FEMINIST LAWYERS IN ISTANBUL: RE-THINKING THE BOUNDARIES BETWEEN THE LEGAL AND THE NON-LEGAL

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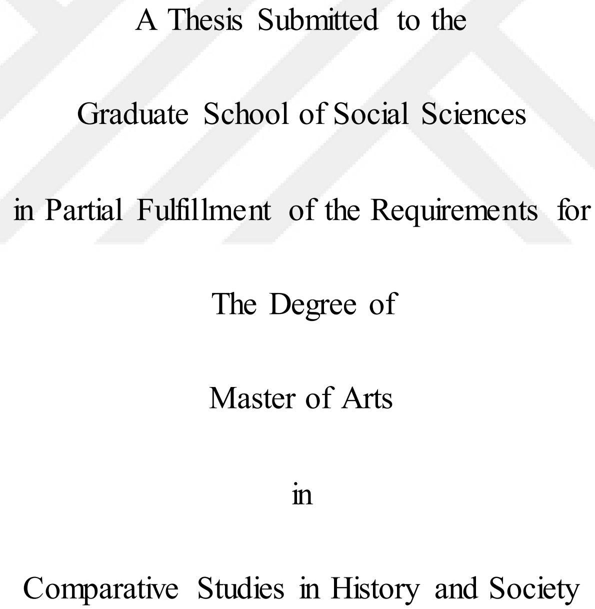
by Fulya Pınar



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This thesis scrutinizes the inclusion, approaches, and roles of feminist lawyers in İstanbul to the legal field through law-making and litigation processes. Although feminist lawyers are trained in law, which claims itself to be neutral and equally distant to all citizens, they do not only exist as legal experts and lawyers in the legal field, but also as activists. This study demonstrates that feminist lawyers maintain their struggle without abandoning any of the three (legal expertise, lawyering, activism) and their existence harbors unique potentials and conundrums, without adhering to binary oppositions between lawyering and activism, and the legal and non-legal. Based on the interviews with feminist lawyers and observations in the meetings with women's organizations, first, I historicize how law is constituted as a field of struggle by women. By doing so, I explain how law became a modifiable and highly-contested field of struggle, as well as women's different focuses and modes of solidarity. Following that, I trace how feminist lawyers' legal expertise, lawyering experiences, and activism intermingle throughout their relations with state institutions, authorities, and developments in the transnational arena. Lastly, I elaborate how they maintain their activism and lawyering in the court rooms, along with their experiences and strategies.

Keywords: Feminism, activism, professionalism, feminist lawyers, feminist strategies, law-making, litigation, Turkey.

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İSTANBUL'DAKİ FEMİNİST AVUKATLAR: HUKUKSAL OLANLA HUKUKSAL OLMAYANIN SINIRLARI ÜZERİNE YENİDEN DÜŞÜNMEK

FULYA PINAR

Bu tez İstanbul'daki feminist avukatların yasa yapımı ve dava takibi üzerinden hukuksal alana dâhil olmaları, yaklaşımları ve bu süreçlerdeki rollerini incelemektedir. Feminist avukatlar kendini nötr ve tüm vatandaşlara eşit mesafede atfeden hukukun eğitiminin içinden geçseler de, hukuksal alanda yalnızca hukukçu ve avukat olarak değil, aynı zamanda aktivist olarak var olmaktadırlar. Bu çalışma feminist avukatların bunların (hukukçuluk, avukatlık, aktivizm) herhangi birinden feragat etmeden mücadelelerini sürdürmeye çalıştıklarını ve bu var oluşlarının özgün potansiyel ve açmazları barındırdığını, avukatlık ve aktivizm ile hukuksal olan ve olmayan arasındaki ikili karşıtlıklara dayanmadan göstermektedir. Feminist avukatlarla yaptığım görüşmelere ve kadın örgütleriyle katıldığım toplantılardaki gözlemlerime dayanarak, ilk olarak kadınlar tarafından hukukun bir mücadele alanı olarak kuruluşunu tarihselleştiriyorum. Bunu yaparak, özellikle 1980 darbesinden sonraki süreçte hukukun kadınlar için müdahale edilebilen ve oldukça çekişmeli bir mücadele alanı olarak ortaya çıktığını anlatıyor ve kadınların farklı odak ve dayanışma biçimlerini açıyorum. Daha sonra feminist avukatların yasa yapım süreçlerinde devlet kurumları, bürokratlar ve uluslar ötesi gelişmelerle ilişkilenmeleri boyunca hukukçuluklarının, avukatlık deneyimlerinin ve aktivistliklerinin nasıl iç içe geçtiğini takip ediyorum. Son olarak kolektif dava takipleri süresince mahkeme salonlarında aktivizm ve avukatlığı nasıl sürdürdüklerini, bu alandaki deneyim ve stratejilerini aktarıyorum.

Anahtar Sözcükler: Feminizm, aktivizm, profesyonellik, feminist avukatlar, feminist stratejiler, yasa yapımı, dava takibi, Türkiye.

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CHAPTER 1

INTRODUCTION

> The predominant (or perhaps, more accurately, default) tendency is to engage with law as if it is, or aspires to be, a discrete and systematized framework of norms which can be comprehended independent of the wider context from which it emerges, and navigated through the effective deployment of a methodologically neutral approach understood as legal reasoning.
>
> (Conaghan, 2013: 15)

This quotation is taken from Joanne Conaghan's book, Law and Gender (2013). By these words, she criticizes the dominant tradition of engaging with the law as in text and practice in the legal field. Law identifies itself "as a discrete and autonomous field of discourse, perception, and practice which is distinct from the domains of the social, political, and cultural" (Conaghan, 2013: 26). Therefore, it claims to have the ability to independently and autonomously select what is relevant and valid, and to exclude what happens outside, i.e. in the social, political, and cultural fields. As a body of knowledge, it sets itself different from all other knowledges, claims to be neutral, objective and at equal distance to all citizens of a society. It alleges to accumulate each unique experience under certain clauses and only gives credit to narratives that are relevant to those clauses. Accordingly, being involved in the legal field requires acknowledging and not questioning its claims and adhering to the "discursive conventions" of the law (Conaghan, 2013: 107).

According to Carol Smart, while claiming its power as a neutral and distinct field that decides what is "true" and what is not, the law constructs itself as a "superior and unified field of knowledge", which hardly gives place to other voices that challenge its power, one of them being feminism (Smart, 1989: 4). Feminist approach to law deconstructs the unity of law by separating the language, content, interpretation, implementation, and practice of the law, as well as law-making processes from each other, and tracing the systematic power relations behind the operation of law that create and reproduce gender inequalities. It challenges the abstract ideas of "equality" and "rights" that reinforces law's claim to be neutral and objective, and the boundary-making power of law through which it separates the political from the private, and acceptable accounts from the unacceptable (MacKinnon, 1989; Smart, 1989; Siegel, 1996; Childs & Ellison, 2000; Schneider, 2000; Kenney, 2008). Law is neither a neutral and unitary field, nor a set of top-down normative rules for feminists. It is a political field in which decisions and differentiations regarding women's position and accounts are made.

The apparent irreconcilability of law and feminism was where I started to think about the subject of this thesis. As I was volunteering for different women's organizations and participating in the meetings of feminist groups and collectives in İstanbul, I met feminist lawyers struggling for better legal texts and implementations. Together with other feminist activists, they were participating in the street protests, informing women about the rights they have, attending meetings with state authorities to discuss new legal reforms, and questioning the gendered interpretations and practices of the judges, as well as discourses of the government officials. They were maintaining their existence as lawyers in the legal field, while criticizing the discourses of the governmental officials and practices of judges, as well as the language and content of

law. Feminist lawyers neither idealized legal texts and implementations as neutral and objective, nor avoided struggling within the legal field altogether. Thus, I started this study by asking how feminist lawyers relate themselves with the law-making processes and practices in court rooms as lawyers, legal experts, and activists. My aim in this thesis is not to address if law is as distant, neutral, and objective as it claims. Rather, I want to understand and demonstrate how feminist lawyers, trained in law schools and organized in feminist groups and collectives, struggle within and against the highly-contested field of law.

Feminist lawyers learn how law operates, how legal texts are made, how to defend a case, how to make claims, and produce evidence in law-schools. They need to improve themselves in their professions to better engage with the legal field. On the other hand, they politicize women's cases in the court rooms and use legal texts against the state institutions and authorities which/who maintain gendered approaches towards women and fail to take women's experiences and needs into account. Moreover, as feminists, feminist lawyers are a part of a broader feminist movement and work as activists in women's collectives and organizations. They listen to women's stories and provide legal, psychological, and emotional support to women in line with their investment in the ideology of feminist solidarity. Their connection to their "clients" is beyond their legal needs. Hence, for feminist lawyers, the legal field is not only a field to maintain their occupation, it is a field of struggle and solidarity.

Since 1980s, feminist mobilization against violence against women and against the language, content, interpretation and practice of law have been going hand in hand in Turkey. Feminist lawyers in İstanbul took great part in the juxtaposition of the struggle against violence and gendered contents and interpretations of law by organizing women for street protests, by forming platforms to inform women about the possibilities

of legal reforms, by lobbying for the change of legal codes and acts, and by politicizing women's cases on violence, women killings, and self-defense collectively. Feminist lawyers perceive all these processes as political, and fundamental in questioning the power relations.

Starting with the rule of Justice and Development *(Ak Parti-AKP)* party, since 2002, the legal field strengthened its place as a field of struggle by the impact of judicial transformations both in the national and international level. Throughout its first term, AKP started changing the judicial system in a more implicit way, such as replacing State Security Courts *(Devlet Güvenlik Mahkemeleri-DGM)* with Special Courts *(Özel Yetkili Mahkemeler-ÖYM)* in 2005, and its authority on legislation and adjudication had increased over years. After 2007, during its second term, AKP implemented new legal reforms, yet also created new modes of polarizations by oppressing various segments of society. Higher Board of Judges and Prosecutors *(Hakimler ve Savcılar Yüksek Kurulu-HSYK)* was continuously intervened by the government since 2007, endangering the independence of judges and prosecutors, and attenuating the idea that the law is neutral and objective[1]. In 2012, the AKP government established Anti-Terrorism Courts *(Terörle Mücadele Mahkemeleri-TMM)* in addition to the Special Courts, by transferring some duties of the Special Courts to the Anti-Terrorism Courts. In 2014, Special Courts were removed, and in 2015 they were brought back as Specialized

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[1]HSYK is a higher board of prosecutors and judges. Its duties are to decide which courts to remove, whom to accept into profession, assign, transfer and promote, and monitor judges and prosecutors. The Minister of Justice has been the head of HSYK.
In 2007, the Minister of Justice, Cemil Çiçek, and other members of HSYK had a crisis about the election of members to replace the retired ones. Other HSYK members claimed that Cemil Çiçek wanted to elect members by himself and raised difficulties against the independence of HSYK. In 2010, after the Constitution Referendum, the president and the minister were allowed to place more members to HSYK. In 2014, most decisions made by HSYK were transferred to the Minister of Justice, such as which judges and prosecutors to send for an MA or PhD degree, whom to be assigned in the international courts, the authority to investigate members of HSYK, whom to work in different units of HSYK, etc.

Courts *(İhtisas Mahkemeleri)*. Although these changes were presented in "democratization packages", more and more people ended up being prosecuted.

Following the juridical changes, the AKP government has been conducting extensive operations via cases such as Ergenekon, Balyoz, Group of Communities in Kurdistan *(Koma Civakên Kurdistan-KCK),* Gezi Protest, and Gülen movement through which large numbers of Kurdish people, leftists, army members, municipalities, unions, academicians, journalists, lawyers, judges, police officers, and students have been prosecuted and arrested. More recently, thousands of people were taken in the custody after the failed coup d'état in 15 July 2016. The current president Recep Tayyip Erdoğan declared a state of emergency for three months in 20 July 2016 to prosecute the suspects easily and to evacuate different forms of oppositions from the cadres. Along with transformations in the judicial processes concerning society directly and extensive operations towards people from different backgrounds, notions as evidence, forgery, presumption of innocence, custody, detention, pending trial, and acquittal have been circulating through media and organizations and superseded in daily lives of people in Turkey.

On the other hand, the political debates about the referendum on the new Constitution in 2010 and the recent amendment draft on the Constitution[2] again in 2016, leaving aside the political aims behind, reinforced ideas on involvement and having a *locus standi* as public in the legal field. While the domestic legal spectacle becomes stricter through the oppressions that the AKP rule has been leading, amendments of the Constitution keeps the ideas on reform and renewal hectic.

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[2] For more information on the new Constitution draft, please see: Sabah. (2010). *İşte anayasa paketi...* Retrieved from Sabah: http://www.sabah.com.tr/galeri/turkiye/iste_anayasa_paketi

Meanwhile, the Civil Code (2002), Labor Code (2003) Penal Code (2005), Criminal Procedure Code (*Ceza Muhakemeleri Kanunu*-CMK, 2004), and ratification of international treaties and conventions were undertaken during the AKP era. These more egalitarian laws and ratifications converged the AKP rule to the international human rights framework, especially on issues such as violence and torture. This might be conceived as being linked to the Copenhagen Criteria[3] which counts the improvement of human rights as one of the requirements for European Union membership or the Turkish state's relationship with the United States, which Falk defines as the "strategic partner of Turkey" (Falk, 2007). According to Babül, on the other hand, human rights were significant determinants in Turkey even before the European Union accession process, since they were a way to find a place in the "world society" of nation states (Babül, 2012: 16). In the meantime, violence against women has been more and more visible in news, speeches of politicians, and debates in the everyday lives of public. Although violence indicated diverse meanings for each, the importance of law on preventing violence against women was embraced by different actors.

By these tense transformations, the legal field started to permeate in what is social and political, and the social and political came to be introduced more and more in the legal field. Therefore, the boundaries between the legal field and other destinations of social struggle became blurred.

Feminist lawyers have been further blurring the boundaries of the legal and non-legal by their existence as feminist activists, legal experts, and lawyers in court rooms while litigating cases, as well as in assembly halls where they meet the state authorities

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[3] These criteria are the requirements that all candidate countries need to fulfill. For more information, please see: European Commission. (2012). *European Commission - Enlargement - Accession criteria.* Retrieved from European Commission: http://ec.europa.eu/enlargement/policy/glossary/terms/accession-criteria_en.htm

to discuss new legal reforms. My aim in this study is to show how they form the legal field as a field of feminist struggle, how they participate in and approach legal reforms regarding women, and how they litigate women's cases as lawyers, without abandoning any of their activism, legal expertise, and lawyering. Before delving deeper in these questions, I shall first explain how I approach this study by elaborating on how I entered into my research field, how I changed personally over time, and formed my methodology.

Meeting Feminist Lawyers, Transforming Personally, Conducting Research

In 2012, I started to participate in workshops given by Purple Roof Women's Shelter Foundation *(Mor Çatı Kadın Sığınağı Vakfı)*, a feminist organization in İstanbul that provides shelter for battered women and psychological and legal support to the battered women in need. In these workshops, voluntary social workers, psychologists, and lawyers working in the foundation were explaining ways to build solidarity with women. By the time, a new protection act for women, Law No. 6284 was recently enacted in Turkey, and feminist lawyers spent great amount of time explaining the new act, its shortfalls, and women's experiences while trying to benefit from it. I was mostly interested in the debates on this act, because I was struck by the stories of feminist lawyers.

The act itself was problematic. Instead of protecting women from violence, its title and content were stating that its aim was to protect the family. Instead of gender discrimination, its content was deliberately revolving around the notion of "sex" and violence arising from "sex differences", as if women were exposed to violence only because they were less powerful than men. Although, in practice, any woman exposed to physical, psychological, sexual, and economic violence had the right to benefit from

the act by going to the police station or family court, women's narratives were usually trivialized and women were sent back home by the officers, stating that these things happen between the husband and wife. These were things that I was familiar with before, as I already knew how gendered law as in text and in practice was operating in Turkey. The first surprising thing for me was that the feminist women, including lawyers, were invited by the Ministry of Family and Social Policies *(Aile ve Sosyal Politikalar Bakanlığı)* to prepare this act, and feminist women actually went to those meetings. The second one was that feminist lawyers were always giving references to international conventions such as Convention on Elimination of All Forms of Discrimination against Women (CEDAW), ratified in 1985, and İstanbul Convention, ratified in 2011, in their speeches. They were expecting the laws and implementations regarding women's needs from the legal field in Turkey to comply with these conventions.

The reasons why I was surprised were as follows: First, I was thinking that the state's approach towards women was obviously working to further subordinate women, especially after the conservative AKP rule. Therefore, I first questioned why feminist women sat down at the same table with the state, as well as why the state invited them to take their opinions about a law, when it does nothing to ameliorate women's subordinate position. Second, I thought that expecting national laws to comply with the international conventions meant idealizing the human rights framework. Hence, I questioned how feminist lawyers could approach women's experiences under human rights paradigm, which ignored male dominance and perceived any violence case from an equal distance. I thought that human rights could work for questioning the inequalities reproduced by the state, but would erase the "male" factor behind violence.

Therefore, I started my research with prejudices about feminist lawyers. How could they bargain with the state? How could they embrace the human rights framework? These vulgar questions drove me to trace the transformative features of the state and human rights framework on feminist lawyers. I thought that their activism would be bounded to the limits defined by the state and discourses diffused by the international conventions, and that they would totally lose something from their feminisms. As I met and had interviews with feminist lawyers, I gradually realized that I was not able to "confirm" my prejudices and have the answers I expected to get. My perceptions about the state, law, and feminism all changed throughout my research.

First, I realized that I assumed that feminist lawyers cannot challenge the legal method and preparation of the legal texts while participating in the law-making processes and court rooms as lawyers. I realized that I thought being feminist activists and lawyers at the same time was impossible. I realized I also reproduced the claim of the law to be a unitary, homogeneous, distinct, and higher knowledge. Second, I noticed that I saw the state as a unity, as if negotiating with the ministry meant bargaining with the state altogether, as if the state only works in a top-down manner and encapsulates all its institutions and authorities. And third, I realized that I assumed that mentioning international conventions would only work for reinforcing the human rights framework. I could not see that human rights operate in a more fragmented fashion, and using international conventions as a means for an end does not necessarily mean depoliticizing women's cases. In short, there were various binaries floating around my mind, and I was in a totally different mindset before I started this research than I am today.

This thesis will elaborate on feminist lawyers' participation in the law-making and litigation processes by approaching the notions of the law, state, human rights, and

activism in a manner that is the exact opposite of the assumptions mentioned above. I shall clarify some terms I repetitively use, to explain what I mean by the approach of this thesis better. "The legal field" includes the law in text and law in practice, although these two can only be separated in the abstract level when law is thought as a body of knowledge. The legal field is the abridgment of all the language and content of legal texts, as well as discourses, interpretations, and implementations during the practice of law in any place a person goes for legal support, such as the police stations, Bar Associations, and court rooms. "The state" is not taken as a unity in this thesis. Since it is rather a fragmented form consisting of various institutions and authorities, each operating differently, I specifically provide the names of institutions and authorities that feminist lawyers and the legal field relate themselves to during different processes. "Human rights" involves human rights as ideas, practices, principles, and human rights as a law as in international conventions that sets rules on the states. "Feminist activism" is separated from the legal expertise and lawyering for analytical purposes, although the three (activism, expertise and lawyering) can and will work hand in hand in the case of feminist lawyers. "Feminist activism" will refer to a political form of existence which carries the principles and aims of a broader feminist collective with itself.

At this point, it is important to explain how I conducted this study with feminist lawyers and how I describe what/who a "feminist lawyer" is. I conducted in-depth semi-structured interviews with 11 feminist lawyers face-to-face, and interviewed with one additional feminist lawyer via social media chatting and e-mailing between July 2015 and June 2016. I met the majority of feminist lawyers I interviewed in workshops and meetings of different women's organizations and feminist collectives, such as Rainbow Women's Association *(Gökkuşağı Kadın Derneği)*, Purple Roof Women's Shelter

Foundation *(Mor Çatı Kadın Sığınağı Vakfı),* Socialist Feminist Collective[4] *(Sosyalist Feminist Kolektif),* and İstanbul Feminist Collective *(İstanbul Feminist Kolektif).* The feminist lawyers I met through these organizations, although primarily volunteered for different women's organizations, are usually involved in multiple organizations and collectives I mentioned above. They usually know each other and work together in the feminist mobilization for legal reforms and litigation of women's cases. Two of them are senior feminist lawyers who have been involved in the feminist movement since the 1980s and were involved establishing many feminist organizations, including Purple Roof Women's Foundation, and women's rights center and commission of the İstanbul Bar Association. Four of the feminist lawyers I interviewed work as environmental lawyers, minority rights defenders, and human rights lawyers in different organizations as well.

I reached two of the feminist lawyers I interviewed through İstanbul Bar Association Women's Rights Center *(İstanbul Barosu Kadın Hakları Merkezi).* Although not volunteering for feminist organizations, both of these lawyers are working in collaboration with Purple Roof Women's Shelter Foundation while pursuing the cases of women and are inspired by the feminist movement while approaching legal reforms and women's cases. They see the legal field as a political field to struggle against the power relations that render women subordinate, and established forums, commissions, and centers which specifically deal with legal reforms and women's cases. In short, although having different interests other than feminist mobilization, all feminist lawyers I interviewed relate themselves to feminist movement in one way or another.

[4] Although Socialist Feminist Collective ceased its activities in October 2015, most women organized through it still work together in the İstanbul Feminist Collective and Purple Roof Women's Shelter Foundation.

I conducted the interviews in İstanbul, because İstanbul is Turkey's center of global meetings of the monitoring commissions of the international conventions and international organizations. Although these meetings might be held in Ankara or in other countries as well, feminist lawyers living in İstanbul are quite mobile. They actively participate in writing shadow reports for monitoring commissions of international conventions and filing cases for European Court of Human Rights (ECtHR), and lobbying activities throughout the law-making processes. I wanted to trace the impacts of these on feminist lawyers' activism and lawyering performances.

I supported the interviews with observational notes I took between 2014 and 2016 on one meeting on changes in legal texts, two workshops on volunteering for women's organizations, two forums in which what to put at the center of feminist struggle was discussed, one conference on sharing experiences of Turkey and European countries on standards, the legal texts, implementations, and experiences of women in the legal field in İstanbul, and one congress in Ankara in which violence against women, accessibility of legal texts and state institutions for women, refugee women's position in Turkey, solidarity with heterosexual, lesbian, bisexual, and transgender imprisoners, and abortion and birth control were discussed through specific workshops and more general speeches given by experts, such as social workers and lawyers. The general foci of the feminist activists as well as the broader women's movement regarding the legal texts and processes elaborated in this thesis are based on these notes unless I specifically give reference to the interviews and certain meetings. I ground the things I learnt in the forums, meetings, and conferences with some news and articles in the websites of the journals and feminist collectives in İstanbul.

In this thesis, I examine the roles of feminist lawyers in making the legal field a site of struggle, in the law-making processes, and in litigations of women's cases. I

divided this thesis into three chapters to elaborate on each of these three ways of feminist lawyers' inclusion in the legal field.

In the first chapter, I historicize women's movement starting with the late Ottoman era. In doing so, my aim is to demonstrate the political dynamics that are shaped by the governmental projects and developments in relation with the international arena. Moreover, revealing different modes of solidarities and particular focuses of women in different eras, I try to distinguish the post-1980 era from the others and show how the legal field became a highly-contested site of struggle for feminist women after the 1980 coup d'état.

In the second chapter, I follow feminist lawyers' narratives to understand and explain their approach to and existence and inclusion in the law-making processes. I elaborate how their legal expertise, lawyering experiences, and activism intermingled and how they related themselves with the legal reforms, law-enforcers, state institutions and authorities, and developments in the transnational arena during the law-making processes.

In the third chapter, I scrutinize feminist lawyers' experiences and strategies in the court rooms as lawyers. My aim in this chapter is to show how feminist lawyers maintain their activisms and lawyering in the court rooms, without abandoning either. I discuss the transformative potential of their entry in the court rooms and the strategies they embrace to build their credibility as lawyers. In the last chapter, I will summarize what I left behind, the dilemmas feminist lawyers experience in the legal field, in relation with the previous chapters.

All in all, the purpose of this thesis is to show how feminist lawyers participate in the making of the legal field a site of struggle, without adhering to binary oppositions

between working within and against law, between lawyering and activism, and between the legal and non-legal.

CHAPTER 2

THE LEGAL FIELD AS A SITE OF STRUGGLE

In recent years, Turkey's president Recep Tayyip Erdoğan has been gathering neighborhood headmen *(muhtar)* frequently in the presidential palace to give speeches. In one of his speeches in February 2016, Erdoğan mentioned a young university student Özgecan Aslan, who was atrociously beaten, stabbed and burnt by a man who tried to rape her in 2015:

> He [the head of the opposition party] says that women's killings are about the increase in unemployment. Does unemployment vindicate being a felon? That guy [the murderer] has a job, indeed he behaves ferocious and viciously during his work time. Their partisan press still defends them. They say that it is the anniversary of harrassment against women. They say they are doing this [dancing for the protest of One Billion Rising[5]] for the sake of it. I don't buy it! When *we* are passing through these days with these kinds of ferocities, we say prayer of al-fatehah[6] as *our* civilization, belief and culture requires to memorialize these.
>
> [Emphasis added]

He continues his speech by directly attacking feminist women in Turkey:

> I say that women are the custodial of god to men, and -you know those feminists?- those feminists stand and say that "What you say is an insult to

[5] An MP from Republican People's Party (CHP), Aylin Nazlıaka, joined to the One Billion Rising protest, but she said that the protest was a universal annual protest against violence against women and little girls, and was not for Özgecan: Milliyet. (2015). *O dans Özgecan için yapılmadı*. Retrieved from Milliyet: http://www.milliyet.com.tr/o-dans-ozgecan-icin-yapilmadi/siyaset/detay/2014917/default.htm

[6] A pray from Koran, the holy scripture of Islam.

women." Look, you [feminists] have no concern with our civilization, belief and religion. We follow what our dearest prophet says in his final sermon. He says that women are the custodial of god to men, and that we should respect, protect, and not hurt it. Actually, there is nothing to debate. But this is what they do! They are as visionless about the issue of the new constitutional presidential government [that AKP and Erdoğan proposes]. But I would like to express my gratitude to *our* Özgecan's father and mother on behalf of myself and *our* nation. After all that ferocity, they stay demurely[7]. *We* will not be emotional; we will stay at least as resilient as Özgecan's father and be sensitive in this way. *We* will not let our emotions dominate our will. *Our* conscience, will, and knowledge will dominate our emotions.[8]

[Emphasis added]

This was not the only public speech of the president Erdoğan, former prime minister and the head of the Justice and Development Party (AKP), through which he publicly announced his antagonisms towards certain practices and attacked feminist women. Moreover, provocative speeches of the representatives of the ruling party regarding women's everyday lives usually accompanied Erdoğan's speeches. For example, on 8 March 2008, Erdoğan urged women to have at least three children (Çetik, Gültekin, & Kuşdemir, 2008). In 2012 he announced that abortion is not different than the Uludere Massacre, a mass murder of Kurdish people by the Turkish Armed Forces and that he is

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[7] Özgecan's parents sent black head scarves to Erdoğan and wrote a note stating that they believed that the perpetrators will be punished heavily. And when justice is served, they would go visit the President in person with white head scarves: Çetin, Ü. (2015, February 18). *Hürriyet Gazetesi*. Retrieved from Hürriyet: http://www.hurriyet.com.tr/ozgecan-in-ailesinden-erdogan-a-siyah-basortusu-28235198

[8] Erdoğan gathered 382 neighborhood headmen around 10 cities in Turkey for this particular meeting: Cumhuriyet. (2015, February 17). *Özgecan için açıklama yapan Erdoğan: Bu feministler falan var ya.* Retrieved from Cumhuriyet: http://www.cumhuriyet.com.tr/video/video/216305/Ozgecan_icin_aciklama_yapan_Erdogan__Bu_feministler_falan_var_ya.html

opposed to cesarean births (BİA Haber Merkezi, 2012). A month later, the Minister of Health, Recep Akdağ, said that if a woman gets pregnant after a man rapes her, she should give birth anyways since the state would look after that child (Hürriyet A.A., 2012). In 2013, then Prime Minister Erdoğan enunciated that he does not approve male and female university students living together at the same house and that they will control this (T24, 2013). In 2014, Deputy Prime Minister Bülent Arınç asserted that women should not laugh out loud and they should know what is decent and not decent (CNN Türk, 2014). Months later, Erdoğan gave a speech to women at a "Women and Justice" *(Kadın ve Adalet)* event of a women's organization, Women and Democracy Association *(Kadın ve Demokrasi Derneği-KADEM)*, known for its close links to the AKP government. He stated that women and men can be equivalent, but not equal, since it is against women's "delicate nature" and feminists cannot understand this since they do not accept the concept of motherhood (Agence France-Presse in Istanbul, 2014). In June 2016, Erdoğan suggested that a woman refusing in order to work outside the home actually refuses her womanhood and, therefore, she is 'half'. He also said that a woman's womanhood is conditioned by her impact on her household and children, and by her delicacy and aesthetic appearance. And lastly, he said that women rights' defenders are refusing to admit the "facts" about being a human and represent a standpoint that does not belong to *this* civilization, *these* lands and *our* people (Akşam, 2016).

These speeches, at first sight, seem quite dispersed, dealing with arbitrarily-chosen subjects. But in fact, all these speeches revolve around some recurring themes around which feminist movement have been mobilizing since the 1980s in Turkey. Feminist women have been trying to show that violence against women is not a discrete, individual, and pathological phenomena that is related to alcoholism or perversion.

They have been questioning the traditional roles attributed to women's sexualities and their positions within family, and the implicit control on women's public appearances as delicate and aesthetic daughters, sisters, wives, and mothers. In their speeches, on the other hand, government official succinctly ignore all the legal attainments of women that state man and woman are equal individuals, and instead, claim to have authority on women's bodies and everyday lives. These speeches articulate the ruling government's conservative ideology, which is informed by the normative frameworks of Islamism and nationalism and how this ideology is used to address not only the question of violence against women, but also the "woman question" in general.

Despite the provocative speeches of government officials, the AKP's rule has also witnessed amendments in favor of the equality of men and women in the Civil Code (2002), Penal Code (2005), and the Constitution (2004 and 2010) and, a new act on protection of women (Law No. 6284) passed in 2012. Although it has almost always been the feminist women's grassroots efforts that made these progressive amendments in law possible, there is certainly a discrepancy between the speeches of the government officials and the legal reforms undertaken during AKP rule. I thus start with a basic question: On what terms feminist women share the same table with the conservative and neoliberal government to pass pro-women legal reforms?

Before delving into answers regarding pro-women law-making processes and how violence against women has emerged as the primary site of struggle for feminist women, I will look at the history of the women's movement in Turkey. There were very few legal reforms and independent women's organizations between the early Republican era and the 1980s. Therefore, historicizing women's movement will help me reveal the political dynamism and transforming mechanisms behind this fact and to distinguish the post-1980 era from the earlier periods, as well as to demonstrate

women's different modes of solidarities and particular foci in different eras. In what follows, I will briefly explain the women's movement since the Ottoman era.

2.1. The Women's Movement in Relation to the Legal Field before the 1980s

In Turkey, the women's movement dates back to the late Ottoman Era. Some reforms were put into force during this era, including daughters' right to inheritance and women's right to marry by a civil court. During the mid-nineteenth century reforms in the Ottoman Empire, because of modernization and newly emerging nation-states, women's education as *wives and mothers of future generations* was started to be debated among intellectuals and politicians (Paulk, 2008: 150). After the Second Constitutional Monarchy in 1908, when ideas on freedom and equality had spread, women began to publish articles in newspapers and journals. They started establishing associations and journals which were mostly related to charity and education of girls. The Society for the Defense of Women's Rights *(Osmanlı Müdafaa-i Hukuk-i Nisvan Cemiyeti),* which published *Women's World Journal (Kadınlar Dünyası Dergisi)* between 1913 and 1921, arranged meetings to discuss issues in women's everyday lives, such as education, paid work, and entertainment (Sirman, 1989; Tekeli, 1990; Bora, 1998; Kıcır, 2013). These subjects were mostly discussed as a means to end polygamy and to obtain the right to divorce, which were then men's monopoly (Tekeli, 1990: 269). Nevertheless, women mostly stayed within the confines of family and home.

During the Republican era, women became the "face value" of modernization, Westernization, and the nation (Parla, 2001). Women's appearance in public space and education as *mothers of future nation* was crucial. However, women were established as patriotic educators in this era, rather than *only* being educated mothers and wives

(Sirman, 1989: 9). They were motivated to take part in the public space, especially by giving patriotic speeches and becoming teachers.

A series of legal reforms were initiated during the early Republican era. In 1926, the Civil Code, replacing the Ottoman Code, was adopted from the Swiss Code (Arat, 2005: 4). Polygamy and unilateral divorce were abolished (Articles 92-94 and 134), and women's inheritance (Articles 439-441, and 444) and custody rights (Article 264) were ameliorated (Law No. 743). However, women's and men's traditional roles continued to be legitimized within the family. The husband was determined as the head of the family and as responsible for the subsistence of the wife and children (Articles 152 and 154), whereas the wife was defined as the assistant and advisor of the husband and as responsible for taking care of the housework (Article 153), and she needed the husband's consent to work outside home (Article 159).

The same year as the Civil Code, the Penal Code was passed, regulating sexual assault against women, along with general issues such as physical harm, violence, murder, and robbery (Law No. 765). This code was more about modernizing the forms and modes of punishment, rather than re-defining the parameters behind crimes and punishments.[9] The traditional understandings of women's sexualities and bodies prevailed in the code. For example, abducting and raping a married woman was to be punished more than abducting a non-married woman (Article 431) and if the abductor married the woman, the conviction was to be quashed (Article 434). While married men's adultery was defined as a crime only if the local community knew about the affair, women's adultery

[9] By the Ottoman Penal Code of 1858, penal servitude *(kürek cezası)* was mostly used as a form of punishment for sexual assaults against women. By the amendment of 1914, if the rapist married the woman, the punishment would be quashed. For more information, please see: Ze'evi, D. (2002). Changes in Legal-Sexual Discourse: Sex Crimes in the Ottoman Empire. *Continuity and Change*, 219-242. and Konan, B. (2011). Osmanlı Hukukunda Tecavüz Suçu. *Osmanlı Tarihi Araştırma ve Uygulama Merkezi Dergisi*, 149-172.

was not conditioned by anything[10]. Moreover, while physical harms against people were discussed under the title "Crimes against Persons", sexual assaults against women were addressed under "Crimes against Public Decency and Family Order", as if women's bodies were "properties" of the public and family. In short, women's sexuality was seen as a "state and public matter" by the Penal Code.

Some scholars see these reforms as products of state feminism. That is, the reforms were partially "progressive", but they were implemented in a top-down manner and they aimed to control women's participation in the national public sphere, rather than to facilitate their individual liberation (Tekeli, 1986: 193; Kandiyoti, 1987; White, 2003). Some others claim that these reforms were only seen as functional for national development (Arat, 1994: 59).

Women activists, coming from the tradition dating back to the late Ottoman era, also fought to obtain the right to vote and be elected during the early Republican era. They asked for permission to found the Women's People's Party *(Kadınlar Halk Fırkası)* in 1923, even before the founding father Mustafa Kemal's own party (Başkan, 2014: 58) but were denied permission and advised to establish a federation instead (Arat, 2005: 17), because women's participation in political parties were not allowed yet. Women eventually gained full citizenship, the right to vote and to be elected at the national level in 1934 and were allowed to be deputies in the Grand National Assembly in 1935. Yet, the Turkish Women's Federation *(Türk Kadınlar Birliği)* was immediately

[10] Türk Ceza Kanunu, No. 765, (1926), T.C. Resmi Gazete, 320, 13.03.1926. Article 440: Zina eden zevce hakkında üç aydan otuz aya kadar hapis cezası tertip olunur. Zevcenin bu fiiline şerik olan kimse hakkında dahi aynı ceza hüküm edilir. Article 441 Karısiyle birlikte ikamet etmekte olduğu hanede yahut herkesçe bilinecek surette başka yerde karı koca gibi geçinmek için nikâhsız kadın tutmakta olan koca hakkında üç aydan otuz aya kadar hapis cezası hüküm olunur.

closed down afterwards, which indicates the perspective against independent and autonomous formations of women's organizations.[11]

Nevertheless, the legal reforms and the women's right to vote and be elected were perceived as progressive, and indeed, ahead of many European countries by women experiences the era (Tekeli, 1990: 270-1). Educated women who grew up in big cities benefited from the rights and reforms, who then established some organizations after the multi-party system was initiated in 1946. Some of the organizations were the Turkish Women's Federation[12] *(Türk Kadınlar Birliği),* the Turkish Association of University Women *(Türk Üniversiteli Kadınlar Derneği)*, the Professional Women's Society *(Meslek Kadınları Derneği)*, and the Society of Mothers *(Türk Anneler Derneği)* (Tekeli, 1990: 271; Çaha, 2016: 58). Between 1946 and 1970, although women's organizations had increased in number, only apolitical and philanthropic organizations were available.

In the political field, socialist parties started to be established during 1960s and 1970s, in which the number and effect of women's participation were greater than in the bourgeois parties (Tekeli, 1990: 274). Yet, the socialist parties were also attributing traditional roles to women working in them. Women's active participation in socialist parties were almost conditioned by being "manlike". Behice Boran, for example, was the first woman to be a chairperson of a party, the Workers' Party of Turkey (*Türkiye İşçi Partisi, TİP*), in 1970. She used only her maiden name even when she was married, although it was not legal by the Civil Code (Article 153). She acknowledged the

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[11] In 1935, the World Union Congress of Women was arranged in Istanbul. Turkish Women's Union participated in this meeting. The first item of the congress program was peace upon which the union agreed. The union was closed down after this certain incident, since it was too independent from the government control. For more information, please see: Tekeli, Ş. (1990). Women in the Changing Political Associations of the 1980s. In A. Finkel, & N. Sirman, *Turkish State, Turkish Society* (pp. 259-287). New York: Routledge.
[12] Turkish Women's Federation, after being closed down in 1935, was re-established in 1949.

inequality between men and women, yet did not see any need to act in solidarity with women particularly. A former member of TİP and current member of Istanbul Feminist Collective, Filiz Karakuş, in an interview, states that it was not possible for women to be party leaders without being “manlike” in those days and all women who participated in leftist parties were like that (Özcan, 2008). Therefore, although the leftist parties possibly had the potential to contribute to the feminist movement in 1980s, a particular focus on women’s issues was not available during 1960s and the first half of 1970s.

The Communist Party of Turkey *(Türkiye Komünist Partisi, TKP)*, on the other hand, gave relative importance to concerns based on gender during the second half of 1970s (Tekeli, 1990: 275), thanks to the rise of popular movements and radical politics at the time. In 1975, the Women’s Association for Progress *(İlerici Kadınlar Derneği)* was established by women from TKP. This association aimed to be a popular movement for all women working in the fields, factories, offices, and houses. Its demands were equality, democracy, progress, peace, and recognition of women’s daily economic needs (Ecevit, 2007: 193). Women’s Association for Progress was the first community to emphasize women’s unpaid labor at home. Yet, although its aims and demands seem like their addressees were the working class women, it mostly tried to organize the wives of male workers to teach them class consciousness and did not refer to women’s problems as experienced by themselves (Tekeli, 1990: 275-6).

In short, the political and social dynamics before 1980s hardly allowed any space for women’s organizing against women’s subordination and oppression. The 1980 coup d’état collapsed the previous political structures, and ironically, paved the way for women to become organized independently and autonomously (Tekeli, 1990: 276).

2.2. The Women's Movement in relation to the Legal Field after the 1980 Coup D'état

Although women were provided with certain rights and opportunities, none of the organizations, parties, and politics gave place to women's individual liberation before the 1980 coup d'état. Tekeli (1986) and Sirman (1989) link the lack of debates on women's issues from a feminist perspective to the hegemony of modernist ideologies of the left in Turkey. The rise of feminism in the post-1980 coup period concerns two things: First, leftist women were already in the process of evolving a consciousness towards their own subordination (Tekeli, 1990: 31). Second, the fatal blow of the military state to the left during the coup d'état helped women to establish a separate, distinct, and autonomous movement (Sirman, 1989: 16; Tekeli, 1990: 31). Young, well-educated female university students and professionals, who either had the opportunity to go abroad to study or organized at the Society of University Assistant Lecturers *(Tüm Üniversite Akademi ve Yüksek Okul Asistanları Derneği-TÜMAS)* became familiar with the western feminist scholarship, the women's movement and women-specific questions and politics (Tekeli, 1990: 277).

Although the society was shut down in 1980, women informally met at tea parties in their houses for discussion groups in Istanbul and Ankara. One of the participants of these meetings was my interviewee for this study, Necla, states that in those days gathering was forbidden by the martial law, yet the district attorney ignored women's gatherings - although he heard about them. He said "what can women possibly talk about that can be dangerous for the state". She continues:

> I grew up with the illusion that men and women are equal. I then realized in our consciousness-raising meetings that we were not equal at all. Before that, I always thought that I could not become friends with women and that they

> only talk about food and fashion. The important things like politics could only be spoken with men. These were all blather. In these meetings I realized how wonderful women were and how we were subordinated by men, how they attack our bodies and freedom.[13]

Therefore, these meetings can be said to be the first gatherings of women where they could talk about their prejudices regarding women and their own problems as women. They criticized themselves and discussed how they reproduce inequalities between men and women.

Although started to discuss feminism in small and closed groups, it did not take long for feminist women to reach the wider public. They did so through publishing (Tekeli, 1990: 277). Starting in 1981, the Cooperative of Writers and Translators (*Sınırlı Sorumlu Yazar ve Çevirmenler Yayın Üretim Kooperatifi, YAZKO)* initiated a series of publications for women about feminism to attract the attention of the public and not to draw the reaction of the command of martial law (Depe, 2014: 89). A symposium was arranged to learn the opinion of the public on feminism in 1982 by YAZKO. Feminist women then started to write for the fourth page of a weekly magazine, *Somut,* which was published by YAZKO, and they also had some of their informal meetings at YAZKO office. Any women could write to those pages without any editorial rules (Tekeli, 1990: 279). Feminist principles, hearing any woman's voice and rejecting hierarchical divisions among women became concrete through these pages. The experience with YAZKO did not last long, but provided feminist women with an easier, cheaper and legitimate way of forming a group.[14] Women's Circle *(Kadın Çevresi)* was

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[13] Interview with Necla, feminist lawyer from İstanbul. 29 March 2016.

[14] YAZKO's founders established a publishing house but when it shut down in the mid-1970 they re-built it as a cooperative in the 1980s, because cooperatives would be relatively less affected by lack of papers, black market, increase of the rates of press and royalties which were cut from the writers in publishing houses (Depe, 2014: 85). Feminist women took the example of YAZKO and founded a joint-stock company, Women's Circle, as a service and consultancy company to reduce their expenses.

established in 1984 as a joint-stock company, but worked as a *de facto* book club. The number of women participating in the Women's Circle increased over a few years, and they started debating the inequalities reproduced through legal texts, especially the Civil Code.[15]

In 1985 the state signed the CEDAW, an international treaty adopted by the United Nations General Assembly in 1979. However, since CEDAW required its signatory states to set equal rights to men and women in their national laws, the Turkish state put some reservations on articles that contradicted with the Civil Code, which stated that husbands are the heads of the family.

On 8 March 1986, members of Women's Circle organized a petition campaign through which they gathered 7000 signatures, which delivered to the Turkish Parliament, demanding the state to implement CEDAW and improve its legal texts in accordance (Ecevit, 2007: 195). This campaign was the first direct political demonstration of women, and it was the starting point of their mobilization around legal reforms and implementations.[16]

In February 1987, a civil court judge in Çankırı, Ankara, rejected a woman's demand after her husband used violence against her. She had children and was pregnant at the time. The judge reasoned that, if she really wanted a divorce, she should have not been carrying her husband's baby. He further added, "You should not let a woman's back without beating and her womb without a baby".[17] Filiz Kerestecioğlu, a feminist lawyer who later became the head of the Coordination Committee for Women's Solidarity against Violence *(Dayağa Karşı Kadın Dayanışması Tertip Komitesi)* (Armutçu, 2015), carried the case to the feminist women's debates. Feminist women

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[15] Interview with Necla, feminist lawyer from İstanbul. 29.03.2016.
[16] Interview with Necla, feminist lawyer from İstanbul. 29.03.2016.
[17] "Kadının sırtından sopayı, karnından sıpayı eksik etmeyeceksin". This is a proverb in Turkey.

protested the judge and sent him telegrams, declaring that his account jeopardizes all women and that they wanted to take part in the case. This was the first demand of feminist women to intervene in a case. Following this incident, they organized the first legal street protest (since the 1980 coup in 1987) in Kadıköy-İstanbul, in which about 3000 women participated. This was the first protest organized with the slogans of women's solidarity and demands (Sirman, 1989:1; Savran, 2005).

The protest became a rupture point for feminists. Beginning in the second half of the 1980s, feminists started to focus primarily on violence against women. They used three methods: They organized protests in the streets, they took part in legal cases to make them political, and they demanded equality in the legal texts from the state. In other words, they started to perceive legal reforms and better implementations as necessary components of the aims of their struggle against male violence, and they began to consider the state as the addressee of their demands.[18]

In October 1987, Women's Circle organized a one-day festival called Kariye Festival and raised funds to establish shelters for women exposed to violence. Women's Circle published a book, *Shout, so Everyone Can Hear You! (Bağır! Herkes Duysun!)* in 1988, gathering women's stories and experiences on violence with some of the funds. In that book, they aimed to reveal that violence is not about education or alcoholism, being exposed to violence is not something to be ashamed of, and that women are not alone (Sosyalist Feminist Kolektif, 2013). In 1989, women from Women's Circle formed a

[18] Feminist women also engaged in protests against sexual harassment through which they gave women purple pins to needle men who harass them in 1989. They broke into coffeehouses and protested at night to claim the public spaces and the control over their bodies as equal as men. Interview with Necla, feminist lawyer from İstanbul. 29.03.2016.

telephone network to be available for women exposed to violence in need of legal and practical support.[19]

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 Women and Family Affairs) declared, "Flirting is nothing different from prostitution", then the government led by Çiçek issued a decree called "Family Enhancement" *(Ailenin Güçlendirilmesi kararnamesi)* and built the "Family Research Institution" *(Aile Araştırma Kurumu)* soon after. Thirty women gave divorce petitions to the court, protesting family policies that consolidated women's subordination. They asserted to the court that they want to end their marriages (Arıkan Özkal, 2012). It was a symbolic gesture in which women emphasized their sexuality independent of their duties in the patriarchal family, as well as to criticize inequalities within the family, reproduced by the Civil Code. This protest aimed to challenge the legitimacy of law, which is supposed to be the source of legitimacy.

Similarly, in 1990, after an incident where a woman was raped and the rape offender's punishment was mitigated because she was claimed to be a prostitute, feminist women marched against the Article 438 of the Penal Code, which allowed the mitigation to rape offenders of prostitutes. Accordingly, they initiated the campaigns "There is No Rightful Rape" *(Haklı Tecavüz Yoktur)*, and "Our Bodies Belong to Us" *(Bedenimiz Bizimdir)*. The article was annuled afterwards, by the impact of women's mobilization.

In 1993, feminist women in İzmir, Ankara, and İstanbul organized many creative protests and collected 100.000 signatures to change the Article 159 of the Civil

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[19] These women then founded Purple Roof Women's Foundation *(Mor Çatı Vakfı)* in 1990 and established a women's shelter in 1995, re-naming the foundation as Purple Roof Women's Shelter Foundation *(Mor Çatı Kadın Sığınağı Vakfı)*.

Code, which stated that the wife needs the husband's consent to work outside home. They handed over the signatures to the Turkish parliamentary speaker *(Meclis Başkanu)* and this article was also annulled. Women had the legitimacy of their protests from the fact that CEDAW defines these inequalities in law as discrimination against women. They successfully engaged in lobbying activities with the MPs during these processes.

Hence, the legal field, as a site of struggle, was formed through feminist women's demands regarding legal texts and their opposition against gendered practices of the law-enforcers, as well as sexist speeches of the government officials. Law has been a political field for feminist women, yet certain transformations in the international arena also catalyzed their struggle.

2.3. Changing Dynamics and Mechanisms

As women raised their voices, the state authorities started to take their demands more seriously. First, to fulfill one of CEDAW's requirements, the Directorate General on the Status and Problems of Women (*Kadının Statüsü ve Sorunları Genel Müdürlüğü)* was established under the prime minister's office *(Başbakanlık)*. Similarly, the Ministry of Women and Family Affairs *(Kadın ve Aileden Sorumlu Devlet Bakanlığı)* was also established in 1991. These state institutions mediated the state and women's organizations to take the necessary measures against gender discrimination by amending laws and gathered data on women's position and problems (Aldıkaçtı Marshall, 2013: 70). Universities and municipalities also started opening centers on women and gender, and did research on women's issues (Altınay & Arat, 2008: 25).

The improvements in the general approach of the state and the public to women's issues, developments in international women's movement, and intergovernmental bodies had significant impact on changes in the early 1990s. The state's control over shaping identities became attenuated by the impact of globalization

and tolerance towards differences increased relatively (Ertürk & Kardam, 1999: 168). Accordingly, women's organizations, increased in numbers all around Turkey, became more effective and institutionalized, and they started to negotiate with the ministry and the directorate more often (Coşar & Gençoğlu Onbaşı, 2008: 330). They became more mobile and affected by the ideas and modes of women's struggles overseas.

Starting in the second half of the 1990s, institutionalization and projects partially replaced the street protests. Women's organizations became more visible at the meetings through advocacy and lobbying in both national and transnational level by the impact of these changes, and feminist lawyers and academicians consulted the directorate and the ministry to know more about women's problems in the field. The directorate presented country reports to the CEDAW committee during the 1990s, and women's organizations started preparing shadow reports in 1997 (Kardam, 2005). In these shadow reports, women's organizations discussed women's problems during their encounters with the law-enforcers, lack of infrastructures to answer women's needs, shortfalls in national legal texts compared to CEDAW and other international conventions and their implementations in the legal field.

After the formal application of the Turkish state to join the European Union in 1999, human rights including women's human rights strengthened their place as a very important political liability. Women's organizations, on the other hand, successfully instrumentalized the European Union harmonization process to push the state institutions and authorities, as well as law-enforcers for better legal texts and implementations. Accordingly, article-based amendments had started to be replaced by more major amendments, abrogating the older codes all together and implementing new ones (Civil Code, 2002; Penal Code, 2005; the Constitution, 2004 and 2010). Myriad gendered practices of law, such as framing honor crimes as extenuating circumstances,

or giving unjust provocation abatement to male perpetrators of violence have also been transformed by women's entrance in court rooms.

The bar associations, with which all lawyers need to register, also started paying attention to women's particular problems, especially violence against women, by establishing Women's Rights Commissions *(Kadın Hakları Komisyonu)* in the late 1990s. Women lawyers, including feminists, volunteered to consult and support poor women exposed to violence through these commissions. Starting with Ankara Bar Association Women's Consulting Center *(Ankara Barosu Kadın Dayanışma Merkezi)* in 1998 and Istanbul Bar Association Women's Rights Commission *(İstanbul Barosu Kadın Hakkları Komisyonu)* in 1999, commissions were launched all over Turkey (Altınay & Arat, 2008: 24).

To sum up, law, as a body of knowledge, as a field of accumulation of gendered practices of law-enforces, and as a tool in the hands of the government for realizing certain projects, has been a field of struggle for feminist women, and the broader women's movement, since the 1980s. As understood from women's struggles for education and marriage rights in the Ottoman era, and later the right to vote and be elected, women's history indicates that law, has for a long time, been an important means for women's demands from the state. Yet, law became a field to intervene in and to level down to the ground only after 1980s for women. Strong feminist subjectivities and politics have been formed hand in hand with the transformations in accordance with the international arena and the legal field afterwards.

In this conjuncture, feminist lawyers have been organizing in relation to the broader feminist movement and have been occupying a unique place. They are located at the intersection of law and feminist struggle. Law, as a body of knowledge that sets itself different from all other knowledges, claims to be neutral, highly hierarchical, yet

at equal distance to all citizens of a society. It alleges to accumulate each unique experience under certain clauses and only selects narratives that are relevant to the clauses. Feminist lawyers are trained as lawyers in law schools. They learn how law operates. They learn how to defend a case, how to make claims, and produce evidence. They know how legal texts are made. Yet, as feminists, they are a part of certain networks of women's solidarity and work as activists in women's collectives and organizations. They provide consultancy and support to women, especially to those who are victims of male violence. They listen to women's unique stories and offer them legal advice for free. Their connection to their "clients" are not restricted to their legal needs. They become friends, they provide psychological and emotional support to each other in line with their investment in the ideology of feminist solidarity.

Giving voice to feminist lawyers' history and stories is important to trace women's legal attainments and losses with all the tensions embedded in the highly-contested legal field, as well as to re-think the boundaries that law creates between the legal and non-legal. In the following chapter, I will elaborate on the narratives of feminist lawyers regarding the law-making processes.

CHAPTER 3

FEMINIST LAWYERS IN THE MAKING OF LAW

This chapter will elaborate on the law-making processes of which feminist lawyers have been a part. The main focus will be on the current understandings of feminist lawyers about the processes that render legal reforms as a field of struggle. I will elaborate on the law-making processes throughout which discussions of feminist lawyers within broader women's movement, with state institutions and authorities, and international conventions and treaties have been prevailing.

The role of feminist lawyers in the law-making processes is characterized by an amalgam of their legal expertise, lawyering, and activism. These three can only be separated at the analytical level, since they are highly related with each other in the experiences and narratives of feminist lawyers. First, as legal experts, feminist lawyers inform women about the potentials of legal reforms, as well as mentor state institutions and authorities about women's needs and demands. Second, at this point, they translate women's needs in the legal field that they encounter while lawyering for or consulting women. Third, as feminist activists, they try to transform the language and context of law to prevent it from reproducing gender inequalities and to set the limits of gendered practices of law-enforcers and discourses of government officials. Lastly, they perform these three simultaneously.

To better explain the feminist lawyers' involvement in the law-making processes since women have been organizing to change legal texts, this chapter will be largely based on the narratives of senior feminist lawyers who witnessed and contributed to the historical layering of laws enacted through their mobilizations. Accordingly, their narratives regarding the law-making processes accumulate in this chapter in a way that

resembles oral history, through which feminist lawyers reveal the historical events they witnessed, as well as their current understandings of those events.

I divided the chapter into three main sections to analyze feminist lawyers' narratives around certain themes. In the first section, I will show how women's agenda liaised with the state authorities and legislation. While feminist lawyers struggled to make the legal texts more compatible with, or at least not too distant from, women's experience, the state institutions and authorities had various motivations to carry out legal reforms. Given that it is hard to talk about a single and all-encompassing motivation behind state institutions and authorities, the hierarchy among them offers a more fragmented picture of the state. This picture is still visible in the asymmetrical relations of women with the state institutions; and it gets even more complicated where their relations are effected by the transnational transformations. In the second section, I will explain how feminist lawyers perceived their struggle to amend the Civil Code and the Penal Code. The main focus will be on their understandings of law as a means to release women from the bounds of family and the societal meanings attributed to their sexuality. The last and the longest section will disclose the recent and current tensions in Turkey and will articulate feminist lawyers' overall understandings of the legal field as both a contested and complementary field.

3.1. Protecting Women from Violence: The First Protection Act

3.1.1. Feminist Lawyers' Interaction with the Ministry of Women and Family Affairs

Starting in the 1980s, the women's movement in Turkey predominantly mobilized around the issue of violence against women. In the early 1990s, as feminist lawyer Necla states, groups of women became organized to harbor women who were threatened with domestic violence in their own houses. Then, they started going to women's houses to show the husbands that their wives are not alone. Some battered

women started renting houses where four or five of them could stay together and be in solidarity.

Women who first formed Women's Circle and then established Purple Roof Women's Foundation in 1990, which included feminist lawyers and activists, established the shelter in 1995 in İstanbul.[20] The shelter was conducted by feminist principles. Being aware of the empowering features of the shelter conducted with a feminist approach, women (many feminist lawyers among them) started to discuss whether a battered woman should leave her own house and change her daily life activities to survive from violence.

Feminist lawyers were aware of the new restraining orders and protection acts becoming prominent in many countries around the world via CEDAW country reports and their relationships with women's organizations abroad. In their eyes, first, some legal measures had to be taken to protect women before they were even exposed to violence.[21] And second, these legal measures also had to answer women's needs after being exposed to violence, without changing their daily routines. Feminist lawyers were familiar with the problems women experience in case of violence, since they were lawyering in the field and consulting women in women's organizations. They promoted legal reforms that drew from their own experiences with women, as well as women's everyday experiences of and fears from violence and their possible needs afterwards.

In 1997, the then Minister of Women and Family Affairs Işılay Saygın noticed the example of Austria, where a protection act was recently passed. She asked her voluntary advisor, feminist lawyer, Cemile, from Women's Rights Commission of the Istanbul Bar Association *(İstanbul Barosu Kadın Hakları Komisyonu)* to help to adapt it

[20] Purple Roof Women's Shelter Foundation *(Mor Çatı Kadın Sığınağı Vakfi)* established its shelter in 1995.

[21] Interview with Türkan, feminist lawyer from Istanbul, 20.04.2016.

to Turkey. Cemile translated the Austrian law into Turkish and a draft was prepared[22]. They worked in the commission to prepare an act that would touch women's everyday lives and gathered the opinions of feminist lawyers who were not in the commission, as well as women's organizations. Işılay Saygın's assistants also called other feminist lawyers in person to learn their opinions about the articles in the draft.[23]

While women were working on the draft, Işılay Saygın[24] decided that the only way the protection act could be approved by the Justice Commission *(Adalet Komisyonu)* and the parliament was to register it as an act to "protect the unity of family", stating that the Constitution treats the family as the foundation of Turkish society. Therefore, the draft was prepared under the title of "The Law on the Protection of the Family" *(Ailenin Korunmasına Dair Kanun).*[25] The act consisted of four clauses that could be easily understood and achievable by any literate women. The main measures to be taken in case of domestic violence were restraining the "faulty spouse" *(kusurlu eş)* from damaging belongings of other family members, harassing them via communication instruments, perpetuating violence against them, carrying or having a gun, entering into the common household and getting into the common household under the influence of alcohol or drugs. Only people within the same family, living under the same roof, could receive protection by this act. Despite being an act on protecting the family, it did not enter in force for a long time due to the debates among MPs in the parliament, which I will elaborate soon.

[22] In Turkey, a law draft first gets prepared by the council of ministers or by the legislative proposals of members of the parliament (MPs). Then the related commissions working under the related ministries examines the draft to make sure that it is designed in accordance with the Constitution. The commissions transfer the draft to the general assembly of the parliament *(TBMM Genel Kurulu)*. The draft then passes as a law by majority of votes of the MPs.
[23] Interview with Necla, feminist lawyer from Istanbul, 29.03.2016.
[24] I want to note that none of the feminist lawyers I interviewed discredited Işılay Saygın. Indeed, Cemile specifically told me that she was exceptional along with some other women MPs among others in the parliament.
[25] Interview with Cemile, feminist lawyer from Istanbul, 13.04.2016.

Considering that the enactment process would take a very long time without backing it up with the street protests, feminist lawyer Türkan called every women from women's organizations she knew around Turkey and informed them about the rights and opportunities that a protection act could bring about, and she also suggested that women should mobilize and organize protests for this act to pass. She merged her feminist activism with her expertise as a lawyer. The first women's platform, which did not have more specific name, having the aim of intervening law-making processes was founded as a result of this mobilization in 1997.

Four of the feminist lawyers I interviewed took great part in the processes of preparation and enactment of the protection act.[26] Türkan, Cemile, Necla, and Sevinç, all participated in the process from different but intersecting positions. Cemile and Sevinç, working in the women's commission at the Istanbul Bar Association, prepared the law draft. Işılay Saygın's assistants called Necla and Türkan to have their opinions, and Necla and Türkan also organized the street protests. Cemile and Sevinç represented the women's movement in the meetings where the law draft was discussed and shared what would be in the law with other women from different organizations. Necla and Türkan advised the assistants to prepare a better draft that would answer women's needs, while informing other women from different organizations about possible benefits of the act to women's everyday lives, as well as coordinating street protests. In Adana, Antalya, Bursa, Mersin, İstanbul, and İzmir women protested in the streets, opened stands and collected 50.000 signatures to hand over to Işılay Saygın in 1997.[27]

These women's aim while gathering the signatures was to accelerate the process of making the act, but it did not mean unconditional support to the act itself. The first

[26] I want to note that not all the process were revolving around these four feminist lawyers. Both in the women's commission of the Bar and the protest organizing groups, there were other women.
[27] Interview with Türkan, feminist lawyer from Istanbul, 20.04.2016.

protection act, Law No. 4320, was passed in 1998 because of women's mobilization. Yet, it was passed as it was, regardless of women's demands. Women found various aspects of the act highly problematic: First, the name and the content of law were based on the notion of the unity of family. It was the opposite of what women demanded from the protection act, because it was not possible to protect both women and the family. What they wanted was rather to "save women from family"[28]. The second had to do with the term "faulty spouse" in the act. Women's mobilization against violence has been based on the idea that violence is not about an individual and pathological problem, but is implicit in each encounter of men and women. "Faulty spouse", on the other hand, implied that violence against women can be a one-time flaw that arises unintentionally. It indicated that the "faulty spouse", i.e. violent husband, could be "repaired" and maintain the family as it was. Third, the law only recognized violence within the official family. Imam marriage[29] or any other forms of relationships were not counted, let alone violence within LGBTI relationships. Fourth, the threat of violence was not covered in the law, meaning that only people who were already exposed to physical violence could benefit from it. In other words, if the marks of physical violence were not directly visible, women were expected to adduce evidence on battering.

Feminist women's agenda has been dominated by the very daily exposures of women to various forms of violence. Accordingly, feminist lawyers had the role of "teaching" the law to women from different social backgrounds, as well as "teaching" what women might need after their husbands use violence against them to the ministry. They either worked or volunteered for women's organizations, reached out to other women, and negotiated with the ministry to include women's everyday experiences of

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[28] This is a sentence I heard from multiple feminist lawyers during our interviews. (*"Bizim derdimiz kadını aileden kurtarmaktı*").

[29] An unofficial and religious marriage ceremony within Islam, performed by a local Muslim figure, imam, best known by directing religious ceremonies in mosques. It is widely performed in Turkey.

violence in the law. In short, the enactment of the first protection law of 4320 witnessed negotiations and discussions among feminist lawyers, women' organizations, and the ministry. Yet, the negotiations were hardly considered as determinants of the content of the new act. Because, although the ministry so far represented the state as one of its institutions, it would be quite hard to say that all related state institutions were involved in the enactment in the same way the ministry did. The Ministry of Justice, through which a law draft should pass to reach the parliament, prevented the ministry to include women's demands in the act. When the draft was finally in the parliament, the MPs from different parties developed very different point of views. Yet, all of them failed to see the act as a way to improve a battered woman's life. In the following section, I explain their perspectives based on the parliamentary discussions.

3.1.2. Violence as a Malfunction

The parliament hosted discussions that were entirely different from what women emphasized at the meetings in 1997 and 1998.[30] The parliamentary debates regarding the protection act demonstrate that none of the MPs considered the act as a way of protecting women from violence. First of all, it is important to note that none of the MPs mentioned women as the addressee of the debates. When they talked about women, they said "our women" (*kadınlarımız*). When they referred to men who are the perpetrators of violence against women, they never used any possessive suffixes as they did while talking about women. Indeed, most parliamentary debates around the domestic violence and protection act victimized and objectified women.

An MP from the Republican People's Party (*Cumhuriyet Halk Partisi-CHP),* Oya Araslı, approached violence as a primitive way of regulating human relations in

[30] TBMM Tutanak Dergisi, Dönem 20, Toplantı 131, c. 32, 06.08.1997. pp. 372-376.
TBMM Tutanak Dergisi, Dönem 20, Toplantı 134, c. 32, 13.08.1997. pp. 210-217, 219-220, 528-565.

underdeveloped societies. The reason for violence to exist in the modern society is either because of the traditional extended families living in certain regions[31] or adverse economic conditions, psychological problems and social tension and the implicit distress that city life creates. Fevzi Arıcı, an MP from True Path Party *(Doğru Yol Partisi-DYP),* made similar comments. He said that the founder of the Turkish Republic granted women -who carried ammo during the Turkish War of Independence *(Kurtuluş Savaşı)* to protect their country altruistically and valiantly- the right to vote (1934) before many modern states.[32] In other words, he implied that women do not achieve legal rights, but rather they are granted rights in exchange for sacrifices they make for the country. MPs from the Welfare Party *(Refah Partisi-RP)* stated that this law cannot protect the unity of family as it suggests the spatial separation of the perpetrator. To them, this would cause the perpetrator, i.e. the male head of the house, to get more aggressive. Violence existed due to moral corruptions in especially industrial societies. It was the alcoholics, gamblers or the unemployed who used violence.[33] Cases of violence indicate either a poor family that cannot catch up with the recent changes in industrial city life or an alcoholic or gambling husband that has some psychological issues. Bahri Zengin, who was an MP from RP, suggested that instead of giving the state the autonomy to solve the problem of violence, the economy should be given an autonomous space and should be governed by market rules. He accused Mustafa Kemal of not leaving any autonomous space to the family by his "statist model" in the 1930s and added that the protection act is a totalitarian act as in those times. Then an MP from

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[31]Oya Araslı did not clarify what she meant by these "certain regions" in her speech in the parliament. I interpret the "certain regions" as the rural areas and/or the Eastern parts of Turkey, where the Kurdish people are the majority of the population. The reason for this interpretation is that since the founding of the Turkish Republic, the Republican People's Party has been relying on the dichotomy of traditional/modern by attributing what is traditional to the lives and experiences of the Kurdish people and modern to the Western. In her speech, she also gave reference to the similar laws previously passed in the Western countries, supporting my interpretation.

[32] TBMM Tutanak Dergisi, Dönem 20, Toplantı 131, c. 32, 06.08.1997. pp. 372-376.

[33] TBMM Tutanak Dergisi, Dönem 20, Toplantı 134, c. 32, 13.08.1997. pp. 210-217, 219-220.

CHP took the floor and criticized Bahri Zengin for talking about 1930s, but then he gave references to customs of Turkish society a thousand years ago to underline how equality between men and women is ingrained in the Turkish culture.[34] Male violence was due to individual and social troubles occurring during the transition from what is traditional to modern.

In short, despite their ideological differences, there were certain similar themes shared by all parties. Almost all parties underlined the "culture" as a way to fight violence or as the cause of violence. By explaining violence as resulting from increased unemployment, they also developed economistic explanation and solutions to the problem of violence. At a broader level, they treated violence as a malfunction that should be fixed with specific economic and cultural interventions. None of the solutions they introduced involved women's perspective on the issue or analyses of patriarchy, i.e. systematic degradation of women in all spheres of life.

For women activists, on the other hand, the protection act was a way to eliminate violence without changing the daily lives of battered women. It was a way to cease the identification of battered women as suffering bodies. But for the MPs, violence was an unintended and unexpected outcome of a transition from a traditional era to the modern. Their debates were largely informed by a pursuit of finding a place for the protection act in that kind of a transitional era. If violence was a malfunction in the operation of that transition, then the new act should have been a one that depends on, but also defines, which side of that transition the Turkish state would fall into.

The law (Law no. 4320) was passed in January 1998. For the feminist lawyers I interviewed, the resistance to enact and implement the act meant a reproduction of

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[34] TBMM Tutanak Dergisi, Dönem 20, Toplantı 134, c. 32, 13.08.1997. pp. 528-565.

violence by the state authorities. But the fact that the act was enacted was conceived as an act of "show-off" by them. Necla, who also took part during the process, explains:

> Our whole mobilization around showing that violence against women is systematic, rather than discrete was ignored. Starting with the street protest in 1987 and the book we published [Bağır! Herkes Duysun!], we tried to show that violence against women is not about education or alcohol use as they said. We tried to show the very specificity of violence against women, that it is nourished by the state and its laws. We always worked on these laws tirelessly but they usually used our efforts to take all credit for themselves, concealing what we really demanded from them.[35]
>
> [Emphasis added]

To fight against the state authorities' resistance to enact and implement, as well as embrace women's standpoints, the women's platform, which was established for the enactment of the law, agreed on the idea to organize women through a congress to discuss necessary policies and legal reforms for women's empowerment and to follow and politicize legal changes in Turkey and around the world. The congress, named the Congress of Women's Shelters and Consulting (Solidarity) Centers" *(Kadın Sığınakları ve Da(ya)nışma Merkezleri Kurultayı)*[36], has been proceeding to be held annually since

[35] Interview with Necla, feminist lawyer from Istanbul, 29.03.2016

[36] With Mor Çatı's experience with the feminist shelter, women started pressing the state to build shelters and conduct them with feminist principles. Although, by the late 1990s, there were few shelters linked to municipalities and women's organizations, the public and state institutions were resisting to the name "shelter", and had the tendency to call shelters "guesthouses", as if shelter connotes something humiliating and as if women were "guests", who would turn back to their houses after making up their minds. For that reason, the congress was named as "Shelter Congress" at first, and the following e-mail group was named after it.

November 1998, and it is the biggest national women's congress in Turkey.[37] In short, as Türkan summarizes:

> The congress has been the greatest meeting platform for women activists and public officials for years now. The foundation of the congress was based on the struggle for the enactment of the protection law. Since then, the aim of the congress has been to pool the discussions on laws and policies about women, and our own experiences as women arising from the implementation of these, with a particular focus on violence.[38]

After the first congress held in 1998, Türkan set up two e-mail groups, one smaller for the organizers of the congress and one bigger for a broader follow up among women's organizations regarding policies and laws that might affect women's lives. Beginning with this experience, the e-mail groups began to be widely used as a means of communication to organize for protests and events among women's organizations. As Türkan states, "it had a huge impact on the following platforms we set to demand legal reforms later on", which I will explain in the following sections.

To sum up, in this part, I looked at the first protection act passed in 1998 to see how it entered the Turkish legal field, how it was discussed among MPs and feminist women, and how feminist lawyers approached it. Feminist lawyers shared their legal knowledge with other women activists to organize them around the protection act, while at the same time negotiating with the state authorities to bring both their own experiences and women's needs into the act. They were mediators in between the state authorities and women, as well as in between their own experiences as lawyers and legal expertise on possible opportunities of laws.

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[37] In November 2015, the 18th congress was arranged. 325 women from 41 cities, 60 women's and LGBTI organizations and 53 public institutions and municipalities participated in the congress.
[38] Interview with Türkan, feminist lawyer from Istanbul. 20.04.2016.

In what follows, I will explore feminist lawyers' approach to the Civil Code and Penal Code during the makings of new codes to further elaborate on feminist lawyers' complex subjectivities.

3.2. Equal Rights for Men and Women on Text

Both the Civil Code and Penal Code were passed in 1926. Until the 2000s, women's mobilization to amend laws encountered bureaucratic obstacles arising from the debates in the parliament and political parties. Accordingly, changes in laws took place merely on an article-basis. For example, the first legal achievement of women's movement was the annulment of the article 438 of the Penal Code (Law no. 765), which allowed mitigation to rape offenders of prostitutes, in 1990.[39] Similarly article 159 of the Civil Code (Law no. 743), which stated that women need their husbands' consent to work outside home, was annulled.[40] Adultery was decriminalized for men in 1996 (Penal Code, Law no. 765, Article 441) and for women in 1998 (Penal Code, Law no. 765, Article 440). In 1997, women were given the right to use their maiden name along with the married name (Civil Code, Law no. 743, Article 153).

In 1999, Turkey was officially given the candidate status by the European Union, twelve years after its application for full membership. In the same year, the reservations[41] placed on CEDAW, signed in 1985, were withdrawn.[42] In 1997, a

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[39] Anayasa Mahkemesi Kararı (1989), T.C. Resmi Gazete, 20398, 10.01.1990.

[40] Anayasa Mahkemesi Kararı (1990), T.C. Resmi Gazete, 21272, 02.07.1992.

[41] Reservations were placed on the articles 9/1, 15/2, 15/4, 16/1-c, 16/1-d, 16/1-f, 16/1-g, and 29/1. Apart from articles 9/1 and 29/1, all reservations were placed since they contradicted with some clauses of the Civil Code. Those articles allowed women equal rights with men within family on possession of common properties, decisions on individual place of residence, custody, and work-choice. For the detailed account of CEDAW articles, please see (UN Women, CEDAW Full text of the Convention in English).
For more information on reasons behind the reservations of the Turkish state, please see: Moroğlu, N. (2002, December). *Kadınların İnsan Hakları Bildirisi ve Ek İhtiyari Protokol.* Retrieved from Türk Hukuk Sitesi: http://www.turkhukuksitesi.com/makale_73.htm

[42] The then minister of state, Aysel Baykal, committed that the reservations on CEDAW would be removed until 2000 in the Fourth World Conference on Women in Beijing in 1995 on behalf of the Turkish state. For the full account of her speech, please see: (Fourth World Conference on Women, 1995).

specific commission to provide measures needed for implementation of CEDAW in the parliament was gathered. During these years, women's mobilization over egalitarian laws started bringing more solid results. The old Civil Code and Penal Code were replaced, in 2002 and 2005, respectively.

Since these changes in civil and penal codes promise crucial and remarkable transformations both in the legal field and women's everyday experiences, it is important to give place to feminist lawyers' accounts regarding the codes to understand how they formed themselves as activists, lawyers, and legal experts and how they make sense of the amendments today.

3.2.1. Family under Closer Scrutiny: The New Civil Code

> After all those years we have been struggling against male violence, we saw that the first place to step in was the family itself, within which violence rises. The reason for mobilizing around the change of Civil Code was that easy. Our mobilization was supported by the European Union harmonization process. But we were the ones who showed the route to the state.[43]

In Turkey, from 1926 to 2002, the Civil Code stayed essentially the same, apart from couple of article amendments. Women's movement to replace the old Civil Code dated back to 1990s. After some amendments in both civil and penal codes, Turkish Women Legal Experts Association *(Türk Kadın Hukukçuları Derneği)* prepared a draft based on the Swiss Civil Code and Istanbul University Women's Research Center *(Istanbul Üniversitesi Kadın Araştırmaları Merkezi)* initiated a campaign through which the draft was distributed and signatures were collected. Women's organizations took part in the distribution process and 119.000 signatures were gathered. The petition to replace the

[43] Interview with Türkan, feminist lawyer from Istanbul, 20.04.2016.

Civil Code, along with the signatures were handed over to the Turkish Parliamentary Speaker in 1993 (Altınay & Arat, 2008: 28-29).

In 1994, a commission was formed by the Ministry of Justice to work on the new code. In 1999, Istanbul Bar Association Women's Rights Commission *(İstanbul Barosu Kadın Hakları Komisyonu)* initiated the establishment of Union of Turkish Bar Associations-Women's Rights Commission *(Türkiye Barolar Birliği Kadın Hakları Komisyonu, TÜBAKKOM).* One of my interviewees, Cemile, was one of the co-founders of both. Cemile stated that TÜBAKKOM also took a great part in pushing the amendment of the Civil Code by their advices and reports[44]. The Directorate General on the Status and Problems of Women *(Kadının Statüsü ve Sorunları Genel Müdürlüğü)*[45] worked together with women's organizations and institutions regarding the amendment and gained their trust by inviting women's organizations to events and meetings.

When the draft was finally debated in the parliament in 2001, the coalition government consisted of Democratic Left Party *(Demokratik Sol Parti, DSP),* Nationalist Movement Party *(Milliyetçi Hareket Partisi, MHP)* and Motherland Party *(Anavatan Partisi, ANAP)* was ruling the country. During the economic crisis of 2000-2001, reforms were suspended. In November 2001, Justice and Development Party *(Adalet ve Kalkınma Partisi, AKP)*, a conservative (neo)liberal party was founded by the former members of an older conservative party, Virtue Party *(Fazilet Partisi, FP).*

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[44] By 2001, 40 commissions all around Turkey were established. Interview with Cemile, feminist lawyer from Istanbul, 13.04.2016.

[45] The Directorate General was under the Ministry of Labor and Social Security until 2003. It began working under the Prime Ministry after 2003.

The parliamentary debates[46] continued in 2001, but with moderate mentioning of women. The MPs discussed the language of the new Civil Code[47] and the role of Islam and family in Turkish national identity. Arat, analyzing the parliamentary debates during the time states that the accounts of MPs revealed how expansions of women's rights were perceived by the decision-makers as ways of modernization and how the major issues debated were secularism and religious roots, rather than women's empowerment. For her, the debates on the new Civil Code were an extention of the modern/traditional dichotomy on which the politicians in Turkey had been leaning since the foundation of the Turkish Republic (Arat, 2010). Koğacıoğlu related the approach of the state -to take only “adequate” amount of steps that would empower women- to its own project of modernization. According to her, this is the key element to understand the existence of gender inequalities within the context of legal texts (Koğacıoğlu, 2005). In January 2002, the new Civil Code was enacted (Law no. 4721). Although women activists pushed the state to amend the code, their hard work was never mentioned, which provides a strong impression of pragmatism in state policies and supports the claims of both Arat and Koğacıoğlu.

Women's motivation to mobilize around the change of the code was entirely different. The old Civil Code affected women's everyday lives by explicitly and intentionally reproducing inequalities within family. In the old Civil Code, husband was defined as the head of the family and housework and care-work were counted as wives' contribution to the unity of family (Civil Code, Law no. 743, Articles 152 and 153).

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[46]For the full account of the parliamentary debates on the Civil Code of 2001, please see:
TBMM Tutanak Dergisi, Dönem 21, Toplantı 11, c. 73, 24.10.2001. pp. 21-89.
TBMM Tutanak Dergisi, Dönem 21, Toplantı 12, c. 73, 25.10.2001. pp. 363-403.
TBMM Tutanak Dergisi, Dönem 21, Toplantı 17, c. 75, 07.11.2001. pp. 18-68.
TBMM Tutanak Dergisi, Dönem 21, Toplantı 18, c. 75, 08.11.2001. pp. 178-210.
[47]The language of the Civil Code of 2001 was simplified. AKP opposed to this as they thought it as disrespectful to the Ottoman roots of Turkey.

When considered in practice, the consequence of this hierarchy and division of labor in the text was beyond being in accordance with traditional social roles attributed to women. If a woman were to avoid doing housework, this was counted as a behavior of a "faulty spouse" and resulted in problems about alimony and compensation.[48]

Article 21 of the same code asserted that the wife's residence is to be husband's residence. Although this might seem abstract, Necla had an exhausting experience about the problems arising from this article. A woman living in Van with her husband moved to Istanbul because of violence she endured and asked for Necla's help as a lawyer to file a divorce. Since her residency was bounded by her husband's, Necla had to go to Van for all the litigation process and her client had to pay the costs. When Necla criticized this practice while speaking to the judge, he said that a guy has a lot to do other than chasing his wife.

Article 146 concerned the separation of goods owned by spouses in case of divorce, meaning that each spouse would get what she/he owned personally during marriage. This seems like an egalitarian approach. Yet, since women usually did the unpaid domestic works and men earned money and held the title of unmovable properties, this caused tremendous inequalities after divorce. Women's economic situation usually worsened after divorce, because the men took all the belongings bought during marriage.

Article 263 stated that the final decision of the custody of children belongs to the husband if there is any disagreement between husband and wife. Although the custody of children was usually given to women, because the bond between mother and children was considered sacred, a lot of women could not bear the burdensome consequences of

[48] All examples in this section are based on interviews with Türkan, Cemile, Sevinç, and Necla.

divorce because of this particular article, even though they were battered. Cemile explains how they, as feminist lawyers, did not have any means to support women in the legal field:

> Before 2002, before the new Civil Code was passed, a woman would come and we did not have any instrument in our hands to help her. We knew that if she was to be divorced, she would end up penniless. Men would receive all the money and own the title to properties. We almost had nothing to do but support women psychologically as lawyers.[49]

These experiences of feminist lawyers were added to the unjust treatments of law-enforcers against women, who consulted with feminist lawyers through women's organizations or the Bar commissions around Turkey, and this led to strong mobilization around the change of the Civil Code. However, the mobilization was divided. Legal texts were not usually responsive to the issues of women that might be solved, or at least ameliorated, in the legal field. Acknowledging this, feminist lawyers perceived their mobilization as a way to transform the gendered content of law, as well as to include women as the equal addressees of the law. Moreover, they demanded the legal texts to answer women's immediate needs without discriminating against them, as well as to give place to women's everyday life needs, i.e. alimony, compensation, equal division of property, and custody, after the incidents women experience. Feminist lawyers were partially alone in their demands, because of both the lack of academic scholarship focused on women's issues in the legal field and divisions of ideas among women activists themselves.

[49] Interview with Cemile, feminist lawyer from Istanbul, 13.04.2016.

Türkan explains:

> While we, as women lawyers supporting women, were debating the issues of marital property, divorce, alimony, and compensation, there was only this one booklet we had in our hands as an academic resource that was published in İzmir. We had no idea about the field and the legal texts were all so flimsy.

Türkan continues, demonstrating the debates among women during the time:

> Some said that it was impossible to make the state pass a law that allows women to receive half of what was owned during marriage by both spouses. Most women lawyers and legal experts embraced this idea and supported a softer legal reform. Feminist lawyers, on the other hand, believed and said loud and clear that all properties bought during marriage should be equally distributed between spouses. You know, we even had to get on TV to publicize this idea. It was so exhausting to debate these. As a legal expert, you see a definite need, and you know what would solve the problem but the preferences might change from person to person. Gradual solutions, such as "We should get what we can get for now, and ask for more later", would not solve women's problems they face every day. It happened every time we demanded a legal change.[50]

Türkan's account reveals that feminist lawyers' struggle was differentiated than other lawyers' approaches. Feminist lawyers' struggle for the change of the Civil Code was not a kind of bargain with the state. Rather, they wanted to radically transform the gendered language, approach, and implementation of the code. One of the first things to

[50] Interview with Türkan, feminist lawyer from İstanbul, 20.04.2016.

do was to question the form of the family and women's role within it. Türkan states it this way:

> So what was our problem? First, family is a unity that violence rises from. We needed to overthrow its very hegemony that breach women's individuality in their daily lives. What did we have to do then? We needed to show what renders women's lives unimportant point by point. The Civil Code was a good way to begin with. It gave much more importance to family than women. The husband practically owned the wife. It was not possible for us to approve this. He could do whatever he wanted and still the woman would end up as guilty, as the one having nothing in her hands to start a new and better life.[51]

Therefore, feminist lawyers' concerns were, first and foremost, related to the everyday projections of inequalities reproduced by the very language and content of the code. Reproducing inequalities between men and women and traditional roles attributed to women within family, the Civil Code was a contested site for feminist lawyers. As feminist activists, they demanded a transformation in the language and content of the code, and as lawyers they wanted it to be a tool in their hands to support women. Sevinç asserts the tactile consequences of the unequal contents of the law for feminist lawyers:

> When I lecture, I talk about the old Civil Code. We call the era before 2000s a "horror tunnel". As a lawyer, you were taught to perform within the boundaries of the legal texts. But those boundaries were so limiting, there

[51] Interview with Türkan, feminist lawyer from Istanbul. 20.04.2016.

> was no way to bring justice to your clients as the intermediary in between law and themselves.[52]

The Civil Code was not providing enough space to feminist lawyers while supporting women. It was reproducing women's subordination and limiting the abilities of feminist lawyers to provide support to women, while men could benefit from it even when they were the reasons for women to end up in seeking support in the legal field. Feminist lawyers saw that the legal texts in Turkey were not neutral and equally distant to all citizens at first hand. The language, content, and implementations of the Civil Code explicitly discriminated against women. Their experience as lawyers while dealing with the limits of the Civil Code brought about the idea that the law both in text and in practice could only be separated at the abstract level. Both in text and in practice, the law operated for the further subordination of women, and therefore, it was a political field, rather than a body of knowledge that transcends politics. Feminist lawyers mobilized to merge law as in text and as in practice for the benefit of women. They experienced gendered practices during the implementations of laws and demanded better laws to overthrow these implementations. In turn, they used better laws to challenge ongoing gendered practices and discourses during the implementations.

Apart from contrasting implementations of laws and legal reforms to challenge one against another, feminist lawyers used other means for better implementations of legal reforms. When they encountered strong resistance of judges in the courts to implement the new Civil Code, they sometimes acted as instructors, demonstrating the good examples of court decisions in Turkey and around the world about the implementation of egalitarian laws. They started referring to the international treaties on

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[52] Interview with Sevinç, feminist lawyer from Istanbul, 19.02.2016.

human rights and about gender equality in the court rooms, as well as what they heard from women's organizations abroad about the implementations of similar laws in their own countries.

To conclude this section, it is fair to say that feminist lawyers struggled very hard in the highly complex law-making process of the Civil Code to include the necessities of women and to have a tool in their hands as lawyers. While the state authorities and the old code revolved around the notion of family and tried to maintain the traditional roles attributed to women, feminist lawyers' aim was much broader and transformative. Feminist lawyers tried to release women from the gendered content and implementations of law. They tried to transform the texts to make them answer to women's immediate and possible subsequent needs after an incident, based on women's and their own experiences. Moreover, they were not able to provide legal support to women in the old context of the Civil Code, since it highly limited their abilities as lawyers. Therefore, improving the Civil Code had a professional side too. Feminist lawyers tried to translate their own professional experiences and women's experiences after an incident within the family into the legal field, as well as introduce feminist and ethical principles regarding practical issues such as alimony, compensation, and the separation of property into law in general.

After the amendment of the Civil Code, feminist lawyers began to contemplate women's sexualities and how the Penal Code reinforced sexual assaults against women. In what follows, I will elaborate their subsequent mobilization to amend the Penal Code, this time to release women's bodies and sexualities from the confines of law in both text and practice.

3.2.2. Women's Sexuality under Closer Scrutiny: The New Penal Code

In November 2002, the AKP came to power. During its first term between 2002 and 2007, AKP embraced a relatively liberal discourse about freedoms and opportunities regarding expression, religion, and ethnicity in public, while supporting European Union reforms (Hale & Özbudun, 2010; Elbasani & Somer, 2015). Six European Union harmonization packages consisting of recommendations on changes in different laws were adopted during the AKP government between 2002 and 2004.[53] One measure necessary for the harmonization was to re-codify the Penal Code all together. The parliamentary debates were usually between the MPs from AKP and the only one other party in the parliament, CHP, since five MPs in total from these two parties had to work in the sub-committee to discuss the replacement of the old Penal Code. Most of the parliamentary debates were about how these two parties overcame their disputes and came together to amend the code, although their discussions were not ceased.[54] The then Prime Minister Recep Tayyip Erdoğan proposed to re-criminalize adultery at the last minute, but the suggestion was not agreed on, because it was expected to negatively affect the European Union accession negotiations.

Feminist women, on the other hand, were demanding the change of the Penal Code since 1980s. Their concerns were about releasing women's sexual freedom from the blockade of family and society. The language and content of the old Penal Code of 1926 stipulated that women's bodies and sexualities belong to the family and public. It

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[53] Before the AKP government, 3 of the packages were adopted by the coalition government. For more information, please see: T.C. Başbakanlık Avrupa Birliği Genel Sekreterliği, (2007). *Avrupa Birliği Uyum Yasa Paketleri*. Ankara: M&B.

[54] For the full account of the parliamentary debates on the Penal Code of 2005, please see:
TBMM Tutanak Dergisi, Dönem 22, Toplantı 119, c. 59, 14.09.2004. pp. 21 & 29-95.
TBMM Tutanak Dergisi, Dönem 22, Toplantı 120, c. 60, 15.09.2004. pp. 14-98.
TBMM Tutanak Dergisi, Dönem 22, Toplantı 121, c. 60, 16.09.2004. pp. 173-245.
TBMM Tutanak Dergisi, Dönem 22, Toplantı 122, c. 60, 17.09.2004. p. 288.
TBMM Tutanak Dergisi, Dönem 22, Toplantı 124, c. 60, 26.09.2004. pp. 368-391.

differentiated the sexualities of men and women, and virgin and non-virgin women.[55] It conceptualized rape as "penetrating one's honor" *(ırza geçmek)* and sexual assaults under the title of "Crimes against Public Decency and Family Order" *(Adab-ı Umumiye ve Nizam-ı Aile Aleyhinde Cürümler)*, while physical harms towards people and abortion were discussed under the title of "Crimes against Persons" *(Şahıslara Karşı Cürümler)*. Abduction of a married woman was charged more than abduction of an unmarried woman (Penal Code, Law no. 765, Article 429). If the rapist later married the woman who he raped, his sentence would be suspended (Penal Code, Law no. 765, Article 434). If a person was murdered because of honor and customs, the penalty would be reduced (Penal Code, Law no. 765, Article 462).[56]

After maintaining equality between men and women within the family by the new Civil Code, women revived their discussions on women's sexuality and how they were conceived in society and how the old Penal Code encouraged, rather than discouraged, sexual assaults against women. Sevinç states:

> We worked on violence first [protection act], then family [civil code], then the very existence of the woman in society as a body belonging to everyone, except from herself [penal code].[57]
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> [Emphasis added]

Sevinç's account perceives a successive or linear progression in women's struggle against the contents of laws. Not all the feminist lawyers I interviewed perceive the

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[55] In the old Penal Code, an explicit distinction was made between virgin and non-virgin women by calling the former girl *(kız)* and the latter woman *(kadın)*. Sexual assaults against virgins were charged more than non-virgins.
[56] For more information about the articles of the Penal Code regarding women, please see: Joseph, S., & Nağmābādī, A. (2006). *Encyclopedia of Women and Islam Cultures: Family, Body, Sexuality, and Health.* Leiden: Koninklijke Brill.
[57] Interview with Sevinç, feminist lawyer from İstanbul, 19.02.2016.

process as a smooth transition. Yet, it is common for all to see different law reforms as subsidiaries of each other. They complete each other to increase the empowerment of women in their everyday lives. This does not mean that feminist lawyers understood the language and content of law as a way to automatically improve women's lives. It is true that beginning in the 1980s, they organized, first and foremost, to change the language and content of legal texts, rather than their implementations. Yet, it was a step for them to get closer to their own political causes, as well as to overthrow boundaries that prevented feminist lawyers from supporting women to the full extent. Necla asserts the following:

> I, as a lawyer, knew that it was not possible to change women's position in society and their everyday encounters with inequalities without first improving the content of law. I am not saying that legal reforms would solve every single problem of women. I am saying that a change in their language should come first. Because, then you have a tool to fight with the inequalities in practice of law. When a police officer or a judge resists to protect woman or punish the perpetrator, or a politician uses women's issues as a way to reach his own ends, you have a tool to bring them to account for what they really say and do.[58]

As can be understood from Necla's account, rather than idealizing better laws, feminist lawyers saw them as a way to question everyday practices and discourses of the decision-makers, which, according to them, affect women's lives. In this context, it is fair to say that feminist lawyers actually were opposed to ostensible reforms, in which

[58] Interview with Necla, feminist lawyer from İstanbul, 29.03.2016.

women are expected to perform their traditional roles as modest daughters, wives, and mothers but are "granted" emancipation to a certain degree.

Necla continues:

> Our [women's] strong movement for legal reforms first and foremost aimed to shape the mentalities of decision-makers. That is, police officers, judges, and politicians. Indeed, I decided to be lawyer to be a mediator while bringing justice to people's everyday lives. Otherwise, I never believed that changing the Penal Code would set women free from harassment. And I know that their bodies are rendered as an asset of the society. But laws define the limits of our actions, and they are important in that sense.
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> [Emphasis added]

Necla perceived the amendment of the Penal Code as a way to limit gendered practices of law-enforcers and politicians, rather than as an ideal tool to use for the "emancipation" of women. She continues, by stating that their struggle actually has the potential to change the mentalities of decision-makers:

> After the enactment of the Penal Code, and with the help of our defense arguments in court rooms, a judge reached a verdict in which he counted a family's defense, indicating honor was the reason of the crime, as an aggravating circumstance. This changes from person to person of course. But I really see that the harder we press through laws the better the decisions get.[59]

[59] Interview with Necla, feminist lawyer from İstanbul, 29.03.2016.

Apart from the impacts of legal reforms on the mentalities of the decision-makers, legal reforms motivated both women and the state authorities to enact new and better laws. In fact, after a series of legal achievements, it became easier for women to demand legal reforms to support the other recently enacted ones. Discrepancies among different codes strengthened their productive resistance. For example, when women gained the Civil Code stating that men and women are equals, there would be no rationale behind keeping the Penal Code the same. And when put in this way, the state authorities also could hardly find women's points dis-avowable. This, in turn, strengthened women's pressing for legal reforms and organizing around them, as well as drawing the interest of the wider public to better laws.[60]

Although feminist women's mobilization to amend the Penal Code was known by the public, much wider public attention to the code was raised by them through a significant incident. In 2003, twenty-seven men, including military and public officers accused of raping a 13 year old girl, were released, because the evidence regarding her consent was found inadequate. Women's organizations made the incident more visible, litigated the trials, and supported her after the case was closed. The incident soon provoked a great public awareness about the inequalities of of the Penal Code, and the media and broader public supported women's demands to amend the law (İlkkaracan, 2007).

In particular, feminist women tried to find a way both to work on the Penal Code and to expand the effect of women's movement regarding the code. Because of the previous experiences of electronic communication networks set first for the shelter

[60] For more information on women's campaigns to amend the Civil Code and Penal Code, please see: Anıl, E., Arın, C., Berktay Hacımirzaoğlu, A., Bingöllü, M., İlkkaracan, P., & Ercevik Amado, L. (2005). *Turkish Civil and Penal Code Reforms from a Gender Perspective: The Success of Two Nationwide Campaigns.* İstanbul: Stampa.

congress and lobbying for the change of the Civil Code, women's organizations were much more prepared for this amendment. Immediately after the Civil Code reform, women formed a platform, Turkish Penal Code Women's Platform *(TCK Kadın Platformu)* under the secretariat of a women's organization, Women for Women's Human Rights-New Ways Association *(WWHR, Kadının İnsan Hakları-Yeni ÇözümlerDerneği, KİH-YÇ)*. Türkan elucidates how the platform worked:

> A lot of women and feminist lawyers from different organizations came together for that platform. Before this experience, we usually organized in an action and reaction manner, and then we intervened. But for the Turkish Penal Code Women's Platform, we were prepared beforehand. We made a very special effort for that. We called every single woman from women's organizations. We searched for the newly-founded women's organizations around Turkey and included them in our works. For two years, we worked on it. We worked like a technical office, as a smaller group consisted of feminist lawyers and activists, 26 representatives in total, and prepared our demands. Then we brought the subject up for discussion for the greater portion of women's organizations. One by one, we contemplated every single article. Together, we prepared a draft regarding the articles that had been affecting women's lives.[61]

In the new Penal Code, more than 30 articles were amended as women proposed.[62] Sexual assaults were considered under the title of "Crimes against Persons" in the new code, reductions of punishment in case of honor killings[63], rape, and abduction were

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[61] Interview with Türkan, feminist lawyer from İstanbul, 20.04.2016.

[62] To see the demands pooled by the Turkish Penal Code Women's Platform, please see: Women for Women's Human Rights-New Ways-TPC Women's Platform. (2003). *Kadın Bakış Açısından Türk Ceza Kanunu: TCK Tasarısı Değişiklik Talepleri.* İstanbul: Art Press.

[63] Honor killings became one of the aggravating circumstances in cases of murder.

annulled, discriminating words like “chastity”, “honor”, “morals”, “disgrace”, and “indecorum” were removed. Differentiations of crimes against virgin/non-virgin and married/non-married women were also repealed. And sexual assaults by law-enforcers were counted as aggravating circumstances.

In 2004, because of women’s pressure to complete the Civil Code and Penal Code in terms of equality of men and women, Article 41 of the old Constitution (Law No. 2709) was amended. The old version stated that the family was the foundation of society and was based on equality between spouses. It was then changed into an article on men’s and women’s equality as individuals in 2004 (Article 10). Women pressed for an additional clause indicating that the state is responsible for taking necessary measures to provide for this equality. Cemile explains the process:

> We revolted against the discrepancies in different laws. You say that women and men are equals as individuals in both the Civil Code and the Penal Code, but you still say that family is the foundation of society in the Constitution! We demanded a change not of words, but of deeds. We organized press conferences and meetings, but did they hear us? I bet they only took a glance at the newspapers. But in the progress reports, the European Union stated that “This only concerns family and is inexpedient.” Then they amended the article as we wished. And the reverse discrimination clause that identified measures to be taken to support equality cannot be approached as concessions added only after 2010 [Law No. 5982, Article 1].[64]
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> [Emphasis added]

[64] Interview with Cemile, feminist lawyer from İstanbul, 13.04.2016.

Cemile's account shows how women's movement and the European Union harmonization process went hand in hand, although women were the ones pushing and orienting the state even before the European Union reports. The era between 1990s and 2010s saw different transformations in women's organizations, state mechanisms and the political dynamics at the national level, and relations of the national with the international arena. It was this complex background that made important changes in legal texts possible and rendered the legal field as a highly contested and productive field for women. Feminist lawyers also had important roles in the making of the legal field as a highly contested and productive site for women.

In the process of the making of the Penal Code, particularly, feminist lawyers formed new and strong ways of organizing and tried to complement the amendment of the Civil Code, which dealt with women's position within the family, by a new Penal Code to change the treatment of women's bodies and sexualities. They made use of the developments about the European Union harmonization process and gained wider public support.

For feminist lawyers, the legal field is a field to maintain their profession, to introduce feminist principles for law to be achievable and usable for women, to change the mentalities and limits of practices and discourses of the law-enforcers and politicians, and to negotiate with the state authorities and institutions to make women's experiences a starting point. It is a field to struggle within and against, and a field to build hope for their feminist aims. In what follows, I will further elaborate on the legal field as a field of struggle and hope, operating through tensions between governmental oppression and reforms.

3.3. Completing what is Left Behind: The New Protection Act

3.3.1. Domestic Tensions and Transnational Interactions

By the end of 2005, the discriminating language and content of legal texts were eliminated in Turkey. Women's organizations worked very hard to amend articles and specific codes. They collaborated with different state institutions, such as the Directorate General on the Status of Women[65] *(Kadının Statüsü Genel Müdürlüğü)*, the related ministries[66], and MPs, as well as the international bodies and women's organizations. They came into conflict with Ministry of Justice and parliamentary commissions and they criticized the discourses of government offficials. At the same time, the legal field became highly contested with tensions among different actors, beliefs and ideas. The judicial system has been oppressed and the independence of judges and prosecutors has been limited, while different forms of antagonisms among the public has also been created through massive operations against different segments of society. Meanwhile, with the more egalitarian laws (Civil Code, 2002; Labor Code, 2003; Penal Code, 2005; Criminal Procedure Code, 2004; Constitutional changes, 2004 and 2010) and ratifications of international conventions undertaken during the AKP era, the AKP rule was merged to the international human rights framework, especially on issues of violence and torture.

Women activists, in an era largely defined by the tensions among diverse and widespread governmental oppressions and the need for legal reforms, strategized the circumstances very effectively. They became related with transnational women's

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[65] The Directorate General on the Status and Problem of Women's name was changed into Directorate General on the Status of Women in 2004.

[66] The Ministry of Women and Family Affairs until 2011, and Ministry of Family and Social Policies afterwards.

organizations and international conventions. They reminded the relevant state institutions about the international conventions that the Turkish state ratified. They collected signatures to oppose the oppressive policies and discourses of the government. They pressed the ministries by their interminable petitions, asking questions about data on battered women that they should have held. They used the projects supported by the European Union and prepared shadow reports to reveal the maltreatment of law enforcers and everyday life experiences of women encountering them and to arouse international reaction against law enforcers and politicians. They lobbied in the commissions of the parliament and meetings of international committees monitoring the implementations of conventions. They developed their relationships with transnational networks of women to collect sample cases regarding legal implementations and to use them in court rooms. They benefited from the international conventions that the Turkish state ratified. And they tried to hold institutions responsible for maltreatment of women accountable in front of the European Court of Human Rights (ECHtR).[67]

Indeed, the Turkish state was the first to be recognized as faulty of not protecting a woman from domestic violence[68] by the ECHtR in the Opuz v. Turkey case (European Court of Human Rights: Opuz v. Turkey, 2009; Abdel-Monem, 2009). The Opuz Case was the first case prosecuted at the ECHtR that recognized domestic violence as a violation of human rights. The reports of different women's organizations about the implementations of law enforcers and the perspectives of the government were given

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[67] European Court of Human Rights is an international court hearing applications on violations of human rights by contracting states. It works under the Council of Europe. The Council is monitored by the EU, NATO, and Organization on Security and Cooperation in Europe (OSCE). Applications to the Court can be made individually or as a group.

[68] In 2009, the European Court of Human Rights (ECtHR) found in the case of Nahide Opuz versus Turkey that the state of Turkey had violated its positive *obligations* to effectively protect women from domestic violence. Opuz sought legal protection from her then husband for her and her mother. Yet, because of the neglect of the law-enforcers, her mother was murdered, and her life was threatened several times. The Court found that the Turkish state violated Article 2 (the right to life), Article 3 (eliminating torture and inhuman treatment), and Article 14 (elimination of discrimination) of the European Convention on Human Rights (European Court of Human Rights, 2009).

place in the case proceedings. Necla expains how they benefited from the international sanctions:

> The state is responsible for protecting the lives of all citizens. Apart from the lobbying activities, we mobilize to condemn the state in the international arena. First, there is this European Court of Human Rights. A person can receive material compensation from that. And then there is Grevio[69], that has the ability to debase and disgrace the state in the eyes of other states. It cannot impose compensation, but it is still powerful. And not all lawyers that intend to apply for the sanction of Grevio, because Turkish is not one of the official languages of application. I always follow the previous cases and try to file cases against the Turkish state with both. At least, these oblige the state to make an explanation.[70]

Although acknowledging that these sanctions of the Court and Grevio might not be so effective, all feminist lawyers I interviewed consider *debasing* and *disgracing* the Turkish state in front of transnationally recognized platforms as important. This is coherent with the other ways of their mobilizations against the implementations of the state and discourses of the government. Apart from "trying whatever ways possible", they perceive the international arena as a significant determinant of Turkish state's policies and implementations. This is a way for them to render the state responsible to consider their political stance. Ayça explains her motivation behind considering the international arena important:

> The important thing is to call the state to account for what it did and did not do. We send petitions to the ministries or we face with the directorate

[69] Grevio is the monitoring body of CEDAW, consisting of independent experts.
[70] Interview with Necla, feminist lawyer from Istanbul, 29.03.2016.

> workers in meetings and conferences and tell them what we see as problematic. They say that it is not their fault. "We do not have enough budget" they say, "we do not have adequate numbers of staff. Revealing the reality in the international arena means that the addressees will be all the state institutions responsible for women's subordination. Otherwise, we would be stuck with the ones saying "we have no budget to do this and that".[71]

The relations of feminist lawyers with international bodies, texts, and reports are used to oppose governmental oppressions and press for the necessity of legal reforms. They want the government members to stop their sexist speeches, to take necessary legal and infrastructural measures for improving the implementations of legal texts, and to re-shape their mentalities through these mediums. Their strategies challenge the imagined monopoly of the state to make top-down decisions by placing it into the "perpetrator chair" in the international arena. The government, on the other hand, exploits the gap between the oppression and antagonisms it creates and the reformist image it produces, finding new ways of legitimizing its power. The government officials, while mentioning democracy and national will as determinants of their policies, either explicitly trivialize different voices, or create mass antagonisms against them. In what follows, I will elaborate on the new protection code, which was implemented in the middle of an era defined by different tensions among different actors and practices.

[71] Interview with Ayça, feminist lawyer from Istanbul, 06.10.2015.

3.3.2. The State as a Non-Unified Entity

As the most distinct product regarding women of this tense period, there stands Law No. 6284 on Protection of Family and Prevention of Violence Against Women *(Ailenin Korunması ve Kadına Yönelik Şiddetin Önlenmesine Dair Kanun)*, replacing the old protection act altogether. In May 2011, the Turkish state ratified a European Council convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, 2011). Just a few months later, the Ministry of Women and Family Affairs was replaced with the Ministry of Family and Social Policies. Since it removed the name of "women" from the ministry and absorbed women's issues into either family or social policies, women organizations resisted the change and launched a petittion campaign, gathering 4000 signatures.[72] Yet, their opposition was not taken into account, and then Prime Minister Recep Tayyip Erdoğan stated that AKP is a conservative party that values family (Belge, 2011).

Immediately after the change, inn 2011, the newly formed ministry started working on the duplication of İstanbul Convention with a "brand new" protection act, Law No. 6284 as some legislative and institutional measures were required by the convention. Before the act, women intervened through lobbying and creating public and international reactions in all mobilizations they took part to shape legal reforms. For the first time with this act, the ministry invited women's organizations and lawyers to prepare the draft. More than 250 women's organizations formed a platform called "Platform to End Violence" *(Şiddete Son Platformu)* to discuss their demands from the new protection act. Representatives from different organizations and women lawyers participated in the meetings for the preparation of the act at the Rixos Hotel in Ankara.

[72] Eşitlik Mekanizmaları Platformu. *Kadın Bakanlığı Kaldırılmasın.* Retrieved from imza.la: http://imza.la/kadin-bakanligi-kaldirilmasin

First, the Ministry of Family and Social Policies and Directorate General on the Status of Women sent them a draft. Together with their organizations, women representatives prepared their own drafts or reports and discussed it with the other members of the platform in the meetings in Ankara.

At first, women were surprised by the invitation. Although they were already pressing the ministry for better implementations of the old protection act, Law. No. 4320, they did not demand a new act. As Güneş states:

> We did not understand where the idea of enacting a brand new act came from. Women's movement demanded the enhancement of the act no. 4320, there were some deficiencies in it, but it was a very simple act that every woman could understand without consulting with a lawyer. We wanted that act to be enhanced and expanded. But more importantly, we wanted the state to establish the necessary infrastructure to better implement it. But remember, those were the times violence against women started to be more visible in all newspapers, especially in the first pages, rather than the third pages.[73] The government seemed like it took the issue of violence against women very seriously, almost like a matter of honor. We heard that the then Minister of Family and Social Policies Fatma Şahin was saying that they have to enact the new act by 8 March 2012. I don't know, they just had to. They were in a huge rush! In just like eleven months, the new act was enacted hastily.[74]

Some feminist lawyers, especially the seniors, became uncomfortable to work together with a ministry under the AKP government. Necla, for example, refused to attend the

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[73] The first page news are about politics, third page news are about "social lives", such as robbery, murders, rapes, and suicides in newspapers in Turkey. The way women killings have been presented in the third page news as "magazinish" has been an important focus of the feminist movement in Turkey.
[74] Interview with Güneş, feminist lawyer from İstanbul, 04.09.2015.

meetings since she did not believe anything good would come from them. Similarly, Türkan protested by not going to the parliament for lobbying when some of their demands were not taken into account by the relevant commission. When Cemile took the floor in the first meeting, she said that she participated in the draft preparing process to make sure that the minister Fatma Şahin understood women's standpoint.

In each meeting in Ankara to discuss Law No. 6284, women, including feminist lawyers, prepared a draft together with the ministry. The first thing that they agreed on was that there was no need to enact a new act. They were repelled regarding that. Then, they decided to contribute with their knowledge and years of experience in the field. The common things women representatives focused on were that i) the word "family" should not be in the law; ii) it should be specific to women; iii) protection should be provided without evidence and iv) to non-married women as well; v) there should be a center that women can access easily about the problems during and after securing protection order, such as finding a place to work and a shelter or a house to stay in. The center should also collect information on violence cases and monitor women's and batterer's statuses afterwards. Lastly, vi) law enforcers need to be trained on gender equality.

In each of the following meetings, the previous draft that women and the Ministry of Family and Social Policies prepared together was changed and made moderate, or more precisely, safe. Moreover, although the new act was aimed to be a simple act of duplication of the İstanbul Convention by the ministry, certain words and phrases were translated or adapted differently. For example, "domestic violence" was adjusted as "protection of family" and "elimination of violence against women" *(tasfiye)* was translated as "prevention of violence against women" *(önleme)* in the title of the act. "Gender" *(toplumsal cinsiyet)* was shortened to "sex" *(cinsiyet)* and

"stalking" *(ısrarlı takip)* was translated as "one-sided stalking" *(tek taraflı ısrarlı takip)*, as if there is a form of two-sided stalking. Cemile explains her frustration:

> Each night before meeting with the ministry in Ankara, they sent an e-mail to us. Attached, a file from the Directorate General on the Status of Women. Our draft that we worked on for hours went away, a new and completely different version came! Ten days later, the same thing! Then I changed the front page of my report. I wrote the definition of violence. I wrote violence is making one feel bad about herself, making one feel useless, frustrated. Then I wrote that according to that definition, what the ministry does to us is a form of violence.

She continues:

> You know, as you age and you come to know the subject very well, people respect you and don't get offended with what you say. Aristo has a saying: Men's blood is hot and clean, women's blood is cold and dirty. That's why women eject some of it regularly. He bases the inequalities between men and women completely upon their biology, you know. He tries to say that women are powerless and born to be subordinated. But, he continues: whenever women stop ejecting their blood and garner it, then they can rule and be respected as men. Mine is like that too. What can they do to me? This aging thing is very effective in those meetings! Whatever, then Fatma Şahin told me that I am certainly right but she can't stop the Ministry of Justice. She goes to the ministries, and is played in the hands of those bureaucrats, for

> example while in the Ministry of Health. They change or remove a sentence without entertaining her opinion, but that sentence is crucial there![75]

Cemile's account firstly reveals that she thinks that the state authorities are selective about whom they respect, depending on their biological features, a.k.a women's age. Secondly, there is a hierarchical difference between ministries that display different amounts of resistance to women's demands. The fact that she does not count the Minister of Family and Social Policies as a bureaucrat confuses the taken-for-granted unity of the state. Although women discussed the new act in a relatively democratic and pluralistic environment in which women representatives from different organizations with various values and missions participated, the same environment did not exist among the state authorities. Nevertheless, women maintained their struggle by benefiting from the ones that are more negotiable.

Similarly, Türkan said that while enacting the act, the prime minister's office sent it to the parliament after sorting out what women conceived crucial, without noticing even Fatma Şahin. In the parliament, eveyone, including Fatma Şahin, was buzzing around to get signatures from the Justice Commission and pass the changes women found necessary. Feminist lawyers I interviewed perceived the cause of the frustrating experience as the AKP government. Feminist lawyers mostly related their experiences in the process of enacting the law with the AKP government's transforming discourses about individual freedom and liberation. As Merve states:

> They were all like "we will do it, we will do that" before they came to power. But their two-facedness came to light in a very short amount of time. They

[75] Interview with Cemile, feminist lawyer from İstanbul, 13.04.2016.

are no different than police officers sending battered women back home saying that "that's your husband, these things happen".[76]

Similarly, Bahar believed that what the then Prime Minister Recep Tayyip Erdoğan mentions in his public speeches is rendered more important than the Constitution by the judges:

> The Constitution says that women and men are equals. But when your prime minister does not believe in that equality and states this loud and clear in his public speech[77], the judges are affected as well. They think that inequality is legitimate today in Turkey.[78]

By giving reference to the same speech of Recep Tayyip Erdoğan, Cemile states something similar:

> The political viewpoint of the government is very important. When they [government members] say that "the nature of women does not allow this and that", when they intervene in what women do, from laughter[79] to giving birth[80], then the judges are affected by that too, they did not come from the moon.[81]

[Emphasis added]

These accounts about the process of the enactment of the new protection act tear down the commonsensical idea about the state as a unity "operating at a higher level" (Ferguson & Gupta, 2002: 983), because we see that all of the state institutions and authorities approached women differently. While the Ministry of Family and Social

[76] Interview with Merve, feminist lawyer from İstanbul, 22.03.2016.
[77] BBC Türkçe. (2014, November 24). *Erdoğan: Kadın-erkek eşitliği fitrata ters.* Retrieved from BBC: http://www.bbc.com/turkce/haberler/2014/11/141124_kadininfitrati_erdogan
[78] Interview with Bahar, feminist lawyer from İstanbul. 31.08.2015.
[79] (CNN Türk, 2014).
[80] (Bianet, 2008) and (CNN Türk, 2013).
[81] Interview with Cemile, feminist lawyer from İstanbul, 13.04.2016.

Affairs sat down at the same table and valued women's comments and demands, the prime minister's office deleted some of women's points that they actually found crucial. In turn, the excluded demands of women did not even reach the parliament. In a way, while one state institution (the ministry) called and invited women to have their opinions, the other (the prime minister's office) censored them.

On the other hand, feminist lawyers' accounts reveal the extensively permeating power of governmental authority. They think that after its second term, starting with 2007, the AKP government started acting more as a unity, primarily operating from Erdoğan's standpoint. They believe that his discourse about women diffuses into the court rooms, affecting the decisions of law-enforcers.

All together, these are projections of the tension between oppression and reforms, seen in both the making and enforcing stages of legal texts. The tension renders feminist lawyers frustrated, as well as sanguine, since the legal field continues to be a controversial and productive field of feminist struggle, by the decisions of its law-enforcers, by the responsive state institutions and authorities, and by the gendered discourses of government officials. In what follows, I will explain how feminist lawyers perceived the legal reforms made throughout the tensions of the AKP era and how they particularly approached the new protection act.

3.3.3. Attenuating the Power of Legal Texts

Law No. 6284 was enacted on 8 March 2016. It defines the meanings of domestic violence, violence against women, violence, victim of violence, perpetrator of violence, and protection order in Article 2. It includes sexual, psychological, economic, and physical violence as a form of violence (Article 2/ç, 2/d), as well as counting "danger of violence" (Article 2/e) as grounds to provide protection order. Unlike the older

protection act, protection order is applicable outside the familial boundaries by Law No. 6284. Therefore, violence perpetrated by an imam marriage partner, a former spouse, boyfriend, girlfriend, stalker, and an ex-love is included as causes for a protection order. A person in need of protection can apply not only to family courts *(aile mahkemeleri)*, but also via various state institutions and personnel, such as the civilian authority, police officers, and district governorships, whichever is more accessible. She does not need to show any evidence of violence. By the protection order, the perpetrator can be fended and the victim can be placed in a shelter or house by police officers. Moreover, the victim can receive temporary financial support from the state and compensation from the perpetrator. Only in case the perpetrator breaks the order, he can be imprisoned for 3 to 10 days provisionally. Prevention and Monitoring Centers *(Şiddet Önleme ve İzleme Merkezi-ŞÖNİM)* operating on a 24/7 basis would be established all around Turkey, providing general consultancy, guidance, and monitoring services before and during protection orders, as well as effective cooperation among different agencies and state institutions. ŞÖNİMs also need to provide psychological support to both victims and perpetrators.

When I asked why feminist lawyers think Law No. 6284 was written in the way it was, I realized two common things in the answers of my interviewees: First, they perceived all the legal reforms made through their efforts as complementary to each other. Their political motivation was focused on women's role within the family, women's bodies, sexualities, and violence. They demanded the legal texts to approach these notions as they do as feminists.

On the other hand, in practice, the Civil Code was necessary for recognizing women's equality within the family. It was important for division of property, compensation and alimony after divorce. The Penal Code was important because of its

ability to effectively punish the perpetrators, but the it does not specifically deal with violence against women. And it does not offer a way for women to feel secure in their homes or workplaces. Feminist lawyers mobilized around the enactment of Law No. 6284 to fill the gaps left in the Civil and Penal Code. The Civil Code was designed for releasing women from their economic independence and the Penal Code was prepared for punishing the perpetrators of women killings, while Law No. 6284 was enacted for protecting the victim from violence. Second, feminist lawyers I interviewed conceived Law No. 6284 as a tool to "teach" the law-enforcers, such as judges and police officers, their duties and scope of their authority, as well as how they can implement the act better. In short, with the Law No. 6284, the law becomes a tool for training judges and for rehabilitating the victims and perpetrators, rather than a tool for punishing.

3.4. Concluding Remarks

For feminist lawyers, legal reforms meant ameliorating women's positions within the family and in society, even before they appealled to the legal field. By changing the language and content of the legal texts, they aimed to struggle against the laws' legitimization of women's subordination in women's everyday lives. They challenged the power relations law reproduced by its language, content, and practice, without abandoning to struggle in the legal field.

While working in the legal field as lawyers, feminist lawyers experienced first hand that the "Law's purported neutrality is simply a mask for the masculinity of its judgements" (Collier, 2010) both in the law in text and in practice. Feminist lawyers knew that the two cannot be separated, and they merged the law in practice and in text as a field to struggle within and against, by maintaining their activisms, lawyering, and legal expertise.

This chapter elaborated the relations of feminist lawyers in the law-making processes with all the relevant actors such as state authorities, institutions, international bodies and conventions, the women they supported, and women who they organized with. Smart sees the struggle for achieving legal reforms as the first step in an evolutionary process that ends with questioning "legal logic, legal values, justice, neutrality, and objectivity" (Smart, 1989: 66). Although feminist lawyers perceived the legal reforms as complementing each other, it was not because of that they conceived their struggle for more legal reforms as evolutionary. They already knew that the legal texts were not neutral and objective at all, and that legal logic, legal values, and justice were not exempt from power relations through which women's subordination was reproduced and legitimized. Feminist lawyers' starting point was much more complex in that sense, since they used their struggle for achieving legal reforms both for questioning and improving the very logic and values of law.

The fact that feminist lawyers knew that law was not operating as a neutral and equally distant field to all citizens attenuated the power of law as a truth-claimer that determines which stories to include and which stories to discredit in the legal texts and court rooms in their eyes. Under the impact of international conventions and pressures, already existing legal texts also lost their preciseness and boldness, since they began to be shaped not in terms of norms and customs, but in terms of the "ideal" as defined by the transnational legal texts. In turn, it became easier for feminist lawyers to struggle within and against the law, and to include women's experiences and needs in the legal texts.

Feminist lawyers' approach to the legal reforms as complementaries of each other is related more to their perspectives about feminist women's mobilization as a whole. They understood the processes as a whole as activists. While their narratives

implied a sense of integrity of their mobilization in the legal field, an integrity hardly existed for their addressees and negotiating authorities from the state institutions, complicating feminist lawyers' struggle in the legal field much more and showing that the state was not a unity that used law to merely control society. Indeed, throughout the rule of the AKP government, the legal field became a much less homogeneous and much richer field with all the tensions it hosted between oppression and reforms, and between restriction and expansion. This further rendered the legal field as a field of struggle for feminist lawyers, as both a field of despair and hope.

The dichotomies of resorting to legal reforms or abandoning them altogether, being activists in the non-legal field and being professional lawyers in the legal field, struggling against the state as a unity and bargaining with the state never worked in an "either this or that" fashion for feminist lawyers. In fact, the never ending tensions made the legal field worth struggling within and against at the same time for them. In the following chapter, I will further enunciate feminist lawyers' struggle in the legal field, this time by looking at their lawyering experiences in the court rooms for women, and against the practicing of law.

CHAPTER 4

LAWYERING AS FEMINIST: ENCOUNTERS AND STRATEGIES

While struggling for legal reforms that would empower women, feminist lawyers worked in the legal field as professionals. Since the 1980s, they have been criticizing and trying to find different ways of transforming implementations and practices of decision-makers. The previous chapter elaborated on their struggles against and demands from certain state authorities and law-enforcers. This chapter scrutinizes performative experiences and strategies of feminist lawyers in the court rooms, where they advocate for women. It shows that they are "lawyering" in cases that are chosen by broader feminist groups, and build their defenses together with other women activists. These cases usually include violence, women killings, and self-defense. Depending on the case, their demands from the judges, as well as their legal strategy at the court rooms change. Rather than approaching the interpretation and language in the court rooms as neutral and objective, this chapter focuses on performative aspects of feminist lawyers' encounters in the court rooms.

To elaborate on how feminist lawyers merge their activisms with their performances as lawyers, this chapter first explains how a woman or her relatives open files for reasons such as violence, failed marriage, protection, and murder. Second, it demonstrates how feminist lawyers participate in women's cases and how decisions and implementations change through their entrance in court rooms. Third, it scrutinizes different strategies of feminist lawyers to deal with the credibility issues they face in court rooms. Altogether, this chapter discusses the transformative potential of "lawyering as feminists" in the legal field, while addressing different conundrums that

feminist lawyers experience because of the broader changes in the legal field and because they are activists in supposedly objective and neutral court rooms.

4.1. The Encounters of Experience and Knowledge

In this section, I first discuss the procedures of how a woman or her relatives individually file a case for reasons such as violence, protection, divorce, and murder. These are the issues around which feminists have been mobilizing since the 1980s. While explaining the procedures, I pay attention to different ways in which feminist lawyers approach the institutional operation of the law and women's experiences.

Second, I elaborate on ways in which a woman can benefit from law, such as the legal assistance service *(Adli Yardım Servisi)* provided by the Bar Association, and legal support provided by feminist lawyers.

4.1.1. Women's Encounter with the Legal Field

A woman in Turkey, or her relatives in case of murder, participate in the legal field in three forms. One is filing for divorce, processed by the family court *(Aile Mahkemesi)* or the civil court of first instance *(Asliye Hukuk Mahkemesi)* in the absence of family courts. A woman who wants to get a divorce goes to the family court and hands over a petition, stating her reasons for filing a divorce and her demands from the spouse, to an officer working in the front office of the court. There are three forms of officially accepted requests to file for a divorce (Civil Code, Law No. 4721, Articles 161-166). The first one is contractual *(anlaşmalı),* where the parties sign a protocol agreeing on issues such as children's custody and financial matters. The second is the case of severe conflict *(şiddetli geçimsizlik)* which might imply a range of problems from discord to violence. Last, and the third is private matters *(özel sebepler),* consisting of issues such

as mental disease of the spouse, indignity *(onur kırıcı davranış)*, adultery, dishonorable living *(onursuz yaşam sürme)*, domestic violence, and an attempt on life *(cana kastetme)*. Judges mostly do not reach a verdict in the first hearing in any of these three cases.[82]

The second form of participation in the legal field for a woman or her relatives is to apply for a criminal action. In case of being exposed to physical or sexual violence, a woman can apply with a bill of claims to the clerk of the prosecutor. The prosecutor hears the defendant(s) and collects evidence in the investigation phase and decides on whether or not to prepare a bill of indictment and pleads the dictum to the judge himself/herself. A woman can make a denunciation through police officers as well. In case of murder, the deceased woman's relatives can file a criminal complaint. If the bill is approved by the court, the prosecution phase begins in the court rooms where both parties and their defenses are heard by the judge. A criminal complaint usually continues as a public prosecution *(kamu davası)*. Even when the plaintiff renounces his/her complaint, the prosecution phase continues to be held in the court rooms. Sometimes, civil claims *(hukuk davası)* can be held bilaterally in forms of both civil and criminal suit *(ceza davası)*. A prosecutor defends the victim on behalf of the Turkish state, against the perpetrator.

Third and last, a woman, who is exposed to physical, economic, psychological, and/or sexual violence, can demand a protection order through civilian authorities, law-enforcement officers, district governorships, Violence Prevention and Monitoring Centers (ŞÖNİM), and family courts. The woman or the officers working in these units prepare a petition to be sent to the front office of the family court. The family judge,

[82] Interview with Bilen, feminist lawyer from Istanbul, 06.05.2016.

then, processes it and decides whether the victim can acquire a protection order or not. Then, she takes the provision from the front office of the family court. Women usually apply for a protection order to save some time securely in the phase of divorce, to incline their intimate partners to think about the consequences of their violent actions, and to prevent their stalkers, ex-boyfriends, or ex-husbands from harassing them[83].

4.1.2. Women's Encounter with the Legal Assistance Service and Voluntary Feminist Lawyers

Hiring a lawyer is not a must for the woman or her relatives in any of the three forms. However, given the fact that it is difficult to translate one's problems into legally acceptable terms without a lawyer, women usually hire a lawyer privately and pay the costs of filing a case and service of the lawyer. Feminist lawyers get involved in women's cases voluntarily. A woman who cannot afford to hire a lawyer but is in need of one can file a case with the help of feminist lawyers. In what follows, I focus on such cases in which feminist lawyers and feminist institutions become a part of a woman's encounter with the legal processes.

First, a woman can go to the Legal Assistance Office *(Adli Yardım Bürosu),* which works under the Bar Association, to apply for a lawyer. The Legal Assistance System only works for civil actions, administrative actions *(idari dava)*, and the protection of women from violence. A woman needs a poverty certificate and residence document - both provided by the neighborhood headman - and a copy of her identity card during the application. If she was exposed to violence, she only needs her identity card. She fills a form there with an officer, the lawyer on duty listens to her, and the Bar Association decides if she can receive a lawyer free of charge or not. When provided

[83] Interview with Bahar, feminist lawyer from İstanbul, 31.08.2015.

with the documents, the Bar usually assigns a lawyer to the case and pay a moderate amount of money to the lawyer.

Only lawyers who attend a seminar called "Women's Rights Seminar for Legal Assistance Office Lawyers" *(Adli Yardım Bürosu Avukatları için Kadın Hakları Eğitim Semineri)* are assigned to these cases. In the seminar, senior lawyers provide training regarding laws on women's rights for two days. After participating in the seminar, a lawyer can receive a certificate. Then, according to the point system *(puanlama sistemi)*[84], lawyers are assigned to women applicants in order. The Bar does not necessarily assign feminist lawyers to women's cases, but they try to find ways to be included in the legal assistance system to reach as many women as possible.

Before this legal assistance system dominated the assignment of lawyers to women's individual cases starting in the late 2000s, there were Istanbul Bar Association Women's Rights Commission *(İstanbul Barosu Kadın Hakları Komisyonu)* and Women's Rights Center *(İstanbul Barosu Kadın Hakları Merkezi)* through which voluntary women lawyers worked on laws and implementations and provided voluntary lawyering for women in need free of charge.[85]

Some senior feminist lawyers I interviewed established the Women's Rights Commission and Women's Rights Center in İstanbul. The commission, then, was merged with the center and the voluntary service was replaced with the legal assistance system in 2007. Over several years, two of the feminist lawyers I interviewed had

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[84] The ranking of lawyers in line is determined by the point system. A lawyer's gross pay and registration point are added to define a lawyer's point. The registration point is the total gross pay of all lawyers registered in the system in a certain region divided by the numbers of active lawyers in the system at the same region. Lawyers with fewer points are assigned to women sooner. For more information on how the legal assistance system operates, please see: Ankara Barosu Adli Yardım Merkezi. (2010). *Adli Yardım Çalışma Rehberi.* Ankara: Şen.

[85] Although lawyers could provide free service before, lawyers are now expected to be paid according to laws, free service is not allowed.

started to be repressed by other lawyers in the meetings and seminars held by the legal assistance system, because of their negative attitudes towards the transformation of voluntary lawyering into the legal assistance system. This was because they thought that voluntary lawyering in a female and feminist dominated commission was more effective for women's cases than assigning male and female lawyers to women through the point system. The other lawyers in the Bar, on the other hand, believed that the legal assistance system was necessary to reach as many women as possible and to support as many lawyers as possible financially. The two feminist lawyers felt obliged to leave the center eventually. Since then, male lawyers also can pursue women's cases. The two dismissed senior feminist lawyers and the younger feminist lawyers I interviewed are in favor of the old system, since they think that being a volunteer means taking women's issues more seriously and dealing with them without expecting any yield. Moreover, since women might have difficulties explaining their disturbing experiences to men, feminist lawyers believe that the legal assistance system cannot be very effective in terms of supporting women not only in the cases but also women's needs afterwards.

Bilen, a junior feminist lawyer, attended the last seminar of the Legal Assistance Office on women's rights. When I asked about her experiences, she said she was disappointed by the attitudes of participant lawyers, the apolitical approach of senior lawyers providing the trainings, and the content of the seminar. She said that most participants only went to the seminar in order to sign up for the roll call. They were only interested in covering their office expenditures through "easier" cases -women's cases- assigned by the legal assistance system.[86] Indeed, she told me that there is a common

[86] The number of divorce cases has been increasing in Turkey (Aile ve Sosyal Politikalar Bakanlığı, 2015), and this might be a reason for the participants of the training. In a report on marriage and divorce, Ministry of Family and Social Policies associated the reason of increase in divorce cases as modernization and love marriages (Aile ve Sosyal Politikalar Bakanlığı-Aile ve Toplum Hizmetleri Genel Müdürlüğü, 2015). Therefore, neither the lawyers participating in the trainings only for the certificate to

phrase used by lawyers regarding divorce lawyers. They call them "high society lawyers" *(sosyete avukatı)*, meaning that divorce cases are too easy for any lawyer and those working on them earn money without expending any effort. Bilen went to the seminar, dreaming that it would provide her with the necessary means for undertaking women's cases which she finds very important. But in the seminar, the trainers only explained the articles of the civil and penal code, as well as the protection act. Moreover, one of these trainers told the participants that she is actually specialized in women's rights, but she will not get into that in the seminar. The reason might be that she was skeptical of the crowd consisting of people with diverse opinions and motivations or she just did not see any point in explaining laws and experiences from her perspective. "So, basically, the seminar was only for the ones that were too lazy to read the codes by themselves." Bilen said.[87]

Despite the fact that all the procedures through the family courts, public prosecutors, and the legal assistance system wholly apply for all people who have something to do with legal actions, approaching a case of a woman who was murdered or exposed to violence, or had a bad experience in her marriage, as if she was just another individual "input", and seeing what she experiences as just an "incident" is unacceptable for the feminist lawyers I interviewed. Through the legal assistance system or through women's organizations, they provide legal support and counseling to women. When working in the women's organizations, they usually only help women write their petitions, rather than pursuing their cases as their lawyers. They can be registered in the legal assistance system as well. Sometimes women's organizations get in contact with feminist lawyers they know, who are also registered in the legal

undertake easier cases, nor the relevant ministry have the ability to understand women's standpoints. This information shows the value of works of feminist lawyers and women's organizations.

[87] Interview with Bilen, feminist lawyer from İstanbul, 06.05.2016.

assistance system, so that women could be assigned to those lawyers. What feminist lawyers do differently than the other ones participating in the legal assistance system while undertaking women's cases is to listen to women. Feminist lawyers hear women's experiences, and let them cry. They explain the whole process in detail, understand women's positions and demands, and help them write their petitions and pursue their cases without missing any important point. They refer to the national laws and international conventions regulating the boundaries of decisions to be made, and ideal implementations of court proceedings in the petitions and in the courts. For them, a divorce suit is not easy money for the occupants of "high-society".

Apart from supporting women through the legal assistance system and providing women with legal counseling, feminist lawyers, together with other women activists, collectively litigate significant cases and politicize them from a feminist standpoint. These cases are criminal actions, complementing their support to women through civil actions and protection order applications. The cases are mostly about violence, women killings, and self-defense, addressing the complex layers of discrimination, such as women's ethnicity, sexuality, and roles within family and society. In this form of feminist litigation, two or three, sometimes more, feminist lawyers undertake the case and defend the woman in court room. These cases are not only built around reciprocal solidarity between feminist lawyers and the "victim" woman, but also they constitute their feminist activism in the legal field. Hence, the legal expertise of feminist lawyers in the law-making processes transforms into lawyering in the field, court rooms, as activists.

Feminist lawyers are very influential in complicating the strict and mechanical procedures. While the legal field is indifferent to what happens until a crime is committed and keeps itself distant from all other areas, feminist lawyers try to integrate

the broader principles that feminist women mobilize around, as well as the systematic power relations behind violence to the legal field.

In the following section, I demonstrate the ways that feminist lawyers participate in women's cases and their entrance into court rooms as lawyering activists. This will help me show the ideas and principles that they mobilize around and how they blur and transform the things that are acceptable in court rooms.

4.2. Lawyering as Feminists

Feminist lawyers undertake women's cases individually or collectively in court rooms. The former involves a range of issues, from divorce to sexual assault and from infringement to the neglect of duty. The latter might involve demanding "intervener status" to politicize certain criminal actions or to participate in the proceedings without the intervener status. The intervener status can be gained by applying to the court with a petition, stating reasons for demanding intervention (Penal Procedure Code, Law No. 5271, Article 238 - *Ceza Muhakemeleri Kanunu-CMK*). Only ones who are "affected by the crime" *(suçtan zarar görmek)* can obtain the intervener status according to the CMK (Article 237). Yet, in practice, the court usually does not consider one as having the right to intervene unless he/she is a relative of the victim.

Starting with 1990s, feminist women's groups tried to gain intervener status in cases regarding violence, women killings, and self-defense to show that they do not have to be relatives of a victim to be affected by male violence[88]. A woman can individually be the victim, but systematic subordination of all women is the real cause

[88] Interview with Necla, feminist lawyer from İstanbul. 29.03.2016.

of that victimization. What happened to one woman can happen to every woman. Eylem explains her perspective:

> Any woman can die because of male violence. What we try to show in the court rooms is that there is a tiny, blurry line between being battered or murdered and being alive, if we're talking about women.[89]

However, it is very hard to obtain the intervener status, since the court generally rejects feminist women's demand to intervene. Still, women insist on the intervener status and prepare petitions by the name of their organizations for the cases that they consider important to pursue. They believe that even these rejections are political, and they voice these systemic rejections in related workshops, forums, and conferences[90].

Although feminist women's demands for official intervener status have been generally rejected by the court, they still pursue the lawsuits of women collectively, without the intervener status. They have a report team that follows the news in the media and transfers the cases they find important to the bigger e-mail groups of women's organizations[91] to make their points against the state institutions, law-enforcers, and the wider public who discriminate against women in their discourses and practices, as well as to be in solidarity with women. Sometimes, women's organizations which do not have voluntary lawyers reach out to these e-mail groups to seek help for an applicant. Occasionally, murdered women's relatives reach out to a women's

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[89] Interview with Eylem, feminist lawyer from İstanbul. 03.03.2016.

[90] Feminist forum in Feminist Mekân, İstanbul. 05.03.2016. Conference, Kadir Has University, İstanbul. 27.02.2016. Conference name: Politics of Women's Shelters, Solidarity Centers and Solidarity against Male Violence throughout 2010s: Sharing Experiences from Turkey and Europe *(2010'larda Erkek Şiddetine Karşı Kadın Sığınakları, Dayanışma Merkezleri ve Dayanışma Politikaları: Türkiye'den ve Avrupa'dan Deneyim Paylaşımları)*.

[91] Interview with İlke, feminist lawyer from İstanbul, 31.07.2015.
I do not mention the names of special teams and organizations for confidentiality purposes.

organization which then spreads the information via the e-mail groups of women's organizations.

While debating on whether or not to pursue a case, the feminist groups, including feminist lawyers, decide if the lawyers can undertake the cases or not, depending on their workloads. Therefore, it is important to note that the decision to pursue a case is not totally up to feminist lawyers. Indeed, when I asked what they did in particular as feminist lawyers to each of my interviewees, they all told me that the whole process depends on the debates of feminist women, although they are prepared for the cases as lawyers of the victim exclusively as well. Depending on the workloads of feminist lawyers, feminist women can decide to pursue a case without assigning feminist lawyers to the case, just as participants. Sometimes, the victim woman might already have a lawyer who does not work with other lawyers. In these cases, feminist activists' major aim while participating in the trials is to show the court that women are not alone and to affect the decisions of judges.

In what follows, I summarize the cases that feminist lawyers litigated and are litigating together with other women activists to show their mobilization as activists in the legal field. The cases I discuss are not necessarily pursued by the lawyers I interviewed unless I state otherwise, but provide a general sense of women's collective litigation and feminist lawyers' experiences of merging their activisms and lawyering performances. Then, I elaborate on the strategies of feminist lawyers to deal with the conundrum of this juxtaposition.

4.2.1. Feminist Ways of Inclusion in the Court Rooms

Women's collective litigation became visible by in case of Güldünya Tören, murdered by her family in 2004. Indeed, a women's publishing house was named after her, *Güldünya Yayınları,* by women who published the feminist journal *Pazartesi* from the late 1990s till the early 2000s. The main focus of women activists in Güldünya's case was the media's and public's immediate understanding of the murder as an honor killing which was associated with "backwardness" and feudalism. The general public and media used to perceive and demonstrate cases like Güldünya's as exceptional to the Kurdish people living in the east, and feminist women were against this idea since it does not delve into broader mechanisms that construct the idea of "honor". Feminist women followed other cases like Güldünya's, in which "honor" was understood by the public and judges as a legitimate reason for murdering a woman and mitigating the punishments.

Most of my interviewees recalled Ayşe Yılbaş's case in 2008 that feminist lawyers pursued as attorneys.[92] Two of the feminist lawyers were Ayşe's personal lawyers for her divorce case. While working in a hospital, Ayşe was murdered by her husband from whom she was trying to divorce. Her lawyers asked other women to join them while proceeding with the criminal action against the perpetrator, Hüseyin Güneş Özmen. Although these women's intervention request was rejected, many feminist

[92] For more examples of collective litigations of feminist women, please see: Sosyalist Feminist Kolektif. (2013, November 1). *Sosyalist Feminist Kolektif.* Retrieved from Sosyalist Feminist Kolektif: http://sosyalistfeministkolektif.org/feminizm/tarihimizden/kampanyalara/732-kad-n-cinayetlerine-isyanday-z-kampanyas.html. For information on these litigations, please see an MA thesis written specifically on feminist interventions in court rooms: Baytok, C. (2012). *Political Vigilance in Court Rooms: Feminist Interventions in the Field of Law.* İstanbul: Boğaziçi Üniversitesi.

lawyers in İstanbul pursued the case as Ayşe's attorneys and other women activists also participated in the court proceedings.[93]

Before Ayşe's case, feminist women's groups followed the cases in which they believed judges might have the tendency to give unjust provocation mitigation *(haksız tahrik indirimi)* to the perpetrator. According to the Penal Code, an unjust provocation abatement is to be implemented in cases where a person commits a crime under the influence of a tortious act that results in rage *(hiddet)* or severe pain *(şiddetli elem)* (Law No. 5237, Article 29). Since the male perpetrators were familiar with making culturally "acceptable" defenses in the court rooms, it was very common for judges to provide amendments for their crimes. Men usually got the unjust provocation abatement when they claimed that their wives made them angry, and the reasons for the anger ranged from the ways the murdered women wear clothes or talk with other men to the ways they insulted their husbands' manhood by rejecting to have sex, and from being cheated by their wives to not being asked for permission to go to shopping.[94] Although having an affair or failing to agree might be interpreted as reasons for getting divorced, the judges had the tendency to consider these as legitimate reasons for women killings. Feminist women, on the other hand, pursued the cases and tried to push the judges not to enact an unjust provocation abatement. Because although a murder, hence the crime, is punished, this abatement does clearly mean the legitimization, at least normalization, of the "reasons" for women's killings.

[93] Interview with İlke, feminist lawyer from İstanbul, 31.07.2015.

[94] For some examples in which unjust provocation amendment was given by the judges for these reasons, please see: Ekin, F. (2009, August 10). *Kadın Cinayetleri Politiktir*. Retrieved from Turnusol: http://www.turnusol.biz/public/print.aspx?id=5168&sp=0&makale=Kad%FDn%20cinayetleri%20politiktir and Meşeli, P. (2011, December 19). *Sosyalist Feminist Kolektif.* Retrieved from Sosyalist Feminist Kolektif: http://sosyalistfeministkolektif.org/guencel/kadin-cinayetleri/113-yarg-hakszda-koer-tahrikte-doert-goez.html

Starting with Ayşe's case, under the impact of the court proceedings and debates among feminist women, feminists pursuing women killing cases started to focus on discretionary abatement *(takdiri indirim)*, along with unjust provocation abatement.[95] The reasons for considering discretionary abatement are determined by the perpetrator's past, social relationships, behavior after the criminal action and during the prosecution process, and the possible effects of the punishment on his future (Penal Code, Law No. 5237, Article 62). This form of abatement is generally known as good conduct abatement *(iyi hâl indirimi)*. Many feminists call it "necktie abatement" *(kravat indirimi)*[96], since it is generally given to male perpetrators of women killings, because of dressing properly and reflecting any form of regret in the court rooms. By Ayşe's case, many feminists, including the lawyers and other women activists, gained experience on the details of what judges and male perpetrators would say and do against women victims.[97] And they started transforming their focuses and defenses accordingly.[98]

The most recent mobilization of feminist women is continuing with a particular focus on women who kill their violent husbands or rapists since 2012. With this campaign called "Women Protect Their Own Lives" *(Kadınlar Hayatlarına Sahip*

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[95] Unjust provocation abatement was usually given to the husbands murdering their wives. I can say that in recent years, its implementation decreased, based on the accounts of my interviewees. Ayşe Paşalı's case is known by feminist women in İstanbul as one of the primary cases in which unjust provocation abatement was not implemented. Following Ayşe Yılbaş's case, in Satı Korkmak case, in which Satı's husband Hasan Korkmak killed her and claimed that she was having an affair in the court room, unjust provocation abatement was not given (2009).

[96] I heard this phrase in several meetings and forums in which feminist women participate.

[97] For more information on the campaign, "We Rise against Women Killings" *(Kadın Cinayetlerine İsyandayız)* following Ayşe's case, please see: Sosyalist Feminist Kolektif. (2013, November 1). *Sosyalist Feminist Kolektif.* Retrieved from Sosyalist Feminist Kolektif: http://sosyalistfeministkolektif.org/feminizm/tarihimizden/kampanyalara/732-kad-n-cinayetlerine-isyanday-z-kampanyas.html. and İstanbul Feminist Kolektif. (2010). *Kadın Cinayetlerine İsyandayız*. Retrieved from Kadın Cinayetlerine İsyandayız. http://kadincinayetlerineisyandayiz.blogspot.com.tr/2010/10/kadn-cinayetlerine-isyandayz.html. In the activities in which feminist women participated together, they usually used the signature of İstanbul Feminist Collective *(İstanbul Feminist Kolektif)*.

[98] Interview with Merve, feminist lawyer from İstanbul, 22.03.2016.

Çıkıyor), feminist women politicize the cases of women who had to kill to survive. Istanbul Feminist Collective's report group prepared more general reports and published a book (*Kirpiğiniz Yere Düşmesin*, "Don't Let Your Eyelashes Fall"), collecting the stories of women's self-defense *(öz-savunma),* including women who attacked their harassers or stalkers.

By Article 25 of the Penal Code (Law No. 5237), an act of self-defense, in which the survivor had no other chance than to commit the crime, is not supposed to be punished. Yet, the judges and prosecutors usually consider women's crimes as committed on purpose, and not from self-defense. Feminist lawyers, on the other hand, try to build their defenses in a way that would force the judges to consider the systematic violence that the perpetrator women experienced previously as a reason to count the crime as an act of self-defense.

First, feminist lawyers get in contact with the woman who killed their husbands or rapists to be in solidarity with them and prepare their defenses that might possibly persuade the judges to consider the act as self-defense and release the woman. If the woman agrees and feminist lawyers have time, they can advocate for the woman voluntarily. If they do not agree[99], then feminist lawyers just participate in the trials as other women activists. In either way, these women's cases are followed by the broader groups of women, and particularly women from İstanbul Feminist Collective, which hosts feminist women from different backgrounds and organizations[100]. Yet, the cases started to be followed by the feminist women from collectives in other cities as well,

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[99] The disagreement usually happens if the woman has a male lawyer. Feminists have this rule to not work with a male lawyer because of the possibility of clash of interest. They try to politicize cases and prepare their defenses accordingly, while male lawyers usually try to get only the unjust provocation or good conduct amendment, without any political perspective attached to the case.

[100] Yet, the cases started to be followed by the feminist women from collectives in other cities as well, such as Çilem Doğan's case. Çilem Doğan, who survived from her husband's systematic violence by killing him, has been in solidarity with women from Adana Feminist Collective.

such as Çilem Doğan's case. Feminist women usually managed to obtain unjust provocation abatement and/or discretionary mitigation for women whose cases they followed, which was very unlikely for women previously, since in court rooms systematic violence was not seen as a reason for immediate provocation to kill.[101] Yet, acquitting of self-defense impunity has not been achieved yet.

During the time I interviewed feminist lawyers, more than half of them were officially lawyering in five continuing cases in total, proceeding in İstanbul.[102] One was about a refugee woman murdered but her boyfriend made to seem like a suicide. Feminist lawyers' aim in litigating this case was to hinder law-enforcers' probable neglect of duty, because the refugee woman was alone in Turkey without any connections. One case was about a woman murdered while she had a protection order and the abettor was not initially considered as guilty by the court. This case was important for feminist lawyers, because there was no evidence that stated the abettor instigated the perpetrator. Feminist lawyers managed to include past experiences of the victim with the abettor as evidence of his crime, and this was very significant because the experiences beyond the particular incidence usually are not counted as evidence in court rooms. Eventually, both the perpetrator and the abettor were punished without giving any amendments. The third case was about a little known celebrity woman, raped and murdered by a burglar and immediately perceived as being the girlfriend of the perpetrator, strengthening the perpetrator's hand to get the amendments. This case is closed now, and the amendments were not provided to the perpetrator because of the arguments of feminist lawyers. The fourth case was about a woman battered by a

[101] Interview with İlke, feminist lawyer from İstanbul, 31.07.2015.
[102] I wrote this part based on the accounts of seven of the feminist lawyers I interviewed. For the sake of confidentiality, I do not provide details about these cases which would reveal the identities of my interviewees.

celebrity. The batterer was only fined in the end by the court's decision, but it was still important because feminist lawyers rendered the gendered practices of male public figures in their "personal" lives publicly questionable. And the last case was about a woman who survived systematic domestic violence by killing her husband. This case has been litigated while conducting the campaign "Women Protect Their Own Lives", to release women from the general understandings about them as solely and statically "victims", while complicating the meaning of what victim is. Although amendments would be probably given to the woman in this case, feminist lawyers advocated to persuade the judges to release her, since her crime was an act of self-defense. They succeeded in persuading the judges, because at the last trial, the judges considered the past experiences of the woman as reason of the crime and demanded evidence on past experience, rather than the particular incidence. This was the first case that judges considered the guiltlessness of a woman who killed her husband as a possibility.

Clearly, there is no linear evolution of what feminist lawyers focus on. On the contrary, they try to build their solidarity in a more complementary way, consisting of cases of women from different social backgrounds in terms of race, ethnicity, and social class. Moreover, the cases they follow complement each other in terms of judicial matters as well, such as preventing abatements to be given to male perpetrators, and demanding self-defense impunity.

It is fair to say that, together with the broader women's movement and feminist activists with whom they prepare for the cases, feminist lawyers improved the conduct and practice of the judges. First, they managed to overthrow the notion of "honor crimes" from the court rooms. Second, their existence in court rooms help them reduce the possibility of amendments provided to male perpetrators. Third, they succeeded in expanding the limits of proof, by convincing the judges to take past experiences of

women into account. Their particular focus while choosing cases to litigate is always in the making, depending on what they think they, as feminists, achieved during litigations so far and what is in their agenda. Both their achievements and losses in court rooms are undertaken by the broader feminist women's movement.

There are three possibilities for feminist lawyers to be a part of a trial. First, as in Ayse Yildiz's case, they can be official lawyers and thereby be directly involved in the case. Second, if they cannot be listed as official lawyers, but they can convince and get permission of both the woman and her lawyer, they can still work in cooperation with the woman's official lawyer in collecting evidence, preparing defense, and so on. Third, they can get the permission of the woman and her lawyer only to follow the case, as the other women activists. On the other hand, even if it is obvious that all of these three possibilities determine the maneuver zone of feminist lawyers, once they are a part of a case, in one way or the other, their struggle in the court rooms continues as a collective struggle established among and by feminist lawyers, feminist groups, and women's organizations.

Feminist lawyers need to prepare defenses, provide evidence, and persuade judges as lawyers. Yet, their feminist activism determines the cases to litigate, the defenses and points to make, and the issues to focus on in court rooms. This creates the possibility of being discredited or ignored in court rooms. While merging their activism and profession in court rooms without abandoning one, they find different ways to deal with the possibility of being discredited. In the following section, I discuss the strategies of feminist lawyers in İstanbul to exist as feminist activists and credible lawyers. Through these strategies, rather than choosing between being a good activist or a good lawyer, feminist lawyers maintain the two together, while strengthening their defenses and transforming the acceptable language in court rooms.

4.2.2. Lawyering Strategies of Feminist Lawyers

The power of law goes beyond its functioning, its instrumental control, such as the ability of criminalizing certain behaviors and punishing the criminals. Rather, it is powerful as a boundary-making mechanism that renders itself neutral, and its truth-claims objective truths, discrediting other alternative social realities (Mossman, 1986; Smart, 1989). It has the power to "impose its definition on events of everyday life" (Smart, 1989: 4) and separate what is legally considerable, and what is relevant to the accusations from what is not. It does not matter whether law operates ideally in court rooms. It has the ability of delegating one to name an account of experience as "consent" or "unjust provocation". This is why "ordinary people" usually resort to legal experts to translate their own experiences into "legally acceptable" accounts.

Conaghan argues that, regardless of their individual opinions, "every law student is encouraged to learn how to know and authenticate legal doctrine, articulate and apply it with precision, and locate it within a broader doctrinal framework" (Conaghan, 2013: 15). Law education is supposedly a "rational and logical exercise", rather than a field harboring political positions and viewpoints (Fineman, 2011: 1). Feminist lawyers' education is no exception to these formulas. Yet, while witnessing gender inequalities in legal texts and implementations, it is hardly possible to imagine feminist lawyers not questioning the very legitimacy of law and its operation. Indeed, some of my interviewees stated that they "became" feminists after realizing these inequalities throughout the history of legal reforms and women's experiences in the legal field. This "double-think", according to Mossman, makes it almost impossible to be a feminist and a good lawyer at the same time, as law cannot be transformed because of its very male logic and structure (Mossman, 1986). Fineman goes further, and claims that feminism is threatened to be transformed by law, not vice versa (Fineman, 2013: xii). Smart also

contemplated on this conundrum, stating that approaching a legal issue from a feminist perspective can endanger the clients' cases (Smart, 1989: 67), and as a result, some feminists organized "outside" of the legal field and challenged it in this way.[103]

In a case where a woman, Hanime Aslan, was murdered by her son, who was provoked by her ex-husband, although she had an officer for protection nearby, some feminist lawyers advocated for Hanime. They wrote a 22-page-defense and declared that the ex-husband obviously was the abettor and should be punished as the son. When the defense attorney, Bülent Akıncı, took the floor, he stated that "Feminist lawyers dramatize the issue too much. They developed a defense out of their fantasy world." (Demishevich, 2015). In the Fethiye case, a rape case in which more than 30 feminist lawyers went to Fethiye to defend the woman, the defense attorney, who was the head of the Muğla Bar Association, was blamed by feminist lawyers for defending a rape offender. The defense lawyer said that feminist lawyers were ignorant militants, who did not know anything about the right of defense *(savunma hakkı)* and presumption of innocence *(masumiyet karinesi)* (Evrensel, 2012), contrasting the legal field with feminist activism, as if these two cannot be together in the court rooms. Similar stories are recounted by the feminist lawyers during the interviews. One of my interviewees encountered a relative of the perpetrator who tried to make a complaint to the judges by stating that "these women are being feminists", as if being a feminist is not allowed in the court rooms. In another case of a husband who killed his wife, the defense lawyer accused feminist lawyers for changing the subject by talking like feminists, again, trying to exclude feminist women's standpoint from the court rooms.

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[103] Please see: Rights of Women Family Law Subgroup. (1985). Campaigning around Family Law: Politics and Practice. In J. Brophy, & C. Smart, *Women in Law.* London: Routledge & Kegan Paul.

This conundrum that feminists, in general, experience while struggling in the legal field is often defined as between being within/for law and outside/against law, which then determines whether feminists struggle for reform or revolution and to transform or transcend law (Lahey, 1985; Smart, 1989; Otomo; 2009; Fineman, 2013). These dichotomous understandings render the tension between feminism and lawyering too static, as if there are tactile boundaries between the legal field and non-legal field. For example, if a feminist lawyer struggles in the court rooms and for legal reforms in order to struggle against the very subordination of women, is she within or outside the law? Does she resist or comply? I do not think that it is possible to extract one's solid position from her feelings, ideas, past experiences, and future aims. For this reason, rather than trying to detect feminist lawyers' position as within or outside the law, and rather than estimating whetner they are "successful" in dealing with this dichotomy, I focus on what they do to blur the boundaries between the legal and non-legal fields, while engaging in feminist activism and lawyering.

What happens in court rooms are about discourse, interpretation, and subjectivities of the actors there, rather than neutrality, objectivity, and equal distance to all citizens. Being aware of this, feminist lawyers have come a long way to reveal and challenge the law's claim to be discrete, together with women's groups through which they collectively maintain their activisms. In what follows, I explore the strategies of feminist lawyers in İstanbul to introduce feminist language in the operation of the law, neither becoming "less activist", nor being discredited as lawyers. First, I scrutinize their ways of submitting evidence that have the potential to transform the acceptable language in court rooms.

Submitting Evidence

Evidence is a body of information that supposedly reveals whether a crime is "really" committed. Evidence has to be "sufficient, certain, persuasive, and above suspicion" (Karabulut, Karapazaroğlu, & Tosun, 2015); it is technical and hierarchical, standing above of all other declarations of truth. The rule of evidence is criticized by feminist legal studies scholars because (1) it is too abstract and universalistic, ignoring the unique experiences and factual contexts; (2) it is too hierarchical, rendering the articulation of it inaccessible for some; and (3) it is adversarial in nature, requiring one to procure an aggressive and competitive attitude to accuse someone (Kinports, 1991; Childs & Ellison, 2000).

Evidence and its production is regulated by the Penal Procedure Code in Turkey (Law No 5271, Articles 206-208 and 215-218). It is supposed to be value-free, neutral, and objective form of revealing the reality. Yet, in court rooms, evidence usually operates toward the further subordination of women. As the litigant of a rape crime, a woman needs to show evidence on the particular incident, while the offender does not need to prove that he did not committ the crime. Moreover, when the rape convict states that the woman consented to the incident or that she is a prostitute, the court usually tries to discover if she really consented or was a prostitute, by delving into her life. If the woman delays to file a complaint, it is quite possible that the traces of rape would fade out from her body. Therefore, women usually do not file a case in rape offences, and when they do, they usually suddenly become the potential liars. This is why we usually hear about rape offences only through incidents in which women are murdered after being raped, because the forensic reports show the traces of rape if the woman's body was found. There is a similar scenario in women killing cases. The murderer, usually the husband of a woman, states that the victim had an affair and he killed her because of

jealousy and honor. In this case, again, the court usually decides to investigate the woman's life before being killed. When as a defendant, as happens in the self-defense cases, a woman is expected to show evidence, like a trace of grappling on her body or a witness stating that the two were fighting before the woman killed the man. The fact that the woman was systematically battered by the man is not taken into consideration as much as woman's prostitution or consent. Feminist lawyers whom I interviewed, although acknowledging that evidence is highly partial and political, still use it as a tool to achieve the ends they aim for in particular cases. They do so not to jeopardize their cases by leaving the conduct to the highly gendered interpretations of judges. Dilek explains:

> I would love the idea of judges that take women's declarations as fundamental. Although for protection orders you don't need any evidence apart from women's declarations, I show anything I have, even for that. Anything, like an SMS, phone calls, voice records, forensic reports, etc. I do not think that any lawyer taking her job seriously would miss providing evidence in a woman's case. If there's nothing to show, I take a picture of women's wounds and attach it to the petition. I can't risk any woman's life. What if the judge only gives one-month protection? Will I spend time objecting to the decision?[104]

The account of Dilek reveals that she tries to, first and foremost, produce documentary evidence. Yet, showing evidence can be difficult, especially if the incident is rape or murder, which usually takes place in private places where no witness is available. In these cases, the courts generally require evidence on the particular incidents, rather than

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[104] Interview with Dilek, feminist lawyer from İstanbul. 07.06.2016

past experiences and the nature of relationships of the parts. In that case, feminist lawyers try to transform the strict notion of evidence by resorting to oral testimonies of women or witnesses, and their own defenses. They do so by working on their defenses collectively with other women activists in their organizations. They try to translate feminist politics into commonsensical defenses and speeches that would complicate the technical and hierarchical nature of what is required by the courts.

There was one case that three of my interviewees were advocating for a woman who was murdered. The perpetrator was caught after the very act and he was sentenced to aggravated life imprisonment. There was one probable abettor, a relative of the perpetrator, but he was released because of lack of any evidence. Although there was no solid documentary evidence, feminist lawyers, preparing a defense and declaring it in the court room, managed to persuade the judge to sentence the abettor to 20 years of imprisonment. Bahar explains:

> We elaborated the issue with a commonsensical approach. We represented the previous facts, such as the protection order she got for she was afraid of these guys. We explained that the abettor was angry with the woman because she ended their previous affair. We told the judge that the two guys were very close to each other, but the abettor never went to visit the perpetrator after he was imprisoned. We told them these guys saw each other every day before the event. We asked, so what happened after the perpetrator was caught? Moreover, he never opened his phone after the incident. It was the case of my life. You know, the trials in Turkey do not usually operate like in U.S.A. Your defense needs to be very standard here, your aptness does not work to

persuade the judges. But this trial was like those. We didn't sleep for three days before the trial to prepare that defense, but it worked[105].

Similarly, in a case where a woman was divorced from her husband and needed alimony to make a living, the judge rejected the demand of alimony by stating that she has her own house to live in. Necla, voluntarily lawyering for the woman, asked the judge if he can "eat the walls of his house", to show him that a person needs money to survive and having a house does not change it. It is hard to imagine these words would be articulated in court rooms, but they actually persuaded the judge to decide on alimony to the advantage of the woman.

In a case where a woman killed her husband, who was about to kill her if she did not, the court did not approach the issue as a self-defense case until the fifth hearing, because there was no evidence or witness of the particular incident. Based on the oral testimonies of witnesses who saw previous violent behavior of the husband, two feminist lawyers that I interviewed managed to persuade the judges to consider physical and psychological traces of violence in the woman's life as evidence of self-defense. The case was not closed by the time I interviewed these feminist lawyers. Yet, Eylem states her hope:

> Generally, you need to show proof of what happened in the particular incident to persuade the court. But we managed to bring previous experiences of violence of that woman to be considered as evidence, and this paves the way for following self-defense cases of other women[106].

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[105] Interview with Bahar, feminist lawyer from İstanbul, 31.08.2015.
[106] Interview with Eylem, feminist lawyer from İstanbul. 03.03.2016.

In each of the cases above, feminist lawyers tried to persuade the judges to understand each case as unique. In this way, the judges started to consider defenses of feminist lawyers as persuasive and previous experiences of women as evidence. As the perspectives of judges, acceptable language and the possible forms of evidence are transformed by the entrance of feminist lawyers into the court rooms, women's narratives, which were usually discredited, started to be taken into account. In turn, as feminist lawyers achieve better implementations in the court rooms, they strengthen their hands, because they use the better decisions as an example in the following cases. This is why, another strategy of feminist lawyers while providing evidence is to present the previous cases that ended up with the decisions as they demanded. They first work on examples of cases to talk about during their defense, supporting them with similar cases in Supreme Court's decisions and writing them item by item, point by point. Skimming through the previous examples comes even before reviewing the relevant codes.[107] After working on previous examples and legal codes as lawyers, they meet with other feminist activists and prepare their defense together. And the most significant part of preparation is probably this. Because then they decide on things to focus on, relevant to feminist politics, such as adding how many women were killed by men and how men get the mitigations when they are perpetrators but women cannot when they commit the same crime. They criticize the state authorities and institutions in court rooms, and render their neglect of women's experiences and rights as evidence of that particular case. They expand the limits of evidence and acceptable language in court rooms.

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[107] Interview with İlke, feminist lawyer from İstanbul. 31.07.2015.

Feminist women's language, as Howe claims, can be labelled as "extreme" or "hysterical" in the court rooms, which is a strategy to render opposing voices as "non-threatening outlets" (Howe, 2008: 54-5). Feminist lawyers deal with this problem by being there as large groups of women. Even when feminist lawyers do not attend the trials as the official lawyers of women, they try to litigate significant cases together with other feminists. They believe that being there as a crowd of women makes it easier to persuade judges, and harder to jump into gendered conclusions. As Eylem states:

> The more crowded we are, the better the proceedings operate. The judges become intimidated by us! When the judges see that there are a lot of women in the hearings, they understand that the case has a political side, and cannot trivialize what women have to say.[108]

In short, feminist lawyers provide documentary evidence as much as they can. Yet, at the same time, they complicate the meaning and acceptable content of evidence through (1) enabling experience to be heard, (2) making connections at court rooms between systematic violence against woman and man killing as a self-defense act, (3) making use of previous cases that support the case, (4) picturing the general subordination of women in Turkey, and (5) being together with other women in the court rooms. In this way, their credibility increases in the court rooms, while they also transform the limits of what credible is. In what follows, I elaborate another strategy of feminist lawyers, which I, following the language of Sally Engle Merry, call "vernacularization".

[108] Interview with Eylem, feminist lawyer from İstanbul, 03.03.2016.

Another strategy used by feminist lawyers to challenge law's authority and increase their credibility is to benefit from transnational legal and ethical frameworks. According to Merry (2006), with neoliberal transformations, sovereignty is conditioned by notions such as "democratic governance" and "humane treatment" of citizens, setting the standard of adoption of human rights for countries as a means of being "civilized" (Merry, 2006: 73). As an "ordering principle in practice", human rights became universal in scale (Goodale & Merry, 2007: 12), because of several social actors, such as international bodies, state institutions, and non-governmental organizations. Yet, human rights are translated, or vernacularized, and made meaningful differently at the local level (Levitt & Merry, 2009). Through vernacularization, social actors render human rights discourse appropriate to their own cultural terms to use in a particular social context.

CEDAW and İstanbul Convention were, being specifically about women's human rights, ratified by the Turkish state in 1985[109] and 2011, respectively, and referred to frequently by women's organizations and feminist activists in the meetings, workshops, and conferences since then. The monitoring bodies of these conventions trace the implementations of the states that ratified them. Therefore, women use these conventions as a means to challenge the practices and discourses of decision-makers, politicians and law-enforcers.

Feminist lawyers in İstanbul make use of the conventions both to press the state authorities and law-enforcers and struggle against gender inequality. Levitt and Merry

[109] CEDAW was ratified by the Turkish state with some reservations on certain clauses. In 1999, all reservations were removed.

state that seeing human rights as *law* and considering them as *ideas* to mobilize around are incompatible and they, indeed, associate the former with *lawyers* and latter with *activists* (Levitt & Merry, 2009: 459). Feminist lawyers, on the other hand, being both lawyers and activists, are approaching women's human rights as law and as ideas at the same time. They attend to international meetings on women's human rights, try to build cases to make the state institutions account for their gendered practices in the ECtHR, and become a part of preparing shadow reports for the monitoring committees of the international conventions. In this way, they pressure the government through "human rights as law", as Levitt and Merry claims. On the other hand, they use the conventions to create awareness and mobilization among women in meetings, workshops, and conferences and to transform the gendered practices of judges, and therefore mobilize around "human rights as ideas". Feminist lawyers are the vernacularizers who mediate between feminist politics and the government by approaching human rights as ideas, as well as clients and law-enforcers by approaching human rights as law. They navigate between activism and lawyering, never being solely one of them, in a way that renders separating the two subjectivities absurd.

Ayça states:

> We call the cases we try to file to bring into ECtHR "strategic litigation". What we do is we collect the cases in which judges made decisions very poorly in terms of gender equality as elaborated in the conventions. Even when we don't apply to the Court, we collect them to reveal injustices in the shadow reports. It is both to transform our work as lawyers, and accuse the decision-makers in any ways possible.[110]

[110] Interview with Ayça, feminist lawyer from İstanbul. 06.10.2015.

Feminist lawyers not only use international conventions to get the attention of international bodies, but also to improve the conduct in the court rooms. Sevinç explains:

> I always refer to the international conventions that Turkey is supposed to adopt in each petition I write for cases, from protection to divorce, and from women's labor rights to sexual violence. I try to comply with the international human rights standards, as this works in court rooms, although the judges become quite awed. This awe is productive, because then they look at the articles that I refer to and question their previous decisions as well[111].

Sevinç's account reveals that she conceives introducing international conventions on women's human rights as transformative. Apart from improving the treatment of judges, referring to the conventions also works for increasing feminist lawyers' credibility in the court rooms. Eylem also states this:

> I attach the relevant articles of international conventions. Because, I need to show that my claims are not based on my personal opinions or some kind of an illusion. I demonstrate that I say something based on the international conventions, which the state already ratified. It affects them. In fact, although the courts do not take women's accounts very seriously, suddenly, you become a more credible person if you know something about CEDAW or the İstanbul Convention.[112]

[111] Interview with Sevinç, feminist lawyer from İstanbul. 19.02.2016.
[112] Interview with Eylem, feminist lawyer from İstanbul. 03.03.2016.

Actually, feminist lawyers took a great part in ratification and adoption of these conventions, as detailed in the previous chapter. Yet, they use the conventions as higher knowledges with which the courts need to conform, separating their struggle for ratification and adoption of them. This helps them to submit alternative accounts to court rooms and convince judges that their references are beyond their activisms, attenuating the constraints they encounter and initiating better practices in women's cases. In this way, while questioning the gendered attitudes and interpretations of judges, feminist lawyers build their credibility through grounding their arguments in a knowledge even higher than the interpretations of judges.

4.3. Concluding Remarks

Feminist lawyers are "lawyering" in the legal field, which is highly institutionalized and indifferent to women's experiences. While working as professionals, they challenge and question the gendered interpretations and practices maintained in the legal field. They prepare their defenses in terms of the political points they want to make as feminists, they accuse the male perpetrators and advocate for the female defendants of self-defense cases, and they persuade judges by transforming the acceptable language to use in defenses, evidence to submit, and references to give. Both the achievements and losses in cases they pursue as lawyers are devoted to the broader feminist movement. The very existence of feminist lawyers in court rooms is a projection of intermingling performances of feminist activism and lawyering.

Working in the court rooms as feminist activists has the potential of endangering their clients' cases. Yet, feminist lawyers find transforming ways to strategize the tension between their activisms as feminists, and lawyering performances, rather than abandoning one of the two. They build their defenses and evidence in ways that

transcend the limits of seemingly objective, neutral, and strict operations of law in court rooms. Introducing the feminist standpoint on women's cases in the court rooms, while securing their credibility through the tools that are already used in the legal field, feminist lawyers blur the boundaries between the legal and non-legal fields.

CHAPTER 5

CONCLUSION:

ARE FEMINIST LAWYERS FREE FROM DILEMMAS?

Throughout this study, based on the interviews with feminist lawyers, I tried to elaborate on feminist lawyers' inclusion and roles in, and approaches towards the legal field. I explained how they construct themselves as legal experts, lawyers, and activists, without abandoning any of the three. I demonstrated the ways they relate themselves with the law-making and litigation processes, as well as strategies they embrace to maintain their feminist activism in the legal field, without resorting to the binaries between lawyering and activism, and the legal and non-legal. The tension between their activism and professionalism is a theme that I repetitively revolved around in this thesis.

While forming the legal field as a site of struggle, as I elaborated in the second chapter, feminist lawyers located themselves at the intersection of law and feminist struggle as consultors of the state authorities, while at the same time mobilized to question gendered approaches that are legitimized by the legal field. In the law-making processes which I examined in the third chapter, they used their legal expertise to mediate between the law-making institutions and broader women's movement, to translate women's experiences and needs from the legal field into legal texts, while at the same time challenging and transforming the gendered language and content of the legal texts as feminist lawyers. Lastly, during the litigations of women's cases, as scrutinized in the fourth chapter, they lawyered for women's cases without distancing themselves from their feminist activism, and they found ways to deal with the discrediting voices arising from the court rooms because they were feminists.

Feminist lawyers maintain their struggles in the legal field by embracing different strategies and foci to challenge and transform it. Yet, the legal field itself also mediates the political field and encounters. It has the potential to penetrate into the feminist activisms of feminist lawyers, since the legal field is beyond being instrumental, beyond being a tool to achieve their political ends for them. In turn, struggling in the legal field brings about some ambiguities and dilemmas for feminist lawyers, arising from demanding more legal reforms, questioning ways of investing extra effort and devotion during the litigations, and the tension between building solidarity with women as activists and as professionals. To give an answer to the question asked in the title of this chapter: No, feminist lawyers are not free from dilemmas. This is what makes their struggle in the legal field productive, non-static, and always in the making. The dilemmas of feminist lawyers are where the potential of transforming the content, boundaries, and implementations of the law for improving women's lives lies. Yet, they also harbor the possibility of transforming feminist politics, and are therefore worth clarifying.

First, when I asked if the struggle for the legal reforms was an important determinant of their broader struggle as feminists today, feminist lawyers said yes, in a quite desperate manner. This despair was partly because they thought their struggle then works in an "action and reaction" *(etki-tepki)* trajectory, meaning that they currently mobilize around legal texts when the government officials announce that they will enact more oppressive laws, such as prohibiting abortion, or when the state authorities invite them to prepare new legal texts together. Therefore, feminist lawyers think that mobilizing around legal reforms today might define the course of their struggle more than it should. The second part of this dilemma has to do with the debates within the women's movement. Since the legal reforms are transformative on women's struggle,

some women activists start asking for more and more legal reforms only to aggravate the punishments to the male perpetrators, such as chemical castration to the rape offenders and aggravated life imprisonment to all male perpetrators of women killings. Feminist lawyers I interviewed disagree with this idea, because they think that the punishments detailed in the legal texts are already very heavy in Turkey and the real cause of impunity or mitigation to the male perpetrators is the gendered interpretations and implementations of the judges. Accordingly, feminist lawyers think that they should demand legal reforms only to change and challenge the "mentalities" of the law-enforcers and decision-makers.

The second dilemma is about the approaches of the feminist lawyers to the processes of litigation and politicization of women's cases. Feminist lawyers, together with other feminist activists, have been focusing on a range of issues to pursue lawsuits. They choose cases to litigate depending on their debates in the feminist collectives about whether a case has the potential of creating public impact regarding a point they want to make. They do not litigate, for example, every case on violence or women killings. Rather, they litigate cases which would complement each other: One about a woman murdered because of the neglect of the police officers, one about a refugee woman who was entirely alone in Turkey, one about a celebrity who was raped and murdered and immediately stigmatized as a "slag" by the media and public, and one about a woman who killed her husband as an act of self-defense. Examples can be duplicated and the cases to follow can change, but the fact that feminist women have to select some cases create uneasiness for feminist lawyers. As an alternative to select the cases, feminist lawyers have been discussing whether they should establish an association for specifically dealing with women's cases as lawyers to reach as many women as possible. If they do so, rather than politicizing the "chosen cases", they will

be lawyering only as professionals. As an another alternative to litigating the "chosen" cases, some feminist lawyers propose to concern themselves with the theoretical and political sides of the law, by working on the philosophical and theoretical evaluations and criticisms regarding the codes. Both of these points address the same tension, the tension between activism and professionalism, and between the modes of feminist solidarity and ethics of lawyering.

While in solidarity with women who consult with them for legal support, feminist lawyers experience a third dilemma. When I asked them what they do when a woman comes to them, all of them said almost the same thing: That they listen to the woman and try to understand her, inform her about the whole legal process, about possible outcomes of a case, and leave the decision totally to the woman. When I asked for specific examples, I realized that feminist lawyers sometimes get uncomfortable while leaving the decision to the woman. Because they usually know the most probable outcome of a case and estimate what action would be more secure for the woman as lawyers, yet, since they should place the woman's agency and empowerment at the center as feminists, they do not tell her what would be "right" for her. This is, again, a tension between feminist lawyers' professionalism and activism. It is a tension between feminist principles and professional knowledge, i.e. the legal expertise.

All the three dilemmas that feminist lawyers experience are, in fact, between what is already established as a mode of keeping activism and professionalism together and what is to be established as a new mode of maintaining the two. The distribution of activism and professionalism might change, but the productive tension that keeps the legal field as a site of struggle will open up a new future in which feminist lawyers will keep negotiating their activism with professionalism.

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APPENDIX: ORIGINAL QUOTES

CHAPTER 2

1. Pages 15 and 16, Footnotes 5,6,7, 8:

İşsizlik caniliği temize çıkarır mı? İşi var, adam minibus şoförü. Ee? İşsiz değil. Adam minibüsün başındayken şoförlüğünü yaparken bu vahşeti, bu alçaklığı orada uyguluyor ya. Bunu işsizlikle ne alakası var? Adam kalkıyor, orada bile siyaset yapıyor ya. Napıyor bakıyorsunuz, kendi mensupları dans ediyor, dansla bunu kutlamaya kalkıyor. Ya böyle bir şey olabilir mi? Yandaş medyaları da hala onları savunuyor. Neymiş? Kadına tacizin yıl dönümüymüş. Bu yıldönümü vesilesiyle bunları yapıyorlarmış. Geç o işleri, geç! Biz bu tür vahşetlerin olduğu günlerde biz kendi medeniyetimizde, kendi inancımızda, kendi kültürümüzde, kalkarız, fatihalarımızla, kalkarız bunlara rahmet dilemek suretiyle bu işi anarız, yad ederiz. Ben kalkıyorum kadının allahın erkeklere bir emaneti olduğunu söylüyorum. Bu feministler filan var ya, bunlar da çıkıyor ne demek diyor kadın emanetmiş diyor bu bir hakaret diyor. Ya senin bizim medeniyetimizle, bizim inancımızla, bizim dinimizle ilgimiz yok ki. Biz sevgililer sevgilisinin o veda hutbesindeki hitabına bakıyoruz. Allahın bir emanetidir diyor, o emanate saygı duyun, o emanate sahip çıkın diyor. Ve onu incitmeyin diyor. Ortada bu varken bunu alıp farklı yerlere çekmenin hiçbir anlamı yok ve bunu rahatlıkla tartışabiliyorlar. Aslında bunların her işi böyle. İşte onun için yeni anayasa ve başkanlık meselesinde ufuksuzluklarını, vizyonsuzluklarını ortaya koyuyorlar. Ama ben burdan Özgecanımızın babasına da annesine de gerçekten şahsım, milletim adına şükranlarımı sunuyorum, bütün muhtarlar adına şükranlarımı sunuyorum. Gerçekten bu vahşet karşısında her babanın, her annenin böyle bir vakur duruş ortaya koyması mümkün değil. Duygusal olmayacağız, en azından Özgecan'ın babası kadar duyarlı olacaksınız. Bu şekilde duyarlı olacağız. Ve

duygularımızın irademize hâkim olduğu değil, vicdanımızın ve irademizin, ilmimizin duygularımıza hâkim olduğu bir geleceği inşa etmemiz lazım.

2. Page 25, Footnote 13:

Ben kadın ve erkeğin eşit olduğu ilüzyonuyla büyüdüm. Sonradan bizim o bilinç yükseltme toplantılarımızda anladım ki aslında hiç de öyle değilmişiz. Ondan önce kadınlarla arkadaş olunmaz, onlar sadece yemekten, işte modadan falan konuşur diye düşünüyordum. Önemli şeyler işte siyaset gibi, sadece erkeklerle konuşulabilir sanıyordum. Böyle saçma sapan şeyler. Bu toplantılarda kadınların aslında ne kadar harika olduklarını ve aslında ne kadar baskılandığımızı, ezildiğimizi fark ettim erkekler tarafından. Bedenimize, özgürlüğümüze erkeklerin nasıl saldırdığını fark ettim.

CHAPTER 3

1. Page 42, Footnote 35:

Yani tüm hareketimiz bu kadına yönelik şiddetin münferit değil sistematik olduğunu gösteren tüm hareketimiz görmezden gelindi. 1987'deki o karnından sıpayı sırtından sopayı eksik etmeyeceksin mevzusundan sonraki eylemimiz, o kitabımız, biz bunlarda hep şiddetin eğitim alkol falan falan bunlarla alakası olmadığı göstermeye çalıştık onların dediği gibi. Kadına yönelik şiddetin bu öznelliğini ve devlet ve yasaları tarafindan aslında nasıl beslendiğini göstermeye çalıştık. Bıkmadan yorulmadan çalışıyorsun yasalarının üzerinde ama böbürlenmeye gelince Türkiye kadına hakları konusunda çok yol aldı demeyi bilip bizim çabalarımızdan nemalanmayı bilip aslında biz ne istemiştik onu gizliyorlar.

2. Page 43, Footnote 38:

Sığınaklar Kurultayı, 4320'nin çıkması ve taslağın değiştirilmesi için mücadele vermek üzere ortak platform kuran kadınların şiddetle ilgili çalışmak için bir araya geldikleri en büyük buluşma platformu olmuş oldu. Yani bir yasa mücadelesi üzerinden, uygulaması ve bu uygulamasından kaynaklanan deneyimlerimiz -özellikle şiddet- ve yasanın kendisi üçlüsünü tartışmak için böyle bir ortak alan oluşturuldu. Bu şu an kadınların bir araya geldiği en büyük organizasyon.

3. Page 45, Footnote 43:

Onca yıl şiddetle uğraştıktan sonra, o şiddetin tam da doğduğu ailenin ilk el atılması gereken bir alan olduğunu gördük. İlk Medeni Kanun'la uğraşmamızın sebebi bu kadar basitti. Avrupa Birliği uyum süreci bizim hareketimize eşlik etti ama devlete önündeki iş sıralamasını gösteren bizdik.

4. Page 49, Footnote 49:

2002'den yani Medeni Kanun'un yürürlüğe girmesinden önce, bir kadın gelirdi, e, elimizde ona yardım edecek hiçbir hukuki aracımız yoktu. Boşanırsa beş kuruşsuz kalacağını biliyorduk. Koca tüm parayı kazanıp her şeyi üstüne yaptırdığı için. Yani elimizde nerdeyse bir avukat olarak kadınlara psikolojik destek vermekten başka hiçbir çare kalmıyordu.

5. Page 50, Footnote 50:

Kadın avukatlar, yani kadınları savunan kadın avukatlar, olarak biz tartışırken işte mal ayrımını, boşanma ya da ölüm durumunda nafakadır tazminattır bunları, elimizde hiçbir şeyimiz yoktu. Bir tane İzmir'de bir kitapçık çıkmıştı akademik kaynak olarak bize yardımcı olacak bir o vardı yani. Hiçbir fikrimiz yoktu ne yapacağımıza dair bu alanda ve yasalar da öyle uydurulmuştu ki. Aramızdan bazıları kadınla erkeğin evlilik boyunca edinilen malları eşit paylaşması gibi bir şeyin devlet tarafından asla geçmeyeceğini söylüyordu. Çoğu kadın avukat ve hukukçu daha yumuşak bir reform olmalı diye o düşünceye sarılıyordu. Feminist avukatlar ve hukukçular da bağıra bağıra diyordu ki eşit paylaşılmalı evlilik süresince alınan her şey. Biliyor musun yani televizyona bile çıktık ki yayalım bu görüşü diye. Ay, o kadar yorucu ve can sıkıcıydı ki. Bir hukukçu olarak, ihtiyacı yani kadınların ihtiyacını görüyorsun, nasıl çözülebileceğini biliyorsun ama tercihler orda farklılaşabiliyor. Daha kademeli yaklaşanlar "Şimdilik bu kadarını alalım sonra dahasını isteriz" diyenler vardı ama bu kadınların günlük hayatlarında yaşadıkları problemleri engellemeye yetmez ki. Yani ne zaman, ne zaman böyle bir yasal değişiklik üzerine bir talebimiz olacak olsa aynı şeyi yaşıyoruz.

6. Page 51, Footnote 51:

Yani neydi bizim sorunumuz? Bir defa şiddet tam da ailenin içinden doğan bir şey. O zaman onun o egemenliğini o kadını yok sayan birey olarak görmeyen egemenliğini bizim yok etmemiz gerekiyordu. Nasıl yapacaktık? Böyle nokta nokta, kadının hayatını önemsiz kılan her şeyi nokta nokta açacaktık. Medeni Kanun da bu yönden güzel bir başlangıç oldu. Aileye kadından çok daha fazla önem veren bir yasaydı o. Adam ne istese yapıyor, kadın yine suçlu ve yeni ve daha iyi bir hayata başlayacak hiçbir şeyi olmayacak halde kalıyordu. Neyse, bizim istediğimiz düşünce egemen oldu ve bizim talep ettiğimiz gibi girdi yasa. Ama bu defa da sistem intikamını kanunu geriye işletmeyerek aldı. Milyonlarca kadının gündelik hayatı etkilendi bundan. Onlarca uykusuz gün geçirdik bunu değiştirelim diye ama ellerimiz kollarımız bağlıydı.

7. Page 52, Footnote 52:

Derslerimde eski Medeni Kanunu anlatıyorum. Korku tüneli diye bahsederiz. Yani bir avukat olarak, yasaların sınırları içinde işini yapmayı öğrenirsin. Ama o sınırlar bu kadar da sınırlı olunca, müvekkiline yasayla kendisi arasındaki bir aracı olarak adalet getirmen diye bir şey söz konusu olmuyor ki.

8. Page 55, Footnote 57:

Önce şiddet üzerinde çalıştık, engellemek için, sonra aileye baktık, sonra da artık kadının toplum içindeki bir beden olarak, kendisinden başka herkesin sahip olduğu bir beden olarak varlığına baktık.

9. Page 56, Footnote 58:

Ben, bir avukat olarak, yasanın içeriğini geliştirmeden kadının toplum içindeki konumu ve aslında o eşitsizliklerle hergün nasıl karşılaştığını değiştirmenin mümkün olmadığını biliyordum. Yani yasaları değiştirince kadınların her problem bitecek diye bir şey yok tabi ki. Sadece ilk gelmesi gereken şey olarak söylüyorum. Çünkü ona sahip olunca aslında eşitsizliklerle, yasanın uygulamasındaki eşitsizliklerle savaşmak için elinde bir aracın oluyor. Mesela bir hakim veya polis memuru direniş gösterirse bunu uygulamamak için veyahut şiddet göstereni cezalandırmamak için, elinde hesap vermelerini sağlayacak bir şey oluyor.

10. Page 57, Footnote 59:

Bizim hareketimiz, o güçlü hareketimiz, yasal değişiklikler için, ilk önce aslında karar vericilerin bakış açısını, yani zihniyetlerini değiştirmek, şekillendirmek. Yani polis memurları, hakimler yargıçlar ve politikacılar. Ben zaten avukat olmaya da insanların hayatlarına bir adalet getirmek için aracılık edebilmek için karar verdim. Yoksa Ceza Yasası'nı değiştirdik diye tabi ki kadınlar artık tacize uğramayacaklar diye bir şey yok. Kadınların bedenleri toplumun malı olduğu için, yasalar orda hareketlerimizin sınırlarını belirliyor o yüzden önemli. Mesela Ceza Yasası yürürlüğe girdikten sonra bizim mahkemelerdeki savunmalarımızın da etkisiyle birlikte bir hakim güzel bir karar almıştı, aile namus cinayeti diye savunma yapmıştı o da bunu ağırlaştırıcı sebep olarak saymıştı. Bu işte kişiden kişiye değişiyor. Ama ben gerçekten biz ne kadar zorlarsak o kadar iyi kararlar alıyoruz, onu görüyorum.

11. Page 59, Footnote 61:

O platform için bir sürü kadın ve feminist avukat bir sürü farklı organizasyondan bir araya geldi. Bundan önce hep bir etki-tepki meselesi şeklinde gidiyordu örgütlenmemiz. Sonra müdahale edip işin içine girebiliyorduk. Ama TCK Kadın Platformu için önceden hazırlandık. O gerçekten çok özel bir çalışmaydı. Her kadın organizasyonundaki kadınları tek tek aradık. Böyle yeni kurulmuş örgütlere baktık Türkiye'deki internetten onları araştırdık onları da dahil etmek için. Aslında teknik bir ofis gibi çalıştık daha küçük bir grup feminist avukatlar var aktivistler var, 26 kişiydik sanıyorum toplamda ve taleplerimizi hazırladık. Sonra daha geniş olan kitleye açtık bunları. Tek tek, tek tek, her madde üzerinde kafa yorduk ve beraber hazırladık kadınların hayatını çok fazla etkileyen o maddelere dair olan yasa

12. Page 60, Footnote 64:

Farklı yasalarda görülen çelişkilere karşı ayaklandık. Medeni Kanun'da diyorsun ki kadın ve erkek eşittir bir birey olarak. Ceza Yasası'nda aynısını diyorsun. Ama Anayasa'da hala aile toplumun temelidir diyorsun! Yani biz de dedik ki, bu özde değil sözde değişikliktir biz bunu istemiyoruz. Basın toplantıları düzenledik, toplandık kendi aramızda ama duydular mı bizi? E sanıyorum şöyle bir gazetelerde görmüşlerdir. Ama o ilerleme raporlarında Avrupa Birliği diyor ki bu sadece aileyi ilgilendiriyor ve amaca uymuyor. İşte o zaman değiştirdiler onu. Pozitif ayrımcılıkla ilgili madde de ne zaman geçti, ancak 2010'dan sonra. O işte devlet bununla ilgili gerekli önlemleri alırsa bu ayrımcılık değildir.

13. Page 64, Footnote 70:

Devlet bütün vatandaşlarının yaşamlarını korumakla yükümlüdür. Lobicilik dışında, uluslararası ortamda devleti mahkum etmek üzere seferber olduk. Birincisi, Avrupa İnsan Hakları Mahkemesi var. Onunla maddi tazminat alabiliyorsun. Sonra Grevio var, o da daha çok devleti küçük düşürmek, rezil etmek için. Maddi tazminat olmuyor onda. Ona her avukat başvuramıyor çünkü resmi başvuru dili beş tane Türkçe yok. Ben önceki davaları takip edip ikisi birlikte yargılatmaya çalışıyorum. En azından devleti açıklama yapmaya mecbur bırakmak açısından.

14. Page 65, Footnote 71:

Önemli olan devleti ne yapıp yapmadığına dair hesap vermeye mecbur bırakmak. Biz bakanlıklara dilekçeler yolluyoruz veya KSGM çalışanlarıyla toplantılarda konferanslarda karşılaşıyoruz orda söylüyoruz neyi sorunlu gördüğümüzü. Bizim suçumuz yok diyorlar. "Yeterli bütçemiz yok", "yeterli kadromuz yok" diyorlar. Kadınları ikincilleştiren tüm o devlet birimlerini bu konunun muhatabı haline getirmek açısından gerçekleri uluslararası ortamlarda ortaya sermek önemli oluyor. Yoksa "onu yapmak için bütçemiz yok, bunu yapmak için bütçemiz yok" diyenlere takılıp kalıyoruz.

15. Page 67, Footnote 74:

Biz ilk başta anlamadık yepyeni bir yasa fikri nerden çıktı şimdi diye. Yani kadın hareketi 4320'nin geliştirilmesi için uğraşıyordu eksiklikler olduğunu söylüyorduk ama bir yandan her kadının anlayabileceği çok basit bir dili vardı onun, yani bir kadın bir avukata danışmaya gerek bile duymadan kullanabileceği bir yasaydı. Biz o yasanın geliştirilip genişletilmesini istiyorduk kapsamının. Ama esas daha iyi uygulama için devletin gerekli altyapıyı kurmasını, tamamlamasını istiyorduk. Ama o zamanlar hatırlarsan kadına yönelik şiddet gazetelerde çok görünürdü yine, üçüncü sayfa yerine

birinci sayfadaydı gazetelerde. Hükümet de kadına yönelik şiddeti çok ciddiye alıyor görünüyordu yani nerdeyse tırnak içinde namus meselesi haline getirmişti. Bizim resmi olmayan kanallardan duyduğumuz kadarıyla Fatma Şahin, o zamanın Aile ve Sosyal Politikalar Bakanı, bu yasayı 8 Mart'a yetiştirmemiz lazım kesin yetiştirmemiz lazım filan diye dolaşıyordu. Bilmiyorum sebebini, yapmak zorundayız gibi bir hal. Çok aceleci davrandılar o yasa 11 ay gibi bir süre içinde alelacele çıkarıldı!

16. Page 70, Footnote 75:

Her toplantı öncesi gece, o sabah uçağa binip Ankara'ya gideceğim yani, bakanlıktan bir e-mail. KSGM'den de bir ek dosya. Açıyorum bakıyorum: A aa! O bizim üzerinde saatlerimizi harcayıp kafa yorduğumuz uğraştığımız yasa gitmiş, yerine bambaşka bir şey gelmiş. On gün geçiyor, yine aynı! Ben sonra raporumun ön sayfasını değiştirdim. Şiddetin tanımını yazdım. Dedim ki şiddet insana kendini kötü hissettirme, işe yaramadığını hissettirme, yaptıklarının boşa olduğunu hissettirme. Sonra dedim ki bu tanıma göre, bakanlığın bize yaptığı da şiddetin bir biçimidir. Yani artık belli bir yaşa gelince ve konuyu da çok iyi bilince, insanlar sana saygı duyuyor ve söylediklerine alınmıyorlar. Şimdi Aristo'nun bir sözü vardır: Erkeğin kanı sıcaktır temizdir, kadınınki soğuktur kirlidir. Bu nedenle belli dönemlerde atar. Şimdi o biyolojik yapıyı, düşünün, kadın erkek eşitsizliğinin temeli olarak oturtuyor. Yani kadınlar güçsüzdüre getirip, anca yönetilen olur diyor aslında. Ama, Aristo'nun sözleri, bakın, ne zaman ki diyor, artık bu kirli kanını biriktirir vücudunda atmaz, işte o zaman erkek gibi yöneten de olur, sözüne de itibar edilir. E, tamam bizimki de itibar edilir hale geldi artık. E ne yapacaklar yani? Bu yaşlanma olayı gerçekten o toplantılarda çok iyi oluyormuş! Neyse, Fatma Şahin dedi ki, ay çok haklısınız, hakikaten çok haklısınız, ama ben Adalet Bakanlığı'na mani olamıyorum. O bakanlıklara gidiyor, orda o bürokratların elinde oynuyorlar

mesela Sağlık Bakanlığı. Onun fikrini almadan bir cümleyi bir şeyi değiştiriyorlar ama o cümle orda can alıcı!

17. Page 71, Footnote 76:

Seçilmeden önce hep "onu yapacağız, bunu yapacağız" şeklindeydiler. Ama tabi ikiyüzlülükleri çok kısa sürede ortaya çıktı. O kadınları şiddete uğramış kadınları kocandır yapar deyip evine yollayan polis memurlarından hiçbir farkları yok aslında.

18. Page 71, Footnote 78:

Anayasa kadın erkek eşittir diyor. Ama başbakanınız çıkıp bu eşitliğe inanmadığını bangır bangır söyleyince halka açık konuşmalarında, hakimler savcılar da etkileniyor bundan. Eşitsizliğin asıl meşru olan şey olduğunu zannediyorlar.

19. Page 71, Footnote 81:

Hükümetin siyasi görüşü çok önemli. Fıtratında yok diyorsa, kahkahasından doğumuna kadar her şeyine karışıyorsa, e o zaman hakim de bundan etkileniyor, hakim de aydan gelmedi.

CHAPTER 4

1. Page 86, Footnote 89:

Herhangi bir kadın olabilir ölen. Göstermek istediğimiz şey zaten bu mahkeme salonlarında, dövülmek şiddet görmek ya da öldürülmekle yaşıyor olmak arasındaki çizgi öyle bulanık küçücük bir çizgi ki. Kadınlardan bahsediyoruz yani.

2. Page 99, Footnote 104:

Keşke kadının beyanını esas alan hâkimler olsa nasıl isterdim. Yani koruma kararı için delil gerekmiyor deniyor kadının beyanından başka ama ben onlarda bile elimde ne varsa gösteriyorum. Sms olur, telefon konuşması olur, ses kaydı olur, adli tıp raporu olur vesaire. Herhangi bir işini ciddiye alan avukatın da zannetmiyorum delil göstermeyeceğini. Hiçbir şey olmasa, kadının yaralarının fotoğrafını koyuyorum dilekçeye ek olarak. Bir kadının hayatını nasıl riske atayım? Şansa bırakamam. Ya hâkim sadece bir aylık koruma verirse? İtiraz mı edeceğim zaman mı kaybedeceğim?

3. Page 101, Footnote 105:

O konuya biz daha genel geçer, herkes tarafindan anlaşılabilecek bir şekilde yaklaştık. Eski kaynakları gösterdik, önceden aldığı koruma kararı vardı bu adamlardan korktuğu için mesela. İlişkiyi sonlandıran kadın olduğu için azmettiren kızgındı dedik. Bu iki adamın birbirine çok yakın olduğunu söyledik, dedik ki yani ama bu adam hiç ziyaretine gitmemiş hapse girdikten sonra öteki. Yani birbirini her gün gören adamlar bir anda fail hapse girince azmettiren onun ziyaretine gitmiyor. E ne oldu da fail yakalanınca görüşmediler hiç dedik. Bir de yani hiç telefonunu falan açmamış aramışlar. O dava benim hayatımın davası falandı. Türkiye'deki davalar biliyorsun pek öyle Amerika'dakiler gibi olmuyor. Savunman belli standartlar dâhilinde hazırlaman

gerekiyor hani hazır-cevaplık zekilik işlemiyor. Ama o duruşma öyle bir şeydi. Üç gün boyunca uyumadık tabi hazırlanalım diye ama işe yaradı yani.

4. Page 101, Footnote 106:

Genelde direkt o olaya dair delil göstermen gerekir mahkemeyi ikna etmek için ama kadının önceki şiddet deneyimlerini biz göstermeyi başardık ve bu da aslında daha sonra olabilecek meşru müdafaa davalarındaki gidişatı belirleyebilecek bir şey.

5. Page 103, Footnote 108:

Ne kadar kalabalık olursak o kadar iyi oluyor. Hâkimlerin gözü korkuyor! O duruşmalarda bir sürü kadını görünce o davanın öyle basit bir dava olmadığını, politik bir tarafının olduğunu ve kadınların sözlerini hafife alamayacaklarını anlıyorlar.

6. Page 105, Footnote 110:

Bu tarz davalara biz stratejik dava takibi diyoruz yani AİHM'ye gidecek olanlara. Eski kararları, davalarda hâkimlerin verdiği, ama toplumsal cinsiyet eşitliği açısından çok başarısız kötü şekilde verdiği, topluyoruz. Mahkemeye başvurmayacak olsak bile bu adaletsizlikleri topluyoruz gölge raporlarda sonra kullanmak için. Bu hem bizi avukatlar olarak mesleki olarak geliştiriyor değiştiriyor, hem de karar alıcılarını mümkün olan tüm yollarla suçlayabilmemizi sağlıyor.

7. Page 106, Footnote 111:

Ben hep her seferinde uluslararası sözleşmelere, Türkiye'nin imzalayıp da güya uygulaması gerektiği, atıfta bulunuyorum her dilekçemde illa ki koyuyorum korumadan tut boşanmaya, kadınların iş yerindeki haklarından tut cinsel şiddete kadar. Uluslararası sözleşmelerle uyumlu yapmaya çalışıyorum çünkü mahkemelerde bu işe yarıyor, hâkimler tabi şaşkınlık içinde kalıyorlar. Ama bu şaşkınlık daha üretken bir şaşkınlık

çünkü bakıyorlar o zaman, aa böyle bir şey varmış diyorlar, hem de kendi eski kararlarını sorguluyorlar bence.

8. Page 106, Footnote 112:

Ben uluslararası sözleşmelerdeki ilgili maddeleri hep eke koyarım. Çünkü göstermem lazım yani bunlar benim şahsi görüşlerim değil ya da bir hayal ürünü değiller, temellerini uluslararası sözleşmelerden alıyorlar yani devletin kendisinin imzaladığı. Etkiliyor bu tabii onları. Kadınların beyanlarını ciddiye almayan mahkemeler için bir anda inandırıcı, güvenilir biri oluyorsun yani CEDAW'a ve İstanbul Sözleşmesi'ne dair bir şeyler bildiğin için.