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**DOMESTIC VIOLENCE IN INTERNATIONAL LAW FROM THE PERSPECTIVE OF
INTERSECTIONAL FEMINISM**

Master's Thesis

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Tallinn

2022

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INTRODUCTION

According to early surveys conducted by the United Nations discrimination against women was extremely common in practically all parts of the world.¹ Since 1945 the right for women to be equal before the law and receive equal protection has been recognized by all the major human rights treaties.² However, it took decades before violence against women was a serious matter on the agenda of the international community.³ The historic World Conference on Women organized by the United Nations that was held in Beijing elucidated a comprehensible operation to advance women's rights.⁴ 189 countries adopted the Beijing Declaration and the Platform for Action that strives for women's empowerment.⁵ It aims to advance women and to achieve gender equality in twelve different areas, such as, violence against women, women in power, and decision-making and institutional mechanism for the advancement of women. by laying down strategic objectives and actions.⁶ This conference was constructed on political agreements that were achieved during the three earlier global conferences on women and merged five decades of legal progress focusing on making sure that the equality of men and women in practice and in law is secured.⁷ However, even though 25 years have passed from this landmark global agreement, there are still significant inequalities, particularly in the workforce, nevertheless, some progress has taken place.⁸

Recognizing the lack of protection that women have received as a whole it is easier to narrow it down to a more specific area that women all over the world suffer from, domestic violence. Women have been suffering from gender-based violence throughout the years. Gender-based violence includes domestic violence. It was not until the late 1960s and early 1970s that women began to acknowledge that domestic violence was actually a problem that several women were facing and

¹ The United Nations and the Advancement of Women 1945-1996, United Nations Department of Public Information. 1st ed. 1996, p 8.

² Edwards, A. Violence Against Women Under International Human Rights Law. Cambridge University Press. 1st ed. New York 2010, p 7.

³ *Ibid.*

⁴ Bachelet, M. (Women's Rights as Human Rights). IN Achieving Gender Equality, Women's Empowerment and Strengthening Development Cooperation. 1st ed. New York 2010, p 16.

⁵ UN Women, World Conferences on Women. Available online: <https://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women> (15.02.2022).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ UN Women, Press release: 25 years after a landmark global agreement, the numbers still don't add up for women in Europe and Central Asia. Available online: <https://www.unwomen.org/en/news/stories/2020/10/press-release-report-from-europe-and-central-asia-tracks-progress-25-years-after-beijing-platform> (15.02.2022).

that it required political redress.⁹ The issues of domestic violence and violence against women were brought up in Goal No. 5 of the 2030 Agenda for Sustainable Development, which strives to obtain gender equality and empowerment of women.¹⁰

Domestic violence has been shaped by different aspects such as culture and political views, however, the main reason for domestic violence roots in the patriarchal view which justifies the power of men over women.¹¹ When one gender is given power over the other it may easily result in having the more powerful gender exercising power in various fields, including the home environment which leads to domestic violence. One of the problematic factors of domestic violence is that it was and still is in many parts of the world seen as a family issue that shall not be informed about.¹² Resulting in many women not being able to recognize that the violence they are facing is against the law. Hence, international law tackling domestic violence and women's rights, in general, helps to externalize these issues, especially domestic violence since it has strongly been seen as a family matter. It is important to bear in mind that domestic abuse affects people disregarding their socioeconomic backgrounds and education levels.¹³

Protecting women from violence and domestic violence roots in the universal principle of human rights and freedoms protection, which was primarily set down in the Charter of the United Nations in 1945.¹⁴ A definition of domestic violence, used by the United Nations (UN), is a pattern of abusive behavior that occurs in any kind of relationship.¹⁵ Domestic violence often includes the will of one of the partners to obtain or maintain power and control over the other party. Domestic violence has a large range, and it can be for example physical, sexual, emotional, economic, or psychological.¹⁶ This encompasses any type of behavior that frighten, intimidate, terrorize,

⁹ Kramer, A. *et al.* The Feminism Book (Big Ideas Simply Explained). Dorling Kindersley. Great Britain 2019, p 236.

¹⁰ The UN 2030 Agenda for Sustainable Development: <https://sdgs.un.org/goals/goal5> (2.3.2022).

¹¹ Nasrawing, L. Protection against Domestic Violence in Jordanian Law and International Conventions. - Arab Law Quarterly 2017/4, p 364.

¹² *Ibid.*

¹³ United Nations, What is Domestic Abuse? Available online: <https://www.un.org/en/coronavirus/what-is-domestic-abuse> (14.2.2022).

¹⁴ Charter of the United Nations, 26 June 1945.

¹⁵ United Nations, What is Domestic Abuse? Available online: <https://www.un.org/en/coronavirus/what-is-domestic-abuse> (14.2.2022).

¹⁶ *Ibid.*

manipulate, humiliate, hurt, blame, injure, or wound someone.¹⁷ Domestic violence is not only limited to marriage, but it can also occur in a variety of relationships such as couples who are living together or dating.¹⁸ It can also extend to other household members including children and relatives.¹⁹ This definition of domestic violence will be used throughout this thesis.

There is a term that is used to define such violence that affects a specific gender, in this case women. The term ‘gender-based violence’ is used internationally to refer to the violence that women face due to their gender.²⁰ This definition may vary slightly depending on the source.²¹ Nevertheless, it shall be noted that this term does not encompass the violence that intersex and transgender people face.²² Gender-based violence has been defined by the Committee of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) as

“...violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”²³

“Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Article 1 of the Convention.”²⁴

Throughout this thesis while referring to gender-based violence the definition of the CEDAW Committee is the definition that is used. The reason why it is important to define the term ‘gender-based violence’ is because domestic violence falls into the category of gender-based violence.²⁵

From the feminist perspective, international law is seen as benefitting men more than women,

¹⁷ United Nations, What is Domestic Abuse? Available online: <https://www.un.org/en/coronavirus/what-is-domestic-abuse> (14.2.2022).

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Henn, E. V. *International Human Rights Law and Structural Discrimination: The Example of Violence against Women*. Springer 1st ed. Berlin 2019, p 14.

²¹ *Ibid.*

²² *Ibid.*

²³ Convention on the Elimination of All Forms of Discrimination Against Women, General Recommendation 19, 1992, para 6.

²⁴ *Ibid.*, para 7.

²⁵ Henn, E. V. *International Human Rights Law and Structural Discrimination: The Example of Violence against Women*. Springer 1st ed. Berlin 2019, p 15.

especially regarding human rights.²⁶ Feminists have criticized that human rights law does not take into consideration women's human rights as thoroughly as it considers the human rights of men.²⁷ The law has also disregarded the differences between genders and the inequalities that root from these differences in international human rights law.²⁸ The rights issued in international human rights law are aimed at everyone regardless of gender, however, this neutralizes gender, which has been viewed by feminist critiques as masculine, meaning that this neutral gender would still benefit men more than it would benefit women.²⁹ For example, the European Convention on Human Rights (ECHR) does not mention the rights of women separately, which is a problem when it comes to gender specific violations.³⁰ Majority of the human rights violations that women face are gender-specific, therefore, very commonly gender influences the form of the violation.³¹ An example of this is that the torture of a woman prisoner would often end up involving sexual violence and the experiences of women are repeatedly misunderstood or not taken seriously enough.³² Of course, one shall not forget the typical gender-based violence such as rape, enforced prostitution, and domestic violence that women face frequently.³³ This is a problem that cannot be successfully solved with the principle of equality and non-discrimination since equality is treated as being equal treatment.³⁴ Such criticism has paid off since international law has taken big steps in including women under the protection of international law by for example drafting conventions that target solely the rights of women and regard the gender-based problems that women face. Such laws will be investigated throughout this thesis. Due to the lack of attention and protection that women have faced; it is important to have conventions that specifically aim to eliminate discrimination against women because the elimination of discrimination would affect the treatment that women receive from authorities in cases of domestic violence.

The aim of this thesis is to examine domestic violence from the perspective of international law

²⁶ Fellmeth, A.X. *Feminism and International Law: Theory, Methodology, and substantive Reform.* - Human Rights Quarterly, 2000/3, p 707.

²⁷ *Ibid.*

²⁸ Radacic, I. *Feminism and Human Rights: The Inclusive Approach to Interpreting International Human Rights Law.* - UCL Jurisprudence Review, 2008/1, p 239.

²⁹ *Ibid.*, p 240.

³⁰ European Convention on Human Rights, 3 September 1953.

³¹ Radacic, I. *Feminism and Human Rights: The Inclusive Approach to Interpreting International Human Rights Law.* - UCL Jurisprudence Review, 2008/1, p 240.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

and whether international law provides a fixed framework of positive obligations for states to follow. The United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and the European Convention on Human Rights (ECHR) are the three conventions that will be used to examine the topic of this thesis. The CEDAW and the Istanbul Convention have been selected because of the value that they bring to women's rights. The CEDAW strengthens the claim "women's rights are human rights"³⁵, while the Istanbul Convention goes into more detail by directly focusing violence and domestic violence.³⁶ Therefore, both conventions are important to examine since they focus on the challenges that women face and not solely on general human rights. On the other hand, the ECHR has a general focus on human rights and not specifically women's rights. However, this convention is also important because of the way the European Court of Human Rights (ECtHR) have addressed cases regarding the rights of women and demonstrated how the articles of the ECHR may be utilized in women's rights cases, while considering the structural issues of states regarding women's rights. The need to tackle the issues of domestic violence and gender discrimination that often relates to it, is urgent. To ensure that the way this is done is inclusive the viewpoint of intersectional feminism shall be considered. It needs to be ensured that states follow international law in cases of domestic violence.

The importance of the Istanbul Convention has been questioned in several countries recently, despite the fact that COVID-19 has had a bad influence on the rates of violence against women because these rates have increased since the pandemic.³⁷ It is argued in this thesis that intersectional feminism helps to tackle better the problem of discrimination that women face. The hypothesis of this thesis is that the ECtHR and the CEDAW Committee lack systematic approach to domestic violence from that perspective, which in turn contributes to single issue approach neglecting the possibility that women can be discriminated on multiple grounds. The second hypothesis is that

³⁵ Raday, F. Gender and democratic citizenship: the impact of CEDAW. – International Journal of Constitutional Law, 2012/2, p. 513.

³⁶ The Council of Europe Convention on preventing and combating violence against women and domestic violence, 11 May 2011.

³⁷ Finnish Government, European gender equality ministers call on European countries to join Istanbul Convention without delay to reduce violence against women. Available online: <https://valtioneuvosto.fi/en/-/1271139/european-gender-equality-ministers-call-on-all-european-countries-to-join-istanbul-convention-without-delay-to-reduce-violence-against-women> (22.2.2022).

there is also unclarity about the scope of States' positive duties in international law and practice in that respect. It will also demonstrate the importance of the Istanbul Convention by showing how serious of a problem domestic violence is and what new does this Convention add to the protection of the rights of women especially regarding domestic violence. Additionally, it takes a closer look at Finland. The reason Finland is an interesting choice is because it is usually seen as a role model in various aspects and this thesis will take a closer look and see whether this is true in the field of domestic violence. Which adds to why Finland is a good choice is that Finland has signed all of the three conventions that are the main focus in this thesis.

Chapter one explains intersectional feminism and the importance of it, including the added value that it brings to this thesis. It demonstrates the different aspects that affect the treatment of women and the discrimination that women face. Additionally, the chapter focuses on how domestic violence is addressed in different international commitments. A closer look will be taken at the CEDAW, Istanbul Convention and the ECHR. It will be found out whether these conventions address domestic violence and if so how. The purposes of the conventions and their focus will be looked at to see if and how well women are taken into account and which aspects are focused on. Also, the sufficiency of international law in cases of domestic violence will be looked at.

Chapter two goes in more depth and examines how international law has been interpreted in cases of domestic violence. Different cases of domestic violence will be introduced and analyzed while keeping the viewpoint of intersectional feminism. The decisions of the CEDAW Committee and the ECtHR will be looked into in detail to see what aspects they have focused on and how they have used the law. Also, the possible focus on structural issues that the CEDAW Committee and the ECtHR may have will be examined to get a detailed understanding of how these two bodies approach the rights of women in cases of domestic violence. This will reveal whether the approach is very specific and how much these bodies take into consideration all the factors that relate to the cases of domestic violence that women face. This chapter will also assess how intersectional feminism is taken into account in cases and legislation and how states fulfill their duties. Additionally, the author will in this chapter look at the possible minimum positive duties of states imposed by international law and see if there are some positive duties that are completely missing. The extent of these positive duties will be examined and whether there is a minimum scope of positive duties.

Chapter three is a case study of Finland. This case study will show in more detail a case of domestic violence in practice. First the relation between Finland and international law will be examined to see for example what changes Finland has done to comply with the CEDAW. The Finnish law on self-defense will be explained while analyzing it and noting possible gaps that may exist. The final matter that will be looked at in this chapter is a case concerning domestic violence and self-defense. The author will look at whether the international law that has been presented in the earlier chapters is applied in this case and if so how. Moreover, this chapter will aim to apply the framework that was built in chapters one and two.

The thesis is seeking to answer the following research questions:

- 1) What positive duties do States have deriving from international law to protect the rights of women in cases of domestic violence?
- 2) What is the extent of these positive duties? What is the extent of positive duties regarding reoccurring structural issues? Is there a minimum scope of positive duties?
- 3) What does intersectional feminism add to the understanding and assessing the positive duties in international law and its implementation?
- 4) To what extent is intersectional feminism taken into account in cases and legislation?
- 5) How do the states fulfill the duties?
- 6) How has Finland complied with its international obligations?

The main methodological approach used in this thesis is qualitative because collecting and analyzing non-numerical data will aid in finding the answer for the research questions. The main research method that is used is the analytical method which involves evaluating the facts and information that is being obtained. This thesis will take into consideration intersectional feminism by referring to cases from different countries and observing whether courts take intersectionality into account while dealing with cases on domestic violence. The facts and information gained need to be evaluated to obtain a deeper knowledge of the information found. Therefore, both the qualitative approach and the analytical method help achieve the goal of this thesis, which is finding out the answer for the research questions.

The author uses different sources to obtain the answers for the research questions. The main pillars that will be used are the CEDAW, Istanbul Convention and the ECHR. In addition to these three a number of other sources will be utilized such as books, journal articles, websites, international and national law, cases, reports, and other documents.

Lastly, the relevance of the study lies in the diverse approach that this thesis aims to provide. The author wants to bring out the gaps that exist in protecting the rights of women and to show the importance of an intersectional approach when it comes to looking at the rights of women in cases of domestic violence. Additionally, the importance of protecting the rights of women and showing how big of a problem domestic violence is will be highlighted. The size of the structural issues relating to domestic violence will be brought up since the author wants to demonstrate the issues that arise from gender discrimination and in how big of a danger this puts women.

Keywords: women's rights, domestic violence, gender discrimination, Finland.

1. DOMESTIC VIOLENCE IN INTERNATIONAL LAW

1.1 Intersectional Feminism

Domestic violence is not one of the typical areas of law covered by international law since it is often seen as a matter of national law. Nevertheless, due to the size of the issue of domestic violence, international law has decided to cover it. Overall women's rights have received more attention in the recent years which strengthens the pressure to take action, also internationally.

This chapter will define intersectional feminism and distinguish the difference between feminism and intersectional feminism. Additionally, the importance of an intersectional feminist perspective will be explained and what new such perspective will bring to this thesis. Then the chapter will proceed to go through the CEDAW, Istanbul Convention, and the ECHR and explain what kind of a role these conventions play in the field of domestic violence.

The Istanbul Convention deals specifically with violence and domestic violence against women on international level. When generally looking at the rights of women, a convention dealing with domestic violence is an important step in acknowledging gender-based violence and recognizing the challenges that women go through. Additionally, other human rights conventions may be used in cases of domestic violence, even though they do not directly cover the area of domestic violence. Since the CEDAW's aim is to eliminate all forms of discrimination against women, it is an important tool in cases of domestic violence. Because neglecting the seriousness of cases dealing with domestic violence is a form of discrimination against women. This thesis will later elaborate more on this claim and demonstrate with the aid of different cases how women have been neglected and not taken seriously in cases of domestic violence. The ECHR does not specifically deal with the rights of women, nor does it tackle gender-specific issues, however the ECHR has been used in cases of domestic violence.³⁸ The ECtHR has taken a step forward and showed how the ECHR can be utilized in cases dealing with domestic violence. Therefore, the ECHR is also an important

³⁸ European Convention on Human Rights, 4 November 1950.

and interesting convention to look at from the perspective of domestic violence and to see how the court uses different articles to protect the rights of women.

Feminism has been a focal point in several discussions during the past years, in good and bad. Feminism often appears as a new movement, even though it has been striving to impact the development of international law from the early twentieth century.³⁹ The term “feminism” is often misunderstood in a way that its aim would be to make women superior to men, which has led to strong criticism on feminism. Even several women are skeptical towards feminism because they are familiar only with the very extreme view of feminism and regard it as being institutionalized and comparable with communism.⁴⁰ Nevertheless, this is not the case. The objective of feminism is to challenge the patriarchal control and allow everyone to enjoy the same rights as men.⁴¹ According to feminist view all genders should be treated equally under and in the law.⁴² However, there is a problem with having solely a feminist approach instead of having an approach from the viewpoint of intersectional feminism. Feminism has been criticized from favoring only a certain group of women, even CEDAW is viewed from some perspective as favoring the West, which does not go well together with the equality that feminism promotes.⁴³ On the other hand some view the aim of feminism as solely striving to save women of Third World Countries.⁴⁴ In this setting women from Third World Countries are viewed as more vulnerable and make it a project and a good deed to save these women, since they are seen as the weaker gender that requires help and to be saved.⁴⁵ Clearly this way of thinking is extremely problematic already by itself but also because it excludes all other women that are not from Third World Countries.⁴⁶

The ideas of gender equality and feminism have been taken into consideration in international law, however, these ideas of gender equality and feminism are favorable solely for particular

³⁹ Oxford, A. *et al.* The Oxford Handbook of the Theory of International Law. Oxford University Press 1st ed. New York 2016, p 488.

⁴⁰ Walters, M. *Feminism: A Very Short Introduction*. Oxford University Press 1st ed. New York 2005, p 4.

⁴¹ LeGates, M. *In Their Time: A history of Feminism in Western Society*. Routledge 1st ed. New York 2001, p 1.

⁴² Fellmeth, A.X. *Feminism and International Law: Theory, Methodology, and substantive Reform*. - *Human Rights Quarterly*, 2000/3, p 662.

⁴³ *Ibid*, p 688.

⁴⁴ Orford, A. *Feminism, Imperialism and the Mission of International Law*. - *Nordic Journal of International Law*, 2002/2, p 276.

⁴⁵ *Ibid*, p 276-277.

⁴⁶ *Ibid*, p 276.

perspectives of feminism.⁴⁷ Intersectional feminism takes a step further. As known feminism itself focuses on providing all genders with the same rights. Furthermore, intersectional feminism recognizes different power structures that include race, class, sexuality, and ability that affect the treatment of women.⁴⁸ In other words, feminism recognizes that women are less privileged than men, while intersectional feminism realizes that there are differences regarding privileges when it comes to women.⁴⁹ This means that for example a white straight and able-bodied woman is less privileged than men but more privileged than a black bisexual and disabled woman. It is important that these power structures are not disregarded because they have a significant effect on the lives of women. The quote “there is no such thing as a single-issue struggle because we do not live single-issue lives” presented by Audre Lorde recapitulates the importance of intersectional feminism.⁵⁰

During the fourth World Conference on Women, States acknowledged these different barriers that may hinder women even more from enjoying their human rights.⁵¹ According to states as stated in the Durban Declaration, racial discrimination, xenophobia, and other such intolerances are disclosed in a different manner for women and girls.⁵² This could also result in a decline in the lives of women and girls regarding their living conditions, violence, poverty, multiple forms of discrimination, and the restriction or denial of their human rights.⁵³ The primary binding human rights treaty that brought up the problem of multiple discrimination against women and girls and that called for States parties to take action in ensuring that women and girls with disabilities are able to equally enjoy all human rights and fundamental freedoms is the Convention on the Rights of Persons with Disabilities.⁵⁴ The general recommendation No. 25 (2004) of the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) stresses the importance

⁴⁷ J. Hucherby, *Feminism and International Law in the Post-9/11 Era*. - Fordham International Law Journal, 2016/3, p 589.

⁴⁸ Losh, E, Wernimont, J. *Bodies of Information Intersectional Feminism and Digital Humanities* University of Minnesota Press. 1st ed. Minnesota 2019, p xi.

⁴⁹ *Ibid.*

⁵⁰ National Park Service, *A Note about Intersectionality*. Available online: <https://www.nps.gov/articles/lgbtqtheme-intersectionality.htm#footnote1> (2.1.2022)

⁵¹ United Nations. *Women’s Rights are Human Rights*. - United Nations Publication 2014/1, p 38.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid*, p 39.

of State parties addressing multiple discrimination against women and girls by taking action, which in this situation means adopting temporary special measures.

These examples emphasize the importance of an intersectional point of view. Therefore, this thesis will take into consideration intersectional feminism by referring to cases from different countries and observing whether courts take intersectionality into account while deciding cases. The view of intersectional feminism was chosen to obtain a wider perspective of women's rights, instead of focusing solely on feminism that would result to a more limited point of view. The marginalized group of women shall not be left out, instead they should be the center of discussion because their voices have not been heard.⁵⁵

1.2 Domestic Violence in different international commitments

Domestic violence is rarely directly recognized in international commitments. Meaning that it is not directly referred to like in the Istanbul Convention. The following section will elaborate on the CEDAW, Istanbul Convention, and the ECHR and whether they recognize domestic violence and if so, how. It will also be demonstrated how conventions that do not specifically mention domestic violence or violence against women can be used in cases of domestic violence. Moreover, having domestic violence mentioned in different international commitments would be an important shift due to domestic violence being a remarkable problem worldwide. However, the protection of human rights is improving constantly both universally and regionally and special measures have been taken to increase the effectiveness of the protection of women.⁵⁶ The framework of women's protection usually undergoes a development by states through the conclusion of international multilateral treaties that have been led up by the acquisition of declaratory documents in the area of women's rights.⁵⁷ Primarily in charge of the protection of the rights of women is the United Nations and the Council of Europe, since these two bodies have initiated the development of the

⁵⁵ Losh, E, Wernimont, J. *Bodies of Information Intersectional Feminism and Digital Humanities* University of Minnesota Press. 1st ed. Minnesota 2019, p xi.

⁵⁶ Chernikov, V.V, Goncharenko, O.K. The problems of violence against women in international law. - *Vestnik of Saint Petersburg University Law* 2021/3, p 804.

⁵⁷ *Ibid.*

main documents on the protection of the rights of women.⁵⁸ Therefore, it is important to examine the CEDAW, Istanbul Convention, and the ECHR.

1.2.1 Convention on the Elimination of all forms of Discrimination Against Women

The Convention on the Elimination of all forms of Discrimination Against Women was adopted in 1979, establishing a new way of viewing women's rights and the gender-based discrimination that women face.⁵⁹ The convention itself does not cover domestic violence, however, the Additional Protocol that was issued in 1993 permits local institutions and individuals to submit complaints against their countries for violations of the provisions of the CEDAW.⁶⁰ According to this protocol the right to lodge in a complaint is an essential element regarding the development of combating all forms of discrimination against women internationally.⁶¹ Additionally, the protocol's general recommendations of the CEDAW Committee includes a clause on domestic violence regarding the implementation of the CEDAW's provisions.⁶² This has been viewed as an important addition and has been approved and adopted in international reports.⁶³ Bearing in mind how big of an issue domestic violence is, it is extremely beneficial that such clause has been added to the protocol's general recommendations of the CEDAW Committee.

The first article of the Convention describes the scope of the term "discrimination against women" in the following way "For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".⁶⁴ This

⁵⁸ Chernikov, V.V, Goncharenko, O.K. The problems of violence against women in international law. - Vestnik of Saint Petersburg University Law 2021/3, p 804.

⁵⁹ Raday, F. Gender and democratic citizenship: the impact of CEDAW. – International Journal of Constitutional Law, 2012/2, p 512.

⁶⁰ Nasrawing, L. Protection against Domestic Violence in Jordanian Law and International Conventions. - Arab Law Quarterly 2017/4, p 370.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, Article 1.

Article clearly presents the scope of the term “discrimination against women” stating that it includes all forms of discrimination and aims not to leave any gaps that would allow some forms of discrimination against women by additionally naming specific fields and ending the sentence with stating that it also includes any other field.

A significant aspect of the CEDAW is that it recognizes the influence that culture and traditions have on influencing and shaping gender roles and family relations and restricting women from enjoying their fundamental rights.⁶⁵ Therefore, the CEDAW targets these areas to fix the problem from the root of it.⁶⁶ All in all, the CEDAW lays down a comprehensive framework that can be used to challenge the different forces that have built up and sustained the discrimination that women face.⁶⁷ Even though the CEDAW does not directly target violence against women and domestic violence, it positively influences these problems by recognizing impact that culture and traditions have on gender roles and family relations.⁶⁸ Moreover, culture and traditions may preserve traditional gender roles where the man is the “head of the house” and the harmful behavior that roots from patriarchy, aiming to have men as the ones who have power, which may include using violence to maintain control.⁶⁹ Therefore, these issues go hand in hand with violence against women and domestic violence.

Article 2 of the CEDAW lays down the structure regarding the law on discrimination against women by providing the following.⁷⁰

“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end undertake:

a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

⁶⁵ Hellum, A, Aasen, H.S. *Women’s Human Rights: CEDAW in International, Regional and National Law*. Cambridge University Press. 1st ed. United Kingdom 2013, p 557.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ Merriam-Webster Dictionary “patriarchy”. Available online: <https://www.merriam-webster.com/dictionary/patriarchy> (25.1.2022).

⁷⁰ Convention on the Elimination of all forms of Discrimination Against Women, 18 December 1979, Article 2.

- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- g) To repeal all national penal provisions which constitute discrimination against women.”⁷¹

This Article targets the legislation of states by stating that the national constitutions or other appropriate legislation of states shall include the principle of equality. It is important that the CEDAW mentions that the principle of equality shall be in the national constitution or another appropriate legislation, which leads to understand that the other appropriate legislation shall be significant. This aims to eliminate the cases of having the principle of equality just mentioned anywhere to be able to say that it is mentioned. On the basis of this information it may be assumed that the CEDAW aims to make sure that this principle is stated in a piece of legislation that is of high value and is known, which also increases the probability that it would be referred to in court cases. In addition to having the principle of discrimination mentioned, the CEDAW requires an establishment of the legal protection regarding the rights of women to be equal compared to the rights of men and highlights the importance of the responsibility that the national tribunals and public institutions in ensuring that women receive equal treatment and do not become the target of discrimination. It is very important that the CEDAW specifically mentions national tribunals and public institutions because these are the ones setting the basis for the treatment of women. National tribunals and public institutions disregarding the importance of ensuring women equal treatment

⁷¹ Convention on the Elimination of all forms of Discrimination Against Women, 18 December 1979, Article 2.

does not encourage nor show an appropriate guidance to for example companies on how to make sure that their women workers are treated equally and do not end up being the victims of systematic discrimination. The article also demands that existing laws, regulations, customs, and practices that allow discrimination against women are modified or abolished. This makes sure that states cannot justify discrimination against women based on existing law. At the same time this pushes states to ensure that their laws, regulations, customs, and practices are up to date. To widen its scope even more, the CEDAW provides that all national penal provisions constituting discrimination against women shall be repealed. This article provides an adequate overview of the extent of the protection of women that this convention offers.

Due to its wider scope the CEDAW is regarded as an important convention in this paper. Additionally, there is not an abundance of international law targeting specifically the rights of women. Therefore, it is important from the point of view of this thesis to examine the most significant and known pieces of international law that tackle the issues regarding the rights of women.

1.2.2 The Council of Europe Convention on preventing and combating violence against women and domestic violence

The Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention, takes a step forward from the CEDAW by focusing in more detail on a specific gender-based issue that women face.⁷² Furthermore, this is the primary instrument in Europe that lays down standards that are legally binding regarding specifically the prevention of gender-based violence, protecting victims of violence and punishing perpetrators.⁷³ An additional significant point regarding the convention is that the European Union (EU) has set EU accession to the Istanbul Convention as being one of its priorities in the EU 2020-2025 gender

⁷² The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 11 May 2011.

⁷³ European Parliament, The Istanbul Convention: A tool for combating violence against women and girls. Available online: [https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA\(2021\)698801#:~:text=The%20Council%20of%20Europe%20Convention,of%20violence%20and%20punish%20perpetrators.](https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2021)698801#:~:text=The%20Council%20of%20Europe%20Convention,of%20violence%20and%20punish%20perpetrators.) (10.2.2022).

equality strategy.⁷⁴ It is very important that there is finally a convention in Europe that has legal power over the prevention of gender-based violence, victim protection, and punishing perpetrators. There are so many problems regarding the lack of protection of the rights of women that every possible step forward is required. It is also extremely positive to note that the EU has accession to the Istanbul Convention as one of its priorities in the field of gender equality. This could possibly widen the use of the Istanbul Convention and use more of its potential.

The Istanbul Convention was signed in 2011.⁷⁵ The Convention shall be applied to all forms of violence against women as well as domestic violence.⁷⁶ This brings a new aspect to the protection of women's rights by aiming to tackle the issue of domestic violence that is often seen as an issue that should be interfered with only on state level, instead of monitoring it on international level. However, as we look at the situation that COVID-19 has created it shows that domestic violence is an international problem. Due to the pandemic the number of cases regarding domestic violence has increased. When facing an international problem, it is logical to aim to fix the problem on international level. Therefore, the pandemic is a good reminder of why even domestic violence should be intervened with on international level. To sum up, the Istanbul Convention provides a new approach to the protection of women's rights due to the area of law that it covers. If we look at for example the ECHR or CEDAW they both cover a quite wide area, when the Istanbul Convention tackles a more specific area. The Istanbul Convention has elements that make it efficient at fighting gender-based violence. The convention identifies existing gaps in legislation, detects best practices, covers a large variety of measures, which includes duties from raising awareness and collecting data to taking legal measures to criminalize various types of violence.⁷⁷ What separates the Istanbul Convention from other international treaties dealing with gender-based violence is that the Istanbul Convention lays down how the implementation of comprehensive and

⁷⁴ European Parliament, The Istanbul Convention: A tool for combating violence against women and girls. Available online:

[https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA\(2021\)698801#:~:text=The%20Council%20of%20Europe%20Convention,of%20violence%20and%20punish%20perpetrators.](https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2021)698801#:~:text=The%20Council%20of%20Europe%20Convention,of%20violence%20and%20punish%20perpetrators.) (10.2.2022).

⁷⁵ The Council of Europe Convention on preventing and combating violence against women and domestic violence, 11 May 2011.

⁷⁶ *Ibid*, Article 2.

⁷⁷ European Parliament. The Istanbul Convention: A tool for combating violence against women and girls, p 1.

[https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698801/EPRS_ATA\(2021\)698801_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698801/EPRS_ATA(2021)698801_EN.pdf)

coordinated policies shall be carried out between national and governmental bodies involved in activities that deal with prevention, prosecution, and protection.⁷⁸

Article 1 of the Convention lays down the purposes of the Convention commencing by stating that “the purposes of this Convention are to contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women”.⁷⁹ Even the fact that the Convention aims to empower women shows how different the approach of this Convention compared to human rights conventions in general. By aiming to empower women it is easier to get to the root of the problem, which makes it easier to create more permanent change than solely fixing the problem on cursory level. The international aim regarding women’s rights is to provide women with equal treatment and to minimize and ideally diminish gender-specific problems and challenges that mainly women face. To make a permanent change to women’s rights a change in the framework needs to take place since the issues regarding women’s rights are a systematic problem. Without tackling the system, itself which is the root of the problem, a permanent change cannot be achieved. Nevertheless, in short, the Istanbul Convention, in addition to dealing with issues that are seen more as a state level issue, it aims more to target the root of the problem, instead of providing more temporary fixes.

The Istanbul Convention provides definitions and criminalizes different types of violence against women including physical, sexual, and psychological violence, stalking, sexual harassment, female genital mutilation, forced marriage, forced abortion, and forced sterilization.⁸⁰ An effective manner that the convention uses to prevent violence against women is investing in education, training for experts, and providing perpetrators treatment programmes.⁸¹ Additionally, the convention guards victims by providing states with obligations to initiate sufficient support services, for example free telephone hotline, shelters, and counselling.⁸² This shows the importance of this Convention and the potential that it has, making it an essential Convention that should be kept and used.

⁷⁸ European Parliament. The Istanbul Convention: A tool for combating violence against women and girls, p 1. [https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698801/EPRS_ATA\(2021\)698801_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698801/EPRS_ATA(2021)698801_EN.pdf)

⁷⁹ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 11 May 2011, Article 1 (b).

⁸⁰ European Parliament, The Istanbul Convention: A tool for combating violence against women and girls p 1. [https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698801/EPRS_ATA\(2021\)698801_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698801/EPRS_ATA(2021)698801_EN.pdf)

⁸¹ *Ibid.*

⁸² *Ibid.*

1.2.3 European Convention on Human Rights

The European Convention on Human Rights is known as a general human rights convention. It does not specifically address discrimination against women, domestic violence, or any other gender-based human rights violations that women face. Nevertheless, the ECtHR has dealt with such cases by referring to the articles of the ECHR. Therefore, the ECHR can also be used in cases regarding women's rights regardless of women's rights not being separately mentioned.

As mentioned, different articles of the ECHR have been used with cases on gender discrimination in relation with domestic violence. Article 14 of the ECHR deals with the prohibition of discrimination.⁸³ According to this Article everyone shall be granted the enjoyment of the rights and freedoms that are laid down in this Convention regardless of any factors such as sex.⁸⁴ This sets down an equal ground for the application of the Convention. Subsequently Article 14 was specified in Protocol No. 12 of the ECHR by adding paragraph 2 "no one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1".⁸⁵

One of the core human rights is the rights to life that is granted in Article 2.⁸⁶ This Article has been referred in cases of domestic violence such as *Durmaz v. Turkey*.⁸⁷ The reason why this Article may be used in such cases is because the states have a positive obligation to protect human rights and if they fail to do so they breach human rights. In this case meaning that if a state fails to protect the right to life when there is a clear threat to it in cases of domestic violence the state breaches this Article.

Article 3 that prohibits inhuman or degrading treatment has also played a role in cases of domestic violence.⁸⁸ This has occurred for example in cases where the state has not taken the needed actions and provide a woman and her children immediate protection against violent actions conducted by

⁸³ European Convention on Human Rights, 4 November 1950, Article 14.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*, Article 1 Protocol No. 12.

⁸⁶ *Ibid.*, Article 2.

⁸⁷ ECtHR 3621/07, *Durmaz v. Turkey*.

⁸⁸ European Convention on Human Rights, 4 November 1950, Article 3.

her husband.⁸⁹ The Court has also decided in a case that there has been a breach of the right to private and family life.⁹⁰

These are examples of some of the articles that may be implemented in cases of domestic violence. The articles mainly referred to are Articles 2, 3, and 14. Different cases demonstrate how and to what extent the ECHR and its articles are applied in cases of women's rights, that will be further elaborated when taking a closer look at the case law of the ECtHR.

1.3 Sufficiency of International Law in cases of Domestic Violence

As noted, the inclusivity of domestic violence in international law is a debated topic and something not everyone agrees with. The aforementioned conventions and their summaries demonstrate the support that these conventions provide regarding domestic violence and discrimination against women that leads to inaction from the state regarding victims of domestic violence. Each of the three conventions approach this matter a bit differently.

The CEDAW deals with discrimination against women and cases dealing with domestic violence often fall under the category of gender discrimination because the threat women are facing is not taken seriously. Even though the CEDAW does not specifically mention domestic violence it may still be seen as a sufficient piece of international law in cases of domestic violence because its articles aim to end the discrimination that women face which is one of the main causes that lead to states violating the human rights of women. For example, Article 5 which aims by modifying the social and cultural patterns of men and women to eliminate prejudices and customary and all other practices that have a foundation based on the inferiority or the superiority of either genders or on stereotyped roles for either gender.⁹¹ This can be interpreted also as aiming to break patriarchal patterns which aims to keep men in power and being the more superior gender. Such patterns are extremely harmful and therefore, international law that aims to break that cycle of these patterns is

⁸⁹ ECtHR 8227/02, *E.S. and Others v. Slovakia*.

⁹⁰ *Ibid.*

⁹¹ Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, Article 5.

important in cases of domestic violence. If the pattern of patriarchy is broken, then men would not be seen as the superior gender, which could possibly lessen the control that they try to have over women, which often results in (domestic) violence. Therefore, the CEDAW can be regarded as sufficient in cases of domestic violence. Also, the CEDAW Committee has used the Convention in cases of domestic violence which shows how well the CEDAW may be applied in practice in such cases.

The Istanbul convention, as already its full title states, is aimed at combating domestic violence that women face, which also its provisions clearly support. Being the primary legally binding instrument in Europe dealing with gender-based violence it has a relatively strong basis to begin with. Possible sufficiency in this case could provide the strong focus on domestic violence, which is a significant issue when it comes to gender-based violence. Such convention is needed especially nowadays when the COVID-19 pandemic has strongly highlighted the actual size of the issue that domestic violence is.⁹² Since domestic violence has remained a huge issue that keeps getting worse a sufficient and logical step is an international/European convention. As mentioned earlier, the Istanbul Convention already in its primary article aims to empower women, which shows that it aims to break the cycle that leads to domestic violence and other violence that women experience. However, there is a problem with this, because the power that men have roots mainly from patriarchy and empowering women without breaking the cycle of patriarchy will most likely not provide us with sufficient results. Therefore, it is important that international law possesses the aim to break the roots of the patriarchal power, so that empowering women would be actually fruitful, such as in the CEDAW.

The ECHR differs from the two afore mentioned conventions because as stated earlier it is not specifically targeted towards women. Nevertheless, it is interesting to see how the ECtHR has been able to use the Convention in cases of domestic violence.

To sum up, international law can be seen as sufficient in the cases of domestic violence, and this

⁹² World Health Organization, Coronavirus disease (COVID-19): Violence against women. Available online: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19-violence-against-women> (14.3.2022).

will be further elaborated on in the next chapter that will go through cases that the ECtHR and the CEDAW Committee have had. Additionally, the following chapter will go into more detail regarding the CEDAW and ECHR and look closer into the possible structural issues that states have and how these two conventions may aid in fixing these structural issues, in order to achieve equality for all genders. The chapter will also explain the situation that the COVID-19 pandemic has caused in the area of domestic violence. The minimum positive duties of states will be stated and analyzed to see how well these duties help protect women's rights and whether, there are some duties that are missing that should be there and why these would be important to have.

2. INTERPRETATION OF INTERNATIONAL LAW IN CASES OF DOMESTIC VIOLENCE

This chapter will analyze how international law is utilized in cases of domestic violence and how a general human rights convention can be applied in such cases, even though it does not separately mention the rights of women and discrimination against women. The chapter will go in more detail to show the work of the CEDAW Committee and the ECtHR in cases of domestic violence. Different cases will be summarized and explained, keeping in mind the viewpoint of intersectional feminism and the importance of it.

International law can be interpreted in different ways especially when talking about conventions that are not specifically targeted to the protection of the human rights of women, such as the ECHR, meaning that international law may be interpreted more widely. Some articles can be implemented in ways that they have not been used before or in cases that they were not initially aimed for. The interpretation of the international law in question is strongly influenced by for example the court or committee that is applying the laws. Therefore, it is important that the enforcing bodies are aware of the structural problems of discrimination against women and can identify the roots of the problem also on state level because this strongly affect the implementation of the conventions. Furthermore, the implementation of the convention has the potential of affecting the state parties and their further actions. This means that in this case the ECtHR or the CEDAW Committee have the possibility to influence the state parties to make changes that aim to demolish the structural discrimination that women face, especially regarding domestic violence. In some cases, pressure from international law may be beneficial in making the needed changes that states might not have done or might have taken longer to do without the pressure of international law.

The cases that will be dealt with in this chapter are from the ECtHR and the CEDAW Committee. These cases were selected to demonstrate the seriousness of the discrimination against women that is strongly reflected in cases of domestic violence. In the cases of the ECtHR the Court has referred the articles of the ECHR to demonstrate the discrimination that the women in those cases have suffered. On the other hand, the cases of the CEDAW Committee refer to the articles of the CEDAW. The biggest difference in these two conventions is that the CEDAW is specifically made to eliminate the discrimination that women face and through that protect women, while the ECHR

is a convention on general human rights. Interestingly, also the ECHR is used to tackle the systematic problems that lead to the discrimination of women in cases of domestic violence. It is an important step internationally, that general human rights conventions also recognize discrimination against women.

Both the ECtHR and the CEDAW Committee go through in detail the situation regarding the discrimination of women in domestic violence cases and aim to find solutions and give recommendations for the state. The following cases will present the viewpoint of the ECtHR and the CEDAW Committee in more detail and explain the measures that both recommend the states to take.

Discrimination against women in cases of domestic violence often shows up in ways such as belittling the danger women face which leads to inaction from the state's side. This leads the danger women face just get bigger and in the worst case it can even lead to death. The cases are picked from the point of view of intersectional feminism and aims to highlight the impact of aspects such as culture and indigenusness that affect the experience that women face in cases of domestic violence.

2.1. Case Law of the European Court of Human Rights

The case of *Opuz v. Turkey* demonstrates how the ECHR was interpreted and applied in a case of domestic violence. In this case the applicant alleged that there had been violations of the right to life, prohibition of torture and inhuman or degrading treatment, right to a fair trial within a reasonable time and the right to an effective remedy.⁹³ In this case the applicant, Ms. Opuz and her mother, were the victims of domestic violence performed by the applicant's husband, H.O.⁹⁴ Ms. Opuz experienced several violent situations including an encounter where she was stabbed seven times by H.O.⁹⁵ Thereafter in 2002 H.O. proceeded to shoot the applicants mother, killing her

⁹³ ECtHR 33401/02, *Opuz v. Turkey*, para 155.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*, para 133.

immediately. The ECtHR unanimously held that there had been a violation of Article 2, Article 3, and Article 14 of the Convention.

Regarding Article 2, the right to life, the ECtHR examined the case and based on the several violent encounters, noted that in this case the lethal attack was foreseeable.⁹⁶ Additionally, the Court considered the applicant and H.O.'s children as victims due to the psychological effects that they experienced due to all the violence that had taken place. The Court paid close attention to the possible motives behind the withdrawal of the complaints done by Ms. Opuz and her mother, that the domestic authorities had disregarded totally. According to the Court the domestic authorities had not acted despite the multiple alerts they had received regarding H.O.'s behavior.⁹⁷

Regarding Article 3, the Court held that the right to prohibition of torture and inhuman and degrading treatment was violated because the domestic authorities did not safeguard the applicant from the illegal behavior of H.O.⁹⁸

Regarding Article 14, the prohibition of torture, the Court held that this right had been violated because domestic violence is gender-based and this violence had led to the breach of Articles 2 and 3.⁹⁹ Therefore, the Court saw this behavior as discriminatory against women also regarding the fact that cases of domestic violence in Turkey were in general looked at passively by the judicial system and it is mainly women who suffer due to the exemption of punishment that the perpetrators commit.

In this instance the ECtHR examined the case thoroughly and tackled the issues that the domestic authorities had totally neglected. It even recognized the national problems regarding similar cases and did not solely do a general scan on the case. Due to this the Court was able to deliver a decision that tackled more than just the facts of the case but also the domestic issues leading to such violations.

⁹⁶ ECtHR 33401/02, *Opuz v. Turkey*, para 136.

⁹⁷ *Ibid*, para 145.

⁹⁸ *Ibid*, para 161.

⁹⁹ *Ibid*, para 202.

Tkheldidze v. Georgia is another example of how the ECtHR handles cases regarding women's rights.¹⁰⁰ This is a newer case compared to Opuz v. Turkey¹⁰¹ but also deals with Article 14, the prohibition of discrimination.¹⁰² In this case the applicant alleged that their daughter was not adequately protected from domestic violence by the Georgian authorities nor was a necessary investigation conducted regarding the case.¹⁰³ According to the applicant, the police was mindful of the danger that their daughter was facing but did not take the preventive measures that should have been taken. The applicant felt like they had received unsuitable and discriminatory replies to the several complaints that they had done.

The applicant's daughter, M.T. had been the target of abusive and threatening behavior conducted by L.M, who was her partner at the time.¹⁰⁴ Even when M.T. had left her partner, she and her daughter kept receiving threatening messages from L.M. M.T. had conducted a criminal complaint against L.M., however, a criminal investigation was not commenced, instead solely a formal warning was given to L.M. stating that he shall not take part in any dispute with M.T.¹⁰⁵ L.M.'s ex-partner continued his behavior and even visited L.M. at her workplace threatening her with a hand grenade. This escalated to him harassing M.T. and her daughter daily and even then, no restraining order or any other restrictive measure was implied. Later on, 17 October 2014 L.M. shot M.T. killing her at her workplace. Then he proceeded to commit suicide. The investigation opened regarding this case was discontinued due to L.M. being deceased.¹⁰⁶ The applicant lodged several complaints but solely received a confirmation that her complaints had been received but did not receive any other information.¹⁰⁷

The applicant claimed that the police did not take the necessary preventive measures that they should have, even though they knew that M.T. was in danger.¹⁰⁸ The applicant interpreted the

¹⁰⁰ ECtHR 33056/17, Tkheldidze v. Georgia.

¹⁰¹ ECtHR 33401/02, Opuz v. Turkey.

¹⁰² ECtHR 33056/17, Tkheldidze v. Georgia.

¹⁰³ *Ibid*, para 44.

¹⁰⁴ *Ibid*.

¹⁰⁵ *Ibid*.

¹⁰⁶ ECtHR 33056/17, Tkheldidze v. Georgia, para 20.

¹⁰⁷ *Ibid*, para 23.

¹⁰⁸ *Ibid*, para 44.

actions of the police as inappropriate and discriminatory.¹⁰⁹ She lodged an application to the ECtHR and relied on Articles 2 and 14 of the ECHR, claiming that there had been a violation of the right to life and the prohibition of discrimination.

The ECtHR examined the application and interpreted Article 2 in conjunction with Article 14 of the ECHR.¹¹⁰ According to the Court special diligence should be taken by the authorities in cases where there is any suspicion of domestic violence or any type of violence against women.¹¹¹ By failing to protect women against domestic violence a state breaches the right to women to being treated equally before the law. Additionally, according to Article 2 of the ECHR effective official investigation must take place in the case someone has been murdered. The police grossly neglected all the attempts that M.T. took to try and get help, even though they were clearly aware of the threat that M.T. was facing, including a statement from L.M.'s parents stating that he was mentally unstable and had anger-management issues.¹¹² Even him admitting having threatened to kill M.T. and criminal record was not enough for the police to act. According to the ECtHR this case displays a failure in the system that requires further inspection on whether the lack of action from the police resulted from gender-based discrimination and bias. Therefore, the Court concluded that there had been a violation of Article 2 read in conjunction with Article 14 of the ECHR.¹¹³

In both cases the ECHR referred to a systematic problem that occurs on state level that prevents women from receiving the help that they need, even when there is clear evidence that they are experiencing violence. In its cases the Court demonstrates how the prohibition of discrimination can be used in cases on domestic violence against women. On one perspective, it could be said that the way the ECtHR is handling the cases regarding domestic violence that women face could amount in a transition of the rights of women, since the Court in its decisions has referred to the systematic problems and stated that these problems need to be fixed. The reason this is so significant is that tackling the systematic problems are the actions that result in more permanent changes and that can help in fixing the problem regarding women's rights.

¹⁰⁹ ECtHR 33056/17, *Tkheldidze v. Georgia*, para 44.

¹¹⁰ *Ibid.*, para 47.

¹¹¹ *Ibid.*, para 48.

¹¹² *Ibid.*, para 7.

¹¹³ *Ibid.*

One more case briefly worth mentioning from the ECtHR is *Civek v. Turkey*. In this case the Court found a violation of Article 2.¹¹⁴ In this case the applicant's mother had been murdered by the father of the applicant.¹¹⁵ According to the applicant the Turkish authorities had not fulfilled their obligation to protect the life of the mother.¹¹⁶ The ECtHR came to the decision that this case amounted in the breach of the right to life because the Turkish authorities had been informed of the genuine and serious threat that the applicant's mother's had faced regarding her life but they decided not to take any measures to prevent the murder of the mother. The Court noted that the state had possible measures available to them that they could have taken but refused to.¹¹⁷

All the afore mentioned cases demonstrate the importance of providing proper assistance for the victims of domestic violence and the role of the state. The case shows that states simply do not take the actions that they are required to in order to adequately protect the rights of the victims of domestic violence. Furthermore, these are not the only such cases that the ECtHR has dealt with. There are several other examples of cases regarding domestic violence that the ECtHR has decided, such as *Talpis v. Italy*¹¹⁸, *Tërshana v. Albania*¹¹⁹, and *Valiulienė v. Lithuania*.¹²⁰

2.2 Case law of the Committee on the Elimination of Discrimination against Women

The CEDAW Committee decided on similar cases as the ECtHR. The case of *X and Y v. Georgia* is a good example. The primary claim that was made before the Committee was the gender-based discrimination that resulted in the failure of the authorities to prevent the violence suffered by the applicants.¹²¹ Interestingly, this case was earlier brought to the ECtHR but was declared inadmissible. However, in the application lodged to the ECtHR the focus was on the personal impact of the abuse on the applicants.

¹¹⁴ ECtHR 55354/11, *Civek v. Turkey*, decision.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ ECtHR 41237/14, *Talpis v. Italy*.

¹¹⁹ ECtHR 48756/14, *Tërshana v. Albania*.

¹²⁰ ECtHR 33234/07, *Valiulienė v. Lithuania*.

¹²¹ CEDAW Committee 024/2009, *X and Y v. Georgia*.

X had been raped by her husband before they got married and later had five children with him. She married this man due to the pressure she felt coming from the Georgian culture.¹²² Her husband used physical and mental violence towards the children and X. X had received medical care for the wounds she had gotten due to her husband's violent behavior. Additionally, she made several complaints alleging spousal battery to the police.¹²³ The same pattern, where X's husband uses physical violence towards her and she reports to the police, repeated itself a number of times. X also noticed that her husband began to behave inappropriately towards her mother Y, who lived with them.¹²⁴ Y also witnessed the husband molesting the children and later X's son and Y gave statements to a psychologist regarding this incident.¹²⁵ The only action that was taken by the state was a number of visits conducted by the local police inspector. During the inspections the police spoke to the husband and made him sign pledges claiming that he will stop the violent behavior towards his wife and children.¹²⁶ This was all action that was taken by the police inspector. The husband did not receive any charges pressed against him. This did not stop X's husband from continuing the violent behavior and therefore, X reported again to the police and the police took the same action as before, making the husband pledge in writing that he will not continue violent behavior in the future. Additionally, the police aimed to persuade X to withdraw her complaint against her husband. Later, she received a letter stating that a criminal investigation regarding her situation will not be opened. X continued filing application also to the court, but no significant measures were taken.

According to the applicants there has been a violation of articles 1, 2 (b) – (f) and 5 (a) of the CEDAW.¹²⁷ These articles were referred to because the applicants believed that Georgia had failed to adhere with its duty to imply the provisions of criminal law to protect women and girls from physical and sexual abuse inside family.¹²⁸ In addition to this, it was claimed that the state failed to issue equal protection under the law to victims of domestic violence and sexual abuse and subjecting the applicants to torture by neglecting their duty to protect them from domestic

¹²² CEDAW Committee 024/2009, X and Y v. Georgia, para 8.2.

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Ibid*, para 2.7.

¹²⁶ *Ibid*, para 2.10.

¹²⁷ *Ibid*, para 3.1.

¹²⁸ CEDAW Committee 024/2009, X and Y v. Georgia, para 3.1.

violence.¹²⁹ Articles 1 and 2 were referred together with the Committee's general recommendation No. 19 because the state has failed to fulfill its duties regarding discrimination against women in all forms and to investigate and punish human rights violations.¹³⁰

After inspection the CEDAW Committee recognized the violation committed by the state regarding Article 2(b) – (f) concerning policy measures and obligations in conjunction with Article 1 that defines discrimination against women, Article 5(a) regarding stereotyping and prejudice and general Recommendation No 19 on violence against women.¹³¹ On the basis of what the Committee found, it made the following recommendations to the State party:

“(a) Concerning the authors of the communication: provide adequate financial compensation to the authors commensurate with the gravity of the violations of their rights;

(b) General:

(i) Ensure that victims of domestic violence and their children are provided with prompt and adequate support, including shelter and psychological support;

(ii) Intensify awareness-raising campaigns and introduce a zero-tolerance policy in respect of violence against women and, more specifically, domestic violence;

(iii) Ratify the Convention on Preventing and Combating Violence against Women and Domestic Violence;

(iv) Provide mandatory training for judges, lawyers and law enforcement personnel, including prosecutors, on the application of the Prevention of Domestic Violence Act, including on the definition of domestic violence and on gender stereotypes, as well as appropriate training on the Convention, the Optional Protocol thereto and the Committee's general recommendations, in particular general recommendation No. 19.”¹³²

Yet again the same problem regarding the discrimination of women is faced. The police refuses to take the situation seriously regardless of how many times they are informed about the issue. Which makes the situation more alarming is that it is also involved children. Therefore, by neglecting the

¹²⁹ CEDAW Committee 024/2009, X and Y v. Georgia, para 3.1.

¹³⁰ *Ibid*, para 3.2.

¹³¹ *Ibid*, para 10.

¹³² *Ibid*, para 11.

rights of women, the police also neglected the rights of the children. From the very beginning it was clear that the applicants and X's children were in danger and required immediate help. This case presents a strong example of gender-based discrimination and how the rights of women are grossly neglected. This is also a good example of how international law aims to make a change regarding this issue and how aware it is of the structural issue that embedded on state level. Such example also discourages women to seek for help when they have seen that similar cases are not taken seriously. Events like these make the struggles women face more invisible, instead of attracting attention to these struggles.

Another example of such cases from the CEDAW Committee is *Angela González Carreño v. Spain*. The author had been subjected to domestic violence committed by F.R.C. to whom she was married to from 1996 to 2001.¹³³ The author and F.R.C. had a daughter together, called Andrea. Throughout the marriage, before and after it the author experienced physical and psychological violence conducted by F.R.C. which included threatening her life with a knife in the presence of their daughter, who was three years old at the time.¹³⁴ Due to the behavior of F.R.C. he was granted ongoing contact with Andrea, while the author was permitted to care and custody of their daughter. Later F.R.C. threatened to kidnap Andrea in front of a police officer after following the author and Andrea when they tried to escape F.R.C. According to the author she had filed more than 30 complaints before the Guardia Civil and the courts of mixed jurisdiction and was constantly on the lookout for protective orders that would keep F.R.C. away from her and Andrea.¹³⁵

Regardless of several complains, F.R.C. was convicted solely once on 24 October 2000 on harassment and the penalty imposed was a fine of 45 euros.¹³⁶ Even though there were several violent incidents conducted by F.R.C., the Court of First Instance of Navalcarnero, allowed unsupervised visits between F.R.C. and Andrea were continued, even though the author appealed this decision. The court stated that “social services cannot predict how the visits will go without their presence and although they do point to some shortcomings in the father’s behavior, they also

¹³³ CEDAW Committee 47/2012, *González Carreño v. Spain*, paras 2.1 and 2.2.

¹³⁴ *Ibid*, para 2.1.

¹³⁵ *Ibid*, para 2.5.

¹³⁶ *Ibid*, para 2.6.

stress that relations between him and his daughter are gradually normalizing”.¹³⁷ During the months allocated for the unsupervised visits Andrea had stated that she does not want to spend time with her father due to the comments and questions her father had made regarding her mother, which took place in 2003. Later after a judicial hearing in 2013 F.R.C. had approached the author and stated to her that he will take away something from her that mattered to her the most. In the afternoon of the same day Andrea had a planned meeting with her father and once she went later to pick her up F.R.C. and Andrea were not there. After waiting and trying to call F.R.C. without success, she went to the police and asked the police to go to the home of F.R.C. When arriving to residence, the police found Andrea and F.R.C. dead. Since F.R.C. had a weapon in his hand, the circumstances suggested that he had shot Andrea first and then proceeded to commit suicide.¹³⁸

Already earlier in 2004 author filed a claim for compensation for miscarriage of justice to the Ministry of Justice by alleging that the administrative and judicial authorities had acted negligently.¹³⁹ According to the author the judicial organs and social services had failed in their duty to protect the life of her daughter, since they had neglected the complaints the author had done stating that her daughter was facing danger being with her father and she stated that she had the right to receive compensation.¹⁴⁰ However, her claims were denied and after this she took the case to the High Court and later appealed before the Constitutional Court but both appeals were denied.¹⁴¹

According to the author there had been violations of articles 2, 5, and 16 of the CEDAW.¹⁴² Articles 2 (a-f) were referred to because the author saw that she was subjected to discrimination due to the actions of the police and the administrative and judicial authorities.¹⁴³ She claimed that violation under Article 2 (e) constituted from the lack of protection regarding the domestic violence she and her daughter experienced.¹⁴⁴ Additionally, the author had individually referred to other sections of Article 2 as well. Regarding Article 5 the author saw that the prejudice that the authorities possessed

¹³⁷ CEDAW Committee 47/2012, González Carreño v. Spain, para 2.14.

¹³⁸ *Ibid*, para 2.17.

¹³⁹ *Ibid* para 2.18.

¹⁴⁰ *Ibid*.

¹⁴¹ *Ibid*, para 8.6.

¹⁴² *Ibid*, para 3.1.

¹⁴³ *Ibid*, para 3.2.

¹⁴⁴ *Ibid*, para 3.3.

resulted in a breach of this Article.¹⁴⁵ She saw that Article 16 was breached because according to her she faced discrimination regarding her separation and divorce.¹⁴⁶

The CEDAW Committee stated that it did not agree with the State's argument that behavior of F.R.C. was unforeseeable.¹⁴⁷ It backed up its claim by stating that the separation of the author and F.R.C. was followed by several violent incidents that the child had also witnessed.¹⁴⁸ It also highlighted the fact F.R.C. was convicted only once and mentioned that F.R.C. has received a psychological report stating that he has an obsessive-compulsive disorder with aspects of pathological jealousy and that he also had a tendency to distort reality. Therefore, the Committee saw that the State party did not meet its due diligence obligations.

On these bases the committee made the following recommendations for the State:

“(a) With regard to the author of the communication:

(i) Grant the author appropriate reparation and comprehensive compensation commensurate with the seriousness of the infringement of her rights;

(ii) Conduct an exhaustive and impartial investigation to determine whether there are failures in the State's structures and practices that have caused the author and her daughter to be deprived of protection;

(b) In general:

(i) Take appropriate and effective measures so prior acts of domestic violence will be taken into consideration when determining custody and visitation rights regarding children and so that the exercise of custody or visiting rights will not endanger the safety of the victims of violence, including the children. The best interests of the child and the child's right to be heard must prevail in all decisions taken in this regard;

(ii) Strengthen application of the legal framework to ensure that the competent authorities exercise due diligence to respond appropriately to situations of domestic violence;

¹⁴⁵ CEDAW Committee 47/2012, *González Carreño v. Spain*, para 3.8.

¹⁴⁶ *Ibid*, para 3.12.

¹⁴⁷ *Ibid*, para 9.3.

¹⁴⁸ *Ibid*.

(iii) Provide mandatory training for judges and administrative personnel on the application of the legal framework with regard to combating domestic violence, including training on the definition of domestic violence and on gender stereotypes, as well as training with regard to the Convention, its Optional Protocol and the Committee's general recommendations, particularly general recommendation 19.”¹⁴⁹

It is great to see that the Committee strongly focused on the structural issue and wants the State to make changes to ensure that such behavior will not continue in the future. It is important that more training would be provided for officials so that they will be able to identify real danger and act accordingly in time. Section (i) points out well the need to take into consideration acts of domestic violence regarding issues of custody and visitation rights. It is also important that the Committee points out probably the most important aspect when talking about children's rights, which is that all decisions must be done in the best interest of the child.¹⁵⁰ When looking at the actions of the State party it is clear that the best interest of the child was not the primary concern while deciding what actions to take, which is alarming especially regarding the vulnerability that children possess. Additionally, by mentioning the due diligence of a state the Committee highlights the responsibility that states have when taking action. Of course, it is a matter on its own whether states decide to follow the recommendations of the Committee, however, it is important that the defects are brought up in the hopes that change will take place.

It is still good to briefly mention the case of Cecilia Kell v. Canada since Cecilia Kell is an aboriginal woman from the Northwest Territories of Canada. Kell had received an apartment as a co-owner with her partner.¹⁵¹ Cecilia Kell became the victim of domestic violence and her situation got worse once she gained financial independence after getting a job. Later her partner requested to move her name from the Assignment Lease without informing her or asking consent and two years after this she was evicted from her home which led her to go to a domestic violence shelter.¹⁵² The author tried to regain her property rights by relying on the Canadian legal system. However, a bit after the filing of the first lawsuit, her partner was diagnosed with cancer and the court action

¹⁴⁹ CEDAW Committee 47/2012, *González Carreño v. Spain*, para 11.

¹⁵⁰ The United Nations Convention on the Rights of the Child, 20 November 1989, Article 3.

¹⁵¹ CEDAW Committee 19/2008, *Cecilia Kell v. Canada*, para 2.3.

¹⁵² *Ibid*, para 2.4.

was delayed due to this on the request of the author's lawyer. Her partner died before the case was closed.¹⁵³ The property had already been sold by the time she filed the third action.

The author claimed that there had been violations of Article 1, Article 2 (d) and (e), Article 14 paragraph 2 (h), Article 15 paragraphs 1, 2, 3, and 4 and Article 16 paragraph 1 (h).¹⁵⁴ In accordance with the facts of the case the Committee recommended the State party to provide the author with housing similar as to the one she was deprived of and give her appropriate monetary compensation for material and moral damages regarding the violation of her rights. The Committee saw that the property rights of the author had been breached and that she had been discriminated being an aboriginal woman. Especially since in this case the author is an aboriginal woman she is in a more vulnerable position, and it is the duty of the State to ensure that intersectional discrimination is eliminated as effectively as possible.

Generally, the Committee recommended the state party to recruit and train more aboriginal women that could provide legal aid to women from their communities.¹⁵⁵ Additionally, the Committee recommended the state to review its legal aid system in order to make sure that aboriginal women who become the victims of domestic violence are able to effectively access justice. This case is a perfect example of how intersectional aspects may affect the experiences of a person. Moreover, in this case the author was in a more vulnerable position because she was a woman and aboriginal. Additionally, when discussing the rights of women especially the rights of indigenous women gender equality is an important aspect to consider but one could also take into consideration the promotion of human development.¹⁵⁶ Furthermore, these two issues may be looked at together. This case is a great example to demonstrate the importance of having an intersectional approach while dealing with cases regarding the rights of women in cases of domestic violence. Since on state-level this was disregarded and therefore, it is very important that the CEDAW Committee saw the importance of this approach and took it into consideration while dealing with the cases and analyzing the aspects of it. However, this is something that should not just be left for the

¹⁵³ CEDAW Committee 19/2008, Cecilia Kell v. Canada, para 2.8.

¹⁵⁴ *Ibid*, paras 3.1-3.6.

¹⁵⁵ *Ibid*, para 11.

¹⁵⁶ Burman, M, Svensson, E-M. Women's Rights in the Governance of the Arctic: Gender Equality and Violence against Indigenous Women. - The Yearbook of Polar Law 2017/1, p 64.

international bodies to tackle but something that should also be acknowledge on state-level. State authorities should be informed of the importance of intersectional feminism and in what ways it should be considered.

These cases show that the same pattern is constantly repeated. This proves the seriousness of gender-discrimination since states time after time keep neglecting the women reporting on domestic violence. Some of the cases also demonstrated how neglecting the rights of women may negatively affect the rights of children and go against the policy that all actions shall be done in the best interest of the child. This is a huge human rights violation when someone's needs are totally disregarded, and one does not receive the help needed. Such behavior goes against one of the main rights that is stated in the UN Universal Declaration of Human Rights according to which "all human beings are born free and equal in dignity and rights".¹⁵⁷ These cases also demonstrate how states neglect their obligations to protect the human rights of people. States have to value the rights of all people the same and cannot discriminate on the basis of different aspects such as gender. The structural issues that lead to gender discrimination must be broken. States need to look at the existing structural issues and take the needed action to abolish such discrimination. These cases support the claim that these are not solely some single cases but a worldwide issue. These are definitely not the only cases tackling such issues. There are several cases that deal with the same issue of states not taking action regarding situations of domestic violence, such as *Isatou Jallow v. Bulgaria*,¹⁵⁸ *A.T. v. Hungary*,¹⁵⁹ and *V.K. v. Bulgaria*.¹⁶⁰

To obtain a more intersectional point of view, the cases mentioned in this chapter are from more than one country and therefore the cultural aspects add to the intersectionality. For example, in the case of *X and Y v. Georgia* the author had specifically mentioned that she experienced pressure from the Georgian culture to marry her husband. Therefore, her culture was one of the aspects that also affected her case. When taking a more intersectional approach, the focus is not solely on certain women. For example, often when talking about domestic violence, a very stereotypical picture that comes to the minds of many are women from countries Africa, Asia, and the Middle

¹⁵⁷ The Universal Declaration of Human Rights, 10 December 1948, Article 1.

¹⁵⁸ CEDAW Committee 32/2011, *Isatou Jallow v. Bulgaria*.

¹⁵⁹ CEDAW Committee 2/2003, *A.T. v. Hungary*.

¹⁶⁰ CEDAW Committee 20/2008, *V.K. v. Bulgaria*.

East. It is often forgotten that women all over the world from all types of different backgrounds may suffer from domestic violence.

International law and international courts have taken a step forward in acknowledging this issue. It is very important that the CEDAW Committee and courts, such as the ECtHR refers to the structural problems that exist on state level in hopes of making a more permanent change in women's rights.

2.3 COVID-19

The COVID-19 pandemic has worsened the phenomenon that domestic violence has become. UN Women has done research about how the pandemic has affected the situation of domestic violence. The issue with violence against women has reached such a level that the research uses the term 'shadow pandemic' when referring to the increase of cases of violence against women because of the pandemic. According to the UN study 45 percent of women had reported that they or a woman they know has encountered some form of violence since the beginning of the pandemic and 68 percent of women have reported that they have experienced violence in their lifetime.¹⁶¹ Referring to the 45 percent of women who stated that they had or know someone who has encountered violence since the pandemic, verbal abuse and denial of basic resources was the most common form of violence experienced, that was 23 percent of the total amount.¹⁶² 15 percent of the respondents reported that they had experienced physical violence.¹⁶³ One in four women has stated that household conflicts have increased during COVID-19 and as a result feel more unsafe in their home.¹⁶⁴ The study also refers to different types of violence that has occurred. On the report, seven to ten women have informed that according to their knowledge verbal or physical abuse by a partner has increased.¹⁶⁵

These statistics are alarming and indicate how big and serious of a problem violence against women

¹⁶¹ UN Women Report. Measuring the Shadow Pandemic: Violence Against Women During Covid-19, 2021, p 5.

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

and domestic violence is worldwide. This reveals how COVID-19 has aggravated an already existing problem. This should be a wake-up call that violence against women is not some issue that will vanish by itself, but instead do the opposite and become even worse in special situations and especially when the issue has not been dealt with properly earlier. Which strengthens the claim that domestic violence is an issue of international law because it is an international problem that a worldwide pandemic has only made drastically worse. Another reason that justifies the need for international law to tackle domestic violence is that it has clearly been seen that states have not been able to solve this issue and it has just gotten worse. The pandemic has highlighted the fact that there is no time to wait and see how the situation will change because this is a real problem that affects the lives of so many women.

It may be assumed that in reality the numbers are even bigger but as with all such issues a lot of cases remain unreported due to different reasons, such as not being able to distinguish that the violence experienced is wrong and against the law or simply being in such a situation that the woman feels that it is too big of a risk to report about the experienced violence in the fear that her partner will find out which may result in more violence and in some cases even more severe violence than what it was in the beginning. Additionally, there is an issue when it comes to age that may negatively affect the statistics. It is often assumed that violence against women affects only a certain age group of women, and this leads to several surveys excluding totally excluding older women because it is assumed that older women do not experience such violence.¹⁶⁶ Even though it may be the case that younger women are more prone to for example domestic violence and experience it more often it does not mean that excluding older women from studies measuring violence against women. Furthermore, such factors shall be kept in mind since they may affect the result of certain studies. Nevertheless, there is data that proves that older women suffer from violence against women.¹⁶⁷ More than three in ten women aged 60 or over and more than four in ten women from age 50 to 59 reported having undergone violence or know someone who has since the beginning of the pandemic.¹⁶⁸ This shows that violence against women, including domestic violence, is a phenomenon that affects women despite of age revealing the true size of this issue that women experience internationally.

¹⁶⁶ UN Women Report. Measuring the Shadow Pandemic: Violence Against Women During Covid-19, 2021, p 8.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

2.4 The minimum positive duties of states

Positive duties of states refer to the actions that states must take to ensure certain rights; therefore, this does not include obligations that require states from refraining certain action that restricts the enjoyment of certain rights.

Article 5 of the Istanbul Convention lays down the obligations and due diligence of states. According to this article the parties shall abstain from taking any act of violence against women and make certain that State authorities, officials, agents, institutions, and other actors that take action on behalf of the State act in accordance with this obligation.¹⁶⁹ Since this paragraph of the article addresses certain actions that the parties shall refrain from taking, these are not seen as positive duties of states. On the other hand, parties have the duty to take the required legislative and other measures which enable the exercise of due diligence to prevent, investigate, punish, and provide reparation for acts of violence included in the scope of the Istanbul Convention and that are executed by non-State actors.¹⁷⁰ In the case of this convention, the states are directly provided with the obligations and due diligence that is required from them. Furthermore, it shall be said in this case that the positive duties of states regarding this convention are taking all obligatory measures, including legislative measures to ensure the prevention, investigation, punishing, and providing reparation for acts of violence that fall under the scope of this convention that are carried out by non-State actors.¹⁷¹

The aforementioned are duties that the convention clearly states as “state obligations and due diligence” moreover, the convention entails other positive duties for the states. States have an obligation to construct free of charge nationwide telephone helplines that must be accessible all-day round this shall be done either through legislative or other measures.¹⁷² These helplines shall provide aid in all questions regarding all forms of violence that are covered by the convention.¹⁷³ The convention mandates state parties to ensure that sufficient legislative or other measures are

¹⁶⁹ Council of Europe Convention on preventing and combating violence against women and domestic violence, 11 May 2011, Article 5 (1).

¹⁷⁰ *Ibid*, Article 5 (2).

¹⁷¹ *Ibid*.

¹⁷² *Ibid*, Article 24.

¹⁷³ *Ibid*.

taken to provide shelters that are easily accessible.¹⁷⁴ Additionally, parties are liable to secure the possibility for victims to receive counselling in for example cases of sexual violence, which can be a part of domestic violence.¹⁷⁵ Apart from the state obligations that directly influence the victims, the convention lays down obligations that provide long-term improvement in protecting women from violence and domestic violence. States are obliged to gather data on crimes that are gender related. Such data helps to track important information about the violence experienced by women, which helps states to make possible changes in the for example their legal system to aim to reduce the rates of violence.

These all help protect women from domestic violence because they aim to eliminate the structural discrimination that women face that is reflected in the actions of authorities. Such actions from authorities have led to devastating results and caused suffering for women and in some cases their children. The cases that were presented show a great example of how some states neglect their duties and disregard the rights of women.

The next step from having all these obligations is applying them. As the presented cases demonstrate states in general do not seem to be aware of the structural issues that are present and that are then revealed in the actions of the authorities. Furthermore, it is important that states take the time and effort to ensure that all genders are actually treated equally, and that this policy is also reflected in the actions of the authorities. Therefore, when looking at the duties of states imposed by international law it can be seen that international law has improved in the field of women's rights, but the problem occurs often at state level. This does not mean that international law is perfect in this field but there has been significant improvement when looking at how male-centered it used to be. By this being said, there is always room for improvement both on international and state level, even though the focus now could be on state level.

The duties assessed for states by the conventions seem to be quite thorough. However, when looking at them from state level, the same thought does not occur. Since the implementation on

¹⁷⁴ Council of Europe Convention on preventing and combating violence against women and domestic violence, 11 May 2011, Article 23.

¹⁷⁵ *Ibid*, Article 25.

state level is problematic, having a more detailed guideline on implementation aimed at for example state authorities might produce a more favorable outcome. Therefore, the scope of States' positive duties in international law and practice may seem unclear and cause confusion. The scope may not be seen as wide due to the lack of the approach of intersectional feminism, even though it does cover important factors.

When examining the positive duties that states have it is seen that considering intersectional feminism when dealing with women's rights is not mentioned. This means that all reoccurring structural issues are not considered because in order for those to be considered, intersectional feminism should be regarded. Nevertheless, on a general level gender structural issues are regarded because the positive duties tackle the areas where women face discrimination, such as domestic violence. Additionally, it would be good to add the perspective of intersectional feminism as one of the positive duties of the states. As was brought up, different factors for example being indigenous affects the position and treatment of a woman. Therefore, it may be argued that minimum positive duties of states should include an intersectional approach because women may face multiple discrimination. This is an important aspect to note because as seen from the cases that were presented, intersectionality was not taken into consideration by the states in cases where it definitely should have been regarded.¹⁷⁶ By neglecting the intersectional approach, a part of the structural issues that states have regarding the protection of women's rights are disregarded. Due to this, it would be very beneficial to have an intersectional approach as one of the minimum positive duties, which would enable a better protection of the rights of women especially in the field of domestic violence. Intersectional feminism is something that is often disregarded, even though it is clearly an important aspect that needs to be considered. If intersectional feminism is totally disregarded by states, women will most likely not receive the adequate treatment, they deserve. There should not be any reason as to why this should not be one of the positive duties of states especially taking into consideration the significant difference in treatment that women receive when intersectionality is regarded versus when it is not. If the aim is to reach full equal treatment for all genders intersectional feminism has to be regarded. When this obligation would come from international level then the states would be bound to educate their authorities on intersectional feminism, what it means, and how it has to be recognized when dealing with cases

¹⁷⁶ CEDAW Committee 19/2008, Cecilia Kell v. Canada.

regarding the rights of women. This is an especially important aspect to consider when dealing with cases of violence against women and domestic violence and therefore, it should be one of the minimum positive duties of states. This would make intersectional feminism closer to becoming a universal standard while assessing women's rights. This should be seen as beneficial regarding women's rights since universality is something that also the ECtHR has aimed towards in its cases.¹⁷⁷

2.5 Assessing the work of international law

When having different international bodies making changes and aiming to improve the rights of women, it is also important to assess the effectiveness of them and whether what has been done is enough. There has been a lot of criticism on the work that has been done regarding women's rights. One of the issues that has arisen is whether a small amount of progress is enough at this point. It is hard to accept a small amount of progress to be even satisfactory compared to the inequalities that women have been facing already for so long now. Alia El-Yassir, the UN Women Regional Director for Europe and Central Asia stated that "women still face barriers in accessing equal opportunities and representation in every sphere of life" and then added that "this is far from the vision of governments, civil society organizations and advocates who gathered in Beijing 25 years ago. The world cannot afford to wait another 25 years before we achieve gender equality".¹⁷⁸ A point has been reached where a lot of precise and detailed material has been delivered and still, we are facing nearly the same problems and as Alia El-Yassir stated, waiting for another 25 years to achieve gender equality should not be an option. This is a valid point since often women's rights are not given that much time and people are often expected to be satisfied as long as some change takes place. However, as a number of cases have demonstrated throughout this thesis, the current treatment that women are receiving is strongly affecting their lives extremely negatively, which shows that action needs to be taken immediately and small changes are not adequate anymore, we need big actions. Especially when looking at the current situation that COVID-19 has caused it shows how rapidly cases of domestic violence increase. Additionally, it shows even more proof

¹⁷⁷ ECtHR 39272/98, *M.C. v. Bulgaria*.

¹⁷⁸ UN Women, Press release: 25 years after a landmark global agreement, the numbers still don't add up for women in Europe and Central Asia. Available online: <https://www.unwomen.org/en/news/stories/2020/10/press-release-report-from-europe-and-central-asia-tracks-progress-25-years-after-beijing-platform> (28.3.2022).

that small changes that take place once in a while are not enough when looking at the rapid pace that cases of domestic violence have grown. This shows that big actions need to be taken immediately. Especially when taking a look at the behavior of the states and the way they have neglected the rights of women.

It is also good to take a look at the international conventions that aim to protect women's rights. The cases discussed how that these conventions have been used very beneficially by the international bodies and the conventions have been a base for calling out states for gender discrimination and revealing the existing structural issues. However, the states in these cases have not used these conventions in a similar way. Therefore, this raises questions on whether the conventions should be improved or are the states being negligent. Based on the cases that have been introduced, the states have been quite negligent regarding women's rights. Significant gender discrimination has taken place and the rights of women are not approached in a serious manner. Such grave negligence that has taken place for example when a woman has tried to seek for help in cases of domestic violence cannot entirely be blamed on international law. States should be aware of how the authorities are dealing with such cases and educate these authorities if they do not behave adequately. However, for example the ECHR would have articles that specifically mention women and consider gender-based violence since it most definitely is a significant issue. The CEDAW and Istanbul Convention are more easily applied to cases of domestic violence because both conventions aim to protect the rights of women, but the ECHR does not. Therefore, it would be important to have mentions of the rights of women. Even though, the ECHR is a general human rights convention it should not mean that the needs of all genders should not be taken into consideration. Apart from the critique, it shall still be remembered that the Istanbul Convention was the first European instrument that provides legally binding standards to prevent gender-based violence.¹⁷⁹ This itself is a remarkable step forward, however there is still a lot to do before gender equality is reached. However, an important step to take is to ensure it is fully recognized that states are obliged to take protective measures against human rights violations that are committed by private persons since this is a way that gender bias that when face could be overcome.¹⁸⁰ This is of course also important from the feminist perspective since one of the questions that has been

¹⁷⁹ Valtioneuvosto, Finland to lead the Committee of the Parties to the Istanbul Convention. Available online: <https://valtioneuvosto.fi/-/finland-to-lead-the-committee-of-the-parties-to-the-istanbul-convention> (07.04.2022).

¹⁸⁰ Rudolf, B, Eriksson, A. Women's Rights under International Human rights Treaties: Issues of Rape, Domestic Slavery, Abortion and Domestic Violence. – International Journal of Constitutional Law 2007/3, p 523.

discussed from the feminist perspective is the involvement of feminism in domestic violence.¹⁸¹ As seen the CEDAW Committee did take into consideration intersectionality, however, this does not mean that this is common practice in international law, meaning that this is not a systematic approach that the ECtHR and CEDAW Committee have.

¹⁸¹ Solanki, G, Gangoli, G. Defining Domestic Violence and Women's Autonomy in Law. – Socio-Legal Review 2016/1, 57.

3. CASE STUDY OF FINLAND

After examining domestic violence from the perspective of international law, it is interesting to see how these laws are implemented on state level and how domestic violence is regulated.

Finland has ratified several human rights treaties of the United Nations and is often viewed as a role model in various aspects including gender equality, nonetheless, this does not mean that Finland does not have any areas of improvement. Actually, Finland seems to have some improvement to do in protecting the rights of women, especially regarding violence against women which includes domestic violence. Based on the information that the Finnish branch of UN Women has, one in three women in Finland experiences intimate partner violence during their lives.¹⁸² This information amounts to Finland being within the EU the second most dangerous country for women.¹⁸³ The Finnish branch also added that almost half of girls and women of at least 15 years of age experience some form of physical or sexual violence in their lifetime.¹⁸⁴ Furthermore, according to the Satakunta Social Services Emergency Department violence against women, especially intimate partner violence has increased.¹⁸⁵ Additionally, the number of calls received by the department's emergency number has increase, which gives a more concrete picture of the size of the issue.¹⁸⁶ Therefore, it is interesting to take a closer look at Finland and to how it complies with international law that aims to protect the rights of women.

This chapter will examine international law regarding women's rights on state level. The effect of international law on women's rights in Finnish law and whether Finland has done possible necessary modifications required by international conventions dealing with the rights of women. The possible impact of international law on domestic law in Finland will be examined to see

¹⁸² Yle, One in three women in Finland experience relationship violence. Available online: [https://yle.fi/news/3-12204299#:~:text=According%20to%20the%20Finnish%20branch,and%20the%20empowerment%20of%20women.\(23.3.2022\).](https://yle.fi/news/3-12204299#:~:text=According%20to%20the%20Finnish%20branch,and%20the%20empowerment%20of%20women.(23.3.2022).)

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

whether international law has had a positive impact on Finnish law by advancing the rights of women or has the impact been more neutral without any significant improvements.

Additionally, this thesis will take a closer look on a case that took place in Finland. This case is about domestic violence and self-defense. The Finnish law on (domestic) violence and self-defense will be looked at and analyzed to find out whether it is adequate to properly protect gender-based violence and how well it complies with the pieces of international law examined throughout this thesis.

3.1 Finland and International Law on Women's Rights

The CEDAW has had a significant influence on the Finnish equality law. Finland ratified the CEDAW without any reservations.¹⁸⁷ The Finnish Constitution experienced a reform which resulted in strengthening the protection of constitutional rights.¹⁸⁸ Due to this it could be assumed that this reform could have possibly awarded a possibility for a more extensive use of the CEDAW.¹⁸⁹ Nevertheless, this did not happen but instead the CEDAW appears to be of lesser value in the Finnish legal reform.¹⁹⁰ It is questionable why emphasis on constitutional and human rights did not strengthen the role of CEDAW which deals with human rights.¹⁹¹

The pressure from international law towards due diligence has the potential of improving the recognition of violence against women as discrimination.¹⁹² The CEDAW was signed by Finland in 1980. Finland recognized that modifications were to be made to specific family law provisions and the authorization of new Anti-discrimination Act shall take place before the CEDAW could be ratified.¹⁹³ At the time the Nordic legal systems prohibited courts from directly referencing to

¹⁸⁷ Hellum, A, Aasen, H.S. *Women's Human Rights: CEDAW in International, Regional and National Law*. Cambridge University Press. 1st ed. United Kingdom 2013, p 557-558.

¹⁸⁸ *Ibid*, p 558.

¹⁸⁹ *Ibid*.

¹⁹⁰ *Ibid*.

¹⁹¹ *Ibid*.

¹⁹² *Ibid*, p 559.

¹⁹³ *Ibid*, p 568.

human rights treaties.¹⁹⁴ Instead, the bigger focus was on representative democracy and the common good through state-centered ideas.¹⁹⁵ Therefore, individual and minority rights were not in the spotlight and the authorities were not significantly committed to the legal protection of the rights of individuals and minorities.¹⁹⁶ The Finnish legislation was contrary to the CEDAW which led to the need to amend the legislation. The amendment that was done comprised of norms concerning custody, citizenship, and the choice of family name. For example, according to the Act on Citizenship only the fathers had the right to transmit their citizenship to their children, which was clear discrimination against women since this law was extremely unfair.¹⁹⁷ Another example was the new Act on Family Names that allowed women to keep their family name when getting married.¹⁹⁸ The previous act prohibited women from keeping their family name when getting married, however, according to the old act women were able to have a double name.¹⁹⁹ Nevertheless, this led to significant political controversy because some saw that this new Act on Family Names would negatively affect family unity and be against traditions.²⁰⁰ Regardless, of these controversies the new Act on Family Names came into force. While looking at the claimed negative factors it is clear that the benefit of the new act strongly overruled the negative factors. This is a good example of prioritizing human rights and equality over traditions. As demonstrated, the ratification of the CEDAW had a significant positive impact on Finnish legislation. Nevertheless, probably one of the most important and notable outcomes was the Finnish Equality Act 1986.²⁰¹ In this case the CEDAW commenced a momentous improvement regarding women's rights in Finland. It was outstanding to see that due to CEDAW Finland decided to take a remarkable step towards equality in the form of an Equality Act.

It is positive to see that Finland was ready to undergo these amendments regarding the Finnish legislation to enable the signing process of the CEDAW. In such situations there exists the risk of states not signing a certain international convention if it requires prior work, including

¹⁹⁴ Hellum, A, Aasen, H.S. *Women's Human Rights: CEDAW in International, Regional and National Law*. Cambridge University Press. 1st ed. United Kingdom 2013, p 568.

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid* p 569.

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

modifications that need to be done to the state's own legislation. The CEDAW is an important step in the right direction when it comes to protecting the human rights of women. Furthermore, it was a very significant step in the right direction from Finland to sign the CEDAW after doing the needed modifications to the already existing legislation. This was also a very mandatory step to take since the Finnish legislation included clear and grave discrimination against women, which does not advance the human rights of women, nor human rights in general, due to general human rights treaties aiming to obtain equality.²⁰²

Finland's general compliance can also be examined for example by looking at how the police informs about domestic violence. The Finnish police defines domestic violence as being violence that is committed against a current or former partner, a child, a close relative, or another person that is close to the perpetrator.²⁰³ A form of violence in close relationships is intimate partner violence, which means that domestic violence that women face is included here.²⁰⁴ Additionally, the factors that may lead to victims not reporting their cases are recognized.²⁰⁵ It is mentioned that for example shame may be something that restrains the from contacting the police.²⁰⁶ The fact that the police have as part of their duties a mandate to report violence in close relationships advances the implementation of women's rights in cases of domestic violence.²⁰⁷

According to the reception that the CEDAW received, the reception of the Istanbul Convention can already be assumed to be good. Finland's foreign and security council recognize the importance of equality and the rights of women and girls.²⁰⁸ Additionally, combatting violence against women at national level is something that the government is strongly committed to doing.²⁰⁹ The implementation of the Istanbul Convention has been assessed in Finland. In its report of the Council of Europe's group of Experts on Action against Violence against Women and Domestic Violence

²⁰² Hellum, A, Aasen, H.S. *Women's Human Rights: CEDAW in International, Regional and National Law*. Cambridge University Press. 1st ed. United Kingdom 2013, p 569.

²⁰³ Police of Finland, Domestic Violence. Available online: <https://poliisi.fi/en/violence-in-close-relationships> (22.3.2022).

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*

²⁰⁸ Valtioneuvosto, Finland to lead the Committee of the Parties to the Istanbul Convention. Available online: <https://valtioneuvosto.fi/-/finland-to-lead-the-committee-of-the-parties-to-the-istanbul-convention> (07.04.2022).

²⁰⁹ *Ibid.*

(GREVIO) stressed the challenges that are related to the training and competence of professionals as well as the significance of appropriate funding when it comes to the implementation of the Istanbul Convention.²¹⁰ This presents one of the important aspects that need to be taken into consideration when it comes to the implementation of the Istanbul Convention.

3.2 Finnish law on self-defense

It is important to be aware of and comprehend the Finnish law on self-defense before taking a closer look at a Finnish case on domestic violence. The translation of the law on self-defense goes as follows:

“(1) An act that is necessary to defend against an ongoing or imminent unlawful attack is lawful as self-defense, unless the act manifestly exceeds what in an overall assessment is to be deemed justifiable, taking into account the nature and strength of the attack, the identity of the defender and the attacker and the other circumstances.

(2) However, if the defense exceeds the limits of self-defense (excessive self-defense), the perpetrator is exempt from criminal liability if the circumstances were such that the perpetrator could not reasonably have been expected to have acted otherwise, taking into account the dangerousness and sudden nature of the attack and the situation also otherwise.”²¹¹

It is always difficult to define such terms and most likely gaps will always exist. Therefore, the focus can be more on how the law is interpreted. Whether the interpretation is loose or strict. Section 4 (1) leaves room for interpretation by stating that an act is seen as self-defense if it does not manifestly exceed what is regarded in an overall assessment as justifiable. However, there might be an issue with interpreting whether an act exceeds what is seen as justifiable. In such cases it is important that all possible factors are taken into consideration. The section does not mention anything about a psychologist’s opinion and statement regarding the case because it is very

²¹⁰ Valtioneuvosto, Finland to lead the Committee of the Parties to the Istanbul Convention. Available online: <https://valtioneuvosto.fi/-/finland-to-lead-the-committee-of-the-parties-to-the-istanbul-convention> (07.04.2022).

²¹¹ Finnish Criminal Code 39/1889, Chapter 4, Section 4.

important to also have a psychological analysis to determine how people normally react in such situations and why.

Moreover, section 4 (2) states that there is a possibility that the perpetrator may be exempt from criminal liability even if the limits of self-defense are exceeded. This requires circumstances in which the perpetrator was not left with other options than to act in a certain way. This section also brings up the importance of recognizing the dangerousness and sudden nature of the attack and the entire situation as a whole.

All in all, the section on self-defense seems to be relatively adequate and takes into consideration important factors. Of course, it is somewhat vague and leaves room for interpretation, but this is necessary in several ways. If it was too precise, there is the chance that it could leave something important out, which would amount to a bigger problem compared to vagueness. Nevertheless, it is left for the state's authorities to interpret this law and it is up to them whether, the outcome is appropriate or not.

3.2.1 Case on self-defense

The following case is a case of domestic violence that concerns a woman who was convicted of excessive self-defense. She was later pardoned by the Finnish President, Sauli Niinistö. What makes this case more remarkable is that Niinistö is known for being strict with pardoning compared to his predecessors.²¹² By his pardon, the president changed the woman's judgement from unconditional imprisonment to conditional imprisonment. This likely strengthens the belief that maybe the court did not decide the case in the best possible way. What makes this case suitable to be mentioned, is that the court referred to the Istanbul Convention and the ECtHR. Additionally, this case brings a different point of view to cases of domestic violence. The viewpoint of intersectional feminism would have been extremely beneficial also in this case because the case

²¹² Helsingin Sanomat, Presidentti Niinistö jatkaa tiukkaa linjaa rikoksista tuomittujen armahduksissa: Ainoa tänä vuonna armahdettu on perheväkivallan uhri, joka löi veitsellä miestä selkään. Available online: <https://www.hs.fi/kotimaa/art-2000008478868.html> (8.3.2022).

concerns a woman of Iranian descent living in Finland. Therefore, she represents a minority which is another factor in addition to the fact that she is a woman that affects her experiences.

A's husband B had abused and threatened to kill A and two of their children ages nine and ten. After this A hit B twice with a sharp knife in the back. The question in this case was whether A had acted in self-defense and whether the attempted killing had taken place taking as a whole regarding mitigating circumstances. Additionally, there was a question of imposing a penalty.

A and B have three children together who at the time were nearly two, nine, and ten years old. According to the claims B had hit the 9-year-old in the face causing nosebleed and pain in the right cheek.²¹³ He had also hit the 10-year-old in the face and kicked in the leg causing the child pain in the thigh, behind the neck, and the right temple.²¹⁴ He had torn A's hair, hit her on the face and dragged her to the bathroom so that A had fell on the floor where B had hit and kicked her in the stomach area.²¹⁵ A had lost consciousness for a while and she had tenderness in her lower abdomen and face and swelling in her mouth area.²¹⁶ B had also threatened to kill A.²¹⁷

As background information it is good to know that B had abused A since 2008.²¹⁸ Additionally, the two older children had both expressed that their father had hit them or pulled their hair or ears.²¹⁹ According to A and witnesses Y and Z, A has had throughout the years several injuries that have been a result of the abuse that B had done to A. A had also been twice in a shelter together with her children. Once in 2008 for six months and in 2015 for four weeks. The length of both stays immediately catches the eye. Neither of the stays was just a few days, especially the six-month stay in 2008. The lengths of these stays possibly reflect the lack of safety that A and her children experienced at home with B being present. Because in principle people usually would prefer staying at home, instead of a foreign place, showing that for someone to stay away from their own home for such a long time does very likely indicate that one does not feel safe and comfortable in

²¹³ KKO:2020:88, section 2.

²¹⁴ *Ibid.*

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*, section 24.

²¹⁹ *Ibid.*

their home. Especially taking into consideration that A had children, which means that even more caution needs to be taken. B had also been convicted in 2009 for assaulting A, which proves that the violence that took place was not solely something that took place once, but rather has been repeating itself throughout the years.²²⁰ The Highest Court also mentioned that it is extremely typical that domestic violence may remain partially or totally unreported.²²¹ This does not indicate the lack of severity of the violence experienced but rather the fear that the victim may experience which leads them to refrain from reporting the situation. Because the victim might be afraid of the reaction of the abuser, if the victim reported the case, which might put the victim in more danger than before. Regarding the nature of the issue and how common it is that such cases stay unreported, the Court noted that comprehensive evidence of reoccurring domestic violence is not presented.²²² Therefore, the Court saw that it appears to be that A and the two older children had been afraid of B who had treated at least A in a contemptuous manner due to her gender.

The Court stated that it took into consideration the ECHR and the Istanbul Convention while making its decision.²²³ The Court brought up that in the light of the conventions it could be interpreted that while assessing self-defense and whether self-defense is justified, it is important to pay attention to how the victim who has experienced long-term or constant domestic violence has reacted earlier to such domestic violence.²²⁴

After analyzing the entire case, the Highest Court stated that according to the previous experiences of violence that A had faced, it could not be seen that these happenings would have affected A to the extent that the two hits with the knife could be seen as an adequate form of defense or that she could not reasonably have been required to abstain from these hits.²²⁵ Due to these findings, the Court stated that they do not have evidence to evaluate the situation as self-defense and therefore, sees that A did not act within the criteria of self-defense while hitting B with a knife.²²⁶

²²⁰ KKO:2020:88, section 24.

²²¹ *Ibid.*

²²² *Ibid.*

²²³ *Ibid.*, section 25.

²²⁴ *Ibid.*

²²⁵ *Ibid.*, decision.

²²⁶ *Ibid.*, decision.

Bearing in mind the decision of the Highest Court, it is interesting to see that the President of Finland had a slightly different view of the case, since by pardoning A, he changed her judgement from unconditional imprisonment to conditional imprisonment. Looking at the decision of the court bearing in mind the entire situation, the decision might look a bit harsh. The court acknowledges the fact that in general several cases of domestic violence remain unreported, and it recognizes the reasons to why such cases remain unreported.²²⁷ Additionally, the Court knew that A and her children had been in a shelter on two different occasions for a longer period of time, which shows that the fear that A has had for her, and her children has been quite significant.

It shall not remain unnoted, that the decision of the highest Court was conducted with a majority of men. Which does raise questions whether the actual fear A was in, has been properly understood. As stated earlier, it is important to note that President Niinistö has been a lot stricter with his pardons compared to the previous presidents.²²⁸ This does raise a lot of questions as to whether the Highest Court had done the correct decision and if the Court gave enough weight to the previous acts of domestic violence that A and her children had faced. It must be taken into consideration that not only did A fear for her life, but also for the lives of her three children, which could possibly explain the need she saw to act in the way that she did. It could be possible that her actions would have been different if she feared only for her own life and not also for the lives of her children. Additionally, when a person experiences constant domestic violence the fear of something severe happening could possibly grow, which can affect the way a person acts, increasing the measure that they would take to protect themselves and others. This is something that should definitely be considered when interpreting the law on self-defense. As mentioned earlier the Finnish Criminal code defines self-defense and it states that in addition to taking into consideration the nature and strength of the attack also other circumstances need to be considered.²²⁹ In this case this could mean that for example the fact that she did not only fear for her own life, should be considered. Even though the courts justified their decisions, they did not necessarily give enough weight to certain aspects such as A fearing also for her children. Therefore, it could be seen that the courts might

²²⁷ KKO:2020:88, section 24.

²²⁸ Helsingin Sanomat, Presidentti Niinistö jatkaa tiukkaa linjaa rikoksista tuomittujen armahduksissa: Ainoa tänä vuonna armahdettu on perheväkivallan uhri, joka löi veitsellä miestä selkään. Available online: <https://www.hs.fi/kotimaa/art-2000008478868.html> (8.3.2022).

²²⁹ Finnish Criminal Code 39/1889, Chapter 4, Section 4.

have done a loose interpretation of this law and not used it to its full potential because according to the law one of the courts could have come to the same decision as President Niinistö in his pardon. Coming back to what was already discussed: the Finnish law on self-defense does leave a lot of interpretation but here the courts had the opportunity to make a different interpretation of it by paying more attention to what could have been seen as other circumstances and how much weight these other circumstances have.

As mentioned, the fact that President Niinistö decided to pardon A is an interesting and important factor considering that Niinistö has not been as generous with pardons compared to the earlier Presidents of Finland.²³⁰ Niinistö's decision can also be looked at from the perspective of international law in the sense that, whether his decision to pardon A had to do with the courts not following international law and the positive duties of international law regarding women's rights. Therefore, the question is whether it is possible that the courts did not comply with international law when assessing and deciding the case. According to the Istanbul Convention states have as one of their positive duties to conduct investigations.²³¹ In this case A and her children had been twice in a shelter, meaning that there is a record of their stay and the reason for it. Moreover, this raises question on whether a more in-depth investigation should have been conducted to find out the severity of the situation. If so, there is a possibility that the case would have ended in a better way if a more thorough investigation had been conducted already from the very beginning. In this case the possible investigation could also have acted as a preventive measure, meaning that A could have possibly suffered less violence if measures would have been taken earlier. In this case it could be the case that A did not receive adequate treatment that she should have been granted according to the Istanbul Convention.

Having the perspective of intersectional feminism as one of the positive duties was discussed in the previous chapter. As seen, it is currently not one of the positive duties of states. However, it would have been beneficial for example in this case to take into consideration that A had an ethnic

²³⁰ Helsingin Sanomat, Presidentti Niinistö jatkaa tiukkaa linjaa rikoksista tuomittujen armahduksissa: Ainoa tänä vuonna armahdettu on perheväkivallan uhri, joka löi veitsellä miestä selkään. Available online: <https://www.hs.fi/kotimaa/art-2000008478868.html> (8.3.2022).

²³¹ The Council of Europe Convention on preventing and combating violence against women and domestic violence, 11 May 2011, Article 5 (2).

background, which means that this was another factor that affects her experiences, in addition to the fact that she is a woman. However, there was no mention done by the courts about the effects of this.

Overall, the court probably should have done a more precise investigation and paid more attention to the situation itself to be able to see the real threat that A experienced. Moreover, the court did recognize international law and mentioned it as well but the question in this case is whether it focused on all aspects enough. If the court would have considered the situation that A faced in more detail, there is a possibility that it would have reached the same decision as President Niinistö.

CONCLUSION

This thesis has conducted an analysis that ranges from international law to domestic law. It analyses the CEDAW, Istanbul Convention, ECHR, and the Finnish law on self-defense. Since gender-based violence is such an important topic and significant issue that has been getting worse due to the COVID-19 pandemic, it is important to analyze the situation and find out how the rights of women could be protected in a better way in order to minimize the cases of domestic violence. Different structural issues that cause gender-based discrimination that leads to for example domestic violence is discussed and analyzed by the author.

The protection of women from violence and domestic violence is rooted in the universal principle of human rights and freedoms protection, which was primarily laid down in the Charter of the United Nations in 1945. The UN defines domestic violence as being a pattern of abusive behavior that occurs in any kind or relationship. Domestic violence has been an issue throughout time and still continues today and due to the COVID-19 pandemic it has just gotten worse. Domestic violence is shaped by different aspects such as culture and political views. The main reason why domestic violence still is in such a dominant role is because it roots from the patriarchal view which justifies the power of men over women. Giving one gender power over the other often results in having the more powerful gender exercising power in various fields and this includes the home environment that then easily leads to domestic violence. The fact that domestic violence is still in many parts of the world seen as a family issue, results in several women not reporting their cases and hence not receiving any help. Therefore, international law tackling the issue of domestic violence is extremely beneficial and necessary since it externalizes the issue and makes it more visible which then leads to it being more likely that women recognize domestic violence and are able to seek for help. Additionally, having domestic violence as a matter of international law is important also because domestic violence affects women disregarding their socioeconomic backgrounds and education levels. Due to domestic violence affecting women more than men as a result of their gender, it is also described as gender-based violence. The definition of the CEDAW Committee was used throughout the thesis, which defines gender-based violence as violence that is directed against a woman due to her gender and that affects women disproportionately.

The thesis aimed to examine domestic violence from the perspective of international law and whether international law provides a fixed framework of positive obligations for states to follow and how states possibly follow these obligations and the value that the viewpoint of intersectional feminism adds to the understanding and assessing the positive duties in international law and its implementation. In addition, Finland was selected as a case study to see how international law in cases of domestic violence is utilized and applied.

Women's rights belong to the category that still needs a lot of improvement, even though several steps have been taken to improve the situation of women. A point has been reached where small improvements are not enough anymore, instead major improvements and changes need to be made. Additionally, different points of view are important to consider. This includes a viewpoint of intersectional feminism since it brings up significant issues. It is important to keep in mind the actual meaning of feminism, which strives to equality between all genders, rather than aiming to make women superior to men. Since the objective of feminism is to challenge the patriarchal control and allow everyone to enjoy the same rights as men, so that all genders are treated equally under and in the law. The reason why intersectional feminism is an even better approach than feminism, is because intersectional feminism recognizes different power structures that includes race, class, sexuality, and ability that affect the treatment that women receive. Meaning that intersectional feminism recognizes the differences regarding privileges when it comes to women, rather than solely comparing the privileges between men and women, which is something that feminism focuses on.

The CEDAW, Istanbul Convention, and the ECHR deal with domestic violence or have been used in cases of domestic violence. The CEDAW takes into consideration the influence that culture and traditions have on influencing and shaping gender roles and family relations restricting women from enjoying their fundamental rights. It aims to ensure that states recognize the discrimination that women face and make sure that states parties condemn discrimination against women in all its forms. One of the most significant aspects of the CEDAW is that it aims to target the legislation of states by stating that the national constitutions or other appropriate legislation of states shall include the principle of equality. This helps to ensure that the principle of equality is actually followed and not solely mentioned somewhere without it having any concrete significance. Apart from mentioning the principle of discrimination, the CEDAW requires an establishment of the legal

protection regarding the rights of women to be equal compared to the rights of men and highlights the importance of the responsibility that the national tribunals and public institutions in ensuring that women receive equal treatment and do not become the target of discrimination. The Istanbul Convention takes a step forward from the CEDAW by being specifically aimed at preventing and combating violence against women and domestic violence. The Convention lays down as its purpose to contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women. What makes the Istanbul Convention even more significant is that it is the primary instrument in Europe that lays down standards that are legally binding regarding specifically the prevention of gender-based violence, protecting victims of violence and punishing perpetrators. Even the EU has set accession to the Istanbul Convention and sees it as one of its priorities in the EU 2020-2025 in its strategy aiming to achieve gender equality. One of the most significant qualities that the Istanbul Convention has is that it has legal power over the prevention of gender-based violence, victim protection, and punishing perpetrators. The EU having accession to the Convention is significant also because this could possibly widen the use of the Istanbul Convention and use more of its potential. The ECHR does not specifically address discrimination against women, domestic violence, or any other gender-based human rights violence that women face. However, the ECtHR has dealt with such cases by referring to the articles of the ECHR, proving that also the ECHR can be used in cases regarding women's rights. An example of articles that have been used by the ECtHR in cases of domestic violence are Articles 2, 3, and 14. The cases that the ECtHR has dealt with demonstrate how and to what extent the ECHR is applied in cases of domestic violence.

International law has multiple ways that it can be interpreted in. The cases analyzed are from the ECtHR and the CEDAW Committee. The ECtHR has pointed out in its cases the issues that the domestic authorities have totally neglected and the existing national issues regarding the rights of women that lead to breaches of women's rights. In *Tkheldize v. Georgia* the Court showed how neglecting the needs of a woman and not providing her with appropriate protection can result in the breach of Article 2 read in conjunction with Article 14 of the ECHR. The Court highlighted how in this case the police had grossly neglected the attempts of the applicant's daughter to seek for help while she was facing severe danger. The ECtHR stated that this case displays a failure in the system that required further inspection on whether the lack of action from the police resulted from gender-based discrimination and gender bias. The cases of the ECtHR that were dealt with in

this thesis demonstrate the importance of providing proper assistance for the victims of domestic of domestic violence and the role of the state. Additionally, the cases showed that states do not take the actions that they are required to in order to adequately protect the rights of the victims of domestic violence. The CEDAW Committee showed in the case of Cecilia Kell v. Canada why it is important to take the perspective of intersectional feminism into consideration because in this case the state has disregarded that the applicant was an aboriginal woman. The CEDAW Committee has also pointed out the structural issues that states have regarding the protection of women's rights. It also demonstrated how a case involving children shall be dealt with since the state authorities had totally neglected the concerns of the child's mother that she had regarding her child. The hypothesis that was made in the introduction of the thesis stating that the ECtHR and CEDAW Committee lack systematic approach to domestic violence is shown to be partially false. The CEDAW Committee did acknowledge intersectionality, however the other cases of both courts had no mention of it to make sure that there are no other factors that should be acknowledged. According to this information the courts do not have a proper systematic approach to domestic violence that would acknowledge that women can be discriminated on multiple grounds.

States have positive duties that derive from international law. According to the Istanbul Convention states parties have the duty to take the required legislative and other measures which enable the exercise of due diligence to prevent, investigate, punish, and provide reparation for acts of violence included in the scope of the Convention and that are executed by non-State actors. States are also obliged to construct free of charge nationwide telephone helplines that must be accessible all-day round, and this shall be done either through legislative or other measures. These are some of the minimum positive duties that states have. However, it would be extremely beneficial to have the viewpoint of intersectional feminism as one of the positive duties of states while dealing with cases of international law, since currently the scope of positive duties is not that wide due to the lack of intersectional feminism. This includes the extent of positive duties regarding reoccurring structural issues. Intersectional feminism recognizes the different power structures that affect the lives of women, thus providing a better and more inclusive protection of women's rights. This was seen in the case of Cecilia v. Canada where the CEDAW Committee acknowledged the Kell was an aboriginal woman. However, the cases that were presented demonstrate that states have not acknowledged intersectional feminism. It was also shown that states do not necessarily fulfill their duties but rather end up continuing the structural issues that result in neglecting the rights of

women. The second hypothesis that was made in the introduction stating that there is unclarity about the scope of States' positive duties in international law and practice is shown to be true when looking at the cases presented in this thesis.

The case study of Finland provides an example of a case of domestic violence and how it is handled on state-level. Finland has ratified several human rights treaties of the UN and is often viewed as a role model in various aspects including gender equality. Despite this, Finland does have aspects that require improvement since several women in Finland experience domestic violence. The CEDAW has had a significant positive influence on the Finnish equality law. Finland has ratified the CEDAW without any reservation and it has made the required changes. Finland was ready to undergo the amendments regarding the Finnish legislation to enable the signing process of the CEDAW.

Finland had recently a case of domestic violence that concerns a woman who was convicted of excessive self-defense. What made this case significant was that Sauli Niinistö, the President of Finland, who is known to be extremely strict with pardons, had pardoned this woman. The President's pardon changed the woman's judgement from unconditional imprisonment to conditional imprisonment. This may strengthen the belief that the case might not have been decided properly and that the court could possibly have neglected some of its positive obligations deriving from international law.

To conclude, according to the author there is still a lot to do regarding the protection of women in international law in the field of domestic violence. However, the steps that have already been taken are also significant. Furthermore, the author wants to stress the importance of adding the perspective of intersectional feminism as to one of the positive obligations of states since it is clear that such a point of view is important which is also proven by different cases. Especially since the pandemic has caused the cases of domestic violence to increase significantly, actions need to be taken immediately, to end this misery that women face all over the world.

REFERENCE LIST

Books

1. Bachelet, M. (Women's Rights as Human Rights). IN Achieving Gender Equality, Women's Empowerment and Strengthening Development Cooperation. 1st ed. New York 2010.
2. Edwards, A. Violence Against Women Under International Human Rights Law. Cambridge University Press. 1st ed. New York 2010.
3. Hellum, A, Aasen, H.S. Women's Human Rights: CEDAW in International, Regional and National Law. Cambridge University Press. 1st ed. United Kingdom 2013.
4. Henn, E. V. International Human Rights Law and Structural Discrimination: The Example of Violence against Women. Springer 1st ed. Berlin 2019.
5. Kramer, A. *et al.* The Feminism Book (Big Ideas Simply Explained). Dorling Kindersley. Great Britain 2019.
6. LeGates, M. In Their Time: A history of Feminism in Western Society. Routledge 1st ed. New York 2001.
7. Losh, E, Wernimont, J. Bodies of Information Intersectional Feminism and Digital Humanities University of Minnesota Press. 1st ed. Minnesota 2019.
8. The United Nations and the Advancement of Women 1945-1996, United Nations Department of Public Information. 1st ed. 1996, p 8.
9. Oxford, A. *et al.* The Oxford Handbook of the Theory of International Law. Oxford University Press 1st ed. New York 2016.
10. Walters, M. Feminism: A Very Short Introduction. Oxford University Press 1st ed. New York 2005.

Journal Articles

11. Burman, M, Svensson, E-M. Women's Rights in the Governance of the Arctic: Gender Equality and Violence against Indigenous Women. - The Yearbook of Polar Law 2017/1.

12. Chernikov, V.V, Goncharenko, O.K. The problems of violence against women in international law. - Vestnik of Saint Petersburg University Law 2021/3.
13. Fellmeth, A.X. Feminism and International Law: Theory, Methodology, and substantive Reform. - Human Rights Quarterly 2000/3.
14. Hellum, A, Aasen, H.S. Women's Human Rights: CEDAW in International, Regional and National Law. Cambridge University Press. 1st ed. United Kingdom 2013.
15. J. Hucherby, Feminism and International Law in the Post-9/11 Era. - Fordham International Law Journal, 2016/3.
16. Nasrawing, L. Protection against Domestic Violence in Jordanian Law and International Conventions. - Arab Law Quarterly 2017/4.
17. Orford, A. Feminism, Imperialism and the Mission of International Law. - Nordic Journal of International Law 2002/2.
18. Radacic, I. Feminism and Human Rights: The Inclusive Approach to Interpreting International Human Rights Law. - UCL Jurisprudence Review 2008/1.
19. Raday, F. Gender and democratic citizenship: the impact of CEDAW. – International Journal of Constitutional Law, 2012/2.
20. Rudolf, B, Eriksson, A. Women's Rights under International Human rights Treaties: Issues of Rape, Domestic Slavery, Abortion and Domestic Violence. – International Journal of Constitutional Law 2007/3, p 523.
21. Solanki, G, Gangoli, G. Defining Domestic Violence and Women's Autonomy in Law. – Socio-Legal Review 2016/1, 57.

International instruments

22. Charter of the United Nations, 26 June 1945.
23. The Universal Declaration of Human Rights, 10 December 1948.
24. European Convention on Human Rights, 3 September 1953.
25. Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979.
26. The United Nations Convention on the Rights of the Child, 20 November 1989.
27. The Council of Europe Convention on preventing and combating violence against women and domestic violence, 11 May 2011.

Cases from the European Court of Human Rights

28. ECtHR 39272/98, M.C. v. Bulgaria.
29. ECtHR 8227/02, E.S. and Others v. Slovakia.
30. ECtHR 33401/02, Opuz v. Turkey.
31. ECtHR 3621/07, Durmaz v. Turkey.
32. ECtHR 33234/07, Valiulienė v. Lithuania.
33. ECtHR 55354/11, Civek v. Turkey.
34. ECtHR 41237/14, Talpis v. Italy.
35. ECtHR 48756/14, Tërshana v. Albania.
36. ECtHR 33056/17, Tkhelidze v. Georgia.

Cases from the Committee on the Elimination of Discrimination Against Women

37. CEDAW Committee 2/2003, A.T. v. Hungary.
38. CEDAW Committee 19/2008, Cecilia Kell v. Canada.
39. CEDAW Committee 20/2008, V.K. v. Bulgaria.
40. CEDAW Committee 024/2009, X and Y v. Georgia.
41. CEDAW Committee 32/2011, Isatou Jallow v. Bulgaria.
42. CEDAW Committee 47/2012, González Carreño v. Spain.

Finnish cases

43. KKO:2020:88.

Finnish law

44. Finnish Criminal Code 39/1889.

Other sources

45. Convention on the Elimination of All Forms of Discrimination Against Women, General Recommendation 19, 1992.
46. European Parliament. The Istanbul Convention: A tool for combating violence against women and girls. [https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698801/EPRS_ATA\(2021\)698801_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698801/EPRS_ATA(2021)698801_EN.pdf).
47. The UN 2030 Agenda for Sustainable Development: <https://sdgs.un.org/goals/goal5> (2.3.2022).
48. United Nations. Women's Rights are Human Rights. - United Nations Publication 2014/1.
49. UN Women Report. Measuring the Shadow Pandemic: Violence Against Women During Covid-19, 2021.

Internet sources

50. European Parliament, The Istanbul Convention: A tool for combating violence against women and girls. Available online: [https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA\(2021\)698801#:~:text=The%20Council%20of%20Europe%20Convention,of%20violence%20and%20punish%20perpetrators.](https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2021)698801#:~:text=The%20Council%20of%20Europe%20Convention,of%20violence%20and%20punish%20perpetrators.) (10.2.2022).
51. Finnish Government, European gender equality ministers call on European countries to join Istanbul Convention without delay to reduce violence against women. Available online: <https://valtioneuvosto.fi/en/-/1271139/european-gender-equality-ministers-call-on-all-european-countries-to-join-istanbul-convention-without-delay-to-reduce-violence-against-women> (22.2.2022).
52. Helsingin Sanomat, Presidentti Niinistö jatkaa tiukkaa linjaa rikoksista tuomittujen armahduksissa: Ainoa tänä vuonna armahdettu on perheväkivallan uhri, joka löi veitsellä miestä selkään. Available online: <https://www.hs.fi/kotimaa/art-2000008478868.html> (8.3.2022).
53. Merriam-Webster Dictionary “patriarchy”. Available online: <https://www.merriam-webster.com/dictionary/patriarchy> (25.1.2022).

54. National Park Service, A Note about Intersectionality. Available online: <https://www.nps.gov/articles/lgbtqtheme-intersectionality.htm#footnote1> (2.1.2022).
55. Police of Finland, Domestic violence. Available online: <https://poliisi.fi/en/violence-in-close-relationships> (22.3.2022).
56. UN Women, World Conferences on Women. Available online: <https://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women> (15.02.2022).
57. UN Women, Press release: 25 years after a landmark global agreement, the numbers still don't add up for women in Europe and Central Asia. Available online: <https://www.unwomen.org/en/news/stories/2020/10/press-release-report-from-europe-and-central-asia-tracks-progress-25-years-after-beijing-platform> (15.02.2022).
58. United Nations, What is Domestic Abuse? Available online: <https://www.un.org/en/coronavirus/what-is-domestic-abuse> (14.2.2022).
59. Valtioneuvosto, Finland to lead the Committee of the Parties to the Istanbul Convention. Available online: <https://valtioneuvosto.fi/-/finland-to-lead-the-committee-of-the-parties-to-the-istanbul-convention> (07.04.2022).
60. World Health Organization, Coronavirus disease (COVID-19): Violence against women. Available online: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19-violence-against-women> (14.3.2022).
61. Yle, Report: One in three women in Finland experience relationship violence. Available online: <https://yle.fi/news/3-12204299#:~:text=According%20to%20the%20Finnish%20branch,and%20the%20empowerment%20of%20women.> (23.3.2022).