Killed by Hatred or Killed by Love?

An intersectional challenge to legal constructions of gendered violence in Finland and Turkey

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This LL.M. thesis is an intersectional, interdisciplinary study of the constructions of gendered violence in Finland and Turkey, in particular with reference to majority and minority positions in society. The study is interested in the perception of “the violence of the other”, i.e. the essentialised violence, but also in the normalisation process of (certain kinds of) violence. The categorisation of the so-called collective gendered violence and so-called individual gendered violence are investigated in the thesis as social constructions.

In the study, a discourse analysis of twelve (six Finnish + six Turkish) judgements is conducted, inspired by Foucauldian views on discourses, where knowledge and power are intertwined. Four discourses are found in the study: male violence, female behaviour, normalised/individual violence and essentialised/collective violence. The discourse analysis mainly focuses on the creation of legal facts in the argumentation of the court. In the study, context is particularly stressed. Therefore, the study includes a general analysis of gendered violence and majority/positions in Finnish in a societal, political, legal and historical context. The most important features in the international legal framework on gendered violence are shortly accounted for, since international pressure has had a large impact on legal development in both investigated countries. The majority/minority positions in focus are Finnish majority population/(Muslim) immigrant minority population in Finland, and Turkish majority population/Kurdish minority population in Turkey.

The study is performed within a feminist and intersectional theoretical framework, where social constructionism and discourse analysis are used as methodology and method. As a main focus of the study, means of alterity are investigated. The study is critical in its nature and poses a challenge to the legal paradigm of objectivity. The study also touches upon the larger debate on the perceived paradox of multiculturalism and feminism in the liberalist view on law in western society. The study claims that this paradox is the result of the patriarchal and imperialistic structures in law.

The conclusion of the study is that the constructions of legal facts in courts are often discriminating upon vulnerable groups. In the study, these are mainly women and minority group members. The interaction and interconnections of the discourses often lead to multiple discrimination, where the female minority member is particularly vulnerable, her perspective being invisible in the construction of the legal facts.

Avainsanat – Nyckelord: intersectionality, feminism and feminist theory, alterity, multiculturalism, gendered violence, violence against women, discourse analysis, comparative study

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Abbreviations

AKP                Justice and Development Party (tr: Adalet ve Kalkınma Partisi)
BRÅ               The Swedish National Council for Crime Prevention (se: Brottsförebyggande rådet)
CEDAW          Convention on the Elimination of All Forms of Discrimination against Women
CETS            Council of Europe Treaty Series
CoE              Council of Europe
DEVAW          Declaration on the Elimination of Violence Against Women
ECHR            Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC         United Nations Economic and Social Council
ECtHR          European Court of Human Rights
ECRI            European Commission against Racism and Intolerance
EU               European Union
EUMC           European Monitoring Centre on Racism and Xenophobia
GAPF           The Swedish National Association against Honour Related Violence (se: Glöm aldrig Pela och Fadime, Riksorganisation mot hedersvåld)
HE              Government Bill (fi: Hallituksen esitys)
KK              Written Question (fi: Kirjallinen kysymys)
KKO            The Supreme Court of Finland (fi: Korkein oikeus)
LaVM          Law Committee Memorandum (fi: Lakivaliokunnan mietintö)
LGBTIQA       Lesbian, gay, bisexual, transgender, intersex, queer/questioning and asexual
LNTS           League of Nations Treaty Series
NGO            Non-governmental organisation
OHCHR        Office of the High Commissioner for Human Rights
SM            The Finnish Ministry of the Interior (fi: Sisäasiainministeriö)
SOU           Official Investigations by the Swedish State (se: Statens offentliga utredningar)
SRVAW       United Nations Special Rapporteur on violence against women, its causes and consequences
STM           The Finnish Ministry of Social Affairs and Health (fi: Sosiaali- ja terveysministeriö)
TEM           The Finnish Ministry of Employment and the Economy (fi: Työ- ja elinkeinoministeriö)
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<tr>
<td>UN</td>
<td>United Nations</td>
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<td>UNTS</td>
<td>United Nations Treaty Collection</td>
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<td>U.S.</td>
<td>United States of America</td>
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<tr>
<td>VAW</td>
<td>Violence against Women</td>
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<td>WHO</td>
<td>World Health Organization</td>
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“Ya benimsin ya toprağın.”

You are either mine, or the earth’s.

Anonymous

“Jos toinen meistä lähtee,
niin toinen meistä lähtee laudoissa
ja toinen raudoissa.”

If one of us leaves,
one will leave in a coffin,
and the other one in handcuffs.

Comment uttered by the defendant in case F1
1 Introduction: Gender, violence and culture

On a winter’s evening in January 2002, Fadime Şahişindal was murdered by her father in her apartment in Uppsala, Sweden. Her murder was head news and largely debated in major Swedish newspapers,¹ her funeral broadcast by television and attended by the Swedish crown princess, the Minister for Integration and several other important politicians.² Her murder is well known in several countries, there are conferences and memory funds organised in honour of her memory³ and Wikipedia pages in several languages about her life and murder.⁴ Her murder is considered important in Swedish modern history: Fadime⁵ has become a symbol for many cases of gendered violence.⁶ Two days after the murder of Fadime Şahişindal, Mikaela Strandberg was murdered by her former partner in an apartment in Borås, Sweden. Her murder was not extensively reported in major Swedish newspapers, nor was her funeral broadcast or visited by members of the Swedish Royal Family, or important politicians. The reason I became aware of her murder was that it was included in a collection of murders of women, registered by a main Swedish evening paper.⁷

The crucial difference, which made the murder of Fadime Şahişindal, but not Mikaela Strandberg, a broadly reported event in media, was that it was addressed, recognised and reported as a so-called honour killing, while the murder of Mikaela Strandberg was not considered a killing related to a specific concept of honour.⁸ Even though this study does not address the Swedish context – but mainly Finland and Turkey, and partly the international legal and policy framework – the comparison of the murders of Fadime Şahişindal and Mikaela Strandberg is striking and explanatory of the purpose of this study. In the Finnish context, the murder of Fadime Şahişindal has had a great effect on public

¹ On the analysis of the Swedish media debates and discussions, see Ekström 2009 and 2005, pp. 23–40.
² Aftonbladet: Fadimes död chockade hela Sverige – då tackade SVT nej.
³ For examples of these, see Varken hora eller kuvad: Inbjudan: Till minne av Fadime Sahindal, Nätverket mot hedersrelaterat våld: Hedersnytt, Tio år efter mordet på Fadime Sahindal, GAPF: Riksorganisation mot hedersvåld och Fadimes minnesfond: En insamlingsstiftelse.
⁵ After her murder, Fadime Şahindal lost her last name to the Swedish public. This infantilisation and intimisation is described by ethnologist Simon Ekström, referring to the comments of the Swedish writer Stieg Larsson. Ekström 2009, p. 17.
⁶ Sandahl 2007.
⁷ Aftonbladet: Dödade kvinnor och barnen som blev kvar.
⁸ In this study, I intend to use the terms so-called honour killings and honour; in order to point out that I do not necessarily agree with the utilisation of honour and gendered violence in the same context, nor do I find a reference to only certain definitions of gendered violence meaningful, if gendered violence is not addressed as a whole. Hence, my usage of italic writing and the word “so-called” is stressing my dissociation from the term. About the universality of gendered violence, see Gill 2011 and Shalhoub-Kevorkian 2005.
awareness and discussion of so-called honour killings, and the issue was taken up as a written question in the Finnish Parliament merely weeks after the killing of Fadime Şahindal.9

After the terrorist attacks in New York, 11 September 2001, the polarisation of the western and non-western world, xenophobia and racism against Muslims – also referred to as islamophobia10 – has grown in western countries.11 It is important to regard the public discussions and the media reporting, primarily concentrated on the West and the Global North12, on so-called honour killings, public veiling, religious circumcision of boys, arranged and forced marriages, the discourse on terrorism and securitisation, etc. towards the background of increased cultural racism, particularly against Muslims and Muslim immigrants.13 However, this connection is not made here in order to depict these phenomena as consequences of Islamic beliefs or Muslim faith, but rather to challenge certain views represented in western public debates and media reporting. It is important to notice how the interest of the public, the media and the authorities in certain types of gendered violence has increased more or less worldwide.14 The stories about the victims in the cases recognised as related to honour are often retold by the media in a similar manner:15 a young, Muslim woman, whose bad behaviour is not accepted by her family – often addressing her sexuality and/or her choice of a so-called western lifestyle – is killed by one or several family members.16

9 KK 134/2002.
10 Here, islamophobia is referred to as racism, however, some scholars claim that they are not exactly the same. See Semati 2010 and Kaya 2012.
12 With the Global North, I refer primarily to European countries, North America, Australia, Israel, South Africa and some other countries. In this study, the West is used in a similar fashion, referring primarily to perceptions of societal development. However, in this study I have primarily used the terms west and western, aiming to also cover the so-called Global North.
14 Much due to dominating western discourses on the culturalisation of gendered violence. See A/HRC/4/34. An interesting example here is the Swedish case, where Swedish authorities have made great investments in mechanisms for prevention and protection of victims, as well as research of so-called honour violence. Eldén 2011, pp. 129–130. For examples of the research, see Håkansson 2007, SS 2007-131-27, Schlytter et al 2009 and BRÅ Rapport 2012:1.
15 Liebmann 2012. This was discussed in my interview with Louise Lund Liebmann, who is writing her Ph.D. dissertation on the topic. Louise Lund Liebmann, 13 September 2013.
16 The media discourse often fails to recognise the broader patterns of family violence, focusing merely on the violence faced by the young woman. Thus, the violence faced by e.g. mothers is easily forgotten. Eldén 2011, p. 138. On the media discourse, see e.g. The Independent: Communities must end these awful abuses, The Independent: Secret that emerged only after her sister was blackmailed, Expressen: Mordet på Maria – ”Det här är ett hedersmord”, Italehti: Isä ampui tyttärensä – kunniamurha lievensi tuomiota, Milliyet: Piknikte cinayet yeri belirlenmiş, Milliyet: Töre kurbanı Hatice toprağa verildi,
The research question investigated in this study is whether there are differences in the ways that gendered violence is described in judgements, depending on gender and perceived culture\textsuperscript{17} of the perpetrator and/or victim. Hence, the study analyses constructions of gendered violence in the Finnish and Turkish legal contexts through analysing national court judgements, towards a background of certain societal and historical analyses. The judgements analysed are cases where women have been killed by their partners, former partners and/or family members. In particular, this study is interested in the creation of legal facts and the formation of legal argumentation and how these reflect power relations as related to certain discourses. The categorisation of gendered violence, e.g. of so-called honour killings and other forms of gender violence, is central in the study.

The study begins with the introduction of the methodological and theoretical frameworks in chapter two. In this chapter, the theoretical and methodological merits of discourse analysis and social constructionism are viewed against the outlines of feminist theory, intersectionality and theories of alterity. In the third chapter, the categorisation of so-called individual and collective forms of gendered violence is discussed, with focus on academic debate, authority and NGO work. Furthermore, chapter three links the discussion of perceived differences in gendered violence to the discussion of perceived incompatibility between feminism and multiculturalism.

In chapter four, the international, Finnish and Turkish legal and policy contexts regarding gendered violence (with focus on death as the outcome) and perceived majority/minority positions\textsuperscript{18} are presented. In the fifth chapter, the findings of the discourse analysis\textsuperscript{19} performed in the study, the discourses of the judgements (male violence, female behaviour, normalised/individual violence and essentialised/collective violence) as well as their intersections, are described and analysed. In the final chapter, the results of the study are evaluated and discussed. The aim of this chapter is to provide an answer to the research question, based on the research performed in the study. Here, I use the phrase an answer

\textsuperscript{17} With perceived culture, I refer to the perception of majority/minority cultural membership that is incorporated by the judge(s) in the judgements. In this sense, the perception of culture is largely connected to grounds of ethnicity and/or race.

\textsuperscript{18} With a focus on cultural/ethnic/racial minorities. I use the term perceived minorities, since I want to highlight the fact that a minority is largely a social construction, dividing human beings on the basis of certain perceptions. Thus, my approach to minorities has similarities with the term minoritised, a way of referring to a minority as a result of socio-historic processes rather than merely numbers, language, religion, etc. Chantler and Gangoli 2011.

\textsuperscript{19} To be explained in chapter 2 Theoretical and Methodological Framework: A critical perspective on law.
instead of the answer, since I want to highlight the subjectivity of the researcher and the research. Therefore, it is possible, and likely, that another researcher, who would take different elements into consideration, would come up with results and answers to the proposed research question that differ from mine.
Those who are interpellated as feminine are cast as the ones to be represented.

Sociologist Dicle Koğacıoğlu²⁰

²⁰ Koğacıoğlu 2011, p. 192.
2 Theoretical and Methodological Framework: A critical perspective on law

In this chapter, the study’s theoretical and methodological outlines – *feminism, intersectionality, alterity, social constructionism* and *discourse analysis* – are clarified and shortly presented in the way that they are utilised in this thesis. It is important to point out that this study does not separate theory from methodology, but rather sees them as *interdependent*. This study challenges the positivist view of law as non-political. On the contrary, it makes the critical claim that law is *inherently* political, and that it is necessary to recognise this relationship in order to be able to genuinely strive for, and achieve, justice. The interdisciplinary use of theory, methodology and methods in this study widens the scope of critique beyond mere legal theory.

The paradigm – or *épistéme* – of law, is largely influenced by the idea of objectivity. This also explains the fact that law is largely resistant of alternative views on law, and so-called *external critique*, for instance the critique posed by feminist theory. Even though legal language is *formally* described as neutral with reference to gender, the *reality* of law is not: frequently discriminating women. In this study, feminist theories are used as means of challenging the legal ideal of *objectivity*, in particular stressing the perspective of the (female) victim. Thus, feminist theories are utilised to reveal the subjectivity and implicit power structures behind descriptions, categorisations and constructions of gendered violence in law. Furthermore, feminist theories are used in order to highlight the universality of gendered violence, and to reveal attempts of rendering gendered violence invisible. Rather than searching for an objective truth, the interest of this study is the

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22 Regarded as typical for e.g. the study of gender and law, legal anthropology or critical legal studies. See Hirvonen 2011, pp. 29 and 50–51.
23 About the objectivity paradigm, see Chomsky 2003 and Bladini 2013, pp. 38–43.
26 Baytok 2012, p. 120.
27 In particular structural feminist theories, with elements of radical and critical feminism. This is not uncommon within the Nordic tradition of gender and law studies. Gunnarsson and Svensson 2009, pp. 119–178. Examples of feminist theories employed in this study are the theories of the normalisation process of violence and the continuum of violence, as described in chapter 4 Legal and Policy Approaches: A universal issue?
28 In all the judgements analysed in this study, the victims were female.
feminist analysis and deconstruction\textsuperscript{31} of legal reasoning, often \textit{perceived} as manifestations of the objective truth:\textsuperscript{32} effectively aiming to making law more just.

However, this study does not only engage in a feminist perspective, but also an anti-racist one, thus, the \textit{approach} aims to be intersectional: to address the vulnerability of minority women without engaging in a racist discourse.\textsuperscript{33} With \textit{intersectional} and \textit{intersectionality}, I refer to the study of discrimination on multiple grounds, its intersections and interactions.\textsuperscript{34} Intersectionality can be described as an academic strive towards the research of “relationships among multiple dimensions and modalities of social relationships and subject formations”.\textsuperscript{35} The main grounds of discrimination investigated in this study are \textit{gender} and \textit{cultural/ethnic/racial minority positions}.\textsuperscript{36} Thus, the intersectional perspective of the study can be considered to support the feminist perspective, investigating the \textit{interests} behind constructions and categorisations of gendered violence – and the \textit{effects} of these – in particular for the victim. Assuming that women and minority group members are vulnerable in society, this study is particularly interested in the perspective of the female minority group member.

In the investigation of gendered violence, the study engages in the perceptions of difference, resulting in categorisation. Here, difference is regarded in the light of \textit{essentialisation} and \textit{alterity}. Alterity, the process of “othering” in ways of \textit{essentialising} the other, can be rendered visible by utilising critical and challenging methodologies and theories. The process of alterity is dependent on perceptions of the \textit{self} and the \textit{other}, determining ultimate access to the perspective of the person describing (\textit{self}), and the perspective of the person described (\textit{other}).\textsuperscript{37} In this study, the focus lies particularly on the perceptions of the \textit{collective self} and the \textit{collective other}. The self, with its dominance, given the privilege of describing the other, is allowed to ascribe certain identity-forming

\textsuperscript{31} Thus, there is a certain deconstruction of the constructed reality in the court cases, as inspired by the theories of Jaques Derrida. See Derrida 1967 and Lawlor, Leonard: Jaques Derrida.

\textsuperscript{32} Bladini 2013, pp. 38–43

\textsuperscript{33} See Crenshaw 1991. This is further dealt with in chapter 3.4 \textit{Culture, Feminism and Rights}.

\textsuperscript{34} Intersectionality as an approach that can be successful in addressing questions that are silenced by other discourses, see Carbin 2010, p. 167. Works of prominent scholars on intersectionality are e.g. Crenshaw 1991, Collins 2000, Davies 2005 and de los Reyes and Mulinari 2005.

\textsuperscript{35} Quotation, McCall 2005, p. 1771.

\textsuperscript{36} Even though these grounds are separate, it is important to highlight their partly interdependent character in their perception as \textit{other}. Furthermore, there are also other grounds one could investigate: e.g. socio-economic positions and class. Unfortunately, the limits of this thesis make it difficult to fully incorporate this perspective into the study. However, I partly touch upon the subject when dealing with minority positions, in particular concerning the Kurdish population in Turkey. See chapter 4.3.2 \textit{Gendered Violence and Majority/Minority Positions in Turkey}.

\textsuperscript{37} Jensen 2011.
qualities and features to the other, forcing the one described to find agency with the described identity.\textsuperscript{38} Hence, the identity of the other is \textit{conceptualised}.\textsuperscript{39}

As referred to earlier, women and minority group members are seen as vulnerable, and are thus sensitive to processes of conceptualisation and essentialisation. The \textit{hypothesis} of the study is that the \textit{self} is perceived as male and the majority group member, while the \textit{other} becomes female and the minority group member: this is reflected in the court cases investigated. Thus, the female minority group member is ultimately exposed to two different processes of alterity. This can be referred to as \textit{intersectional othering}.\textsuperscript{40} Theories of alterity are particularly useful in answering the research question, since they can explain both the \textit{essentialised} and \textit{normalised} constructions of gendered violence, e.g. in the court context, as strategies that are not necessarily opposite, but rather interconnected.\textsuperscript{41} This will be further demonstrated throughout the thesis.

\textit{Social constructionism} and \textit{discourse analysis} are independent theories and/or methodologies.\textsuperscript{42} However, closely related – if not interrelated – both investigate and stress the significance of structural \textit{power relations}, mirrored and reinforced in language. Social constructionism mainly criticises knowledge as socially created: law offered no exception.\textsuperscript{43} Thus, social constructionism opens up multiple ways to rethink categorisation within law and society.\textsuperscript{44} In this study, social constructionism offers a useful strategy of critique of legislation, law in practice, legal knowledge, theories and argumentation: all viewed as social constructions. Thus, social constructionism, in combination with theories of intersectionality, feminism and alterity, can explain the existence of the constructions investigated in the judgements. Here, \textit{contextualisation} is of ultimate importance. Therefore, the judgements investigated are placed within a societal context, in order to reveal the meaning and implications of the judgement text, reaching beyond the strictly

\textsuperscript{38} Jensen 2011. About this formation of identity and the management mechanisms created on the micro level, see e.g. Howarth 2002 and Stets and Carter 2012.
\textsuperscript{39} Gingrich 2004.
\textsuperscript{40} The theoretical concept of othering is originally invented by post-colonial theories. Jensen 2011, p. 63. Inspiration for the critical analysis of linguistic constructions of alterity and difference is also taken from Derridaean concepts of deconstruction. See Derrida 1967.
\textsuperscript{41} Well demonstrated in Volpp 2011.
\textsuperscript{42} Social constructionism might be classified as a theory. Discourse analysis is the methodology and method that is most closely related to the theory of social constructionism.
\textsuperscript{43} Coined as a term in the 1960s, \textit{social constructionism} is today considered to be one of the main schools of knowledge critique. See Berger and Luckmann 1967 and Gergen and Gergen 2003. However, there also exists a paradox between the notions of realism and the notions of social constructionism. Gergen 1998. About the application of social constructionism on law, see Ruuskanen 2006.
\textsuperscript{44} Burr 1998, p. 13.
legal context.\textsuperscript{45}

Approaching the methodology of discourse analysis, there are multiple forms of the kind.\textsuperscript{46} Commonly used in combination with social constructionism,\textsuperscript{47} discourse analysis investigates discourses within language as \textit{social interaction}. By analysing discourses, one can discover multiple arguments and their connections with values within language, and investigate how \textit{power} and \textit{constructions of power} are connected to these.\textsuperscript{48} Generally, discourse analysis is a time-consuming, qualitative research method, requiring a close reading from the researcher.\textsuperscript{49} I primarily use discourse analysis to analyse the connection between knowledge and power in the way they are particularly described in \textit{Discipline and Punish}, \textit{The Archaeology of Knowledge} and the first volume of \textit{The History of Sexuality} by Michel Foucault.\textsuperscript{50} In this study, the analysis particularly focuses on the language of the court.\textsuperscript{51} The discourse analysis performed is primarily focused on similarities, rather than differences.\textsuperscript{52} In answering the research question, discourse analysis can be considered particularly useful: finding the constructions within the judgements, revealing the focus of court and recognising whose perspective is regarded as valid in the construction of legal facts.\textsuperscript{53}

The \textit{methodology} of the study can be summarised through an analysis of its \textit{epistemological} and \textit{ontological} frameworks.\textsuperscript{54} The ontological cornerstone of this study is that law is a social concept that \textit{manifests power relations}, while the epistemological premise is that power relations can be found through the \textit{analysis} of the \textit{letter} and the

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{45}Volpp 2011, p. 98.
\item \textsuperscript{46}Examples of famous forms of discourse analysis are Foucauldian discourse analysis, the discourse analysis developed by Ernesto Laclau and Chantal Mouffe, and critical discourse analysis. See Jørgensen and Phillips 2002 and Phillips and Hardy 2002.
\item \textsuperscript{47}Jørgensen and Phillips 2002.
\item \textsuperscript{48}The power of a discourse largely determines the value and the reception that various arguments will have. This notion of power is evident in many studies of social sciences; one recent example is the work of Stets and Carter on the sociology of morality. Stets and Carter 2012. See also the concept of Foucauldian biopower, which can be described as power politics on the macro level. Foucault 2007.
\item \textsuperscript{49}Bergström and Boréus 2005.
\item \textsuperscript{50}Foucault 2002, 1995 and 1990. The discourse analysis performed is somewhat genealogical, rather than archaeological. Discursive information is regarded as created through contradictory and multifaceted processes. See Bergström and Boréus 2005 and Keskinen 2009a, pp. 258–259.
\item \textsuperscript{51}About the application of Foucauldian theories to the concept of law, see Tuori 2002, in particular pp. 3–38. See also Niemi-Kiesiläinen \textit{et al} (edit) 2006, in particular Niemi-Kiesiläinen \textit{et al} 2006 and Ruuskanen 2006.
\item \textsuperscript{52}Thus, the Foucauldian influences are evident. Bergström and Boréus 2005, p. 313.
\item \textsuperscript{53}See Niemi-Kiesiläinen \textit{et al} (edit) 2006.
\item \textsuperscript{54}The ontological and epistemological frameworks are pictured interdependently, and thus largely dependent on their contexts. However, it is possible to run into the methodological paradox between realism and social constructionism, touched upon in Burr 1998.
\end{itemize}
\end{footnotesize}
context of law. Here, law is recognised as written, practical and political. The aim is to analyse legal language and the discursive power that it creates and manifests. Particular attention is paid to the reproduction of gender, as well as minority/majority relations, mirrored in the essentialisation of the minority other in the judgements. The minority/majority positions analysed are (Muslim) immigrant minority/Finnish majority population in Finland, and Kurdish minority/Turkish majority population in Turkey.

As already mentioned, the cases chosen for analysis are cases were women have been killed by their partners, former partners and/or family members. My choice of cases is motivated by earlier academic writings and media reporting, an aim of broad geographic representation, legal impact, as well as personal contacts with feminist lawyers. The cases are relatively recent, in order to represent the current legal situation of each country as comprehensively as possible. In total, I have analysed six cases from Finnish courts and six cases from Turkish courts. Three of the Finnish cases are Supreme Court decisions, and three are not. All six of the Turkish cases are from the Turkish Supreme Court of Appeals (the Supreme Court). Discourse analysis has been conducted on the judgements by all court instances, making the total number of analysed judgements 25: 13 Finnish and 12 Turkish. However, the Turkish judgements of the Courts of First Instance are only analysed in the short form in which they are described in the judgement by the Supreme Court. Thus, the Turkish judgements can be considered to count six in total, making the ultimate number of judgements analysed 19. My command of Turkish language permits me

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55 Thus, theory and methodology have to be seen as intertwined. This form of linguistic power creation is typical for Foucauldian readings, other forms of discourse analysis as well as feminist analysis of power. With power, I do not refer to something that is simply observed, but to a “projection of a category [...] that derives from our own awareness”. Quotation, Beattie 1964, pp. 140–141. See Jørgensen and Phillips 2002, Gutting, Gary: Michel Foucault and Allen, Amy: Feminist Perspectives on Power.
56 Thus, the sociological aspect of law is particularly highlighted. See Baytok 2012, p. 7.
57 Also seen in the concept of Foucauldian biopower, see Foucault 2007.
58 Similar to what is done in the study of Swiss police reports by Gloor and Meier. See Gloor and Meier 2011.
59 This primarily concerns Turkey, where the cases have been chosen from both the eastern, western, southern and middle parts of the country. This concern has been important in bridging the gap between “the East” and “the West”, which often occurs in Turkish reporting and writings on many issues, gendered violence being one of them.
60 Contacts with the feminist lawyers have particularly been helpful in the process: providing me with information about cases that were particularly followed by feminist activists. I also took part in one of these trials, on 21 August 2013, at Bakırköy Adalet Sarayı, where a group of feminist activists and lawyers were following a case where a woman had been killed by her husband. However, this case is not analysed in this thesis, since its judgement will not be released until 2014.
61 Thus, no major changes have been made in legislation.
62 The cases that are not Supreme Court judgements are dealt with in this thesis because they have gained attention in the Finnish media as being potential so-called honour killings, or simply because the perpetrators and victims were immigrants. Two of the cases are also analysed by Arto Karalahti in his LL.M. thesis on the subject of so-called honour killings. See Karalahti 2008, pp. 49–55.
to understand the contents of the judgements. However, in order to fully understand the meaning and implications of the Turkish judgements and to familiarise myself with Turkish legal concepts and legal culture, I have received help from the lawyers at the Foundation for Legal and Society Studies, TOHAV, where I did an internship during the summer of 2013. In particular, I have received help from lawyer Sevgi Epçeli.

In order to obtain deeper and more nuanced information about the construction of gendered violence and discourses of culture, I conducted 13 semi-structured interviews with academics, one former UN special rapporteur, representatives of NGOs, social workers and other people working professionally against violence. The interviews ranged between 30 minutes to two hours in length, and were mainly performed in the Nordic countries and Istanbul, Turkey. The findings of the discourse analysis performed are viewed against the theoretical, historical, political and societal frameworks, both national and international, put forward in the first four chapters of the thesis. This is done in order to stress the interdisciplinary nature of the study: to highlight the problematic nature of multiple discrimination, and to place legal constructions in a societal context. The amount of material might seem excessive, but is necessary in order to contextualise the constructions found in the judgements, which ultimately increases the understanding of the discourse analysis performed in the study.63

The study continues the discourse analysis research on gendered violence in the Finnish legal context, characterised primarily by the works of legal researchers Johanna Niemi, Minna Ruuskanen and Helena Jokila.64 Being an interdisciplinary study, this thesis is largely influenced by the works of certain sociologists and social theorists, such as Yakın Ertürk, Suvi Keskinen, Dicle Koğacıoğlu and Nükhet Sirman,65 but also by other research within the field: particularly concerning intersectionality.66 The discourse analysis carried out in this study compares the Finnish legal context with the Turkish: offering another perspective to Finnish law, primarily concerning the fields of gender and law, sociology of law and criminal law. Hence, this study aims to develop legal knowledge and particularly

63 This is also needed in order to understand the context and intersections of the issue. Koğacıoğlu 2011, pp. 173–174.
knowledge about law in the national and comparative legal field. There being no earlier comparative studies of Finnish and Turkish judgements on gendered violence, this study can be considered to offer new insights into the subject: in particular concerning legal constructions of majority/minority positions in society. The aspired effects of the study are to discuss and contribute to the results of other research in the area, as well as to provide material and ideas for further research on the subject.

It is of ultimate importance to highlight that this study is by no means trying to undermine the violence faced by minority women. Rather, it tries to understand the need – or lack of such – for a separate debate and intervention on certain forms of gendered violence, with reference to minorities and vulnerable groups. The study stresses the perspective of the female victim, rather than the perspective of the perpetrator, aiming to avoid the normalisation of gendered violence. Discourse analysis is utilised in this study in order to render visible the strategies of culturalising gendered violence: e.g. to get beyond orientalised descriptions and understandings of honour. Thus, this study aims to highlight the universality of gendered violence, while simultaneously recognising its multiple forms.

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68 The need and importance to recognise all forms of gendered violence was discussed in my interview with Jenny Westerstrand. Jenny Westerstrand, 17 October 2013.
69 In this study, the word perspective is sometimes used in order to describe a certain narrative of a person involved in the events.
71 Therefore, it largely follows a research tradition that has been put forward by certain feminists, e.g. Åsa Eldén, Eva Lundgren and Jenny Westerstrand. See Eldén and Westerstrand 2003, SOU 2004:121 and Lundgren et al 2001.
Those with power appear to have no culture; those without power are culturally endowed.

Lawyer Leti Volpp\textsuperscript{72}

\textsuperscript{72} Volpp 2001, p. 1192.
3 Gendered Violence: Passion or honour?

In this chapter, I account for gendered violence and the dichotomous divisions of gendered violence on the grounds of perceived collective v. individual nature. This is done with reference to international, Finnish and Turkish legal and policy frameworks. Furthermore, the discussion on the presumed paradox between multiculturalism and (liberal) feminism is touched upon. This chapter aims to provide for a further understanding of the context of gendered violence.

Definitions and understandings of violence traditionally focus on physical forms of violence, forming the main perception of violence in the legislative frameworks of many countries. However, violence is a concept that goes beyond physical assault: there are also e.g. mental, social, sexual and economic forms of violence. It is important to highlight that violence can be defined both from the point of view of the perpetrator, as well as that of the person who is the object of violence, the victim or survivor.

In this thesis, I have chosen to deal with male violence against women, using the term gendered violence. The term can be considered appropriate, since it highlights both the gendered nature of perpetration and victimisation in different forms of violence. Gendered violence departs from the term violence against women, and is a worldwide phenomenon, springing from and contributing to gender inequality. With reference to

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73 Initiated primarily by Susan Moller Okin. See Okin 1999.
74 An example here worth mentioning is the definition by the Violence Prevention Alliance. Violence Prevention Alliance: Definition and typology of violence.
75 This is e.g. the case in Finland, where the focus in criminal provision of assault (fi: pahoinpitely) in the Finnish Criminal Code (39/1889), chapter 21, section 5, mainly lies on physical violence: A person who employs physical violence on another or, without such violence, injures the health of another, causes pain to another or renders another unconscious or into a comparable condition, shall be sentenced for assault to a fine or to imprisonment for at most two years. Finnish Ministry of Justice: Unofficial translation of the Criminal Code of Finland. However, the most recent amendment of section five in 1994 was thought to include forms of violence other than physical violence. See HE 94/1993, pp. 95–96.
76 This perspective on violence was also discussed with Tanja Völker and Martina Gaidzik, 29 January 2013.
77 The approach that departs from the point of view of the victimised woman can be considered as feminist and rights-based. This approach has been particularly difficult to form in some cases, e.g. the battered women’s movement. See Merry 2003b.
78 With the term male violence, I do not refer to the violence as biological or natural for the male sex or gender. However, it is used in order to highlight the gendered exercise of violence as power, enforcing male supremacy and female inferiority. Therefore, my utilisation of the term male violence differs from some definitions. See Masson and Roux 2011, Alder 1997, Edwards A. 1987 and Jokinen 2000, p. 27.
81 World Health Organization: Violence against women.
82 Here, men and women are used as generalised perceptions and conceptions, mainly based on the same perception of sex that occurs in international legal documents, such as the CEDAW. It is used in this way,
certain feminist theories, male violence perpetrated against women forms an encompassing pattern of violence: perpetrated in public as well as in private. Violence against women is sometimes referred to as gender-based violence, due to the fact that the victimisation happens on the grounds of gender or sex. However, gendered violence and gender-based violence are not identical: gendered violence stresses the act of violence as reproducing and maintaining structural gender inequality more than the term gender-based violence. Gendered violence is not limited to male perpetrators and female victims: it involves a broader, multifaceted understanding of violence and societal creation of gender and sex, also involving LGBTIQA groups. Thus, violence is only one element, or manifestation, of this structural gender inequality.

I have limited the focus of this study to gendered violence, where female victims have been killed. Hence, the focus is on physical violence, with a traditional understanding of the concept of sex. With this limitation, I do not intend to contribute to the focus only on extreme forms of violence, as is often done for instance in the media. In doing so, the patterns of gendered violence and the everyday realities faced by victims of gendered violence are easily hidden and forgotten. Rather, the narrowing of the subject is done in order to limit the scope of research, and to be able to offer grounds for comparison between different legal contexts. A profound analysis of all forms of gendered violence in the countries of comparison is, mildly put, an extensive area of research: thus, not appropriate since the framework of gendered violence in international law more or less builds upon this perception. However, it is important to highlight that the perceptions of sex and gender are highly complex phenomena, not merely divided into two sexes and/or genders as female and male – neither does the perception of sex or gender look the same in all parts of the world. Because of the complexity of the phenomena of sex and gender, and the limitations of this thesis, I have chosen not to challenge and question these terms and perceptions more than this.

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84 This study being feminist, I cannot make a distinction between private and public without (at least implicitly) questioning it. This division is problematic in order to render structural violence visible. Åsa Eldén, 24 June 2013 and Heidi Kinnunen, 24 May 2013. About the danger of dividing gendered violence into domestic violence and violence in the public sphere, see Lundgren et al 2001 and Eldén 2003, p. 87. See Ertürk and Purkayastha 2012, p. 145 and Dallmeyer (edit) 1993. It is important to highlight that the violence can be perpetrated by anyone: e.g. strangers, acquaintances, work colleagues, supervisors, friends, family members or partners. See chapter 4 Legal and Policy Approaches: A universal issue?
85 Gender-based violence is used largely in national and international law instead of violence against women. This is mainly because of the perception of the term women as an unstable, fractured and contested category of identity. However, it remains questionable whether the term gender is more coherent than the term women. See Helen Gremillion, 23 May 2013.
86 Involving inherent male supremacy and female inferiority. Saying this, it is also possible that e.g. a person, biologically recognised as a man, or as an intersex person, are victims of gendered violence.
87 Sociologists for Women in Society: Gendered Violence Fact Sheet.
88 E.g. focusing particularly on gruesome cases of violence, such as murders in which the body is dismembered. This was discussed in my interview with Åsa Eldén. Åsa Eldén, 24 June 2013.
89 Note: mainly women.
90 This is also described in Eldén and Westerstrand 2003.
for an LL.M. thesis.\textsuperscript{91}

Often critiqued as offering an implicit justification or excuse to violence,\textsuperscript{92} so-called \textit{passion killings} and so-called \textit{honour killings} are described as examples of \textit{individual v. collective gendered violence} in this study. I have chosen to use the terms as a point of departure, in order to pin them down and thoroughly investigate their structures. In the following chapters, the terms are defined in accordance with legal, socio-legal, sociologist, historical and anthropologist sources.\textsuperscript{93} It should be pointed out that the implicit risk in defining concepts is the danger of closing the scope of the definition to phenomena, which lie beyond the perception of the person making the definition. This exclusion might result in unequal treatment and discrimination of cases that fall outside the range of the definition.\textsuperscript{94} However, within law there is a \textit{normative need} to define certain phenomena, in order to create a common framework for interpretation, or a point of departure for analysis.\textsuperscript{95}

\section{3.1 The Collective Violence: So-called killings of honour or custom}

In this section, I describe two similar examples of what is often perceived as \textit{collective gendered violence} in the international, Finnish and Turkish frameworks of law, sociology and anthropology. In the international and Finnish contexts, this example is described as so-called \textit{honour killings}. In Turkey, the example referred to are so-called \textit{custom killings}.

In the international framework, there have been many attempts to define so-called \textit{honour killings}. Despite this, there is no common, uncontested definition.\textsuperscript{96} One of the most frequently quoted definitions is the one offered by human rights advocate Purna Sen. Sen presents six characteristic features for murders in the name of honour: that the woman’s

\textsuperscript{91} This type of research has, to some extent, already been done. A good example of anthropological analysis of gendered violence is e.g. the works of Sally Engle Merry. See Merry 2008 and 2006.
\textsuperscript{92} About excuses for gendered violence, see Renteln 2004, pp. 24–36. This was highlighted by the representatives of the Turkish feminist NGO Mor Çatı. Tanja Völker and Martina Gaidzik, 29 January 2013. It has been stressed by the former Finnish President Tarja Halonen. Ess.fi: Halonen: “Intohimorikos” ja “kunniaväkivalta” olisi unohdettava.
\textsuperscript{93} Naturally, the different disciplines offer different explanations and frameworks for explanations of the terms. The definitions in the following are based on the commonalities of these definitions.
\textsuperscript{94} This is one of the main points that can be derived from the extensive work of Judith Butler on the concepts of sex and gender. See Butler 2004, 1993 and 1990.
\textsuperscript{95} The normative needs in law can be described from the shortcomings of legal realism. However, there is a need for both normative as well as realist argumentation in law. This can be well observed in international law, which is captured in its dependency on international politics. Koskenniemi 2005, pp. 562–617.
\textsuperscript{96} In her analysis, Unni Wikan writes that the term is widely contested also in the environments where so-called “honour killings are part of old traditions”. See Wikan 2005, p. 8.
behaviour is the main focus of attention; that women can have a role in the supervision over other women, possibly even participate in the killing; that the decision to kill is made collectively; that there is a possibility to regain honour through threat, force or violence; and that the State legitimises the crime by accepting honour as a motive and purpose of the perpetrated violence.\textsuperscript{97}

So-called \textit{honour killings} are often described as an extreme part of larger, systematic, gendered violence, often referred to as so-called \textit{honour (related) violence}. So-called \textit{honour killings} are often, generally in the coverage by (western) media, particularly connected to Middle Eastern and Asian cultures: be it immigrants or remote societies.\textsuperscript{98} However, there are claims that so-called \textit{honour killings} exist everywhere in the world.\textsuperscript{99} Furthermore, so-called \textit{honour killings} have a contested connection to Islam.\textsuperscript{100} Due to a particular sensitivity, some actors avoid the term: e.g. the UN, mainly addressing so-called \textit{honour killings} within the framework of so-called \textit{harmful traditional practices}, later only \textit{harmful practices}. The elimination of the word \textit{traditional} can be considered as a positive development of the term, to a greater extent avoiding discourses of alterity.\textsuperscript{101}

Influenced in particular by the Swedish discussion, there has been relatively little attention paid in the Finnish media and public debate to so-called \textit{honour killings} and so-called \textit{honour violence} in comparison with the other Nordic countries.\textsuperscript{102} There are some authority reports and handbooks on the subject of so-called \textit{honour killings}\textsuperscript{103} as well as work done by NGOs.\textsuperscript{104} Two of the most well-known NGO projects surrounding the theme

\begin{itemize}
\item Sen 2005, pp. 61–62.
\item See Keskinen 2009a, p. 262 and Koğacıoğlu 2011, p. 189. One example of the discourse is the study by anthropologist Clementine van Eck on so-called \textit{honour killings} perpetrated by Turkish immigrants in the Netherlands. The study does not deal with gendered violence on a broader scale, nor the violence perpetrated by majority Dutch men against majority Dutch or immigrant women. See van Eck 2003.
\item Well demonstrated by the different authors in Welchman and Hossain (edit) 2005.
\item See Wikan 2005, p. 8 and Welchman and Hossain (edit) 2005. However, there is often a perceived connection in the West between honour killings and Islam. See Sen 2005, pp. 46–48. This perceived connection can e.g. be seen in the writings of Kirsti Härkönen in her observations of (in particular sexual) gendered violence in Turkey and references to the Qu’ran. Härkönen 2004. The perception is often based on lack of knowledge of Islam and the history of Islam. See Awla 2005, p. 162.
\item Springing from the recognition of these in CEDAW Art. 5 and DEVAW Art. 2. See OHCHR: Fact Sheet no. 23, E/CN.4/RES/1994/45. Plan of action for the Elimination of Harmful Traditional Practices affecting the Health of Women and Children, and Ertürk and Purkayastha 2012, p. 149. This was discussed during the interviews with Tassopoulos and Eldén. Kostas Tassopoulos, 5 June 2013 and Åsa Eldén, 24 June 2013.
\item Keskinen 2009b. About the problematic alterity discourse in the Nordic countries, see Sundström 2009, pp. 71–72 and Bredal 2005.
\item Examples of prominent NGOs in the field are the Finnish League of Human Rights, Monika-Naiset and Miehen linja. See Allinen-Calderon \textit{et al} 2011, Äärelä and Gerbert 2012, Nyqvist and Hyvärinen 2012 and Keisala 2006.
\end{itemize}
are the *Kitke!* project\(^{105}\) and the *Amoral* project.\(^{106}\) In many of the definitions used by the authorities and NGOs, so-called *honour violence* and so-called *honour killings* are described as *new phenomena* in Finland, related to foreign cultures and traditions, a *collective* society, immigration and immigrants. Thus, many of the approaches are *particularist* and *culturalist*.\(^{107}\) However, there are certain tendencies, particularly in more recent work, to relate the problem of so-called *honour killings* to more universal explanation models on gendered violence.\(^{108}\)

There is no explicit legal definition of the term in Finland, even though attempts to create definitions have been made in authority reports on the subject.\(^{109}\) This might be due to the fact that *honour* in the Finnish context, addressed as such, is not – at least formally – given legal relevance, regarding acts of violence.\(^{110}\) Some efforts to create a legal definition have been made e.g. in the article *Honour Violence from a Legal Perspective* by Pia Holm\(^{111}\) and in LL.M. theses *Patriarchal Honour Violence* by Sara Räisä\(^{112}\) and *Honour violence – Honour Killing as a Form of Honour Violence* by Arto Karalahti\(^{113}\). All of the definitions proposed focus on the *collectivity* of the violence. However, the definitions can be seen as somewhat problematic: since they place the problem, and the context of the definition, in certain (minority) cultural contexts. Not proposing a definition *per se*, sociologist Suvi Keskinen has used a different approach to the subject: recognising so-called *honour related violence* partly as violence in intimate relationships, partly as parental violence against children, partly as exercised by adult children against their parents, and partly as violence by several family members towards one family member.\(^{114}\) Thus, her definition does not focus on differences and culture, but departs from the *violence* perpetrated.

In Turkey, one form of collective violence is referred to as so-called *custom violence* or so-called *custom killings*. This term is used in media reporting,\(^{115}\) legal documents, NGO

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106 Initiated by the Mannerheim League for Child Welfare. See the final report of the project, Tauro and van Dijken (edit) 2009.
107 About culturalist and particularist explanation models, see Ertürk 2009 and Jenny Westerstrand’s article DN Kultur: Här är sanningen i debatten om hedersvåld.
108 Hong 2013. See also Keskinen 2011a.
109 Hong 2013.
110 At least, it is not mentioned in the justifying (*se: rättfärdigande*) or excuses (*se: ursäktande*) grounds for a crime within the Finnish criminal legal doctrine. Frände 2004, pp. 154–218.
115 Anlayıs: Mardin olayı: Töre değil katliam.
frameworks, academic research and public discussions.\textsuperscript{116} One of the most conspicuous features in the Turkish legal context is that it is officially addressed as a specific type of crime,\textsuperscript{117} and in order to be legally classified as a so-called \textit{custom killing}, the point of departure is the need for a \textit{collective decision} made before the killing.\textsuperscript{118} This collective decision is traditionally described as the outcome of a family council meeting.\textsuperscript{119} However, this view has been somewhat abandoned in recent years, the collective decision not deemed crucial for the description of the crime.\textsuperscript{120}

There have been several attempts to define so-called \textit{custom killings} legally and in other academic fields. One of the most prominent and well-known investigations of so-called \textit{custom killings} has been done by former Supreme Court of Appeals judge Salih Zeki İskender. According to İskender, the particular features of the so-called \textit{custom killings} can be multifaceted, but are distinguished by the collective perception of honour.\textsuperscript{121} Political scientist Ceren Belge has addressed so-called \textit{custom killings} as the perceived right for families to punish their own for the breach of societal norms: an unofficial legal system existing particularly in certain parts of Turkey.\textsuperscript{122} This being said, so-called \textit{custom killings} are often associated with \textit{Kurdish people} and \textit{Kurdish culture} in Turkey.\textsuperscript{123} The Supreme Court of Appeals often points out the areas of Turkey with a large Kurdish population as an area where these crimes are perpetrated.\textsuperscript{124} Some actors have criticised this policy for its essentialising effects.\textsuperscript{125}

When referring to a phenomenon of violence with perceived collective character (both so-called \textit{honour killings} and so-called \textit{custom killings}), the term so-called \textit{collective gendered violence} is used in the following text. Sometimes the term so-called \textit{honour killings} is

\textsuperscript{116} Radikal: Kadınlar, töreler ve ötekiler.
\textsuperscript{117} To be further addressed in chapter \textit{4.3.1 Turkish Legislation}.
\textsuperscript{118} As defined by legal practice. Ertürk 2009, p. 62 and Yıldız and Muller 2006, pp. 33–34.
\textsuperscript{119} This is highlighted in most Turkish legal and sociological literature on the issue. See Özcan 2013, p. 242.
\textsuperscript{120} This can be seen e.g. in \textit{The Supreme Court of Appeals of Turkey}, Decision no. 2011/120, File no. 2011/1-138, Judgement given 14 June 2011. See also Habertürk: Töre mi, namus mu?
\textsuperscript{121} İskender 2011.
\textsuperscript{122} Hence, Kurdish people are particularly affected. Belge 2008, p. 44 and 55. This form of \textit{justified violence} is also touched upon in Shalhoub-Kevorkian 2005, pp. 160–161.
\textsuperscript{123} Ertürk 2009, p. 63.
\textsuperscript{124} Bayr 2013, pp. 138–139. See also \textit{The Supreme Court of Appeals of Turkey}, Decision no. 2010/111, File no. 2010/1-56, Judgement given 11 May 2010.
\textsuperscript{125} Mostly by Kurdish activists and researchers with feminist and intersectional approaches. See e.g. Koşacoglu 2011 and 2004 and Sirman 2011. This was also discussed in my interview with Ph.D. candidate Ferya Taş, who pointed out that in particular the media discourse in Turkey uses strategies of alterity towards the Kurdish minority. Ferya Taş, 16 August 2013. A few examples of the Turkish media discourse are Diyadinnet.com: Ağrı'da Tüyler Ürperten Töre Cinayeti, Milliyet: Töre kurbanı Hatice toprağa verildi and Sıcak Haberler: Mardin'de Töre Cinayeti.
used, if reference is made particularly to Finnish or western contexts.

3.2 The Individual Violence: So-called killings of passion or honour

In this section, I analyse what are often referred to as so-called passion killings in the international and Finnish contexts, and as so-called honour killings and/or passion killings in Turkey. The term refers, in the large international context, to a strategy of legal defence – often legally referred to as provocation – making the apologetic claim that a crime was perpetrated due to sudden anger or heartbreak. The term is originally used in cases when a person (often male) finds his/her partner having sexual intercourse with another, and immediately kills one – or both of them – in a state of anger. In courts, this is used as a legal strategy for the defendant to get a reduced sentence or a cause for acquittal. The strategy typically relates to the defendant’s claims of sexual relations and/or love and affection. The perpetrators of so-called passion killings are typically described as the (often male) partners or former partners of the victims, but there have been cases where similar logics were used as legal defence strategies by other members of the (often female) victims’ families, such as brothers or fathers. So-called passion killings are not considered to be specific for non-western societies and receive legal recognition in some modern legal systems: either explicitly through legislation, and/or implicitly through court practice.

In the Finnish context, the defence strategy of passion has in history been officially approved in the legal system. This was done according to Swedish law – since Sweden has historically comprised a great part of what is today considered to be Finland – as an exclusive right for a married man. According to Magnus Erikssons stadslag, 14th century Swedish criminal law gave the right to a husband to kill his wife and her lover, in the event that the husband catches the couple red-handed. This can imply a type of honour

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126 So-called passion killings do not occur as an often used term within legal, sociological, anthropological or historical texts. The more common terms used for the phenomenon, are so-called crime passionnel or crime of passion. However, this thesis being limited to (mainly) physical violence with death as the outcome, I have chosen to use the term so-called passion killings. The choice of the term also draws parallels to so-called honour killings.


128 See Besse 1989, p. 653.

129 Thus, they are different from so-called honour killings on this point.

130 On the similarities and difference between the meaning of the concepts of so-called honour and passion, see Abu-Odeh 1997.

131 There is no reason mentioned in the contemporary legal texts as to why the husband was given this right.
codex\textsuperscript{132}, expecting the husband to kill the couple (or one of them) in order to defend his honour. It can also imply legal acceptance for the revenge of the husband.\textsuperscript{133} Thus, there are certain similarities with the definition of so-called honour killings, provided by Sen.\textsuperscript{134} The defence of passion no longer receives (at least explicit) support in Swedish, nor Finnish, criminal laws.\textsuperscript{135} However, it is not entirely clear whether some situations that fall within the scope of so-called passion killings can be interpreted as extenuating circumstances in Finnish courts.\textsuperscript{136} What remains clear, on the other hand, is that jealousy, a will to control female partners and the perceived shame of losing the female partner are addressed as explanations of gendered violence: in research as well as by professionals working within the subject.\textsuperscript{137} Even though violence is seldom addressed explicitly as so-called passion killings in the Finnish context, a certain (individual) honour can be distinguished as a pattern in these violence myths.\textsuperscript{138}

In Turkey, there are references to two terms when addressing perceived individual honour: so-called passion killings and so-called honour killings.\textsuperscript{139} A so-called passion killing and a so-called honour killing are described as killings when the individual honour of a man is contested or perceived as lost.\textsuperscript{140} Typical cases recognised as so-called passion killings or so-called honour killings in the Turkish system are cases where the victimised woman is thought to have a sexual relationship with a man other than the male perpetrator, or when

\begin{thebibliography}{99}
\bibitem{Wikan2005} This term is particularly used by anthropologist Unni Wikan, when she describes the “cultural background” of so-called honour killings. Wikan 2005.
\bibitem{Sen2005} See chapter 3.1 The Collective Violence: So-called killings of honour or custom.
\bibitem{SwedishCriminalLaw} In modern Finnish criminal law, provocation is not addressed so much in the criminal legal doctrine: the provocation addressed is mostly violent provocation in combination with self-defence. See Matikkala 2000, pp. 59–63. However, according to older sources, the act of provocation does not necessarily have to constitute physical violence. Honkasalo 1970, pp. 18–19. On the evaluation of provocation in modern Swedish criminal law, see Lernestedt 2010, pp. 264–269.
\bibitem{FinnishCriminalLaw} According to a Finnish precedent of 1997, this legal strategy is not (at least explicitly) given legal protection in Finnish criminal law. See KKO:1997:153. This issue is further addressed in chapter 4.2.1 Finnish Legislation.
\bibitem{Eldén2007} On violence myths, see Eldén (edit) 2007, p. 12.
\bibitem{Pervizat2011} The division has been challenged by certain feminists, addressing both so-called collective gendered violence and so-called individual gendered violence as perpetrated in the name of honour. Pervizat 2011, pp. 142–143. Some claim that the Turkish perception of honour (tr: namus) is different from that of passion, arguing that it is more encompassing than simply male control over women. See Se'ver and Yurdakul 2001, p. 973.
\bibitem{Karınca2011} Karınca 2011, p. 40. Özcan 2013, p. 244.
\end{thebibliography}
she wants to end the relationship with the male perpetrator.\textsuperscript{141} The violence perpetrated is acted out of the \textit{shame} inflicted upon the man, often perceived as a result of the behaviour of the woman with whom he is having (or has had) a relationship.\textsuperscript{142} These cases can sometimes receive a milder treatment in court, being considered as \textit{unjust provocation} of the perpetrator.\textsuperscript{143} Thus, so-called \textit{honour killings} do not have precisely the same meaning in Turkey as they do in the international (largely western determined)\textsuperscript{144} and Finnish contexts.

Thus, \textit{honour} is an ambiguous word in the Turkish (and perhaps also Finnish and international) legal context(s). This is due to the fact that what is perceived by the judge as a killing motivated by \textit{individual honour} can receive certain legal protection in practice – while what is perceived as a killing motivated by \textit{collective honour} is considered as aggravating.\textsuperscript{145} Insightfully demonstrated in the writings of Nükhet Sirman, this ambiguity is explained through the connections to foundational Republican values in the Turkish context, which regard \textit{romantic love} (perceived as individual) as superior to \textit{kinship} (perceived as collective).\textsuperscript{146}

So-called \textit{passion killings} are internationally questioned today, much owing to feminist movements.\textsuperscript{147} However, the term still exists as a strategy for legal defence.\textsuperscript{148} Nevertheless, it is notable that the so-called \textit{honour killings} are still widely used as a term (as opposed to the so-called \textit{passion killings}), even though they can be subjected to the same critique: i.e. constituting strategies that build on the \textit{narrative} of the perpetrator.\textsuperscript{149}

When referring to a phenomenon of violence with perceived individual character, the term so-called \textit{individual gendered violence} is used in the following. Sometimes only the term so-called \textit{passion killings} is used, if reference is made to the Finnish or western context.

\textsuperscript{141} This is described as a \textit{western perception of honour} by Aylin Akpınar. See Akpınar 2003, p. 427.
\textsuperscript{142} This is described by lawyer Onur Özcan as acts perpetrated in anger or mental anguish. Özcan 2013, p. 254.
\textsuperscript{143} İstanbul Barosu Kadin Hakları Merkezi 2010, pp. 43–44. The article on \textit{unjust provocation} in the Turkish legal system is further dealt with in chapter 4.3.1 \textit{Turkish Legislation}.
\textsuperscript{144} With \textit{international context}, I focus primarily on the framework of the UN.
\textsuperscript{145} Ertürk 2009, p. 62. However, the distinction between so-called \textit{individual} and \textit{collective} honour is often not clear in the Turkish legal context. Thus, labelling a killing as one of custom is generally something that judges refrain from. The phenomenon is well demonstrated in Habertürk: Töre mi, namus mu?
\textsuperscript{146} Sirman 2011 and 2004. See 4.3.2 \textit{Gendered Violence and Majority/Minority Positions in Turkey}.
\textsuperscript{147} This is mainly because the term (primarily in legal contexts) during the 20\textsuperscript{th} century has been the object of wide-ranging feminist critique as not only excusing, but permitting gendered violence to continue. See e.g. A/HRC/11/6/Add.5.
\textsuperscript{149} This was discussed during my interview with Nükhet Sirman. Nükhet Sirman, 11 July 2013. This is also partly analysed by Terman 2010.
3.3 Categorisation of Gendered Violence: Helpful or harmful?

The western discussion about so-called *honour violence* and so-called *honour killings* has largely been dominated by the question of whether certain forms of violence should be separated from others. The aim of this section is not to provide a definite answer to the question of whether or not so-called *honour violence* should be separated from other forms of gendered violence. The aim is rather to shortly present some of the main claims for and against a division of gendered violence with a perceived *individual* or *collective* nature. This is done in order to provide a deeper understanding of the phenomena of gendered violence, and their social constructions and discursive differences.

Both so-called *collective gendered violence* and so-called *individual gendered violence* are known as forms of gendered violence, victimising women to a larger extent than men. They are also perpetrated by men more often than women. If perceived as a legally accepted cause for a mitigated sentence, the concept of so-called *individual gendered violence* is in many ways related to the *psychological elements* of the perpetrator, while the so-called *collective gendered violence* focuses on the *culture* of the perpetrator. The terms greatly build upon the perceptions and narrative of the perpetrator of the violence.\(^{150}\)

The perceived collective forms of gendered violence are often described as perpetrated by the *family* or the *extended family* (e.g. fathers, brothers and mothers) and as requiring a certain audience, while the perceived individual forms of gendered violence are described as perpetrated by the *partner* or *former partner*.\(^{151}\) However, both occur when *male control*\(^{152}\) is challenged: be it perceived as collective or individual.\(^{153}\) The difference is often addressed as one of culture: sometimes, the *other* culture (the perceived collective culture) is even addressed as a *culture of honour*.\(^{154}\) This term is important to regard


\(^{151}\) Chesler 2009 and Wikan 2005.

\(^{152}\) The perception of *male control* is here not bound to the gender or sex of the perpetrator; it is rather a concept of structural male power.

\(^{153}\) Baker *et al* 1999, p. 175. However, it is important to highlight the fact that so-called *honour killings* or so-called *passion killings* are not the only possible reaction to threatening male control. Threatening of male control can also be regarded as important means of agency for women in different societies. Ginat 1982, pp. 177–182.

\(^{154}\) In particular, Swedish media and also, to some extent, academic writings and the Swedish authorities, use the word *hederskultur*. See SOU 2010:84, Schlytter *et al* 2009, pp. 24–27, Göteborgs stad: Hederskultur, Feministiskt Perspektiv: Åkesson förespråkar “hederskulturer”, and Johansson (edit) 2005. However, the utilisation of the term, and most importantly, its culturalising line of argumentation, has also reached Finnish authority work. Examples of this can be seen in SM 14/2011 and SM 1/2008. The utilisation of the term has been largely criticised, e.g. by several of my interviewees. See Kostas Tassopoulos, 5 June 2013, Natalie Gerbert, 7 June 2013, Åsa Eldén, 24 June 2013 and Jenny Westerstrand, 17 October 2013.
towards the development of cultural racism, particularly in the West. Viewing minority women as more oppressed than majority women is a common strategy for rendering the dominant anti-feminist and culturalist discourses stronger. Psychologist Phyllis Chesler and anthropologist Unni Wikan particularly highlight cultural difference in their work on so-called honour violence. However, this stress on differences can also be found in other works on the subject, e.g. reports by Finnish and Swedish NGOs. This cultural differentiation, however, often borders on a dichotomous construction of perceptions of western v. non-western, and the line of argumentation commonly orientalises Islam and/or cultures perceived as non-western.

It is important to raise the question whether this perceived cultural collectivism is important for the true nature of gendered violence – let alone the assessment of such. Is there a significant difference in the involvement of the (extended) family in the violence, compared to if the perpetrator acts alone? Is there a difference if the honour is defined by a surrounding audience, or by the perpetrator alone? Is the significance of the difference estimated from the perspective of the victim? The answers to these questions are dependent on which factors one deems important when analysing different forms of gendered violence, and whose perspective is stressed as important.

Unni Wikan stresses that so-called honour killings are not the same as so-called passion killings, by claiming that the essence of so-called honour killings is not the jealousy of one partner against the other. Rather, the essence lies on power and control, and not on deceived love or relationships. Wikan regards so-called honour killings as the rights of the collective over the rights of the individual, the obligation of submission for the individual, and she also stresses the relevance of structural power in these crimes. This perceived difference is also stressed by others, e.g. sociologist and political scientist Rasool Awla. To

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156 Lazaridis (edit) 2011 and Benhabib 2004, in particular p. 198.
160 The somewhat simplified and static way of viewing culture in this manner (even though Wikan claims that she is doing the opposite) has been criticised by multiple theorists and researchers, e.g. Şeyla Benhabib. See Benhabib 2002, p. 103. See also Said 1991 and 1981.
161 Here, the question is thought about primarily from the point of view of the victimised woman. Hence, I do not at this point analyse the differences between one or multiple perpetrators of crime in the manner in which would be done in criminal law.
163 Wikan 2005, p. 22.
regard honour killings as equal to murders that spring from affection, is an underestimation of the oppression of women implicit in the term itself, Awla claims.\textsuperscript{164} The contrast expressed between acts described as springing from affection/love, individual decisions and “the heat of the moment”, and those perceived as resulting from structural patterns, hatred, misogyny and oppression against women, is interesting: since it does not regard so-called passion killings to be a result of structural patterns of oppression of women.\textsuperscript{165} Hence, the difference mainly lies in a perspective that is not intrinsically feminist. It only applies some form of feminist, structural analysis to one of the two forms of gendered violence.\textsuperscript{166} To view the comparison of the two as an act of love v. an act of hatred is not only anti-feminist, but imperialist, culturalist, and even racist.\textsuperscript{167}

3.4 Culture, Feminism and Rights

In this chapter, I analyse the presumed conflict between culture, feminism and rights in order to link the description of the conflict with processes of alterity. I claim that this conflict does not originate from feminist thinking, nor is it necessarily supported by it. The presumed conflict between the three originates from the constructed dichotomy of western and non-western thinking and history, and roots beyond simple claims of culture.\textsuperscript{168} A classic example of the representation of the dichotomy can be observed in the argumentation of political scientist Samuel P. Huntington, in his essay The Clash of Civilizations?\textsuperscript{169} The presumed cultural conflict is particularly evident and brought to the surface in multicultural societies.\textsuperscript{170} It is expressed in several anthropological, sociological,

\begin{itemize}
\item\textsuperscript{164} Independent translation from Swedish by the author: “Att likställa hedersmord med mord som begås i affekt är en underskattnings av det kvinnoförtryck, som ligger i själva begreppet, anser jag.” Awla 2005, p. 129. This view on so-called passion killings is particularly criticised by feminist lawyer Victoria Nourse. Nourse 1997, p. 1331.
\item\textsuperscript{165} See Eldén 2003. Baytok 2012 can be considered an example of a work where there is no difference made between the two forms.
\item\textsuperscript{166} This was discussed e.g. in my interview with Åsa Eldén. Eldén, like many others, criticised the application of feminist theory only on certain forms of oppression of women and gendered violence, if not applying this to other forms of oppression of women and gendered violence. Åsa Eldén, 24 June 2013. See also Eldén 2003 and Dagbladet: Sviket mot Fadime.
\item\textsuperscript{167} On the universality and particularity of gendered violence, see Ertürk 2009.
\item\textsuperscript{168} The view of western legalism v. eastern traditionalism has been criticised e.g. by former UN Special Rapporteur Yakın Ertürk, in her critique on the notion of human rights as western and the Cairo Declaration. A/HRC/4/34, pp. 9–10 and 16 para 41.
\item\textsuperscript{169} See Huntington 1996.
\item\textsuperscript{170} However, the term multicultural society is a societal concept that is not clearly defined. It is often used to describe mostly liberal, western societies with relatively high or growing immigrant rates, and departs from the idea of the liberal Nation State. Hence, this focus is very limited to a certain time period and
\end{itemize}
legal but also certain feminist writing, such as *Is Multiculturalism Bad for Women?* by feminist philosopher and political theorist Susan Moller Okin. In certain other feminist writings, it is highly questioned and contested, e.g. in *Multicultural Jurisdictions: Cultural differences and women’s rights* by lawyer and political scientist Ayelet Shachar.

### 3.4.1 The Concept of Culture

Culture is a concept present and relevant in everyday life and discussion, largely forming our perceptions of the world. The concept of culture remains a socially divisive regime: often taken for granted and unquestioned. Culture is a term easily confused with other terms, e.g. religion. Culture is often used as means of describing otherness and foreignness: however, culture and otherness/foreignness are not synonyms. It is important to highlight culture as present in *all* societies and human communication, and not only in *other* societies. Furthermore, culture is a complex phenomenon of both *individual* and *collective* nature: it is a way of life, ancient and inherited habits codified in human languages. It is a set of multiple narratives, not necessarily similar but often conflicting, through which communal understandings, misunderstandings, aims and duties are communicated. Cultures are not static, but constantly changing and dependent on the interpreter. A pertinent description of culture is that it is not the object that is being seen, but rather the means used when seeing. This definition has a meta-cognitive approach: culture is what is behind our actions, values, ideas and attitudes.

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171 Particularly to societies that can be recognised as western. See Parekh 1999, pp. 74–75.
172 Here, an example of some of the most prominent and significant works on multiculturalism and multiculturalist society are the works of Will Kymlicka. See e.g. Kymlicka 2001 and 1995.
174 Done e.g. by Susan Moller Okin. Okin 1999, p. 13.
175 Honig 1999, p. 39. Honig criticises Okin for confusing the concept of culture with the concept of foreignness.
178 This is something that has been evident in many of the interviews that I have conducted. E.g. Kostas Tassopoulos, 5 June 2013.
179 This somewhat Kantian description is used in Strauss and Quinn 1994.
180 This definition is also used by Unni Wikan. See Wikan 2005, p. 92.
3.4.2 The Concept of Rights

In this context, rights are defined primarily within the concept of human rights. Human rights are rights established in international treaties, negotiated and adopted by governments, within the framework of the United Nations and more regional intergovernmental organisations. All individuals are equally entitled to human rights without discrimination. Human rights are “interrelated, interdependent and indivisible”. Universal human rights are determined and guaranteed by sources of international law: legally defining codes of conduct for governments to support and protect individual and collective human rights and fundamental freedoms.

Human rights are often regarded as cornerstones of the liberal, western concepts of law. Philosopher John Rawls has written that the necessity of human rights is motivated by their function as a standard for the propriety of the political institutions and legal order of societies: hence, they limit the pluralism among peoples. Here, one can begin to distinguish a paradox, or conflict, between cultures and rights: particularly when it comes to multiculturalism and the rights of minority cultures. There exist both the individual’s human rights and cultural rights, as well as the collective rights for the group. At some point, this evokes the question of the limits of cultural tolerance, and the protection of human rights for (in particular) the vulnerable members of minority groups.

The conflict has led to collective group rights being contested in the international community, particularly with regard to the rights of minorities. Collective group rights are e.g. minority rights, the right of people to self-determination, the right to peace, the right to development, the right to humanitarian assistance and environmental law. There are different theories regarding their status in the international community, in particular due to the fact that they do not spring from identity politics and individual rights, but from the rights of the group. Thus, they are different from the earliest, liberalist notions of

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180 Sometimes with certain reservations, which might have great impact on the realisation of human rights.
181 Quotation, OHCHR: What are human rights?
182 These are treaties, customary international law, general principles and other sources of international law. OHCHR: What are human rights?
184 Rawls 1999, p. 80. This limit to pluralism within the liberal framework has been further developed by e.g. Will Kymlicka. See Kymlicka 1995.
185 See e.g. Okin 1999. See also Kukathas 1998. The paradox as referred to above, the paradox of multicultural vulnerability is further developed by Shachar 2001.
186 This is dealt with by Abdullahi An-Na'im in his answer to Okin. An-Na'im 1999.
187 Cornescu 2009.
individual human rights developed in the framework of the United Nations.\textsuperscript{189} Collective group rights are often referred to as the third generation of human rights, revealing their position and status within the hierarchy of human rights.\textsuperscript{190}

3.3.4 The Concept of Feminism

Feminism refers in many ways to the concept of rights: especially the concept of equal rights, with particular stress on gender and/or sex.\textsuperscript{191} What once sprung from the so-called women’s movement, endeavouring to achieve equal rights for women, is now a term covering a wide, diverse range of movements and means of analysis: academic as well as political.\textsuperscript{192} In societal debates often referred to as a singular and united movement, this is far from the truth: the theoretical and methodological frameworks that derive from feminism have a tendency for more often disagreeing than agreeing on facts, sources and means of criticism.\textsuperscript{193} Reducing the concept of feminism to the strive for women’s equal rights – thus leaving out many of the analytical aspects of the subject as such – there is a perceived threat in guaranteeing cultural rights, if this is done at the expense of women’s rights. However, the reduction of multiples of experiences from different persons with diverging backgrounds to the perspective of “the man” or “the woman”, is in itself an inherently dangerous abstraction.\textsuperscript{194} It is dangerous in the sense that it creates means of abuse, serving the instrumental needs of the speaker – hence, it is a concept as ambiguous as human rights.\textsuperscript{195} However, one of the means of preventing this generalisation – at least to some extent – is the concept of intersectionality, which discovers discrimination on multiple grounds and in various forms.\textsuperscript{196}

\textsuperscript{189} However, this does not necessarily mean that they are in conflict with a liberalist tradition. About autonomy and tolerance as two sides of the same coin, see Kymlicka 1995, p. 158.
\textsuperscript{190} Cornescu 2009.
\textsuperscript{191} About the development of women’s rights in the international legal framework, see SOU 2004:121, pp. 38–42.
\textsuperscript{192} Gunnarsson and Svensson 2009, pp. 119–178.
\textsuperscript{193} The main sources of disagreement between different feminist theoretical and methodological frameworks are the concept of the woman, sex, gender as well as feminism as such. Krook 2006, p. 79.
\textsuperscript{194} As demonstrated e.g. in Crenshaw 1991 and Gilman 1999, p. 55.
\textsuperscript{195} On the abstract and ambiguous nature of human rights, see Koskenniemi 2001.
\textsuperscript{196} Crenshaw 1991. See chapter 2 Theoretical and Methodological Framwork: A critical perspective on law.
3.4.4 Conflict or Creation?

Is there a conflict between feminism, rights and cultural diversity (multiculturalism)? To be able to answer this question, the question needs to be specified further. Therefore, I have chosen to combine and simplify the concept of feminism and rights as women’s rights from a feminist perspective, which is claimed to be in conflict with the scope of multiculturalism and minority group rights in western societies. The conflict, or paradox – offering only two possibilities for a woman: her rights or her culture – is represented in the writings of e.g. Okin and political theorist Chandran Kukathas. However, this conflict is negotiated and put into different light, e.g. in the writings of Shachar. She offers a way of getting behind what she calls the paradox of multicultural vulnerability in order to strengthen the most vulnerable groups in minority cultures (nomoi). Shachar offers an inventive model of solving the conflict within the liberal state framework – however, she does not herself question the existence of the conflict.

In order to solve the presumed conflict of women’s rights and the rights of minorities, I think that there is a need to go beyond the conflict not only in a practical way, as is done by Shachar, but also to question the very foundational existence of the presumed conflict. Not questioning the facts that women in some minority cultures have been object to practices of inequalities in e.g. rules of marriage and heritage, there is a need to understand where this conflict originates from. The conflict mainly originates from universalist thinking patterns, which undoubtedly stem from western liberal paternalism. It places the interests of non-male and non-majority (often western) actors against each other; it does not offer women of a minority culture a framework to claim their rights. Seeing women as mere victims rather than actors of culture in fact limits their participation in the discussion, ultimately undermining their rights. Thus, I claim that the

197 Multiculturalism here as the toleration of the parallel existence of different cultures in a certain place, assimilation as the opposite. Abbas 2011, p. 22.
198 By a feminist perspective, I primarily refer to a gender-sensitive approach that is particularly focused on the role and the position of the woman.
199 Kukathas assumes the same binary as Okin: however, he thinks that cultural rights should prevail over women’s rights, as long as there is a possibility to opt out of the group. Kukathas 1998.
200 See particularly Shachar’s theory on transformative accommodation, where she finds a way to utilise external protections in order to reduce internal restrictions. Shachar 2001, pp. 117–145.
201 As done by other writers. See Volpp 2001 and Bhabha 1999.
203 These thinking patterns are evident in Slaughter 2000.
204 See Ghobadzadeh 2010.
dichotomous thinking that derives from western, patriarchal tradition\textsuperscript{206} and liberalist heritage, can be harmful in the context of multiculturalism, if it remains unchallenged.\textsuperscript{207} However, the later political movements for feminism and multiculturalism originate from the same societal post-modernist movements, attempting to offer alternative, non-capitalist perspectives to the world, outside the framework provided by traditional liberal theory.\textsuperscript{208} The aims of both feminism and multiculturalism in the West have originally been to support vulnerable groups in society.\textsuperscript{209} Today, multiculturalism and feminism are rarely viewed as parts of the same phenomenon within policy and academia. However, this does not make them incompatible.\textsuperscript{210}

The traditional liberalist law approach, largely constituting the foundation of international human rights doctrine, somewhat contests the position of collective group rights in the international community today.\textsuperscript{211} Thus, the dichotomous division of \textit{collective v. individual} can also be seen within the field of human rights and international law.\textsuperscript{212} In this study, multiculturalism and feminism are not viewed as opposite claims.\textsuperscript{213} They are rather seen as parallel ways of approaching vulnerabilities of the liberal system, mainly as it is expressed in the West. They both enable different possibilities for empowering vulnerable and disadvantaged groups. In my view, multiculturalism should be regarded as a possibility to develop, pluralise and transform patriarchal patterns within claims of cultures.\textsuperscript{214}

\begin{itemize}
  \item Referring to \textit{patriarchal tradition}, I aim at describing a certain kind of structural male supremacy over women: deriving from and enforced in many aspects of society. However, patriarchy might take many forms, depending on the societal and cultural context, thereof the word \textit{tradition}. See Kandiyoti 1988.
  \item It is important to highlight here that liberalism and multiculturalism are in no way opposites: they rather, to a certain extent, represent two sides of the same coin. Multiculturalism is in no ways a new phenomenon in Europe, the “new” perception of multiculturalism rather stems from nationalism and the creation of the Nation State; seen in Huntington 1996.
  \item Kymlicka 1999, p. 33.
  \item Reynolds and Constantine 2004. See Ghobadzadeh 2010.
  \item This relationship is often investigated in postmodern gender studies. See Reynolds and Constantine 2004 and Ghobadzadeh 2010.
  \item Visible in the argumentation by Okin, see Okin 1999.
  \item However, they are not necessarily in a static conflict where the one has to out-rule the other, but have to be premeditated in different contexts and situations. An-Na'Im 1999, p. 63.
  \item However, this does not mean that they cannot come to different conclusions or that they in individual cases can make opposite claims.
  \item Ghobadzadeh 2010, p. 309. The difference is evident in different policy frameworks. Ghobadzadeh is comparing the Canadian political framework with the Australian political framework, and comes to the conclusion that the Canadian political framework has been much more successful in including Muslim women in society and politics than the Australian political framework has. This is, according to Ghobadzadeh, a result of the Canadian political framework allowing for a greater amount of multicultural movements and claims.
\end{itemize}
Worldwide, it has been estimated that violence against women is as serious a cause of death and incapacity among women of reproductive age as cancer, and a greater cause of ill-health than traffic accidents and malaria combined.

World Health Organization\textsuperscript{215}

4 Legal and Policy Approaches: A universal issue?

This chapter accounts for foundational elements in the international, Finnish and Turkish legal and policy frameworks surrounding gendered violence and majority/minority positions. Gendered violence is – as highlighted in the Beijing Platform for Action – the most striking and visible face of the unequal power relationship between the genders. A survey published by the World Health Organization in 2013, 35.6 per cent of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence. Abuse by a male partner is a widespread form of gendered violence faced by women worldwide, a fact traditionally silenced in public discussions. 38 per cent of all murders of women worldwide are committed by (mainly male) partners. Statistical data on gendered violence being important, there is a need to harmonise and develop the definitions of violence and methods for gathering data, in order to provide results that are equally representative and true for every country investigated.

In the discourse analysis performed in the fifth chapter, gendered violence is limited to domestic violence with death as the outcome. The women in the cases investigated have been victims of various forms of violence, often during a long period of time: sometimes, this violence is accounted for in the judicial decisions, and sometimes, only the physical violence resulting in their death is stated in the judgement. In order to begin to grasp the realities of (mainly female) victims, it is important to understand the normalisation process of violence, following from a continuum of violence surrounding many women. Rarely mentioned in criminal legal doctrine, described by sociologist Eva Lundgren, the normalisation process of violence is used to describe the power exercised through systematic, escalating gendered violence in a relationship, leading to the victim ultimately accepting the explanations of the violence as they are formulated by the perpetrator. Thus,

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217 World Health Organization 2013, p. 20.
218 World Health Organization 2005, pp. 4 and 26–42.
220 Due to e.g. different understandings of violence in different countries. ST/ESA/STAT/SER.K/19, p. 129 and World Health Organization 2005, pp. 4–7.
221 Falling outside the traditional scope of legal relevance, which is particularly interested in a relatively limited series of events, the assessment of the act being divided into “objective” and “subjective” elements. See Frände 2004, on the concepts of actus reus (se: gärningsculpa), intent (se:uppsät) and negligence (se:oaktsamhet), pp. 98–154 and 219–238. An excellent example of the limited interest of criminal law can be observed in the writings on the concept of self-defence by Minna Ruuskanen, Ruuskanen 2005.
the violence is normalised. The *continuum of violence*, as described by Lundgren and sociologist Liz Kelly, can be considered to be a feminist understanding of violence, where a pattern and reality of violence is recognised, affecting particularly women. Hence, it is important to understand and recognise the *multiple forms* of violence existing, and not e.g. only its more severe forms. The context of the violence should *always* be taken into consideration – be the perpetrator a partner and/or a family member – since the normalisation process and the continuum of violence always are to be understood from the perspective of the victim. Forming the every-day reality for the victim of violence, the effects can be stronger and more long-lasting, particularly if the victim is a child and the violence occurs in the family. This explains the fact that if there is a history of violence in a woman’s childhood, the risk that she will be re-victimised as an adult is greater.

4.1 International Legislation and Policy Framework

During the last decades, gendered violence has received attention on international levels. In the following, I provide a summary of the most relevant international legislation and policy framework that regulates gendered violence, focusing on the work of the United Nations (UN), very briefly mentioning the work of the Council of Europe (CoE) and the European Union (EU). I have considered this summary necessary in order to account for the international framework, providing *guidelines* and *obligations* for the governments of Finland and Turkey. However, the focus of my thesis does not lie in international obligations, recommendations, harmonisation efforts and other legal instruments, but rather on *law in practice*. Therefore, this summary functions as part of the surrounding context, in which the results of the discourse analysis can be discussed.

Within the framework of the UN, there are numerous documents addressing gendered

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222 Lundgren 2013 and 1992. Lundgren has described the significance of violence in her theory on gender constitution in Lundgren 1993. This has also been highlighted by sociologist Nea Mellberg in her work on sexual violence against children. Mellberg 2002, in particular pp. 52–60. See also Jenny Westerstrand in DN Kultur: Här är sanningen i debatten om hedersväld.


225 About the crucial importance of context, see Lundgren and Westerstrand 2002, p. 172.

226 Messman-Moore and Long 2000. However, patterns and histories of violence from the perspective of the victim are often excluded in research on violence, due to narrow research questions. Williams 2003.

227 Even though Turkey is not a member state of the EU, it is highly influenced by the work and the political and legislative development of the EU, mainly because of the membership negotiations. This is well demonstrated in the annual EU progress reports. See European Commission 2013 and 2012.
violence. Violence against women (VAW) was officially mentioned within the framework of the UN as an obstacle for gender equality during the Nairobi World Conference on Women in 1985, and officially recognised as an issue for human rights in the Vienna Declaration and Programme for Action of 1993. VAW is addressed as a separate area of concern in the Beijing Platform of 1995. Two of the most important legal documents concerning gendered violence can be considered to be the Convention of the Elimination of all forms of Discrimination Against Women (CEDAW) of 1979 and the Declaration on the Elimination of Violence Against Women (DEVAW) of 1993. The UN, particularly the General Assembly, has adopted several important legal documents combating gendered violence. The UN is working against gendered violence in many ways, e.g. through the concept of gender mainstreaming and through various campaigns on the matter.

Despite being legally binding, the CEDAW does not impose sanctions upon governments for non-compliance: the consequence being a large gap between universal rights and universal remedies. Compliance with the CEDAW is monitored by the CEDAW Committee. The CEDAW does not specifically mention violence as one form of discrimination against women, but this has been specified in the CEDAW General Recommendations. Both Turkey and Finland have signed and ratified the CEDAW. Unlike the CEDAW, the DEVAW is a Declaration, and not a Convention. Therefore, its articles are not legal mandates, but rather recommendations and guidelines. The DEVAW addresses the structural violence of male perpetrators against female victims, and

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228 Report of the Nairobi Conference 1985, p. 70 para 288. This was much a result of the international women’s movement. This subject was discussed during a lecture held by Åsa Eldén at the Swedish Research Institute. Åsa Eldén, 27 June 2013.

229 Vienna Declaration and Programme of Action 1993. See also the report issued on the Vienna Conference and Declaration, United Nations Secretary General 1993.


233 The campaign **UNiTE to End Violence against Women** being one important example of a current campaign. The United Nations: United Nations Secretary-General’s Campaign UNiTE to End Violence against Women.

234 Merry 2003a and OHCHR: Committee on the Elimination of Discrimination Against Women.

235 In particular, CEDAW General Recommendations nos. 12, 19, 21 and 24.

236 Finland signed the CEDAW in 1980 and ratified it in 1986. Finland has made no reservations to the CEDAW. Turkey signed and ratified the CEDAW in 1985. Turkey has made one reservation to the CEDAW that is still in force, this reservation is that it considers itself not to be bound by Article 29, paragraph 1. UNTS: CEDAW Signatories and Ratifications.
consequently calls on States to make structural reforms in order to fully combat the issue. It defines violence as encompassing (but not being limited to) physical, sexual and psychological violence occurring in the family, community or perpetrated or condoned by the State. In the same process as introducing the DEVAW, the UN Commission on Human Rights decided to appoint a Special Rapporteur on violence against women (SRVAW).

Within the framework of the Council of Europe, gendered violence has been addressed through soft law instruments and campaigns since 1985. The most important achievement in the area can be considered to be the Istanbul Convention, opened for signature in May 2011. The Convention adds to the framework provided by the CEDAW, as well as the ECHR and the ECtHR case law. One of its main achievements is that it strives towards substantive equality between men and women, and that it is legally binding. The Convention constitutes an important legal document, in some ways representing a hybrid between law and politics: focusing on the rights of the victim to a large extent. So far, it has been signed by 32 CoE member states, including Finland. It has been signed and ratified by seven CoE member states, Turkey being one of them. It has not yet entered into force, the condition for this being ten ratifications, of which eight have to be CoE member states.

When it comes to the framework of the European Union, gendered violence has been on the agenda since 1993. The EU is working against gendered violence on multiple levels, e.g. through making the rights of the victim a priority in EU legislation, various awareness-raising activities and support to NGOs with transnational projects to combat violence

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237 According to Articles 1 and 2 of the DEVAW.


239 SOU 2004:121, p. 42. A relatively recent campaign is Council of Europe: Campaign to combat violence against women, including domestic violence (2006–2008).


241 At least, it holds the potential of constituting such: depending on its ratification and implementation.

242 Christine Chinkin, 27 May 2013. This was also addressed by Kevät Nousiainen, in her comment to Chinkin’s speech during the seminar on the Istanbul Convention, held on the 27 May 2013. Kevät Nousiainen, 27 May 2013.


244 SOU 2004:121, pp. 42–43.
against women, children and young people.\textsuperscript{246} Three of the most important documents within the framework of gendered violence can be considered to be the \textit{Guidelines on violence against women and girls and combating all forms of discrimination against them},\textsuperscript{247} the \textit{Strategy for equality between men and women 2010–2015},\textsuperscript{248} and the \textit{Women’s Charter}.\textsuperscript{249} However, most of the work by the EU can be considered important on the policy level, rather than as directly applicable legal obligations.\textsuperscript{250}

Gendered violence is an issue of high relevance on the international level: at least on the level of policy framework.\textsuperscript{251} However, the risk of a great gap between \textit{de jure} rights and \textit{de facto} reality is considerable.\textsuperscript{252} In the next sections, I investigate the national developments in Finland and Turkey, in order to get a sample of the implementation of international obligations within the work against gendered violence.

### 4.2 Gendered Violence in Finland

The progress of the combat against gendered violence in Finland has been heavily influenced by the international framework and international pressure. The relationship to gender equality in Finland is dubious: being the first country in the world where women could exercise full political rights in 1906,\textsuperscript{253} Finnish women have gained quite advanced rights in the public sphere.\textsuperscript{254} However, Finland has received much international critique

\begin{itemize}
\item \textsuperscript{246} An example of this is the Daphne (i, ii and iii) programmes, supporting various projects with the aim to decrease violence. Daphne Toolkit: The Daphne Toolkit – An active resource from the Daphne Programme. See European Commission: Zero tolerance of violence against women and girls.
\item \textsuperscript{247} Adopted by the General Affairs Unit at the Council of the European Union. European Union: Guidelines on violence against women and girls and combating all forms of discrimination against them.
\item \textsuperscript{248} A declaration adopted by the European Commission. European Commission/COM/2010/0078 final.
\item \textsuperscript{249} This is also true for non-EU member states, in particular States with prospects of EU-membership, such as Turkey. In the sense of \textit{legal framework}, one could however count the non-discrimination law of the EU. However, the non-discrimination directives within the framework of gender equality do not directly address gendered violence. Thus, I have chosen to leave them outside the scope of this study.
\item \textsuperscript{250} The \textit{de facto} involvement of states on the legally binding level can, however, be questioned. This is seen e.g. in the low ratification number of the Istanbul Convention, even though it has been open for signature and ratification for over two years.
\item \textsuperscript{251} The work against gendered violence has to be implemented on multiple levels and at multiple stages of the process: a particular responsibility lying on prosecuting and punishing the perpetrators, and to provide the victim of violence with necessary legal assistance. ST/ESA/329, pp. 31–53.
\item \textsuperscript{252} Full political rights being the right to vote and to stand for election. In New Zealand women were granted the right to vote in 1893, and in Australia women were given the right to vote and to stand for election in 1902. However, Finnish women were the first women to be able to exercise these rights. See Centenary of women’s full political rights in Finland: The General Strike and women’s suffrage.
\item \textsuperscript{253} According to a new European index, Finland has the third highest score in gender equality in the EU. The index was based largely on women’s advancement in the public sphere. Yle Uutiset: Index: Finland third in gender equality in EU.
\end{itemize}
when it comes to gendered domestic violence. Finland signed the CEDAW in 1980 and ratified it in 1986.\textsuperscript{255} In 1994, Finland criminalised marital rape. This was done after large and long-lasting debate in parliament and pressure from certain activists and organisations, nationally as well as internationally.\textsuperscript{256} In comparison, rape within marriage was criminalised in neighbouring country Sweden in 1962.\textsuperscript{257} The legislative changes in order to regard assault in close relations as offences under public prosecution were finalised in 2011.\textsuperscript{258}

The killing of a woman by her partner is the second most common form of homicide in Finland.\textsuperscript{259} According to official surveys by Finnish authorities, around 17 women were murdered annually by their partners in the beginning of the 2000s.\textsuperscript{260} If former partners are included, it is estimated that this number ranges from 20 to 26.\textsuperscript{261} The likelihood that a woman will be victimised in domestic violence in Finland exceeds the EU average rate.\textsuperscript{262} According to surveys performed during 1980–2009, approximately three quarters of the family violence cases concerning assault were perpetrated by a partner or former partner: in one quarter of the cases, the perpetrator was another member of the family.\textsuperscript{263} The numbers of adult women\textsuperscript{265} that have been or are faced with sexual or physical violence or the threat of such are around 40 per cent, depending on the survey and definition of violence.\textsuperscript{266} Every year, the police receives over 5 000 reports of domestic violence in Finland.\textsuperscript{267} However, many cases of domestic violence are not litigated in trials in Finland, but in mediation processes – a fact often perceived as problematic: not offering enough protection to victims and easily leading to re-victimisation.\textsuperscript{268}

\begin{thebibliography}{99}
\bibitem{255} UNTS: CEDAW Signatories and Ratifications.
\bibitem{257} Väestöliitto: Seksuaalinen väkivalta.
\bibitem{258} 13.5.2011/441.
\bibitem{259} Salmi \textit{et al} 2009, p. 1.
\bibitem{260} Väestöliitto: Väkivalta.
\bibitem{261} Väestöliitto: Väkivaltaan yleisyyss.
\bibitem{262} CoE Commissioner for Human Rights 2012a, p. 10.
\bibitem{263} Salmi \textit{et al} 2009, p. 4.
\bibitem{264} \textit{Fi: perheväkivalta}.
\bibitem{265} Sirén \textit{et al} 2010, p. 13.
\bibitem{266} Over 15 years of age. Heiskanen and Piispa 1998.
\bibitem{267} Piispa \textit{et al} 2006 and Heiskanen and Piispa 1998.
\bibitem{268} When it comes to cases of rape, very few cases are reported to the police. Amnesty International 2013, p. 11.
\bibitem{269} Amnesty International 2013, pp. 11–12. To reduce mediation in cases concerning domestic violence is one of the aims of the Finnish Government in their Gender Equality Programme of 2012–2015. STM 2012:10, pp. 32–33.
\end{thebibliography}
men responded that it is sometimes justifiable for a man to beat his wife.\textsuperscript{269}

Finnish authorities have received remarks from multiple international actors, e.g. by Amnesty International, the CoE and the CEDAW Committee, for their shortcomings in effectively combating gendered violence.\textsuperscript{270} As a result of the international critique, gendered violence has been addressed in the current Gender Equality Programme of the Finnish Government\textsuperscript{271} and the particular Action Plan to reduce violence against women, initiated by the Government in 2010.\textsuperscript{272}

Even though actions to combat gendered violence have been taken during recent years in Finland,\textsuperscript{273} many problems remain. For instance, there is no legal obligation in Finland to provide shelters for victims of violence,\textsuperscript{274} the queues for public mental health care are long,\textsuperscript{275} the legal definitions of assault and attack are problematic when it comes to domestic violence,\textsuperscript{276} the legal definition of rape is highly problematic from the victim’s perspective\textsuperscript{277} and the problems in legislation are often enforced and worsened by the attitudes of law enforcement authorities.\textsuperscript{278} Many of the problems relate to insufficient laws and problems in the criminal process, but also to insufficient funding and financial support from the State.\textsuperscript{279} Shelters and organisations working with victims of violence and with anti-violence work are often funded on a short-term project basis. This insecure form of funding is often perceived as threatening, affecting the activities of anti-violence work.\textsuperscript{280}

Gendered violence is generally not addressed in the Finnish public spheres, such as in

\textsuperscript{269} This expression was used in the survey. In order to keep the authenticity of the survey, it is also used in this context – despite its implicit heteronormativity. UN Women 2011, p. 32.

\textsuperscript{270} Amnesty International 2013, pp. 11–12, CoE Commissioner for Human Rights 2012a, Ulkoasiainministeriö: YK:n naisten syrjinnän poistamista käsittelevä komitea antoi Suomelle suositukensa naisten oikeuksien toteuttamisesta and United States Department of State 2012a, p. 11.

\textsuperscript{271} STM 2012:10.

\textsuperscript{272} STM 2010:5.

\textsuperscript{273} Examples of action that has been taken is e.g. the introduction of a legislation concerning restraining orders and the changes in the Criminal Code during the 1990s and 2000s. See CEDAW/C/FIN/5, pp. 20–23. See also HE 94/1993 and HE 286/2010.

\textsuperscript{274} CoE Commissioner for Human Rights 2012a, p. 11.

\textsuperscript{275} This was discussed during my interview with Heidi Kontkanen at the shelter Pääkaupungin turvakoti ry. The effects of the insufficient funding of preventive measures are often felt by the shelters. Heidi Kontkanen, 22 February 2013.


\textsuperscript{277} This has been criticised e.g. by Amnesty International. Amnesty International 2010, p. 11.

\textsuperscript{278} See Kainulainen 2004.

\textsuperscript{279} This is true e.g. for the Action Plan 2010 and the planned ratification of the Istanbul convention. CoE Commissioner for Human Rights 2012a, p. 11, Amnesty International 2013, p. 12, Ulkoasiainministeriö 2013 and STM 2010:5.

\textsuperscript{280} This was discussed e.g. during my interview with Matti Kupila. Matti Kupila, 7 February 2013. The financial difficulties can be seen e.g. in the closing down of shelters, which was done in Espoo in December 2012. Länsiväylä: Espoon turvakodin ovet pannaan kiinni.
education or in discussions at the workplace.\textsuperscript{281} The attitudes towards gendered violence can be considered to be problematic: according to a Eurobarometer survey in 2010, only 67 per cent of the Finnish respondents thought that the government ought to be helping victims of domestic violence. This was among the lowest percentages in the EU.\textsuperscript{282} According to the same survey, many violence myths are prevalent in Finland: alcohol, drug addiction, poverty/social exclusion, unemployment and religious beliefs were mentioned as major causes for domestic violence, all above EU average.\textsuperscript{283} Provocative behaviour of women was also regarded as a contributing factor to domestic violence by 74 per cent of the Finnish respondents, considerably higher than the EU average on 52 per cent.\textsuperscript{284}

4.2.1 Finnish Legislation

In this section, Finnish legislation on gendered violence is investigated only concerning intentional homicide. This is done due to the focus of the thesis – also, unfortunately, partly limiting the understanding of gendered violence. The Finnish regulation of homicide can be found in the Finnish Criminal Code (39/1889), chapter 21 sections 1–3. The different forms of intentional homicide are, since 1995, divided into regulations of a general form, an aggravated form as well as an extenuated form. These are referred to as manslaughter (section 1, fi: tappo), murder (section 2, fi: murha) and killing (section 3, fi: surma).\textsuperscript{285} In the following, I primarily focus on murder and killing, the aggravated and extenuated forms of intentional homicide.

Manslaughter is simply described as the act of killing another person – intent is not mentioned in the section, it being the assumed form of the offences described in the Criminal Code.\textsuperscript{286} For manslaughter, the law provides for a sentence of imprisonment of a fixed period, minimum eight years. Murder, the aggravated form of manslaughter, is described as an act of manslaughter that is premeditated, committed in a particularly brutal or cruel manner, committed by causing serious danger to the public or committed by killing a public official on duty maintaining public order or public security, or because of an official action. In addition, the offence also has to be aggravated when addressed as a

\textsuperscript{281} Special Eurobarometer 344, 2010, pp. 12–23.
\textsuperscript{282} Special Eurobarometer 344, 2010, p. 115.
\textsuperscript{283} Special Eurobarometer 344, 2010, pp. 69–88.
\textsuperscript{284} Special Eurobarometer 344, 2010, tables p. 187.
\textsuperscript{285} Finnish Ministry of Justice: Unofficial translation of the Criminal Code of Finland.
\textsuperscript{286} Independent translation from Finnish by the author: ”Joka tappaa toisen, on tuomittava taposta vankeuteen määräajaksi, vähintään kahdeksaksi vuodeksi.” See also HE 94/1993, p. 92.
whole to be legally considered a murder. For murder, the law provides for a sentence of life imprisonment.\textsuperscript{287} Since the amendment in 1995, the list of grounds for considering a manslaughter a murder is not open-ended, but closed.\textsuperscript{288} According to the preparatory works of the law, personal motives, e.g. jealousy, are mentioned as grounds for not considering a homicide of a public official a murder, while revenge as motive in general can be qualified as mediation, ultimately regarding the manslaughter a murder.\textsuperscript{289}

The extenuated form of manslaughter, a killing, is described as an act of manslaughter, where the \textit{exceptional circumstances of the offence, the motives of the offender or related circumstances, when assessed as a whole, is to be considered committed under mitigating circumstances}. For this offence, the law provides for a sentence of imprisonment for at least four, and at most ten years.\textsuperscript{290} The offence was introduced as a separate section in 1995, and is, according to the preparatory works, to be applied only \textit{exceptionally}.\textsuperscript{291} One example of mitigating circumstances, mentioned in the preparatory works, is the exceptional agitation of the perpetrator. Examples of situations where exceptional agitation can occur are not laid down in the Government Bill. However, it is mentioned that this exceptional agitation could be a state of mind, which is not enough to be considered as a state of impaired sanity.\textsuperscript{292}

In the case law of the Supreme Court, there is a particularly interesting case from 1997 concerning \textit{exceptional agitation} in the extenuated form of manslaughter. In the case, a man had discovered his wife and her lover (who was also his friend and second cousin) having sexual intercourse in a summer house. After the discovery, the defendant left the summer house, but returned later. When the defendant returned, he shot his wife’s lover and pointed the gun at his wife. However, he did not shoot her. It is written in the judgement by the Supreme Court that the defendant \textit{had acted in an exceptional condition...}
of stress. [...] Even though he had been suspecting the relationship between his wife and X [the deceased victim] for a couple of days, the discovery had deeply shocked and hurt the defendant.  

However, the Supreme Court ruled that the defendant had not acted in an exceptional agitation sufficient enough to qualify for the extenuated form of manslaughter. According to the Supreme Court, his [the defendant’s] actions immediately after the discovery had been controlled and he had had a couple of hours to consider the situation before committing the manslaughter. Shooting X, he [the defendant] has had to understand the meaning and the illegal nature of killing another human being. The situation and the circumstances presented above are not, when assessed as a whole, exceptional enough for the Supreme Court to regard the situation a killing, rather than a manslaughter. Thus, the Supreme Court regarded the couple of hours for consideration important for not regarding the manslaughter to have been committed in extenuating circumstances. However, the case was not even considered as a murder in the judgement by the Supreme Court, nor by any of the lower court instances. This indeed raises the question of the legal judgement of so-called passion killings in Finland.

The more detailed and closed description of murder versus the more open description of killing are the consequences of a wide interpretation of the principles nullum crimen sine lege and nulla poena sine lege, typically receiving a strong recognition in the legalistic Finnish criminal law. In practice, the application of the two principles in the case of homicide means that an action cannot be considered a murder if this is not clearly stated in the section. Thus, it is a way of the law to bind the hands of the judiciary: to make sure that the section is not used outside the letter of the law. However, this is not the case with the extenuated form of manslaughter – here, the legalistic legal culture opens up for a more
independent interpretation by the judiciary, in favour of the defendant.\textsuperscript{299} In other words, even though it is stated in the preparatory works that the offence of killing only should apply to exceptional cases of manslaughter, the hands of the judiciary are more free to apply the section than they are in the case of murder.

\textbf{4.2.2 Gendered Violence and Majority/Minority Positions in Finland}

In this section, gendered violence is discussed particularly regarding essentialising strategies. This is done with reference to minority and majority positions within Finnish society, and the focus is on what is often referred to as \textit{immigrant groups} or \textit{ethnic and cultural minorities} as perceived minorities in Finnish authority work.\textsuperscript{300} The aim of this section is not to reduce the seriousness of gendered violence faced by immigrant women in Finland, nor to undermine the fact that it is important to investigate and analyse patterns of violence perpetrated against these women. However, there is an implicit risk in treating the cases concerning gendered violence in a minority group as a different form of violence than the gendered violence of the majority group, in particular if the political, societal and individual context is not regarded. This risk primarily constitutes the creation of \textit{culturalist explanations} of violence – not truly beneficial from the perspectives of minority women – as well as the risk of ignoring universal patterns of gendered violence.\textsuperscript{301}

Largely due to the growing support of the nationalist and anti-immigration rhetoric of the Finns party,\textsuperscript{302} Finnish media has turned much attention to anti-immigration politicians and parties.\textsuperscript{303} Finland has been criticised by several international actors for not taking the problem of racism and xenophobia seriously enough.\textsuperscript{304} Structural racism and discrimination, such as ethnic discrimination on the labour market, are problems in Finnish society.\textsuperscript{305} In 2011, 86 per cent of the suspected hate crimes filed by the police were

\textsuperscript{299} This is generally the case in Finnish Criminal law: and this was particularly highlighted in the amendment of 1995. See HE 94/1993.
\textsuperscript{300} See e.g. SM 29/2009, SM 1/2008 and STM 2005:15.
\textsuperscript{301} Ertürk 2009. This was also discussed during my interview with Åsa Eldén. Åsa Eldén, 24 June 2013.
\textsuperscript{302} In some contexts, referred to as \textit{the True Finns}, which was their earlier party name in English.
\textsuperscript{303} See Keskinen 2011a and 2011b, Migrant Tales: Why does the Finnish media give so much attention to anti-immigration politicians and parties? and Raatila 2009.
\textsuperscript{304} E.g. through insufficient funding of projects aimed at combating racism, xenophobia and related intolerance. Examples where capacities and competences should be enhanced are the Ombudsman for Minorities, the National Discrimination Tribunal in Finland and the Advisory Board for Ethnic Relations, according to ECRI. CRI(2013)19.
\textsuperscript{305} TEM 16/2012.
recognised as having racist motives. However, gendered domestic violence is generally not regarded as a hate crime in Finnish society, even though research suggest that domestic violence affects minority women to a greater extent than majority women. One problematic feature in public discussions, media and certain authority reporting is that Finnish majority society is viewed as a culturally homogeneous entity, facing a challenge posed by immigration. However, immigration numbers having increased during the last couple of years, it is important to keep in mind that people have migrated to Finland at least during the last two centuries, and that the view of Finnish society as homogeneous is simplified, generalised and often used in order to justify racist discourses.

With an intersectional approach, it is particularly important to regard gendered violence against this background. The public discourse in Finland on gendered violence in immigrant families, primarily in the form of so-called honour violence and forced marriages, has strongly been affected by discourses in other Nordic countries. Explaining the low reporting and awareness of violence in immigrant families, the relatively low numbers of immigrant population in Finland are repeatedly stressed in different regards. Pointing out the number of immigrants as the only reason for low reporting of gendered violence is problematic, since it does not problematise the linkage between gendered violence and racist views on majority/minority positions in society.

In Finland, there are and have been particular projects, aimed at addressing violence faced by immigrant girls and women. This can be a positive approach to the subject, but it is important to analyse the interests of these projects. In research conducted by Suvi Keskinen, culturalist explanations to violence are common among professionals working

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306 United States Department of State 2012a, p. 15.
308 An analysis of the political debate in Finland is done in Keskinen 2009c.
309 Sisäasiainministeriö 2013.
311 However, racist discourses in Finnish society are not always recognised as such. See Rastas 2009.
312 Keskinen 2009a. As mentioned in the introduction, the first time the issue of so-called honour killings was explicitly addressed in parliament was only a few weeks after the famous murder of Fadime Şahindal. KK 134/2002.
313 This is e.g. done in the Action Plan 2010, as well as the report to the CEDAW Committee. See STM 2010:5, pp. 26–30 and CEDAW/C/FIN/5, pp. 25–28.
314 See Keskinen 2009a, p. 263.
315 Some examples that can be mentioned are the projects KokoNainen (the League of Human Rights) and Hawo Tako (the Finnish Red Cross), aimed towards preventing female genital mutilation, the activities by ETNO (the Advisory Board for Ethnic Relations) and various anti-violence projects particularly addressing immigrant families: these are e.g. Miehen Linja, the Mixeri-project and the various activities by Monika Women (MonikaNaiset). See CEDAW/C/FIN/5, pp. 25–27. See Kostas Tassopoulos, 5 June 2013; Heidi Kontkanen, 22 February 2013; Miira Hartikainen, 7 February 2013 and Natalie Gerbert, 7 June 2013.
with gendered violence against immigrant women in Finland.\textsuperscript{316} This is a common feature for many Nordic and western countries, linking a \textit{particular vulnerability} with cultural features to immigrant (in particular Muslim) women, while there is a linkage between immigrant (in particular Muslim) men and perceived threats to security.\textsuperscript{317} These explanations are strengthened by discursive reconstructions of a dichotomous division of majority/minority populations. The perceived gender equality and the ideal picture of the emancipated women of the majority often lead to stereotypical images of the western/Nordic woman as strong and powerful, while the immigrant woman is pictured as weak, vulnerable and in need of (western/Nordic) emancipation/rescue.\textsuperscript{318} This is highly problematic; rendering the structural nature of the violence faced by the women of the majority invisible, only highlighting the structural nature of the gendered violence faced by female (immigrant) minority members.\textsuperscript{319}

### 4.3 Gendered Violence in Turkey

In this section, gendered violence in Turkish and Kurdish contexts is accounted for, in order to further contextualise the constructions of gendered violence found in the judgements analysed.\textsuperscript{320} The status of women in Turkey has visibly been linked with the westernisation/modernisation process of the country, starting from the 19\textsuperscript{th} century period of \textit{Tanzimat}\textsuperscript{321} in the Ottoman Empire, and still continues today.\textsuperscript{322} Republican founder Mustafa Kemal Atatürk introduced many changes during the years 1922 to 1937 in Turkey, many of them having positive aspects for women. These were reforms in education, family policy, work policy, cultural and social policy, female autonomy and societal life.\textsuperscript{323} The changes also involved the right to vote for women in 1934, introduced even before many European countries.\textsuperscript{324} However, it is important to point out that the status of women in the modernisation process has been criticised for focusing on the \textit{control} of female bodies and

\textsuperscript{316} Keskinen 2011a.
\textsuperscript{317} Campani 2011 and Semati 2010, pp. 256–258.
\textsuperscript{318} A/HRC/11/6/Add.5, p. 42.
\textsuperscript{319} A/HRC/11/6/Add.5, p. 42.
\textsuperscript{320} A/HRC/11/6/Add.5, p. 42.
\textsuperscript{321} See Keskinen et al (edit) 2009 and DN Kultur: Här är sanningen i debatten om hedersvåld.. This was also discussed in my interview with Yakın Ertürk. Ertürk was particularly highlighting this problematic nature in the Netherlands and Sweden, where she had been studying the situation. Yakın Ertürk, 9 July 2013.
\textsuperscript{322} See chapter 5 \textit{Court Context: Analysis of constructions}.
\textsuperscript{323} A period referred to as the modernisation period of the Ottoman Empire.
\textsuperscript{324} The modernisation/modernisation process has continued in phases, of which the main ones are the Kemalist modernisation process as well as the EU integration process. Çakmak and Aluntuğ 2008, p. 6.
\textsuperscript{326} İstanbul Barosu Kadın Hakları Merkezi 2010, p. 72. See also Bozkurt 2007, p. 2.
sexualities, not taking departure in the realities or opinions of women themselves and that not all females have benefited in the same way from these changes. On the other hand, the same arguments about controlling female bodies and sexualities can be made for the counter movements of the westernisation/modernisation process, e.g. the more radical Islamist movement.

Gendered violence is a problem of great extent in Turkey: in particular, gendered domestic violence. According to the National Research on Domestic Violence against Women in Turkey performed in 2008, women who had experienced physical and/or sexual violence by their partners or former partners at least once during their lives, reported to be 42 per cent. In this context, it is highly important to point out that these numbers only focus on violence by husbands and partners, or former husbands and partners, which might leave out much gendered violence. Due to this fact and to differences in notions and definitions of violence as well as research methods, it is not directly comparable with the earlier presented Finnish numbers. Similar to the Finnish context, domestic gendered violence in Turkey is perpetrated mainly by partners and former partners, but also, however less frequently reported, other members of the family. The problem of gendered violence is reflected in attitudes relating to the relationship between the genders. According to the attitude survey committed by the World Values Survey Association in 2010, around 25 per cent of Turkish men responded that it is sometimes justifiable for a man to beat his wife.

In the Turkish public discourse on gendered violence, gendered domestic violence is often referred to as a problem of rural areas and the eastern regions of Turkey, in particular the South-east. The numbers on gendered violence generally reported higher in the eastern

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325 A phenomenon not unfamiliar to e.g. colonialist regimes, see Volpp 2000, p. 108.
326 Sirman 2003. This was also the main critique raised by the women’s movement, being critical towards the State during the 1980s. Özyeğin 2009. In particular, the rights granted to women by the Kemalists aimed at breaking the links to the Ottoman Empire and to cut the connections with religious hegemony, rather than establishing actual gender equality. Ilkkaracan 2007, p. 7.
327 This is for instance the case with many women in the eastern regions, who have not benefited from the nominal legislative changes in the same way as other women might have. Belge 2008, pp. 73–74.
328 Özyeğin 2009.
329 Kocacık 2004. However, it is important to remember that gendered violence is not limited only to domestic violence. Åsa Eldén, 24 June 2013.
330 In the study, 39 per cent of women report physical violence, while 15 per cent of women report sexual violence. Turkish Prime Ministry Directorate General on the Status of Women 2009, p. 46.
331 Thus, not observing the continuum of gendered violence. See Lundgren et al 2001 and SOU 2004:121.
333 This expression was used in the survey. In order to keep the authenticity of the survey, it is also used in this context – despite its implicit heteronormativity. UN Women 2011, p. 32.
334 This can be seen in the National Research on Domestic Violence against Women in Turkey of 2008,
regions, this indeed calls for further investigation. However, the reported higher numbers in the East do not go unchallenged. The complex tension between the West and the East – interesting to observe in the Turkish context – linked to the economic and regional discrepancies in Turkey, has to be regarded in a political and historical context. However, the increased media reporting about gendered violence (in particular killings of women), the work by activists and organisations and also to a certain extent the authorities, all contribute to raising awareness of the universality of gendered violence.

Estimations based on studies on gendered violence suggest that eleven million women in Turkey have suffered from physical or sexual violence at least once during their lives. These numbers are alarming, and the Turkish government has received attention in the international community, e.g. by the CEDAW Committee, the UN SRVAW, Human Rights Watch and Amnesty International for its insufficient measures towards combating gendered violence and meeting the needs of the victimised women. The problematic attitudes among the police and the judiciary were particularly brought to the attention of the international community in the landmark case Opuz v. Turkey, before the European Court of Human Rights in 2009, where the Turkish State was found guilty of violating the obligation to protect women from domestic violence. The case was also the first judgement of the ECtHR that considered gendered violence a form of discrimination under the ECHR.

Turkey signed and ratified the CEDAW in 1985. Much like Finland, many of the

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where particularly high numbers of lifetime physical and sexual violence by partners and former partners are reported in the eastern regions of Turkey (e.g. 51.1 % in South-east Anatolia and 57.1 % in North-east Anatolia, as opposed to 26.2 % in West Marmara and 38.4 % in Istanbul). Turkish Prime Ministry Directorate General on the Status of Women 2009, p. 47. The focus on the East can also be seen in academic writing and NGO work. See Se'ver 2005, Ilk karacan and Women for Women’s Human Rights 1998, Human Rights Watch 2011 and Çakmak and Altuntaş 2008.

Radikal: Kadınlar, töreler ve ötekiler and Altnay and Arat 2009.

This is shortly done in chapter 4.3.2 Gendered Violence and Majority/Minority Positions in Turkey.

The Guardian: Turkey Opens Its Eyes to Domestic Violence. This is largely a result of feminist movements’ awareness-raising activities for the issue, Baytok 2012 and Tanja Völker and Martina Gaidzik, 29 January 2013. Efforts have also been made on behalf of the authorities, see T.C. Milli Eğitim Bakanlığı 2008.

Human Rights Watch 2011, p. 10.


Case of Opuz v. Turkey. The applicant (Nahide Opuz) brought the case against the Turkish State, because of the lack of sufficient intervention (despite several complaints) by the police and the prosecuting authorities in the several years of brutal domestic violence that she and her mother faced. The domestic violence also led to the death of the applicant’s mother.

Thus, the ratification was done one year before Finland. Turkey withdrew its earlier reservations to the Convention in 1999. UNTS: CEDAW Signatories and Ratifications.
changes in Turkey concerning women’s rights have been made due to pressure from the international community, e.g. the CEDAW Committee, the CoE and in particular the EU.\footnote{343} The CEDAW and the DEVAW have been important for the development of women’s rights in Turkey.\footnote{344} However, there are still problems concerning gender equality both in the so-called private and public spheres, e.g. the employment rate of women was only 30.9 per cent in 2012, while it was 75.0 per cent for men, however women continue to carry out a large majority of the unpaid household work.\footnote{345}

Similar to the Finnish changes in legislation and policy framework accounted for earlier, there has been a great shift in the approach towards gendered violence during the last 15 years in Turkey, mostly due to women’s movements: the has country replaced many of its old, discriminatory and sexist regulations with new ones.\footnote{346} One of the most important changes is the legislative reform of the Criminal Code in 2004,\footnote{347} which made sexual crimes against women a crime against the individual and a woman’s bodily integrity. Before the amendment, sexual crimes against women had been considered crimes against the family or public morality.\footnote{348} Other important measures taken are e.g. the introduction of protection orders and a law on domestic violence,\footnote{349} the legal restrictions concerning so-called virginity examinations,\footnote{350} the important reforms of the Civil Code in 2001 as well as the Criminal Code in 2004, certain training of law enforcement personnel and the ratification of the Istanbul Convention in 2012.\footnote{351} However, there are still many drawbacks in the Turkish system for combating gendered violence. These are mainly related to problematic legal regulations,\footnote{352} the lack of State financial support and State initiatives,\footnote{353} the attitudes and lack of knowledge of women’s rights as human rights of the law enforcement agencies,\footnote{354} insufficient shelters for victims of violence,\footnote{355} as well as the high

\footnote{343} Özdamar 2009, CoE Commissioner for Human Rights 2012b and European Commission 2013.\footnote{344} Istanbul Barosu Kadın Haklari Merkezi 2013, pp. 28–39.\footnote{345} European Commission 2013, pp. 19 and 41.\footnote{346} EGM/GPLVAW/2008/EP.13, p. 1.\footnote{347} Entering into force in 2005.\footnote{348} Shifting the discourse from seeing the woman as a commodity of the family or society to seeing the woman as an own legal subject and an individual, the importance of this legal amendment is major. Ertürk 2009, p. 62, Ilkkaracan 2007 and Centel (edit) 2013, p. 5.\footnote{349} The Law to Protect Family and Prevent Violence against Women (Law no. 6248).\footnote{350} Which were state-sanctioned on certain groups of women in Turkey until 1999. Özyeğin 2009, p. 111.\footnote{351} EGM/GPLVAW/2008/EP.13, Özyeğin 2009, p. 111, CEDAW/C/TUR/4–5, Ilkkaracan 2007 and The Advocates for Human Rights: Violence against Women in Turkey.\footnote{352} Such as Article 29 on unjust provocation, often exciting male perpetrators who have killed women. Ertürk 2009, p. 62. See chapter 5.2.4 Essentialised/Collective Violence.\footnote{353} United States Department of State 2012b, pp. 34–36. Tanja Völker and Martina Gaidzik, 29 January 2013.\footnote{354} Here, the police is often mentioned, but also the judiciary. Se'ver 2005, p. 133, Se'ver and Yurdakul 2001, p. 971 and European Commission 2012, p. 27.
threshold for reporting violence.356

4.3.1 Turkish Legislation

After the foundation of the Turkish Republic in 1923, the Turkish Criminal Code was adapted in 1926, largely inspired by the Italian Criminal Code of the time, adopted under Benito Mussolini.357 Due to the EU integration process and the pressure by civil society, major amendments were made to the Turkish Criminal Code in 2004.358 In this section, the investigation of Turkish legislation on gendered violence within the domestic sphere is limited to intentional homicide: in particular relating to the regulations of custom (tr: töre), as well as provocation. The Turkish regulations of intentional homicide is found in the Turkish Criminal Code (Law no. 5237), volume 2, chapter 2, section 1, Articles 81–83. Much like the Finnish system, there is a division of the offence into a general form, a qualified form and a privileged form. However, the privileged form is diverging much from the present Finnish regulation, building partly on the criminal law concepts of failure and negligence. Thus, it is similar to the Finnish regulation on negligent homicide (fi: kuolemantuottamus).359 Therefore, the articles of significance for this study are Articles 81 and 82: particularly Article 82. Later, also Article 29 of the Criminal Code is analysed.

Article 81 is referred to as felonious homicide (tr: kasten öldürme). In accordance with Article 81, any person who unlawfully kills a person is sentenced to life imprisonment360. Article 82 is titled qualified forms (tr: nitelikli hâller) and regulates the aggravated forms of the homicide. According to the article, the homicide is perpetrated in aggravating circumstances, if it is premeditated, ferociously or brutally perpetrated, perpetrated with the use of nuclear, biological or chemical weapons which cause explosion or result in fire, flood, destruction, sinking etc., perpetrated against one’s antecedents or descendants, spouse, sister or brother, perpetrated against a child or a person unable of

357 Adopted when Mussolini was the President of the Council of Ministers. EGM/GPLVAW/2008/EP.13, p. 2. See also Se’ver and Yurdakul 2001, p. 967.
358 EGM/GPLVAW/2008/EP.13, pp. 7–10.
360 Life imprisonment in the Turkish Criminal Code is regulated as a sentence of imprisonment that continues until the death of the convict. This is regulated in the Turkish Criminal Code, volume 1, chapter 3, section 1, Article 48.
361 Independent translation from Turkish by the author: “bir insanı kasten öldüren kişi, müebbet hapis cezası ile cezalandırılır”.

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protecting her/himself because of physical or mental disability, perpetrated against a pregnant woman, perpetrated by virtue of public office, perpetrated with the intention of concealing or facilitating another offence, or destroying evidence, or perpetrated due to blood feud or custom. The sentence prescribed for the offence is heavy life imprisonment\textsuperscript{362,363}.

In this study, I intend to focus on the last of the aggravating circumstances described: i.e. custom (töre). This concept is particularly interesting, due to the fact that it has – since its introduction in 2004 – mainly been used in order to address certain homicides. In western countries and media, many of these cases are/would be referred to as so-called honour killings.\textsuperscript{364} However, as dealt with earlier, this distinction is different in Turkey, since honour is here mainly addressed in cases that in many western countries are/would be referred to as so-called passion killings.\textsuperscript{365} Concerning a so-called custom killing (töre), as mentioned above, the recognising factor is traditionally considered to be a family council and a collective decision to kill the victim, who is suspected to have broken societal norms.\textsuperscript{366} The Turkish Supreme Court of Appeals often describe these types of collective decisions as requiring a certain form of society, characterised as collective\textsuperscript{367}, often referred to as feudal.\textsuperscript{368} The Supreme Court has repeatedly geographically placed these crimes in the eastern and south-eastern parts of Turkey.\textsuperscript{369} Regarding criminal liability, all the people involved in the decision-making process can be held accountable for the crime of so-called custom killing.\textsuperscript{370} However, during recent years, the collective decision is no longer regarded necessary in order to classify a killing as one of custom, somewhat undermining

\textsuperscript{362} Heavy life imprisonment in the Turkish Criminal Code is regulated as a sentence of imprisonment that continues until the death of the convict, enforced under strict security measures. This is regulated in the Turkish Criminal Code, volume 1, chapter 3, section 1, Article 47.

\textsuperscript{363} Independent translation from Turkish by the author, inspired by the translation on Legislationonline.org: “Kasten öldürme suçunun; a) Tasarlayarak, b) Canavarca hisle veya eziyet çekirerek, c) Yangın, su baskını, tahrip, batırma veya bombalama ya da nükleer, biyolojik veya kimyasal silâh kullanmak suretiyle, d) Üstsoy veya altsoydan birine ya da es veya kardeşe karşı, e) Çocuğa ya da beden veya ruh bakımdan kendisini savunamayacak durumda bulunan kişiye karşı, f) Gebe olduğunu bilinen kadına karşı, g) Kişinin yerine getirdiği kamu görevi nedeniyle, h) Bir suçu gizlemek, delillerini ortadan kaldırmak veya işlenmesini kolaylaştırmak amacıyla, i) Kan gömme saikiyle, j) Töre saikiyle, İşlenmesi hâlinde, kişi ağırlaştırılmış müebbet hapis cezası ile cezalandırılır”. Legislationonline.org: Criminal Code, Law no. 5237.

\textsuperscript{364} See chapter 3.1 The Collective Violence: So-called killings of honour or custom.

\textsuperscript{365} However, in eastern Turkey, this distinction between custom and other homicides of women is not made in the same way. Kardam (edit) 2007, p. 62

\textsuperscript{366} Özcan 2013, p. 242. See also KA-MER 2007.

\textsuperscript{367} Bayr 2013, pp. 138–139.

\textsuperscript{368} Pervizat 2006, pp. 297–299.

\textsuperscript{369} Bayr 2013, pp. 138–139.

\textsuperscript{370} Özcan 2013, pp. 248–249 and 256–258.
the former line of the Supreme Court.371

In the Turkish Criminal Code, volume 1, chapter 2, section 2, Article 29, unjust provocation (tr: haksız tahrik) is regulated. Unjust provocation is considered to exist in cases where the perpetrator acts out of anger or asperity caused by an unjust act372. In these cases, the perpetrator is given a reduced sentence.373 There is a tendency in practice374 among the perpetrators of domestic gendered violence (in particular killings of women) to rely on the legal strategy of unjust provocation for potentially reducing the sentence.375

There is a certain similarity between the Turkish and Finnish regulations of homicide. A homicide perceived as premeditated by the court, e.g. decided by a family council,376 is considered as aggravated and followed by a heavier sentence. However, a homicide perceived to be a spontaneous act of rage can in certain cases be considered by the court as extenuated and, accordingly, reduce the sentence. Developing the arguments laid down in previous chapters, the so-called collective gendered violence typically receives a more severe treatment by the court, while the so-called individual gendered violence receives a milder one. Thus, the court’s perception of and interest in the legal facts of the individual case are crucial for the treatment of the case in court, and ultimately for the judgement. In chapter five, this argumentation is further developed by investigating the construction of legal facts more thoroughly.

371 As demonstrated in The Supreme Court of Appeals of Turkey, Decision no. 2011/120, File no. 2011/1-138, Judgement given 14 June 2011 and Habertürk: Töre mi, namus mu? This change is largely a consequence of feminist critique against the difference between so-called custom and so-called honour. Sirman 2011, p. 1.
372 Independent translation from Turkish by the author, inspired by the translation on Legislationonline.org: “haksız bir fiilin meydana getirdiği hiddet veya şiddetli elemin etkisi altında suç işleyen kimseye”. Legislationonline.org: Criminal Code, Law no. 5237.
373 Instead of heavy life imprisonment, the perpetrator is sentenced to imprisonment of 18–24 years. Instead of life imprisonment, the perpetrator is sentenced to imprisonment of 12–18 years. There are also other possibilities to reduce the sentence for the perpetrator, e.g. based on good behaviour. The wide possibilities to reduce the sentence given to the judiciary have been criticised, e.g. by feminist movements. See Se’ver 2005, p. 133
374 However, in the preparatory works it is highlighted that Article 29 should not be applied in order to reduce the sentence of a brother or father, who kills a woman who was sexually abused. CezaKanunu.net: TCK Madde 29.
375 See Se’ver and Yurdakul 2001, pp. 981–984. It was also discussed in my interview with Tanja Völker and Martina Gaidzik. Tanja Völker and Martina Gaidzik, 29 January 2013. This is, however, not unique for Turkey. These strategies also exist in the Finnish legal context, in particular with references to family dynamics within domestic violence. See Ruuskanen 2005.
376 Arto Karalahti highlights that these forms of homicide are indeed regarded as murders, due to the premeditated nature of the crime. Karalahti 2008, p. 23.
4.3.2 Gendered Violence and Majority/Minority Positions in Turkey

The East-West tension in Turkey finds its explanation in Turkish history. In this section, I account for the main features of minority and majority positions in Turkey, ultimately affecting societal creations of gendered violence. The Turkish Republic was established 1923 on the principles of Turkish nationalism and Kemalism, wanting to cut the bonds from the old, religious Ottoman Empire.\textsuperscript{377} In the modernisation process during the 20\textsuperscript{th} century, political dissidents, religious (Islamic) movements, ethnic and cultural minorities (e.g. the Kurdish), as well as intellectuals on the left and right, had little to say.\textsuperscript{378} The Turkish Republic was established 1923 on the principles of Turkish nationalism and Kemalism, wanting to cut the bonds from the old, religious Ottoman Empire.\textsuperscript{377} In the modernisation process during the 20\textsuperscript{th} century, political dissidents, religious (Islamic) movements, ethnic and cultural minorities (e.g. the Kurdish), as well as intellectuals on the left and right, had little to say.\textsuperscript{378}

The Kurdish people – the largest minority in Turkey, forming approximately 20 per cent of the population (even though no statistics are kept by the Turkish State)\textsuperscript{379} – are traditionally and particularly settled in the eastern parts of the country.\textsuperscript{380} Building on a national ideology regarding minorities as enemies within, the foundational Lausanne Treaty\textsuperscript{381} only recognises non-Moslem minorities, i.e. not the Kurdish people.\textsuperscript{382} Still today, the only language mentioned in the Turkish Constitution is Turkish.\textsuperscript{383} Throughout Turkish history, in particular during the 1980s, the Turkish State has been guilty of human rights violations against the Kurds,\textsuperscript{384} and the situation of the Kurds has gained international attention.\textsuperscript{385} However, some steps towards democratisation have been taken. A good example of this is the recent democratisation package, launched by the ruling AKP government, opening up possibilities for some reforms regarding Kurdish language, e.g. in the field of education.\textsuperscript{386}

The East and the Kurds are often negatively portrayed as backward, uneducated and rural, as opposite to the educated, modern people in western Turkey.\textsuperscript{387} Culturalist and

\textsuperscript{378} Ergil 2000, p. 123.
\textsuperscript{380} However, they have also moved to other parts of Turkey due to forced migration (emptying of villages) or economic reasons. Bayr 2013, p. 117. However, the eastern parts of Turkey are still largely inhabited by Kurds, often manifested in discourses of alterity in Turkey. See Koğacıoğlu 2011.
\textsuperscript{381} An international treaty founding the Republic of Turkey.
\textsuperscript{382} This is done in Article 38, paragraph 3 of the Lausanne Treaty.
\textsuperscript{383} Article 3, paragraph 1 of the Constitution of the Republic of Turkey (Law no. 2709).
\textsuperscript{384} This was after the military coup. Koğacıoğlu 2011, pp. 179–181. See also Çakmak and Altuntaş 2008, p. 8.
\textsuperscript{386} The democratisation package was launched by the Turkish government on 30 September 2013. European Commission 2013, p. 6.
\textsuperscript{387} This discourse is particularly visible e.g. in Turkish TV series. This was discussed during my interview with Nükhet Sirman. Sirman highlighted the fact that the Turks mock the Kurds and the people in the eastern settlements of Turkey in the same way that they experience them being mocked by the West. Nükhet Sirman, 11 July 2013.
particularist explanations of some forms of gendered violence are used by NGOs, academics and researchers for the violence faced by women in the eastern regions of Turkey. The phenomenon has been well described by lawyer Türkan Sancan, as Turkey simply imitating the West, i.e. looking to the East in its search for so-called honour killings. The regional discrepancies are particularly enforced by government policy and inequalities in investments, development, education and awareness of rights. The income levels in the eastern regions of Turkey are comparable to the least developed countries in the world, while income levels in western Turkey are comparable to income levels in EU countries. Insufficient language skills; illiteracy among women; high fertility rates resulting from lack of sexual and reproductive autonomy; and the practice of unofficial (religious) marriages, not granting women any of the rights of legally married women, generally render women in the East vulnerable to domestic violence. Furthermore, the armed conflict between Kurdish guerrilla forces and Turkish military, going on in eastern Turkey over the last 30 years, is particularly affecting women. However, these facts are often left out of the public discussions and media reporting on gendered violence in the East.

Although many minorities exist in Turkey, I have chosen particularly to focus on the Kurdish minority, due to its particularly vulnerable situation. The dichotomous construction of west and east in Turkey is, however, not limited to Turkish-Kurdish settlements. In focusing on minority groups, this study aims to highlight structural patterns of gendered violence, and stress that stigmatising minority groups is also harmful for minority women. Intersectional perspectives are needed in order to recognise the multiple discrimination – and the following vulnerability – faced by minority women.

389 Radikal: Kadınlar, törel ve ötekiler.
390 Altınay and Arat 2009, particularly pp. 58 and 122–123.
391 Yıldız et al 2010, p. 23.
392 This is supported by more independent surveys (not State funded) that take other factors, such as economic discrepancies, into consideration. See Altınay and Arat 2009, Yıldız et al 2010 and Ilkaracan and Women for Women’s Human Rights 1998, p. 66.
394 Thus, the Kurdish question cannot be understood in isolation. Ergil 2000, p. 133. See Koğacıoğlu 2004 and Koğacıoğlu 2011.
396 It involves multiple elements, such as secularity v. religiosity, “enlightened” v. uneducated, as well as urban v. rural settlements. See Altınay and Arat 2009, in particular pp. 22–26.
397 This is recognised e.g. by Härkönen in her observations on sexual violence in Turkey. Härkönen 2004.
The victim was judged and became the prime suspect, as if she was not constantly battered by her husband, moved finally to the shelter, picked up by her husband and returned home and killed the same day.

Sociologist Cemre Baytok\textsuperscript{398}

\textsuperscript{398} Baytok 2012, p. 2.
5 Court Context: Analysis of constructions

In this chapter, court judgements are analysed using discourse analysis. The judgements chosen for analysis are mainly cases of gendered violence dealt with by the Supreme Courts of Turkey and Finland, which means that they can be considered to be of value for the national doctrines. However, some of the Finnish cases are not the rulings of the Finnish Supreme Court: instead, these cases have been chosen because of intense media reporting, mainly because they were committed by (Muslim) immigrant perpetrators. Some of the Turkish cases have also been dealt with in this way by the media. In every case, the ruling of the highest legal instance is particularly considered, but the arguments of lower instances also provide for useful objects of analysis.

In the analysis of the cases, it is important to keep in mind that the position of the Supreme Court of Appeals in Turkey is different from the Finnish Supreme Court, since it issues many more annual decisions than the Finnish. A common criterion of the cases chosen is that they all address recent cases of gendered violence: a majority of the cases having taken place after 2000, and all of the Turkish cases after the introduction of the new Criminal Code in 2004. Another criterion is that the cases involve a victimised woman who was killed by her partner, former partner, family or extended family. In all cases, the victim was an adult, apart from one, in which the only victim was a five-year-old girl. Furthermore, many of the cases have in common that the narrative motive of the perpetrators has been that of so-called honour and/or passion. In all cases, the perpetrator was male, and in most cases he was the partner or the former partner of the woman killed. In order not to highlight the identity of the women killed or the perpetrators – but instead to highlight the systematic nature of gendered violence – the references in the cases are not made to the names of the people involved, but to their gender.

399 For some of the media reporting on the cases, see e.g. Helsingin Sanomat: Helsingin poliisi pilottanut tytöjä kunniaväkivallan uhan takia, Yle Uutiset: Pakistaniäisnaisen surma käräjillä, Itta-Sanomat: Eroaiket pakistaniäisnaisen surman takana – syyttäjä: rituaaliteurastus, Sondakika haberleri: Cinayet haberleri, and Milliyet: Töre cinayeti.

400 Resulting in the threshold of appealing being significantly lower. It is common that cases are sent back for revision to lower instances. Ceren Belge, 30 July 2013. See also Turkish Ministry of Justice 2013.

401 With woman, I primarily refer to adult women: however, in two of the cases, also female children were killed. It is important to stress that gendered violence also victimises girls. That being said, my main focus in the discourse analysis is on adult women.

402 This case is particularly interesting, since she was killed instead of her mother.
5.1 Facts of the Cases

Here, only the most pertinent legal facts of the cases are accounted for. The analysis does not focus on the outcome of the judgements, as much as on the creation of legal facts and the argumentation provided for in the judgements. However, short descriptions of the cases can be found in the annex. With case code F, I refer to Finnish judgements, and with case code T, I refer to Turkish judgements. In cases F1–F3, the victim and the perpetrator were members of the Finnish majority population, while in cases F4–F6, the victim and the perpetrator were members of the immigrant minority population. In the Turkish judgements, it is likely and relatively evident that some of the perpetrators and/or the victims were of Kurdish minority population. However, this is difficult to establish with certainty, due to the policies of the Turkish State, silencing the Kurdish identity as separate from Turkish.\footnote{\textsuperscript{403} See Bayr 2013. See chapters 4.3.2 Gendered Violence and Majority/Minority Positions in Turkey and 5.2.4 Essentialised/Collective Violence.} However, this is not to say that Turkish courts avoid essentialising discourses.\footnote{\textsuperscript{404} Dealt with in chapter 5.2.4 Essentialised/Collective Violence.} For this reason, and for the risk of creating own discourses of alterity, I have chosen not to include minority and/or majority population membership in the case codification. Furthermore, the universal nature of gendered violence is highlighted.

<table>
<thead>
<tr>
<th>Case Code</th>
<th>Victim</th>
<th>Perpetrator</th>
<th>Relationship</th>
<th>How the Woman Was Killed</th>
<th>Earlier Violence or Threats</th>
</tr>
</thead>
<tbody>
<tr>
<td>F1</td>
<td>Woman</td>
<td>Man</td>
<td>Marriage</td>
<td>Gunshots, hit twelve times by different bullets</td>
<td>Yes</td>
</tr>
<tr>
<td>F2</td>
<td>Woman and her three children</td>
<td>Man</td>
<td>Marriage</td>
<td>Stabbed 39 times with knife (the children killed in the same way)</td>
<td>Not specified in the judgement</td>
</tr>
<tr>
<td>F3</td>
<td>Girl child (killed because her mother escaped)</td>
<td>Man</td>
<td>Partner’s child – mother’s partner</td>
<td>Strangled, stabbed with knife and throat cut</td>
<td>Not specified in the judgement</td>
</tr>
<tr>
<td>F4</td>
<td>Woman</td>
<td>Man</td>
<td>Marriage</td>
<td>Stabbed 28 times with knife</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Woman</td>
<td>Man</td>
<td>Relationship</td>
<td>Injury Details</td>
<td>Specified in Judgement</td>
</tr>
<tr>
<td>---</td>
<td>-------</td>
<td>-----------</td>
<td>--------------</td>
<td>--------------------------------------------------------------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>F5</td>
<td>Woman</td>
<td>Man</td>
<td>Marriage</td>
<td>Stabbed 17 times with knife</td>
<td>Not specified in the judgement</td>
</tr>
<tr>
<td>F6</td>
<td>Woman</td>
<td>Man</td>
<td>Former marriage</td>
<td>Throat cut</td>
<td>Not specified in the judgement</td>
</tr>
<tr>
<td>T1</td>
<td>Woman</td>
<td>Man</td>
<td>Partner, co-habitant</td>
<td>Stabbed 18 times with knife, salt put into vagina</td>
<td>Not specified in the judgement</td>
</tr>
<tr>
<td>T2</td>
<td>Woman</td>
<td>Man</td>
<td>Former marriage</td>
<td>Gunshots, hit five times by different bullets</td>
<td>Yes</td>
</tr>
<tr>
<td>T3</td>
<td>Woman</td>
<td>Man</td>
<td>Siblings</td>
<td>Stabbed 9 times with knife</td>
<td>Not specified in the judgement</td>
</tr>
<tr>
<td>T4</td>
<td>Woman</td>
<td>Man</td>
<td>Marriage</td>
<td>Gunshots, not mentioned how many times</td>
<td>Not specified in the judgement</td>
</tr>
<tr>
<td>T5</td>
<td>Woman</td>
<td>Man</td>
<td>Marriage</td>
<td>Gunshot, shot to the head with a close-range shot</td>
<td>Yes</td>
</tr>
<tr>
<td>T6</td>
<td>Woman</td>
<td>Man</td>
<td>Separated and recently divorced</td>
<td>Gunshot, hit nine times with different bullets</td>
<td>Yes</td>
</tr>
</tbody>
</table>

### 5.2 Findings: Discursive similarities and differences

In this section, I account for the different discourses found in the court cases. The discourse analysis primarily focuses on the creation of facts in the court judgements, according to which the legal decision is made. The reason for the use of discourse analysis is to create means of demonstration of legal reasoning and use of legal language. The main discourses that I have found in the different court cases are: male violence, female behaviour, normalised/individual violence and essentialised/collective violence. In most of the court cases, I have not found one, but multiple discourses. However, one or two of the different discourses were often dominant in the individual court cases: depending on various factors. The discourses can be coupled into male violence – female behaviour and normalised/individual violence – essentialised/collective violence, one of the discourses in the pair often dominating over the other. However, it is important to keep in mind that the
coupled discourses should not be seen as exclusive, as both possibly appear in the same cases, sometimes even in the same sentences.\textsuperscript{405} Hybrid versions of the different discourses also exist in some cases: e.g. can a case of male violence also be described as essentialised/collective violence, as a reaction to female behaviour. Thus, the various relationships between the discourses are complex.\textsuperscript{406}

The discourse analysis used challenges the foundations of legal assessment – relevant for the legal analysis of the cases. The main focus of critique is essentialising strategies and alterity in the legal argumentation on intersectional grounds: with a focus on gender, ethnicity, culture and/or race. In a comparative study, this form of research methodology and research interest draws particular attention to the largely universal existence of the discourses, not so much depending on formal differences in legislation or legal culture. It is important to highlight that analyses with other focus interests than mine might find different discourses and interconnections than I have, which further stresses the methodological versatility of discourse analysis. This fact also highlights the linkage and interdependency between methodology and theory, as described earlier.\textsuperscript{407}

\textbf{5.2.1 Male Violence}

The discourse referred to as male violence describes the violence perpetrated by men as the main focus of attention in the judgements. This means that the manifestations of the discourse are various descriptions of violence, with a focus on the violence perpetrated by the male perpetrator, rather than the behaviour of the victimised woman. One point worth observing here is that this discourse focuses on the violence as an illegal act, rather than the perpetrator as a person. Here, the perpetrator’s violence is described as the main fact, upon which the legal judgement is made. There are also value judgements, interlinked with the descriptions of violence: the violence can be described as with or without context. I have recognised these discourses as normalised/individual behaviour and essentialised/collective behaviour.\textsuperscript{408} In the criminal legal doctrines of both Turkey and Finland, the discourse of male violence is often officially recognised as the only discourse

\textsuperscript{405} However, this is truer for the first two discourses than the last two.

\textsuperscript{406} This is dealt with further in chapter 5.3 Interconnections: The ultimate victimisation of minority women.

\textsuperscript{407} See chapter 2 Theoretical and Methodological Framework: A critical perspective on law.

\textsuperscript{408} See chapters 5.2.3 Normalised/Individual Violence and 5.2.4 Essentialised/collective violence.
given value within the legal judgement. However, as mentioned earlier, other discourses can also be recognised in the analysed judgements.

In all the judgements, the male violence discourse is evident. In some, it is the clearly dominating discourse. In general, the discourse of male violence is more dominating in the reasoning of the Finnish courts than in the arguments of the Turkish judgements. In the analysed judgements, Finnish courts generally focus less on the behaviour of the female victim than Turkish courts. This might be the result of various factors: e.g. differences in legislation, assemblies of judges, the facts of the cases, or legal context. However, it is important to keep in mind that only a few cases are analysed, and that they do not necessarily represent the multiplicity of the national legal culture, even though they might represent important parts of it. Furthermore, conclusions that do not take into consideration the context of the individual cases should not be made. The cases where the discourse male violence is most clearly dominating are cases F2, F3, F4, F5, T5 and T6. In general, the courts have seemed less hesitant to regard male perpetrators guilty of a qualified form of homicide if the dominant discourse has been male violence rather than female behaviour. Thus, the dominating discourse is linked with the outcome of the judgement.

The following demonstrates some examples of the discourse male violence.

In case F2, a good example is found in the arguments of the Court of First Instance, written in the judgement of the Supreme Court: […] The four cases of manslaughter, directed towards A’s family members, perpetrated through stabbing or stinging with a knife, in a fairly aggressive state of mind, can be considered to be perpetrated in a particularly brutal or cruel manner. The cases can also be considered to be aggravated when addressed as a whole, when regarding the killing of the youngest child E, who was unable of any self-defence, and in particular when taking into consideration that the legal, biological, social and moral duty of the father was to act as a protector and guardian of the child.

409 This has its roots in the dominant legal discourses on perceived objectivity. See Chomsky 2003, Gunnarsson and Svensson 2009 and Bladini 2013, pp. 38–43.
410 This also supports the theory of dominating discourses in Foucauldian discourse theory, and their effects on the (re)creation of knowledge and power. About the application of Foucauldian discursive power relations and the notions of the individual, see Koğacıoğlu 2004, p. 120.
In the case described, the role and responsibilities of the male perpetrator as a father is highlighted, further enhancing the serious nature of the violence perpetrated. The male violence is not only described as the physical act of stabbing his child, but also of the psychological violence enacted through the failure of performing his duties as a father. The violence is not merely described as violence towards the individual child, but the words legal, social and moral rather refer to the violence as having societal and collective implications: as if the crime was also perpetrated against society. Thus, the child’s life and safety are highlighted as societal, legal interests. However, it is relevant to note that the stabbing of the woman does not involve the same implications: it seems that the legal, social and moral duties of the male perpetrator are not given the same value in this case.

In judgement F3, one example of the discourse is expressed in the legal argumentation of the Finnish Supreme Court: Before the killing, A was assaulting B by strangling her, which woke up her daughter C. A was trying to kill B while C was present. He also strangled C, who was crying out of fear. When the mother escaped from the island by swimming, five-year-old C was left helpless and defenceless alone with A. In these circumstances, A repeatedly strangled C, and caused two stab wounds, on her neck and her right jawline, and a 7.5 cm long horizontal cut on the front side of the throat, breaking the oesophagus and the trachea, and cutting the cervical vein and the left and the inner carotid arteries. The main cause of death was the wide cut of the throat. The Supreme Court regards the killing to be perpetrated in a particularly brutal manner. The fact that the act is directed towards a defenceless small child makes the act aggravated, when addressed as a whole.

In the description of the violence by the male perpetrator, the physical and mental violence is highlighted by the situation in which the perpetrator and the victim were. Thus, in order to get a full picture of the violence perpetrated, the Supreme Court took the context of the crime into consideration. In the argumentation of the Supreme Court, the blame on the

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412 Gaining societal protection as an interest of legal protection. On the legal protection of certain interests, see Tolvanen 2005.

perpetrator is further enhanced by the relationship between the perpetrator and the victim, the victim being described as a small child, who was defenceless and scared. The male violence discourse is highlighted, since the physical violence perpetrated gains a stronger focus because of the perceived innocence of the victim. The child victim can, to a certain extent, be described as an ideal victim, according to the theory of sociologist and criminologist Nils Christie: the violence being more easily distinguished if the victim can be recognised as an ideal victim.\(^{414}\) In this regard, it is relevant to note that the violent abuse of the mother is not described in the same manner: the description is rather used as “background information” to the killing of the female child.

In case F4, an example of the discourse is expressed in the following way by the Court of First Instance: G killed A with 28 stab wounds, mainly on the upper body. G directed killing blows towards A, who died as a result of the wounds she sustained half an hour after the stabbing. According to the witness E, the stabbing lasted around five minutes. G continued the stabbing until the blade of the knife broke. G stabbed the victim with both of his hands holding the knife, and with great effort: the stabbing movement departing from the top of his head. The act can be considered as particularly cruel and brutal, regardless of when A lost her consciousness. The act can also be regarded as aggravated when addressed as a whole, in particular concerning the determination and the resiliency of the killer, when killing A.\(^{415}\)

A similar description of the violence of the male perpetrator can be found in case F5: Taking into consideration the number of stab wounds, and regardless of when the killing stab wounds were made or when the victim lost her consciousness, the killing can be considered to be perpetrated in a particularly brutal and cruel manner.\(^{416}\) In the


\(^{416}\) Independent translation from Finnish by the author: “Iskujen lukumäärä luokitellaan ottaen ja riippumatta siitä, missä vaiheessa puolustava tai tajunnan menettämiseen johtuvat iskut ovat tapahtuneet on surmaamista pidettävä erityisen rauhalla ja jumalla tavalla tehtynä.” Helsingin käräjäoikeus, Judgement no. 06/1871, Record no. R 05/8762, Judgement given 22 February 2006, p. 3.
judgements described here [F4 and F5], the violence perpetrated by the male perpetrator is brought forward in multiple ways: the argumentation does not account for the acts of the female victim at all, but focuses on the acts of the male perpetrator. It repeatedly uses the word *stab* or *stabbing*\(^{417}\), the duration of the action is stressed\(^{418}\), and the amounts of stab wounds are given particular value in the argumentation. The judgements highlight that the condition the victim was in when she lost her consciousness is irrelevant for the aggravated nature of the crime. Thus, both cases are highlighting the male violence as more stripped of context than the two earlier descriptions in cases F2 and F3.

In judgement T5, one example of the discourse is that [...] *the defendant was living in his house, with his official wife and children, when he took another woman home from an extramarital affair, to live with them in order to lead an immoral life. He also had an extramarital affair with the sister of this woman, which was known by everyone. When the defendant wanted to divorce his wife, he tried to violently force her to approve of the divorce, and later referred to the legal grounds of unjust provocation.*\(^ {419}\)

In this example, it is crucial that the act of killing [the violent forcing of his wife] is *not* described as the main violence perpetrated. The violence highlighted in this case is mainly the *mental violence* of forcing his wife to live together with his mistress. The physical violence is barely visible in the argumentation of the court: what is highlighted is rather the *immorality* of the man. Thus, there is an evident social aspect in the legal creation of the case: it seems as if the fact that the male perpetrator was living together with his wife and his mistress creates a greater *societal blame* than him killing his wife.

In case T6, an example of the discourse can be found in the following argumentation by the Supreme Court: *In this case, the defendant had decided to kill his wife when he heard about the divorce judgement. The defendant had not wanted a divorce, and the proceeding culminated in the killing of his wife. During the 12-day period, from the decision to the time of the crime, the defendant did not give up his decision and kept a mental calm, in order to carry out the decision to kill his wife. The choice of means of transportation (taxi)*

\(^{417}\) This is particularly true for case F4.

\(^{418}\) *Ibid.*

\(^{419}\) Independent translation from Turkish by the author: ”Sanığın, resmi eşi ve çocuklarıyla birlikte yaşadığı evine evlilik dışı ilişki yaşadığı kadını getirerekahlak dışi davranışla metres hayatı yaşamaya, ayrıca metresinin kız kardeşiyle herkesçe bilinerek seçilde ilişki kurduğuunu duyulup ifade edilmesi, eşi makulce karsi şiddet kullanarak onu boşanmaya zorlaması ve dolayısıyla kendisinin haksız zeminde bulunmasını karşışında.” The Supreme Court of Appeals of Turkey, Decision no. 2012/1724, File no. 2010/3234, Judgement given 13 March 2012.
can be considered to indicate that the act was planned, making it easier for the defendant to escape from the scene of the crime. Approaching his wife as if his intention was to talk, and shooting her with seven shots, mainly from the back, suggests that the act was premeditated.\textsuperscript{420}

In the argumentation described, the focus is on the actions of the male perpetrator. In fact, the behaviour of the female victim is not at all considered in the judgement, making the male violence more visible. The case also, unlike the previous case, focuses on the physical violence perpetrated: accounting for the number of shots, as well as for how they were executed. Again, it is significant to notice that the dominance of the male violence discourse – and the absence female behaviour discourse – seems to suggest a higher likelihood for the act of killing to be considered as premeditated by the court.

5.2.2 Female Behaviour

The discourse that I have chosen to refer to as female behaviour describes the behaviour of the female victims as the main focus of attention in the legal judgements. The different expressions of the discourse highlight the blame of the woman in various ways, or the interdependent or reactive nature of the violence perpetrated.\textsuperscript{421} Hence, the discourse is often used in order to explain, excuse and justify the violence perpetrated by the man in the cases. However, even if the violence is not justified by the court as a matter of sentences or classification of crimes, the occurrence of the female behaviour discourse contributes to taking the focus away from the violence perpetrated, and focuses instead on the behaviour of the victim. This discourse domination affects the way in which the facts of the case are created in the courtroom. Here, the separation between actions and person is not as clear as

\textsuperscript{420} Independent translation from Turkish by the author: "Şu halde; sanığın, öldürme olayından 12 gün önce aleyhine sonucu olan boşanma davası ve öncesinde gelişen olaylar nedeniyle, boşanma davasının istemiş olduğu şekilde neticelenmesinin hemen ardından eşini öldürme kararını verdiğini, öldürme kararından sonra suç tarihine kadar geçen 12 günlük süre ile ulaştığı ruh suykunete rağmen öldürme kararından vazgeçmemiştir, kararını gerçekleştirmek amacıyla olay sonrasında rahaşıklıkla kaçabilmek için olay yerine geldiği ticari taksiyi olay yerinin hemen yakınında bekletmiş, konuşmak bahanesiyle yaklaştığı ve o sırada evinin bahçesinde temizlik yapmakta olan maktûleye tamamı arkadan olmak üzere, enksesine isabet ederek şekilde 7 el ateş ederek eylemini gerçekleştirdiği anlaşılmakla; öldürme eyleminin tasarlayarak gerçekleştirdiğini kabulünde zorunluk bulunmamaktadır." The Supreme Court of Appeals of Turkey, Decision no. 2009/290, File no. 2009/1-200, Judgement given 15 December 2009.

\textsuperscript{421} Minna Ruuskanen has also addressed this issue, highlighting that a discourse taking the behaviour of the woman into consideration is often used in cases where women are being abused and battered by their partners, in order to explain the violence. Ruuskanen 2005. Similar issues have also been addressed by Helena Jokila, focusing on the argumentation of the Finnish courts in cases concerning sexual violence. Jokila 2010. Another study focusing on different discourses can be considered to be the study on intimate partner violence by Johanna Niemi. See Niemi-Kiesiläinen 2004, in particular pp. 66–69.
it is in the discourse of male violence. The discourse of female behaviour tends to focus more on the person of the victim than the male violence discourse does. In the female behaviour discourse, the violence perpetrated by the man becomes a consequence of the behaviour of the woman: rendering the violence of the act invisible.\footnote{This issue has been analysed e.g. by Edwards S. 1987 and Lövkrona 2001, p. 17.}

In the Finnish criminal legal doctrine – and to certain extent also the Turkish – this discourse is not officially recognised\footnote{In Finnish legal literature, this can be seen in the absence of discussions on provocation. There is no substantial discussion on provocation e.g. in the doctoral dissertation by Jussi Matikkala, which covers the legal concept of intent. Matikkala 2005. Violent provocation is shortly mentioned by Matikkala in Matikkala 2000, pp. 61–63. In the criminal legal manual by Lappi-Seppälä et al, it is only shortly mentioned as a possible ground for regarding a manslaughter a killing, referring to the Government Bill. (see 4.2.1 Finnish Legislation). Lappi-Seppälä et al 2009, p. 499. In Turkish legal literature, greater attention is paid to that of provocation, much explained by the existence of Article 29. Here, the concepts of objective and subjective provocation are distinguished. See Belge 2008, pp. 51–52, CezaKanunu.net: TCK Madde 29 and Özcan 2013, pp. 253–254.}, however, it occurs in practice.\footnote{An example within the Finnish legal context, see Ruuskanen 2005. An example within the Turkish legal context, see Baytok 2012.} The formal legal support of the discourse might be found e.g. in the so-called margin of appreciation, giving the judge the privilege of interpretation.\footnote{The margin of appreciation has certain resemblance with the comprehensive assessment of a case, which the judge is supposed to do. See Matikkala 2000, pp. 54–56 and 60.} This is a legal instrument in multiple legal systems, international and national, allowing more or less space for the judge to apply legal norms to a case.\footnote{On the margin of appreciation within international human rights law, see Legg 2012.}

The discourse of female behaviour exists to some extent in all the judgements analysed. However, in some cases, it is more dominating than in others. The discourse could be found in Turkish as well as Finnish judgements, being somewhat more apparent in the Turkish judgements investigated. It is likely that the application of the unjust provocation article in the Turkish legal system is linked to the discourse of female behaviour, which would explain the higher prevalence of the discourse in the Turkish judgements. This observation has also been highlighted by Turkish and Kurdish feminists.\footnote{İstanbul Barosu Kadın Hakları Merkezi 2010, pp. 43–44 and Baytok 2012, p. 66.} However, since the research sample of this study is small, no further conclusions about major differences in national legal systems can be made. The cases where the female behaviour discourse is most clearly dominating are cases T1, T3 and T4. However, in the following, examples from the other judgements are also taken into consideration. This is done in order to get a more nuanced picture of how the discourse is used: it is most often implied between the lines, in single comments such as the behaviour of the victim had not given the perpetrator...
any reason to kill her.

This makes it difficult to define the discourse as dominant. However, minor utilisation of the discourse also affects the male violence discourse used: explaining, excusing and justifying the violence perpetrated.

In case F1, the female behaviour discourse is evident, even though it does not perhaps dominate over the male violence discourse. Two examples of the discourse, one from the Court of First Instance and one from the Court of Appeals, can be considered to be the following: According to the story of P [the male perpetrator], the conclusion cannot be that S [the female victim] would have, through her behaviour, caused the sense of aggression that P felt, which would explain his decision to kill his wife. 

Things, which speak for the fact that the crime cannot be considered as aggravated when addressed as a whole, are the facts that P was very angry before the killing – because S had confessed her extramarital relationship – the jealousy motive and P's unbalanced life management and mental (in)stability before the act. 

In the examples described, there is a clear emphasis on the behaviour of the female victim. In the first argument, the behaviour of the woman is highlighted as the main focus of the trial (even though she is regarded innocent). In the second argument, the fact that the woman had confessed an extramarital relationship and the possible jealousy motive that this might have given rise to, are described as facts that limit the criminal legal responsibility of the male perpetrator. Hence, the male perpetrator is given a certain right or privilege to punish his woman in the cases where the judge considers her behaviour to be unwanted. No matter whether the woman is considered guilty or not of the unwanted behaviour by the court, the mere usage of the discourse female behaviour contributes to the justification of gendered violence.

In judgement F3, the female behaviour discourse is evident primarily in the comment

428 Seen in the Finnish judgements, e.g. cases F1 and F5.
431 This patriarchal argumentation – the woman represented as a commodity, belonging to the man – can also be seen in the Turkish legal system. See Ertürk 2009, p. 62.
432 Since the application of the discourse is rendering the discourse stronger in itself.
written by the judge in the Court of First Instance, who did not agree with the majority of the judges that the manslaughter was aggravated: *When regarding the issue, whether the crime should be considered as aggravated when addressed as a whole, one should take into consideration the fact that it is evident from the stories of both S [the female victim] and A [the male perpetrator] that the events described in the prosecution were preceded by hours of nagging and acting up by S. This caused a sense of annoyance for A, and finally took him to a stage of uncontrollable anger […] Even though the killing was perpetrated in a particularly brutal and cruel manner, it cannot be considered to be aggravated when addressed as a whole, which is required in order to regard the case a murder. Therefore, A can be regarded guilty of manslaughter.*

The acts of the male perpetrator are described largely as consequences of the *acting up* and *nagging* by the woman. As stated earlier, this kind of “provocation” does not formally receive any protection in the Finnish legal system. However, this kind of provocation appears to fall in the wide margin of appreciation of the judge, *de facto* receiving protection in the Finnish legal system and argumentation.

In judgement F6, the discourse is visible in the legal argumentation of the judgement by the Court of Appeals: *There is no proof that K [the female victim], who was lying on the bed at the time, had given I [the male perpetrator] any reason or in any way contributed to his behaviour. What could be considered as contribution cannot be her decision to leave home, or possible scolding of and kicking I.*

In this case, it is evident that the righteousness of the violence perpetrated by the man is mirrored against the behaviour of the woman. Describing the actions of the female victim as *reason* or *contribution* to the violence, the *male violence* discourse becomes strongly influenced by the usage of the *female behaviour* discourse: making the violence of the male perpetrator *secondary* to the behaviour of the woman.

In case T1, the discourse appears e.g. in the following excerpts: *Having sexual relations with men for money […] the lifestyle of the victim does not constitute grounds for*
provocation, since there is no wrongful action before or during the events on behalf of the victim. This would have had to include an unjust action or utterance from the victim, which is absent in the case [...]. In this judgement, what is referred to as the lifestyle of the female victim is given legal consideration: in the Supreme Court, it is judged not to constitute unjust provocation, diverging from the opinion of the lower court instance. It is significant to point out, is that the incidents where the female victim had been selling sex are described as her lifestyle, and not simply as work, or a way of making money. Selling sexual services is considered to be a part of her behaviour, or even character, but not to directly affect the situation in the way demanded in order for it to constitute grounds of unjust provocation. Through the utilisation of the discourse, the male violence is rendered invisible, at least for a moment, in the judgement: focusing on the provocative nature of the lifestyle of the woman killed, rather than the acts of the man, who ultimately killed her.

In judgement T2, there are also examples of the discourse: The marriage took place after the finalisation of the divorce proceedings between the deceased victims. The victim [the male victim in the case] was married to Ze [the female victim in the case] on the grounds of an emotional relationship, in the presence of a witness, stating that there was no evidence of concrete hindrance for the marriage to take place. In this case, the provocation of the perpetrator is viewed against the righteousness of the woman’s new marriage. Hence, the female behaviour had an ultimate influence of the justification of the killing in court, and thus the judgement. In this judgement, there is much focus on the behaviour of the female victim, in concluding whether her decision to remarry (i.e. her behaviour) somehow justifies the male violence, or not.

The discourse also occurs in the legal argumentation in judgement T3, where the Supreme Court considers the following: [...] when rumours started to exist between the two families, saying that the victim was cheating on her husband, the relationship between the families was completely cut. This caused the family of the victim to blame the victim for the

435 Independent translation from Turkish by the author: “para karşılığı erkeklerle ilişkiye giren maktule [...] Maktulenin yaşam tarzının sanık yönünden tahrık oluşturmayacağını, olay öncesinde veya sırasında maktuleden kaynaklanan sanık lehine tahrık oluşturacak herhangi bir haksız söz veya eylem bulunmadığı gibi olaydan önce sanının maktuleye külfetmesiyle ilk haksız hareketin kendisinden kaynaklandığı anlaşılığı halde [...]” The Supreme Court of Appeals of Turkey, Decision no. 2010/3023, File no. 2009/6525, Judgement given 27 April 2010.

436 Independent translation from Turkish by the author: "Maktullerin evlilikleri boşanma davasının kesinleşmesinden sonra gerçekleşmiş olup maktullar arasından, sanıkla maktul Ze'nin evli olduklarını süre içerisinde de duygusal ilişki bulunuyışına dair görgüye dayalı bir tanık beyanı veya somut bir delil bulunmamaktadır." The Supreme Court of Appeals of Turkey, Decision no. 2011/124, File no. 2011/1-24, Judgement given 14 June 2011.
The lowering of honour that rumours about the extramarital affair is perceived to have caused, is provided as the main motive for the killing of the woman, making the behaviour of the woman more central than the violence perpetrated by the male perpetrator. Thus, the male violence perpetrated – later described in the case – is continuously viewed against the female behaviour, providing the motive of the killing.

In case T4, there is an example of the discourse in the argumentation of the Supreme Court: The fact that the victim, the wife of the defendant, did not want to go to Antalya and did not want to have sexual intercourse with the defendant when he made a proposal of such, and the fact that he was pushed out of bed and insulted by the victim, do not provide grounds for unjust provocation. Here, the behaviour of the female victim is examined by the judges, whether it is provocative in a legally relevant way or not. In this case, neither of the court instances thought that the case could be considered as unjust provocation. However, it has been argued that the mere existence of the discourse – encouraged by the existence of the article on unjust provocation – is problematic. Instead of investigating the violence perpetrated by the man, the court is concentrating on whether the behaviour of the woman was enough to kill her.

In judgement T5, the discourse is visible in the following argument, highlighted by the Supreme Court: [...] the mother of the defendant bears witness that the victim was a clean and honourable bride [...] in his defence, the defendant claims that his wife had extramarital relations twice, which made him angry on the night of the events. The fact that the perceived sexual purity of the female victim – as well as the discussion of the probability that she was having extramarital relations – are given this much attention,
nurtures the discourse of female behaviour. The final result of the judgement – that the claim of the extramarital relations was not likely to be true, not giving the male perpetrator the right to benefit from the article on unjust provocation\textsuperscript{441}, is of minor importance for the existence and enforcement of the discourse. The more important for the domination of the discourse is the amount of the court’s attention that is turned from the acts of the male perpetrator, towards the behaviour of the female victim.

As mentioned earlier, the existence of the article on unjust provocation in the Turkish Criminal Code has been considered as highly problematic, since it encourages the use of the female behaviour discourse. The discourse is not dependent on the existence of the article – as can be seen in the Finnish judgements – but the utilisation of the article leads to its further strengthening. It is possible to ask oneself whether the Finnish Criminal Code encourages this discourse, in particular with the existence of the section on killing.\textsuperscript{442} As described above, the interpretation of the section potentially opens up for the utilisation of this discourse, as is somewhat implied in the case KKO:1997:153.\textsuperscript{443}

\textbf{5.2.3 Normalised/Individual Violence}

In this section, I intend to look at the discourse that I describe as normalised or individual violence. I analyse it as opposed to the discourse of essentialised or collective violence in the court judgements. In my analyses, I focus particularly on the descriptions of the perpetrated gendered violence perpetrated within the judgements: if it is described as normal violence/violence perpetrated by an individual due to an individual decision, or essentialised or abnormal violence, perpetrated by an individual or a group due to a decision of a group (a collective decision). Thus, the descriptions of the violence perpetrated have different elements involved. However, both discourses mainly focus on the narrative of the male perpetrator, focusing on finding the motive and explanation, excuse, or even justification of the violence.\textsuperscript{444} At this stage, it is important to point out that other descriptions of violence are also possible, and frequent, in the court judgements, such as simple descriptions of violence and damages, without further explanations of motives or

\textsuperscript{441} Unlike the Court of First Instance, where he was given the right to benefit from the article of unjust provocation. The Supreme Court of Appeals of Turkey, Decision no. 2012/1724, File no. 2010/3234, Judgement given 13 March 2012.

\textsuperscript{442} Regarded as manslaughter under extenuated circumstances. See chapter 4.2.1\textit{Finnish Legislation}.

\textsuperscript{443} See chapter 4.2.1\textit{Finnish Legislation}.

\textsuperscript{444} See Lundgren and Westerstrand 2002.
context. However, I do not primarily focus on these descriptions in this study.

The normalised/individual violence discourse describes the violence perpetrated as deviant, while the perpetrator is otherwise largely described as normal. The perpetrator is identified as part of the collective self,\textsuperscript{445} while the violence perpetrated derives from deviant factors: the perpetrator might be described as particularly jealous, blinded by extreme anger, or otherwise mentally deviant. The narrative of the perpetrator is that he killed the woman because he saw no other, or little, alternative at the time being. The perpetrator often claims to have few or vague memories of the killing, and is overall described in the judgement as later distancing himself from the events.\textsuperscript{446} In the construction of gendered violence, it is important to stress the fact that what is described as normalised or individual violence is often perceived as the violence of the (collective) self, while what is described as the essentialised or collective violence is often perceived as the violence of the (collective) other.\textsuperscript{447} As stated earlier, this study regards the majority positions\textsuperscript{448} as the collective self, and the minority positions\textsuperscript{449} as the collective other. Commonalities of both violence discourses are that they support the narrative/story of the perpetrator, and regard the female victim as the other.

In case F1, following examples of the discourse, in the judgement of the Supreme Court, emerge: During the fight, in order to further emphasise his words, P [the male perpetrator] had taken out his firearm, set the hammer ready for shooting and pointed it at S [the female victim]. When she surprisingly left the apartment, P, according to his own story, was caught under the influence of anger, followed S and shot her, emptying the clip of his gun by the shots. […] P had, under the same influence of anger, gone back to his apartment, changed the clip of the gun, went out of the apartment and shot S, who was lying on the ground 1–2 meters away from him. […] Regarding whether the act was premeditated, P considers that the Court of Appeals had (over)emphasised the threats that he had directed towards S. These types of coincidental, old and disjointed “threats” could not be given the position of evidence. He had probably uttered them when he was under the influence of alcohol, and they can be regarded as some form of masculine outbursts.\textsuperscript{450}

\textsuperscript{445} In which the collective character is not necessarily outspoken, but rather implicit.
\textsuperscript{446} About these narratives and myths of violence, see Lundgren and Westerstrand 2002.
\textsuperscript{447} See Lundgren et al 2001 and Sirman 2011.
\textsuperscript{448} Finnish and Turkish majority population(s).
\textsuperscript{449} Immigrant and Kurdish minority population(s).
\textsuperscript{450} Independent translation from Finnish by the author: "Riidan aikana P oli puheitaan tehostaakseen ottanut aseen esiin, virittänyt sen ampumavalmiiksi ja osoitellut sillä S:ä. Tämän lähtienä yllättäen poistumaan
When analysing this example, it is important to keep in mind that it is the description of the perpetrator, retold in the argumentation of the court: also addressed as such. Thus, it does not have the direct voice of the court, and does not receive the same position of authority as the later argumentation, addressed as the view of the court. However, the extract is described under the section reasoning of the court, thus given certain value in the legal judgement. Therefore, the extract and its phrasing should be read as part of the judgement. It is possible to argue that the words of the perpetrator are given the indirect voice of the court. The excerpt describes the narrative of the perpetrator as an individual man under the influence of aggression, who killed his wife due to this exceptional anger. The earlier threats are described as deviant, uttered under the influence of alcohol. This is done in order to emphasise the exceptional, irregular nature of the violence: according to the perpetrator, the violence does not form a pattern, but have to be seen as independent occurrence. On the other hand, it is necessary to note that the perpetrator seems to recognise, and blame, some form of pattern, or structure, of the threats, referring to them as some form of masculine outbursts. Thus, he is partly addressing the violence perpetrated as gendered.

Another example of the discourse from the legal argumentation of the Supreme Court, this time particularly considering mental deviancy, is the following excerpt from case F2: What also supports that A [the male perpetrator] cannot be held fully responsible for the acts, is the impetuosity of the violence, and in particular that it was directed, apart from against his wife, also against his particularly close, small children. In this case, the deviancy of the violence is expressed through its direction towards some of the objects of the violence, the children. The children are described as unexpected and innocent victims, a description creating the need for an explanation of the violence. When it comes to the adult woman killed, she is not granted the same position. Contrasted towards her children, there seems to

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451 The voice of the court is analysed in Bladini 2013, pp. 281–295. It is also touched upon in Ruuskanen 2006 and 2005.

be a lesser need to explain the violence directed towards her: hence, there is a certain, implicit normalisation of this violence.

In case F3, one example of the discourse is expressed in the opinion of the judge in the Court of First Instance, who did not agree with the majority of the judges that the manslaughter was aggravated: [...] At this stage, A [the male perpetrator] could no longer control his actions, but was committing the actions described in the prosecution in an uncontrollable, aggressive and uninterrupted outbreak of rage [...]. In this argumentation, the violence perpetrated by A seems to be excused by the stage of uncontrollable anger, which he was in. As described earlier, this uncontrollable anger is described as a result of the behaviour of the female victim. According to this logic, the violence is described in a normalised manner: the main reason for the woman’s death was her own behaviour. The violence of the man is not the focus of the extract, neither is any structural nature of the violence. Hence, one can begin to distinguish a certain bond between the discourse female behaviour and normalised/individual violence.

In judgement F4, the argumentation of the Court of First Instance can be seen as having been influenced by the discourse: The Court of First Instance regards G’s [the male perpetrator’s] story as believable, according to which he completely lost his self-control, when A [the female victim] refused to speak to him. This is also supported by the story of the witness K, according to whom G had tried to speak with A. A was accompanied by the couple’s younger child. The act of G was not premeditated. In this example, similarly to the pervious examples, the behaviour of the woman is described as the reason for the aggression of the male perpetrator, making the violence seem natural and/or normal. Here, the killing is described as a sudden act of aggression, instead of a premeditated act. The same judgement also comprises information about earlier violence that the male perpetrator had directed towards the woman. However, this is not included in the argumentation of the judgement in deciding upon the nature of the killing: due to the criminal doctrine, which typically limits the focus of the trial to the duration of the event.


considered to be legally relevant.\textsuperscript{455} Thus, it is difficult to introduce other perspectives of the violence, e.g. structural patterns and/or the perspective of the victim/survivor, who has faced a continuum of violence, rather than individual occurrences.\textsuperscript{456}

In the Finnish judgements, the objectivity paradigm is clearly manifested in the fact that the language of the individual (and normalising) discourse is strong in the argumentation of the court.\textsuperscript{457} In the Turkish court cases, the objectivity paradigm can also be identified, however, the overall approach is somewhat different from the Finnish cases. An example of this is that, in one of the Turkish court cases analysed, sociological research is used as part of the legal argumentation. This would not be particularly common in a Finnish court, which traditionally focuses on the sources considered to have a higher hierarchical legal value.\textsuperscript{458} The normalised or individual discourse being strong in the argumentation of the Turkish Supreme Court, the essentialised or collective discourse can also be considered to be frequently used. In the following, I analyse a few examples of the normalised or individual discourse found in the Turkish cases.

In judgement T2, an example of the discourse can be found in the judgement of the Supreme Court, when it depicts the narrative of the male perpetrator […] When my old wife saw me, she said “look at that bad man, standing here without shame”, which I found insulting. Zi [the woman’s new husband, the male victim], who was standing next to her, made some movements. I noticed that he was correcting the position of his jacket, and trying to put his arm around her waist. Thinking that he would pull out a gun, I pulled out my gun. It had fourteen bullets inside. I opened fire against Zi from a distance of 2–3 meters. I do not remember how many times I shot him. While I was doing this, Ze [the female victim] continued shouting and speaking. She said that I had no dignity. For this reason, I could not stop myself from shooting at her. I do not remember how many times I shot her. They both fell to the ground. Then, I noticed that the child was present.\textsuperscript{459}

\textsuperscript{455} The disadvantages of this approach are well demonstrated in Ruuskanen 2005.

\textsuperscript{456} Thus, it is not in accordance with (certain) feminist theory. See SOU 2004:121, p. 12, Eldén and Westerstrand 2003, Lundgren 2013.

\textsuperscript{457} About the objectivity paradigm, see Chomsky 2003 and Bladini 2013, pp. 38–43.

\textsuperscript{458} Which can be considered to be characteristic for Finnish and Nordic legal doctrines. Peczenik 1995, pp. 183–199. See also Tuori 2000, pp. 174–175.

Much like case F1, the court describes the narrative of the perpetrator directly in his own words; it does not add its own voice to it, at least not directly. However, the court is responsible for the phrasing, as well as the choice of whose narrative in the judgement text is given what amount of focus, since the judgement is an official document of legal value. It is possible to pose the question whether the extract in its current form is suitable for the judgement text, unquestionably nurturing the discourse of normalised gendered violence. In the example described, the narrative and the legal strategy of the male perpetrator is that he was acting out of rage, and that he could not control his behaviour: this is particularly true for the killing of the woman. Thus, he is hoping to benefit from the article of unjust provocation. This strategy can be potentially beneficial in both Finnish and Turkish court practice. This is because violence described as an impulse, rather than as planned, often receives a milder treatment by the court, resulting in a lesser punishment.460 This similarity between the two different legal systems is noteworthy, particularly when it comes to gendered violence. On the other hand, it is difficult to draw any conclusions within the framework of legal argumentation, the individualist approach of law avoiding to recognise patterns.

A final example of the discourse can be seen in case T6, in the comment added to the Supreme Court judgement by the judge who thought that the article of unjust provocation should be applied in the case: On the day of the events, the defendant had not seen F [his son] for a long time, since he was living in another place. He went to the home of his son in order to see him, facing the victim when trying to enter the house. The victim did not allow him to enter, and he was exposed to insults and attacks by the victim, who was provoking the defendant, resulting in the events that took place [the killing of the woman] […]461 In this minority opinion, the acts of the defendant are described as results of the behaviour of the female victim: therefore, there is a clear link between the discourses female behaviour and normalised violence in this case. The same link is clearly visible in the aforementioned example, as well as in case F3. The guilt for her own killing is placed on the woman, instead of the male perpetrator.

460 See chapters 4.2.1 Finnish Legislation and 4.3.1 Turkish Legislation.

461 Independent translation from Turkish by the author:

el ateş ettiğimi hatırlamıyorum. İkişte de yerdeki çocuğunu fark ettim.” The Supreme Court of Appeals of Turkey, Decision no. 2009/290, File no. 2009/1-200, Judgement given 15 December 2009.
In judgements T5 and T6, it is particularly significant how little attention is paid by the court to the fact that the male perpetrator had travelled a long way, even from another city, in order to kill the female victim. Furthermore, it is important to notice that the strategy of unjust provocation was successful in the lower court instances, regardless of the long trip that the male perpetrator had made, and the fact that the male perpetrator in each case had brought a gun with him.

5.2.4 Essentialised/Collective Violence

As opposed to the previous discourse, I argue that there is a discourse describing violence as clearly abnormal and particularly belonging to members of certain groups, particularly visible in some of the judgements. I have chosen to refer to this discourse as essentialised or collective violence, primarily describing violence as the violence of the other. The discourse can be addressed in multiple ways in the judgements, but the main element of the discourse is that the violence is attached to a certain person or group as a characterising feature, while the normalised/individual violence is described as deviant and separate from a person or a group. Hence, there is a similarity between this opposition and the opposition between the male violence and female behaviour discourses.

Even though accounting for structural violence is unusual within the criminal legal framework, it is sometimes visible in practice when it comes to the descriptions of the violence of the perceived other. Here, structural patterns of gendered violence are addressed, often implicitly in the judgements, but sometimes also explicitly. This discourse is particularly harmful from an intersectional perspective, since it recognises the structural problems of gendered violence, however only concerning the minority, and not the majority. Thus, the problematic nature of the gendered violence of the majority population is rendered invisible, while the minority population is labelled as the problem.⁴⁶² This, in fact, directly works in a harmful way for multiple groups: e.g. the women of the majority population, the women of the minority population and the men of the minority population. The normalised violence, perpetrated by the men of the majority population, is not recognised as a structural problem.⁴⁶³

There are examples of this essentialising discourse in both Finnish and Turkish cases:

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⁴⁶² Hence, the particularity of the violence is addressed without recognising the universality of the violence, which can be considered highly problematic. See Ertürk 2009 and Koğacıoğlu 2011.

⁴⁶³ This is also described in the 2009 report of the SRVAW. A/HRC/11/6/Add.5, p. 42.
however, the circumstances surrounding the legal environment and legal argumentation are somewhat different. Due to the official policy of the Turkish government,\textsuperscript{464} and that Kurdish names have been long forbidden in law,\textsuperscript{465} the Kurdish minority is typically not addressed as such in the court judgements. However, Kurdish people are often addressed by other means in the judgements analysed, often referring to geography, such as \textit{rural areas, eastern or south-eastern parts of Turkey}, but also expressions like \textit{villagers} or \textit{people living in feudal systems} are commonly used. Therefore, the discourse is evident in these ways, often referring to Kurdish people.\textsuperscript{466} In the Finnish context, the aforementioned objectivity paradigm within law largely excludes explicit mentioning of things that are not considered legally relevant. To be a member of an ethnic, religious or racial minority is most of the times not considered legally relevant, however this is not true for all cases, as will be demonstrated. The discourse is more often expressed \textit{implicitly} in the Finnish judgements, such as in the formulation by the court of the narrative of the male perpetrators (or the lack of such reformulation), as well as the choice of facts brought forward in the judgements.\textsuperscript{467}

In the Finnish context, one of the clearest, most explicit examples of the discourse can be found in case F6, in the argumentation of the Court of Appeals: \textit{Modus operandi has been of rare nature in Finnish circumstances, and can be considered to symbolise the particular determination to achieve the ultimate result of the crime. Neither the modus operandi, nor other circumstances suggest that the situation would have arisen suddenly, due to agitation, or otherwise outside the control of I [the male perpetrator]. Rather, modus operandi suggests that the action was long premeditated and controlled.}\textsuperscript{468}

\textit{Modus operandi}, the cutting of the throat, is described as rare in Finnish circumstances, and it is highlighted as the suggestion that the act was \textit{not} an act of sudden rage. Thus, the \textit{normalised/individual} discourse is here viewed against what is perceived as \textit{essentialised/collective} violence. This is particularly important when comparing the case

\textsuperscript{464} Often claiming that Kurdish and Turkish people are inseparable as groups.
\textsuperscript{465} A policy that is still enforced in practice. See Aslan 2009.
\textsuperscript{466} See Belge 2008 and Bayr 2013.
\textsuperscript{467} Additionally, what is not being said, and what is not given place in the judgements is also important. See Carbin 2010, p. 34.
\textsuperscript{468} Independent translation from Finnish by the author: ”Tekotapa on ollut Suomen oloissa harvinainen ja sen voidaan katsoa ilmentävän tekijän poikkeuksellista päättäväisyyttä teon lopputuloksen suhteen. Tekotapa tai muut tekoon liittyvät olosuhteet eivät sitten viittaa myöskään siihen, että tilanne olisi yhtääkkiä kiihtymyksen takia tai muutoinkaan riistätynyt I:n hallinnasta, vaan tekotapa osoittaa pikemminkin harkittua ja hallittua toimintaa.” Kouvolan hovioikeus, Judgement no. 2011/399, Record no. R 10/1129, Judgement given 14 April 2011, p. 3.
with the judgement F3, in which the male perpetrator also cut the throat of the victim. Here, it was not mentioned that *modus operandi* is unusual in the Finnish context. Even though both cases are described as perpetrators acting on their own decisions, the violence in case F6 [the immigrant, Muslim minority population perpetrator] is described as premeditated due to *modus operandi*, while the similar violence in case F3 [the Finnish majority population perpetrator] is *not* described as premeditated. However, it is necessary to add that the facts and contexts of the cases are different, and that they are not directly comparable.

In the same [F6] case, there are additional arguments worth noticing, particularly in the prosecution, included in the intermediate judgement of the Court of First Instance: *I regard the crime as an act, which has traces of brutish, ritual slaughter [...]*.\(^{469}\) Also in this regard, the prosecutor refers to the *modus operandi* of the act, considered as resembling *ritual slaughter*. Whether this aspect of *modus operandi*, most probably referring to *Ḍabiḥah*, the Islamic religious slaughter of animals, is highlighted due to the fact that the defendant is a Muslim, becomes clarified later in the intermediate judgement by the Court of First Instance: *He is a Sunni Muslim. He has never even participated in animal slaughter.*\(^{470}\)

It remains questionable whether the fact that the male perpetrator is Muslim is relevant to the criminal legal assessment of the case. The fact that the religious slaughter is mentioned in the case is important because the *Ḍabiḥah* slaughter is performed by cutting the animal’s throat, in order to more effectively drain the blood from the animal, resulting in more hygienic meat. Therefore, it is strictly a way of killing *animals* for food, and does not possess a ritual sense in killing human beings. Therefore, the sense of the *ritual* cannot, *mutatis mutandis*, be applied to the killing of the woman in the case. Thus, I regard it mainly as a means of expressing *difference* and *alterity*. It is also interesting to notice that the fact that the perpetrator was Muslim would, according to the court, suggest that he had been participating in religious slaughter. In the judgement, there seems to be a need for the court to highlight that he had *not* been part of any religious slaughter, *even though* he was a Muslim.


In the same case, there also seems to be a particular eagerness to find the *motive* of the crime, expressed by the prosecution in the following sentence: *I has in the beginning of the investigation repeatedly admitted killing K [the female victim] without being able to account for any motive.*\(^{471}\) The case was reported in the media, mainly because both the perpetrator and the victim were members of a minority population (immigrants), and there were speculations that the crime might be a so-called *honour killing*,\(^ {472}\) a violence form often addressed as *motive violence*.\(^ {473}\) However, using the available material, it is impossible to draw any further conclusions about whether this fact affected the phrasing of the text and the particular aspiration to find a motive.

In the Turkish cases, it is evident that the clause of *custom* (*töre*) in the qualified form of felonious homicide encourages the existence of the *essentialised/collective violence* discourse. This might explain why the discourse generally occurs more frequently, dominating the Turkish cases more than the Finnish ones. Examples of the discourse can be seen in multiple arguments in the judgements examined. In the following, I account for a few.

In case T1, the discourse appears in the comment added to the judgement by the judge who argued that the killing should be considered as one of *custom*. The judge refers to socio-legal and sociological research in her/his comment, arguing that: *In this environment, honour killings are perpetrated by the perpetrators due to the fear of risking their honour/dignity, and in order to maintain their social/communal values, in order to act in accordance with their moral judgements, and also in order to see to it that these rules are implemented in general [...]*.\(^ {474}\) The source of the argument accounted for, is a book by lawyer Doğu Ergil, called *Terror and Violence in Turkey*\(^ {475}\) from 1980. Here, the strategy of alterity is evident: the judge refers exclusively to *them*, describing another reality and another society, different from the “civilised” society of the *self*.\(^ {476}\) The employment of this discourse continues in the comment by the same judge in minority: *Custom is a*
sociological concept, describing a societal “norm” in a certain place. Deriving from societal values, sanctions for deviations from the norm are generally harsh and cruel. It is not certain what measures will be directed against the victim of honour killings.\textsuperscript{477} This depends on the status of the measures and the dimensions of the perceptions, and may have regional variations.\textsuperscript{478} Here, reference is made to sociologist Tezcan Mahmut, and his book \textit{Custom (Honour) Killings in Turkey},\textsuperscript{479} from 2003.

It is significant to notice that there seems to be a particular need for cultural explanations of what is perceived as the violence of the \textit{other}. On the other hand, there seems to be no need for sociological or cultural explanations in the cases analysed, which are \textit{not recognised} as motivated by custom or \textit{(collective) honour}. Since the violence recognised as \textit{custom} is more severely punished, the legal recognition of so-called \textit{custom killings} leaves a remarkably great margin of appreciation to the court.\textsuperscript{480}

Another example of the discourse is visible in the argumentation in judgement T3: \textit{The defendant entered the room where the victim was staying, with the motive of saving the family honour (custom). The defendant knew that the victim was heavily pregnant and that the time for giving birth was approaching. The victim was sleeping, when the defendant stabbed her with a knife in nine different places, four of the stab wounds being enough to kill the victim, thus understood as premeditated.}\textsuperscript{481} In this case, it is particularly noteworthy how important the motive is for the description of the violence, and in order to determine whether the killing was premeditated or not. The construction of so-called \textit{collective gendered violence} in courts focuses largely on the motive of the killing, often involving a collective decision. As stated earlier, a decision of a family council is often

\textsuperscript{477} Direct translation from the Turkish judgement. However, since this sentence lacks logical consistency, what is probably intended is that \textit{it is not certain what measures will be directed against the person deviating from the societal norm.}


\textsuperscript{479} Independent translation from Turkish by the author: \textit{Türkiye'de Töre (Namus) Cinayetleri.}

\textsuperscript{480} It is interesting to notice that this tends to lead to a greater willingness of the judiciary to apply the article of \textit{unjust provocation} instead of regarding a crime as one of so-called \textit{custom}. Sirman 2011, p. 1.

\textsuperscript{481} Independent translation from Turkish by the author: "Sanğın, makulelenin kaldıği odaya girecek ailenin namusunu kurtarmak (töre) saikjyle, hamile olduğunu ve doğumuna az bir süre kaldığini bildiği, uyumakta olan makuleye başkala, dördü ayrı ayrı öldürülce olmak üzere, dokuz ayrı yerinden vurarak tasarlayarak öldürdüğü anlaşıldığına göre." The Supreme Court of Appeals of Turkey, Decision no. 2009/293, File no. 2008/10901, Judgement given 30 January 2009.
seen as proof that the killing was motivated by custom, thus, also leading to the conclusion that the killing is premeditated. Since the Turkish Criminal Code – like the Finnish – already considers a premeditated manslaughter aggravated, it is legitimate to pose the question whether it is necessary to additionally mention custom as a separate aggravating ground. This being said, a separation of this kind can be seen as a manifestation of the essentialised or collective violence discourse.

An example of the discourse also occurs in judgement T5. However, here it mostly concerns the mistress of the man, living in the same house as the rest of the family: The defendant was living in his house, with his official wife and children, when he took another woman home, from an extramarital affair, to live with them in order to lead an immoral life [...]. In this context, the discourse primarily essentialises polygamy, allowed in the Ottoman Empire, but forbidden by law in the founding of the Turkish Republic, which highlights romantic love and monogamy. Thus, the ideal of the heterosexual couple and the nuclear family are strongly connected to the collective self of the Republican Turkish identity. This said, it is particularly valuable to notice that this moral distancing from polygamy is not merely expressed on the legislation level, but also on the level of individual judgements.

5.3 Interconnections: The ultimate victimisation of minority women

The discourses investigated in this study are interconnected, meaning that they occur simultaneously, and that they are not exclusive of each other. In this section, I shortly account for the interconnections of the different discourses, as well as the consequences of their parallel existence and intersections. Due to the limitations of the thesis, the interconnections are described shortly. However, the close study of the interconnections of the discourses could be further developed in another study, since they are particularly

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482 This is evident in the Turkish case law, e.g. The Supreme Court of Appeals of Turkey, Decision no. 2010/111, File no. 2010/1-56, Judgement given 11 May 2010. See also Şev'er 2005, p. 133 and Sirman 2011, pp. 1–2.
483 See Koğacıoğlu 2011.
484 Independent translation from Turkish by the author: "Sanığın, resmi eşi ve çocuklarıyla birlikte yaşadığı evine evlilik dışı ilişki yaşadığı bayanı getirerek ahlak dışı davranışla metres hayatı yaşaması [...]" The Supreme Court of Appeals of Turkey, Decision no. 2012/1724, File no. 2010/3234, Judgement given 13 March 2012
485 In the Civil Code of 1926. EGM/GPLVAV/2008/EP.13, p. 2.
486 The phenomenon of highlighting the heterosexual nuclear family over the extended family and other forms of kinship is well described in Sirman 2003.
interesting from an intersectional point of view. According to the discourse analysis of the judgements, there are some general conclusions that can be made about the interaction of the discourses. The general and most common interconnections and interactions are available in the following table, providing for patterns found in the court cases studied.

<table>
<thead>
<tr>
<th>Perceived Culture</th>
<th>Majority Population</th>
<th>Minority Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>Individual/Deviant Violence (A)</td>
<td>Collective Violence (B)</td>
</tr>
<tr>
<td>Female</td>
<td>Provocation (C)</td>
<td>Culture (D)</td>
</tr>
</tbody>
</table>

According to an intersectional line of argumentation, the general assumption of the study is that women and minority populations as groups are vulnerable and often disadvantaged in different societal contexts. Regarding legal systems and courts as a part and an outcome of society, they create no exception to this assumption. According to the intersections of the discourses, the intersectionality of the study is particularly revealed, discovering the combination of the female behaviour and the essentialised/collective violence discourses to be the most harmful for minority women. In the following, the combinations of the different discourses are shortly investigated and explained.

The combination of the male violence and the normalised/individual violence discourses (A) is the most common in the court cases analysed. Here, the focus lies on the male perpetrator, regarded as a member of the collective self. This is often defined through means of implicit identification, the identification often (but not always) depending on the ethnicity/race/perceived culture of the male perpetrator. In this combination, the individual approach of the court is evident, and the violence perpetrated is not regarded as a result of culture or the impact of a collective society, but as a result of individual decisions. This means that patterns of structural gendered violence are rendered invisible in these cases, resulting in the disadvantaged status of female victims.487

The combination of the male violence and the essentialised/collective violence discourses (B) is particularly evident in cases F6, T1, T3 and T5. This combination can be considered to be exceptionally common. Here, the focus lies on the violence perpetrated by the male

perpetrator, regarded as a member of the collective other, often defined through what the court perceives as his own culture and/or ethnicity. Here, the court does not necessarily apply an approach that is only individual, but regards the perpetrated violence to be part of a societal pattern: allowing for a structural approach to the violence. The violence being perceived as the violence of the collective other, it also seems to be easier to recognise these forms of violence. Here, the direct disadvantaged group is the men of the minority population or members of what is perceived as “minority culture”.\footnote{See Volpp 2001 and 2000 and Koğacıoğlu 2011 and 2004.}

The combination of the female behaviour and the normalised/individual violence discourses (C) is evident in a couple of the cases analysed. In these cases, the focus lies particularly on the behaviour of the woman, as a cause or explanation of the violence. The violence directed against her is perceived to be of individual nature, often referred to as jealousy, or even love. Cultural membership is seldom addressed, since the woman is perceived to be a member of the “majority culture”. Alternatively, the cultural membership of a woman is not regarded as important in the case. The cultural membership of the woman is often more dependent on her social environment, her family and partner, than her person, ultimately evaluated on different grounds than the cultural membership of the man.\footnote{Here, traditionally the person of the man has a larger significance for his perceived cultural membership.} This combination is particularly harmful to women, since the behaviour of the woman is marked as significant and abnormal, while the violence is normalised.\footnote{This is well described by lawyer Lama Abu-Odeh, in her article on defence strategies by the perpetrators in cases concerning gendered violence. Abu-Odeh 1997.}

The combination of the female behaviour and the essentialised/collective violence discourses (D) is also apparent in the cases analysed. Here, the focus of the court lies on the behaviour of the woman, perceived as belonging to the “minority culture”. Like the previous discourse combination, the cultural membership of the woman is not necessarily dependent on her own ethnicity/race/cultural membership, but rather her environment. However, unlike the previous discourse combination, culture is addressed in these cases: either explicitly or implicitly. The particular problem of this combination is that it is both discriminating and harmful for women because of their gender and as a part of a perceived minority culture, making minority women particularly vulnerable.\footnote{The women are simply regarded as victims of their culture or even victims of (cultural) hatred against women; this explanation also justifying and allowing for more violence towards them, as}
long as they belong to this other culture. Most importantly, their narratives and realities are seldom presented, or even represented, and their voices are seldom heard in the court constructions of the gender violence. This occurs because the role they are given by the court is simply that of victims, in which the room for alternative narratives is strictly limited.

It could be argued that the last combination of discourses is particularly fruitful for the strategy that has often been referred to as so-called cultural defence. In this strategy, the perceived other culture of the defendant is treated as an extenuating factor in the criminal litigation of the case. This strategy has been particularly criticised by feminists, since it has been used – particularly in certain countries (e.g. the U.S.) – to excuse gendered violence.

\[492\] The similar argumentation is used by political theorist Chandran Kukathas. Kukathas 1998.

\[493\] The same conclusions are also made by Dicle Koçacioglu in her sociological work regarding the Turkish-Kurdish context. Koçacioglu 2011.


But to say that a category such as race or gender is socially constructed is not to say that that category has no significance in our world.

Lawyer and intersectional theorist Kimberlé Crenshaw\textsuperscript{496}

\textsuperscript{496} Crenshaw 1991, p. 1296.
6 Conclusions: Gendered violence and identity-building processes

This chapter analyses and discusses the conclusions and findings of the study. It brings the crystallised findings of the study forward and places it against the background of established theories. Furthermore, this conclusive chapter suggests material and possible questions for further research.

Described by several sociologists, such as Nükhet Sirman, Suvi Keskinen and Dicle Koğacıoğlu, the identity-building process of a nation happens through a process of inclusion and exclusion, depending on who is viewed as the self and who is viewed as the other. What is viewed as positive and worth striving towards is often considered part of the (collective) self, while the things that are viewed as negative are easily considered to belong to the (collective) other. Thus, the identity-building process is dependent on the concept of alterity, affecting in particular vulnerable minority groups, who are subjected to oppressive, e.g. racist, discourses in the media and society in general. Gendered violence is one area especially sensitive to this identity-building process. Being a universal problem, it is easy to point out gendered violence as a problem of the perceived other, if one is blind to the gendered violence existing in the society of the perceived self. Concluded in the analysis of the court cases, the categorisation of gendered violence renders the universal problem of gendered violence invisible, stressing the particularism of the problem. Thus, it is important to challenge and question the interest in the debate surrounding the so-called collective gendered violence, which has been growing in the international, Turkish and Finnish national societal and legal contexts during the last decade(s).

In the court context, particularly concerning criminal law cases, there is an important element of representation and construction, performed by judges in order to be able to make a legal evaluation of the case. This means that the facts of the case are constructed by the court, and the facts that are considered relevant are dependent on the evaluation of the

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498 A classic study of this phenomenon is Edward Said’s book Orientalism. Said 1991. How consensus is achieved through strategies of exclusion is described also by Judith Butler. Butler 2004, p. 206. The function is well described by Leon Sheleff as it being easier to recognise a problem, if it is not perceived as the problem of the self (the larger society). Sheleff 1999, p. 369.
500 See chapter 3.1 The Collective Violence: So-called killings of honour or custom.
judge(s). In criminal law, an important concern in a case is that of *intent*, or the lack of such, regarding the defendant. Therefore, the narrative description of the defendant is of great importance, providing the court with material for the construction of intent in the legal context, constituting important facts of the case. Thus, criminal law, by structure and nature, focuses largely on the narrative of the perpetrator, the narrative of the victim traditionally being of less importance.\(^{502}\)

Legal intent and the motive of a crime are not the same. All the crimes in this study are considered to be *intentional*, but the *motives* of the acts are brought forward in different ways. However, both are constructions of legal theory and legal practice, taking place mainly in the court room. In the cases analysed, it is essential to notice how the motive of a crime is highlighted, even sought after, in some cases,\(^{503}\) while in others it is not given much importance. In criminal law, a motive is generally used in court in order to prove the degree of legal guilt, in particular through demonstrating that an act of violence was premeditated.\(^{504}\) Thus, it implicitly indicates an aggravated form of the crime and a greater guilt. In the judgements investigated, it seems to be of particular importance in cases where the legal construction of the male perpetrator’s narrative has an *essentialising* effect: for instance so-called *collective gendered violence*.\(^{505}\) In the judgements where the *normalised/individual* discourse\(^ {506}\) is dominating, on the other hand, the *motive* of the killing is often not accounted for, particularly if the discourse occurs in combination with the *female behaviour* discourse. In this combination, the focus is on the behaviour of the woman, rather than the violence of the man.\(^ {507}\) Hence, there is no particular need to *explain* the violence with a *separate* motive: it is evident that the excusing motive was the behaviour of the woman.

In a criminal legal examination of a case, it is of ultimate importance to take into consideration the particularities of every case. Since the context of each case is different,

\(^{502}\) See Goldstein 1982.

\(^{503}\) One example of this is case F6, where the motive of the crime is repeatedly investigated in both court instances, and rendered of great importance for the legal judgement. Kouvolan hovioikeus, Judgement no. 2011/399, Record no. R 10/1129, Judgement given 14 April 2011.

\(^{504}\) A premeditated crime indicates particular legal guilt, according to Lappi-Seppälä *et al* 2009, p. 481. In the Turkish legal context, the *motive* is largely highlighted in so-called *custom killings*. See Ertürk 2009, pp. 62–63.

\(^{505}\) See chapter 3.1 *The Collective Violence: So-called killings of honour or custom.*

\(^{506}\) See chapter 5.2.3 *Normalised/Individual Violence.*

\(^{507}\) As discussed in chapter 5.3 *Interconnections: The ultimate victimisation of minority women* on the interconnections of the different discourses.
an individual judgement is necessary in order to guarantee the fairness of the trial.\textsuperscript{508} This being said, a legal conceptualisation of violence only taking place on an individual level is not necessarily fair or just – rendering the universality of gendered violence invisible. The legal focus is often only directed towards the events which are recognised as legally relevant, allowing only for a considerably limited understanding of violence.\textsuperscript{509} This approach is discriminating upon the female sex and gender, since it does not recognise patterns of violence for individual women, nor for women as a group, in the worst cases leading to the death of the woman. These structural patterns can be seen in the court cases analysed in this study. All of the women were killed by men, many of the women\textsuperscript{510} were subjected to violence earlier by the same male perpetrator who later killed them, most of the women were killed by their partners and all of the women were unable to get enough help, support and protection from the state and society in order to avoid death.\textsuperscript{511}

When addressing gendered violence without addressing discrimination in society, issues of racism, inequality in resource distribution, marginalisation and other structural problems, it is easy to draw conclusions that rely on culturalist explanations.\textsuperscript{512} Through performing a discourse analysis of judgements, taking the context of the judgements into consideration, I have strived towards revealing constructions of gendered violence in court language from an intersectional perspective. The aim of this study has been to break through the objectivity paradigm of law, as well as to highlight the universality of gendered violence. The intersections and interconnections of the discourses analysed being of special interest, this provides material and research questions for further research. In particular, the consequences of the combinations of two or multiple discourses provide a fruitful topic for research. An important question, mentioned shortly above, would be to investigate the frequency of the different discourses in relation to the criminal strategy of so-called cultural defence: in particular relating to the discourses of essentialised/collective violence and female behaviour.\textsuperscript{513}

When it comes to the usefulness or harmfulness of dividing gendered violence, it can be

\textsuperscript{508} In order not to move outside the letter of the law. See Matikkala 2005, pp. 15–16.
\textsuperscript{509} This phenomenon has earlier been investigated by other feminist researchers, such as Johanna Niemi-Kiesiläinen, Minna Ruuskanen and Helena Jokila. Niemi-Kiesiläinen 2004, Ruuskanen 2005 and Jokila 2010.
\textsuperscript{510} I have chosen to use the phrase many of the women, since it does sometimes not emerge from the court cases whether the woman had been faced with violence earlier in the relationship.
\textsuperscript{511} See chapter 5 Court Context: Analysis of constructions.
\textsuperscript{512} Koğacıoğlu 2004.
\textsuperscript{513} See chapter 5.3 Interconnections: The ultimate victimisation of minority women.
considered to be useful in order to categorise the forms of violence legally, e.g. marking a
difference in legal guilt between battering and killing. It can also be regarded useful in
order to recognise as many forms of gendered violence as possible.\textsuperscript{514} Useful examples
where recognition occurs are e.g. special education and training of law enforcement
authorities to recognise and take seriously multiple forms of violence, as well as to build
shelters for survivors of multiple forms of violence.\textsuperscript{515} One positive outcome of the
Swedish work against so-called honour violence during the last decade is that there is more
knowledge about the meaning and the serious nature of e.g. death threats and family
council decisions.\textsuperscript{516} This study recognises multiple forms of gendered violence: with a
particular focus on gendered violence with death as the outcome, perpetrated in the
domestic sphere. However, I would like to stress that there is a significant difference
between dividing and recognising. Recognising various forms of violence is equal to
paying attention to them, admitting their existence and taking them seriously. The concept
of dividing different forms of gendered violence is however closely connected to
essentialising discourses of alterity.

Dividing and categorising different forms of gendered violence has two main downsides,
as demonstrated in this study: 1) it renders invisible the universal nature of gendered
violence, and 2) it supports the culturalisation of violence, providing for particularist
explanations. It is discriminating on multiple grounds and particularly harmful for women
recognised as members of a minority culture.\textsuperscript{517} This is particularly visible in the examples
of the division of so-called collective\textsuperscript{518} and individual gendered violence\textsuperscript{519}. In so-called
collective gendered violence – of which so-called honour killings is an example – the
decision, norms and motivation to perpetrate the violence is said to come from the
collective, rather than from one single perpetrator. So-called collective gendered violence is
often described as acts of policing, guarding the societal norms in a certain community.\textsuperscript{520}
The societal norms of honour and the honour codex in a specific society is said to bring
about these crimes. Thus, both the perpetrator(s) and the victim are somewhat viewed as

\textsuperscript{514} The importance of addressing and recognising violence faced by minority women is also highlighted by
lawyer and intersectional theorist Kimberlé Crenshaw. If this violence is ignored, the approach cannot be
\textsuperscript{515} Abu-Lughod 2011, p. 18. It can be considered as a serious issue if the law enforcement personnel (in
particular) are unable to recognise certain forms of gendered violence. Payton 2011, pp. 71–72.
\textsuperscript{516} This was brought forward by Jenny Westerstrand during my interview with her. Jenny Westerstrand, 17
October 2013.
\textsuperscript{517} See chapter 5.3 Interconnections: The ultimate victimisation of minority women.
\textsuperscript{518} See chapter 3.1 The Collective Violence: So-called killings of honour or custom.
\textsuperscript{519} See chapter 3.2 The Individual Violence: So-called killings of passion or honour.
\textsuperscript{520} Ertürk 2009, pp. 65–66.
victims of (another) culture.521

However, in so-called individual gendered violence – of which so-called passion killings is an example – the male perpetrator is described as a perpetrator acting alone, on the basis of an individual decision, which he has often made in “the heat of the moment”, under the influence of anger, jealousy or mental instability. However, elements of honour are also highlighted in these cases, but in these crimes it is described as individual honour, such as the fear of being left by the woman or the “shame” of the woman having a relationship with someone else.522 Here, elements of culture can also be considered to be present – but these elements are not described as belonging to another culture, but rather rendered invisible as part of the majority culture. Thus, this form of violence is normalised. This means that the normalised description of violence is somewhat culturally blind: not recognising the so-called individual honour as a creation of culture.523

As described earlier, in some of the literature on the issue of gendered violence, patriarchal patterns are highlighted to a greater extent in the cases that are recognised as so-called collective gendered violence, than in the cases of so-called individual gendered violence. So-called collective gendered violence is described as the acts of misogyny or hatred towards women, while the so-called individual gendered violence is described as acts of love or passion. This represents a clear example of the implicit cultural blindness, racism and patriarchy of the later discourse. In this study, I have aimed to stress the construction of this difference, in order to challenge the essentialising argumentation visible in some of the judgements analysed.

This study is an attempt to render visible the discriminating discourses that occur in the judgement texts, viewed against their societal context, in order to stimulate debate and open up the legal argumentation for analysis, revision and development. Division of gendered violence for the purpose of providing different explanations for the violence is not supported by the outcomes of this study. The division of different forms accepts, and therefore gives value to, the narrative of the male perpetrator: the perspective of the victim being forgotten. This study does not suggest that so-called collective gendered violence and so-called individual gendered violence are the exact same phenomenon. This study recognises the importance of the recognition of all forms of gendered violence. However,

521 See Wikan 2005. See chapter 3.1 The Collective Violence: So-called killings of honour or custom.
523 See chapter 3.2 The Individual Violence: So-called killings of passion or honour.
this study is critical of the division and culturalisation of violence, visible in societal discourses and in the court context. The study highlights the universality of gendered violence over the particularity of its forms: but above all, it stresses the contextuality of the violence.
Annex: Court Judgements

F1
This is the case KKO:2004:80 from the Finnish Supreme Court. Here, the woman was killed by her husband. Having separated before the killing, the woman in the case had been invited by her husband to his new apartment. In the previous relationship, the man had several times earlier threatened the woman, as well as members of her family, saying he would kill her. He had also been violent towards the woman on several occasions. The day before her visit, the man had obtained a 22 calibre gun and two clips of bullet cartridges. When the woman arrived to the apartment, the man had put the loaded gun under his belt, and the other clip under a pillow of his couch. In the apartment, the man started threatening the woman, pointing a gun at her. While trying to escape from the apartment, the woman was shot several times by the man, using both clips of cartridges. While the woman ran down the staircase, being hit by a few bullets and shouting for help, the man followed her. The final shots at the woman were made while she was lying on the ground. The woman was hit twelve times by different bullets. There was no doubt in court that the man had aimed to kill the woman. The male perpetrator confessed to manslaughter, but not murder. The man was considered guilty of manslaughter in the Court of First Instance, and of murder in the Court of Appeals and in the Supreme Court. The Supreme Court considered the act to be premeditated, of a particularly cruel and brutal manner, as well as aggravated when addressed as a whole.

F2
This is the case KKO:2000:3 of the Finnish Supreme Court. In this case, the woman was killed by her husband. The woman and the male perpetrator had three children together, who were all killed at the same time as the woman. It does not emerge from the judgement whether the woman had been faced with violence in the relationship before. The woman had lain down in the bedroom to rest, when the man entered the bedroom and stabbed her 39 times: in the chest, the back, the right armpit, the left arm and the left shoulder. After stabbing the woman to death, he stabbed the children to death. There was no doubt in the

524 An example of the violence earlier faced by the woman was that the man had tried to strangle her using the belt of a bathrobe. This was told in the Court of First Instance by a witness. KKO:2004:80, Turunseudun käräjäoikeus R 01/542, Judgement given 5 December 2001, p. 9.
court that the man had aimed to kill the woman (or the children). The male perpetrator thought that the crimes should be regarded as four cases of manslaughter, and stressed his mental instability. The Supreme Court considered that the act was perpetrated in a particularly cruel and brutal manner, and that it was aggravated when estimated as a whole. The man was considered guilty of murder in all court instances, and the killing was considered to have been perpetrated without full understanding of the circumstances of the offence in the Court of First Instance. However, in the Court of Appeals and the Supreme Court, the murder of the woman and the children were considered to be perpetrated with full understanding of the circumstances.

**F3**

This is the case KKO:2000:29 of the Finnish Supreme Court. Here, it was not the grown-up woman that was killed – but her female child. The girl was killed by her mother’s partner. The female child was with her mother (the woman) and her mother’s partner, on an island, when the male perpetrator violently battered her mother, aiming to kill her, crushing her throat and stabbing her several times to her upper body; however, partly missing as the woman was able to move slightly, and managed to avoid being stabbed. The woman escaped from the stranglehold of the male perpetrator, and was able to run away, get into the water and escape from the island by swimming. The woman received abrasions, contusions and a 2.5 cm cut on her chin from the battering.

The child was woken up by the noise of her mother’s partner assaulting her mother, and got up from bed in order to witness the scene. The girl saw her mother’s partner trying to stab her mother to death, and started to cry out of fear. When her mother managed to escape from the violence her partner was directing towards her, the male perpetrator turned his violence towards the female child instead. She was repeatedly strangled by the man, and stabbed to the neck and the chin. After this, her throat was slit with a 7.5 cm cut: causing major damage to vital organs and massive bleeding, which was the immediate cause of death. There was no doubt in court that the man had aimed to kill the woman, as well as the child. The male perpetrator confessed to manslaughter, but not murder. The act (the killing of the female child) was considered to be particularly raw and brutal in its manner, as well as aggravated when addressed as a whole. The man was considered guilty.

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525 *Fi: vailla täyttää ymmärrystä.*
of murder in the Court of First Instance, the Court of Appeals and in the Supreme Court. The judgement text does not account for whether the woman or the child had been faced with violence by the perpetrator before.

**F4**

This is the case of the Helsinki Court of First Instance, judgement no. 06/1871. In this case, the woman was killed by her husband. During a holiday, the relationship between the woman and the male perpetrator had ended. After arriving to Finland, the woman went to a shelter, because she had nowhere else to go after leaving the abusive relationship. Arriving to the shelter, she was worried about the security of their two children, as well as her own abilities to cope with the situation. At the shelter, she had said that her “life insurance” was that she was still breastfeeding, referring to her violent husband. The woman was still staying at the shelter, and getting off a bus in Helsinki city centre with their baby daughter, when her husband approached her. He had been waiting for her at a nearby restaurant, since he was expecting her to get off at the bus stop around that time. Getting off the bus, he grabbed her and pulled her (with the perambulator and the child) towards his car, which was parked nearby. She refused to engage in discussion with him, and asked him to let her go. When the man opened the door to his car and she refused to get in, he took a knife from the car door and stabbed the woman 28 times to her upper body. Falling to the ground from the first cut, the man continued to stab the woman while she was lying on the ground. The man kept stabbing the woman until the blade of the knife broke.

There was no doubt in the Court of First Instance that the man had aimed to kill the woman. The man also confessed to manslaughter, but not murder. The manner of the act was considered to be particularly brutal and cruel, and aggravated when addressed as a whole. The court considered the man to be guilty of murder. However, he was ascribed reduced criminal responsibility for the act, due to medically verified personality disorders.

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526 Court of First Instance, Helsingin käräjäoikeus, Judgement no. 06/1871, Record no. R 05/8762, Judgement given 22 February 2006.
This is the case of Helsinki Court of First Instance, judgement no. 06/10736. In this case, the woman was killed by her husband. The judgement does not involve any statement whether the woman had been battered earlier in the relationship. At a parking ground in Helsinki, the woman had been together with her husband and their one-year-old child. She was stabbed to death by the male perpetrator, the man having bought the knife used for the act on the same day. She was stabbed 17 times by the man, 14 times to her upper body and her head, and three times to her arms. At the time of her death, she was pregnant, because of this, she was considered particularly vulnerable by the court. There was no doubt in court that the man had aimed to kill the woman. The man also confessed the act: however, he highlighted that his mental and financial situation should be taken into consideration by the Court. The manner of the act was considered to be particularly brutal and cruel, as well as aggravated when addressed as a whole. The Court of First Instance considered the man to be guilty of murder. However, he was considered to be mentally deranged.

This case is from the Kouvola Court of Appeals, judgement no. 2011/399. Here, the woman was killed by her former husband. She was married to a new man, who had been threatening her, knocking her down to the floor, and crushing her throat violently with his hands, on the same day that she was murdered by her former husband. The abuse had caused the woman a tender bump to the head, cuts, abrasion, and swelling. The man had abused the woman after she had declared her intentions to leave him. After the abuse, the woman left their common apartment, where she was normally staying with him and their three children. After having a medical examination performed by a doctor, she fled to the apartment of a friend.

The woman was staying in her friend’s apartment, when her former husband came to see her later during the same day. He had earlier, during the same day, talked to her new husband, and came to the apartment in order to tell the woman to return to her new husband. Before going to the apartment to see the woman, the man had bought a knife. In court, the man claimed that he had talked to the woman for roughly half an hour in a room,

527 Court of First Instance, Helsingin käräjäoikeus, Judgement no. 06/10736, Record no. R 06/10736, Judgement given 27 October 2006.

528 Kouvolan hovioikeus, Judgement no. 2011/399, Record no. R 10/1129, Judgement given 14 April 2011.
where they were alone. The woman had refused to return home to her new husband. When
the woman had lain down on the bed to rest, the man had slit her throat with the knife:
cutting through major organs and veins, causing massive bleeding, leading to the woman’s
death. The judgement of the court does not evaluate whether the woman had been faced
with violence earlier in the new relationship, or the old relationship, than on the day of her
murder.

There was no doubt in court that the man had aimed to kill the woman. The man confessed
to manslaughter, but not murder. The act was considered to be premeditated by the Court
of First Instance as well as the Court of Appeals. The manner of the act was considered to
be particularly brutal and cruel by the Court of First Instance, but not by the Court of
Appeals.\textsuperscript{529} The act was considered to be aggravated, when addressed as a whole, by both
the Court of First Instance and the Court of Appeals. Both Courts considered the man to be
guilty of murder.

\textit{T1}

This case is from the Turkish Supreme Court of Appeals on Criminal Matters, decision no.
2010/3023.\textsuperscript{530} Here, the woman was killed by her male partner, with whom she was living.
Her partner owned a bar, in which the woman worked. Sometimes, in order to cope with
her poor financial situation, the woman had sold sexual services to men. The man was
married to another woman, with whom he had two children, however, he was not living
together with this woman. On the day of the killing, the man came home around 2 a.m.,
and the woman did not let him come into the house. The court decision does not account
for the reason why the woman did not want to let the man inside, neither whether the male
perpetrator had been violent in their relationship before, or not. According to the man, he
waited outside for the woman to let him in; while he was waiting, he was cursing the
woman for not letting him inside. Eventually, the woman let the man in. Entering their
home, the man claimed that they had an argument, after which he killed the woman. The
man killed the woman in a way that was considered to cause her particular pain, by
stabbing her 18 times to different parts of the body and putting salt into her vagina.

\textsuperscript{529} The Court of Appeals did not consider the woman to be in a defenceless situation, since it thought there
was no proof of such situation. However, the Court of First Instance considered the woman killed to be in
a defenceless situation.

\textsuperscript{530} The Supreme Court of Appeals of Turkey, Decision no. 2010/3023, File no. 2009/6525, Judgement given
27 April 2010.
There was no doubt in the Supreme Court, nor the Court of First Instance, that the man had aimed to kill the woman. The man also confessed to killing the woman, however he demanded that the fact that the woman had been selling sexual services be regarded to his advantage, as unjust provocation. The Court of First Instance thought that the behaviour of the woman constituted unjust provocation, but this opinion was not shared by the Supreme Court, which did not consider the behaviour of the woman to constitute unjust provocation. The act was considered a qualified form of felonious homicide in both Court instances. The majority of the Supreme Court regarded the crime qualified due to its ferocious and brutal nature. A minority of the Supreme Court thought that it should be qualified due to grounds of custom: however, that was not the final verdict.

This case is from the Turkish Supreme Court of Appeals on Criminal Matters, decision no. 2011/124. In this case, the woman was killed by her former husband. After separating from her husband, who had been violently abusing both her and her children, the woman first lived at her parents’ house, in another city, with her two children. When she met a new man, she applied for a divorce. After the divorce was officially approved by the State authorities and she was granted full custody of the children, she married the new man. Her former husband was still making threats after the divorce: he said that he would kill the woman and their children. In order to get away from the threats of her former husband, the woman moved with her children and her new husband to another city, further away from her old husband. However, her former husband heard about the move and decided to follow them. Arriving to the new city, the armed, former husband saw the woman and her new husband in a shop. Upon seeing them, the man shot the woman five times and her new husband six times with his gun, causing lethal injuries to their internal organs, as well as internal bleeding, leading to the death of the woman and her new husband.

There was no doubt in the Supreme Court that the man had aimed to kill the woman and her new partner, however, it was discussed whether the act was premeditated, or if it was an act of sudden rage. In the Court of First Instance, it was considered a qualified form of felonious homicide, which benefited from the article of unjust provocation. The Supreme Court also discussed whether the crime could be counted as performed due to unjust

\[T2\]

\[531\] The Supreme Court of Appeals of Turkey, Decision no. 2011/124, File no. 2011/1-24, Judgement given 14 June 2011.
provocation, i.e. whether seeing his old wife in a new relationship could be regarded as unjust provocation. The Supreme Court thought that the act was wilfully performed – and therefore a case of qualified form of felonious homicide. A minority of the Supreme Court thought that unjust provocation should be counted to the benefit of the male perpetrator, however, a majority of the Supreme Court thought that the act could not benefit from the regulation on unjust provocation. The decision of the lower court was discarded, and the case was sent back for revision, saying that unjust provocation should not be considered in the case.

_T3_

This case is from the Turkish Supreme Court of Appeals on Criminal Matters, decision no. 2009/293. Here, the woman was killed by her brother. It does not emerge from the judgement whether the woman had been subjected to violence before by the male perpetrator. The woman was living with her husband, and her family had come to stay with them for a holiday. The woman was pregnant, and the baby was expected to be born in a few weeks. Her husband being away for work, the woman was sleeping in their bed one night, when her brother entered the room, and started stabbing her with a knife. The noise from the bedroom woke the woman’s mother up, and upon entering the room, the mother witnessed the scene. The mother tried to stop her son from stabbing her daughter to death, but was unsuccessful, since he had already managed to stab her in nine different places, causing lethal damages. The brother also attacked the mother and tried to kill another one of his sisters, who tried to stop him on his way out of the room.

Both court instances had no doubt that the man had aimed to kill the woman, and, in the Supreme Court, there was a discussion whether the crime constituted a qualified form of felonious homicide due to grounds of custom or not. The Court of First Instance had earlier regarded the crime to be a killing motivated by custom. The Supreme Court discussed whether the crime performed could receive a mitigated sentence due to unjust provocation, but it was considered that the circumstances did not entitle the male perpetrator to a lesser sentence. The act was considered to be wilfully performed, against a close relative (sister), a person who cannot protect herself, a pregnant woman and on grounds of custom, and therefore a case of qualified form of felonious homicide. The article of unjust provocation

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was not applied. Therefore, the decision of the lower court was not discarded but affirmed.

\textit{T4}

This case is from the Turkish Supreme Court of Appeals on Criminal Matters, decision no. 2007/6751.\footnote{The Supreme Court of Appeals of Turkey, Decision no. 2007/6751, File no. 2006/4529, Judgement given 24 September 2007.} In this case, the woman was killed by her husband. The male perpetrator had proposed to the woman to travel to Antalya with him, but she had not wanted to go. Later, he wanted to have sexual intercourse with the woman, but she refused. When the male perpetrator tried to rape her, the woman pushed him out of bed. Falling out of bed, the man took a gun and shot the woman to death. The judgement of the Supreme Court does not say whether the woman had experienced violence by the man before.

There was no doubt in the Court of First Instance – or the Supreme Court – that the man had aimed to kill the woman. The man had been considered guilty of the qualified form of felonious homicide in the Court of First Instance. The man had applied to the Supreme Court, asking it to try the case on the grounds of unjust provocation. The Supreme Court decided that refusing to have sex and refusing to go on a trip with the man did not create grounds for unjust provocation, and therefore the man could not be given a reduced sentence. Since the act was performed against a spouse, it constituted a qualified form of felonious homicide. The Supreme Court affirmed the judgement of the Court of First Instance.

\textit{T5}

This case is from the Turkish Supreme Court of Appeals on Criminal Matters, decision no. 2012/1724.\footnote{The Supreme Court of Appeals of Turkey, Decision no. 2012/1724, File no. 2010/3234, Judgement given 13 March 2012.} Here, the woman was killed by her husband, who had regularly abused her during the relationship. A few months before her death, the man had violently forced the woman to accept that he was taking another woman (as a mistress, \textit{kuma}) to live in the same household as them and their children. The man also had an affair with the sister of the other woman. Rumours soon spread about the situation, and the man claimed that he wanted to divorce his wife in order to end the rumours (in order to later marry his mistress). However, since a divorce constituted a great risk to the social and financial
situation of herself and her children, the woman did not agree to it. When the woman refused a divorce, the male perpetrator shot her in the head with a close-range shot.

There was no doubt in both court instances that the man had aimed to kill the woman, and the Supreme Court tried whether the offence could be considered as perpetrated on grounds of unjust provocation, since the male perpetrator claimed that his wife was cheating on him. This was a claim that he had also expressed in the Court of First Instance, who considered this claim enough for him to benefit from the article on unjust provocation. However, the Supreme Court considered that these claims were groundless and that they were probably only part of a strategy for the man to access a mitigated sentence through the application of Article 29. Since the act was perpetrated against a spouse, it constituted a qualified form of felonious homicide. The Supreme Court discarded the judgement of the Court of First Instance, since it had considered the man entitled to the mitigated sentence through the application of unjust provocation.

This case is from the Turkish Supreme Court of Appeals on Criminal Matters, decision no. 2009/290. In this case, the woman was killed by her former husband. The woman had been married to the male perpetrator for 30 years, but they had been living separately for almost eight years. They also had children together. The man had earlier violently abused both the woman and their children. Twelve days prior to her killing, the divorce case of the man and the woman, as well as the custody of their common children, had been dealt with by the court. In court, the divorce was approved and the woman received primary physical custody of the children.

On the day of her murder, the woman was in her garden and her son was inside the house. The male perpetrator had taken a taxi to the woman’s house, and walked up to the woman with a gun in a bag. The man asked to see their son inside the house, but the woman refused. As a result, the man and the woman started arguing loudly, exchanging insults. While violently trying to get into the house, the woman hit the man with a broom in order to stop him. The man then took the gun out of the bag, and shot the woman several times. She was hit seven times by different bullets, lethally wounded by five of them. Most of the

bullets were fired after the woman had fallen to the ground.

In both court instances, it was clear that the man had aimed to kill the woman. However, the Court of First Instance thought that the article on unjust provocation should be applied in the case. This was due because the court considered the man to be in great stress due to not being able to see his son, and that he was hit by sudden rage and anger when he was not allowed to enter his former wife’s house. However, the court still considered the killing to be a qualified form of felonious homicide, since it was performed against a spouse (the divorce judgement not having gained legal force). The Supreme Court also considered the case to be a qualified form of felonious homicide, both on the grounds that it was against a spouse and that it was premeditated. A majority of the Supreme Court did not think that the male perpetrator could benefit from the article of unjust provocation, since he had fired so many shots against the woman from behind, while she was lying on the ground. Thus, the Supreme Court discarded the decision of the Court of First Instance, not approving the application of Article 29 in the case.

536 The Supreme Court thought it likely that the man had planned to kill the woman since the divorce and custody decision of the Court was given.
537 The Supreme Court regarded a few shots from the front to potentially be within the scope of unjust provocation, however not so many shots from behind, as were the facts of the case.