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**ISTANBUL CONVENTION, HONOUR KILLINGS AND TURKEY'S  
EXPERIENCE.**

Master's thesis

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I hereby declare that I have compiled the thesis/paper independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously presented for grading.

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## **Abbreviations**

<b>IC</b>	Istanbul Convention
<b>VAW</b>	Violence Against Women
<b>DVAW</b>	Domestic Violence Against Women
<b>ECtHR</b>	European Court of Human Rights
<b>ECHR</b>	European Convention on Human Rights
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>TCK</b>	Turkish Penal Code

## **Abstract**

The problem of domestic violence against women (DVAW) is a global concern and pivotal point which is still waiting for necessary radical measures to prevent it. Honour related violence is a phenomenon and special form of domestic violence against women that affects every country. For decades, honour killings have been a topical legal issue in Turkey and have many significant points that needs to be clarified in order to eradicate it. Every year, women in Turkey face the problem of DVAW, especially honour killings. This thesis work highlights the positive changes of Turkey's legislation after ratification of the Istanbul Convention, which provides legal protection and prevention measures to help women and their families and shows how important it was for Turkey to implement the Convention in order to prevent these crimes. The author sheds light to the point that Turkey has done much to fulfill the requirements of the Istanbul Convention, but male dominance in the mentality, still hampers the effective prevention of gender-based violence. The thesis analyses the importance of the Istanbul Convention in Turkey through the "Unjust Provocation" concept and Law No. 6284 which was adopted by Turkey after ratification of the Convention. The thesis helps to understand the strengths, the gaps and loopholes of the Law No. 6284, regarding honour killings and identifies how the concept of "Unjust Provocation" can differently and radically change the honour killing issues.

**Keywords:** Honour Killing, Domestic Violence Against Women (DVAW), The Istanbul Convention, Unjust Provocation, Law No. 6284.

## **Introduction**

Given master's thesis is presented and formatted as an article and contains the article's full text formatted exactly as required by the journal. As the article has not yet been published but has been accepted for publication, the author presents the committee an official statement from the editor the letter of acceptance about the publishing confirmation. The article is expected to be published in the International and Comparative Law Review journal, which is a peer-reviewed legal journal published by the Faculty of Law, Palacky University Olomouc, (Czech Republic) in cooperation with Johannes Kepler Universität in Linz (Austria) and Karl-Franzens Universität in Graz (Austria). The aim of ICLR is to demonstrate expert research concerning International law and EU Law. The journal has an international recognition and is indexed on the Elsevier SCOPUS Journals list. As foreseen by the Tallinn University of Technology rules, the student and supervisor are named co-authors of the publication.

Student's contribution to the given master thesis consists of analyzing the whole situation regarding honour killings in the Republic of Turkey, using the language skills and Turkish sources, shedding the light to the gaps and loopholes of the Turkish legislation concerning DVAW and namely honour killings in the modern Turkey, and touching very important issue named Unjust Provocation and its impacts in the honour killings cases.

### **I. Novelty of the chosen topic and basis for selection**

The reason for selecting this topic, was the negligence to the issue of Domestic Violence Against Women, namely honour killings in Turkey. The authors wanted to attract the attention of society to the problem of honour killings, because in the daily papers, it is possible to see the new case regarding honour crimes in Turkey. Each murder of women is shining a light on the Turkey's shockingly high rate of the femicide and sparking outrage in the country. This problem does not lose its topicality to this day, vice versa the situation is worsening every day.

The main goal of this thesis is to evaluate the relation between so-called honour killings and the IC, to analyse the contribution of the IC in DVAW cases, namely honour killing in Turkey as the first country to ratify the Convention and to highlight the positive changes of Turkey's legislation after ratification of the IC which provides legal protection and prevention measures to help women and their families. The phenomena of honour killing still remains its relevance and causes serious problems in a daily life of a women in Turkey and definitely needs and waits for discussion and solution.

## II. Methodology and research material

Research question of the thesis is “Did the ratification of the Istanbul Convention give more useful and effective outcomes in combating crimes committed in the name of so-called honour in the scope of the Domestic Violence against Women?”

This is a qualitative research based mainly on the systematic legal-dogmatic research method, when interpreting the legal norms mainly teleological and literal interpretation has been used. This research is based on the scientific literature, legal acts and case law as well as international and national reports and contributes for the development of Turkish law in combating violence against women, especially in abolishing honour killing.

In the introductory part, the authors clearly explain the definition of the honour killings as a special form of the DVAW within the framework of the IC. The authors also explain the distinctive feature of honour killings and the reason which can cause the murder of the women in the name of honour.

In the second chapter the authors have touched the topics like, the usage of the word honour as a justification, relation between human rights and honour killings, and honour killings as a part of patriarchal societies. In this chapter the authors have mentioned the most important and wide-known honour killing case in the history of Turkey, *Opuz v. Turkey* case, after which Turkey was stated as the government which failed to protect its citizen and to take all needed measures in order to prevent the murder.

The third chapter is about Unjust Provocation in honour killings and how this notion can change the decision of the court in the honour killing cases. Unjust Provocation is a reason for reduction in the penalty that reduces the criminal liability of the murderer, because the court considers that the crime was committed under the effect of unfair provocation. The authors analyse the difference between “custom” and “honour” killings and the discriminatory provisions which still exists in the Turkish legislation.

In the next chapter the authors explain the positive changes in the legislation of Turkey after ratification of the IC and touch the law No. 6284 Law to Protect Family and Prevent Violence against Women, which Turkey adopted in order to demonstrate the compatibility with the IC. There are many strengths of this Law but the implementation of it has its own gaps and loopholes as well. The majority of the gaps as well as strengths was touched in this chapter.

In conclusion, the authors explain their own point of view about these important issues and provide some suggestions, how to cover the loopholes and gaps of the legislation and why the IC is so important for Turkey.

### **III. Main emphasis and outcomes of the work undertaken.**

Unfortunately, VAW is a fundamental problem throughout the world and affects women at least once in their lives. One of the most severe forms of VAW, honour killings started to attract global attention in a world, in the late 1990s. Turkey is one of the countries where violence against women and especially honour crimes is soaring more every year.

Ratification of the IC was a blooming hope for every woman in Turkey, who are potentially risked for being murdered. Because IC provides an important standpoint for its signatory states representing a modern and comprehensive instrument in combatting against VAW and includes examination of perpetrators, prevention of violence, protection of victims and wide-ranging policies. It contributes significantly to the international law by providing more thorough standards on VAW and domestic violence, including honour killings and supports the achievement of considerable equality between the genders and the elimination of discrimination against women in every sphere of life.

Turkish legislation before the ratification of the IC has failed protection of women at risk of death, prevention of honour killings, and punishment of offenders of murders committed in the name of honour cases. There are several cases that is proving this statement and one of them was given as an example in this article.

After Turkey's ratification of the IC, Turkish legislation was obliged to provide concrete steps to fight against VAW, particularly preparing the Law No. 6284. Although, Turkey was trying to show the compatibility with the IC, the Law No. 6284 still has loopholes which are waiting to be filled with comprehensive provisions thanks to the IC. First of all, Law No. 6284 and the TCK relegate women as a part of the "family" rather than respect them as "individual."

The law enforcement authorities, judges and officers need to focus on women's equality with men in its considerable form and the patriarchal understanding must be eliminated from their mindset for protecting women and their fundamental rights and freedom. The lack of decisive political will is a main obstacle in abolition of VAW, namely honour killings and in eliminating the discrimination against women in Turkey. The most important part is, that the measures to be taken regarding acts of violence and criminal process to be commenced within the scope of



Law No. 6284 should not regard custom and tradition, culture, or so-called ‘honour’ as justifications for these murders. The law should also provide more aggressive measures for recidivists and police. Judges, police and prosecutors must redouble efforts to detect dangerous situations and take effective measures. In the situations where victims are afraid of reporting abuse, which is quite common in domestic violence cases, this might necessitate specific vigilance.

Honour killing remains major challenges for Turkey and it is hard to imagine the growing cases and how hard it will be for women in Turkey to live safely, after withdrawal from the IC. Unexpected decision of Turkey about abandoning the most far-reaching instrument in combatting VAW, the IC, caused series of protests. This unreasonable step means, letting women be killed and perpetrators be punished improperly. And of course, it is not hard to predict that the withdrawal may move Turkey further away from the EU and membership will become less realistic.

# ISTANBUL CONVENTION, HONOUR KILLINGS AND TURKEY'S EXPERIENCE

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**Abstract:** The problem of domestic violence against women (DVAW) is a global concern and pivotal point which is still waiting for necessary radical measures to prevent it. Honour related violence is a phenomenon and special form of domestic violence against women that affects every country. For decades, honour killings have been a topical legal issue in Turkey. This article highlights the positive changes of Turkey's legislation after ratification of the Istanbul Convention, which provides legal protection and prevention measures to help women and their families and shows how important it was for Turkey to implement the Convention in order to prevent these crimes. The authors shed light to the point that Turkey has done much to fulfill the requirements of the Istanbul Convention, but male dominance in the mentality, still hampers the effective prevention of gender-based violence. Article analyses the importance of the Istanbul Convention in Turkey through the "Unjust Provocation" concept and Law No. 6284 which was adopted by Turkey after ratification of the Convention.

**Keywords:** Honour Killing, Domestic Violence Against Women (DVAW), The Istanbul Convention, Unjust Provocation, Law No. 6284, Violence Against Women.

## Introduction

Honour crimes are one of history's most terrible forms of gender-based violence across the globe. Honour killings can be concisely described as punishing a woman, mostly by killing her or forcing her into suicide, in the expectation of recovering the 'family honour' when the family council decides that she has behaved in a way that completely contradicts their moral principles.<sup>1</sup> As Gill states "Around the world, women are statistically in the greatest physical danger from men known to them."<sup>2</sup> This is the case in the honour killing crimes. The distinctive feature of honour killings is the concept of family honour, irrespective of whether the woman is married or single.<sup>3</sup> Also age does not matter, girls under 18-year can be victims of honour killing as well. Women can be targeted for murder for a variety of reasons, some of them are : women's or girls' marital infidelity and chastity,<sup>4</sup> to have an extra-marital relationship, tarnishing the honour and dignity of the family, the loss of a woman's honour after rape, the wish to divorce or to stop the relationship, an out of wedlock pregnancy, a marriage against the family's will, to refuse the arranged marriage, a relationship outside of marriage, rumours of dishonourable behaviour, a meeting with friends, message from lover and etc.<sup>5</sup> So-called honour killings are the set of consequences of the patriarchal mechanism and historically disproportionate power relations between women and men.<sup>6</sup> While reinforcing and making national laws, advertence to women's vulnerabilities is essential.<sup>7</sup>

Even though Istanbul Convention<sup>8</sup> (art 42(1)) (IC) "demands to establish by the states that culture, religion, traditions or so called 'honour' can never be accepted by a court of law to justify the commission of crime"<sup>9</sup> the practice shows that several states are very slow to follow this international principle.

In this article authors explore honour-killings in general and its large scale in Turkey, pointing out some distinctive features of honour killings from other forms of the violence against women (VAW). In this empirical research authors try to find the answer to the question

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<sup>1</sup> INCE Onur, HILAL, YARALI Aysun, and ÖZSEL Doğanca. Customary killings in Turkey and Turkish modernization. *Middle Eastern Studies*, 2009, vol. 45, no .4, pp. 537-551. p. 538

<sup>2</sup> GİLL, Aisha K., STRANGE Carolin, and ROBERTS Karl. *Honour killing and violence*. New York: Palgrave Macmillan, 2014, pp. 1-244. p. 19

<sup>3</sup> GÖZTEPE, Ece. Honour killings and the law in Turkey. *Crimes Against Women*. Nova Science Publishers, Inc., 2011, pp. 191-199, p. 192

<sup>4</sup> KARDAM, Filiz, ALPAR Zeynep, and YÜKSEL İlknur. *The dynamics of honor killings in Turkey: Prospects for action*. Population Association, 2005, pp. 1-88, p. 17

<sup>5</sup> GÖZTEPE, Ece. Honour killings and the law in Turkey. *Crimes Against Women*. Nova Science Publishers, Inc., 2011, pp. 191-199, p. 192

<sup>6</sup> DE VIDO, Sara. The ratification of the Council of Europe Istanbul Convention by the EU: a step forward in the protection of women from violence in the European legal system. *Eur. J. Legal Stud.* 9. 2016, pp. 69-102, p. 75

<sup>7</sup> SEV'ER, Aysan. In the Name of Fathers: Honour killings and some examples from South-Eastern Turkey. *Atlantis: Critical Studies in Gender, Culture & Social Justice*, 2005, vol. 30 no. 1, pp. 129-145. p. 138

<sup>8</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Law, CETS No. 210, 11 May 2011 (entered into force on 1 August 2014). [online] Available at: <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c>> Accessed: 10.02.2021.

<sup>9</sup> JOAMETS Kristi, SOGOMONJAN Melita. Influence of forced child marriage and domestic violence on mental health and well-being. Conflict of traditions and rights of Roma Children. *International and Comparative Law Review*, 2020, vol. 20, no. 1, pp. 58–76. DOI: 10.2478/iclr-2020-0003, p. 64.

how Turkish legislation has been developed by the ratification of IC and whether there are still some gaps and loopholes between the legislation and convention to give sufficient protection for women against honour killing. This research bases on the scientific literature, legal acts and case law as well as international and national reports and contributes for the development of Turkish law in combating violence against women, especially in abolishing honour killing.

Article begins with the explanation of the phenomenon of honour killings within the framework of the IC and the positive impact of the IC to the future policies of the signatory countries. The second part examines the concept of “unjust provocation” to show how it has been applied in honour killing cases and what are the consequences by this in the context of protecting women’s life. By the end, authors explore the Law No. 6284 which was adopted after the ratification of IC in Turkey and its loopholes. In the conclusion the suggestions are given for Turkish government what to consider when fixing the loopholes and gaps in the implementation of law.

### **Honour killings, human rights, and Istanbul Convention**

In honour-driven societies, the lower patriarchal power over women, the harder it is to exercise control over them, and consequently, the higher the chance of the practice of violence in order to reaffirm domination.<sup>10</sup> In patriarchal societies, the behaviour of women and girls are under deep and tight control. This type of VAW happens all over the world. There was a great amount of awareness events in the 21<sup>st</sup> century in order to properly criminalize honour killings, but most of the countries failed in taking the effective steps. Most of the times, these murders were ruled as an accidental issue or a suicide, even though, all the evidence were showing the opposite. The word “honour” is usually used as a justification for murder. As Gill states “the word ‘honour’ carries connotations that encourage perpetrators to view their actions as morally defensible when it is the opposite that should be associated with acts of murder and violence.”<sup>11</sup>

It is worth analyzing the distinctive characteristics of honour-related crimes from so-called ordinary violence: planning in honour killings is quite common and usually involve several perpetrators, who do not feel remorse, while in ordinary violence planning is rare and there is usually only one perpetrator who feels remorse directly after the act.<sup>12</sup>

From the legal point of view, honour killing is a violence against women and violates their human rights. MacKinnon states that “Human rights have not been women’s rights - not in theory or in reality, not legally or socially, not domestically or internationally”.<sup>13</sup> Honour

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<sup>10</sup> GRZYB, Magdalena A. An explanation of honour-related killings of women in Europe through Bourdieu’s concept of symbolic violence and masculine domination. *Current Sociology*, 2016, vol. 64, no. 7, pp. 1036-1053. p.1044.

<sup>11</sup> GILL, Aisha K., and BRAH Avtar. Interrogating cultural narratives about ‘honour’-based violence. *European Journal of Women’s Studies* 2014, vol. 21, no. 1, pp. 72-86. p. 73

<sup>12</sup> GILL, Aisha K., STRANGE Carolin, and REBERTS Karl. *Honour killing and violence*. New York: Palgrave-Macmillan, 2014, pp. 1-244. p. 160

<sup>13</sup> MACKINNON, Catharine A. Rape, genocide, and women's human rights. *Harvard Women's Law Journal*, 1994, vol. 17, pp. 5-16, p. 5.

killing is a good example to prove that statement, as even today in some countries the honour killings are minimally punished and even legal. Fighting against it is complicated because it has been justified also by the culture, religion or customs. Even though in most states the substantive law bans honour killing then in the practice it has been treated as something not so serious crime. Unfortunately, even the fact that human rights conventions states have associated consist the right to the life it is often explained that, as Doğan states “The dynamic behind honour killing cannot be fully explained without proper consideration of cultural dimensions”. In communities where honour killings tend to occur, there is a “culture conflict” or “normative conflict”.<sup>14</sup>

In Turkey honour killings are quite common problem, and it is impossible to determine how often honour killings take place in this state. The daily papers repeatedly share the information of such killings. Doğan states that “In Turkish communities where honour killings tend to occur, mutual relationships between males and females including marriage are strictly controlled and regulated by institutions and associations in accordance with their cultural norms.”<sup>15</sup> In most honour killing cases, a family council, first comes together, and decides the future of the “amoral” that is alleged to have brought dishonour and tarnished the family honour,<sup>16</sup> and in many cases the chain of events that ends up with the murder has begun with a simple suspicion or a rumour that a female relative has contravened accepted cultural and moral norms by behaving improperly or being disobedient.<sup>17</sup>

In principle, honour killing is the most radical solution, usually before committing honour crime an alternative way of solution has been tried to achieve. People do their best to prevent issues of honour to arise.<sup>18</sup> Every crime in the name of “honour” makes people to be concerned about the future fate of the women.

One of the wide-known case which reached to the European Court of Human Rights (ECtHR) is the *Opuz v. Turkey* case<sup>19</sup> which attracted a widespread public and academic attention to the honour killings issue. In this case Nahide Opuz when attempting to protect herself and her family faced the following questions:

If the police are ignoring you when you feel that your life is in danger, you are threatened or maybe even attacked and you call the police and ask for a help and support, what should you do? What will be your next step? Where would you turn for help?

In this case Nahide’s ex-husband, was continually beating and threatening her during all their marriage. Once even, he had cruelly knifed Nahide seven times which resulted in her

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<sup>14</sup> DOĞAN, Recep. The dynamics of honor killings and the perpetrators’ experiences. *Homicide studies*, 2016, vol. 20, no.1, 53-79. p. 74

<sup>15</sup> DOĞAN, Recep. The profiles of victims, perpetrators, and unfounded beliefs in honor killings in Turkey. *Homicide Studies*, 2014, vol. 18, no. 4, pp. 389-416, p. 401

<sup>16</sup> *Ibid.* at 401

<sup>17</sup> DOĞAN, Recep. The dynamics of honor killings and the perpetrators’ experiences. *Homicide studies*, 2016, vol. 20, no.1, 53-79. p. 60

<sup>18</sup> VAN ECK, Clementine. *Purified by blood: Honour killings amongst Turks in the Netherlands*. Amsterdam University Press, 2002. pp. 1-303, p. 157.

<sup>19</sup> *Opuz v. Turkey*, App. No. 33401/02 (Eur. Ct. H.R. June 9, 2009), [online]. Available at: <<http://hudoc.echr.coe.int/eng?i=001-92945>> Accessed: 10.01.2021.

hospitalization and her life was at risk. These series of violence, followed by a failure of local authorities to commence criminal proceedings against Nahide's ex-husband, was repeated several times.<sup>20</sup> The governmental authorities released Nahide's ex-husband after temporarily arresting him, without any investigation of the case and significant actions to protect her and her family. Of course, the police negligence ended up with the brutal murder. He killed Nahide's mother. He argued that the murder was committed in the name of "honour" and he was released from detention pending appeal, instead of sentencing to life imprisonment.

In 2002, Opuz filed an application to ECtHR, alleging that the Turkish government violated the ECHR<sup>21</sup> by failing to protect her and her mother. The Court made its judgment in 2009, stating that Turkish government failed to protect Nahide and her mother from attacks committed by Nahide's husband.<sup>22</sup> Additionally, in response to the statement of the authorities, that interference of the national authorities would have considered as a breach of the Article 8,<sup>23</sup> the ECtHR rejected the statement and highlighted the necessity of the intervention of the authorities, in order to prevent the lethal consequences.<sup>24</sup>

According to McQuigg, "judicial passivity in Turkey created a climate conducive to domestic violence."<sup>25</sup> And Sev'er Aysan argues that "States that fail to protect women from violence must be held accountable. If they systematically fail in their responsibility, there should be international investigations and sanctions. Notwithstanding the difficulty of enforcement, the principle is that the states must feel moral, political, legal and economic pressure from the community of nations to protect their own citizens (especially women and children)."<sup>26</sup> That is what is missing today in many states, including Turkey: serious international investigations and sanctions in the protection and prevention of domestic violence against women (DVAW).

The ECtHR observed that three articles of the ECHR were violated by Turkish government in this particular case: Article 2, the right to life; Article 3, the prohibition of torture and

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<sup>20</sup> ABDEL-MONEM, Tarik. Opuz v. Turkey: Europe's Landmark Judgment on Violence against Women. *Human Rights Brief*, 2009, vol. 17, no. 1, pp. 29-33, p. 29

<sup>21</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 [online]. Available at: <[https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)> Accessed: 10.01.2021.

<sup>22</sup> ABDEL-MONEM, Tarik. Opuz v. Turkey: Europe's Landmark Judgment on Violence against Women. *Human Rights Brief*, 2009, vol. 17, no. 1, pp. 29-33, p. 29

<sup>23</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Article 8, Nov. 4, 1950, 213 U.N.T.S. 221 [online]. Available at: <[https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)> Accessed: 10.01.2021. Right to respect for private and family life:

1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

<sup>24</sup> GRANS, Lisa. A right not to be left alone—utilising the right to private life to prevent honour-related violence. *Nordic Journal of International Law*, 2016, vol. 85, no. 3, pp. 169-200, p. 177.

<sup>25</sup> MCQUIGG, Ronagh J. A. *International human rights law and domestic violence: The effectiveness of international human rights law*. Taylor & Francis, 2011, pp. 1-176, p. 51

<sup>26</sup> SEV'ER, Aysan. In the Name of Fathers: Honour killings and some examples from South-Eastern Turkey. *Atlantis: Critical Studies in Gender, Culture & Social Justice*, 2005, vol. 30, no. 1, pp. 129-145, p. 137.

inhuman treatment; and Article 14, the prohibition of discrimination.<sup>27</sup> With this decision Turkey became the first country, which failed taking the necessary measures and not being able to protect the citizens from domestic violence and prevent it. Under the IC, if the state fails dealing with gender-based domestic violence, it can be considered as a form of discrimination.

After this “embarrassing” case, when the IC was introduced for signature in Istanbul in 2011, Turkey became the first signatory and the first country to ratify the convention. Additionally, the IC also served as a benchmark for Law No. 6284<sup>28</sup> (Law on the Protection of Family and Prevention of Violence Against Women) adopted in 2012 in Turkey.

According to The Council of Europe’s report, approximately, over 200 women has been killed in the name of honour each year in Turkey.<sup>29</sup> As Küçükaliöglu states “the seriousness of the problem does not only originate from the increasing number of women who lost their lives or have been subjected to different forms of violence but most importantly from the “normalization” of violence.”<sup>30</sup> It is worth noting that, these murders occur not only in rural cities but in the big and developed cities as Istanbul, Izmir, and Ankara as well.<sup>31</sup> However, the overall situation of honour killings in Turkey has been under international control in order to unroot such issues, in accordance with the obligations of the IC.

In most cases, family members are forcing the minor family member to commit a crime in order, to get a shorter sentence, because of the age. Sometimes the family members force the women to suicide, in order to avoid legal outcomes. According to Güneş, “honour killing is an extremely popular form of domestic violence and Turkey has failed to effectively prevent honour killings despite taking substantial measures to address this phenomenon.”<sup>32</sup> Every state should fulfil the requirements under international law and should require courts to interpret the law properly, otherwise honour killings become a form of state-sanctioned femicide, even if, it is treated as a crime.<sup>33</sup>

In the sections of the Turkish law, namely that deal with women in the family and society, men are shown as having a role of dominance over women. As a result of this legally designated

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<sup>27</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2, 3, 14. Nov. 4, 1950, 213 U.N.T.S.221 [online]. Available at: <[https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)> Accessed: 10.03.2021.

<sup>28</sup> BÜYÜKGÖZ, Selime. *The Istanbul Convention. A chronicle of the feminist struggle*. [Online] Available at: <https://tr.boell.org/en/2020/10/05/istanbul-convention-chronicle-feminist-struggle> Accessed: 25.02.2021.

<sup>29</sup> CESUR-KILIÇASLAN, Seher. “Honor Killings in Turkey” *The International Journal of Interdisciplinary Cultural Studies*. 2013, vol 7, no. 3, pp. 27-34. p. 29

<sup>30</sup> KÜÇÜKALIOĞLU, Elif Gözdasoglu. Framing gender-based violence in Turkey. *Les cahiers du CEDREF. Centre d'enseignement, d'études et de recherches pour les études féministes*, 2018, vol. 22, pp. 128-157, p. 130.

<sup>31</sup> RUBIN, Clara. Between Traditional Practice and Secular Law: Examining Honor Killings in Modern Turkey. *Political Science*, 2010, pp. 1-13, p. 9. [online]. Available at: < <https://www.semanticscholar.org/paper/Between-Traditional-Practice-and-Secular-Law%3A-Honor-Rubin/b9fd49ba6fb9055191cab5c404336713628e972>> Accessed: 07.04.2021

<sup>32</sup> GÜNEŞ, Ayşe. *International Human Rights Law and Crimes Against Women in Turkey: Legislation on So-Called Honour Killings*. Routledge, 2020, pp. 1-285, p. 1

<sup>33</sup> ARIN, Canan. Femicide in the name of honor in Turkey. *Violence against women*, 2001, vol. 7, no. 7, pp. 821-825. p. 823.

male supremacy, women are legally obliged to preserve their “honour” and killers benefit from reduced sentence or even are not punished at all.<sup>34</sup>

As UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not cover any reference to violence against women or domestic violence,<sup>35</sup> the ratification of the IC has been received as a constructive outcome, which fills a regulatory gap existing in Turkey,<sup>36</sup> and plays an important role in fighting against honour killing.

The IC has no tolerance policy for a VAW and provides for all signatory states, a wide range of extensive responsibilities for dealing with all forms of such violence, within the legal framework of international human rights in order to make the world a safer and better place to live. The IC is an important agreement for developing and supporting to the international human rights law framework regarding VAW and it reconfirms fundamental rights stated by the first legally binding document on VAW- the Convention of Belem do Para<sup>37</sup>, also it improves the context provided by the ECHR and the ECtHR and CEDAW.

Grans states that “honour-related violence is a complicated and deeply rooted phenomenon, but it is preventable, even more so than certain other forms of gender-based violence, due to its tendency to generally be preceded by threats of violence and premeditated.”<sup>38</sup> She explains that “the IC could have a remarkable impact in terms of driving ratifying States to seek effective ways to assist those many girls and women in Europe who are faced with the threat of violence in the name of honour in their everyday life”<sup>39</sup> and that “the IC refers explicitly to honour-related violence only in the context of the prohibition of justifying acts of violence with honour.” She suggests that “it notably needs to be clarified whether under the Convention honour-related violence constitutes domestic violence. Certain provisions apply specifically to domestic violence but do not mention honour-related violence.”<sup>40</sup>

Also, the IC defines violence extensively and distinguishes the two forms by covering both domestic violence and violence against women.<sup>41</sup> It considers domestic violence as a form of violence against women and notes that it affects women disproportionately.<sup>42</sup> The important point that girls under the age of 18 years are included in the term ‘women’ is clarified in the

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<sup>34</sup> INCE Onur, HILAL, YARALI Aysun, and ÖZSEL Doğançan. Customary killings in Turkey and Turkish modernization. *Middle Eastern Studies*, 2009, vol. 45, no. 4, pp. 537-551, p. 545.

<sup>35</sup> DE VIDO, Sara. The ratification of the Council of Europe Istanbul Convention by the EU: a step forward in the protection of women from violence in the European legal system. *Eur. J. Legal Stud.*, 2016, vol. 9, pp. 69-102. p. 74

<sup>36</sup> *Ibid.* at 75

<sup>37</sup> Organization of American States (OAS), *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para")*, 9 June 1994, [online]. Available at: <<https://www.refworld.org/docid/3ae6b38b1c.html>> Accessed: 06.03.2021.

<sup>38</sup> GRANS, Lisa. The Istanbul convention and the positive obligation to prevent violence. *Human Rights Law Review*, 2018, vol. 18, no. 1, pp. 133-155. p. 134

<sup>39</sup> *Ibid.* at 135

<sup>40</sup> *Ibid.* at 135

<sup>41</sup> *Ibid.* at 136

<sup>42</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Law, CETS No. 210, 11 May 2011 (entered into force on 1 August 2014). Article 2(1) [online]. Available at: <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c>> Accessed: 10.02.2021.



Article 3(f) of IC.<sup>43</sup> There was a specific requirement of criminalisation of crimes committed in the name of honour, during the drafting process of the Second Draft of IC, but it was removed later.<sup>44</sup> Accordingly, honour-related violence, in the text of the IC does not feature significantly.

There is an obligation in Article 16(1) of the IC, which relates only to sexual assault, rape and domestic violence, but would be notably beneficial also to the prevention of honour-related violence. This obligation is about support programmes which are targeted to teach perpetrators to accept and adopt non-violent behaviour in social relationships. The positive obligation to guarantee the honour killings in a penal context is contained in Article 42(1) of the IC as “Unacceptable justifications for crimes, including crimes committed in the name of so-called honour”.<sup>45</sup> Here it is clearly mentioned as to guarantee that religion, custom, culture, tradition or honour are not considered as justification for any actions of violence.

The human rights approach presents particular way to protect women from abuse and violence but mainstreaming women's experiences and concerns within the framework of human rights still raises many issues.<sup>46</sup>

### **Unjust Provocation to Honour Killings**

As Pope states, “Judges are too often ready to accept that a woman “severely provoked” her relatives simply by going out wearing a low-cut dress, by talking at length to a neighbour, etc”<sup>47</sup> and as an unjust provocation, it can cause a reason for mitigation in VAW cases.

Unjust provocation is a reason for a reduction in the penalty that reduces the criminal liability in the event where a person commits a crime under the influence of anger or severe suffering caused by an unjust act.<sup>48</sup> There is a decrease in the fault ability of the person who committed a crime under the effect of unfair provocation.<sup>49</sup> The perpetrator benefits from the penalty reduction since he committed a crime under unjust provocation.

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<sup>43</sup> Ibid., Article 3(1)

<sup>44</sup> GRANS, Lisa. The Istanbul convention and the positive obligation to prevent violence. *Human Rights Law Review*, 2018, vol. 18, no. 1, pp. 133-155. p. 138

<sup>45</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Law, CETS No. 210, 11 May 2011 (entered into force on 1 August 2014). Article 42(1) [online]. Available at: <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c>> Accessed: 10.02.2021.

1. Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition, or so-called honor shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social, or traditional norms or customs of appropriate behavior. 2. Parties shall take the necessary legislative or other measures to ensure that incitement by any person of a child to commit any of the acts referred to in paragraph 1 shall not diminish the criminal liability of that person for the acts committed.

<sup>46</sup> MEETO, Veena, and MIRZA Heidi S. There is nothing ‘honourable’ about honour killings: Gender, violence and the limits of multiculturalism. *Women's Studies International Forum*, Pergamon, 2007, vol. 30, no. 3, pp. 187-200, p. 196

<sup>47</sup> POPE, Nicole. *Honor killings in the twenty-first century*. Springer, 2012, pp. 1-223, p. 184

<sup>48</sup> AYDIN, Devrim. "YENİ TÜRK CEZA KANUNU'NDA HAKSIZ TAHRİK." *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, 2005, vol. 54, no.1, pp. 225-254, p. 229

<sup>49</sup> Ibid. at 229

Unjust provocation is regulated in the Article 29 of the TCK (Turkish Penal Code)<sup>50</sup> and under the TCK, usually the term of ‘custom’ instead of ‘honour’ may result in less serious sentences, generally, custom and honour killers are sentenced to heavy prison terms.<sup>51</sup>

It allows to consider the perpetrator’s psychological state at the time of the killing, if it is brought into cases where the perpetrator acted out of anger or severity provoked by an unjust act, and if the perpetrator was found to have acted under this influence, obviously, this is the main reason why unjust provocation is interpreted by the drafters of the Turkish Penal Code.<sup>52</sup> The justification of Article 29 states that the reduction of sentence is not applicable to customary killings, but still its justification limits that, this is not the case in all of honour killings.<sup>53</sup> And eventually, in some cases, it allows the opportunity of the mitigation defence to be applicable. Nevertheless, the justification of Article 29 also emphasises that this particular article should not be applied to reduce the sentence of a father or brother who kills a woman who was sexually abused.<sup>54</sup>

These justifications of Article 29 create an equally difficult problem in the application of a crime committed in the name of “custom” or “honour”. The ambiguous wording of Article 82(1)(k)<sup>55</sup> narrows the scope of this provision, by including aggravating circumstances of murder and by changing to “killing in the name of custom” instead of including “honour”.<sup>56</sup> As a response to the gaps in the Turkish law, with the effort of the women's rights organizations in Turkey the TCK was amended to include two more provisions that are applicable to honour crimes.<sup>57</sup> Boon states that “while these amendments are significant steps in the right direction, they do not completely eliminate the possibility of sentence reductions for honour crimes”.<sup>58</sup>

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<sup>50</sup> Turkish Penal Code 2005/5237, [online]. Available at: <<https://www.lawsturkey.com/law/criminal-code-law-of-turkey-5237>> Accessed: 10.01.2021. Article 29- (1) A person committing an offense with effect of anger or asperity caused by the unjust act is sentenced to imprisonment from eighteen years to twenty-four years instead of heavy life imprisonment, and to imprisonment from twelve years to eighteen years instead of life imprisonment. In other cases, the punishment is abated from one-fourth up to three thirds.

<sup>51</sup> GÜNEŞ, Ayşe. *International Human Rights Law and Crimes Against Women in Turkey: Legislation on So-Called Honour Killings*. Routledge, 2020, pp. 1-285, p. 191

<sup>52</sup> TBMM, ‘Turk Ceza Yasa Tasarisi ve Adalet Komisyon Raporu / The Draft of Turkish Penal Code and Justice Commission Report’ TBMM Tutanak Dergisi / Turkish Grand National Assembly Account of Proceedings Period 22Legislation Year 1 Meeting No.64. Available at: <https://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss664m.htm> accessed: 16 March 2021.

<sup>53</sup> AYDIN, Devrim. "YENİ TÜRK CEZA KANUNU'NDA HAKSIZ TAHRİK." *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, 2005, vol. 54, no.1, pp. 225-254, p. 226

<sup>54</sup> TBMM, ‘Turk Ceza Yasa Tasarisi ve Adalet Komisyon Raporu / The Draft of Turkish Penal Code and Justice Commission Report’ TBMM Tutanak Dergisi / Turkish Grand National Assembly Account of Proceedings Period 22Legislation Year 1 Meeting No.64. [online]. Available at: <<https://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss664m.htm>> Accessed: 20 March 2021.

<sup>55</sup> Turkish Penal Code 2005/5237, [online]. Available at: <<https://www.lawsturkey.com/law/criminal-code-law-of-turkey-5237>> Accessed: 10.01.2021. Article 82(1)(k)- Article 82 (1) If the act of intentional killing is committed: k) With the motive of custom. - the offender shall be sentenced to aggravated life imprisonment.

<sup>56</sup> BOON, Rebecca E. They Killed Her for Going out with Boys: Honor Killings in Turkey in Light of Turkey's Accession to the European Union and Lessons for Iraq. *Hofstra L. Rev.*, 2006, vol. 35, no. 2, pp. 815-856, p. 835

<sup>57</sup> *Ibid.* at 835

<sup>58</sup> *Ibid.*

Some judgements uncover the use of unjust provocation as a mitigating condition to reduce sentences. In its remarkable decision the above-mentioned case of *Opuz v. Turkey*<sup>59</sup> the ECtHR argued the practice of the criminal courts in Turkey. The accused (Nahide's husband) claims in his murderer defence proposals, that he killed his mother-in-law to protect his honour, because she was encouraging his wife to live an amoral life and was estranging his children from him.

The Assize Court of the city where the murder was committed, sentenced him to life imprisonment but then mitigated the original sentence, considering the fact that the perpetrator had committed the crime as a result of provocation, and his good behaviour all through the trial, and finally, the court ordered his release. According to the ECtHR statement, "It was the general practice of the criminal courts in Turkey to mitigate sentences in cases of "honour crimes". In cases concerning "honour crimes", the criminal courts imposed a very lenient punishment or no punishment at all on the perpetrators of such crimes."<sup>60</sup> Instead of classifying honour killings as a separate category the TPK combined them with customary killings.

As Cihan states "the sovereign decision to categorize honour killings within the terms of customary killings in the TCK creates a situation of a juridical exception that sympathizes with and favours those who commit honour killings."<sup>61</sup> Also, he adds that "incorporation of honour killings into the existing categories for murder allows the application of an exceptional measure, the "unjust provocation" clause, as a mitigating circumstance."<sup>62</sup> She explains that "consideration of the "unjust provocation" clause undermines the intentionality and maliciousness of an honour killing and this consideration becomes the basis for lenient sentencing. Here, the "unjust provocation" clause is considered as exception and is both a legislative provision as well as a transgression of juridical order."<sup>63</sup>

The TCK still contains discriminatory provisions against women and the vague language of it reveals the difficulties of its application because of contradictory interpretation of the honour killings and this allows the application of 'unjust provocation' as a mitigation to criminals of honour killings. Even though, the amendments to Turkish law show progress in eliminating some discriminatory provisions, but this is not enough for having an impact on Turkish society and mentality.

As Boon observes "while legal reforms that promote women's equality and changes to the penal code that eliminate the mitigation defence are a step in the right direction, without a broader grassroots movement that addresses the socioeconomic and institutional factors that

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<sup>59</sup> *Opuz v. Turkey*, App. No. 33401/02 (Eur. Ct. H.R. June 9, 2009), [online]. Available at: <<http://hudoc.echr.coe.int/eng?i=001-92945>> Accessed: 10.01.2021.

<sup>60</sup> *Ibid.* at 27.

<sup>61</sup> AHMETBEYZADE Cihan. Gendering Necropolitics: The JuridicalPolitical Sociality of Honor Killings in Turkey, *Journal of Human Rights*, 2008, vol 7, no. 3, pp. 187-206, p. 196

<sup>62</sup> *Ibid.* at 196

<sup>63</sup> *Ibid.*

contribute to the pervasiveness of the crime and the ability of the perpetrators to avoid legal consequences, this problem will not go away.”<sup>64</sup>

While Turkey has adopted laudable amendments in judicial and legislative and level, they remain on paper and eliminate honour killings or at least sentencing process of these cases still depends on the cultural and patriarchal biased decisions of the judge. Most judges in Turkey prefer to offer mild punishments to honour crime perpetrators regardless of those textual amendments, because honour killing never appears in the TPK. The TPK mentions "custom killing," which judges may separate on a completely technical basis from honour killing.<sup>65</sup>

### **Legal implications of the Turkish legislation after ratification of the Istanbul Convention**

As discussed above, after the ratification of the IC, the understandings of judiciary and the law enforcement specialists in the cases of the honour killing have changed in Turkey. Turkey could do more to implement the IC, but the abolition of honour killings seems impossible, because of the male-dominated mindset and the accent on family unity, instead of women as individuals in Turkish legislation.

In 2012, Turkey aimed to demonstrate its compatibility with the IC by adopting the Law to Protect Family and Prevent Violence against Women (No. 6284)<sup>66</sup> and revoking Law No. 4320-Family Protection Law.<sup>67</sup> Güneş explains that “the new law aims to provide both prevention and protection measures to help and support women and their families,”<sup>68</sup> “to ensure that these measures taken to protect women from violence provide adoption of inclusive policies to combat (VAW).”<sup>69</sup> According to Şener, “this was the first time in Turkey, when in the law’s preparation 242 women’s organizations actively participated and worked on the draft law and talked to the Ministry of Family and Social Policy.”<sup>70</sup> Thanks to their participation, one of the main strengths of Law No. 6284 became both - ‘protection of the family’ and ‘prevention of violence against women’ at the same time.

There are several strengths of the Law No. 6284, which are worth to highlight. First is the protection of women without regard to their marital status as declared in the context of the IC

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<sup>64</sup> BOON, Rebecca E. They Killed Her for Going out with Boys: Honor Killings in Turkey in Light of Turkey's Accession to the European Union and Lessons for Iraq. *Hofstra L. Rev.* 35 (2006): pp. 815-856, p. 856

<sup>65</sup> CORBIN, Bethany A. Between Saviors and Savages: The Effect of Turkey's Revised Penal Code on the Transformation of Honor Killings into Honor Suicides and Why Community Discourse Is Necessary for Honor Crime Eradication. *Emory International Law Review. Rev.* 29, 2014, pp.277-325. p. 309.

<sup>66</sup> Law to Protect Family and Prevent Violence against Women 2012/6284, [online]. Available at: <<http://www.lawsturkey.com/law/law-to-protect-family-and-prevent-violence-against-woman-6284>> Accessed: 12.02.2021.

<sup>67</sup> GÜNEŞ, Ayşe. *International Human Rights Law and Crimes Against Women in Turkey: Legislation on So-Called Honour Killings*. Routledge, 2020, pp. 1-285, p. 212

<sup>68</sup> GUNES, Ayse. Legal Implications of Turkey’s Accessions to the Istanbul Convention by Enacting and Refining Its Laws on Violence Against Women. *Women & Criminal Justice*, 2019, pp. 1-15, p. 1

<sup>69</sup> GÜNEŞ, Ayşe. *International Human Rights Law and Crimes Against Women in Turkey: Legislation on So-Called Honour Killings*. Routledge, 2020, pp. 1-285, p. 212

<sup>70</sup> ŞENER, Ülker. 6284 Sayılı Ailenin Korunması ve Kadına Yönelik Şiddetin Önlenmesine Dair Kanun Ne Getiriyor?. TEPAV Değerlendirme Notu 201220, 2015, pp. 1-5. p. 2

and CEDAW, eliminating discrimination against women considering their marital status. Additionally, children who are at a risk of being part of the violence or being the witnesses of domestic violence and who can be negatively affected by failing school, behaving violently or even having mental problems<sup>71</sup> are benefiting of the Law No. 6284 context, because according to IC, they are accepted as victims of domestic violence.

Sarihan states that “Law No. 6284, in line with the IC, has extended the protection scope including both the victims of violence, the people who are in danger of being subject to violence even if they haven’t been subject to violence and all the victims of violence outside the family members.”<sup>72</sup> This statement shows us the second interesting and important point of this Law, namely that it includes within the scope of its protection procedures, the victims who are at the risk of violence, while the previous legislation (Law No. 4320), was protecting only victims who already have been subject to violence.

The IC points out that “women and girls are exposed to a higher risk of gender-based violence than men.”<sup>73</sup> Taking needed and comprehensive measures, in order to protect women at risk of honour killings by their family members and relatives is a compulsory obligation of the signatory states.

Accordingly, Ugur questions who will determine the victims who are at risk of violence and how.<sup>74</sup> The Law No. 6284 does not include the principle of ‘clear, adequate, immediate danger’, which is crucial in defining the existence of the risk of violence. And it is considered

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<sup>71</sup> See about mental problems caused by domestic violence of children in JOAMETS, Kristi, SOGOMONJAN, Melita. Influence of Forced Child Marriage and Domestic Violence on Mental Health and Well-Being. Conflict of Traditions and Rights of Roma Children. *International and Comparative Law Review*, 20 (1), 58–76. DOI: 10.2478/iclr-2020-0003.

<sup>72</sup> SARIHAN Banu Bilge, Violence against Women in the Law Numbered No. 6284. *The Macrotheme Review A multidisciplinary journal of globe macro trends*, 2015, vol 4, no. 8, pp. 40-55, p. 42.

<sup>73</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Law, CETS No. 210, 11 May 2011 (entered into force on 1 August 2014). Preamble [online]. Available at: <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c>> Accessed: 10.02.2021.

<sup>74</sup> UĞUR, Hüsamettin. Kadın ve aile bireylerine yönelik şiddete karşı 6284 sayılı kanunun getirdikleri. *Türkiye Barolar Birliği Dergisi*, 2012, vol. 101, pp. 333-366, p. 348

as a weakness of the Law. But the IC contains these principles in appliance with Article 50<sup>75</sup>, Article 51<sup>76</sup> and Article 52.<sup>77</sup>

Article 1(2)(a) of Law No. 6284 endorses Article 90 of the Constitution Law, which states that the provisions of international agreements, especially the IC shall surpass Turkish domestic laws in cases where they conflict.<sup>78</sup> This article proves the usefulness and the importance of the Istanbul Convention and shows the helpfulness of the provision. Police officials, judges and other governmental authorities have the lack of awareness and knowledge of international agreements, and the IC was obliging them to pay more attention to the IC, as it is the legally binding document on combatting VAW.

The Law No. 6284 focuses on a human rights approach in combatting VAW. The law provides “a fair, effective and speedy method, which is based on basic human rights, sensitive to the equality of men and women, applicable to the social state principle, is maintained in providing support and services to the victims of violence.”<sup>79</sup> Not just the women’s rights framework, but the whole human rights framework will apply. Furthermore, the law applies “the preventive and protective cautionary decisions taken for victims and perpetrators, respecting human dignity and honour.”<sup>80</sup> It also shows that “taking special measures to prevent violence and protect women from the gender-based violence cannot be interpreted as discrimination.”<sup>81</sup>

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<sup>75</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Law, CETS No. 210, 11 May 2011 (entered into force on 1 August 2014). [online]. Available at: <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c>> Accessed: 10.02.2021.

Article 50-Immediate response, prevention and protection.

1. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims.

2. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies engage promptly and appropriately in the prevention and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence.

<sup>76</sup> *Ibid.* Article 51-Risk assessment and risk management.

1 Parties shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary, to provide co-ordinated safety and support. 2 Parties shall take the necessary legislative or other measures to ensure that the assessment referred to in paragraph 1 duly takes into account, at all stages of the investigation and application of protective measures, the fact that perpetrators of acts of violence covered by the scope of this Convention possess or have access to firearms.

<sup>77</sup> *Ibid.* Article 52- Emergency barring orders.

Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.

<sup>78</sup> Law to Protect Family and Prevent Violence against Women 2012/6284, Article 1 (2) (a), [online]. Available at: <<http://www.lawsturkey.com/law/law-to-protect-family-and-prevent-violence-against-woman-6284>> Accessed: 12.02.2021.

<sup>79</sup> *Ibid.* at Article 1(2)(b).

<sup>80</sup> *Ibid.* at Article 1(2)(c).

<sup>81</sup> *Ibid.* at Article 1(2)(ç).

The IC contains definitions for “violence against women”, “domestic violence”, “gender” and “gender-based violence”,<sup>82</sup> and the definitions of ‘violence’ and ‘violence against women’ in Law No. 6284 match with the definition of ‘violence against women’ in the IC. The lack of a definition of “gender” in Law No. 6284 is a restriction.<sup>83</sup> Additionally, in Law No. 6284, the definition of “gender-based violence” is included in the definition of “violence against women.”

Even though Law No. 6284 has created a legal framework for protecting women from violence and preventing VAW, and tries to comply with the IC, there are still gaps within its scope. It still needs the guideline of the IC and the monitoring of the implementations of the Law No. 6284 in Turkey. The problem is not the formation of the new laws, but its implementation of Turkish legislation in the cases of VAW and the lack of political desire to guarantee gender equality.

The implementation of the Law No. 6284 and other legislations that protects women against honour killings have its own loopholes and challenges. The implementation of Turkish legislation about VAW has confronted with criticism concerning “negative manners towards women, lacking funds and human resources, lack of monitoring and resources, insufficiency of care mechanisms (shelters call centres and etc), comprehensive evaluation measures, connected laws and etc.”<sup>84</sup>

Article 42 of the IC obliges that ‘culture, custom, religion, tradition or so-called “honour” shall not be regarded as justification for such acts.’<sup>85</sup> Accordingly, Article 42(1)<sup>86</sup> in particular, in the perspective of criminal law, it strengthens the state’s responsibility in Article 12(5)<sup>87</sup> of the Convention.

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<sup>82</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Law, CETS No. 210, 11 May 2011 (entered into force on 1 August 2014). Article 3 [online]. Available at: <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c>> Accessed: 10.02.2021.

<sup>83</sup> CEYLAN, Ebru. Türk hukukunda aile içi şiddet ve kadına karşı şiddetin önlenmesiyle ilgili yeni düzenlemeler. *Türkiye Barolar Birliği Dergisi*, 2013, vol 109, pp. 13-54. p. 25

<sup>84</sup> PALMEN Rachel, FRANCOLI Nuria, GENOVA Angela, GÖKSEL Asuman, SALES Laura, SANSONETTI Silvia and TOZLU Çiğdem with GÜNGÖR DUYGU and ÖZTÜRK Aslıhan. “WAVE: Violence Against Women Comparative Report: Italy, Spain and Turkey.” TR2010/0135.01-01/339. (2016) [online]. Available at: <<https://notus-asr.org/wp-content/uploads/2016/05/WAVECRFinal.pdf>> Accessed: 26.03.2021. pp. 1-102, p. 60

<sup>85</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Law, CETS No. 210, 11 May 2011 (entered into force on 1 August 2014). Article 42 [online]. Available at: <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c>> Accessed: 10.02.2021.

<sup>86</sup> Ibid. Article 42(1)- Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called “honour” shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.

<sup>87</sup> Ibid. Article 12(5)- Parties shall ensure that culture, custom, religion, tradition or so-called “honour” shall not be considered as justification for any acts of violence covered by the scope of this Convention.

There is not a context of crime in the scope of the Law No. 6284. The TCK<sup>88</sup> is applicable, but some of its terms are not compatible with the IC. Notwithstanding, custom killing is established as an aggravated case, but there is no provision for honour related crimes in the TCK. The cases of honour killings demonstrates that the “unjust provocation” is still applied for these crimes and accordingly, this infringes Article 42 of the IC.

One of the indications and major concerns of the unsuccessful implementation and the limited impact of Law No. 6284 is the absence of the official data on women killings in Turkey. According to “We will Stop Femicide Platform”,<sup>89</sup> 474 women were killed in 2019. These statistics are worrying, especially when considering how Turkish legislation has improved after the ratification of the IC. Additionally, Women’s NGO Centre - KAMER organized a study ‘Who is the Guilty? Family? State? Society? So, All of US?’<sup>90</sup> that contains the data of 100 case, 22,684 women in 22 regions in eastern parts of Turkey. This study clearly shows that VAW is still widespread in practice. Women and girls must unconditionally follow the requirements of patriarchal structure, and if they disobey, they face violence, bad treatment, torture, even murder in the name of ‘honour’.

After 10 years of being the first country to sign and ratify the landmark European treaty (the Istanbul Convention), on 19<sup>th</sup> of March 2021, Recep Tayyip Erdogan, the President of Turkey has annulled Turkey's ratification of the Istanbul Convention. The idea that the country has left the IC, has caused profound indignation and strong condemnation, gathered hundreds of protestants at demonstration against this decision, because 4 out of 10 women in Turkey are exposed to physical or sexual violence at least once in their lives.<sup>91</sup> These claims and protests have been strongly supported by a number of feminist NGO’s.

Council of Europe Secretary General Marija Pejčinović Burić states that “Turkey has announced withdrawal from the Council of Europe’s Istanbul Convention on violence against women is devastating news. The Istanbul Convention covers 34 European countries and is widely regarded as the gold standard in international efforts to protect women and girls from the violence that they face every day in our societies. This move is a huge setback to these efforts and all the more deplorable because it compromises the protection of women in Turkey, across Europe and beyond.”<sup>92</sup>

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<sup>88</sup> Turkish Penal Code 2005/5237, [online]. Available at: <<https://www.lawsturkey.com/law/criminal-code-law-of-turkey-5237>> Accessed:10.02.2021.

<sup>89</sup> Kadın Cinayetlerini Durduracağız Platformu / We will End Femicide Platform, ‘2019 Report of We will End Femicide Platform’ [online]. Available at: <<http://kadincinayetleriniDurduracagiz.net/veriler/2889/kadin-cinayetlerini-durduracagiz-platformu-2019-raporu>> Accessed: 10.02.2021.

<sup>90</sup> KAMER, “Hane Ziyaretleri Verileri 2015 sonuclari / The Report of House Visits in 2015” [online]. Available at: <[https://www.kamer.org.tr/icerik\\_detay.php?id=256](https://www.kamer.org.tr/icerik_detay.php?id=256)> Accessed: 23 March 2021

<sup>91</sup> SEN Selma, BOLSOY Nursen, Violence against women: prevalence and risk factors in Turkish sample. *BMC women's health*, 2017, vol. 17, no.1, pp. 1-9, p. 2

<sup>92</sup> Secretary General responds to Turkey’s announced withdrawal from the Istanbul Convention. [online] Available at: <https://www.coe.int/en/web/portal/-/secretary-general-responds-to-turkey-s-announced-withdrawal-from-the-istanbul-convention> Accessed: 20.03.2021



## Conclusion

Unfortunately, VAW is a fundamental problem throughout the world and affects women at least once in their lives. One of the most severe forms of VAW, honour killings started to attract global attention in a world, in the late 1990s. Turkey is one of the countries where violence against women and especially honour crimes is soaring more every year.

Ratification of the IC was a blooming hope for every woman in Turkey, who are potentially risked for being murdered. Because IC provides an important standpoint for its signatory states representing a modern and comprehensive instrument in combatting against VAW and includes examination of perpetrators, prevention of violence, protection of victims and wide-ranging policies. It contributes significantly to the international law by providing more thorough standards on VAW and domestic violence, including honour killings and supports the achievement of considerable equality between the genders and the elimination of discrimination against women in every sphere of life.

Turkish legislation before the ratification of the IC has failed protection of women at risk of death, prevention of honour killings, and punishment of offenders of murders committed in the name of honour cases. There are several cases that is proving this statement and one of them was given as an example in this article.

After Turkey's ratification of the IC, Turkish legislation was obliged to provide concrete steps to fight against VAW, particularly preparing the Law No. 6284. Although, Turkey was trying to show the compatibility with the IC, the Law No. 6284 still has loopholes which are waiting to be filled with comprehensive provisions thanks to the IC. First of all, Law No. 6284 and the TCK relegate women as a part of the "family" rather than respect them as "individual."

The law enforcement authorities, judges and officers need to focus on women's equality with men in its considerable form and the patriarchal understanding must be eliminated from their mindset for protecting women and their fundamental rights and freedom. The lack of decisive political will is a main obstacle in abolition of VAW, namely honour killings and in eliminating the discrimination against women in Turkey.

The most important part is, that the measures to be taken regarding acts of violence and criminal process to be commenced within the scope of Law No. 6284 should not regard custom and tradition, culture, or so-called 'honour' as justifications for these murders.

The law should also provide more aggressive measures for recidivists and police. Judges, police and prosecutors must redouble efforts to detect dangerous situations and take effective measures. In the situations where victims are afraid of reporting abuse, which is quite common in domestic violence cases, this might necessitate specific vigilance.

Honour killing remains major challenges for Turkey and it is hard to imagine the growing cases and how hard it will be for women in Turkey to live safely, after withdrawal from the IC.

Unexpected decision of Turkey about abandoning the most far-reaching instrument in combatting VAW, the IC, caused series of protests. This unreasonable step means, letting women be killed and perpetrators be punished improperly. And of course, it is not hard to predict that the withdrawal may move Turkey further away from the EU and membership will become less realistic.

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