in achieving gender equality between women and men in the public and private sphere. Turkey's participation in CEDAW is an important factor in promoting the status of women's human rights in Turkey. The relationships between the CEDAW, Turkish Constitution, and Turkish Civil Code are analysed concerning the principles of equality and non-discrimination, but shortfalls of the laws are also identified for their discriminatory provisions such as age of marriage and family name, through teleological statutory interpretation approach. Moreover, The Family Protection Law, the Circulars to prevent honour/custom killings, and the KSGM's activities are also valued as important policies on the elimination and prevention of such crimes. Nonetheless, problems with implementing and enforcing these measures by law enforcement officers undermine the duty of 'due diligence'.

This chapter further reveals that the TCK is far ahead of the previous TCK in terms of prosecuting and punishing perpetrators of so-called 'honour killings'. Unlike the previous TCK, the TCK does not include a provision that serves to legitimise such killings, but it still contains discriminatory provisions against women such as 'genital examination'. Moreover, the TCK's vague language reveals the hindrances to its application because of inconsistent judicial interpretation of the phenomenon of 'honour killings'. This variability enables the

¹⁰⁷⁸ Helin Uçar, 'Women's Rights in Turkey: Interaction of State and Non-State Actors in the Implementation of Judicial Equality' (2009) 15 *Friedrich-Ebert-Stiftung Fokus Türkei* 1, 13.

application of ‘unjust provocation’ as a mitigating circumstance to perpetrators of honour killings. Although the changes to Turkish Legislation indicate positive progress on providing gender equality by eliminating some discriminatory provisions, the wave of universalism was not strong enough for these changes to have a sustainable impact on Turkish society.

The next chapter investigates the extent to which the Turkish legal system, especially the new “Law to Protect Family and Violence against Women” (No. 6284), has combatted and prevented VAW, particularly so-called ‘honour killings’, after Turkey’s ratification of the Istanbul Convention in 2012. New judgements of so-called ‘honour killings’ cases will be examined after the General Assembly Supreme Court of Appeals’ significant judgement in 2010. The effects of the correlation between Law No. 6248, the TCK, and the Istanbul Convention are discussed through teleological statutory interpretation method on the elimination of so-called honour killings in Turkey.

Chapter 5:

Legal Implications of Turkey's Accession to the Istanbul Convention: Challenges to Preventing 'Honour Killings'

5.1. Introduction

The previous chapter examined the Turkish Legislation regarding the prevention and the punishment of so-called honour killings and assessed its consistency with the CEDAW Convention. Despite the law's shortcomings, its equality and non-discriminatory wording has been mostly achieved by the recent amendments to the Turkish Constitution, the Turkish Civil Code, and the TCK before Turkey's ratification of the Istanbul Convention. The Turkish Legislation has paved the way for preventing such crimes, protecting women from violence, and punishing the perpetrators of honour killings under the obligations of international law and the EU accession process. However, a closer look at the judgements by the Supreme Court of Appeals has revealed that the inconsistent understanding of 'honour killings' leads to vagueness which in turn affects the punishments of murderers in cases of honour killings. More generally, Turkey did not take into account the universality of such crimes (intersecting gender, ethnicity, and sexual orientation) and has not had enough concrete consequences to eliminate honour killings in Turkey.

In this chapter, I examine whether the perceptions of law enforcement practitioners and the judiciary in cases of honour killings have changed after the enactment of the Istanbul Convention on VAW and honour killings in Turkey. I argue that Turkey has done much to implement the Istanbul Convention, but the continuously male-dominated mentality and the emphasis on family coherence and harmony, rather than women as 'individuals' in Turkish Legislation, still hinder the elimination of honour killings.

This chapter examines Turkish Legislation (particularly Law No. 6248) to combat and prevent VAW, particularly honour killings, in Turkey since 2012. I assess this legislation, the loopholes of the law, and its consistency with the Istanbul Convention. In addition, I analyse international and national reports such as the National Research on Domestic Violence Report to demonstrate how the implementation of Law No. 6248 encounters obstacles in practice. I examine further important new judgements held by the Supreme Court of Appeals on 'honour killings' that have continued to maintain the ambiguity regarding the definition of

honour killings. Finally, I discuss feminist critiques of political unwillingness in the government that exposes a contradiction between placing women in the family and promoting gender equality and female autonomy.

5.2. The State's Significant Step: Strengths of the Law to Protect Family and Prevent Violence against Women

In 2012, in response to its ratification of the Istanbul Convention, Turkey adopted the Law to Protect Family and Prevent Violence against Women (No. 6284)¹⁰⁷⁹ and abolished Family Protection Law No. 4320.¹⁰⁸⁰ Law No. 6284 emphasises the importance of preventing violence against women and ensures that the measures taken to protect women from violence adopt inclusive policies to fight VAW. Significantly, women's organisations actively participated in the law's preparation. For the first time in Turkey, 242 women's organisations worked on the draft law under the aegis of "*Siddete Son Platformu / Platform to End Violence*" and negotiated with the Ministry of Family and Social Policy.¹⁰⁸¹ In the following section, I analyse the strengths of Law No. 6248 to reveal its compatibility with the Istanbul Convention: the aim and the scope of the Law and its definitions, protective measures, preventive measures, preventive imprisonment, violence prevention and monitoring centres, and victim-reporting processes.

5.2.1. Strength No. 1: Aim and Scope of Law No. 6248

One of the strengths of Law No. 6248's aim and scope is that although it continues to include the phrase "protection of the family", it also includes "prevention of violence against women". This is a major step forward, possible only after the active participation of women's rights NGOs in the process of drafting the law. Hence, the aim of the law is said to be "to protect the women, the children, the family members and the victims of stalking, who have been subject to the violence or at the risk of violence, and to regulate procedures and principles with regard to the measures of preventing the violence against those people."¹⁰⁸² This suggests that women should be protected from violence only because they are women, not because they are spouses or mothers. This language is important because it pushes

¹⁰⁷⁹ The Law to Protect Family and Prevent Violence against Women 2012/6248 will be referred to as "Law No. 6284" or "the Law" throughout the thesis.

<<http://www.evicisiddet.adalet.gov.tr/en/dosya/up/icerik/1-6284-sayili-kanun.pdf>> accessed: 07/02/2016.

¹⁰⁸⁰ See section 4.2.3 for an evaluation of Law No. 4320 in the Chapter 4.

¹⁰⁸¹ Ulker Sener, '6248 Sayili Ailenin Korunmasi ve Kadina Yonelik Siddetin Onlenmesine Dair Kanun Ne Getiriyor? / What has the Law No. 6284 on Protecting the Family and Preventing Violence Against Women brought into account?' (2012) *Türkiye Ekonomi Politikali Arastirma Vakfi* 1, 2.

<http://www.tepav.org.tr/upload/files/13330268091.6284_Sayili_Ailenin_Korunmasi_ve_Kadina_Yonelik_Siddetin_Onlenmesine_Dair_Kanun_Ne_Getiriyor.pdf> accessed: 12/02/2017.

¹⁰⁸² Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 1(1).

domestic law away from the traditional notion of women's roles that places them exclusively in the family. It also steps looking at family as an honour-based unit in which VAW is a private matter to be kept within the family. Incorporating and responding to women and their concerns transcends the gendered notion of public/private dichotomies in law.¹⁰⁸³ In line with the Istanbul Convention, Law No. 6248 clarifies the definition of VAW in relation to the public/private dichotomy; VAW is the same "whether occurring in public or in private life".¹⁰⁸⁴ In this manner, the law accommodates feminist critiques of international human rights law regarding this dichotomy by allowing gender-based understandings of these critiques to inform domestic laws. These provisions in Law No. 6248 are significant because they comply with current international human rights law developments and standards.

The second strength of Law No. 6248 is the scope of its beneficiaries. Contrary to Law No. 4320, which separated women between those "living under same roof" and those "living separately despite being married",¹⁰⁸⁵ Law No. 6248 protects women without consideration to their marital status as ruled in the context of CEDAW and the Istanbul Convention.¹⁰⁸⁶ This eliminates discrimination against women based on their marital status. It follows the ECtHR judgement of *M.G. v Turkey*¹⁰⁸⁷ abolishing the separation between married women and divorced women who are seeking protection orders. This exhibits Turkey's decisive improvements in enacting Law No. 6248.

Children who are subject to violence, exposed to a higher a risk of being subject to violence, or witnesses of domestic violence are also included as beneficiaries of Law No. 6248's scope of protection. The law recognises that children who are the victims of violence are affected negatively by the violence such as having mental disorders, failing in school, and exhibiting

¹⁰⁸³ Hilary Charlesworth and Christine M. Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000) 59.

See section 2.3.2 in Chapter 2 for further analysis of the public/private dichotomy based on gender.

¹⁰⁸⁴ The Istanbul Convention, Art. 3(a). See section 3.3 in Chapter 3 for further reading.

¹⁰⁸⁵ See section 4.3.3.2 in Chapter 4 for further reading.

¹⁰⁸⁶ See sections 3.2.2.1 for an evaluation of Article 16(1) of the CEDAW and 3.3.2 for an evaluation of Article 4(3) of the Istanbul Convention in Chapter 3.

¹⁰⁸⁷ *M.G. v. Turkey*, Application No. 646/10 (Council of Europe: European Court of Human Rights, 22 March 2016) para. 103.

violent behaviour later in life.¹⁰⁸⁸ Thus, they are accepted as victims of domestic violence according to the Istanbul Convention.¹⁰⁸⁹

The third strength is that although the previous legislation, Law No. 4320, only considered protecting victims who “have been subject to violence”, Law No. 6248 includes victims who are “at the risk of violence” within the scope of its protection measures.¹⁰⁹⁰ This is an obligation under international law. The Istanbul Convention emphasises that “women and girls are exposed to a higher risk of gender-based violence than men.”¹⁰⁹¹ To protect women and girls at risk of death is a compulsory obligation by State parties, which must take necessary measures to protect women at risk of honour killings from their fathers, husbands, and relatives. In my opinion, this obligation highlights law enforcement officers’ duty of due diligence to protect women and girls from the danger of violation of their right to life.¹⁰⁹² Sarihan states that the context of the Law widens “the protection scope including both the victims of violence, the people who are in danger of being subject to violence even if they have not been subject to violence and all the victims of violence outside the family members.”¹⁰⁹³ Thus, Law No. 6284 introduces the protection from the danger of being subjected to violence via its current regulation to implement preventive and protective measures adequately.¹⁰⁹⁴

Nevertheless, Ugur questions who will determine the victims who are at the risk of violence and how.¹⁰⁹⁵ He argues that there may be serious problems that could result in a violation of the rights and freedoms guaranteed under the Turkish Constitution in practice because the law does not include a criterion such as “clear, adequate, immediate danger”, which is crucial in

¹⁰⁸⁸ T.C. Başbakanlık Kanunlar ve Kararlar Genel Müdürlüğü, ‘6248 Sayılı Ailenin Korunması ve Kadına Karşı Sıddetin Önlenmesine Dair Kanun’un Genel Gerekçesi / *General Justification of the Law No. 6248 to Protect Family and to Prevent VAW*’ (24/2/2012 Sayı: B.02.0.KKG.0.10/101-428/872).

<<https://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss181.pdf>> accessed: 04/03/2017. (author’s translation).

¹⁰⁸⁹ The Istanbul Convention, Introduction. It states that “recognising that children are victims of domestic violence, including as witnesses of violence in the family”.

¹⁰⁹⁰ Mehmet Serif Sagioglu, *Ailenin Korunması ve Kadına Karşı Sıddetin Önlenmesine Dair / Law to Protect Family and To Prevent Violence against Women* (Legal Yayıncılık, 2013) 24.

¹⁰⁹¹ The Istanbul Convention, Introduction.

¹⁰⁹² See section 3.3.3. in Chapter 3 for further analysis on the principle of due diligence within the Istanbul Convention as applying ECtHR case-law such as *Opuz v. Turkey*, and *Bevacqua and S. v. Bulgaria*.

¹⁰⁹³ Banu Bilge Sarihan, ‘Violence against Women in the Law Numbered No. 6248’ (2015) 4(8) *The Macrotheme Review A multidisciplinary journal of globe macro trends* 40, 42.

¹⁰⁹⁴ Mehmet Serif Sagioglu, *Ailenin Korunması ve Kadına Karşı Sıddetin Önlenmesine Dair / Law to Protect Family and To Prevent Violence against Women* (Legal Yayıncılık, 2013) 24.

¹⁰⁹⁵ Husamettin Ugur, ‘Kadın ve Aile Bireylerine Yönelik Sıddete Karşı 6284 Sayılı Kanunun Getirdikleri / *Changes Brought by the Law No. 6248 in Relation to Fight Violence against Women and Family Members*’ (2012) 101 *Türkiye Barolar Birliği Dergisi* 333, 348.

determining the existence of the danger of violence.¹⁰⁹⁶ This criterion is clearly under the scope of the Istanbul Convention in conformity with Article 50 (immediate response, prevention, and protection), Article 51 (risk assessment and risk management), and Article 52 (emergency barring orders).¹⁰⁹⁷ Despite these weaknesses, in my view, Law No. 6248 extends the protection borders appropriately, accommodating the definition of violence and the protection of not only victims who have been subjected to violence but also victims who are at risk of violence.

The fourth strength is the promise to enforce the Constitution of the Republic of Turkey and the international treaties to which Turkey is a party, especially the Istanbul Convention.¹⁰⁹⁸ This proves the importance of the Istanbul Convention, which guides the Law, and its interpretative usefulness. Article 1(2)(a) of Law No. 6248 reaffirms Article 90 of the Constitution Law, which states that the provisions of international agreements supersede Turkish laws in cases where they conflict.¹⁰⁹⁹ This is a helpful provision, considering the lack of knowledge of international treaties among law enforcement officers and especially judges, prosecutors, and police officials. It obliges them to give more attention to the Istanbul Convention, which is a legally binding document on combatting VAW.

The Law's fifth strength is its focus on a human rights approach in combatting VAW. The law provides "a fair, effective and speedy method, which is based on basic human rights, sensitive to the equality of men and women, applicable to the social state principle, is maintained in providing support and services to the victims of violence."¹¹⁰⁰ In other words, the law places honour killings within the general human rights framework. Hence, the law views important the application of women's rights but also of human rights in general. So, the whole human rights framework will apply, not just the women's rights framework. Moreover, the Law implements the preventive and protective cautionary decisions taken for victims and perpetrators, respecting human dignity and honour.¹¹⁰¹ It also indicated that taking special measures to prevent violence and protect women from the gender-based violence cannot be interpreted as discrimination.¹¹⁰² These provisions indicate the significance of the *de facto* or substantive equality between women and men—and of affirmative action when government

¹⁰⁹⁶ *ibid.*

¹⁰⁹⁷ The Istanbul Convention, Articles 50, 51, 52.

¹⁰⁹⁸ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 1(2)(a).

¹⁰⁹⁹ See section 4.2.1 for the analysis of Article 90 of the Turkish Constitution in the Chapter 4.

¹¹⁰⁰ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 1(2)(b).

¹¹⁰¹ *ibid.* Art. 1(2)(c).

¹¹⁰² *ibid.* Art. 1(2)(ç).

officers take effective preventive and protective measures with consideration for human rights principles.

This section delineates the strengths of the aim and scope of Law No. 6248 within the context of the Istanbul Convention. The scope of law for victims of violence is broader than that of former Law No. 4320, highlighting the principles of equality, non-discrimination, and due diligence in accordance with the aim and scope of the Istanbul Convention. The following section discusses strength no. 2 of Law No. 6248: whether the definitions given in context of Law No. 6248 comply with the Istanbul Convention.

5.2.2. Strength No. 2: Definitions in the Context of Law No. 6248

Law No. 6248 defines ‘domestic violence’, ‘violence against women’, and ‘violence’ in Article 2(b)(ç)(d):

Domestic violence: Any physical, sexual, psychological and economic violence between the victim of violence and the perpetrator of violence and between the family members and the people who are considered as family members whether they live or do not live in the same house.

Violence against women: The gender-based discrimination directed against a woman just because she is a woman or that affects women disproportionately and any attitude and behaviour violating the human rights of women and defined as violence in this Law.

Violence: The acts which results or will probably result in person’s having physical, sexual, psychological and financial sufferings or pain and any physical, sexual, psychological, verbal or economical attitude and behaviour which include the treat, pressure and arbitrary violation of person’s freedom as well and conducted in social, public and private space.¹¹⁰³

The Istanbul Convention also includes definitions for ‘violence against women’, ‘domestic violence’, ‘gender’, and ‘gender-based violence’.¹¹⁰⁴ The definitions of ‘violence’ and ‘violence against women’ in Law No. 6248 correspond with the definition of ‘violence against women’ in the Istanbul Convention.¹¹⁰⁵ Additionally, the definition of ‘gender-based

¹¹⁰³ *ibid.*, Art. 2 (1)(b)(ç)(d).

¹¹⁰⁴ The Istanbul Convention, Art. 2 (1)(b)(ç)(d).

¹¹⁰⁵ Article 3 (a) of the Istanbul Convention states that “violence against women” is understood as a violation of

violence' is included in the definition of 'violence against women' in Law No. 6248. However, the lack of a definition of 'gender' in Law No. 6248 is a limitation.¹¹⁰⁶ Instead, crucially, 'verbal violence' as a form of violence against women, which is not mentioned in the Istanbul Convention, is provided in Law No. 6248.¹¹⁰⁷ In other words, Law No. 6284 defines 'violence' in a very extensive way; its definition is more comprehensive than that given in the Istanbul Convention. On the other hand, only physical violence is mentioned in the former law (Law No. 4320), while not only physical but also sexual, psychological, and economic violence are defined in Law No. 6248.

Not only the violent act itself but also the possibility or threat of violence is taken into consideration. However, Law No. 6248 defines the victim who suffers the act of violence, but does not specifically include all people who are impacted by it.¹¹⁰⁸ For instance, a woman who receives violence from her husband is a victim, but family members such as children and grandparents impacted by this violence in the home are not separately indicated in the given definition as victims under the scope of the law. The Law does not include gays and lesbians in its definition of victims. This omission is criticised by feminists for not including intersecting forms of violence with sexual orientation,¹¹⁰⁹ which should be incorporated within the scope of law because they are victims of violence, even murdered in the name of 'honour'¹¹¹⁰ or killed with the motive of 'hate' in Turkey. This is proved in Article 122 of the TCK titled "Hatred and discrimination" is amended in 2014:

human rights and a form of discrimination against women constituting all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life.

¹¹⁰⁶ Ebru Ceylan, 'Türk Hukukunda Aile İçi Sıddet ve Kadına Karsi Sıddetin Onlenmesiyle İlgili Yeni Duzenlemeler / New Regulations in Turkish Law on the Prevention of Domestic Violence and Violence Against Women' (2013) 109 *TBB Dergisi* 13, 25.

¹¹⁰⁷ Husamettin Ugur, 'Kadin ve Aile Bireylerine Yonelik Sıddete Karsi 6284 Sayili Kanunun Getirdikleri / Changes Brought by the Law No. 6248 in Relation to Fight Violence against Women and Family Members' (2012) 101 *Turkiye Barolar Birliđi Dergisi* 333, 346.

¹¹⁰⁸ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 2(e):

Article 2(e) Victim of violence: The person who is directly or indirectly subject to or at the risk of the attitudes and behaviors which are defined as violence in this Law and the people who are affected by violence or at the risk of being affected by violence.

¹¹⁰⁹ See sections 2.4 'Intersectionality within the Feminist Legal Theory' and 2.5.3.6 for an assessment of intersectionality within feminist-legal theory in the context of Turkey in the Chapter 2.

¹¹¹⁰ Ahmet Yıldız, the son of a family from Urfa (province from South-eastern part of Turkey), was killed by his father Yahya Yıldız. The murder of Ahmet is often characterised as the "first homosexual honor killing in Turkey." To be sure, this case will be a significant turning point in Turkey's judicial history with its procedures, handling, and conclusion. However, Ahmet is one of the victims of the many family murders that have been unnamed and swept under the carpet. See *Sosyal Politikalar, Cinsiyet Kimliđi ve Cinsel Yönelim Çalışmaları Derneđi / Social Policies, Gender Identity, and Sexual Orientation Studies Association; LGBT Hak İhlalleri: Emsal Dava Analizleri / LGBT Rights Violations: Analysis of Cases* (İstanbul: Punto Baskı Çözümleri, 2013) 26.

(1) Any person who (a) Prevents the sale, transfer or rental of a movable or immovable property offered to the public, (b) Prevents a person from enjoying services offered to the public, (c) Prevents a person from being recruited for a job, (d) Prevents a person from undertaking an ordinary economic activity on the ground of hatred based on differences of language, race, nationality, colour, gender, disability, political view, philosophical belief, religion or sect shall be sentenced to a penalty of imprisonment for a term of one year to three years.¹¹¹¹

Despite this amendment on Article 122 of the TCK, the grounds of hatred do not include ‘sexual orientation’ in the TCK which contradicts the intersectionality application to the Istanbul Convention.

The beneficiaries of Law No. 6248’s protection also include victims of stalking. Although not defined in the original law, Implementing Regulation of Law No. 6248,¹¹¹² adopted a year after the adoption of the law, adds this clarification:

Regardless of the actual content and whether family ties or relationship between the victim or practitioner, all kinds of oppressive attitudes or behaviours committed verbally, written or using any kind of communication tool, directed at victims causing concern for the safety, physical or psychological fear or feeling of desperation.¹¹¹³

This is similar to the definition given in Article 34 of the Istanbul Convention, which prohibits stalking, offers a definition as well:

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised.¹¹¹⁴

The definition of “stalking” given in the Implementing Regulation of Law No. 6248 is broader and clearer than the definition in the Istanbul Convention. Yet the Implementing Regulation does not mention “the intentional conduct of repeatedly engaging in threatening conduct” within the definition of stalking introduced in the Istanbul Convention.¹¹¹⁵ Instead it

¹¹¹¹ Turkish Penal Code 2005/5237, (Amended on 2 March 2014 – By Article 15 of the Law no. 6529), Art. 122.

¹¹¹² The Implementing Regulation Concerning the Law No. 6284 to the Protect Family and to Prevent of Violence against Women (18 January 2013), Official Gazette 28532.
<<http://www.evicisiddet.adalet.gov.tr/en/dosya/up/icerik/3-Yonetmelik.pdf>> accessed: 02/02/2017.

¹¹¹³ The Implementing Regulation Concerning the Law No. 6284 to the Protect Family and to Prevent of Violence against Women (18 January 2013), Art. 3(§).

¹¹¹⁴ The Istanbul Convention, Art. 34.

¹¹¹⁵ Berrin Akbulut, ‘6248 Sayılı Kanunda Sıddet ve Istanbul Sozlesmesinin TCK Acısından Degerlendirilmesi / Violence in the Law Numbered 6248 and Evaluation of the Istanbul Covenant in Terms of TCK’ (2014) 5(14) TAAD 141, 50.

posits “all kinds of the oppressive attitudes or behaviours”; from this it can be inferred that “causing her or him fear” is a result of the perpetrator’s oppressive attitude.¹¹¹⁶

In conclusion, the definitions in Law No. 6248 are in general compatible with those in the Istanbul Convention. This section further argues the need to broaden this definition to consider people affected by the risk of violence within the scope of the Law. It also touches upon criticism for not intersecting sexual orientation in the definitions given by Law No.6248.

5.2.3. Strength No. 3: Protective Measures for Victims

The protective measures for victims are another strength of this law. This section focuses on the specific protective measures taken by enforcement officers for women and girls at risk of honour killings. It argues that the absence of multi-cooperation among institutions and the lack of risk assessment and a risk management strategy is an obstacle to these measures.

Law No. 4320 includes only protective measures for VAW under its scope, but Law No. 6248 also comprises protective measures for women at risk of killings, including honour killings.¹¹¹⁷ This reflects Articles 12-28 of the Istanbul Convention.¹¹¹⁸ While protective measure decisions were put forward only by the judges of the Family Court in the former law, Articles 3(2) and 5(2) of Law No. 6248 obliges not only judges but also civil authorities and law enforcement officers to take protective measures. For instance, the provisions on protective measures taken by **civil authorities** in Article 3(1)(a)(ç) include:

(a) To provide an appropriate shelter to the person and if necessary to the person’s children in the vicinity or in some other location.

(ç) To provide temporary protection upon a request of the relevant person or ex officio if there is a life-threatening danger for the person.¹¹¹⁹

Article 3(2) stipulates that protective measures can also be taken by related **law enforcement chiefs**; however:

in cases where the delay is considered to be risky, the measures as contained in the paragraph 1, clauses a and ç shall be taken by related law enforcement chiefs as well.

Law enforcement chief shall present the report to the administrative chief for approval

¹¹¹⁶ *ibid.*

¹¹¹⁷ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 3 and Art. 4.

¹¹¹⁸ The Istanbul Convention, Arts. 12-28.

¹¹¹⁹ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 3(a)(ç), Implementing Regulation Concerning the Law to Protect Family and Prevent Violence against Women Numbered 6284, Articles 7(1) and (3). (18 January 2013)

<<http://www.evcisiddet.adalet.gov.tr/en/dosya/up/icerik/3-Yonetmelik.pdf>> accessed: 02/02/2017.

not later than the first work day after the decision is taken. The measures which are not approved by the administrative chief within forty-eight hours shall be per se abolished.¹¹²⁰

Through this change, women who prefer to apply to police stations as a first course of action¹¹²¹ can take advantage of both protective and preventive measures more rapidly. Such an advantage reveals that these measures are broader, more varied, and not as limited as those in Law No. 4320.¹¹²² Obviously, the most urgent protective measure is to ensure shelter for the victim who is subjected to violence. Unfortunately, there are not enough shelters in Turkey for those who suffer violence.¹¹²³ For this reason, Article 7 of the Implementing Regulation of the Law explains the solution for this shortage in detail:

The persons, for whom a decision for providing a shelter has been taken, shall be settled in places belonging to the Ministry or under the supervision of the Ministry. On the occasions when the shelters are not adequate, the protected persons are settled in the social facilities, dormitories or similar lodgings of the state institutions and organizations upon a request of the district authority and in urgent cases, upon a request of the law enforcement officials or the Ministry until his/her secure transfer is provided.¹¹²⁴

It also expresses clearly that “if there is a life-threatening danger for the person and the person’s children, they shall be accompanied for settling securely to guesthouse, the first receiving unit or other facilities by the law enforcement officers.”¹¹²⁵ In cases “when the measure for providing a shelter is implemented by the law enforcement officers” or “when the protected person is in the police station”, the victim is immediately delivered to ŞÖNİMs/Violence Prevention and Monitoring Centres by law enforcement officers.¹¹²⁶ If this is not possible, short-term shelter is afforded to the victim and her company.¹¹²⁷ The victim

¹¹²⁰ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 3(2).

¹¹²¹ Aile ve Sosyal Politikalar Bakanlığı / *Ministry of Family and Social Policy*, “Türkiye’de Kadına yönelik Aile içi Şiddet Arastırması: Özet rapor / *Research on domestic violence against women in Turkey: Summary Report*” (2014) 25.

<<http://aihmis.org.tr/aktarimlar/dosyalar/1428409374.pdf>> accessed: 12/02/2017. (author’s translation).

¹¹²² See section 4.2.3 in Chapter 4 for an analysis of the former law (Law No. 4320).

¹¹²³ Necla Ozturk, ‘Ailenin Korunması ve Kadına Karşı Şiddetin Önlenmesine Dair KANunun Getirdiği Bazı Yenilikler ve Öneriler / *Some Innovations in the Act of Family Protection and Prevention of Violence against Women*’ (2017) 8(1) *Inonu Üniversitesi Hukuk Fakültesi Dergisi* 1, 9.

¹¹²⁴ Implementing Regulation Concerning the Law to Protect Family and Prevent Violence against Women Numbered 6284, Art. 7(1).

¹¹²⁵ *ibid.*, Art. 7(3).

¹¹²⁶ *ibid.*, Art. 7(4).

¹¹²⁷ *ibid.*

shall be immediately accepted to the shelter without seeking any other decision or approval.¹¹²⁸ Nevertheless, Article 23 of the Istanbul Convention requires that States “shall take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children.”¹¹²⁹ This Article specifically requires “appropriate, easily accessible shelters in sufficient numbers”. Article 14 Municipal Law clarifies this provision by specifying the obligation to open a shelter in municipalities where the population is larger than 100.000.¹¹³⁰ However, this implementing regulation of the Law may cause a lack of clear communication among institutions that provide shelter; this inefficiency may increase the threat to victims at risk of death. Unfortunately, considering the inadequacy of the number of shelters in Turkey, it may not be possible for all victims to benefit from this service.

There are various arguments on the standards used to measure the threat to life faced by women seeking protective orders. Hilal Akdeniz, a lawyer from the Ankara Bar Association discussing the temporary protection order against life threat, asks,

Who is to define the life threat? What are the standards? There are no standards. The act of violence can start with just a slap on the face, but it can turn into a beating and stabbing with a sharp object. So, who is to define the threat to life? This is quite vague. I believe myself that this is not defined in a proper way.¹¹³¹

I agree with Akdeniz on the point of the law’s vague language. The Law should provide clearer and explicit standards on the protection of women against life threats. These would provide more effective solutions to law enforcement officers who enforce the standards provided by the Law; upholding such standards would essentially eradicate a passive approach to protecting women’s right to life.¹¹³²

It is not enough to see and intervene with violence only after it emerges. It is important to take preventive measures, which means supporting the empowerment of women, respecting

¹¹²⁸ *ibid.*, Art. 7(5).

¹¹²⁹ The Istanbul Convention, Art. 23.

¹¹³⁰ Necla Ozturk, ‘Ailenin Korunması ve Kadına Karsi Siddetin Onlenmesine Dair Kanunun Getirdigi Bazi Yenilikler ve Oneriler / Some Innovations in the Act of Family Protection and Prevention of Violence against Women’ (2017) 8(1) *Inonu Universitesi Hukuk Fakultesi Dergisi* 1, 10.

¹¹³¹ Hilal Akdeniz, ‘Prevention of Violence against Women in Turkey’ in Yalcin Sahinkaya (ed.), *Combating Violence Against Women in The Context of Effective Implementations of Human Rights Standards International Symposium, 7-8 June 2012, Istanbul/Turkey*, (Justice Academy of Turkey Press, 2012) 341-342.

¹¹³² The Opuz case showcases the law enforcement officers’ passivity on the protection of the applicant’s right to life. See section 4.3.2.2., titled “A Failure to Duty of the State to Act with Due Diligence to Enforce Law No. 4320”, for further evaluation in Chapter 4.

women's individual and bodily integrity, and listening to women as equal participants in this process.¹¹³³ The State is therefore obliged to protect women's right to life and their individual and bodily integrity if they face life-threatening danger; this can be undertaken by civilian authorities, or in cases where a delay might be detrimental, law enforcement officers may take victims under temporary protection pursuant to Article 3(ç) of the Law.¹¹³⁴ Determining 'cases where the delay is detrimental' requires a risk assessment and risk management strategy made by law enforcement practitioners. Lack of immediate action increases the chance of killings, but Law No. 6248 does not introduce any legal regulations regarding risk assessment and management issues. This oversight is analysed in the weaknesses of Law No. 6248 in this chapter.

In accordance with the positive obligations to protect women from violence, the State encourages women to cut off their relationships with perpetrators and to pursue independence.¹¹³⁵ Law No. 6248 regulates State obligations such as temporary financial aid,¹¹³⁶ provision of counselling services,¹¹³⁷ and provision of nursery facilities.¹¹³⁸ Judges also impose protective measures such as arranging a change of workplace¹¹³⁹, residence,¹¹⁴⁰ and identity;¹¹⁴¹ they can also assist with alimony for health expenses.¹¹⁴²

In conclusion, Law No. 6248 introduces comprehensive protective measures for women at risk of violence or death; the absence of a clause for victims at risk of violence or death in Law No. 4320 has enabled killings in the name of honour. Law No. 6248 sets many positive obligations and protective measures designed to force law enforcement officers to act

¹¹³³ Yakin Erturk, 'Concept and Institutional Approaches from Europe' in Yalcin Sahinkaya (ed.), *Combating Violence against Women in the Context of Effective Implementations of Human Rights Standards International Symposium, 7-8 June 2012, Istanbul/Turkey* (Justice Academy of Turkey Press, 2012) 39-40.

¹¹³⁴ Implementing Regulation Concerning the Law to Protect Family and Prevent Violence against Women Numbered 6284, Art.10 (1).

¹¹³⁵ Nisan Kuyucu, *AIHM Kararlarının Uygulanması İzleme Raporları, 2015/1 Opuz Kararının Uygulanması- İzleme Raporu / The monitoring report on the implementation of decisions of ECtHR, 2015/1 the Implementation of the ECtHR judgement on case of Opuz-Monitoring Report* (Insan Hakları Ortak Platformu 2015) 15.

¹¹³⁶ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 3(b). The implementation of temporary financial aid shall be made pursuant to Article 17 of the Law No. 6248 and how to count aid is regulated by Article 8 of the Implementing Regulation Concerning the Law to Protect Family and Prevent Violence against Women Number 6284.

¹¹³⁷ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 3(c), Implementing Regulation Concerning the Law to Protect Family and Prevent Violence against Women Numbered 6284, Art. 9.

¹¹³⁸ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 3(d).

¹¹³⁹ *ibid.*, Art. 4(a), Implementing Regulation Concerning the Law to Protect Family and Prevent Violence against Women Numbered 6284, Art. 13.

¹¹⁴⁰ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 4(b). Implementing Regulation Concerning the Law to Protect Family and Prevent Violence against Women Numbered 6284, Art. 14.

¹¹⁴¹ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 4(ç), Implementing Regulation Concerning the Law to Protect Family and Prevent Violence against Women Numbered 6284, Art. 16.

¹¹⁴² Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 5.

efficiently. Nevertheless, while the Law mostly complies with Articles 20, 22, 23, and 24 of the Istanbul Convention, some provisions of the Law prevent its own advancement because they are incompatible with some obligations of the Istanbul Convention.

The following section discusses another strength of Law No. 6248, which is that preventive measures are not limited to women but include children and family members in compliance with Article 56 of the Istanbul Convention. It also analyses provisions that allow judges to make a preventive cautionary decision and take preventive measures without the need to seek evidence or provide a report proving the violence—and the absence of such provisions in Law No. 4320. These preventive measures are revealed proving by the ECtHR judgements to Turkey.

5.2.4. Strength No. 4: Preventive Measures

Judges can impose preventive orders on perpetrators of violence. Article 5 of Law No. 6248 and Article 17 of the Implementing Regulation of Law No. 6248 regulate these orders in detail. The list of orders provided is not prescriptive;¹¹⁴³ so, the judge can decide on one, several, or several ‘similar’ versions of these orders so that each case can achieve its bespoke purpose based on its distinct characteristics and context. The victim is thereby protected as an individual rather than a statistic.¹¹⁴⁴ Protective measures may be applied without seeking any evidence nor document. On the contrary, evidence is required for a preventive measure regarding a person exposed to or at risk of being exposed to violence.¹¹⁴⁵ This means that preventive orders may have significant limitations on individual rights and freedoms. Nevertheless, the necessity to make a preventive measure based on facts should not result in delaying the decision.

Article 5(1) of Law No. 6248 states that judges may impose one or several preventive measures (or similar ones) to perpetrators of violence.¹¹⁴⁶ These preventive orders are also

¹¹⁴³ Mustafa Akın, ‘Ailenin Korunmasına Dair Kanunda Belirtilmeyen Tedbirlere Hükmedilmesi ve Danışmanlık Tedbirinin Uygulanması / *Decision of Unspecified Measures for the Protection of the Family and Application of the Counseling Measure*’ in Nazif Kacak (ed.), *Terazi Aylık Hukuk Dergisi No: 14 Yıl: 2/ Terazi Monthly Law Journal No. 14 Year: 2* (Seckin Yayinlari, 2007) 135.

¹¹⁴⁴ Mehmet Serif Sagioglu, *Ailenin Korunmasi ve KAdina Karsi Siddetin Onlenmesine Dair / Law to Protect Family and To Prevent Violence against Women* (Legal Yayıncılık, 2013) 92.

¹¹⁴⁵ *ibid.* 93.

¹¹⁴⁶ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 5(1):

- a) Not to exhibit an attitude and behaviours including the threats of violence, insult and humiliation against the victim of violence.
- b) To move from the shared dwelling or the vicinity immediately and to allocate the shared dwelling to the protected person.
- c) Not to approach to the protected persons and their residences, schools and workplaces.
- ç) If there is a previous decision to allow having a personal connection, to have a personal connection

ruled under the scope of the former law, but Article 5(1)(c) is a new order in Law No. 6248: “If there is a previous decision to allow having a personal connection, to have a personal connection with the children together with a company and to restrict the personal connection or to revoke it completely.” There was no provision in Law No. 4320 for preventive orders to children who are the silent victims of domestic violence. Law No. 6284 allows the judge to apply such protective and supportive measures under the Child Protection Law¹¹⁴⁷ on the issues of guardianship,¹¹⁴⁸ custody,¹¹⁴⁹ alimony,¹¹⁵⁰ and personal connection in accordance with the Turkish Civil Code.¹¹⁵¹

Moreover, in cases where the delay would be risky, “the measures as contained in the clauses of (a), (b), (c) and (d) of the first paragraph shall be taken by the relevant law enforcement chiefs as well.”¹¹⁵² The law enforcement chief needs to present the report to the judge for approval no later than the first work day after the decision is made. If the measures are not approved by the judge within twenty-four hours, they shall be abolished pursuant to Article 5(2). However, whether the “disapproval” process was performed within twenty-four hours must be established in a manner that is not a passive or indirect but by direct examination of the circumstances at odds with the law itself.¹¹⁵³ Otherwise, the lapse of time because of workload or similar processes would allow the victim to remain unprotected.

In conformity with Article 5(d), preventive measures can also be applied to relatives of victims even if they have not been subjected to the violence. This clause is a crucial

with the children together with a company and to restrict the personal connection or to revoke it completely.

d) Not to approach the friends or relatives and children of the protected person even though they haven’t been subject to the violence, without prejudice to the decisions that allows personal connection with children

e) Not to damage the personal belongings and household goods of the protected person.

f) Not to cause distress to the protected person by means of communication instruments or alternative channels

g) To hand over the officially permitted and authorized weapons to the law enforcement officials.

g) To hand over the weapon to the employing institution, even if the person is in a profession of public service that requires carrying a weapon.

h) Not to use alcohol, drugs or stimulants in places where the protected people are present or not to approach the protected people and whereabouts while under the influence of these substances and to ensure to have a medical examination and treatment including in-patient treatment in case of the addiction.

i) To apply to the health centre for examination or treatment and to ensure having a treatment.

¹¹⁴⁷ The Child Protection Law 2005/5395.

¹¹⁴⁸ Turkish Civil Code 2001/4721, Art. 335.

¹¹⁴⁹ *ibid.*, Art. 403.

¹¹⁵⁰ *ibid.*, Art. 364.

¹¹⁵¹ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 5(3).

¹¹⁵² *ibid.*, Art. 5(2). See footnote (66) for the preventive measures taken by the judge pursuant to Article 5(1).

¹¹⁵³ Mehmet Serif Sagiroglu, *Ailenin Korunmasi ve KAdina Karsi Siddetin Onlenmesine Dair / Law to Protect Family and To Prevent Violence against Women* (Legal Yayincilik, 2013) 101.

development compatible to Article 56 of the Istanbul Convention, which obliges States to ensure that “victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively at all stages of investigations and judicial proceedings.”¹¹⁵⁴

As indicated in the previous chapter, under former Law No. 4320, preventive and protective measures can be applied sufficiently when the victim experiencing violence informs the public authorities so that measures can be taken without delay.¹¹⁵⁵ Therefore, the ECtHR has reiterated in the judgement of *Opuz v Turkey* that the measures envisaged for the protection of women against violence should be taken quickly and effectively because the implementation of the law is deficient: “there are unreasonable delays in issuing injunctions by the courts, under Law No. 4320, because the courts treat them as a form of divorce action and not as an urgent action. Delays are also frequent when it comes to serving injunctions on the aggressors, given the negative attitude of the police officers.”¹¹⁵⁶ The drafters of Law No. 6248 took into consideration the ECtHR’s ruling that Turkey’s law enforcement officers fail to protect women and prevent VAW. Provisions allowing judges to impose cautionary decisions without seeking evidence or a requiring a report proving the violence, then taking preventive orders without delay, are another strength of Law No. 6248: “the preventive cautionary decision is taken without delay. This decision cannot be delayed as to endanger the realisation of the aim of this Law.”¹¹⁵⁷

This section argues that the provision for judges and civil authorities to impose preventive orders without delay is a major strength of Law No. 6248. The allowance of this provision reveals that the drafters of the Law appreciated the judgement of *Opuz v. Turkey*. These factors expose the weaknesses of Law No. 4320, which requires judges to have evidence for imposing preventive orders as if enacting criminal procedures. This section also explores the inclusion of victims’ relatives in this domain. The next section investigates another strength of Law No. 6248—that of ‘preventive imprisonment’ to diminish repeat violence and femicides, including honour killings.

¹¹⁵⁴ The Istanbul Convention, Art. 56(1)(b).

¹¹⁵⁵ See section 4.2.3 in Chapter 4 for further reading.

¹¹⁵⁶ *Opuz v. Turkey*, Application No. 33401/02 (Council of Europe: European Court of Human Rights, 09/09/2009), paras. 195-196. This paragraph is referred to in *Halime Kilic v. Turkey* in its consideration of the ineffective prevention of the violence: “three different protection measures have been decided in accordance with Law No. 4320 and that the decisions given cannot provide effective protection.” See: *Halime Kılıç v. Turkey*, Application No. 63034/11 (Council of Europe: European Court of Human Rights, 28 June 2016) para. 73 (author’s translation).

¹¹⁵⁷ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 8(3).

5.2.5. Strength No. 5: Preventive Imprisonment

Another strength of Law No. 6248 is the introduction of preventive imprisonment for a perpetrator of violence acting contrary to a judge's orders. This section argues that the effective implementation of the Law is based on the sanction of preventive imprisonment as a means of preventing perpetrators who act contrary to the requirements of preventive and protective orders. However, this brings into question whether this sanction compromises a person's right to freedom and whether it uses force to ensure a person fulfils his or her duties in a disproportionate manner to his/her human rights.

Article 8(5) of Law No. 6248 states that "a legal warning stating that the person is subject to preventive imprisonment in the case of acting contrary to the cautionary decision is issued, when the cautionary decision is pronounced and notified." Pursuant to Article 13:

In case of that the perpetrator of violence for whom a cautionary decision is taken as per the provisions of this Law acts contrary to the requirements of this decision, he shall be subject to the preventive imprisonment from 3 to 10 days by the judicial decision depending on the nature and severity of the violated measure even if the act constitutes another crime.¹¹⁵⁸

Preventive detention/forced imprisonment should not be given to the perpetrator of violence who contradicts protective measures orders. In fact, Article 13 states that once the perpetrator acts contrary to the preventive measure given in accordance with Article 5, the measure of forced imprisonment will be implemented. Ugur questions forced imprisonment is when perpetrators act contrary to the preventive cautionary orders.¹¹⁵⁹ Hence, the most appropriate preventive measures should be decided with careful attention to the relationship between the nature of violence and the family, social, economic, etc. relationship between the victim and the perpetrator.¹¹⁶⁰ When a preventive measure is decided, it must be analysed rigorously, taking into account the psychological, sociological, and economic context of the violence and especially how family members should be treated considering the effects of the violent act.¹¹⁶¹ In addition, the perpetrator should participate in training and rehabilitation programs aimed at

¹¹⁵⁸ *ibid.*, Art. 13 (1), Implementing Regulation Concerning the Law to Protect Family and Prevent Violence against Women Numbered 6284, Art. 38.

¹¹⁵⁹ Husamettin Ugur, 'Kadin ve Aile Bireylerine Yonelik Siddete Karsi 6284 Sayili Kanunun Getirdikleri / Changes Brought by the Law No. 6248 in Relation to Fight Violence against Women and Family Members' (2012) 101 *Turkiye Barolar Birligi Dergisi* 333, 356.

¹¹⁶⁰ *ibid.*

¹¹⁶¹ *ibid.*

controlling anger, coping with stress, and changing his behaviour.¹¹⁶² In case he is an addict of alcohol or drugs or has a mental disorder, he should be examined or treated in a health institution and engage in activities aimed at acquiring a profession.¹¹⁶³ Otherwise, just considering the victim of violence, giving the preventive imprisonment to the perpetrator of violence as an immediate preventive decision in the first place will probably cause further violence between the parties.¹¹⁶⁴

Law No. 6248 regulates the period of preventive imprisonment, implemented by the public prosecutors and notified by the related Province and District directorates.¹¹⁶⁵ Article 13(1) state that the perpetrators of violence “shall be subject to the preventive imprisonment from 3 to 10 days by the judicial decision depending on the nature and severity of the violated measure even if the act constitutes another crime”.¹¹⁶⁶ In addition, “in each recurring action contrary to the requirements of the preventive orders, the period of preventive imprisonment shall be from 15 to 30 days, but the period cannot be more than 6 months”.¹¹⁶⁷ This provision was discussed by the members of the parliament during a meeting held in the Grand National Assembly of Turkey on 6 March 2012 before the enactment of Law No. 6248—it was felt that the sanction’s limitation of 6 months may be too short.¹¹⁶⁸ Some members proposed a limitation of “up to six months in a year”.¹¹⁶⁹ Nevertheless, this was not included in the final clause.

During that same meeting, the effects of preventive imprisonment on the individual’s human rights was also discussed. In general, one’s right to freedom is not subjected to a binding sanction resulting from his failure to fulfil his obligations.¹¹⁷⁰ However, in some cases, persons may be forced to fulfil their obligations, and may, therefore, be deprived of their freedoms for a certain period of time. According to Sagiroglu, compulsory/forced imprisonment (preventive imprisonment) is a sanction given to force a person to fulfil his or

¹¹⁶² Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 5(1)(h).

¹¹⁶³ *ibid.*, Art. 15(3).

¹¹⁶⁴ Husamettin Ugur, ‘Kadin ve Aile Bireylerine Yonelik Siddete Karsi 6284 Sayili Kanunun Getirdikleri / Changes Brought by the Law No. 6248 in Relation to Fight Violence against Women and Family Members’ (2012) 101 *Turkiye Barolar Birligi Dergisi* 333, 356.

¹¹⁶⁵ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 13 (3)

¹¹⁶⁶ *ibid.*, Art. 13(1)

¹¹⁶⁷ *ibid.*, Art. 13(2)

¹¹⁶⁸ TBMM/Grand National Assembly of Turkey, ‘Adalet Komisyonu Raporu / Justice Commission Report’, *TBMM Tutanak Dergisi / Turkish Grand National Assembly Account of Proceedings*, Period 24, Legislation Year 2, Meeting No. 181.

<<https://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss181.pdf>> accessed: 21.02.2017. (author’s translation).

¹¹⁶⁹ *ibid.*

¹¹⁷⁰ Izzet Ozgenc, ‘Siddet Uygulayan Kisinin Zorlama Hapsine Tabi Tutulması / Subject to Preventive Imprisonment for Perpetrator of the Violence’ (2012) 8(97-98), *Kazancı Hakemli Hukuk Dergisi* 59, 59.

her obligations.¹¹⁷¹ Ugur states that preventive imprisonment or similar penalties from similar sanctions in positive law is not a punishable offence, such as disciplinary punishment; rather a sanction envisaged as a measure to enforce compliance with a rule or an obligation to abide by it.¹¹⁷² Academics associate preventive imprisonment with “disciplinary incarceration” in the Turkish legal system.¹¹⁷³ Disciplinary incarceration is regulated and defined by the Turkish Criminal Procedure Law:

The imprisonment imposed for certain conduct, which will be put into effect with the aim of protecting the partial order in certain institutions; which cannot be transformed into alternative measures; and cannot be subject to settlement procedures; and shall not be a ground for application of repetition provisions; the perpetrator of which may not be released under certain conditions; which cannot be postponed; and cannot be taken into the records of convicted individuals.¹¹⁷⁴

In its 2012 Report, members of the Justice Commission argue the following regarding Law No. 6248:

It should be emphasised that the draft law essentially includes measures to prevent violence and protect the victim against violence. In cases where violence against women and family members constitute a crime, relevant legislation, especially Turkish Penal Code No. 5237 (dated 26/9/2004) and Criminal Procedure Code No. 5271 (dated 4/12/2004), will be enforced. The aim of this draft is to prevent crimes before more serious crimes, such as intentional killings, are committed. For this reason, the draft law envisages a system for the rapid adoption and effective implementation of injunctions against perpetrators. Significant improvements to the draft will ensure the effective implementation of ‘preventive imprisonment’. It is important to note that preventive imprisonment is not a punishment sanction applied to a crime but rather a preventive measure to compel perpetrators of violence to comply with the

¹¹⁷¹ Mehmet Serif Sagiroglu, *Ailenin Korunmasi ve Kadina Karsi Siddetin Onlenmesine Dair / Law to Protect Family and To Prevent Violence against Women* (Legal Yayıncılık, 2013) 120.

¹¹⁷² Husamettin Ugur, ‘Kadin ve Aile Bireylerine Yonelik Siddete Karsi 6284 Sayili Kanunun Getirdikleri / Changes Brought by the Law No. 6248 in Relation to Fight Violence against Women and Family Members’ (2012) 101 *Turkiye Barolar Birligi Dergisi* 333, 355.

¹¹⁷³ Izzet Ozgenc, ‘Siddet Uygulayan Kisinin Zorlama Hapsine Tabi Tutulmasi / Subject to Preventive Imprisonment for Perpetrator of the Violence’ (2012) 8(97-98), *Kazanci Hakemli Hukuk Dergisi* 59, 59.

¹¹⁷⁴ The Turkish Criminal Procedure Law 2004/5271, Art. 2(1) (I).

measures.¹¹⁷⁵

In its justification of preventive imprisonment, the Grand National Assembly of Turkey's Report criticises the implementation of the Law because of the length of criminal cases and because the imprisonment sanction was rarely imposed on perpetrators of violence.¹¹⁷⁶ Thus, the Assembly accepts the sanction of preventive imprisonment as a means of preventing perpetrators who act contrary to the requirements of preventive and protective orders. The sanction must be initiated without any finalisation of proceedings so that protection orders are enacted effectively and quickly.¹¹⁷⁷ Appeal of this decision is not provided within the provision.

5.2.6. Strength No. 6: Violence Prevention and Monitoring Centres (ŞÖNİM)

Law No. 6248 has established *Şiddet Önleme ve İzleme Merkezi* /Violence Prevention and Monitoring Centres (ŞÖNİM) in order to efficiently implement its protective and preventive measures. This section assesses the compatibility of these centres with Articles 19, 20, 21, 22 and 23 of the Istanbul Convention and discusses the 'due diligence' duty imposed to professionals such as managers, social workers, psychologists, nurses, civil servants, a security and cleaning staffs, as well as the requirement of multi-agency cooperation among these professionals and other law enforcement officers (such as police and prosecutors):

where necessary qualified personnel especially the women are employed and perform a duty, and where the support and monitoring services are provided to the persons to prevent the violence and implement efficiently the protective and preventive measures They operate on a basis of seven days and twenty-four hours and their procedures and principles are identified by implementing regulation.

Monitoring studies are conducted and support services are provided to the persons in these centres in order to prevent violence and efficiently implement the protective and preventive measures.¹¹⁷⁸

The Ministry of Family and Social Policies operates ŞÖNİMs on a 24-hour, 7-day-per-week

¹¹⁷⁵ TBMM/Grand National Assembly of Turkey, 'Adalet Komisyonu Raporu / *Justice Commission Report*' *TBMM Tutanak Dergisi / Turkish Grand National Assembly Account of Proceedings*, Period 24 Legislation Year 2, Meeting No.181, 47.

<<https://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss181.pdf>> accessed: 21.02.2017. (author's translation).

¹¹⁷⁶ *ibid.*

¹¹⁷⁷ Mehmet Gunay, '6284 Sayılı Kanuna Göre Koruyucu ve Onleyici Tedbirler / According to Law No. 6284 Protective and Preventive Measures' (2012) 3(10) TAAD 647, 683.

¹¹⁷⁸ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 14(1)(2).

one-step system in accordance with the Istanbul Convention. ŞÖNİMs provide effective and urgent services that recognise human dignity and strengthen women's economic, psychological, legal, and social position.¹¹⁷⁹ As of December 2012, ŞÖNİMs were opened in Ankara, Adana, Antalya, Bursa, Denizli, Diyarbakır, Gaziantep, İstanbul, İzmir, Malatya, Mersin, Samsun, Şanlıurfa, and Trabzon following a plan to launch 2-year pilot scheme primarily in 14 provinces.¹¹⁸⁰ After 4 years (Law No. 6248 came into force in 2012), the working procedures and principles of these centres were published on 17 March 2016 as the Implementing Regulation on Violence Prevention and Monitoring Centres.¹¹⁸¹

ŞÖNİMs provide information to victims about their rights and institutions where they can receive support;¹¹⁸² they cooperate with NGOs working to end violence¹¹⁸³ and monitor the implementation of Law No. 6248.¹¹⁸⁴ These obligations are compatible with Articles 19 and 20 of the Istanbul Convention, which asserts that States need to provide these services to victims in a language they understand, intersecting their varied ethnicities.¹¹⁸⁵ Nevertheless, this intersectionality approach is not ruled within the scope of the Law: “to guide the persons about their rights, the institutions where they can receive support.”¹¹⁸⁶ Further, the Istanbul Convention obliges States to provide governmental and non-governmental organisations and domestic violence counsellors to support victims, at their request, during investigations and judicial proceedings regarding the crimes.¹¹⁸⁷ Such support will not only contribute to the effective conduct of the investigation and prosecution but also reduce the risk of VAW being repeated.

The WAVE (Women against Violence Europe) Report on the role of specialist women's support services in Europe which is an independent organisation founded by the EU, argues that “although there has been an increase in the number of places available in shelter for women [...] and a significant increase in Turkey (55% increase in places available in shelter)

¹¹⁷⁹ Nazan Moroglu, ‘Uluslararası Sözleşmelerde ve Türk Hukukunda Kadına Karşı Sıddetin Önlenmesi / *Prevention Violence against Women within the International Treaties and Turkish Legal System*’ (2012) 8(97-98) *Kazancı Hakemli Hukuk Dergisi* 20, 38.

¹¹⁸⁰ KSGM, “ŞÖNİM: Violence Prevention and Monitoring Centres”, <[http://kadinistatusu.aile.gov.tr/data/58528516369dc524d057a5fe/The%20Violence%20Prevention%20and%20Monitoring%20Centers%20\(ŞÖNİM\).pdf](http://kadinistatusu.aile.gov.tr/data/58528516369dc524d057a5fe/The%20Violence%20Prevention%20and%20Monitoring%20Centers%20(ŞÖNİM).pdf)> accessed: 07/03/2017.

¹¹⁸¹ Implementing Regulation on Violence Prevention and Monitoring Centres, 17 March 2016, No. 29656, Official Gazette. <<http://www.resmigazete.gov.tr/eskiler/2016/03/20160317-8.htm>> accessed: 13/03/2017.

¹¹⁸² Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 15(2) (a).

¹¹⁸³ *ibid.*, Art. 15(1) (e).

¹¹⁸⁴ *ibid.*, Art. 15.

¹¹⁸⁵ The Istanbul Convention, Art. 19.

¹¹⁸⁶ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 15(2) (a).

¹¹⁸⁷ The Istanbul Convention, Art. 55 (2).

[...] all these countries are still only providing a fraction of the minimum standard. Turkey is currently providing just over half of the minimum standards.”¹¹⁸⁸ Moreover, this Report compares the per capita number of shelters in Turkey and Greece:

Greece and Turkey also have a large number of women’s centres, 56 and 55 respectively, run by women NGOs and other NGOs as well as the State, providing support to women throughout the country. It should be pointed out, however, that Turkey has a population seven times the size of Greece’s population and, therefore, despite having the same number of centres, the service provided to women differs hugely.¹¹⁸⁹

According to official data, as of December 2016 KSGM has been servicing victims of violence in ŞÖNİMs in 49 out of 81 provinces.¹¹⁹⁰ It has also operated 137 shelters/guesthouses,¹¹⁹¹ four of which are run by women NGOs. In 2011 there were only 48 shelters.¹¹⁹²

In conclusion, violence prevention and monitoring centres are one of the crucial outcomes of Law No. 6248 in compliance with the Istanbul Convention, although there are some hindrances in its provisions. Despite the increased number of shelters/guesthouses and ŞÖNİMs, the number and capacity of the shelters is still deficient considering the prevalence of different forms of violence against women in Turkey.

5.2.7. Strength No. 7: Adopting Victim-Reporting Processes

The Istanbul Convention includes several provisions that oblige States to alter national legislation to enable victim-reporting methods and provide improved opportunities for victims to access and use them. Such measures are analysed in this section, which argues that necessitating legally-binding changes to national legislation better protects victims of violence. Such measures include restructuring reporting procedures and encouraging victims to make use of the legal remedies available to them; such recourses help to decrease violence,

¹¹⁸⁸ WAVE Report, ‘WAVE Report on the Role of Specialist Women’s Support Services in Europe’ (WAVE 2016) 29. <http://files.wave-network.org/researchreports/WAVE_Report_2015.pdf> accessed: 13/03/2017.

¹¹⁸⁹ *ibid.*

¹¹⁹⁰ KSGM, ‘ŞÖNİM Violence Prevention and Monitoring Centres’ (Ankara, 2016) 4. <[http://kadininstatusu.aile.gov.tr/data/58528516369dc524d057a5fe/The%20Violence%20Prevention%20and%20Monitoring%20Centers%20\(ŞÖNİM\).pdf](http://kadininstatusu.aile.gov.tr/data/58528516369dc524d057a5fe/The%20Violence%20Prevention%20and%20Monitoring%20Centers%20(ŞÖNİM).pdf)> accessed: 05/09/2016.

¹¹⁹¹ KSGM, ‘National Action Plan on Combatting Violence against Women (2016-2020)’ (Ankara, 2016) 24. <<http://kadininstatusu.aile.gov.tr/data/585d231c369dc55714513399/Kadına%20Yönelik%20Şiddetle%20Mücadele%20Ulusal%20Eylem%20Planı%202016-2020.pdf>> accessed: 12/03/2017.

¹¹⁹² Republic of Turkey, ‘Report submitted by Turkey pursuant to Article 68 (1) of the Council of Europe Convention on preventing and combatting VAW and domestic violence (Baseline Report)’, received by GREVIO on 3 July 2017, GREVIO/Inf (2017)5 (4 July 2017) 36. <<http://www.coe.int/en/web/istanbul-convention/country-monitoring-work>> accessed: 04/07/2017.

danger of violence, and risk of death. This section evaluates the victim-reporting processes within the scope of Law No. 6248 in light of the Istanbul Convention.

The victim-reporting mechanisms are essential to allow friends, family members, or any outside witness of violence to stand up for women too afraid to speak for themselves as a consequence of learned obedience, shame, or fear of revenge. Thus, the Istanbul Convention obliges the States to “take necessary measures to encourage any person witness to the commission of acts of violence covered by the scope of this Convention or who has reasonable grounds to believe that such an act may be committed, or that further acts of violence are to be expected, to report this to the competent organisations or authorities.”¹¹⁹³ Moreover, the Istanbul Convention holds certain professionals responsible for reporting to organisations or authorities if there is a serious act of violence which has been committed or further serious acts of violence which are to be expected:

Parties shall take the necessary measures to ensure that the confidentiality rules imposed by internal law on certain professionals do not constitute an obstacle to the possibility, under appropriate conditions, of their reporting to the competent organisations or authorities if they have reasonable grounds to believe that a serious act of violence covered by the scope of this Convention, has been committed and further serious acts of violence are to be expected.¹¹⁹⁴

Law No. 6248 states that “if there has been violence or there is a risk of it, everybody can report this situation to the official authorities and organs” and gives the public officials “who receive the report” responsibility “to fulfil their duties without any delay and inform the authorities of the other measures needed to be taken.”¹¹⁹⁵ This provision does not provide a notification obligation. Nuhoglu points out that it is a social duty to report the situation of those who witness violence to the competent authorities whether (s)he is a victim of violence

¹¹⁹³ The Istanbul Convention, Art. 27.

¹¹⁹⁴ *ibid.*, Art. 28.

¹¹⁹⁵ Law to Protect Family and Prevent Violence against Women 2012/6248, Art. 7. This is stated also within the Implementing Regulation of the Law No. 6248:

Article 4 (1): if there has been violence or there is a risk of it, everybody can notify this situation to the relevant authorities and organs in written, verbally or by other means. The public institutions and organizations and the professional organisations with public institution status being aware of violence or the risk of violence are obliged to inform immediately the situation to the complaint authorities.

or not.¹¹⁹⁶ Violence contravenes human dignity and human rights; however, if it constitutes an offense of the TCK, those who act in contradiction to the notification obligation will face sanctions in conformity with Article 278 of the TCK.¹¹⁹⁷

Public and health officers who violate the notification obligation may face sanctions if the act of violence constitutes one of the offenses defined in the TCK.¹¹⁹⁸ Public officers are obliged to fulfil their duties under the TCK without delay and to inform authorities of the measures to be implemented.¹¹⁹⁹ Failure to fulfil these duties without delay may constitute the offences of “Misuse of Public Duty”¹²⁰⁰ and “Public Officer’s Report of Offense” in Articles 257 and 279 of the Turkish Penal Code.

¹¹⁹⁶ Ayse Nuhoglu, ‘Kadina Yonelik Siddet / Violence against Women’ (2012) 8(97-98) *Kazancı Hakemli Hukuk Dergisi* 62, 71.

¹¹⁹⁷ Turkish Penal Code 2005/5237, Art. 278. (Annulled by the Decision of the Constitutional Court dated 30/6/2011 and Case No. 2010/52 and Decision No. 2011/113; Amended on 2/7/2012 by Article 91 of the Law no. 6352):

(1) Any person who fails to report, to the relevant authority, an offence which is in progress shall be sentenced to a penalty of imprisonment for a term of up to one year.

(2) Any person who fails to notify the relevant authority of any offence, which has been committed but where it is still possible to limit its consequences, shall be sentenced according to the provisions of the aforementioned paragraph.

(3) Where the victim is a child (not having yet attained his fifteenth year) a person physically or mentally handicapped or a pregnant woman who cannot defend herself as a result of her pregnancy, the penalty to be imposed according to aforementioned paragraphs shall be increased by one half.

¹¹⁹⁸ Turkish Penal Code 2005/5237, Articles 279 and 280.

Article 279 of the TCK:

(1) Any public officer who fails to report of an offence (which requires a public investigation and prosecution), or delays in reporting such offence, to the relevant authority, after becoming aware of such offence in the course of his duty, shall be sentenced to a penalty of imprisonment for a term of six months to two years.

(2) Where the offence is committed by a judicial law enforcement officer, the penalty to be imposed according to aforementioned paragraph shall be increased by one half.

Article 280 of the TCK:

(1) Any member of the medical profession who fails to report of an offence, or delays in reporting such offence, to the relevant authority after becoming aware, in the course of his duty, of any evidence demonstrating that a crime may have been committed shall be sentenced to a penalty of imprisonment for a term up to one year.

(2) A member of the medical profession shall include physicians, dentists, pharmacists, midwives, nurses and other persons who provide health services.

¹¹⁹⁹ Husamettin Ugur, ‘Kadin ve Aile Bireylerine Yonelik Siddete Karsi 6284 Sayili Kanunun Getirdikleri / Changes Brought by Law No. 6248 in Relation to the Fight Violence against Women and Family Members’ (2012) 101 *Turkiye Barolar Birligi Dergisi* 333, 349.

¹²⁰⁰ Turkish Penal Code 2005/5237, Art. 257:

ARTICLE 257-(1) Excluding the acts defined as offense in the law, any public officer who causes suffering of people or injury by acting contrary to the requirements of his office, or secures unjust benefit to third parties, is punished with imprisonment from one year to three years. (2) Excluding the acts defined as offense in the law, any public officer who causes suffering of people or public injury, or secures unjust benefit for others by showing negligence or delay in performance of his duties, is punished with imprisonment from six months to two years.

(3) Any public officer who secures benefit for himself or others in order to fulfil his obligations or for similar other reason, is punished with imprisonment according to provisions of the first subsection if such act does not constitute the offense of malversation.

This section reveals that although the provision for reporting violence under Article 7 of Law No. 6248 does not fully fit the requirements of Article 28 of the Istanbul Convention, this provision is sufficient partly in fulfilling Articles 278, 279, and 280 of the TCK and Article 7 of Law No. 6248 because if the violence does not constitute an offence or a prosecuted offence *ex officio*, there is no notification obligation.

In concluding, the new Law 6248, put in force after the adoption of the Istanbul Convention, has significantly improved the fight against VAW and in particular the so called ‘honour killings’. The aim and scope of the law is much wider: it includes measures for the prevention of violence against women; as opposed to only ‘protection’ which the previous legislation was restricted to. It extends the protection to women, children and family members in risk of violence as much as victims of violence. It also makes no distinction to the status of women protected and includes victims of stalking. Finally, it adopts a human rights approach and explicitly refers to the Istanbul Convention, both important elements for a progressive interpretation of the legislation. In addition, to the scope, the definitions included in the text also improve the legislative framework. The law promotes protective measures open to law enforcement officers and civil authorities (when before only judges were able to issue them); even more so, an important step forward is the preventive measures that the law includes, that can stretch even to preventive imprisonment. Other more practical changes include the establishment of ŞÖNİMs, centres where women can find refuge, and the clarification of the process for reporting violence against women.

5.3. Weaknesses of the Law to Protect Family and Prevent Violence against Women

Although Law No. 6248 has created a comprehensive legal framework for protecting women from violence and preventing VAW, particularly honour killings, and complies with the Istanbul Convention, there are still loopholes within its scope. In this section, I examine these gaps through the lens of intersectionality within feminist-legal theory.

5.3.1. Challenges to the Women’s Role

Turkish feminists have pinpointed the patriarchal male-dominated mentality to women’s role in the family that is still evident in Law No. 6284. They object to the name of the law; they voiced such objections while the code was being drafted. Although the draft law was entitled “Draft Law on the Protection of Women and Family Members from Violence”, it was changed to “Draft Law to Protect Family and Prevent Violence against Women” during the

meetings in the Grand National Assembly of Turkey/TBMM.¹²⁰¹ Changing the name of Law No. 6284, which is different than the one suggested in the draft, has attracted the reaction of women's organisations and parliamentarians in the Grand National Assembly of Turkey/TBMM.¹²⁰² Using the phrase "protection family" rather than "protection women and family" indicates that the name and the scope of the law contradict each other. This obstacle thwarts the efficient, clear implementation of the law's aim to protect women against violence.¹²⁰³

The Law's title reflects the perception of women as members of a family rather than as 'individuals'. VAW concerns primarily the rights of individual autonomy and the protection of the materially and morally existence of one. To end the public/private distinction, emphasised both in the CEDAW and the Istanbul Convention, necessitates deprioritising women's role in the 'family' over her foremost status as an individual, autonomous person.¹²⁰⁴ The root of women's oppression has been society's placement of her within a fixed, gendered role in a traditional family construct. To relegate violence in the framework of 'protection of the family' grounds the rights of the individual in a secondary position.¹²⁰⁵ There is a tendency to focus on family rather than on women.

This tendency is further echoed in the political, social, and legal developments in Turkey in the last decade. After the parliamentary elections of 2011, the Ministry of Family and Social Services (substituting the Ministry for Women and Family) was established, and there was renewed emphasis in political and academic discourse on women's status and place in the society. This is an important juncture in the struggle of the women's movement against the State's centring of women in the family.¹²⁰⁶

Another criticised loophole in Law No. 6248 is that the definition of 'gender' is not given in Article 2. VAW is based on gender discrimination in Turkey in line with the ECtHR

¹²⁰¹ Nazan Moroglu, 'Kadina Yonelik Siddet'in Onlenmesi 6284 sayili yasa ve Istanbul Sozlesmesi / Violence against women in the Law No. 6284 and the Istanbul Convention' (2012) 99 *Türkiye Barolar Birliği Dergisi* 357, 369.

¹²⁰² *ibid.*, 374.

¹²⁰³ Nur Centel, 'Ceza Hukuku Siddete Karsi Kadini Koruyor mu? / Does Turkish Penal Code Protect Women against Violence?' in Nur Centel (ed.), *Ceza Hukukunda Kadinin Siddete Karsi Korunmasi / Protecting Women against Violence in the Turkish Penal Code* (Levha Yayinlar, 2013) 4; Nazan Moroglu, 'Kadina Yonelik Siddet'in Onlenmesi 6284 sayili yasa ve Istanbul Sozlesmesi / Violence against women in the Law No. 6284 and the Istanbul Convention' (2012) 99 *Türkiye Barolar Birliği Dergisi* 357, 374.

¹²⁰⁴ See sections 3.2 for an evaluation of the CEDAW and 3.3 for analysis of the Istanbul Convention in Chapter 3.

¹²⁰⁵ Ulker Sener, '6248 Sayili Ailenin Korunmasi ve Kadina Yonelik Siddetin Onlenmesine Dair Kanun Ne Getiriyor / What has the Law No. 6284 on Protecting the Family and Preventing Violence Against Women brought into account?' (2012) *Turkiye Ekonomi Politikali Arastirma Vakfi* 1, 3.

¹²⁰⁶ *ibid.*

assessments of the cases of *Opuz v. Turkey*,¹²⁰⁷ *M.G. v. Turkey*,¹²⁰⁸ and *Halime Kılıç v. Turkey*.¹²⁰⁹ These criticisms and determinations are based on the argument that family life cannot prioritise the mental and physical integrity of women over that of men. Article 3(c) of the Istanbul Convention defines gender as “the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”, but Law No. 6284 does not provide a definition of ‘gender’ either in Article 2 or the purpose of the Law.

The ambiguous approach to the status of women is a significant shortcoming of Law No. 6248. Prioritising ‘family’ rather than women as ‘individuals’ is a main reason for all forms of VAW, particularly honour killings. The absence of ‘gender’ as another gap within the scope of the Law—it serves as an evocative reminder of the way ‘gender’ is inscribed within the patriarchal male-dominated mentality of Turkish society and culture. By failing to define it in writing, the drafters of the Law have effectively maintained this hegemony of traditionally constructed roles, behaviours, and attitudes that serve only to weaken women’s right to life.

5.3.2. Challenges to ‘Vulnerable Women’

Another main drawback of Law No. 6248 is its exclusion of vulnerable woman who have the specific needs that mainstream VAW support mechanisms are unable to support.¹²¹⁰ This violates the rights of these women, for they cannot be referred to mainstream support services.¹²¹¹ This is addressed in Article 18(3) of the Istanbul Convention. As a counterexample, the Catalan Law on VAW uses an intersectional approach that identifies and supports women in specific situations including those with disabilities, transsexuals, Roma ethnic groups, old age, immigrants, and women at risk of FGM.¹²¹² Given that honour killings affect mostly Kurdish women in Turkey, the government needs to take into account their struggles by providing access to legal aid; it also needs to consider language barriers by intersecting ethnicity, gender, and language within strong patriarchal family units.¹²¹³ This is

¹²⁰⁷ *Opuz v. Turkey*, Application No. 33401/02 (Council of Europe: European Court of Human Rights, 09 September 2009) paras. 184-202.

¹²⁰⁸ *M.G. v. Turkey*, Application No. 646/10 (Council of Europe: European Court of Human Rights, 22 March 2016) paras. 108-118 (author’s translation)

¹²⁰⁹ *Halime Kılıç v. Turkey*, Application No. 63034/11 (Council of Europe: European Court of Human Rights, 28 June 2016) paras. 112-122 (author’s translation).

¹²¹⁰ WAVE, ‘Violence against Women Comparative Report: Italy, Spain and Turkey’, Rachel Palmén, Nuria Francoli, Angela Genova, Asuman Göksel, Laura Sales, Silvia Sansonetti, Çiğdem Tozlu, Duygu Güngör, and Aslihan Öztürk (eds.) (2016) 19.

<<http://notus-asr.org/wp-content/uploads/2016/05/WAVECRFinal.pdf>> accessed: 13/03/2017.

¹²¹¹ *ibid.*

¹²¹² *ibid.*

¹²¹³ See section 2.5.3 in Chapter 2 for an evaluation of Kurdish women.

in concert with the UN's concern for "the inequalities faced by Kurdish women, which are compounded by the intersecting forms of discrimination to which they are subjected."¹²¹⁴

5.3.3. Challenges to the Eradication of So-called 'Honour Killings'

Another shortcoming of Law No. 6248 is the lack of a clear, explicit general obligation in line with Article 12 of the Istanbul Convention: Article 12(5) guarantees that crimes against women are considered crimes irrespective of the intentions behind them.¹²¹⁵ The most important feature of international treaties for women is that they reflect changes in social patterns; this is regulated in Article 12(5) of the Istanbul Convention.¹²¹⁶ Moreover, Article 42 of the Istanbul Convention obliges that "culture, custom, religion, tradition or so-called 'honour' shall not be regarded as justification for such acts."¹²¹⁷ Thus, Article 42(1) specifically reinforces the State's obligation in Article 12(5) of the Convention in the context of criminal law.

Law No. 6248 does not include the context of crimes within its scope. The TCK continues to apply, but some of its provisions do not correspond with those of the Istanbul Convention. Despite this, the act of killing committed with the motive of custom is legislated as an aggravated circumstance.¹²¹⁸ However, there is no provision for a crime committed in the name of 'honour' in the TCK. As discussed in the previous chapter, whether the term 'honour' is comprehended by the term 'töre/custom' is still debatable. Thus, crimes committed in the name of 'honour' should be legislated under the TCK and Law No. 6248.

During the meetings before Law No. 6248 was enacted, feminist activists from the *Şiddete Son Platformu*/Platform to End Violence proposed a provision related to 'honour killings' entitled "Unacceptable Justifications for the Crimes":

In criminal proceedings initiated within the scope of this Law, culture, custom, tradition, and/or so-called "honour" shall not be regarded as justification for the crime. Allegations that the victim violated appropriate norms and practices of cultural, religious, social, or traditionally accepted behaviour are included in these prohibited justifications. None of justifications can be regarding as 'unjust provocation'. No

¹²¹⁴ UN Committee on the Elimination against Women, 'Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey' (2016) CEDAW/C/Tur/Co/7 (25 July 2016) paras. 12-13.

¹²¹⁵ Marianne Hester and S. J. Lilley, 'Preventing violence against women: Article 12 of the Istanbul Convention' *A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence* (Strasbourg: Council of Europe, 2014) 8.

¹²¹⁶ See section 3.3.4.1 in Chapter 3 for further analysis of Article 12 of the Istanbul Convention.

¹²¹⁷ See section 3.3.4.2 in Chapter 3 for further reading.

¹²¹⁸ See section 4.2.4.2.2 in Chapter 4 for further reading.

punishment reductions for reasons such as ‘good conduct, regret,’ can be applied in any way in the determination and execution of sentences, which cannot be converted into a judicial fine or short-term sanctions.

Evidence of the victim’s sexual history, preferences, attitudes, and behaviour in the legal and criminal proceedings under this Law is only allowed if it is directly and necessarily related to the case. Such evidence should be collected only if it is directly and necessarily related to the case.¹²¹⁹

They pointed here on the provision of ‘good conduct’, as judges apply the ‘good behaviour’ provision to give lenient judgments or reduced sentences to perpetrators of killings, including honour killings, and perpetrators of sexual violence in trials pursuant to Article 62 of the TCK.¹²²⁰ Thus, this proposed article would have guaranteed the unacceptable justifications for crimes based on ‘good conduct, regret, custom, tradition, culture and honour’. However, this proposed Article was not presented to the TBMM/Grand National Assembly of Turkey and was not included within the scope of Law No. 6248.

One problem of the TCK is the application of unjust provocation provisions in cases involving so-called honour killings. Even in cases where unjust provocations conditions occur, sentence reductions cannot be imposed to murders committed with the motive of blood feud or töre/custom.¹²²¹ In other words, only in cases of killing committed with the motives of töre/custom or blood feud are aggravated circumstances legislated in Article 82 of the TCK applied.¹²²² In light of this, Article 29 in the TCK should include ‘culture, tradition, religion, and so-called honour killings’ as reasons within its scope to correspond with the requirement

¹²¹⁹ Şiddete Son Platformu / Platform to End Violence, ‘1 Mart 2012-31 Aralık 2012 Tarihli Bakanlık Taslagında Kabul Edilen Taleplerimiz ve Metnin Eksikliklerine Dair Madde Bazlı İnceleme / Analysis of the Women’s Platform to Stop Violence against Women, Accepted Requests on Deficiencies of Provisions under the Draft Law No. 6248, which is dated between 1 March 2012 and 31 December 2012” (March 2012) <<http://www.kahdem.org.tr/?p=287>> accessed: 12/03/2017 (author’s translation).

¹²²⁰ Turkish Penal Code 2005/5237, Art. 62:

Grounds for Discretionary Mitigation

Article 62:

(1) Where there are grounds for discretionary mitigation, a penalty of life imprisonment shall be imposed where the offence committed requires a penalty of aggravated life imprisonment; or twenty-five years imprisonment where the offence committed requires a penalty of life imprisonment. Otherwise the penalty to be imposed shall be reduced by up to one-sixth.

(2) In the evaluation of discretionary mitigation the following matters shall be taken into account: background, social relations, the behaviour of the offender after the commission of the offence and during the trial period, and the potential effects of the penalty on the future of the offender. The reasons for any discretionary mitigation are to be stated in the judgement.

¹²²¹ Berrin Akbulut, ‘6248 Sayılı Kanunda Şiddet ve İstanbul Sözleşmesinin TCK Acısından Değerlendirilmesi / Violence in the Law Numbered 6248 and Evaluation of the Istanbul Covenant in Terms of TCK’ (2014) 5(14) TAAD 141, 158.

¹²²² İzzet Özgenc, *Türk Ceza Hukuku, Genel Hukimler, Gözden Geçirilmiş ve Güncellenmiş / Turkish Criminal Code, General Provisions, Reviewed and Updated*, 9th Edition (Ankara, 2013) 433.

of Article 42 in the Istanbul Convention. Crucially, sentence reductions do not apply to töre/custom killings and so-called ‘honour killings’ as stated in the justification of Article 29 in the TCK.¹²²³ However, in practice unjust provocation is exercised with respect to so-called ‘honour killings’.¹²²⁴ Because so-called honour killing is not regulated as a qualified condition in Article 82 of TCK, the unjust provocation can be applied. Husamettin Ugur, a member of the Supreme Court of Appeals, argues whether unjust provocation can be applied to so-called ‘honour killings’ and ‘custom killings’:

Article 29 indicates that unjust provocation cannot be applied in the sentencing of the custom killings. However, in the media and also in the legal system, the concepts of custom killings and honour killings are confused with each other. They are used interchangeably, however, according to the decision General Assembly of Supreme Court of Appeals, the custom killing and honour killing concepts are defined and indicated as two concepts that are different from each other. In every case, the consequence is very important; if the killing is done in the way of custom killing, there cannot be any reduction in the sentencing due to unjust provocation. However, if the killing occurs due to the honour concept of the perpetrator, the situation is very different. In killing, if there is a woman involved everybody jumps to the conclusion that the killing is done for the reasons of custom killing.¹²²⁵

In conclusion, Law No. 6248 should include general obligations that reflect changing social patterns affecting gender discrimination of women, any form of VAW, and the scope of women’s right to life. This section discusses the changing mentality in Turkish society and government institutions that is initiating and advancing the prevention of violence and women killings in the name of ‘honour’, custom, or tradition. The following section assesses the impact of another absent provision in Law No. 6248—criminalising forced/arranged and early marriages as separate offences.

5.3.4. Omission to Prohibit Mandatory Alternative Dispute Resolution

State authorities opt for the path of least resistance in such cases or devise a way to reconcile the couple in the name of ‘protecting the family’. Police officers usually consider the problem

¹²²³ See section 4.2.4.3.2 titled ‘Unjust Provocation to Honour Killings’ in Chapter 4 for further analysis.

¹²²⁴ *ibid.*, Nur Centel, ‘Ceza Hukuku Siddete KArsi Kadini Koruyor mu? / Does Turkish Penal Code Protect Women against Violence’ in Nur Centel (ed.), *Ceza Hukukunda Kadinin Siddete Karsi Korunmasi / Protecting Women against Violence in the Turkish Penal Code* (Levha Yayinlar, 2013) 9.

¹²²⁵ Husamettin Ugur, ‘Prevention of Violence against Women’ in Yalcin Sahinkaya (ed.), *Combating Violence Against Women in The Context of Effective Implementations of Human Rights Standards International Symposium, 7-8 June 2012, Istanbul/Turkey* (Justice Academy of Turkey Press, 2012) 361.

as a family issue with which they cannot intervene; rather than investigate victims' claims, they "seek to assume the role of mediator by trying to convince the victims to return home and drop their complaint."¹²²⁶ The Istanbul Convention forbids any legislation that obliges victims to take part in mandatory mediation or other forms of mandatory alternative dispute resolution mechanisms. Thus, the Istanbul Convention obliges State Parties to "take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation."¹²²⁷

While the drafters of the Istanbul Convention do not question the benefits that these alternative methods present in many criminal and civil law cases, they highlight the harmful effects these can have in cases of violence covered by the scope of this Convention, "in particular if participation in such alternative dispute resolution methods are mandatory and replace adversarial court proceedings".¹²²⁸ Nelles explains that "this is because in cases of violence against women covered by the Istanbul Convention, victims can never enter the alternative dispute resolution process on a level equal to that of the perpetrator."¹²²⁹ Victims of violence are always left with "a feeling of shame, helplessness and vulnerability, while the perpetrator exudes a sense of power and dominance."¹²³⁰ It is the responsibility of the State to provide access to adversarial court proceedings presided by a neutral judge to avoid re-privatisation and to enable the victim to seek justice.¹²³¹ Kimelblatt argues that this eradicates the probability that "victims would be forced to sit down with their abusers to resolve issues prior to or instead of using other legal remedies."¹²³² The Istanbul Convention gives Parties the responsibility to "take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations

¹²²⁶ *Opuz v. Turkey*, Application No. 33401/02 (Council of Europe: European Court of Human Rights, 09/09/2009), para. 195. See *Halime Kılıç v. Turkey* Application No. 63034/11 (Council of Europe: European Court of Human Rights, 28 June 2016) para. 73 (author's translation).

¹²²⁷ The Istanbul Convention, Art. 48 (1).

¹²²⁸ Council of Europe, 'Convention on Preventing and Combating Violence against Women and Domestic Violence: Explanatory Report to the Istanbul Convention' (2011) para. 252.

¹²²⁹ Johanna Nelles, 'The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)' in Yalcin Sahinkaya (ed.), *Combating Violence Against Women in The Context of Effective Implementations of Human Rights Standards International Symposium*, 7-8 June 2012, *Istanbul/Turkey* (Justice Academy of Turkey Press, 2012) 442.

¹²³⁰ Council of Europe, 'Convention on Preventing and Combating Violence against Women and Domestic Violence: Explanatory Report to the Istanbul Convention' (2011) para. 252.

¹²³¹ Johanna Nelles, 'The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)' in Yalcin Sahinkaya (ed.), *Combating Violence Against Women in The Context of Effective Implementations of Human Rights Standards International Symposium*, 7-8 June 2012, *Istanbul/Turkey* (Justice Academy of Turkey Press, 2012) 442.

¹²³² Meredith Kimelblatt, 'Reducing Harmful Effects of Machismo Culture on Latin American Domestic Violence Laws: Amending the Convention of Belem Do Para to Resemble the Istanbul Convention' (2016) 49 *Geo. Wash. Int'l L. Rev.* 405, 428.

and judicial proceedings, in particular by ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible.”¹²³³ Consequently, Article 48(1) entails State Parties to forbid in national criminal and civil law the mandatory participation in any alternative dispute resolution processes.

The Turkish Legislation is very blurred on this matter. Certainly, Article 48(1) of the Istanbul Convention is not included in the scope of Law No. 6284. The drafters of Law No. 6284 did not prohibit either mediation as a legal institution or reconciliation efforts within the scope.¹²³⁴ Its absence shows the lack of the State’s willingness to fight judicial passivity. This grounds that women have to accept the traditional roles because not only do they seem like second class citizens as women but also as members of minorities in light of intersectionality within feminist-legal theory. For this reason, often the state does not take them as seriously and puts up with solving these issues within the family or community because it does not want to interfere.

Moreover, there is no provision related to mediation on VAW in Article 253(4) of the Turkish Criminal Procedure Law; rather, it enables that “in cases where the crime under investigation is depending on mediation, the public prosecutor, or upon his orders, the official of judicial security forces shall propose mediation to the suspect and to the victim or to the person who has suffered damages from the crime.”¹²³⁵ This provision gives to the officials of judicial security forces to propose mediation on disputes. Crucially, the Turkish Criminal Procedure Law is amended in 2016 and the duty to propose mediation to the suspect and to the victim is given to ‘Mediator’ who works in the Mediation Bureau.¹²³⁶

However, this is not the whole picture: In 2012, the Law on Mediation in Civil Disputes prohibited mediation in domestic violence disputes: “This Law shall be applied in private law disputes, arising solely from the affairs or actions on which the parties may freely have a disposal, including those possessing the element of alienage. However, disputes containing domestic violence are not suitable of mediation.”¹²³⁷ Therefore, the law does look at disputes involving claims of domestic violence are unfit for mediation because of the possibility of that

¹²³³ The Istanbul Convention, Art. 56(1) (g).

¹²³⁴ Nisa Kuyucu, *AIHM Kararlarının Uygulanması İzleme Raporları, 2015/1 Opuz KARARININ Uygulanması- İzleme Raporu / The monitoring report on the implementation of decisions of ECtHR, 2015/1 the Implementation of the ECtHR judgement on case of Opuz-Monitoring Report* (Insan Hakları Ortak Platformu 2015) 16.

¹²³⁵ The Turkish Criminal Procedure Law 5271/2004, Art. 253(4).

¹²³⁶ The Turkish Criminal Procedure Law 6763/2016, No. 29906, official gazette, (2nd December 2016) < <http://www.resmigazete.gov.tr/eskiler/2016/12/20161202-1.htm>> accessed: 12/05/2017.

¹²³⁷ The Law on Mediation in Civil Disputes 6325/2012, Article 1(2).

one of the parties threatens and oppresses the other and that difficulties would arise to access of the principle of equality.¹²³⁸ Unfortunately, no detailed arrangement has been made regarding what kinds of disputes can be fully assessed in the context of domestic violence.¹²³⁹

It is suggested that because of the vague language of the Law on Mediation in Civil Disputes, it is not adequate to try to prevent violence only by deciding on the preventive measure. Applicability of mediation (or rather not) in cases of VAW also need to be added to support the services provided by ŞÖNİMs.¹²⁴⁰ Ozturk supports this idea, “especially in cases where there is no physical violence, the voluntary mediation may be an effective solution in the prevention of violence as being evaluated and conducted the concrete cases by the jurist-psychologist or psychologist who are charged in duty in the ŞÖNİMs, instead of an absolute prohibition of the role mediation in this regard.”¹²⁴¹ I do not agree with Ozturk, whose proposal may cause repeating victimisation and even compromise women’s right to life. Instead, female victims of violence should be provided sufficient and efficient preventive and protective measures through law enforcement officers’ duty of due diligence. Officers must also prevent women’s secondary victimisation by being sensitive and attentive to their own responses to victims’ claims. Although the Istanbul Convention forbids the enforcement of these mechanisms, it must open its doors to considering closely the risk of the murder that many women face.

In conclusion, although the Law on Mediation in Civil Disputes prohibits mediation in domestic violence disputes, Law No. 6248 does not; such a provision which forbids the mandatory participation in any alternative dispute resolution processes in cases of VAW and domestic violence should be included in the law.

In concluding, it is argued that although this Law has gradually acquired many strengths within its scope, yet, its weaknesses, particularly the absent provisions in light of Article 12

¹²³⁸ Samil Demir, ‘Arabuluculuk ile Aile içi Sıddet ve Uzlaşmaya Tabi Sucların İlişkisi / *Relationship between Mediation and Domestic Violence and Crimes Subject to Reconciliation*’ (2014) 2 *Ankara Barosu Dergisi* 214, 219; Ferhat Yıldırım, ‘Türk Hukuk Sisteminde Alternatif Bitir Cozum Yolu Olarak Arabuluculuk / *Mediation as an Alternative Remedy in Turkish Legal System*’ (2016) 2(3) *International Journal of Social Sciences and Education Research* 926, 930.

¹²³⁹ Gonca Gulfem Bozdağ, ‘Arabulucuk ve Arabulucunun Ebeveynler Üzerindeki Uluslararası İhtilaflarda Uygulanabilirliği / *Mediation and Applicability of Mediation in International Disputes between Parents*’ (2016) 20(1) *Gazi Üniversitesi Hukuk Fakültesi Dergisi* 101, 117.

¹²⁴⁰ Mustafa Serdar Özbek, *Alternatif Uyuşmazlık Cozumunu / Alternative Dispute Resolution* (Ankara: Yetkin Yayınları, 2013) 1027.

¹²⁴¹ Necla Öztürk, ‘Ailenin Korunması ve Kadına Karşı Sıddetin Önlenmesine Dair Kanunun Getirdiği Bazı Yenilikler ve Öneriler / *Some Innovations in the Act of Family Protection and Prevention of Violence against Women*’ (2017) 8(1) *İnönü Üniversitesi Hukuk Fakültesi Dergisi* 1, 25.

and 42 of the Istanbul Convention, hinder its overarching aims, particularly in relation to my research topic. Full compliance with all principles of the Istanbul Convention is required in order to achieve gender equality; one of the main challenges is the elimination of the male-dominated mentality in Turkish society and its institutions.

5.4. The Implementation Gap

The previous section looked closely at the law. However, the implementation of the legislation that protects women against honour killings –especially Law No. 6248- has its own challenges. I will analyse them using reports by the government, women NGOs, and international human rights organisations. In particular, this section examines the extent to which the protective and preventive orders being implemented are combatting all forms of VAW. It concludes by arguing how the unjust provocation and good conduct reductions applied to perpetrators of ‘honour killings’ in specific cases exhibit the persistence of a male-dominated mentality in Turkish society and institutions.

5.4.1. Reporting on the Implementation Gap

The implementation of Turkish Legislation regarding VAW has faced much criticism regarding “the lack of resources, including insufficient human resources and funds, lack of monitoring, evaluation and follow up of measures, inadequacy of support mechanisms such as shelters and intervention centres, lack of indicators and objectives, negative attitudes towards women, related laws and shelters due to conservative ideologies.”¹²⁴² My own analysis of these criticisms is based on statistics provided in a range of national, international, and shadow reports. In fact, on 3 July 2017 (at the time of this writing), GREVIO has just received the Turkey State Report¹²⁴³ and the shadow NGO report from Bianet (Independent Communication Network)¹²⁴⁴ on the legal implications of Turkey’s accession to the Istanbul Convention.¹²⁴⁵

¹²⁴² WAVE, ‘Violence against Women Comparative Report: Italy, Spain and Turkey’, Rachel Palmén, Nuria Francoli, Angela Genova, Asuman Göksel, Laura Sales, Silvia Sansonetti and Çiğdem Tozlu with Duygu Güngör and Aslihan Öztürk (eds.) (2016) 60.

<<http://notus-asr.org/wp-content/uploads/2016/05/WAVECRFinal.pdf>> accessed: 13/03/2017.

¹²⁴³ Republic of Turkey, ‘Report submitted by Turkey pursuant to Article 68(1) of the Council of Europe Convention on preventing and combatting VAW and domestic violence (Baseline Report)’, received by GREVIO on 3 July 2017, GREVIO/Inf (2017)5, (4 July 2017) 16.

<<http://www.coe.int/en/web/istanbul-convention/country-monitoring-work>> accessed: 04/07/2017.

¹²⁴⁴ BIANET Shadow Report, ‘Turkey’ (3 July 2017), prepared by Nisa Kuyucu, submitted to GREVIO, 12, para. 16. <<http://www.coe.int/en/web/istanbul-convention/country-monitoring-work>> accessed: 04/07/2017.

¹²⁴⁵ GREVIO <<http://www.coe.int/en/web/istanbul-convention/country-monitoring-work>> accessed: 04/07/2017. See section 3.3.5 in Chapter 3 for evaluations of GREVIO as a monitoring mechanism of the Istanbul Convention.

Research on Domestic Violence against Women in Turkey in 2015 found that “36 percent of women are subjected to physical violence; 12% of them are subjected to sexual violence; 44% of them are subjected to psychological violence and, 30% of them are subjected to economic violence by their husbands or male partners in any period of their lives.”¹²⁴⁶ Although this research does not provide statistics on female killings and honour killings, it observes that:

Regarding the incidents of violence against women or femicides, men generally try to justify the murder and blame the wife whom they injured or killed. In most of the incidents, “jealousy”, “betrayal” or “suspicion of betrayal” have been emphasised. By the young men who participated in the focus group discussions, betrayal was given as one of the reasons for society’s approval of violence. In line with the opinions of the young men, the men who have killed their wives not only justified themselves but also mentioned “betrayal” as a justification which is in line with society’s understanding of “honour”. The narrations of 39-year-old, secondary school graduate K. who murdered his wife, reveal the society’s approach to honour and how violence is legitimised in case of a betrayal.¹²⁴⁷

The State’s failure to protect a woman from honour killing is also evident in the 2015 Report’s analysis of the case involving ‘K’, who was punished with 15 years’ imprisonment. K indicated that he killed his wife for his honour and did not mention any ‘remorse’. He states that “he was right to murder his wife and that the society also thought like him”, and continues:

Media exaggerates this. You know I have killed my wife, and the state couldn’t protect her, a woman was murdered. Okay but ask him the reasons why he killed that woman. Like for example; a man gets angry and kills his wife because she didn’t cook. Another man kills his wife because of his honour, his wife cheated on him. They give both of us life imprisonment. There is no justice in this. When I went before the court, they gave me aggravated life imprisonment. They gave normal life imprisonment for the other guy. Then I was sentenced to 15 years of imprisonment.¹²⁴⁸

¹²⁴⁶ Republic of Turkey Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, ‘Research on Domestic Violence against Women in Turkey: Summary Report’ (2015) 7-13.

¹²⁴⁷ Republic of Turkey Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, ‘Research on Domestic Violence against Women in Turkey’ (2015) 252.

¹²⁴⁸ *ibid.* 254.

This case demonstrates that the ‘unjust provocation’ provision applied to punishments of ‘honour killings’ is still used; this infringes Article 42 of the Istanbul Convention.

Unfortunately, there is no official data on women killings in Turkey. Yet, some women NGOs provide such data: The Bianet Male Violence Monitoring Group reports that in 2016, 261 women and girls were killed—“68% of the women were killed by their partners (husband/boyfriend/ fiancé) or ex-partners, 10% were killed by relatives.”¹²⁴⁹ The report also indicates the ineffective implementation of Law No. 6248, for “6% of the women were killed despite protection orders. 9% of the women were killed despite demanding (and not receiving) protection orders against their husbands who were inflicting violence, or were killed right after a protection order had expired.”¹²⁵⁰ Therefore, this shows that the legislation, as good as it is, has limited impact on the ground. This is a major concern. The data was reported to GREVIO in the BIANET Shadow NGO Report in response to GREVIO’s first period questionnaire:

The figures declared by various ministries to the press are in contradiction with the figures Bianet reached by compiling information from the media. For instance, as then the Minister of Family and Social Policies Ayşegül Islam claimed that there was no woman murdered under state protection, whereas Bianet declared in its male violence monitoring report that 11 women were killed in the first quarter of 2014 and 10 women were killed in 2013 despite protection orders.¹²⁵¹

Another research initiative, entitled “We will Stop Femicide Platform”, presented statistics stating that 328 women were killed in 2016.¹²⁵² These statistics are worrisome, especially when considering the improvements made to Turkish Legislation on eliminating women killings after the ratification of the Istanbul Convention.

¹²⁴⁹ Cicek Tahaoglu and Begum Baki, ‘Men Kill at Least 261 Women, Girls in 2016’ *Bianet* (3 February 2017) <<http://bianet.org/english/women/183255-men-kill-at-least-261-women-girls-in-2016>> accessed: 4 April 2017.

¹²⁵⁰ *ibid.*

¹²⁵¹ BIANET Shadow Report, ‘Turkey’ (3 July 2017), prepared by Nisa Kuyucu, submitted to GREVIO, 12, para. 16. <<http://www.coe.int/en/web/istanbul-convention/country-monitoring-work>> accessed: 04/07/2017.

¹²⁵² Kadın Cinayetlerini Durduracagiz Platformu / *We will Stop Femicide Platform*, ‘2016 Report’ (1 January 2017) <<https://kadincinayetlerinidurduracagiz.net/veriler/2786/kadin-cinayetlerini-durduracagiz-platformu-2016-yili-raporu>> accessed: 4 April 2017.

The US State Department's Human Rights Report on Turkey¹²⁵³ also evaluates honour killings, noting that while perpetrators of honour killings receive life imprisonment, actual punishments frequently are reduced because of mitigating factors:

The law allows judges, when establishing sentences, to take into account anger or passion caused by the “misbehaviour” of the victim. Local political and human rights representatives noted that society largely downplayed the issue of women killed by family members because there was an underlying assumption that some type of “honour” violation was involved, perhaps justifying the killing.¹²⁵⁴

In addition, KAMER (Women's Centre NGO) conducted a study entitled “Who is the Guilty? Family? State? Society? So All of US?” that included 22.684 women in 22 provinces in South-eastern and Eastern parts of the Turkey. It analysed about 100 case files regarding the discrimination against women and the abuse of their rights.¹²⁵⁵ This report demonstrates that despite legislation and regulations on preventing violence, VAW is still prevalent in practice. In line with this research, Baki highlights the bizarre reality that violent criminals reside with their families in the first place, then are seen with their criminal partners in every area of the public-private domain, thereby normalising their status in the community. This social crime is excused and justified as “man's insanity, honour, and property”¹²⁵⁶—such a perception helps explain the CEDAW report on the omnipresent, persistent issue of crimes, comprising murders, committed in the name of so-called “honour” and the relatively high number of forced suicides or disguised murders in Turkey.¹²⁵⁷ The CEDAW Committee has noted that:

The State party's efforts to raise the awareness of the public in order to reject the concept of “honour” that perpetuates and condones the killing of women have been insufficient. It notes the information provided by the State party that article 29 of the Penal Code providing for mitigating circumstances in the case of “unjust provocation” is not applied to killings in the name of so-called “honour”. The Committee is concerned, however, that this does not constitute a sufficient legal safeguard, given

¹²⁵³ U.S. Department of State, ‘Human Rights Country Report: Turkey’ (U.S. Department of State, 2016) <<http://www.state.gov/documents/organization/265694.pdf>> accessed: 4 April 2017.

¹²⁵⁴ *ibid.*

¹²⁵⁵ KAMER, ‘Hane Ziyaretleri Verileri 2015 sonuçları / The Report of House Visits in 2015’ <http://www.kamer.org.tr/menus/report_of_house_visits_2015-2016.pdf> accessed: 4 April 2017.

¹²⁵⁶ Begum Baki, ‘Kadınlar Soruyor ve İfşa Ediyor, Suçlu Kim? / Women are asking and revealing, Who is the Guilty?’ (2017) 157 *Guncel Hukuk Dergisi* 63.

¹²⁵⁷ UN Committee on the Elimination against Women, ‘Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey’ (2016) CEDAW/C/Tur/Co/7 (25 July 2016) para. 34.

that the provision explicitly prohibiting the application of article 29 addresses only killings in the name of “custom” (töre) and thus may not always cover killings in the name of so-called “honour” (namus).¹²⁵⁸

The BIANET Shadow Report to GREVIO echoes this observation that “culture, manners, and customs, tradition or so-called honour are used especially as unjust provocation cause to reduce the punishment. Jealousy, having male friends or suspicion that his wife cheats on him became factors in remission under the name of unjust provocation.”¹²⁵⁹

Preventive mechanisms that lack a women’s rights-based approach refuse to acknowledge that patriarchy and violence are a holistic, reciprocally related problem. Tahaoglu observes that women and girls must obey unconditionally the boundaries drawn by prescribed gender roles within the patriarchal structure; if they pass beyond this border, they face violence, ill-treatment, torture, and even murder or forced suicide in the name of ‘honour’.¹²⁶⁰ Therefore, State law enforcement officers are obliged to exercise their due diligence duty to prevent and protect women from the risk of murders committed in the name of ‘honour’. The following section analyses research and reports on this duty of due diligence and its failure.

5.4.2. The State’s Reluctance to Exercise Due Diligence to Protect Women at Risk of Death

After experiencing severe violence, some women at risk of death seek protection from the police station to survive. KAMER’s study of 13 murder cases in south-eastern Turkey where mostly Kurdish women live found that 11 women made more than one application to the police station in response to the ongoing violence they experienced.¹²⁶¹ Although the women reported their potential killers to law enforcement officers, their murders were not prevented mostly because the women were not protected more effectively. This is evidence of the intersectionality within feminist-legal theory, as women are ignored because of their status as women but also because of other characteristics they may have. Their multiple identities make them even more vulnerable. Baki discusses that “there is no risk assessment, no measures are taken to provide coordinated protection and support in cases where the violence is not

¹²⁵⁸ *ibid.*

¹²⁵⁹ BIANET Shadow Report, ‘Turkey’ (3 July 2017), prepared by Nisa Kuyucu, submitted to GREVIO, page. 22, para. 41. <<http://www.coe.int/en/web/istanbul-convention/country-monitoring-work>> accessed: 04/07/2017.

¹²⁶⁰ Cicek Tahaoglu, ‘Suclu Kim? Aile? Devlet? Toplum? Yani Hepimiz? / Who is the Guilty? Family? State? Society? So All of US?’ *BIANET* (15 December 2016) <<http://bianet.org/bianet/toplumsal-cinsiyet/181732-kadina-siddette-suclu-kim-aile-devlet-toplum-hepimiz>> accessed: 4 April 2017.

¹²⁶¹ Begum Baki, ‘Kadinlar Soruyor ve Ifsa Ediyor, Suclu Kim? / Women are asking and revealing, Who is the Guilty?’ (2017) 157 *Guncel Hukuk Dergisi* 63.

repeated or there is a risk of death.”¹²⁶² Thus, there is an urgent need to enforce “the idea of acting immediately, acting swiftly, making sure that the police response to every single call, even if it’s coming from the same victim and it’s often repeated and they haven’t been able to help her properly, but the idea is to take it seriously and to act quickly.”¹²⁶³ This reveals the necessity of provision on risk assessment and management procedure within Law No. 6248 in requirement of Article 51 of the Istanbul Convention. BIANET echoes this systemic neglect in its Shadow Report to the GREVIO:

No effective protection is provided to groups that face the highest risk of violence based on gender and sex since there is no risk assessment and management, and security officers do not carefully and immediately work on complaints about violence when it is made by women, trans and LGBTI individuals in Turkey.¹²⁶⁴

This Report indicates that 284 women were murdered in 2015 “while protection orders were issued for 27 of these women or they made a complaint about violence and applied to security authorities.”¹²⁶⁵ We do not know how many of these deaths were honour killings. In any case, this high number demonstrates that despite the protective measures in place, women’s lives remain unsafe because law enforcement officers do not uphold their duty of due diligence.¹²⁶⁶ This makes other women who face similar problems even more reluctant to revolt against the traditional hierarchies of their own families or cultural environment and apply to legal mechanisms, because they distrust them and their effectiveness.

Law No. 6248 does not contain a provision for risk assessment and risk management in line with Article 51 of the Istanbul Convention, which explicitly introduces a proper risk assessment and risk management scheme. This means that enforcement officers need to assess the situation and implement a safety plan to manage the risk in cases of life-threatening danger.

5.4.3. Ineffective Training of Law Enforcement Officers on VAW

Raising awareness and increasing knowledge through training play a vital role in eliminating VAW. To prevent negative attitudes and neglect toward women requires training on gender

¹²⁶² *ibid.* 62-63.

¹²⁶³ Johanna Nelles, ‘Concept and Institutional Approaches from Europe’ in Yalcin Sahinkaya (ed.), *Combating Violence against Women in the Context of Effective Implementations of Human Rights Standards International Symposium, 7-8 June 2012, Istanbul/Turkey* (Justice Academy of Turkey Press, 2012) 272.

¹²⁶⁴ BIANET Shadow Report, ‘Turkey’ (3 July 2017), prepared by Nisa Kuyucu, 25-26, para. 49. <<http://www.coe.int/en/web/istanbul-convention/country-monitoring-work>> accessed: 04/07/2017.

¹²⁶⁵ *ibid.*

¹²⁶⁶ *ibid.*

equality, women's rights, and VAW for law enforcement officers. To this end, the Ministry of the Interior, Ministry of Justice, and Ministry of Health have signed "Training Protocols" on the elimination of VAW: between 2014 and 2016, "several seminars were organized until now with the participation of 71,000 Police, 65,000 Health Personnel, 326 Family Court Judges and Public Prosecutors."¹²⁶⁷ Moreover, around 7.197 military staff from the Ministry of National Defence was given "Professional Training of Trainers, Training of Trainers and Unit Training of Trainers" for five days and 490.222 for ranks and files given trainings for two days between the years 2014 and 2015; 537 trainers trained around 47,566 religious officers from 2014 to 2016.¹²⁶⁸ The State also sponsored seminars, projects, and other awareness-raising activities on gender equality and all forms of VAW. Published books, booklets, and brochures were submitted to GREVIO, according to the State report.¹²⁶⁹

In addition, in 2015, the Bureau for Combating Violence against Women and Domestic Violence within Provincial Directorate of Security Affairs Division of Public Security of 81 provinces was established "to examine the data related to violence against women and domestic violence in the province and represent the organization in the processes and procedures carried out throughout the province".¹²⁷⁰ Between January and March 2016, around 500 people were trained for police trainings in these Departments via the Combatting Domestic Violence Project¹²⁷¹ in partnership with the EU.¹²⁷² Moreover, 221 personnel working for the Ministry of Health (from November to December 2015), 272 working for the Ministry of Justice (from January to April 2016), and 124 working for ŞÖNİMs (from March

¹²⁶⁷ Republic of Turkey Ministry of Family and Social Policies, 'The General Directorate on Status of Women' (Ankara KSGM, 2016) 32.

<[http://kadininstatusu.aile.gov.tr/data/58528516369dc524d057a5fe/The%20General%20Directorate%20of%20the%20Status%20of%20Women%20\(KSGM\).pdf](http://kadininstatusu.aile.gov.tr/data/58528516369dc524d057a5fe/The%20General%20Directorate%20of%20the%20Status%20of%20Women%20(KSGM).pdf)> accessed: 15/01/2017.

This is also reported to the GREVIO's first periodic questionnaire by the State. Republic of Turkey, 'Report submitted by Turkey pursuant to Article 68(1) of the Council of Europe Convention on Preventing and Combatting VAW and domestic violence (Baseline Report)', received by GREVIO on 3 July 2017, GREVIO/Inf (2017)5, (4 July 2017) 16.

<<http://www.coe.int/en/web/istanbul-convention/country-monitoring-work>> accessed: 04/07/2017.

¹²⁶⁸ Republic of Turkey, 'Report submitted by Turkey pursuant to Article 68 (1) of the Council of Europe Convention on Preventing and Combatting VAW and Domestic Violence (Baseline Report)', received by GREVIO on 3 July 2017, GREVIO/Inf (2017)5, (4 July 2017) 16.

¹²⁶⁹ *ibid.*, 19.

¹²⁷⁰ *ibid.*, 11.

¹²⁷¹ The project was launched on 27 December 2013 to establish and/or improve support services for victims of violence. It is found to be enabled to provide effective protection for women against violence in 26 provinces. See: Republic of Turkey Ministry of Family and Social Policies, 'The General Directorate on Status of Women' (Ankara KSGM, 2016) 14.

¹²⁷² KSGM, 'AB Aile İçi Sıddetle Mucadele Projesi Egitimleri / *Project on Combatting Domestic Violence with EU*' (Ankara KSGM)

<<http://kadininstatusu.aile.gov.tr/faaliyetler/egitimler/ab-aile-ici-siddetle-mucadele-projesi-egitimleri>> accessed: 05/03/2017.

to June 2016) were trained for 5 days through this project.¹²⁷³ KSGM plans to train 35.000 health and 140.000 law enforcement personnel through this project by end of 2016.¹²⁷⁴

Yet despite this extensive training, reports reveal that women who have applied to police stations in the first instance still face both negative and positive comments from the police officers.¹²⁷⁵ Some of the victims stated that “they were not referred to services of guidance and support by the police and instead they were sent back to their homes and tried to be reconciled with their abusive husbands.”¹²⁷⁶ Moreover, the rate of access to legal aid is reduced because of victims’ lack confidence in the justice system, their experiences of injustice, and the complicated and cumbersome nature of legal proceedings.¹²⁷⁷ Further, police, prosecutors, and judges are approaching cases of VAW and violations of women’s rights as if they are ordinary, formal decision-making processes.¹²⁷⁸ Although the training programs aim to raise police awareness of gender equality in the fight against VAW, the police reproduce a systemic culture of entrenched patriarchal beliefs that is exceedingly difficult to uproot. This confirms that the prevailing cultures of entrenched patriarchal beliefs extend to the state mechanism. In this respect, the legislation is not able to bear fruits in a society where the structures are patriarchal and male-dominated within the lens of poststructuralist feminist-legal approach. This is evidenced in their pronounced neglect for women:

Police stations/police and women’s guesthouses/shelters are the most widely known institutions that provide services in the field of violence against women. Regarding the applications made to the police, women’s statements not being taken (81 percent), and women not being alone during the statement taking process (18 percent another police officer, 14 percent their family, 3 percent their husbands) are among the problems encountered during the application process. Referral of women subjected to violence to another institution/organization by the police is the most common implementation (40 percent). However, the fact that 27 percent of the applications resulted in women’s

¹²⁷³ *ibid.*

¹²⁷⁴ Republic of Turkey Ministry of Family and Social Policies, ‘The General Directorate on Status of Women’ (Ankara KSGM, 2016) 15.

¹²⁷⁵ Republic of Turkey Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, ‘Research on Domestic Violence against Women in Turkey’ (2015) 228.

¹²⁷⁶ *ibid.* 229.

¹²⁷⁷ Cicek Tahaoglu, ‘Suclu Kim? Aile? Devlet? Toplum? Yani Hepimiz? / Who is the Guilty? Family? State? Society? So All of US?’ *BIANET* (15 December 2016) <<http://bianet.org/bianet/toplumsal-cinsiyet/181732-kadina-siddette-suclu-kim-aile-devlet-toplum-hepimiz>> accessed: 4 April 2017.

¹²⁷⁸ Begum Baki, ‘Kadinlar Soruyor ve Ifsa Ediyor, Suclu Kim? / Women are Asking and Revealing, Who is the Guilty?’ (2017) 157 *Guncel Hukuk Dergisi* 63.

reconciliation with their husbands points out that there are still problems in this field. The Violence Prevention and Monitoring Centers which started to provide services in 2012 and which are still operative as a pilot scheme in certain provinces are the least known institutions.¹²⁷⁹

The ECtHR has referred to this research in its judgement of *Halime Kilic v. Turkey* in 2016.¹²⁸⁰ The case concerned the death of Ms. Kilic's daughter, Fatma Babatli, killed by her husband after she had lodged four complaints and obtained three protection orders and injunctions.¹²⁸¹ The ECtHR reached a judgement on the failure by the domestic authorities to provide Fatma Babatli with effective protection.¹²⁸² The Court held that:

impunity reflected wilful denial on the part of the national authorities regarding the seriousness of the incidents of domestic violence, which had been particularly worrying, and regarding the particular vulnerability of the victims of that violence. In regularly turning a blind eye to the repeated acts of violence and death threats against Fatma Babatli, the domestic authorities had created a climate that was conducive to domestic violence. The Court found it unacceptable that the victim had been left without resources or protection when faced with her husband's violence.¹²⁸³

The Court therefore concluded that Turkey violates Article 14 of the Convention taken with Article 2 referring to the *Opuz* judgement.¹²⁸⁴

Research conducted by the state in collaboration with academia also reveals that the training of law enforcement practitioners should continue due to the lack knowledge of Law No. 6248 and the Istanbul Convention.¹²⁸⁵ Training that conveys information on Law No. 6248 should be organised for young women and men with different educational and socio-economic levels to increase their awareness.¹²⁸⁶ In keeping with its intensifying mandate to prevent domestic violence, the Turkish State should devote focused attention to femicide and honour killings.

¹²⁷⁹ Republic of Turkey Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, 'Research on Domestic Violence against Women in Turkey' (2015) 350.

¹²⁸⁰ *Halime Kılıç v. Turkey*, Application No. 63034/11 (Council of Europe: European Court of Human Rights, 28 June 2016) para. 62 (author's translation).

¹²⁸¹ *ibid.* paras. 94-95

¹²⁸² *ibid.* para. 119.

¹²⁸³ *ibid.* para. 120, Registrar of the Court, 'Turkish Authorities did not Effectively Protect the Life of a Woman Threatened with Death by Her Husband' (28 June 2016) *Press Release ECHR 227(2016)* 3.

¹²⁸⁴ *ibid.* paras. 121-122.

¹²⁸⁵ Republic of Turkey Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, 'Research on Domestic Violence against Women in Turkey: Summary Report' (2015) 37.

¹²⁸⁶ *ibid.*

To date there is neither data nor training on femicides including honour killings provided in any official government studies and research.

In conclusion, it is very clear that the implementation of Turkish Legislation adopted after the Istanbul Convention lacks the due diligence principle in preventing and combatting all forms of VAW, particularly women killings and honour killings. Worrisome numbers of violence and femicide cases in Turkey have been widely reported that reflect the persistent mentality of society supported partly by the State—all contrary to the spirit of Law No. 6248 and the Istanbul Convention. Despite considerable investment in training on gender equality and VAW for judges, police, and other government personnel, the aggregate approach to victims in practice weakens women's trust in the very institutions so clearly charged with protecting them. Therefore, part of the solution might be to institute a quota on the number of new female recruits to the police force so that there is more gender parity in law enforcement. Women could be actively recruited to the force to offset the gross imbalance and thereby change the culture from within the system. However, all measures have to be taken having in mind the need for reversing the male-dominant culture existing in the state and in particular pockets. This can only happen if continuous education takes place in general but also in specific to the enforcement bodies dealing with such cases on the need to empower women's position in the society.

5.5. Judicial Interpretation and 'Honour Killings': Continuing Inconsistency

The third part of this chapter (Section 5.5) will focus on judges and their contribution to the elimination of 'honour killings'. It will argue that the Supreme Court of Appeals has adopted arbitrary new criteria in its judgements of honour killings cases resulting in an inconsistent judicial approach to litigating such cases after the ratification of the Istanbul Convention. This section first discusses the judges' challenges in children's criminal liability, when these children commit so-called honour killing. It then looks at judgements given by the Supreme Court of Appeals after the General Assembly's judgement given in 2010 which attempted to resolve the ambiguity of the language of law on honour killings.

5.5.1. Juvenile Criminal Liability in So-called 'Honour Killings'

Children are sometimes used in perpetrating murders committed in the name of honour because elder family members perceive that their status as minors might prevent their heavy punishment. Children's criminal liability is considered in conformity with Article 42(2) of the Istanbul Convention which obliges that States shall not diminish the criminal liability of any

child who commits murder in the name of “culture, custom, religion, tradition or so-called honour.”¹²⁸⁷ Complying with the Istanbul Convention, the TCK has a provision for the ‘age of criminal responsibility’ for minors regulated in Article 31 of the TCK:

(1) The children having not attained the full age of twelve on the commission date of the offense, may not have criminal responsibility. Besides, no criminal prosecution may be commenced against such persons; but, it may be deemed necessary to take certain security precautions specific to children.

(2) In case a person who attained the age of twelve but not yet completed the age of fifteen on the commission date of the offense does not have the ability to perceive the legal meaning and consequences of the offense, or to control his actions, he may not have criminal responsibility for such behaviour. However, security precautions specific to children may be adopted for such individuals. If a person has the ability to apprehend the offense he has committed or to control his actions relating to this offense, then such person may be sentenced to imprisonment from nine years to twelve years if the offense requires heavy life imprisonment; from seven years to nine years if the offense requires life imprisonment.

Two thirds of other punishments are abated and in this case, the imprisonment to be imposed for each offense may not be more than six years.

(3) A person who attained the full age of fifteen but not yet completed the age of eighteen on the commission date of the offense is sentenced to imprisonment from fourteen years to twenty years if the offense requires heavy life imprisonment; and from nine years to twelve years if the offense requires life imprisonment. One half of the other punishments are abated and in this case, the imprisonment to be imposed for each offense may not be more than eight years.¹²⁸⁸

The Istanbul Convention stipulates punishment for the person who groomed or provoked the child, thus the TCK punishes persons who commit such acts. Moreover, the Istanbul Convention indicates that “the offences established in accordance with this Convention shall apply irrespective of the nature of the relationship between victim and perpetrator.”¹²⁸⁹ This means that whether the victim or the offender is from the same family or not, whether they are kin affairs or not, does not matter and necessary steps will be taken to punish the perpetrator.

¹²⁸⁷ The Istanbul Convention, Art. 42 (2).

¹²⁸⁸ Turkish Penal Code 2005/5237, Art. 31.

¹²⁸⁹ The Istanbul Convention, Art. 43.

The use of children in perpetrating criminal acts will therefore not reduce the punishment but rather increase it. For instance, Article 37(2) of the TCK increases the punishment of murders in cases involving a person who lacks culpability and solicits but does not execute the crime.¹²⁹⁰ Complying with Article 43 of the Istanbul Convention, Article 38(2) of the TCK states that “the case of solicitation to commit offense by using the power originating from lineage (antecedent/descendent) relation, the punishment of the soliciting person is increased from one-third to one half. The lineage relation is not sought for increase of punishment pursuant to the provisions of this subsection in case of solicitation of minors to commit offense.”¹²⁹¹ However, the vague language Article 39 of the TCK does not specify children on the issue of criminal liability for encouraging or assisting another person to commit an offence: “A person encouraging another person to commit offense is sentenced to life imprisonment from fifteen years to twenty years if subject to heavy life imprisonment; and from ten years to fifteen years imprisonment if the offense requires life imprisonment.”¹²⁹² Moreover, Article 37(1) of the TCK points the crime convicted under the joint enterprise: “Each one of the persons who jointly execute the act defined as crime in the law is responsible from its legal consequences as the offender”.¹²⁹³ The wording “person” in the TCK is used without referring also ‘child’ or ‘minor’, thus the TCK do not consider that a child may commit a crime as an accomplice, a child jointly execute the act of crime, or an adult may help a child to act.¹²⁹⁴ If a person uses the child as an indirect offender, the sentence will be increased, but if the offense is committed as an accomplice, both offenders will be sentenced the same punishment.¹²⁹⁵ This provision is same in cases involving the solicitation of minors to commit the crime.

The following section discusses the ongoing argument between the motives of ‘custom’ and ‘honour’ as ‘aggravating circumstances’ in doctrine and court judgements.

5.5.2. Recognition of the Vague Terminology of Article 82(k) of the TCK

This section analyses some judgements given by the Supreme Court of Appeals after the General Assembly decision in 2010.¹²⁹⁶ As mentioned in the previous chapter, the General

¹²⁹⁰ Turkish Penal Code 2005/5237, Art. 37(2).

¹²⁹¹ *ibid.*, Art. 38 (2).

¹²⁹² *ibid.*, Art. 39.

¹²⁹³ *ibid.*, Art. 37.

¹²⁹⁴ Berrin Akbulut, ‘6248 Sayılı Kanunda Sıddet ve Istanbul Sozlesmesinin TCK Acısından Degerlendirilmesi / Violence in the Law Numbered 6248 and Evaluation of the Istanbul Covenant in Terms of TCK’ (2014) 5(14) *TAAD* 141, 158.

¹²⁹⁵ *ibid.*

¹²⁹⁶ See section 4.2.4.3.2 in Chapter 4 for further reading.

Assembly of the Supreme Court of Appeals in its judgement 2010/111 of 11 May 2010 decided that if perpetrators of so-called '*töre*/custom killings' act with "belief of having a duty", the 'unjust provocation' provisions could not be applied.¹²⁹⁷ In case of provocation, the crime's qualified form shall be changed from so-called '*töre*/custom killings' to so-called 'honour killing'.¹²⁹⁸ Thus, it becomes difficult for the Supreme Court of Appeals to establish a standard for determining the content of the murder in the name of 'honour' since there is not a standard for the application of 'unjust provocation' provisions in such conditions; neither can judges avoid a point of view that is shaped by masculine norms. When giving judgments on honour killings, first-instance court judges are still underpinned by a patriarchal sensibility.

Thus, I examine how the concepts of 'custom' and 'honour' are seen as different. This vague terminology was accepted by the General Assembly of Supreme Court of Appeals in its judgment number 2011/1-138 of 4 June 2011:

Even though the concept of '*töre*/custom' encompasses '*namus*/honour' in certain conditions, *töre*/custom killings and honour killings are not in themselves the same concepts. It is possible to commit honour killings in accordance with the customs accepted by the certain community, and in this case, it can be accepted that the act of killing is committed with the motive of honour. However, not every act of honour killing is committed with *töre*/custom motives; such acts are perpetrated because of the person's own sense of honour and not closely related to *töre*/custom.¹²⁹⁹

On the other hand, cases in which crimes of custom are identified with crimes of honour lead to a widespread interpretation of the law, which leads to criticism, and does not allow the use of analogy pursuant to Article 2(3) of the TCK. Thus, the merging of crimes of honour and custom was not foreseen by the legislators of Article 2 of the TCK entitled "Legality rule in offences and punishments", which states that "when applying the law which governs criminal offences and penalties the use of analogy shall not be permitted. Provisions relating to criminal offences and penalties shall not be interpreted widely so as to lead to the use of analogy."¹³⁰⁰ The General Assembly of the Supreme Court also articulates the difference between *töre*/custom killings and honour killings in its judgement:

¹²⁹⁷ The General Assembly of the Supreme Court of Appeals, Decision no. 2010/111, File no. 2009/1-56, Judgement given 11 May 2010. (author's translation) See section 4.2.4.3.2 in Chapter 4 for further reading.

¹²⁹⁸ *ibid.*

¹²⁹⁹ The General Assembly of the Supreme Court of Appeals of Turkey, Decision no. 2011/1-138, File no. 2011/130, Judgement given 04 June 2011 (author's translation).

¹³⁰⁰ Turkish Penal Code 2005/5237, Art. 2 (3).

Research shows that honour killings are perceived differently than custom killings in society—honour killings are regarded as a more individual action, unassociated with custom or any region. Indeed, crimes committed in the name of ‘honour’ are of a more individual nature, and it is not appropriate to associate every killing with a custom motive. A crime committed with the motive of honour cannot necessarily be regarded as a crime committed with the motive of custom based on Article 82/1-k of the TCK.¹³⁰¹

The General Assembly indicates that honour killings and custom killings are different in their concepts, stating that the motive of honour cannot be interpreted in relation to Article 82(1) (k). However, honour killing is called ‘*töre*/custom killing’ in south-eastern and eastern parts of Turkey where women are more vulnerable due to their subordinate gender and ethnic status within strong patriarchal family units in light of the intersectionality withing feminist legal theory.¹³⁰² This also reveals that honour killings are not regulated as a specific crime within the scope of the TCK, thereby opening the possibility to apply ‘unjust provocation’ in cases of ‘honour killings’ if the circumstances of the murder developed suddenly as discussed in the previous chapter.

5.5.3. A New Criterion on ‘Honour Killings’

After the General Assembly’s judgement, the Supreme Court of Appeals developed a new criterion in 2012 that can be applied in specific cases.¹³⁰³ The Court argued that it is necessary to have three elements to be able to accept that the crime of murder is committed in the name of ‘*töre*/custom’. First, it is necessary for the victim to have acted contrary to generally accepted societal norms. Second, the fact that this contrary behaviour should be punished with only ‘death’ can be regarded as an expected reaction by the people of that society. Third, the perpetrator should commit crime with ‘belief of having a duty’ regarding the expected reaction by the people of that society and save ‘his reputation’ in the society. In its judgment number 2012/9331 of 12 December 2012, the defendant, Ayhan, killed his sister-in-law because he did not conform to her lifestyle. According to the Court’s judgement, there is no expectation to kill someone merely because of her/his lifestyle. He killed her based on his own subjective evaluations, thus the crime cannot be deemed a *töre*/custom killing. Therefore,

¹³⁰¹ The General Assembly of the Supreme Court of Appeals of Turkey, Decision no. 2011/1-138, File no. 2011/130, Judgement given 04 June 2011 (author’s translation).

¹³⁰² See section 4.2.4.3.1 and 4.2.4.3.2 in Chapter 4 for further analysis.

¹³⁰³ The Supreme Court of Appeals of Turkey, Decision no. 2012/9331, File no. 2012/3659, Judgement given 12 December 2012 (author’s translation).

the Supreme Court of Appeals discarded the lower court judgment in which the defendant was sentenced in line with ‘*töre*/custom killings’ instead of the act of intentional killing without application of unjust provocation.¹³⁰⁴ This judgement echoes the decisions of the General Assembly of the Supreme Court of Appeals.¹³⁰⁵

According to the Court’s judgement, the motive of ‘custom’ that constitutes the subject of paragraph 1(k) of Article 82 in the Turkish Penal Code refers to a ‘harmful custom’ that the ones who performed certain behaviour or preferred a certain way of life should be killed:

There is no difference between them in terms of the formation of ‘custom killings’, which occur across the country in small towns and villages, neighbourhoods and large families. Moreover, the concept of ‘honour’, which is frequently confused with the concept of ‘custom’, is defined as fidelity, chastity, honesty, and loyalty to the moral rules and social values of a society. Although there are some situations in which the concept of *töre*/custom may encompass the concept of ‘honour’, there are cases in which honour killings cannot be described as ‘custom’ because they originate from the perpetrator’s individual behaviour such as jealousy, not being able to respond to sexual desire, disapproval, or dislike. Similarly, a killing resulting from these behaviours wherein the victim (and her preferred way of life) suffered societal rejection is not considered a *töre*/custom killing because of the rejection itself. Thus, the crimes of honour and custom are not the same because the prohibition of comparison in criminal law regarding the principle of criminality and criminal justice does not allow extending the scope of *töre*/custom killings in this way.¹³⁰⁶

In my view, accepting the notion that the concept of honour reflects a subjective judgement by the individual, as opposed to tradition, causes us to reject the claim that the concept of honour is not the product of cultural or social accumulation. This argument runs contrary to the concept of so-called ‘honour killings’ in international human rights law, including the CEDAW (GR No. 31 and 35) and the Istanbul Convention (Articles 12 and 42).¹³⁰⁷

¹³⁰⁴ The Supreme Court of Appeals of Turkey, Decision no. 2012/9331, File no. 2012/3659, Judgement given 12 December 2012 (author’s translation).

¹³⁰⁵ The General Assembly of the Supreme Court of Appeals of Turkey, Decision no. 2012/258, File no. 2012/1-763, Judgement given 03 July 2012. The General Assembly of the Supreme Court of Appeals of Turkey, Decision no. 2013/456, File no. 2013/1-355, Judgement given 19 November 2013. (author’s translation).

¹³⁰⁶ The Supreme Court of Appeals of Turkey, Decision no. 2012/9331, File no. 2012/3659, Judgement given 12 December 2012 (author’s translation).

¹³⁰⁷ See section 3.3.4.2 in Chapter 3 for the analysis of characterisation of ‘honour killings’ under the CEDAW GR No. 31 and the Istanbul Convention.

Nevertheless, this misconception about the subjective, individual understanding of the concept of honour takes place in many judicial decisions¹³⁰⁸ and doctrines in Turkey. For example, Hakeri regards honour killings as an individual rather than collective act of crime regulated by Article 82(1)(k) of the TCK.¹³⁰⁹ Goztepe maintains that honour killings occur when women, regardless of their marital status, are murdered by family members to save her family's honour and dignity.¹³¹⁰ Hafiogullari and Ozen explicate the vague term of töre/custom killing in the TCK:

Despite that lack of clarity about common but non-traditional practices, the Law is an important step for improving women's lives in traditional/feudal societies. This is because the crime of *töre*/custom killing with the motivation to save 'honour' is accepted as an aggravated form of intentional killing. The act of killing must have taken place to kill the shamed girl (or one who is thought to be shamed) to save honour upon the decision of a family council to be considered a *töre*/custom killing and to increase the punishment.¹³¹¹

On the other hand, Ozbek points out that these acts should be called honour killings because killing with *töre*/custom motives is based on the idea of saving honour by killing a woman.¹³¹² Thus, the concept of *töre*/custom necessarily includes the concept of 'honour'. In such a case, it would be enough to enforce the decision for the reason of 'saving honour' although this is not a requirement of *töre*/custom.¹³¹³ In my view, honour killings are called 'custom killings' in the region of south-eastern part of Turkey where Kurdish minority lives. The motive of crime has same basis on the understanding of male mentality –to save honour by killing a woman- in the patriarchal society.

The Supreme Court of Appeals' judgements on custom killings and honour killings have still had the same criteria since the judgment number 2012/9331 of 12 December 2012. In its judgement number 2014/184 of 22 January 2014, the Court justifies that "the reason for

¹³⁰⁸ The General Assembly of the Supreme Court of Appeals of Turkey, Decision no. 2011/1-138, File no. 2011/130, Judgement given 04 June 2011 (author's translation).

¹³⁰⁹ Hakan Hakeri, *Kasten Öldürme Suçları, TCK 81-82-83/Intentional Killings, Article 81-82-83 of the TCK*, 2nd edition (Seckin Yayınları, 2007) 248.

¹³¹⁰ Ece Goztepe, 'Namus Cinayetlerinin Hukuki Boyutu /The Legal Dimension of Honour Killings' (2005) 59 *Türkiye Barolar Birliği Dergisi* 29, 29.

¹³¹¹ Zeki Hafiogullari and Muharrem Ozen, *Türk Ceza Hukuku Özel Hukumlar Kisilere Karsi Suclar / Turkish Criminal Law Special Proceedings Offences against Persons* (Us-A Yayinlari, 2013) 54.

¹³¹² Veli Ozer Ozbek, *Yeni Türk Ceza Kanun'un Anlami / The Meaning of the New Turkish Penal Code* (Seckin Yayınevi 2010) 243

¹³¹³ *ibid.*

killing women whose acts are not approved by her society or whose acts are based on personal preferences that her society condemns can be regarded as killing with the motive of *töre/custom*”.¹³¹⁴ According to this judgement, the defendants Ramazan and Metin warned their sister, Cemile, of rumours about her relationship with Mehmet. She was killed since she did not conform to the way of life imposed by them. The Supreme Court of Appeals decided that “If there is no expectation that those who behave in this way should be killed in society, this position is based on their own subjective evaluations. It would not be possible to categorise them as *töre/custom* killers.”¹³¹⁵ It discarded the lower court’s judgement in which the defendant was sentenced in line with ‘*töre/custom* killings’ instead of the act of intentional killing without the application of unjust provocation. This justification is still used in cases of so-called ‘*töre/custom* killings’ and ‘honour killings’ in the Supreme Court of Appeals’ judgements.¹³¹⁶

In my view, the judgments of the Supreme Court of Appeals serve to normalise some of the acts of violence against women by distinguishing the terms ‘*töre/custom*’ and ‘*namus/honour*’ instead of judging all acts of violence—resulting from patriarchy/male domination—in the same category and penalising them. I agree with Dogan’s point that this division cannot be produce a crucial and meaningful solution.¹³¹⁷ The problem is that if a human being, as a social entity, does what he/she knows or is forced to do something based on his/her own cultural perception, he/she will legally support any behaviour that is part of the cultural structure that dominates society.¹³¹⁸ This puts into question whether his/her behaviour in the context of cultural norms per se is supported by law.¹³¹⁹ Hence, he concludes that crimes in the name of honour or *töre/custom* are punishable without pointing to the culture, custom, tradition or religion in which they are committed.¹³²⁰ Otherwise, it would not be right and fair to interpret that crimes of ‘honour’ can be applicable for ‘unjust provocation’ and crimes of *töre/custom* cannot be applicable for the same because judgements of masculine power and

¹³¹⁴ The Supreme Court of Appeals of Turkey, Decision no. 2014/184, File no. 2013/2789, Judgement given 22 January 2014 (author’s translation).

¹³¹⁵ *ibid.*

¹³¹⁶ The Supreme Court of Appeals of Turkey, Decision no. 2015/4272, File no. 2015/2328, Judgement given 2 July 2015. The Supreme Court of Appeals of Turkey, Decision no. 2015/3523, File no. 2015/2393, Judgement given 1 June 2015.

¹³¹⁷ Recep Dogan, ‘Yargıtay Kararlarında Töre Saikiyle Oldurme Sucu / *Understanding the Concept of Customary Killing in the Light of Rulings of the Appeal Court*’ (2016) 126 *TBB Dergisi* 123, 158.

¹³¹⁸ *ibid.*

¹³¹⁹ *ibid.*

¹³²⁰ *ibid.*

the law have been re-created by male-dominated discourses.¹³²¹ However, in my view, this interpretation contradicts his argument that honour killings or custom/töre killings are punishable “without pointing to the culture, custom, tradition or religion” under the international human rights instruments, particularly the CEDAW Committee GRs and the Istanbul Convention. Particularly, the Istanbul Convention regulates honour killings as a specific crime under Article 42. In addition, the international human rights law accepts so-called ‘honour killing’ as a gender-based violence which should be outlawed and points that ‘culture, custom, religion, tradition or so-called honour shall not be measured as a justification’ (such as CEDAW Committee GR No. 19). In my view, this obligation should be considered by the Government of Turkey, amending Articles 29 and 82 (k) of the TCK. Thus, this vague application can be prevented, including “the motive of custom, tradition, culture or so-called ‘honour’” within the context of Article 82(k) as an aggravating circumstance, and reforming Article 29 of the TCK as “unacceptable justifications for crimes, including crimes committed in the name of so-called ‘honour’” in light with the Istanbul Convention.

In this section, I assessed the Supreme Court of Appeals’ judgements which are inconsistent in cases of honour killings, inviting us to question how to interpret the meaning of the crime of *töre*/custom. Court judgements force us to consider the extent to which it should be understood as the result of a ‘family council decision’¹³²²—and how the societal expectation for murdering a woman¹³²³ serves as an obstacle to proving whether a crime was driven by the motive of ‘töre/custom’ or of ‘honour’. We should also ask to what extent society’s mentality, mores, and expectations regarding murdering women in the name of honour or custom should have any bearing or justification whatsoever. Crucially, these are the very questions that are fundamentally at stake in Turkey today. Therefore, Turkish Legislation should follow and adopt CEDAW Committee GRs and the Istanbul Convention which assert that there is no justification for murdering a woman in the name of culture, tradition, custom, or honour, through amending the vague terminology of Articles 29 and 82(k) of the TCK. In doing this, the inconsistency in interpreting the judgements of first instance courts and the erroneous application of the ‘unjust provocation’ provision in their judgements can be prevented. The following section discusses feminist critiques of the mixed messages underpinning State-

¹³²¹ *ibid.*

¹³²² See section 4.2.4.3.1 in Chapter 4 for an evaluation of family council decisions in the Supreme Court of Appeals’ judgements.

¹³²³ This has been taken into consideration since the Supreme Court of Appeals of Turkey’s judgement in 2012. See: The Supreme Court of Appeals of Turkey, Decision no. 2012/9331, File no. 2012/3659, Judgement given 12 December 2012 (author’s translation).

initiated policies that paradoxically assert women's roles in family and promote gender equality simultaneously.

5.6. Contrasting State Policy: 'Women's Role in Family' v. 'Gender Equality'

The Istanbul Convention clearly states that the core reason for gender-based violence is the inequality between men and women and that its purpose is to eliminate violence based on gender.¹³²⁴ The reforms made over the last two decades by the Turkish government have made promises for the equality for women while protecting traditional gendered roles that make them a more vulnerable group.¹³²⁵ The government pursues a decisive power strategy that has shaped the gender regime of 'family-centred modernisation' in Turkey.¹³²⁶ This shaping, however, is rooted in and informed by a strong 'historical' momentum whereby men establish a State, and women build a modern nation by making families.¹³²⁷ Although women's rights NGOs collaborated with the Turkish government in drafting and enacting Law No. 6248, the societal ideal of women's main role as mothers and wives remained unwavering in its strength because the family as a core social entity for most of the Turkish population remains a firmly patriarchal unit. The reforms made over the last two decades have made promises for the equality for women while protecting traditional gendered roles that make them a more vulnerable group.¹³²⁸

The current Turkish government have limited efforts to secure gender equality in the Turkish legal system by avoiding opportunities to offer practical policies designed to change women's position and role in society. Dedeoglu and Elveren discuss that the changing nature of the welfare state concerning guarantees of equality for women increases women's vulnerability as treating them 'equally' without adequate policy measures or protection from violence.¹³²⁹ This is a formal understanding of equality, which is not reflected in current standards of international law. Current standards focus on treating different sections of the population in

¹³²⁴ Marianne Hester and S. J. Lilley, 'Preventing violence against women: Article 12 of the Istanbul Convention' in *A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence* (Strasbourg: Council of Europe, 2014) 5.

¹³²⁵ Saniye Dedeoglu and Adem Y. Elveren, 'Introduction: Gender, Society and the Welfare State in Turkey' in Saniye Dedeoglu and Adem Y. Elveren (eds.), *Gender and Society in Turkey: The Impact of Neoliberal Policies, Political Islam and EU Accession* (I.B. Tauris & Co Ltd. 2012) 3-4.

¹³²⁶ Serpil Sancar, *Türk Modernleşmesinin Cinsiyeti, Erkekler Devlet, Kadınlar Aile Kurar/ Gender of Turkish Modernisation, Men Establish States, Women Establish Family* (İletişim Yayıncılık 2012) 306.

¹³²⁷ *ibid.*

¹³²⁸ Saniye Dedeoglu and Adem Y. Elveren, 'Introduction: Gender, Society and the Welfare State in Turkey' in Saniye Dedeoglu and Adem Y. Elveren (eds.), *Gender and Society in Turkey: The Impact of Neoliberal Policies, Political Islam and EU Accession* (I.B. Tauris & Co Ltd. 2012) 3-4.

¹³²⁹ *ibid.*, 8.

such a different way that the opportunities they have are the same. They also argue that “the current welfare reform processes are destined to remain ineffective for women as long as they are not backed by a political willingness and commitment to promoting gender equality.”¹³³⁰ This reveals a failure of the women’s accesses of the substantive equality in practice, although the Constitution includes an equality provision, which makes a clear obligation to substantive equality.¹³³¹

Despite the ratification of the Istanbul Convention and amendments to Turkish Legislation, authorities have not made progress in halting violence against women, “nor did they adopt procedures to investigate the hate motive in cases of people perceived to have been killed due to their sexual orientation or gender identity.”¹³³² According to the World Economic Forum’s Global Gender Gap Report for 2016,¹³³³ Turkey is rated 130 among 144 countries; the country consistently fell in the report’s rankings over the previous 10 years due to the government’s failure to recognise the role of women outside the family unit and to use the law to provide them with effective protection. This proves that discrimination against women and gender-based violence have not been adequately addressed because of the insufficient implementation of Turkish legislation and the lack of political will to ensure gender equality. BIANET has reported discriminatory public statements by government officials to GREVIO in its Shadow NGO report, one example being when the President described “women who stand against inequality of men and women and refuse to be a mother as ‘deficient and incomplete’” in June 2016.¹³³⁴

It is seen that in their statements, the government officials introduce “traditional honour” as a solution in struggle against violence against women instead of panic buttons designed to be used by women who are subjected to violence. This mindset is in contradiction with the approach advocating that tradition, custom, religion, and so-called “honour” cannot be an excuse for violence. Then deputy prime minister’s statements which even consider women laughing against honour and defend that honour is a very important value, shall be noted as statements that objectify women

¹³³⁰ *ibid.*

¹³³¹ See section 4.2.1 in Chapter 4 for further analysis.

¹³³² Amnesty International, ‘Amnesty International Report 2016/17: The State of the World’s Human Rights’ (AI, 2017) 370. <<https://www.amnesty.org/en/documents/pol10/4800/2017/en/>> accessed: 4 April 2017.

¹³³³ World Economic Forum, ‘The Global Gender Gap Report 2016’ (World Economic Forum, 2016) <http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf> accessed: 4 April 2017.

¹³³⁴ BIANET Shadow Report, ‘Turkey’ (3 July 2017), prepared by Nisa Kuyucu, 15, para. 24.

and condone violence by doing so.¹³³⁵

Despite taking measures through the enactment of Law No. 6248 to harmonise domestic law with the Istanbul Convention, the mentality of government representatives contradicts the spirits of both the Istanbul Convention and domestic legislation. Highlighting the EU progress report on Turkey: “since Turkey’s ratification in 2014 of the Istanbul Convention, Turkey has not taken any concrete steps to harmonise its domestic legislation with the Convention and to raise awareness.”¹³³⁶

In conclusion, only genuine political will stands a chance in eradicating the male-dominated traditional mentality in society and government institutions that supports and promotes women’s role in the family and simultaneously combats (unsuccessfully) all forms of VAW, particularly ‘honour killings’, as an obligation of the Istanbul Convention. This contradiction between the law and its implementation is at the very heart of what continues to jeopardise Turkish women’s lives daily as well as the health and integrity of the entire nation’s population.

5.7. Conclusion

After Turkey’s ratification of the Istanbul Convention, Turkish Legislation has been taking concrete steps to combating VAW, especially through Law No. 6248 and the TCK. Despite the compatibility between the Turkish Legislation and the Istanbul Convention, gaps and loopholes between the two still exist. While Turkey has done much to implement the Istanbul Convention in combatting VAW, including the so-called ‘honour killings’, the male-dominated traditional mentality still holds a powerful grip on government agents and society, evident in the context in which Law No. 6248 and the TCK relegate women as primarily fixtures of the ‘family’ rather than regard them as ‘individual’, autonomous people.

The vague application of Articles 82 and 29 of the Turkish Penal Code still remain as important obstacles that can be solved only by making amendments to legislation or by introducing specific crime offences that remove the ability for judges to be inconsistent in their judgements of so-called ‘honour killings’. The patriarchal understanding and discourse has to be eliminated from the mentality of the law enforcement officers, prosecutors, and judges and they need to prioritise women’s equality with men in its substantive form. They need to protect women and their individual rights and freedoms and promote changes in the

¹³³⁵ *ibid.*, 15-16, para. 25.

¹³³⁶ European Commission, ‘Turkey 2016 Progress Report’, SWD (2016) 366 final, Brussels, 9.11.2016, 75.

social and cultural patterns of behaviour that empower women. Women and men need to work together to eliminate prejudices, customs, and negative gender stereotypes in society. Government research and intervention on VAW needs to adopt intersectionality within a feminist-legal approach that specifically targets the communities in which so-called honour killings remain common. Ending discrimination against women in the public and private spheres demands decisive political will, the lack of which remains the main obstacle to eliminating VAW, in particular so-called ‘honour killings’, in Turkey.



Chapter 6:

Recommendations and Conclusions

6.1. Introduction

The objective of this research has been to analyse the failures of legislation designed to prevent so-called ‘honour killings’ in Turkey. This analysis has used a feminist-legal approach to identify the effects of the male power ideology ingrained in Turkish government institutions and society—an ideology that facilitates the obstacles women face in the country. Liberal feminism cannot address just on its own the issue of honour killings. This approach emphasises the need for equal rights between men and women, which is an important element of the CEDAW and the Istanbul Convention. However, liberal feminism does not address issues of patriarchy that are at the core of the practice of so-called honour killings. Radical feminism, I have argued, is also helpful because it focuses on the patriarchal structures and how they impact on the position of women in the society and in the institutions of government. This, I have argued, is consistent with the realities of women in Turkey. Poststructuralist feminism also brought in this study some helpful elements, especially as it emphasises the particular circumstances that have to be taken into account in the analysis of women’s situation. In this study, I have zoomed in only on women in Turkey and their geographical and social realities. However, poststructuralist feminism rejects universalism and in this respect international universal human rights standards cannot be squared with such an approach.

Notwithstanding the above, the most helpful branch I have found to address the issue of honour killings in Turkey is the intersectionality approach within the feminist-legal theory. Intersectionality within feminist-legal theory rejects having a one size fits all approach but does not ignore the universality of violence against women. It helps us to understand the particularities in women’s different experiences without losing sight of the universality of violence against women and in particular honour killings.

The obstacles identified by feminist theories prevent the effective and comprehensive implementation of international human rights standards in Turkey. I have analysed the international legal framework prohibition of the so-called honour killings and I have found that the international system has progressed recently with the introduction of the Istanbul Convention in a way that can adequately address the challenge of VAW, in particular honour

killings. In specific, my research has found that CEDAW does not explicitly include provisions on honour crimes. CEDAW only has resolutions and recommendations on honour killings. Thankfully, the Istanbul Convention has recently codified the resolutions and recommendations which address on the elimination of honour killings. At the same time, CEDAW also now focuses on this issue: CEDAW Committee has just updated GR No. 19 by GR No. 35, in a way that now refers to the Istanbul Convention. This proves the cross-fertilisation between the European and universal bodies and the attention the international community places on the issue of honour killings.

Coming to Turkey, the main focus of this research, I have focused on two main research questions: (1) to what extent Turkey's legal framework for preventing women killings, particularly so-called 'honour killings', has been effective prior to Turkey's ratification of the Istanbul Convention; and (2) how might the Istanbul Convention help Turkish Legislation combat VAW, particularly honour killings.

I have answered my research questions using a doctrinal methodology and have assessed evidence and made recommendations based on this evidence. Answering the first question entailed providing a comprehensive framework of Turkish legislation and its application to international law (especially the CEDAW) using teleological statutory interpretation method. I evaluated this legislation in relation to the requirements of international law and Turkey's EU accession process. Intersectionality within feminist-legal analysis has informed my recommendations for improving Turkey's approach in combatting VAW, particularly so-called 'honour killings'. Despite Turkey's developments in improving legislation designed to promote gender equality and to abolish discriminatory practices toward women, the research has found that passive legal enforcement officers and inconsistent judicial litigation of 'custom killings' and 'honour killings' hinder the application of the law and the duty of due diligence. Answering the second question has also entailed an analysis of doctrinal research using teleological statutory interpretation method in order to assess whether the object and purpose of the legislation is effective after the ratification of the Istanbul Convention. The current legislation and its different stages have been analysed in detail; so have the attempts of the state to comply with the Istanbul Convention. The analysis has exposed gaps and loopholes that undermine the goal to eradicate VAW, particularly so-called honour killings, in Turkey.

In specific, the research has analysed the most frequently used legislation related to honour killings—the Turkish Penal Code and the Law to Protect Family and Prevent VAW. The

lacunae within each of these are one major reason for the ineffectiveness of Turkish Courts and law enforcement in doing their job to enforce this legislation. The thesis has asserted the need for the government to make immediate reforms to this legislation to address these gaps. One reason for the existence of these gaps is the lack of political will to enact fundamental societal change; this resistance is the manifestation of persistent male-dominated cultural values that continue to centralise women within the ‘family unit’ rather than acknowledge them as autonomous individuals in the same way men are defined.

Feminist interventions in the process of preparing law by women’s NGOs, in the process of Turkey’s EU membership, and in Turkey’s ratification of the Istanbul Convention have advanced the country’s affirmative action toward preventing VAW. However, there is still a glaring deficit in eliminating ‘honour killings’ despite these interventions. Accepting women as individuals and treating them equally, rather than labelling them as ‘mothers’ or ‘sisters’ in traditional family roles, must be prioritised by the government. This priority has been voiced by multiple international human rights organisations and prominent scholars. Enabling gender equality is contingent on Turkey’s willingness to fulfil its obligation to enforce the due diligence duty to eliminate so-called ‘honour killings’ as a form of gender-based VAW. The thesis has delineated important legal, judicial, and political changes, necessary to pursue the following 7 practical and workable solutions.

6.2. Legislative Additions to the Turkish Penal Code

Article 82 of the Turkish Penal Code must be amended in line with Article 42 of the Istanbul Convention in such a way that culture, custom, religion, tradition, and/or so-called ‘honour’ is not regarded as justification of VAW, particularly so-called ‘honour killings’. To prevent the persistent juridical problems caused by the vague understanding of the relationship between *töre* (custom/tradition) and *namus* (honour), Article 82 must include a separate identification of the ‘honour’ motive for killings as aggravating circumstances under its scope. Doing so will eliminate the inconsistency of judgements on crimes committed in the name of ‘honour’ given by the Supreme Court of Appeals.

Article 29 of the TCK on ‘unjust provocation’ must also be amended with a view to excluding explicitly those crimes committed in the name of so-called ‘honour’ from its application.¹³³⁷ Because the violent actions are based on gender-based violence, a woman’s socially constructed roles and behaviours are deemed as ‘unjust provocation’ and hence, as mitigating

¹³³⁷ See section 4.2.4.3.2 (unjust provocation to honour killings) in Chapter 4 for further analysis.

circumstances. The provision allowing this justification should be eliminated from a judge's application in cases of women killings in the name of honour.

In addition, Article 287 of the TCK regulating 'genital examination' must be amended. Even if a judge or prosecutor authorises this medical examination, the woman's consent for the examination must be ensured to prevent gender discrimination in line with the CEDAW and Istanbul Convention. In addition, in cases where genital controls take place without the judge's decision, the offender's punishment with imprisonment from three months to one year should be increased to disallow this discriminatory act.

Moreover, forced/arranged and early marriages should be criminalised as a specific crime under the TCK in compliance with Article 37 of the Istanbul Convention. Using threats to force someone who has reached marriage age to marry should be criminalised as well as forced marriages involving attempted suicide, physical injury, or deteriorating health.

6.3. Legislative Additions to the Law to Protect Families and Prevent VAW

Law No. 6248 is generally in line with the Istanbul Convention; however, it still has some gaps. To fully conform with Article 12(1) and Article 12(5) of the Istanbul Convention, the law should include a provision under its aim and scope stating that all forms of gender-based VAW, including domestic violence, forced/arranged and early marriages, and crimes committed in the name of so-called 'honour killings', constitute serious human rights violations against women and girls and a major obstacle to achieving equality between women and men. Measures to be taken in relation to acts of violence and criminal proceedings to be initiated within the scope of Law No. 6248 should not regard culture, custom, tradition, or so-called 'honour' as justifications for these crimes. Moreover, Turkey should also transpose Article 12(1) of the Istanbul Convention in Law No. 6248: "promoting 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." Adopting these provisions will dismantle the perception that honour upholds the status of a man within a family based on patriarchal hierarchies. Criminalising perpetrators of all forms of VAW should be regulated by Law No. 6248.

Law No. 6248 must also adopt a provision on undertaking risk assessment and risk management in compliance with Article 51 of the Istanbul Convention. Under this provision, law enforcement practitioners must ensure women and girls' lives are safe by conducting

regular risk assessments and adopting measurement policies. They need to have a safety plan for taking swift action in preventing women killings in the name of ‘honour’ and protecting women at risk to death.

6.4. Adoption of Effective Training for Law Enforcement on Gender Equality and VAW

Women’s NGOs, international reports, and judicial cases demonstrate that police officers exhibit lamentable ignorance about all forms of VAW and femicides/women killings cases. Reports show that police officers usually send victims of violence back to their homes to reconcile with their abusive partners, fathers, or husbands. This demonstrates that there is still lack of training on how to approach victims’ circumstances and how to protect those at risk of death. This neglect is rooted in Turkey’s patriarchal culture, social mores, and governmental structure wherein it is still common to define women exclusively in traditional roles as mothers, sisters, or wives rather than as individuals.

Therefore, law enforcement practitioners should be trained on issues of gender, gender equality, and gender discrimination by the women’s rights experts. The fact that more than 70.000 of law enforcement practitioners have already been trained indicates that this training is not effective in eliminating VAW. Resolving this entails changing the mentality of implementers such as judges, prosecutors, police officers, and officers who serve in Violence Prevention and Monitoring Centres (ŞÖNİMs). In addition, part of the solution may be, it is suggested, to institute a quota on the number of new female recruits to these institutions so that there is more gender parity in law enforcement. Resolving this entails changing the mentality of implementers such as judges, prosecutors, police officers, and officers who serve in Violence Prevention and Monitoring Centres (ŞÖNİMs). Women could be actively recruited to the force to offset the gross imbalance and thereby change the culture form within the system.

6.5. Establishment of Special Task Force Police Units to Combat ‘Honour Killings’

Developing a better understanding of the various forms of women killings/femicides and VAW and the relations between them entail the establishment of strategic special task force police units throughout Turkey. These units will develop risk assessment and risk management strategies to prevent and to combat women killings in the name of ‘honour’ in compliance with Article 51 of the Istanbul Convention. Many of such special task units should be established in areas where honour killings are most prevalent.

When a victim at risk makes a report to her local unit, the unit should conduct an immediate risk assessment of the victim's situation followed by an immediate plan of action to protect the victim that corresponds with the identified risk level.¹³³⁸ A risk assessment should be finalised, and law enforcement practitioners should work with partner organisations to implement a risk management policy to prevent women killings committed in the name of honour.¹³³⁹

The establishment of these units would enable national police to record and monitor cases more effectively. This would address the current serious shortcomings in the collection of police data. Provided these units sufficiently implement effective risk assessment and management procedures, the quality of policing and criminal justice responses to women killings would improve significantly and protect women at risk of death before it is too late.

6.6. Establishment Special Women Killings Investigation Units

Article 5(2) of the Istanbul Convention obliges State members to exercise due diligence to investigate and punish perpetrators of VAW. However, the Turkish government has rejected demands from women rights NGOs to establish special women killings/femicides investigation units for preventing the high numbers of women killings and protecting women at risk of death.¹³⁴⁰ In the UK, the Crown Prosecution Centre followed a trial as part of wider project on honour-based violence involving both the training of 25 specialist prosecutors to work in honour-based violence 'hot spots' and the creation of a system for flagging forced marriages and violent crimes in the name of honour.¹³⁴¹ Turkey should follow the UK's example.

These units should also investigate so-called 'suicides' that are really committed in the name of honour. Because of the aggravated punishments of perpetrators, women and girls are forced to commit suicide; these suicides are rarely investigated. Prosecutors often fail to properly conduct investigations of these crimes. To prevent this neglect, these units can effectively investigate honour killings, suicides, and 'accidents' involving the deaths of women and girls

¹³³⁸ Karl Anton Roberts, Gerry Campbell, and Glen Lloyd, *Honor-based Violence: Policing and Prevention* (CRC Press 2013) 68.

¹³³⁹ *ibid.* 72.

¹³⁴⁰ Morçati Kadın Sigınagi Vakfı / The Purple Roof Shelter Women NGO, 'Joint Declaration by Women and LGBTI Organizations Against Demand for Legislative Changes Against Women Murders' (11 January 2016). <<https://www.morcati.org.tr/tr/346-kadin-cinayetlerine-iliskin-gundemdeki-yasa-degisikligi-taleplerine-karsi-kadin-ve-lgbti-orgutlerinden-ortak-bildirge>> accessed: 12.02.2017.

¹³⁴¹ Nazan Begikhani, Aisha K. Gill, and Gill Hague, *Honour-Based Violence Experiences and Counter-Strategies in Iraqi Kurdistan and the UK Kurdish Diaspora* (Ashgate 2015) 97.

by using forensic evidence such as psychological autopsy or medical autopsy. Establishing femicide investigation units is essential to prevent and combat women killings/femicides committed in the name of honour and to protect women at risk of death in Turkey.

6.7. Striving for a Strong Political Will to Eliminate Gender Stereotypes and Patriarchal Attitudes

International and national official reports and women's NGOs' studies indicate that the prevalence of deep-rooted discriminatory stereotypes regarding the responsibilities and roles of women and men in the family and society still exists in Turkey. As government representatives continue to overstress the traditional role of women as mothers, sisters, wives, the autonomy, social status, and professional careers of women are undermined. This also constitutes a fundamental reason for gender-based VAW. Instead of eradicating patriarchal attitudes and beliefs in society and State institutions, government representatives issue statements that endorse and thereby perpetuate discriminatory attitudes toward women. The Turkish President has stated that women and men are not equal because of biological differences that prohibit women and men from serving the same functions.¹³⁴² These statements "might lead to hopelessness and might even lead to violence and murder."¹³⁴³ Therefore, government officers should abandon their discriminatory statements and instead adopt and demonstrate publicly their willingness to promote gender equality and gender justice. Advancing women's equality in the public and private sphere should be a priority government policy. Eliminating patriarchal attitudes and stereotypes and changing the mentality is fundamental to adopting an inclusive strategy that functions at all levels of society.

6.8. Strengthening Cooperation between the State and Women's Rights NGOs

The State should strengthen the General Directorate for the Status of Women (KSGM). KSGM should work in cooperation with women's rights NGOs and support them financially. NGOs such as KAMER and Morcati provide legal aid and shelter to victims of violence or women at risk of death; therefore, they should receive government support as a priority. In addition, women's rights NGOs and KSGM should organise conferences, seminars, short-

¹³⁴² BBC News, 'Turkey President Erdogan: Women are not to Equal Men' (24 November 2014) *BBC* <<http://www.bbc.co.uk/news/world-europe-30183711>> accessed: 12/05/2017. The Guardian, 'Recep Tayyip Erdogan: Women not to Equal Men' (24 November 2014) *The Guardian* <<https://www.theguardian.com/world/2014/nov/24/turkeys-president-recep-tayyip-erdogan-women-not-equal-men>> accessed: 15/05/2017.

¹³⁴³ Yonca Poyraz Dogan, 'Kamer's Akkoc: Women's Groups Excluded from Istanbul Convention Process' (28 December 2014) <http://www.kamer.org.tr/eng/icerik_detay.php?id=221> accessed: 24/02/2017.

term education workshops, and awareness-raising training programmes for the advancement of women. The government needs to properly resource women's support projects, shelters, and outreach services working in conjunction with these initiatives. Providing this infrastructural support is one of Turkey's big challenges in eradicating women killings in the name of 'honour'.

6.9. Final Remarks

Strong will and gender equality are crucial to preventing women killings in the name of 'honour'. Achieving both entails shaping legislation that elucidates law enforcement officers' duty of due diligence to prevent honour killings and protect women at risk of death. Accordingly, the establishment of risk assessment and risk management procedures provides practitioners the means to preserve women's right to life efficiently. It is imperative that more emphasis is devoted to eliminating so-called honour killings and the intersection of gender inequality based on gender, ethnicity, and language among Kurdish minority women. This emphasis would minimise the obstacle to their legal access to protection under the Law to Protect Family and Prevent Violence against Women and the Turkish Penal Code.

In this thesis, I have focused on the inefficient implementation of Turkish legislation and the perpetuation of male-dominated cultural values by government institutions and in society—and how these together enable so-called 'honour killings' to continue. Therefore, I conclude that 1) locating the source of the problem using the intersectionality approach within feminist-legal discourse and 2) resolving the problem by advancing bold, strategic initiatives to achieve gender equality and non-discrimination against women will at last serve to eliminate women killings in the name of 'honour' in Turkey.

My research therefore recommends that international human rights standards, particularly the CEDAW Convention and the Istanbul Convention, must serve the benchmarks for developing and interpreting Turkish law. Training for law enforcement practitioners such as judges, prosecutors, and police officers is essential to prevent passivity and discriminatory attitudes toward women. This training needs to explicitly advance gender equality so that practitioners finally internalise their acknowledgment that the reprehensible perpetuation of VAW, particularly so-called 'honour killings', must be eradicated once and for all.

BIBLIOGRAPHY

International Legislation

- Convention on the Elimination of All Forms of Discrimination against Women 1979, 1249 UNTS 13 (CEDAW)
- Convention on the Rights of the Child 1989, 1577 UNTS 3 (CRC)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, 1465 UNTS 85 (CAT)
- Convention for the Protection of Human Rights and Fundamental Freedoms, (as amended by Protocols Nos. 11 and 14, 4 November 1950) ETS 5
- Council of Europe, 'Explanatory Report to the Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms' (2000), European Treaty Series (ETS)- No. 177
- The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Law, CETS No.210 (11May 2011).
- Council of Europe, 'Explanatory Memorandum of the Recommendation No R (2002) 5 of the Committee of Ministers to Member States on the Protection of Women against Violence' (2002)
- Council of Europe, 'Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005) Action Plan CM (2005)80' (17 May 2005).
- Council of Europe, 'The Council of Europe Task Force to Combat Violence against Women, including Domestic Violence (EG-TFV)' Gender Equality and Anti-Trafficking Division Directorate General of Human Rights and Legal Affairs, Strasbourg, September 2008.
- Council of Europe, 'Blueprint of the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence', Committee of Ministers, EG-TFV (2006) 8 rev 5, 21 June 2006.
- Council of Europe, 'Final Activity Report, Task Force to Combat Violence against Women, including Domestic Violence' (EG-TFV) 6 (2008).

- Council of Europe, 'Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence: Explanatory Report to the Istanbul Convention' (2011)
- International Covenant on Civil and Political Rights 1966, 999 UNTS 171 (ICCPR)
- International Covenant on Economic, Social and Cultural Rights 1966, 993 UNTS 3 (ICESCR)
- Parliamentary Assembly Council of Europe (PACE), 'Recommendation Rec (2002)5 of the Committee of Ministers to member states on the protection of women against violence' the Committee of Ministers, 30 April 2002, 794th meeting of the Ministers' Deputies (2002).
- Parliamentary Assembly Council of Europe (PACE), 'Resolution 1327 (2003): So-called "honour crimes" (4 April 2003)
- Parliamentary Assembly Council of Europe, 'The Urgent need for Action on So-called "Honour Crimes', (2007) Motion for Resolution, Doc. 11348, 4 July 2007.
- Parliamentary Assembly Council of Europe, 'The Urgent need for Action on So-called "Honour Crimes', Report of the Committee on Equal Opportunities for Women and Men, Rapporteur: Mr Austin, Doc. 11943, 8 June 2009, Draft Resolution.
- Parliamentary Assembly Council of Europe, 'The Urgent need for Action on So-called "Honour Crimes', Resolution 1681 (2009)
- Parliamentary Assembly Council of Europe, 'Action to Combat Gender-based Human Rights Violations, including Abduction of Women and Girls- The Urgent need for Action on So-called "Honour Crimes', Reply to Recommendation 1868 (2009), Committee of Ministers, Doc.12206, 16 April 2010.
- Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No.177, Rome, 04/11/2000, came into force 01/04/2005.
- Universal Declaration of Human Rights (adopted by the United Nations General Assembly on 10 December 1948), G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).
- UN Committee on the Elimination of Discrimination against Women (CEDAW), 'CEDAW General Recommendation No. 12: Violence against women' (1989) CEDAW/C/GC/12
- UN Committee on the Elimination of Discrimination against Women (CEDAW), 'CEDAW General Recommendation No. 14: Female Circumcision' (1990) CEDAW/C/GC/14

- UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘CEDAW General Recommendation No. 19: Violence against women’ (1992) CEDAW/C/GC/19
- UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘CEDAW General Recommendation No. 21: Equality in marriage and family relations’ (04/02/1994) CEDAW/C/GC/21
- UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘CEDAW General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the CEDAW’ (2010) CEDAW/C/GC/28
- UN Committee on the Elimination of Discrimination against Women and Committee on the Rights of Child, ‘Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women and General Comment No. 18 of the Committee on the Rights of the Child on harmful practices’ (14 November 2014) CEDAW/C/GC/31-CRC/C/GC/18
- UN Committee on the Elimination of Discrimination against Women, ‘General Recommendation No. 35 on gender-based violence against women, updating general recommendation no. 19’ (2017) CEDAW/C/GC/35
- UN, Declaration on the Elimination of Violence against Women 1993 (DEVAW), GA res. A/RES/48/104, (20 December 1993).
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 54/4, U.N. GAOR, 54th Sess., Agenda Item 109, U.N. Doc. A/RES/54/4, 2131 U.N.T.S. 83 (6 Oct. 1999)
- UN, ‘Beijing+5, Further Actions and Initiatives to Implement the Beijing Declaration and Programme for Action’ UN Doc. A/RES/S-23/3 (2000)
- UN Human Rights Committee (HRC), ‘General Comment No. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ (26 May 2004), CCPR/C/21/Rev.1/Add.13
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women of 1994 (Convention of Belém do Pará),
- The Protocol to the African Charter on Human and People’s Rights on the Rights of Women (the Maputo Protocol)
- The Committee on Economic, Social and Cultural Rights, ‘General Comment No. 3 ‘The nature of States parties’ obligations (art. 2, para. 1, of the Covenant)’ (1990)

- The Committee against Torture, ‘General Comment No. 2: Implementation of Article 2 by State Parties’ (2007)

Turkish Legislation

- The Constitution of the Republic of Turkey no. 2709 (7/11/1982)
- Turkish Constitution 1982, s 2 (41) 1, Paragraph added on October 3, 2001; Act No. 4709.
- Turkish Constitution 1982, s 10 (10) 2, Paragraph added on May 7, 2004; Act No. 5170
- Turkish Constitution 1982, s 1 (10) 2, Sentence added on September 12, 2010; Act No. 5982.
- Turkish Constitution 1982, s 3 (90) 5, Sentence added on May 7, 2004; Act No. 5170.
- The Constitution of the Republic of Turkey no. 2709 (7/11/1982) s 3(148)
- Turkish Civil Code 1926/743
- Turkish Civil Code 2002/4721
- Family Protection Law 1998/4320
- The Family Protection Law 4320/5636, 26/4/2007, Official Gazette, No. 26512.
- Implementing Regulation of the Law 4320 on the Protection of the Family (Official Gazette 26803, March 2008)
- The Turkish Penal Code 1926/765
- Turkish Penal Code 2005/5237
- Prime Ministry Circular No: 2006/17, Official Gazette No: 26218, 4 July 2006.
- Interior Ministry Circular No: 2007/8 (EGM 2007/6), 11.01.2007.
- The Ministry of Justice, Circular No: 2006/35, 01.01.2006
- KSGM, *Combating Domestic Violence against Women National Action Plan 2007-2010*, (KSGM, 2007)
- The Municipal Law No: 5393, (published in the Official Gazette on 13 July 2005, No. 25874)
- Law to Protect Family and Prevent Violence against Women 2012/6248
- The Implementing Regulation Concerning the Law No. 6284 to the Protect Family and to Prevent of Violence against Women (18 January 2013, Official Gazette 28532)
- The Child Protection Law 2005/5395

- The Turkish Criminal Procedure Law 2004/5271
- Implementing Regulation on Violence Prevention and Monitoring Centres (17 March 2016, No. 29656, Official Gazette)
- The Law on Mediation in Civil Disputes 6325/2012 (Official Gazette 28331)

CASES

Turkish Cases

- Anayasa Mahkemesi/The Constitutional Court of Turkey, Decision no. 1990/31, File no. 1990/30, judgment given 29/11/1990
- Anayasa Mahkemesi/The Constitutional Court, Decision no. 1998/359, File no. 1997/61, judgment given 29/09/1998, Official Gazette No.22996 (22.05.1997)
- Anayasa Mahkemesi/The Constitutional Court of Turkey, Decision no. 2013/89, File no. 2012/94, judgment given 25/01/2014.
- The Supreme Court of Appeals of Turkey, Case No: 2001/4973, Decision No: 2002/613, Judgment given: 04.03.2002
- The Supreme Court of Appeal of Turkey, Case No: 2007/6700, Decision No: 2008/1986, Judgement given: 14.03.2008.
- The Supreme Court of Appeal of Turkey, Case No: 2007/8437, Decision No: 2008/3340, Judgement given: 25.04.2008.
- The Supreme Court of Appeals of Turkey, Decision no. 2009/293, File no. 2008/10901, Judgement given 30 January 2009.
- The Supreme Court of Appeals of Turkey, Decision no. 2010/3058, File no. 2009/6772, Judgement given 28 April 2010
- The Supreme Court of Appeals of Turkey, Decision No: 2010/246, File No: 2009/1759, judgement given: 22.01.2010.
- The General Assembly of the Supreme Court of Appeals, Decision no. 2010/111, File no. 2009/1-56, Judgement given 11 May 2010.
- The Supreme Court of Appeal of Turkey, Decision No: 2010/605, File No: 2009/8861, Judgement given: 01.02.2010
- The Supreme Court of Appeal of Turkey, Decision No: 2010/4214, File No: 2009/8804, Judgement given: 07.06.2010

- The Supreme Court of Appeal of Turkey, Decision No: 2010/3340, File No: 2009/8437, Judgement given: 25.04.2008.
- The Supreme Court of Appeals of Turkey, Decision no. 2011/4313, File no. 2011/3430, Judgement given 06 July 2011
- The General Assembly of the Supreme Court of Appeals of Turkey, Decision no. 2011/1-138, File no. 2011/130, Judgement given 04 June 2011.
- The Supreme Court of Appeals of Turkey, Decision no. 2012/9331, File no. 2012/3659, Judgement given 12 December 2012.
- The General Assembly of the Supreme Court of Appeals of Turkey, Decision no. 2012/258, File no. 2012/1-763, Judgement given 03 July 2012.
- The General Assembly of the Supreme Court of Appeals of Turkey, Decision no. 2013/456, File no. 2013/1-355, Judgement given 19 November 2013.
- The Supreme Court of Appeals of Turkey, Decision no. 2012/9331, File no. 2012/3659, Judgement given 12 December 2012.
- The Supreme Court of Appeals of Turkey, Decision no. 2014/184, File no. 2013/2789, Judgement given 22 January 2014.
- The Supreme Court of Appeals of Turkey, Decision no. 2015/4272, File no. 2015/2328, Judgement given 2 July 2015.
- The Supreme Court of Appeals of Turkey, Decision no. 2015/3523, File no. 2015/2393, Judgement given 1 June 2015.

ECtHR Cases

- *Osman v. United Kingdom*, Application No. 87/1997/871/1083 (ECtHR, 28 October 1998)
- *M. C. v. Bulgaria*, Application no. 39272/98, (ECtHR, 4 December 2003)
- *Opuz v Turkey*, Application No.33401/02, (ECtHR, 9 June 2009)
- *Ebcin v Turkey*, Application no. 19506/05, (ECtHR, 1 February 2011)
- *Salgueiro da Silva Mouta v. Portugal*, Application no. 33290/96, (ECtHR, 21 December 1999).
- *Abdulaziz, Cabales and Balkandali v. The United Kingdom*, Application No: 15/1983/71/107-109, (ECtHR, 24 April 1985).

- *Bevacqua and S. v. Bulgaria*, Application No. 71127/01, (ECtHR, 12/09/2008).
- *Ünal Tekeli v. Turkey*, Application No. 29865/96, (ECtHR, 16 November 2004)
- *Leventoglu Abdulkadiroglu v. Turkey*, Application No.: 7971/07, (ECtHR, 28 May 2013)
- *Tuncer Güneş v. Turkey*, Application No. 26268/08, (ECtHR, 3 December 2013)
- *M.G. v. Turkey* Application No. 646/10, (ECtHR, 22 March 2016)
- *Halime Kılıç v. Turkey* Application No. 63034/11, (ECtHR, 28 June 2016)

CEDAW Communications

- *A.T. v. Hungary*, (CEDAW communication No. 2/2003, views adopted 26 January 2005).
- *Fatma Yildirim (deceased) v. Austria*, (CEDAW communication No. 6/2005, views adopted 6 August 2007)
- *Gonzalez Carreno v. Spain*, (CEDAW Communication No.47/2012, Communication No. CEDAW/C/58/D/47/2012 (2014)
- *Jallow v Bulgaria*, (CEDAW Communication No.: 32/2011, views adopted 23 July 2012)
- *Karen Tayag Vertido v The Philippines*, (CEDAW Communication No. 18/08, CEDAW/C/46/D/18/2008, 2010)
- *Sahide Goekce (deceased) v. Austria*, (CEDAW communication No. 5/2005, views adopted 6 August 2007)
- *VK v Bulgaria*, (CEDAW Communication No.: 20/2008, views adopted 25 July 2011)

IAtHR Cases

- *Velásquez Rodríguez v State of Honduras* (IAtHR, 1988)
- *Gonzalez et al (Cotton Field) v Mexico* (IAtHR, 2009)

BOOKS

- Abi-Mershed E A H, 'Due Diligence and the Fight against Gender-Based Violence in the Inter-American System' in Carin Benninger-Budel (ed.), *Due Diligence and Its Application to Protect Women from Violence* (Brill 2008)
- Abdo N, 'Honour Killing, Patriarchy and the State: Women in Israel', Shahrzad Mojab and Nahla Abdo (eds.) *Violence in the name of Honour, Theoretical and Political Challenges* (Istanbul Bilgi University Press 2004)
- Abu-Odeh L, 'Honor: Feminist Approaches to' in Suad Joseph and Afsana Nagmabadi (eds.) *Encyclopedia of Women and Islamic Cultures: Family, Law and Politics*. (Vol. 2. Brill 2003)
- ----- 'Crimes of Honour and the Construction of Gender in Arab Societies', in (ed.) Mai Yamani, *Feminism and Islam: Legal and Literary Perspectives* (New York University Press 1996)
- Acar F and Altunok G, 'Understanding Gender Equality Demands in Turkey: Foundations and Boundaries of Women's Movements', in Saniye Dedeoglu and Adem Y Elveren (eds), *Gender and Society in Turkey: The Impact of Neoliberal Policies, Political Islam and EU Accession* (I.B. Tauris & Co Ltd. 2012)
- Acar F, Altinok G, and E. Gozdasoglu, *Report Analysing Intersectionality in Gender Equality Policies in Turkey and in the EU, QUING Project* (Institute for Human Rights, 2008)
- Acar F, *Country Papers: Turkey, the First CEDAW Impact Study, The Centre for Feminist Research*, (York University and the International Women's Rights Project, York University 2002)
- Ahmetbeyzade C, 'Kurdish Nationalism in Turkey and the Role of Peasant Kurdish Women' in Tamar Mayer (ed.) *Gender Ironies of Nationalism: Sexing the Nation* (Routledge 2000)
- Akadli E B, Sunday O and Elif K Y, 'Introduction', in KSGM (ed.), *National Research on Domestic Violence against Women in Turkey* (KSGM 2010)
- Akdeniz H, 'Prevention of Violence against Women in Turkey' in Yalcin Sahinkaya (ed.), *Combating Violence Against Women in The Context of Effective Implementations of Human Rights Standards International Symposium, 7-8 June 2012, Istanbul/Turkey* (Justice Academy of Turkey Press 2012)
- Akın M, 'Ailenin Korunmasına Dair Kanunda Belirtilmeyen Tedbirlere Hükmedilmesi ve Danışmanlık Tedbirinin Uygulanması/ Decision of Unspecified Measures for the

Protection of the Family and Application of the Counseling Measure’ in Nazif Kacak (ed.), *Terazi Aylık Hukuk Dergisi* No: 14 Yıl: 2/ *Terazi Monthly Law Journal* No.14 Year:2 (Seckin Yayinlari 2007)

- Al-Ali N, *Women’s Movements in the Middle East: Case Studies of Egypt and Turkey* (Geneva: United Nations Research Institute for Social Development 2002)
- Al-Rebholz A, ‘Gendered Subjectivity and Intersectional Political Agency in Transnational Space: The Case of Turkish and Kurdish Women’s NGO Activists’ in Wilson Angelia (ed.) *Situating Intersectionality* (Palgrave Macmillan US 2013)
- Altınay A G and Arat Y, *Violence against Women in Turkey: A Nationwide Survey* (Punto 2009)
- Anıl E, C. Arın, Berkay-Hacımirzaoğlu A, Bingöllü M, İlkkaracan P, and Ercevik A L, *Turkish Civil and Penal Code Reforms from a Gender Perspective: The Success of Two Nationwide Campaigns* (Women for Women's Human Rights-New Ways 2005)
- Arat Y, *The Patriarchal Paradox: Women Politicians in Turkey* (London and Toronto: Associated University Press 1989)
- ----- ‘Contestation and Collaboration: Women’s Struggles for Empowerment in Turkey’ in Resat Kasaba (ed.), *The Cambridge History of Turkey Volume 4: Turkey in the Modern World* (Cambridge 2008)
- Arat Z, ‘Introduction: Politics of Representation and Identity’, Zehra F. Arat (ed.) *Deconstructing Images of “The Turkish Woman”* (Palgrave 2000)
- Arın C, ‘Violence against Women’, in Yıldız Ecevit (ed.), *Bridging the Gender Gap in Turkey: A Milestone towards Faster Socio-economic Development and Poverty Reduction* (World Bank Report 2003)
- Arnardottir O M, *Equality and Non-discrimination under the European Convention on Human Rights* (The Hague: Martinus Nijhoff Publishers 2003)
- Ayata G, Eryılmaz S and Kalem S, *Ailenin Korunmasına Dair Kanun Kimi ve Neyi Koruyor? Hâkim, Savcı, Avukat Anlatıları/Who and What are Protected by Family Protection Law? Narratives from Judges, Prosecutors, and Lawyers* (Istanbul: Bilgi Üniversitesi Yayinlari/Bilgi University Publications 2011)
- Bağlı M and Özensel E, *Türkiye’de Töre ve Namus Cinayetleri. Töre ve Namus Cinayeti İşleyen Kişiler Üzerine Sosyolojik Bir Araştırma/ Custom and Honour Killings in Turkey. A Sociological Research on Moral and Honour Killers* (Istanbul: Destek Yayınevi 2011)

- Bantekas I, and Oette L, *International Human Rights Law and Practice* (Cambridge University Press 2013)
- ----- *International Human Rights Law and Practice* (Cambridge University Press 2016)
- Barnett A E, *Contact at All Costs? Domestic Violence, Child Contact and the Practices of the Family Courts and Professionals* (DPhil thesis, Brunel University 2014)
- Begikhani N, Gill A K, and Hague G, *Honour-Based Violence Experiences and Counter-Strategies in Iraqi Kurdistan and the UK Kurdish Diaspora* (Ashgate 2015)
- Benhabib S, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton University 2002)
- Benninger-Budel C and O'Hanlon L, *Violence against Women in Turkey: A Report to the Committee against Torture* (World Organisation against Torture (OMCT) 2014)
- Benninger-Budel C, *Due Diligence and Its Application to Protect Women from Violence* (Brill 2008)
- Berktaş F, 'Osmanlı'dan Cumhuriyet'e Feminizm/ *Feminism from the Ottoman through the Republic*' in M. O. Alkan (ed.) *Modern Türkiye'de Siyasal Düşünce: Tanzimat ve Meşrutiyet'in Birikimi/ Political Thought in Modern Turkey: The Accumulation of the Tanzimat and Meşrutiyet* (Istanbul: İletişim Yayınları 2001)
- -----*Tarihin Cinsiyeti/ Gender of History* (Istanbul: Metis Yayınları 2006)
- Bourke-Martignoni J, 'The History and Development of the Due Diligence Standard in International Law and Its Role in the Protection of Women against Violence' in Carin Benninger-Budel (ed.), *Due Diligence and Its Application to Protect Women from Violence* (Brill 2008)
- Brownmiller S, *Against Our Will: Men, Women and Rape* (New York: Simon and Schuster 1975)
- Bruinessen van M, 'From Adela Khanun to Leyla Zana: Women as Political Leaders in Kurdish History' in Shahrzad Mojab (ed.), *Women of Non-State Nation: The Kurds* (Mazda Publishers 2001)
- Bunch C, 'Transforming Human Rights from a Feminist Perspective' in J. Peters and A. Wolper (eds.), *Women's Rights, Human Rights: International Feminist Perspectives* (New York: Routledge 1995)

- ----‘Women’s Human Rights: The Challenges of Global Feminism and Diversity’ in Marianne Dekoven (ed.), *Feminist Locations: Global and Local, Theory and Practice* (Rutgers University Press 2001)
- Butler J, *Bodies that Matter: On the Discursive Limits of Sex* (London: Routledge 1993).
- Byrnes A, ‘Article 1’ in Marsha A. Freeman, Christine Chinkin and Beate Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press 2012)
- Caha O, *Women and Civil Society in Turkey: Women's Movements in a Muslim Society* (Ashgate Publications 2013)
- Carline A, ‘Honour and Shame in Domestic Homicide: A critical analysis of the Provocation Defence’, in Mohammad Mazher Idriss, and Tahir Abbas (eds.), *Honour, Violence, Women and Islam* (Routledge 2010)
- Cassese A., *International Law* (2nd Edition, Oxford University Press 2005)
- Centel N, ‘Ceza Hukuku Siddete KArSi Kadini Koruyor mu? / Does Turkish Penal Code Protect Women against Violence’, in Nur Centel (ed.), *Ceza Hukukunda Kadinin Siddete KArSi Korunmasi/ Protection Women against Violence in the Turkish Penal Code* (Levha Yayinlari 2013)
- Charlesworth H and Chinkin C M, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press 2000)
- Charlesworth H, ‘Human Rights as Men’s Rights’ in Julie Peters and Andrea Wolper (eds.) *Women’s Rights, Human Rights: International Feminist Perspectives* (New York, NY, USA: Routledge 1995)
- Chinkin C, Wright S and Charlesworth H, *Feminist Approaches to International Law: Reflections from Another Century* (Hart Publishing 2005)
- Connors J, ‘United Nations Approaches to ‘Crimes of Honour’’, in Sara Hossain and Lynn Welchman (eds.), *Honour”: Crimes, Paradigms, and Violence against Women* (London & New York: Zed Books 2005)
- ---- *Violence against Women in the Family*. (New York: United Nations 1989)
- Cook R and Cusack S, *Gender Stereotyping Transnational Legal Perspectives*, (University of Pennsylvania Press 2010)
- Crawford J, *State Responsibility: The General Part* (Cambridge University Press 2013)

- Cryer R, Hervey T, Bal B, *Research Methodologies in EU and International Law* (Hart Publishing 2011)
- Dedeoglu S. and Elveren A Y, 'Introduction: Gender, Society and the Welfare State in Turkey' in Saniye Dedeoglu and Adem Y.Elveren (eds.), *Gender and Society in Turkey: The Impact of Neoliberal Policies, Political Islam and EU Accession*, (I.B. Tauris & Co Ltd. 2012)
- Demirdirek A, 'In Pursuit of the Ottoman Women's Movement' in Zehra Arat (ed.) *Deconstructing Images of 'The Turkish Women* (Palgrave 1999)
- Dobash R and Dobash R, 'The Politics and Policies of Responding to Violence against Women', in Jalna Hanmer and Catherine Itzen (eds.) *Home Truths about Domestic Violence: Feminist Influences on Policy and Practice—A Reader* (London: Routledge 2000)
- ----- *Violence against Wives* (New York: The Free Press 1979)
- Durakbasa A, 'Kemalism as Identity Politics in Turkey' in Zehra Arat (ed.) *Deconstructing Images of the Turkish Woman* (Routledge 1998)
- ----- 'Cumhuriyet Döneminde Modern Kadın ve Erkek Kimliklerinin Oluşumu: Kemalist Kadın Kimliği ve "Münevver Erkekler/ *The Construction of Modern Women and Men Identities in Republican Period: Kemalist Woman Identity and "Enlightened Men*', in Ayse Berktaç Hacimirzioglu (ed.) *75 Yılda Kadınlar ve Erkekler Hacimirzaoglu /Men and women in the 75 years* (Istanbul: Türkiye İş Bankası&İMKB&Tarih Vakfı 1998)
- Eck van C, *Purified by Blood: Honour Killings amongst Turks in the Netherlands* (Amsterdam University Press 2002)
- Edwards A, *Violence against Women under International Human Rights Law* (Cambridge University Press 2010)
- Ekinci H and Sağlam M, *Individual Application to the Turkish Constitutional Court* (Publications of Constitutional Court of Turkey 2015)
- El Saadawi N, *The Hidden Face of Eve: Women in the Arab world* (London&New York: Zed Books 2007)
- Elver H, 'Gender Equality from a Constitutional Perspective: The Case of Turkey', in Beverley Baines and Ruth Rubio-Marin (eds.), *The Gender of Constitutional Jurisprudence* (Cambridge University Press 2005)

- Engle K, 'International Human Rights and Feminisms: When Discourses Keep Meeting', in D. Buss and A. Manji (eds.), *International Law: Modern Feminist Approaches* (Oxford: Hart Publishing 2005)
- ----- 'After the Collapse of the Public/Private Distinction: Strategizing Women's Rights' in D.G. Dallmeyer (ed.), *Reconceiving Reality: Women and International Law* (American Society of International Law 1993)
- Erturk Y, 'Violence in the Name of Honour within the Context of International Regimes' in S. Mojab & N. Abdo (eds.), *Violence in the name of honour: Theoretical and political challenges* (Istanbul: Istanbul Bilgi Universitesi Yayinlari 2004)
- ----- 'Turkey's Modern Paradoxes: Identity Politics, Women's Agency, and Universal Rights' in Ferree, Myra Marx, and Aili Mari Tripp (eds.) *Global Feminism: Transnational Women's Activism, Organizing, and Human Rights* (NYU Press 2006)
- ----- 'Concept and Institutional Approaches from Europe' in Yalcin Sahinkaya (ed.), *Combating Violence Against Women in The Context of Effective Implementations of Human Rights Standards International Symposium, 7-8 June 2012, Istanbul/Turkey* (Justice Academy of Turkey Press 2012)
- European Stability Initiative (ESI), *Sex and Power in Turkey: Feminism, Islam and the Maturing of Turkish Democracy* (European Stability Initiative 2007)
- Erdal M, *Kadınlara Yönelik Devlet Kaynaklı Cinsel Şiddet/State-based Sexual Violence against Women* (Ankara Barosu Hukuk Kurultayı, Ankara Barosu Yayınları 2006)
- Fairclough N and Wodak R, 'Critical Discourse Analysis' in Teun A van Dijk (ed.) *Discourse Studies: A Multidisciplinary Introduction Vol 2* (Sage 2004)
- Findikçi A, *Töre Cinayetler Kurd Kulturunun Bir Parçasi mi? / Are So-called 'Töre(custom) Killings' a Part of Kurdish Culture?* (Imaj Yayinlari 2010)
- Findley C V, 'The Tanzimat' in Resat Kasaba (ed.) *Turkey in the Modern World Volume 4* (Cambridge University Press 2008)
- Foucault M, 'Truth and Power' in Colin Gordon (ed.) *Power/Knowledge: Selected Interviews and Other Writings 1972-1977* (Pantheon Books 1980)
- Freeman M A, 'Article 16', in Marsha A. Freeman, Christine Chinkin and Beate Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press 2012)

- Fried S T, 'Controlling Women's Sexuality, Sustaining Dominant Culture(s), Legitimising Gender-based Violence: The Case for Due Diligence', in Carin Benninger-Budel (ed.), *Due Diligence and Its Application to Protect Women from Violence*. (Brill 2008)
- Friedman S, *Women and the Law* (Clarendon Press 1997)
- Frostell K, 'Gender Difference and the Non-discrimination Principle in the CCPR and the CEDAW', in L. Hannikainen and E. Nykanen (eds.), *New Trends in Discrimination Law – International Perspectives* (Publications of Turku Law School 1999)
- Gavey N, 'Feminist Poststructuralism and Discourse Analysis' in Mary M. Gergen and Sara N. Davis (eds.) *Toward a New Psychology of Gender* (Routledge: London and New York 1990)
- Gill A, 'Introduction: 'Honour' and 'Honour'-Based Violence: Challenging Common Assumptions', in Aisha K. Gill, Carolyn Strange, and Karl Roberts (eds.) *'Honour' Killing and Violence* (Palgrave Macmillan UK 2014)
- ----- 'Reconfiguring 'Honour'-based Violence as a Form of Gendered Violence', in Mohammad Mazher Idriss, and Tahir Abbas (eds.) *Honour, Violence, Women and Islam* (London: Routledge 2011)
- Göle N, *Modern Mahrem: Medeniyet ve Örtünme /The Forbidden Modern: Civilization and Veiling* (Istanbul: Metis Yayınları 1993).
- ----- *The Forbidden Modern: Civilization and Veiling* (University of Michigan Press 1996)
- Gormley L, 'Violence against Women by Non-state Actors, a Responsibility for the State under Human Rights Law: Amnesty International's Work on Domestic Violence', in Carin Benninger-Budel (ed.), *Due Diligence and Its Application to Protect Women from Violence*. (Brill 2008)
- Grosz E, 'A Note on Essentialism and Difference' in Sneja Gunew (ed), *Feminist Knowledge: Critique and Construct* (Routledge 1990)
- Gunter M M, *The Kurds in Turkey: A Political Dilemma* (Boulder CO Westview Press, 1990)
- Hafiogullari Z. and Ozen O, *Türk Ceza Hukuku Özel Hukumlar Kisilere Karsi Suclar/ Turkish Criminal Law Special Proceedings Offences Against Persons* (Us-A Yayinlari 2013)

- Hakeri H, *Kasten Öldürme Suçları, TCK 81-82-83/Intentional Killings, Article 81-82-83 of the TCK*, 2nd edition (Seckin Yayınları 2007)
- Hegemann-White C. and Bohn S, *Protecting Women against Violence: Analytical Study on the Effective Implementation of Recommendation Rec (2002)5 on the Protection of Women against Violence in Council of Europe Member States* (Directorate General of Human Rights and Legal Affairs, Council of Europe Strasbourg 2007)
- Hester M and Lilley S J, 'Preventing Violence against Women: Article 12 of the Istanbul Convention' in *A collection of Papers on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (Strasbourg: Council of Europe 2012)
- Hirose K, 'Article 1: Definition of Discrimination against Women', in Japanese Association of International Women's Rights (ed.), *Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Bunkyo: Japanese Association of International Women's Rights 1995)
- Holtmaat R, 'Article 5' in Marsha A. Freeman, Christine Chinkin and Beate Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press 2012)
- Holtmaat R and Naber J, *Women's Human Rights and Culture: From Deadlock to Dialogue* (Intersentia 2011)
- Hossain S and Welchman L, *Honour: Crimes, Paradigms and Violence against Women* (Zed Books 2005)
- Hoyek D, 'Crimes of Honor in Lebanon', in Mariza Correa and Erica Renata de Souza (eds.), *Family Life a Comparative Perspective on "Crimes of Honor"* (UNICAMP 2006)
- Janis M W, Kay R S, and Bradley A W, *European Human Rights Law: Text and Materials* (Oxford University Press, USA 2008)
- Ilkharacan P, 'How Adultery Almost Derailed Turkey's Aspirations' in Pinar Ilkharacan (ed.) *Deconstructing Sexuality in the Middle East: Challenges and Discourses* (Routledge, 2008)
- ----- *A Brief Overview of Women's Movement (s) in Turkey and the Influence of Political Discourses* (Women for Women's Human Rights 1997)

- Iskender S Z, *Ogreti ve Yargisal Kararlar Isiginda Töre Saikiyle Insan Oldurme Sucu (Namus Cinayetleri)/ Custom Killings in the Light of Judiciary Decisions (Honour Killings)* (Yetkin Yayinlari 2011)
- Kamminga M, 'Due diligence' Mania: The Misguided Introduction of an Extraneous Concept into Human Rights Discourse', in Ingrid Westendorp (ed.), *The Women's Convention Turned 30* (Maastricht Faculty of Law Working Paper No 2011/07 2012)
- Kandiyoti D, 'End of Empire: Islam, nationalism and women in Turkey' in Deniz Kandiyoti (ed.) *Women, Islam and the State* (USA: Temple University Press 1991)
- Kardam F, Alpar Z, Yuksel I, and Ergun E, *The Dynamics of Honor Killings in Turkey* (United Nations Population Fund Ankara 2005)
- Kardam N, *Evaluation Report: Women for Women's Human Rights – New Ways: Women's Human Rights Training Program 1995-2003* (WWHR 2003)
- Karınca E, *Kadına Yönelik Aile İçi Şiddete İlişkin Hukuksal Durum ve Uygulama Örnekleri/Legal Status and Implementation Examples regarding Domestic Violence against Women* (Ankara: KSGM 2008)
- Kılıç Z, 'Cumhuriyet Türkiye'sinde Kadın Hareketine Genel Bir Bakış/A General Account of the Women's Movement in the Turkish Republic' in A. B. Hacımirzaoğlu (ed.), *75. Yılda Kadınlar ve Erkekler/Men and Women on the 75 years* (İstanbul: Tarih Vakfı Yayınları 1998)
- Kitching K, *Non-Discrimination in International Law- A Handbook for Practitioners* (Interights 2005)
- Koca M, 'Türk Ceza Hukukunda Töre Saikiyle Öldürme/ Custom Killings in the Turkish Penal Code' in Adem Sozuer (ed.) *Academic Program and Films of Second International Crime and Punishment Film Festival: Violence and Discrimination against Women* (İstanbul Üniversitesi Yayınları 2012)
- KSGM/General Directorate of Women's Status, *Kadına Yönelik Aile İçi Şiddetle İlgili Ulusal ve Uluslararası Yasal Düzenlemeler/National and International Legal Framework on Domestic Violence against Women* (Ankara: KSGM 2008)
- Korteweg A C and Yurdakul G, *Religion, Culture and the Politicization of Honour-Related Violence: A Critical Analysis of Media and Policy Debates in Western Europe and North America* (United Nations Research Institute for Social Development 2010)
- Longman C. and Coene G, 'Harmful Cultural Practices and Minority Women in Europe: From Headscarf Bans to Forced Marriages and Honour Related Violence' in

Chia Longman and Tamsin Bradley (eds.), *Interrogating Harmful Cultural Practices: Gender, Culture and Coercion* (Ashgate Publishing 2015)

- MacKinnon C A, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, MA: Harvard University Press 1987)
- ----- *Toward a Feminist Theory of the State* (Harvard University Press 1989)
- ----- *Sexual Harassment of Working Women: A Case of Sex Discrimination* (Yale University Press 1979)
- ----- 'Equality Remade', in C. A MacKinnon, *Are Women Human? And Other International Dialogues* (Cambridge, MA: Harvard University Press 2006)
- ----- 'Making Sex Equality Real', in C. A MacKinnon, *Are Women Human? And Other International Dialogues* (Cambridge, MA: Harvard University Press 2006)
- Mahoney K, 'Canadian Approaches to Equality Rights and Gender Equity in the Courts' in Rebecca J. Cook (ed.) *Human Rights of Women, National and International Perspectives*. (University of Pennsylvania Press 1994)
- Mayer A E, 'Cultural Particularism as a Bar to Women's Rights: Reflections on the Middle Eastern Experience' in Julie Peters, and Andrea Wolper (eds.) *Women's Rights, Human Rights: International Feminist Perspectives* (New York, NY, USA: Routledge 1995)
- McKean W, *Equality and Discrimination under International Law* (Oxford: Clarendon Press 1983)
- McNay L, *Foucault and Feminism: Power, Gender and the Self* (Polity Press 1992)
- Mendes Bota J, *Opinion on the Draft Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence: Rapporteur Jose Mendes Bota* (Committee on Equal Opportunities for Women and Men, Doc. 12530, 24 February 2011)
- Merry S E, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago Press 2009)
- Mill J S, 'On Liberty with the Subjection of Women' in Stefan Collini (ed.), *J. S. Mill on Liberty and Other Writings* (Cambridge: Cambridge University Press 1989)
- Mojab S, 'The Particularity of 'Honour' and the Universality of 'Killing': From Early Warning Signs to Feminist Pedagogy' in Shahrzad Mojab and Nahlo Abdo (eds.) *Violence in the Name of Honour: Theoretical and political challenges* (Istanbul: İstanbul Bilgi University Publishing 2004)

- Moroglu N, 'Kadınların İnsan Hakları Bildirisi ve Ek İhtiyari Protokol/ Declaration on the Women's Human Rights and the Optional Protocol', in Nazan Moroglu (ed.), *Prof. Dr. Erdoğan Moroglu's 65th Anniversary Gift* (İstanbul Üniversitesi Hukuk Fakültesi Yayınları 2003)
- Munro V, *Law and Politics at the Perimeter: Re-Evaluating Key Debates in Feminist Theory* (Hart 2007)
- Nash K, 'Liberal Feminism', in Lorraine Code (ed.), *Encyclopedia of feminist theories* (Routledge 2002)
- Nelles J, 'The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (İstanbul Convention)' in Yalcin Sahinkaya (ed.), *Combating Violence Against Women in The Context of Effective Implementations of Human Rights Standards International Symposium, 7-8 June 2012, İstanbul/Turkey* (Justice Academy of Turkey Press 2012)
- -----, 'Concept and Institutional Approaches from Europe' in Yalcin Sahinkaya (ed.), *Combating Violence Against Women in The Context of Effective Implementations of Human Rights Standards International Symposium, 7-8 June 2012, İstanbul/Turkey*, (Justice Academy of Turkey Press 2012)
- Nousiainen K, and Chinkin C, *Legal Implications of EU Accession to the İstanbul Convention*, (Luxembourg: Publications Office of the European Union 2016)
- O'Brien M, *The Politics of Reproduction* (London: Routledge & Kegan 1981)
- O'Donovan K, *Sexual Divisions in the Law* (London: Weidenfeld and Nicholson 1985)
- Otto D, 'Disconcerting 'Masculinities': Reinventing the Gendered Subject(s) of International Human Rights Law' in Doris Buss and Ambreena Manji (eds.), *International Law Modern Feminist Approaches* (Hart Publishing 2005)
- Ozbek V O, *Yeni Türk Ceza Kanun'un Anlamı/ The Meaning of the New Turkish Penal Code*, (Seckin Yayınevi 2010)
- Ozbek M S, *Alternatif Uyuşmazlık Çözümü/Alternative Dispute Resolution* (Ankara: Yetkin Yayınları 2013)
- Ozbudun S, *Türkiye'de Kadın Olmak/Being a Woman in Turkey* (İstanbul: Yazın Dergisi Yayınları 1994)

- Ozgenc I, *Türk Ceza Hukuku, Genel Hukumler, Gözden Geçirilmiş ve Güncellenmiş / Turkish Criminal Code, General Provisions, Reviewed and Updated*, 9th Edition (Ankara 2013)
- Parrot A and Cummings N, *Forsaken Females: The Global Brutalization of Women* (Rowman Littlefield 2006)
- Pentikainen M, *The Applicability of the Human Rights Model to Address the Status and Concerns of Women* (Erik Castrén Institute, Research Reports 1999)
- Pervizat L, 'Lack of Due Diligence Judgements of Crimes of Honour in Turkey' in Mohammed Mazher Idriss and Tahir Abbas (eds.) *Honour, Violence, Women and Islam* (Routledge 2010)
- ----- 'An Interdisciplinary and a Holistic Attempt to Understand the Honor Killings in Turkey', in Mariza Correa and Erica Renata de Souza (eds.), *Family Life a Comparative Perspective on "Crimes of Honor"* (UNICAMP 2006)
- Peterson V S, and Parisi L, 'Are Women Human? It's not an Academic Question' in Tony Evans (ed.), *Human Rights Fifty Years on: A Reappraisal* (Manchester University Press 1998)
- Pietila H, and Vickers J, *Making Women Matter: The Role of the United Nations*, (3rd edition, London and New Jersey: Zed Books 1996).
- Pimentel S, Pandjarian V and Belloque J, "'Legitimate Defense of Honor" - Illegitimate Impunity of Murders - A Critical Study of the Legislation and the Case Law in Latin America' in Mariza Correa and Erica Renata de Souza (eds.), *Family Life a Comparative Perspective on "Crimes of Honor"* (UNICAMP 2006)
- Pitt-Rivers J, 'Honour and Social Status' in J.G. Peristiany (ed.), *Honour and Shame: The Values of Mediterranean Society* (Chicago: Chicago University Press 1966)
- Popa R, 'Using the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence to Address Femicide/Feminicide', in Simona Domazetoska, Michael Platzer, and Gejsi Plaku (eds.), *Feminicide*, (Academic Council on the United Nations Systems (ACUNS) 2014)
- Pope N, *Honor Killings in the Twenty-first Century* (Palgrave Macmillan 2012)
- Raday F, 'Culture, Religion, and CEDAW's Article 5 (a)', in Hanna-Beate Schöpp-Schilling, and Cees Flinterman (eds.), *The Circle of Empowerment: Twenty-five Years of the UN Committee on the Elimination of Discrimination against Women* (Feminist Press 2007)

- Serif Sagioglu M, *Ailenin Korunmasi ve Kadina Karsi Siddetin Onlenmesine Dair/ Law to Protect Family and To Prevent Violence against Women* (Legal Yayıncılık 2013)
- Rao A, 'The Politics of Gender and Culture in International Human Rights Discourse' in J. Peters and A. Wolper (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (Routledge New York 1995).
- Roberts K A, Campbell G, and Lloyd G, *Honor-based Violence: Policing and Prevention* (CRC Press 2013)
- Romany C, 'State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law' in Rebecca J. Cook (ed), *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press 1994).
- Romkens R G, 'Reflections on Domestic Violence as Gender-based Violence in European Legal Developments', in Maznah Mohamad and Saskia E. Wieringa (eds.), *Family Ambiguity and Domestic Violence in Asia. Concept, Law and Process* (Sussex Academic Press 2014)
- S. Politikalar, Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği/Social Policies, Gender Identity, and Sexual Orientation Studies Association, *LGBT Hak İhlalleri: Emsal Dava Analizleri/LGBT Rights Violations: Analysis of Cases* (İstanbul: Punto Baskı Çözümleri 2013)
- Sancar S and Bulut A, *Final Report: Turkey: Country Gender Profile* (Ankara, 2006)
- Sancar S, *Türk Modernleşmesinin Cinsiyeti, Erkekler Devlet, Kadınlar Aile Kurar/ Gender of Turkish Modernisation, Men Establish States, Women Establish Family* (İletişim Yayıncılık 2012)
- Sev'er A, *Honourless Killings: Honour-based Cultures, Patriarchal Murders of Women in Turkey and in the West* (Lexington Books 2010)
- ----- *Patriarchal Murders of Women: A Sociological Study of Honour-Based Killings in Turkey and in the West* (Lewiston: The Edwin Mellen Press, 2013)
- Sirman N, 'Kinship, Politics and Love: Honour in Post-Colonial Contexts—The Case of Turkey' (2004) in Shahrzad Mojab and Nahlo Abdo (eds.) *Violence in the Name of Honour: Theoretical and political challenges*. (İstanbul: İstanbul Bilgi University Publishing 2004)

- Spivak G C, 'Subaltern Studies: Deconstructing Historiography' in R. Guha and G. Spivak (eds.), *Selected Subaltern Studies* (New York: Oxford University Press 1988)
- Stamatopoulou E, 'Women's Rights and the United Nations' in Julie Peters and Andrea Wolper (eds.), *Women's Rights, Human Rights: International Feminist Perspectives* (Psychology Press 1995)
- Süral N, 'Legal Framework for Gender Equality', in Yildiz Ecevit (ed.), *Bridging the Gender Gap in Turkey: A Milestone towards Faster Socio-economic Development and Poverty Reduction*, (World Bank Report, 2003)
- Thapar-Bjorkert S and Persson C, *State Policy, Strategies and Implementation in Combating Patriarchal Violence, Focusing on 'Honour Related' Violence* (Integrationsverkets stencilserie 2007)
- Thiara R K and Gill A K, *Violence Against Women in South Asian Communities: Issues for Policy and Practice* (London: Jessica Kingsley Publishers 2010)
- Ugur H, 'Prevention of Violence against Women', in Yalcin Sahinkaya (ed.), *Combating Violence Against Women in The Context of Effective Implementations of Human Rights Standards International Symposium, 7-8 June 2012, Istanbul/Turkey*, (Justice Academy of Turkey Press 2012)
- Vandenhoe W, *Non-discrimination and Equality in the View of the UN Human Rights Treaty Bodies* (Intersentia 2005)
- Walby S, *Theorizing Patriarchy* (Basil Blackwell 1990)
- Weedon C, *Feminist Practice and Poststructuralist Theory* (Blackwell Publishers 1987)
- Wikan U, *In Honor of Fadime: Murder and Shame* (University of Chicago Press 2008)
- Willott S, 'An Outsider within: A Feminist Doing Research with Men' in Karen Henwood (eds.), Christine Griffin and Ann Phoenix, *Standpoints and Differences: Essays in the Practice of Feminist Psychology* (Sage Publications 1998)
- Yalcin S T, *Türk Ceza Hukukunda Kadın/Women within the Scope of the Turkish Penal Code* (Ankara: Seckin Yayinlari 2013)
- Yirmibesoglu V, *Topraga Dusen Sevdalar - Töre ve Namus Gerekcesiyle islenen cinayetler/Love Fallen into the Earth – Murders Committed with the Reasoning of Customs and Honour* (Istanbul: Hurriyet Yayinlari 2007)
- Yucel B, 'Anayasa Mahkemesi Kararlarinda Esitlik Ilkesinin Yorumlanmasi ve Cinsiyet Ayrimciligina

Yargisal Bakis/ *The Interpretation of the Principle of Equality in the Judgements of the Constitutional Court and Judicial Review on the Gender Discrimination*’, in Ozan Ergul (ed.), *Anayasa Hukukunda Yorum ve Norm Somutlasmasi* (TBB Yayinlari 2013)

- Zürcher E J, *Turkey: A Modern History* (New York: I. B. Taurus 2004)

JOURNAL ARTICLES

- Abu-Odeh L, ‘Comparatively Speaking: The Honor of the East and the Passion of the West’ (1997) *Utah L. Rev.* 287-308.
- Ahmetbeyzade C, ‘Gendering necropolitics: The juridical-political sociality of honor killings in Turkey’ (2008) 7(3) *Journal of Human Rights* 187-206.
- Akbulur P R I, ‘Gender Equality in Turkish Law: Victims v. Heroes’ (2014) 8(3) *Human Rights Review* 177-200.
- Akbulut B, ‘6248 Sayili Kanunda Siddet ve Istanbul Sozlesmesinin TCK Acisindan Degerlendirilmesi/ *Violence in the Law Numbered 6248 and Evaluation of the Istanbul Covenant in Terms of TCK*’ (2014) 5(14) *TAAD* 141-177.
- Araji S K, ‘Crimes of Honor and Shame: Violence against Women in non-Western and Western Societies’ (2000) 8 *The red feather journal of postmodern criminology* 1-12.
- Arat Y, ‘Democracy and Women in Turkey: In Defense of Liberalism’ (1999) 6(3) *Social Politics* 370–387.
- ----- ‘Feminists, Islamists, and Political Change in Turkey’ (1998) 19(1) *Political Psychology* 117-131.
- Arat Z F, ‘A Struggle on Two Fronts’, (2003) 2(10) *Human Rights Dialogue*
- Arat-Koç S, ‘(Some) Turkish Transnationalism (s) in an Age of Capitalist Globalization and Empire “White Turk” Discourse, the New Geopolitics, and Implications for Feminist Transnationalism’ (2007) 3(1) *Journal of Middle East Women's Studies* 35-57.
- Arin C, ‘Femicide in the Name of Honor in Turkey’ (2001) 7(7) *Violence against women* 821-825
- Arnold K C, ‘Are the Perpetrators of Honor Killings Getting Away with Murder Article 340 of the Jordanian Penal Code Analyzed under the Convention on the Elimination of All Forms of Discrimination against Women’ (2000) 16 *Am. U. Int'l L. Rev.* 1343-1410.

- Ates M, '4320 Sayılı Ailenin Korunmasına Dair Kanun ve Bu Kanundaki Değişiklikler Üzerine Düşünceler/*The Family Protection Law No. 4320 and Thoughts on Amendments in the Law*' (2007) 65(3) *Ankara Barosu Dergisi* 161-172.
- Aydın D, 'Yeni Turk Ceza Kanunu'nda Haksiz Tahrik/Unjust Provocation in the new Turkish Penal Code' (2005) 54(1) *AÜHFD* 225-254.
- Badur E, 'Ailenin Korunması Alanındaki Son Gelismeler/ *Recent Developments in the Field of Protection of Family*' (2009) 84 *TBB Dergisi/Union of Turkish Bar Associations Review* 63-92.
- Bağlı M. and Sev'er A, 'Female and Male Suicides in Batman, Turkey: Poverty, Social Change, Patriarchal Oppression and Gender Links' (2003) 2(1) *Women's Health and Urban Life: An International and Interdisciplinary Journal* 60-84.
- Baker N V, Peter R G, and Cassidy M, 'Family Killing Fields Honor Rationales in the Murder of Women' (1992) 5(2) *Violence against women* 164-184.
- Baki B, 'Kadınlar Soruyor ve Ifsa Ediyor, Suçlu Kim?/ *Women are Asking and Revealing, Who is the Guilty?*' (2017) 157 *Güncel Hukuk Dergisi* 63.
- Bakirci K, 'İstanbul Sözleşmesi/ the Istanbul Convention' (2015) 4 *Ankara Barosu Dergisi* 134-204.
- Bayefski A F, 'The Principle of Equality or Non-Discrimination in International Law' (1990) 11(1-2) *Human Rights Law Journal* 1-34.
- Bilgili N, and Vural G, 'The Heaviest Way of Violence against Women: Honor Killings' (2011) 14(1) *Journal of Anatolia Nursing and Health Sciences* 66-72.
- Binion G, 'Human Rights: A Feminist Perspective' (1995) 17(3) *Human Rights Quarterly* 509-526.
- Bond J E, 'International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations' (2003) 52 *Emory L.J.* 71-186.
- Boon R E, 'They Killed Her for Going Out with Boys: Honor Killings in Turkey in Light of Turkey's Accession to the European Union and Lessons for Iraq' (2006) 35 *Hofstra L. Rev.* 815-856.
- Bozdağ G G, 'Arbulucuk ve Arbulucugun Ebeveynler Üzerindeki Uluslararası İhtilaflarda Uygulanabilirliği/*Mediation and Applicability of Mediation in International Disputes Between Parents*' (2016) 20(1) *Gazi Üniversitesi Hukuk Fakültesi Dergisi* 101-136.

- Boyd S, 'Backlash and the Construction of Legal Knowledge: The Case of Child Custody Law' (2001) 20 *Windsor Yearbook of Access to Justice* 141-165.
- Brems E, 'Enemies or allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse' (1997) 19(1) *Human Rights Quarterly* 136-164.
- Byrnes A and Connors J, 'Enforcing the Human Rights of Women: A Complaints Procedure for the Women's Convention?' (1995-1996) 21 *Brooklyn Journal of International Law* 679-798.
- Byrnes A. and Bath E, 'Violence against Women, the Obligation of Due Diligence, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women — Recent Developments' (2008) 8(3) *Human Rights Law Review* 517-533.
- Bunch C, 'Women's Rights as Human Rights: Toward a Re-Vision of Human Rights' (1990) 12 *Human Rights Quarterly* 486-498.
- Caglar S, 'Anayasa Mahkemesi Kararlarında Esitliğin Dar Yorumu/Comments in Supreme Court Decisions that Narrow Equality' (2012) 3 *Ankara Barosu Dergisi* 43-86
- Cakırca S I, 'Turkish Civil Code and CEDAW: Never Shall the Twain Meet?' (2013) 45(62) *Annales de la Faculté de Droit d'Istanbul* 145-192.
- Caha O, 'The Transition of Feminism from Kemalist Modernism to Postmodernism in Turkey' (2011) 2(1) *Turkish Journal of Politics* 5-20.
- ----- 'The Kurdish Women's Movement: A Third-Wave Feminism within the Turkish Context' (2011) 12(3) *Turkish Studies* 435-449.
- Cain P A, 'Feminist Jurisprudence: Grounding the Theories' (1989-1990) 4 *Berkley Women's L.J.* 191-214.
- Celorio R M, 'European Court of Human Rights: Opuz v. Turkey-Introductory Note' (2009) 48(5) *International legal materials* 907-940.
- Cesur-Kılıçaslan S, 'Honor Killings in Turkey' (2013) 7(3) *The international Journal of Interdisciplinary Cultural Studies* 27-34.
- Ceylan E, 'Turk Hukukunda Aile İçi Sıddet ve Kadına Karşı Sıddetin Önlenmesiyle İlgili Yeni Düzenlemeler/New Regulations about Turkish Law on the Prevention of Domestic Violence and Violence Against Women' (2013) 109 *TBB Dergisi* 13-54.
- Charlesworth H, Chinkin C, and Wright S, 'Feminist Approaches to International Law' (1991) 85 *The American Journal of International Law* 613-645.

- Chesler P, 'Worldwide Trends in Honor Killings' (2010) 17(2) *Middle East Quarterly* 3-11.
- Choudhry S, 'Towards a Transformative Conceptualisation of Violence Against Women—A Critical Frame Analysis of Council of Europe Discourse on Violence Against Women' (2016) 79(3) *The Modern Law Review* 406-441.
- Cindoglu D, 'Virginity Tests and Artificial Virginity in Modern Turkish Medicine' (1997) 20(2) *Women's Studies International Forum* 253-261.
- Cook R J, 'State Responsibility for Violations of Women's Human Rights' (1994) 7 *Harv. Hum. Rts. J.* 125-176.
- Corbin B A, 'Between Savors and Savages: The Effect of Turkey's Revised Penal Code on the Transformation of Honor Killings into Honor Suicides and Why Community Discourse is Necessary for Honor Crime Eradication' (2014) 29 *Emory Int'l L. Rev.* 277-326.
- Crenshaw K, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) *U. Chi. Legal F.* 139-168.
- ----- 'Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Color' (1997) 43(6) *Stanford Law Review* 1241-1299.
- Davies M, 'Unity and Diversity in Feminist Legal Theory' (2007) 2(4) *Philosophy Compass*, 650-664.
- Davis K, 'Intersectionality as Buzzword: A Sociology of Science Perspective on What Makes a Feminist Theory Successful' (2008) 9(1) *Feminist theory* 67-85.
- Demir S, 'Arabuluculuk ile Aile içi Sıddet veUZlaşmaya Tabi Sucların İllskisi/ Relationship between Mediation and Domestic Violence and Crimes Subject to Reconciliation' (2014) 2 *Ankara Barosu Dergisi* 21-228.
- Diner C and Toktas S, 'Waves of Feminism in Turkey: Kemalist, Islamist and Kurdish Women's Movements in an Era of Globalization' (2010) 12(1) *Journal of Balkan and Near Eastern Studies* 41-57.
- Dogan R, 'Yargıtay Kararlarında Töre Saikiyle Oldurme Sucu/ Understanding the Concept of Customary Killing in the Light of Rulings of the Appeal Court' (2016) 126 *TBB Dergisi* 123-166.

- Durakbasa A and Ilyasoglu A, 'Formation of Gender Identities in Republican Turkey and Women's Narratives as Transmitters of 'Herstory' of Modernization' (2001) 35(1) *Journal of Social History* 195-203.
- Eisler R, 'Human Rights: Toward an Integrated Theory for Action' (1987) 9(3) *HRQ* 287-308.
- Engle K, 'Female Subjects of Public International Law: Human Rights and the Exotic Other Female' (1992) 26 *New England L. Rev.* 1509-1526.
- Engle S M, 'Constructing a Global Law – Violence against Women and the Human Rights System' (2003) 28(4) *L. & Soc. Inquiry* 941-977.
- Erdem M, 'Aile İçi Şiddet ve 4320 Sayılı Ailenin Korunmasına Dair Kanun/ *Domestic Violence and the Law No. 4320 on Family Protection*' (2007) 73 *Türkiye Barolar Birliği Dergisi* 46-77.
- Ertürk Y, 'Towards a Post-patriarchal Gender Order: Confronting the Universality and the Particularity of Violence against Women' (2009) 46(4) *Sociologisk forskning* 61-70.
- Esim S and Cindoglu D, 'Women's Organizations in 1990s Turkey: Predicaments and Prospects' (1999) 35(1) *Middle Eastern Studies* 178-188.
- Etienne M, 'Addressing Gender-Based Violence in an International Context' (1995) 18 *Harv. Women's L. J.* 139-170.
- Evatt E, 'Eliminating Discrimination against Women: The Impact of the UN Convention' (1991) 18 *Melb. UL Rev.* 435-449.
- Funk A., Lang J L, and Osterhaus J, 'Ending Violence against Women and Girls: Protecting Human Rights Good Practices for Development Cooperation. Good Practices in Ending Violence against Women' (2005) *Deutsche Gesellschaft für Technische Zusammenarbeit (GIZ)* 23.
- Gill A, 'Voicing the Silent Fear: South Asian Women's Experiences of Domestic Violence' (2004) 43(5) *The Howard Journal* 465-483.
- ----- 'Feminist Reflections on Researching So-called 'Honour' Killings' (2013) 21(3) *Feminist Legal Studies* 241-261.
- ----- 'Patriarchal Violence in the Name of 'Honour'' (2006) 1(1) *International Journal of Criminal Justice Sciences* 1-12
- ----- "'Crimes of Honour' and Violence against Women in the UK' (2008) 32(2) *International Journal of Comparative and Applied Criminal Justice* 243-263.

- Goztepe E, 'Namus Cinayetlerinin Hukuki Boyutu/*The Legal Dimension of Honour Killings*' (2005) 59 *Turkiye Barolar Birliği Dergisi* 29-48.
- Goldscheid J and Liebowitz D J, 'Due Diligence and Gender Violence: Parsing its Power and its Perils' (2015) 48 *CORNELL INT'L L.J.* 301-342.
- Gunay M, '6284 Sayılı KAnuna Gore Koruyucu ve Onleyici Tedbirler/ *According to the Law No 6284 Protective and Preventive Measures*' (2012) 3(10) *TAAD* 647-686
- Gunning I R, 'Arrogant Perception, World-travelling and Multicultural Feminism: The Case of Female Genital Surgeries' (1991) 23 *Colum. Hum. Rts. L. Rev.* 189-248
- Gupta N, 'Honour Killing and Women's Rights' (2015) 3(2) *Journal of Development Management and Communication* 326-335.
- Harris A P, 'Race and Essentialism in Feminist Legal Theory' (1990) 42 *Stanford Law Review* 590-601.
- Hernandez-Truyol B E, 'Women's Rights as Human Rights–Rules, Realities and the Role of Culture: A Formula for Reform' (1996) XXI:3 *Brooklyn Journal of International Law* 605-677.
- Higgins T E, 'Anti-Essentialism, Relativism, and Human Rights' (1996) 19 *Harv. Women's L. J.* 89-126.
- ----- 'By Reason of Their Sex: Feminist Theory, Postmodernism and Justice' (1995) 80 *Cornell L. Rev.* 1536-1594.
- Hooks B, 'Understanding patriarchy' (2013) *Louisville Anarchist Federation. Louisville Lending Library* 1-6.
- Ilkkaracan P, 'Exploring the Context of Women's Sexuality in Eastern Turkey, Reproductive Health Matters' (1998) 6(12) *Taylor & Francis* 66-75.
- ----- 'Reforming the Penal Code in Turkey: The Campaign for the Reform of the Turkish Penal Code from a Gender Perspective' (2007) *Institute of Development Studies (IDS)* 1-28.
- Ilkkaracan P and Amado L E, 'Human Rights Education as a Tool of Grassroots Organizing and Social Transformation: A Case Study from Turkey' (2005) 16(2) *Intercultural Education* 115-128.
- Ince H O, Yarali A, and Ozsel D, 'Customary Killings in Turkey and Turkish Modernization' (2009) 45(4) *Middle Eastern Studies* 537-551.
- Jurasz O, 'The Istanbul Convention: A New Chapter in Preventing and Combating Violence against Women' (2015) 89(9) *Australian Law Journal* 619-627.

- Kandiyoti D, 'Bargaining with Patriarchy' (1988) 2(3) *Gender & society* 274-290.
- ----- 'Emancipated but Unliberated? Reflections on the Turkish Case' (1987) 13(2) *Feminist Studies* 317-338.
- Karahan F, 'Kurt Kadini olmak: Sosyo-ekonomik Yapi Icinde Kurt kadınınin StatusU/To be a Kurdish Woman: The Kurdish Woman's Status within the Socio-economic Structure' (1991) *Deng* 13.
- Kapur R, 'Tragedy of Victimization Rhetoric: Ressurecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics' (2002) 15 *Harv. Hum. Rts. J.* 1-38.
- Keyhani N, 'Honour Crimes as Gender-Based Violence in the UK: A Critical Assessment' (2013) 2 *UCLJLJ* 255-277.
- Kimelblatt M, 'Reducing Harmful Effects of Machismo Culture on Latin American Domestic Violence Laws: Amending the Convention of Belem Do Para to Resemble the Istanbul Convention' (2016) 49 *Geo. Wash. Int'l L. Rev.* 405-439.
- Kirbas C S, 'Siddetin ve Evici Siddetin Onlenmesine Dair Ulusal ve Uluslararası Mevzuat (Istanbul Sozlesmesi ve 6284 Sayılı Kanun)/International and National Legislation for Preventing Violence against Women and Domestic Violence (the Istanbul Convention and the Law Numbered 6284)' (2015) 3 *Ankara Barosu Dergisi* 357-378.
- Kogacioglu D, 'The Tradition Effect: Framing Honor Crimes in Turkey' (2004) 15(2) *Differences: A journal of feminist cultural studies* 119-151.
- Korteweg A C and Yurdakul G, 'Islam, Gender, and Immigrant Integration: Boundary Drawing in Discourses on Honour Killing in the Netherlands and Germany' (2009) 32(2) *Ethnic and Racial Studies* 218-238.
- Krill F, 'The Protection of Women in International Humanitarian Law' (1985) 25(249) *Int'l Rev. Red Cross* 337-363.
- Luopajarvi K, 'International Accountability for Honour Killings as Human Rights Violations' (2004) 22 *Nordisk Tidsskrift for Menneskerettigheter* 2-21.
- McCall L, 'The Complexity of Intersectionality' (2005) 30(3) *Signs* 1771-1800.
- McQuigg R J A, 'What Potential does the Council of Europe Convention on Violence against Women Hold as Regards Domestic Violence?' (2012) 16(7) *The International Journal Of Human Rights* 947-962.

- ----- ‘Domestic Violence as a Human Rights Issue: *Rumor v. Italy*’ (2015) 26(4) *Eu J Int Law* 1009-1025
- MacKinnon C A, ‘Rape, Genocide, and Women's Human Rights’ (1994) 17 *Harv. Women's LJ* 5-16.
- Mahoney K, ‘Theoretical Perspectives on Women’s Human Rights and Strategies for Their Implementation’ (1995-1996) 21(3) *Brook J. Int’l L.* 799-856.
- Mernissi F, ‘Virginity and Patriarchy’ (1982) 5(2) *Women’s Studies International Forum* 183–191.
- Minor J A, ‘An Analysis of Structural Weaknesses in the Convention on the Elimination of All Forms of Discrimination Against Women’ (1994) 24 *GA. J. INT’L & COMP. L.* 137-154.
- Mohanty C T, ‘Under Western Eyes: Feminist Scholarship and Colonial Discourses’ (1988) 30 *Feminist review* 61-88.
- Mora N, ‘Violence as a Communicative Action: Customary and Honor killings’ (2009) 6(2) *International Journal of Human Sciences* 499-510.
- Moroglu N, ‘Uluslararası Sözleşmelerde ve Türk Hukukunda Kadına Karşı Sıddetin Önlenmesi/ *Prevention Violence against Women within the International Treaties and Turkish Legal System*’ (2012) 8(97-98) *Kazancı Hakemli Hukuk Dergisi* 20-41.
- ----- ‘Kadına Yönelik Sıddet’in Önlenmesi 6284 sayılı yasa ve İstanbul Sözleşmesi/ *Violence against women in the Law No. 6284 and the Istanbul Convention*’ (2012) 99 *Türkiye Barolar Birliği Dergisi* 357-380.
- Müftüler-Bac M, ‘Turkish women's predicament’ (1999) 22(3) *Women's studies international forum Pergamon*, 303-315.
- Nachescu V, ‘Racial Feminism and the Nation: History and Space in the Political Imagination of Second Wave Feminism’ (2009) 3(1) *Journal for the study of Radicalism*, 29-59.
- Naffine N, ‘In Praise of Legal Feminism-Butterworths Inaugural Legal Studies Lecture’ (2002) 22 *Legal Stud.* 71-101.
- Neuwirth J, ‘Inequality before the Law: Holding States Accountable for Sex Discriminatory Laws under the Convention on the Elimination of All Forms of Discrimination Against Women and Through the Beijing Platform for Action’ (2005) 18 *Harv. Hum Rts. J.* 19-54.

- Nuhoglu A, 'Kadina Yonelik Siddet/ *Violence against Women*' (2012) 8(97-98) *Kazancı Hakemli Hukuk Dergisi* 62-77.
- Ozcurumez S and Cengiz S F, 'On Resilience and Response Beyond Value Change: Transformation of Women's Movement in Post-1980 Turkey' (2011) 34(1) *Women's Studies International Forum* 20-30.
- Ozgenc I, 'Siddet Uygulayan Kisinin Zorlama Hapsine Tabi Tutulması/Subject to Preventive Imprisonment for Perpetrator of the Violence' (2012) 8(97-98) *Kazancı Hakemli Hukuk Dergisi* 59-61.
- Ozkan Duvar A, 'The Judicial Application of Human Rights Law in Turkey', (2015) 3(1) *Journal of Penal Law&Criminology* 59-73.
- Ozturk N, 'Ailenin Korunması ve Kadına Karsi Sissetin Onlenmesine Dair KAnunun Getirdigi Bazi Yenilikler ve Oneriler/ *Some Innovations in the Act of Family Protection and Prevention of Violence against Women*' (2017) 8(1) *Inonu Universitesi Hukuk Fakultesi Dergisi* 1-32.
- Otto D, 'Violence against Women—Something Other Than a Violation of Human Rights?' (1993) 1(1) *Australian Feminist Law Journal* 159-162.
- Parisi L, 'Feminist Praxis and Women's Human Rights' (2002) 1(4) *Journal of Human Rights* 571-585.
- Parla A, 'The "Honor" of the State: Virginity Examinations in Turkey' (2001) 27(1) *Feminist studies* 65-88.
- Payton J, "'Honor," Collectivity, and Agnation: Emerging Risk Factors in "Honor"-Based Violence' (2014) 29(16) *Journal of interpersonal violence* 2863-2883.
- Peroni L, 'Violence against Migrant Women: The Istanbul Convention through a Postcolonial Feminist Lens' (2016) 24(1) *Feminist Legal Studies* 49-67.
- Pervizat L, 'In the Name of Honour' (2003) 20 *Human Rights Dialogue* 30-32.
- Phoenix A and Pattynama P, 'Intersectionality' (2006) 13(3) *European Journal of Women's Studies* 187-192.
- Radacic I, 'Feminism and Human Rights: The Inclusive Approach to Interpreting International Human Rights Law' (2008) 14 *UCL Jurisprudence Rev* 238-276.
- Rodriguez B L, 'Justice through Domestic Violence Legislation: Improving the Implementation of Turkey's Law 4320 on the Protection of the Family' (2009) 20(1) *Journal of Public & International Affairs* 27-46.

- Romany C, 'Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law' (1993) 6 *Harv. Hum. Rts. J.* 87-126.
- Sarihan B B, 'Violence against Women in the Law Numbered No. 6248' (2015) 4(8) *The Macrotheme Revview A multidisciplinary journal of globe macro trends* 40-55.
- Sener U, '6248 Sayili Ailenin Korunmasi ve Kadina Yonelik Siddetin Onlenmesine Dair Kanun Ne Getiriyor/ What has the Law No. 6284 on Protecting the Family and Preventing Violence Against Women brought into account?' (2012) *Turkiye Ekonomi Politikali Arastirma Vakfi* 1-5.
- Sepper E, 'Confronting the 'Sacred and Unchangeable': The Obligation to Modify Cultural Patterns under the Women's Discrimination Treaty' (2008) 30 *University of Pennsylvania Journal of International Law* 585-639.
- Sev'er A, 'In the Name of Fathers: Honour Killings and Some Examples from South-eastern Turkey' (2005) 30(1) *Atlantis: Critical Studies in Gender, Culture & Social Justice* 129-145.
- Sev'er A, and Yurdakul G, 'Culture of Honor, Culture of Change: A Feminist Analysis of Honor Killings in Rural Turkey' (1999) 7(9) *Violence Against Women: An International and Interdisciplinary Journal* 964-999.
- Shalhoub-Kevorkian N, 'Reexamining Femicide: Breaking the Silence and Crossing 'Scientific' Borders' (2003) 28(2) *Signs: Journal of Women in Culture and Society*, 581-608.
- Shrestha M, 'Istanbul Convention Poised to Enhance Global Efforts to Eradicate Violence against Women and Domestic Violence' (2015) 19(4) *ASIL Insights*.
- Simonovic D, 'Global and Regional Standards on Violence against Women: The Evolution and Synergy of the CEDAW and Istanbul Conventions' (2014) 36(3) *Human Rights Quarterly* 590-606.
- Sirin T, 'Ucuncu Yilda Bir Bilanco: Turkiye Anayasa Mahkemesi'nin Bireysel Basvuru (Anayasa Sikayeti) Usulunun ve Kararlarinin Degerlendirilmesi/Balance Sheet in the third year: Evaluation of individual application to the Turkish Constitutional Court procedures and decisions' (2015) *Marmara University Law Faculty* 1-143.
- Sirman N, 'Feminism in Turkey: A Short History' (1989) 3 *New Perspectives on Turkey* 1-34.

- Sledzinska-Simon A, 'Making Progress in Elimination of Gender Stereotypes in the Context of Gender-based Violence-The role of the CEDAW Committee' (2013) 16(1) *Tijdschrift voor Genderstudies* 41-53.
- Sokullu-Akinci F, 'Increase in the Numbers of Women Victimization and Access to Justice for the Women of Turkey' (2011) 43(60) *Annales de la Faculté de Droit d'Istanbul* 161-183.
- Southard J L, 'Protection of Women's Human Rights under the Convention on the Elimination of All Forms of Discrimination against Women' (1996) 8 *Pace Int'l L. Rev.* 1-90.
- Tekeli S, 'The Turkish Women's Movement: A Brief History of Success' (2010) 7 *Quaderns de la Mediterrània= Cuadernos del Mediterráneo* 119-123.
- Thill M, 'States' Duty to Prevent and Eliminate Violence against Women in the European Union' (2014) 21 *RUE: Revista universitaria europea* 43-68.
- Uçar H, 'Women's Rights in Turkey: Interaction of State and Non-State Actors in the Implementation of Judicial Equality' (2009) 15 *Friedrich-Ebert-Stiftung Fokus Türkei* 1-19.
- Ugur H, 'Kadin ve Aile Bireylerine Yonelik Siddete Karsi 6284 Sayili Kanunun Getirdikleri/ Changes Brought by the Law No. 6248 in Relation to Fight Violence against Women and Family Members' (2012) 101 *Turkiye Barolar Birligi Dergisi* 333-366.
- Ulrich J L, 'Confronting Gender-Based Violence with International Instruments: Is a Solution to the Pandemic Within Reach?' (2000) 7(3) *Indiana Journal of Global Legal Studies* 629-654.
- Urlich M, 'Short Topology of Feminist Legal Theory' (1992) 7 *Auckland UL Rev.* 483-490.
- Waring M, 'Gender and International Law: Women and the Right to Development' (1988-89) 12 *Australian Year Book of International Law* 177-189.
- Weston P, 'The Empty Idea of Equality' (1982) 95(3) *Harv. L. Rev.* 537-596.
- Verloo M and Walby S, 'Introduction: The Implications for Theory and Practice of Comparing the Treatment of Intersectionality in the Equality Architecture in Europe' (2012) 19(4) *Social Politics* 433-445.
- Volpp L, 'Feminism versus Multiculturalism' (2001) 101 *Columbia L Rev* 1181-1218.

- Yesilyurt G Z, 'The Women's Movement in Turkey: From Tanzimat towards European Union Membership' (2004) 9(3) *Perceptions: Journal of International Affairs* 115-134.
- Yildirim F, 'Turk Hukuk Sisteminde Alternatif Bit Cozum Yolu Olarak Arabuluculuk/ *Mediation as an Alternative Remedy in Turkish Legal System*' (2016) 2(3) *International Journal of Social Sciences and Education Research* 926-944.
- Yurdakul G. and Korteweg A C, 'Gender Equality and Immigrant Integration: Honor Killing and Forced Marriage Debates in the Netherlands, Germany, and Britain' (2013) 41 *Women's Studies International Forum* 204-214.
- Yuval-Davis N, 'Intersectionality and Feminist Politics' (2006) 13(3) *European Journal of Women's Studies* 193–209.
- Zearfoss S C, 'Note the Convention for the Elimination of All Forms of Discrimination against Women: Radical, Reasonable, or Reactionary' (1990) 12 *Mich. J. Int'l L.* 903-942.

REPORTS

International Reports

- UN CHR, 'Extrajudicial, summary or arbitrary executions Report of the Special Rapporteur, Ms. Asma Jahangir' (1999) UN doc. E/CN.4/1999/39, 6 January 1999.
- UN GA Resolution 55/111, 'Extrajudicial, Summary and Arbitrary Executions' (4 December 2000) UN doc. A/RES/55/111, 2000.
- UN CHR, 'Extrajudicial, summary or arbitrary executions Report of the Special Rapporteur, Ms. Asma Jahangir' (2000) UN doc. E/CN.4/2000/3, 2000.
- UN CHR, 'Extrajudicial, summary or arbitrary executions' (2001) UN doc. E/CN.4/2001/167- E/2001/23, 23 April 2001.
- UNCHR, 'Extrajudicial, summary or arbitrary executions Report of the Special Rapporteur, Ms. Asma Jahangir' (2001) UN doc. E/CN.4/2001/9.
- UNCHR, 'Extrajudicial, summary or arbitrary executions Report of the Special Rapporteur, Ms. Asma Jahangir' (2002) UN doc. E/CN.4/2002/74.
- UNCHR, 'Extrajudicial, summary or arbitrary executions Report of the Special Rapporteur, Ms. Asma Jahangir' (2003) UN doc. E/CN.4/2003/3.

- UNCHR, 'Extrajudicial, summary or arbitrary executions Report of the Special Rapporteur, Ms. Asma Jahangir' (2004) UN doc. E/CN.4/2004/7.
- UNCHR, 'Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Ms. Asma Jahangir, Addendum: Mission to Turkey' (2002) UN doc. E/CN.4/2002/74/Add.1.
- UN CHR, 'Resolution on the Integration of the Human Rights of Women and the Gender Perspective', 16 April 2002, E/CN.4/2002/L.59
- UN GA, 'Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Yakin Erturk: Intersections between culture and violence against women' (17 January 2006), A/HRC/4/34.
- UN CHR, 'UN Special Rapporteur on Violence against Women, its Causes and Consequences, Integration of the Human Rights of Women and the Gender Perspective: Violence against Women. The Due Diligence Standard as a Tool for the Elimination of Violence against Women', (20 January 2006), E/CN.4/2006/61.
- UN Commission on the Status of Women, 'Report on the fifty-seventh session' (4-15 March 2013), March 2013, UN doc. E/CN.6/2013/11.
- UN HRC, 'Report of the Special Rapporteur on violence against women, its causes and consequences: Intersections between culture and violence against women' (2007) UN Doc. A/HRC/4/34
- UN HRC, 'Report of the Special Rapporteur on violence against women, its causes and consequences, Ms.Yakin Erturk, Addendum: Mission to Turkey' (2007) A/HRC/4/34/Add.2
- UN HRC, '15 Years of the United Nations Special Rapporteur on Violence Against Women: its Causes and Consequences (1994-2009) A Critical Review: Yakin Erturk', 27 May 2009, UN doc. A/HRC/11/6/Add.5
- UN HRC, 'Special Rapporteur on violence against women, its causes and consequences, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural, Including the Right to Development, Ms. Rashida Manjoo', (2nd May 2011) U.N. Doc. A/HRC/17/26.
- UNHRC, 'Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo' (2012) UN doc. A/HRC/20/16.
- UN HRC, 'Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo' (2013) UN doc. A/HRC/23/49.

- UNHRC, 'Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo' (2014) UN doc. A/HRC/26/38
- UN, 'Report of the Secretary General E/CN.6/1988/6 in the 32th Session of the Commission of the Status of Women' (CSW) (1989)
- UN Secretary-General, 'In-depth study on all forms of violence against women', U.N. Doc. A/61/122/Add.1 (July 6, 2006)
- UN Sub-Commission on the Promotion and Protection of Human Rights, 'Women and Human Rights: Third report on the situation regarding the elimination of traditional practices affecting the health of women and the girl child, prepared by Ms. Halima Embarek Warzazi' UN doc. E/CN.4/Sub.2/1999/14
- UN Sub-Commission on the Promotion and Protection of Human Rights, 'Women and Human Rights: Third report on the situation regarding the elimination of traditional practices affecting the health of women and the girl child, prepared by Ms. Halima Embarek Warzazi' UN doc. E/CN.4/Sub.2/2000/17
- UN Sub-Commission on the Promotion and Protection of Human Rights, 'Women and Human Rights: Third report on the situation regarding the elimination of traditional practices affecting the health of women and the girl child, prepared by Ms. Halima Embarek Warzazi' UN doc. E/CN.4/Sub.2/2001/21
- UN Sub-Commission on the Promotion and Protection of Human Rights, 'Women and Human Rights: Third report on the situation regarding the elimination of traditional practices affecting the health of women and the girl child, prepared by Ms. Halima Embarek Warzazi' UN doc. E/CN.4/Sub.2/2002/32
- UN Sub-Commission on the Promotion and Protection of Human Rights, 'Women and Human Rights: Third report on the situation regarding the elimination of traditional practices affecting the health of women and the girl child, prepared by Ms. Halima Embarek Warzazi' UN doc. E/CN.4/Sub.2/2003/30
- UN Human Rights Committee, General Comment 28, Equality of Rights between Men and Women. Article 3; UN Doc. CCPR/C/21/rev.1/Add.10 (2000)
- UN Committee on Economic, Social, and Cultural Rights, General Comment No.16, Article 3, UN Doc. E/C.12/2005/3 (13 May 2005)
- UN Commission on Human Rights, Special Rapporteur on Violence against Women, Its Causes and Consequences (SR-VAW), UN Doc. E/CN.4/RES/1994/45, (4 March 1994)

- UN Committee on the Elimination against Women, 'Report of the Committee on the Elimination on the Discrimination against Women', General Assembly, Fifty-second Session, Supplement No.38 A/52/38/Rev.1. (1997)
- UN Committee on the Elimination against Women, 'Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Israel' (1997) U.N. Doc. A/52/38/Rev.1, Part II. (1997)
- UN Committee on the Elimination against Women, 'Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Jordan' (1997) U.N. Doc. A/55/38 (1997)
- UN Committee on the Elimination against Women, 'Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey' (1997) UN doc. A/52/38/Rev.1
- UN Committee on the Elimination against Women, 'Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey' (2005) U.N. Doc. A/60/38 (2005), 32nd Session.
- UN Committee on the Elimination against Women, 'Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Jordan' (2000) U.N. Doc. A/55/38 (2000), 22nd Session.
- UN Committee on the Elimination against Women, 'Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey' (2010) U.N. Doc. CEDAW/C/TUR/CO/6.
- UN Committee on the Elimination against Women, 'Report of the Committee on the Elimination on the Discrimination against Women, Concluding Observations: Turkey' (2016) U.N. Doc. CEDAW/C/TUR/CO/7.
- UN GA Resolution 55/66, 'Working towards the Elimination of Crimes Committed in the Name of Honour' (2001) UN doc. A/RES/55/66, 31 January 2001.
- UN GA, Res. 57/169, 'Working towards the Elimination of Crimes against Women Committed in the Name of Honour, Report of the Secretary General' (2002) UN doc. A/57/169, 2 July 2002.
- UN GA, Res. 59/165, 'Working towards the Elimination of Crimes against Women Committed in the Name of Honour, Report of the Secretary General' (2004) UN doc. A/59/165, 20 December 2004.

- UN GA, Res. 58/147, '*Elimination of Domestic Violence against Violence*, Report of the Secretary General' (2003) UN doc. A/58/147, 22 December 2003.
- UN GA special session, 'Women 2000: Gender Equality, Development and Peace for the Twenty-first Century' (5 June), Press Release SG/SM/7430 WOM/1203.
- UN GA, 'Report of the Committee on the Elimination on the Discrimination against Women', General Assembly, Fifty-Fifth Session, Supplement No.38 A/55/38 (2000)
- UN GA, Resolution 64/137, 'Intensification of Efforts to Eliminate all Forms of Violence against Women' (2009) UN General Assembly Resolution 64/137, 27 October 2009.
- Council of Europe, Committee on Equal Opportunities for Women and Men, 'Violence against Women in Europe, Report of Rapporteur: Mrs Ruth-Gaby Vermot-Mangold, Switzerland, Socialist Group' (2000) Doc. 8667.
- Council of Europe, 'CAHVIO Interim Report' CAHVIO (2009) 4 FIN, Strasbourg, 27 May 2009
- Council of Europe, 'CAHVIO Report of the 2th Meeting' CAHVIO (2009) 31, Strasbourg, 15 June 2009
- Council of Europe, 'CAHVIO Report of the 3th Meeting' CAHVIO (2009) 34 , Strasbourg, 7 January 2010
- Council of Europe, 'CAHVIO Report of the 4th Meeting' CAHVIO (2010) 1 rev, Strasbourg, 16 April 2010
- Council of Europe, 'CAHVIO Report of the 5th Meeting' CAHVIO (2010) 11 Strasbourg, 15 July 2010
- Council of Europe, 'CAHVIO Report of the 6th Meeting' CAHVIO (2010) 18, Strasbourg, 25 October 2010
- Council of Europe, 'CAHVIO Report of the 7th Meeting' CAHVIO (2010) 21 rev bis, Strasbourg, 12 January 2011
- Council of Europe, 'CAHVIO Report of the 8th Meeting' CAHVIO (2010) 27 rev, Strasbourg, 12 January 2011
- Council of Europe, 'CAHVIO Report of the 9th Meeting' CAHVIO (2011) 8, Strasbourg, 25 January 2011
- Council of EU, 'Council decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey', 2003/398/EC, 19 May 2003

- European Commission, ‘Turkey Progress Report SEC (2008) 2699’, Brussels, 5.11.2008
- European Commission, ‘Turkey Progress Report SEC (2009) 1334’, Brussels, 14.10.2009
- European Commission, ‘Turkey Progress Report SEC (2010) 1327’, Brussels, 9 November 2010
- European Commission, ‘Turkey 2016 Progress Report SWD (2016) 366 final’, Brussels, 9.11.2016.
- U.S. Department of State, ‘Human rights Country Report: Turkey’ (*U.S. Department of State*, 2016)

National Reports

- Turkish Prime Ministry Human Rights Presidency, *2007 Honour Killings Report* (2008)
- Basbakanlik Insan Haklari Baskanligi/ Turkish Prime Ministry Human Rights Presidency, *Töre ve Namus Cinayetleri Raporu/ Report on Custom and Honour Killings* (28 June 2008)
- Kadinin Statusu Genel Mudurlugu (KSGM)/ General Directorate for the Status of Women, ‘Töre ve Namus Cinayetleri ve Kadınlara ve Çocuklara Yönelik Sıddetin Sebeplerinin Arastırılarak Alınması Gereken Önlemlerin Belirlenmesi Amacıyla Kurulan TBMM Arastırma Komisyonu Raporu/ Report of Parliamentary Research Commission on Prevention of and Measures to Combat Violence against Women and Children, and Custom and Honour Crimes’ (2006) C.122 *TBMM Tutanak Dergisi*.
- Grand National Assembly of Turkey (TBMM), ‘Proposal for the Law on the Amendment of Certain Articles of the Constitution of the Republic of Turkey and the Constitutional Commission Report (2/278)’ (2003)
- TBMM Kadın Erkek Eşitliği Komisyonu / Grand National Assembly of Turkey, The Committee on Equal Opportunity for Women and Men, ‘Toplumsal Cinsiyet Açısından Anayasa Konulu Komisyon Raporu/ *Committee Report on the Constitution in terms of Gender*’ (Ankara: TBMM Yayınları, June 2012)
- T.C. Başbakanlık Kanunlar ve Kararlar Genel Müdürlüğü, ‘6248 Sayılı Ailenin Korunması ve Kadına Karşı Sıddetin Önlenmesine Dair Kanun’un Genel Gerekçesi/

General Justification of the Law No. 6248 to Protect Family and to Prevent VAW, (24/2/2012 Sayı: B.02.0.KKG.0.10/101-428/872)

- TBMM/ Grand National Assembly of Turkey, ‘Turk Ceza Yasa Tasarisi ve Adalet Komisyon Raporu/ *The Draft of Turkish Penal Code and Justice Commission Report*’ *TBMM Tutanak Dergisi/Turkish Grand National Assembly Account of Proceedings*, Period 22 Legislation Year 1 Meeting No.66
- TBMM/Grand National Assembly of Turkey, ‘Adalet Komisyonu Raporu/ *Justice Commission Report*’ *TBMM Tutanak Dergisi/Turkish Grand National Assembly Account of Proceedings*, Period 24 Legislation Year 2, Meeting No.181.
- Republic of Turkey Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, ‘Research on Domestic Violence against Women in Turkey: Summary Report’ (2015)
- Republic of Turkey Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, ‘Research on Domestic Violence against Women in Turkey’ (2015)
- The Committee on Equal Opportunity for Women and Men, ‘Report about Early Marriages’ (2009)
- Aile ve Sosyal Politikalar Bakanlığı/ Ministry of Family and Social Policy, ‘Türkiye’de Kadına yönelik Aile içi Sıddet Arastırması: Özet rapor/*A research on domestic violence against women in Turkey: Summary Report*’ (2014)
- KSGM, ‘ŞÖNİM Violence Prevention and Monitoring Centres’ (Ankara, 2016)
- KSGM, ‘National Action Plan on Combatting Violence against Women (2016-2020)’ (Ankara, 2016)
- KSGM, ‘AB Aile İçi Sıddetle Mucadele Projesi Eğitimleri/ Combatting Domestic Violence Project with EU’ (Ankara KSGM)
- Republic of Turkey, ‘Report submitted by Turkey pursuant to Article 68 (1) of the Council of Europe Convention on preventing and combatting VAW and domestic violence (Baseline Report)’, received by GREVIO on 3 July 2017, GREVIO/Inf (2017)5, (4 July 2017)

NGOs Report

- Amnesty International. ‘Women in the front of Line: Human Rights Violations against Women’ (1991)

- Amnesty International, ‘Amnesty International Report 2016/17: The State of the World’s Human Rights’ (AI, 2017)
- Human Rights Watch, ‘Lebanon: Law Reform Targets Honor Crimes’ (August 2011).
- Human Rights Watch, ‘He Loves You, He Beats You" Family Violence in Turkey and Access to Protection’ (4 May 2011)
- International League for Human Rights, ‘Human Rights Abuses against Women: A Worldwide Survey. A Compilation of Experts from the US Department’s 1990 Country Reports on Human Rights Reports’ (1990)
- Kurdish Human Rights Project, ‘European Parliament Project: The Increase in Kurdish Women Committing Suicide’ (June 2007) 8
<[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2007/393248/IPOL-FEMM_ET\(2007\)393248_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2007/393248/IPOL-FEMM_ET(2007)393248_EN.pdf)> accessed: 8/5/2017
- Kurdish Human Rights Project, ‘Submission and List of Issues to be Taken Up in Connection with the Consideration of Turkey’s Initial Report Concerning the Rights Covered by Article 1-15 of the ICESCR’ (May 2010)
<http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/TUR/INT_CESCR_NGO_TUR_44_10184_E.pdf> accessed: 8/5/2017
- Şiddete Son Platformu/ Platform to End Violence, ‘1 Mart 2012-31 Aralık 2012 Tarihli Bakanlık Taslagında Kabul Edilen Taleplerimiz ve Metnin Eksikliklerine Dair Madde Bazlı İnceleme/ Analysis of the Women’s Platform on the Stop Violence against Women’ Accepted Requests on Deficiencies of Provisions under the Draft Law No.6248 which is dated between 1 March 2012 and 31 December 2012’ (March 2012)
- The Executive Committee for NGO Forum on CEDAW- Turkey, ‘Shadow NGO Report on Turkey’s Seventh Periodic Report to the Committee on the Elimination of Discrimination against Women’, 64th Session to CEDAW’, (July 2016)
- The Executive Committee for NGO Forum on CEDAW- Turkey, ‘Shadow NGO Report on Turkey’s Seventh Periodic Report to the Committee on the Elimination of Discrimination against Women’, 46th Session to CEDAW’, (July 2010)
- WAVE Report, ‘WAVE Report on the Role of Specialist Women’s Support Services in Europe’, (WAVE 2016)

- WAVE, ‘Violence against Women Comparative Report: Italy, Spain and Turkey’ (eds.) Rachel Palmén, Nuria Francoli, Angela Genova, Asuman Göksel, Laura Sales, Silvia Sansonetti and Çiğdem Tozlu with Duygu Güngör and Aslihan Öztürk (2016)
- BIANET Shadow Report, ‘Turkey’ prepared by Nisa Kuyucu, submitted to GREVIO (3 July 2017)
- Kadın Cinayetlerini Durduracağız Platformu/We will Stop Femicide Platform, ‘2016 Report’ (1 January 2017)
- KAMER, ‘Hane Ziyaretleri Verileri 2015 sonuçları/ The Report of House Visits in 2015’ (2016)
- World Economic Forum, ‘The Global Gender Gap Report 2016’ (World Economic Forum, 2016)

INTERNATIONAL CONFERENCES

- World Conference on Women, ‘Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace’, Mexico, 1975, UN Doc. E/Conf.66/34 (2 July 1975)
- World Conference on Women, Equality, Development and Peace, Copenhagen, (1980) UN Doc. A/CONF.94/35, (19 September 1980)
- World Conference on Women, ‘Report of the World Conference to Review and Appraise the Achievement of the United Nations Decade for Women: Equality, Development and Peace’, Nairobi, (United Nations publication, 15-26 July 1985, Sales No. E.85.IV.10)
- United Nations, *World Conference on Human Rights: The Vienna Declaration and Programme of Action*. A/CONF.157/23 (25 June 1993)
- World Conference on Women, Beijing Declaration and Platform for Action, UN Doc. A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995)
- International Conference on Population and Development, Cairo Programme of Action (5-13 September 1994)
- United Nations, *World Conference on Human Rights: The Vienna Declaration and Programme of Action*, UN doc. A/CONF.157/23.25 (June 1993)
- Council of Europe, ‘The 3rd European Ministerial Conference on Equality between Women and Man, Strategies for elimination of violence against women in the society: the media and other means’ (1993) MEG-3(93)

Newspaper Articles

- BBC News, 'Turkey President Erdogan: Women are not to Equal Men' (24 November 2014) *BBC* < <http://www.bbc.co.uk/news/world-europe-30183711>> accessed: 12/05/2017.
- Cicek Tahaoglu and Begum Baki, 'Men Kill at Least 261 Women, Girls in 2016' *Bianet* (3 February 2017) < <http://bianet.org/english/women/183255-men-kill-at-least-261-women-girls-in-2016>> accessed 4 April 2017.
- Cicek Tahaoglu, 'Suclu Kim? Aile? Devlet? Toplum? Yani Hepimiz?/Who is the Guilty? Family? State? Society? So All of US?' *BIANET* (15 December 2016) <<http://bianet.org/bianet/toplumsal-cinsiyet/181732-kadina-siddette-suclu-kim-aile-devlet-toplum-hepimiz>> accessed 4 April 2017.
- Ivana Radacic, 'What is Feminism and Feminist Jurisprudence?' (2008)
- <www.zenskamreza/Izjave/feminist_legal_theory.Doc> accessed: 12.08.2016
- James Sturcke, 'Father guilty of daughter's 'honour' murder', (11 June 2007) *The Guardian* <<https://www.theguardian.com/uk/2007/jun/11/ukcrime.jamessturcke>> accessed at: 27/12.2016
- Justin Huggler, 'Women Killed to Save Male Face' *The Independent* (6 May 1999) < <http://www.independent.co.uk/news/women-killed-to-save-male-face-1092004.html>>accessed: 06/04/2016
- NTV, 'Kadin Cinayetleri Yuzde 1400 Artis Gosterdi/ Women Murders Has Raised %1400' *NTV News* (24 November 2009) <http://www.ntv.com.tr/yasam/kadin-cinayetleri-yuzde-1400-artis-gosterdi,gTy3YNnHUkS_bLGuT-XfeQ> accessed: 12/01/2017
- The Guardian, 'Recep Tayyip Erdogan: Women not to Equal Men' (24 November 2014) *The Guardian* < <https://www.theguardian.com/world/2014/nov/24/turkeys-president-recep-tayyip-erdogan-women-not-equal-men>>accessed: 15/05/2017.

Miscellaneous

- Carlo Chiaromonte, 'Council of Europe: Working towards a convention on preventing and combating violence against women and domestic violence'

http://www.coe.int/t/dghl/standardsetting/violence-against-women/Flyer_CAHVIO_en.pdf> accessed: 10/9/15

- Council of Europe “Crimes committed in the name of so-called honour crimes” www.coe.int/conventionviolence accessed: 13/08/2015
- Clara Rubin, ‘Between Traditional Practice and Secular Law: Examining Honor Killings in Modern Turkey’ (2011) 11. <http://middlab.middlebury.edu/files/2111/04/Honor-Killings-essay1.pdf> accessed: 12/11/2014.
- GREVIO, <http://www.coe.int/en/web/istanbul-convention/country-monitoring-work> accessed: 04/07/2017.
- KSGM, ‘ŞÖNİM: Violence Prevention and Monitoring Centres’ (Ankara, 2016, [http://kadininstatusu.aile.gov.tr/data/58528516369dc524d057a5fe/The%20Violence%20Prevention%20and%20Monitoring%20Centers%20\(ŞÖNİM\).pdf](http://kadininstatusu.aile.gov.tr/data/58528516369dc524d057a5fe/The%20Violence%20Prevention%20and%20Monitoring%20Centers%20(ŞÖNİM).pdf) > accessed: 07/03/2017.
- Kadınin İnsan Hakları Yeni Çözümler Derneği/ Women’s for Women’s Rights- New Ways. <http://www.kadinininsanhaklari.org/kadinin-insan-haklari/yasalardaki-haklarimiz/anayasa-ve-anayasal-haklarimiz/> > accessed: 23/01/2017
- Morçati Kadın Sığınak Vakfı / The Purple Roof Shelter Women NGO, ‘Joint Declaration by Women and LGBTI Organizations Against Demand for Legislative Changes Against Women Murders’ (11 January 2016) <https://www.morcati.org.tr/tr/346-kadin-cinayetlerine-iliskin-gundemdeki-yasa-degisikligi-taleplerine-karsi-kadin-ve-lgbti-orgutlerinden-ortak-bildirge> accessed: 12.02.2017.
- Organization of American States and Council of Europe ‘Regional Tools to Fight Violence Against Women - The Belem do Para and Istanbul Conventions’ (2014) 102. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680465f70> accessed: 2/1/2017
- Ruth Rabio Martin ‘The Constitutional Status of Women at a Crossroads: Reflections from Comparison’ http://verfassungsblog.de/constitutional-status-women-turkey-crossroads-reflections-comparison/#_ftn14 accessed: 18/01/2017
- Turkey’s reservations to CEDAW: <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> (21/01/2017)

- Yonca Poyraz Dogan, 'Kamer's Akkoc: Women's Groups Excluded from Istanbul Convention Process' (28 December 2014) <http://www.kamer.org.tr/eng/icerik_detay.php?id=221> accessed: 24/02/2017.



