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# **Violence against women with temporary residence permit**

## **An analysis of judgements from the Migration Court**

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## Abstract

The Swedish government has an equality goal that men's violence against women must stop, the government has also signed several international obligations to eliminate discrimination and violence against women. The number of people that moves to Sweden due to family ties is steadily increasing and research has shown that foreign born women have an increased risk of being exposed to male partner violence. How the question about violence against women with temporary residence permit is handled in the alien law has been criticised by women's organisations and in a government inquiry for being oppressive towards women. The aim in this thesis is to examine how the alien law is applied in the practical work and since the Migration Court generally is the final instance that decides in cases regarding continued residence permit, 16 judgments from the Migration Court are analysed. The aim is to examine how violence against women with temporary residence permit is handled by the Migration Court, which discourses about violence and immigrant women that can be identified in the judgements and how this relate to the gender equality goal to eliminate violence against women. To analyse the judgements discourse analysis is used, to analyse how the law is applied a dogmatic approach and a critical perspective is also partly used. The analysis of the judgments suggest that the interpretation of the alien law is more generous than the legislator might have intended, however the assessments in the judgements varies, especially the question of the duration of the cohabitation. The consequence is that the interpretation of the alien law is unpredictable. Findings also suggest that a woman's credibility is dependent on that she has made the violence probable. Two discourses are identified "the seeking help discourse" that shows that a lot of responsibility is placed on the individual woman to seek help and protection. And "the discourse of the invisibility of the violence" which points to that if the woman has any other reasons to be granted a residence permit, the Migration Court in many cases fail to discuss or even mention the claimed violence or violation, which creates a notion about what the Court values. It can be stated from this study that how the Migration Court handles the question about men's violence against women is not compatible to national obligations and to that Swedish government gender equality goal about ending men's violence against women.

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# 1. Introduction

## 1.1 Background and formulating a problem

The Swedish government has in their latest gender equality policy goal stated that men's violence against women must stop.<sup>1</sup> In 2016 the Swedish government also presented a new national strategy to prevent and combat men's violence against women.<sup>2</sup> In addition to this goal the Swedish government has signed several international obligations to eliminate discrimination and violence against women. But are all women living in Sweden included in the goal to eliminate men's violence against women?

Since Sweden is becoming a more and more globalized society, marriage migration and the number of people that applies to move to Sweden due to family ties is steadily increasing.<sup>3</sup> In 2016 the Swedish Migration Agency handled approximately 39 000 applications for residence permit due to family ties. In approximate 22 000 of these cases, the applicant was a woman (women of all ages are included in this number).<sup>4</sup> According to the Swedish alien law will an immigrant that has not cohabitated for a longer period with his/her partner be granted a two-year residence permit instead of a permanent residence permit. The reason is that the seriousness and sustainability of the relationship this way is tested on more than one occasion. After two years if the relationship still is continuance, the immigrant can be granted a permanent residence permit. If the relationship instead has ended there are some exception rules on which the immigrant can be granted a permanent residence permit anyway, one of them is if the relationship has ended because the immigrant has been exposed to violence or violation.<sup>5</sup> According to the government bill is the fact that an immigrant has suffered from violence or violation not in itself enough for the immigrant to be granted a residence permit, it depends on the seriousness of the violence, under what circumstances the abuse happened and how long time the cohabitation has been.<sup>6</sup> The alien law and the violence exception rule has been criticised by women's organisations and also in a government inquiry from 2012,<sup>7</sup> for placing battered women in a situation that are oppressive towards them. In connection to the government inquiry an article by Burman was publicised, in the article she analysed the alien law in regard to the question of men's violence against women without a permanent residence

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<sup>1</sup> <http://www.government.se/government-policy/gender-equality/goals-and-visions/>

<sup>2</sup> Skr. 2016/17:10

<sup>3</sup> Östh, van Ham & Nedomysl (2009) p. 3

<sup>4</sup> <https://www.migrationsverket.se/English/About-the-Migration-Agency/Facts-and-statistics-/Statistics.html>

<sup>5</sup> Alien act (2005:716) chapter 5 §16

<sup>6</sup> Prop. 1999/2000:43 p. 53f

<sup>7</sup> SOU 2012:45

permit, in addition to being oppressive towards women Burman argues that the alien law leaves women's integrity, rights, and welfare poorly protected. Further she means that the relation between gender, violence and power has not been acknowledged nor implemented in the alien law, which is noted in patterns of reproducing patriarchal notions of abused women and in how violence is represented in the alien law.<sup>8</sup> It can therefore be assumed that how violence against women is handled in the alien law is far from the Swedish government's equality goal. But how is it in practice? How is the law applied? Is the applying of the law as oppressive towards women as it is suggested in the alien law?

To gain a deeper understanding of the application of the alien law regarding the question about violence against women with uncertain residence permit status, it is of interest to analyse judgements from the Migration Court. The Migration Court is generally the final instance that decides in cases regarding continued residence permit even if the relationship that the previous residence permit was based on has ended, since it is the Migration Court that handle appeals regarding decisions from the Migration Agency.

## 1.2 Aim

In this thesis, the aim is to examine how the Swedish Migration Court applies the alien law and especially the violence exception rule. The purpose is to examine how violence against immigrant women with temporary residence permit is handled by the Migration Court and which discourses about violence and immigrant women that can be identified in the judgements. To examine if this is compatible with the gender equality goal, the findings in this study will be placed in relation to the Swedish government's international obligations and gender equality goal, that men's violence against women must stop.

### *1.2.1 Research question*

How is violence against women with temporary residence permit handled by the Swedish Migration Court and how does this relate to the gender equality goal that men's violence against women must stop?

## 1.3 Limitations

Some of the immigrants in this study had applied for asylum after their relationship ended, and some had gotten their residence permits withdrawn because their previous relationship had ended. However, in all the judgements that are included in this study the immigrant had moved to Sweden due to family ties, had been granted a temporary residence permit because of their

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<sup>8</sup> Burman (2012) p. 19

family ties and the Migration Court has made an assessment based on the alien act chapter 5 §16 about continued residence permit. The immigrants that was granted a residence permit based on asylum reasons are not included in this study. The temporary alien act that are effective for three years from the 20<sup>th</sup> of July 2016 and has the consequence that some immigrants are not eligible for a residence permit based on the alien act chapter 5 §16,<sup>9</sup> is not discussed in this study, and the reason is that the temporary alien act does not apply to any of the cases in this study.

#### 1.4 Outlines

The next chapter in this thesis concern theory and method, the chapter starts with a discussion about gender and violence against women, this is followed by a description about intersectionality, a dogmatic view of law and a critical perspective and discourse analysis. How the analysis has been carried out and how it is presented is also described in this chapter. The chapter ends with a description about the material in the study.

In chapter three the focus lies on the legal aspects and on policy documents regarding violence against immigrant women with temporary residence permit. To get an understanding about the legal situation for immigrant women with temporary residence permit that are victims of male partner violence the alien law needs to be described. Therefore, the alien act, a governmental bill and the only judgement from the Migration Court of Appeal concerning this question is described and discussed. Thereafter, is a government inquiry about violence against immigrant women, and a mapping of how the alien law is applied when a relationship has ended due to violence made by the Swedish government described. This is followed by a description of two international obligations that the Swedish government has signed about elimination of violence and discrimination against women. The purpose of the inclusion of the international obligations in this thesis is to show what the Swedish government is committed to do. The findings in this study will also be put in relation to these commitments.

Chapter four consists of the analysis, which is divided into two parts, in the first part the application of the alien law and especially the violence exception rule is analysed. In the second part the focus is on which discourses about violence and immigrant women that could be identified in the judgements. The thesis ends with a conclusion discussion in chapter five, where

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<sup>9</sup> Alien act (2005:716), chapter 5 §16

the findings in the analysis is put in relation to the Swedish governments obligations and own gender equality goal that the violence against women must stop.

## 2. Theory and Method

### 2.1 Gender

Gender is about social relations within which individuals and groups act, gender should therefore be understood as a social structure<sup>10</sup> and as constructed by the society.<sup>11</sup> Lundgren describes that it exists an imbalance of power in the notion of gender, she means that the notion of male and the notion of female is created differently. Male is created as the superior, the one with power and female is created as the opposite to this as the subordinate.<sup>12</sup>

The gender equality politics in Sweden is based on the gender system theory developed by Hirdman, this theory understands gender as a socially constructed relationship between men and women. The gender system consists of normative and stable patterns that is active in reproducing gendered patterns of inequality. Two principles characterize the gender system theory, firstly that the two sexes, men and women are detached and secondly that male is the standard for the human being.<sup>13</sup> The theory also clarifies notions about what is male and female, that exists on all levels in society.<sup>14</sup> The gender system can be used as an analytic concept to describe how the relationship between the meaning of men and women is expressed.<sup>15</sup>

#### 2.1.1 Violence against women

Violence against women is seen as one of the major factors that undermines women's human rights.<sup>16</sup> The United Nations defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."<sup>17</sup> Men's violence against women should be conceptualized as the reflection of a power struggle for the maintenance of the kind of social order where men terrorize women.<sup>18</sup> The violence should be understood has having its roots in historical inequalities between men and women, that is a continued obstacle for equality,

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<sup>10</sup> Connell (2002) p. 9

<sup>11</sup> Gunnarsson & Svensson (2009) p. 133

<sup>12</sup> Lundgren (2004) p. 18f

<sup>13</sup> Burman (2007) p. 98

<sup>14</sup> Gunnarsson & Svensson (2009) p. 52

<sup>15</sup> Burman (2007) p. 98

<sup>16</sup> Thiara & Gill (2010) p.15

<sup>17</sup> General Assembly Resolution 48/104

<sup>18</sup> Bacchi (1999) p. 175

development and peace<sup>19</sup> and therefore men's violence against women is generally accepted in Sweden as a significant social problem.<sup>20</sup> In the governmental bill about a new equality act in Sweden from 1990 the Swedish government for the first time described violence against women as an expression of inequality of power between men and women.<sup>21</sup> This view is also expressed in a governmental bill about men's violence against women from 1995. It is stated that men's violence against women often relate to the notions of men's superiority over women. Men's violence against women is a threat to the individual woman, but it also a threat to the equality between men and women both in the society and between individual men and women.<sup>22</sup>

There are notions in the society about men's violence against women both about the perpetrator and the victim. Mahoney quoted in Bacchi describes these notions in the society about how a battered woman is supposed to act. Mahoney means that if a woman show signs of resistance can that be interpreted as evidence that the woman is not in need of protection. But if the women instead show signs of passivity can that be interpreted that she is in need of protection. If a woman show resistance to the violence she is liable not to qualify as a battered woman.<sup>23</sup> Burman also discusses This, she states that studies shows that immigrant women comply more easily with this picture of defenceless and passive victims of male partner violence and are often considered to be less independent than women of Swedish origin.<sup>24</sup>

### 2.1.2 Violence against immigrant women

Fernbrant show in her study that foreign-born women in Sweden especially women that originates from low or middle-income countries or countries with low or very low gender equality have an increased risk of being exposed to male partner violence. Her study also show that foreign-born women have an increased risk of mortality due to male partner violence compared to Swedish-born women.<sup>25</sup> Andersson and Lundberg discusses the specific situation for women with temporary residence permit, they mean that immigrant women that have moved to Sweden due to family ties often is in a vulnerable situation. They are new in the Swedish society, they might not know the language or have any social network in Sweden, which can lead to that they get dependent on their partner.<sup>26</sup> This double oppression is also discussed by Lenardt, who mean that these women are exposed both as victims of male partner violence and

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<sup>19</sup> Thiara & Gill (2010) p.15

<sup>20</sup> Burman (2007) p. 93

<sup>21</sup> Gunnarsson & Svensson (2009) p. 54

<sup>22</sup> Ibid p. 83

<sup>23</sup> Bacchi (1999) p. 170

<sup>24</sup> Burman (2012) p. 8

<sup>25</sup> Fernbrant (2013) p. 58

<sup>26</sup> Andersson & Lundberg (2000) p. 54ff

as immigrants, the women have a weak position both against the men and the Swedish society.<sup>27</sup> Lenardt points to different tactics of control often used by the abuser, for instance, threats about that the woman will get expelled from Sweden, slandering the woman in front of her family and preventing her integration efforts in the society. The women's situation in Sweden are often also characterised by isolation from family and friends. And due to language difficulties and the effects of living in segregated areas, are many women also isolated from the Swedish society.<sup>28</sup> This isolation, mean that it can be difficult for the women to get information about how the Swedish society work, what rights they have or what help they can get.<sup>29</sup> These are examples of violence and violation that exist in the context that the women have moved to a new country, and in some cases, have an uncertain residence permit status.

### 2.1.3 The process of normalisation

Lundgren writes about the theory called the process of normalisation, which describes violence as a process that gradually breaks the women down until eventually the violence becomes something that is normal in the relationship.<sup>30</sup> She means that the violence is connected to the notion of gender, power and characteristics that are associated with male and female.<sup>31</sup> Lundgren describes two different types of mechanisms that the man use to control the woman, isolation of the woman, and that the man shifts between violence and care. Lundgen describes different processes of normalisation for men and women, the process for a man is about being masculine and about having control over the woman.<sup>32</sup> For a woman the process is about how gradually she is broken down, limits are moved and eventually the violence is seen as something normal, an abused woman can therefore have difficulties in maintaining her own perception of reality.<sup>33</sup> And therefore, is it often easier for a woman to leave the partner when the violence has just started, because when the violence has been going on for a while, there is a risk that the woman has lost her own perception of the reality and then it can be much harder to leave the relationship.<sup>34</sup>

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<sup>27</sup> Lenardt (2008) p. 288f

<sup>28</sup> Ibid (2008) p. 312f

<sup>29</sup> Andersson & Lundberg (2000) p. 54ff

<sup>30</sup> Lundgren (2004) p. 49

<sup>31</sup> Ibid p. 13ff

<sup>32</sup> Ibid p. 23ff

<sup>33</sup> Ibid p. 49ff

<sup>34</sup> Ibid p. 71

## 2.2 An intersectional approach

Men's violence against women affects women of all social standing and ethnicity,<sup>35</sup> but women also have different experiences of men's violence against them.<sup>36</sup> Crenshaw argues that violence against women is shaped by other dimensions than only gender, for instance also by ethnicity and class, and she argues that these dimensions intersect with each other.<sup>37</sup> In a society where multiple systems of domination exist, individual experiences are not shaped by only one identity.<sup>38</sup> Intersectionality can therefore be used to explore how different identities, construct and interact with each another.<sup>39</sup> For instance do immigrant women that are victims of male partner violence suffer from a gender oppression, but they do also suffer from an oppression because they are immigrants, and these two oppressions are intertwined.

Burman argues that a broader social and legal context needs to be included in the analysis of law and policy. An intersectional approach can be used to understand power and oppression which highlights the effects that the law has in producing the subjectivity of immigrant women that are victims of male partner violence. An intersectional approach can also be useful to visualize the different power structures and the different considerations that abused immigrant women are exposed to.<sup>40</sup> In order to understand gendered violence, the differences between women in terms of structural and cultural differences must be taken into account, these differences must however be explained in a way that does not reproduce stereotypical representations of women.<sup>41</sup> An intersectional approach will therefore partly be used when looking at how the Migration Court describes and discusses men's violence against immigrant women, this in order to identify inequality against immigrant women, which otherwise can be hard to identify.

## 2.3 Dogmatic view of law and a critical perspective

A dogmatic view of law can be used to interpret legislation, source of law and the legal argumentations in the source of law.<sup>42</sup> To have a critical perspective on law means that the law is problematized from another perspective such as for instance gender and that the relationship between law and society is highlighted.<sup>43</sup> When studying gender law a dogmatic study of the law can serve as the starting point for the gender law critic.<sup>44</sup> According to gender law does the

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<sup>35</sup> Nixon & Humphreys (2010) p. 138

<sup>36</sup> Montoya & Austin Rolandsen (2013) p. 536

<sup>37</sup> Crenshaw (1991) p. 1242ff

<sup>38</sup> Thiara & Gill (2010) p. 38

<sup>39</sup> Einarsdottir & Thorvaldsdottir (2007) p. 21

<sup>40</sup> Burman (2012) p. 19

<sup>41</sup> Thiara & Gill (2010) p. 37

<sup>42</sup> Gunnarsson & Svensson (2009) p. 165

<sup>43</sup> Ibid p. 99

<sup>44</sup> Ibid p. 165

law change over time and is also interpreted differently in different contexts. Since the law assume a certain understanding of reality, the law is neither neutral in relation to values nor in the ways to understand different problems.<sup>45</sup> The ambition in gender law is to visualize how the interpretation of the law is done.<sup>46</sup> In gender law the legal texts that are studied are therefore read in search for patterns.<sup>47</sup>

To analyse how the alien law is applied by the Migration Court a dogmatic study of the law will be the starting point for the analysis. I will not interpret the law, instead I will look at how the Migration Court has interpreted the alien law and the violence exception rule in the judgements. The analysis includes both those that have been granted a residence permit based on the violence exception rule and those that have not. I will start from the different prerequisites in the alien act and governmental bill to examine how the Court has assessed and discussed these prerequisites. I will analyse what the Migration Court see as important, to do that I will look for patterns in the judgements, and I will look both at what is said and how it is said. Finally, I will use gender as a critical perspective when analysing what consequences this application of the alien law might have for immigrant women that are victims of male partner violence. The findings in this part of the analysis provide the basis for the analysis on which discourses about violence and immigrant women that can be identified in the judgements.

## 2.4 Discourse analysis

When a discourse analysis is used theory and method is intertwined,<sup>48</sup> the discourse analysis can be used both as theory and as method.<sup>49</sup> Discourse analysis provide tools for dealing with the question of power, power and knowledge and the relations between power and knowledge. According to Burman is a common idea in feminist legal studies that the structure and method of today's law is hierarchically gendered, and that law claims to speak the truth and in this claim, disqualifies other knowledge and experiences.<sup>50</sup> Law as gendered is a notion discussed by Carol Smart, she means that law is not a system that can impose gender neutrality, instead law should be understood as a system that brings gendered subjects into being as well as subjectivities to which the individual becomes tied or associated with.<sup>51</sup> Discourse analysis is one method that can be used to explore gendered construction and power relation in law and

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<sup>45</sup> Svensson (2013) p. 279f

<sup>46</sup> Ibid p. 294

<sup>47</sup> Ibid p. 279f

<sup>48</sup> Winther Jørgensen & Phillips (1999) p. 10

<sup>49</sup> Niemi-Kiesiläinen, Honkatukia, & Ruuskanen (2007) p. 71

<sup>50</sup> Burman (2007) p. 98

<sup>51</sup> Smart (1992) p. 34

legal document. Assumptions that are more or less hidden in legal argumentation about gender and power can also be discovered by using a discourse analysis.<sup>52</sup>

Niemi-Kiesiläinen, Honkatukia and Ruuskanen argues that a discourse analytical method is useful when analysing legal discourses and legal documents. They mean that discourse analysis can be used to explore how assumptions about gender are reflected in discourses on for instance violence.<sup>53</sup> When using a discourse analysis, the focus is not only on reading and interpreting a text, the text is seen as having a life of its own and discourses are seen as constructing the social world. Gender for instance is not seen as existing independently in a text but also as constructed in the text.<sup>54</sup> The discourse analysis is built on the notion that laws creates social discourses when they are applied, and through that the law is part of the social construction of reality on which the law is applied.<sup>55</sup>

#### *2.4.1 Language*

The discourse analysis is based on the constructionist relationship between reality and language, which means that reality and language are intertwined, the reality cannot be approached independently of language.<sup>56</sup> The goal with a discourse analysis is to explore how the reality is constructed through language and to discover the reality behind the text.<sup>57</sup> Discourse analysis can be used to study structures that is taken for granted and that can otherwise be hard to make visible. This is based on the assumption that there are hidden structures in the society that control people's behaviour.<sup>58</sup> Discourse is both the representative and the creator of social construction, through the language a representation of reality is created that also creates the reality. A researcher can by using discourse analysis observe which discourses that exist and that are used. In law and gender discourses puts up frames for what are included and what are excluded.<sup>59</sup> Discourses are meant to capture the ways in which language limits what can be said, since language reflect the accepted way of seeing things in the society.<sup>60</sup> Discourses should be understood as speaking which in turn sets limits for what can be said. It is therefore useful to discuss discourses as frames because discourses are larger than language itself.<sup>61</sup>

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<sup>52</sup> Burman (2007) p. 99

<sup>53</sup> Niemi-Kiesiläinen, Honkatukia, & Ruuskanen (2007) p. 69

<sup>54</sup> Ibid p. 73

<sup>55</sup> Gunnarsson & Svensson (2009) p. 175

<sup>56</sup> Niemi-Kiesiläinen, Honkatukia, & Ruuskanen, (2007) p. 77

<sup>57</sup> Watt Boolsen (2007) p. 169

<sup>58</sup> Esaiasson, Gilljam, Oskarsson & Wägnerud (2012) p. 212f

<sup>59</sup> Gunnarsson & Svensson (2009) p. 174ff

<sup>60</sup> Bacchi (1999) p. 164

<sup>61</sup> Ibid p. 40

## 2.5 To use a discourse analysis

When using a discourse analysis, the researcher needs to be conscious of his/her own theoretical assumptions and anticipated discourses, and the researcher should also be open-minded towards other discourses.<sup>62</sup> Performing a discourse analysis does often mean revealing the different discourses that operates in a text. In this context, a discourse is regarded as a certain way of speaking of and understanding phenomenon. Constructions of central notions can be revealed by identifying discourses in legal texts.<sup>63</sup>

If discourses are defined as a coherent expression or as a structure that constructs reality and constitutes and constructs social identities and relationships between people and system of knowledge, then the researcher's job is to identify the discourses and to analyse how they relate to each other.<sup>64</sup> When a discourse analysis is used the focus lies on what is said and how it is said. Legal texts can be deconstructed by looking behind the surface of the text to reveal discourses that contribute to the construction of for instance gender. This is done by reading the text carefully and trying to identify recurrent pattern that forms a discourse.<sup>65</sup>

It is necessary to analyse and reflect upon what is said about a specific issue or problem, rather than assume that all that must be said has been said.<sup>66</sup> And it is also important to analyse what is not said or discussed in a text.<sup>67</sup> To look at what is not said or discussed in a text can be especially useful when analysing legal documents, since legal texts often are written as objective and neutral as possible. To analyse what is not said can help the researcher to understand how normality is constructed.<sup>68</sup>

To analyse the judgments in this study, the judgements have been read several times. The first times quickly to get an overview. The following times the judgments were read thoroughly, I used underlining and notes were taken of key quotations. As mentioned earlier is the analysis divided into two parts, in the first part of the analysis the focus is on how the alien law is applied and what consequences this might have. The focus in the second part of the analysis is to analyse which discourses about violence and immigrant women that can be identified in the judgements. By reading the judgements carefully and looking at the language the goal is to identify which discourses that are prominent in the judgements and what consequences this might have. This

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<sup>62</sup> Niemi-Kiesiläinen, Honkatukia & Ruuskanen (2007) p. 81

<sup>63</sup> Burman (2007) p. 97

<sup>64</sup> Niemi-Kiesiläinen, Honkatukia, & Ruuskanen (2007) p. 80

<sup>65</sup> Burman (2007) p. 98

<sup>66</sup> Bacchi (1999) p. 41

<sup>67</sup> Ibid p. 2f

<sup>68</sup> Niemi-Kiesiläinen, Honkatukia, & Ruuskanen (2007) p. 81

has been done by asking the following questions: What is said in the discourse? How is it said? What consequence does that lead to? The purpose is to achieve an awareness about that legal discourses that has the status as representing the reality when they in fact only represents some form of reality.<sup>69</sup>

## 2.6 Material

The Migration Court does not have any register over cases that concerns immigrants that have moved to Sweden due to family ties, have been granted a temporary residence permit and which relationship has ended due to violence and violation.<sup>70</sup> I have therefore used the legal system Karnov to find relevant judgements. I have searched for judgements from the Migration Court that include the words violence and violation. I have then gone through them manually to find judgements from the right category. This study includes 16 judgements from the year 2011 until 2016 in which the immigrant has referred to violence or violence as the cause of why the relationship that the earlier residence permit was based on has ended. The study includes all the relevant judgements that I found through the described search method. But because there is no register over different judgments from the Migration Court, and my own lack of knowledge about if all judgements from the Migration Court are published at Karnov and exactly how they are coded in order to search for them, I cannot claim that this study consists of all judgements from this time period.

Because of ethical reasons the judgements have been anonymized, to get a structure over the judgements that are used in this study, a register has been made where the judgements have been written and renamed to judgement 1 and 2 and so on.

## 3. Violence against women with temporary residence permit in law and policy

### 3.1 The Swedish Alien law

As mention in the introduction is an immigrant that applies for residence permit based on family ties to a partner that the immigrant has not cohabitated with for a longer period, generally granted a temporary residence permit that is valid for two years. The reason is that the relationship seriousness and sustainability this way is tested on more than one occasion. After two years if the relationship still is continuance, the immigrant can be granted a permanent residence permit. If the relationship has ended before the two years have elapsed the immigrant can be granted a continued residence permit anyway if: 1. The immigrant has a special

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<sup>69</sup> Gunnarsson & Svensson (2009) p. 176

<sup>70</sup> DS 2014:38 p. 13

attachment to Sweden, or 2. If the relationship has ended because the immigrant has been exposed to violence or violation, or 3. There are other particularly strong reasons to why the immigrant should be granted a residence permit.<sup>71</sup> In the government bill it is stated that a special attachment to Sweden as mentioned in point one, generally means if the immigrant is established in the Swedish labour market or have family ties to a person living in Sweden.<sup>72</sup> To be granted a residence permit because the immigrant has been exposed to violence or violation as described in point two, the violence or violations must have been of a certain extent and the violence must have been the main reason to why the relationship ended. Further must the cohabitation have lasted a certain amount of time and the relationship must have been genuine from the start. In the government bill, it is stated that the two last prerequisite are necessary to prevent abuse to the right to immigration.<sup>73</sup> Point three aims at humanitarian grounds, which can for instance be that the immigrant risk being socially deprived if the immigrant would return to his/her country of origin.<sup>74</sup>

### *3.1.1 The alien law and violence against women*

The alien law has been criticized for how violence against women with temporary residence permits are handled. Burman for example, argues that the relation between gender, violence and power has not been implemented in the alien law. She means that patriarchal and racist discourses construct immigrant women that are exposed to male partner violence as the “other.”<sup>75</sup> Further, she means that the alien law in the ambition to test a relationship seriousness and sustainability on more than one occasion uses criteria about violence against women that are oppressive towards women. It is oppressive because in order for a woman to be granted a permanent residence permit based on the violence exception rule, the relationship must have ended because of the violence, the cohabitation must have lasted a certain amount of time and the violence or violation must have been of a certain extent. This implies that the woman has to put up with violence for some time in order to fulfil the relationship duration, but if the woman waits too long before leaving the abusive man, the causal connection between the violence and her ending the relationship might be questioned.<sup>76</sup> If the woman leaves the violent man after the first violence or violation act occurs, the risk is that the Migration Agency and Migration Court won't see the abuse as serious enough and it is also a risk that the length of the relationship has

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<sup>71</sup> Alien act (2005:716) chapter 5 §16

<sup>72</sup> Prop. 1999/2000:43 p. 64

<sup>73</sup> Ibid p. 53f

<sup>74</sup> Ibid p. 64

<sup>75</sup> Burman (2012) p. 18

<sup>76</sup> Ibid p. 15

been too short and the woman risk expulsion. The discussion about how much violence that are “required” is a contrast to the crime gross violations of a woman’s integrity, which looks at men’s violence against women as especially serious. This distinction between how men’s violence against women are viewed in the alien law compared to in the criminal law suggest that immigrant women without a permanent residence permit are a category of women that are not equally important to protect.<sup>77</sup>

### *3.1.2 Decision MIG 2011:25 from the Migration Court of Appeal*

There has only been one case handled by the Migration Court of Appeal concerning continued residence permit for an immigrant that have moved to Sweden due to family ties and whose relationship ended because of violence or violation, that case is from 2011. In this case, the woman had in July 2008 applied for an extension of her residence permit due to family ties to her husband. In November the same year, she notified the Migration Agency that the relationship had ended and that she had been exposed to violence in the relationship. In May 2009, she reported the violence to the police. The Migration Agency rejected her application because it could not be assumed that the relationship had ended because the woman had been exposed to violence or violation. As reasons the Migration Agency stated that the woman had not in previous contact with them mention that she was exposed to violence or violation. The Migration Agency also referred to that she had not handed in any medical reports and that she reported the violence to the police about six months after the relationship had ended. The Migration Court rejected her appeal, they stated that she had not handed in any documentation that could make the violence probable. Nor had her former husband been suspected or convicted of any crimes against her. The Migration Court of Appeal however granted the woman a permanent residence permit based on the violence exception rule. The Court stated that the fact that the woman had not mention the violence to the Migration Agency in previous contact with them, could not count against her, since her former husband not only had accompanied her to the Migration Agency, he had also acted as her translator. The Migration Court of Appeal stated that it is unreasonable to expect that a victim of violence should talk about the violence for the first time in the presence of the perpetrator. Regarding the fact that the woman reported the violence to the police six months after the relationship had ended the Migration Court of Appeal stated that the difficulties that a person that are exposed to abuse have to contact the authorities or tell anyone about the situation should be taken into consideration. Further should the immigrant’s background also be considered. The woman in this case originated from a male-

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<sup>77</sup> Ismail (2014) p. 242f

dominated culture and she had during her time in Sweden been controlled by her former husband and had had little contact with the outside world. Furthermore, did the Migration Court of Appeal stated that the fact that the former husband had not been convicted of any crime against her could not rule out that violence had occurred in the relationship. It was however also established that the violence or the violation must be of a certain extent and not a single action and that the relationship must have lasted a certain amount of time.<sup>78</sup>

### 3.2 International obligations

The convention on the elimination of all forms of discrimination against women (CEDAW) is a convention from the United Nation concerning human rights adopted in 1979 by the UN General Assembly. The convention consists of a preamble and 30 articles, which defines what constitutes discrimination against women and set up agendas for action on national level to end discrimination against women. By accepting the convention, the states agree to take appropriate measures so that women can enjoy all their human rights and fundamental freedoms.<sup>79</sup> In the original convention, violence against women was not mention, but this question has later been added in the convention. Regarding violence against women does the convention require the states to act to protect women against violence of any kind occurring within the family, at the workplace or in any other area of social life.<sup>80</sup> In 1993 the General Assembly adopted the declaration on the elimination of violence against women. It is stated in the declaration that some groups of women such as women belonging to minority groups, migrant and refugee women for instance are especially vulnerable to violence.<sup>81</sup> Sweden ratified the CEDAW in 1980, in the latest concluding observations in the combined eighth and ninth periodic reports of Sweden from 2016, the Committee under point number 27 recommend the State party to “revise, from a gender perspective, the conditions for granting temporary residence permit to migrant women who are dependent on their partners in order to avoid adverse consequences for these women of their dependency on their partners when the latter exercise violence against them and ensure full protection to women victims of violence.”<sup>82</sup>

In 2011, the Swedish government signed the Istanbul convention about preventing and combating violence against women and domestic violence. In the Istanbul convention, it is

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<sup>78</sup> MIG 2011:25

<sup>79</sup> <http://www.un.org/womenwatch/daw/cedaw/>

<sup>80</sup> General recommendations adopted by the committee on the elimination of discrimination against women

<sup>81</sup> 48/104. Declaration on the elimination of violence against women

<sup>82</sup> Committee on the elimination of discrimination against women. Concluding observations in the combined eighth and ninth periodic reports of Sweden, p. 8

among other recognised in the preamble that the realisation of de jure and de facto equality between women and men is a key element in the prevention of violence against women. It is recognised that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over and discrimination against women. It is also recognised that the structural nature of violence against women as gender-based violence, and that the violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men. It is stated in article four that the implementation of the convention shall be secured for everyone, without discrimination on any ground. In chapter seven of the convention, migration and asylum are discussed, article 59 states that if the victim of violence is depended on the violent spouse for a residence permit and the relationship is dissolved an autonomous residence permit should be granted regardless of how long the relationship has been.<sup>83</sup> In the governmental bill 2013/14:208 the Swedish government discusses the Istanbul convention and regarding article 59 the government assessed that the convention is compatible with the Swedish alien law. According to the governmental bill does the convention not prevent that an assessment is made about the relationship duration, as stated in the alien law, when an immigrant has been the victim of violence. Since the purpose with that assessment is to prevent abuse to the right to immigration.<sup>84</sup>

### 3.3 National policy documents

In 2012, a government inquiry was made with the purpose to map the presence of violence and violation that affect immigrant women and children that has been granted a residence permit due to family ties. In the inquiry, the alien act and the government bill is criticised for lack of gender equality ambitions to combat men's violence against women. The government bill is criticised because of its focus on immigrant women, instead of focusing on the men, the men's motives and the violence. The inquiry also states that "women immigrants with temporary residence permits have less access to legal solutions to fight the violence exercised by men against them than other women who are exposed to violence." It is also stated that many immigrant women try to stay in their relationship for two years in order to be granted a permanent residence permit, because it can be difficult for many of them to return to their home country if they would not be granted a permanent residence permit.<sup>85</sup> In the inquiry it is stated

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<sup>83</sup> Council of Europe convention on preventing and combating violence against women and domestic violence

<sup>84</sup> Prop. 2013/14:208 p. 122f

<sup>85</sup> SOU 2012:45 p. 26

that gender equality reasons strongly indicate against temporary residence permit since it means that the immigrant, most often a woman alone bears the risk if the relationship ends and alone must bear the consequence of the violence. While the person to whom the immigrant has ties, usually a man, can make use of the legislation through his superior situation.<sup>86</sup> It is further stated that the question about violence against immigrant women with temporary residence permit is a question about equality and women's human rights, this has however not been clearly enough in the alien law. The alien law is an important tool to ensure that Sweden fulfils international obligations.<sup>87</sup> But that not much has changed regarding this question can for instance be noted in the latest national strategy to combat men's violence against women, presented by the Swedish government. Where the question about violence against women with temporary residence permit is very absent.<sup>88</sup>

In 2014, the Swedish governments presented an official letter about how the alien law is applied when a relationship has ended due to violence or violation. In the official letter a mapping of judgements from the Migration Court and decisions from the Migration Agency from 2010 until 2013 was made.<sup>89</sup> Regarding decision from the Migration Agency the mapping showed that the Migration Agency assessed individual acts of violence rather than look at the violence as a process of systematic actions. For instance, had the Migration Agency assessed that violence in form of pushes, beating with open hand and kicks was not violence that was referred to in the violence exception rule. Neither was violations in form of control of the woman, threats about violence and threats about getting expelled from Sweden.<sup>90</sup> The conclusion from the mapping of the judgements from the Migration Court was that the judgements and motivations regarding an immigrant's right to residence permit varies. Another conclusion was that the judgement from the Migration Court of Appeal had not had any particularly effect on the judgement from the Migration Court or the decision from Migration Agency.<sup>91</sup>

#### 4. Analysis

The analysis consists of 16 judgements from the Migration Court, the judgements are from the year 2011 until 2016, in all the judgements the applicant is a woman, in four of the cases there is also accompanying children. All the judgments are written in an objective and neutral way

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<sup>86</sup> SOU 2012:45 p. 26f

<sup>87</sup> Ibid p. 73f

<sup>88</sup> [http://www.regeringen.se/4ace09/globalassets/regeringen/dokument/socialdepartementet/jamstalldhet/makt-mal-och-myndighet--feministisk-politik-for-ett-jamstallt-samhalle-skr.-2016\\_17-10.pdf](http://www.regeringen.se/4ace09/globalassets/regeringen/dokument/socialdepartementet/jamstalldhet/makt-mal-och-myndighet--feministisk-politik-for-ett-jamstallt-samhalle-skr.-2016_17-10.pdf) p. 109

<sup>89</sup> DS 2014:38 p 16s

<sup>90</sup> Ibid p 34f

<sup>91</sup> Ibid p. 77f

and throughout in the judgements, except for some exceptions is not the women's nor the men's origin written. All the judgements are written in Swedish, the quotations from the judgements are therefore translated by me, the judgements have as mentioned before been anonymized.

In all the 16 judgements, the Migration Court cancels the earlier decision from the Migration Agency about refusal of continued residence permit and expulsion from Sweden. All the applicants are granted a permanent residence permit by the Migration Court on different grounds. In all the cases except in two does the women claim (among other reasons) that they should be granted a residence permit because their previous relationship ended because of that they had been exposed to violence or violation.

#### 4.1 How is the alien law applied?

In eight of the 16 judgements, the women were granted a residence permit because they had been exposed to violence or violation. The prerequisite that the relationship must have been genuine from the start, it not discussed in the analysis, the reason is that it is not mentioned in two judgements,<sup>92</sup> and in the other judgements it is only mentioned with one sentence. In one of the eight cases the woman was granted a residence permit based on "other strong reasons" because the Migration Agency had failed to investigate the woman's claims about violence when she applied for an extension of her residence permit the previous time.<sup>93</sup> In the other eight judgements, the women were despite of having referred to violence or violation as the reason for that the relationship had ended granted residence permits on another ground.

##### 4.1.2 *The extent of the violence or violation*

In order to be granted a residence permit on the violence exception rule the violence or violations must have been of a certain extent, according to the governmental bill should single violence acts or violence of trivially matters not result in a continued residence permit, it should also be taken into consideration during what circumstances the violence has occurred.<sup>94</sup> A lot of emphasis is placed in the judgements on the different documentation that the women had handed in to support their claims about the abuse. In many of the cases the women had handed in extensive documentation to support their claims of violence.<sup>95</sup> In all the cases the women had reported the violence to the police and had handed in police reports, many had handed in documentation from woman's shelter and some had handed in documentation from social services and/or physicians. That most the women in this study had handed in documentation to

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<sup>92</sup> Judgement 4 & 6

<sup>93</sup> Judgement 3

<sup>94</sup> Prop. 1999/2000:43 p. 64

<sup>95</sup> For instance, Judgements 4 & 7

support that violence had occurred correspond with findings in the governments mapping of how the alien law is applied, were 98 % of the applicants had handed in documentation to support that violence had occurred.<sup>96</sup>

What can be seen from the judgements in this study is that there is a tendency toward looking at what consequence the violence has had. In one judgement, the Migration Courts finds that the woman had been pushed two times. This is strengthened through medical journals, where it also is stated that the woman suffered a concussion from one of these pushes, the Migration Court writes:

“Considering that it in the medical journals are stated that [the woman] from one of the times suffered a concussion, the Migration Courts finds that [the woman] has made it probable that she on this occasion has been exposed to violence of more serious nature.”<sup>97</sup>

In one case, the woman was exposed to abuse to such extent that she had a miscarriage which the Migration Court consider to be very serious.<sup>98</sup> A quotation from another judgement, which also is an example of how emphasis is placed on the consequence of the violence, that the woman had suffered from “visible injures”.

“[..]one time he abused her so that she got visible injures[..]”<sup>99</sup>

That the Migration Court looks at what consequence the violence has had is a result of what is stated in the governmental bill that the violence or violations must have been of a certain extent. But that the Migration Court assesses individual violent actions and what consequence the violence has had might indicate that the Court fails to look at the violence as a process. As according to the mapping of how the alien law is applied, was the case in decisions from the Migration Agency.<sup>100</sup> It is however not as pronounced in these judgements as it seemed to be in the decisions from the Migration Agency. This may, however be a consequence of that all the applicants in this study are granted a residence permit by the Court.

What seems to be required by the Migration Court to be granted a residence permit on the violence exception rule is documentation that can make the violence or violation probable, for

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<sup>96</sup> DS 2014:38 p. 35

<sup>97</sup> Judgement 2

<sup>98</sup> Judgement 3

<sup>99</sup> Judgement 4

<sup>100</sup> DS 2014:38 p 34f

instance police reports. And, documentation about what consequence the violence has had, for instance medical journals, documentations from physicians and so on.

#### *4.1.3 Why has the relationship ended?*

To be granted a residence permit based on the violence exception rule the violence or violation must according to the governmental bill be the main reason to why the relationship ended. This is mention in all the judgements, the Migration Court put a lot of emphasis on what the women states regarding this question. In one judgement, the Migration Courts writes:

“Through her oral story, the police reports that has been submitted in and her wish to get accommodation at a woman`s shelter, she has shown that the probable cause that her relationship with [the man] has ended primarily because she has been exposed to violence or other serious violation of her freedom and peace.”<sup>101</sup>

Even when there are circumstances that point to the contrary, the Migration Court put a lot of emphasis on what the woman herself has stated. In one example the Migration Court writes that the woman has not been trustworthy in her description about her relationship, however that does not according to the Court mean that the woman should be seen as untrustworthy in her description about why the relationship ended.<sup>102</sup> In another case, it was the man that moved out of the common home and also he who applied for divorce, the Migration Court anyway find that the woman`s version of what happened and how the relationship ended is credible, the Court writes:

“Regarding the question if the relationship has ended because of the violence, is it enough that [the woman] stated that that was the case.”<sup>103</sup>

Regarding this question, about why the relationship has ended the Court in several judgements show an understanding about how complex a violent relationship can be and the difficulties that some women face to leave a violent relationship. An example from one case where the relationship ended because the man forced the woman to sign divorce papers and then drove her to a woman`s shelter. The Migration Court states that this should be seen as part of the violence that the man exposed her to, and therefore the violence should be seen as the main reason to why the relationship ended.<sup>104</sup> In one other case the woman and man continued to live together after the violent act that ended the relationship had occurred. The Migration Court anyway found that the woman had made it probable that the relationship had ended due to the

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<sup>101</sup> Judgement 6

<sup>102</sup> Judgement 3

<sup>103</sup> Judgement 5

<sup>104</sup> Judgement 4

violence she had been exposed to. The Court referred to the woman's background and the control that her partner had over her. The Court also mention the circumstance that the woman had been granted a residence permit based on the relationship she had with the man and the fact that she has been in a vulnerable situation in Sweden.<sup>105</sup> This formulation is interesting since the Migration Court writes that the temporary residence permit that the woman was granted in itself could be seen as part of her oppressive situation. That the Court in this judgement discusses both the woman's situation as a victim of male partner violence and also as an immigrant woman suggest that the Court recognised that her different identities was constructed and interacted with each another.<sup>106</sup> That the violence against the woman was shaped by other dimensions than only gender, as discussed by Crenshaw,<sup>107</sup> it was also shaped by the fact that she was an immigrant in Sweden, which suggest that the Migration Court to some extent had an intersectional understanding in this case.

That the Migration Court put a lot of emphasis on what the abused women have stated, about why the relationship ended and to some extent also assesses that the ending of the relationship is a part of the violence, is from a gender equality perspective a positive sign. However, since all these cases are individual assessments does it not change what is stated in the governmental bill about the required causal connection between the violence and the end of the relationship. Nor is the lack of knowledge in the governmental bill about how complex the process can be for a woman to leave a violent man as discussed by Burman changed.<sup>108</sup>

#### *4.1.4 How long has the cohabitation lasted?*

The last prerequisite to be granted a residence permit on the violence exception rule that will be discussed is that the cohabitation must have lasted a certain amount of time. Exactly how long time this should be is unclear, Burman refers in her article, to two decisions from 2000 by the former Aliens Board, in one case the Alien Board regarded four months as too short for the violence rule to be applicable and in the other case, were nine months regarded as relatively short but long enough for the violence rule to be applicable.<sup>109</sup> These assessment are quite unclear and the guidance that they give is that four months are too short and nine months also are short but can be long enough. In the judgements in this study the Migration Court seems to have moved towards a more generous interpretation. In some judgements, the length of the

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<sup>105</sup> Judgement 2

<sup>106</sup> Einarsdottir & Thorvaldsdottir (2007) p. 21

<sup>107</sup> Crenshaw (1991) p. 1242ff

<sup>108</sup> Burman (2012) p. 11f

<sup>109</sup> Ibid p. 13

cohabitation is not mentioned at all.<sup>110</sup> In one case, the woman had cohabited with the man for three months. The Migration Court writes:

“That the woman had cohabited with the former husband for a relative short period of time should in relation to the serious violence she has been exposed to according to the Migration Court not be assigned a decisive role in this context.”<sup>111</sup>

In another case, the woman had cohabited with the violent man for six months, which was regarded as a relative short period of time, however the Court also took into consideration that they had lived together abroad for two months, and therefore their cohabitation of totally eight months could not be seen as too short according to the Migration Court.<sup>112</sup>

Only in one case has the Migration Court regarded the cohabitation as too short, in that case the cohabitation had lasted for two weeks. The woman was therefore not granted a residence permit based on the violation exception rule even though the Migration Court did not question that she had been exposed to violence and that the relationship had ended because of that. The woman was instead granted a residence permit based on “other strong reasons”, the Migration Court writes that the woman had been working in Sweden and that she had made it probable that her family posed a threat to her and that she would be socially deprived if she returned to her country of origin.<sup>113</sup>

In article 59 in the Istanbul convention the question about the length of a violent relationship is discussed and it is stated that an autonomous residence permit should be granted regardless of how long the relationship has lasted if the victim of the violence is depended on the violent spouse for a residence permit and the relationship is dissolved.<sup>114</sup> The Swedish government however regarded the alien law as satisfactory. From this study, it can be said that the how long a cohabitation needs to be to fulfil the relationship duration seem to vary from case to case, in some judgements the time of cohabitation is not mentioned, in one case does the fact that the cohabitation has lasted only three months not matter because of the seriousness of the violence and in another case, are six months regarded as a short time. It can therefore be argued that how the Migration Court look at the prerequisite about the relationship duration is unpredictable. And the Courts assessment of the alien law can result in as in one case in this study that the

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<sup>110</sup> For instance, judgements 3, 4 & 6

<sup>111</sup> Judgement 7

<sup>112</sup> Judgement 8

<sup>113</sup> Judgement 1

<sup>114</sup> Council of Europe convention on preventing and combating violence against women and domestic violence

duration of the cohabitation is judged to be too short even though the woman had been exposed to violence.

That the cohabitation was regarded as too short in one judgement and that the woman instead was granted a residence permit based on “other strong reasons” because her family posed a threat to her is an example of as Burman describes it to place the problem outside of Sweden, since the problem that is described in the judgement exists in the woman’s country of origin. This is a way of placing the problem with male partner violence somewhere else and avoid having to deal with the problem of male partner violence that exist in Sweden. This is according to Burman a way of othering the problem with male partner violence.<sup>115</sup>

*4.1.5 Why not residence permit because the relationship has ended due to violence or violation?*  
In four of the cases the women where been granted a residence permit based on that they had a child that was a Swedish citizen or that it was in the best interests of the accompanying child or children to be granted a residence permit. In one of this judgement the Migration Court makes an assessment about the violence that the woman refers to (the woman refers to two former violent men) the Court however states that:

“It has not in the case emerged that any of the men have been convicted for violence or violation towards her. The woman has not made it probable that the relationship has ended because of that she has been exposed to violence or other serious violation of her freedom and peace.”

Since none of her former husbands had been convicted of any crime against her, the Migration Court assessed that the woman had not made the violence probable.<sup>116</sup> This however seems to be an isolated assessment, in judgements from later years’ emphasis is not placed on whether the man has been convicted of any crime against the woman or not. In some of the other judgements the Court states that the fact that the man has not been convicted of assault against the woman, does not mean that the Court can disregard that violence or violation had occurred.<sup>117</sup> This was also stated in the judgement<sup>117</sup> by the Migration Court of Appeal that is dated after this decision.<sup>118</sup>

In the other three judgements, the women have referred to violence or violation as the reason to why their previous relationships have ended, the claimed violence or violation is however

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<sup>115</sup> Burman (2012) p. 16

<sup>116</sup> Judgement 10

<sup>117</sup> For instance, judgement 8

<sup>118</sup> MIG 2011:25

not mentioned or discussed by the Migration Court. The women have all been granted residence permit due to special attachment to Sweden because of their family ties with their children.<sup>119</sup>

In another three judgements, the women have been granted residence permits due to special attachment to Sweden since they had employment in Sweden. In two of the judgements the women had handed in documentation to support the claims that their previous relationship ended because of violence or violation. The first woman had handed in a police report<sup>120</sup> and the second woman a certificate from a physician.<sup>121</sup> However, both women were granted residence permits based on special attachment to Sweden because they had employment. The fact that the women referred to violence or violation as the reason for why they're their previous relationship ended is not mentioned or discussed in the assessment by the Migration Court.

In the third judgement, the woman also refers to violence and violation and that the relationship had ended because her former husband's addiction and "other personal problem," these statements are supported by documentation from the former husband's parents. In the assessment by the Migration Court it is stated that the woman had not shown that the relationship had ended due to violence or violation. However, the Court does not discuss nor describe the assessment further, nor does the Court make an assessment about the probability of that the violence had occurred, instead the Migration Court continues to discuss the woman's employment and she is granted a residence permit based on a special attachment to Sweden.<sup>122</sup>

#### *4.1.6 Summary: how is the law applied?*

Similarly, to the finding in the Swedish government's mapping of how the alien law is applied, the findings in this analysis suggest that the assessments from the Migration Court varies. Regarding the question if violence or violation has occurred the Migration Court put a lot of emphasis on documentation about the violence and the violation, but regarding the question about why the relationship has ended the Court put a lot of emphasis on what the individual woman states. This suggests that a woman's credibility is dependent on that she has made the violence or violation probable by handing in documentation to support her claim about the abuse. After the woman have done the violence or violation probable then a lot of emphasis is placed on what she states about why the relationship ended. This creates a notion about that the women must "earn" their trustworthiness by first making the violence or violation probable.

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<sup>119</sup> Judgements 11, 12 & 13

<sup>120</sup> Judgement 14

<sup>121</sup> Judgement 15

<sup>122</sup> Judgement 16

The Migration Court seems to some extent to have a more generous interpretation of the alien law than the legislator has intended. The Court also in some cases seem to have an intersectional approach and an understanding about the difficulties that some women face when exposed to male partner violence. From a gender equality perspective, this is of course a positive indication. However, it does not change that these judgements are individual assessments and that they do not have any bearing on future assessments by the Migration Court nor by the Migration Agency. The fact that the assessments especially about the relationship duration varies, can also mean even more uncertainty for immigrant women that faces male partner violence, because the alien law and the interpretation of the law is unpredictable.

It is hard to do a deeper analysis of the Migration Courts' assessments of the violence in the judgements where the women were not granted a residence permit based on the violence exception rule, because only in a few judgements did the Migration Courts do an assessment about the violence and violation and even then, not much is written. Therefore, it is also hard to say something based on this study about how much violence or violence that is "required" or is considered to be serious enough to be granted a residence permit on the violence exception rule. It can however be said that there is a tendency in these judgements not to elaborate the assessment about the violence or in some cases not even mention the violence and violation that the women refer to. It appears as if the Migration Court finds another ground to grant a residence permit on, the Court will not discuss the violence. This is of course partly explained by how the alien act is written and how the Migration Court applies it. But it nonetheless can be argued that this creates a notion about how the Court look at the question of men's violence against women, more about that in the following chapter.

## 4.2 Identified discourses

Based on the analysis about how the alien law is applied I have identified two discourses in these judgements firstly "the seeking help discourse" that is mostly pronounced in the judgements where the women were granted a residence permit based on the violence exception rule. The second discourse "the discourse of the invisibility of the violence" is identified in the judgements where the women were not granted a residence permit on the violence exception rule.

### *4.2.1 The seeking help discourse*

In the judgements where the immigrant women were granted a residence permit because the relationship had ended due to violence or violation a lot of emphasis as mentioned earlier is put on the documentation that the women submits to their case. In many of the cases documents

from social services, certificate from a physician or/and psychologist had been handed in. In all the judgements, the violence and violation had been reported to the police one or several times, this is something that seems to be regarded by the Migration Court as important documentation to make the violence or violation probable. Emphasis is also put on the interrogation made by the police and on how serious the police has taken the reported violence:

“[...]the police have taken [the woman’s] report to the police serious because a counsel for an injured party has been appointed.”

Another quotation from the same judgement which is an example of how the Migration Court put emphasis on what the woman has said and how she has described the violence in the police interrogation:

“In the police interrogation that has been held with [the woman] about one month after the police report was made, [the woman] maintains the information in the police report and she explains in detail events that happened during the time she lived together with her former partner.”<sup>123</sup>

In almost every case had the women been in contact with, or lived at a woman’s shelter. This is also something that the Migration Court attaches great importance to, and it also seems to strengthen the women’s stories:

“Further, it should be taken in to account that [the woman] on the 17<sup>th</sup> of June visited the Migration Agency and expressed wishes about get accommodation at a woman’s shelter [...]”<sup>124</sup>

In this quotation, it should also be noted that emphasis is put on that it was the woman herself that contacted the Migration Agency and requested an accommodation at a woman’s shelter. From another judgement, the Migration Court writes:

“It is apparent that both the Social services and the women’s shelters have assessed that she on the base of the claimed violation have needed protection and help.”<sup>125</sup>

In one case that included a woman and her accompanying children the Migration Court writes:

“The Migration Court finds that the abuse that [the woman] has accounted for during the (police) investigation are supported by the fact that the family directly after the relationship ended got in contact with a woman’s shelter where they after that lived for a longer period.”<sup>126</sup>

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<sup>123</sup> Judgement 9

<sup>124</sup> Judgement 6

<sup>125</sup> Judgement 8

<sup>126</sup> Judgement 9

That a lot of emphasis is placed on the documentation that the women have handed in, can be understandable because it is stated in the governmental bill that it is the immigrant that need to make the violence or violation probable, something that is also fortified in the judgement from the Migration Court of Appeal.<sup>127</sup> But that sufficient documents that support the women's claims about the violence or violation seems to be needed in order to be granted a residence permit can be problematic, especially for immigrant women. According to the government inquiry have immigrant women with temporary residence permits less access to legal solutions and less access to fight the violence exercised by men against them than other women that are exposed to violence.<sup>128</sup> It is also problematic that a lot of responsibility is placed on the women because it creates a notion about women's ability and knowledge to seek help. To seek help can be complex, and as pointed out by Andersson and Lundberg can it be difficult for women that face male partner violence to seek help, and especially for immigrant women that have newly moved to Sweden and that might be dependent on their partner for information about the Swedish society.<sup>129</sup> And it can be even more problematic if the women are isolated from the Swedish society as described by Lenardt.<sup>130</sup> To report the violence to the police authority can also be difficult for immigrant women, since they might not know the language or might be unaware of their rights.<sup>131</sup> It can therefore be argued that this is a question about access to justice. That all humans are equal and that the law therefore applies equally to every human is a central position in the rule of law.<sup>132</sup> But since it in this study is shown that the woman's credibility and right to a residence permit is dependent on what documentation she submits to her case, it can be argued that the right to residence permit is a question about the individual woman's access to justice. And since research as mentioned has shown that immigrant women that face male partner violence have a vastly reduced access to legal solutions for the violence compared to women with secure immigrant status.<sup>133</sup> And as pointed out by Shama and Gill amongst others, does many immigrant women face several barriers in accessing sources for help.<sup>134</sup> Which means that these women might have difficulty in making the violence or violation probable to the Migration Court.

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<sup>127</sup> MIG 2011:25

<sup>128</sup> SOU 2012:45 p. 26

<sup>129</sup> Andersson & Lundberg (2000) p. 54ff

<sup>130</sup> Lenardt (2008) p. 312f

<sup>131</sup> Shama & Gill (2010) p. 219

<sup>132</sup> Wade (2015) p. 152

<sup>133</sup> Thiara, Condon, & Schröttle (2011) p. 21

<sup>134</sup> Shama & Gill (2010) p. 230

To report the violence or violation to the police and to seek help from for instance a woman's shelter can be seen as a conception in the society of how an immigrant woman that is a victim of male partner violence should act and the consequence is that a notion about how a battered woman should act creates. The violence should be reported to the police and documentation from a woman's shelter or social services also strengthen the woman's story about the abuse. The more documentation that are submitted the more probable the woman's claims about the abuse is, and as discussed above the more probable the abuse is, the more emphasis is placed on what the woman states in regarding to for instance why the relationship ended. It can be argued that how a battered woman is supposed to act can seem to be somewhat contradictory. As discussed by Mahoney can signs of passivity from the woman be interpreted as that the woman is in need of protection, while if the woman shows signs of resistance can that be interpreted as evidence that the woman doesn't need protection.<sup>135</sup> Burman, argues that immigrant women often comply more easily with this picture of defenceless and passive victims of male partner violence and that they often are considered to be less independent than women of Swedish origin.<sup>136</sup> Because immigrant women often have a weak position in the society,<sup>137</sup> and a weak position as victims of crimes, and since immigrant women comply more easily with the picture of defenceless can it be interpreted as weakness when an immigrant woman seek help and protection. Despite this, is quite a lot of activity required from a battered woman to be granted a continued residence permit, it however seems that the activities need to be of a certain kind.

#### *4.2.2 The discourse of the invisibility of the violence*

As mention in chapter 2.4 is to look at what is not said or discussed in a text especially useful when analysing legal documents, to analyse what is not said can help the researcher to understand how normality is constructed.<sup>138</sup> That the Migration Court in most of the judgements where the women were not granted a residence permit based on the violence exception rule does not mention or discuss the violence or violation that the women refer to and in some judgements does not develop why the women were not eligible for a residence permit based on the violence exception rule, creates a notion about what the Migration Court values and it suggests that the Migration Court trivializes the violence. It can be argued that the violence is seen as less important than the fact that the women have employment or children in Sweden.

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<sup>135</sup> Bacchi (1999) p. 170

<sup>136</sup> Burman (2012) p. 8

<sup>137</sup> Lenardt (2008) p. 288f

<sup>138</sup> Niemi-Kiesiläinen, Honkatukia, & Ruuskanen (2007) p. 81

And it creates a notion that immigrant women are more wanted in the Swedish society as employers than as victims of male partner violence. It suggests as studies from Switzerland have pointed to, that the renewal of residence permit primarily depends on skills or qualification as a criterion of integration, while the violence is seen as secondary.<sup>139</sup> This is also strengthened by the fact that the Migration Court in most of the judgements where the women were granted a residence permit because they had been exposed to violence or violation nevertheless made an assessment about the women's special attachment to Sweden and about their current work and work experience.<sup>140</sup>

To do a deeper analysis of these judgements is difficult because generally very little is written in the judgements, for instance is information about the origin of the women often not mention, which can be positive in that sense that the information might not be needed. However, the fact that so little information is written about the women is surprising, since it was stated by the Migration Court of Appeal that the immigrants background should be considered.<sup>141</sup> It is difficult to analyse how and if the Migration Court has done this since very little is written in the judgements about the women, their background, and the contexts that they have been in. That the Court fails to take the women's background into account can be seen as a way to hide women's experiences from different contexts. That the Court grants the women residence permit based on special attachment to Sweden without discussing the violence or violation can be seen as a way to conceal the "other" context. This and the lack of discussion and failing to mention the violence and violation that these women refers to, suggests that the Migration Court does not take responsibility for the question about men's violence against immigrant women.

## 5. Concluding discussion

### 5.1 Summary in terms of the aim

The aim with this thesis was to examine how the alien law and the violence exception rule is applied by the Swedish Migration Court and which discourses about violence and immigrant women that could be identified in the judgements and to place this in relation to Swedish governments international obligations and gender equality goal, that men's violence against women must stop. Firstly it can be stated that the fact that temporary residence permits are granted instead of permanent residence permits is a breach with the latest concluding observations of Sweden from CEDW where the Swedish government is recommended to revise

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<sup>139</sup> Masson & Roux (2011) p. 134

<sup>140</sup> For instance, judgements 2, 3, 4, 5 & 7

<sup>141</sup> MIG 2011:25

the conditions for granting temporary residence permits to immigrant women in order to avoid adverse consequences for these women of their dependency on their partners when the latter exercise violence against them and ensure full protection to women that are victims of violence.<sup>142</sup> The differences in how the question of men's violence against women is handled in the alien law and the criminal law is also a breach to CEDW, because it makes the laws discriminatory since the effect suggest that some women are worthy of protection, but other women are not.<sup>143</sup> It can also be argued that different access to justice and the different possibilities to make the violence and violation probable is a discriminatory circumstance. It can therefore be argued that the Swedish government seems to have a different view on the question of violence against immigrant women with temporary residence permit than what is pointed out by the CEDAW and stated in the Istanbul convention. One question that is pointed out in the Istanbul convention is that an autonomous residence permit should be granted to victims whose residence status depends on a spouse irrespective of the duration of the cohabitation or marriage.<sup>144</sup> This is a question as shown in this study than can be especially problematic for women that face male partner violence. The cohabitation even if the woman is exposed to violence must have lasted a certain amount of time, but it is unclear for how long. The consequence is that the interpretation of the alien law is unpredictable. Simply the fact that the duration of the cohabitation is a question that can affect women's opportunity to obtain a residence permit, contributes to the notion that not all women are equally important to protect.

Findings in this study suggest that the applying of the alien law by the Migration Court is more generous than the legislator might have intended. To a certain degree the Migration Court also seems to have an intersectional understanding, which from the Swedish governments gender equality goal perspective is a positive indication. However, findings in this study suggest that women's credibility to a large extent is dependent on if the women have done the violence probable. Which creates a notion about women's ability and knowledge to seek help, what I have called "the seeking help discourse." That a lot of responsibility is placed on the individual woman can be problematic since many immigrant women face several barriers in accessing sources for help, the support and resources that is available to them can also be limited. The consequence of this is that the right to a residence permit to a large extent depends on the

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<sup>142</sup> Committee on the elimination of discrimination against women. Concluding observations in the combined eighth and ninth periodic reports of Sweden, p. 8

<sup>143</sup> Shama & Gill (2010) p. 231

<sup>144</sup> <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

individual woman's access to justice, which in turn mean that many of these women face a continuing violation of their human rights, to get protection from violence.<sup>145</sup>

Apart from the seeking help discourse is a discourse about what the Migration Court values identified in the judgements, "the discourse of the invisibility of the violence." This study suggests, that the Migration Court avoids discussing or mention the violence or violation that the women refer to by granting women residence permits on "special attachment to Sweden." This indicates how the Migration Court look at the question about men's violence against women. And it can be argued that it creates a notion about that immigrant women are more wanted in the Swedish society as employer or mothers than as victim of male partner violence.

Although it seems as the Migration Court has moved toward a more generous interpretation of the alien law. All the judgements from the Migration Court are individual assessments and the fact that the assessments varies can create uncertainty for the individual, because the interpretation of the alien law becomes unpredictable. And that a lot of responsibility is placed on the individual woman, means that the woman need to help herself rather than being helped by the society. Instead as pointed out by the CEDAW that the Swedish government need to ensure full protection to women that are victims of violence, the findings in this study points to that the women that are victims of male partner violence and have a temporary residence permit to a large extent need to protect themselves. This along with tendencies that the Migration Court ignores the violence if residence permit can be granted on another ground than the violence exception rule suggests that how the Migration Court handles the question about men's violence against women, and how the alien law is applied is not compatible with the Swedish government gender equality goal about ending men's violence against women.

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<sup>145</sup> Shama & Gill (2010) p. 230

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