

**Women as Slaves of Others:
Violence Against Women Through the Lens of the
European Court of Human Rights**

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Abstract

The capstone project investigates three forms of violence against women: intersectional discrimination, rape and femicide. These forms are explored through the social and legal lens. The main social lens applied is Simone de Beauvoir's concept of 'women as other', together with the concept of 'intersectionality' and concept of 'feminicide.' The legal framework that is used for the analysis is the case-law of the European Court of Human Rights and legal standards that the Court made. My aim is to explore several forms of women's oppression and the interdependency of the social and legal framework. Further, my aim is to identify the gaps between legal protection, its implementation and reality. Also, I will present which changes and legal recognition of violence case-law has brought. Lastly, my aim is to give policy recommendations and to raise awareness of these injustices and my voice through the practical part: the BLOG platform. The platform will serve as a channel of advocacy for women's rights and as a platform for women's empowerment.

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1. Introduction

The patriarchal society over and over again emphasizes women's subordination, and entrenches male dominance and its power over the women's bodies. Women's bodies are often used as 'tools' in the dominant power relations. Women are subjected to violence in various forms and often are collateral damage of the dominant, patriarchal power. Structural violence and women's subordination are complex, global issues. In each area of the world several similar structures of violence are happening repeatedly.

The women's rights abuses where the women's bodies are collateral damage of the dominant power will be presented through the three examples discussed in the paper: intersectional discrimination, rape and femicide. These three forms of violence against women have in common that the woman's body serves as an area for the exercising the dominant, patriarchal power. It negatively affects the woman's bodily integrity and psychological integrity. Also, the woman's right to life, dignity, privacy, and many other rights are taken by these forms of violations. Consequently, these human rights abuses point out oppressive gender relations and social constructs of gender. Hence, social norms and constructs affect the legal reality, and the legal reality affects and constructs social norms.

In order to understand deeply rooted systematic issues and to suggest practical policies for their solutions, the women's rights abuses under scrutiny will be addressed through the social and legal lens. The main social concept that will be used is the Simone de Beauvoir's concept, which explained the relationship between man and woman as the relationship between 'master and slave.'¹ In the words of Simone de Beauvoir, women are often present in their relation to men as a 'passive object' due to the lack of physical power.² Also, a woman's body is often the source of 'honor and shame.'³ Beauvoir discussed how those views of women are controversial, because they are built by men: 'women only exist in the projection of men's need of her.'⁴ Hence, women are presented as OTHERS in correlation with men who are powerful and dominant over them. It creates distinction between WE and OTHERS, and it is one of the key concept of Beauvoir's understanding of women oppression, where women are

¹ Simone de Beauvoir, *The Second Sex* (1949).

² *ibid.* 306-307.

³ *ibid.*

⁴ *ibid.*

inferior, less developed, vulnerable and the like.⁵ The mentioned distinction where is ‘man as a subject and woman as other’, present the key concept of Beauvoir’s understanding of the women oppression in patriarchal world.⁶ Therefore, woman’s existence is defined as ‘opposed to the essential,’ where man is the essential subject.⁷ Women’s bodies are object of ‘another gaze’ that is not defined in biology but in ‘education and surroundings.’⁸

Furthermore, in this duality, laws and legislations are created by men.⁹ Even through the historical feminist lens, the legal status of women and the protection of women’s rights were never fully equal with the men.¹⁰ The legal reality had a huge impact on social reality and vice versa. Therefore, the woman’s body is materialized and it carries social meanings. The case-law of the European Court of Human Rights (ECtHR) will be used in order to explain how social reality and several forms of women’s oppression affected the legal reality and deconstruct and redefined the legal framework. My aim is to prove the interdependency of the legal and social framework in the protection of women’s rights and dignity. The identification of the social issues and discriminatory practices is the first and crucial step toward legal recognition and protection.

More specifically, my aim is to present how case-law, as a living instrument, challenges existing protection, interpretation of the European Convention of Human Rights (ECHR) and identifies gaps between legal provisions and reality. Further, how case-law identifies gaps between national laws of member States and their compliance with the ECHR. I seek to demonstrate how the jurisprudence of the ECtHR creates standards for the protection of women’s rights and establishes positive obligations for the Member States of the CoE that ultimately can contribute to dismantling the existing oppressive structures. Finally, I plan to illustrate how these standards and obligations affect the legal reality and shape legal standards on the protection of women’s rights while influencing social reality and social norms at the same time. In the concluding remarks, I will give policy recommendations regarding the protection and prevention of violence against women.

The legal aspects will be presented through the lens of the case-law of the European Court of Human Rights (ECtHR or Court). The ECtHR is a regional human rights Court founded in

⁵ *ibid.*

⁶ Lennon Kathleen, ‘Feminist Perspectives on the Body’ [2019] Stanford Encyclopedia of Philosophy <<<https://plato.stanford.edu/archives/fall2019/entries/feminist-body/>>>.

⁷ Simone de Beauvoir (n 1).21.

⁸ Lennon Kathleen (n 6).

⁹ Simone de Beauvoir (n 1).21.

¹⁰ *ibid.*20.

1959 in the Council of Europe (CoE).¹¹ The three main pillars of the CoE are: democracy, rule of law and human rights constituted in Article 8 of the Statute of the CoE.¹² The specific rights are protected by the European Convention of Human Rights and Fundamental Freedoms (ECHR).¹³ Individuals may submit complaint directly to the ECtHR against the member state alleging the violation of their rights enshrined in the ECHR.¹⁴ The Court has a possibility for individual complaints against the State of violation of rights guaranteed by ECHR.¹⁵ The judgments of the ECtHR are legally binding for the States in cases to which they were party.¹⁶ It covers the wide scope of protection of the people's rights in 46 countries, members of the COE.¹⁷

Furthermore, the case-law of the ECtHR presents 'a powerful living instrument that challenging the rule of law and democracy in Europe.'¹⁸ The Court conceded the fact that the ECHR is the living instrument in 1978 in the case *Tyrer v. the UK*.¹⁹ In the mentioned case, the Court emphasized that the ECHR 'must be interpreted in the light of present-day conditions.'²⁰ The meaning of the 'living instrument' is referring to the present-day developments and standards in the CoE as a 'counterweight to the moral climate prevailing in the correspondent state.'²¹ Therefore, the interpretation of the ECHR is 'evaluative.'²²

Considering all the above, these injustices will be investigated in the following order: The first part of the case study will reflect the complexity of intersectional discrimination through the example of the forced sterilization that Romani women have faced; The second part will be focused on rape, and it will present chronologically how case-law challenged existing protective provisions concerning rape. The third part will investigate femicide and its complexity and limitations of the existing legal provisions. Lastly, the concluding part will present the policy recommendations.

¹¹ Council of Europe, 'European Court of Human Rights' <<https://echr.coe.int/Pages/home.aspx?p=home>>.

¹² Council of Europe, 'Statute of the Council of Europe'.

¹³ Council of Europe, *European Convention on Human Rights and Fundamental Freedoms* (1950).

¹⁴ *ibid.* Article 34.

¹⁵ Council of Europe, 'European Court of Human Rights' (n 11).

¹⁶ *ibid.* Art.46.

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ Andreas Føllesdal, Birgit Peters, and Geir Ulfstein, *Constituting Europe: The European Court of Human Rights in a National, European, and Global Context* (Cambridge University Press 2013).109.

²⁰ *ibid.*109.

²¹ *ibid.*112.

²² *ibid.*113.

2. Intersectionality

The first example of women's oppression and violent practices that I will investigate is the intersectional discrimination of the Romani women. Women who are part of the ethnic minority groups are among the most vulnerable groups in Europe.²³ My focus will be on their oppression by the State and Public authorities. The State authorities present dominant power in the relation to disadvantaged Romani women. They face intersectional discrimination and they are the victims in the cases where their ethnicity and their gender intersect in the oppressive patriarchal system. Hence, Romani women are facing discrimination and oppression on the several levels.²⁴ They have faced historical injustice, as ethnic minority and as women. These injustices have been mirrored in forced sterilization, early marriages, segregations, forced prostitution and trafficking, as many other forms of violence and discrimination.²⁵ These complex and deeply-rooted issues are still present, as well as intersectional discrimination by different dominant actors.

The injustice that the Romani women faced will be presented via the case-law of the European Court of Human Rights and Crenshaw's theory of intersectionality. The case that will be presented is highly compound and is related to the violation of the rights and dignity of Romani women. The case-law manifests the failure of the States to prevent, protect and investigate. Thus, States in these cases failed to fulfill their obligations towards the European Conventions of Human Rights. Therefore, I am aiming to present the complexity of the intersectionality of gender and race; and how the intersectional subordination and social constructs of Romani women have a huge impact on their social and legal reality.

To begin with Crenshaw's theory, the intersection of race and gender shapes structural, political and representative subordination.²⁶ The global stereotypes and social constructions regarding Romani women have a huge impact on the legislation and policies. Her approach emphasizes the need for consideration of multiples identities in the construction of the social world.²⁷ Crenshaw argues that 'all interventions for the prevention of discrimination against

²³ Sandra Fredman, 'Double Trouble: Multiple Discrimination and EU Law' [2005] *European Anti-discrimination Law Review* 2 13.13.

²⁴ Debra L. Schultz, 'Translating Intersectionality Theory into Practice: A Tale of Romani-Gadže Feminist Alliance' [2012] *The University of Chicago Press* 37.37.

²⁵ Rita Izsa'k, 'The European Romani Women's Movement: The Struggle for Human Rights' [2009] *Society for International Development* 200.16.

²⁶ Kimberle Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' [1991] *Stanford Law Review* 1241.1244.

²⁷ *ibid.* 1245.

women will have a limited reach if they do not also specifically address the economic, social and political contexts in which these women live.’²⁸ Therefore, the approach of intersectional subordination is applicable in the case of Romani women’s lives, and their personal and professional experiences. Also, it is necessary to identify and deconstruct deeply rooted social constructions that influence discriminatory and oppressive practices. The case-law of the ECtHR will showcase the standards and obligations of the States. Also, it will reveal discriminatory practices of the State authorities based on prejudices and stereotypes.

Moreover, the complexity of intersectional discrimination is well illustrated in the case: *V.C. v Slovakia*.²⁹ This case addresses the complex issue of the oppression and the forced sterilization faced by Romani woman in the public hospital in Slovakia. The case highlights ‘the atmosphere of racism and social fear’ from Roma people in institutions, particularly in public health institutions.³⁰ The hostile attitude of state authorities was specially reflected in ‘the long-established practices of sterilization.’³¹ This case, as many others against the same respondent state (e.g. *N.B. v Slovakia*, and *I.G. and others v. Slovakia*), was not recognized as violation of women’s rights by the domestic authorities in Slovakia and no remedy was offered to the victims before the domestic courts. Hence, many of them finished in front of the ECtHR.

In the case *V.C. v Slovakia*, the applicant complained that she was sterilized without her informed consent during the caesarean section when delivering her second child, which in her submission, constituted a violation of Articles 3, 8, 12, 13 and 14 of the ECHR.³² She did not understand the term ‘sterilization’, and she signed some form in the fear that otherwise there would be fatal consequences.³³ Since she was in the last stage of the labor, her cognitive capacities were under the influence of the enormous pain and no one took time to provide her further information. She sought a remedy before domestic courts in the vein: the state authorities did not recognize the violation of her rights. The ECtHR found violation of Article 3 of the ECHR (prohibition of torture, inhuman and degrading treatment) and violation of Article 8 (right to respect private and family life) of the applicant.³⁴

²⁸ European Roma Rights Centre, ‘Multiple Discrimination’ <<http://www.errc.org/cikk.php?cikk=3564>>.27.

²⁹ European Court for Human Rights, ‘V.C. v. Slovakia’ (Application No. 18968/07).

³⁰ Journeyman Pictures, *Forced Sterilization of Romany Women in Slovakia (2003)* <https://www.youtube.com/watch?v=IxCS_QOtKRc>.

³¹ *ibid.*

³² Council of Europe, *European Convention on Human Rights and Fundamental Freedoms* (n 13).

³³ European Court for Human Rights (n 29).

³⁴ *ibid.*

The state justified the sterilization as lifesaving surgery. The Court emphasized that sterilization is not lifesaving surgery.³⁵ Hence, the treatment of sterilization that victim faced was consider under the scope of Article 3. Further, the violation of Article 8 and the victim's right to family was violated during these racist practices. Even though the Court did not examine the accusation under Article 14 concerning discrimination, the fact is that Slovakia has history of sterilization provisions and practices toward Romani women.³⁶

Nevertheless, Judge Mijovic's dissenting opinion highlights a systematic and profound issue in society that concerns Roma, especially Romani women.³⁷ She pointed out that the state policy existed for the sterilization of Romani women in the communist regime.³⁸ According to the Judge Mijovic, the applicant was 'marked out and sterilized because of her origin', and not because there was any relevant medical reason for it.³⁹ She claimed that is the 'strongest form of discrimination' and should constitute a violation of Article 14 as well in conjunction with Articles 3 and 8.⁴⁰ In the words of the International Justice Recourse Centre, forced sterilization is a human rights abuse and can be claimed as 'an act of genocide, gender-based violence, discrimination and torture.'⁴¹ Therefore, the victim in this case and Romani women in general suffered because of their biological predisposition. They were the main objects of the multiple discrimination and oppression by the dominant power: state and public authorities.

The judgment of the previous case and identification of the social issues have brought changes on the International legal field and women's rights protection in general. Hence, awareness concerning these issues has started to change legal and social constructs. The Istanbul Convention recognized the necessity of criminalization of forced sterilization and forced abortion in Article 39:

'Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalized:

³⁵ *ibid.* para 110.

³⁶ *ibid.* para 153.

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ International Justice Resource Center, 'Forced Sterilization as a Human Rights Violation'

<[6](https://ijrcenter.org/forced-sterilization/#:~:text=Forced%20sterilization%20is%20the%20involuntary,viole%2C%20discrimination%2C%20and%20torture.>.</p>
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a) performing an abortion on a woman without her prior and informed consent;

*b) performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.*⁴²

Also, The International Roma Women's Network (IRWN) was established as one of the consequences that Romani women have faced, in order to lobby governments for Romani women's rights.⁴³ The IRWN consisted of Romani and non-Romani women from around 18 European countries.⁴⁴ Their work focused on the difficulties that Romani women have been facing in the health care system due to discrimination and poverty.⁴⁵ One of their first public actions was protest regarding the forced sterilization of Romani women in Slovakia.⁴⁶ The public action, education and awareness are necessary in order to deconstruct deep systematic issues and stereotypes. Thus, the legal and social recognition of the issues are necessary to 'act together' in order to make real change.

The judgment of the ECHR in *V.C. v. Slovakia* is marked as a turning point for Romani women and their rights across Europe. These practices existed in many European countries, especially Slovakia and the Czech Republic. The ruling brought a new dimension of analysis and understanding of the unequal position of Roma, especially Romani women and its consequences. It raised awareness about human rights violations and the insufficiency of legal protection. In the forced sterilization cases, Romani women were considered as 'exotic others' and decisions regarding their body and life were taken by dominant, state authorities. As Simone de Beauvoir claimed: 'women are defined in relation with men',⁴⁷ and in this case in relation to the majority of population. These women were perceived as objects without rights and their bodies were slaves of others. Their rights, dignity and bodily integrity were taken and violated by the dominant power.

⁴² Council of Europe, 'Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence'.

⁴³ 'The International Roma Women's Network Is Launched' (*feminismuz.cz*, 2003)

<<http://www.feminismus.cz/cz/clanky/the-international-roma-women-s-network-is-launched>>.

⁴⁴ *ibid.*

⁴⁵ Rita Izsa'k (n 25).

⁴⁶ *ibid.*

⁴⁷ Simone de Beauvoir (n 1).

3. Rape

The second example of violence against women and women's oppression that will be examined is rape. Rape violates the bodily integrity and human dignity of the woman, and the woman's 'personal, intimate and emotional boundaries.'⁴⁸ Through the lens of the Simone de Beauvoir's theory, rape is the reflection of the patriarchal dominance of woman's body. It controls woman's sexuality and woman's bodily integrity. Consequently, rape has a tremendous emotional, social and physiological negative impact on the women.⁴⁹ In many jurisdictions, rape is defined as 'sexual intercourse/sexual penetration without consent.'⁵⁰ The definition has not been consistent with the reality; it has wide scope from different perspectives and interpretations. The rape and other forms of sexual violence are 'contributing to gender inequalities' and give an emphasis to the men's dominance and constant women's fear.⁵¹

In the rape-related legal and political reforms globally began in the '80s.⁵² Even today, 40 years later, there is still a lot of space for the improvement of their efficiency and implementations.⁵³ The second wave of the feminist movement acquired various legal reforms concerning gender roles and woman's position, including sexual violence and rape.⁵⁴ Further, in the case of the CoE and ECtHR, the case-law established legal standards and positive obligation towards the member states. These legal standards of the ECtHR regarding the rape are integrated in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) and became legally binding.⁵⁵ According to the Istanbul Convention, the case-law of the ECtHR developed the definition and standards regarding rape. In the following part, I will present the three cases of the ECtHR that elaborated on the definition, legal and desired social understanding of rape. To demonstrate the development and also the different layers of this complex issue, the

⁴⁸ Horvath Miranda and Brown Jenifer, *Rape: Challenging Contemporary Thinking* (Routledge, 2009).3.

⁴⁹ *ibid.*3.

⁵⁰ Nicola Malizia, 'A Social Problem: Individual and Group Rape' [2017] *Advances in Applied Sociology* 95 <<https://www.scrip.org/journal/paperinformation.aspx?paperid=74594>>.

⁵¹ Horvath Miranda and Brown Janifer (n 48). 7.

⁵² *ibid.*3.

⁵³ *ibid.*3.

⁵⁴ Maria Alejandra Gómez Duque, 'Towards a Legal Reform of Rape Laws Under International Human Rights Law' *Georgetown Journal of Gender and the Law* <<https://www.law.georgetown.edu/gender-journal/in-print/towards-a-legal-reform-of-rape-laws-under-international-human-rights-law/>>.502.

⁵⁵ European Union Council of Europe, 'Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice' <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/TrainingManualAccessJustice_EN.pdf>.40.

judgments concerning rape will be examined in chronological order. The overview of the selected case-law will also highlight the standards and positive obligations the Court developed towards the member states of the Council of Europe. I chose these three judgments because they showcase several gaps between human rights protection and reality. These cases point out how State failed to prevent, protect and investigate rape allegations. Also, the victims in these cases challenged legal provisions and contributed to the development of wider understanding of rape and women's rights protection.

The first case that addressed rape was: *X and Y v. Netherlands*⁵⁶ from 1985, and it pointed out limitations of the Dutch criminal provisions. The main issue in the case was child rape and access to justice. In that time, she was 16 years old and lived in the privately run hotel for mentally handicap persons. The day after her 16th birthday, she was woken up by Mr. B and was forced to undress and have sexual intercourse with him. He was cousin of the director, who lived in institution, but was not employee. That incident had traumatic mental consequences for her. Hence, the victim's mental handicap, together with the fact that she was the child, increased her vulnerability. It also brought complexity in the case, and importance of the wide criminal provisions.

The father, who was representing the victim complained under Article 3 and 8 in conjunction with Article 14 of the ECHR because state failed to protect his daughter and investigate the criminal complaint he brought on her behalf.⁵⁷ In this case, the ECtHR found violation in Article 8⁵⁸ – the right to private life, and did not examine the under Article 3 and 14. Although the state had a duty to investigate and effectively punish under Article 3, the state failed and did not have effective criminal provisions. The judgment is from 1985, and it created standards for the CoE members regarding the effective criminal provision and human rights protection. Hence, the margin of appreciation concerning Article 8 is related to the particular context and state obligations concerning it: state is free to decide how it complies with it. The Court concluded that there was a gap in the Dutch Criminal Code, and that justice in this case could be achieved just by the criminal procedures that address the alleged violations even if the victim does not have legal capacity.⁵⁹

⁵⁶ European Court of Human Rights, 'Case of X and Y v. Netherlands (Application No. 8978/80)'.

⁵⁷ Council of Europe, *European Convention on Human Rights and Fundamental Freedoms* (n 13).

⁵⁸ *ibid.*

⁵⁹ European Court of Human Rights, 'Case of X and Y v. Netherlands (Application No. 8978/80)' (n 56).

The problematic of definition of rape regarding consent and physical force was assessed in the case *M.C. v. Bulgaria*⁶⁰ from 2003. The victim in this case was raped when she was 14 by two men (20 and 21 years old). The victim claimed that they forced her to have sex and that she cried during the rape. Both of them denied raping her. The victim was found by her mother and taken to the hospital. The state authorities dismissed the case because resistance of the applicant was not established; hence ‘use of force or threats had not been established beyond a reasonable doubt.’⁶¹

The victim complained in front of the ECtHR of the violation of Articles 3, 8, 13 and 14 of the ECHR.⁶² The written expert opinion, submitted to the ECtHR, indicated that the most common response to rape is the ‘frozen fright: traumatic psychological infantilism syndrome.’⁶³ They analyzed 25 rape cases of women in Bulgaria (14-20 years old), and 24 women had the reaction of ‘frozen fright.’⁶⁴ ECtHR emphasized that the state has a positive obligation to ‘enact criminal legislation to effectively punish rape and to apply this legislation through effective investigation and prosecution’ under Articles 3 and 8, meaning the lack of resistance cannot be decisive.⁶⁵ Therefore, the Bulgaria failed to fulfill its obligations under the Article 3 and 8, and failed to protect and investigate.

Additionally, the judgment in *M.C. v. Bulgaria* established that state must adopt effective criminal provisions regarding violence against women and rape. Thus, the crucial legal constitutive element of rape is ‘a lack of consent, not physical force.’⁶⁶ Member states, if they wish to avoid condemnation by the ECtHR, have to implement this standard in their domestic laws. Therefore, this case is one of the most significant cases in the area of women’s protection and it changed the definition of rape on the European level.

The legal definition of rape concerning consent is also laid out in the Istanbul Convention. Hence, this significant standard was set out by the ECtHR and adopted in 2011 by Istanbul Convention.⁶⁷ The definition of sexual violence and rape followed the standard of the *M.C. v.*

⁶⁰ European Court of Human Rights, ‘*M.C. v. Bulgaria* (Application No.39272/98)’.

⁶¹ *ibid.*

⁶² Council of Europe, *European Convention on Human Rights and Fundamental Freedoms* (n 13).

⁶³ European Court of Human Rights, ‘*M.C. v. Bulgaria* (Application No.39272/98)’ (n 60).

⁶⁴ *ibid.* para 70.

⁶⁵ *ibid.* para 158.

⁶⁶ *ibid.* para 163.

⁶⁷ Council of Europe, ‘Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (n 42).

Bulgaria judgment.⁶⁸ The Istanbul Convention via Article 36 defines sexual violence and rape.⁶⁹ It emphasizes that party States shall criminalize any:

‘a) non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;

b) engaging in other non-consensual acts of a sexual nature with a person;

c) causing another person to engage in non-consensual acts of a sexual nature with a third person.’⁷⁰

The 34 states members of the CoE ratified Istanbul Convention, and they are supposed to adjust their criminal provision and legal definition of rape.⁷¹ Even though there is obvious legal progress in the area of the women protection and rape, we are still live in the reality where the victims are framed as ‘attention-seekers.’⁷² The oppressive gender norms and the relationship between man and women as ‘master and slave’ are framed through the Simone de Beauvoir theory.⁷³ The women’s *otherness* lies in deep, patriarchal, systematic frames and oppression. The necessity of movements such as #metoo and ‘let’s talk about yes’, points out the insufficiency of the legal definition and challenging social norms and standards regarding rape and consent.⁷⁴

Finally, repeated rape and violence is address in the case of *M. and Others v. Italy and Bulgaria*.⁷⁵ This case also points out the complex issues of intersectionality and institutional biases during the investigation. In this case, state failed to protect the victim, investigate the crime and punish the perpetrator. The state authorities justified their lack of investigation because of the ‘Roma Culture’, hence, social norms and negative stereotypical constructs stopped the investigation.

⁶⁸ Emma Prins, ‘A Consensus on Consent - Do We Need Consent-Based Legislation?’ [2021] The Hague University of Applied Sciences
<https://www.researchgate.net/publication/348809203_A_Consensus_on_Consent_-_Do_we_need_Consent-based_Legislation>.

⁶⁹ Council of Europe, ‘Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (n 42).

⁷⁰ *ibid.*

⁷¹ *ibid.*

⁷² Emma Prins (n 68).

⁷³ Simone de Beauvoir (n 1).

⁷⁴ Emma Prins (n 68).

⁷⁵ European Court of Human Rights, ‘M. and Others v. Italy and Bulgaria (Application 40020/03)’.

The facts of the case present the four applicants, Roma from Bulgaria, who went to work in Italy in a villa owned by Roma/Serbian man. They claimed that after the six days, beaten and threatened with death the three of them were forced to go back to Bulgaria.⁷⁶ Their daughter, a minor in that time, was forced to stay in the villa. She was repeatedly raped, beaten, threatened and forced to steal.⁷⁷ Her mother came back to Italy and reported in the police that her daughter was kidnapped (24th May). 18 days later, on the 11th June the police went to the villa and rescued the daughter, and eventually the mother and daughter had returned to Bulgaria. There was an obvious gap between the report of kidnapping and the rescue mission of the police. The daughter was not medically examined in Italy, despite her claims that she was ‘repeatedly beaten and raped.’⁷⁸ She had the post-traumatic disorder, bruise in the head, wounds, broken rib, vaginal infection, etc. The Italian authorities investigated reported events, but they did not open a criminal procedure, considering that it was an arranged Roma marriage and ‘selling of the girl.’⁷⁹ With the assumptions of the Roma marriage, they dismissed the possibility of the girl’s kidnapping. The Italian authorities built their opinion on photo evidence and they opened criminal procedures for false accusations against parents.

The applicants complained about the violation of Articles 3, 4, 13 and 14 of the ECHR. They maintained the ‘violation of Article 3 in respect of the lack of adequate steps to prevent the first applicant’s ill-treatment by a Serbian family by securing her swift release and the lack of an effective investigation into that alleged ill-treatment.’⁸⁰ Further, they complained on the ill treatment and discrimination by Italian police during their questioning.⁸¹ Additionally, they argued that the Bulgarian authorities did not provide them with any assistance.⁸²

The complaints of the parents were considered inadmissible, because there was no sufficient evidence and proof for events in the villa and their ill treatment. Also, the complaint concerning the Bulgarian authorities’ inactivity was declared as inadmissible due the fact that the underlining events happened outside Bulgarian jurisdiction.⁸³ Due to the same fact, the country did not have an obligation to investigate and the ECHR does not contain diplomatic

⁷⁶ *ibid.* para 8.

⁷⁷ *ibid.* para 9.

⁷⁸ *ibid.* para 88.

⁷⁹ *ibid.* para 32.

⁸⁰ *ibid.* para 59.

⁸¹ *ibid.* para 60.

⁸² *ibid.* para 63.

⁸³ *ibid.* para 167.

or international protection of rights. What remained questionable here, was the duty of the state regarding the protection of the own citizens and the scope of its obligations.

The Court did not found violation under Article 3 of the Convention concerning the Italian authorities: the Court stated that they had taken all the required steps to free the applicant.⁸⁴ Contrary, the ECtHR found violation of Article 3 in alleged ill-treatment of the victim by the private individuals. Further, complains concerning human trafficking under Article 4 (prohibition on slavery and forced labor) were considered as inadmissible due to the absence of evidence and Italian the victims were ‘free from the situation.’⁸⁵ The Italian authorities claimed and justified inadmissibility with the arguments that event had characteristics to the typical traditional Roma marriage.⁸⁶ The Court did not find a violation of Article 14 in the case: there were not positive obligations on the State to investigate racial and discriminatory motives.’

Having in mind the justification of the authorities I argue that this aspect is very problematic. As is claimed: ‘The Convention requires effective deterrence against grave acts such as rape, and children and other vulnerable individuals, in particular, are entitled to effective protection’⁸⁷ Firstly, the intersectional discrimination and ill-treatment that minor girl survived because of her gender and ethnicity is more than evident ground for the discrimination or at least it establishes a *prima facie* case.⁸⁸ Secondly, the State has a duty to protect from violence any human being, not to justify its failure of intervention due to the Roma tradition. The mentioned justification signals institutional racism and the privileged protection of humans.

However, the dissenting opinion of Judge Kalaydjieva⁸⁹ is more reasonable and emphasizes deep systematic issues. She came to the conclusion that authorities had this approach because they believed that applicants were telling the lies. She pointed out that the minor girl was subjected to the ill-treatment and non-consensual sexual act for a month.⁹⁰ Also, authorities needed 17 days to get her released after they got information of deprivation of her liberty. The villa was owned by the person with a criminal record. The most

⁸⁴ *ibid.* para 108.

⁸⁵ *ibid.* para 150.

⁸⁶ *ibid.* para 93.

⁸⁷ *ibid.* par 176.

⁸⁸ European Court of Human Rights, ‘Assenov and Others v. Bulgaria (Application No. 90/1997/874/1086)’.

⁸⁹ European Court of Human Rights, ‘M. and Others v. Italy and Bulgaria (Application 40020/03)’ (n 75).

⁹⁰ *ibid.*

problematic is the justification of the ‘traditional marriage’, and overall approach of the Italian authorities to the case and to the several violations of child rights.⁹¹

The last case illustrates complexity of the rape, intersectionality and child protection. It challenges the existing provisions and points out the gaps between the law and social reality. Also, it reflects the discriminatory practices by the dominant (public authorities), lack of protection and their biases. Further, it emphasizes the necessity for the education and changes of the social construct on every level in the society. If women are considered as others, and Roma women as exotic others, they continue to face injustices due to these facts. They have equal dignity, they deserve equal treatment and the case-law should to create a bridge between reality and ECHR.

Overall, the rape-related cases discussed above reflect complex issues of rape and violence. They indicate lack of criminal provision and protection regarding rape and women’s protection on the national level. Also, these terrible issues require reconstruction and solutions on legal, educational, social, institutional, and policy levels. States failed to prevent and protect women from violence, and failed to investigate the alleged crimes. The case-law crates new standards and positive obligations towards the Member States of the CoE and these obligations shall influence national legislations and polices. Furthermore, it is established that the national legal framework should provide wide protection of the women’s right and work on prevention (e.g. education).

⁹¹ *ibid.*

4. Femicide. *Our lives belong to us. Our bodies belong to us.*

*'...these women were mothers, daughters, spouses, were often subjected to violence till death. Their right to life, their dignity, freedom and all other rights were taken'.*⁹²

The most extreme form of violence against women is femicide. Femicide is the act of the 'misogynic killing woman by the men.'⁹³ It is often defined as man attempts 'to control women's lives, bodies and/or their sexuality' till death because women did not accept their submission.⁹⁴ It represents the form of the sexual violence against women, and it can combine 'visual, physical, verbal or sexual acts experienced by women or girls.'⁹⁵ Also, it reflects the roots of the patriarchal society, women's oppression and it points out 'men desire for power, dominance and control.'⁹⁶ Moreover, the focus is on the misogynic motivation of femicide that present a continuum of sexual violence.⁹⁷ In some of the cultural contexts, it presents an area of private sphere. Hence, it something that is not discussed in the public, and very often there are 'denial of the women's subjective experience' and often the deaths of women are trivialized.⁹⁸

Moreover, the broader concept of femicide is the term and the concept 'feminicide', made by Marcela Lagarde y de los Rios.⁹⁹ She used the concept of 'feminicide' as 'genocide against women', and 'violent attempt against integrity, health, liberties and rights of girls and women', and it reflects the complexity of the issue.¹⁰⁰ Marcela Lagarde developed this concept by analyzing femicide in Mexico, and her work analyzes the wider perspective of femicide: class, economic, political, and the like.¹⁰¹ By using this analysis, she deconstructed power relations and male domination in Mexican male identity, and pointed out the

⁹² Marcela Lagarde y de los Rios, 'Preface', in Rosa-Linda Fregoso & Cynthia Bejarano (Eds.), *Terrorizing Women. Feminicide in the Americas* (Duke University Press 2010).

⁹³ Jill Radford and Diana Russell, *Femicide: The Politics of Woman Killing* (Twayne Publishers 1992).3.

⁹⁴ Committee of Experts of the Follow-up Mechanism and to the Belém do Pará Convention (MESECVI), 'Declaration of Femicide'.3.

⁹⁵ (n 93).3.

⁹⁶ *ibid.*3.

⁹⁷ *ibid.*4.

⁹⁸ *ibid.*5.

⁹⁹ Marcela Lagarde y de los Rios (n 92).15.

¹⁰⁰ *ibid.*15.16.

¹⁰¹ *ibid.*16.

connections between organized crimes and drug cartels.¹⁰² In the case of Mexico, women's bodies were and femicide are used as communication channel for between drug cartels.¹⁰³

According to these facts, feminicide investigates deeply rooted and systemic issues of gender relations and women's subordination. The concept can be applied to the cases of violence against women and femicide on the global level. Further, it can be applied on the European level, which standards (ECtHR standards) I will discuss. As in the previous two examples, the women are considered as inferior others, without any rights. In the case of femicide, their right to life is taken by dominant power. The mirror of the reality present is through the data from 2020: 47 000 girls and women were killed by men on the global level.¹⁰⁴ Therefore, every 11 minutes one woman was killed in 2020.¹⁰⁵ The same statistic is showing that femicide increased from 2019 till 2020 in the Western Europe for 11%.¹⁰⁶ Femicide is often the most tragic consequence of domestic violence.

The case-law of the ECtHR regarding femicide changed standards and positive obligation of the member states of the CoE concerning domestic violence. In the case of *Opuz v. Turkey*, the state failed to protect the victim from domestic violence and the victim's mother was killed.¹⁰⁷ The applicant's mother was shot and killed by the applicant's husband in 2002. She had been subjected to a series of violent assaults, some of which were certified as life-threatening. The husband said he carried out the attacks to protect his honor. He was convicted of murder and sentenced to life imprisonment. However, he was released pending appeal and repeats his threats against the applicants: she asked state authorities for protection. She got protection 7 months later, on the request of the ECtHR.¹⁰⁸

The ECtHR found the violation of the three articles of the ECHR: Article 2 (right to life), Article 3 (prohibition of torture and inhuman treatment) in conjunction with Article 14 (prohibition of discrimination).¹⁰⁹ This decision of the ECtHR 'holds the governments accountable for failing to take adequate steps to protect the victims of repeated domestic

¹⁰² *ibid.* 21.

¹⁰³ *ibid.*

¹⁰⁴ United Nations Office on Drugs and Crime, 'Killings of Women and Girls by Their Intimate Partner or Other Family Members: Global Estimates 2020' (2021).

¹⁰⁵ *ibid.*

¹⁰⁶ *ibid.*

¹⁰⁷ European Court of Human Rights, '*Opuz v. Turkey* (Application No. 33401/02)'.

¹⁰⁸ *ibid.* para 183.

¹⁰⁹ *ibid.* para 205.

violence.’¹¹⁰ Moreover, it was the first Court decision that recognized State failure to address gender-based violence under the ECHR.¹¹¹ The judgment spelled out the legal standards and established unequivocal state obligations to protect victims from the actions of a private person under Articles 2, 3 and 8. Also, it set domestic violence under Article 3 of the ECHR.¹¹² Further, this case identified the ‘required levels of the necessary actions’ by the state actors and also pointed out gender discrimination by the state actors in the cases of violence against women (Article 14).¹¹³

Moreover, the Court’s decision identified women’s oppression as deep, systematic issue and ‘imbalance in power’ as one of the roots of it.¹¹⁴ The male domination is used in private and public sphere and by the concept of femicide and its roots can be investigated and deconstructed. Also, the Court’s judgments make standards for the states in area of women’s protection of domestic violence. These standards require not only new laws and policies, but also training of the police officers, prosecutors, judges, and the like.¹¹⁵ Hence, the broader reforms are necessary in the area of the women’s rights and women’s protection.

Additionally, in the cases of femicide women’s ‘otherness’ and inferiority lead to the most extreme form of violence. Their dignity and their right to life were taken. The roots of these injustices lie deeply in the patriarchal system and men dominance. Legal protection should be developed parallel with the changes of social norms and constructs. The education of equality, dignity and rights is equally significant as development in legal protection.

Finally, we need a common understanding of femicide and violence against women. Even though many European states were recognized gender motives of femicide, no European state has legal framework and definition of femicide.¹¹⁶ The common definition on the level of the Council of Europe would help to discover layers of deep, systematic issue of inequalities. In the cases of femicide, men are acting as owners of women’s life. Identification of the issue and its layer is the first steps of its solving. The common legal definition would contribute to the development of the stronger criminal provisions and obligations of the States, member of CoE. It would contribute to the legal and social justice of all of us.

¹¹⁰ Tarik Abdel-Monem, ‘Opuz v. Turkey: Europe’s Landmark Judgment on Violence against Women’ <<https://www.corteidh.or.cr/tablas/r23564.pdf>>.

¹¹¹ *ibid.*

¹¹² *ibid.*

¹¹³ *ibid.*

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

¹¹⁶ European Institute for Gender Equality, ‘Femicide: Name It, Count It, End It!’ <<https://eige.europa.eu/news/femicide-name-it-count-it-end-it>>.

5. Conclusion with policy recommendations

My aim was to investigate three forms of violence against women: intersectional discrimination, rape and femicide. The social and legal lenses have been used to investigate these injustices and violations of women's rights. Also, they reflected gaps between legal protection and reality, and the deep roots of violence in the oppressive patriarchal structures.

The concept of Simone de Beauvoir served as the main tool to explain the otherness of women, patriarchal roots and oppression that women have been facing. As she claimed, the relationship between man and women is as the relationship between the master and slave, and it has deep oppressive roots. Therefore, in the cases of the intersectional discrimination and forced sterilization of Romani women, State behaves as the owner of women's bodies and their bodily integrity. In the cases of rape, man behaves as the owner of woman's body and her sexuality. In the most extreme form of violence, femicide, man behaves as the owner of a woman's life and all her rights.

The case-law of the ECtHR reflects challenges and limitations of women's rights protection on the regional and national levels. Also, it reflects legislative changes and recognitions that case-law brought. The Istanbul convention defines and criminalizes rape, sexual violence and forced sterilization in the Istanbul convention. The legal framework is highly significant but not sufficient. The changes and deconstruction of social constructs and patriarchal oppressive structures are necessary in each layer of the society. In the following part I will suggest some of policy recommendations.

Policy recommendations:

- **Legal recognition of femicide in the CoE**

The legal recognition of femicide would contribute to the criminalization of femicide as a form of violence against women. It would constitute positive obligations for the CoE member states to prevent, protect and investigate. Also, it would influence provisions and policies concerning domestic violence and women's rights protection. Therefore, it would highly contribute to the prevention and protection of women and their rights.

- **Education and training of judges, prosecutors, policy and public officers**

The legal recognition is insufficient if the people on the national level, who are supposed to implement the legislation and policies, are not aware of all inequalities and biases. The issues of deeply rooted oppression are reflected in the lack of investigation, prevention and protection. Hence, changes and education are necessary in each layer in the society.

- **Education about gender equality, women's rights and Intersectionality**

The first step in the deconstruction of the oppressive gender structures is education and awareness about it. Thus, education policies should include principles of non-discrimination and equality.

- **Mainstreaming: gender equality and intersectionality**

Specific strategies and strategic objectives regarding legal provisions, social constructs and violence against women would be significant tool for raising awareness and contributing to the changes of the social constructions and women's position in the society.

- **Media as a 'tool' for the mainstreaming**

Media in various forms (popular culture, marketing, social media) has a huge influence. It should be used for educational purposes and as a tool for the deconstruction of the gender relationship 'master – slave' that unfortunately still exists and negatively influence women's position and rights.

6. Practical part

The practical part of my capstone project is my personal platform: 'Fearless women' and the three blog posts that are produced regarding the topics discussed above. Via this platform I will combine human rights expertise, advocacy, journalism, anthropology and digital media. I want my voice to be heard, to spread the knowledge and awareness about injustices. Also, I consider that platform and blog can be beginning of the women's empowerment, women's strength and my personal way of deconstructing patriarchal oppressive structure and fighting against injustices.

The link:

<https://micacabrilovski.wixsite.com/i-am-woman--i-am-fea>

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