POLITICAL VIGILANCE IN COURT ROOMS:
FEMINIST INTERVENTIONS IN THE FIELD OF LAW

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2012

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Thesis submitted to the
Institute for Graduate Studies in the Social Science
in partial fulfillment of the requirements for the degree of

Master of Arts
in
Sociology

by
Cemre Baytok

Boğaziçi University

2012

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Feminist Interventions in the Field of Law

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September 2012

Thesis Abstract

Cemre Baytok, "Political Vigilance in Court Rooms: Feminist Interventions in the Field of Law"

This thesis scrutinizes feminist activism in the field of law in Turkey. Focusing on the litigation of court cases of male crimes against women, I aim, in this thesis, to figure out how the feminist movement challenges the reproduction of women's subordination in the practice of law. Based on interviews with feminist activists and on my observations throughout litigation processes, I attempt first to reveal how women encounter in different stages of law with multiple forms of male domination while trying to escape battering, publicize sexual assault or expose rape experiences, and secondly, how feminist interventions in law are of significance to contest patriarchy by and large. Relying on a comprehensive observation of litigation processes in women killing and sexual assault cases, I convey how law deals with these crimes around the notions of women's sexuality and family, and accordingly maintains men's domination over women. In so doing, dwelling on the notions of testimony, evidence, medical reports that figure in complaint, trial and decision processes, I show the structural content of patriarchy that is reified in the field of law. With a careful inquiry about organized litigation of cases, I expose what is not been appended to court records but has vital consequences on women's daily lives. In this thesis, thus, by narrating stories of battering, rape, and murder, I highlight the contribution of law in the perpetration of male violence and how it is reproduced at the ground level, and argue, for that very reason, it is a political space of intervention for feminists that they challenge and change.

Tez Özeti

Cemre Baytok, "Politikayı Mahkemelere Taşımak: Hukuka Feminist Müdahaleler"

Bu tez Türkiye'de hukuk alanındaki feminist aktivizmi incelemektedir. Kadına yönelik erkek şiddeti davalarına odaklanarak, bu tezde, feminist hareketin hukuk pratiğinde cinsiyetçiliğin yeniden üretimine nasıl karşı çıktığını anlatmayı hedefliyorum. Feminist aktivistlerle yaptığım mülakatlara ve dava takipleri süreçlerindeki gözlemlerime dayanarak, ilk olarak, kadınların, şiddetten kurtulmaya çalışırken, cinsel saldırı veya tecavüz deneyimlerini kamusallaştırırken hukukun farklı evrelerinde erkek egemenliğiyle karşılaşmalarını ortaya koymayı, bununla birlikte, hukuka feminist müdahalenin, genel anlamıyla patriarkayı sarsmak için, ne açılardan belirleyici olduğunu göstermeyi amaçlıyorum. Kadın cinayeti ve cinsel saldırı davalarına yönelik bütünlüklü bir gözlem ile, hukukun bu suçları kadın cinselliği ve aile temaları etrafında tartıştığını ve bu şekilde erkek egemenliğini idame ettiğini öne sürüyorum. Bunun için, şikayet, dava ve karar süreçlerindeki ifade, delil, tıbbi rapor temalarına değinerek, patriarkanın yapısal içeriğinin hukuk alanında nasıl yeniden üretildiğini tartışıyorum. Örgütlü dava takiplerini dikkatle araştırmak, mahkeme kayıtlarına yansımayan ama kadınların hayatlarına doğrudan etkisi olan bu yeniden üretimi açığa çıkarmaktadır. Bu tezde, bu anlamda, şiddet, tecavüz ve cinayet hikayeleri aracılığıyla, hukukun erkek şiddetine katkısı ve şiddeti somut biçimlerde ürettiği, tam da bu sebeple, hukukun feministler için mücadele edilen ve değiştirilen bir politik müdahale alanı olduğu ortaya koyulmaktadır.

ACKNOWLEDGEMENTS

This thesis is a truly collective work. I always felt that I had beautiful people around me during this lonely work of writing. First of all, I am grateful to my thesis advisor, Biray Kolluoğlu, for her analytical understanding and inspiring criticisms for all the moments. Not only with regard to this thesis but also right from the very beginning, she has been the most notable and influential person for me throughout my studies in sociology. I also owe much to her for her deep insights in the improvement of this thesis. I am also thankful to my thesis committee, Meltem Ahıska and Cenk Özbay, for their support and valuable comments during the process. I want to thank all the faculty members in the Boğaziçi University Sociology Department first for their contribution in the formation of my sociological and critical thinking and for their sincere support during the writing of this thesis.

I am grateful to Filiz who shared all the moments. She was in constant support from the very beginning of this study until the last words; I without her could not able to attempt such a work. Her unending enthusiasm and belief kept me motivated until the end. I also owe much to Asena, who contributed a lot to the construction of this thesis with her generous and emotional attitude. She patiently endured with my moods all the time.

I would like to thank many people for their contribution in the improvement of this thesis: Gülnur, Aslı Z, Candan, Huriye, Çiğdem, Fatoş, Deniz T and Deniz B for their insightful guidance and connections, Gamze, Şengül, Özlem K, Özlem B, Güneş, Meriç and Zeyno for their sincere encouragement, Balca and Ayşe for their patience and help in corrections, Ceren for her refined translations, and my colleagues in the

Assistants' Room, Güzin, Alev, Zeynel and Caner for their support. All of them helped me a lot in carrying it through.

My mother, Füsun, was supportive in all of my decisions and work, like always, helped me from far away. I always felt that she stood by me which encouraged me in realizing my hopes and beliefs.

Finally, I want to thank the feminist movement, all women who shaped this study and shared their ideas and thoughts with me. Socialist Feminist Collective, in which I spent my last four years, made me believe in the power of collective work and in the possibility of alternative ways of producing together as much as building real solidarity.

In memory of Dicle Koğacıoğlu …

CONTENTS

CHAPTER 1

INTRODUCTION

Şefika Etik, killed by her husband in October 2011, was publicly known via a newspaper, *Habertürk*, like many other women who were killed by their intimates. What separated her from others was her dead body in blood covering one third of the first page of the newspaper published without any censor. This photo immediately led to public reactions: some were supporting this "courage" because it was perfectly showing the "end point of male violence" (a knife was stuck in her back and it was shown in the picture) and some others were opposing it saying that this photo without any censor is the overexposure and pornography of violence. The editor of *Habertürk*, Fatih Altaylı defended his publishing and explained that it is a striking and yet successful means of making women killings visible in public.

This was almost all about Şefika for the public because apparently she was one of the women who faced male violence and was killed eventually. Months later, a call from two women lawyers in an e-mail group mobilized women from different cities for Şefika again. These two young women wrote in their e-mail that they asked support from feminist lawyers for Şefika's trial because this was their first criminal case. First trial was on January 23 in Manisa.

In the following meeting of *Istanbul Feminist Collective*[1], women decided to participate in this case. Four women from Istanbul, one of them a lawyer, then, went to Manisa for the first hearing. I was also part of this process as a constant participant of court cases. While we reached the court house in Manisa, a group of women from Izmir was making a demonstration. In the court room, three hours of hearing was full of attack on this dead woman's personal life. The main question around which the testimonies were constructed was whether she had cheated on her husband. The accused, İbrahim Etik, in his testimony said that he "forgave her but still she went on cheating" and that for this reason for a moment he lost himself and just remembered that he stabbed her one time. All his relatives –a grand family-, including two sons, testified in a similar fashion and defended the killer. Şefika's lawyers formulated their petitions objecting to this claim of adultery. The victim was judged and became the prime suspect, as if she was not constantly battered by her husband, moved finally to the shelter, picked up by her husband and returned home and killed the same day. Courts are interesting places which have their particular orders. For me, sitting in the audience, it was more than obvious that she was battered during her entire marriage and finally left because she was exhausted. He eventually convinced her to come back home and killed her. The reality in my opinion, which law aims to reveal obviously, was so sharp and definite in that very first hearing. The court, unlike me, needed to discover if she really had an affair. If so, upon which rationale of law it can be decided that he should be given reduction in penalty? I have felt in each and every case hearing as if the court is trying to find an appropriate excuse within the relevant boundaries of legal regulation for the male killing or assaulting of a female.

[1] Istanbul Feminist Collective is an organization which gathers women's groups Amargi, Filmmor, Mor Çatı Women's Shelter, Socialist Feminist Collective, Women's Solidarity Foundation, Women for Women's Rights and independent feminists.

The Field of Law in Turkey and its Critique

In Turkey law and power have always been on the political agenda. Similarly, litigating cases has regarded as a political act. Legal operations against especially leftist groups and their legal and illegal acts can be counted among the effective state policies in the 1980s Military Coup period which charged and judged masses guilty of rebelling against state authority. As such prosecutions against members of these groups were taken political and litigation of and intervention in cases are politically organized starting from the 1990s. Most visibly, the accused and the lawyers made political defenses depending on their political attachments at the court rooms and in some they rejected the courts. Metin Göktepe, Manisa, Madımak, Cizre, Hrant Dink, and Temizöz cases were among the collectively followed cases (Atılgan and Işık, 2011), including several intervening lawyers and activists and families both waiting and demonstrating before famous State Security Courts (*Devlet Güvenlik Mahkemeleri* - DGM) and being present as audience in the court room.

After the Justice and Development Party (*Adalet ve Kalkınma Partisi* – AKP) rule in the 2000s the scope of political prosecutions has been widened and transformed in terms of its systematic and meaning. In 2004 DGMs were removed by AKP and Special Courts (*Özel Yetkili Mahkemeler* - ÖYM) were introduced in their place as the new relevant courts for "terror crimes".[2] Extensive cases like Ergenekon and KCK are the operations of "a new system" of power: a huge number of people from different occupations have been prosecuted by these operations and/or arrested, most of them associated with irrelevant claims or crimes, almost all of them banned for months from having been informed about the alleged crime, and passed long periods in prison. Today

[2] While I was writing this thesis, AKP has proposed a law reform transforming Special Courts' as well.

in its third term in government AKP has established large scale oppression towards different antagonisms in society by KCK, Devrimci Karargah, Ergenekon, Balyoz, Şike, Deniz Feneri operations: a significant number of people are included from the Kurdish movement (legal or illegal) to weak leftist groups, from retired army members to university students and children, football managers and journalists (eds. İnanıcı, 2011). In this, as a part of women's movement in Turkey, Kurdish women's movement (*Demokratik Özgür Kadın Hareketi* - DÖKH) is under attack with regard to the Kurdish movement. Simultaneously law has gone under a rapid institutional change as well primarily by the replacement of prosecutors and judges (*Hakim Savcılar Yüksek Kurulu* - HSYK) (Ertekin, 2011). As a consequence law has been reinforced as a site of struggle in the 2000s in Turkey. Meanwhile, in this context, crimes against women have achieved a considerable visibility for official numbers indicate a raising number in women killings. In this concern, the impact of AKP on patriarchy and its reflections like promoting male violence has been questioned (Coşar and Yeğenoğlu, 2011). And as law occupies a significant place in the overall reflection on women killings, court cases have gone through politicization as well. Across Turkey, cases of women killings are politically reclaimed by feminists, women's rights organizations, leftist groups and the Kurdish movement towards the end of the 2000s.

Under these circumstances law and its exercise of power are on the top of the current politics in Turkey. Although trials for each indicate to different ideologies or political stances, what embraces all is the significant role of law in reproducing and reflecting of the state and the government power (*Birikim*, 2012). Trials concerning women killings and sexual assault of men, though today it is admitted that they have an organic relationship with patriarchy, are left to the care of the feminist movement and women's organizations. In other words, this growing criticism against the new regime of oppression via legal apparatus, excludes the role of law in reproduction of another

political system; patriarchy, or at most is considered and in that manner objected under the paradigm of human rights. In this sense crimes against women in the field of law cannot go beyond regarding them as "ordinary" trials rather than political or "political enough" ones. Human rights discourse help reinforcing this understanding: as far as rape or murder of a woman are said to be violations of human rights, rather than male crimes enabled by patriarchy,[3] these trials continue to be handled as nonpolitical or abstracted to the paradigm of human rights disregarding the patriarchal system which cuts across all the power relations. In turn, as the state violence is politically contested, the male[4] violence (which is also a constitutive and reflective component of state violence) is ignored. This is the lack in criticisms on the field of law today. This lack of conceptualization mentioned above results not only in *de facto* creation of an "expertise" of feminist movement in such trials but also in another conflict: feminists encounter with the men of above mentioned in the "political trials", in cases of crimes against women, as the defense lawyers.

Every crime against women perpetrated by men is political. What makes it political is the systematic power relation behind it. Rape, sexual harassment, battering and, murder are the manifestations of this power; of the male dominance towards women (Ulmschneider, 1995). Thus this study above all relying on "personal is political" argues that male crimes against women are political and the field of law consists of one of its components. It is argued that what has been rendered private and invisible for ages is in fact under direct state protection and intervention and, male dominance, therefore, private reconsidered in the liberal doctrine as determined by individual

[3] Is rape a crime against humanity ("insanlık suçu")? Many argue it is so. For feminists, it is first and foremost male crime. This emphasis enables to state the subject and the systematic aspects of the crime: men, as a category of dominance of patriarchy, not humanity. See, Karakuş, 2012.

[4] In a similar vein, feminists name the perpetrator of violence: using male violence as a category, instead of "domestic violence" or "violence against women", they expose the patriarchal mechanisms embedded in violence. See, Segal, 1990.

choices or preferences is itself already constructed and contrubuting to the system of patriarchy to be sustained (MacKinnon, 1983). Politicizing of the private thus embraces a wide range of mechanisms: labor, sexuality, violence, family roles at the interests of men according to which legal claims as abortion, divorce, same sex marriage, protection order are asserted (eds. Thornton, 1995, eds. Boyd, 1997). Feminists with the argument of personal is political attempt to bring to public all these and male violence is one of them. However what means political does not bring simultaneously activism. Feminist women by intervening to the litigation construct the activism of this politics. So intervention and exploration of the field of feminists have to be analyzed in this regard.

Towards a Thesis Subject

I as a member of a feminist organization (Socialist Feminist Collective) first confronted with case processes with Ayşe Yılbaş trial during its local court proceedings in 2009. I could follow two hearings of this case. At that time feminists again were asserting that "women killings are political" and law constituted a crucial part of it. Ayşe Yılbaş case was a landmark in politicizing these trials from a feminist standpoint, due to her story and the feminist interpretations that ensured and the discussions that it triggered.

The prevailing feeling that I had at that time, certainly related to other political trials that I was acquainted as well, was the rupture in my sense of reality. That is, in Ayşe Yılbaş hearings all was so explicit to me that I was wondering how law cannot "see" this in the same way. Then I have looked forward for a deeper understanding of the particularities of this realm in terms of its regulation and practice. Gradually, with the rising number of women killings that law has become more and more a significant confrontation space for women and thus, for feminists. This space includes

sophisticated mechanisms which necessitate an overarching inquiry than examining only struggles over its written form. In other words, after pursuing some cases and entering the prosecution processes I realized that law indicates to a wider and comprehensive phenomenon with all these prosecution processes, testimonies, victimhood, activism and the role of actors in all these. Then I formulated the basic and yet substantial questions of this study: in which aspects law is a political space for the feminist movement? How do feminists experience and challenge the multiple forms of confrontation with law which degrade women's positions compared to men and promote women's repression in society? In which ways do they have an impact on law as a gendering strategy?

This study thus scrutinizes feminist activism in the field of law. I have to clarify what I mean by the field of law. "The field of law" as a conceptual tool embraces the political and practical aspects of law alongside its written form. Furthermore, this conceptualization connotes to change, practice and contest. Against the tendency of regarding law as a set of rules only, the field of law suggests more and binds several layers altogether: the field of law includes its discourse, implementation, actors, and its link to everyday practice (Smart, 1992). Hence this study focused on trials explores the jurisprudence but offers neither a legal theory nor a lawmaking from a feminist perspective; dwells on the implementation of law but does not focus solely on the court room processes; and relies on the narratives of women but does not suggest a narrative analysis. Rather, in this study I attempt to have a comprehensive look through "the dialectics of rights and politics" (Schneider, 1986; 2000). Depending on the dialectical relationship between activism and legal claims (including rights talk); they shape each other. So that, intervention in law is ensured as a subcategory of larger political struggle through which feminist movement all over the world has been challenging male violence against women. Similarly the feminist movement in Turkey considers legal

struggle also as a part of the broader activism to which law is one of the sites of struggle among others.

I have benefited a lot from the feminist literature on feminist engagement to the legal practice and historical turns especially concerning the late 1980s and mid 1990s. Feminist investigation in the field of law clarified that law is not simply written as a set of rules and orders; it has a materiality upon which gender discrimination is produced and results in as a concrete impact on the ordinary lives of women. Accordingly I, in this study, I will precisely elaborate on how feminists trace and contest patriarchal dynamics in the entire process of trials which provide for a wider frame to grasp gender discrimination at work. Although similarities to the 1990s world literature in terms of encounters with law upon which feminists built their criticisms are impressive, particularities are as important. This will enable to see as well the ups and downs of feminist activism and new quests accordingly. Finally a study on activism will enable to rethink on the tendency of separating feminism as academic project or political activity (Conaghan, 2000).

I stress using the term patriarchy though it may seem outmoded in the literature (Ogle and Batton, 2009). The term patriarchy implies that there is a systematic relationship that male violence is based on therefore attributions and reductions to psychology, culture, religion or ignorance as the reasons of and solutions to male domination are invalid. The term patriarchy enables also to indicate a subject position and/or an actor as well: the domination of *men*. In a similar vein, I intentionally do not use honor or custom killings for these approaches highlight custom or tradition as the cause of violence and as such "male dominance is seen as only one contributing variable to violence against women rather than as the central organizing feature" (Hunnicutt, 2009, p. 556). Throughout the study I will use term patriarchy as follows: "Rather than adding gender as one variable in a model, a gender-centered theory would expose how

violence plays out in a gendered social context and would permit understanding of the complex ways that gender interacts with other social conditions and processes. Patriarchy is a chief characteristic of social structures but is easily obscured" (*i.b.i.d.*, p. 556). A feminist study on the legal practice enables also to see different layers of patriarchy rather than a single model of oppression at work. It portrays out how family, sexuality and heterosexism have central role in the analysis of law (Boyd, 1999). It is significant to briefly mention my theoretical grounds to show where I locate the litigation of court cases. Thereby, I will use patriarchy and its multiple sites of power in scrutinizing court cases such as age, occupation, marital status, location, and so on. However, a detailed discussion of feminist theory of male violence would be beyond the purposes of this study.

In this study I define feminist movement as a subcategory of women's movement. Women's movement gathers different ideologies primarily differentiating in terms of the analysis and the tools for women's emancipation and one of them is the feminist movement. However, it is noteworthy that there are other women's groups than feminists who are involved in litigation of cases which also contribute to the public awareness of male violence.

As a final note, in this study I definitely argue that the feminist struggle in the field of law does not constitute the sole focus of but, on the contrary, is fed by the larger feminist politics. Furthermore, I would assert that by that way only it could have impact on law (Gotell, 2007). Feminists in Turkey have intervened with an organized manner in the field of law and court litigation in women killings through which they emphasized the contribution of law in rising male violence in society.

Methodology and the Field Entry

There is no academic literature about the feminist legal struggle in Turkey. Yet there is a literature that can be found in a variety of feminist magazines. In other words, feminist writing is in increase but writing on the feminist movement is rare. To conceptualize the subject of this thesis, I thus applied to short essays in feminist magazines[5] to catch up the history and theoretical grounds of litigating cases. They reveal the developments of and ideological turns in the feminist approach to the field of law over the years as well. Moreover, what appeared crucial to me was to interview with feminist activists including lawyers to both capture the historical traces –in a sense some interviews recall a study of oral history in the absence of comprehensive written history- and elaborate more about politics. To interview feminist activists and lawyers gave considerable information about how law as a political space is constructed for the feminist movement and as importantly about how feminist activists encounter gendered practices in the whole process.

I made 15 interviews with female activists including lawyers. I reached feminist women from Istanbul Feminist Collective (*Istanbul Feminist Kolektif*), Ankara Women's Platform (*Ankara Kadın Platformu*) and Adana Women's Platform (*Adana Kadın Platformu*). I followed court hearings in Fethiye, Manisa, İstanbul and meetings held in Istanbul in which these women from three cities were participating. I did not interview jurors. There is no feminist activist prosecutor and judge in any feminist organization and for purposes of this study, in which I observe political mobilization via litigation, I did not interview women outside the movement. There is a distinction in subject positions of lawyers from prosecutors and judges: it seems lawyers are those who belong

[5] There is s tradition of feminist magazines in Turkey from the late 1980s onwards including Kaktüs, Feminist, Pazartesi, Amargi, Feminist Politika that I will benefit throughout this study.

to the defense and the rest represents the state. At the same time, jurors reclaim "objectivity", compared to lawyers and the audience, which stems from the very ground ideology of the liberal law. Accordingly, this study aims to be subjective: which ultimately conveys that the objectivity of law is inherently subjective.

In other words, as a part of feminist methodology participant observation is fundamental. As a member of a feminist collective I had already a standpoint starting this research. Thus, I was already engaged in litigation of trials, have been involved in political activism and I was familiar with both the activists and the reflections about the issue. All that prepared the political ground for this study. Thus, as mentioned above, in contrast with the objectivity claim of law, I was not an objective observer either; I tell the story from inside which after all affects the knowledge that this study produces (Al-Ali and Pratt, 2006).

By observing court cases, I in this study aim to construct a narrative out of what is happening inside court rooms and in the entire proceeding and, reveal mostly what is not recorded but has direct influence on women's lives, and over all, how in sharp law contributes to devalue women's experience, which are already distinct enough to be brought before court, and promotes in multiple ways to women subordination. Depending on my constant participation in hearings that I supplement by interviews with lawyers and activists I will seek how feminists challenge the field of law in an elaborate manner. In this study I do not assert a state or institutional ethnography about male violence but in the other way round I examine the feminist objections raised to it. However, while scrutinizing feminist challenge, as a matter of course, the role of the state and its instruments in their contribution to sustaining patriarchal order are deeply exposed.

Interviews at first show the multifaceted aspects of legal arena which is nearly impossible to understand without an embodied intellectual encounter. It is hard to

comprehend law and its practice as an outsider without any legal education. Law in its written form and in its implementation is already complicated; I can certainly say that in each and every trial I have faced new situations. Before starting to write, I spent one year of witnessing processes of trials both outside and inside, and lawyers helped me out with my abundant questions about every single detail in court records, demands, decisions, in short, in its practice. Hence, these interviews first of all enabled to translate a complex realm of law to a site of study out of which many sociological questions arise. Thus, trial records and my own presence in courtrooms, observing both what is happening inside and outside court houses, are supplementary and yet fundamental sources for this research. Because what is recorded in trials and in which formulations already gives cues about the gendered nature of legal realm, being present during trials was more than necessary for me.

I will separate this study into three core chapters. In Chapter 2, I will explore first encounters with law before and after the crime in concern. This includes three forms of encounter which are tied together for the purposes of this study: confrontation of complainants with legal practice, an overview on the feminist movement in its relation to law and involvement of my informants in litigation. In Chapter 3, a detailed analysis of trial process will be handled. In this, I expose court proceedings step by step in order to show the feminist intervention in its variety. Finally, in Chapter 4, I will look at the decision of the local court about the crime and its aftermath in which I will argue how feminist struggle endures rather than ends with the decision part. This division is inferential. The feminist critique concerning the field of law dwells abundantly on the proceeding nearly neglecting before and after the trial. Depending on this comprehensive examination, I will demonstrate that the feminist intervention in the field of law comprises both before and after of the trial, thereby it is a part of larger struggle contesting male domination in society.

A detailed research about feminist litigation of cases would also contribute to the following: There are no sufficient academic studies that explore the history and dynamics of the feminist movement in Turkey. And academia rarely refers to nonacademic materials. And these limited sources reflect a limited face of the movement because they focus on certain problematic or do sort of overviews about the ideological constructions of the movement: what the feminist movement in Turkey is and does in practice are never fully handled in the academic literature. The scarce sources may give the impression that as if there is a uniform and stable feminist movement and as a result many changes and/or different feminist perspectives are out of sight. I hope this study would contribute some to document the history of the feminist movement in Turkey. For that, in line with the feminist methodology, I notice in this study to the opinions, interpretations, and detailed narratives of activists and lawyers in order to help carrying the process out.

Sitting in the audience place in Şefika Etik's trial and hearing the proceeding has been my position in the past two years. Astonished in each I constantly tried to understand the *rationale*, which is particular to the construction of law, it was distinct from what I observe as a nonlegal person. What was obvious to me in Şefika's first hearing was not at all for the court. One of the Ayşe Yılbaş hearings in 2009 was my first experience in terms of careful observation in court rooms and my feelings were quite the same. Over time I came across a variety of practice of law in each gender bias is generated in different fashions. So gradually I noticed how layered the feminist struggle is in the field of law. A careful look to the implementation of law reflects how the larger gender discrimination plays out grounded on the notions of family, sexuality, motherhood and so forth. As such, I aim also to contribute to the link between violence and gender from the field of law.

In the days Şefika's proceeding was moving on, feminists had on their agenda how to choose political cases and in what ways to intervene in them. In this first hearing of Şefika's case, the proceeding was overtly gender biased, in other words, misogynist. The case was held in Manisa and it was difficult to follow from Istanbul because there were already ongoing other cases. On the other hand, her story and the first hearing were so impressive that feminists did not want to leave. Şefika case is a good example to start for it covers all the aspects of feminists' litigation: the inevitable reaction to the patriarchy, the visibility of feminist activists that from Manisa they were reached and the organized situation that they have found themselves in recently in terms of litigating abroad.

CHAPTER 2

THE COMPLAINT

First Encounter with Law: Bumping into State Institutions

In June 2007, B.[6] went to a thermal center in Gebeler (Fethiye[7] - Muğla) with her boyfriend. The Center's boss was a friend of B.'s boyfriend and they met there with other friends. After dinner, B. had a head ache and they brought her a pill. After a while she began to feel paralyzed. She was conscious yet she was numb physically. And that night in a room of this thermal center the boyfriend and his friends raped her.[8] Among the rapists, there were high school teachers and an education inspector. At that period B. was working night shifts in a small hotel. They took her back to work. For six months she did not and could not remember what happened that night and meanwhile her relationship with the boyfriend ended.

After six months, upon a call from one of her rapists she suddenly began to remember bits and pieces of the events of that night. She identified eight of the rapists and applied to the prosecutor to litigate this gang rape. However, the public prosecutor of Fethiye did not gather the necessary documents cited in her complaint. Although B.

[6] Throughout this study, I will use the first initial for the living victims of male violence. Yet I will give the names of the perpetrators. In the mainstream media and elsewhere, perpetrators are hidden behind initials because they are alive. Giving names of the perpetrators is in line with the aim of this study to highlight gender discrimination and to contribute to the feminist perspective in the field of law.

[7] Fethiye is a costal touristic village in the southwest of Turkey.

[8] Because this study is grounded on the feminist perspective, I "take to be fundemental women's declaration" and I do not use expressions like "asserted to be raped" commonly used in non-feminist language. This argument will be clarified in the following chapter.

had a report from the Sixth Special Board of the Forensic Medicine, the prosecutor did not take any action and declared nonsuit based on the explanation that the accused were considered as "notable people" in Fethiye "among whom there were five teachers".[9] B. raised an objection to Muğla Second High Penal Court. The objection was rejected. When the domestic remedies were exhausted, she applied to the European Court of Human Rights (EHRC) about the missing investigation; and finally wrote to the Ministry of Justice to reverse the judgment "for public weal." Then the Ministry - primarily due to the Forensic Medicine report mentioned above - revoked the decision of the Muğla Second High Penal Court and litigated. The Supreme Court affirmed the Ministry's decision, and the rape case was finally brought before the court in 2011. In all this process B. was not alone and was supported by activist women who had taken up the case.

Nejla Yıldız was killed by Gazi Baltacı, the ex-boyfriend of her daughter, on a main street in Ankara in 2010. Her son was with her while the perpetrator stabbed her repeatedly. The murder was recorded by a security camera. Despite all the public evidence, her trial did not begin for 9 months because the investigation was not completed and the prosecutor waited the Forensic Medicine report on Gazi Baltacı's sanity although the report concerning the mental functions of the accused should be included in the proceeding part, and not be a reason for the prosecutor to postpone the filing of the case. Lawyers insisted on starting the litigation arguing that the court was to decide on the insanity in the proceedings.

One month before she was killed, Nejla and her daughter had applied to the prosecution with the complaint of threat to life. The prosecution of Ankara responded to this demand by opening a case concerning "simple bodily harm" and "threat" on

[9] Fethiye High Criminal Court, Investigation no. 2008/1468, *Decision no. 2008/1642*, 19.06.2008. See Appendix for all the original quotes from court records.

December 2011, 14 months after her death. Of course in this indictment the fact that Nejla was long dead was not included.

Nejla was a court employee, so was her daughter. She was member of the office laborers union (*Büro Emekçileri Sendikası*- BES) and the union arranged a lawyer for Nejla. Due to the camera records showing Gazi Baltacı stabbing her to death, the murder largely appeared in the media. Besides the union, lawyers from Kadın Dayanışma Vakfı in Ankara immediately got in touch with her daughter and intervened in the process while the prosecutor was resisting to file the case.

Nejla's lawyers wrote a petition to Ankara's prosecutor gathering all the acts of ignorance of the related prosecutor both in her application period before she was killed and in the litigation processes. And by referring to ECHR's decision in Opuz v. Turkey[10] they wrote in the petition that:

> In the Opuz decision of the European Court of Human Rights, *'the judicial passivity'* was underlined in failing to prevent violence against women in our country (…) and the Court pointed out that even though the government has made reforms in recent years, the judicial system has failed to adequately respond to these reforms and the Court also drew attention to the failure to take necessary steps concerning domestic violence within the framework of CEDAW, as exemplified by the immunity from punishment seen in the Opuz case.[11]

Nejla Yıldız, Nahide Opuz and many other women face similar obstacles in the legal practice. Nahide Opuz trial held in ECHR made visible the operations of law and state in cases of legal deterrence in Turkey. It is a representative decision for unraveling what women experience when they seek legal protection from male violence. After Turkey's defense in the court hearing, a juror asks whether Law no.4320 (Law on the Protection of Family) was applied in Turkey in general and if so how come Nahide Opuz and her

[10] Turkey was sentenced by ECHR for failing to protect Nahide Opuz and her mother in 2009. The court concluded that Turkey had violated Article 2 (protecting right to life), 3 (deterrence against torture and degrading treatment) and 14, in conjunction with Articles 2 and 3, (securing the enjoyment of the rights and freedoms set without discrimination) of ECHR (European Convention Human Rights).

[11] Petition to Ankara 10th High Criminal Court, for the File no. 2011/206, 14.10.2011.

mother were not directed to plea for 4320 after their multiple tries of applying to the prosecutors[12]. This question has no real answer because there are so many women who try ceaselessly to obtain protection orders from official institutions and these efforts become visible only after their deaths.

Arzu Yıldırım was one of them who had the prosecutor's petition in her bag when she was killed. After routine violence and threats by her husband she had applied to the prosecutor to receive a protection order. Although the prosecutor had the authority to instruct directly the family court and the relevant police station to issue the order, he told her to give the petition to the police herself. Her killing appeared in the media with a distinct emphasis on the contribution of law to women killings. Stating that it is not only men who kill who are responsible for these murders *Istanbul Feminist Collective* made a complaint about the prosecutor and requested the investigation of this official neglect. The court rejected the demand of investigation. Melahat tells:

> We filed a criminal complaint for the prosecutor at Ümraniye. We made a protest in front of the entrance. We were unwelcome. Everything we did -our entrance to the courthouse, the petition, our conversation with the prosecutor- became a problem. The chief prosecutor said "What can he do here? You're unfair to him."[13]

When it comes to Nejla, she is one of the women who, despite several tries, had no response from state institutions. Prosecutors did not put Law no. 4320 into operation; consequently she could not receive a protection order. Eventually she was killed. Her case reveals vital consequences of the layered operations of male violence: in addition to domestic violence, at the state level, like Arzu, she was confronted with the *neglect* of the legal mechanisms which confirmed and promoted further male violence and even

[12] To watch online the hearing: http://www.echr.coe.int/ECHR/EN/Header/Press/Multimedia/Webcasts+of+public+hearings/webcastEN_media?id=20081007-1&lang=lang&flow=high

[13] Interview with Melahat, lawyer from Istanbul, 06.06.2012. See Appendix for all the original quotes from interviews.

murder. One of the components of the silencing and deterrent aspects of legal complaint is this institutional indifference or neglect.

This process of complaint is first and foremost the initial (and for some the final) step of women's encounter with law. In this first encounter, women have to break the silence and insistently go over all the procedural hurdles of a legal application. The first difficulty is that they have to publicize a situation; that is, battering of a male intimate or an act of sexual assault; acts which have been rendered to be private. Then they have to struggle with the actors of law –often male- to be able to translate their complaints to the legal formulation. They have to tell their experience over and over again in order to achieve legal intervention. In this vein "if a victim's claim still cannot be adequately translated, her harm goes unnoticed" (Cornell, 1991, p.109).

This encounter has an ambivalent impact on women; it is "both silencing and giving voice to silenced women" (Smart, 1990). Battering and most assaults, especially rapes, are not always reported by women. In rape cases husband rape, rape by a relative, rape by an ex-husband, as well as rape by a stranger may all too easily lapse into silence (Ellison, 2000). For rape by its very nature usually has no proof and no witness. The act itself is part of the private sphere (Hunter, 1996).

This particular pressure on delivering the painful experience of male crime to the realm of law is widely acknowledged by women and may end up preventing them applying to state institutions like the hospital, the police, the prosecutor, and so on. If and when women do decide to report, they have to handle the troubling process of complaint procedures and they sometimes abandon the legal process all together. In sexual assault crimes it is specifically difficult to talk about the crime in concern with third parties especially when these parties are authority figures. Moreover, women are also deterred because complaints may end in nonsuit, or their case file can wait for long periods of time.

It can be argued that the violence that women experience is double in the complaint process. And this can also lead to the silencing of women within their environments: they do not tell the crime their (male) relatives. In P.'s rape case followed by feminists, only the mother knew about the rape due to the fear of male relatives in the family. Again in all the followed cases except in the Fethiye case, exposing what happened and its perpetrator is avoided due to a concern for women's safety. What differed in the Fethiye case was the will of B. to politicize and publicize the case so that it could largely spread to so various women's groups across Turkey. After all, despite the particularities in each process, like in P.'s or B.'s rape cases and in all others, litigation is "giving voice" to various forms of male violence. Publicizing cases of sexual assault in the field of law exposes the systematic feature of male violence. It is a means through which women declare their subject positions with regard to their experiences.

In 20 March 2012, the new law on protection order was enacted. With the new regulation, a broader range of litigants can seek orders of protection. Before, only married women could benefit from protection and the rate of divorced women killed by ex-husbands was significantly high. With the women's groups' pressure in the lawmaking process, the scope was enlarged. Still, the law poses difficulties for those who have applied before 2012. However, it is also important to note that this change by itself does not lead to eliminate *the neglect* in its application. Gökçe exemplifies another moment of encounter in women's access to protection:

> Even though the old legislation (Law no. 4320) has a regulation that says, "No fees shall be applied," we had to pay a fee for an application I made. She was a woman who got divorced one month ago, and this application was rejected because they were not married. We did not have any means of appeal, so we waited, and once the new legislation was published in the Official Gazette on 20 March, we made a new application. This time, we submitted to the provincial district governor and were granted a confidential order of protection because the perpetrator of violence was a judge. He was abusing his spouse, a teacher in a small province. I reapplied for the reimbursement of the fee we paid for the order of protection that got rejected. I'm waiting for the judge's decision. I will

> send the reimbursement as well as the receipt to the Ministry in the future, so to ask for a solution to this problem. [14]

Legal fees, on the other side, were enacted in October 2011 due to the new regulations in the Code of Civil Procedure (*Hukuk Muhakemeleri Kanunu* - HMK) adapted in the National Juridical Network Project (*Ulusal Yargı Ağı Projesi* - UYAP). High amounts of money are charged in many legal operations (the Civil Code included, e.g. divorce fees) and this obviously makes difficult or blocks especially low income people's access to law. Legal fees in this sense are constitutive of women's encounter with law in their efforts of getting rid of male pressure since privatizing justice leads to prevention of access of especially low income women. As Gökçe mentions, although the old and new protection orders are issued free of charge according to CMK, at least at the beginning women may be arbitrarily obliged to pay some money. Because of this practice, during the lawmaking, women's groups insisted on removing charges. And it was accepted. However, while I was conducting this study it still has not been specified in UYAP that the protection order is issued free of charge. That is to say, from October 2011 onwards Ministries of Justice and Finance have not implemented the regulation of the Ministry of Family and Social Policies that has direct consequences on women's lives.

Another obstacle that women face while trying to access the law is the complexity of the process. Both the law and its operations are complicated for those who are not lawyers. Keeping in mind the high number of illiterate women in Turkey, and the contribution of the constant changes in the legal regulations; law has more and more become a difficult space to enter individually for women. Simplicity in lawmaking was one of the major political goals of the women's movement. Gökçe talks about their efforts in the reform process:

> We insisted that this law (*protection order)* should not be written in a language that will be intelligible only to lawyers, law professors and

[14] Interview with Gökçe, lawyer from Istanbul, 13.04.2012.

> judges. We tried to explain this so many times, but we have been partly successful. It was a draft that was hard to understand for an outsider, there was only partial improvement despite our efforts, and this is a problem with this legislation.[15]

Melahat on the other hand adds the overall complexity of women's entry today:

> Not only all the court houses are located in one place, they've also turned into places that cause fear among people. They are huge, huge buildings with labyrinths and corridors where you lose your way (…). Nowadays, if you do not get any professional help when you're there, it is so hard to deal with everything while trying to work through things even though you have the money. Because it functions in such a complicated way, in addition to the costs, in the judiciary system, it is much more difficult for women to go directly to justice, fight for their rights, see a prosecutor, file a complaint without the help of a lawyer. Even though the number of lawyers has increased (….). It is more difficult for women than men to find the bar association or a feminist group, or –as the most well-known example- find Mor Çatı to have an address of a lawyer, find this and that...[16]

In light of all these, it can be argued that complaints on male violence are already filtered before they are brought to court. The pre-court period, less visible than the trial stage, already does not facilitate the access of women to law and it even promotes obstacles[17]. In this sense, parallel to case hearings it discriminates women's accounts beforehand (Smart, 1989). However, despite all and whatever the result is, the complaint itself is a form of articulation of different forms of invisible male violence – maybe silenced for years – and their exposition and criminalization on the scene of jurisprudence.

The victim's encounter with double violence after a rape or any criminal case, if she passed all these difficult steps and eventually decided to go on legal deterrence has to be further analyzed. However, in this study, I do not dwell exactly on what is experienced by victims of male violence. In other words, I will not put at the center of this analysis victims' narratives. It is obvious that feminists politicize these cases

[15] Gökçe, 13.04.2012.

[16] Melahat, 06.06.2012.

[17] F. Ş.'s case is a significant one that made visible that access to law is the duty of the state, not of women's groups. See Chapter 5.

primarily arguing that if one woman is victim of male violence, due to the patriarchal system; all women are under threat (Mor Çatı, 1996; Tuna 2011). However, politicizing one's victimhood does not lead to sameness in terms of experiencing pain and violence: every victim has another story to tell. Furthermore, accordingly the concept of victim is under debate: whether it stabilizes victimhood and how to construct an equal relationship without ignoring the victimizing pain are challenging topics for feminists (Schneider, 2000) which are beyond the scope of this study. Feminist critique on how the victims of male violence are re-victimized in the aftermath of these crimes constitutes a rich literature (Smart, 1989; McLean, 1997; Goodmark, 2004; Caringella 2008). Yet, in which ways the juridical process itself treats victims and reproduces other forms of victimization are included in this study in order to supplement my points. Still, observing the process through the lens of victims' narratives requires a different consideration. I will focus on the political engagements of the feminist movement in such trials which constitutes the frame of this study.

A Brief History: Feminist Engagement in Legal Proceedings in Turkey[18]

In the previous section I have shown that women's encounter with law starts immediately with a complaint petition. In order to fully understand the collective engagement of feminists in such cases I have to briefly outline the movement's historical engagement with law. In other words, now I will look at the first encounters of the feminist movement with law from the 1980s onwards. This historical background

[18] In terms of feminist methodology I believe it is appropriate to appeal equally to the oral histories of the witnesses of the feminist movement from 1980s onwards rather than contenting myself only with the scarce written and academic resources on the history of the feminist movement in Turkey. For the purposes of this study, a brief and yet comprehensive research particularly on the history of the feminist struggle in the field of law is almost unavailable. Therefore for this part, I owe much to Filiz Karakuş and Canan Arın who constitue two of the vivid memories of the history of feminism in Turkey.

will enable an understanding about how and in which ways feminists in Turkey have formulated a struggle to the field of law.

The re-rise of the independent feminist movement in Turkey in the late 1980s bears in itself three contextual features: first, the influence of the second wave feminist movement in the West of the globe; secondly, coming to terms with the inadequacy of legal equality movements before the 1980s Coup; and finally and maybe most importantly, a critical gaze towards the leftist groups that eventually had a major impact in the birth of feminism in Turkey (Tuna, 1988a, 1988b; Tekeli, 1995; Aytaç 2005; Ovadia, 2005). The feminist movement in Turkey always had a variety of concerns on its political agenda whereas I will briefly go over the relevant developments that preceded the movement's insights on the issues of battering, sexual harassment, killings and finally engagement with court cases in an organized manner.

In the course of 1980s, leftist groups started to discuss equality between women and men under the name of the "woman issue" and they were articulating legal demands in this concern. However this problematic did not lead to changes to the advantage of women in practice within these organizations (Berktay, 1995). And yet, these equality demands were not distinctively voiced by independent women's organizations. Feminist women -some were involved in leftist political organizations- particularly from Istanbul and Ankara consequently realized that political and legal demands had to be based on the fundamental argument that women constituted a group oppressed by men in society, and accordingly they began to concentrate on a single larger movement of feminism (eds. Tekeli, 1995; eds. Kum, Gülçiçek, Selek and Başaran, 2005). So, starting first with questioning their personal lives, the feminist movement in Turkey started with an articulation of a larger transformation in society based on women's liberation. This inevitably led to the foundation of various independent women's groups, and a gradual release from their leftist surroundings.

Simultaneously, they began to investigate issues like family, marriage, body, sexuality, the private sphere through their own experiences and they valued legal change within this context. Family was one of the institutions which was taken for granted before the 1980s and laid at the core of relations of oppression for it reproduced unequal relations between men and women (Tekeli, 1985).

The late 1980s was fruitful in this sense: a variety of groups were forming, long meetings were held, and new journals were published. After the ratification of the UN treaty CEDAW (Convention on the Elimination of all forms of Discrimination against Women) in 1985, women's groups with enhanced solidarity submitted a "women's petition" including 7000 signatures to the Turkish Parliament in 1987 and demanded the adaption of legal regulation in Turkey according to CEDAW. This was one of the first massive demonstrations of women. The same year, Mustafa Durmuş, a judge in Çankırı in a court trial, rejected a woman's demand to divorce his beating husband on the account of the following statement: "You should never leave a woman's back without a stick and her womb without a colt".[19] These words were also included in the reasoned decision. Women raised their voice, queued before post offices to send protesting telegraphs to the judge and asserted their intervention with a petition arguing that this statement targeted and threatened all women, and in that way, they took part in this trial. This was the first intervening act of the feminist movement in Turkey (Mor Çatı, 1989; Yüksel, 1995). The same year this decision precipitated the organization of the "campaign against battering" where women attempted to explore male violence, especially domestic violence (Filiz K, 1987; *Feminist*, 1987). Thereby women went out themselves for their organization for the first time (Savran, 2005). In those years domestic violence occupied a central place in feminist politics and at the end of the campaign against battering, Mor Çatı Women's Shelter was initiated in 1990 and opened

[19] Kadının karnından sıpasını, sırtından sopasını eksik etmeyeceksin.

its first shelter in 1995 (Paker 1988; Mor Çatı, 1988; 1998). In 1997 women's groups submitted to the parliament their demands about the new law about the protection order from battering, Law no.4320. It was more or less accepted and lasted until its reform in 2012. Basically their requests were to formulate a protection order against wife battering, a regulation about shelters, and an intervening status for women in related court cases. Law no. 4320 enacted in 1998 was for many aspects a fulfilling order.

On the other side, in 1989 another campaign about sexual harassment using the symbol "purple pin" was initiated and in time it evolved into the "campaign against sexual harassment" (*Kaktüs*, 1989; Karakuş, 2007). The same year, Article 438 of the old Penal Code, which provided the perpetrators in rape crimes with 2/3 of mitigation if the victims were sex workers, was annulled as a result of steady protests by feminists and human rights activists against the unequal treatment of sex workers (*Feminist*, 1990). Similarly, Article 159 of the old Civil Code, which stated that women needed their husbands' consent to be able to work outside home, was canceled during this period.

In 1990, the developments in the political realm promoting the family led to the organization of the feminist campaign "divorce action". First Cemil Çiçek (former Minister of State responsible for Family and Women) declared, "Flirting is nothing different from prostitution"[20], then the government led by Çiçek issued a decree called "Family Enhancement" and built the "Family Research Institution" consecutively. 30 women gave divorce petitions to the court protesting the family policies which consolidated women's subordination. They asserted to the court that they ended up their marriages (Özkal, 2011). It was a symbolic gesture in which they emphasized women's sexuality independent of women's duties in the patriarchal family.

With regard to court cases, in the mid 1990s, Güneş K was on the cover of the first issue of the feminist journal *Pazartesi.* Around Güneş, feminists forged a struggle

[20] Flört fahişeliktir.

over a woman beaten, tortured and raped by her partner and a friend of him. Feminists litigated her case, which in turn created harsh debates because the rapists were publicly known figures[21]. The rapists were given sentence and supposedly this was the first litigation in which they loudly articulated, "woman's declaration is taken to be fundamental and man is responsible for proving against."[22]

In July 1995, Zeynep Uludağ and her mother went to Kumkapı[23] for a dinner and they drank as a group of women. While they were enjoying their dinner, a man, İsmail Kızılkaya, passing by their table annoyed and sexually harassed them. When Zeynep reacted to him, he gathered other men around and they started a harsh dispute and battered her mother and her sister. At the end Zeynep Uludağ stabbed and killed one of them. Feminists put this on their agenda, also intervened in her court case, and 8th of March 1996 in Kumkapı recalling this event (*Pazartesi*, 1995). Güneş K and Zeynep Uludağ cases were important in revealing, in the first, violence and rape by a partner and, in the second, the self-defense of a woman against male assault, and in both cases public voice was organized. Consequences were twofold: while feminist words became visible and supported in the public scene through notions of sexuality, male violence and women's presence in men's public places, at the same time, sexist counter arguments against women's liberties were also mounted in media.

Alongside the struggles concerning the articles of law, feminists were articulating an entire change in lawmaking as well. The Civil Code has been under discussion for years and feminists prepared draft legislation and kept submitting it to the

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[21] One of the accused was her ex-partner Mehmet Kaçan, the author of the well-known novel *Ağır Roman*, and the other was the TV speaker Alp Buğdaycı, who was defended by Ergin Cinmen, a famous leftist lawyer –my intention in naming the lawyer will be clarified in Chapter 3.

[22] "Kadının beyanı esastır, erkek aksini ispatlamakla yükümlüdür" is one of the major slogans that the feminist movement in Turkey has asserted for the examination of sexual assault cases. It means in sexual assault events usually there is neither evidence nor witnesses and therefore examinations should start by primarily taking into account the woman's declaration. I will elaborate more on its significance in Chapter 3.

[23] A popular district with fish restaurants and taverns in Istanbul.

parliament. Finally in 2001, 126 women's groups nationwide came together to initiate a campaign about the Civil Code (see Arın, 1990, for an evaluation of the old legislation, and see Eyüboğlu, 2003; Gülbahar, 2010, for the new one). Some of the major themes that women focused on were to change the legal regulation "the head of the family is the husband" and achieve equal rights for the spouses, equal property between spouses during marriage, and abolish the term "illegitimate children". Women's groups were successful at the end and gained partly what they demanded in their draft legislation (WWHR, 2005).

In 2004, immediately after the Civil Code process, a reform in the Penal Code was on the agenda. The Penal Code, dating back to 1926, included substantial articles indicating both implicitly and explicitly that women's bodies, identities and sexuality were to be dominated and controlled by men and the state. The old legislation allowed rapists impunity in cases of rape in marriage, women's and children's virginity was determinant in sexual assault crimes, and similarly the status of unmarried women was to their disadvantage. In this vein, sentence reductions or aggravations were organized according to the legally defined notions of virginity, consent, honor, indecent behavior and else which are obviously fed by and reshape discrimination against women in society (Coşar & Yeğenoğlu, 2011).

In 2003-2004, Turkey was going through a harmonization process with the EU which had impact on the legal reforms. In this context, the women's groups' campaign the reform in the Penal Code was successful (Ayata & Tütüncü, 2008). As a consequence, more than 30 gender sensitive amendments were achieved in the new Penal Code. The major gain was the replacement of the legal definition "crimes against society, family or public morality" with "crimes against the inviolability of sexual integrity" which embraces sexual crimes. Concomitantly, references to patriarchal motives like honor, chastity, virginity and alike were eliminated from the law (Demirler

and Gümüş, 2004; WWHR 2005). In addition, the state's responsibility in providing shelters was admitted, which reflects a step towards the recognition of male violence at state level (Coşar & Yeğenoğlu, 2011).

The reform in the Penal Code is of significance for my study because the feminist legal struggle I examine pertains to the new Penal Code period and I dwell on the new law and its applications that women and women's organizations face. Therefore, I find it helpful to quote from the WWHR (Women for Women's Human Rights)'s report about the gains of this process to give meaningful information about the legal ground in Turkey today: "The new code (…) brings progressive definitions and higher sentences for sexual crimes; criminalizes marital rape; brings measures to prevent sentence reductions granted to perpetrators of honor killings; eliminates previously existing discrimination against non-virgin and unmarried women; criminalizes sexual harassment at the workplace and considers sexual assaults by security forces to be aggravated offences. Provisions regulating the sexual abuse of children have been amended to explicitly define sexual abuse and remove the notion of 'consent of the child'. Provisions legitimizing rape and abduction in cases which the perpetrator marries the victim have been abolished (…)" (WWHR 2005, p.14). Of course all demands of women's groups were not met but yet the gains mentioned above were quite radical. Still one of the major failings was about the replacing honor with custom killings in aggravation of killing. During the lawmaking, feminists insisted that honor could not be an excuse in women killings, on the contrary, it should count as an aggravation of penalty. However, the Parliament refused it and put custom incentive as an aggravating factor instead of honor. Feminists actually realized the significance of this in the aftermath of the lawmaking process, with the turnover from honor to women killings in their political categorization.

Regarding the feminist and women's groups' engagement with the lawmaking processes after the 2000s, it is important to restate that Turkey was under international influence in that period. Alongside the EU harmonization process which in a sense obliged Turkey to realize law reforms, the rise of NGOs in Turkey which focused on women's rights has been the case. Gender was becoming a mainstream issue, not only feminist movement but also NGOs and state officials declared their involvement in the lawmaking accordingly (Bora, 2006a, 2006b). In a context where male violence is mainstreamed –by media, state and NGOs- and translated into the concepts of "violence against women" or "domestic violence", there is a risk for feminism to be tamed and in so doing, male violence is decontextualized from the women's subordination (Gotell, 2007; Schneider, 2000). The feminist movement in Turkey moved conscious about this fact.

Huge platforms targeting the Civil and Penal Code legislations gathered more than 100 women's organizations –thus the aim was to find a common ground in demands as there was a variety in terms of political stances ranging from feminist groups to Istanbul governor's women's rights center. And finally alongside the international pressure on the legislation in Turkey it is noteworthy that the archaic feature of the Civil and Penal Codes paved the way for a legal transformation. After all, even though women's pressure in all these lawmaking processes remained ineffective in reducing and finally eliminating acts of male violence, the changes marked significant gains vis-à-vis the state and its mechanisms. This historical background with its multiple aspects will be helpful for Chapter 3 as well.

From Honor Crimes to Women Killings: A Political Move

During the Penal Code reform campaign in 2004, there were major debates over tradition and honor based killings among women's groups (Koğacıoğlu 2007; Sirman, 2010) parallel to those worldwide (eds. Welchman and Hossain, 2005). The old legislation provided sentence reductions to the perpetrators of women's murders in case they defended themselves by stating they killed with the incentive of honor. The parliament law draft was eliminating honor mitigation and bringing aggravation for killings committed with customary incentives. Women's groups insisted that "customary incentive" had to be replaced by "honor" due to the following reason: with the use of the terms "custom" and "tradition", the manner in which murders of women were discussed was with direct reference to a specific region, unsurprisingly to the Kurdish region, and reasons behind the murders of women were associated with backwardness, ignorance and feudal norms. Feminists were opposing to this indeed racist statement and arguing that crimes of murder of women have no ethnicity or status. They deciphered the racism in these discussions showing that women killings are only problematized in relation to Kurdish ethnicity. As part of Turkey's efforts towards gaining admission to the EU in that period, tradition or custom was instrumentalized by the AKP rule which in turn concealed the very systemic dynamics behind women killings. Accordingly, resigning women killings to the notion of tradition allows concealing the rule of patriarchy in Turkey and proposes legal solutions (Koğacıoğlu, 2004). In all these discussions, feminists highlighted that honor is a political relation; a central and overarching dynamic in the social regulation with regard to patriarchy (Sirman, 2004). As such, the term custom discursively and legally leaves out murders committed in the name of honor, let the other motivations aside.

In the meanwhile, Güldünya Tören was killed in 2004. In the context mentioned above, her killing was immediately symbolically associated with custom killings in the public opinion. She was killed at the age of 22 by her two brothers based on honor. Her murder is not only a horrific example of male violence but also of official neglect. Güldünya went to the police and could not receive any protection. She was then attacked on a street and killed in a hospital in the absence of security measures. Neither of the institutions provided adequate protection (Pope, 2012). After her death, feminists involved in the proceedings demanded intervener status for different women groups in each hearing and all were rejected.

Şemse Allak, Kadriye Demirel, Gülseren Artuk were also killed in this period (Akkoç, 2004; Pope, 2012). They largely appeared in the media as the victims of custom killings; killed, like Güldünya, by the decisions of the family councils in the Kurdish region as a result of the feudal structure. Women from the region, seemingly in contrast with the feudality argument, claimed their bodies and buried them as a collective of women.

Sevim Zarif was a feminist activist. She had divorced her husband in 1996. Her ex-husband lawyer Yaşar Özcan killed her and her partner on the street in 2007. Sevim's murder was a landmark for the feminist movement. First of all they were shocked at the loss their friend. Gradually they reflected more on the murders of women. At that period, the Penal Code was changed and according to the new clauses the accused had to be given serious sentences. However, in the new legislation the regulation of "unjust provocation" has become a potential cause of mitigation.

In 2008, while Sevim's trial was proceeding, Ayşe Yılbaş, an applicant for divorce of one of the feminist lawyers, was killed by her husband Hüseyin Özmen. The following month, Pippa Bacca, an Italian peace activist was raped and killed. All these had an impact on feminist movement leading the feminists to reformulate murders of

women: women among or close to them were killed, no matter of the perpetrators' ethnicity, profession or status; and as importantly, the concept of honor was inappropriate to embrace the structural motives behind the murders. Women were killed as a reflection of male dominance just because they were women. Hence, honor could only be one of the patriarchal motives behind.

The murder of Sevim led further reflections for feminists on the politics of male violence. The development in their conceptualization of murders of women, after all, was consistent with the feminist methodology: they derived political consequences from personal attachments. Thereafter, feminists began to use and spread the concept of "women killings" instead of "honor killings".[24] What custom once was misguiding to understand women killings by locating male violence to a regional practice, the term honor was misleading as well in terms of indicating the "excuse" of the killings. The concept "women killings" ensured that these killings are not particular but "universal" in the systematic sense of the word (Charlesworth, 1994; Mojab, 2004) and this was a political maneuver for feminists in Turkey in terms of challenging the patriarchal mechanisms behind male violence.

In these two brief sections on the history of the feminist movement's entanglement with the field of law from the 1990s onwards, I attempted to show, first, that feminist activism has always identified law as a site of struggle. Secondly, however, I tried to convey that different than earlier debates, feminists in the late 2000s focused in a condensed manner on the gendered practice of law. The struggle for achieving "equality in law", which implicitly projected a kind of *trust* in law, was integrated in time

[24] I use "women killings" as a term in this study. "Femicide", another one coined to indicate the political and systematic feature of men killing women and thus politically separating it from homicide, is probably the exact term. It is a step beyond conceptualizing these murders as honor crimes because femicide covers multiple dynamics leading to the killings (Radford and Russell, 1992; Shalhoub-Kevorkian, 2002; Taylor and Jasinski, 2011). Although the history of the feminist movement in Turkey carries out a similar development in its analysis, I prefer to use the term "women killings" as the feminist movement in Turkey does.

with "challenging law in its practice". In this sense, the feminist movement aiming to advance women's rights on one side, started to challenge law more broadly, as a compelling space which provides multiple stages of women's encounters. In so doing, they engaged in litigation and monitoring the cases (as both lawyers and non-lawyers) in an organized way to explore how, with all its actors and mechanisms, law itself treats women unequally and how it reinforces male domination and women subordination within society.

From Women Killings to Court Cases: Politicizing the Juridical Process

Feminists reconfigured their analysis on women killings. In the 2000s their point was: whatever the cause behind it, either honor, divorce, cheating, wearing a skirt or just not passing the salt at the dinner table, and whoever the perpetrator, either Turkish or Kurdish, unemployed, worker, or teacher, either leftist or conservative; women killings are systematic, and cannot be reduced to individual or deviated acts. Women killings are political and thus, these trials are political and the jurisprudence has a crucial role in sustaining the system (Ulmschneider, 1995). Law operates as one of the mechanisms that allow in several ways male killings. Defining and politicizing women killings in this manner, feminists in Turkey point at the role of the law and the state in the reproduction and promotion of male domination[25] (Hacıvelioğlu, 2010a; Eyüboğlu, 2010).

While the feminist movement in Turkey began to concentrate on the reflections of male violence in the field of law, I have to briefly mention parallel investigations abroad that I will benefit from in the rest of this study. International

[25] The slogan of "erkek vuruyor, devlet koruyor" is widely used by the movement.

feminist literature is loaded with discussions about law and feminist politics. Especially from the late 1960s onwards, feminists challenged the authority and the legitimacy of law which led to the rise of women's rights movements in the Western parts of the world as well. A rich literature about both feminist legal theory and feminist criticism on law and its implementation has emerged. In these discussions, the concept of "violence against women" has been discussed with regard to human rights and whether male violence can be taken as a violation of human rights (Byrnes, 1992) and a crime has been questioned (Chapman, 1990). Feminist criminology as a discipline has emerged after the second-wave feminism which offers a critical investigation on the taken for granted notion of individual crimes (Chesney-Lind, 2006). Civil rights of women, rape, self-defense of battered women, male battering, same-sex marriages between women and many else have been under investigation depending on the context (Schechter, 1982; Barnett (eds.), 2000; Schneider, 2000). Feminist legal theory and its relation to liberal law and its implementation have been questioned (Smart, 1989). Feminist jurisprudence, produced out of all these works, offers alternative ways with respect to women's experience that law excludes (Littleton, 1987). From the 1970s onwards feminist movements accumulated certain political gains: first and foremost, contrary to the liberal law doctrine, public/private boundaries and the maintenance of male violence by law through the protection of the private sphere of the family has been challenged (MacKinnon, 1989; Siegel, 1996). It has been revealed that the notion of privacy, promoted by law, masks systematic violence and inequality and that the "violence" in the private is precisely political (MacKinnon, 1983; O'Donovan, 1984; Schneider, 2000). In this regard, feminists brought many sexual assault and battering cases into public attention, although the majority still remained unreported. Transcending the dichotomization of public and private has been possible through their active work in the public: making public what has been silenced asserted that it already belonged to the

public. Feminist challenge to the legal practice included opposition to lack of female jurors, gendered meanings attributed to evidence inquiry in sexual assault cases, and conducts of jurors to the victims and testimonies (eds. Childs and Ellison, 2000; Matoesian, 2001; Kenney, 2008). As such, court processes and legal proceedings have been entirely put under criticism.

What followed the feminists' struggle before the 2000s was the necessary combination of legal struggle with feminist politics in general. Some feminist scholars criticized feminist engagement with the rights talk (that had on the agenda primarily international legal regulations, the leading debate was the agreement of CEDAW, which today have been ratified by 187 out of 193 countries) and they said a focus on the conceptualization of women's rights risked to slip into liberal arguments and neglect the political context (Charlesworth 1994; Mullally, 2006). CEDAW was inarguably a political gain in terms of women rights, however, in the aftermath, rights talk tended to become aligned with mainstream gender work. Rising professional networks or NGOs played out a significant role in decreasing activism in feminism. In this vein, feminists have noted that legal struggle without the contextualization of a comprehensive gender subordination analysis and devoid of political action accordingly, would be impotent.

The feminist movement in Turkey starting from the late 1980s had a similar experience in its struggle in the field of law. Within an entire feminist politics the movement challenged both legal regulations and the practice that promote women's subordination. The state and its apparatuses are always attacked by feminists for reproducing male domination and violence and enforcing gendered inequality. However, feminists, and this study accordingly, acknowledge state's complex place in the legal struggle. Feminist struggle in the domain of law inherently sets state and its tools as the addressee: feminists contest the patriarchy generating state and its contributions to the maintenance of male violence and at the same time remind it its duties like protection

orders which have vital consequences on women's ordinary lives. Women's groups' involvement in the lawmaking processes in the 2000s had a valuable impact on the amendment of laws, and similarly, in that decade women killings were made visible and exposed through litigation and wider campaigns about male violence, relations with the state is redefined during these struggles.

At the end of the 2000s feminists focused on the trials of these killings and especially on the "unjust provocation" mitigation. Sentence reductions and the way they are legally organized constituted a key factor in discovering the gender biased regulations and implementations of the juridical process. During the proceedings of women killings, feminists were confronted with other crimes -rape and sexual assault- that shaped their accumulated knowledge and considerations about the political trials and also, about how they can intervene and transmit the feminists' words in the processes. Alongside the conceptual and ideological discussions about male violence, from the 2000s onwards the feminist movement in Turkey started to focus on legal practice in an organized manner by intervening in court trials, politically litigating and watching hearings collectively. Asiye accounts for the earlier times:

> Six months after Sevim, Ayşe Yılbaş, a medical intern at Cerrahpaşa, was murdered by her husband, a specialized sergeant. He killed her in front of everyone while screaming "Allahuakbar" during the midday prayer on a Friday, just like he said he would do. A while ago, Ayşe gave power of lawyer to feminist lawyers and filed for a divorce. This is how we got involved to the case. Like Sevim's ex-husband, her husband was constantly harassing her with threats after the divorce; he took away the child and kept the child away from the mother. After Sevim, this case was monitored in a more organized manner. There have been times when we've entered the courtroom with almost 50 people, ten or fifteen of which were feminist lawyers. A high number of feminist lawyers and other feminists who have been following up the case very closely were successful in drawing attention to the case. The defendant's lawyer was someone with whom we've been acting together in other areas and we were very much disturbed by his presence. Of course, it was our belief that everybody had a right of defense, but he wasn't supposed to be the one to defend him. On the other hand, he was not only incapable of understanding that women killings were political, he was also eager to defend and save the defendant and this uneasiness has continued

> throughout the hearing, dividing us into separate camps. Similarly, Sevim's murderous ex-husband was a lawyer known closely by some of us and with whom we had worked together for other issues. Sevim's, as well as Ayşe's husband and lawyers were always saying the same things, explaining why they had to kill. The fact that women wanted a divorce, did not allow them to see their children enough times or implied to take such action were sufficient motives to kill. Both of them fired their gun for a second time, once they've realized that the women were not dead after the shooting. Their aim was not to cause fear, or the shootings were not a result of momentary anger, their only desire was to kill. They had been telling for years that they were going to kill and did so once they had the opportunity. In response to these threats, Sevim and Ayşe applied to courts many times and had no result instead. During Sevim's case, we've mostly tried to understand the situation. On the other hand, Ayşe's case has become more and more instructive for us.[26]

Therefore, after this process feminists reaffirmed that producing legal arguments, winning a case, struggling with law in practice on the ground level, everything they do to challenge law, are interconnected with a larger claim for social change (Savran, 2011). I will examine throughout this study the feminist movement's relation to law in Turkey in line with this theoretical and political approach.

Today: Which Trials, in Which Context?

Alongside this brief historical account, it is as significant to note that feminist activists that I have interviewed for this study have different or sometimes shared experiences and reasons for participating in political litigation. In this section I will go over their articulations which will at the same time provide an introduction for exploring their first encounters with the field of law.

In the aftermath of Sevim Zarif and Ayşe Yılbaş cases, not only the feminists in Istanbul, but also women from other feminist groups or women's groups from

[26] Interview with Asiye, an activist from Istanbul, 20.04.2012.

different cities had gradually put on their agenda collectively litigating women killings. As Asiye tells above, politics over women killings has become a priority for feminists acknowledging the experience of these two trials. Selma explains her particular involvement:

> I became involved in these cases because of a personal experience. My friend, Demet Eygi, got killed in Adana. This was one of the cases monitored by SFK in Adana. I wasn't part of SFK at that time. Demet is a friend of mine from high school and dormitories. (…) After Demet, I started to question the reason behind the high number of murdered women. At that time, we've started to discuss the protest called "We don't lament, we rise up." I have been defining myself as a feminist for some time now, but after Demet's death, I realized that the feminist cause was very important as in a life or death struggle. This is something that life has brought to me.[27]

Experiencing a similar feeling with women who witnessed the murders of Sevim Zarif and Ayşe Yılbaş in Istanbul, Selma had also realized that women close to her could be killed. That was to say women killings "do not happen somewhere else", which in turn had a direct influence on feminist consciousness. The results of having been confronted with male violence and death so closely are twofold. Primarily, women politicize their own testimonies. In other words, they derive political measures out of personal experiences, which align them with a political movement. They come to terms with both actively becoming engaged in the post-murder processes and at the same time questioning the dynamics which eventually lead to women's deaths.

Secondly, especially after the Ministry of Justice declared the tremendous increase in women killings[28] and also, other statistical data showing the high rates of male violence based women victimizations, feminist groups and women's rights organizations inevitably dealt with the issue. And the legal component of violence is an

[27] Interview with Selma, lawyer from Ankara, 31.01.2012.

[28] Towards the end of 2009, in his response to DTP's representative Fatma Kurtulan's parliamentary question about the statistics concerning male violence, the Minister of Justice Sadullah Ergin stated that 66 women were killed in 2002, 83 in 2003, 164 in 2005, 317 in 2005, 663 in 2006, 1011 in 2007, 806 in 2008, and in the first 7 months of 2009, 953 women were killed. He statistically showed that during 2002-2009 women's killings had increased 1400%. (AKP has not declared the recent numbers yet.)

intrinsic one. Simultaneously, this rising visibility created a mainstreaming of male violence. "Violence against women", as it is widely appropriated, has in this way come to the fore for a wide range of political figures, at the level of the government and NGOs. At any rate, this political atmosphere concerning male violence had an important impact on the individual and collective considerations of feminist women in terms of legal engagement. Gül, a lawyer from Ankara, talks about the immediacy of their involvement:

> I see increased visibility as the driving force that makes the monitoring of such cases compulsory. News on murders of women has moved from newspapers' third pages[29] to their headlines. We are one of the leading actors who can contribute solutions to these problems. That is why we needed to intervene.[30]

Personal stories of attachment to these criminal cases[31] reveal another dimension of the confrontation of women with law: Lawyers that I interviewed were not criminal lawyers except one. However, they all found themselves engaged with the Penal Code while they were engaged in political trials. They were involved in other political trials before as participating lawyers, and despite these, they were generally involved in divorce cases in family courts. As one of the lawyers says, "women ultimately direct us to the Penal Code". Apart from killings and sexual assaults, one of the most important laws that concern women today and thus lawyers because they receive many applications, is the Law no.4320, the protection order from violence, that requires working on the Penal Code. This inevitable relation to the Penal Code bears in itself a political content: from private to public women's experiences of male violence is carried to the legal realm through the criminal law instead of the civil one.

[29] Crimes stories are often given on the third page of newspapers in Turkey.

[30] Interview with Gül, lawyer from Ankara, 01.02.2012.

[31] Throughout the study I use the word criminal to make a legal distinction only: to distinguish cases of the Penal Code from the Civil Code. Otherwise, I oppose to the *criminalization* and individualization of women killings.

Lawyers' inevitable encounter with the Penal Code creates a new space: they both have to discover the Penal Code, to which they were nearly indifferent before in the professional sense, and also, to understand a new procedure which is different from the Civil Code. And as importantly, cited in the Code on Criminal Procedures (*Ceza Muhakemeleri Kanunu* - CMK), criminal cases that are mentioned in this study are defined as public actions. Moreover, investigation is held by the prosecutor and the police forces, which gather the evidence and mostly do not even show the material to lawyers and instead give them the expert reports. Lawyers are thus restricted in terms of access to evidence and proofs; what they are charged with in reality is defense. Mine interpretes how the criminal procedure restricts them:

> We can only fight a psychological war in penal courts to prevent judges from making interpretations that are to women's disadvantage. That is why we need to have a big crowd in the courtroom.[32]

As a consequence of being engaged in politicizing women killings and litigating accordingly, a widespread and yet informal knowledge among women has emerged. That is, in the 2000s while women killings have become publicly visible, women or families have started to get in touch at an increasing rate with feminist or women's organizations. Gül puts it as follows:

> The visibility of such cases has given women, who conduct a variety of projects on this subject, an increased opportunity to get into contact with our organization. For example, you see the name of the Foundation for Women's Solidarity on the media and women start to call us. Since 1992, the year when we started to work as the Bar Foundation's Woman's Rights Center, we try to reach several sectors of the society on March 8, November 25 etc. with our small brochures; we organize talks with women at community centers. When we work around low-income neighborhoods, we always inform women about the addresses where they can reach us. And they tell each other. If a woman in a neighborhood has knowledge, she shares it with other women.[33]

[32] Interview with Mine, a lawyer from Ankara, 31.01.2012.

[33] Gül, 01.02.2012.

Alev also mentioned an increase in the number of applicants and when I asked the reason behind, she replied:

> Apparently, this is because these cases were on the media. It comes mainly through Mor Çatı. It is heard on the grapevine. Or we hear it from the press and say, "let's monitor this one". It is known that we are feminist lawyers and will carry on the process in a feminist way and people hear about it.[34]

As I have also argued above, feminists were primarily involved in cases either because they were acquainted with the complainant or the complainant's relatives. And also, they decided to intervene in publicly known trials like Pippa Bacca or Güldünya Tören. In this sense, three encounters that I dwell on from this chapter on are to be handled together. Women's and women's groups' relation with law starts as early as the process of complaint; this entry to the legal realm has a historical and contextual background and the movement has an accumulated an experience and this historical move of the movement is now reflected in the particular attachments of both activists and victims.

On the other side, during this study feminists were involved in the Ayşe Paşalı case because the lawyer of the trial demanded legal support. Similarly, in the Şefika Etik case lawyers from Manisa reached Ankara and finally women from Izmir and Istanbul gathered. In Fethiye, via the complainant's efforts, several women from different cities came together, and feminists also participated in the trial.

Thus, in the late 2000s, the period I'm observing in this study, feminists' access to trials has not gone under a significant change. They still move according to an informal web of knowledge and yet demands from women and their families have increased. However, in a sense this growing web has created an impression like feminist groups or lawyers are the "owners" of these trials. It is important to note that in the context of the Kurdish movement in the 2000s, leftist groups and other social organizations have also been litigating human rights cases including women killings.

[34] Interview with Alev, lawyer in Istanbul, 01.03.2012.

Still, the increasing demand from women outside, in a sense render feminist organizations "professionals" of the issue; especially women from political networks apply to feminist organizations and individually to feminist lawyers to litigate both women's killings cases and recently, sexual assaults. This has had an impact on the organizations of litigation and caused a dispersed participation (including long distance litigations) that will be handled in a detailed manner in Chapter 3.

CHAPTER 3

TRIAL

As mentioned before the Fethiye case is one of the collectively pursued court cases. For each hearing women –both activists and lawyers- come together from different parts of Turkey. That is, since the trial started, once every two months, women met in a cafe near the courthouse, talked to each other, waited for others to come and finally prepared a press release and staged a lively protest in front of the courthouse until the hearing ended. Hundreds of women whistled and clapped outside the gate of the courthouse, at times stood six hours under the sun, in the heat of Fethiye. The complainant's lawyers were texting phone messages to women shouting slogans ceaselessly outside before the police forces and were at the same time keeping in touch with the developments inside. In addition, this gang rape case found some coverage in the press and on television news, though not really taken up seriously by the mainstream media.

After the first hearing the complainant, supported by women from Ankara, succeeded in spreading the case to various women's organizations. In the second hearing, in March of 2011, there were 18 intervening lawyers, all of whom except one had come from different cities. There were around 200 activists coming from Denizli, Muğla, Antalya, Ankara, Izmir, Istanbul, Datça, Bodrum, Didim, Adana and Fethiye. There were eight men accused, two of them were under 18 when the rape had taken place. The courtroom was full as in this one the presiding judge for the first and last

time had allowed the public to watch the case. Those who could not enter made their presence felt through their shouting and protests. In the ensuing cases the judge closed the case on account of the two accused being under 18.[35]

In the first hearing several women's organizations including Mor Çatı Women's Shelter Foundation demanded intervener status and all were rejected. In the second, Bar Association's Women's Rights Commission (TÜBAKKOM) and Contemporary Lawyers Association (Antalya ÇHD) demanded the same status. The result was the same. One of the defense lawyers, President of Mugla Bar Association Mustafa İlker Gürkan, who was already known by some of the activist women outside, through his former position in leftist organizations, objected to these demands with the well known argument: "When the public enters through the court door justice goes out."[36]

In the second hearing, six accused men gave their statements. Each explained how they did not know the complainant. One of them, with whom the complainant had a relationship before, said that they had a sexual intercourse but due to her psychological problems, she confused a consentual intercourse with rape.

After the second hearing the complainant's lawyers in Istanbul held a meeting. They discussed the importance of the involvement of Muğla Bar association in this case. Besides its head, the secretariat of the association was also the defense lawyer of the rapists. However, Gürkan's attitude towards the complainant and her lawyers was the real issue. Having faced several legal difficulties bringing this case before the court for more than three years, they were confronted with the president of a bar as the defense lawyer. This can seriously be consequential: As the head of the bar association, he could abuse his authority and responsibility in a rape case; mobilizing the power of the Muğla

[35] Sexual assault cases are public cases, hence, are and should be open to public as regulated by law. However, this is not always the case. I will dwell on this issue in a detailed manner later.

[36] Mahkeme kapısından içeri kamuoyu girerse, adalet çıkar.

Bar and the local power it represents for the rapists. This was the first signals of the affirmation of patriarchal power in a rape trial: firstly, the legal proceeding started already gender biased; as experienced in the period of opening the case, so too in the process of the trial, there is an ongoing struggle of recognition of women's experience where men's truth is dominant (Smart, 1989; 1990). Secondly, there is a conflict among lawyers as well, manifested by discriminatory attitudes from defense lawyers directed to complainant's lawyers. Regarding the overall proceeding of the trial, the complainant's lawyers in Istanbul continued to hold several meetings first to interpret the process and to formulate the legal strategies.

In the hearings, Gürkan, the defense lawyer, demanded that the court ask for the divorce papers of the complainant's family, claiming that an unhappy family history could lead to such "imagination". The court accepted it. In another hearing he claimed that she was a member of a leftist group. Again in another, he argued that she had written articles about sexuality. In all these, the defense lawyer had recourse to the gendered strategies of legal prosecution in order to come up with a persuasive context in which the complainant could in fact invent such a story. In this sense, he attacked all aspects of the victim's life to be able to first discover and then argue that she imagined such a rape. In this standard way of discrediting testimonies of rape victims, (sexual) morality as a powerful instrument of gender bias is put to work (Larcombe, 2002). To supplement the inquiry over her inappropriate life style, all kind of records were brought before the court: from divorce papers to psychiatric reports (Sheehy, quote Larcombe, 2002).

Gürkan simultaneously targeted his attacks in a similar sexist manner to the rape victim's lawyers as well. Again in one hearing, he claimed that this case is not a rape case but a conspiracy case against the president of the bar. Moreover, he had a dispute

at the end of one hearing with a feminist lawyer and it was recorded by complainant's lawyers to make a complaint afterwards.

In a conservative town, Fethiye, a rape case started. In this rape case, eight accused were prosecuted among whom there were influential local people, high school teachers and one education inspector. And the head of the Bar, who holds another powerful position and appearantly affirming patriarchy, was one of the defense lawyers. Women, on the other hand, were crowded before the court house contesting men's solidarity rebuilt around this rape case and claiming justice. Fethiye case was important in terms of women's activism: Slogans, whistlings, clappings, all reached the courtroom; the ones who watched first hearings knew it.

Women Litigating Collectively

Ayşe Yılbaş, Sevim Zarif, Pippa Bacca, Ayşe Paşalı cases are among the examples that reveal the organized and consistent effort of the movement both inside and outside court houses. After all these, the significance of collective litigation has been historically proven for women's movement. With regard to Fethiye case, having said that it was the first litigation of a rape case which united such a variety of groups, the importance of the collective presence of female lawyers in court room was reaffirmed in this process. It brought together several women from different cities and political backgrounds. It became in a way a symbol of collective litigation against male violence. Feminists as a group were just one of the participants. Melahat explains why intentionally only women were allowed to participate:

> for example, I say this to all men who try to join our protests: "this protest is not only against the state, but also against you." I think that this is what it's mostly about. Our presence there cannot be explained as

> an effort to make it visible. Our presence there is about exposing sexism in the entire system and causing it to lose its power.[37]

In one meeting of lawyers in Istanbul concerning the Fethiye case, one of them suggested that bringing a male criminal lawyer in front of the jurors may be more influential. She provided the following explanation for that: "if our aim is to figure out rape, we may ask an expert in criminal law". For, as I have shown in Chapter 2, most of the feminist lawyers have become acquainted with criminal law during these politicized trials. Months later when I was in Ankara, I noticed that this was a prevailing question. Eylül, whom I interviewed in Ankara, told me that this was the case in Ayşe Paşalı's murder trial and she explained political reasons of her opposition to this idea which was quite similar to those put forth by the lawyers who reacted to the suggestion in Istanbul. She problematizes the reduction of the cases of male violence against women to the concept of criminal cases and opposes to emphasizing the legal expertise:

> when you legalize, and then you're done. If you legalize a political case in this country… look at Tekel Workers' Resistance, it's over now and what has happened? I object to see women killings only as murders in the legal sense, and to treat hate murders similarly: when you discuss something only in relation to law and punishment policies, then you'll be trapped by all the rules of law. Law is the field of discussion and contest for men, especially in criminal cases. We've heard them so many times asking, "How can a woman become a criminal defense lawyer?" I don't care if a woman can become a criminal defense lawyer or not. I find women's rage valuable.[38]

Eylül clearly states that feminist lawyers intervene in litigation for political reasons. For her, the feminist struggle in the field of law should not be focused on professionalism on the basis of criminal procedure, for it aims to sort out and highlight prevailing gender discriminations in such crimes. In other words, feminists do not aim better strategic moves within the restrictive boundaries of criminal law, instead, they try to challenge the legal practice overall. For that reason, she indicates women's anger as a tool to

[37] Melahat, 06.06.2012.

[38] Interview with Eylül, lawyer from Ankara, 31.01.2012.

professional knowledge and turns upside down the overemphasis on the knowledge and experience of criminal law. She argues this overempahis is already a male notion.

Lawyers from different cases expressed that especially the presiding judge's reactions towards collective litigation make them feel as a "just a bunch of women". For Nazan the idea of including male lawyers would contribute to this degradation:

> The court has seen us as a bunch of women during three or four hearings. In return, the idea to come up with a male lawyer changes the whole picture.[39]

Besides above mentioned discussions among activists, sex of the lawyer may be a concern for victims' families as well. P.'s mother asked around the midst of the proceeding whether it would be more efficient if a male lawyer took up her daughter's rape case. Because the process was proceeding to the disadvantage of the victim, she thought it was a better idea. The lawyers of the case gave her a brief explanation and she gave up. At the end, the accused was acquitted due to lack of evidence: that is, the court accepted that an intercourse had taken place, however, there was no evidence proving it was coercion based. We cannot know if she blamed feminist lawyers.

With their collective presence in courtrooms feminist lawyers and the audience first of all assert to the court and the public that the victim of the crime is not alone. While emphasizing the political aspect of such trials, they argue that these criminal acts are not individual or deviant cases, but on the contrary are results of systemic male violence. That is to say, women are party to rape or murder cases in the existing patriarchal order and thus, not only the female victim but all women on behalf of her are under prosecution. Accordingly, women's solidarity, independent of men, gains importance. For this reason, feminists try to organize and increase the number of intervening female lawyers to such trials. Hence, a male lawyer –no matter how he is willing to support this struggle- would be in contradiction with the political

[39] Interview with Nazan, lawyer from Istanbul, 04.02.2012.

conceptualization of the proceeding process. However, the noteworthy concern about believing to influence the court via a male lawyer demonstrates also - keeping in mind that the field of law is both physically and intellectually male dominated (MacKinnon, 1989; Smart, 1992)- women's lack of confidence in themselves.

The fundamental motive behind the political significance in litigating as female lawyers relates to the basic argument of this study: litigation is part of a feminist struggle, *a means rather than an end*, therefore, supported and embraced by the feminist movement both inside and outside courts. For feminists to be part of these proceedings primarily means to deliver feminist statements to the court and by and large to the public, and thereby insist on a gradual social change (Schneider, 2000). Delal underlines the organic relationship between activists and lawyers:

> What puts pressure on the court is the presence of women's movement and feminist movement in the courtroom. Feminists are trying to expose male dominance with all its branches by focusing on the case. Feminist movement's involvement to a case, which is about to get closed, affects the whole process in a positive way. As we said before, they have a special law effective in the functioning of the court. As long as women and lawyers, who are the subjects of a case, become lonelier in this system, the law works more for men and male justice. The presence of women outside leads the ones inside to act more carefully.[40]

Ferzan adds:

> Before the sentence hearing of Ayşe Paşalı murder trial, a protest[41] was staged on skype all across Turkey; this was a marvelous thing and it had an effect on the judgment next day. If we continue to do such things, we can make sure that there are decent decisions.[42]

In this vein, a challenge to the field of law is already based on feminist activism. And organization of female lawyers before the court is parallel to the activism outside. In Chapter 2, I briefly mentioned that at the core of feminist involvement in the juridical process lies the political statement "the murder of women is/ women killings are

[40] Interview with Delal, activist from Istanbul, 20.12.2011.

[41] Women all over Turkey took to the streets and *kept guard for women killings* in 11 and 12 May 2012, see http://bianet.org/bianet/insan-haklari/129941-bu-bizim-icin-bir-hayat-mucadelesi

[42] Interview with Ferzan, lawyer from Istanbul, 19.04.2012.

political". As a part of the larger whole, court cases are political. Well aware of the trap of criminalizing and in that way decontextualizing violence, feminists politicize all forms of male violence. Once it is argued that these killings are political, the implication is collective struggle, organized as a whole, with campaigns in streets and litigation. However, in litigation sometimes lawyers are alone in hearings. Selma explains:

> As a lawyer, I can get lost in legal stuff, what will enrich me is the feminist movement. Without the feminist movement, there will be no difference between a women's rights defender and me during these cases! I should see where my statements fall into by considering the movement and see them with their rights and wrongs in the context of the feminist movement. The communication between the inside and outside of the courtroom is very important.[43]

Gül on the other hand states that there has been an influence of collective litigation. And she expresses the importance of activism outside as follows:

> Over the past couple of years, after the collective monitoring of cases of women killings has started, the feminist organizations have had a considerable effect; the public has started to pay attention to these cases. Even though we (*lawyers*) go to hearings collectively, we did not have such visibility in the eyes of the public. Those who wait outside the courtroom have started to become more influential. The fact that their numbers have increased caused an increase in the number of lawyers who want to work inside. Here, I think that feminist movement has a triggering and guiding role; especially concerning women killings.[44]

Transmitting the Feminist Words to the Court

Previously I have discussed the ways in which feminists had shifts in their consideration of women killings in the last two decades. In 2009, they initiated a campaign in Istanbul, called "we are revolting against women killings!"[45] Their basic aim was to draw attention

[43] Selma, 31.01.2012.

[44] Gül, 01.02.2012.

[45] http://www.kadincinayetlerineisyandayiz.blogspot.com/

to the tremendous increase in the rate of women killings from 2002 to 2009 during the governance of AKP. They target and explore the institutions that prevent beaten or threatened women from getting protection. In this vein, they argued that police force, instead of mobilizing legal deterrence against men, undertakes the mission of mediation and sends women back home; the courts and the prosecutors, disregard women's request for protection orders and contribute to the impunity of male violence and threats; shelters are insufficient for those who could succeed in quitting home and lastly, media, instead of male violence, exposes the female victim and her life. In this campaign accordingly they reveal the role of each institution in the promotion of male violence. From 2009 onwards, the campaign has extended to other cities in Turkey by the participation of various women's groups.

Therefore courts in this context continue to be one of the institutions that the feminist movement targets for the neglect of their duty or, more precisely put, for their discrimination against women. Feminists in Turkey from the beginning of their involvement in the field of law, assert that to advance legal arguments would be insufficient on its own to end male violence and killings. They are also clear that the patriarchal practices in courts (such as processes of examination, defense, treatment) play a vital role in women's lives and court decisions reflect the dominant male ideology in society. For them it is more likely that "law should remain an important focus for feminist work, not in order to achieve law reforms (although some may be useful) but to challenge such an important signifier of masculine power" (Smart, 1989, p.2). So by collective litigation of women they aim to transmit feminist politics to courts and to the public in general. However, this does not mean leaving law reforms aside. Instead, in its fullness, feminism as a dynamic process of engagement radically questions both gender biased and sexist legal arrangements and the ways in which patriarchy is replicated and constructed in practice. On the other hand, since the courts stand as a space of

entrenched subordination for women, feminist entry to the courts is a contradiction in terms for the authority of male dominance. Melahat states clearly how:

> We try to say most of the things we can say from the point of view of feminist politics. For example, we stress the fact that women killings are not random; they are clearly a result of male violence and a case-specific manifestation of male violence and therefore the fact that we're women leaves us open to such violence.[46]

Feminist involvement in court proceedings is thus a challenge to the common sense understanding of violence. By litigation feminists expose different forms of violence and how they are organically linked to each other. That is, they politicize not only killings *per se*, but also publicize prior male violence, routine degradation, threat or insults at home, or similarly marital rape which was not until recently considered as a crime; and this approach encapsulates all forms of male violence, hence all women. By denaturalizing male dominance in different aspects of life (of which only some are visible) and articulating them as consequences of the patriarchal order, they at the same time challenge the public/private divide: feminist litigation is an endeavor primarily of bringing out to the public what is systematically hidden and deemed private. That is, while politicizing women killings, feminists reveal that "the personal is political" (e.g. male violence at home) in all its broadness and inclusiveness. In other words, feminist litigation is in fact an attempt to "to redefine the relationship between the personal and the political, to definitely link violence and gender" (Schneider, 2000, p.6). Moreover, their secondary aim in revealing what is private concerns law: As a part of the entire struggle, litigation supplemented with campaigns, press releases or publications, is also an effort to publicize how law operates as a gendering strategy within confined and composed court rooms. Although courts are public by definition, they refer to the private in practice.

[46] Melahat, 06.06.2012.

I have previously stated that there are certain differences in political approaches to litigation among women groups. Although women, as Gül argues, have been uniting easily in such trials recently, in terms of their positions before the court they can differ. Obviously this does not lead to strict divisions. Instead there are numerous litigations going on simultaneously. Fethiye case is one of those gathering multiple women's groups across Turkey. In Ankara and Adana, feminists do not litigate cases on their own. Eylül gives an example from a rape trial and says a feminist perspective results in a different conception of intervention:

> One of our colleagues, a lawyer, was harassed by the debt enforcement officer. The question was (*asked by the judge):* What was she doing with the debt enforcement officer at that hour? S. said that "You are not allowed to ask such a question" and they started to fight. Before giving his opinion, the judge gave the floor to the complainant's lawyers and our colleague added that "write all these down and add that the prosecutor was smiling during the whole session." This created a tension as well. When they went outside, lawyers from the women's rights committee exclaimed, "You were so harsh." This harshness is necessary![47]

Although Nazan insisted during the interview that feminist lawyers have to intervene on the gender biased process, during the conversation she incidentally noticed that they could not:

> I think that there should be no discussion about whether someone cheated somebody or not, whether there was provocation or not and feminist lawyers should move from that point onward. The feminist movement is very much about daily life; we may be forced to take some very pragmatic decisions. There, the lawyer thinks about the thing that will have the biggest contribution to the case. Moreover, this might be a case about sexual harassment; it can be a case that has a direct counterpart in a woman's life. The man *(the defendant's lawyer)* can claim that the woman is immoral. Does this mean that, the lawyer has to prove that the woman is immoral? Does the fact that the woman is immoral make a difference for us, feminist lawyers? What does it mean to be moral or immoral? Rape is rape. The feminist movement should find its common ground in such manner. On the other hand, how can you defend an "immoral" woman… It is difficult. They say we fall short. Cemre we can't! But we have to do this![48]

[47] Eylül, 31.01.2012.

[48] Nazan, 04.02.2012.

As Nazan states, in Fethiye case for instance, the complainant's lawyers could not prevent the jurors from accepting the defense lawyer's investigation on her "broken family". So while aiming at the same time to deliver feminist words to the court, feminist lawyers may face difficulties in building up defenses accordingly or rejecting the discriminatory demands of the jurors against the female victim.

In the following sections, I will go over the difficulties that feminists face in transmitting their word, the restrictions and discriminations that they encounter, while trying, on the one hand, to argue their case depending on the material experience within the legal realm and, on the other, locating their political approach to law within the comprehensive feminist struggle.

The Intervener Status

The feminist movement like other movements in Turkey uses the legal demand of "intervener status" as one of the ways to politicize trials both in the public and in courts. In the Penal Procedure Code (*Ceza Muhakemeleri Kanunu* - CMK), the regulation of intervener status allows third parties to join the ongoing litigation and take part on the side of the victim on the base of "being affected by the crime".[49] In its general practice, the court considers whether the applicant is a first degree kin to the victim, and if not, rejects the demand on account of not being "directly" affected by the crime. Although the kinship is not mentioned in the Article, in practice it is taken as the fundamental criterion.

[49] Article 237 – (1) The victim, real persons and legal entities, who as well as the individuals liable for pecuniary compensation, are entitled to intervene in the public prosecution during the prosecution phase at the court of the first instance at any stage, until the judgment has been rendered, announcing that they are putting forward their claim.

In the legal statement that they direct to the court, feminists explain the aim of intervening in accordance with the Article 237 as follows:

> Those who have a close and rightful relation to the interest protected by the material element of the offense are those who suffer damage from this offense. This relation cannot be reduced to a relation of material interest. Every individual and institution, having a feeling of satisfaction as a result of the punishment of the offender are the ones that are harmed by the offense. In this manner, every woman in our society is harmed because of women killings and they have the right to play an active an effective role in the judgment of perpetrators. (Centel, quote Dumrul, 2012a).[50]

From the 1990s onwards, feminists have insisted on the intervener status in every court case that they participated in. By this demand, they challenge the conventional meaning of "directly affected by the crime" arguing that the individual victim is "affected" by the crime on the grounds of the systematic domination of all women by men; all women are under threat as long as the patriarchal system persists. So, all women are "directly affected" by men's crime, in political terms. On the other hand, although the intervener status is a legal tool, by their very participation in hearings as lawyer or activists, feminists already intervene in proceedings. Hence, the claim of intervention covers both being party in legal terms in these trials and transforming the field of law itself.

In each hearing of Güldünya Tören's trial women's groups demanded the status. Eventually all were rejected, in the same way that they were in Sevim Zarif, Ayşe Yılbaş, Satı Korkmak, Şefika Etik and Fethiye cases. Women's groups begin each trial with this demand. Explaining before the court the reasons behind their demand constitutes a political speech. This demand and its meaning for women's groups have become known to the public in the late 2000s.

Recently, also as a result of its increasing visibility in the public, a variety of groups like Bars' Women's Rights Center, leftist groups, trade unions, started to make this demand as well. For feminists, although the intervener status primarily has a

[50] This is an excerpt about the intervener status from the legal opinion of Prof. Dr. Nur Centel. Feminists use her text in their petitions. See, for an updated version, Centel, 2010.

political meaning, they also insist on its potentiality to be accepted: they tend to demand in the name of Mor Çatı Women's Shelter, a special organization working with and for the victims of male violence, in order to provide the legitimate ways of intervening.

Judges constantly reject this demand, sometimes explaining that they individually understand but "legally" they cannot accept. However, in the case of Nejla Yıldız, the demand of the union (BES) and Ankara Women Solidarity Foundation (*Kadın Dayanışma Vakfı*) was accepted. In the court report the justification is as follows: "Relying on the possibility of being affected by the crime, the intervener status of Kadın Dayanışma Vakfı was accepted".[51] It was the first time in cases of women killings.

This was in October 2011. In December, Fatma Şahin, the Minister of Family and Social Policy for the first time announced to be party to a lawsuit. She via her lawyers submitted to the court the intervener status petition. The trial, in a small western district Dikili (İzmir), was of a man who had murdered his wife. In their petition they highlighted the justification of their demand in the following manner: Intervening in the name of the state, in cases of violence against women and in related trials, as party in proceedings on the side of the victim or complainant are parts of their mission and responsibility[52]. The prosecutor of the trial demanded that the status be rejected on the basis of exactly the same rationale: the Ministry was not directly affected by the crime. The court delayed its decision to the following hearing and finally rejected the petition. Meanwhile, the Ministry announced that the demand for the intervener status in trials across Turkey would persist. In this vein, the Ministry corroborated its claim with a legal formulation[53] in the new draft of protection order on which it was already working in

[51] Ankara Tenth High Criminal Court, *File No. 2011/206*.

[52] http://egedesonsoz.com/haber/Oldurulen-kadin-davasina-Bakan-Sahin-mudahil/807470

[53] Law No. 6284. Article 20 - (2) The ministry can, if deems necessary, participate in an administrative, punitive and judiciary lawsuit or ex parte proceeding opened due to the violence or violence threat against women, children and family members.

this period. Eventually, after the new law of protection was enacted on March 20, 2012, many courts began to accept the Ministry's intervention.

As I mentioned above, political intervention obviously does not require the trial court's recognition (Dumrul, 2012). In any case, via lawyers, concerned parties are involved in the proceeding. However legally recognized intervention allows for the applicant to have equal rights with the victim during the entire case. Therefore, admitting one's demand binds the victim and the Ministry together in legal terms. Gül interprets the Ministry's insistent act to achieve the status as follows:

> For me, this is an attempt to shy away from duty. On the contrary, those who intervene to criminal cases are the ones that are harmed by the offense. The perpetrators of a crime cannot intervene; we also think that the Ministry and the State should also be among the perpetrators of the crime. Because they did not take necessary measures, and moreover made decisions and took actions that actually encouraged the crime; that is why they have to be considered as perpetrators.[54]

Alongside Gül's interpretation in which she underlines the role of the state in male violence against women, it is important to note that there is another risk. In protesting against women killings and other forms of male violence, feminists emphasized the contribution of law in all these and explored how the state and its mechanisms promote the perpetration of male violence, and accordingly they are interested in intervening in the field of law. And in this, the intervener status became a crucial component of the struggle both in political and legal terms for years now. The Ministry's action carries also the risk of abolishing this political effort and repressing women's activism. Overall, a state's ministry's involvement in the process has the potential of decontextualizing and depoliticizing the intervener status and trials at large.

In addition, Gökçe argues, the Ministry's involvement in the juridical process puts justice in question as well; she then distinguishes the intervention of the Ministry from those of women groups:

[54] Gül, 01.02.2012.

> In a legal system, within the framework of overall democracy and judicial independence, can we accept the intervention of the Ministry to a case, even if it is to the advantage of woman's organizations? When I run across an example like this, I'll work for its annulment at the High Court of Appeals, because this indicates interference to judiciary. Is there a consensus among women's movement on this issue? No, a lot of organizations approved this, because they thought it was to their advantage.[55]

What Gökçe refers to by "the common opinion of women's movement" is the discussion during the reform campaign for the law of protection from violence order in 2011. During the lobbying process, as I have mentioned above, the Ministry's lawyers declared that they want to include in the new law their intervener status. Some groups rejected it due to the above mentioned reasons. Finally the law was enacted and the Ministry's intervention was included. As Gökçe says, at first some of the women's groups reacted positively to the intervention of Ministry. However all of my interviewees' responses were otherwise. Nazan says:

> Legally, I find this very problematic, that is to say in terms of the separation of powers. Politically, it can affect us in a way that makes us more invisible. When we start to approve the intervention of the Ministry, we can lose the legitimacy of our demand. We've insisted for the enactment of this law recognizing women's organizations involvement to cases, but instead the Ministry wrote down its name.[56]

Recurring Interconnected Themes: Sexuality and Family

Before monitoring trials I had no enough knowledge of what is happening inside the court room. Because in its very construction, the legal arena and more precisely courts are isolated and closed spaces in which, they declare their authority, have their own rules

[55] Gökçe, 13.04.2012.

[56] Nazan, 04.02.2012.

and mechanisms. As such, courts in general attract public attention when their decisions are concerned, or when the media is interested in a court case. During two years of regularly monitoring court cases, in some cases I had to wait outside and in some others I could go in, I have come to terms with the practice. In my observations I was convinced that law is more than "a matter of interpretation", as the common understanding goes, for the actors do much more than interpreting and implementing legal arguments.

Monitoring a case allows one to witness how structured and fragmented male violence is. Many patriarchal patterns diffused in society are repeated and reinforced during these trials. In many of the ways in which killers of women or rapists defend themselves, jurors react to female victims and lawyers of the accused and jurors interpret the crime, male domination is at work. As such, court cases provide abundant material to figure out how promoting male violence is intrinsic to the field of law. While I dwelled on the practice in Turkey, I have benefited also from feminist experiences abroad.

The overlapping patriarchal patterns distinctly manifest themselves in accordance with the specific crime in question. It would be appropriate to begin with women killing trials to grasp what feminists have accumulated in time. Selma puts forward what litigation enabled to see first:

> The fact that we monitor these cases and construct a memory give way to these: Look, Ayşe Paşalı's murderer also said the same thing, Necla's killer said the same thing, Rengiye's as well. The similarity of these men's defenses, their common discourse, their excuses, the monitoring of such cases give us a background on this issue. If these women's murders were to be seen as exceptional cases, we wouldn't be able to discover this chain reaction. First and foremost, I think feminists' monitoring of these hearings is very important in terms of deciphering the systematic nature of these cases. This has been understood.[57]

[57] Selma, 31.01.2012.

Then what is common in what the killers or the accused say? How does their consensus on testimonies reveal the systematic patterns behind? In the Sevim Zarif case, the accused Yaşar Özcan claimed that Sevim provoked him because Sevim had filed and won the suits against him. Ayşe Yılbaş's killer, Hüseyin Özmen claimed that she intended to hide their baby from him. In the following hearings, and even after the domestic court decided and the Supreme Court reversed it, he came up with new excuses saying that Ayşe was cheating on her. Satı Korkmak's killer, her husband claimed that she had an affair too. Istikbal Yetkin killed his ex-wife, claimed that Ayşe Paşalı danced with a man and moreover, threatened him by hiding their children from him. Hasan Mersinli killed his wife, who was trying to divorce him, and claimed that she wanted to hide the children from him. In the Şefika Etik case, İbrahim Etik and his witnesses, i.e. his whole family including two sons, claimed that Şefika had an affair. Besides these efforts on making the victims primary suspects; Hüseyin Özmen, Gazi Baltacı, İstikbal Yetkin and Hasan Mersinli all declared insanity[58]. And all of them pleaded for sentence reduction with all these justifications. Examples can be multiplied. To cover the bizarre situation of the exact match among statements, I will start with common themes that emanate from these claims.

Jealousy is one of the common arguments that women killers put forward to get away with murder (Estrich, 1998). Alleging that the victim is not a proper mother is another (Smart, 1992). These two are enmeshed in each other within the notion of sexuality. That is, women's sexuality is the key aspect that is brought forward in defenses according to which men's jealousy or interpretation of proper motherhood is defined. Precisely, in court rooms the sexuality of woman is reified as inarguably heterosexual, monogamous and marital. Moreover, it belongs to her husband. In cases of separation,

[58] See Estrich, 1986, pp. 1096-1105, to see how "mens rea" (prohibited mental state) argument operates in rape cases.

leaving the husband only counts as a further excuse for provocation. The man's feelings of ownership persist even after divorce (Coss, 2006). This content of women's sexuality first enables to evaluate the female victim's life story accordingly and then allows formulating mitigation of sentence. The accused, claiming in his defense that he was jealous, attempts in that way to persuade the court to have mitigation. Thus, the symbiotic link between the notion of mitigation and blaming the female victim is striking in its reflections of the dynamics of patriarchy at work. With the blamed subjectivity of women, a particular *type* of woman is discursively articulated and reconstructed in the overall court prosecutions (Smart, 1992). The type of woman which is over and over reinforced in court rooms is blamed for her inappropriate sexuality. This patriarchal chain is complete, if in addition the court finds this link credible, in other words, admits the male accused as justifiably provoked. Because then the accused and the jurors seem to have built a consensus about the notions of sexuality and family: he can be accorded reduction –i.e. be implicitly approved by the jurors- if the victim had cheated on him. Delal describes the period in 2008:

> When Turkish Criminal Law took effect in 2005, we thought that women were saved concerning the criminal. Later on, "unjust provocation reduction" was applied for three murders of women in Ankara; I realized that we are facing something called ¨unjust provocation¨ justified with reasons such as wearing leggings or asking for time flirtatiously. We used "We take a position" and "Women killings are political" for the first time in statements we made for this trial. Sevim showed us that a woman could be murdered not only because she wore leggings, asked for time or had occasional sexual intercourse, but also a woman's husband she divorced 11 years ago could also murder her. With Sevim, we realized that women killings were not far away from us. The expression women killings (instead of *honor killings*) mostly stems from this experience.[59]

[59] Delal, 20.12.2011.

Asiye describes what else feminists face in that period:

> Another thing that we've witnessed was that all the defendants were so similar in their behaviour and ways of speaking to such extent that they looked like they went to the same school. They believe that they had to do what they had to do, that they had no other choice and this is the reason why they committed murder and consequently, they were the aggravated party. For these reasons, they thought that it was natural for them to ask for their release. For them, unjust provocation reduction was their vested right.
> We've learned the importance of unjust provocation reduction through such cases. We saw how it was easy to earn such a reduction in their sentence, as well as, the political nature of the reasons behind this. There had to be understandable reasons for killing someone and these were simple behaviours that have always existed.[60]

As I have briefly dealt with in Chapter 2, in the new Penal Code in 2005, the reductions in sentences of murder were changed to the advantage of the victim. That is, the sentences were augmented and the excuse of honor was eliminated from the law. Women's groups struggled further for honor to become an aggravating factor for the crime. Despite all the efforts, the demands that feminists put forward were not met and the Government passed the law including "the incentive of custom" as an aggravation clause[61]. As Delal describes, a new regulation came into being out of this process. This new regulation is called "unjust provocation".

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[60] Asiye, 20.04.2012.

[61] Law No. 5237 Offenses against Life
Voluntary manslaughter (Felonious Homicide)
Article 81-(1) Any person who unlawfully kills a person is sentenced to life imprisonment.
Qualified form of felonious homicide
Article 82- (1) In case of commission of this offense;
a) Willfully,
b) Ferociously or brutality,
c) By use of nuclear, biological or chemical weapons which cause explosion or result with fire, flood, destruction, sinking etc.
d) Against any one of the antecedents or descendents, or spouse or brother/sister, or
e) Against a child or a person who cannot protect himself due to corporal or spiritual disability, or
f) Against a pregnant woman, or
g) By virtue of public office, or

In the new regulation, the previous term "severe provocation" is replaced by "unjust provocation". In legal terms unjust means "not appropriate". In its application, a person who commits an unjust action under provocation is provided for roughly 1/3 mitigation in life imprisonment sentence.[62] The justification of the reform in the Article 29 "Unjust Provocation" is as follows:

> Rage or strong grief results from a tort. The reason behind adding such a clause to the article is to prevent *the misapplication of unjust provocation reduction* in killings of a relative, which are called "tradition or honor killings" in our country. Because of this regulation in the article, the perpetrator cannot benefit from unjust provocation reduction because of torts committed against the victim of a crime. For example, *in the act of a murder committed by the father or the brother against a woman who was sexually abused, the sentence shall not be reduced based on unjust provocation.*[63] (emphasis mine)

What is more striking in this new formulation is, as can be seen, its justification. It is said: "to prevent abuse of sentence reductions in honor and custom crimes". This gives the impression that the women's efforts during the law reform to draw attention to the sexist regulation in sentencing women killings were taken into consideration. However, this legal advance efficiently shows that law reform in itself does not lead to a change in practice. To turn back to the repeating notions around women's sexuality which eventually provide mitigation of sentences in court trials, I would argue that the gender biased legal system find its way. In other words, from 2005 onwards, killers of women plea for the mitigation based on unjust provocation and the justification operates according to gender(ed) roles: either woman's sexual conduct is put under scrutiny or

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h) With the intention of concealing or facilitating commission of an offense, or destroying the evidences, or
i) Blood feud,
j) Ethical reasons,
the offender is sentenced to heavy life imprisonment.

[62] Law No. 5237, Excusatory and Mitigating Causes
Unjust Provocation
Article 29- (1) A person committing an offense with affect of anger or asperity caused by the unjust act is sentenced to imprisonment from eighteen years to twenty-four years instead of heavy life imprisonment, and to imprisonment from twelve years to eighteen years instead of life imprisonment. In other cases, the punishment is abated from one-fourth up to three thirds.
[63] http://www.cezakanunu.net/tck-madde-29/

her role in the family is judged in order to implement the Article 29. Defenses based on provocation operate to excuse women killings by their victim-blaming narratives. Not only in Turkey but all over the world, the regulation of provocation has allowed women killers and their lawyers to excuse the killing of allegedly "unfaithful" women (Burton 2002; Howe, 2002).

Unjust provocation thus functions as a protection for the male accused. Feminists formulated this mitigation as "the mitigation of masculinity" (Karakuş, 2011). It cannot be argued it is equally implemented in cases of women who kill men (McColgan, 1993; Schneider, 2000) or perhaps women do not express themselves as "provoked" after all (Howe, 2002). Moreover, women do not kill men as widely and abundantly for similar reasons (Dobash and Dobash, 2004). This comparison itself is striking for understanding gender: women do not kill when they live under *provoking* conditions like routine violence or assaults as men do for any slightest reason (Hacıvelioğlu, 2009).[64]

In formulating a mitigation demand based on provocation, the accused obviously deals with lawyers and jurors. That is, as the accused constructs his defense attacking the female victim, lawyers translate it into legal terms. Lawyers or other spokesmen reinforce, as does the the accused, gender discrimination in their defense lines. In addition they legalize the patriarchal common understanding that if the woman cheats, the man gets angry, and anger kills. In other words, "they are the ones falling back continually on the rights of their provoked clients and on their own innocent affirmation of provocation's putatively universal concession to human frailty" (Howe, 2002, p.54). Moreover, defense lawyers are those who suggest this male "priviledge of loss of control" (Coss, 2006) and jurors are those who are expected to approve it. İbrahim Etik's lawyer defends his client as follows:

[64] For an inspiring short essay on female violence, see Savran, 1995.

> Because the murdered party made phone calls and had relations with other man, the unity of the family was shaken to its foundation and as a result of this, they decided to have a consensual divorce. 2 days before the consensual divorce trial, the offense was committed by my client who'd lost himself when the murdered party said "I had an intercourse with the teacher, let me clean myself" while she was about to take a bath at home. Besides, why my client would commit such a crime since he had a divorce trial two days later? For this reason, I demand for the application of provisions on unjust provocation without taking into account articles concerning premeditation for the sentencing of my client.[65]

The use of Article 29 leads not only to the justification of the murder, but also contributes to the re-victimization of women in the aftermath of the crime. When the accused claims adultery the process turns into the examination of the victim. In this, her life is put under scrutiny, if required in a detailed manner. Centered on a patriarchal construction of sexuality, the courts tend to deal with the *honor* and sexual history of the victim during the proceedings (Easton, 2000). To allege the victim for causing adulterous act or for just being "unfaithful" reinforces the sexist functioning of court trials. Though she is the one facing violence or is killed subsequently, via the tools of interrogation and defense she experiences secondary violence.

As a matter of fact, adultery is already regulated in the Civil Code as a justification for divorce. Selma explicitly puts forth the gender bias in the application of the Article 29 with regard to the regulation in the Civil Code:

> The law gives you the right to divorce when someone cheats on you. In this legal framework, you have the right to divorce as a response to the infidelity of the woman. Did you file for a divorce? Yes or the woman did it, that's it, it's over now. So this action had its compensation legally. If you do not file a divorce, this means you're ok with it. Especially, the woman's lifestyle cannot be put forward as a reason during a divorce case. First and foremost, we have to exclude this from the framework of the penal law. In the Kayseri case[66], the defendant said, "I heard that she cheated on me from here and there." He brought two or three false witnesses to the courtroom. We asked, "Did you file for a divorce?" If you hear the answer "No" following that question, this means that the

[65] Manisa, Second High Criminal Court, *File No. 2011/246*.

[66] Hakan Kalkan who killed his wife defended himself before the court saying the victim, besides comitting adultery, insulted him.

> defendant complies with it. A matter that he complies with cannot be a reason for provocation. [67]

Feminists assert that under no circumstance can adultery be considered as an excuse to killing. In criminal cases where it is reinforced as an excuse, Candan reminds that it contradicts with law as well: adultery has a place in law concerning the rights to divorce; its sanction is regulated in the Civil Code. Law promotes and discusses adultery by transferring its location: adultery in crimes against women moves from Civil Code to Penal Code, it reflects death instead of divorce. Nevertheless, for feminists mentioning the regulation in the Civil Code in the courts stands just for a strategy. For political struggle in search of guarantee by law is bound to fail: the rate of women killings after divorce, with the same excuses of "infidelity", is significantly high (Mahoney, 1991). In other words, divorce does not intrinsically mean a *real* separation for man and woman. Indeed threat of or actual separation can lead to further violence, because men cannot handle women's decisions and continue to attack on their autonomy (Coss, 2007; Mahoney, 1991). This is valid for the cases that I observed in this study as well.

In addition to the strategic use of the Civil Code, Aslı says in this case, the aggravating pretext of custom should be applied if honor as an excuse is articulated. She reminds of the nearly neglected article in the Penal Code: killing based on custom is a cause of aggravation (article no.82-1/j). She explains:

> For example, he said that he has restored his honor, ok then, what we should say is that this is a reason for aggravated sentence based on the motive of tradition. We should use the issue of tradition for our advantage. If someone says that he killed because of honor, what we have to say is, "yes, please impose an aggravated sentence." Maybe, we have been obsessed about this: When they were making the law, we put too much emphasis on this: "let's not use the motive of tradition, but instead use the motive of honor." We thought that tradition has nothing to do with us, ok that's what happened, then let's use this to our advantage.[68]

[67] Selma, 31.01.2012.

[68] Interview with Aslı, 28.04.2012.

Selma in a similar vein argues that it is a strategy within the boundaries of law again and explains how to do it:

> we have to make sure that individuals use legal tools. (…) What we have to say is this: it is claimed that the murdered party cheated on her husband, on the condition that this does not represent an admission on our part, if he killed to protect his honor, as a result of the rage caused by that, we ask for an aggravated sentence because he acted with the motive of tradition. What is the meaning of the motive of tradition? A murder committed for a reason as a result of societal pressure. In my opinion, the murder of Şefika Etik is a murder committed with the motive of tradition: The fact that the murder was discussed in the family council etc. You should build your defense in a way that does not defend the woman, but that reveals the motive. You should put them in a defensive position; they are the ones to prove that there is no motive of tradition. You have to cause panic in the opposing party, because it is clear that murderers of women, once they get panicked, they start to break up.[69]

Rengiye was killed by Hasan Mersinli whom she was trying to divorce. In her case, feminist lawyers used this strategy in their defenses. The killer testified as follows:

> My wife told me that "From now on, I'm gonna live my life, take your bastards away and get out of here." I've lost myself. I've lost my mind. I started to shoot with the gun in my waistband. (…) I have been to Bartın for one or two times. (...) I saw my wife walking arm-in-arm with my brother-in-law. Then, I came back there for one more time, I followed her, saw her embracing someone while leaving the goldsmith (...) All of these happened after I filed for a divorce during the time when we were living separately. (...) My intention was to take my kids and return home. I've never intended to shoot. I swore to send my kids to school. I always told that I wanted the first one to become a doctor, and the second one a prosecutor.[70]

In his defense, Hasan Mersinli describes the victim as an unproper mother having a deviant life, and himself as a good father after all. Rengiye's lawyers insisted that if this man, during the divorce interval, killed Rengiye with "sharp anger" based on her inappropriate sexual behavior –which is inevitably reflected on her motherhood-, then he killed her with customary incentives (based on his utterance of honor). However, the

[69] Selma, 31.01.2012.

[70] Bartın High Criminal Court, *Decision no.2012/106*, File no. 2011/230.

jurors rejected this claim telling that he is not "proven guilty as charged" for these incentives.

However in Şefika's trial, the jurors state in the justified decision their opinion about customary incentives:

> Even though the case file lacks convincing hard evidence showing that the murdered party was killed as a result of a decision taken in the family council, since it is understood that the murdered party committed the crime all by himself with the motive of tradition thinking that his murdered wife has harmed his honor and reputation because she talked on the phone with other people…

And it is explained why unjust provocation cannot be used:

> According to the Turkish Civil Code Article 185/2, married couples are obliged to be loyal to their spouses. But this liability does not mean that individuals cannot talk on the phone with people other than their family, cannot have friends they'll socialize with, cannot talk with others on the Internet, cannot go outside alone, and cannot go to places like cafes and cinemas. These shall not be discussed since they are within the framework of individual's rights and freedoms. On the contrary, -the fact that some families and men believe that they have a determining role in women's bodies and emotions and a murder has been committed on the grounds that his reputation and honor have been tainted because he found the female family member, sister, wife or close relative's actions contrary to the dominant traditions and conventions of the social environment they live in- when it is considered that a murderer can see these reasons as factors that make the murder partially justified and excusable in the legal sense, it is seen that unjust provocation provisions cannot be applied for the offender because it is impossible to accept that the victim's action was a tort and that the offender who *also filed for a divorce* committed the crime he was accused with under the influence of strong and violent pain caused by the murdered party's action, that is to talk on the phone with another man 17 days before the incident. (…)[71] (emphasis mine)

Şefika's case demonstrates that provocation based declarations are shaped depending on the interpretation of law. It shows courts can also turn upside down universalistic evaluations (on "human frailty") intertwined with misogynist construct of "adultery-anger-killing" relation. By emphasizing that the accused attempted divorce, the jurors of Şefika's trial cancel out the credibility of alleged adultery in killing. Similarly, in their

[71] Manisa Second High Criminal Court, *Decision no. 2012/153*, File no. 2011/246.

opinion about the incentive of custom, they applied the existing legal formulation to this specific killing. "Customary incentives" in this case turn out to be to the advantage of women as my informants argue above. Although feminist lawyers do not focus too much on the amount of sentence given, they try to transform the practice to the advantage of women.

Moreover, the ways in which lawyers or other spokesmen interpret the articles lead to the formation of general convictions in time. To be precise, these men's murderous excuses in such trials become vital for they have direct influence on future women killings. For instance, Hüseyin Özmen's articulation of provocation in Ayşe Yılbaş trial paves the way for İbrahim Etik's defense. Almost the whole first hearing of Şefika Etik trial was concentrated on the testimonies of the alleged cheating. Şefika was beaten by İbrahim Etik numerous times and finally moved to the shelter. Like in most of the cases, battering precedes murder, but unlike almost in all, prior violence was documented in her case. Although this fact seems to sufficiently show how the process built up until death, in the proceeding, the legal attention was on the suspicion of the affair. This inquiry corresponds practically to an interrogation of whether she "deserved" to be killed.

Within the boundaries of defense, if the other party brings an argument as an excuse to his client's violent act, the complainant's lawyer tends to prove the contrary as a practice of prosecution. Although Şefika's case is obvious in terms of the gendered trap with respect to adultery, this is not always as apparent as in this case, especially in sexual assault cases in the majority of which there is no evidence except the woman's declaration. Furthermore, if the victim is alive the frame of defense becomes more difficult for lawyers. That is, law by its making and its practice devalues the female victim and her life; and this context brings about restrictions for the defense of feminist lawyers. In this vein, it is contradictory to try to prove to the court that the rape

occurred within the legal terrains. Alev reflects the debates about this situation in their meetings:

> we put forward political reasons, in the case of unjust provocation, we talk about how a woman's behavior cannot be used to justify a murder in the legal sense. We also talk about how the fact that a woman wore leggings cannot be characterized as a tort. Similarly, what we have to do in the next sexual assault case is to have a decision, underlining that in such cases, there will be no witnesses and evidence, and there will be no eye-witnesses of such crimes. (...) It is strange that, on the one hand we say that the woman's statement should be taken as the basis; on the other hand we try to provide evidence to the file. [72]

The primary obstacle to political defenses, as Alev describes, lies in the restrictions of law. That is, depending on the order of courts, a legal defense without responding to the examination within conventional ways can lead to the failure of the case. And for that, the opinion of the victim or families has to be taken into account. Different than other politicized trials in which the accused makes the political defense and lawyer is only the mediator, like in the prosecutions in the scope of Law on the Fight against Terrorism (*Terörle Mücadele Kanunu* –TMK) for instance, in crimes against women often this is not the case. In addition, differently in these trials, the victim is in concern instead of the accused. This situation results in two conflicts: first the victim is not always willing to politicize her case and secondly the victim's rights are not as "advanced" as the accused rights in the history of law. I will deal with these two aspects of the victim position later.

Court Records

I have demonstrated above that the sexuality of women is the recurring theme in court proceedings. In Nejla Yıldız's trial, the accused Gazi Baltacı's mother in her testimony

[72] Alev, 01.03.2012.

said "Nejla's daughter is responsible from the murder, she was not even a virgin."[73] Gül tells what happened afterwards:

> They called the defendant's mother as the witness; she came and terrorized the hearing. Trying to say that it was an honor killing, she said "she slept with my son, she wasn't a virgin, for this reason, my son has restored his honor." She shouted at the lawyers, "why are you all come here, do you go to the other cases like that, or is it just because Nejla Yıldız, you try to show yourselves off!" We had arguments. We demanded all her words to be recorded and for a filing of a criminal complaint because she insulted Duygu and Nejla Yıldız and violation of their personal rights. The court recorded these demands. The fact that she shouted, saying she wasn't a virgin and a girl, was an attack and the court took this seriously. The prosecutor started the inquiry and summoned us for our sworn statements.[74]

The old Penal Code, was foreseeing more severe sentences if the victim is virgin in rape cases. In 2005 that was changed. Today virginity is no longer legally arranged and regulated by law and thus cannot be referred to in legal terms in proceedings; on the contrary, attribution to virginity as such pertains to violation of one's personal life. However, virginity continues to be an issue to influence the court and provide mitigation accordingly. As in the Sincan rape case, that women's groups litigate in Ankara, in rape trials judges continue to ask or imply whether the female victim was virgin before. Whether legally regulated or not, women's sexuality is always out in the public whatever the decision the jurors make afterwards. And as mentioned above, the indifference of the prosecutor in capturing how this wording violates the personal life, contributes to the normalization of the references made to the notion of virginity. Although it is obvious that the daughter's non-virginity could not lead to any justification for the murder of her mother, still it circulates as a part of common judgment and as an attempt to shape the court's opinion about the murder.

Obviously everything articulated inside the court room is not reported. The report itself has a formal procedure. In all the cases that I overview in this study

[73] Olayın müsebbibi maktülenin kızıdır, maktülenin kızı da kız değildi. Ankara Tenth High Criminal Court, *File no. 2011/206*.

[74] Gül, 01.02.2012.

excepting the case of Rengiye Mersinli, the presiding judge dictates to the clerk after listening to all intervening parties according to the procedure. Thus, what has been recorded misses many of the sentences uttered during the hearings. In other words, manifestations of power, especially in terms of gender are left hidden in what is not reported. For instance, examination of jurors and lawyers of the accused and their attitudes towards the victim and her lawyers matter a great deal in evaluating the gender bias in rape and also murder trials. Unlike the cross-examination method of the Western legal system, these questions are not appended to records; instead the testimony in its full form –of course in the way the presiding judge registers it- is reflected in the record. As such, gendered inquiry on women's sexuality like virginity question is bound to be invisible where exactly discrimination against women is blatant. That is why also I insisted monitoring the cases; because I argue that only in this way the juridical process and the potential feminist impact on it could be entirely revealed.

Feminist lawyers regard what is and should be reported as also a matter of struggle. And jurors, prosecutors and defense lawyers are the subjects of this struggle. Proceedings produce potential grounds on which multiple forms of re-victimization operate, both on the victim's part and of the activists present in the court on behalf of her. Questions of jurors, defenses of the lawyer of the accused or jurors' attitude against feminist lawyers, all can easily turn into the discriminatory acts. Delal explains the significance of the courtrooms in this respect:

> Today, violence against women is a well-known subject across Turkey. Fighting violence with laws, exposing on the media, people are used to these. On the other hand, cases are not exposed. Nobody says that in this certain case, a certain judge did this. People are interested in the outcome of the case, not the whole process. A judge may ask to an 18-year-old girl who was held captive in a house and raped, "Why did you eat ice-cream the next morning?" and we cannot expose this question.

> This stays with three or five people who monitor the case. What we can make visible are the decisions.[75]

In S.'s rape trial in Istanbul, the presiding judge in search of "how rape occurred" asks victim-blaming questions. Delal points out to one of them. They are not as public as decisions since they are not recorded. Court rooms are bound to be isolated places; although legally it is open to everyone, the media and tools of recording other than those of the court are not allowed. Therefore, exposing what has been experienced through a feminist lens is of significance. In the above quote for instance, the question of the presiding judge is not on the record although similar questions of judges constitute the very notion of the "rapable woman of legal discourse" (Smart, 1990). It is important to remember that the Supreme Court, which is responsible for evaluating the decision that the domestic court has taken, works on these court records as well. Gül tells what changes when the hearing is entirely recorded:

> It was a relief to us to have recorded hearings in the case of Rengiye Mersinli in Bartın. First of all, witnesses took their seats, were given water and spoke as long as they wanted. We've never been to a case like this before. Maybe Bartın ise a pilot area or something. In other trials, what we go through is like a war.[76]

Male Agency In The Courtroom: Jurors And Defense Lawyers

As in the above quote, while S. was giving her testimony, the presiding judge asked why she did not shout or scream for help from the relatives at home. This examination seems quite common. It is common to expect from a woman during the moment of rape to resist and often get wounded (Henderson, 1992; Sheehy, 2000; Larcombe, 2002). In this case, S. kidnapped by a man, was taken away to the house of his sister in an

[75] Delal, 20.12.2011.

[76] Gül, 01.02.2012.

unknown district. And during the examination she patiently responded that she cried for help but nobody responded. And in the second rape at night, she ceased to shout because she knew that it was pointless. And she decided to bear it in order to be able to escape alive. In the morning, they went out for the breakfast and then she was released because everything seemed quite normal as she pretended. And the presiding judge asked "Why did you eat ice-cream?" She again with patience explained that she believed she could escape only if she displayed an ordinary attitude.

How can jurors evaluate the consistency in her testimony by a question about eating ice-cream? What is the appropriate behavior that she has to show? Jurors try to find contradictions in her testimony in the need for corroborating evidence and therefore can ask whatever seems to them as unexpected reactions to rape. In cases where there is no physical evidence, like distinctive wounds or marks, or residues of sperm or other material evidence belonging to the accused, the victim confronts as "a must" with these sorts of questions. Certainly sometimes lawyers succeed in restricting discriminatory questions or depending on the judge questions can be more to the point. Still, how do they define what to ask during examination? Mine describes the situation in Ankara:

> Interestingly, their attitudes are dreadful in settlements – I know this, because I work as a lawyer in Istanbul. They are very prejudiced while they take your statements, interrogate you, listen to their demands and record them. They are very resistant and half-hearted. But for example, in small places, their attitudes are way much better.[77]

What Mine refers to as the reluctance of the jurors is explained clearly by Eylül:

> In cases of harassment and rape, when unjust provocation is discussed, the legitimacy of the offense is discussed, not the fact that he (*the accused)* committed the offense. In other words, they turn it around. As long as you can prove the illegitimacy of the offense, the case may turn out to your advantage. (…) *(Judges)* They are not interested in what woman has been subject to. We try to convey how one feels as a woman. They see the situation as a done deal, somebody died, the body was somehow

[77] Mine, 31.01.2012.

> raped, subject to rape, they see it as a creature whose boundaries are violated, they treat her as an object. The moral equivalent of the offense is discussed, not the offense itself. It is the same in murder cases, as well as in rape cases.[78]

The first reaction that the victim's party is confronted with during the proceedings is unwillingness. I often came across this scene: while the court case is proceeding in its ordinary yet dense atmosphere, files are read during the hearings, jurors look exhausted, the presiding judge is usually impatient, harsh and even rude to the victim, her lawyers, the witnesses and to the audience. There is a check list on the door, on which every day all the hearings are listed, leaving around 10 minutes for each. That is, the court is expected to see every 10 minutes a high crime case. Because all hearings do not last 10 minutes, this causes delays. There is constant waiting. The alienation to the job is permeated the court room itself despite the nature of crimes. Accordingly, the workload of the jurisdiction has always been an issue in Turkey. The government and HSYK on this occasion suggested some measures to prevent it[79]. After all, the unwillingness or neglect of the court members has a direct impact on the lives of both the victim and the accused. Ferzan gives an example:

> Years ago, a 30-year marriage was about to end at a hearing. My witness was speaking and the judge interfered by saying "I have a lot to do, cut it short." I got pissed off and said "one minute, dear gentleman, we're not talking about our love stories and adventures here. You're going to make a decision about one person's 30-year long life and this is a job as well. If you don't have the patience to listen to, don't sit there, let someone who's willing to listen take your seat." Of course, he was silent. Back then, the judges were different, if a similar thing happens today they'll jump on me saying that I insulted the court. What I mean is that, they also lose their patience and can't listen.[80]

Feminist lawyers' struggle during the proceedings against the gender biased practice of law obviously includes this indifference. Such indifference may result in decisions to the

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[78] Eylül, 31.01.2012.

[79] http://www.resmigazete.gov.tr/eskiler/2011/04/20110414-1.htm , http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&VersionID=88447&Date=16.09.2011&ArticleID=1063487

[80] Ferzan, 19.04.2012.

disadvantage of women and discriminative acts towards women in the proceedings. Eylül reveals the meaning of their struggle against this attitude of the jurors intermingled with other gender biased acts in their examination and overall evaluation of cases:

> When the judge assumes such an (*rude and inattentive*) attitude, you remind him about the law. But, It is significant to say that "you cannot ask such a question." (*In a sexual harassment case*) When we told "please put on record the smile on the prosecutor's face," the judge came to his senses. You cannot smile dear sir, we don't expect you to mourn, but please have respect for God's sake! When you monitor the case collectively, you bring them into line. It is definitely useful to show your collective anger to the other party when necessary.[81]

Selma adds:

> if you consider the court system, this is the case: there's a man who stands at the top and a lot of woman are down there, trying to get their point across. The head judge thinks that he has so much power. And they are supposedly respectful of female lawyers. They say "ok MS. but…" and they don't treat a male lawyer like that. And when a judge has 30 female lawyers standing opposite to him, he does not show this fake respect to them, and when he has powerful, angry and outspoken women against him, he gets more and more angry. Even though you represent the aggravated party, the judge has more against you than the defendant. He doesn't like to see a crowd in the courtroom and says "you want to put pressure on the court." At that moment, in a sense, the court stands with the defendant. And of course, he puts an extra effort to say that he is objective and won't be influenced. More than the lawyer, he is angry with the activist and feels uncomfortable being watched. In some sense, he gives a message to families and says "do not unite with feminists, this will eventually backfire". [82]

Another attitude of jurors towards feminist lawyers, that comes into play mostly if they make a political argument, is their allegation of "putting on a show". Parallel to Selma's note, the trial judge especially makes the audience feel that he represents the "objectivity". In other words, in principle "judicial passivity is encouraged, as it is assumed to preserve the appearance of fairness in criminal proceedings" (Ellison, 2000, p.48). However, alongside the *neglect* above mentioned, what I observed in court hearings, the court's independent stance can be easily intertwined with a disdain towards

[81] Eylül, 31.01.2012

[82] Selma, 31.01.2012

the audience. It would be incorrect to argue that the perception of "putting on a show" in especially political defenses is specific to cases that feminists litigate; in many cases lawyers face this sort of indifference and disdain. Aslı explains why jurors call some arguments in defense "putting on a show":

> You see, we try to make a political defense, say that three women are murdered each day, you have a responsibility in this problem as well, are you aware of it. We ask them if they're going to be a partner of the crime or not, or do something to solve it? For example, they answer by saying, "we read these in the papers, do not try to make it sensational."[83]

Leyla makes a comparison with the practice in the Special Courts:

> They are used to lawyers at State Security Courts (DGM)[84], but they are not at High Criminal Courts. At DGMs, a lawyer's struggle when s/he says "you cannot write this down" is what the intervening party's lawyer does here in cases of women killings; and they are not used to that. They say things like "we already protect the woman's rights" or "we'll take all the necessary steps, who are you to question?" Being a defense lawyer at DGMs is a very different thing. You're the representative of a plaintiff, of the aggravated party. There's a tradition set by leftist lawyers at DGMs. There, they have to treat lawyers better than they do in High Criminal Courts. I think that it's women and feminist lawyers who teach judges how to be a judge at High Criminal Courts. They say you can't do this and that.[85]

Leyla's comparison enables us to see once again the depoliticization of men's crimes against women. As I said earlier, in political trials targeted against the state, court members recognize the quality of the crime in concern. This is certainly a result of the constant struggles of oppressed groups. Women's organizations also endeavour to attain this from the late 1990s onwards.

In order to grasp the authority performed by the jurors in the court rooms, we have to acknowledge that it is not specific to the male violence crimes. The organization of space in the court room itself reflects the power relations (Bourdieu, 1987). The jurors in High Criminal Courts, consisting of a prosecutor and three judges, are at the

[83] Aslı, 28.04.2012

[84] DGMs are the previous form of ÖYMs.

[85] Interview with Leyla, lawyer from Adana, 28.04.2012.

top at just the opposite of court door. Below on the left and right, the complainant and the defendant with their lawyers are aligned. In between there is the seat of the accused. And at the back, the audience is placed facing the jurors. The power manifests itself in this ordinary picture. The presiding judge is above the prosecutor as well. He or she (mostly, he, in High Criminal Courts) is the head of his court and what he utters is treated as law itself. This persistent picture enables the maintenance of the power positions of court members within society and system of values regarding the field of law and reproduces the hierarchial mechanisms over and over.

Ş. was sexually harassed by a medical technician during her kidney stone operation. Her criminal complaint was accepted and hearings started in the Criminal Court. Unlike High Criminal Courts, here there is only one judge that leads the trials. In 2011 due to the workload, the prosecutor was extracted from the Criminal Courts[86]. The absence of the jurors or of one judge leading the proceedings accords all the authority and direction to the judge of the court and eliminates the possibilities of controlling by other members of the jurors, in comparison with the High Criminal Courts. The case was filed in Bakırköy Court House in which the court rooms are smaller than usual. In the first hearing, while a group of women, including me, tried to enter to the room, we were first prevented by the usher and then we heard the judge shouting in front of the door, "Get out! Who are you! She is trying to get in!" and eventually we could not enter. The explanation that the usher made, was that the trial was closed and thus we, non-lawyers, could not enter. When Delal responded to the judge that "you haven't decided to close the trial", he was enraged. Delal describes the situation as such:

> When the justice system enters the picture, there's a hierarchy and at the top of it is the head of the panel of judges. Head prosecutors have a similar position but the head judges of panel of judges are at the top. That mechanism works in a way that violates the existing legal rules. Especially, they have a discriminatory attitude towards women, the poor

[86] http://www.resmigazete.gov.tr/eskiler/2011/04/20110414-1.htm

> and the weak. For today's hearing, (*above mentioned*) courts are open according to the law, everybody are entitled to monitor the case, as long as there is no special prohibition or a closed session. In fact, if there are a high number of people who want to monitor the case, it is the court's duty to arrange an available hall. Today, the head judge did not allow anyone inside. He looked at the file in his hand: simple sexual assault. He looked at the names, he looked at the lawyers, tried to understand whether there are privileged ones inside or not; he takes an attitude which in a sense means "I'll let them inside as I please". He thinks that it is his right to ask "who are you" when you want to enter the room.[87]

What lies behind this anger of the judge targeted to a woman here? He was offended by the presence of a group of women wanting to monitor the case. He arbitrarily declares that the audience cannot watch the hearing. It is arbitrary because in public trials normally the hearings are open to everyone and it is regulated in the Penal Procedure Code (CMK), Article 182 in accordance with the Article 141 of the Constitution:

> Article 182 – (1) Main hearing is open to the public. (2) In cases, where it is strictly necessary in respect to public morale or public security, the court may rule that the main hearing be conducted partially or wholly closed to the public. (3) The decision about exclusion of the public, which shall be furnished with reasons, as well as the judgment, shall be announced.

And the decision of closing a trial is regulated in the Article 186 of the Code:

> Article 186 – (1) The decision on closing the main hearing to the public shall be taken into the records, together with its grounds.

Another excuse given especially by ushers is that there is no enough place for the monitoring audience. Although the matter of physical space is not regulated in the Code, the accused or the victim and their lawyers have the right to demand for a larger room to realize a just proceeding. In practice, judges tend to decide arbitrarily depending on the physical capacity of the room. In terms of this offense in the monitoring of cases Delal points to the ambivalances in the decisions to insist on feminist activist presence in the court room:

[87] Delal, 20.12.2011.

> The openness of legal procedures to the public, citizens' or aggravated party's right to have knowledge is actually a human right. You are not the subject of the case; as a feminist, you are a supporter of the case. The woman who was sexually assaulted has trouble expressing herself in the first place, so you're thinking about how a contentious atmosphere will affect the case. Secondly, there you have the lawyers of the case, they are also feminist lawyers, and you also observe them a little bit.[88]

Lawyers in some cases are not willing to conflict with the jurors as well. Similarly for them, having an argument with the presiding judge may influence following hearings to the disadvantage of the victim. In Sevim Zarif's hearings, the activists did not enter the courtroom in accordance with the demand of the lawyer who did not want any "tension" inside. Asiye recounts the process:

> As Sevim's friends, we got together quickly and decided to monitor the case; Mor Çatı also made an open call to women's organizations with a statement and the whole process has started. Because of our hastiness and lack of experience I guess, the family hired a male lawyer. He was an lawyer that we've been familiar with. Nevertheless he wanted us to be calm till the end of the hearings and politely said that otherwise, it will have a negative effect on the court. And we politely refused to follow his advice. We made a statement to the press with a high number of participants on the day the hearing has started. Following that, we have regularly monitored the case as feminists, and made sure that the press followed the case from beginning to end. They never got us into the courtroom with the pretext that there was not enough space. Our relation to the case was that of monitoring it from outside. We've always waited at the corridor. It was getting chaotic when the defendant entered and left the courtroom. Sometimes additional police force was sent to the courtroom to maintain the order, the family was very angry and this anger reflected upon all of us.[89]

Among judges and prosecutors of the Penal Code a few are women. That is, mostly the judiciary is made up solely of men. In many sexual assault cases, the female victim faces a committee of four men (one of them is the prosecutor) and gives her testimony to them. As my informants confirm, they do not take into account the difficulty for the

[88] Delal, 20.12.2011

[89] Sevim's trial was held in the old court house Sultanahmet. The accused was brought from the prison and waited until the hearing began, surrounded by soldiers at the door until the hearing started. At the end of the hearing similarly he was taken out of the audience. What Asiye mentions about the tension while he was there was in these old court houses. In Ayşe Yılbaş similarly, the activists while waiting face to face argued several times with the accused and his lawyer. However, in the new design like in Bakırköy or Çağlayan, there is another door for the the accused. So this interaction stopped recently.

victim of telling them what happened and they even make it worse with their victim-blaming attacks on her. Then, sentencing is shaped accordingly. This suspicious treatment towards rape victims in turn has a considerable impact on the low convictions rates (Mack, 1993). When I asked what changes if there are women among them, the majority replied negatively. Eylül explains:

> It changes nothing. I don't want to be unfair but what we've seen so far is that women generally had a much more direct approach. They ask the question "Why this did not happen to me?" They only have empathy with this point of view! Those who are oppressed become fast enemies compared to oppressors who act with solidarity much more easily! [90]

Eylül in that way refers us to the the notion of "empathy" on the part of the female jurors. In this sense, although they differ from men because they question themselves as women, they are more likely to say "I wouldn't let that happen to me" (Schneider, 2000). Delal on the other hand elaborates on what lies behind this "lack" of empathy and what it means after all:

> In the rape case of S., there was a woman at the panel. My impression of her was like this: She believed in what has been said, because women have such stories in their lives, all of us have a harassment story in our lives, especially simple abuse cases. There's violence in our lives in one-way or another. This is also true for the woman in the panel of judges. I believe that they have the ability to empathize more.
> A contrary case might be like this: Attitudes and decisions that will breach the available legal system and turn the rules upside down may have a negative effect on respectability. It is already a hard job to be a female head judge. The head judge was a woman at Ödül's hearing (*a rape trial*). She was so decent while taking the testimonies. But the decision was the same. He did not get any sentence because of rape. The head judge was a woman at the beginning in P's hearing. Her attitude can be gentle, but the decision might stay the same. There, they don't take a woman's statement as the basis; the rule that counts is the one that says it is the accused who benefits from the doubt. [91]

As Delal describes, different than a male juror, a female juror is more likely to be aware of the women's devaluation throughout the proceeding. And what would prevent a female judge to ask whether the female victim of rape did demand help from the

[90] Eylül, 31.01.2012.

[91] Delal, 20.12.2011.

relatives of the rapists during the crime (as the judge interrogated during S.'s testimony) is this overarching knowledge of being a woman. In other words, women "all experience the world as a woman, subject to the risks of sexual violence, gender devaluation, and exclusion and discrimination" (Kenney, 2008, p.105). However experience in and of itself does not lead to a sharing of feminist consciousness, which is, after all, a political achievement (Martin, Reynolds, and Keith 2002).

The approach of the jurors, their unwillingness and gendered interrogations contribute to the reproduction of women's devaluation after the case is brought before the court. In particular, the jurors' examination and sentencing on the basis of victim-blaming questions instead of judging the criminal act are very widely applied in trials (Ellison, 2000). Thus the jurors' revictimization necessarily constitutes an intrinsic part of the feminist intervention in the field of law.

Defense lawyers also have a significant role in such cases. Within the slippery ground of the defense right of the accused, they tend to move toward victim-blaming narratives in a sexist manner. That is to say, in order to defend their clients, defense lawyers tend to show how the victim in fact contributed to the crime. In so doing, as alluded to in previous parts, they depict the rape victim as a loose woman, or as having inappropriate lifestyle. Similarly in murder cases, improper motherhood and adultery come forward to justify the murder and receive mitigation accordingly.

Feminists do not engage in a conflict with every defense lawyer. However in Ayşe Yılbaş and Fethiye rape cases debates with them became an intrinsic part of the process. To begin, what distinguished Bahri Belen (lawyer of Hüseyin Özmen) from others was his constant attack on Ayşe. He tried to defend his client by claiming that Özmen's "uncontrollable grief" of not seeing his child eventually led him to commit the crime. It was an attempt to show how the victim failed in proper motherhood. How come improper motherhood counts as an indication of provocation to kill? Apart from

provocation, how does investigating the life style of Ayşe contribute to our understanding of killing? The feminist movement, as I demonstrated previously, was extensively engaged with Ayşe Yılbaş case so that it largely appeared in the media and its litigation was publicly known as an example of feminist activism in courts. In such a context, Belen insisted to ground his justifications on the reproduction of discrimination against women. By blaming the victim for not fitting the appropriate gender roles, he called the jurors to act upon it.

The defendant's lawyer Mustafa İlker Gürkan in Fethiye case, on the other hand, not only put forth a set of arguments in which he attacked the personal life of the victim, but also he was in constant conflict with complainant's lawyers. His discussions with lawyers and activists before and after hearings aside, he also created a public opinion against the feminist participants who protested him[92] targeted his involvement in the trial. Gürkan was offended by the right of protest, for he made a complaint about a lawyer who mentioned women's opposition to his way of defending the accused[93]. And before the final hearing, various Bar Associations published a declaration showing support for Gürkan[94].

Confrontations with defense lawyers demonstrate that the litigation process can involve multiple struggles. Feminist intervention in the field of law does not only consist of the struggle with jurors who reproduce gendered judgments, which is already complicated especially in rape cases, but also defense lawyers deepen the gender bias. Compared to other lawyers, Belen and Gürkan, though in different manners, tried to degrade the women's struggle by their persistent involvement and attacks to the victim's

[92] http://www.youtube.com/watch?v=3lssAbXNEbM&feature=related, http://www.youtube.com/watch?v=ffXmhvfrbZs

[93] http://bianet.org/kadin/insan-haklari/139313-canan-gibi-dusunuyoruz-bizi-de-sorusturun

[94] http://www.muglabarosu.org.tr/Mugla-Barosu-Haberler/Page-fb8371f6442a48aa809b8ca5336a8147/TBB-BA%C5%9EKANI-AV.V.AHSEN-CO%C5%9EARIN-BASIN-A%C3%87IKLAMASI.aspx

lives in the trials. It was more than explicit in Fethiye and Ayşe Yılbaş cases that the patriarchal judgment corresponds neither to the judge's decisions nor to the practice in courts only; it stems from the powerful dynamics rooted in society. Hence it requires a comprehensive feminist contestation.

The Evidence

The prosecution of sexual assault cases differs from that of women killings. As expressed above, in the case of women killings, the accused is proven guilty in the first hearings, and during the following hearings, the court decides the penalty. In contrast, in sexual assault cases, the court has to confirm first that the crime occurred, which may take a great amount of time. In order to figure out the crime the court considers evidence as the primary tool of investigation. The dominant notion in the prosecution of sexual assaults is thus the inquiry of evidence.

It should be noted that all sexual assault cases are not brought before the court. After the troubling experience it is a difficult decision for the victims of rape or sexual harassment to handle a long litigation process. Even if they decide to do so, women do not or may not apply in time to the relevant institutions to document the crime and file a complaint. Instead, they first tend to get cleaned; blaming themselves and feeling "dirty" (Lundberg-Love and Waits, 2010). This results in erasing what constitutes "the possible evidence" for the official authorities, such as the residues of sperm or any wounds, if they exist. Similarly, women may tend to reveal the crime and make the application after hiding it for some time. As I have mentioned in the previous chapter, obstacles in investigation can also lead to low convictions (Ellison, 2000). Consequently, as the examination of sexual assault mostly and primarily rests on the evidence, this sort

of late complaints turns out to be at the disadvantage of the victim. And the powerful evidence for the victim, which is her narrative, is not as credible as concrete evidence for the court. Without taking into account how difficult it is for the victim to decide for publicizing the crime, jurors tend to devalue her account as proof in such crimes (Mack, 1993). Without acknowledging the fact that corroborating evidence is often unavailable in sexual assaults –either do not exist or eliminated by the victim in the aftermath-, they insist on looking for physical injuries. In their absence, they suspect whether the victim has resisted enough. This often contradicts the very notion of rape, as feminists exposed, where most of the time there is no proof and/or witness.

Feminist critique to the field of law revealed that this common logic in figuring out sexual assault reflects the dominant male rationale based primarily on the assumption that one uses *force* when he or she is in an undesired situation and secondly on the belief in abstract equality between a woman and a man (MacKinnon, 1989). In this vein, questioning why the female victim "did not resist his assault more forcibly is based on an unrealistic and gender biased standard of reasonableness" (Schafran, 1996, p. 1159). By ignoring the unequal power relations (physical and else), jurors come up with notions such as resistance, fearlessness, courage and escape when examining the victim's actions. More tellingly, are woman and man equal so that she can get away from a man who coerces her? Under unequal circumstances, woman is expected to show court that she resisted enough (Sheehy, 2000). Although violence ("cebir") based sexual assault is not necessary for penalty but a cause of aggravation[95], this does not change the

[95] Sexual abuse Article 102- (1) Any person who attempts to violate sexual immunity of a person, is sentenced to imprisonment from two years to seven years upon compliant of the victim.
(2) In case of commission of offense by inserting an organ or instrument into a body, the offender is punished with imprisonment from seven years to twelve years. In case of commission of this offense against a spouse, commencement of investigation or prosecution is bound to complaint of the victim.
(3) If the offense is committed;
a) Against a person who cannot protect himself because of corporal or spiritual disability,
b) By undue influence based on public office,
c) Against a person with whom he has third degree blood relation or kinship,

fact that the victim's narrative is insignificant for the law. After all, in cases where there is any physical evidence how would the rapists be proven guilty? Why women's account has low credibility for court? How to explain the reason why women invent such stories, then? And in which ways coercion of rape is defined? Delal describes:

> Judges have such a masculine attitude and their questions are masculine. This causes to women (*victims)* to withdraw into themselves. At the top are two or three men; you have the defendant, dressed properly, in front of you; this is a very trying situation. In addition to this, women may feel much more constrained because generally, there are no witnessed in these cases and men are always denying. They have a concern about how to express themselves, how to make them believe their story. Contrary to what we have on TVs, it is impossible to interfere by saying "He is lying your honor!" There is no system or an empowering environment which allow you to say these words. [96]

In P.'s case, her high school friends claimed in their testimonies that she lied. The court in its justified acquittal decision, relying on the detailed excerpts from the legal literature on "false rumors in sexual assaults", implicitly approved this.[97] In Fethiye case, on the other side, the court argued that B. made contradicting statements. Not only the victim's declaration is found insufficient as evidence, but also at the same time, she is expected to prove her allegation: according to the practice of the Criminal Procedure Code (CMK), the burden of proof lies with the victim. The principle "the accused benefits from doubt" is binding in the Penal Code. In line with "the presumption of innocence" arranged in ECHR; in the criminal proceeding until it has been proven, the accused is innocent.[98] What is relevant for this study is to note that compared to other political

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d) By using arms or participation of more than one person in the offense, the punishments imposed according to above subsections are increased by one half.
(4) In case of use of force during the commission of offense in such a way to break down victim's resistance, the offender is additionally punished for felonious injury.
(5) In case of deterioration of corporal and spiritual health of the victim as a result of the offense, the offender is sentenced to imprisonment not less than ten years.
(6) In case of death of vegetal existence of a person as result of the offense, the offender is sentenced to heavy life imprisonment.

[96] Delal, 20.12.2011.

[97] Üsküdar Second High Criminal Court, *Decision no. 2012/31*, File no. 2009/28.

[98] See ECHR, Article No. 6/2. Although this principle is not legally regulated in the Penal Code, it is inarguably admitted in the legal doctrine and application. It is one of the rights of the accused.

crimes, this principle is applied extensively in cases of crimes against women (Orenstein, 2007). Leyla underlines the difference:

> I believe in the principle that says it is the defendant who benefits from the doubt; but this principle is only applied in cases of women killings and rape. In DGM cases, you can't find any defendant that has benefited from the doubt! [99]

As Leyla puts clearly, although the principle "from doubt the accused benefits" aims to protect the accused in criminal cases, it is not applied in cases of Law on the Fight against Terrorism (*Terörle Mücadele Kanunu* – TMK) trials. Instead jurors tend to recall it in male crimes and then to protect the accused (Barın, 2012).

Selma tells Sincan case that illuminate what I described above:

> for example in the Sincan file, the woman returns from a private lesson. While she was waiting at the bus stop, two men take her into their cars, rape her, and discuss among themselves whether to kill her or not. And in order to save herself, the woman says "I did not feel bad, I've actually enjoyed this, we should see each other later on as well, leave me home." She lies in order to avoid getting killed and the court questions this: "why wasn't she killed?" (..) There is physical evidence, examples of semen have been collected and it was proved that they belong to one of the men but he was released to be trialed without detention because the judge calls it a "voluntary relationship." He refers to the rape as "a relationship." He asks "Was this your first sexual relationship?" You interfere by saying "Rape is not a form of relationship, but a form of attack" and add that "if you question this because of virginity, you can't, because virginity does not have significance in the law. He answers by saying "I am the judge, I can question everything." In other words, what he says is that a moral woman cannot be raped or maybe this not a rape at all.[100]

Like in S.'s investigation, the court of Sincan case questions whether she tried hard to escape. In so doing, it examines in a sexist lens her sexual life details. Even when the victim explains rationally the moments of coercion, because her account is not considered as fundamental, the court interprets her experience as an "intercourse". In all these, what precedes the perception of intercourse is *consent*.

[99] Leyla, 28.04.2012.

[100] Selma, 31.01.2012.

N.Ç.'s trial attracted public attention. N. was raped by almost 30 men in Mardin at the age of 12. Among the accused there were soldiers, teachers, civil servants; and two women were alleged guilty for complicity. The proceeding lasted 7 years and was over in 2010. The jurors decided mitigation for all the men accused (of rape) but not for the two women (of complicity). The decision of mitigation was justified on grounds of *lapse of time* (that prevented from prosecution on other crimes like detention), their *good conduct* during the proceedings and foremost, and the disapproval of the old Penal Code article no. 414/2. Public debates about this trial revolved around the notion of consent, as the jurors justified their disapproval of 414/2 as follows:

> (*In the case of)* Using force or violence without the consent of a minor necessitates the application of 414/2 paragraph of the Turkish Criminal Law; in this case it is necessary to determine whether the minor had consent or not in order to decide about which paragraph of the article is applicable.
> According to the findings of the specialized departments of the Forensic Medicine Institution, the real age of the victim at the time of the incident was 15 years of age. Moreover, according to the same departments, the victim was aware of the moral perversion of the incident that she was a victim of and was able to show moral resistance to these incidents (…) With this in mind, it is understood that the victim was not totally weak in the face of these events and went to the offices or houses of the defendants, as well as to outdoors with the defendants Emine and Türkan and had sexual intercourse with them for money. Considering the fact that the defendants did not use any material or moral force against the victim and because the victim is at the age limit -15 years old- defined by the law as illegal, for all defendants except the defendants Türkan and Emine, the minimal imprisonment stipulated by the law will be sentenced.[101]

Two women accused of complicity to rape received the aggravated sentences in contrast to the men who, proven to have committed rape, received 3-5 years of prison sentence. The jurors based on the medical report decides that N.Ç. was able to seize the crime and oppose it asserting that there is no physical or spiritual coercion on her and concludes to the reduction of sentence to rapists. The use of the notion of consent concealed N.Ç.'s testimony. Consent is, therefore, a tool of the legal system through which rape is

[101] Mardin, First High Criminal Court, *Decision no. 2010/160*, File no. 2003/137.

transformed into "sexual intercourse". N.Ç.'s testimony has limited credibility: her experience is translated into legal terminology as consensual intercourse (Das, 1996). In N.Ç. trial, the court's claim to *truth* subordinated the victim's one.

However, consent does not protect the accused from receiving penalty. So, how come an action can be defined as rape at the same time the victim could have consented to it? (Demir, 2012). In other words, do in some cases women have consent to rape? Depending on the overlapping notion of women's sexuality and constant degradation of it, "the consent standard denies female autonomy; indeed, it even denies that women are capable of making decisions about sex, let alone articulating them (Estrich, 1986, p.1095)".[102]

In the quotation above Selma highlights the slippery ground between sexuality and rape: what counts as rape in courts is inextricably linked to the dominant understanding of sexuality. The naturalized hetero-patriarchal gender divide in sexuality, which considers male sexuality as uncontrollable and aggressive and female as passive and submissive (Gotell, 2007), does not recognize women's "no". Thereby, rape can be widely considered as a "form" of sexual intercourse, instead of crime. Because violence and force are already involved and normalized in sexual relations (Karakuş, 2012) rape is perceived as its extreme form: extreme and unusual violence that contravenes women's will, and leaves behind evidence. Yet, if this understanding of sexuality itself is put under question, the rape as a "barbarian attack of monstrous men" would be challenged; and it will become evident that rape is an ordinary crime in women's lives.

As a result of the normalization of the sexuality based on force and submission, "men coerce women; women 'consent'" (MacKinnon, 1989, p. 168), jurors tend to disregard or undermine the multiple ways in which women object to engage in sexual contact (Sheehy, 2000). For instance, women saying "no" to indicate her

[102] For further reflections on the notion of consent, see Pateman, 1980; Barın, 2012.

unwillingness can turn into "yes" with the court's translation of it into consensual intercourse (Pateman, 1980). For them, "no sometimes means yes". However, to say "no" to sexual intercourse is the very proof of refusal to the intercourse.

Feminists see the way out from "silencing" (Smart, 1990) of women by this construct in allocating the burden of proof on the accused, i.e. taking women's declaration of her experience as central. Arguing that "the law's lack of belief in women's stories can be seen as a direct manifestation or consequence of the overall problem of male dominance" (Mack, 1993), feminists highlight on the contrary women's narratives that reveal sexual assault is an intrinsic part of the patriarchal system. Although feminists' collective litigation of sexual assault cases is comparatively recent, the feminist literature across the globe from the 1970s onwards accumulated impressive knowledge about sexual assault crimes and the contributions of law. As mentioned above, the widely known slogan "no means no" is produced out of the eagerness to explore the ways in which women resist and has put forward that women's declaration matters (Estrich, 1986). As long as legal treatment of women's experiences of male violence is collectivized and politicized, the law's male *truth* is contested. This is what the feminist movement seeks through litigation. In Turkey as well, feminists underline the significance and substantive aspect of female victim's narrative in sexual assault crimes. Feminist movement in Turkey formulates this as such: "woman's declaration is taken to be fundamental and the man is the responsible for proving against".[103] This does not mean that all that women say is true; instead, it suggests a ground upon which these acts have to be regarded. In other words:

> To take the woman's declaration as fundamental is to give the oppressed, the one who is under domination or facing violence/abuse, the opportunity to express and rise against her own oppression, in other words, it is to make the woman the subject of her own experience of subjugation. (…) It doesn't change anything whether the man

[103] Kadının beyanı esastır, erkek aksini ispatlamakla yükümlüdür.

> "supposes" that the woman has consent or not, always "misjudges" her or "thinks that she makes a suggestion." Here, the issue is about who do you take as the subject of this experience, whose life you take as your basis. To take the woman's statement as the basis is to see the woman as the political subject vis a vis her objectification; with his male-dominant perception, it is not the man who has trouble understanding when the woman says no or naturally has trouble to say so; it is not the man who misunderstands her, or continues what he does even though he understands her perfectly well. [104]

During my research, feminists in their meetings in Istanbul were discussing how to deliver this to the courts in an organized manner and construct legal defenses accordingly.

Although the general legal practice in sexual assault cases is far away from this feminist standpoint, there are certain practices of the Supreme Court that can be considered to be at the advantage of women. The Supreme Court sometimes reverses lower courts' decisions on grounds of "sincere and consistent declarations" of women during the entire process. One of them is as follows:

> When the sincere accounts of the victims', who have no reason to slander the defendant, witnesses' sworn statements and the content of the file are considered and because it is understood that the defendant has committed the offenses he's being charged with, an imprisonment sentence is necessary.[105]

Examples can be multiplied. Throughout this study, I have not come across a decision valuing women's declaration as in the quotation above and questioning why woman, to whom the accused was stranger, would invent such a story. Although the Supreme Court's justification of consistent declarations is the closest approach to feminist principles in its offering a particular prosecution in such crimes, it still presumes a resistant female subject before the compelling courtroom talk such an extent that she succeeds in consistent narrative without any indicator of shame or blame of herself

[104] http://www.sosyalistfeministkolektif.org/feminist-gundem/22-kadinin-beyani-esastir For further reflections, see Günaçtı, 2012.

[105] Supreme Court, Fifth Criminal Department, 04.10.2005.

(Larcombe, 2002). Thus, the requirement of consistent and sincere declarations can disclaim those who "fail" in that kind of narration. Still, it is an important step.

The courts reliance on physical evidence has an essential component: application to the medical reports. Although in the regulation medical reports of the experts are admitted, in practice local courts and the Supreme Court give preeminence to the Institution of the Forensic Medicine. In this manner, the relevant institution of the Forensic Medicine, the Sixth Specialized Board becomes the sole authority over these reports for courts concerning sexual assault crimes. In other words, the Forensic Medicine is the official expert of the state. These reports consist of both mental and bodily injuries caused by the crime. Hence, its function is twofold. First and foremost, it represents the authority to provide evidence for the court especially in cases where there is no other than the victim's account. Secondly, the indication of damage to mental and bodily integrity counts as aggravating factor in the evaluation of the courts.

Sexual assault cases all over Turkey are sent to the Sixth Board to have medical reports for the courts. As a result, the workload of the Board is excessive. Appointments are routinely delayed. For a report, the court has to wait about 8 months; which leads to the extension of the proceeding.[106] While the evidence is of high importance in these cases, the justice is bound to be late because of the presence of a unique authority in reporting.[107]

The necessity of the reports from the forensic medicine is not determined in law; however, lawyers and jurors usually act as it is so. Furthermore, the Supreme Court

[106] Hüseyin Üzmez, guilty of repeatedly sexually abusing a child in 2008, was released on the account of the report of the Forensic Medicine indicating that the "physical and mental health" of the minor involved was stable. The report was prepared in three days which contradicted with late appointments of the institution. The council had to oversee its findings after several protests in the public.

[107] To solve this, the Supreme Court declared that universities by constructing identical boards to the board of the Forensic Medicine can also intervene in the legal process in sexual assault cases as official expertise (Decision no. 2011/76). However, the insistence on an identical board led to objections from several universities and recently only a few accepted the preconditions of the Supreme Court. This is yet an ongoing process.

can reverse the judgment in the absence of the Forensic Medicine report. So when jurors think of giving sentence to the accused, they send him first to the Forensic Medicine, to prevent their case decision to be reversed by the Supreme Court. In S.'s rape trial, although there was a university report filed, when the jurors decided to send the victim to the forensic medicine, S.'s lawyers thereby interpreted it as a positive development for the proceeding.

In Nejla Yıldız trial, the accused performed to be insane and refused to give testimony in the proceedings. Although there is a report from the Bakırköy Psychiatric Hospital showing his *mens rea* is well, the court sent him to the Forensic Medicine. It is a consolidated act to prevent the Supreme Court from reversing the judgment of the local court.

On the other hand, in Ş.'s case of sexual assault by a medical technician, which was in the Criminal Court of First Instance, the judge decided to send the case to the High Criminal Court after examining the university report, claiming that the report engenders mental damage due to the crime. This meant change in the quality of crime and it has to be scrutinized under the scope of High Criminal Court. It was also a positive evaluation; the judge did not disregard the university report. It depended on his interpretation of law if not on her lawyers' and activists pressure in hearings.

As mentioned above, these reports have two functions: making evidence and aggravating sentence. However, even in cases where they indicate that the mental health of the victim is damaged because of the crime, they do not necessarily lead to the punishment. Here reappears the notion of consent. To remind, in the case of N.Ç., the forensic medicine had in the report that although she was 15 at that time, she was capable of resistance[108].

[108] For an inspiring analyis of the regulation of age distinction in rape laws, see MacKinnon, 1989, p.176.

In P.'s rape trial, the jurors insisted on the forensic medicine although she had a university report. Melahat conveys in which sense its process is difficult:

> I guess one year after the complaint, the court decided to send it to the Forensic Medicine Institution. If I'm not wrong, the Forensic Medicine Institution set a date a year and six months ahead. It is such a mechanism that not only it gets longer and longer, but also there is a woman who tries to heal herself and get back to life and we expect her to tell everything one and a half year later to in front of a committee. This means opening up the wound again and again each time.[109]

What the expected report from the Forensic Medicine states took place in the justified decision of the court as the following:

> Since in the Forensic Medicine Institution's Sixth Specialized Department's report dated 26.08.2011, it is indicated that the victim's depression can be caused by the sexual assault, as well as by other psychosocial stress and conflicts resulting from another event and/or other events that differ from a sexual assault… [110]

In the same report it was declared that according to the medical examination, the hymen rupture had occurred. It was also said that her mental damage could not be directly linked to the crime. Depending on this report, the court decided that because the crime in question was not accurately proved, he has acquitted.

Again in Fethiye case, the victim got a report from the Forensic Medicine before the proceedings started, to open the court case in the first place. The report confirmed that her mental health was damaged. However, the court ruled this out in the justified decision: "there is no corroborating evidence other than the report of the Forensic Medicine that there was deterioration in the spiritual health of the victim…"[111]

While examining the corroboration inquiry, as I have tried to show, medical reports in sexual assault cases are at times at the advantage of the female victim depending on the pressure of her lawyers and the interpretation of jurors as evidence or a cause of aggravation. However, in some, they are not. It is clear in the cases

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[109] Melahat, 06.06.2012.

[110] Üsküdar, Second High Criminal Court, *Decision no. 2012/31*, File no. 2009/28.

[111] Fethiye High Criminal Court, *Decision no. 2012/104*, File no. 2011/28.

mentioned above that the damage in mental or physical health may also be insufficient to prove rape.

Above all, it is crucial to remember that "…the medical evidence may add to the other evidence but cannot be treated as sole evidence of rape having occurred since rape is a legal category and not a medical category" (Das, 1996, p.2413). In other words, rape is not a health problem, yet can lead to some; it is one form of male violence against women. Such a perspective reinstates the significance of women's narrative.

The reporting process is one of the hard times for the victim. Alongside her testimonies about the crime, reporting also is repeated: she is examined by the hospital, by the university and finally by the Forensic Medicine. And just like in any other step in the proceeding, the women's vulnerability is ignored, and possible ways to strengthen her are neglected by these institutions. Feminist movement takes into account this process as well; the relationship within women's solidarity during litigation is one of the crucial components of the feminist litigation.

Women's Solidarity and the Victim

In E.'s rape trial the victim did not participate in the cases. However, the accused was accompanied in each case by friends. In her absence, litigation of feminists delivers a word to the public: this case is not abandoned. It is different than the confrontation of an accused of murder where the victim is not alive. In Ş.'s sexual assault trial as well the accused' rush vis-à-vis a group of women was apparent. I have noticed the curiosity of judges and usher asking whether these women are relatives of the victim.

Women's solidarity in court room and outside during the trial is one of the major features that feminists value in their involvement in litigation. As I have put earlier, because even though one woman is exposed to male violence, it is fed by a larger systematic threat present on women in general. From this perspective, feminist approach aims to abolish hierarchical differences among women by saying that male violence has no specific target like age, profession, status or ethnicity. Therefore, at the theoretical level, a feminist lawyer or activist does not differentiate herself from the female victim claiming that she also can be or already was exposed to male violence though in different ways.

Feminist movement's engagement in litigation has a history. Depending on my interviews, it seems that the growing demand outside to give court files to feminists is quite recent (in Ankara, Adana and Istanbul). As I have depicted in Chapter 2, the political content of women killing and sexual assault cases is widely acknowledged in the late 2000s. Before, the applicant and her family for several reasons did not show eager interest to feminists' involvement to the process. Aslı traces the historical change:

> With Aysel, we also tried to intervene to two cases of women killings before the platform (*Adana Woman's Platform with which they monitor the case*) Two women were killed during the same week, we said to ourselves, let's enter the courtroom and ask for intervention. Of course, we were refused; we haven't been able to get the power of lawyer from the families. There was a woman who was shot from her vagina, there was a man who killed his mother, and these two have happened during the same week. We were asking: What shall we do? I wasn't part of an organization at that time, and we couldn't intervene to the cases in the end. The family asked, "why are you trying to take the case, you're not our lawyers." We monitored the case from outside, we entered the courtroom as part of the audience, and we went to each hearing. These happened around the year 2006. [112]

The "fear" of the applicant or her family arises apparantly from the political aspect of these crimes. Recently this has almost reversed as the growing demand shows due to primarly the visibility of women killings voiced by feminist and women's movement.

[112] Aslı, 28.04.2012.

The process has brought about another change: NGO-isation. Rapidly, like elsewhere across globe, in Turkey as well starting from the late 1990s, professionalization and specialization in the form of NGOs affected feminist movement (Howe, 2008). Mor Çatı was the major NGO in the late 1990s initiated by feminists in the movement while today there are multiple women's solidarity and counseling organizations across Turkey. Women activists from such NGOs participated in the early 2000s to the lawmaking processes and lobbied with governments, and some objected to it. Secondly, this NGOisation process precipated a review in women's solidarity. The relationship in the form of client and lawyer is enforced that contradicts with women's solidarity and equality notion of feminism. Feminists I have interviewed accept that there are missing features in their relationships to the female victims although a few among them work in NGOs. Although the distance in between is not formulated as a result of professionalism, they have difficulties in the realization of women's solidarity against the deep rooted misogyny within society. Delal depicts:

> We do not see them as equals exactly. There's a hierarchy between the activist and the victim who does not come from a political background. I think this is a distanced and overly protective relationship. There's not enough friendship. The women who have really faced violence have an extra burden; once they express this situation, because making violence political and bringing it to court are as much a burden for them as violence. Being subjected to violence may affect your self-image as a strong woman. You're perceived as such at your environment, among your family, in your daily environment. Hiding violence is also a thing that strengthens woman: I don't face violence; I am not one of those women: saying these things makes her stronger. If she is not a woman of political background, victimhood stands out in our relationship; we shift between victimhood and subjecthood.[113]

Arzu argues that throughout the struggle during the proceedings, their relation with the victim may lose priority:

> I had this feeling that we neglect the importance of solidarity and forming a relationship with the injured. As activists and lawyers, we keep up with legal issues, but we do not have a relationship with the injured.

[113] Delal, 20.12.2011.

> We do not unite against things that we define as problems during this whole process. For example, it is wrong when the mother gets in touch with a lawyer and this relationship continues through one person. (…) If the victim still wants to commit suicide and feels violated at the beginning of her case, then there is a problem there. I don't mean that she has to monitor the case with feminists and change everything about her, but it is important that she gets interested to this part of the story, asks questions and wants to come closer.[114]

Alev explains her feeling of being stucked:

> On the one hand, I feel like I have to protect the emotional distance between me and the woman in order to protect the legal perspective. I want her to see me not as one of the subjects of the case, or like her spouse or friend, but I want her to understand that what I do is a technical job, so I might fail at the end. I also don't want her to become too attached to me or become too emotional. On the other hand, I start to walk in her shoes and start to swear, damn the court and identify with her victimhood. I can't find a balance between the two.[115]

Feminist activists sometimes have difficulties in cases where the complainant has no familiarity with feminist politics. Feminist perspective facilitates the relations in between as experienced in Fethiye, Sincan, Ş.'s cases. So what Arzu and Alev describe reflects a general difficulty in relations depending on the compelling situations like sexual assault or rape however feminists try to surpass distances among themselves and the victim's attitude is also influential in this.

At the beginning of cases feminist lawyers and activists try to prepare the female victim saying that the litigation process may bring about new vulnerabilities to her. They try to explain in the first place that sexual cases are difficult to "win" legally and it will be harmful to repeat what happened many times throughout the process. Having already a political stance towards these cases facilitates to capture that the struggle against male crimes is not limited to the legal decision. Moreover, feminist acquisitions are the results of long terms and persistent struggles. In addition, feminist intervention in these crimes aims after all a social change. In Fethiye case, for instance,

[114] Interview with Arzu, lawyer from Istanbul, 30.03.2012.

[115] Alev, 01.03.2012.

the case is lost for the victim and movement, however, the defense lawyer, the 8 accused and the rape itself are widely exposed in the public. Feminist movement's engagement in court cases loaded with layered struggles against gender discrimination throughout the proceedings thus contains political gains even if cases are not won, though the pace is apparently slow.

CHAPTER 4

ORDERED AND ADJUDGED

P. was raped by her high school teacher M.A.[116] in 2008. He first sexually harassed her in school then took her to his flat and raped. She concealed the rape for a while. Then she decided to tell it to one of her teachers. She contacted with Istanbul Feminist Collective and feminists took up her case.

Her judgment hearing did not last long. In the previous one the prosecutor demanded acquittal for the lack of evidence. P.'s lawyers prepared beforehand and presented a loaded petition to the court primarily arguing that in sexual assault crimes the victim's account is often the unique evidence. The presiding judge, waited to the argument to end and, without taking the parties, the lawyers and the audience out –as it is done according to the convention- declared their decisions of acquittal. In a sense, without considering the defense of the complainant's lawyers in the last hearing jurors explained their already taken decision.

One feminist woman from the audience reacted to the court's decision saying to the accused that "even you are acquitted, we know that you are a rapist". It was not directed only to the accused but also to the court and law. The court did not find P.'s account credible and decided accordingly.

The decision of acquittal due to the lack of evidence is the consequence of physical evidence oriented understanding of investigation of law. In Fethiye case,

[116] I use initials for the accused in consideration of P.'s position.

women marched under the slogan "Not male justice, but real justice!"[117] and "This case will not end before we say that it did".[118] The decision of the acquittal does not end the feminist struggle.

Feminist engagement in the field of law can easily be seen as or reduced to the struggle of lawmaking or winning a court case. As a gendering strategy, after all, decisions are the most visible part of the whole process. It is first of all a concrete result after years of proceedings and at the same time public; decisions figure in the media and are discussed more compared to the rest of the proceedings. In previous chapters by putting emphasis on the process itself, I have shown that feminist intervention in law is not limited with the decision. Feminists struggle against the gendered structure and practice of law, concerning the crimes against women. Hence, the feminist intervention in the field of law cannot be captured solely by looking at the changing legal regulations and/or the decisions of trials.

Decisions of court cases have to be investigated in a comprehensive manner. For two reasons: first, losing a case does not necessarily correspond to a *failure* because bringing the crime before the court, intrinsically means exposing the crime and the accused for a long period of time during which also feminist words in different ways are transmitted to the public. Secondly, the trial literally does not end when the court makes its decision because the legal process continues. By separating the whole process into the chapters of application, trial and decision I have stressed how the feminist intervention in the proceedings carries an impact on legal practice as a whole. And in this particular chapter on decisions I will both examine some of them and dwell on the aftermath of final hearings. For that, it is crucial to convey the decisions of the courts comprehensively which would reveal why feminists continue their struggle within the

[117] Erkek adalet değil, gerçek adalet!

[118] Biz bitti demeden bu dava bitmez!

field of law: the aim is not giving the highest penalty for the accused. On the contrary, feminists intervene in the ways in which the decision is formulated, knowing that the grounds for the decision reflect the very discrimination throughout the process and in the aftermath, via appealing to the Supreme Court for instance, they continue to their struggle in order to influence the gendered functioning of law. For this reason, I will not divide sections according to whether the case is won or not, I will rather focus on the emerging themes in this stage of the legal struggle.

Furthermore, decisions in women killings which result at the advantage of the male killers (e.g. mitigation due to the unjust provocation) are used by men in future cases. Men use similar excuses to have the mitigation (that I have shown in Chapter 3). On the other side, in rape cases in which women *win*, the decision carries the risk of constructing an "ideal victim" type which creates a division among women on the account of the emerging measure of *real* complainant's credibility (Gotell, 2007). For all of these reasons, the legal struggle of the feminist movement cannot solely focus on and invest in the court decision.

The Victim on Stage Again

Ayşe Yılbaş's lawyers demanded Hüseyin Özmen to be sentenced by Law no. 82/a (killing willfully). They claimed the deliberation in killing with a detailed petition in which they mentioned his constant threats that he would kill her in a Friday at pray time, that what he did, he went to the hospital where Ayşe worked with two guns and used both and waited her death at her bedside. At the time of the event they were not divorced, so Özmen would be sentenced by 82/d (against spouse). In the petition

subsequently Ayşe's lawyers pointed that Hüseyin Özmen should also be sentenced by the articles 82/b (ferociously or brutally) and 82/e (against a person who cannot protect himself due to corporal or spiritual disability) besides 82/a-d.

Hüseyin Özmen consequently had been sentenced to aggravated life imprisonment in 2009. Due to the collective work and persistent litigation of feminists in this case, one can argue that any mitigation was not applied. His penalty was aggravated as he committed this crime deliberately (82/a) and against his wife (82/d). In 2011, the Supreme Court reversed the decision claiming that the deliberation of the crime (82/a) is not ascertained. At the same time it rejected the appeal of the accused for reduction due to unjust provocation.

The Supreme Court's reversal does not make any difference in the penalty that Özmen has received. One of the articles under the Law no. 82 (qualified form of felonious homicide) is sufficient for an aggravation in life imprisonment sentence. Thus, claiming aggravation articles has a political meaning outside of the boundaries of law. Feminist lawyers insist on the implementation of the deliberation article to emphasize the structured aspect of these killings. That is to say, contrary to the argument of men kill under "uncontrollable grief", which is mostly uttered by defense lawyers; feminists expose prior violence until the murder arguing that the murder is the final and visible step of it. As I have mentioned before, Ayşe's case was important for feminists in collectively litigating and highlighting the relevant feminist word both to the legal arena and to the public. They hence objected to the reversal of the local court decision by the Supreme Court in the political sense.

In the hearings following the reversal, Özmen came up with new stories. Saying that his wife was cheating on him, he demanded the examination of her body due to his suspect of her being pregnant. He argued that he was provoked to *death* because she had an affair with another man. Although what he made up was irrelevant to the

issue of deliberation (because the reversal was not about the unjust provocation reduction), during the two hearings he brought forward the notion of adultery. In addition, after the decision of the local court he wrote a petition to the court complaining that the feminist lawyers were misleading the court under the guise of women's rights. This process itself allowed Özmen to defend his murder in new ways in which he attacked the victim again. In attempting to receive provocation mitigation in the last hearing, his lawyer asked to the court:

> I apologize for this question, I'm asking you (the court) and we have women in the courtroom, is there any Turkish man who would not reach to the answer: "I'm with someone else, but this is none of your concern"?[119]

It is important to note that, while he was defending that the murder was unintentional, he also asked for unjust provocation. In practice, i.e. not legally defined, at most cases where provocation mitigation is given, the deliberation article is not put into use. In other words, these two articles are used in conjunction.[120]

Ayşe Yılbaş case is also a preliminary example of the layered characteristic of the legal struggle. One can claim that feminists with their insistent intervention and participation had an impact on the judgment. However, winning a case constitutes only a part of the feminist struggle with law. Not only the Supreme Court's reversal of the case, but also the repetition of the claims of the murderer allowed the discrimination to endure. In the aftermath of the local court process, stories over woman's dead body are once more circulated. Like the local court, the Supreme Court procedure also puts the victim under suspicion. In the local court proceeding, the court and the defense were interested in whether she was cheating on him and/or she was a bad mother. Whatever

[119] 23.05.2012.

[120] What differs on the side of Hüseyin Özmen is that with provocation mitigation he could reduce his penalty. However by cancelling the aggravation of deliberation he could not because he was already sentenced by another aggravation clause, 82/d (murder against spouse).

the justification of the reversal of the decision by the Supreme Court is, similar stories are uttered in the following hearings. Hence, the victim's party ends up in struggling against the male gaze once again in this part of the proceedings. Feminists continued to collectively litigate the hearings, with a high number of lawyers and activists.

To remember, feminist engagement in the field of law in terms of court decisions on women killings has significant impact mostly on the reduction of unjust provocation. In each trial that they are involved they contested the most visible gendered practice, i.e. Law no. 29 regulating unjust provocation. Despite the gender *neutral* arrangement of the article and the justification of it at the advantage of women in the Penal Code reform period in 2005, the practice turned out to absolve men killing women. The defense leaning on jealousy or cheating has been much more widely used by lawyers, and all killers plea for this article, tell their stories and reshape them accordingly to be able to get reduction sentence. Starting from the 2000s, feminist movement has discussed and protested unjust provocation and highlighted their objection to its application. Concomitantly, feminists have put emphasis on this article as it is the most obvious and common discriminatory tool against women in proceedings. They insisted that adultery cannot be used in justifying a killing. As a result, in cases where feminists were involved, unjust provocation was not applied.[121]

Feminist movement's effort to eliminate the gendered use of Law no. 29 is not limited to the local court procedure. This effort entails the Supreme Court procedure as well. Leyla tells the interaction between the two:

> The judge in Demet's case is a judge who knows well the High Court of Appeals. A judge who is aware of decisions made with a male perspective when the defendant says "She insulted me, so I killed" and in this case, the judge knows that the High Court of Appeals will unjust provocation. As a result of our efforts, unjust provocation was not

[121] In these cases that the decions are explained; Güldünya Tören, Sevim Zarif, Satı Korkmak, Ayşe Paşalı, Ayşe Yılbaş, Pippa Bacca, Şefika Etik, Rengiye Mersinli, Demet Eygi, Tuğçe Anlaş, unjust provocation is not used.

> applied in this case. After the decision was given, I went to his room for an errand; the judge turned to me and said "why are you putting so much effort to this case, it will result in unjust provocation." The guy knows this. As a matter of fact, the Chief Prosecutor of the Republic of the High Court of Appeals wanted unjust provocation to be applied, but the court has not made a decision yet. They know each other very well in the legal sense.[122]

The struggle is not only against the reinventing of stories about the victim in the aftermath of the decision of the local court, but also the lacking parts in the decision.

Lacking Decision

Leyla continues:

> They also agree that we cannot give much for premeditated manslaughter. Of course, going to the appointment with a knife is a proof of premeditation. On the other hand, the article on premeditation is not clear. There's also reduction of sentence by application of good behavior mitigant. These are ambiguous terms. They're ambiguously defined on purpose. The defendants are now aware of this. The High Court of Appeals never interrogates and evaluated the case looking at the file. We do not have any chance to intervene, which is horrible. Consequently, the judge who accused us of showing off did not apply unjust provocation as a result of our perseverance. But he wished he would have. We have a power that shows itself in time. It is slow but effective. If there are 5 Heavy Criminal Courts, all of them know about us. They say, they're going to monitor this one.[123]

Demet was killed by her boyfriend, Hüseyin Ayyıldız in 2009; he stabbed her on the stairs of her apartment building. He invited her to talk[124] and then killed. During the proceeding he applied for mitigation of provocation. As Leyla explains there was a constant fight between the jurors and Demet's lawyers over the mitigation both inside and outside the court room. Moreover, Ayyıldız was given sentence according to Law no. 81, that is, without any aggravation. He did not receive unjust provocation but good

[122] Leyla, 28.04.2012.
[123] Leyla, 28.04.2012.
[124] For further critique on the notion of "last talk", see Hacıvelioğlu, 2010b.

conduct mitigation. Lawyers insisted that he should be punished in accordance with Article 82/a-e, murder with deliberation (a) and with atrocious feelings (e), but the jurors did not accept. He murdered Demet with two knives that he was carrying and stabbed her 17 times, and according to the report, 7 out of them were individually fatal. What came out to be the reason of reversal of judgment for the Supreme Court in Ayşe Yılbaş appears similarly in Demet Eygi's court decision as a lack of evidence: the notion of deliberation in murder. Deliberation seems to have a contested place in legal judgment. So, in which cases the court decides to have enough evidence to prove 82/a-e? In which ones the Supreme Court does not reverse the deliberation aggravation? In other words, what do deliberation and atrocious feelings refer in legal terms?

One of the remarkable things in the court decisions is the repeating theme of men carrying a knife (in some cases more than one). Recently there is a lot of news about women killed by their male intimates with tens of knife strokes. More than a pistol, the knife figures in the picture. Similarly, in cases that I examine for this research (in Şefika Etik, Tuğçe Anlaş, Demet Eygi, Nejla Yıldız cases), the knife appears as the object of murder but not the cause of deliberation. If carrying a knife is not a cause of intention what does it mean then? In other words, does the repeting notion of knife carrying men reveal any question in the field of law? Unlike the victim's sexual history or other details regarding her life before the crime, knives of men have no relevance for the "truth" that the criminal law by principal aims to achieve while investigating these crimes.

Tuğçe Anlaş, on the other hand, was taken by her boyfriend and a friend of him to an isolated place near the city, Adana, in 2009, and they killed her by stabbing 26 times. And one of the murderers, Malik En had two knives with him. In its decision, the court judged to murder without deliberation and its justification is as follows:

> Even though they (*Tuğçe's lawyers*) claimed that the offense was premeditated, in order to talk about premeditation, the offender has to be firm and decisive about committing the act against one person. He also has to be firm in his decision despite being serene as a result of a cold-blooded and calm thinking process before committing the crime and start committing the act in this manner. Because there is no evidence that the defendant committed a premeditated killing, despite being serene as a result of a cold-blooded and calm thinking process, and started to commit the crime anyways, the court has decided that the defendant Malik En committed the offense with an impulsive decision (…)[125]

In their declaration on the accusations, Tuğçe's lawyers marked that Malik En repeatedly threatened Tuğçe which was revealed by the testimonies of the witnesses. He claimed several times that he would turn Tuğçe to "Münevver of Adana".[126] And he carried two knives with him that day. Still sufficient evidence could not be collected. With reference to the testimonies the lawyers expose the process leading to death, but the court did not take this into account. To remember, similarly, in the reversal of Ayşe Yılbaş decision, the Supreme Court claimed that the deliberation was not proven despite Hüseyin Özmen's systematic threats and his announcement that he would kill her on a Friday. And Supreme Court's articulation of the objection to the deliberation was as follows:

> It is understood that it is not certain that the defendant took a decision to kill the victim who's also his wife, he has followed the plan he made in a resolute and persistent manner and stood firm in his decision in the time period between the intended offense and its execution and that it is not determined when the defendant took the decision to kill (…)[127]

It would be incorrect to argue that the legal regulation of deliberation is by itself gender biased. Deliberation according to the procedure (CMK) reflects first of all how law comprehends the act of intention. Courts investigate whether the murder is decisively and patiently planned and search for evidence for it in order to judge deliberation. However, different than men killing men, intention in women killings resides precisely

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[125] Adana Fifth High Criminal Court, *Decision no. 2011/216*, File no. 2010/1.

[126] 18 year old Münevver Karabulut was killed by her boyfriend Cem Garipoğlu in 2009 in Istanbul. Her body was found in a waste container, her head been cut off. This murder attracted huge attention from the press.

[127] The Supreme Court, *Decision no. 2011/6534*, File no. 2011/4629.

in the structure of male oppression against women: violence is the very intention and evidence of murder. That is the systematic feature of women killings that feminists expose.

Hence by interpreting deliberation in women killings in a patriarchal gaze, law takes for granted the repeating theme of men carrying knife, as well as prior violence or threats, and overexpands the scope of the act of immediate killing. Men defending themselves as provoked, though the victim was exposed prior violence during her relation with the accused, creates a contradiction for law with the intention of killing. Moreover, jurors do not count constant threats of the accused although again it is another common form of violence present almost in all court cases. The official *neglect* that I have mentioned in Chapters 2 and 3 reappears in court decisions. In other words, the law which does not take into account women's complaints about threats to life (and consequently prevents them from protection) and the testimonies of the witnesses in this regard functions the same when women are dead: threats do not count as proof in murder. So what comes out as gendered in the use of the deliberation article is the maintenance of the invisibility of the structural aspects of women killings. By insisting politically that the crime is deliberately committed, feminists expose prior and constant violence in women's lives and that these murders are not individual or isolated events of "sharp anger".

Turning back to Tuğçe and Demet's cases, another common aspect in both is the rejection of the presence of the second murderer. In Demet's murder, a friend of the killer, waited for him in a car and spent following hours with him. He was called in the proceeding as a witness and in his testimony he rejected the accusations. Demet's lawyers insisted on judging him as well for complicity. Also bringing him before the court would show whether the murder was planned or not. However, the court did not accept it. The case file eventually was sent to ECHR.

Different from Demet, in Tuğçe's case a friend of Malik En was also present while the crime was committed. Atilla Pekgözlü was carrying the second knife and they were together after the murder. The court decided to punish Pekgözlü for complicity and rejected for lack of evidence the claim of Tuğçe's lawyers that they killed her together.

Leyla mentions that the presiding judge asks her why they are insisting on abolishing of provocation mitigation and he warns that the decision without provocation mitigation would be reversed by the Supreme Court. Leyla says that this is a common knowledge. It is common among lawyers as well. That is to say, in cases where the accused defends himself as provoked by an insulting word or adultery, the Supreme Court tends to decide for mitigation. The decision can be reversed also when multiple clauses of aggravation are given. In such situations, knowing that the decision might be reversed, local courts do not apply these clauses. Although it is not regulated in law, this practice turns out to be a *male* agreement among the murderers, lawyers, prosecutors and judges in cases of women killings: with these lacking decisions male violence is sustained – by either legitimizing men's excuses for killing or hiding the structural dynamics in the process. The accused prepares his excuses knowing that he can reduce his penalty within this frame. And the lawyer or the judiciary initiates or encourages him with their defenses, decisions or reversal of decisions. In all that "law not only represents itself as a solution, it also defines how we can think about women" (Smart, 1989, p.85). Because the defense line that the male agencies in courtroom agree promotes sexist stories over the female victims. As I have shown before, this allows for further victimization for women. So, alongside the *type* of woman it reinforces, it reconceptualizes the notion of deliberation as well.

Another aggravation clause that women encounter widely is the Article no. 82/d murder against spouse or relatives. In cases men kill their wives based on this

clause the sentence is directly aggravated. Although at first glance this may seem as a regulation at the advantage of women, this in fact separates female victims. That is to say, like in Tuğçe's case, relations except (official) marital or familial ones are not recognized by law. In so doing legal regulation makes a separation among women in murder: those who are married are privileged compared to those who are single, divorced or have religious wedlock.[128] Another clause that women encounter hardly ever is the Article no. 82/b (ferociously or brutally). In a similar vein, tens of knife strokes or series of gunshots are normalized and legitimized in the absence of use of this article.

Lacking Evidence

In sexual assault cases on the other hand decision process runs different. In murders of women there is a crime which is certain. The court associates the act and the actor and decides the penalty accordingly. In rape and other sexual assault cases however, the crime is yet to be ascertained. First of all, the court has to be sure that the crime exists and then the actor is interrogated for his relation to it. Because women's declaration is not taken fundamental in such crimes and the proceeding is done according to the male procedure seeking first and foremost for physical evidence, the crime is hardly proven. And even if it is, the actor of the crime might remain ambiguous. The difficulty that lies in the evaluation of these crimes leads to the decisions of acquittal.

Fethiye case resulted with acquittal for all of the accused on the grounds of lack of evidence. The court found the victim's declaration and the report of the Forensic Medicine insufficient. In its justified decision, the court claimed that the victim's

[128] Women groups brought forward this separation similarly during the reform of the protection order. Only (officially) married women were within the scope of the previous Law no. 4320 –despite the different interpretations in practice- whereas in the new one all women are included.

testimony is not supported by physical evidence and even included contradictions. In addition, the court found her late complaint suspicious. Another reason for lack of evidence is as follows:

> even though the aggravated party is expected show outward signs of depression or other symptoms, the victim has continued her social life in a normal way until December 2007 and as a matter of fact, she continued her friendship with Murat Külcüoğlu, one of the defendants. The court did not find all of these quite consistent with the ordinary flow of life and it is hard to argue against these assertions.[129]

The expectation of the court in the victim's psychology is another attribute to the victim. It presumes a *type* of woman who falls into depression. So is the victim who could recover afterwards less advantageous before law? This is enforced by the explanation of "against the natural course of life". Then, does a woman's fiction about 8 men's rape –7 of them were strangers- correspond with the natural course of life?

P.'s rape case ended similarly with acquittal. The court decided that there is no evidence apart from the victim's testimony. The medical report unfolded that there was a hymen rupture. Even if this demonstrated a "sexual intercourse" for the court, it is not the proof of a "forcible" act. Melahat explains the final hearing of P.'s case:

> I stood up and started to talk at the last session. It was a petition of maybe 20 pages; I was trying to convey it heading by heading. The prosecutor was looking at something on his laptop, checking the book in front of him. He was doing everything for us to understand that he hasn't been listening. The head judge was listening, but he was also getting frustrated. I never looked at the defendant. In his opinion, he was implicitly admitting that the two had a relationship, never using the word "consent." But this was the only conclusion that he could draw from that account. "Actually, there's a relationship going on, and no force has been used." (...) The head judge did not even send us outside, he did not think for one moment. He passed the sentence while we were all there. He based his decision not on the opinion, but on the principle that any doubt benefits the defendant, that is to say the lack of adequate evidence. He acquitted the defendant. I was unable to talk for a while. I was petrified. [130]

[129] Fethiye High Criminal Court, *Decision no. 2012/104*, File no. 2011/28.

[130] Melahat, 06.06.2012

P. was student of her rapist. The court, which approved that there was an "intercourse" but was uncertain about whether it was forced, by its decision reproduced the presumption about (sexual) equality among unequals in the evaluation of rape cases. Moreover, the court grounded its acquittal decision on the lack of corroborating evidence and on the emerging suspicion due to her late complaint. With its decision the court disregarded the victim's position in the web of power relations and interpreted the situation as if a high school female student could escape from what surrounded her (Gotell, 2007). In her testimony she explained the reason of her late complaint with reference to her teacher's pressure. Once again "the court room trial and the structure of sentencing demonstrate how a woman's no to sex can be converted into a yes to it through the operation of judicial grammar and judicial sentencing" (Das, 1996, p.2411). In both Fethiye and P.'s cases the law reinforced physical evidence oriented male viewpoint in rape, and makes the victim responsible of the crime by disregarding the structural barriers in front of women's complaints.

Differing Decisions

This study reveals the similarities between the jurors' interpretation of law and the crimes. Depending on their patriarchal world view and relying on an already gendered regulation of law, the jurors reinforce male domination not only in the decisions they take but also throughout the proceedings. So law, like in its regulation, is interpreted and practiced according to the patriarchal motivations. The notions like consent, provocation, and honor that influence the proceedings are loaded with patriarchal understandings of family, adultery, motherhood and sexuality. However, law by its

organization is open to different interpretations that I have exemplified above with reference to different cases. So there are some decisions at the advantage of women. Ferzan gives an example:

> The mentality of judges carries great importance for the application of laws. For example, the new Turkish Criminal Code took effect in 2005, and in this code, killing in the name of tradition is regarded as an aggravating factor, but in 2004, Şanlıurfa Criminal Court did not see any extenuating factors, gave the highest sentence possible to all the members of the family who had given the decision for murder. The law was the former law, it had been applied for many years and a lot of men got away with their crimes because they had been benefiting from this law. But, some judges were able to make a different interpretation out of this law. We have to underline the same thing over and over without being disheartened.[131]

One can argue that the number of such decisions increase –though in relatively slow pace- due to the growing feminist impact on law. The elimination of the use of unjust provocation in feminist litigation is one manifestation for that. The judge that Ferzan mentions, by coincidence, appeared in Şefika Etik's trial. The prosecutor of the trial demanded unjust provocation mitigation for the accused but the jurors did not accept it. Indeed they aggravated his sentence with deliberation in murder. In Rengiye Mersinli case too, the court evaluated the murder with deliberation. In Ayşe Paşalı case, which became a symbolic for women killings in 2011, the court decided for the killer İstikbal Yetkin to be sentenced by 82/a-d. Different than the period of Şanlıurfa case mentioned above, in the late 2000s feminist intervention in women killings litigation has become remarkable.

In Sincan case, two accused of the rape are sentenced to prison. It was an unexpected decision. The court decided that the act of the accused "restricts the freedom of a person and violates the sexual immunity" and aggravated their sentences because of "deterioration of corporal and spiritual health of the victim as a result of the offense." The victim in this case was not late for application. As she was not late the

[131] Ferzan, 19.04.2012.

physical evidence could be reported by the medicine, however it was valid only for one of the accused. Moreover, the court based its justification of the decision on "the consistent testimonies" and condoned the second accused too; even there was no physical evidence for him.

Overall study shows why these decisions in rape cases are rare. Law relies on interpretation in the last instance. However, interpretation is not a free floating entity, on the contrary, does stem from the patriarchal system. Feminist intervention challenges this system, it does not only attack the focus on the physical evidence, but it accounts for a perspective in crimes including male domination against women.

What is Left

Trials endure long. Being able to sustain the same effort and concentration is not easy in general. In Fethiye case for instance, there were tens of different women's groups but it was difficult for them to go long distance and monitor each and every hearing. Nevertheless, they actively participated in the process and in the aftermath of the decision of the local court they were organized to raise their voice against the Bars' declarations. The problems in organization and in enabling a collective political action around such trials result sometimes with overload on few women responsible of mapping out the process.

In many cases like Fethiye lawyers always apply to the Supreme Court for reversal. If reversal is accepted –which is mostly not the case- and hearings are reopened, feminists continue to monitor the case. If not, the process removes non-lawyers from the courts and lawyers deal with the remaining technical issues. All the cases accumulate materials for further feminist politics outside of the court rooms.

Feminists from Istanbul Feminist Collective, Ankara Women's Platform and Adana Women's Platform held meetings during my research in which they evaluated the overall litigation processes and defined once again what the legal struggle meant to them: feminist struggle in the field of law is not restricted to the court cases because it is part of a desire of an entire social change. In this vein, litigation cannot be left to lawyers only, both inside and outside of the courts. The feminist word has to be diffused widely after all in order to have an impact on the making and practice of law. However the revealing feminist arguments failed at times, especially in rape trials. As I dealt in the previous chapter, feminist movement's effort in exposing rape is, briefly put, based on the significance of woman's declaration. And the focus of courts on corroboration restrains feminists: lawyers have to tell the court that the declaration is the proof which is hardly found credible by the jurors, at the same time they have to show supplementary evidence. After noticing this fact, they held a meeting in May 2012 and decided that the word to circulate in the legal talk on sexual assault should be "woman's declaration is to be taken fundamental" in the following period.

Second observation in the meetings is on the growing demand of litigation. The more the crimes against women become visible, the higher the demand for litigation –be politically or not-. And this demand is sometimes based on movement's networks, at the same time, female victims and families, just heard from media, reach feminist lawyers somehow. As such, feminist activists have already individually followed the cases, but for some they were not organized politically. Moreover, this increasing demand creates a perception of "expertise of court cases" concerning the crimes against women. It is in a way an inevitable result but at the same time carries two risks for feminist perspective: professionalism on a specific issue may encourage hierarchical relations and neglect the aim of constructing equal positions among women. The victim of the issue, a woman, demands for help from the professional of the issue, a feminist

lawyer. Secondly, in the absence of a balance with other political concerns feminist movement can restrict itself with the legal struggle (Smart, 1989). And finally, politics over crimes against women and legal practice is after all exhaustive: it requires confronting not only crimes but also tragic lives vulnerable to male violence. It requires strength against the revictimizing operations in the field of law. In light of these, feminists in their meeting in May underlined the significance of their intervention in law but decided to select cases that they would formulate their political word on and continue their struggle within the courts. Delal evaluates the overall process:

> Our propositions concerning the law come from these cases. We were not aware of the issue of unjust provocation until Sevim Zarif's case. For the first time, it is in this case that we clearly said women killings are political and went into the depths of unjust provocation. I believe our politics in relation to the feminist movement will fall short without the monitoring of cases. For this reason I think we should continue monitoring these cases. Our problem is that we do not get to choose the cases, cases come to us, we hear them because it is someone's friend's case or the case of an acquaintance and we can get political to the extent that the claimant wants us to be. The possibility of changing the laws lies in the struggle itself.[132]

Litigation provides with abundant materials for the feminist movement in order to challenge law in its construction and for male practice that reign in society. So it seems that feminist intervention in law will long endure.

[132] Delal, 20.12.2011.

CHAPTER 5

CONCLUSION

F. Ş. was forced by her husband Çetin Şen to jump from a fourth floor balcony in July 2012. Fortunately she survived and was hospitalized and had nine surgeries. Çetin Şen was arrested for soliciting the suicide. F. had been subject to constant violence by her husband during her marriage. Before the event, she already had applied for protection to Esentepe Police Station, which not only failed to protect her and but asked her to withdraw her demand.

Istanbul Feminist Collective, one week before F.'s story appeared in the media, launched a street protest in front of Fatih Police Station. Feminists exposed the contribution of the police force to male violence (alongside law) as part of their campaign against women killings. While they were organizing a demonstration for Esentepe Police Station to insist on the role of the police, they learned that F. had no access to a lawyer. Istanbul Feminist Collective has in this way intervened in her case.

F.'s story rendered visible once again the official *neglect* that women who are exposed to male violence. To begin with, although she did have a protection order, the police force did not do its job. Secondly, despite the fact that her story drew particular attention in the public, instead of the state authorities, it was Mor Çatı which intervened into the process and provided her with support and lawyers. Thirdly, the prosecutor had filed the case for soliciting suicide instead of attempting to commit murder. Towards the end of this thesis, feminists have already taken up the case in solidarity with F. In the

second hearing in August, the criminal charge was changed to attempt to murder and the proceeding will continue accordingly in September. During the hearing feminist participants were exposed to attacks and threats by the accused and his family.

In this study, working through court observations and interviews with intervening activists, I tried to expose multiple ways in which law is a site of feminist struggle. Investigating court cases and feminist litigation, I attempted to show that women's gendered confrontation with the field of law in male crimes against women does not only consist of legal formulation of these crimes or of court decisions but it corresponds to more fragmented forms of male practice that reinforce women's subordination by men. Accordingly, through their engagement with law, feminists claim not only amendment of articles or law at the advantage of women but they also challenge by and large legal practice itself through constant pursuit of court processes. To show their entire struggle, I focused on different stages of encounter with law complaint, trial and finally decision processes and on several elements that figured in each of them, like testimony, medical report, court records, unjust provocation mitigation, evidence inquiry, the role male actors during litigation. As such, I attempted both to figure out how law as a structure produces multiple practices that reflect patriarchy, and to show thereby that feminists' every single contestation to this comprehensive entity is significant in order to eliminate women's subordination deep rooted in society that this field also consolidates.

By in its very construction, law is *male*. In this sense I aimed also to highlight "why law is so resistant to the challenge of feminist knowledge and critique" (Smart, 1989, p.2) by showing feminist interventions in different moments of litigation. Although law (the state) indicates the official ways in which one has to appeal in order to overcome male violence (battering and sexual assaults), women frequently face neglect by relevant institutions both during the process of complaint and of litigation.

To be more precise, Nejla Yıldız, Arzu Yıldırım and F. Ş. from different parts of Turkey appealed for protection to different police stations or prosecutors and they faced similar reactions of neglect or reluctance. On the other hand, in the cases of Ayşe Yılbaş, Demet Eygi and Tuğçe Anlaş, different jurors did not consider constant threats to life as evidence of murder. In this sense, through official neglect, the field of law approved of and promoted male violence that women already experienced, even murder. With respect to sexual assault cases, courts that did not accept women's account as sufficient to file the case (as in Fethiye case) also did not consider those as evidence of rape in their decision as well (also as in P.'s rape case). Similarly, during litigation and especially in the investigation part, different jurors in different court cases put the victim on stage instead of the accused. The overall process enables us to see that women, who have at once been exposed to violence by their husbands or by rapists, encounter further violence when they come across prosecutors, jurors and (defense) lawyers in different stages of litigation. In other words, in addition to the feminist critique to the very organization of law that excludes women (MacKinnon, 1989), a feminist investigation on litigation reveals that it also oppresses those who somehow gain access to it.

At the face of this layered structure of law, which produces multiple forms of patriarchy, in this study I tried to show in a comprehensive manner how the feminist movement struggles with all these. Reinvigoration of the feminist movement in Turkey in the late 1980s had contested law in its sexist regulations and practices. In the late 2000s, however, with the rise of women killings, they began to organize collective interventions in court cases in different parts of Turkey as a part of their protests against murders. Feminist and women's groups staging protests in front of courthouses litigated various murder and sexual assault trials in solidarity with the victim of the crime and among themselves: litigation is considered as part of a larger feminist political agenda that both lawyers and activists are involved in through the pursuit of cases.

Through collective litigation, feminists engage politically with the male practice in the field of law. They contest patriarchal reproductions throughout the process by replacing the male truth with women's (shared but not homogenous) experiences. Arguing that if even one woman is subjected to male violence all women are impacted, they explore and publicize the systematic (not individual or independent) aspect of male violence. They object to the ways in which a *type* of woman is reinforced in courts by opposing to the excuse of adultery or improper motherhood as a cause of mitigation of murder or by insisting that women's declaration is fundamental as evidence in sexual assault cases and for protection orders in battering. Feminists resist to the translation of women's pain (of sexual assault) into legal terminology as *consent* by arguing that women's are the subject of their experiences, so their declaration is the ground for investigation. Feminist struggle is thus a radical challenge to the *common* practice in the field of law, which not only has direct and vital consequences on women's everyday lives, but also reinforces a type of woman – subordinated by men. In their challenge to law, feminists expose that law produces a compelling space, like many other sites of struggle, in which feminist intervention does not overvalue law, instead scales it at the ground level where gendered practices take place and have influence over the multiple spaces of women's lives –first and foremost in the private one. In this sense, it is not an abstract intervention: on the contrary, it is enmeshed with the political and the practical in that it deals with the very realities of women's lives. Asiye summarizes the overall process as follows:

> when feminist lawyers and intervening activist observers monitor the case, it is a nightmare for the defendant, a pressure on the court, a support to the victim/the family and for themselves and an endless struggle whatever the result is. [133]

[133] Asiye, 20.04.2012

From the 1980s onwards, feminists have set forth the multiple aspects of patriarchal regime in Turkey and have asserted that law is an organic part of it. They located law as an institution that reproduces patriarchy, that is, intrinsically embedded with all its actors and regulations in the larger system. Collective litigation is therefore one step within their larger campaigns against male violence, like those against the state, the government, police forces, and the media. That is why they do not focus solely on the court decisions, but on every single act that reproduces patriarchy during their intervention.

While I was doing this research, as my informants confirmed, the number of applicants to feminists increased: many more women demanded from the feminists to take up their cases. Through the increasing visibility of male violence in the public and constant struggles of women's movement, women reach out to feminist organizations through both formal and informal networks. Many women are strengthened to uncover male crimes.

Feminists eliminated the use of unjust provocation mitigation in cases that they litigate. The next step for the trials that they will intervene in the future will be to further spread the idea that the account of women has to be taken to be fundamental in male crimes. This principle covers both sexual assault crimes and testimonies in battering by indicating the organic link between violence and murder regarding male oppression against women. It is a radical contest on the organization and maintenance of male dominance and is a way through which women declare their subject positions with regard to *their* experiences.

In this thesis, I tried to figure out feminist interventions in law and the multiple ways in which feminists encounter with and challenge gendered practices during litigation. In so doing, I have shown how feminists create a new space which rises above what they have accumulated so far with their struggle with patriarchy. While they

thoroughly expose the gendered workings of the justice building process which could even promote death and, ground law in a concrete manner showing how the truth generating patriarchal system operates on the everyday lives of women, they open up new ways in which women, as agents, articulate themselves and their experiences of male oppression and contest, through and through, the regime of patriarchy.

Appendix: Original Quotes in Turkish

Page 17, footnote 11:

Avrupa İnsan Hakları Mahkemesi'nin Opuz kararında; ülkemizde kadınlara yönelik şiddetin önlenememesinde özellikle *'yargısal edilgenliğe'* dikkat çekilmiş (…) ve Mahkemeye göre son yıllarda hükümetçe gerçekleştirilen reformlara rağmen yargı sisteminin bu reformlara yanıt vermeyişi ve saldırganlara, Opuz davasında gözlendiği üzere, tanınan cezadan bağışıklık CEDAW bağlamında aile içi şiddet konusunda uygun önlemleri almak taahhüdünde yetersizliğe işaret ettiğini belirtmiştir.

Page 18, footnote 13:

Ümraniye'deki ilgili savcı hakkında suç duyurusunda bulunduk. Kapıda eylem yaptık. Kötü karşılandık, adliyeye girmemiz, dilekçe vermemiz, başsavcıyla konuşmamız hepsi problem oldu. Başsavcı "burada savcı ne yapabilir ki? Siz haksızlık ediyorsunuz" diyordu.

Page 21, footnote 14:

Eski kanunda (4320 SY) da harç alınmaz düzenlemesi olmasına rağmen, yaptığım bir başvuruda harç ödemek zorunda kaldık, bir ay önce boşanmış bir kadındı, evlilik bağı olmadığı için reddedildi bu başvuru. İtiraz yolu da kapalı olduğu için önü kesildi, bekledik, 20 Mart'ta yeni yasa Resmi Gazete'de yayımlanınca yeni bir başvuru yaptık. Yeni başvuruyu kaymakamlığa yaptık, gizli ibareli bir koruma kararı aldık, şiddet hakim eştendi çünkü, küçük bir ilde, öğretmen eşe. Reddedilen koruma kararı için harcın geri ödenmesi için başvurdum. Hakimin karar vermesini bekliyorum. Hem iadeyi hem makbuzu Bakanlık'a göndereceğim ileride. Buyrun çözün bu sorunu diye.

Page 22, footnote 15:

Bu kanun (*koruma kanunu*), sadece avukatların, hukuk profesörlerinin, hakimlerin anlayabileceği bir dille yazılmamalı diye çok üsteledik. Defalarca anlatmaya çalıştık ama ancak kısmen başarılı olduk. Dışarıdan anlaşılabilecek bir taslak asla değildi, bizim müdahelemizle kısmen düzeldi, bu kanunun bir problemi de bu.

Page 22, footnote 16:

adliyeler tek yerde birleşmiyor sadece, bence insanların gözünü korkutan yerlere dönüştüler, kocaman kocaman binalar, labirentler kaybolunan koridorlar (...) Şu an profesyonel bir destek almazsanız oradaki işleyişte, paranız olsa bile, birsürü şeyle başetmeniz daha zor. O kadar çok dolayım araya girmiş durumda ki para dışında da, yargı sistemi içerisinde, kadınların doğrudan hukuğa başvurmaları, bir avukat desteği olmaksızın, haklarını aramaları, bir savcıya ulaşmaları, şikayetçi olmaları, çok daha zor. (...) Kadınlar için erkeklerden çok daha zorlu bir uğraş, baroyu bul, işte feminist bir grubu bul ya da işte en bilinen örnek Mor Çatı'yı bul, oradan bir avukat adresi versinler, onu bul…

Page 38, footnote 26:

Sevim'den altı ay sonra, Cerrahpaşa tıpta stajyer doktor olan Ayşe Yılbaş'ı, uzman çavuş olan kocası, daha önceden söylediği gibi bir cuma günü öğle ezanı okunurken herkesin gözü önünde tekbir getirerek öldürdü. Bundan bir süre önce Ayşe feminist avukatlara vekalet verip boşanma davası açmıştı, bizim davayla ilişkilenmemiz de buna dayanıyordu. Tıpkı Sevim'in eski kocası gibi onun kocası da, boşanma davasından sonra ölüm tehditleriyle sürekli rahatsız ediyor, çocuğu kaçırıyor, annesine göstermiyordu. Sevim'den sonra bu dava daha örgütlü takip edildi, duruşma salonuna yaklaşık elli kişi girdiğimiz

oluyordu, bunun on, on beşi feminist avukatlardan oluşuyordu. Çok sayıda feminist avukat ve davayı düzenli takip eden feminist izleyiciler davaya dikkat çekmeyi başarmıştı, sanığın avukatı ise başka zeminlerde birarada sözümüzü söylediğimiz bir avukattı ve orada olması bizleri çok rahatsız ediyordu, tabii ki herkesin savunma hakkı vardı ama onu savunacak avukat o olmamalıydı, gelin görün ki kadın cinayetlerinin politik olduğunu kavramamak bir yana cepheden sanığı kurtarmak ve savunmak için ısrarla orada oldu ve dava süresince karşılıklı bir tutum alış şeklinde sürdü bu rahatsızlık. Aynı şekilde Sevim'in katili olan eski kocası da başka zeminlerde birarada sözümüzü söylediğimiz, bazılarımızın da yakından tanıdığı bir avukattı. Sevim'in ve Ayşe'nin kocası ve avukatı hep aynı şeyleri, neden öldürmek zorunda kaldıklarını anlatıyorlardı, boşanmak istemeleri, çocuğu yeteri kadar göstermemeleri veya bunu ima etmeleri onlara göre öldürmek için yeterli bir nedendi, ikisi de ateş ettikten sonra ölmediklerini fark edince yeniden ateş etmişlerdi, amaçları korkutmak değildi veya bir anlık öfke patlaması sonucu ateş etmemişlerdi, tek istedikleri öldürmekti, yıllarca öldüreceklerini söylemişlerdi ve uygun bir zamanda öldürmüşlerdi, bu tehditlerle ilgili olarak Sevim'in ve Ayşe'nin defalarca mahkemeye başvuruları olmuştu ve sonuç alamamışlardı. Sevim'in mahkeme sürecinde durumu anlamaya çalıştık çoğunlukla, Ayşe'nin mahkeme süreci ise bizler açısından daha bir öğretici olmaya başladı.

Page 39, footnote27:

Benim bu davalara sürüklenişim kişisel bir hikayeyle oldu, arkadaşım öldürüldü, Demet Eygi, Adana'da, SFK'nın takip ettiği davalardan biriydi. Ben o zaman SFK'lı değildim. Demet benim liseden, yatılı okuldan arkadaşım. (…) Demet'ten sonra algıda seçicilik oluştu, ya bu kadınlar neden bu kadar çok öldürülüyorlar demeye başladım. O sırada biz Ankara Kadın Platformu'nda "Yasta değil isyandayız" eylemini konuşmaya başladık. Bir süredir kendimi feminist olarak tanımlıyordum ama Demet'in ölümü üzerine, artık feminist mücadelenin ölüm kalım mücadelesi kadar önemli olduğunu fark ettim. Biraz hayatın getirdiği bir şey oldu.

Page 40, footnote 30:

Görünürlüğün artmasını da davaların takip edilmesinin zorunlu hale gelmesine sebep olarak görüyorum. Üçüncü sayfadan birinci sayfaya geçti kadın cinayeti haberleri. Karşımıza çıkan bu sorunların çözülmesi için katkıda bulunabilecek kesimlerin başında geliyoruz biz. Bu nedenle müdahil olmamız gerekiyordu.

Page 41, footnote 32:

Cezada sadece psikolojik savaş vermek düşüyor bize. Hakimlerin kadınlar aleyhine yorumlar getirmesine engel olmak. İşte bunun için mahkemede kalabalık olmak gerekiyor.

Page 41, footnote33:

Bu davaların görünürlüğü, bu konuda çeşitli projeler kadınların bize ulaşmasını artırdı. Medyada Kadın Dayanışma Vakfı ismi geçiyor örneğin, kadınlar arıyor. Baro'nun Kadın Hakları Merkezi olarak çalışmaya başladığımız 1992'den beri neredeyse, 8 Martlarda 25 Kasımlarda toplumun çeşitli kesimlerine ulaşmaya çalışıyoruz, küçük broşürlerimizle, toplum merkezlerinde kadınlarla söyleşiler yapılıyor, dar gelirli ailelerin olduğu çevrelerde kadınlarla iletişim kurduğumuzda bize ulaşabilecekleri adresleri mutlaka söylüyoruz. Ve birbirlerine iletiyorlar. Bir mahallede bir kadın haberdarsa diğerleri de haberdar oluyor.

Page 42, footnote 34:

Galiba bu davaların basına yansımış olmasından kaynaklanıyor. Çoğunlukla Mor Çatı üzerinden geliyor. Kulaktan kulağa yayılıyor. Ya da biz de basından duyup biz de bunu

takip edelim diyoruz. Bizim bir şekilde feminist avukat olduğumuz ve bu işleri feministçe yürüteceğimiz bilgisi etrafa yayılmış durumda ve insanlar duyuyor.

Page 48, footnote 37:

mesela bizim eylemlere katılmaya gelen erkeklere de bunu söylüyorum: "bu eylem sana da karşı, sadece devlete karşı değil". ben biraz mevzunun bu olduğunu düşünüyorum. bizim oradaki varlığımız bir görünür kılma çabası olarak adlandırılamaz sadece. bizim oradaki varlığımız aslında o sistemin bütünündeki cinsiyetçiliği de teşhir etmek, aşındırmak.

Page 48, footnote 38:

hukuksallaştırdığın zaman bitersin. Herhangi bir vakayı bu memlekette hukuksallaştırırsan, buyrun bakın Tekel direnişi, bitti, ne oldu? Kadın cinayetlerini hukuki olarak cinayetten ibaret görmeye de, nefret suçlarını böyle değerlendirmeye de itirazım var: bir şeyi suç ve ceza politikası açısından tartıştığın zaman hukuğun tüm kurallarına hapsolursun. Hukuk adamların tartışma meydanı, er meydanı daha ziyade ceza davaları, kadından ceza avukatı olur mu sorularını çok duyduk. Kadından ceza avukatı olsun olmasın beni ilgilendirmiyor, ben kadınların öfkesini kıymetli buluyorum.

Page 49, footnote 39:

Heyetin üç dört duruşma bizi kadın kalabalığı olarak görmesinden sonra oraya bir erkek avukat çıkarma fikri çok ayrı bir şeye dönüştürüyor işi.

Page 50, footnote40:

Mahkemeyi etkileyen şey orada kadın hareketinin, feminist hareketin olmasının baskısı. Feministler o davayı odağına alıp erkek egemenliğini bağlantılarıyla teşhir etmeye çalışıyor. Feminist hareketin kapıda bir davayı genel mücadelenin bir parçası haline getirmesi davanın gidişatını olumlu etkiliyor. Çünkü orada başka bir kanun geçiyor diyoruz ya, mahkemenin iç işleyişinde; ne kadar o iç kısımda davanın öznesi kadın ve avukatlar yalnızlaşırsa, oradaki hukuk daha çok erkeklerden ve erkek adaletten yana işler. Dışarıdaki kadınların varlığı içeridekileri daha dikkatli davranmaya iter.

Page 50, footnote 42:

Ayşe Paşalı cinayetinin karar duruşması öncesinde Türkiye çapında skype'la bir eylem yapıldı, muhteşem bir şeydi ve onun ertesi günkü karara etkisi oldu. Böyle şeyler yapabildiğimiz sürece kararların düzgün çıkmasını sağlayabiliriz.

Page 51, footnote 43:

Ben avukat olarak hukuki şey içinde kaybolabilirim, beni besleyecek şey feminist hareket. Feminist hareket olmazsa bu dava takiplerinde beni sıradan bir kadın hakları savunucusundan ayıran hiçbir şey kalmıyor ki! Benim söylediğim sözün mücadelede nereye düştüğü, hatalar doğruları feminist hareket içinde görmem lazım. Salonun içiyle dışının iletişim halinde olması çok önemli.

Page 51, footnote 44:

Son yıllarda kadın cinayetleri davalarında toplu takipler olmaya başladıktan sonra, feminist örgütlerin çok büyük etkisi oldu, kamuoyu bununla ilgilenmeye başladı. Biz (*avukatlar*) yine davalara topluca girsek de, dışarıda, toplumda görünürlüğü bu kadar olmuyordu, adliye önünde bekleyenler daha fazla etkili olmaya başladılar. Adliye önünde bekleyenlerin artması içeride çalışmak isteyen avukatların da artmasına yol açtı. Ben burada feminist hareketin tetikleyici, yön gösterici olduğunu düşünüyorum, özellikle de kadın cinayetlerinde.

Page 53, footnote46:

biz feminist politika açısından orada söyleyebileceğimiz birçok şeyi söylemeye çalışıyoruz. Örneğin kadın cinayetlerinin bir tesadüf olmadığını, açıkça erkek şiddeti olduğunu, erkek şiddetinin bu dosyadaki tezahürü olduğunu, bu nedenle de kadın olmanın bu şiddete bizi açık hale getirdiğini söylüyoruz.

Page 54, footnote 47:

bir avukat arkadaş icra müdürünün tacizine uğradı, (*hakimin*) soru şu: o saatte ne işi vardı icra müdürüyle? S. "böyle bir soru sormaya yetkiniz yok" diyor ve kavga kopuyor. Mütalaa verilmeden önce söz veriliyor mağdur avukatlarına ve diğer avukat arkadaşımız da şöyle diyor, "bütün bunları yazın ve duruşma boyunce savcının sırıttığını da geçirin" diyor, yine gerginlik kopuyor. Çıkışta kadın hakları kurulundan olan avukatlar "çok serttiniz" diyor. Bu sertlik gerekiyor!

Page 54, footnote 48:

aldattı aldatmadı, tahrik vardı yoktu, tartışmamak gerektiğini, feminist avukatların buradan söz kurması gerektiğini düşünüyorum. Feminist hareket çok gündelik hayata değiyor, çok pragmatik kararlar vermek zorunda kalabiliyoruz, orada da avukat davayı en iyi götürecek şeyi düşünüyor, ayrıca bu dava bir cinsel saldırı davası da olabilir, birebir kadının hayatına değecek bir dava da olabilir, adam (*sanık avukatı*) kadının iffetsiz olduğunu iddia edebilir, bu sefer avukat kadının iffetsiz olmadığını kanıtlamaya mı çalışacak? Bizim için, feministler açısından fark eder mi kadının iffetsiz olması? İffetli iffetsiz ne demek? Tecavüz tecavüzdür. Ortak zemini feminist hareketin böyle bir yerden kurması gerekiyor. Öte yandan, "iffetsiz" bir kadının savunması nasıl yapılır... Zor. Yapamamıyormuşuz ya! Cemre yapamıyoruz! Ama yapmamız gerek!

Page 56, footnote 50:

Suçun maddi unsuru ile korunan menfaatle yakın ve haklı görülecek bir ilgisi bulunan herkes, suçtan zarar görendir. Bu ilgi, sadece bir maddi menfaat ilgisine indirgenemez. Sanığın cezalandırılması suretiyle karşılanacak bir tatmin arzusunun uyandığı her kurum veya şahıs, suçtan zarar görendir. Bu anlamda, kadın cinayetlerinde, aslında toplumumuzdaki her kadın suçtan zarar görendir, faillerin yargılanmasında aktif ve etkin bir rol oynamak istemeye hakları vardır (Dumrul, akt. Centel, 2012a).

Page 58, footnote 54:

Kendi üzerinden görevi atma çabasıdır bu bence. Aksine, ceza davalarında müdahil olanlar, suçtan zarar görenlerdir. Suçun failleri müdahil olamazlar, Bakanlığın ve devletin suçun failleri arasında olması gerektiğini düşünüyoruz biz. Gerekli önlemleri almadığı için, bunun ötesinde teşvik eden kararlar ve uygulamalarla fail tarafında yeralması gerekiyor.

Page 59, footnote 55:

Bir hukuk sisteminde Bakanlık'ın, kadın örgütlerinin lehine de olsa, müdahil olmasını biz kabul edebilir miyiz genel demokrasi ve yargı bağımsızlığı çerçevesinde? Önüme bir örnek çıktığında Anayasa Mahkemesi'nin bu hükmü iptal etmesi için çalışacağım. Çünkü bu yargıya müdahaledir. Kadın hareketinin ortak görüşü mü bu, hayır, birçok grup lehimize diye onayladı.

Page 59, footnote 56:

Hukuki açıdan, yani kuvvetler ayrılığı ilkesi açısından çok sorunlu buluyorum. Politik olarak da bize şöyle dönebilir, iyice bizi görünmez kılabilir, Bakanlık müdahilliği bir kere kabul edilmeye başlanırsa bizim talebimizin meşruluğu ortadan kalkabilir. Biz ısrarla kadın örgütlerinin müdahilliğinin yasaya geçmesini söyledik ama Bakanlık kendisini yazdı yasaya.

Page 60, footnote 57:

Bizim bu davaları takip etmemiz, bellek yaratmamız şuna yol açıyor: Bak Ayşe Paşalı'nın katili de aynısı söylemişti, Necla'nın katili de aynısını söyledi, Rengiye'nin katili de. Adamların ortak savunmaları, ortak söylemleri, gerekçeleri, bu davaların takipleri bu konuda bize bir arkaplan veriyor. Bu kadınlar eğer münferit vakalar olarak öldürülselerdi biz zincirleme ilişkiyi ortaya çıkaramazdık. Bence feministlerin bu davaları takip etmesi öncelikle bu davaların sistematikliğinin deşifre edilmesi açısından çok önemli, bu görüldü.

Page 62, footnote 59:

Biz TCK 2005'te yürürlüğe girdiğinde kadınların ceza kanunu açısından kurtulduğunu sanıyorduk. Daha sonra, Ankara'da üç kadın cinayetine "haksız tahrik indirimi" uygulandığını gördüm; tayt giyme, cilveli saat sorma gerekçe gösterilerek, o zaman anladım ki "haksız tahrik" diye bir şey var karşımızda. "Tarafız" ve "Kadın cinayetleri politiktir" sözlerini ilk bu duruşma için yaptığımız açıklamalarda kullandık. Sevim bize aynı zamanda, bir kadının tayt giydiği, saat sorduğu, arada bir cinsel ilişki olduğu için sadece öldürülmediğini, 11 yıl önce boşandığı eşi tarafından öldürülebildiğini gösterdi. Kadın cinayetlerinin kendimize bu kadar yakın olduğunu Sevim'le anladık. Kadın cinayetleri (*namus cinayetleri yerine*) telaffuzu bu deneyime dayanıyor çok.

Page 63, footnote 60:

tanık olduğumuz diğer bir şey de bütün sanıklar davranış ve konuşmalarıyla aynı kursun eğitimini almış gibiler. İşledikleri fiillerin kendileri açısından olması gereken olduğuna, başka çareleri kalmadığından öldürdüklerine ve devamında kendilerinin de mağdur olduğuna inanıyorlar ve bu sebeple tahliye talep etmekte bir tuhaflık görmüyorlardı, haksız tahrik indirimini ise kazanılmış hak olarak görüyorlardı. Haksız tahrik indiriminin önemini bu davalar sırasında öğrendik çoğumuz, ne kadar kolay verildiğini görmenin yanı sıra bunun nedenin de politik olduğunu gördük. Öldürmenin anlaşılabilir nedenleri olmalıydı ve bunlar zaten hep varolan basit davranış biçimleriydi.

Page 64, footnote 63:

Hiddet veya şiddetli elemin haksız bir fiil sonucu ortaya çıkması gerekir. Maddeye bu ibarenin eklenmesinin amacı, ülkemizde özellikle "töre veya namus cinayeti" olarak adlandırılan akraba içi öldürme suçlarında *haksız tahrik indiriminin yanlış biçimde uygulanmasının* önüne geçmektir. Maddedeki düzenleme nedeniyle bir suçun mağduruna yönelik olarak gerçekleştirilen fiiller dolayısıyla fail haksız tahrik indiriminden yararlanamayacaktır. Örneğin *cinsel saldırıya maruz kalmış kadına karşı babanın veya erkek kardeşin işlediği öldürme fiilinde, haksız tahrike dayalı olarak ceza indirimi yapılamayacaktır.*

Page 66, footnote 65:

Olay maktülün başka erkeklerle telefonda konuşması ve ilişkide bulunması neticesi aile birliği temelinden sarsılmış, bunun neticesi de taraflar anlaşmalı boşanmaya karar vermişlerdir. Anlaşmalı boşanma davasından 2 gün once maktül, evde banyo yapmak istediği sırada müvekkilime, "hoca ile ilişkiye girdim, cenabetliği üzerimden atayım" demesi üzerine kendini kaybeden müvekkilim tarafından bu olay gerçekleşmiştir. Kaldı ki 2 gün sonra boşanma davası olan müvekkilim niçin bu suçu işlesin? Bu nedenle müvekkilim hakkında hüküm kurulurken haksız tahrik hükümlerinin uygulanmasını, tasarlamaya ilişkin kanun maddelerinin uygulanmamasını talep ediyorum.

Page 67, footnote 67:

Hukukta aldatanın karşısında sana boşanma hakkı tanınmıştır. Senin bu hukuki çerçevede kadının sadakatsizliğinin karşılığında boşanma var. Boşanma davası açtın mı açtın, ya da kadın açtı, tamam, bitti. Demek ki bu eylem hukuki olarak karşılığını buldu.

Eğer açmadıysan, bu senin kabulündür. Hele ki boşanma davası sürecinde kadının yaşayışı hiçbir şekilde gerekçe olamaz. Öncelikle bunu ceza hukukunun kapsamından atmamız lazım. Kayseri davasında sanık "aldattığını sağdan soldan duyuyordum" dedi, iki üç tane de yalancı tanık getirdi, "sen boşanma davası açtın mı peki?" diye sorduk orada. Bunu dedikten sonra, eğer hayır diye cevap geliyorsa, sanığın bu konuda kabulü vardır, kabul ettiği bir husus tahrik nedeni oluşturmaz.

Page 67, footnote 68:
Namusumu temizledim dedi mesela, tamam o zaman, töre saikiyle ağırlaştırma sebebi dememiz gerekiyor. Töre meselesini biz kendi lehimize kullanmalıyız diyorum. Namus gerekçesiyle işledim diyene biz evet o zaman ağırlaştırın demeliyiz. Şuna çok takıldık belki de, yasa çıkarken töre saikiyle olmasın da namus saikiyle olsun'a çok takıldık, sonra töre bizim için değilmiş gibi düşündük, tamam öyle oldu, biz bunu kendi lehimize verelim.

Page 68, footnote 69:
hukuki araçların bireyler tarafından kullanılmasını sağlamak lazım. (…) Şunu demek lazım, maktülün kocasını aldattığı iddia ediliyor, bu konuda bir kabul olarak algılanmaması kaydıyla, eğer namusunu korumak sebebiyle, bundan duyduğu öfkeyle eğer öldürdüyse bunun daha fazla cezalandırılmasını talep ediyoruz çünkü töre saiki gütmüştür. Töre saiki ne demektir, toplumsal baskıyla bir amaç için işlenen cinayet. Bence Şefika Etik cinayeti töre saikiyle işlenen bir cinayettir. Aile meclisinde konuşulması vs. Kadını savunan değil, saiki açığa çıkaran bir savunma yapmalısın, onları savunan pozisyona düşüreceksin, onlar ispatlasınlar töre saiki olmadığını. Karşı tarafı paniğe sürüklemek lazım şu çok açık ki kadın katilleri panikledikleri anda çözülüyorlar.

Page 68, footnote 70:
Eşim bana 'ben artık hayatımı yaşayacağım, piçlerini de al defol git buradan' dedi. Kendimi kaybetmiştim. Şuurumu kaybettim. Belimdeki silahla ateş etmeye başladım. (…) bir iki sefer Bartın'a gelmiştim. (...) Bacanağım Mustafa ile eşimin kolkola gezerken gördüm. Daha sonra yine bir daha geldim, takip ettim, altıncıdan çıkarken sarmaş dolaş olarak gördüm. (...) Bunlar boşanma davası açıldıktan sonra ayrı yaşadığımız zaman içinde oldu. (...) Çocuklarımı alıp evime dönmekti amacım. Hiç bir zaman için vurmak gibi bir niyetim yoktum. İki çocuğumu okutmak için yemin etmiştim. Birini doktor, birini savcı yapmak istediğimi söylerdim.

Page 69, footnote 71:

Maktülün öldürülmesi hususunda bir aile meclisi kararı alındığını gösterecek kesin ve inandırıcı deliller dosyada yok ise de, sanığın kendi başına maktül karısının başkalarıyla telefonda konuşmasının namusunu ve şerefini eksilttiği düşüncesiyle töre saikiyle atılı suçu işlediği anlaşılması nedeniyle (…)

Evli olan eşlerin TMK 185/2 Mad. göre eşine karşı sadakat yükümlülüğünün bulunduğu, bu yükümlülüğün kişilerin ailesi dışında kimseler ile telefonda konuşmayacağı, sosyal arkadaşlık yapamayacağı, internet ortamında konuşamayacağı, tek başına dışarı çıkamayacağı, cafe-sinema gibi ortamlara giremeyeceği anlamına gelemeyeceği, bunların kişiye ait hak ve özgürlüklerin kapsamında kaldığının tartışılmaz olması, aksine bir düşüncenin bazı ailelerin veya erkeklerin duygu ve bedenleri üzerinde belirleyici bir hakka sahip olduklarına inandıkları, aile üyesi kadın, kız kardeş, eş hatta yakın akrabalarından birinin bulunduğu toplumsal çevrenin egemen gelenek veya törelerine aykırı sayarak namus ve şerefine leke sürüldüğü gerekçesiyle işlediği cinayetleri hukuken

kısmen haklı ve mazur görmek anlamına gelebileceği dikkate alındığında, maktülün olaydan 17 gün önce telefonda bir başka erkekle konuşmasının tek başına haksız bir fiil kabul edilerek bu fiilin *boşanma davası da açan* sanık üzerinde meydana getirdiği hiddetli ve şiddetli elemin etkisi altında atılı suçu işlediğinin kabulünün mümkün olmaması nedeniyle sanık hakkında haksız tahrik hükümlerinin uygulanmasına yer olmadığı (…)

Page 71, footnote 72:
Politik gerekçeler söylüyoruz, haksız tahrik meselesinde, kadının davranışlarının neden bir cinayete gerekçe gösterilemeyeceğini, hem hukuken anlatıyoruz, hem de kadının tayt giymiş olması haksız fiil olarak nitelendirilemez diyoruz. Bence aynı şekilde bundan sonraki bir cinsel saldırı davasında bu tür davalarda tanık, delil olamayacağı, bu tür suçların tanık huzurunda işlenemeyeceği, şeklinde bir karar geçirmeyi hedeflemeliyiz. (...) Bir yandan kadının beyanı esas alınsın derken bir yandan da bizim o dosyaya delil sunmaya çalışmamız bir garabet.

Page 72, footnote 74:

Sanığın annesini tanık olarak dinlettiler, kadın geldi, terör estirdi duruşmada. Namus cinayetini sokmanın gayreti içinde, "oğlumla beraber oldu, bakire değildi, kız değildi, o yüzden oğlum namusunu temizledi" dedi. Avukatlara elini kolunu sallayarak "niye geliyorsunuz hepiniz buraya, bütün kadın davalarına böyle mi giriyorsunuz siz, sadece Nejla Yıldız diye mi geliyorsunuz, şov yapıyorsunuz!" diye bağırdı. Karşılıklı tartışmalarımız oldu. Biz söylediklerinin hepsinin tutanağa geçirilmesini ve Duygu ve Nejla Yıldız'a yönelik hakaret ve kişilik haklarının ihlalinden ötürü suç duyurusunda bulunulmasını istedik. Mahkeme bunları tutanağa geçirdi. Bakire olmadığı, kız olmadığı yönünde bas bas bağırması saldırıydı ve bunu ciddiye aldı. Savcı soruşturmayı başlattı, bizi de ifadeye çağırdı.

Page 74, footnote 75:

Kadına yönelik şiddet, artık Türkiye'de çok yaygın olarak biliniyor. Yasalarla mücadele, medyanın teşhiri biliniyor. Ama davalara ilişkin bir teşhir yok. Şu davada da hakim bunu yaptı denmiyor. Davanın bütün gidişatı üzerinden değil sonuçla ilgileniliyor. Bir evde zaptedilmiş ve tecavüz edilmiş 18 yaşındaki bir kıza bir hakim "Ertesi sabah neden dondurma yedin?" diye sorabiliyor ve biz bu soruyu açığa çıkaramıyoruz. O davayı izleyebilen 3-5 kişinin bilgisinde kalıyor. Biz kararları görünür kılabiliyoruz ancak.

Page 74, footnote 76:

Bartın'da Rengiye Mersinli davasında kayıda alınan duruşmaların yapılması bizi çok rahatlattı. Bir kere tanıklar oturtuluyor, su veriliyor, istediği kadar anlatıyor. Hiç daha önce böyle bir duruşmaya girmedik biz. Belki Bartın pilot bölge filan. Diğer duruşmalarda savaş gibi yaşadıklarımız.

Page 75, footnote 77:

İlginç bir şekilde büyük yerlerde, ben İstanbul'da da avukatlık yaptığım için biliyorum, çok kötü tutumları. Çok önyargılılar, ifade alırken de sorgularken de sizin taleplerinizi dinlerken ve zabta geçirirken de. Çok direnç gösteriyorlar, çok isteksizler. Ama mesela küçük yerlerde çok daha iyi tutumlarla karşılaşabiliyoruz.

Page 76, footnote 78:

Taciz tecavüz davalarında, haksız tahrik konuşulduğunda, bir eyleminin meşruluğu tartışılıyor, (*sanığın*) eylemi icra etmiş olması değil. Tersten bükülüyor yani. Eylemin gayrimeşruluğunu ne kadar ispatlayabilirsen dava o kadar lehine dönebiliyor. (…)

(*hakimler*) Kadının maruz kaldığıyla pek ilgilenmiyorlar. Biz bir kadın olarak ne hissedildiğini anlatmaya çalışıyoruz. Olmuş, bitmiş, ölmüş, beden, ya da bir şekilde tecavüze uğramış, maruz kalmış, sınırları ihlal edilmiş bir varlık olarak, obje olarak görüyorlar. Eylemin kendisi değil, ahlaken karşılığı tartışılıyor. Cinayet davalarında da bu böyle, taciz tecavüzde de.

Page 76, footnote 80:

Türkiye'de çok fazla dava var, bir adam veya kadın günde 40-50 dosyayla duruşmaya çıkıyorsa onların hepsine ancak 2 cümle verebiliyor, bir tanık biraz fazla konuşunca "kısa kes işim var" diyebiliyor. Uzun yıllar önce bir mahkemede 30 yıllık bir evlilik sonra eriyor ve benim tanığım konuşuyor ve hakim birdenbire "tamam tamam işim var çok konuşma kısa kes" der demez geldiler bana. "Bir dakika beyefendi" dedim, "biz burada aşk ve maceralarımızı anlatmıyoruz. Bir insanın 30 yıllık ömrü hakkında karar vereceksiniz ve bu da iş. Eğer dinlemeye sabrınız yoksa orada oturmayın bırakın dinleyecek birisi gelsin" dedim.

Page 77, footnote 81:

hakimin böyle (*dikkatsiz ve kaba*) tavırlarında sen ona hukuğu hatırlatıyorsun. Ama "böyle bir soru soramazsın" demek anlamlı. (*bir cinsel taciz davasında*) "Savcının suratındaki sırıtmayı tutanağa geçirin" demek kendisine getirdi adamı. Gülmeyeceksin kardeşim, yas tutmanı beklemiyoruz ama bir zahmet saygı duy! Had bildirici bir tarafı var toplu takip etmenin, gerekirse o öfkenin toplu bir şekilde karşıya geçirmenin kesinlikle faydası var.

Page 77, footnote 82:

mahkeme düzenin kendisi itibariyle durum şu: tepede duran bir adam ve aşağıda duran ve dert anlatmaya çalışan bir düzine kadın. Mahkeme başkanları kendini çok büyük iktidar sanıyor. Bir de kadın avukatlara dönük bir güya nezaket var "tamam da avukat hanım" derler böyle, bir erkek avukata böyle davranmazlar. Karşısında 30 tane kadın avukat varsa hakim de o yapay nezaketi göstermiyor, tabii karşısında güçlü, öfkeli, sözünü söyleyen kadınlar olduğunda daha çok öfkeleniyor. Mağdur vekili olduğun halde sanık vekilinden çok seninle kavgası vardır hakimin. Orada kalabalık görmeye çok gıcık olur, mahkemeyi baskı altına almak istiyorsunuz der. Birazcık orada mahkeme sanıkla yan yana düşüyor. Bir de tabii ben objektifim demek, etkilenmem demek için ekstra bir güç gösterisinde bulunuyor. Avukata öfkesinden çok ise aktiviste öfkesi var. Biraz da ailelere mesaj, feministlerle örgütlenmeyin, bu geri teper diyor.

Page 78, footnote 83:

Şimdi biz politik savunma yapmaya çalışıyoruz ya, günde 3 kadın öldürülüyor filan diyoruz, bu sorunda sizin de üzerinize düşen bir sorumluluk var, farkında mısınız, siz de ortak mı olacaksınız diyoruz, yoksa buna karşı bir şey yapacak mısınız? Bunları gazetede okuyoruz zaten, magazinleştirmeyin diyor mesela.

Page 78, footnote 85:

DGMler aslında avukata alışmışlar, ama Ağır Ceza'lar alışmamışlar avukata. Avukatın "hayır bunu yazamazsınız" gibi DGM'lerdeki cevval mücadelesi, burada kadın cinayetleri dosyalarında müdahil avukatların yaptığı şey, buna alışmamışlar. Burada şu tavırdalar "biz zaten koruyoruz kadının hakkını", "biz zaten gereğini yaparız, sen kim oluyorsun" gibi. DGM'deki sanık avukatlığı çok farklı. Şikayetçi vekilisin, mağdur vekilisin ya burada. DGM'de bir gelenek oluşturulmuş sol avukatlar tarafından, avukatlara normal Ağır Ceza Mahkemeleri'nde davrandıklarından daha edepli davranmak zorundalar. Ağır Ceza'larda da kadınlar, feminist avukatlar hakimlere hakimliği öğretiyor bence. Burada böyle yapamazsın diyorlar.

Page 80, footnote 87:

İşin içine adalet sistemi girdiğinde, bir hiyerarşi var, onun en üstünde olan mahkeme heyetinin başkanı, başsavcılar da öyledir ama, heyet başkanı hakimler en tepede. O mekanizma mevcut hukuk kurallarını da çiğneyerek işliyor. Özellikle kadınlara, yoksullara, güçsüzlere yaklaşımda ciddi bir ayrımcılık söz konusu. Bugünkü duruşma (*yukarıda bahsedilen*) için de, yasalara göre mahkemeler alenidir, isteyen herkes izleyebilir özel bir yasak, kapalılık yoksa. Hatta mahkemeyi izlemek isteyen çoksa ona göre salon da ayarlamak durumundadır. Bugün başkan içeri kimseyi almadı. Elindeki dosyaya bakıyor: basit cinsel saldırı. İsimlere bakıyor, avukatlara bakıyor, dokunulmazlar var mı filan, istediğimi alırım, istediğimi almam gibi bir tavırda bulunuyor. Sen içeri girmek istediğinde "sen kimsin" deme hakkını görebiliyor.

Page 81, footnote 88:

Mahkemelerin aleniyeti ve vatandaşın ya da mağdur tarafların yakınlarının bilgiye sahip olma hakkı bir insan hakkı aslında. Sen davanın asıl öznesi değilsin. davanın destekçisisin bir feminist olarak. Zaten cinsel saldırıya uğrayan kadın kendini ifade etmekte zorlanırken, oradaki bir kavga ortamının davayı nasıl etkileyeceğinden korkuyorsun. İkincisi, orada davanın avukatları var, aynı zamanda feminist avukatlar, biraz da onlara bakıyorsun.

Page 81, footnote 89:

Sevim'in arkadaşları olarak hemen biraraya gelip feministler olarak davayı takip etmeye karar verdik, Mor Çatı da bir açıklamayla kadın örgütlerine çağrı yaptı ve süreç başladı. Acelecilik ve acemiliğimizden olsa gerek, aile erkek avukat tutmuştu. Avukat bizleri tanıyan bilen bir avukattı, yine de her seferinde duruşmalar bitinceye kadar sakin durmamızı, aksi halde heyetin olumsuz etkilenebileceğini söyledi kibarca. Biz de kibarca onu hiç dinlemedik. Davanın başladığı gün oldukça kalabalık katılımlı bir basın açıklaması yaptık. Sonrasında feministler olarak davayı düzenli takip ettik, basının davayı baştan sona takip etmesini sağladık. Yer darlığı bahanesiyle bizi duruşma salonuna hiç almadılar. Dava ile esas olarak dışarıdan takip şeklinde ilişkilendik, hep koridorda bekledik, Sanığın salona getirilmesi ve götürülmesi sırasında ortalık iyice hareketleniyordu, asayişi sağlamak için bazen takviye polis geliyordu, aile çok öfkeliydi ve bu öfke hepimize geçiyordu.

Page 82, footnote 90:

Bir şey değiştirmiyor, haksızlık etmek istemem ama, genellikle kadınların daha keskin bir tavrı olduğuna denk geldik. "Benim başıma neden gelmiyor?" sorusunu soruyorlar. Lanet empatiyi kura kura oradan kuruyorlar! Ezilenler daha kolay düşman olur birbirine, ezenler her zaman daha kolay dayanışır!

Page 82, footnote 91:

S.'in tecavüz davasında heyette bir kadın vardı. Kadından şöyle bir his aldım: söylenenlere inanıyordu çünkü kadınların hayatlarından böyle şeyler geçiyor, hepimizin hayatında bir cinsel taciz hikayesi vardır, basit cinsel saldırı özellikle. Şiddet bir şekilde vardır. Heyetteki kadın için de geçerli. Ben biraz daha empatiyle bakabileceklerini düşünüyorum.

Tersine bir durum da şöyle olabilir: mevcut hukuk sistemini yaracak, kuralları ters yüz edecek davranışlar kararlar ve tutumlar saygınlığı azaltabilir. Zaten mahkeme başkanı kadın olabilmek çok zor bir şey. Ö.'nün (*bir tecavüz davası*) duruşmasında başkan kadındı. İfade alırken inanılmaz düzgün davrandı. Ama kararda bir değişiklik olmadı. Tecavüzden ceza almadı. P.'ın duruşmasında da başta başkan kadındı. Tutumu yumuşak oluyor ama

sonuç değişmeyebiliyor. Orada kadının beyanı esastır işlemiyor. şüpheden sanık yararlanır işliyor.

Page 87, footnote 96:

Hakimler çok erkek ve sorular da çok erkek oluyor. (*mağdur*) Kadınların biraz daha içine kapanmalarına neden oluyor bu. Daha tepede 2 ya da 3 adam, karşında sanık, derli toplu giyinmiş duruyor, çok zorlayıcı bir durum. Bir de genelde bu davalarda tanık olmadığı için ve adamlar sürekli inkar ettikleri için kadınlar kendilerini daha da sıkıştırılmış hissedebiliyorlar. Kendimi nasıl anlatırım, nasıl inandırırım diye bir dert var. "Yalan söylüyor hakim bey!" gibi bir şey demek mümkün değil televizyonlarda olduğu gibi. Bunun denebileceği ne bir sistem var ne de kendini o kadar güçlü hissedebileceğin bir ortam var.

Page 88, footnote 99:

Şüpheden sanık yararlanır prensibini ben kabul ediyorum ama bunun uygulandığını ben birtek kadın cinayeti ve tecavüz davalarında gördüm. Asla DGM dosyalarında sanık şüpheden yararlanmadı!

Page 88, footnote 100:

mesela Sincan dosyasında, kadın özel dersten dönüyor, durakta otobüs beklerken yanına yaklaşan bir araca iki adam alıyorlar, tecavüz ediyorlar, aralarında öldürelim mi öldürmeyelim mi diye konuşurlarken, kadın bundan kurtarmak için kendini, aslında ben çok da kötü hissetmedim, hatta hoşuma da gitti, sonra görüşelim biz sizinle, beni eve bırakın diyor, öldürülmekten kurtulmak için resmen yalan söylüyor ve mahkeme şunu sorguluyor neden öldürülmedi ki? (..) Fiziki bulgular var, meni örneği alınmış, adamlardan birine ait olduğu da ispatlanmış ama tutuksuz yargılanıyor çünkü hakim "gönüllü ilişki" diyor. Tecavüzden "ilişki" diye sözediyor. "İlk ilişkin mi?" diye soruyor. Müdahale ediyorsun: "Tecavüz bir ilişki biçimi değildir, tecavüz bir saldırı eylemidir." "Kaldı ki bunu sormaktaki amacınız bekaretse bekareti soramazsınız bunun hukuki karşılığı yok" diyorsun, "ben hakimim her şeyi sorarım" diyor. Yani diyor ki, ahlaklı kadın tecavüze uğramaz, ya da belki de bu tecavüz değildir.

Page 89, footnote 101:

Küçüğün rızası olmaksızın cebir veya şiddet kullanılarak eylemlerin gerçekleştirilmesi *(durumunda)* TCK 414/2 fıkrasının uygulanması gerekecektir, bu durumda küçüğün rızasının olup olmadığı uygulanması gereken madde fıkrasının belirlenmesi bakımından zorunludur.

Adli Tıp kurumu ihtisas dairelerinin tespitine gore mağdurenin olay tarihindeki gerçek; yaşı 15'tir. Ayrıca aynı ihtisas kurullarınca mağdurenin, mağduresi olduğu olayların ahlaki redaetinin farkında olduğu, olaylara manevi olarak karşı koyabilecek durumda olduğu belirtilmiştir. (…) Bu hali ile, mağdurenin meydana gelen olaylarda tamamen iradesiz olmadığı, sanıklar Emine ve Türkan ile gerek sanıkların işyerine veya evlerine gerekse de açık alanlara giderek sanıklarla para karşılığı ilişkiye girdiği anlaşılmaktadır. Sanıkların mağdureye karşı kullandıkları maddi veya manevi bir cebir unsuru bulunmaması, mağdurenin yaşının da kanunun suç olarak kabul ettiği 15 sınırında olması nedeniyle, sanık Türkan ve Emine dışındaki sanıklar için cezalar alt sınırdan tayin edilmesi gerektiği kanısına ulaşılmıştır.

Page 92, footnote 104:

Kadının beyanının esas alınması ezilenin, tahakküm, şiddet/taciz altında olanın kendi ezilmişliğini dile getirmesi, buna karşı çıkabilmesi, yani kendisini kendi ezilme deneyiminin öznesi kılabilmesinin olanağını sağlamak içindir. (…) Erkeğin kadının rızası olduğunu "sanması", her daim "yanlış anlaması", "teklif ettiğini düşünmesi" bir şey

değiştirmez. Burada mesele deneyimin öznesi olarak kimi gördüğünüzdür, kimin yaşantısını temel aldığınızdır. Kadının beyanını esas almak, nesneleştirilmesine karşı politik özne olarak kadını almaktır; kadının hayır dediğini veya gayet olağan ki diyemediğini kendi erkek egemen zihninde bir türlü algılayamayan, yanlış anlayan, gayet güzel anlasa da devam eden erkeği değil.

Page 92, footnote 105:

Sanığa iftira etmeleri için herhangi bir neden bulunmayan mağdurelerin aşamalardaki samimi anlatımları, yeminli tanık beyanları ve tüm dosya içeriğinden, isnad edilen eylemleri gerçekleştirdiğinin anlaşılmasına göre mahkumiyetine karar verilmesi gerekir.

Page 95, footnote 109:

şikayetten galiba bir yıl sonra filan mahkeme Adli Tıp Kurumu'na göndermeye karar vermişti. Adli Tıp da yanılmıyorsam bir buçuk yıl sonraya tarih verdi. Öyle bir mekanizma ki, çok uzaması değil sadece, aslında kendini iyileştirip yeniden hayata tutunmaya çalışan bir kadın var ve bir buçuk yıl sonra heyet önünde her şeyi yeniden anlatmasını bekliyoruz. Her seferinde yeniden yeniden o yaranın deşilmesi anlamına geliyor.

Page 95, footnote 110:

ATK 6. İhtisas Kurulu'nun 26.08.2011 tarihli rapor içeriği ve raporda mağdurede tespit edilen depresyonun cinsel saldırıya bağlı olabileceği gibi, cinsel saldırı olmaksızın başka olay ve/veya olaylara bağlı olarak gelişen psiko sosyal stres ve çatışmalar sonucunda olabileceğinin belirtilmiş olması (…)

Page 97, footnote 112:

Biz platformdan (*davaları birlikte takip ettikleri Adana Kadın Platformu*) önce de Aysel'le iki kadın cinayeti dosyasına katılmak için çabaladık. İki kadın aynı hafta içerisinde öldürülmüştü, biz girelim katılma talebinde bulunalım demiştik kendi kendimize, tabii ki kabul edilmemişti, ailelerden de vekalet alamamıştık. Vajinasına kurşun sıkılan bir kadın vardı, bir de annesini öldüren bir adam vardı, bu ikisi aynı hafta içindeydi, biz de ne yapalım diyorduk ama örgütlü de değildim, o dosyalarda giremedik işte. Aile neden giriyorsunuz, siz bizim avukatımız değilsiniz dedi. Dışarıdan takip ettik, izleyici olarak katıldık, her duruşmaya gittik. 2006'lar filandı.

Page 98, footnote 113:

Tam eşit görmüyoruz. Aktivistle, politikanın içinden gelmeyen mağdur arasında da bir hiyerarşi var. Mesafeli, fazla korumacı ve fazla gözeten bir ilişki olduğunu düşünüyorum. Gerçekten de şiddet yaşamış kadınlar bunu ifade ettikleri andan itibaren iki katı yük yükleniyorlar, şiddeti politikleştirmek, davalaştırmak en az şiddet görmek kadar yük. Şiddet görüyor olmak seni güçlü kadın olmaktan aşağı çekiyor, iş yerinde, ailende, çevrende öyle algılanıyorsun. şiddeti saklamak kadınları güçlendiren de bir şey: ben şiddet görmem, ben o kadınlardan değilim, demek güçlendiriyor. Biz de eğer politikanın içinden bir kadın değilse onunla ilişkimizde mağdurluk öne çıkıyor, mağduriyet ve özne olma arasında gidip geliyoruz.

Page 99, footnote 114:

Mağdurla dayanışma ve ilişki kısmını ihmal ediyoruz gibi bir his oldu bende. Biz hukuki kısmını avukatlar ve aktivistler olarak takip ediyoruz ama mağdurla ilişkimiz yok. Bizim sorun olarak bu süreçte tespit ettiğimiz şeylerde biraraya gelmiyoruz. Bir avukatla mesela annenin ilişkiye geçip sonrasında o ilişkinin hep tek kişi üzerinden devam etmesi yanlış. (…) Davaya başladığı noktada neredeyse mağdur, hala intihar etmek istiyor, hala kendini kirlenmiş hissediyorsa, orada da bir sorun var, feministlerle birlikte dava takip etmesinin,

elbette her şeyinin değişmesinden söz etmiyorum, ama en azından bu kısma dair bir merak duyup, yaa orada ne oluyor, sorması, gelmek istemesi önemli bir şey.

Page 99, footnote 115:

Bir yanıyla, sanki kadınla aramdaki duygusal mesafeyi korumam gerekiyormuş gibi hissediyorum, işi hukuki olarak tutabilmek için. Beni de o yargılamanın öznelerinden biri gibi, kendi eşi, dostu, arkadaşı gibi değil de, yaptığım işin teknik bir iş olduğunu, dolayısıyla başarısız olabileceğini görsün istiyorum. Bana çok da fazla umut bağlamasın, bir duygusallık geliştirmesin diye düşünüyorum bir yanıyla. Bir yanıyla da, onun tarafına geçip Allah mahkemenin de belasını versin diye sövüp saymaya başlıyorum, onun mağdur durumuyla kendimi özdeşleştiriyorum. Aradaki dengeyi bulamıyorum.

Page 105, footnote 119:

Özür dileyerek soruyorum, hem size hem de salonda bayanlar var, "hayatımda biri var, seni ilgilendirmez" cevabını alan hangi Türk erkeği tepki vermez?

Page 107, footnote 122:

Demet'in dosyasındaki hakim Yargıtay'ı çok iyi bilen bir hakim. O erkek zihniyetiniyle verilecek kararı, yani sanığın "bana hakaret etti, öldürdüm" ifadesini görecek, burada haksız tahrik uygulayacak Yargıtay, bunu bilen bir hakim. Bizim bütün çabalarımız sonucu haksız tahrik uygulanmadı bu dosyada. Karar çıktıktan sonra ben bir şey için gittim hakimin odasına, hakim döndü dedi ki "neden bu kadar uğraşıyorsunuz bu dosyayla? Bu dosya dönecek haksız tahrik'ten." Adam biliyor bunu. Hakikaten Yargıtay Cumhuriyet Başsavcısı haksız tahrik uygulansın dedi, daha mahkeme henüz karar vermedi. Birbirlerini çok iyi biliyorlar hukuk anlamında.

Page 107, footnote 123:

Aynı şekilde tasarlamadan da çok zor veririz gibi bir mutabakat var. Bıçakla görüşmeye gitmek tabii ki tasarlama sebebi olmalı. Ama tasarlama maddesi açık bir madde değil. İyi hal indirimi keza. Muğlak terimler. Özellikle muğlak bırakılmış. Sanıklar da bunu öğrenmişler artık. Yargıtay zaten sorgulama yapmıyor sadece dosya üzerinden değerlendiriyor. Bizim katılma şansımız yok, bu da korkunç bir şey. Sonuç itibariyle, bize ne kadar şov yapıyorsun diyen hakim bizim tutarlı ısrarlı duruşumuzla haksız tahrik uygulamadı. Ama gönlünden geçen uygulamaktı. Yavaş yavaş sirayet eden bir gücümüz var. Yavaş ama etkili. 5 Ağır Ceza varsa 5'i de bizi biliyor. Ha bu dosyayı bunlar takip edecek diyorlar.

Page 109, footnote 125:

Eylemin tasarlayarak işlendiğini (*Tuğçe'nin avukatları*) iddia etmişler ise de, tasarlamadan söz edilebilmesi için failin bir kimseye karşı belli bir suçu işlemeye sebatla ve koşulsuz olarak karar vermesi, suçu işlemeden once soğukkanlı ve sükunetle düşündükten sonra ulaştığı ruhi sükunete rağmen bu kararından vazgeçmeyip, ısrarla bu akış içerisinde fiilini icraya başlaması gerekmekte olup sanığın insan öldürme suçunu önceden verdiği kararla, ulaştığı ruhi sükunete rağmen bu kararından vazgeçmeksizin ısrarla icraya başladığına ilişkin delil elde edilemediğinden sanık Malik En'in ani bir kararla suç işlediği mahkememizce kabul görmüş (…)

Page 109, footnote 127:

Sanığın eşi olan maktuleyi öldürmeye karar verdiği, yaptığı planı sebat ve ısrarla uygulamaya koyduğu, tasarlanan eylem ile icrası arasında geçen sürede kararında vazgeçmediği hususlarının sübut bulmadığı, sanığın öldürme kararını ne zaman verdiğinin kesin olarak belirlenemediği anlaşılmakla (…)

Page 113, footnote 129:

mağdurda en azından dışa yansıyan depresyon veya başkaca belirtilerin fark edilmesi beklenir iken, mağdurun 2007 Aralık ayına kadar sosyal yaşamına tamamen normal olarak devam etmesi, hatta bir müddet daha sanıklardan Murat Külcüoğlu ile arkadaşlığını devam ettirmiş olması da, aksinin iddia edilmesi mümkün olmakla birlikte yaşamın olağan akış kurallarına mahkememizce fazlaca uygun bulunmamıştır.

Page 113, footnote 130:

son celsede kalktım konuşmaya başladım 20 sayfa dilekçeydi belki başlıklar halinde anlatmaya çalışıyordum, savcı önündeki kitaptan ve laptoptan bir şeyler karıştırıyordu, dinlemediğini bize hissettirmek için elinden her şeyi yapıyordu. Başkan dinliyordu ama onda da bir daralma hissi vardı. Ben sanığa hiç bakmadım zaten. Mütalaada bize şunu söylüyordu, her ikisi arasında bir ilişki olduğunu örtülü olarak kabul ediyordu, rıza kelimesi asla geçmiyordu ama o anlatıdan çıkarılabilecek yegane sonuç buydu. Aslında bir birliktelik var ama bu zora dayanmıyor (...) Başkan bizi dışarı bile çıkarmadı, düşünmedi bile. Ordayken kararı açıkladı. mütalaaya değil, şüpheden sanığın yararlanması ilkesine, yani yeterli delilin olmamasına dayandırdı. Beraat kararını verdi. ben bir süre konuşamadım yerimde kaldım.

Page 115, footnote 131:

Kanunların nasıl uygulanması gerektiği konusunda yargıçların mantalitelerinin çok büyük anlamı var. Mesela, yeni TCK 2005'te yürürlüğe girdi, töre saikiyle öldürme ağırlatıcı sebep o zaman sayıldı, fakat, 2004'te Şanlıurfa Ceza Mahkemesi töre cinayetinde hiçbir hafifletici sebep görmedi, ağır cezayı uyguladı ve cinayete karar veren bütün aile meclisi üyelerinin de hepsine en ağır cezayı verdi. Kanun eski kanundu, yıllardır uygulanıyordu ve pek çok erkek bu kanundan yararlanarak cezadan yırttı. Ama aynı kanunu bazı yargıçlar faklı şekilde de yorumlayabildi. Bizimse yılmadan bıkmadan aynı şeyleri vurgulamamız gerekiyor.

Page 118, footnote 132:

Bizim hukuka ilişkin önerilerimiz davalardan çıkıyor. Sevim Zarif davasına kadar haksız tahrik meselesinin bu kadar farkında değildik. Biz ilk o zaman kadın cinayetlerinin politik olduğunu bu kadar düzgün söyledik, haksız tahrik'in derinliklerine o zaman girdik. Dava takibi olmadan politikanın feminist hareket açısından kısır kalacağını düşünüyorum, o yüzden dava takiplerine devam etmemiz gerektiğini düşünüyorum. Bizim sorunumuz şu: biz davaları seçmiyoruz, davalar bizim önümüze birinin yakını, diğerinin arkadaşı, tanıdığı şeklinde geliyor ve mağdurun istediği ölçüde politikleştirebiliyoruz. Politikleştirme de aldığımız dava sonuçlarıyla olacak. Ve davalardaki savunmalarımızla olacak. Yasaları değiştirme imkanı da politik mücadeleden geçiyor. (...)

Page 122, footnote 133:

feminist avukatların ve aktivist müdahil izleyicilerin dava takip etmeleri, sanık için kabus, mahkeme için baskı, mağdur/aile için destek ve kendileri için ise sonuç ne olursa olsun mücadele anlamına geliyor.

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