

Self-Defence and Domestic Violence: An Analysis of Turkish Criminal Law Practice

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How to assess the criminal liability of the abused woman who kills her abuser while in his sleep or in a state of unconsciousness has become a salient topic of debate in recent years. Although there is a tendency to consider these acts within the context of self-defence with the impact of “the battered woman syndrome” theory and the movement to battle against domestic violence, the debate still persists. Despite some opinions that such acts should be considered self-defence in the Turkish doctrine, the Turkish Courts, for the most part, tend to evaluate them as provocation. According to the Turkish Penal Code, only acts that are a response to occurring attacks or those that are certain to ensue are considered “self-defence.” Domestic violence is not accepted as itself as an attack if it does not meet these conditions. In this study, we will examine how such cases are treated in Turkish law practice in light of three decisions of The Court of Cassation. Prior to the explanations about self-defence and domestic violence, we will provide an overview of how this practice should be interpreted in the context of domestic violence according to the Turkish penal doctrine (I). It is argued that the conditions of self-defence are gender-neutral provisions, indicating they do not take into consideration “the battered woman syndrome” or female victims of domestic violence. This study will also focus on the conditions of self-defence in the Turkish Penal Code and will analyse it in the context of domestic violence (II).

Keywords: Violence against women; domestic violence; battered woman syndrome; self-defence; provocation.

Introduction

Violence against women is a critical issue in Turkey, as it is worldwide. Every day, countless women are abused by their former or current spouse or family member and are subjected to various forms of violence. In domestic violence cases, the violence commonly continues for days, months or even years. Although in many countries there are specific criminal and civil law remedies to combat domestic violence, they are apparently not sufficient to protect the victims¹. Furthermore, even when legislation is sufficient, almost every country has shortcomings in its law practice². For example, let us imagine a female victim who suffers from domestic violence. She cannot forfend the violence despite having filed several complaints, even with the existence of restraining orders.

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¹Euronews. (2022).

²Erbaş (2021) at 1.

Conceivably out of fear, she is unable to appeal to any authority and is therefore compelled to withdraw her complaint. Unfortunately, we can encounter this kind of story in any newspaper in Turkey almost daily. What is worse, we observe that such stories mostly result in femicide³.

In some cases, the story may have a different conclusion: Victims, especially when violence has been continuing for many years, can respond with violence toward their abusers⁴. Studies show that when a woman has been convicted of murder or any violent crime, that crime has almost certainly arisen as the response to domestic violence⁵. Although men have different motives from women when they commit crimes, the same legal procedures and provisions are applied to both⁶. Therefore, gender-neutral legislation can cause discrimination against women, so that self-defence may fall into this type of gender discrimination⁷.

Imagine a woman who has killed her abuser. The first thing that comes to mind is that the woman did it to defend herself. If this act has occurred in the face of a present attack, we can undoubtedly classify it as “self-defence.” However, the self-defence classification cannot be so clear-cut if the abuser is sleeping or unconscious. Debates about how such acts should be evaluated under criminal law have been ongoing in Turkey and other countries such as the United States and France⁸. One of the purposes of this study is to show how Turkish law practice responds in such cases. For this reason, firstly, we will try to explain the facts and the court’s reasoning in sample cases. In the Turkish Penal Code (TPC), there are some articles that can be applied to these acts: self-defence, excessive self-defence, provocation, and error⁹. Therefore, it is necessary to clarify what these articles mean according to the TPC. Additionally, in recent years “battered women syndrome” (hereinafter BWS) has started to be used in self-defence context, but BWS has not been mentioned in any judgments in Turkish law at this time of writing. On the other hand, the Turkish doctrine touches on this topic, and various suggestions have been made about how this phenomenon can be considered. Therefore, in this study, we will try to explain “BWS” from the point of view of Turkish criminal law. Moreover, we will try to evaluate the self-defence provisions of the TPC in light of domestic violence facts.

The Cases

We have chosen three key cases to demonstrate the Turkish law practice on the matter. As our main aim is to understand the practice of non-confrontational self-defence, the homicides we examine were carried out while the abusers were

³DW/BÖ, HS.

⁴Cornia (1997) at 100.

⁵Linklaters LLP for Penal Reform International, (2016) at 4; Penal Reform International (2012) at 1.

⁶Crocker (1985) at 121.

⁷European Human Rights Advocacy Centre (EHRAC) (2021) at 8.

⁸Faigman (1986) at 619; Fitz-Gibbon & Vannier (2017) at 319.

⁹Küçüktaşdemir (2015) at 556.

sleeping or unconscious. Excepting the first case, the Turkish Court of Cassation has classified the other two homicides under provocation, rather than self-defence.

In the first case¹⁰, the woman was abused by her own father for many years. She underwent almost every kind of violence, such as sexual assault and physical injury. When she was married, the abuser threatened, harassed, and injured his son-in-law and was prosecuted for all these crimes. He threatened his daughter by saying, “*even if you have ten children, I will make you break up with this person, and I will never give you up to anybody.*” Because of these threats, the perpetrator divorced her husband and she returned to her family home, where she lived with her parents and younger sister. The father sexually harassed his other 22-year-old daughter, even in the presence of other family members, by holding her in his arms and touching her hips and chest during the six months preceding the date of the incident. The perpetrator was sharing the same room with her sister, and while the sister was asleep, her father sexually assaulted his wife while holding a gun to her head. As a result of these sexual assaults, the perpetrator became pregnant and terminated the pregnancy at a clinic. One day, the perpetrator, her sister and mother were kicked out of the house by the father on the grounds that the perpetrator had come home late. For this reason, the women had to stay in the restaurant they managed together. One night, when the father was sleeping, the woman killed him with three gun shots. The Court decided that self-defence was established, noting that the perpetrator had behaved with the belief that the abuser's attacks would continue, and that the abuser would never give up. Therefore, it was concluded that the temporal limit was exceeded as a result of excusable anticipation, fear or anxiety.

In the other case¹¹, the perpetrator and the deceased had been married since 1985 and had two children from this marriage. The deceased often consumed alcohol and while drunk, he was violent towards his wife and children. Previously, the deceased had been sentenced to imprisonment for threatening his wife and intentionally injuring his daughter, son, and the perpetrator's wife, but the verdict was deferred. Although the couple was living together, there was an ongoing divorce case. The perpetrator had argued that before the incident, the deceased had attempted to sexually assault her, upon which a fight broke out between her and her husband. As he was continuously beating her, in order to defend herself, she had to strangle her husband with her scarf. The Court decided that there was no attack directed at the perpetrator when the murder occurred, in light of the evidence in the file. The existence of self-defence was discussed among the court members, and several judges had the dissenting opinion that the conditions of self-defence were met. However, the majority upheld the sentence of voluntary manslaughter with the existence of provocation. In this case, it was concluded that “*just as there was not an occurring attack, there was no imminent attack.*” The Court concluded “there was no attack” by evaluating the medical report of the perpetrator. It was noted that although the perpetrator had minor redness, there was no other scar on her body.

¹⁰The Court of Cassation, 1st Criminal Chamber, 2011/ 1267 E. 2011/4491 K., 13.07.2011.

¹¹The Court of Cassation, General Assembly of Criminal Chambers, 2015/1-424 E., 2018/399 K., 18.09.18.

In the third case¹² there is no debate about self-defence but the straight acceptance of provocation. The victim had abused the perpetrator physically, for which she had left home. Also, it mentioned that the husband occasionally used other means of violence against the perpetrator. Two days before the incident, the deceased had recourse to violence again. The perpetrator killed him with a gun while her husband was asleep. The Court of Cassation did not even discuss self-defence and stated that, on the grounds that the deceased was sleeping, this was an aggravated homicide.

The Defences Which May Be Applied Excluding Except Self-Defence under Turkish Penal Code

Provocation According to the Turkish Penal Code

As we can observe in the above-mentioned cases, in Turkish law practice, these homicides have been assessed in the context of provocation. Provocation is one of the motives which affects culpability under Turkish criminal law. According to TPC article 29 “*Any person who commits an offense in a state of anger or severe distress caused by an unjust act shall be sentenced to a penalty of imprisonment for a term of eighteen to twenty-four years where the offense committed requires a penalty of aggravated life imprisonment up to a penalty of imprisonment for a term of twelve to eighteen years, where the offense committed requires a penalty of life imprisonment. Otherwise, the penalty to be imposed shall be reduced by one-quarter to three quarters.*” The conditions of provocation comprise the existence of an unfair act, the perpetrator being under impact of anger or passion, and the crime being committed because of this anger or passion¹³. In the case of provocation, the sentence will be reduced. It is not possible to determine a criterion about how long the passion caused by an unfair act should continue. Therefore, the judge should decide according to the distinctive characteristics of the case¹⁴. Nonetheless, an element of “imminence” between the unfair act and the reaction is not required as rigidly as in self-defence; therefore, in domestic violence cases, former violence that the perpetrator suffered is considered provocation.

There is no doubt that the domestic violence is an unfair act. And this violence can cause “anger” and “severe distress” in the domestic violence victim. However, in self-defence cases, the perpetrator’s state of mind while committing homicide differs from that of a female “provoked” person, because the self-defending perpetrator’s survival instincts are what primarily motivate her¹⁵. In other words, the most significant difference between self-defence and provocation

¹²The Court of Cassation, 1st Criminal Chamber, 2020/693 E. 2021/4491 K., 15.09.2021.

¹³Demirbaş (2021) at 478.

¹⁴Ibid, at. 483.

¹⁵Eroğlu & Özeroğlu (2020) at 1414.

is that the perpetrator aims to ward off the attack in the case of self-defence¹⁶, whereas the provocation perpetrator does not. The perpetrator may act with anger, but specifically because there is a time gap between violence and the criminal act, it should not automatically mean provocation exists in every case.

Mistake of Law

Although not discussed in the above-mentioned cases, article 30 of the TPC, which regulates “mistake”¹⁷, argues that this provision can be applied in such situations as above. The mistake may be related to facts or to law¹⁸. In the latter scenario, the mistake of the perpetrator is not about facts. Instead, it is about her perception of law: she actually thinks that the law permits her acts¹⁹. According to TPC 30/4 “Any person who makes an inevitable mistake about whether his act was unjust or not shall not be subject to penalty.” However, the mistake of the perpetrator should be inevitable so that she can use article 30/4 in her defence²⁰. To decide whether the mistake was inevitable or not, the subjective circumstance of the perpetrator is considered, such as her educational background, the social and cultural environment in which she lives²¹. In case of mistake/error of her concept of law, the perpetrator will be considered not culpable²².

In the Turkish doctrine, *Ergüne* and *Demirel* have argued that if there is no attack at the time of act, it is not possible to implement the self-defence provisions, but that the act can be considered as a “mistake of law”²³. If the perpetrator acts believing that they are acting in self-defence as a measure against the attacks which will occur in the future, their case may be evaluated within the context of “mistake”²⁴. The perpetrators have been subjected to violence, and in efforts to hide this from society, they may have remained silent against these acts while they were occurring, putting mounting pressure on them. For these reasons, their criminal act can be considered inevitable²⁵. As a result, the perpetrator will not be

¹⁶Özgenç (2021) at 507.

¹⁷(1) Any person who, while conducting an act, is unaware of matters which constitute the *actus reus* of an offence, is not considered to have acted intentionally. Culpability with respect to recklessness shall be preserved in relation to such mistake.

(2) Any person who is mistaken about matters which constitute an element of a qualified version of an offence, which requires an aggravated or mitigated sentence, shall benefit from such mistake.

(3) Any person who is inevitably mistaken about the conditions which, when satisfied, reduce, or negate culpability shall benefit from such mistake.

(4) (Paragraph Added on 29 June 2005 - By Article 4 of the Law no. 5377). Any person who makes an inevitable mistake about whether his act was unjust or not shall not be subject to penalty.

¹⁸Koca & Üzülmöz (2021) at 253.

¹⁹Dülger, Özkan & Bakdur (2021) at 253; Göktürk (2016) at 126.

²⁰Özgenç (2021) at 535; Dülger, Özkan & Bakdur (2021) at 254.

²¹Koca & Üzülmöz (2021) at 370.

²²Demirbaş (2021) at 451.

²³Ergüne & Demirel (2020) at 175; The authors have examined two cases of The Court of Cassation in this study and one of them is The Court of Cassation, 1st Criminal Chamber, 2011/1267 E. 2011/4491 K., 13.07.2011. In both cases, the perpetrators were victims of sexual assault.

²⁴Ibid, at 176.

²⁵Ibid, at 177.

considered culpable, and according to TPC 223, the verdict will be "no need to impose punishment."²⁶

Self-Defence According to the Turkish Penal Code

Self-defence is a person's response to deflect an unjust attack against himself/herself or a third party²⁷. Under the TPC, self-defence is a justifying reason that renders an act, which should constitute a crime, lawfully subject to the existence of certain circumstances²⁸. The Turkish doctrine, Article 223 of the Turkish Penal Procedure Code is used to demonstrate that self-defence is a justifying reason because, according to this Article, when self-defence is acknowledged, the tribunal decides upon acquittal²⁹. The act becomes lawful and is accepted as correct³⁰. Because there is a theoretical divergence between justifiable act and excusable act³¹, there is a need to evaluate these acts in the context of self-defence or justification instead of within the concept of excuse³². In short, the perpetrator demands that her acts be accepted as lawful instead of being considered excusable³³. Moreover, according to TPC, provocation provides a reduced sentence, but in the existence of self-defence, the verdict is acquittal.

Self-defence is one of the essential legal arguments used to defend a perpetrator who is the victim of domestic violence in Turkey in such cases. It is argued that the perpetrator has been in a constant state of self-defence, and with her criminal act, she has protected her own life and/or also the lives of her children from a future attack³⁴. If she had not killed her abuser, one day the abuser would have killed her³⁵. However, is it possible to accept such acts as self-defence in terms of the TPC? In order to answer this question, it is necessary to refer to the conditions of self-defence regulated in Article 25 of the TPC.

According to Article 25/1 "*No punishment is given to an offender who acts with immediate necessity, according to the prevailing conditions, to repulse or eliminate an unjust assault against his or another person's rights, of which the recurrence is highly expected.*"³⁶ The Turkish doctrine generally analyses elements of self-defence in two subgroups, related to 'aggression' and 'defence'³⁷. The elements of aggression are: there should be an aggression, this aggression should

²⁶Ibid.

²⁷Dönmezer & Erman (1997) at 97; Özgenç (2021) at 357.

²⁸Özgenç (2021) at 357; Sınar (2016) at 30.

²⁹Sınar (2016) at 34; Özgenç (2021) at 357.

³⁰Robinson (1975) at 274.

³¹Dressler, (2006) at 13 - The excusable conduct is still unjustified, but we cannot blame the perpetrator for her actions in this case.

³²Crocker (1985) at 130.

³³Dressler (2006) at 7.

³⁴Walker (1992) at 321.

³⁵Dressler (2006) at 11.

³⁶European Commission for Democracy Through Law (Venice Commission), Penal Code of Turkey.

³⁷Dönmezer & Erman (1997) at 105.

be unlawful and be directed towards a right, the aggression and the defence should occur at the same time³⁸. The elements of defence are: the defence should be necessary, and proportionate to the aggression³⁹.

For the matter at hand, the first problem is to decide whether it is possible to acknowledge the existence of an attack. The Turkish legislator accepts self-defence in two cases: One of them is “present attack,” which means both aggression and defence happen simultaneously. In other words, the attack is ongoing.⁴⁰ Acts committed after the attack is completed are not considered self-defence, but they may be evaluated under the terms of provocation⁴¹. The acts perpetrated to prevent future aggressions will not be considered as self-defence, either⁴² because in such situations, it is accepted that it is possible to avoid future attack without resorting to an incriminating act, for instance, applying to public authorities⁴³. If we can say that an attack is **certain** to occur or repeat, *i.e.*, if there is an imminent attack, the acts will come under the scope of self-defence according to the TPC. As “certainty” is neither a legal term nor a word that exists as defined in the TPC, what counts as “certain should be established.”⁴⁴ “Certain” means “leaving no room for doubt and hesitation”⁴⁵. In the Turkish doctrine, it is argued that this should not be strictly interpreted⁴⁶. Someone approaching you with a pointed gun while threatening to kill you, is a classic example to explain certainty⁴⁷. Considering this example, much as it is argued that this concept should not be interpreted strictly, we can say traditional criminal law does not allow for commenting broadly. Also, Turkish courts tend to follow this interpretation. Even if there is no direct reference to a time gap, the Court of Cassation has not accepted violence that occurred two days before the act as “aggression⁴⁸.” Therefore, it is largely not possible to accept self-defence in such cases. Some Turkish scholars share the same opinion, and they criticise the first case for this reason⁴⁹. Although there are various opinions within the Turkish Doctrine, it is generally accepted that if this element is not established, it cannot be possible to discuss the others⁵⁰.

Hypothetically, let us assume that this element was established; the second problem we are faced with in such cases is to determine whether the defence was necessary or not. To meet this criterion, it must be impossible to save yourself from the attack in any other way⁵¹. During the proceedings, the perpetrators are always confronted with the same questions. For example, why did she not break

³⁸Ibid.

³⁹Ibid.

⁴⁰Ibid. at 113.

⁴¹Demirbaş (2021) at 311.

⁴²Ibid, at 310.

⁴³Dönmezer & Erman (1997) at 113.

⁴⁴Kaufman (2007) at 344.

⁴⁵Büyük Türkçe Sözlük

⁴⁶Apaydın (2020) at 78.

⁴⁷Demirbaş (2021) at 310.

⁴⁸The Court of Cassation, 1st Criminal Chamber, 2020/693 E. 2021/4491 K., 15.09.2021.

⁴⁹Ergüne & Demirel (2020) at 172.

⁵⁰Byrd (1991) at 173.

⁵¹Dönmezer & Erman (1997) at. 115.

up with her abuser or did not choose another option?⁵² The third problem is whether this defence is "proportionate" or not. Considering the perpetrator used deadly force against a person who was asleep, it can be said that the defence limit was exceeded because using more force than necessary to repulse aggression indicates that the defence is disproportionate⁵³. The responses to these questions should be examined within the context of domestic violence.

Self-Defence and Domestic Violence

All evaluations will change when we examine the above-mentioned self-defence from a gender or battered woman syndrome perspective. It has been suggested that gender-neutral provisions that do not consider women's social and economic positions may cause discrimination against women⁵⁴. The self-defence provisions are interpreted as this type of discrimination because they have been created with the notion that men who confront to are aggressive.⁵⁵ Why the self-defence provisions can cause discrimination is explained as follows: The woman's act can be a reaction to continuing violence rather than to a single attack that can be pinpointed⁵⁶. When we consider all the violence that the woman has been subjected to, the attacks the abuser committed before the defensive act may not be life-threatening⁵⁷. Because of the disparity in power between the abuser and the woman, the immediate response by domestic violence victims may be impossible⁵⁸. In domestic violence cases, whether the existence of aggression is met or not should be examined with gender perspective.

In the United States, "The Battered Woman Syndrome"⁵⁹ started to be used as a legal defence by lawyers of women who kill their abusers when their abusers were in an unconscious state, in other words, when there is no imminent attack⁶⁰. BWS was first mentioned by Lenore Walker⁶¹. It is a term used to explain the mental state of women who were repeatedly subjected to violence⁶². Although this syndrome has not been accepted by all legal experts, it has found many supporters⁶³. BWS is a mechanism which is based on two theories: Circle of violence and learned

⁵²Burke (2002) at.13.

⁵³Erden Tütüncü (2019) at 474.

⁵⁴Choudhry (2018) at 6; EHRAC (2021) at 8.

⁵⁵EHRAC (2021) at 9; Cornia (1997) at 104.

⁵⁶Committee of Experts of The MESECVI (2018) at 4; EHRAC (2021) at 9.

⁵⁷Committee of Experts of The MESECVI (2018) at.4; EHRAC (2021) at 9.

⁵⁸Penal Reform International (2012) at 4; EHRAC (2021) at 9.

⁵⁹Even if it is called "battered woman syndrome" it can be used for the same-sex relationships or for the men who are abused by female partners. Champaign (2010). For detailed explanations see Polat Akgün (2022).

⁶⁰Crocker (1985) at 101.

⁶¹Dressler (2006) at 6; Walker (1977) at 1.

⁶²Küçüktaşdemir (2015) at 327; *This syndrome is considered a sub-category of the generic Post Traumatic Stress Disorder.*

⁶³Burke (2002) at 12; Faigman (1986) at 620.

helplessness⁶⁴. The domestic violence victim comprehends a danger of attack even if there is no violence, therefore she acts with the instinct of self-defence⁶⁵. This syndrome is used for explaining why a woman behaves violently in non-confrontational situations and why their perception about imminent attack is different from that of men⁶⁶. This approach aims to consider the acts of women as “justifiable” rather than “excusable”⁶⁷.

According to “BWS”, the cycle of violence is divided into three phases⁶⁸. The first phase is called “tension-building”, in which there are not too many grave violent incidents, but where the tension has begun to rise⁶⁹. The second phase is called “acute battering” where the violence is intense⁷⁰. And the third phase is “non-violent phase” wherein the man feels remorse and to get forgiveness for himself⁷¹. This continuing cycle is used as an argument as to why the women constantly feel in danger⁷². This cycle also causes “learned helplessness”, which means the woman starts to think she will never break free from this violence⁷³. Thus, we can explain why the woman does not try to escape by divorce. In the Turkish doctrine *Erden Tütüncü* has argued that in the case of BWS, even though there has been a current attack, it is also possible to evaluate the existence of an imminent attack⁷⁴. *Eroğlu* and *Özeroğlu* share a similar view⁷⁵.

There are many critics as well as supporters of this argument in the doctrine. BWS should not be used to justify murders in self-defence in which the “imminence” element is not lacking⁷⁶. Firstly, there is no scientific evidence about “cycle of violence.” Each relationship may follow different patterns which need to be distinguished⁷⁷. This way, we create a category which the women must fit into to be considered to be acting in self-defence⁷⁸. Even though violence against women is a human rights violation, the abusers’ right to life cannot be denied⁷⁹. *Dressler* alleged that if there is self-defence, the act is “justifiable”⁸⁰. The person’s psychology and mental state, or in a broader sense, her subjective peculiarities are not about justification⁸¹. In order to justify this act, it is unacceptable to say that if the perpetrator had not killed him, the abuser would kill her one day⁸². On the other hand, *Taşkın* accepts that the self-defence conditions are not met in such

⁶⁴Doğan (2015) at 179.

⁶⁵Polat Akgün (2022) at 156.

⁶⁶Cornia (1997) at 104.

⁶⁷Dressler (2006) at 7.

⁶⁸Walker (1977) at 53.

⁶⁹Walker (1977) at 53; Taşkın (2013) at 107.

⁷⁰Taşkın (2013) at 107.

⁷¹Walker (1977) at 54; Taşkın (2013) at 107.

⁷²Burke (2002) at 22.

⁷³Walker (1992) at 330; Burke (2002) at 22; Eroğlu & Özeroğlu (2020) at 1409.

⁷⁴Erden Tütüncü (2019) at 478.

⁷⁵Eroğlu & Özeroğlu (2020) at 1423.

⁷⁶Dressler (2006) at 7.

⁷⁷Faigman (1986) at 638.

⁷⁸Wallace (2004) at 1756.

⁷⁹Dressler (2006) at 10.

⁸⁰Ibid, at 5.

⁸¹Burke (2002) at 38; Dressler (2006) at 7.

⁸²Dressler (2006) at 11.

cases, because if we accept self-defence, we would be excessively broadening its scope⁸³. Also, for *Küçüktaşdemir*, there is a possibility of attack, but it is not certain⁸⁴.

We should examine the violence during the relationship closely. All proof about the abuse should be taken into consideration within the trial. Our goal is not in creating an automatic justifying reason, but without acknowledging the reality of domestic violence or, in other words, “the battered woman syndrome”, we may end up with unfair judgments. Even if the imminent attack is accepted as existing, whether the other conditions are met or not still need to be examined. One of them is the obligatory character of the defence, which means that the only way of thwarting the attack is the act constituting defence⁸⁵. It can be argued that while the abuser is asleep, the woman can appeal to any authority or just could leave the abuser. But while evaluating these conditions, we must consider all of the motives behind the behaviour of the woman and why she did not act in any other way. In respect to BWS, the notion of “learned helplessness” can help explain things. Indeed, in this day and age, women try to get out of this type of relationship, but we can observe that the legal remedies available to them are not sufficient to help⁸⁶. In both possibilities, women experience desperation, and they cannot see any release from this situation⁸⁷. The best solution is to evaluate every case while considering its own characteristics, and not to interpret self-defence in a very strict sense. In gender-based violence, we can assume the existence of imminent attack in every domestic violence case at first sight. The abusers can resort to violence at any time. Therefore, it is not hard to say that when the abuser wakes up, he will resume the violence⁸⁸. But what matters the most is what happens before the homicide. For example, if there had been a dispute between the couple and he had physically assaulted the perpetrator, existence of an imminent attack may be more easily accepted.

Excessive Self-Defence

Two aspects of excessive self-defence can be discussed in such cases: Disproportionate defence/tool or excessive temporal limit⁸⁹. In the Turkish doctrine, there are two views: According to one, exceeding the temporal limit in self-defence is not possible, and according to the other, it is possible⁹⁰. *Erden Tütüncü* and *Küçüktaşdemir* are of the opinion that it is possible to exceed temporal limit in self-defence and battered women, with the pressure of their situation, defend

⁸³Taşkın (2013) at 117.

⁸⁴Küçüktaşdemir (2015) at 567.

⁸⁵Sınar (2016) at 43.

⁸⁶Küçüktaşdemir (2015) at 554.

⁸⁷Ibid.

⁸⁸Dressler (2006) at 10.

⁸⁹Demirbaş (2021) at 358.

⁹⁰Demirbaş (2021) at 359; Erden Tütüncü (2019) at 476.

themselves without a present attack⁹¹. Excessive self-defence regulates under TPC article 27/2. “No punishment is given to the offender if the limit during self-defence is exceeded as a result of excusable excitement, fear or anxiety.”

Even if we consider this act within the concept of self-defence, it becomes possible to debate excessive self-defence in respect of the other condition. One of the conditions of self-defence is that the defence should be proportionate, i.e. the defence should be in proportion to the resistance of the attack⁹². It has been argued that this defence is proportionate when we consider all the violence that was imposed on the woman during the relationship⁹³.

Concluding Remarks

In Turkey, domestic violence still poses a vital problem and regardless of whether their situation is formally accepted as a syndrome or not, battered women who are abused by men, as well as these women’s predicaments, should not be ignored by courts. Effects of being subjected to violence over a long period of time, and the hardship in daring to escape this cycle of violence should be understood by the legal authorities. Moreover, victims of domestic violence should not be portrayed as insane, mentally ill or irrational. It seems difficult to accept the existence of self-defence in crimes perpetrated by victims of BWS in Turkish law, because when the abuser is asleep or unconscious, there seems to be no present or imminent danger or attack in the sense of the TPC, which precludes application of self-defence provisions. Nevertheless, domestic violence can be accepted as a form of continuing attack even if in the absence of aggression in the traditional sense. In order not to cause abuses with this interpretation, the courts should carefully examine the evidence which proves the domestic violence the perpetrator underwent.

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⁹¹Erden Tütüncü (2019) at 478, Küçüktaşdemir (2015) at 578.

⁹²Özgenç (2021) at 312.

⁹³Küçüktaşdemir (2015) at 579.

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