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# Violence Against Women in Turkey: An Analysis of Barriers to the Effective Implementation of International Commitments

JAMM07 Master Thesis

International Human Rights Law  
30 higher education credits

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Term: Spring 2018



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# Abstract

Turkey has been an active participant in international developments when it comes to women's rights and violence against women. However, systematic and widespread violence against women persists.

Claiming that deficient and/or incorrect implementation of international commitments serves as a serious obstacle to combating violence against women in Turkey, this research analyses the reasons for non-compliance. It demonstrates that the growth of conservative political ideology in Turkey and ever-increasingly employed governmental policies prioritizing family at the expense of women's safety hinder the effective implementation of international obligations, thus rendering the efforts to combat and prevent violence against women obsolete.

The research concludes that the abandonment of policies and discourse that justify violence against women is critical to overcoming the barriers to the effective implementation. Furthermore, the joint action of the government and women's organizations is needed to confront the root causes of violence against women and raise awareness about the oppressive and discriminatory nature of particular practices that are justified by culture, religion or traditions.

# Acknowledgements

Firstly, I would like to express the immense gratitude that I have for my supervisor, Karol Nowak. His constructive feedback and constant support along the way were pivotal for me to complete this thesis.

Further, I am deeply indebted to my family and all of my supportive friends, for the encouragement and unyielding love throughout my education.

Finally, there is one person who has made the last two years the best years of my life. Thank you, Davit, for your insightful comments and encouraging words. However, most of all, for believing in me and standing by me through thick and thin. This process would not have been the same without you.

*Lund, 24 May 2018*

# Abbreviations

|        |                                                                                 |
|--------|---------------------------------------------------------------------------------|
| CAHVIO | Ad Hoc Committee on Preventing and Combating Violence against Women             |
| CEDAW  | Convention on the Elimination of all Forms of Discrimination Against Women      |
| CoE    | Council of Europe                                                               |
| DEVAW  | Declaration on the Elimination of Violence Against Women                        |
| ECHR   | European Convention on Human Rights                                             |
| ECtHR  | European Court of Human Rights                                                  |
| EU     | European Union                                                                  |
| GONGO  | Government-organized Non-governmental Organization                              |
| GREVIO | Group of Experts on Action against Violence Against Women and Domestic Violence |
| HRW    | Human Rights Watch                                                              |
| IACtHR | Inter-American Court of Human Rights                                            |
| ICCPR  | International Covenant on Civil and Political Rights                            |
| ICESCR | International Covenant on Economic, Social and Cultural Rights                  |
| JDP    | Justice and Development Party                                                   |
| KADEM  | Women and Democracy Association                                                 |
| KSSGM  | Directorate General on the Status and the Problems of Women                     |
| MoFSP  | Ministry of Family and Social Policies                                          |
| TGNA   | Turkish Grand National Assembly                                                 |
| TÜRAP  | Turkish Family Platform                                                         |
| UDHR   | Universal Declaration of Human Rights                                           |

# 1 Introduction

This thesis is a result of repeatedly asking two questions: Why, in spite of the increasing number of women who have experienced violence, the Turkish government has been failing to provide effective protection? And why do we read news about police officers, prosecutors and judges intentionally handing women who seek help over to the arms of violence again and again?

Violence against women knows no borders. It is an ever-present and a grave violation of women's fundamental rights. Nevertheless, it is not hard to find states that do not prosecute and/or penalize perpetrators effectively. While the states have a positive obligation to prevent violence and protect victims, the legal systems abandon women in many instances. Generally, it is perceived that only the perpetrators of the violence themselves are responsible for the acts. State's obligations to prevent violence and protect women are often neglected. This perception provides states with a *Cloak of Invisibility* and contributes to the existing order by leaving women unprotected. Thus, in addition to the societies where the male-oriented culture is strong, states can also be actors that directly or indirectly pave the way for the violence against women, rendering women extremely vulnerable.

The international community, due to the seriousness of this problem, decided to take collective action through the adoption of international legal instruments. Nevertheless, as of now, it has become clear that these instruments have not been sufficiently effective. Despite the fact that Turkey has actively participated in the international developments aiming to eradicate violence against women, it does not comply with its commitments properly. Often, the actions and statements of authorities are counter-productive – conflicting with the nature and the purpose of the instruments Turkey has ratified. Hence, the author has chosen this particular subject to explore the obstacles to the deficient and/or incorrect implementation of international commitments and to address the question of what more can be done to improve the efficiency of the existing protection mechanisms.

Violence against women is an omnipresent problem. It is, in fact, a tool of the male dominance. It cannot be considered as an incident which is isolated from the society. Perpetrators do not share a common religion, nationality, or class. Yet they do share a patriarchal culture which provides them with the understanding that women are subordinate to men. Even though there are various types of violence, all of the acts of violence against women are the responses and reactions of males to their shaken dominance and authority. This is why acknowledging the acts of violence against women not as one-



off incidents but as being political is critical for the fight against it. It is not enough to develop reactive policies that address women who have already become victims of violence. The diagnosis of the condition should be more than treating the symptoms: It should also aim to explore the social roots of the problem. Without understanding and addressing the real causes of the violence, it is not possible to combat it in an effective manner. Hence, states have a crucial role in combating violence against women and they should be forced to take their *cloaks* off, and take the necessary measures immediately.

## 1.1 Objective

The objective of the present study is to investigate the actual causes of the deficient and/or wrong implementation of international legal obligations in the context of violence against women in Turkey. In line with this, this thesis intends to:

- Determine and map the international obligations of Turkey as regards to combating and preventing violence against women;
- Analyse the shortcomings of Turkey with respect to these obligations;
- Identify the barriers to the effective implementation of international commitments.

Drawing on the findings of these, the study seeks to provide a thorough discussion on how these barriers lead to non-compliance and in fact a toleration by the government of Turkey for this non-compliance. In addition to this, it is aimed to explore and recommend potential solutions for improving the effective implementation of international obligations.

Lastly, a concluding analysis will be carried out on the shortcomings of international law.

## 1.2 Methodology

This thesis is a legal-sociological study and it primarily employs the traditional legal dogmatic method. This method is used to analyse the international legal framework governing the prevention of and protection from violence against women. In this manner, Turkey's international obligations and its shortcomings within this framework are identified through the examination of international conventions, recommendations, case-law, doctrine and some other authoritative legal texts. Moreover, sources in the Turkish language, such as national laws, reports, articles, books, studies, press releases, news articles are often consulted.

In addition to the legal dogmatic method, a qualitative sociological analysis is carried out to analyse the reasons behind Turkey's non-compliance with its international commitments and to understand why international law is not implemented efficiently. Ziegert states that qualitative socio-legal research "provides the array of 'sensors' which can be brought to bear on society in order to make the boundaries of the operations of law visible."<sup>1</sup> In this regard, it is intended to shed light on the interplay of the social context in Turkey and the implementation of international law. This analysis rests on national policy papers as well as official statements of state authorities, politicians and other public officials. The cited statements are carefully selected. It is imperative noting that these statements are of individuals who are high-level representatives of state institutions and thus are capable of manipulating the society. Furthermore, reports of NGO's to the treaty monitoring bodies, works of scholars, surveys, reports of national and international organizations and statistical data are also examined to provide a solid basis for the asserted arguments.

This study does not adopt a particular feminist method. However, it certainly approaches the issues in question through a feminist lens. Feminism helps to place emphasis on the gender inequality and discrimination against women throughout the study.

Finally, a critical analysis of the efficiency of international law is carried out in the last chapter.

### **1.3 Delimitations**

While this thesis attempts to identify the barriers to the effective implementation of Turkey's international obligations, it does not provide a complete analysis of each obligation in this context. It is limited to the specific aspects of barriers to effective implementation. As the study showcases how shifted governmental policies in Turkey have influenced the implementation of international commitments, major shortcomings deeply linked to this shift are selected and examined in detail. Therefore, certain aspects of non-compliance are excluded from this study on purpose.

In addition to this, the present study is limited to violence against women perpetrated by men. As a result, it does not cover violence against women

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<sup>1</sup> Klaus A Ziegert, 'Systems Theory and Qualitative Socio-Legal Research' in Reza Banakar and Max Travers (eds), *Theory and Method in Socio-Legal Research* (Bloomsbury Publishing 2005) 66.

where violent acts are not perpetrated by men, which often is the case in violence against LGBTQ women. The latter is characterised by a different set of complications and needs to be a subject of a whole new study.

## **1.4 Disposition**

This study consists of five substantive chapters. Chapter 2 is meant to explain the definition, the scope and the source of violence against women as well as its historical background at the international level. Chapter 3, as the title of the chapter implies, identifies Turkey's international obligations for combating and preventing violence against women and clarifies the due diligence standard. Chapter 4 is designed on one hand to offer a contextual background of the situation in Turkey, and on the other hand, to detect Turkey's major shortcomings with respect to its international commitments. Chapter 5 provides an in-depth analysis of the barriers to effective implementation from a sociological point of view and seeks to explore potential ways to improve the situation. Finally, Chapter 6 presents a concluding discussion on the efficiency of international law.

# 2 Understanding Violence Against Women

This chapter will provide a brief information on the definition, the scope and the sources of violence against women. Furthermore, the historical developments at the international level with respect to the recognition of violence against women as a violation of human rights will be examined in detail.

## 2.1 Definition

### 2.1.1 Naming the Violence

‘Violence against women’ has been defined in a number of different ways in international law. In some of the instruments, gender-neutral terms such as ‘gender-based violence’, ‘intimate partner violence’ or ‘domestic violence’ are preferred. Additionally, some antifeminist organizations, politicians and researchers also claim that women can also be the perpetrators of violence and oppose the usage of ‘violence against women.’<sup>2</sup>

The term ‘violence against women’ itself contains the basic information about who the main target of violence is: women. However, the fact that some women may engage in violence does not change the reality: The vast majority of adults who are exposed to adult violence are women.<sup>3</sup> Moreover, the nature and the effects of women’s violence against men is different than the nature and effects of men’s violence against women.<sup>4</sup> Stark highlights that women who resort to violence “typically lack the social facility to impose the comprehensive levels of deprivation, exploitation, and dominance found in coercive control.”<sup>5</sup> Contrary to this, women experience violence just because they are women, and all of the acts of violence against them are not only

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<sup>2</sup> Walter S DeKeseredy and Martin D Schwartz, ‘Theoretical and Definitional Issues in Violence Against Women’ in Claire Renzetti, Jeffrey Edleson and Raquel Bergen (eds), *Sourcebook on Violence against Women* (2nd edn, SAGE Publications 2011) 7.

<sup>3</sup> *ibid* 8.

<sup>4</sup> Russell P Dobash and R Emerson Dobash, ‘Women’s Violence to Men in Intimate Relationships: Working on a Puzzle’ (2004) 44 *The British Journal of Criminology* 324, 324–49.

<sup>5</sup> Evan Stark, ‘Commentary on Johnson’s “Conflict and Control: Gender Symmetry and Asymmetry in Domestic Violence”’ (2006) 12 *Violence Against Women* 1024.

reinforced by a broad structure of control, but these acts at the same time are strengthened by and intensify the existing unequal structure.

In accordance with the above-mentioned, the term ‘violence against women’ will be used in this paper.

## 2.1.2 Scope

Some scholars consider an act to be violence against women only if it consists of a physical abuse or sexual assault which involves penetration. Excluding psychological violence and economic harm from the scope of the definition, this narrow approach is very problematic, especially due to the fact that it affects how women react to violence. The perception that violence always has physical components prevents women from reporting the act – making them think that their rights, in fact, are not violated enough. It is remarked that if researchers’, law enforcement officials’, politicians’ and society’s definition of violence does not overlap with the definition of a woman who is subjected to violence, “she may be left in a ‘twilight zone’ where she knows that she has been abused but cannot define it or categorize it in a way that would help her to seek help.”<sup>6</sup> At the same time, narrow perspectives underestimate what women are going through and the consequences of the violent acts. Consequently, women do not only avoid taking legal actions, but they also refrain from seeking social support.<sup>7</sup>

As opposed to the narrow approach, there are also scholars who argue that psychological and economic abuse should also be included within the scope of the definition. DeKeseredy and Schwartz, for instance, highlight that abused women most of the time experience more than one type of assault, and they may even find the psychological violence to be more injurious than the physical.<sup>8</sup> Physical, sexual, economic and psychological abuse are not mutually exclusive and often several types of violence are exercised at the same time.<sup>9</sup> Perpetrators generally try to control women coercively using psychological, emotional and physical abuse together.<sup>10</sup> Hence, the broader definitions are developed and accepted by many feminist scholars, like DeKeseredy and Macleod, quoted below:

Woman abuse is the misuse of power by a husband, intimate partner (whether male or female), ex-husband, or ex-partner against a woman,

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<sup>6</sup> DeKeseredy and Schwartz (n 2) 5.

<sup>7</sup> *ibid* 4.

<sup>8</sup> *ibid* 6.

<sup>9</sup> *ibid* 7.

<sup>10</sup> *ibid* 6.

resulting in a loss of dignity, control, and safety as well as a feeling of powerlessness and entrapment experienced by the woman who is the direct victim of ongoing or repeated physical, psychological, economic, sexual, verbal, and/or spiritual abuse. Woman abuse also includes persistent threats or forcing women to witness violence against their children, other relatives, friends, pets, and/or cherished possessions by their husbands, partners, ex-husbands, or ex-partners.<sup>11</sup>

Broad definitions are usually criticized for covering nearly everything possible. However, in light of the facts mentioned above, violence against women is understood as a broad term which is “encompassing, but not limited to, any act, omission, or threat to life or of physical, sexual, or psychological harm or suffering perpetrated against women, or its structural and economic manifestations”<sup>12</sup> throughout this paper. Even though this definition by Edwards is based on article 1 of the Declaration on the Elimination of Violence against Women (DEVAW), it is not limited to gender-based or gender-related violence and it adopts a comprehensive approach which covers economic violence and social, cultural and traditional practices that exacerbate violence against women.<sup>13</sup>

## 2.2 Source of the Problem

There is a common myth that men who engage in violence are mentally disturbed, sick or addicted to alcohol or drugs.<sup>14</sup> These potential reasons which are brought forward to explain violence reflect the assumption that ‘normal’ men are not violent. Accepting that perpetrators have an anomaly, in fact, demonstrates the denial to acknowledge the nexus between violence against women and gender inequality. This approach considers the social structure as to be healthy and normal, and asserts that violence is a result of deviating from that normal. However, as it is emphasized in the quotation from Katz below, this common perception does not reflect the reality:

Most men who assault women are not so much disturbed as they are disturbingly normal. Like all of us, they are products of familial and social systems. They are our sons, brothers, friends, and coworkers. As such, they are influenced not only by individual factors, but also by broader cultural

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<sup>11</sup> Walter S DeKeseredy and Linda MacLeod, *Woman Abuse: A Sociological Story* (Harcourt Brace 1997) 5.

<sup>12</sup> Alice Edwards, *Violence against Women under International Human Rights Law* (Reprint edition, Cambridge University Press 2013) 25.

<sup>13</sup> *ibid.*

<sup>14</sup> DeKeseredy and Schwartz (n 2) 9.

attitudes and beliefs about manhood that shape their psyches and identities. And ours.<sup>15</sup>

The number of men who are violent is actually enough to confute this view. If all men who engage in violence are sick, then shouldn't there be a question of what is the actual reason for this widespread disease? Why does a huge number of men engage in violence, and how can the links between them be ignored so easily? The answer is hidden behind the unequal power structure: Violent or not, all men who are compatible with the norms of hegemonic masculinity benefit from this structure and accepting it as natural and healthy is necessary for them to maintain their power. Hence, it is imperative to understand the relation between this structure and violence against women. Without challenging the unequal distribution of power between women and men, it is not possible to eliminate violence against women. The United Nations Commission on Human Rights clearly acknowledged the linkage between discrimination and violence against women in a 2003 resolution: "all forms of violence against women occur within the context of de jure and de facto discrimination against women and the lower status accorded to women in society and are exacerbated by the obstacles women often face in seeking remedies from the State."<sup>16</sup>

Feminist theorists understand violence against women as a result of patriarchy and gender inequality.<sup>17</sup> While there are several different types of feminism, it is commonly accepted by feminists that violence is a result of men's desire to control women.<sup>18</sup> Jill Radford concurs with this approach: "It is clear that men's violence is used to control women, not just in their own individual interests, but also in the interests of men as a sex class in the reproduction of heterosexuality and male supremacy."<sup>19</sup> Hence, violence against women is not only a manifestation of a systemic gender inequality but also a tool for reproducing and sustaining the control over women. Its roots are in the patriarchal culture that defines womanhood and sets its boundaries. Ertürk emphasizes that violence against women ensures the continuity of patriarchy

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<sup>15</sup> Jackson Katz, *The Macho Paradox: Why Some Men Hurt Women and How All Men Can Help* (3.2.2006, Sourcebooks 2006) 28.

<sup>16</sup> 'Elimination of Violence against Women' (UN Commission on Human Rights 2003) Resolution 2003/45 3.

<sup>17</sup> Eisenstein defines patriarchy as 'a sexual system of power in which the male possesses superior power and economic privilege.' See: Zillah R Eisenstein (ed), *Capitalist Patriarchy and the Case for Socialist Feminism* (Monthly Review Press 1978) 16.

<sup>18</sup> DeKeseredy and Schwartz (n 2) 12.

<sup>19</sup> Jill Radford, 'Policing Male Violence - Policing Women' in Jalna Hanmer and Mary Maynard (eds), *Women, violence and social control* (Macmillan 1987) 43.

and male hegemony while being strengthened by societal approval and the law.<sup>20</sup>

In a social context where male hegemony exists, men are the subjects and women can only exist as objects. The subject is the one who is active, who talks, who decides; while the object is the one who is passive, who is silent, and who cannot decide for herself. Thus, in such an environment, it is expected of women that they do not cross the lines of womanhood, which is already defined by the language of men. Consequently, violence is a result of not complying with the boundaries of this definition, and going further from its borders: Since a crucial part of manhood is controlling women, violence is a tool of protecting the manhood. It is easy to see the common reasons behind the violence by going through two websites that are listing women murders in Turkey.<sup>21</sup> The most common reasons for women murders are listed as honour, jealousy, sexual assault, suspicion of being cheated on, resistance to a man's wish to get divorced or to become reconciled, a woman's wish to get divorced, absence of a male child, or a failure to meet a man's expectation of being served – such as refusing to do housework. Much of reality lays behind these minor reasons: the struggle to maintain control and domination. Without addressing this reality, it is impossible to conceive a man's motivation to kill his wife just because “she did not give him the salt cellar” when he asked for it.<sup>22</sup>

It is worth noting that some scholars offer ‘ecological models’ in order to examine violence against women. These models present various layers of influence and argue that violence against women should be analyzed in a holistic manner.<sup>23</sup> They are particularly important because they take many factors that play a part in violence against women into consideration. In ecological models, as DeKeseredy and Schwartz explain, the broadest level is called ‘macrosystem,’ and it refers to the institutional structure of cultural factors in relationships. Patriarchal beliefs and gender stereotypes are examples of this. Another level is ‘exosystem,’ which covers social networks between the intimate relationships and culture. ‘Microsystem’ refers to the relationship itself where violence occurs. Lastly, ‘ontogenic’ level makes

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<sup>20</sup> Yakın Ertürk, *Sınır Tanımayan Şiddet - Paradigma, Politika ve Pratikteki Yönleriyle Kadına Şiddet Olgusu* (Metis Yayınları 2015) 37.

<sup>21</sup> ‘Monument Counter - An Online Monument to Commemorate Women Who Lost Their Lives Due to Domestic Violence’ <<http://anitsayac.com/>> accessed 24 May 2018; ‘Women Murders’ <<http://kadincinayetleri.org>> accessed 24 May 2018.

<sup>22</sup> Ahmet Yeşilağaç, ‘Tuzluğu uzatmadı diye eşini öldürdü’ *Hürriyet* (29 October 2010) <<http://www.hurriyet.com.tr/gundem/tuzlugu-uzatmadi-diye-esini-oldurdu-16167947>> accessed 24 May 2018.

<sup>23</sup> DeKeseredy and Schwartz (n 2) 15.



reference to the individual development and its contribution to the first three levels. The quotation below from Hines & Malley-Morrison explains the ecological model in a precise manner:

We need to understand the genetic endowments of those individuals, the microsystem in which they grew up, the microsystem in which they are currently embedded, characteristics of the neighborhood within which their family functions (including the availability of social support and social services, and relationships between the community and criminal justice system), and the larger society that embraces all the separate neighborhoods.<sup>24</sup>

While it is imperative to investigate the actual source of the problem, the approach of ‘questioning and understanding the roots’ is not commonly embraced. It is not in demand since it requires a transformation of the prevailing order by challenging the social, political, economic and cultural norms and structures.<sup>25</sup> It is not only difficult for general populations to support but is also incompatible with the interests of who benefit from the system. Thus, an easier and more ‘beneficial’ path is preferred: accepting the problem as an individual one by separating it from its social background. Assuming that the perpetrator is sick, and arguing that the problem can be solved by therapies is a common understanding that reflects this path. This assumption oversimplifies the problem and most importantly, by turning its back on a wide range of factors that contribute to violence, it makes the fight against violence against women impossible.

## **2.3 Violence Against Women as a Human Rights Issue – The Historical Background**

“Around the world at least one woman in every three has been beaten, coerced into sex, or otherwise abused in her lifetime. Most often the abuser is a member of her own family.”<sup>26</sup> This describes how widespread violence against women is. Yet, international law for a long time has turned a blind eye to it. It was not until the 1990’s that violence against women captured the attention of the international law.<sup>27</sup> Even the 1979 Convention on the

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<sup>24</sup> Denise A Hines and Kathleen Malley-Morrison, *Family Violence in the United States: Defining, Understanding, and Combating Abuse* (1st edn, SAGE Publications 2005) 16.

<sup>25</sup> Donileen R Loseke, Richard J Gelles and Mary M Cavanaugh (eds), ‘Controversies in Conceptualization’, *Current Controversies on Family Violence* (2nd edn, SAGE Publications 2005) 1–4.

<sup>26</sup> Lori Heise, Mary Ellsberg and Megan Gottemoeller, ‘Ending Violence Against Women’ (1999) XXVII Population Reports 1.

<sup>27</sup> Edwards (n 12) 7.

Elimination of all Forms of Discrimination Against Women (CEDAW) does not have an explicit reference to violence against women, while its main purpose is the prevention of discrimination against women.<sup>28</sup> Edwards emphasizes that the exclusion of the issue of violence against women from the international human rights agenda is stemmed from “a failure to see the oppression of women as political.”<sup>29</sup> With the words of Chinkin, an important factor for the lack of international concern was that human rights law “has traditionally been formulated to guarantee protection against wrongful government action within the public arena, where men act out their public lives.”<sup>30</sup> Since most of the acts of violence against women occur in private, it was perceived as a part of the private sphere, in which the state authorities cannot, *or do not*, intervene. Charlesworth states that the result of the public/private dichotomy was “to muffle, and often completely silence, the voices of women.”<sup>31</sup> At the same time, most of the enshrined rights consisted of negative obligations that stipulate that states shall refrain from certain acts. States weren’t obliged to protect persons from having their rights violated by third party individuals. The combination of these factors resulted in the absence of protection of women from violence. Hence, not even theoretical protection from those acts was provided for women.<sup>32</sup>

However, the changing approaches in the international law together with the efforts of the feminist movement challenged this deep-rooted understanding of violence against women as a private and personal issue. First of all, acts of third party individuals started to give rise to state responsibility. States’ obligations with respect to violence against women have shifted from a neutral state towards positive obligations phase, and it is acknowledged that states have not only negative, but also positive obligations to prevent violence against women. The due diligence standard, which will be explained in the next chapter, has also played an important role to challenge the assumption of violence against women as a part of the private sphere. As a result of these developments, states started incorporating policies covering women’s rights, perspectives and experiences.<sup>33</sup> Most importantly, the relation of sexism and

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<sup>28</sup> Bonita Meyersfeld, ‘A Theory of Domestic Violence in International Law’ [2016] Yale Law School Dissertations 52.

<sup>29</sup> Edwards (n 12) 66.

<sup>30</sup> Christine Chinkin, ‘Violence against Women: The International Legal Response’ (1995) 3 Gender and Development 23, 24.

<sup>31</sup> Hilary Charlesworth, ‘What Are “Women’s International Human Rights”?’ in Rebecca J Cook (ed), *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press 1994) 68.

<sup>32</sup> Chinkin, ‘Violence against Women’ (n 30) 23.

<sup>33</sup> Gülriiz Uygur, ‘2006/17 Sayılı Başbakanlık Genelgesi Işığında Kadına Yönelik Şiddeti Önlemeye Yönelik Devletin Ödevi: Değişen Devlet Anlayışı mı?’ in Serpil Sancar (ed),

violence against women has been acknowledged.<sup>34</sup> International community has more and more commonly started to accept that violence against women is a tool of patriarchy and male domination rather than belonging solely to private space and being a one-off occasion. Below, the most important developments in the international law which have led to the changes mentioned above will be explained in a chronological order.

When one looks back at the history of the legal developments in the international law as regards to violence against women, it is noteworthy to begin with addressing the CEDAW Committee's 1989 General Recommendation No. 12. Even though the issue of violence against women is addressed in this recommendation, it did not have an explanation of how CEDAW covers violence against women.<sup>35</sup> Because of this, the Committee issued its General Recommendation No:19 in 1992, which was a turning point. In this comprehensive recommendation, CEDAW is interpreted to cover violence against women within the scope of discrimination against women.<sup>36</sup> The Committee declared that violence against women constitutes a form of gender discrimination, which is prohibited by CEDAW.

Subsequent to the World Conference on Human Rights in 1993,<sup>37</sup> UN Commission on Human Rights appointed a Special Rapporteur on violence against women, its causes and consequences. The mandate of the Special Rapporteur is to seek and receive information from governments, treaty bodies, specialized agencies and other special rapporteurs on violence against women, its causes and consequences and make recommendations at the national, regional and international level to eliminate violence against women and its causes, and to remedy its consequences.<sup>38</sup> Moreover, in 1993, "strategies for the elimination of violence against women in society: the media and other means" were addressed in the Third Ministerial Conference on Equality Between Women and Men, in Rome. As a result of this conference, the requirement for women and men to be equal for the effective enjoyment of fundamental rights and freedoms was confirmed with the

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*Birkaç Arpa Boyu... 21. Yüzyıla Girerken Türkiye'de Feminist Çalışmalar* (Koç Üniversitesi Yayınları 2011) 859.

<sup>34</sup> Meyersfeld (n 28) 15.

<sup>35</sup> Dubravka Šimonović, 'Global and Regional Standards on Violence Against Women: The Evolution and Synergy of the CEDAW and Istanbul Conventions' (2014) 36 *Human Rights Quarterly* 590, 600.

<sup>36</sup> CEDAW General Recommendation No. 19: Violence against Women 1992 para 6.

<sup>37</sup> The World Conference on Human Rights adopted 'Vienna Declaration and Programme of Action' in Vienna on 25 June 1993. See: Vienna Declaration and Programme of Action 1993.

<sup>38</sup> 'Question of Integrating the Rights of Women into the Human Rights Mechanisms of the United Nations and the Elimination of Violence against Women' (UN Commission on Human Rights 1994) Resolution 1994/45 para 7(a) and (b).

“Declaration on Policies for Combating Violence against Women in a Democratic Society.”<sup>39</sup> The document emphasized that states may be held responsible for the private acts of violence if they have not taken measures to prevent violations nor have they investigated and punished the responsible party for the acts in question.<sup>40</sup> The conference contributed to tackling violence against women “wherever it occurs, in the family, at the place of work, or in society, and irrespective of whether or not it is perpetrated or tolerated by public officials.”<sup>41</sup>

In 1995, the Fourth World Conference on Women was held in Beijing. The Beijing Platform for Action encouraged states to adopt measures to eliminate violence against women and to provide victims with access to the mechanisms of justice.<sup>42</sup> It is highlighted that the governments should support women’s organizations’ initiatives to raise awareness of the issue of violence against women<sup>43</sup> and they should organize, support and fund campaigns to raise awareness about violence against women as a violation of human rights.<sup>44</sup> The developments on the issue of violence against women have begun to crescendo with the adoption of Recommendation Rec(2002)5 by the Committee of Ministers to the Council of Europe in 2002.<sup>45</sup> An important number of recommendations were made to the states, such as developing or improving the national policies on raising public awareness and providing training for professionals who are dealing with the issue of violence against women. In the Explanatory Report to the Istanbul Convention, this recommendation is described as being “a milestone in that it proposed, for the first time in Europe, a comprehensive strategy for the prevention of violence against women and the protection of victims in all Council of Europe (CoE) member states.”<sup>46</sup>

In 2006, a report titled ‘Combating Violence Against Women: Stocktaking study on the measures and actions taken in Council of Europe member states’ was published.<sup>47</sup> It is emphasized in the report that even though the attention

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<sup>39</sup> Declaration on policies for combating violence against women in a democratic Europe 1993 para 4.

<sup>40</sup> *ibid* 18.

<sup>41</sup> *ibid* 22.

<sup>42</sup> Beijing Platform for Action 1995 para 124.

<sup>43</sup> *ibid* 125(d).

<sup>44</sup> *ibid* 125(e).

<sup>45</sup> Ronagh McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights* (1 edition, Routledge 2017) 38.

<sup>46</sup> ‘Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (Council of Europe 2011) para 9.

<sup>47</sup> ‘Combating Violence Against Women: Stocktaking Study on the Measures and Actions Taken in Council of Europe Member States’ (Council of Europe 2006).

towards violence against women has risen in the world, and there have been developments to combat it, violence against women is still widespread in Europe.<sup>48</sup> The report drew attention to the ‘deficits’ in the implementation of the criminal law and indicated that these deficiencies discourage women to report the acts of violence. Stating that these problems can only be addressed if they are documented, it is recommended to states that systematic data collection should be instituted to track the consequences of “reporting, recording, investigating, prosecuting and convicting violence against women.”<sup>49</sup>

Another important development has been the establishment of the Task Force to Combat Violence Against Women, Including Domestic Violence in 2006. The objectives of the Task Force were evaluating the effective functioning of the measures; proposing amendments to these measures; assisting member states in adopting practical policies; assessing the results of the monitoring framework; further identifying other possible roles of men in the context of family violence; preparing a blueprint for the CoE campaign and identifying the main subjects to be highlighted in preventing and combating violence against women.<sup>50</sup> The Task Force developed a blueprint which became the basis for the Council of Europe Campaign to Combat Violence Against Women, including Domestic Violence, launched at the end of 2006. The campaign focused on objectives related to legal and policy measures, support and protection for victims, data collection and awareness-raising. At the same time, states were to carry out national campaigns to ensure a better implementation of Recommendation Rec(2002)5.<sup>51</sup> More than half of all member states conducted national awareness-raising campaigns and many others assessed their policies and legislation or took other measures.<sup>52</sup> This process placed the issue of violence against women at the political agenda of member states and it showed the need for a joint action to combat violence against women.<sup>53</sup> In its Final Activity Report, which was issued in 2008, the Task Force emphasized the need for a CoE convention to prevent and combat violence against women.<sup>54</sup> It is stated in the report that violence against

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<sup>48</sup> *ibid* 7.

<sup>49</sup> *ibid* 41.

<sup>50</sup> ‘Blueprint of the Council of Europe Campaign to Combat Violence against Women, Including Domestic Violence’ (Council of Europe 2006).

<sup>51</sup> ‘Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (n 46) para 11.

<sup>52</sup> ‘Fact Sheet on the Council of Europe Campaign to Combat Violence against Women, Including Domestic Violence’ (Council of Europe Directorate General of Human Rights and Legal Affairs).

<sup>53</sup> *ibid*.

<sup>54</sup> ‘Final Activity Report’ (Council of Europe Task Force to Combat Violence against Women, including Domestic Violence 2008) 79.

women is an obstacle to achieve gender equality and is a result of the unequal distribution of power between women and men.<sup>55</sup> Furthermore, the report underscored the CoE's potential to lead the preparation of the first European human rights treaty to prevent and combat violence against women and it is indicated that a legally binding human rights instrument would demonstrate member states' strong commitment to eradicating violence against women.<sup>56</sup>

In accordance with the report which suggests that the group responsible for drafting such convention should consist of experts with knowledge and experience on violence against women, gender equality and human rights, the Task Force proposed the establishment of a new ad hoc committee. Consequently, an Ad Hoc Committee on Preventing and Combating Violence Against Women (CAHVIO) is established in December 2008 by the Committee of Ministers of the Council of Europe. CAHVIO's mandate was to prepare an instrument "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."<sup>57</sup> The Interim Report that was published by CAHVIO on 27 May 2009 states:

Recognising the fact that violence against women is the result of an imbalance of power between women and men, the purpose of the convention is thus to guarantee the full enjoyment of women's human rights [...] Consequently, the provisions of the future convention will put into effect the obligation of the state to prevent violence against women, protect victims of such violence and investigate and appropriately sanction all acts of violence against women – the due diligence standard now widely accepted in international human rights law.<sup>58</sup>

After the text of the convention was approved by CAHVIO in December 2010, and the Parliamentary Assembly gave its opinion in March 2011, the CoE adopted its legally binding instrument, Istanbul Convention on 7 April 2011. In an explanatory document generated by the CoE, it is indicated that the drafting process of the Istanbul Convention was inspired by the case-law of European Court of Human Rights (ECtHR) and by the jurisprudence of the CEDAW Committee on violence against women.<sup>59</sup> It is also worth noting that

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<sup>55</sup> *ibid.*

<sup>56</sup> *ibid.*

<sup>57</sup> 'Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence' (n 46) para 19.

<sup>58</sup> 'Interim Report' (Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence 2009) 21.

<sup>59</sup> 'Working towards a Convention on Preventing and Combating Violence against Women and Domestic Violence' (Council of Europe 2010).

the Council is in fact not the first regional human rights organization to adopt a legally binding convention on violence against women.<sup>60</sup> Almost seventeen years before that, in 1994, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, also known as the Convention of Belém do Pará, was adopted by the General Assembly of the Organization of American States. This convention was a groundbreaking instrument, taking into consideration that it was the first regional instrument to address the issue of violence against women. Furthermore, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (also known as the Maputo Protocol) was adopted by the African Union in 2003.

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<sup>60</sup> McQuigg (n 45) 31.

# 3 International Legal Instruments

This chapter firstly aims to provide a detailed analysis of the international legal documents governing the prevention of and protection from violence against women. Afterwards, the due diligence standard will be discussed.

## 3.1 International Legal Documents

According to the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, women and men are entitled to all the rights and freedoms contained in it, “without distinction of any kind, such as [...] sex”.<sup>61</sup> This guarantee is reaffirmed in the following human rights treaties: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966. However, as it is explained in the previous chapter, apart from the prohibition on discrimination, these human rights instruments paid close attention neither to women’s human rights nor to the issue of violence against women. The acts of violence against women which occurred in the private sphere without an intervention by state actors were not considered to constitute human rights violations.<sup>62</sup> As a consequence, the experiences of women were not recognised or addressed by the traditional human rights instruments, and violence against women was not acknowledged as an issue of international concern. It was not explicitly mentioned or outlawed by any of the UN human rights treaties.<sup>63</sup> However, the issue has been brought up by the UN human rights bodies<sup>64</sup> within their scope through the use of provisions such as the right to life; the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; the right to equality; the right to liberty and security of person; the right to equal protection under the law; the right to be free from all forms of discrimination; and the right to the highest standard attainable of physical and mental health.<sup>65</sup>

International legal instruments covering violence against women will be analyzed below.

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<sup>61</sup> Universal Declaration of Human Rights 1948 art 2.

<sup>62</sup> *Women’s Rights Are Human Rights* (United Nations 2014) 26.

<sup>63</sup> Edwards (n 12) 8.

<sup>64</sup> McQuigg (n 45) 22.

<sup>65</sup> Declaration on the Elimination of Violence against Women 1993 art 3.



### 3.1.1 European Convention on Human Rights

The European Convention on Human Rights (ECHR) does not provide a specific protection in the context of violence against women. However, it is a living instrument and the standards under the convention are not static: The Court can interpret the convention rights in accordance with the present-day conditions<sup>66</sup> and can set how these interpretations shall be applied contextually. This is very important to ensure that individuals can actually enjoy the rights that are enshrined in the convention. As the Court remarked, “the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective.”<sup>67</sup> ECtHR has recently been developing its jurisprudence in the context of violence against women. Several times, the jurisprudence of the Court has reflected the decisions and General Recommendations of the CEDAW Committee in interpreting and applying ECHR.<sup>68</sup> In the case of *Opuz v. Turkey*,<sup>69</sup> ECtHR detailed the state obligations under ECHR in the context of domestic violence and held that the positive obligation to protect the right to life is violated if the state has not displayed due diligence in protecting the lives of those involved. This judgment will be discussed below.

Nahide Opuz and her mother had been experiencing brutal domestic violence by Opuz’s husband. They had been injured severely on many occasions, and some of the injuries were classified by doctors as life-threatening. The applicant, Opuz, and her mother had repeatedly resorted to the authorities and asked for protection, arguing that they are facing an immediate threat of death. Despite the criminal proceedings against Opuz’s husband for different offences, such as death threats, serious assault and attempted murder, as a result of the withdrawal of the complaints, at least two cases were discontinued. The motive behind the withdrawal, the seriousness of the offences and the chances of the husband offending again were not considered. Yet, the proceedings regarding running the applicant down with a car and stabbing proceeded to trial in view of the fact that the injuries were serious. The husband was convicted in both cases. While his three-month prison sentence for running down with a car was converted to a fine, for the second offence the sentence itself was paying a fine. Regardless of the applicant’s numerous complaints, authorities did not take adequate measures to protect

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<sup>66</sup> *Tyrer v The United Kingdom* [1978] European Court of Human Rights 5856/72 [31].

<sup>67</sup> *Airey v Ireland* [1979] European Court of Human Rights 6289/73 [24].

<sup>68</sup> Jackie Jones, ‘The European Convention on Human Rights (ECHR) and the Council of Europe Convention on Violence Against Women and Domestic Violence (Istanbul Convention)’ in Rashida Manjoo and Jackie Jones (eds), *The Legal Protection of Women From Violence: Normative Gaps in International Law* (Routledge 2018).

<sup>69</sup> *Opuz v Turkey* [2009] European Court of Human Rights 33401/02.

her and her family. Opuz's husband murdered her mother in 2002 "*for the sake of his honour.*" The husband was convicted of murder in 2008 and sentenced to life imprisonment. The Court reduced his sentence to fifteen years and ten months' imprisonment and a fine of 180 Turkish Liras for the reasons that the offence had been committed in response to his mother-in-law's provocation and due to his good conduct during the trial. He then was released while the appeal was pending, and had continued to threaten the applicant. While the applicant had requested protection from the authorities, measures were taken seven months later, only after the European Court requested information from the Turkish government.<sup>70</sup>

ECtHR held that the local authorities had not shown due diligence and failed to fulfil their positive obligation to protect the right to life of Opuz's mother under article 2 of ECHR. The Court arrived at this finding as the authorities had not taken reasonable measures that could alter the outcome or mitigate the harm, and they had decided to give "exclusive weight to the need to refrain from interfering with what they perceived to be a family matter."<sup>71</sup> Furthermore, since the authorities were negligent towards the fact that the applicant had been subjected to violence, injury and death threats, the Court decided that the article 3 of the convention is violated as well. Last but not least, the Court underscored that intentional or not, the state's failure to protect women from domestic violence violates women's right to non-discrimination under the article 14.<sup>72</sup> Hence, the Court concluded that there had been a violation of article 14 in conjunction with article 2 and article 3 of the convention.

The judgment is particularly important since it was the first time that the Court arrived at the decision to acknowledge gender-based violence as a form of discrimination under ECHR. The Court, stressing that domestic violence is not a private or family issue, stated that:

[T]he first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends in appropriate circumstances to a positive obligation on the authorities to

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<sup>70</sup> *ibid* 60–69.

<sup>71</sup> *ibid* 143.

<sup>72</sup> *ibid* 191.

take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.<sup>73</sup>

Therefore, article 2(1) requires an effective state action to provide protection to individuals whose lives are at risk. However, to ensure that authorities are not burdened with impossible tasks, the Court also explained in what circumstances there will be a violation of article 2. If the authorities know or ought to know that there is a real and immediate risk to the life of an individual from the criminal acts of another individual, then they have a positive obligation to take measures to eliminate that risk. In cases where necessary measures have not been taken to prevent the potential offences against an individual, a violation of the positive obligation to protect the right to life may arise. Therefore, state parties are obliged to take measures to secure the rights of individuals under the convention. As Mowbray pointed out, “passive non-interference by governmental authorities with persons’ Convention rights is not sufficient to ensure that many of those rights are fully and effectively respected.”<sup>74</sup>

### 3.1.2 CEDAW

Convention on the Elimination of All Forms of Discrimination against Women was adopted in 1979 by the United Nations General Assembly and ratified by Turkey on 19 January 1986.<sup>75</sup> Being one of the most widely ratified UN treaties, it imposes various obligations on states to eliminate discrimination against women on the basis of sex. As it is mentioned in the previous chapter, CEDAW does not encompass any explicit reference to violence against women. Rehman states that “a serious criticism of the Women’s Convention has been the absence of specific provisions condemning violence against women, an omission which is unacceptable in the light of everyday instances of violence against women in every region of the world.”<sup>76</sup> However, when it is taken into consideration that violence against women had not been capturing significant attention from any form of law during that time, this absence is more understandable.<sup>77</sup> After all, with the General Recommendation No. 19, adopted in 1992, CEDAW is interpreted as prohibiting violence against women within the scope of

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<sup>73</sup> *ibid* 128.

<sup>74</sup> Alastair Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights* (Hart Publishing 2004) 221.

<sup>75</sup> Convention on the Elimination of All Forms of Discrimination Against Women 1979.

<sup>76</sup> Javaid Rehman, *International Human Rights Law* (2nd edition, Longman Pub Group 2010) 551.

<sup>77</sup> McQuigg (n 45) 23.

discrimination against women. Discrimination against women is prohibited by the article 1 of CEDAW, and defined as:

[A]ny 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 between men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>78</sup>

Within the General Recommendation No. 19, the Committee pointed out that the definition of discrimination provided above encompasses violence that “is directed against a woman because she is a woman or that affects women disproportionately.”<sup>79</sup> Chinkin states that the Recommendation provides “the first holistic international law definition of gender-based violence against women.”<sup>80</sup> In the recommendation, it is emphasized that to ensure a thorough implementation of the convention, states have to take effective legal, preventive and protective measures to eliminate all forms of violence against women.<sup>81</sup> More importantly, it is underlined that state parties are required to display due diligence in preventing and reacting to acts of violence against women and in case they do not take appropriate steps to prevent violations of rights or do not punish acts of violence, they can be held responsible for the acts of private individuals in question.<sup>82</sup> Hereby, the understanding of the public-private distinction which “places many forms of violence against women beyond the protective scope of human rights instruments”<sup>83</sup> is transcended by the state responsibility.<sup>84</sup>

As for the monitoring mechanism, states should submit a report every four years for consideration by the CEDAW Committee.<sup>85</sup> According to General Recommendation No.19, reports should include information on legal,

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<sup>78</sup> Convention on the Elimination of All Forms of Discrimination Against Women (n 75) art 1.

<sup>79</sup> CEDAW General Recommendation No. 19: Violence against Women (n 36).

<sup>80</sup> Christine Chinkin, ‘Violence Against Women’ 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 Commentaries on International Law)* (1st edn, Oxford University Press 2012) 452.

<sup>81</sup> CEDAW General Recommendation No. 19: Violence against Women (n 36) For the specified measures, see para 24(t).

<sup>82</sup> *ibid* 9.

<sup>83</sup> Anthony P Ewing, ‘Establishing State Responsibility for Private Acts of Violence against Women under the American Convention on Human Rights’ (1995) 26 *Columbia Human Rights Law Review* 751, 753.

<sup>84</sup> McQuigg (n 45) 24.

<sup>85</sup> Convention on the Elimination of All Forms of Discrimination Against Women (n 75) art 18.

preventive and protective measures that are adopted by the state to overcome violence against women and the effectiveness of these measures.<sup>86</sup> Furthermore, the Optional Protocol to CEDAW entered into force in December 2000 and was ratified by Turkey on 29 October 2002. The protocol provides individuals or groups with a right to submit their claims to the CEDAW Committee as regards to the violations of the convention. Thus, each woman in any of the states that have ratified the protocol can argue before the Committee that the state has violated her rights under the convention. In addition to this, under the article 8 of the Optional Protocol, the inquiry procedure is established. In case the Committee receives information on a grave or systematic violation of rights under the convention by a state party, it invites the state to cooperate in the examination of the information. Afterwards, the Committee may conduct an inquiry. The state has six months to submit its observations to the Committee after receiving the findings of the inquiry.<sup>87</sup>

### **3.1.3 DEVAW**

The United Nations General Assembly adopted the Declaration on the Elimination of Violence against Women by consensus amongst states in December 1993.<sup>88</sup> Even though it is not a legally binding document, the declaration was an important step forward as it is the first international instrument to express international political consensus on state obligations to prevent violence against women.<sup>89</sup> Furthermore, the international dimensions of the problem and the inadequacy of human rights law were acknowledged in the declaration.<sup>90</sup> It was clearly affirmed that in order to eliminate violence against women, a commitment by states with respect to their responsibilities and a commitment by the international community are required.<sup>91</sup> It is stated in the article 4 of the declaration that states should “pursue all appropriate means and without delay a policy of eliminating violence against women.”<sup>92</sup>

Subsequent to the adoption of DEVAW, the problem of violence against women started to capture a significant attention of international community

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<sup>86</sup> CEDAW General Recommendation No. 19: Violence against Women (n 36).

<sup>87</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women 1999 art 8.

<sup>88</sup> Declaration on the Elimination of Violence against Women (n 65).

<sup>89</sup> Donna Sullivan, ‘The Public/Private Distinction in International Human Rights Law’ in Julie Peters and Andrea Wolper (eds), *Women’s Rights, Human Rights: International Feminist Perspectives* (Routledge 1995) 131.

<sup>90</sup> Chinkin, ‘Violence against Women’ (n 30) 26.

<sup>91</sup> Declaration on the Elimination of Violence against Women (n 65) Preamble.

<sup>92</sup> *ibid* art 4.

and was placed in the mainstream agenda.<sup>93</sup> Consequently, as Rehman remarks, DEVAW has played a significant role on the development of the law regarding women's rights and has provided "substantial ammunition to CEDAW to scrutinise practices which contravene the provisions of the Declaration."<sup>94</sup>

### **3.1.4 Istanbul Convention**

Convention on Preventing and Combating Violence Against Women and Domestic Violence, also known as Istanbul Convention, is a comprehensive instrument which sets new and substantial legally binding standards on state parties in the field of violence against women. It was adopted by the Committee of Ministers of the Council of Europe on 7 April 2011 and entered into force on 1 August 2014. The convention draws significant importance to prevent, prosecute and eliminate violence against women. First of all, it symbolizes the CoE's awareness and acknowledgement of the scope of the problem and the immediate necessity to act. It is stated in the Explanatory Report to the Istanbul Convention that violence against women "undermines the core values on which the CoE is based."<sup>95</sup> In addition to this, the convention is of immense significance due to its legally binding nature. As McQuigg explains, most of the measures that Istanbul Convention places have already been set by UN bodies such as the CEDAW Committee and UN Special Rapporteur on violence against women, its causes and consequences. However, the previous documents are not legally binding. Even though CEDAW is legally binding, it does not explicitly refer to violence against women, which means that the statements of the CEDAW Committee and of the other UN bodies as regards to violence against women are not strong enough. Hence, the Istanbul Convention, in fact, provides a safer ground for the recommendations that have previously been made by the UN human rights bodies.<sup>96</sup> On the other hand, non-governmental organizations can pressure governments by using the legally-binding nature of the obligations that the convention places on states.<sup>97</sup> The European Women's Lobby

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<sup>93</sup> Shazia Qureshi, 'The Recognition of Violence against Women as a Violation of Human Rights in the United Nations System' (2013) 28 *South Asian Studies* 187, 191.

<sup>94</sup> Rehman (n 76) 552.

<sup>95</sup> 'Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence' (n 46) para 7.

<sup>96</sup> McQuigg (n 45) 141.

<sup>97</sup> *ibid.*

published a ‘Lobbying Kit’ to explain the roles that the non-governmental organizations can play to ensure that the monitoring mechanism is effective.<sup>98</sup>

Violence against women is acknowledged as a violation of human rights and as a form of discrimination against women by the Istanbul Convention.<sup>99</sup> The definition of violence against women under the convention encompasses economic violence, as well as physical, sexual and psychological harm. The inclusion of economic violence shows that the scope of the convention is broader than many other instruments such as the General Recommendation No.19 of the CEDAW Committee.

According to article 66(1) of the Istanbul Convention, the implementation of the convention is to be monitored by a Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO).<sup>100</sup> The primary monitoring mechanism is a reporting procedure. States submit their reports on legislative and other measures that are taken in line with the convention for consideration by GREVIO.<sup>101</sup> Moreover, non-governmental organisations, civil society and national institutions can contribute to the monitoring process – through, for instance, submitting shadow reports to GREVIO – for the protection of human rights.<sup>102</sup> Consequently, GREVIO adopts a report regarding the implementation of the convention by the state based upon all the information received. This report includes suggestions and proposals concerning “the way in which the Party concerned may deal with the problems which have been identified.”<sup>103</sup> Furthermore, the Istanbul Convention has an inquiry procedure similar to the inquiry procedure under the Optional Protocol to CEDAW. According to the article 68(13) of the convention, if GREVIO receives information on the existence of a situation where problems require immediate attention to prevent the serious violations of the convention, it may request a special report from the state “concerning measures taken to prevent a serious, massive or persistent pattern of violence against women.”<sup>104</sup> Subsequent to this, GREVIO may conduct an inquiry. Following the examination of the findings of the inquiry, these findings together with comments and recommendations, where deemed appropriate,

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<sup>98</sup> ‘Lobbying Kit for a Transparent Monitoring Process of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (European Women’s Lobby 2014).

<sup>99</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence 2011 art 3(a).

<sup>100</sup> *ibid* art 66(1).

<sup>101</sup> *ibid* art 68(1).

<sup>102</sup> *ibid* art 68(5).

<sup>103</sup> *ibid* art 68(10).

<sup>104</sup> *ibid* art 68(13).

are to be transmitted to the state party and to the Committee of the Parties and the Committee of Ministers of the Council of Europe.<sup>105</sup>

### 3.2 The Due Diligence Standard

The due diligence standard consists of four critical obligations: prevention, investigation, punishment and providing remedies for acts of violence. This standard was first introduced in 1988 with the landmark case of the Inter-American Court of Human Rights (IACtHR), *Velásquez Rodríguez v Honduras*.<sup>106</sup> In this case, which concerned the disappearance of Manfredo Velásquez in Honduras, the Court stated that the state has an obligation to take reasonable measures to prevent human rights violations and investigate violations committed within their jurisdiction.<sup>107</sup> Hence, the Court emphasized that an illegal act of a private individual that violates human rights 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.”<sup>108</sup> In conclusion, the Court held that Honduras had failed to fulfil its obligations under the American Convention on Human Rights.

ECtHR has also developed a body of jurisprudence concerning the positive obligations of states to prevent, prosecute, punish and provide remedies for acts of violence committed by private individuals or entities.<sup>109</sup> In the case of *Osman v. United Kingdom*, the Court established criteria to examine if the state had fulfilled its obligations under ECHR to ensure “practical and effective protection of the rights and freedoms laid down therein.”<sup>110</sup> In accordance with this, the Court stated that if the state authorities did not take necessary steps that could be reasonably expected of them to avoid a real and immediate risk to the life of an individual, they failed to fulfil their positive obligations under the convention.<sup>111</sup> In this sense, according to the Court, the scope of the states’ obligations to prevent acts of violence and to provide

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<sup>105</sup> *ibid* art 68(14-15).

<sup>106</sup> *Velásquez-Rodríguez v Honduras* [1988] Inter-American Court of Human Rights Series C No 4.

<sup>107</sup> *ibid* 174.

<sup>108</sup> *ibid* 172.

<sup>109</sup> Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press 2006) ch 9.

<sup>110</sup> *Osman v United Kingdom* [1998] European Court of Human Rights 23452/94 [116].

<sup>111</sup> *ibid*.



protection against them depends on the circumstances of any particular case, namely, the measures that should have reasonably been taken by the state.<sup>112</sup>

In addition to IACtHR and ECtHR, CEDAW Committee made a relevant decision under the Optional Protocol in its 2005 case of *A.T. v. Hungary* as well. Even though the due diligence standard was not explicitly addressed in the case, the Committee held that Hungary had failed to fulfil its obligations under the convention to prevent acts of violence against A.T. and to provide protection to her.<sup>113</sup> These examples from different judicial or quasi-judicial bodies allow “to develop general guidelines on the requirements of due diligence.”<sup>114</sup>

Chinkin indicates that the due diligence standard “has long been accepted in international law with respect to attributing state responsibility to wrongful acts of non-state actors.”<sup>115</sup> To begin with, the General Recommendation No. 19 of the CEDAW Committee urges states to act with due diligence when addressing the issue of violence against women.<sup>116</sup> Moreover, DEVAW calls on states to exercise due diligence to fulfil the above-mentioned obligations.<sup>117</sup> At the regional level, the Istanbul Convention requires states to act with due diligence to “prevent, investigate, punish and provide reparation for acts of violence.”<sup>118</sup> McQuigg comments that the inclusion of due diligence standard in the Istanbul Convention “serves again to emphasise the fact that the public/private divide in human rights law has now been surmounted to a substantial extent.”<sup>119</sup> Furthermore, the establishment of the mandate of the Special Rapporteur on violence against women, its causes and consequences in 1994 was an important development as regards to the due

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<sup>112</sup> 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* (Martinus Nijhoff Publishers 2008) 51.

<sup>113</sup> *AT v Hungary* [2005] United Nations Committee on the Elimination of Discrimination against Women Communication No. 2/2003 [24].

<sup>114</sup> Yakın Ertürk, ‘The Due Diligence Standard as a Tool for the Elimination of Violence against Women’ (2006) Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences: para 24.

<sup>115</sup> Christine Chinkin, ‘Addressing Violence against Women in the Commonwealth within States’ Obligations under International Law’ (2014) 40 Commonwealth Law Bulletin 471, 479.

<sup>116</sup> CEDAW General Recommendation No. 19: Violence against Women (n 36).

<sup>117</sup> Declaration on the Elimination of Violence against Women (n 65) art 4(c).

<sup>118</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (n 99) art 5(2).

<sup>119</sup> McQuigg (n 45) 140.

diligence standard.<sup>120</sup> The former Special Rapporteur, Yakın Ertürk, remarks that this standard “provides a yardstick to determine whether a State has met or failed to meet its obligations in combating violence against women.”<sup>121</sup> In addition to this, she highlights that being duly diligent in preventing the acts of violence against women and responding to them is a rule of customary international law on the basis of practice and *opinio juris*.<sup>122</sup> In her report, Ertürk states that the due diligence standard has mostly applied after an act of violence occurs. The obligation to prevent acts of violence, including the obligation to transform patriarchal gender structures and societal values that aggravate the problem, has not taken into account thoroughly.<sup>123</sup> Ertürk comments that the due diligence standard has a great potential for the full implementation of obligations to prevent and to compensate as well as for the effective realisation of obligations to protect and to punish.<sup>124</sup>

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<sup>120</sup> ‘Question of Integrating the Rights of Women into the Human Rights Mechanisms of the United Nations and the Elimination of Violence against Women’ (n 38) para 2.

<sup>121</sup> Ertürk, ‘The Due Diligence Standard as a Tool for the Elimination of Violence against Women’ (n 114) para 14.

<sup>122</sup> *ibid* 29.

<sup>123</sup> *ibid* 15.

<sup>124</sup> *ibid* 74.

# 4 Analysis of the Situation in Turkey

This chapter is structured to examine the situation in Turkey. It is divided into three subchapters: In the first part, the status of women in Turkish society, as well as the problem of violence against women, will be analysed. The second part will provide information on the improvements made in the legal framework for combating violence against women in Turkey. The last part will cover the major shortcomings of Turkey with respect to its obligations in the same context.

## 4.1 Background Information

### 4.1.1 Women in Turkish Society

Before discussing the reasons why non-compliance with international obligations in the context of violence against women is tolerated, it is important to provide a brief view on the status of women in the Turkish society. In line with this, starting with information on the historical background is essential.

Mustafa Kemal Atatürk, the founder of the Turkish Republic, sought to modernise the traditional Ottoman society through reforms. The monarchy was replaced by a republican state, which takes its legitimacy from the national sovereignty – legitimacy based on the Islamic law, ‘Shariat’, was abandoned. 1926 Civil Code replaced religious ‘Majalla’, and various reforms were implemented in order to secularise education and social life such as forbidding women to wear charshaf and veil. Moreover, polygamy was banned and equal rights were granted to women in case of divorce and child custody.<sup>125</sup> Since women were the most oppressed group under the Islamic law, “its dismissal and replacement by secular institutions ameliorated women’s legal status immensely.”<sup>126</sup> However, as Yorgun emphasizes, these changes were not sufficient to alter the real conditions of life for the majority of women, who still experience oppression in various

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<sup>125</sup> Pinar Ilkcaracan, *Reforming the Penal Code in Turkey: The Campaign for the Reform of the Turkish Penal Code from a Gender Perspective* (Institute of Development Studies 2007) 4.

<sup>126</sup> Pembenez Yorgun, ‘The Women’s Question and Difficulties of Feminism in Turkey’ (1984) 11 *Khamsin: Journal of revolutionary socialists of the Middle-East* 70.

forms.<sup>127</sup> With Ilkcaracan's words, "traditional and contemporary patriarchy has continued to dominate other areas of life."<sup>128</sup>

Women's oppression in Turkey is closely related to the deep-rooted cultural values. An important traditional value is honour.<sup>129</sup> Honour stands for "a man's reputation as determined by the chastity of the women of his family."<sup>130</sup> Women are expected to remain virgins until they get married and to comply with the rules of the society throughout their lives in order to protect their honour. An inappropriate behaviour of a man's wife, unmarried daughter or sister "may bring a taint to his honour."<sup>131</sup> Hence, men are 'charged' with a responsibility to control the sexuality of women with whom they are associated. Yılmaz states that social conservatism is "focused on the regulation of sexuality and gender relations" in Turkey.<sup>132</sup> In a context of rooted traditions of honour, shame and the control of female sexuality, an honourable, hard-working woman is idealized in a holy family.<sup>133</sup> This 'holy' family is a structure where men have the authority over everyone else<sup>134</sup> and women are expected to be the "guards of tradition and custom and be good mothers and wives."<sup>135</sup> According to Müftüler-Bac, "the ideal woman is portrayed as pure, honourable, and unreachable, serving the higher cause of modernization in Turkey."<sup>136</sup> Marriage and motherhood are perceived as ways of acquiring high status, and "care giving, nurturing, and self-sacrificing roles of women" are glorified.<sup>137</sup> These rules, which determine behaviours that are appropriate for women and that are not, together with the honour and shame codes, contribute to the maintenance of the male superiority within the Turkish culture.<sup>138</sup>

Moreover, these traditions are reflected in the family policies and population politics, as Korkut and Eslen-Ziya remark. "The gender roles are constructed

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<sup>127</sup> *ibid.*

<sup>128</sup> Ilkcaracan (n 125) 4.

<sup>129</sup> John George Peristiany, *Honour and Shame: The Values of Mediterranean Society* (Weidenfeld and Nicolson 1965).

<sup>130</sup> Yorgun (n 126).

<sup>131</sup> *ibid.*

<sup>132</sup> *ibid.*

<sup>133</sup> Umut Korkut and Hande Eslen-Ziya, 'The Impact of Conservative Discourses in Family Policies, Population Politics, and Gender Rights in Poland and Turkey' (2011) 18 *Social Politics* 387, 409.

<sup>134</sup> Deniz Kandiyoti, 'Bargaining With Patriarchy' (1988) 2 *Gender and Society* 274, 278.

<sup>135</sup> Korkut and Eslen-Ziya (n 133) 409.

<sup>136</sup> Meltem Müftüler-Bac, 'Turkish Women's Predicament' (1999) 22 *Women Studies International Forum* 303, 307.

<sup>137</sup> Gökçe Yurdakul and Aysan Sev'er, 'Culture of Honor, Culture of Change: A Feminist Analysis of Honor Killings in Rural Turkey' (2001) 7 *Violence Against Women* 964, 969.

<sup>138</sup> Müftüler-Bac (n 136) 305.

around male breadwinner-female homemaker.”<sup>139</sup> The main workplace for women is considered to be the household. Sev’er and Gökçeçiçek note that Turkish customs “explicitly emphasize the family roles of women and deem secondary any work or career aspirations women may have.”<sup>140</sup> These cultural factors contribute to the Turkish women’s low levels of participation in formal employment. Furthermore, because of the lack of affordable institutionalized childcare services, many women in Turkey quit their jobs after getting engaged, married, pregnant and giving birth.<sup>141</sup> Childcare is considered to be the responsibility of women. Women “undertake their traditional tasks and find jobs which are considered as traditionally women’s jobs.”<sup>142</sup> They carry a ‘double burden’, working outside homes to earn money and being responsible for childcare and household chores at the same time. In addition to the low levels of female labour force participation rate, even though the Turkish women have been entitled to the right to vote and to be elected to public office since 1934, access to decision-making and political participation remains significantly low.

It is worth noting that Turkey ranks 131st among 144 countries in World Economic Forum’s 2017 Global Gender Gap Report.<sup>143</sup> The report measures gender equality by evaluating the gender gap between women and men in the fields of health, education, economy and politics. While the report is not a direct measure of equality, it is important since it showcases the disadvantaged position of women compared to men.

#### **4.1.2 Violence Against Women in Turkey**

Violence against women has been a concern of the political agenda and under the spotlight of the Turkish society for a long time, mostly through the efforts of the Turkish women’s movement. There have been major changes in the domestic law to adopt the international approaches. However, violence against women remains an acute problem in Turkey and it has been increasing at an alarming rate. Below, a brief information on the prevalence of the issue will be provided.

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<sup>139</sup> *ibid.*

<sup>140</sup> Yurdakul and Sev’er (n 137) 969.

<sup>141</sup> Burçin Belge, ‘Kadın İstihdamı, Ebeveyn İzni ve Kreş Hizmetleriyle Artar’ *Bianet* (28 May 2010) <<http://www.bianet.org/bianet/ekonomi/122341-kadin-istihdami-ebeveyn-izni-ve-kres-hizmetleriyle-artar>> accessed 24 May 2018.

<sup>142</sup> Mustafa Özer and Kemal Biçerli, ‘Türkiye’de Kadın İşgücünün Panel Veri Analizi’ (2003) 14 *Sosyal Bilimler Dergisi* 55, 55.

<sup>143</sup> ‘The Global Gender Gap Report’ (World Economic Forum 2017).

Due to the lack of formal statistical records on violence against women in Turkey, it is very hard to access reliable and up-to-date data.<sup>144</sup> According to the results of 2015 research on domestic violence against women in Turkey, which covers only women who married at least once, 36% of women in Turkey stated that they have been exposed to physical violence. This means that almost 4 out of 10 women are subjected to physical violence at some point during their lifetime. Moreover, 12% of women declared that they have been exposed to sexual violence. The report emphasizes that physical and sexual violence are not completely exclusive and often both are experienced together.<sup>145</sup> In addition to these, 44% of women declared that they have been exposed to psychological violence.<sup>146</sup>

## **4.2 Overview of the Improvements Made in the Legal Framework for Combating Violence Against Women**

Since the 1990's, important reforms have been implemented concerning gender equality in the legal framework and gender policy of Turkey. These changes were mostly motivated by the intentions to align Turkey's legislation with the European Union (EU) acquis. Thus, Turkey's EU accession process accelerated the transformation.<sup>147</sup> The major reforms will be explained below.

First of all, article 10 of the Turkish Constitution, entitled 'Equality before the law', was amended by the Turkish Grand National Assembly (TGNA) on 7 May 2004 as "Men and women have equal rights and the State is responsible for the measures to implement those rights."<sup>148</sup> Moreover, with the 2004 amendment to the article 90 of the Constitution, international agreements concerning fundamental rights and freedoms shifted to a higher hierarchy than domestic laws. Accordingly, in case of a conflict of laws, provisions of international agreements will prevail.<sup>149</sup> As a consequence, CEDAW, for instance, started to prevail over domestic laws.

Furthermore, the 1926 Civil Code was replaced by a new Civil Code on 22 November 2001 by the TGNA. The old Civil Code had provisions that

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<sup>144</sup> This problem will be discussed under the subchapter 4.3.1

<sup>145</sup> 'Türkiye'de Kadına Yönelik Aile İçi Şiddet Araştırması' (Hacettepe Üniversitesi Nüfus Etütleri Enstitüsü 2015) 83.

<sup>146</sup> *ibid* 92.

<sup>147</sup> Meltem Müftüler-Bac, 'Gender Equality in Turkey' (Directorate General for Internal Policies, European Parliament 2012) 14.

<sup>148</sup> Constitution of Turkey 1982 art 10.

<sup>149</sup> *ibid* art 90.

strengthen women's subordinate position in the family.<sup>150</sup> For instance, the husband was identified as the 'head of the marriage union', enabling him to make final decisions on such important issues as children and choice of domicile.<sup>151</sup> In spite of the feminist advocacy and lobbying focusing on the reform of the Civil Code during the 1990s, several attempts to reform the code were unsuccessful until the 2001 reform. The latter was a result of great efforts of the women's movement.<sup>152</sup> With the new Civil Code, for the purpose of complementing the Constitutional amendments, new provisions have been introduced that strengthen women's position in the family and social order.<sup>153</sup> The supremacy of men in the marriage has been abandoned and the equality between women and men in the family has been acknowledged. Moreover, the minimum age for marriage has been increased to 18 for both sexes, while it used to be 17 for men and 15 for women.

In addition to the Civil Code, significant changes were introduced to the 2005 Penal Code. Ilkcaracan states that many provisions of the old Penal Code "reflect the construction of sexuality, in particular women's sexuality, as a potential threat to public order and morality, and in need of regulation by laws."<sup>154</sup> For example, sexual crimes were classified as 'crimes against society' and 'crimes against traditions of morality and family order'. Ilkcaracan emphasizes that this showcases how the code perceives women's bodies and sexuality as a property of men, family and society.<sup>155</sup> The new Penal Code reclassified sexual crimes as 'crimes against individuals'. This change constitutes "a paradigmatic shift in Turkish legislation in terms of gender policy."<sup>156</sup> Furthermore, the old code consisted of articles that sought to protect honour instead of sexual rights and bodily integrity. For instance, a man's punishment for raping or abducting a woman could be reduced if he got married to her after the act.<sup>157</sup> The reasoning for this is that marriage could restore the 'lost honour.' Another striking example is that the old code was providing the reduction of sentence to perpetrators of honour crimes if the victims were "caught in the act of committing adultery or 'illegitimate sexual relations,' or if there was evidence beyond doubt that the victim had just carried out such an act."<sup>158</sup> This article was in fact revoked in 2003 due to the pressure from EU.<sup>159</sup> However, this did not prevent the use of another article,

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<sup>150</sup> Ilkcaracan (n 125) 4.

<sup>151</sup> *ibid.*

<sup>152</sup> *ibid* 6.

<sup>153</sup> Müftüleri-Bac (n 147) 8.

<sup>154</sup> Ilkcaracan (n 125) 8.

<sup>155</sup> *ibid.*

<sup>156</sup> Müftüleri-Bac (n 147) 9.

<sup>157</sup> Turkish Penal Code 1926 art 434.

<sup>158</sup> *ibid* art 462.

<sup>159</sup> Ilkcaracan (n 125) 9.

titled ‘unjust provocation’ in the same manner.<sup>160</sup> In short, many changes were introduced and women’s autonomy over their bodies and sexuality was recognized in the new Penal Code.<sup>161</sup>

In addition to these developments, CEDAW’s Optional Protocol was ratified in 2002 and Turkey became the first country to ratify the Istanbul Convention in March 2012. Both of these are demonstrations of Turkey’s willingness to bring its legislation in line with the international standards in the context of gender equality. Moreover, the Law No.6284 to Protect Family and Prevent Violence Against Women was adopted in 2012. This law extended existing protective measures to all women, regardless of their marital status.<sup>162</sup> In spite of its more comprehensive scope compared to the previous law and the progress made, most of the criticism for these developments seem to focus on the lack of proper implementation and monitoring. Additionally, the title of the law is problematic and reflects the government’s approach to the issue.<sup>163</sup> Furthermore, National Action Plans for Gender Equality and Combating Violence Against Women were adopted for consecutive four year periods. However, due to the lack of collaboration with women’s organizations and the absence of a monitoring system, it is not possible to observe positive transformations.<sup>164</sup> Last but not least, another improvement which is worth noting is the requirement of shelters. Under the 2005 Municipality Law (No.5393), municipalities with a population of more than 100.000 are required to provide shelters – or ‘guest houses’, as the Law No.5393 and authorities insist on this name – for women and children.<sup>165</sup> Yet the number of shelters is insufficient<sup>166</sup> and the conditions of many shelters are claimed to be poor.<sup>167</sup> The number of social workers, psychologist and health workers is not enough and those who are working in shelters usually do not have a good knowledge and experience of violence against women and psychological trauma.<sup>168</sup> These concerns are raised in the report of the Purple Roof Women’s Shelter Foundation on the implementation of Law No.6284 in detail.<sup>169</sup>

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<sup>160</sup> Detailed information regarding the concept of ‘unjust provocation’ will be provided in the following chapter.

<sup>161</sup> Ilkcaracan (n 125) 3.

<sup>162</sup> Nicole Pope, ‘Good on Paper, Poor in Practice: Combating Gender Violence in Turkey’ (2014) 4 Turkish Review 600–604.

<sup>163</sup> More in depth discussion on the criticism takes place in the subsequent chapter.

<sup>164</sup> ‘Situation Report on Violence against Women in Turkey’ (EuroMed Rights 2017).

<sup>165</sup> Turkish Municipality Law 2005 art 14.

<sup>166</sup> Müftüler-Bac (n 147) 10.

<sup>167</sup> ‘Situation Report on Violence against Women in Turkey’ (n 164).

<sup>168</sup> *ibid.*

<sup>169</sup> ‘6284 Sayılı Kanun Uygulamaları İzleme Raporu’ (Mor Çatı Kadın Sığınağı Vakfı 2014) 20–22.



## 4.3 Major Shortcomings

It is clear that there have been improvements in the legal framework to provide greater protection to women. However, ratification of the conventions or enactment of legislation alone is not sufficient to eradicate violence against women. The major shortcomings of Turkey with respect to its obligations will be demonstrated below.

### 4.3.1 Data Collection

Under the article 11 of the Istanbul Convention, states should regularly conduct population-based surveys and keep relevant statistical data on the issue of violence against women. Research on the root causes and effects of violence against women, incidences and conviction rates and the efficacy of measures undertaken should be supported by the state.<sup>170</sup> Moreover, the information collected should be available to the public.<sup>171</sup> In the Explanatory Report, it is emphasized that research plays a major role in improving the responses to violence against women by the judiciary, support services and law enforcement agencies.”<sup>172</sup> The importance of statistical information is also highlighted in the CEDAW Committee’s 1989 General Recommendation (No.9) entitled ‘Statistical data concerning the situation of women’.<sup>173</sup>

It is very hard to access reliable statistical records provided by the state of Turkey. This is in fact not a bureaucratic obstacle but a result of the efforts of the state to render violence against women invisible in the eyes of the society and make an impression that it is not a common problem.<sup>174</sup> One of the striking statements was made in 2009 by the Minister of Justice, Sadullah Ergin. After a parliamentary question that was submitted by a member of parliament, the Minister stated that while 66 women were murdered in 2002, this number reached 953 during the first seven months of 2009.<sup>175</sup> Within seven years, the number of women murders had increased drastically: 83

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<sup>170</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (n 99) art 11(1)(b).

<sup>171</sup> *ibid* art 11(4).

<sup>172</sup> ‘Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (n 46) 5.

<sup>173</sup> CEDAW General Recommendation No. 9: Statistical data concerning the situation of women 1989.

<sup>174</sup> Özgül Kaptan, ‘Türkiye’de Kadına Yönelik Şiddetin On Yılı’ (2015) IV Türkiye Politika ve Araştırma Merkezi (Research Turkey) 31.

<sup>175</sup> Önder Yılmaz, ‘7 Ayda 953 Kadın Öldürüldü’ *Milliyet* (8 November 2009) <<http://www.milliyet.com.tr/7-ayda-953-kadin-olduruldu-gundem-1159501/>> accessed 24 May 2018.

women in 2003, 164 women in 2004, 317 women in 2005, 663 women in 2006, 1011 women in 2007 and 806 women in 2008. These numbers show that in seven years, the rate of women murders had skyrocketed by 1400%. While murders constitute one part of violence against women, formal statistics on the other types of violence are not available. Even for the women murders, the state has been avoiding publishing any detailed quantitative records and segregated data. This is why providing this statement of the Minister of Justice even though it is from 2009 is imperative to highlight how widespread the problem is.

The state not only avoids releasing official statistics on violence against women, but it also provides different and inaccurate records.<sup>176</sup> As opposed to the statement of the Minister of Justice indicating that 953 women were killed during the first seven months of 2009, for the Ministry of Internal Affairs the number is 324 for the whole year. On the other hand, 171 women were killed in 2009 according to Fatma Şahin, Minister of Family and Social Policies between July 2011 – December 2013. These conflicting numbers are even smaller than the numbers published in various newspapers. Statements made by different governmental bodies are contradicting not only with the numbers provided by women’s organizations, they are contradicting with each other. It gets even worse – some statements belonging to officials working under the same ministry are incompatible. This is highlighted in a parliamentary question submitted by Mülkiye Birtane, a member of parliament, to the Prime Minister Recep Tayyip Erdoğan to answer.<sup>177</sup> Thus, while the accessible statistics are beneficial for having a general view of the situation, it is important not to lose sight of the fact that official reports do not necessarily reflect the reality and therefore they should not be solely relied upon.

It should also be noted that even if it is assumed that these statistics are reliable, the provided numbers are just the tip of the iceberg. These statistics are based solely on the number of victims that have resorted to police forces, prosecutors or other legal methods and the victims that have been killed. Women who do not report violence are excluded from the official records. According to the report of Hacettepe University Institute of Population Studies, four women out of ten suffer physical violence, and 89% of women who experience violence do not report it to any authority.<sup>178</sup> The findings of this research were announced in a closed meeting and in the beginning, the

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<sup>176</sup> Çiçek Tahaoğlu, ‘Erkek Şiddeti Verilerinde Bakanlar Birbirlerinin Yalancısı’ *Bianet* (22 May 2013) <<https://bianet.org/bianet/kadin/146807-erkek-siddeti-verilerinde-bakanlar-birbirlerinin-yalancisi>> accessed 24 May 2018.

<sup>177</sup> *ibid.*

<sup>178</sup> ‘Türkiye’de Kadına Yönelik Aile İçi Şiddet Araştırması’ (n 145) 162.

Ministry of Family and Social Policies (MoFSP) did not make the findings available to the public. The Ministry stated that they made this decision as they “did not want to get any question” regarding this issue.<sup>179</sup>

It is imperative to highlight the efforts of the women organizations to keep statistics of the incidents of violence against women. Bianet, an independent press agency, has been publishing Male Violence Monitoring Reports since 2009.<sup>180</sup> It keeps track of women murders, murder attempts, rape, sexual harassment, injury and sexual abuse of girls based on the media reports. Since 2008, the Platform for Stopping Homicide of Women has also been publishing monthly and annual statistics on women murders. These statistics are mainly based on the news reporting by the press. According to the Platform’s reports, 28 women were killed in January 2018, 47 in February 2018, 25 in March 2018, 30 in April 2018.<sup>181</sup> This means that during the first four months of 2018, 130 women were killed and this merely covers the acts which were published by the press.

Lastly, it is worth mentioning the website titled ‘Anıtsayaç’, which literally means ‘The Monument Counter.’ This website is updated every day and provides detailed information on women murders: the name and the age of the woman, where, why, how and by whom the act is committed, and whether the victim requested protection from the government or not. In the website, it is stated that before creating this database, various requests were submitted to the Ministry of Justice, Ministry of Family and Social Policies and General Directorate for Security in order to receive relevant statistical records. However, these requests remained fruitless and a media search has been carried out to compile information. The website emphasizes that as the information is gathered from media, it is possible that many women murders cannot be informed of and covered.<sup>182</sup>

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<sup>179</sup> “‘Sağır Sultan Duymasın’ Diye Gizlenen Rapor: 10 Kadından Dördü Şiddet Mağduru’ *Diken* (16 January 2015) <<http://www.diken.com.tr/sagir-sultan-duymasın-diye-gizlenmiş-10-kadından-dördü-siddet-mağduru/>> accessed 24 May 2018.

<sup>180</sup> ‘Bianet Is Monitoring Male Violence’ *Bianet* (29 November 2011) <<http://bianet.org/english/gender/134394-bianet-is-monitoring-male-violence>> accessed 24 May 2018.

<sup>181</sup> See: ‘Platform for Stopping Homicide of Women’ <<http://kadincinayetlerinidurduracagiz.net/kategori/veriler>> accessed 27 May 2018.

<sup>182</sup> ‘Monument Counter - An Online Monument to Commemorate Women Who Lost Their Lives Due to Domestic Violence’ (n 21).

### 4.3.2 Integrated Policies and Cooperation with Women's Organizations

Article 7(1) of the Istanbul Convention gives rise to a state obligation to develop effective and comprehensive policies to prevent and combat violence against women. These policies are to be victim-oriented<sup>183</sup> and states must support and collaborate with non-governmental organizations and civil society that are actively working to combat violence against women.<sup>184</sup> The necessity to cooperate with non-governmental organizations is acknowledged at the UN level too. For example, the Commission on Human Rights stressed the importance of cooperating with relevant non-governmental and community-based organizations.<sup>185</sup> Below, Turkey's compliance with these obligations will be examined.

Firstly, the government's policies and the public officials' statements focus merely on the unity of the family. Nas remarks that the family according to the Justice and Development Party's (JDP) conservative agenda is "a social institution, which is threatened by the emergent trends of contemporary society, challenging the strictly established boundaries of the nuclear family."<sup>186</sup> The family's interests are prioritized at the expense of individuals' rights,<sup>187</sup> and women are seen not as individuals but as mothers and caregivers. Thus, the government's pro-family approach confines women to the traditional gender roles and put them in a much more vulnerable position by undermining the gender equality and justifying the male dominance. Moreover, this approach diminishes women's issues and tag them as family issues. A more problematic issue is the government's encouragement of non-intervention in the cases of acts of violence against women. For instance, in April 2016, the Minister of Justice Bekir Bozdağ stated: "We should seriously reconsider how appropriate it is for the state to come between husband and wife with all its police, soldiers, judges, psychologists, social workers and experts. [...] We need to seriously address this. And we need to do it irrespective of the criticism from women's organizations."<sup>188</sup> This statement

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<sup>183</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (n 99) art 7(2).

<sup>184</sup> *ibid* art 9.

<sup>185</sup> 'Elimination of Violence against Women' (UN Commission on Human Rights 2001) Resolution E/CN.4/RES/2001/49 para 10(d); 'Elimination of Violence against Women' (UN Commission on Human Rights 2004) Resolution E/CN.4/RES/2004/46 para 15(j).

<sup>186</sup> Alparslan Nas, 'Familialization of Women: Gender Ideology in Turkey's Public Service Advertisements' (2016) 8 *Fe Dergi* 168, 170.

<sup>187</sup> *ibid* 171.

<sup>188</sup> 'Bekir Bozdağ'dan Aileyle İlgili Tartışılacak Sözler' *CNN Türk* (14 April 2016) <<https://www.cnnturk.com/turkiye/bekir-bozdogdan-tartisilacak-sozler>> accessed 24 May 2018.

shows the government's will to prioritize the unity of the family over the rights of women. More importantly, it reveals reasons why the policies aiming to strengthen family are not innocent: They contribute to the reproduction of the patriarchal gender norms and inequality between women and men, and they promote the inferiority and obedience of women. As a consequence, they prevent women from enjoying their rights fully.

In addition to the international obligations to develop comprehensive policies to combat violence against women, states are required under international law to address gender stereotypes and stereotyping.<sup>189</sup> A gender stereotype is defined as “a generalised view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, men and women.”<sup>190</sup> Gender stereotyping is the practice of ascribing specific attributes or roles to women or men based on their gender.<sup>191</sup> This obligation is explicitly stated in CEDAW. Under article 5, states are required to make the necessary steps to alter the social and cultural patterns that “are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”<sup>192</sup> Moreover, in the preamble of CEDAW, it is, in fact, pointed out that to achieve substantive equality, states should change “the traditional role of men as well as the role of women in society and in the family.”<sup>193</sup>

It is also important to point out that CEDAW requires states to take “all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”<sup>194</sup> Thus, the relation between the social and cultural norms and the acts of violence against women is acknowledged and it is indicated that states should “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.”<sup>195</sup> Moreover, it is stated in DEVAW that states should not invoke custom, tradition or religion to justify the avoidance of their obligations

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<sup>189</sup> ‘OHCHR Commissioned Report: Gender Stereotyping as a Human Rights Violation’ (UN Office of the High Commissioner for Human Rights 2013) 8.

<sup>190</sup> Rebecca J Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press 2010) 20.

<sup>191</sup> ‘OHCHR Commissioned Report: Gender Stereotyping as a Human Rights Violation’ (n 189) 9.

<sup>192</sup> Convention on the Elimination of All Forms of Discrimination Against Women (n 75) art 5(a).

<sup>193</sup> *ibid* Preamble.

<sup>194</sup> *ibid* art 2(f).

<sup>195</sup> *ibid* art 5(a).

related to the elimination of violence against women.<sup>196</sup> It is worth noting that a failure of a state to act with due diligence to oppose the use of tradition, culture or religion to justify violations of women's human rights constitutes a human rights violation even if there is no harm.<sup>197</sup> In addition to these, the Istanbul Convention emphasizes that culture, custom, religion, tradition or honour should not be used to legitimize acts of violence against women.<sup>198</sup> Furthermore, article 12(1) of the Istanbul Convention is very important in this aspect since it acknowledges the relationship between the traditional gender roles and the violence against women:

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.<sup>199</sup>

Far from taking measures to address gender stereotyping and to eliminate discrimination, the statements of politicians and public officials in Turkey often refer to gender stereotypes, while using the customs and traditional values to justify gender inequality and even violence against women. Examples of the discriminatory statements are provided in the following chapter. Furthermore, the implemented policies are far from being victim-oriented. They ignore the actual causes of the acts of violence and do not acknowledge it as being a consequence of unequal power structure. They emphasize women's role as mothers and caregivers, idealize obedience as a characteristic of womanhood, and focus on strengthening the family rather than gender equality. Hence, these policies do not comprehensively cover the root causes of the problem and as a consequence, they are doomed to be ineffective in the elimination of violence against women. The CEDAW Committee, in its 2016 report on Turkey, expressed its concerns about the persistence of discriminatory stereotypes related to the responsibilities of women and men in family and society. The Committee stated that these stereotypes promote the traditional role of women as mothers and wives and thus undermine "women's social status, autonomy, educational opportunities and professional careers" while "constituting an underlying cause of gender-based violence against women."<sup>200</sup> Furthermore, it is indicated in the report

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<sup>196</sup> Declaration on the Elimination of Violence against Women (n 65) art 4.

<sup>197</sup> Ertürk, 'The Due Diligence Standard as a Tool for the Elimination of Violence against Women' (n 114) para 88.

<sup>198</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (n 99) art 12(5).

<sup>199</sup> *ibid* art 12(1).

<sup>200</sup> 'Concluding Observations on the Seventh Periodic Report of Turkey' (Committee on the Elimination of Discrimination against Women 2016) 7.

that “patriarchal attitudes are on the rise within State authorities and society, and that gender equality is being openly and increasingly undermined by vaguely defined concepts.”<sup>201</sup>

Secondly, as it is expressed in the 2017 Shadow NGO Report to the GREVIO Committee, the government has been limiting its relations and cooperation with independent women’s organizations drastically, while establishing and supporting government-organized non-governmental organizations (GONGO), alternative organizations with pro-family approaches.<sup>202</sup> An example of the failure to collaborate with women’s organizations is the “Family Education Program Implementation and Dissemination Project”, which has been implemented by MoFSP since 2012.<sup>203</sup> The purpose of this project is the creation of healthy and happy families. In line with this, training materials are prepared to provide education to trainers and participants. However, while the website of the project claims that during the preparation of the curriculum of the training, a cooperation was established with 26 civil society organizations, those organizations that are components of the Istanbul Convention Monitoring Platform have not been consulted with.<sup>204</sup> On the other hand, the material lacks a gender perspective, and domestic violence is not covered sufficiently.<sup>205</sup> The Committee on the Elimination of Discrimination against Women also shares the concerns related to the involvement of women’s organizations in promoting the implementation of international obligations of Turkey. In its 2016 report, the Committee emphasized the existence of “the increasingly restrictive and oppressive measures taken over the years” against representatives of women’s organizations and women human rights defenders.<sup>206</sup>

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<sup>201</sup> *ibid.*

<sup>202</sup> ‘Shadow NGO Report on Turkey’s First Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (Istanbul Convention Monitoring Platform 2017) 9 (The reasons for the government’s attitude towards the independent women’s organizations will be discussed in the upcoming chapter).

<sup>203</sup> Information on the project can be found at: (*Aile Eğitimi Programı*) <<https://www.aep.gov.tr/>> accessed 27 May 2018.

<sup>204</sup> ‘Shadow NGO Report on Turkey’s First Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (n 202) 26.

<sup>205</sup> *ibid.*

<sup>206</sup> ‘Concluding Observations on the Seventh Periodic Report of Turkey’ (n 200) 3.

### 4.3.3 Educating Professionals and Awareness-Raising

Under the article 13 of the Istanbul Convention, states are required to promote and conduct awareness-raising campaigns to increase the public's awareness and understanding of violence against women. The equality between women and men, non-stereotyped gender roles and gender-based violence against women are some of the issues that should be covered in the teaching materials.<sup>207</sup> Heisecke remarks that raising awareness is the first step to change attitudes and behaviour that maintain or ignore different forms of violence against women.<sup>208</sup> Similarly, various UN bodies have highlighted the importance of awareness-raising with regard to violence against women. The CEDAW Committee, for instance, encouraged states to implement public education programmes to change attitudes towards the status of women and men in its General Recommendation No. 19.<sup>209</sup> Furthermore, the Special Rapporteur in 2003 urged states to adopt societal projects to “delink masculinity from an association with oppressive uses of power.”<sup>210</sup>

In addition to the obligations involving raising awareness, under Istanbul Convention, states are required to provide trainings to the relevant professionals who deal with victims or perpetrators of acts of violence against women on issues of the prevention and detection of violence, the equality between women and men, the needs and rights of victims, and how to prevent re-victimization.<sup>211</sup> These professionals can be working in the judiciary, legal practice, law enforcement agencies, in the fields of healthcare, social work and education.<sup>212</sup> The CEDAW Committee also asserted that gender-sensitive training of public officials is essential for implementing CEDAW effectively.<sup>213</sup> Furthermore, the Special Rapporteur in 2002 underlined the

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<sup>207</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (n 99) art 14(1).

<sup>208</sup> Karin Heisecke, *Raising Awareness of Violence against Women: Article 13 of the Istanbul Convention* (Council of Europe 2014) 5.

<sup>209</sup> CEDAW General Recommendation No. 19: Violence against Women (n 36).

<sup>210</sup> Yakın Ertürk, ‘Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences: Towards an Effective Implementation of International Norms to End Violence against Women’ (UN Commission on Human Rights 2003) para 58.

<sup>211</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (n 99) art 15.

<sup>212</sup> ‘Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (n 46) para 100.

<sup>213</sup> CEDAW General Recommendation No. 19: Violence against Women (n 36).



need to provide training to all officials in the administration of justice, education and health sectors on violence against women.”<sup>214</sup>

In the 2017 Shadow NGO Report to the GREVIO Committee, it is stated that like the governmental policies, the activities to raise awareness on violence against women in Turkey also focus on the empowerment of the family. It is concluded that these activities “do not have the function of disseminating information on equality between women and men, non-stereotyped gender roles, and non-violent conflict resolution in interpersonal relationships as the [Istanbul] Convention aims.”<sup>215</sup> In the report, it is emphasized that even though the government established some measures in the National Action Plan for Combating Violence Against Women to raise awareness and transform mentality, and many public officials were provided with training, the contents and results of these activities are in question. This concern is mostly originating from the government’s general attitude towards the issue and the fact that cooperation with independent women’s organizations for implementing awareness-raising activities have ended.<sup>216</sup> Moreover, the Committee on the Elimination of Discrimination against Women echoed similar concerns in its 2016 report, stating that awareness-raising programmes no longer cover gender equality modules.<sup>217</sup> In addition to these, there is not any mechanism to monitor the effectiveness of training. Hence, it is not possible to analyse the outcomes of the training, neither to improve the materials when necessary.<sup>218</sup>

#### **4.3.4 Access to Non-discriminatory Police Forces and Judiciary**

Chapter VI of the Istanbul Convention regulates investigation, prosecution, procedural law and protective measures. First of all, article 50 requires states to take measures to ensure that law enforcement agencies intervene promptly in urgent situations to protect victims of violence against women and to

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<sup>214</sup> Radhika Coomaraswamy, ‘Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Submitted in Accordance with Commission on Human Rights Resolution 2001/49: Cultural Practices in the Family That Are Violent towards Women’ (UN Commission on Human Rights 2002) para 128.

<sup>215</sup> ‘Shadow NGO Report on Turkey’s First Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (n 202) 25.

<sup>216</sup> *ibid* 26.

<sup>217</sup> ‘Concluding Observations on the Seventh Periodic Report of Turkey’ (n 200) 3.

<sup>218</sup> ‘Shadow NGO Report on Turkey’s First Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (n 202) 27.

prevent the occurrence of such acts. The necessary measures can be preventive operational measures or the collection of evidence. Hence, states have an imperative obligation to ensure that investigation and prosecution of the acts of violence against women are effective. Furthermore, the following articles give rise to various obligations. Article 51 states that the seriousness of the situation and the probability of the repetition of the act should be analysed in order to assess the risk and provide necessary protection if need be. Under articles 52 and 53, states should ensure that appropriate emergency barring orders and restraining or protection orders are available to protect the victims from the acts of violence. States are under an obligation to ensure that protection orders are effective, proportionate and dissuasive.<sup>219</sup> The UN Handbook for legislation on violence against women is also important as it states that for the issuance of a protection order “live testimony or a sworn statement or affidavit of the complainant/survivor is sufficient evidence” and “no independent evidence – medical, police or otherwise – should be required.”<sup>220</sup>

One of the major problems in Turkey in this context is the law enforcement officials’ and other relevant actors’ tendency not to intervene when a woman subjected to violence resorts to them. Non-intervention means that they often do not launch criminal investigations and do not issue protection orders and rather encourage victims to reconcile with perpetrators to maintain the family unity.<sup>221</sup> The law enforcement officials acting as mediators is very common where women are forced to get back with the perpetrator who exposed them to violence. This often happens when women return to the police stations to make another complaint or for another procedure and they then find out that the perpetrator has also been invited by the police in efforts of arranging a reconciliation.<sup>222</sup> A statistics on the tendency of the non-intervention from December 2014 Report on Domestic Violence against Women in Turkey discloses the seriousness of this issue. “In 29 percent of the applications made to the police, women were reconciled with their husbands, 23 percent of the applications resulted in giving cautionary decisions, 41 percent of them resulted in the referral of the police to other institutions, organizations; whereas, in 13 percent of the applications nothing was done.”<sup>223</sup> These

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<sup>219</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (n 99) art 53(3).

<sup>220</sup> *Handbook for Legislation on Violence against Women* (United Nations 2009) 48.

<sup>221</sup> ‘He Loves You, He Beats You: Family Violence in Turkey and Access to Protection’ (Human Rights Watch 2011) 5.

<sup>222</sup> ‘Shadow NGO Report on Turkey’s First Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (n 202) 54.

<sup>223</sup> ‘Domestic Violence against Women in Turkey: Summary Report’ (Hacettepe University Institute of Population Studies 2014).

concerns are echoed in the 2017 Shadow NGO Report to the GREVIO Committee. According to the report, law enforcement officials either do not act on time or they discourage women from making a complaint. Sometimes they do this explicitly, while other times they discourage women by making them wait for a long time at the police station or by telling them that legal remedies are tiring and not effective in violence cases.<sup>224</sup> It is stated in the report that:

It is frequently witnessed that women are held responsible for violence with a gender bias and accusations of ‘not obeying their husbands’ or ‘provoking them.’ When the law enforcement agencies refuse to take action, the crimes are not conveyed to the prosecutor, hence no proceedings can be initiated.<sup>225</sup>

Moreover, the report remarks that the gender bias is one of the biggest obstacles preventing the law enforcement officials from taking necessary measures immediately and to collect evidence properly particularly if the reported act involves sexual abuse. Most of the times, this is due to thinking that the woman has consented to the act.<sup>226</sup> This assumption gets stronger if the woman does not comply with the norms of the society. This perspective stems from the lack of knowledge on gender equality and discrimination against women. The CEDAW Committee drew attention to the limited knowledge of the law enforcement officials and legal practitioners on gender equality.<sup>227</sup> Law enforcement officials often first question the ‘appropriateness’ of the woman exposed to violence in the context of society’s gender norms and then decide how they will act. Thus, their preconceived opinions become decisive instead of the facts of the case in question. This further shows why gender-sensitive approach in the training of the law enforcement officials and all actors of the justice system is crucial. It is stated in the GREVIO report that all of these malpractices have been reflected in many activity and monitoring reports of women’s organizations before.<sup>228</sup>

Reluctance and slow decision process of the courts are other barriers that women encounter. Especially for obtaining the protection orders, as their purpose is to protect individuals who are at imminent threat, promptness is of vital importance. However, even though decisions on the orders are made

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<sup>224</sup> ‘Shadow NGO Report on Turkey’s First Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (n 202) 53.

<sup>225</sup> *ibid.*

<sup>226</sup> *ibid.*

<sup>227</sup> ‘Concluding Observations on the Seventh Periodic Report of Turkey’ (n 200) 6.

<sup>228</sup> See, for instance: ‘Türkiye’de Erkek Şiddetiyle Mücadele Mekanizmaları İzleme Raporu’ (Mor Çatı Kadın Sığınağı Vakfı 2016).

quickly, the period for issuing and delivering the decisions generally take too much time.<sup>229</sup> Trials following a violation of an order often take place 2-3 months after the violation.<sup>230</sup> According to the Human Rights Watch (HRW) report, this is caused by inaction and even “reluctance on the part of prosecutors and judges to interfere with family matters.”<sup>231</sup> The report provides an interview with a chief prosecutor who stated that he is sometimes reluctant to intervene in the cases of domestic violence. His reasoning was: “okay, she might have been beaten before, but now they are together again, and if we get involved the family might be broken up and he might get more violent. If we know the man is an addict we might do something.”<sup>232</sup> Police forces are also reluctant to take action even when the situation is very serious. It is indicated that even if the police forces are notified of a violation of the protection order, they may avoid taking action. As a consequence of this rejecting attitude, many women stop further notifying the police.<sup>233</sup> The slow pace of the process and the reluctance of judges and the police negatively affect the efficacy of the protection orders. The CEDAW Committee indicates that “protection orders are rarely implemented and are insufficiently monitored, with such failure often resulting in prolonged gender-based violence against women or the killing of the women concerned.”<sup>234</sup>

As for the assessment of the risk, there are violations and deficiencies in practice. It is observed that in spite of the fact that whereabouts of shelters are confidential, law enforcement officials collaborate with the perpetrators or relatives of women and disclose this information with an intention of convincing women to reconcile with the perpetrator.<sup>235</sup> In addition to this, the lack of technical infrastructure is considered to be a problem in this context as it causes delays in the implementation of confidentiality orders and puts lives of victims at risk.<sup>236</sup> Moreover, this is also a problem when it comes to the enforcement of sentences. It is reflected in the shadow report to GREVIO

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<sup>229</sup> ‘Shadow NGO Report on Turkey’s First Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (n 202) 56.

<sup>230</sup> *ibid.*

<sup>231</sup> ‘He Loves You, He Beats You: Family Violence in Turkey and Access to Protection’ (n 221) 34.

<sup>232</sup> Human Rights Watch Interview with Durdu Kavak, Chief Prosecutor, Diyarbakır, June 16, 2010. See: *ibid.*

<sup>233</sup> ‘Shadow NGO Report on Turkey’s First Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (n 202) 56.

<sup>234</sup> ‘Concluding Observations on the Seventh Periodic Report of Turkey’ (n 200) 8.

<sup>235</sup> ‘Shadow NGO Report on Turkey’s First Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (n 202) 56.

<sup>236</sup> *ibid.*

that “the first thing perpetrators [of violence against women] do when they are granted an amnesty or released on parole – that are frequently issued – is to injure or kill women.”<sup>237</sup> Women who are at risk are not notified when the perpetrators break out or are released from the prison.<sup>238</sup>

*Halime Kılıç v. Turkey* is of significant importance in this context as it showcases the common circumstances women encounter in their efforts to access justice.<sup>239</sup> The case concerns the murder of the applicant Halime Kılıç’s daughter Fatma Babatlı (F.B.) by her husband even though she had lodged four complaints and obtained three protection orders and injunctions. Firstly, ECtHR found that the protection orders were issued to the husband too late, and this abolished their effectiveness leaving F.B. alone without any protection.<sup>240</sup> Secondly, the prosecutor did not make the decision on custody immediately and rather waited until the police interrogation.<sup>241</sup> Hence, the Court decided that the protection orders were completely ineffective to provide protection to the victim.<sup>242</sup> Furthermore, despite the fact that the husband clearly constituted a danger to F.B.’s right to life, the domestic court refused to arrest him and released him without taking any precautions to protect F.B.’s life.<sup>243</sup> The Court emphasized that by not punishing the husband, the local authorities created an environment of impunity where he can repeatedly resort to violence without any consequence.<sup>244</sup> Moreover, it is observed by the Court that F.B. was not informed about the shelters or other institutions that can fulfil her needs.<sup>245</sup> Consequently, the Court held that authorities failed to meet the requirements of the Convention with respect to the right to life and violated the article 2 together with article 14.<sup>246</sup>

Turkish Law No. 6284 to Protect Family and Prevent Violence Against Women is in fact in line with international obligations stating that there should not be any evidence or documentation required to obtain protection orders.<sup>247</sup> However, according to the HRW report, there are many documented cases where judges or prosecutors require medical evidence or witness and notify the allegedly abusive husbands that they can testify before

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<sup>237</sup> *ibid* 57.

<sup>238</sup> *ibid*.

<sup>239</sup> *Kılıç v Turkey* [2000] European Court of Human Rights 22492/93.

<sup>240</sup> *ibid* 96.

<sup>241</sup> *ibid* 97.

<sup>242</sup> *ibid* 95.

<sup>243</sup> *ibid* 97.

<sup>244</sup> *ibid* 99.

<sup>245</sup> *ibid* 100.

<sup>246</sup> *ibid* 122.

<sup>247</sup> Turkish Law to Protect Family and Prevent Violence against Woman 2012 art 8(3).

issuing a protection order.<sup>248</sup> This situation is also mentioned in a report to the GREVIO Committee, emphasizing that even in the “serious and heavy” cases women have to provide evidence, and if they cannot show evidence, their requests for temporary debarment is either denied or the period of the debarment is shortened.<sup>249</sup> Moreover, the report observes that the period of injunctions has recently been decreased significantly from six months, which is the maximum period according to the law, to a maximum of three months. It is remarked in the report that often judges ask for a new application for the order with new evidence rather than extending the existing period, and this can cause serious problems for women and children who are under threat.<sup>250</sup>

As a consequence of the fact that often the authorities do not comply with their obligations to investigate, prosecute and punish perpetrators and provide remedies when they are notified of a violent incident, many women do not report a violation of their rights to the authorities. The likelihood of being turned away causes women to mistrust the state authorities. Women disclosed to HRW that they are hesitant to report acts of violence because “their experience, or that of acquaintances, has led them to believe that police will turn them away.”<sup>251</sup> However, this is not the only factor why violence against women is likely to be underreported. In the report of HRW, it is stated that women who are subjected to violence are generally controlled by their family members or husbands for preventing them to seek help. In addition to the lack of trust in law enforcement agencies and the economic dependence on perpetrators, fear of stigmatization is also a serious reason that keeps women away from resorting to authorities.<sup>252</sup>

In its General Recommendation on Women’s Access to Justice, the CEDAW Committee emphasizes that the access to justice for women is fundamental. Without the effective access to justice, the rights enshrined in CEDAW are impracticable. Leaving women defenceless, ineffective jurisdictional protection constitutes a violation of women’s human rights.<sup>253</sup> Hence, for women to be able to resort to authorities when necessary, it is imperative that the justice system is impartial and free from gender bias. This chapter ends

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<sup>248</sup> ‘He Loves You, He Beats You: Family Violence in Turkey and Access to Protection’ (n 221) 36.

<sup>249</sup> ‘Shadow NGO Report on Turkey’s First Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (n 202) 55.

<sup>250</sup> *ibid* 56.

<sup>251</sup> ‘He Loves You, He Beats You: Family Violence in Turkey and Access to Protection’ (n 221) 25.

<sup>252</sup> ‘Concluding Observations on the Seventh Periodic Report of Turkey’ (n 200) 8.

<sup>253</sup> CEDAW General Recommendation No. 33 on Women’s Access to Justice 2015 para 1.

with a statement of the former UN High Commissioner for Human Rights, Navi Pillay:

Explicit action is required to ensure that government officials, especially those working in the justice system, do not deliver decisions based on harmful stereotypes and undermine the human rights of women and girls. Rather, officials should be identifying and challenging such negative beliefs, to help create environments that more fully respect the human rights of women and girls and build a culture of equality.<sup>254</sup>

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<sup>254</sup> Navi Pillay, 'Equality and Justice in the Courtroom' (*Huffington Post*, 3 March 2014) <[https://www.huffingtonpost.com/A-View-from-the-United-Nations-/equality-and-justice-in-t\\_b\\_4892624.html](https://www.huffingtonpost.com/A-View-from-the-United-Nations-/equality-and-justice-in-t_b_4892624.html)> accessed 27 May 2018.

# 5 Barriers to Compliance and Recommendations

This chapter will provide an in-depth discussion on the barriers to the effective implementation of international commitments with respect to combating and preventing violence against women in Turkey. In an attempt to showcase the linkage between governmental policies and the implementation problem, a qualitative sociological analysis will be carried out. In accordance with this, national policy papers and official statements of state authorities, politicians and other public officials will be addressed. In this regard, it is essential to highlight that the statements which are cited in this paper are expressed by high-level representatives of state authorities and they are symptomatic of a widespread problem in Turkey. The chapter will conclude with recommendations to improve the existing situation.

## 5.1 Barriers to Compliance

Despite the significant developments in the field of gender equality and violence against women that are outlined in the previous chapter, women have been continuously subjected to violence with alarming frequency in Turkey. The deficient and/or wrong implementation of the international obligations plays a big role in this. The major reasons for non-compliance will be examined under three main headings below: Governmental Policies, Gendered Discourse of State Officials, Lack of a Gender-Sensitive Approach in the Justice System.

### 5.1.1 Governmental Policies

Many reforms have been implemented by the Turkish government since the beginning of the 2000s in order to provide better protection to women. Even though the goal of reducing violence against women is still a major subject of government's agenda, its approach and attitude towards gender equality have changed stiffly in the recent years. As Ertürk underscores, governmental policies focusing on preventing violence against women do not have a holistic approach that addresses patriarchy and gender inequality as part of the problem.<sup>255</sup> The Shadow NGO Report to the Committee on the Elimination of Discrimination Against Women in 2010 highlighted two main reasons for the inadequacy in the elimination of all forms of discrimination against

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<sup>255</sup> Ertürk, *Sınır Tanımayan Şiddet - Paradigma, Politika ve Pratikteki Yönleriyle Kadına Şiddet Olgusu* (n 20) 14.



women in Turkey. Firstly, it is emphasized that Turkey is lacking political commitment for the elimination of discrimination against women. Secondly, the report drew attention to the increasing conservatism and the conservative discourse and policies employed by the government.<sup>256</sup> Same concerns are reiterated in the 2012 and 2016 reports. In the following subchapters, these two reasons and their ties with the problem will be discussed. In this sense, the shifting focus of state policies in the context of violence against women and how this shift contributes to the ascending scale of violence against women will be demonstrated.

### **5.1.1.1 Shifting Focus of Combating Violence against Women**

In order to understand why the focus of combat has been significantly shifted, it is crucial to enlighten the changing political structure in Turkey since JDP first came to power in 2002. To begin with, during JDP's first term, there were many sources of pressure that JDP was facing. Firstly, as a consequence of the EU accession process, JDP was obliged to align Turkey's legal framework with the EU's body of law.<sup>257</sup> To ensure that their demands are met, feminists mobilized the EU actors and the pressure from the EU played a major role in implemented reforms within the field of gender equality. Moreover, there were powerful internal forces which were ensuring that secularism was sustained. Judiciary, for example, had been claiming responsibility for secularism for a long time. Just like the previous parties with pro-Islamist agendas, JDP as well faced a threat of dissolution in 2008 on the basis of the violation of the principle of separation of religion and the state.<sup>258</sup> Another factor that JDP had been limited by was the influence of Turkish armed-forces, which had forced four governments out before. JDP was aware of the fact that crossing the lines of secularism could pave the way for a coup.<sup>259</sup> As a consequence, all of these power structures were keeping JDP away from certain expressions and policies which could cause a reaction.

However, the power structures that are listed above and their abilities to control JDP have changed drastically. With the 2010 Constitutional Amendment, JDP managed to raise the executive's control over the judiciary.

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<sup>256</sup> 'Shadow NGO Report on Turkey's Sixth Periodic Report to the Committee on the Elimination of Discrimination against Women' (The Executive Committee for NGO Forum on CEDAW - Turkey and the Women's Platform on the Turkish Penal Code 2010).

<sup>257</sup> Korkut and Eslen-Ziya (n 133) 418.

<sup>258</sup> 'Q&A: Turkey's Ruling Party on Trial' *BBC News* (28 July 2008) <<http://news.bbc.co.uk/2/hi/europe/7490653.stm>> accessed 24 May 2018.

<sup>259</sup> Melinda Negrón-Gonzales, 'The Feminist Movement during the AKP Era in Turkey: Challenges and Opportunities' (2016) 52 *Middle Eastern Studies* 198, 208.

Invoking the necessity of reforming civil-military relations in order to join the EU, the military's powers were diluted. For example, the control of the National Security Council was severely reduced.<sup>260</sup> Furthermore, individuals who take a similar stance as the government towards women's issues are appointed to state organs, such as the Directorate General on the Status and the Problems of Women (KSSGM). Moreover, the EU accession process slowed down and thus it has become harder for feminists to mobilize allies and to take part in the policy-making process.

Negrón-Gonzales underscores that these reconfigurations enabled JDP to consolidate its power.<sup>261</sup> They have given the government the ability to incorporate its pro-family approach into the reforms regarding gender equality. This approach led women's issues to be examined under family issues. It acknowledges women not just as women, but first as wives and mothers who have duties and responsibilities in the family.<sup>262</sup> Hence, women's rights can be sacrificed for protecting the stability of the family. Divorce and women in the workforce, for instance, are considered to be threats for the traditional *healthy* family.<sup>263</sup> These policies have systematically been placed at the center of everyday life. As a result of this, the focus of the combat against violence has been distanced from the international norms of gender equality and human rights. Thus, already ratified international human rights conventions and in particular, conventions against gender discrimination have become obsolete.<sup>264</sup> A symbolic example of this shift is the change of name of the Ministry for Women and Family Affairs to the Ministry of Family and Social Policies in 2011.

A vivid example of the government's pro-family approach can be found in the May 2016 report of "The Parliament Research Commission Founded to Investigate the Factors Which Threaten the Unity of Family and Divorce Incidents and to Make Recommendations Concerning the Strengthening of the Institution of Family." This commission was established in the TGNA at the beginning of 2016, and it is publicly known as the Divorce Commission. The report, which has been criticized rigorously by the independent women's organizations, among others, provides the following suggestions: not to give any punishment to perpetrators of child abuse in case of a marriage between a perpetrator and a victim; to provide conciliation in divorce cases; to seek

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<sup>260</sup> Steven A Cook, 'The Weakening of Turkey's Military' *Council on Foreign Relations* (1 March 2010) <<https://www.cfr.org/expert-brief/weakening-turkeys-military>> accessed 24 May 2018.

<sup>261</sup> Negrón-Gonzales (n 259) 207.

<sup>262</sup> *ibid* 208.

<sup>263</sup> Negrón-Gonzales (n 259).

<sup>264</sup> Kaptan (n 174).

proof for restraining orders for more than fifteen days; to hold cases regarding family law in closed sessions (thus excluding women's organizations from participating in those cases) in order to protect "the unity of the family."

In addition to these developments, the democratization in Turkey has led the religious conservative section of the civil society to grow considerably. Many pro-family civil society organizations have been established. For instance, the Turkish Family Platform (TÜRAP), the first coalition with the mission to protect family values, was established in 2012 and it involves ninety civil society organizations. Bulletins from the Platform show that government officials visit its events and thus indicates JDP's close affiliation with these groups with pro-family agendas.<sup>265</sup>

As Kaptan states, one of the major causes of the exponential rise of violence against women in Turkey is the intensification of the deep-rooted gender unequal structure of Turkish society by governmental policies. These policies focus on family protection rather than acknowledging women as individuals and respecting their identity. These policies imprison women to traditional family roles and exclude them from the public sphere. While tagging women as the "guardians of the conservative society," they encourage women to be obedient and to avoid any action that can break up the marriage. For instance, numerous women have been killed because they wanted to get divorced.<sup>266</sup> Since women are expected to ensure the continuation of the family, their desire to divorce can be considered as a reason for violence. Hence, insisting on and institutionalizing this discourse based on the traditional gender roles deprives women of the full enjoyment of their rights and contributes to the soaring rates of violence against women and even justifies violence.<sup>267</sup>

### **5.1.1.2 Negative Attitudes Towards Women's Organizations**

This subchapter explains the views towards women's organizations in Turkey. To distinguish women's movements from feminist movements, Beckwith's distinction is applied:

Women's movements, then, can be defined as social movements where women are the major actors and leaders, who make gendered identity claims as the basis for the movement, and who organize explicitly as women. [...]

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<sup>265</sup> Negrón-Gonzales (n 259) 208.

<sup>266</sup> Şadiye Dönümcü, 'Dövülüyor, Yaralanıyor, Öldürülüyor' *Bianet* (25 June 2011) <<http://bianet.org/bianet/kadin/131014-dovuluyor-yaralaniyor-olduruluyor>> accessed 24 May 2018.

<sup>267</sup> Kaptan (n 174).

Feminist movements can be distinguished from the larger set of women's movements on the basis of their goals and aims. Specifically, feminist movements are a type of women's movement that challenges patriarchy, and contests political, social and other power arrangements of domination and subordination on the basis of gender.<sup>268</sup>

Even though women's organizations in Turkey have been isolated by the majority of the local society that is hostile towards feminism, they played a significant role and reached an important milestone in the establishment of state institutions focusing on violence against women and other problems caused by gender inequality. Some feminist campaigns paved the way for important legislative changes carried out by the JDP. Particularly, amendments to the Civil Code and the Penal Code in the first half of 2000's are the achievements of the women's organizations. These codes used to contain articles that were contradicting with gender equality. In addition, women's organizations were included in the drafting process of the Code 4320, the first regulation aiming to fight violence against women, as well as in its implementation. They had also been actively involved in the ratification of the Istanbul Convention and the enactment of the Law on the Protection of Family and Prevention of Violence against Women, shortly the Code 6284. The contributions of these organizations were crucial since they were providing a holistic approach based on the universal principles of gender equality as well as their knowledge on and experience of fighting violence against women.

As it is explained in the previous subchapter, the pressure from the EU played a significant role in JDP's intentions to comply with the global gender equality regime. Negrón-Gonzales underlines how JDP tried to comply with feminists' demands when there is a pressure from EU actors and institutions. Besides, JDP's pro-EU program was the impetus to implement the requirements of CEDAW: repealing discriminatory provisions in laws on divorce, property ownership and responsibilities in marriage and collaborating with women's organizations to work through the needs of working women. It was very important for JDP to satisfy Copenhagen Criteria – thus, legislative reforms were implemented in order to begin and maintain the formal accession negotiations with EU. CEDAW's Optional Protocol, which provides the right of individual petition to the CEDAW Committee, was signed. Therefore, the pressure from EU cultivated many improvements for the gender equality. Feminists' strategies of lobbying internal and external allies and getting their support played major roles in having their demands

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<sup>268</sup> Karen Beckwith, 'Mapping Strategic Engagements: Women's Movements and the State' (2007) 9 *International Feminist Journal of Politics* 312.

met even when those demands and policy changes were not approved by the public broadly.<sup>269</sup>

Women’s organizations made great efforts to ensure that these developments are embraced by the society. However, as Kaptan expresses, this kind of contributions, which can be considered as good examples of a dialogue between civil society organizations and the public, could no longer be made after 2012.<sup>270</sup> As a consequence of weakened EU accession process and JDP’s consolidation of power, experiences and opinions of women’s organizations have been disregarded and even devalued by various statements and barriers. They have been sued for what they write. They have been silenced at meetings they are attending. They have even been beaten by the security forces in front of a courthouse.<sup>271</sup> They have been displaced by some of the local governments, their activities have been terminated and some of their employees have been dismissed.<sup>272</sup> Furthermore, many statements by high-ranking government officials have been made to marginalize women’s organizations. The following concerns were raised in the Shadow NGO Report to the Committee on the Elimination of Discrimination against Women in 2010:

Dialogue between the State Ministry of Women’s and Family Affairs [...] and women’s NGOs remains limited and constrained. [...] The increasing conservatism in Turkey during the reporting period poses a threat to women’s ability to enjoy their rights and freedoms. The already acquired legal rights of women are subject to backlash and efforts that aim to eradicate existing discrimination are usually met with resistance. Even positive actions by the government have conservative undertones, and include loopholes that may infringe on existing rights and freedoms.<sup>273</sup>

These criticisms are echoed in the 2016 Shadow NGO Report to the CEDAW Committee. In the report, it is emphasized that women’s rights are moving backwards because of the “mushrooming” of the government-oriented non-governmental organizations and the civil society space for the women’s rights

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<sup>269</sup> Negrón-Gonzales (n 259) 200.

<sup>270</sup> Kaptan (n 174).

<sup>271</sup> Çiçek Tahaoğlu, ‘Nevin Yıldırım Davasında Kadınlara Adliye Önünde Darp’ *Bianet* (25 March 2015) <<http://bianet.org/bianet/kadin/163283-nevin-yildirim-davasinda-kadnlara-adliye-onunde-darp>> accessed 24 May 2018.

<sup>272</sup> “‘Yerel Yönetimler İle Kadın Örgütleri Arasında Bir İlişki Olması Yeterli Değil’” *Kaos GL* (29 November 2016) <<http://www.kaosgl.org/sayfa.php?id=22574>> accessed 24 May 2018.

<sup>273</sup> ‘Shadow NGO Report on Turkey’s Sixth Periodic Report to the Committee on the Elimination of Discrimination against Women’ (n 256).

defenders has been diminishing severely.<sup>274</sup> Some specific examples of these changes are: MoFSP tried to exclude rooted women's organizations from the international platforms such as Beijing+20.<sup>275</sup> Municipal governments stopped collaborating with these organizations and started working with those who are sympathetic to the government. Hülya Gülbahar, a lawyer and activist, stated that "there is a wish to bring the shelters or consultation centres of the municipalities and women's organizations under the control of the ministry. It seems to be an effort to eradicate independent management."<sup>276</sup> Similar concerns are also raised by various activists. While the rooted women's organizations are excluded, alternative women's organizations whose missions and visions are close to the government, GONGOs, are established. Sharing the government's pro-family approach, these new organizations are backed by the government. For instance, President Recep Tayyip Erdoğan's daughter Sümeyye Erdoğan Bayraktar serves as a Vice-President of the Women and Democracy Association (KADEM). Moreover, MoFSP tried to exclude independent women's organizations from the process of determining a candidate for GREVIO.<sup>277</sup> Concerns regarding the government-organized women's organizations were shared in the September 2017 Shadow NGO Report to the GREVIO Committee: "The state clearly gives preference to government-organized non-governmental organizations when it is a matter of working together, leaving the independent women's movement out of the loops of communication and collaboration."<sup>278</sup>

In addition to these, there has been a state of emergency in Turkey since 21 July 2016. By declaring a state of emergency, the Government expanded its capacity to issue decrees and limited parliament's supervisory functions. Having removed obstacles, the Government started passing decrees that violate human rights law. In such an environment, opposing opinions have

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<sup>274</sup> 'Shadow NGO Report on Turkey's Seventh Periodic Report to The Committee on The Elimination of Discrimination Against Women' (The Executive Committee for NGO Forum on CEDAW - Turkey 2016).

<sup>275</sup> Pınar Ilkcaracan, 'Pekin 20 ve Kadın Örgütleri' *Kazete* (3 August 2015) <[http://kazete.com.tr/makale/pekin-20-ve-kadin-orgutleri\\_1034](http://kazete.com.tr/makale/pekin-20-ve-kadin-orgutleri_1034)> accessed 24 May 2018.

<sup>276</sup> 'AKP Seeking to Create Own Women's Movement: Lawyer' *Hürriyet Daily News* (4 March 2013) <<http://www.hurriyetdailynews.com/akp-seeking-to-create-own-womens-movement-lawyer-42245>> accessed 24 May 2018.

<sup>277</sup> 'Feride Acar GREVIO Üyeliğine Seçildi' *Mor Çatı Kadın Sığınağı Vakfı* (11 May 2015) <<https://www.morcati.org.tr/tr/neler-yapiyoruz/basin-aciklamalari/314-feride-acar-grevio-uyeligine-secildi>> accessed 24 May 2018.

<sup>278</sup> 'Shadow NGO Report on Turkey's First Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence' (n 202).

been muted – some of the women’s organizations were shut down.<sup>279</sup> Concerns regarding the state of emergency are expressed in the 2016 report of the Committee on the Elimination of Discrimination against Women as well: The Committee highlighted that the measures taken by the government in this context “could negatively affect the overall framework for the enjoyment of women’s human rights.”<sup>280</sup>

## 5.1.2 Gendered Discourse of State Officials

The state policies are also consolidated by the high-level government officials’ sexist statements. Below, these statements will be analysed and their contribution to the status quo will be discussed.

First of all, many high-ranking officials adopt an approach which emphasizes the biological differences between men and women. Basing their arguments on these differences, they mainly claim that gender equality is not possible: The differences are a result of ‘nature.’ Some statements that are examples of this discourse are: “Equality between men and women is against nature” by President Recep Tayyip Erdoğan,<sup>281</sup> “She [the woman] will not laugh in public. She will not be inviting in her attitudes and will protect her chasteness” by Deputy Prime Minister Bülent Arınç;<sup>282</sup> “Turkish ladies are ornaments of their houses, they are the honour of their men, the western women are unfortunately oppressed” by Minister of National Defense, Vecdi Gönül.<sup>283</sup> All of these statements are voiced by individuals who have the ability to share their messages with public and influence people effortlessly.<sup>284</sup> Their views are based on the ‘nature’ of the sexes, and basically, claim that women and men are different and they have to behave in accordance with their nature. They all carry a message which identifies where

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<sup>279</sup> Çiçek Tahaoğlu, ‘Kadın Dernekleri Kapatıldı, Hangi Çalışmalar Yarıda Kaldı?’ *Bianet* (16 November 2016) <<https://m.bianet.org/bianet/toplumsal-cinsiyet/180798-kadin-dernekleri-kapatildi-hangi-calismalar-yarida-kaldi>> accessed 24 May 2018.

<sup>280</sup> ‘Concluding Observations on the Seventh Periodic Report of Turkey’ (n 200) 2.

<sup>281</sup> Lizzie Dearden, ‘Turkish President: “Equality between Men and Women Is against Nature”’ *Independent* (24 November 2014) <<http://www.independent.co.uk/news/world/europe/turkish-president-equality-between-men-and-women-is-against-nature-9879993.html>> accessed 24 May 2018.

<sup>282</sup> Lizzie Dearden, ‘“Women Should Not Laugh in Public,” Says Turkey’s Deputy Prime Minister in Morality Speech’ *Independent* (29 July 2014) <<http://www.independent.co.uk/news/world/europe/women-should-not-laugh-in-public-says-turkeys-deputy-prime-minister-in-morality-speech-9635526.html>> accessed 24 May 2018.

<sup>283</sup> ‘Bir Ev Süsü: Türk Kadını!’ *Radikal* (27 March 2005) <<http://www.radikal.com.tr/turkiye/bir-ev-susu-turk-kadini-742145/>> accessed 24 May 2018.

<sup>284</sup> Kaptan (n 174).

women belong to, what they can do and what they cannot. Moreover, expressing these views underestimates the consequences of gender inequality and accepts them as normal and expected results of natural differences. Hence, these expressions reproduce the unequal gender structure of the society and strengthen male dominance.

Furthermore, many statements have been made which view the motherhood as the only career path for women and discourage them from participating in the workforce. Some examples of this category are: “Unemployment is high because women seek jobs” by the Minister of Finance, Mehmet Şimşek;<sup>285</sup> “Mothers should not put another career other than motherhood at the center of their lives” by the Minister of Health, Mehmet Müezzinoğlu;<sup>286</sup> “I absolutely do not accept making [a woman’s] business life an alternative to motherhood. Rejecting motherhood means giving up on humanity. I would recommend having at least three children” by President Erdoğan.<sup>287</sup> Clearly, these statements identify women as creatures that belong to the family and that are responsible solely for giving birth and raising children. While normalizing inequality, they also render women dependent on men culturally, economically and socially by excluding them from the workplace and the public sphere.<sup>288</sup> Again, this approach is not limited to statements – it is also supported by legislation. With the aim of raising the fertility rates, the Action Plan for the Protection of Family and Dynamic Population Structure, or publicly known as ‘Family Package’, was proposed as a draft law by MoFSP and accepted by the Grand National Assembly of Turkey in 2015.<sup>289</sup> Encouraging women to have three children, this package provides women with part-time employment option until their children reach the schooling age. This means that a woman who has three children may be away from the workforce for 16.5 years (6 years not working and for the rest, working part-time). According to Gülay Toksöz, this practice will result in employers preferring men to employ and as a consequence, a decrease in the female work

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<sup>285</sup> ‘Şimşek: İşsizlik Neden Artıyor Biliyor Musunuz?’ *NTV* (18 February 2009) <<https://www.ntv.com.tr/ekonomi/simsek-issizlik-neden-artiyor-biliyor-musunuz,rVvk51e0aokaqiNFUtUANpA>> accessed 24 May 2018.

<sup>286</sup> ‘Mothers’ Only Career Should Be Motherhood, Turkish Health Minister Says’ *Hürriyet Daily News* (1 January 2015) <<http://www.hurriyetdailynews.com/mothers-only-career-should-be-motherhood-turkish-health-minister-says-76360>> accessed 24 May 2018.

<sup>287</sup> Sara Malm, ‘President Erdoğan Urges Turkish Women to Have at Least Three Children and Tells Them Their Lives Are “incomplete” without Babies’ *MailOnline* (6 June 2016) <<http://www.dailymail.co.uk/news/article-3627087/President-Erdogan-urges-Turkish-women-three-children-tells-lives-incomplete-without-babies.html>> accessed 24 May 2018.

<sup>288</sup> Kaptan (n 174).

<sup>289</sup> “‘Aile Paketi’ Kabul Edildi’ *TRT Haber* (26 March 2015) <<http://www.trthaber.com/haber/gundem/aile-paketi-kabul-edildi-175133.html>> accessed 24 May 2018.



participation rate.<sup>290</sup> As Kaptan emphasizes, there have been other recent regulations supporting the flexible employment for women which cause the rate of women participating in a secure workforce decrease. However, no measures have been taken regarding the insufficiency of kindergartens despite the fact that it is one of the biggest obstacles to the participation of women in the labour market.<sup>291</sup>

In addition to the policies which aggrandize motherhood, the state has also been trying to ban abortion. An enactment of the prohibition of abortion was attempted in 2012 but withdrawn after a severe reaction of the women's movement and the extensive pressure from EU. The bill was publicly criticized by the CoE.<sup>292</sup> On the other hand, even though according to the Turkish legislation, abortion within a certain medical period is allowed, other obstacles have been put in place such as reducing the number of hospitals that carry out abortions, narrowing the circumstances in which women can have an abortion, converting the free service into a paid one,<sup>293</sup> etc. The report of the Purple Roof Women's Shelter Foundation confirms these de facto bans that limit access to abortion.<sup>294</sup> These policies are reflected in the various statements of officials. "I am a prime minister who is against Caesarean births. I consider abortion as murder," by the Prime Minister Erdoğan;<sup>295</sup> "A mother who considered abortion should kill herself instead and not let the child bear the brunt of her mistake" by the Mayor of Ankara, Melih Gökçek;<sup>296</sup> "The rapist is more innocent than a rape victim who chooses to have an abortion" by Ayhan Sefer Üstün, Chairperson of the National

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<sup>290</sup> Gülay Toksöz, 'Yeni Aile Nüfus Yasasının Amacı Doğurganlığı Artırmak' *Bianet* (6 February 2015) <<https://bianet.org/bianet/toplum/162081-yeni-aile-nufus-yasasinin-amaci-dogurganligi-artirmak>> accessed 24 May 2018.

<sup>291</sup> Kaptan (n 174).

<sup>292</sup> Cansu Çamlıbel, 'Ban Will Not Lead to Fewer Abortions: Council of Europe' *Hürriyet Daily News* (11 June 2012) <<http://www.hurriyetdailynews.com/ban-will-not-lead-to-fewer-abortions-council-of-europe-22834>> accessed 24 May 2018.

<sup>293</sup> Constanze Letsch, 'Istanbul Hospitals Refuse Abortions as Government's Attitude Hardens' *The Guardian* (4 February 2015) <<https://www.theguardian.com/world/2015/feb/04/istanbul-hospitals-refuse-abortions-government-attitude>> accessed 24 May 2018.

<sup>294</sup> 'Kürtaj Yapıyor Musunuz? "Hayır Yapmıyoruz!"' *Mor Çatı Kadın Sığınağı Vakfı* (3 February 2015) <<https://www.morcati.org.tr/tr/ana-sayfa/290-kurtaj-yapiyor-musunuz-hayir-yapmiyoruz>> accessed 24 May 2018.

<sup>295</sup> 'Abortion Is "murder," Says Turkey's PM' *Hürriyet Daily News* (26 May 2012) <<http://www.hurriyetdailynews.com/abortion-is-murder-says-turkeys-pm-21665>> accessed 24 May 2018.

<sup>296</sup> Constanze Letsch, 'Turkish Women Join Pro-Choice Rally as Fears Grow of Abortion Ban' *The Guardian* (3 June 2012) <<https://www.theguardian.com/world/2012/jun/03/turkish-women-rally-abortion-ban>> accessed 24 May 2018.

Assembly's Commission on Human Rights and JDP legislator.<sup>297</sup> The above-mentioned are some of the appalling examples. The policy against abortion is another sign of the government's intention to take control of the female body.

Another dimension of gendered discourse includes statements minimising the seriousness of violence against women. "The media exaggerates the situation. Violence against women is just about selective perception" by the Minister of Family and Social Policies Fatma Şahin,<sup>298</sup> "These problems should be settled in the family. If you consider forced sexual intercourse in the marriage as a crime we cannot tackle this. If this is counted as a criminal offence, even a man who satisfies his sexual lust on his sleeping wife can be considered as a rapist. The woman can run to the court the next morning arguing that her husband did not take her consent" by Sulhi Dönmezer, who was the chairman of the Turkish Criminal Code Drafting Commission;<sup>299</sup> "They should have taken care of their daughter"<sup>300</sup> by Celalettin Cerrah, Chief of Police, on the murder of Münevver Karabulut, who was deliberately and savagely killed. The above-mentioned are some examples of this outrageous discourse.

The first feminist protest against violence against women in Turkey was held on 17 May 1987 in Istanbul after a Judge, Mustafa Durmuş, refused the application of a woman to divorce her husband because of the systematic violence she had been exposed to and stated in the ruling: "You should never leave a women's back without a stick and her womb without a colt."<sup>301</sup> This statement, which is a Turkish proverb, is only one of the manifestations of the attitude towards women in Turkey. However, as Kaptan highlights, it is a good example since it symbolizes the relationship between violence against women and the male-dominated cultural structure. More importantly, it shows how different effects these statements may have if they are voiced by people who have the ability to manipulate the values of the society than a

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<sup>297</sup> Jeanne Zaino, 'How a Young Woman's Murder Has Become a Rallying Cry for Change Across Turkey' *Huffington Post* (18 February 2015) <[https://www.huffingtonpost.com/jeanne-zaino/how-a-young-womans-murder\\_b\\_6694104.html](https://www.huffingtonpost.com/jeanne-zaino/how-a-young-womans-murder_b_6694104.html)> accessed 24 May 2018.

<sup>298</sup> 'Fatma Şahin: "Kadına Yönelik Şiddet Algıda Seçicilik"' *CNN Türk* (18 May 2013) <<https://www.cnnturk.com/2013/turkiye/05/18/fatma.sahin.kadina.yonelik.siddet.algida.seccilik/708432.0/index.html>> accessed 24 May 2018.

<sup>299</sup> 'Evlilikte Irza Geçmek Suç Sayılmasın!' *Internet Haber* (21 November 2003) <<http://www.internethaber.com/evlilikte-irza-gecmek-suc-sayilmasin-1047190h.htm>> accessed 24 May 2018.

<sup>300</sup> 'ÇHD'den Cerrah'a Suç Duyurusu' *NTV* (20 May 2009) <[https://www.ntv.com.tr/turkiye/chdden-cerraha-suc-duyurusu,kM\\_kNRv8hkSdaGJpwS0NIg](https://www.ntv.com.tr/turkiye/chdden-cerraha-suc-duyurusu,kM_kNRv8hkSdaGJpwS0NIg)> accessed 24 May 2018.

<sup>301</sup> Emel Armutçu, 'Türkiye'de Feminist Hareket' *Hürriyet Kelebek* (13 May 2007) <<http://www.hurriyet.com.tr/kelebek/turkiyede-feminist-hareket-6505867>> accessed 24 May 2018.

regular person who does not have such power. The already prevailing patriarchal public perception is extremely weak against such manipulations of individuals or institutions with the capacity to influence the public.<sup>302</sup> Their statements normalize the gender inequality and make it stronger. Furthermore, promoting the conservative gender norms, they label obedience as a feature that women have to possess and tacitly provide men with the right to 'react' when women do not fulfil their 'obligations'.

### **5.1.3 Lack of a Gender-Sensitive Approach in the Justice System**

Women often encounter obstacles and restrictions in their efforts to access justice in Turkey. The major problems and dominant understandings in the justice system that aggravates the problem will be discussed below.

First of all, many judges, in fact, carry a gender bias and judicial stereotyping is very common especially in the cases concerning violence against women.<sup>303</sup> Asserting some excuses to shift the blame onto victims is a very common escape route for the perpetrators of violence against women in Turkey. Aiming to justify the violence, with these excuses, perpetrators try to lay emphasis on the ways women do not comply with the traditional gender roles and claim that this non-compliance is a sign of their consents. Wearing 'provocative' clothes, being outside late and having sexual intercourse with other men are examples of some of the more common reasonings. Unfortunately, in Turkey, perpetrators are not the only ones who resort to this method. The traditional gender stereotypes are still dominant in the justice system and assumptions about female promiscuity are often used to reduce punishments for men who engage in violence. There are many examples of cases in which the judges first analyse what is appropriate for women and what is not, then determine how the woman in question acted, and decide on the punishment accordingly. There are two serious outcomes of this victim-blaming approach: First, perpetrators are not punished justly. Second, with these decisions, judges legitimize the acts of violence.

In many of the violence against women cases, especially in the ones where the perpetrators claim that they committed the crime in order to protect their

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<sup>302</sup> Kaptan (n 174).

<sup>303</sup> Judicial stereotyping is defined as 'the practice of judges ascribing to an individual specific attributes, characteristics or roles by reason only of her or his membership in a particular social group (e.g. women).' See: Simone Cusack, 'Eliminating Judicial Stereotyping – Equal Access for Justice to Women in Gender-Based Violence Cases' (2014) Final paper submitted to the United Nations Office of the High Commissioner for Human Rights.

honour, they either get very lenient punishments, or their sentences are reduced referring to the article 29 of the Penal Code. In order to clarify this issue, first, it is necessary to explain what the concept of ‘unjust provocation reduction’ is according to the Turkish legal system. Article 29 of the Penal Code reads:

Any person who commits an offence in a state of anger or severe distress caused by an unjust act shall be sentenced to a penalty of imprisonment for a term of eighteen to twenty-four years where the offence committed requires a penalty of aggravated life imprisonment and to a penalty of imprisonment for a term of twelve to eighteen years where the offence committed requires a penalty of life imprisonment. Otherwise, the penalty to be imposed shall be reduced by one-quarter to three-quarters.<sup>304</sup>

Therefore, there should be an unjust act in order for a mitigation for unjust provocation to be granted. However, there have been many cases in which punishments given to perpetrators of violence against women have been reduced by reference to the article 29. In these cases, men defend their acts by providing the Court with some reasons for their violent acts such as “she offended my manhood, she cheated on me, she did not listen to what I said, she wore tights/mini skirts, etc.”<sup>305</sup> A striking example of this is a man who killed his wife in November 2014 saying “I used my right to kill. I’ve recently learned about the existence of this right.”<sup>306</sup> The major problem with these defences is that the perpetrators are aware of the fact that their statements would in fact work. These are not only individual excuses, as they are supported by the political and legal system as a whole. The gendered discourse of the politicians provides men with the understanding that if women do not behave the way they are supposed to, men can engage in violence, and can even get away with their acts. This is indeed not a personal perspective or an interpretation of the situation: Going through news reports regarding violence against women in Turkey shows that majority of the perpetrators choose to defend themselves with proposing similar reasons and aim to benefit from the scope of article 29. Unfortunately, most of the time, this trick of taking advantage of this article works. Courts apply this article to many violence against women cases and men get extricated from long-term punishments.

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<sup>304</sup> Turkish Penal Code 2004 art 29.

<sup>305</sup> “‘Haksız Tahrik’ ve ‘İyi Hal’ İndirimi Kadın Cinayetlerini Arttırıyor’ *Milliyet* (16 November 2015) <<http://www.milliyet.com.tr/haksiz-tahrik-ve-iyi-hal-indirimi-kadin-di-yarbakir-yerelhaber-1066438/>> accessed 24 May 2018.

<sup>306</sup> “‘Öldürme Hakkımı Kullandım’ Demişti...” *Milliyet* (26 January 2015) <<http://www.milliyet.com.tr/-oldurme-hakkimi-kullandim-gundem-2004149/>> accessed 24 May 2018.

As it is quoted above, normally, in order for the article 29 to be applied, there should be an unjust act which causes a perpetrator to commit a crime in question in a state of anger or severe distress. However, there are a lot of cases in which Courts decide to apply article 29 because women want to get divorced/they want the guardianship of their children/they do not want to engage in sexual intercourse/they wear things that men do not approve of, etc.<sup>307</sup> For instance, a man who killed his wife and argued that she was cheating on him, benefiting from the article 29 and getting time off for good behaviour, was sentenced to imprisonment for 15 years instead of a life imprisonment.<sup>308</sup> Another example is a man who killed his wife because she went shopping without taking his approval. He was sentenced to 24 years instead of aggravated life imprisonment.<sup>309</sup> Further, a man killed his wife because she wore jeans and asked a male stranger what time it was in a “flirtatious way” was sentenced to 20 years instead of aggravated life imprisonment.<sup>310</sup> These examples can be multiplied but the above-mentioned is enough to demonstrate how easily the article 29 of the Penal Code is applied to the cases concerning violence against women.

The fact that Courts perceive these excuses as ‘unjust acts’ means that they cooperate with the unequal order based on stereotyped gender roles. While the statements of the politicians and high-ranking government officials play an important role in shaping men’s attitudes towards violence against women and provide them with excuses and strategies to get away with their crimes, this discourse is also supported by the judiciary’s tendency to apply article 29 and provide perpetrators with reduced sentences for good behaviour. All of these factors normalize violence by reproducing gender stereotypes and consolidating the discriminatory structure of the society. At the same time, they are good examples of sexism in the Turkish judicial system as well as many other institutions in Turkey.

A similar argument that serves as a ground for mitigation is a concept known in Turkey as ‘love murders’. For instance, a man who killed a woman that

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<sup>307</sup> Meriç Eyüboğlu, ‘Erkek Vuruyor, Devlet Haksız Tahrik Diyor’ *Bianet* (7 February 2009) <<http://bianet.org/bianet/biamag/112352-erkek-vuruyor-devlet-haksiz-tahrik-diyor>> accessed 24 May 2018.

<sup>308</sup> ‘Müebbet Hapis İstenen Kocaya “haksız Tahrik” İndirimi: 15 Yıl Hapis’ *Cumhuriyet* (10 August 2017) <[http://www.cumhuriyet.com.tr/haber/turkiye/800178/Muebbet\\_hapis\\_istenen\\_kocaya\\_haksiz\\_tahrik\\_indirimi\\_15\\_yil\\_hapis.html](http://www.cumhuriyet.com.tr/haber/turkiye/800178/Muebbet_hapis_istenen_kocaya_haksiz_tahrik_indirimi_15_yil_hapis.html)> accessed 24 May 2018.

<sup>309</sup> Kemal Arduç, ‘35 Bıçak Darbesine “haksız Tahrik” İndirimi’ *Sabah* (17 November 2006) <<http://arsiv.sabah.com.tr/2006/11/17/gun101.html>> accessed 24 May 2018.

<sup>310</sup> Ali Eyce, ‘Mahkemedен Cilveli İndirim’ *Sabah* (8 November 2007) <<http://www.internethaber.com/mahkemedен-cilveli-indirim-112601h.htm>> accessed 24 May 2018.

refused his proposal by stabbing her several times argued in Court that the reason for his act was “too much love.”<sup>311</sup> The Court did not consider the crime to be a premeditated murder and decided on life imprisonment instead of aggravated life imprisonment. The reasoning of the Court was that the murder was committed as a consequence of “extreme love and the fury it created.” The decision was approved unanimously by the Supreme Court of Appeals.<sup>312</sup> In addition to this, “the victim’s consent” is also often used in sexual assault cases for lowering punishments. One of the most striking and devastating examples of this is a famous case known as “N.Ç. Case.” In 2002, when she was 13 years old, N.Ç. was raped by at least 26 men. The Court decided that the acts were carried out with the consent of N.Ç. thus the punishments should be the minimum limit prescribed by law for statutory rape.<sup>313</sup>

Edwards states that the tendency of the competent actors not to intervene is, in fact, a consequence of “private attitudes regarding appropriate sex roles, appropriate conduct and family ideologies.”<sup>314</sup> When women seek justice, individuals who are responsible for dealing with their complaints see them through the lens of traditional gender roles. Gender bias of judges, prosecutors and other law enforcement officials damages the impartiality and integrity of the justice system while revictimizing women.<sup>315</sup> It creates an environment where victims’ claims are undermined and questioned while the perpetrators’ arguments are promoted. These circumstances result in serious challenges for women’s access to justice.

## 5.2 Recommendations

In light of all the facts mentioned above, it is clear that Turkey fails to exercise due diligence to combat and prevent violence against women. Below, recommendations will be suggested to improve the existing situation and to overcome the problems analysed in the previous parts of this study.

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<sup>311</sup> ‘Cinayete “Aşırı Sevgi” İndirimi’ *NTV* (11 September 2015) <<https://www.ntv.com.tr/turkiye/cinayete-asiri-sevgi-indirimi,AYg7g94Uf0Gs2mhKhzkJ-A>> accessed 24 May 2018.

<sup>312</sup> Gökçer Tahincioğlu, “Tutkulu Sevgi” Skandalına Yargıtay Onayı’ *Milliyet* (8 April 2018) <<http://www.milliyet.com.tr/yazarlar/gokcer-tahincioglu/tutkulu-sevgi-skandalina-2643355/>> accessed 24 May 2018.

<sup>313</sup> Rachael Curtis, ‘The Case of N.Ç.: A Turkish Child’s Presumed Consent to Prostitution’ *Human Rights Brief* (2 October 2012) <<http://hrbrief.org/2012/02/the-case-of-n-c-a-turkish-child%E2%80%99s-presumed-consent-to-prostitution/>> accessed 24 May 2018.

<sup>314</sup> Susan SM Edwards, *Policing ‘Domestic’ Violence: Women, the Law and the State* (SAGE Publications 1989).

<sup>315</sup> CEDAW General Recommendation No. 33 on Women’s Access to Justice (n 253).

First of all, the importance of the obligation to collect data should be acknowledged and fulfilled thoroughly. The data should reflect the reality and show the status quo including the effectivity and the impact of the measures taken to combat violence against women. Moreover, it should incorporate the criteria on the mechanisms that are put in place for combating violence against women and the feedback on how well these mechanisms function and how they affect the situation of women.<sup>316</sup> Detailed, accurate and reliable statistics on violence against women and the evaluation of the measures taken should be collected, regularly updated and made available to the public. However, the privacy and security of the victim should be carefully taken into consideration when publishing these records. As it is highlighted in the 2017 Shadow NGO Report to the GREVIO Committee, the collected data should include information about “the fundamental reasons for these offences, their effects, the ratio of convictions, measures taken and their effectiveness.”<sup>317</sup>

Secondly, gender inequality should be acknowledged as the root cause of the violence against women. This perspective should be incorporated into the policies to combat violence against women, and the importance of changing the traditional gender roles and stereotypes in combating and preventing violence against women should be conceded. It should be recognized that invoking gender stereotypes in order to justify acts of violence constitutes discrimination against women, perpetuates women’s inferior position in the family and society and prevents them from enjoying the rights that they are entitled to ‘on paper.’ Women should be seen as autonomous individuals, not family caregivers. Religious and cultural values that are asserted for the maintenance of the pro-family policies should be questioned and if they are contradictory with principles of gender equality they must be abandoned. In line with these, a holistic approach to the problem should be embraced by the state in collaboration with women’s organizations to eradicate gender stereotypes. Furthermore, the politicians and the public officials should stop making discriminatory statements that reproduce the gender stereotypes and exacerbate the unequal power structure of the society. It should be ensured that the statements of individuals who have the capacity to influence large groups of people are gender-sensitive and free from any reference to traditional values that justify the violations of human rights. The CEDAW Committee indicated that Turkey should:

dismantle the concept that the honour and prestige of a man or the family are intrinsically associated with the conduct or presumed conduct of women

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<sup>316</sup> ‘Shadow NGO Report on Turkey’s First Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (n 202) 24.

<sup>317</sup> *ibid.*

related to them, which is based on patriarchal attitudes and serves to control women and curb their personal autonomy and is incompatible with the Convention.<sup>318</sup>

Experience and knowledge of the independent women's organizations on combating violence against women should be recognized and the government should ensure that these organizations can participate in policy making, legislative and executive processes to combat and prevent violence against women. As the Committee on the Elimination of Discrimination against Women stated in its 2016 report, "an enabling and conducive environment for the establishment and active involvement of women's and human rights organizations in promoting the implementation of the Convention [CEDAW] and all other international human rights instruments" should be guaranteed by the state.<sup>319</sup> In addition to these, women's empowerment should be promoted and supported by the state. As Ertürk emphasizes, this perspective should embrace "the progressive realization of the full range of rights – economic, social, cultural, civil and political."<sup>320</sup> The purpose of the empowerment discourse is ensuring that women comprehend that subordination and violence are neither destiny nor a result of their 'nature,' and that they are autonomous individuals who can resist oppression.<sup>321</sup> The role of women's organizations in providing the necessary environment to ensure that women realize their full range of human rights should not be neglected.<sup>322</sup>

Empowerment of women should be complemented with an approach based on "cultural negotiation." This approach aims to confront the root causes of violence against women and to raise awareness of the oppressive nature of certain practices that are justified by culture.<sup>323</sup> Within this framework, through campaigns and media, discriminatory values, institutions and power structures shall be transformed. Moreover, "hegemonic interpretations of culture should be challenged" as Ertürk indicates.<sup>324</sup> Here Ertürk means that culture is not a rigid, homogenous entity and those who claim the right to speak on behalf of culture or religion should be questioned and their legitimacy should be disputed.<sup>325</sup>

Moreover, women who are victims or under threat of violence should be able to access a justice system that fulfils their needs, provide adequate protection

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<sup>318</sup> 'Concluding Observations on the Seventh Periodic Report of Turkey' (n 200) 10.

<sup>319</sup> *ibid* 3.

<sup>320</sup> Ertürk, 'The Due Diligence Standard as a Tool for the Elimination of Violence against Women' (n 114) para 79.

<sup>321</sup> *ibid* 80.

<sup>322</sup> *ibid* 81.

<sup>323</sup> *ibid* 85.

<sup>324</sup> *ibid*.

<sup>325</sup> *ibid*.



and take the necessary measures promptly to prevent the occurrence of violence. The state should accelerate efforts to ensure that the law enforcement agencies and the actors of the justice system are free from gender-bias, sensitive towards the issue of gender-based discrimination and approach women who resort to them with a non-blaming attitude. A gender-sensitive perspective should be incorporated into all aspects of the justice system.<sup>326</sup> Accordingly, reporting acts of violence should be encouraged through awareness-raising activities and by increasing the number of female judges and law enforcement officials.<sup>327</sup> Ertürk highlights the potential of judges and prosecutors to challenge and disempower the unequal power structure through a determined attitude:

Interventions at this level may have both consequential effects in that condemnations of patriarchy can lead to changes in socio-cultural norms, as well as intrinsic effects in that prosecutors or judges can be considered to be the “mouthpieces” of society, and strong statements condemning violence against women made on behalf of society through the judiciary or prosecutorial services will make that society less patriarchal.<sup>328</sup>

Not only prosecutors’ and judges’, but the high-level state officials’ potential to challenge socio-cultural norms should be optimized. The state should take an explicit stand against violence against women and inform the public well that it is a serious crime that will be prosecuted and those responsible for them will be punished. In line with this, it should be acknowledged that mitigating the sentences of perpetrators of violence on the ground of unjust provocation and judicial stereotyping damages the impartiality of the justice system as well as diminishes the deterrent effect. Additionally, this approach should be supported by ensuring that the judiciary is independent. Thus, decision making should not be influenced by traditional gender norms and should be in compliance with the international commitments. In order to achieve this objective, all of the actors of the justice system and the law enforcement officials should be trained in legal arrangements in the context of violence against women. To ensure the effectiveness of the training, on one hand, collaboration with women’s organizations is essential. On the other hand, a monitoring mechanism should be established to assess the content and the impact of the training.

Considering that the law enforcement agencies are often the first places that women resort to after being exposed to violence, these agencies should be

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<sup>326</sup> ‘Concluding Observations on the Seventh Periodic Report of Turkey’ (n 200) 6.

<sup>327</sup> *ibid* 9.

<sup>328</sup> Ertürk, ‘The Due Diligence Standard as a Tool for the Elimination of Violence against Women’ (n 114) para 90.

reorganized to ensure that the staff is gender-sensitive, and ideally consisting of women who are trained and experienced in working with the issue of violence against women.<sup>329</sup> In order to ensure that protection measures are effective, an attentive risk assessment should be carried out before denying protection or restraining orders requests, and the decisions regarding the protection period should be in accordance with the risk analysis. Additionally, when a violation of a protection or restraining order occurs, a trial should be carried out immediately.<sup>330</sup> Last but not least, protection orders should be monitored studiously, and their violation should be sanctioned. Law enforcement officials' and judiciary personnel's actions should be subjected to investigations and they should be held accountable if they fail to register complaints and issue or enforce protection orders.<sup>331</sup>

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<sup>329</sup> 'Shadow NGO Report on Turkey's First Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence' (n 202) 55.

<sup>330</sup> *ibid* 57.

<sup>331</sup> 'Concluding Observations on the Seventh Periodic Report of Turkey' (n 200) 9.

## 6 Concluding Analysis

Violence against women is one of the manifestations of gender inequality that a significant number of women face all around the world. Acknowledging the seriousness of this problem, the international community decided to take collective action through the adoption of international legal instruments. However, looking at the past, and the status quo, it is clear that these instruments have not been sufficiently effective. According to Bayefsky, state parties believe that “there are not serious consequences associated with ratification.”<sup>332</sup> Ulrich notes that the problem of implementation is magnified particularly in treaties addressing the rights of women.<sup>333</sup> In line with this, some of the states, Turkey being one of them, that have ratified the instruments aimed at combating violence against women do not demonstrate their commitment through subsequent action. In fact, often, their actions and statements are counter-productive – defeating the purpose of the instruments. This thesis has attempted to shed light on the complex correlation between the ratification of the instruments and the compliance with them – identifying the reasons for the deficient and/or incorrect implementation of international obligations in the context of violence against women in Turkey. It has found that the growth of a conservative political ideology and the justification of the violations of women’s human rights in the name of culture, societal values and religion serve as a major obstacle to the implementation of the international commitments rendering Turkey in violation of the binding treaties that it has ratified. The thesis has concluded that the establishment of an understanding which confronts the actual causes of violence against women is critical to overcome these impediments and to start respecting women’s human rights.

Violence against women is a result of “historically unequal power relations between men and women, which have led to domination over and discrimination against women by men [...]”<sup>334</sup> However, this is not reflected in the recent policies and discourse concerning violence against women in Turkey. Policies focusing on ‘the family unity’ rather than gender equality are ever-increasingly employed, and often culture, religion, traditions are invoked for restricting women’s enjoyment of their human rights. Turkish government’s approach to the problem lacks the will to achieve gender

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<sup>332</sup> Anne F Bayefsky, *The UN Human Rights Treaty System: Universality at the Crossroads* (Transnational Publishers 2001) 7.

<sup>333</sup> Jennifer L Ulrich, ‘Confronting Gender-Based Violence with International Instruments: Is a Solution to the Pandemic within Reach?’ (2000) 7 *Indiana Journal of Global Legal Studies* 629, 638.

<sup>334</sup> Declaration on the Elimination of Violence against Women (n 65) Preamble.

equality through challenging traditional gender stereotypes and transforming the cultural values which exacerbate violence against women. The government does not acknowledge these values as reproducing gender inequality, instead, they are incorporated in governmental policies and promoted through statements of high-level representatives of state authorities. As a consequence of overlooking the root causes of violence, acts of violence are often ignored, necessary steps are not taken, and protection is not provided. While the government develops various policies for eliminating violence against women, it tries to solve an inequality problem with an ineffective and counter-productive method: strengthening the family. Such understanding makes the actual causes of the problem invisible and dignifies family at the expense of women's rights. Furthermore, it aggrandizes discrimination against women in the society and provides justification for the acts of violence. Unfortunately, it hampers progress in the field of gender equality and makes it impossible to eliminate violence against women. Increasing rates of violence against women showcase that this approach is beyond being inconvenient: It is fundamentally wrong.

Therefore, entitling rights alone is not sufficient to achieve gender equality thus to eradicate violence against women. It is essential to establish a gender-sensitive perspective which paves the way for these rights to become effectively applicable. To do so, a transformation of the approaches of policy makers, actors of the justice system and other relevant actors is essential. It is important to remember that as much as they can contribute to the reproduction of the traditional gender norms, the government policies can also play a major role in defeating them. In order to achieve social transformation, the importance of joint action should be acknowledged. The collaboration with women's organizations should be intensified especially in the policy-making process. Merry states that the impact of CEDAW "depends on its cultural legitimacy and its embodiment in local cultures and legal consciousness."<sup>335</sup> This applies to the Istanbul Convention and other relevant instruments as well. Thus, to ensure the effectiveness of international commitments, they should first be internalized by actors responsible for their enforcement. In order to achieve this, showcasing the linkage between gender inequality and violence against women is essential. Women's organizations have a great potential to ensure that women are aware of this linkage and their rights. They should mobilize allies and endeavour to get support from society. Challenging discriminatory aspects of culture is not easy. As Ertürk comments, it "inherently questions, delegitimizes, destabilizes, ruptures and, in the long run, destroys oppressive hierarchies" and thus it will "provoke resistance

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<sup>335</sup> Sally Engle Merry, 'Constructing a Global Law-Violence against Women and the Human Rights System' (2003) 28 *Law & Social Inquiry* 941, 941.

from those who have a vested interest in preserving the status quo.”<sup>336</sup> Most importantly, it requires political consciousness and will to establish and adopt comprehensive policies to eradicate gender inequality and violence against women. Implementation of human rights standards depend on the political will of governments: This simply means that if governments are not willing to commit to their obligations, the instruments which place those obligations on states are not effective.<sup>337</sup> This paper shows that the Turkish government lacks the consciousness and will to comply with its international commitments.

The question to ask here is, considering the fact that the efficiency of international law depends on the political will of governments, how does it help Turkish women today, or does it even help them at all? The situation analysed throughout this paper shows that international law only provides a theoretical framework – it does not do much on the ground for women who are victims of violence. Implementation mechanisms of international legal instruments are far from rectifying the problem. Hence, it should be discussed whether international law provides at least a normative platform that eventually might make things better or if it is only a ‘fig leaf’ which creates a certain appearance of legitimacy for states.

Overall, international legal instruments aiming to prevent violence against women and protect the victims from its consequences seems to be impotent in Turkey. The Turkish government has not demonstrated any significant restraint or respect for the binding rules of international law. At the same time, international law frameworks have assumed a role of a passive player at best and of a spectator at worst. However, the contribution of international law in the context of violence against women cannot be dismissed. To estimate its contribution and determine possible improvements, the international legal instruments should be separated into two parts: substantive and procedural. The substantive portion of the international legal instruments such as CEDAW and Istanbul Convention enshrine the prohibition of gender-based discrimination and violence against women. They set international standards and impose obligations on states to respect, to protect and to fulfil women’s human rights. The other part of international legal instruments concern implementation and monitoring. In order to achieve the goals that the instruments set, these two parts need to function together. It is similar to a relay race where substantive part hands off the baton to the procedural part and the latter needs to bring the baton to the finish line. However, in the

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<sup>336</sup> Yakın Ertürk, ‘Intersections Between Culture and Violence against Women’ (2007) Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences: para 53.

<sup>337</sup> Merry (n 335) 941.

context of Turkey, most of the time, the procedural part drops the baton and renders the entire instrument obsolete.

The weakness of the monitoring and implementation mechanisms of the instruments cannot be blamed on the particular conventions. They are as binding as it gets under international law. This weakness is an existing challenge for all international treaties. The states' sovereignty and the lack of a supranational legislative body renders international law ineffective in holding states accountable to their commitments. This is particularly true with respect to human rights treaties as their special non-reciprocal nature does not provide actors with much of a leverage. On the other hand, the impact of the international legal instruments on the protection of women's human rights cannot be dismissed. In situations such as in Turkey, these instruments provide relevant stakeholders such as women's organizations, women's rights advocates and activists, academics and the whole international community with a point of reference. At least, these legally binding instruments will do as much as a soft law instrument can do. And, if the soft law is to be considered as being of any importance, the hard law instruments such as CEDAW and the Istanbul Convention deserve more. In this particular thesis, these instruments have provided the point of reference and the material to assess how Turkey is doing when it comes to the protection of women's human rights. However, at the same time, the relevant actors cannot be content with the status quo and must use all existing leverages to demand the compliance with the binding rules of international law. Otherwise, any single legal instrument alone will be obsolete – discussed by academics but have no effect on the lives of victims of violence.

This study has recommended some solutions to improve the existing problems in Turkey. However, further research is needed to identify new methods of improving the effectiveness of international law in terms of implementation. Moreover, this thesis does not cover violence against women where violent acts are not perpetrated by men, which often is the case in violence against LGBTQ women. Accordingly, further research is necessary to cover the different set of complexities of acts of violence against LGBTQ women in Turkey.

In conclusion, this thesis has studied violence against women in Turkey in light of its international commitments. It has found that the non-compliance of Turkey with its international obligations concerning violence against women is due to a growth of the conservative political ideology and the justification of the violations of women's human rights in the name of culture, social values and religion. Lastly, the thesis has concluded that a social transformation is critical to overcoming these impediments. This research is

important as it has demonstrated a serious regress in Turkey with respect to gender equality and violence against women. Furthermore, it has revealed how claiming a monopoly on culture, social values and religion – and talking on behalf of them – influences the implementation of international commitments. With these findings, the study contributes to a wider academic discussion on women's human rights. Moreover, the author of this work hopes that the reader finds this thesis useful and hopes that it will contribute to making positive changes.

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