

IS IT POSSIBLE TO CONSTRUCT A FEMINIST JUDGMENTAL PROCESS:  
THE WOMEN'S COURT OF SARAJEVO

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PINAR KURANEL

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**Name, Last name:** Pınar Kuranel

**Signature :**

## **ABSTRACT**

### **IS IT POSSIBLE TO CONSTRUCT A FEMINIST JUDGMENTAL PROCESS: THE WOMEN’S COURT OF SARAJEVO**

Kuranel, Pınar

M.S. Department of Gender and Women Studies

Supervisor: Assist. Prof. Dr. Şerif Onur Bahçecik

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In this study, research is going to be conducted on the possibility of constructing a feminist judgmental process by examining a real-life example: The Women's Court of Sarajevo. Liberal law systems and judgmental processes are driven by the notions of objectivity, rationalism, and neutrality; however, it is possible to understand that these notions are understood by the patriarchal perspective. To have a more fair and just judgmental process, the feminist legal theory suggests 3 methods. Together with explaining different feminist theoretical standpoints in legal thought and the methods that are produced based on these standpoints; I examined the Women's Court of Sarajevo and witnesses' views on the possibility of constructing a feminist judgmental process.

**Keywords:** Feminism, Feminist Legal Methods, Women’s Courts, Post Conflict Reconstruction

## ÖZ

### FEMİNİST BİR YARGILAMA SÜRECİ OLUŞTURMAK MÜMKÜN MÜDÜR: SARAYBOSNA KADIN MAHKEMESİ

Kuranel, Pınar

Yüksek Lisans, Toplumsal Cinsiyet ve Kadın Çalışmaları Bölümü

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Bu çalışmada, feminist bir yargılama süreci oluşturmanın mümkün olup olmadığı gerçek hayatta yaşanmış bir örnek üzerinden incelenecektir. Liberal hukuk sistemleri ve yargılama süreçleri üç başat kavram tarafından gerçekleştirilmektedir: tarafsızlık, akılcılık ve yansızlık; fakat, bu kavramların ataerkil bir bakış açısından yorumlandığını görmek mümkündür. Bu noktada, daha adil ve adaletli bir yargılama sürecine sahip olmak için feminist hukuk teorisi 3 metot önermektedir. Feminist hukuk teorisinin çeşitli bakış açılarını ve bu bakış açılarından yola çıkılarak oluşturulan bu üç metodu açıklarken; aynı zamanda Saraybosna Kadın Mahkemesi'ni ve bu mahkemeye tanık olarak katılan kadınların böyle bir sistemin ihtimali hakkında ne düşündüğünü inceledim.

**Anahtar Kelimeler:** Feminizm, Feminist Hukuk Metotları, Kadın Mahkemeleri, Çatışma Sonrası Yeniden Yapılandırma

*To my mother, Sema and all of the revolutionary women of Yugoslavia*



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## LIST OF ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CONADEP	National Commission on the Disappearance of People
CPY	Communist Party of Yugoslavia
ELN	National Liberation Army
EULEX	European Union Rule of Law Mission in Kosovo
FARC	Revolutionary Armed Forces of Colombia
FRY	Federal Republic of Yugoslavia
ICC	International Criminal Court
ICTY	International Criminal Tribunal for Former Yugoslavia
JNA	People's Army of Yugoslavia
NATO	North Atlantic Treaty Organization
PCC	Colombian Communist Party
REKOM	Regional Commission Tasked with Establishing Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of Former Yugoslavia from 1991 to 2001
SFRY	Socialist Federal Republic of Yugoslavia
TRC	Truth and Reconciliation Commission
UN	United Nations
UNPA	United Nations Parliamentary Assembly
USSR	Union of Soviet Socialist Republics
WCC	War Crimes Chamber in Bosnia and Herzegovina



## **CHAPTER 1**

### **INTRODUCTION**

In our culture, they say that when there is a silence, a girl would be born and out of that silence again, Women's Court of Sarajevo was born.

Mira - One of the members of Organizational Board of Women's Court of Sarajevo

#### **1.1.Aim and the Scope of the Study**

This study is conducted to understand whether it is possible to construct a feminist judgmental process in national and international formal legal mechanisms. In order to understand this possibility, it is highly important to start from the experiences of an informal court mechanism which is Women's Court of Sarajevo. Moreover, in order to understand this issue broadly, it is also important to make definitions of what is woman and how woman is located in law systems. So, the word "woman" has always been a controversial word in the history of human civilization. Differences between women and men have always been discussed, judged and ruled according to specific norms and obligations and women have been suppressed and oppressed under patriarchy which is defined as a "system of society or government in which men hold the power and women are largely excluded from it" ("patriarchy" n.d.). Law, in this perspective, constitutes an important area of domination of men over women. Historically, law helped continue the gendered division of society by regulating human relations. For instance, Hammurabi Law Code of Babylon set women in a position that their sexuality had to be protected by men and they were seen as the properties of men, mainly their fathers, husbands and brothers (Brownmiller, 1975: 18). One can also find

this kind of laws and regulations through world history; Ancient Rome, Byzantine Empire, Ancient Greece, Ottoman Empire; it is possible to find laws and regulations which are misogynist even in today's world. Moreover, in the historical perspective, the emergence of modern states and concepts such as the rights of individual have not helped to change the situation of women. According to Berkday, especially with the emergence of liberal theory in the 19th cc, which creates a societal and political order and let the individual out from the hierarchical political structures with bringing a free space to the individual through doing this, a strong patriarchal function can be found in liberal theory since it makes a division of public and private and makes the male "individual" as the free authority of his own private place (2012). This direct division of public and private spheres was also accompanied by the standardization of the law systems around the values of positivism such as neutrality, rationalism and objectivity. These values which were brought by enlightenment era, were actually formed in order to escape from scholastic and religious domination of church and aimed to create a scientific world order which is free from all of the pressures of religion and authorities. However, in time, these values were started to be seen as the right way of ruling and decision-making, too. Especially with the empowerment of Western thought through colonialism and cultural imperialism, it is possible to say that from 19th cc to these days modernism and modernization of the legal system and judicial processes have always been understood in this perspective. This method is also named as the "dogmatic law" which excludes law from the social and natural sciences as a normative science. According to this definition, law, even though it depends on value judgments and intends to "what should be," receives its scientific status from its method based on logic (Akçabay, 2018). One might say that this change especially in the judicial systems is better for women and their positions in the society since it started to give importance to the freedom of the individual and his/her own boundaries and guarantees that if there is an unjust situation, these decision making structures will decide on a neutral and objective basis. However, saying this means neglecting the cultural background of hundred years of patriarchy and political structures that have been established with the effects of this cultural background. For MacKinnon, law, as the power of words, expresses the society in the shape of the state and also expresses



the state in the shape of society and in this way state legitimizes the patriarchal culture through the judicial and law making procedures by saying that it is neutral and objective but at the same time staying in a world order that is highly androcentric (2015).

In the historical perspective mentioned above, international relations have also developed between the states according to liberal thought. Berktaý underlines that the system of international relations and the emergence of the liberal state have a close relationship since in the framework of international law, states are like the individuals who are in a social contract with their states in the position of free, equal and independent actors (2012). Modern nation states invented a communication style between them in order to get in peaceful relations and in this scene, every state was an individual who had his own private sphere and other individuals/states did not have the right to intervene what was going on in other one's public place. However, in this point international relations and law intersected with a newer topic: human rights. Especially after World War II, international community formed the "United Nations" in order to promote human rights and in addition to this, international criminal tribunals (Nuremberg and Tokyo trials) were set up for dealing with wartime crimes internationally. Until today especially within the UN and its bodies, this notion has been developed and defined over and over. States which have been individual actors in their own private spheres, namely in their affairs, are not free enough to do whatever they want to do but they should comply with regulations and norms in the framework of international law and human rights. However, at the same time it is still a contradictory and risky field that in much of the time international community has the risk of being late in intervening or not intervening at all since the private public sphere distinctions in the international area in the name of sovereignty (Berktaý, 2012). To be clear, one can think international community as a men's club that is built upon a cooperation about business and in which all men have to respect the specific rules and codes about the community's sake such as not smoking in the room or not discussing specific issues between them; so in this context, they all have to respect the rules in order to stay in this club. However, men in the community are not interested about the

issues of each other's' houses. A man would also be welcomed to the club even if he beats his wife and children in the condition of respecting the rules of the community. So, from this example, it is possible to understand that international community is the men's club while individual members of this club are being the states in this system.

Besides human rights, there is another complicated and controversial topic of international law. Historically, men have been seen as the definition of human while developing rights and these rights came to cover women much later just like other sections of modern society such as immigrants, black people, and minorities. In this point, it is crucial to underline that women have always been in a struggle with patriarchy, even before the emergence of feminist theories. However, especially with the beginning of 18<sup>th</sup> century women and men started to fight against the patriarchal culture and domination of men over women. Early resistances were for marriage and divorce rights and suffragette but after a while, this struggle expanded and moved into other areas. Field of law and judiciary could not be left out of this struggle since it is defining what justice is and what injustice is for women, too. International law can be easily included to this struggle after the developments of 20<sup>th</sup> cc. In this perspective it is impossible to divide international law and national law systems since both of them has the same path in the judgmental process because of the androcentric understanding of liberal world order. As it was mentioned above, international community and its institutions or implications have its roots from the practice of liberal theory. To be clear, it can be said that there are some circles. In one circle there is one state and the state does not intervene to what happens in the private sphere of its citizens but mostly regulates the public sphere and a bigger circle includes the circle of the state which is called international system. And international community and law also does not intervene what happens in the state's private sphere. After explaining this situation, it is also important to explain what happens in private sphere. As feminist theories indicate, private sphere has been a place that women's subordination started. According to Berkday, the distinction between public and private spheres is coming from the notions of old Greek thought which conceptualize *polis* (the public sphere) and *oikos* (private sphere) and while polis means the area of men's governance, the

latter is for the house which is the place of women and children and in this place, that is free from law, men can do whatever they want. Although it looks like this situation has changed in last two centuries, there is still a problematic structure about the definitions of freedom in private sphere (Berkday, 2012). Even though feminist critique of law has begun to develop much later than the other theoretical critiques of feminism; it made clear one distinctive feature of patriarchy, that it is contained, produced and reproduced by law (MacKinnon, 2015). Moreover, even though there are different theoretical and methodological approaches of feminisms exists in this field, it is possible to say that there are certain common themes in this field such as the systematic bias of the law that accepts men as the rational, aggressive, competitive, political and dominant ones and women as the emotional, subordinate, passive, nurturing and domestic followers. Secondly, different feminist theories of law also meet on the common ground that law is still legitimizing the public/private spheres differences. And thirdly, human rights are still a contradictory topic for feminists in this field; although developments such as CEDAW (United Nations Convention on the Elimination of All Forms of Discrimination Against Women) are hailed by them, they are still concerned that human rights are still shallow and laws reflecting patriarchal cultures continue to exist (Frances & Smith, 2017). Despite these common points, there are several differences between the theoretical grounds of feminism on this issue: according to Uygur, one can sum feminist legal theory in three waves. The first wave can be called as “approach of equal rights”, the second is “different approach” and the final is “approaches that are based on identity differences” (2015). These three theoretical perspectives will be explained in Chapter 2 with an extra addition of the explanation of postmodern feminist legal theory in order to provide a wider perspective.

As it was mentioned above critiques to international and national law mechanisms should be criticized in the same line since these two mechanisms follows the same path in decision making procedures. Moreover, in this issue it is very clear that not only wars, but also armed conflicts and their aftermath constitutes an important issue from

the perspective of feminism since women's bodies constitutes an important war field for the patriarchal culture from the beginning of history. According to Fejic & Idekovic sexual violence against the "women of the enemy" were often perpetrated and also perceived as insulting and destroying the honor of male combatants but not as individual crimes (2015). Especially in the 1990s, sexual violence and rape were excessively used as weapons for ethnic cleansing in two armed conflicts: Yugoslavian Civil War and Rwandan Genocide together with the other armed conflicts in Cambodia, Liberia, Peru, and Colombia. What makes these two-armed conflicts as distinctive in this context is the establishment of international criminal courts in the peace time in order to judge war criminals under the Statute of Rome. However, these transitional justice mechanisms could not be satisfying for the ones who survived and who have been waiting for justice most of the time. Especially women who have been tortured, sexually violated, raped and who lost their families and friends mostly did not satisfy with the Courts' decisions because of the limited convictions, long judicial procedure and ineffective witness protection. In addition to this situation, peace-building period is also problematic for women since almost all of the official or semi-official peace talks are between the people who were carrying guns and who fought with each other, mainly men (Fejic & Idekovic, 2015). However, according to Harders even when it is possible to make an official peace accord without including women to the process and taking into consideration gender relations, it is not possible to transform the armed conflict and violence without using a feminist lens (2018).

What women do or did reflect to the situations which were mentioned above in this case constitutes an important matter. They became important factors in the peace building times and searched for the justice through different ways. In this point alternative mechanisms that they invented provide significant improvements to the society and to the notion of justice worldwide. Women's courts/tribunals, which were made in Belgium, Japan, Colombia, Bosnia, etc., constitute an important place together with the truth commissions and nongovernmental organizations. These courts/tribunals, as it mentioned above, not only help to build a multi-functional peace

building process but at the same time they develop the technique what is to be called as a feminist judgmental process. It is highly important to say that these courts/tribunals throughout the world are very near to establish a conclusion of what feminist theorists on legal theory have been trying to form. From the first court/tribunal, which was held in Belgium in 1976, to these days women have been collecting knowledge, forming new ideas, practicing these ideas and acting with solidarity within themselves. Between these courts/tribunals Women's Court of Sarajevo is at the heart of understanding how feminist methods can be intersected with the antifascist and antiwar ideas in addition to that fact how to build an ongoing process after the Court. There are several reasons for the importance of Women's Court of Sarajevo, firstly, even though they have a lot of differences between their political processes after the peace records, all of the post Yugoslavian countries have the same pattern of containing different ethnicities within themselves and this fact makes it obligatory to find a common pattern between the citizens to live together peacefully against the rising nationalist politics; secondly, as it was mentioned before, women in these new republics were excluded from the peace talks even though they were one of the parts of societies that were war tormented and finally, in all of the republics victims are still do not satisfy with the existing judgmental systems (Fejic & Idekovic, 2015).

In analyzing the process of Women's Court of Sarajevo and its effects on the participators, both the witnesses and organizers, I will aim to construct the possible application of feminist judicial process and evaluate its implications to the formal courts, the international and national ones. Further, I will discuss the possibility of feminist judgmental process in the future. With the points that were mentioned before, Women's Court of Sarajevo constitutes an important place in this path. All in all, in this study Women's Court of Sarajevo to make it clear how it intersects feminist theories with an antiwar and anti-nationalist perspective and moreover, how it can be an example of feminist judgmental processes. together with this reason, this topic is also important for me because coming from a Bosniak migrant family, I always heard the stories of distant relatives that my family had no longer been in touch. There was also a war that was mentioned as evil and secret thing. So, when I went to high school,

I started to make research about this war and what happened to these relatives of my family. I discovered the ugly sides of war and learned about the facts about war. After I learned about the post-conflict process, I became curious about how women handled with these conditions and how they managed to survive. So, in this way I chose the focus of this study. As a feminist researcher, I do not build a strict researcher-participant relationship with the participants. We laughed together, cried together and built a deep and impressive relationship. Because of these reasons, I do not define myself as an objective and neutral researcher; in contrast, I underline that the backgrounds and stories of the participants are highly important for me. After explaining my position while doing the research for this study, I am going to explain which method is used and why it is used.

## 1.2. Methodology of the Study

A research method is a technique for gathering evidence and a methodology is a theory that analysis how research does or should proceed in terms of data collection and data analyzing. The traditional philosophy of science argues that the origin of hypotheses is should be in the “context of justification” and a researcher should seek “logic of scientific inquiry” (Harding, 1996). And this one-sided standpoint has been accepted as the natural, objective and general (Smith, 1975). However, it is very clear that by searching for scientific inquiry and looking into issues with a context of justification do not consider the subjects of the research especially in social sciences and can hide the bias of the researcher.

In the beginning of 1970s, as opposed to these conditions of making researches and being objective, neutral and general; feminist methodologies were begun to be developed and scholars started interrogating traditional perspectives. Searching for the women and exceeding the limits of scientific inquires while discovering what is really happening are the most important parts of feminist methodologies. According to

Hammersley, there are four important points of feminist methodology. First of all, gender is accepted as the central concern and it must be taken account in any of the researches. Secondly, women's experiences constitute an important part in this methodology. It provides access to the truths of social world much more than the hypotheses. Thirdly, hierarchical relations between the researcher and the subject should be rejected according to this methodology since it is the only possible way for a feminist who makes a research about women and moreover hierarchy can lead to the distortion of the data and only authentic relations can be useful for discovering the truth. Finally, emancipation of women is the goal of feminist methodology but not the production of knowledge since only description without any eye for the transformation is highly conservative (1992). All of these points can be supported by other feminist theorists. Harding also discusses importance of "women's experiences" as the new empirical and theoretical resources and underlines that it is the one distinctive features of feminist methodology since it uses experiences as the indicators of reality and at the same time it also generates its research problems from these experiences (1996). In addition to that she emphasizes that a researcher must have placed him/herself on the same page with the subject and must avoid being "objective" since it mostly hides the important parts of the research through hiding the beliefs and thoughts of the researcher which is also a part of social sciences and researches (Harding, 1996). Oakley also advocates this point with saying that there is a new model of feminist interviewing which engages with intimacy and includes self-disclosure (Reinharz, 1992). Another important point of the feminist methodology is its contribution to women's consciousness raising through putting women in the center of social sciences which has been traditionally male-biased and androcentric. This means that the knowledge is both analyzed and produced through the experiences of the oppressed women, not only through privileged men (Abbott, Tyler & Wallace, 2005). It also means that this standpoint is claiming to be a part of the production of the knowledge which assumes that this will be more effective to complete the knowledge.

In the light of all of factors, that were mentioned above, feminist research tends to be developed on qualitative research models since quantitative research methods are

mostly associated with objectivity, positivism and statistics and in addition to that, at the same time since the voice of the participants are silenced by the powerful voice of the researcher who has the high possibility of turning subjects into objects (Woolgar, 1983: 242). Qualitative research “is a naturalistic, interpretative approach concerned with understanding the meanings which people attach to phenomena within their social worlds” and it is very well suited with for exploring issues that are complex and for studying processes which occur in time (Snape & Spencer, 2003). According to Heyink & Tymstra interview is the most used method of the qualitative methods which can show significant differences according to the degree of their structures; on the one hand there is structured interviews where the respondent cannot reflect her or his own feelings and has to select from options, in addition to that the interviewer is seen as invisible and anonymous in a way that s/he does not have an influence on the interview, on the other hand there are semi-structured or unstructured interviews and the differences between them can also lead to major differences in the results (1993). In feminist methodology, semi-structured and unstructured interviews are used since they are not formed by close questions and helps the participant to talk about broad definitions and express him or herself in a broad time. Moreover, relations between the researcher and the participants is highly important in this issue. Since the researcher is far from trying to be objective and s/he tends to create a relation with the participant, research process reflects a two-way interaction between them, broad answers to open-ended interview questions can be helpful while building this relationship. In addition to these, there are several merits of the semi-structured or unstructured interviews: firstly, the participant can also raise issues that maybe essential for the research, secondly, misunderstandings about the questions can be solved easily, thirdly, it is possible to check for many themes in a short time and finally it is significantly appropriate while researching about feelings, behaviors and intentions (Ritchie, 2003). To conclude, it is very clear that qualitative research methods, especially semi-structured and unstructured interview models are highly compatible with feminist methodologies since they help the researcher to understand the feelings, thoughts and ideas of the participants.



In this study, also qualitative analysis was adopted as the research method and semi-structured in-depth interviews were adopted as the principal data-collection technique. 11 women who were testified as witnesses out of 36 in the Court were interviewed. All of the interviews were made in Serbia. I was invited by Women in Black to a regional meeting of the Court, which will be explained in detail in following chapters, and in this regional meeting I had the chance to meet with both the participants and the organizers. All of the participants were more than 40 years old and they all witness conflict during the Civil War. Two of them were coming from Croatia, four from Serbia, two from Bosnia and Herzegovina and one of each Slovenia, Macedonia and Montenegro. I did not ask about their nationalities because it constitutes a problematic and sensitive topic in the region and also, they defined themselves as an opposition to all nationalistic perspectives. Rather I asked them the question of “where are you from?” And with this question, I aimed to understand where they feel belonging in the region. I did not ask direct questions about the times of the conflict such as, what happened to you in civil war, instead I asked open questions such as “Can you tell me about your experiences during the wartime?” Below, the reasons and design of the research is going to be explained in detail.

There are several reasons why this study adopted a qualitative analysis in line with the feminist methodology while examining the issue. First of all, this study is focused on feminist theory of law and the possibility of the application of feminist theory of law to the national and international legal mechanism; therefore, a feminist methodological approach is necessary to understand the issue completely and to build an effective theoretical ground of it. Secondly, this study was made through semi-structured interviews in order to understand experiences of women and to give them the space of free speaking and intervening to the process. As it was mentioned above, semi-structured interviews are very important for feminist methodology in which participants and researcher create a bond between themselves and at the same time this kind of interview creates a safe place or zone for the participant. It also allows the researcher to understand the subject in a broad sense and provides a deep knowledge for the issue that is to be researched. In contrast to the structured interviews, semi-

structured interviews are more convenient for the studies such as this since most of the participants have been traumatized by experiences of war and an armed conflict. A research environment in which participants have the possibility to be raped, to lose their relatives and to be tortured by the oppositional armed forces, it is significantly important to ask open questions to them in order to help them for telling their own story and the importance of the Court from their perspectives. A feminist standpoint while analyzing the answers is very important since this study is aimed to understand women's perspectives and solutions in the problematic areas of law and judicial matters. In addition to all of these points, semi-structured interviews help researcher to form a wide perspective about the study. With different answers and interpretations by the participants, the researcher can understand the background of the issue much more efficiently and s/he can also conduct a more accurate study for the women. Finally, it is very important to have a feminist methodological standpoint in this work since the Court itself claims that it created a new methodological approach. One cannot understand the Court's mechanism without using feminist methodology while studying the Court and its effects on the future or on women. Moreover, the Court is an intersectional field to be studied, it combines anti-war activism, pacifism, feminism and legal methods at the same time. To understand the legal part of it is very important to know what feminist methodology have been done in this field until today. The Court, which criticizes the existing legal mechanisms from the point of view of women, cannot be understood if feminist methodology is not used. In that annual meeting of the Court a network was developed to reach out the witnesses and a snowball sampling technique<sup>1</sup> was used in order to reach other participants. It should be underlined that since witnesses are coming from different countries, which used to be Yugoslavian Republics, it was very challenging to connect to them and also to meet with them because of that it was only possible to make interviews with 11 of them. Interviews were made in July and that month was a special month with two

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<sup>1</sup>Strategy of snowball sampling means that identifying various people with topical characteristics and interviewing them and after that the researcher can ask for the contact of other people who have the same characteristics (Berg, 2001)

commemoration events which were made by Women in Black in Belgrade and eight of the interviews were made with the women who were coming from different countries to support some political protests. In order to complete other three interviews, I had to travel to the other three cities of Serbia. Another challenging side of the research was the language problem. Since almost none of the participants spoke English, I needed a translator to conduct the interviews. In this part Women in Black and its activists were very helpful, they made translations and from time to time help me to clarify dots and connections more easily since they participated in the Court process and at the same time they have been living in the same geography. Despite these difficulties, when I explained myself and what I was planning to do, they made it clear that they were glad to answer to questions because all of the participants expressed that any study about the Women's Court would help to spread the word outside. However, they preferred to hide their identities and names since they are still in danger of being attacked because of their testimonies. The questionnaire was also prepared bearing in mind that all of the women who testified in the Court were highly traumatized. It started with introduction questions in order to understand their lives and their perceptions about feminism, women's movements and notion of justice or judgmental process before the War and after that it continued with their experiences in the wartime so as to connect with their stories as the researcher. The questionnaire was also prepared to learn their views about transitional justice process, international community's justice mechanisms and the effectiveness of NGOs in the region. In the final step, their experiences before and after the Court, the reasons of participating for them in the Court and their perceptions of a feminist judgmental process were asked. Different questions were added to the questionnaire for the members of organizational board so as to understand their views about the region, activism and their purposes of organizing the Court. Their names will be written to this study since they are still openly involved in activism. In addition to these points, all of 14 interviews were made with audio-recording devices and after that they were transcribed to the electronic devices.

### 1.3. Significance and the Structure of the Study

Topic of this study, which is Women's Court of Sarajevo, is a multi-layer event since it is a reaction against the whole patriarchal structure of the society. It emerged with a major demand, which was justice, and, in this path, it did not only focus on this notion or demand but also it continued with the criticisms of a lot of topics; forced mobilization, genocide, war crimes, economic and social problems, discrimination, etc. In addition to all of these, it also worked to form a new form of judgmental process from a feminist perspective. It was not unique in terms of being one of the women's court on the world, but it was unique in its struggle with the ruins of a peaceful country which is now divided to authoritative new republics. Studying this Court and its contributions to feminist theory of law and to law does not only mean to study law theories. It means studying anti-militarism, anti-fascism and women's collective reaction to the existing justice mechanisms, both internal and external ones at the same time. Studying Women's Court of Sarajevo and its probability for creating feminist judgmental process are significant because of several reasons. First of all, there are a lot of studies that analyzes feminist law theories, women's situation in courts, the gaps that are excluding women and other groups which are not belong to white, male and upper-middle class and on the notion of justice from women's perspective and all of these studies have brought ideas or imaginations what justice should be like or how it should be succeeded. Theories have been written in these terms, researches have been done and women's associations from different countries have taken these ideas to reality by creating or establishing women's courts/tribunals. However, there is not so much work on the possibility of feminist judgmental processes through a real-life example and this study in macro level will try to understand the possibility of a change in judgmental processes through understanding and analyzing women's experiences in Women's Court of Sarajevo.

Secondly, at the micro level, this study will also focus on women's situations in times of armed conflicts and their solutions to past traumas that they are still coping with.

Women's bodies have been seen as the lands of enemy's territories in times of war since the beginning of history and sexual violence, rape, forced pregnancy or abortion have become war tools for the armies or paramilitary forces. In 20th century rape was also begun to be seen as a tool for ethnic cleansing (Kesic, 2001: 26). In Yugoslavian Civil War also this tool was used remarkably and still the number of women who were there is no certain number of women who was exposed to sexual violence and rape. In this study, the position of women in Yugoslavian Civil War and what they had gone through in this period will also be examined in order to understand women's perception about war and armed conflicts. Reflecting on their experiences and how they felt after the Court has a major importance since it certainly enriches feminist theory of law and critical legal studies.

Thirdly, all of the former Yugoslavian countries have different ethnic backgrounds and socioeconomic classes, this study will also show how women deal with these differences from a feminist perspective as another micro level analysis which can be shown as an example of intersectional feminism. Their dissatisfaction about the peace-building process after the war and important work on getting together of their cumulative accumulation constitute another important point for this work which should be studied also in order to understand significance of the Court from a feminist perspective. Altogether, this study would contribute to feminist theory of law through examining the possibility of a feminist judgmental process over the example of Women's Court of Sarajevo and experiences and views of women who participated in the Court process.

In order to understand the issue broadly and fully, this study was formed by six main chapters. The first chapter is an introduction part to clarify the methodology, scope, research problem, objectives and significance of the study. Following this chapter, Chapter 2 is focused on the theoretical and background of the study. Here, feminist theoretical perspectives on law will be explained in order to provide a better understanding of the research problem. So as to understand the specific context of the study, transitional justice mechanisms will also be explained together with four main

theoretical perspectives: liberal, radical, the one that focuses on difference and postmodern feminist legal perspectives. After providing necessary theoretical explanations, Chapter 3 will analyze the relation between women and war and at the same time will make a broad explanation of women's courts/tribunals which were occurred throughout the world. This part will provide a better understanding of feminist theories of law and criticisms that they pointed out while going through real events. Following Chapter 3, Chapter 4, constitutes a broad explanation and examination of Sarajevo Women's Court by looking deeply to the differences and methodology of the Court. In this chapter, women's perception about feminist judgmental process and their experiences during the Court will be examined in detail and the possibility of constructing a feminist judgmental process which can be applied both to internal and international formal courts will be discussed in regard to all of the information which would have given in the previous chapters. Chapter 5 will provide a discussion and conclusion to the study by deliberating main arguments and points altogether to shed light on the research problem.

## **CHAPTER 2**

### **THEORETICAL AND CONCEPTUAL FRAMEWORK**

It is very important to combine theory and practice in order to construct a solid ground for the application of feminist judgmental process. This study, since it is focused on the possibility of that kind of a practice; firstly, will explain the meaning of feminism and how it has evolved in the past two centuries. By doing that, it will underline the problems that feminism had revealed and also provide a better understanding of the history of feminist theories. At the same time with this necessary information, it is going to focus on feminist legal theories so as to create a broad perspective on the issue in each section. After that, it is going to discuss and compare different theories and approaches to the issue in order to make a final analysis between them. Following these explanations of theoretical ground, it is also necessary to understand what feminist theories have brought to the methodology of law for understanding how current practice of law should be changed in order to applying feminist judgmental process, moreover in this part feminist methodologies in international law will also be explained. In this way, following questions are going to be answered in this chapter: what is feminism, what are the feminist legal theories, what feminism has brought to the methodology of law and how judgmental process of formal courts should be change in order to create a more just, fair and safe world for women in accordance with this methodology.

#### **2.1.What is Feminism and Feminist Legal Theory**

For women, it has been very challenging to say the sentence “I am feminist”. These words have been mostly confronted with a lot of prejudices and enmity toward women

when they were spelled. For a world that has been patriarchal and androcentric for many years, women have been saying these words by much more confidence and bravery, and also in a lot of ways. As an introduction, it is highly crucial here to ask the question “What is feminism?” and as the answer quoting Bell Hooks here will be relevant “Feminism is a movement to end sexism, sexist exploitation and oppression” (2000: iiiv). However, one cannot restrict what is feminism into this summary. Theories have been developed and continue to develop around different questions about women and different solutions to their problems. In order to be in line with the theoretical framework of this study, four main theories among them, that have been working on legal theory, are going to be explained further below together with their theoretical perspectives on laws.

Before explaining the main theoretical feminist perspectives on legal theory and differences between them, it is very important to highlight the emergence of feminist legal studies, and the common purposes and points of different perspectives on this topic. With the beginning of the 1970s, feminist legal theory was begun to be shaped by scholars together with the critical school of thought (Barnett, 1998). As it was mentioned in the introduction part, in the early 1970s feminist theorists started to question why law could not succeed in creating equality between women and men. In addition to this, they began to challenge male values which are also attributed to legal studies such as rationality, objectivity and neutrality. Zillah Eisenstein, Katharine MacKinnon, Robin West, Carol Gilligan, Mary Joe Frug and Frances Olsen have been among the scholars and theorists who focused on the relationship between law and patriarchy and also on the question of how a feminist legal theory should be. This period has brought a lot of perspectives through years and it is possible to classify them in four categories: liberal, radical, the one that focuses on difference and postmodern feminist legal perspectives. All of these perspectives, despite all the differences of their focus, emphasis or approach, have certain themes that are common. They all have normative assumptions that include the equal moral worth of all human beings and the entitlement of beings such moral worth to equal treatment under the law and also, they



all try to define how one should act in order to be a feminist legal scholar or lawyer. In other words, they share two things: one is observation and the other one is aspiration.

### 2.1.1.Liberal Feminism and Sameness Theory

18th century marks an important era for human history. With two important declarations, United States Declaration of Independence (USA) and Declaration of the Rights of the Man and of the Citizen (France) rights of an ordinary man have begun to be shaped in a modern discourse. These developments have been followed by the transition of authoritarian regimes into democracies in the next century. However, the rights of man were not followed by the rights of woman. Even though, education for higher- and middle-class women became much more popular during these developments and it provided an entrance to the public sphere in which they launched movements for legal and political rights (Freedman, 2003: 145). In this atmosphere, women in the Western world started to think about equality in every aspect of life. Education, workers' rights and suffragette were amongst those rights that they have been fighting for equality. In accordance with the liberal theory, they theorized that women and men are the same and because of that they should be treated as same. Mary Wollstonecraft applied Enlightenment ideals of equal opportunity to women in "A Vindication of the Rights of Women" and claimed that men should not have divine rights over women as their husbands and women should have power over themselves as a way of succeeding this aim she pointed out education for women (Wollstonecraft, 1996: 80, 81). Wollstonecraft was followed by Harriet Taylor and John Stuart Mill who thought that giving more opportunities to individuals could have correct all social inequalities. From this point on, liberal feminism also developed itself with works of Eisenstein, Scheman, etc. It is possible to summarize liberal feminism's political commitments in following terms: promotion of women's greater recognition and self-value as individuals, equality of opportunity, ending *de facto* discrimination and sex prejudice, and equal opportunity in education for boys and girls at the same time using

education as a tool of promoting equality in society (Wendell, 1987: 66). Even though liberal feminism points out most of the problems of women especially in the public sphere and demands equality and rights for women, it has been criticized for only staying in the fields of education, property and suffragette and ignoring how capitalism affects women in the propertyless working class. At the same time, it has been criticized for not being deeply concerned about the cultural codes of patriarchy which concludes in not being able to persuade women and men who believe in women's domestic and maternal roles (Freedman, 2003).

In accordance with its critical ground of theory, liberal feminism also analyzes women's position in law and legal theory. It gives priority to the notion of "equality" in the legal theory as it gives priority to this concept again in other topics. Liberal feminists consider men and women as same. Right to vote, divorce and paternal rights and women's public life are among the points that they are concerned and an initial liberal feminist approach to legal theory was to argue strictly for formal equality which denies all sexual differences relevant to the legal doctrine and this is called as the "assimilation model" (Francis & Smith, 2017). While this model points out that law should not treat women differently from a similarly situated men, the other important claim of liberal feminists is to state that law should not ground its decisions on women with a generalization that they are a group which should be protected because of their special situations such as pregnancy since in the end it leads to the isolation of women from public sphere (Levit & Verchick, 2016). Liberal feminist scholars such as Wendy Williams and Herma Hill Kay argue that laws which are protective toward women led to the subordination of women as "different". Furthermore, according to Hill Kay, the biological differences between women and men should only be considered important when there is a woman who is pregnant, not in a much broader perspective in which women always have the possibility of being pregnant (Çağlar, 2014).

According to Lynne Henderson, Zillah Eisenstein, who can be put into a more reformist position in liberal feminist theory of legal thought, emphasizes sameness and a kind of "formal" legal equality corrected for the misperception that the model of the

individual is male in her work, “The Female Body and Law” (1991)<sup>2</sup>. In this study, she focuses on the term of “phallocratic discourse” that is making penis “the symbolic guarantor of significance” and in return make law unable to move beyond the male referent as the standard of sex equality. In addition to that, law constructs and mirrors patriarchal social relations through its “phallocratic interpretations”. According to her “...within law, women are treated in four ways: as a sex-class, as different from men;... as the same as men, like men, and therefore not women; as absent but as a class different from men; and as absent; but as a class the same as men...” and she underlines that the phallus is in the center in all of these treatments in different forms (Eisenstein, 1989). She also underlines that with this concept, men and law see and treat women as potentially pregnant which means women are different and differential treatment can be applied to women, at the same time she cautions that the concept of difference remains open to “essentialism” which can turn into a trap for feminism since it is seen as a useful tool by the Right for reaffirming gender roles and women’s subordination to men (Henderson, 1991; Eisenstein, 1989). In order not to allow this perception, women should be careful about the “difference” discourse. For her, the reconceptualization of “equality” which enables affirming “...the biological particularity of female body without endorsing the historical contingencies of its engendered form...” is very necessary in this point. For achieving this, she suggests adopting a radical pluralist method, which assumes that differences and plurality compose the society while understanding that hierarchy and unequal relations of power structure those differences, according to Eisenstein this method should be used to think about how difference constitutes the meaning of equality. She emphasizes that radical pluralist method is different from liberal pluralist method since the latter assumes that equality already exists by masking the hierarchy and inequality under the referent of silent male. In the conclusion chapter, she also explains that a radical pluralist and feminist theory of equality recognizes the specificity of female bodies and differences between them in contrast to phallocratic discourse. The suppositions of phallocratic

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<sup>2</sup> Eisenstein is mostly described herself as a socialist feminist but regarding the legal feminist theories, since she theorized about the equality of women and men as the solution, her works are included to the category of liberal feminist legal theory.

discourse assume women as a sex-class constituted of pregnant, middle class and white women, and this homogenizes difference of women from men while establishing their similarity to other women. She suggests that legislation which will pursue a radical pluralist method is necessary for recognizing women's bodies' plurality (Eisenstein, 1989). After doing this, again for Henderson, Eisenstein suggests that it will be easier to rely on law reform to restructure the political economy of sex and parenting (1991).

Liberal feminism and its arguments on legal theory have been highly criticized by other theoretical grounds in this topic. It has been claimed that the "assimilation model" or "equal treatment theory" remains focused on public activities rather than more personal realm. In addition to this critique, it has been asserted that it accepts male experience as the reference point or the norm (Levit & Verchick, 2016). Zillah Eisenstein, coming from the liberal feminist theoretical ground although she is standing as a reformer of this ground, also has been criticized for several reasons, too. Firstly, the critiques claim that it is unclear how women's bodies are the equals of pregnant bodies and mother in her theory. She explains that even they were seen as mothers and wives in the past, women are only seen as mothers now and femininity in this context means motherhood according to her; however, it is also not certain what "mother" means. Secondly, her theory fails to recognize the sexualization of women's bodies since pregnant bodies do not always signify "motherhood" but at the same time they can signify "sexuality" and this situation may end up with neglecting the total realm of meaning and source of women's inequality. In this context, she puts the "penis" against the "pregnant body" but not against the female body which can easily be seen as partial (Henderson, 1991). Finally, she was criticized for not being clear about how to bring about the equality which recognizes the richness or differences of women's bodies (Bernstein, 1990).

### 2.1.2.Radical Feminism and Dominance Theory

In the early 1970s, a group of feminists started to depart from existing feminist movements and claimed that women's subordination could not have been ended by a socialist revolution or women's equal participation to the public space. By rejecting socialist and liberal feminist theories, radical feminism started to see women as a sex-class and focused on recasting relations between men and women in political terms (Echols, 1989). Focusing on universal dominance of men over women, women's sexuality lies at the heart of radical feminist theory and in accordance with this debate, men's sexuality and its forms of expression are analyzed in order to understand how they result in women's inequality. It should be underlined that radical feminism is not a single school of thought, it is diverse (Barnett, 1998). Since it would be very complicated and comprehensive to explain the evolution of radical feminism and different perspectives in it for the purpose of this study; in the following part it is going to explain the two contributors of radical feminism: Kate Millett and Mary Daly, and their perspectives. Kate Millett claims that sex is political primarily because the male-female relationship is the paradigm for all power relationship and in order to eliminate male control, men and women has to eliminate gender. According to her, androgyny is the ideal but only if the male and female qualities integrated into it (Tong, 2008). Another leading works in this field, Mary Daly signifies a journey in her theory. Daly's first major work 'Beyond God the Father' focused on God as the paradigm for all patriarchs and argued that if he is dethroned from both men's and women's consciousness women will be empowered as full person. Daly wanted to change this God with the new feminine God. She concluded that androgyny can be possible only women say no to the values of the morality of victimization and yes for the values of ethics of personhood. However, in her next book 'Gyn/Ecology' Daly refused three points that she has defended once: God, androgyny and homosexuality. She defended that a woman cannot even survive so long she stays in patriarchy and should reject everything labeled as feminine since they have nothing to do with femaleness. Moreover, she suggested that there should be a new language that transforms the

inferior words into superior and better ones (Tong, 2008). In “Gyn/Ecology” she explains the subordination of women in terms of men’s fear about women’s supremacy over them. According to her, female energy is coming from a life-affirming and life-creating biological condition of women and because men cannot bear children without women, their dependency to women has been concluded with a perpetual war against women in which with all of their fear and insecurity, the male energy wants to control and dominate the life-energy of women and female energy needed to be free from this domination. Women should construct “free spaces” for bonding with other women for this purpose (Alcoff, 1988). Although there are different standpoints and perspectives exist within the radical feminism, it is possible to say that they all have a common ground which sees patriarchy and women’s oppression as universal, insists on women’s sexuality and uses the technique of “consciousness raising”, which is going to be explain further below, with all of these radical feminism constitutes a distinctive vantage point (Barnett, 1998).

For another contributor of radical feminist theory, Katharine MacKinnon, to be a woman is to occupy a “status”, not a “class”. Women’s status is sex object that is created for what is necessary for men’s arousal and satisfaction and dominance and violence are what men require for arousal and satisfaction (Henderson, 1991). MacKinnon also draws a well-founded theory for state and law with her book “Toward a Feminist Theory of the State” in which she adopts the “dominance approach” to look at the world in the eyes of subordinated women (Barnett, 1998). She claims that since the state accepts objectivity as a norm, in a feminist manner, state and law are patriarchal. Objectivity is grounded by the assumption that gender circumstances, which are created for men, are also valid for women; in other words, there is no gender discrimination. It gives the guarantee for making decisions in the benefit of the ones who are the closest to system’s own idea of justice, which can be concluded in this sentence: this kind of system is directed by patriarchal methods in today’s liberal state. So, the liberal system burned down neither the old hierarchical social structures nor the status differences, but it just only assumed that it created a new world with the settled gender inequalities from the Middle Ages (MacKinnon, 2015). She also

analyzes the differences between negative and positive freedoms and underlines that even though law excludes positive freedom, which gives one a permission to do something, it ignores the fact that women have been already under the pressure of their inner circle even without the state or the law. To sum up, for MacKinnon, the state protects patriarchy by making the patriarchal control to be ensured by slowing down, evaluating. Within this framework, the law is used when state wants to normalize the situation and prevent excesses. Societal and legal realities are coherent with each other and mutually decisive (2015). Rape and pornography constitute two important areas for her to prove sexual violence in the patriarchal world order. In contrast to these theories, MacKinnon is very optimistic about the role of law in prohibiting sexual harassment and pornography (Roach Anleu, 1992). Contemporary radical feminist analysis invented a technique for women's struggle against the conditions that are mentioned above: consciousness raising. Especially MacKinnon contributed a lot to this field. This concept can be explained as a method that questions a situation, which has been social from the beginning, that is a mix of thought and materiality and covers gender in general (MacKinnon, 2015). It also means to engage in practical action for the transformation of power relations. Consciousness-raising enables women to view their shared reality with other women from within the perspective of their own experience (Roach Anleu, 1992). With this method, women can understand the patriarchal stand of law. This can be counted as the first step of the MacKinnon theory towards a feminist law since she put forward in these words: to build a feminist law, women must first admit their concrete situation and secondly they have to realize that masculine forms of power on women were approved in the law as the individual freedoms. All in all, to bring the real freedom of women there is a need for change and a new relation between law and life. Even though the feminist law can be understood as something that is one-sided, one cannot forget that the current system is also biased and moreover one should always remind that feminist state has never been experienced before (MacKinnon, 2015).

There are also several critiques to MacKinnon's theoretical arguments, expressing that powerful as they are, they remain partially persuasive only. In order to explain some

of these critiques Henderson underlines several points: first, her portrayal of male sexuality appears to be too unidimensional, second, if men choose to dominate women, how can sex/gender be simply “social constructs”, where does the power to choose to come from? Third, if women are victims of male sexual violence, should they only be defined by their victimhood? Fourthly, and most importantly MacKinnon’s argument is developed on a radical challenge to the law, but she predicts for the future of women is developed on legal reforms and does not aim to create a change in the system in total. She only mentions “a change” but does not give certain steps to make the change and moreover she is also hopeful for system’s prohibitions on certain issues like pornography. How these prohibitions can solve the societal problem (1991)? In addition to these critiques, several questions have been directed to her theory, especially about consciousness raising method: how can accounts or experiences be evaluated, how can we say that women’s experiences are more real or more accurate than others? Who determines the criteria? How can one analyze the difference of women who have manly power... (Roach Anleu, 1992)?

### 2.1.3.Cultural Feminism and Difference Theory

Cultural feminism signifies a breakdown of minimizing gender differences which was popular during 1970s and argues a turning back to femaleness. Mary Daly and Adrienne Rich have been influential in this position by struggling to revalidate undervalued female attributes. Cultural feminism claims that women’s enemy is not only political or social structure of the society, but it is masculinity itself, from this perspective its politics has been shaped in order to create and maintain an environment which is free from masculinist values and their results such as pornography. Even though radical feminists such as Daly and Rich have been influential on the emergence of cultural feminism, Alice Echols, one of the significant theorists of cultural feminism, underlines that cultural feminism is different from radical feminism since it aims to equate women’s liberation with the development and preservation of a female



counter-culture. Moreover, these two approaches are different not only because of that but also there is a tendency in radical feminism for being essentialist and ahistorical about female nature which is developed and consolidated by cultural feminist theory (Alcoff, 1988). Cultural feminism also assumes that individual liberation can be achieved in a patriarchal context while radical feminism suggests that heterosexual women are actually pre-consciousness lesbians and their liberation is not possible in individual terms (Echols, 1983). The most significant distinction between those two theories is their approach to the gender differences. Whereas one aspect of radical feminism is the minimization of gender differences and aims to construct androgyny, cultural feminism highlights women's uniqueness and feminine qualities. In this respect, essentialist definitions are centered in cultural feminism. Definitions of women such as passive and submissive are redefined for exemplifying women's ability to be nurturing, loving, non-violent and egalitarian in nature whereas men are defined as biologically and inherently aggressive, violent and competitive. These aggressive, violent and competitive attitudes of men are aimed to change through emphasizing women's natural ability to solve conflicts with cooperation, pacifism and non-violence by cultural feminism. By placing women in the center, cultural feminism changes the focus of feminist scholarship (Wolff, 2007).

Legal theory and law also constitute important places in cultural feminism. Being totally opposite to "sameness" model of liberal feminist thought, cultural feminism claims that gender-neutral law can keep women down unless they acknowledge women's different perspectives and experiences. It urges for a concept of legal equality in which biological and cultural differences between men and women are accommodated by laws. According to this theoretical stand, women are essentially connected to each other not only culturally but also biologically and in this situation, current legal theory and laws are problematic since they treat humans as distinct and physically unconnected beings. It is very important here to mention Carol Gilligan, one of the leading theorists in this field as a cultural feminist. In her book: *In a Different Voice: Psychological Theory and Women's Development* Gilligan seeks to find out why boys' and girls' reactions are different to the same situation and how they

are reasoning these reactions. By doing that she develops a challenging theory of dominant psychology and concludes that boys and girls learn different methods of moral reasoning (Barnett, 1998; Levit et. al., 2016). In this book, Gilligan discovers two fundamental ways of seeing situations that determines one's moral responses as "justice perspective" and "care perspective". The previous one means the tendency to observe situations in terms of principles of fairness or equality whereas the latter means observing situations in terms of the needs of the people involved (Kyte, 1996). Here, she points out that girls grow into women with learning to value empathy, compassion and a sense of community which lead to the reasoning with "ethics of care" and on contrary boys are raised with "ethics of justice". So, Gilligan claims that women and men have different voices although they speak in the same language. Gilligan was followed by other proponents of feminist jurisprudence, such as Carrie Menkel-Meadow who also speculates about how legal ethics and substantive principles of law would look if female values and orientations, like mediation, caring, and empathy predominated. According to her, women lawyers can be more successful in dispute resolution with their ethic of care and a heightened sense of empathy. Both of them are not concerned with the origins of differences but with the results for legal practice. And another theorist in this field, Robin West, by following this path, is more specific than others since she locates women's difference from men in their connection to human life, through pregnancy and through their moral and practical life. West underlines that women's lives are relational, not autonomous like men's and because of that their experience of being human is different from that of men (Roach Anleu, 1992)

This theory was also criticized by a number of feminist scholars. The critiques claim that two main problems exist with the argument that women and men have different voices: firstly, "Focus on alleged distinctiveness of women's voice diverts attention from differences among women and men". Women who do not reflect the "different voice" in the practice, like Margaret Thatcher or Marine Le Pen, are counted as exceptions and also as women who suffer from false consciousness; however, it can also show that the theoretical implications of differences between men and women are

merely acknowledged rather than explored, and moreover race and class identity have been overlooked. Secondly, the qualities associated with women are the ones which have historically been used to justify their subordination; their status as deviant other (Roach Anleu, 1992). Because of that, the theory of “differences” may deepen the inequality between women and men. Uygur also mentions that the differences approach legitimates the existing system and reproduces the stereotypes (Uygur, 2015).

#### 2.1.4. Postmodern Feminism and Deconstructing the Subject of the Law

Like all other postmodernists, postmodern feminist thought rejects the “phallogocentric thought” which means ideas that are ordered around an absolute word that is male in style and in addition to that it rejects any theory of feminism that focused on one solution to the problem of women’s subordination. Postmodern feminists urge all women to become the kind of feminist that they want to be, for them there is no single definition of “good feminist”. In accordance with postmodern thought, they claim that truth is what power proclaims to be (Tong, 2008). Moreover, postmodern feminism rejects a dualistic view of gender underlining the inseparability of the body from the language and social norms (Ratliff, 2006). The theory of postmodern feminism benefits from number of theorists such as Jacques Lacan, Simone de Beauvoir, Jacques Derrida and Michael Foucault. French feminist Helene Cixous analyzes the dualities in the language such as moon/sun, dark/light, passive/active etc. and concludes that this dualistic structure of the language comes from the duality of men and women (Çağlar, 2014). By being an author at the same time, Cixous urges women to write their own stories in their own ways. She thinks that “feminine writing” can change the Western world and its dichotomous conceptual order which is consistent on a duality of the dominant and the submissive (Tong, 2008). In another aspect, postmodern feminism values the differences between women and criticizes the ground theory of feminism as being white, middle class, Western and heterosexual.

Because of pointing out the pluralism notion of feminism by criticizing the mainstream thought, it is supported by black and third world feminisms. Theorists such as Julie Kristeva, Judith Butler and Luce Irigaray have been among the scholars who were working in a postmodern view on gender topic; however, to be in line with the purpose of this study without further explanations about their work, this chapter is going to continue with the postmodern feminist stand on legal thought.

Postmodern feminist standpoint firstly challenges law's rationality. Frances Olsen explains three important points in this regard. Firstly, according to her, the dualistic structure of thought created opposite sites like light/dark, active/passive, rational/emotional, etc., secondly it also created a hierarchical structure in which the positive values are male such as being rational, active and powerful, and finally, she indicates that law is placed in the side of male qualities by aiming to be objective, neutral and rational. Women, on the other side, stay in the inferior side of this hierarchical structure as secondary in this structure (Çağlar, 1998). According to Mary Joe Frug also, law plays a role in producing and constructing gender (Rosenbury, 2016). After revealing how law is constructed with male values, postmodern feminism aims to deconstruct the subject of law and aims to focus on the multiplicity of the subjects of law. It underlines that laws represent false conceptualizations about men and women, and it is only possible to reveal the multiplicity and diversity of the subject through the deconstruction (Barnett, 1998). Postmodern feminist legal theory challenges other theoretical perspectives in feminist school of thought by saying that feminist theory fails to identify differences between women and by doing that, it becomes inclusive according to this perspective feminist pluralism must replace feminist modernism (Çağlar, 1998; Barnett, 1998). Rosenbury indicates that there are three contributions of postmodern feminist legal thought to legal feminism: first of all, it rejects a fixed understanding of gender. It does not try to find out more accurate definitions of being woman or man, in contrast it rejects that feminism or law can better reflect reality. It underlines that reality, like gender, is fluid and contextual; secondly, it also seeks to challenge and problematize the female/male binary, it also seeks to deconstruct the notion of "gender" and tries to find out new identities that can

come into existence by blurring this binary; thirdly, it questions the very value of identity categories but by doing that it does not focus on eliminating these categories or aiming to free people from gender, it just questions their treatment under law (2016).

Although postmodern feminist legal thought can be beneficial and helpful to develop a further understanding of feminist legal theory in a more radically and constructively self-consciousness manner if its tools are used, it should be noted that the merits of the postmodernist deconstructive exercise must be used carefully for the sake of the social, legal, political goals of feminist jurisprudence because of two reasons. Firstly, while gender can be seen as a central and unifying construction which may fail to encompass alternative realities of women, it is also a remaining concept on the basis on that women can challenge male discourse. Moreover, some political topics are special to gender such as abortion and childcare and in order to deal with these issues appropriately, principal organizing constructs are necessary, not only gender but also race and class. So, it is possible to say that these issues affect all women while affecting some of them much more compared to others because of their race and class. Secondly, it can be said that postmodernism stays in a field of theoretical and intellectual elitism. It becomes problematic for the ones who struggle to achieve equality in the tough reality of life and law since it is theorized by white and privileged men in industrial societies. By denying the legitimacy of theoretical concerns placed in gender, while society and law remain gendered, and women are classified as women with all inequalities; postmodernism can lead to a loss of direction, of identity, and this means the potential for undermining feminist goals. It can result to relativism and nihilism (Barnett, 1998).

#### 2.1.5.A Final Comparison of the Theories

In order to provide a clear ground of theoretical background of this study it is necessary to summarize differences between them and compare their standpoints. Liberal feminism, since it focuses on equality between women and men in every aspect of public and private spheres adopt “sameness theory” in legal field, too. According to liberal feminists, men and women are same and because of that law should treat them as it is. Because of that, some theorists in this field sees “assimilation model” as the solution while some of them want to bring the “radical plurality method” to the jurisprudence in which women cannot be categorized as the “different” one and at the same time their special situations would be on regard in the eyes of the law.

Theory of liberal feminism is criticized by cultural and radical feminists. Radical feminism that is focusing on women as a sex-class, does not see the solution in equal participation of women and men to public sphere. According to radical feminists, men dominates women universally and in order to understand the roots of this domination, it is necessary to focus on women’s sexuality. As another solution, some radical feminists adopt “androgyny” and defend that when there are no male or female sexes, there will be no problem of patriarchy. From this perspective, radical feminists take on “dominance theory” and claim that by forming consciousness-raising groups and raising their awareness about patriarchal system and its implications through laws; women will start to demand a feminist state which can be look like one-sided but at the end, since it has not been experienced before, it has the possibility of being well-functioning, too.

On the other side, cultural feminism rejects both of these theories and claims that women are different from men which makes them more pacifist, compassionate and loving human beings. They reject the solution of being “androgyny” because they believe that it is possible to create a more peaceful world with these specialties of women. Because of this perspective, they adopt “difference theory” in legal field.

According to this theoretical ground, while women decide upon “ethics of care”, men use “ethics of justice” and this division between them means that women can bring more peaceful solutions to conflicts and can be more efficient mediators in legal issues. In order to succeed this, women’s different voice should be heard.

In contrast to all of these theories, postmodern feminism does not apply one method for feminism. According to postmodern feminism, there is no single definition of feminism and also it is very problematic to accept the generalized definitions of both sexes and genders. By declining definitions, it focuses on the plurality of women. In legal theory, it struggles for the “deconstruction of the subject of law” which is in line with its plurality method. Postmodern feminists point out that law is built upon a dualistic and hierarchical structure between men and women and it is very important to remove this hierarchical structure without creating new essentialist structures or power domains. For them, it is also not possible to talk about single definitions of women and men, and because of that sameness is not possible. However, this theoretical standpoint is also criticized by not being realistic about the harsh realities of daily law. According to criticisms, by deconstructing the subject of law and giving importance to plurality, it can lead to the loss of focus especially in issues which is about women such as abortion and childcare.

All in all, in the study, it is not possible to adopt one of the theoretical perspectives that were mentioned above. In order to make an efficient analysis of the situation and question the possibility of feminist judgmental process, one should make use of a combination from all of these perspectives. In following section methods of feminist legal theories will be discussed in order to understand the issue more deeply and following this the implications of feminist legal theories and its methods to international law are going to be discussed and explained further so as to provide a more broad information about the subject of this study.

## 2.2.The Methodology of Feminist Legal Theory

In Cambridge Dictionary “method” was defined as a particular way of doing something (<https://dictionary.cambridge.org/dictionary/english/method>). This “particular way of doing something” has been an important topic in science. As it was mentioned in the introduction chapter especially research methods are significant within social science. By rejecting making researches with positivist methods, social sciences developed and continue to develop methods. In this regard, feminism also develop its own methodology within time. However, it is important to underline that methodology should also be seen as the reflection of the theory. In this respect, feminist legal theories also need a methodology because of two reasons: first of all, methods shape one’s view about the possibilities for legal practice and reforms so by defining their methods in this field, feminists can challenge existing structures of power; secondly, methods are also important for feminism since they are the way of anchoring defense of feminists’ positions and at the same time they can constitute a common ground for feminists, too. (Bartlett, 1990). Even though methodology constitutes an important place for feminism, this topic began to be discussed much more later than the development of feminist legal theories. By struggling against the mask of the Western liberal tradition, in which laws are claimed to be class-, age-, race- and gender-neutral, feminists undertake a task that is both political and legal and with the beginning of 1990s, feminist legal methods were started to be developed (Barnett, 1998). Katharine Bartlett has been one of the important scholars in this field and she underlines that through her analysis of feminist legal methods, she rejects the sharp dichotomy between abstract and deductive “male” reasoning and concrete, contextualized “female” reasoning by saying that these differences relate to differences in emphasis and in underlying ideals about rules. She underlines that when feminists “do law” they do whatever other lawyers do: they use a full range of methods of legal reasoning (deduction, induction, analogy and use of hypotheticals) with other principles; however, what is important in here is what they do more (1990). Bartlett identifies three methods in this perspective: first is “asking the woman question”,



second is “consciousness-raising” and the last one is “feminist practical reasoning”. Below, these methods are going to be explained further.

### 2.2.1. Asking the Woman Question

“Asking the woman question” can be called as “unmasking patriarchy” since doing this technique seeks to reveal how laws are biased while they are seemed to be neutral. In Bartlett’s words:

In law asking the woman question means examining how the laws fails to take into account the experiences and values that seem more typical of women than of men, for whatever reason, or how existing legal standards and concepts might disadvantage women. The question assumes that some features of the law may be not only nonneutral in a general sense, but also “male” in a specific sense. The purpose of the woman question is to expose those features and how they operate, and to suggest how they might be corrected (1990).

Two important points can be found in this regard: first, experiences of women are necessary to understand and locate the gender bias and second, for suggesting how these features of law can be corrected, there should be a corrective action which means the transmission of women’s experiences into the political and legal process (Levit et. al., 2016). For instance, it means asking the question of why consent is always questioned in the rape trials and how the defendant can say that he thought that the woman wanted which puts the victim in a position of defense. It is possible to see that through asking this question in rape trials, the questioning of consent has become a political and legal issue in the world. Three essential features of the woman question can be identified in this respect: first, one is identifying bias against women which appear neutral and objective but at the same time covert in legal rules and practices while the second one is revealing how the law excludes experiences and values of women; and the last one is insisting upon application of legal rules that contribute to

women's subordination (Alkan, 2012). This method does not mean that the decision must always be made in favor of women far from that it requires the decision-maker to reach a decision in which s/he after s/he searches for gender bias (Bartlett, 1990). In addition to these points, asking the woman question can also lead to "question of the excluded". Talking about the "gender bias" is not solely effective most of the time. The one who question the woman should also include specific categories that are affecting women such as race and class. In this perspective, including these categories to the question, may lead to invisible other exclusions and this process can help to structure this method more efficiently (Bartlett, 1990).

### 2.2.2. Consciousness-Raising

"Consciousness-raising is a process whereby women become aware, through discussion and debate on their own and others' situations and the disabilities which are imposed by society and law" and by participating in this process, both the individual and the group become empowered because of the release from isolation (Barnett, 1998). According to Bartlett, this is also a method of trial and error since a participant reveals her experience to the audience, she cannot know whether the other will recognize it and this means that she values taking risks and vulnerability; in addition to that, honesty is very important in this process and in the end, this method is in a dialectical relationship with the theory. Experience can lead to a change in theory and in return the changed theory can lead to a change in experience (1990). Consciousness-raising is not only experienced by small groups, especially in today's world, through broadcast and digital media, it becomes much wider and broader for instance with YouTube channels, blogs and forums in websites (Levit et. al., 2016).

This technique also provides a tool for feminists for drawing insights and to use these insights to challenge the dominant versions of social reality which enables to structure other feminist legal methods such as asking the woman question and feminist practical

reasoning. Moreover, it is effective for feminists about their normative accounts of legal process and legal decision-making, for instance it can provide a collaborative decision-making process among judges (Bartlett, 1990). From another aspect, this method can also be used in formalized settings like trials, interviews and hearings (Levit et. al., 2016). So, in this regard it constitutes an important place in the application of feminist judgmental processes.

There are also several criticisms to this method from feminists. First, some discuss that there can be different meanings of certain experiences such as childbirth and heterosexual relations and from this perspective, some feminists discuss each other's roles in an oppressive society. In addition to that, it can lead to essentialism or ethnocentrism since having common topics are risky for neglecting other aspects of oppression that some women are subjected to. Second, some worry that the method can create a pressure among participants for translating their experiences into politically correct positions. Third, Bartlett also underlines that altogether with all methods that were mentioned above, consciousness-raising also challenges the concept of knowledge and she questions the meaning of being right or how to understand whether it is right or not (Barnett, 1998; Bartlett, 1990; Levit et. al., 2016).

### 2.2.3.Feminist Practical Reasoning

In order to understand what feminist practical reasoning is, it is an obligation to explain what practical reasoning and its applications on law is in here. Amelie Rorty (1988) as cited in Bartlett (1990) defines practical reasoning in Aristotelian model as a method that "holistically considers ends, means, and actions in order to recognize and actualize what is best in the most complex, various and ambiguous situations." So, in law, it requires not only determining how to meet certain goals in the most efficient way but also requiring constant reevaluating that ends to pursue with the help of new information and experiences. It does not reject rules since it accepts rules as necessary; however,

at the same time it rejects the reduction of contingencies to rules. Moreover, practical reasoning demands justification of the decisions of decision-makers. According to this technique, the decision-maker should take responsibility of his or her decisions and also should explain on which bases s/he made them (Bartlett, 1990).

Although feminist practical reasoning is structured upon the traditional mode of this method, there is a significant difference between them. The classical method tends to be conservative since it accepts the legitimacy of the community; whereas, feminist practical reasoning questions what community is, whether there is one community or many communities and underlines that laws tended to reflect existing structures of power so other perspectives which are not represented in the dominant culture should be sought (Bartlett, 1990). After explaining the difference between these two types of method, it is also necessary to indicate what feminist practical reasoning focuses and aims at. Law and decision-making process in law is reflected as objective, neutral and abstract while it has a lot of biases, as it was mentioned before in this study. So, because of this discovery of feminist legal theory, feminist practical reasoning aims to unmask the juridical techniques and legal reasoning of decision-making process that are employed in courts how these techniques affect or reinforce women's inequality. Focusing on deconstructing of the legal reasoning of decision-makers, it reveals the damaging assumptions and presumptions that led the decision-maker to make their discriminatory decisions and at the same time by contextualizing methods of reasoning, it allows greater understanding and exposes injustices. Focusing on and aiming at these points; however, it does not stand on an exact oppositional point to traditional legal methods. The predictability and certainty in law is necessary as well as the process of abstraction since it is very important to separate what is important from the unimportant one. Instead, it investigates to complement traditional legal method by embodiment of alternative views, experiences, perceptions and values that can be excluded by traditional method with the aim of being objective, neutral and abstract (Barnett, 1998; Bartlett, 1990). In a nutshell, it does not seek to replace legal reasoning with contextual reasoning, rather it aims to place contextual reasoning into the legal one to structure a reasoning which gives importance to human experiences and diversities between them.

### 2.3.Feminist Methods in International Law

The above-mentioned methods can be applied to all of the formal courts, including the international ones. However, it should be underlined that the dominance of legal reasoning and its implications on judgmental process become much more complicated and harmful for women while international law is practiced in the areas where transitional justice is needed. Women's subordination becomes much wider and more general especially during armed conflicts and in post-war periods. In the next chapter, roots and reasons of this situation are going to be discussed in detail but before doing that, it is necessary to explain what methods have been recommended for international law by feminists. In this regard, Hilary Charlesworth's work constitutes a significant place. According to her, there are two significant techniques that should be used in international area. The first one is "searching for silences" which enquires to question the objectivity of a discipline. "Silences" also exist in international law in order to provide stability. She does not reject women's existence in international law, rather she underlines that when they enter into focus of international law, they are mostly seen as victims and also there is a distinction between public and private spheres which leads to act different about how women were subjected to violence. In order to understand and reveal these differences, in other words to decode and identify silences, she suggests paying attention to the use of various dichotomies in the structure of international law. By doing that, it is possible to see that some values and perspectives are coded as "female" while others as "male" and in this respect, it is possible to see that giving priority to "male" values and silencing "female" ones; international law is reproducing a gendered perspective.

The second technique for feminist scholars in international law is to respond to the many differences among women. International law tends to assert a generality and universality and diversity among women in international instruments remains at a very general level. Several methods have been proposed by feminist scholars. Here, Charlesworth gives two examples from these methods. First one is from Isabelle

Gunning which has been described a technique of “world traveling” by her and which has counseled international feminist legal practitioners, firstly, to be clear about their own historical context, secondly, to understand how the women in this context might see them and finally to recognize the complexities of the context of other women. After Gunning, Charlesworth introduces the technique of Rosi Braidotti who has claimed that feminists should use “multiple literacies” to engage in conversation in a variety of styles, from a variety of disciplinary angles which can only achieve “temporary political consensus on specific issues”. In the conclusion part, Charlesworth (1999) concludes what feminist international legal practitioners to do in these words:

First, feminist international lawyers must be aware of the limits of their experiences, that is, wary of constructing universal principles on the basis of their own lives. Second, the technique of asking questions and challenging assumptions about international law may be more effective than generating grand theories about women’s oppression. Third, international lawyers must recognize the role of racism and economic exploitation in the position of most of the world’s women. They should attend to the multiple, fluid structures of domination which intersect to locate women differently at particular historical conjunctures rather than invoke a notion of universal patriarchy operating in a transhistorical way to subordinate all women.

All in all, even though feminism started to discuss legal theory much more later than other topics, it is very clear to see that feminist theories and methods contributed a lot to this field. Revealing the patriarchal and gendered structure of law can lead to structure a more just system since by starting with that, other issues will also be opened up to debate. Moreover, analyzing the dominant legal theory and its applications, laws and rules from multiple perspectives such as liberal, radical or cultural feminist perspectives, is much more helpful to understand the importance and multiple sides of the question “what is justice”. Although it is not possible to answer this question fully, feminist theory of law can provide a solid base for answering this question in a much more comprehensive way.

In the next chapter, the discussion is going to continue with the position of women in wars and armed conflicts. After explaining what gender is, the relation between women and armed conflicts will be discussed in detail. For providing a historical context to the reader of this study, Chapter 3 will also mention three cases of armed conflicts and wars that made women to search for the healing and justice. In the last part, the reaction of women will be explained in detail with the examples of East Asian and Colombian experiences.

## **CHAPTER 3**

### **A GENDERED REFLECTION ON THE WARS AND ARMED CONFLICTS: WOMEN'S COURTS/TRIBUNALS**

This chapter is going to analyze and explain the connection between gender and war. War, from the beginning of the history until today, have been linked to the notions such as victory, heroism, reputation by the winner side and the losers have always been linked to being weak, powerless, miserable. Women, on the other side, have always belong to the losing party; invasions, wars and armed conflicts have been mostly concluded by mass rapes, slavery and sexual violence. Their bodies have been seen as the honor of their states, tribes or communities and in most of the occasions invading a country or a piece of land means invading its' women bodies. Here, it is necessary to understand what is being woman and what is being man from the perspective of the notion "gender" but not "sex" since women's biological condition is not the main reason that they have been subjected to violence by men. It is their historical conditions, societal factors that pointing out them as the targets since even though biologically women and men are different from each other such as having different genes, physical capacities and abilities, differences in groups are much higher than the differences between women and men (Harders, 2018). It is important to say that women have not always been seen as the victims or the passive symbols of honor, but they have also been seen as the heroines and warriors of their society. So, because of this reason also, it is very important to fully understand what "gender" is.

After explaining what gender is and how it is understood in this study, this part is going to analyze the relation between gender and war and the position of women. Importance of taking gender as the starting point in a feminist research is going to be explained in



order to provide a broad perspective to the issue and after that a brief historical explanation about certain wars and armed conflicts of the 20th century and women's situations in these conflicts will be given. Following these, the notion of justice will be examined so as to understand the evaluation of the reaction of international community to the armed conflicts and wars that were mentioned before and also to explain the development of transitional justice mechanisms in the fields that have been war tormented and need support of international community. In the final part, women's positions in the peace time will be examined and their critiques to the peace-building periods will be analyzed. Their participation to the processes and their reactions will also be explained in this part since it is necessary to understand what they think or feel in these processes in order to understand their motives for creating alternative justice and healing mechanisms. From this perspective, evaluating the possibility of a feminist judgmental process will be much easier. This part with the information that has been given in the second chapter, will provide why women needed a feminist judgmental process.

### 3.1.What is Gender?

As it was mentioned above “sex” and “gender” have different meanings and in order to understand women's position both in the periods of wars and armed conflicts and in peacetimes, it is important to bring a gendered perspective. Gender in the dictionary, means “the physical and/or social condition of being male or female” (<https://dictionary.cambridge.org/us/grammar/british-grammar/about-nouns/gender>). But this definition only is not enough for the feminist theory. There has been a wide discussion around the word “gender” since it is seen as one of the permanent products of patriarchy and androcentric world; however, it is not possible to bring a certain description for defining “gender”. In one side, according to Judith Lorber (1995), “A sex category becomes a gender status through naming, dress and the use of other gender markers” and this means that gender should be convinced as a social institution

which is one of the major ways that individuals organize their lives and it is legitimated by the religions, laws, science and societies' entire sets of values moreover in Western societies have two genders as woman and man and in this context even transsexuals and transvestites do not count as the third gender but they only change their gender from man to woman or vice versa. Gender is a social institution that is based upon three structural principle which at first dividing people into groups as woman and man, second, creation of societal differences between these groups and third treating these groups in separate ways which are justified by socially generated differences (Harders, 2018: 35). De Beauvoir also underlines the same thing, in her own oft-quoted words: "One is not born, but rather becomes, a woman...; it is the civilization that elaborates this intermediary product...; that is called feminine" (2010: 330). She also focuses on the differences that are created by the societies between boy and girl or between women and men and explains that biological differences are neglected in the first period of childhood until the grown-ups start to intervene. In this equation, males are praised as the "men" and they are different from women since they are not emotional and do not need protection for whom the world has greater designs (de Beauvoir, 2010). All in all, most of the work in this field have been focused on the differences between women and men and how these differences have been built up by the patriarchal structures of the societies.

However, in contemporary discussions, it is not possible to restrict this argument into a two-sided camp that is composed of men and women and this orientalist point of view that is only focusing on Western world and its implications is highly criticized. Critiques have been raised to this argument in several ways. According to Butler, there is no reason for genders to remain as two since it is not possible to know how sexes were given in the beginning. She also claims that sexes can be too culturally constructed as gender and in this point "...gender is not to culture as sex is to nature; gender is also the discursive/cultural means by which 'sexed nature' or 'a natural sex' is produced and established as 'prediscursive', prior to culture, a politically neutral surface on which culture acts" (1990: 10-11). Apart from this discussion that is about the meaning of "gender" and "sex", Butler also underlines that contemporary feminist

debates have started to question the essentialism of the previous theories which are based on common epistemological grounds about femininity, maternity or sexuality and they also started to criticize how the unified category of women as it was reflected in universalistic claims has refused or ignored the multiplicity of cultural, social and political intersections in which substantial arrangement of “women” are built up (1990). Rather than questioning what gender is and whether sex is socially constructed like gender or not, this study is going to discuss the critiques that have been directed to the universalistic perspective of the gender. This “intersectionality debate”, claims that there are also differences between women and women and women cannot be counted as one “single” category because there are two axes of inequalities as homo-social and hetero-social. Homo-social axis of inequality means a woman who is working in a bank with a high salary and another woman who is working for the first woman as her babysitter have different conditions and they are not equal in terms of conditions. This complicated web of inequalities and situations between different women is called as “intersectionality” (Harders, 2018). This construct of intersectionality has stood an important place when one thinks about gender because of two main reasons. First, this standpoint promises a language for the reality that it is impossible to talk about gender without talking about social structure or the identity that constitute an important place in gender’s meaning or operation. Second, intersectionality can be a solution that is descriptive about multiple features which create and define social identities (Shields, 2008). Here, all of these explanations mean that gender is not a single category but socially constructed for men and women. Gender should be seen in a perspective that combines different aspects such as race, class, age, sexual orientation and ableness. In this study also an intersectional definition of the word “gender” is going to be used since it is not possible to talk about a single definition of “women” who are subjected to same conditions or perceived as a single group but rather women and their struggle which is analyzed in this study have multidimensional sides when it comes to the fields of war, times of armed conflicts and peace-building periods. There are different situations of women, some women have been harming other women by joining the war as female combatants while some women stand up for peace and solidarity. In addition to this, it is important to underline

that race constitutes an important axis of the violence against women during these periods that were mentioned above. They have been raped or sexually harmed not just because of being women but also because of “belonging” another nation. Moreover, this situation is not only special to the times of armed conflicts and wars, in peace-building periods, too, there is always a possibility for a woman to be unemployed or not getting any social help from the government just because of her nationality. To conclude, in this study the notion of “gender” is not only used for socially constructed roles of woman and man, but it is used in a wider perspective that is including women’s differences such as race and class into the context.

### 3.2. Women, Wars and Armed Conflicts

When one looks at the context of the wars and armed conflicts it can be seen that there is a total division of the roles between women and men in which women have been helpless ones when there is an invasion or a warfare because their bodies have been seemed as the territory of the enemies while men are driven by the passion of being victorious and heroine by conquering women’s’ bodies. It can be said that women were the properties to be seized in war and heroin of war felt a right for misusing women of the conquered lands, this phenomenon has been an act of power which inflicts shame on the conquered, women but also men who cannot protect their women (Cook, 2006: 31). It is very important to explain what is “rape culture” here since this notion helps to understand the position of women in wartimes theoretically. In Brownmiller’s words “rape” means “his forcible entry into her body, despite her physical protestations and struggle, became the vehicle of his victorious conquest over her being, the ultimate test of his superior strength, the triumph of his manhood” and in this context a man’s genitalia that can serve as a weapon to make a woman fear can be seen as one of the most significant discoveries of prehistoric times (1975). Moreover, rape had always been seen as the unquestionable consequence of the warfare while men have been men in conquering lands, driving on toward victories, etc. This situation never changed

depending on the purpose of war, there was rape in wars of religion, there was rape in wars of revolution, and it was used as a weapon of terror and revenge in all of these context (Brownmiller, 1975). Furthermore, she analyzes the motives behind this situation, according to Brownmiller winner side of a war does the raping because of two reasons: first, it is a collective action of a victorious army that marches through an occupied territory which is also constituted by its women's bodies and second, it can be reward for the services of the soldiers. All in all, "...in the name of victory and the power of gun, war provides men with a tacit license to rape" (Brownmiller, 1975). This culture of rape is not only restricted to the forcible intercourse of the man and woman; in contrast, it means all forms of the sexual violence that women have been subjected to such as forcible pregnancy, forcible abortion, enslaving women, etc. Especially with the emergence of national states wartime rape and sexual violence have gained one more purpose: a different form of ethnic cleansing. According to Natalja Zabeida, genocidal rape is made because women belong to a group which is identified as the "national ethnic enemy" and it also means the embodiment of a nation's continuity through reproduction (2010). Historical development against this culture on this issue to prevent wartime rape and sexual violence is going to be explained in further chapters while explaining international law mechanisms.

Significantly, women's only being subjects or victims of sexual violence is not enough for understanding the multidimensional framework of the issue since as it was mentioned above it is not possible to understand man and woman from one standpoint that divided them into two, concrete camps. If one analyzes the issue more broadly, s/he can see that women have also been maid-in-waiting and, in some occasions, warriors who are eager to defend their lands or communities (Dombrowski, 1990: 1). They can also be the producers or agents of a support mechanism for the ones who are marching for the victory with the motive that men should be worthy for women's expectations from them. In this equation, especially from 19th century on, with the emergence of modern states, women have also contributed to warfare by forming the role of "brave mother" who encourages her sons to go to the war or supports the war herself by yearning to go to war. This role of woman has always been used as a tool

for making women proud of their sons to be born or to make them work behind the front (Harders, 2018). It is possible to see a lot of examples of this situation from ancient times to this day such as Jeanne D'arc, female guerrillas of nationalist independency struggle in the period of decolonization, last Russian tsarina who opened a hospital for the wounded soldiers in the palaces. On the other side, women have not always been subjected to violence or they have become the tools as being political motivations of the wars. They have demanded peace and reconciliation throughout the history. Even in ancient texts, for instance in Iliad, wife of Hector, who was the bravest warrior of the kingdom of Troy, begged to him for not going to war when he came for sacrificing to the Gods and tried to persuade him to stay at home with her and their child. This pacifist standpoint of women has developed over time and led to the activism for the peace in times of wars and conflicts. Especially before First World War, these movements of Bismarckian era turned into an international network of opposition which was leaded by women from Europe and the United States with the work of left-wing socialist organizations by saying that the upcoming war of capitalism would have helped the ruling class as an instrument of power while dividing, exploiting and destroying the laboring poor (Dombrowski, 1990). Here it is also important to underline that men have also rejected their traditional roles in warfare. In AD 295, Maximilianus who was a son of Roman army veteran refused to serve in the legions and said that his religious beliefs would not allow him to serve as a soldier. In the end Maximilianus was executed for refusing to serve (Brock, 1972). Although this standpoint that is named as "conscientious objection" after the introduction of the military system as a standing national army based on universal conscription, there has always been similar collective exemptions from militia service (2012; Brock, 1972). Especially First World War, again in this respect, remarked a turning point in this context when more than 16,000 conscientious objectors from the United Kingdom refused to serve in military (Prasad & Smythe, 1968). This movement has developed until today and begun to be seen all over the world as a problematic topic in human rights.

Overall, it is not possible to construct fixed gender images for women and men in times of wars and armed conflicts. This part of study has tried to show how this issue can be complicated when it is necessary to make a broad analysis. In following chapters, 20th century, which was baptized in a pool of blood, is going to be analyzed and explained so as to provide a solid background for understanding the importance of Women's Court of Sarajevo and why it is necessary to have a feminist judgmental process in formal courts.

### 3.3. Century of Wars: 20th Century

Without knowing how 20th century have turned into bloodshed; it is not possible to understand why women have been seeking justice and healing with women's courts/tribunals. In order to provide this background, this section is going to give a brief explanation on three wars of 20th century in a chronicle order by their starting date: World War II, Colombian Civil War and Yugoslavian Civil War.

Due to practical constraints this part will not provide a full review of the very complicated and multidimensional history of the World War II but instead of this, it is going to underline important events and development of it. On April 1, 1939, Neville Chamberlain's cabinet of the UK government had pledged Britain to defend Poland against the threats from Germany. Six months later when Hitler marched across the Polish frontier, France and Britain, as the Western Allies, entered the war which had developed into the second great war of the world (Liddell Hart, 1971: 3). In 1940, Italy entered war on side of Axis powers and in the same year Tripartite Pact was signed by Germany, Italy and Japan. Already occupying Manchuria and the whole of the north-eastern part of China, Japan attacked Pearl Harbor resulting in the declaration of war on Japan by Britain and the USA. In the same year, Hitler attacked USSR with the name of "Operation Barbarossa" which caused a total surprise for USSR since they have signed a nonaggression pact with Germany in 1933 (Gascoigne, 2010: 40). With

the beginning of 1943, Axis powers started to be defeated by the Allies, Germans surrendered in Stalingrad to Russians, Allied invasion to Sicily, Mussolini fell, and Berlin bombed. In 1944, Leningrad, Rome and Paris were liberated, and Allies entered Holland and Greece. 1945 was the year of final stage of this great war. Yalta Conference was held between Churchill, Roosevelt and Stalin which was a turning point for the destiny of European continent and meant the declaration of war on Japan by Soviet Union. In the same year Mussolini was murdered, Hitler committed suicide and all German forces surrendered. By the end of same year atomic bomb dropped to Hiroshima and then Nagasaki and Japan surrendered (Bourke, 2001).

As Garry Leech cites from Gabriel Garcia Marquez when God was creating the world, he gave special attention to Colombia and after a while the archangels started to question his decisions and asked him whether he was sure about giving Colombia coasts on two seas, the Pacific and the Caribbean. The God answered that he was sure. And then they asked him whether he was sure about giving Colombia three major mountain ranges with other natural resources, the God again answered that he was sure. And the archangels protested these decisions because they thought that it was not fair for the rest of the world. But the God was insisted in his decision and added that they had to wait to see that how he was going to give bad politicians to Colombia in order to be just (2011: 2,3). This literate definition of Colombian politics represents an important part of the reality of the country's history.

The Colombian Civil War is the longest-running civil war in South America and because of that it is very challenging to explain the history of it. In this study, I wanted to include Colombian Civil War because of two reasons. First, it reflects a multiple face of armed conflicts since it is not possible to talk about fixed two sides but instead of that, there are sides more than two and interconnected with each other. Second, women are in the center of these conflicts and it is not possible to classify them into one category, too. There are female guerrillas, there are activists that are seeking for peace and there are also women in the villages or cities that are subjected to emotional and sexual violence by all of the sides of the conflict. It is not possible to specify the



violations against women that they are made by guerrilla forces or that they are made by paramilitary forces of the state. Because of these two reasons, it is important to explain Colombian Civil War in here.

As it was mentioned before about World War II, it is not possible to explain the whole history and all details of the Colombian Civil War so, there is going to be a brief explanation in here, too. 20th century started with a civil war, War of a Thousand Days, in Colombia between the two opposite parties, the liberals and the conservatives and it caused 100,000 deaths. This war was ended with a peace treaty between two sides in 1902 and until 1946, Colombia experienced 40 years of peace. However, in 1946 violence broke out again between liberals and conservatives because Colombian liberal political leader Jorge Eliecer Gaitan was murdered, which led to massive urban riots in Colombia, and this event deepened political tension between two parties which was resulted a war again. Years between 1946 and 1964 are known as “*La Violencia*” with a number of 200,000 deaths. In 1957, with the fear of that social conflicts were getting out of control, liberals and conservatives came together to make a peace through a political pact, “*Frente Nacional*” which meant alternating presidency and dividing political offices between those two parties. However, even after this pact, Colombian State continued to be weak because for most of her citizens, central state had no power, but instead local or regional forces exercised power (LeGrand, 2003). Meanwhile from 1930 onwards, another actor was entering the political scene, Colombian Communist Party (PCC) and it became instrumental in organizing the peasants’ self-defense movement. This self-defense movements of peasants together with the acts and organization of PCC became a critical point in the history of Colombia since they posed a threat to the ruling elite (Leech, 2011). Especially with the impact of Cuban revolution, the 1960s have witnessed to the formation of guerrilla forces from both the rural and the urban areas. Two of them have been the most important ones in the history of country: The Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN). While ELN has been led by urban middle-class intellectuals and found its roots in the Liberation Theology Movement in the Latin American Catholic Church, FARC’s leadership was consisted

of peasants who at first had taken up arms just to defend themselves from the armed groups which served for the interest of landowners but finally transformed into revolutionary guerrillas (LeGrand, 2003; Leech, 2011). In this context, until the entrance of drug trafficking to the scene in 1970s, political violence occurred between the state, guerrillas and paramilitary forces. When it came to the end of 1980s, cocaine production has exploded and by 1999 Colombia became the premier coca-cultivating country (Bagley, 2005). The situation has become more complicated day by day with the violence between paramilitary forces, state's army, guerrillas and drug dealers. It is possible to say that there is not a certain line in Colombian Conflict that one can draw in order to distinguish the good from the bad. However, it can be said that over the past five decades, this conflict caused 200,000 deaths, thousands of forced disappearances and kidnappings and nearly 7 million people were displaced. Peace talks between the state and FARC started in 2011, after two unsuccessful attempts one was in 1984 and the other was in 1990 and concluded with "Final Agreement" in 2016 (Herbolzheimer, 2016).

Explaining the Second World War and Colombian Civil War is not satisfactory for the compilation of this study. In the Chapter 1 the features of Yugoslavian region and Sarajevo Women's Court was explained and in the following chapter these explanations are going to continue. However, explaining the background of the Yugoslavian Civil War and its historical development are very important in here because one cannot understand what women have been through during the times of conflict and the importance of their anti-nationalist and feminist reactions without knowing the times of war and its historical background. Here, the explanation is going to be start with the establishment of the Socialist Federal Republic of Yugoslavia (SFRY) because it is possible to understand the ethnic dimensions and history of the region by understanding what is SFRY and how it was established.

After defeating Axis powers in Balkans with a very effective and complicated resistance of Yugoslavians, the SFRY was established on 29th September 1945. This new state consisted of six nominally equal republics: Montenegro, Serbia, Croatia,

Slovenia, Bosnia and Herzegovina, and Macedonia. Josip Broz Tito as the leader of the partisan forces during the resistance against Axis powers became the president immediately after the establishment, Communist Party of Yugoslavia held power and, in the beginning, it was highly centralized around a constitution similar to the model of USSR. This solid system begun to be weakened in the middle of 1950s with criticisms to the existing structure for creating a new class of bureaucrats. Together with nationalist and cultural demands from the state, economic crisis deepened the crisis of the system and weakened the power of Central Committee. Even though the constitution of 1974 seemed to provide political stability by giving veto rights to the republics in federal legislation and cautiously using ethnic quotas and strict rotation of cadres, which ensured that after Tito's death in each term one of the presidents of republics would have become the president of Yugoslavia (Ramet, 2018: 6). After Tito's death in 1980, the disintegration did not come immediately because of the Soviet thread and the last constitution that worked well but during that decade economy went worse and ethnic tensions continued to raise (Finlan, 2004: 15). Republic of Serbia started to dominate the Federation by appointing Serbians to army and public offices, reformists from this wing were dismissed from the Communist Party of Serbia and the movement of "Chetnik" was legalized. Moreover, with the Article 72 of the Constitution of 1989, Cyrillic alphabet became the official alphabet, Serbia got the permission for intervening in the areas where Serbian minorities were living, and finally freedoms of Kosovo and Vojvodina were demolished (Bora, 2018). All of these events were just idly observed by the Communist Party of Yugoslavia.

1990s remarked a bloody end for the SFRY. Elections of 1990 demonstrated that nationalism was rising in most of the republics. Especially results in Croatia and Serbia was important in this context because two leaders of them, Milosevic from Serbia and Tudjman from Croatia, were popular in these countries because of their bold nationalistic moves and statements. While Milosevic was eager for the continuation of Yugoslavia with Serbian dominance, Tudjman by blaming Serbians as the orthodoxy of ancient Byzantine and praised Croatia as a westernized and progressive state (Bora, 2018: 166). In this election of 1990 Aliya Izzetbegovic became the president of Bosnia

and Herzegovina, as Milan Kucan of Slovenia, Kiro Gligorov of Macedonia and Momir Bulatovic of Montenegro (Finlan, 2004). At the same time, the crisis was also deepening in the Federation although president Ante Markovic tried to solve the problems without any significant political power. On January 1991 the state presidency gave an order requiring that all of the militias which were not a part of JNA to be overruled and that all of the weapons to be surrendered to JNA because it was very clear that all of the republics started to arm themselves, especially Croatia and Slovenia (Ramet, 2018). The Federation was dissolved in 1991 when the Serbian president Borisav Jovic did not want to stand aside for the Croatian president, Stipe Mesic. In the same year Croatia and Slovenia declared independence and two days after this declaration a war broke out between Slovenia and People's Army of Yugoslavia (JNA) which was going to spread to Croatia ending after 2 days. These events were followed with the declaration of independence of Bosnia and Herzegovina in 1992 which meant the total collapse of Yugoslavian dream (Finlan, 2004). This collapse of Yugoslavian dream marked as the last war of 20th in European continent and became the nightmare of many former citizens of the Union. It will not be logical to give details about the fronts of this war; however, a brief summary is needed. JNA was one of the most powerful armies on the world at that time and it was called as the seventh republic of the SFRY. Even though it had been very critical toward extreme nationalist or extreme democratic movements during 1980s, this situation has also changed in 1990s by the appointment of Serbian officers to the most important two chairs: the chair of Minister of Defense and its Chief of Staff (Bora, 2018; Finlan, 2004). So, having JNA on her side, Serbia was the most powerful actor of this equation. It is very important here to know that Yugoslavian Civil War was different from traditional warfare because of two reasons: first, in much of the cases, victims knew their attackers because of sharing the same school or same street, etc. Second, it was highly decentralized and criminalized with gangs' bandits and paramilitary forces in the same extent with soldiers in uniform (Finlan, 2004). It should be underlined that examining Yugoslavian Civil War, means examining four war fares which are written chronically here. First is the "Ten-Day War", second is the "Croatian War of Independence", third is the "Bosnian War" and last one is the "Kosovo War". Although it is possible to say that

Kosovo War did not occur in the period of SFRY, since it was one of the major events that affected all of the citizens of Former Yugoslavia this part is going to mention to Kosovo War, too. The war started between JNA and Slovenia as it was mentioned above after the proclamation of Republic of Serbian Krajina in Croatia and followed by a massive bombing to Vukovar, Dubrovnik, Karlovac and Osijek (Bora, 2018). In 1992, conflict was moved to Bosnia after the declaration of independence with the aim of creation of a new and separate Serbian state, Republika Srpska and in same year Federal Republic of Yugoslavia was proclaimed to consist of Montenegro and Serbia. Even though JNA retreated from Bosnia in 1992, it left its weapons to the army of Republika Srpska and leading to a massive attack to the poorly armed Bosnian cities (Finlan, 2004). Moreover, the conflict between Bosniaks and Croats began at the same time with the siege of Sarajevo. In 1993, major sanctions were imposed to FRY and Mostar Bridge was destroyed by Croatian forces (Ramet, 2018; Benson, 2006). Bosniaks and Croats signed a peace treaty which was concluded with the formation of Federation of Bosnia and Herzegovina. With “Operation Flash” and “Operation Storm” Croatia recaptured a part of her territory and reclaimed the land that they lost to Serbians. These operations were resulted in the displacement of a significant number of Serbs and ended the war in Croatia. In the same year, Bosnia and Croatia started an operation against Republika Srpska together and war in Bosnia was ended with the Dayton Peace Agreement (Transchel, 2007). Next year, FRY recognized these two countries and these developments was followed by the uprising of Albanian rebels in Kosovo which led to fighting between them and FR Yugoslavia. In 1999, in order to stop FRY’s aggressive operations in Kosovo, NATO started a military campaign in Kosovo and bombarded FRY and after that Kosovo was handed to UN which led to the resigning of Milosevic next year and marked the end of wars in the Former Yugoslavia (Ramet, 2018).

After the end of Milosevic’s rule and his arrest, the whole region entered in a period of transition and demands for justice were begun to be raised much more than before. Below, I will explain the process of transitional justice and its mechanisms in order to

provide a wider perspective to the issue and to indicate why did not satisfy with these mechanisms.

### 3.4. Transitional Justice Mechanisms: Emergence, Formal Institutions and Truth Commissions

Notion of “transitional justice” means the process of transition of an authoritative regime into democracy with the need of reparation for what happened in the past. Moreover, this notion was not developed in the modern world. For instance, in 411 BC and 404-403 BC Athenians overruled oligarchs and returned to democracy and these processes were followed by retributive measures against the oligarchs (Elster, 2004: 3). Although they were not structured in a modern sense, the notion of “transition” from an authoritarian regime found its contemporary meaning in the modern world. This part of the study is going to focus on the process of institutionalization of transitional justice and on the emergence of other dimensions linked to this notion, such as truth commissions. However, it is very challenging to understand the logic of transitional mechanisms and why it is needed without understanding what the meanings of justice and reconciliation are. In order to provide an effective perspective, this part of study is going to begin with these notions and after explaining them, it is going to give a brief summary on the history of transitional justice. Furthermore, the structures of these mechanisms are going to be explained together with the problems and missing points of them.

Reconciliation provides the space for a beginning of civic trust, willingness to talk and listen which is not possible in the absence of justice, in other words, “Justice and reconciliation are inherently and inextricably linked” in the period of transitional justice (Villa-Vicencio, 2005). After the challenging periods of conflicts and authoritarian regimes, societies that have been divided deeply can and might have the possibility of integrating again, building their society based on the rule of law and

social reconstruction, and constructing a sustainable peace. The process of reconciliation also addresses structural inequalities and material needs (Hayner, 2011). Justice, which is directly linked to the process of reconciliation as it was mentioned above, has two kinds in this issue: one is the retributive and the other one is the restorative justice. While the first one is focused on crime as the violation of the law, the latter observes the crime as the violation of people and relations between them. Restorative justice focuses on correcting such violences and restoring relationships and by involving victims, perpetrators and the community to the process, it targets a level of justice that is promoting repair, trust-building and reconciliation (Villa-Vicencio, 2005). To sum up, it is necessary to involve a challenging process of reconciliation and an understanding of restorative justice in transitional justice periods in order to build a democratic good governance and peace, stability and socio-economic development.

After revealing what transitional justice periods must have in order to build a multidimensional and satisfying peace, it is very important to explain the historical process of it and how it was institutionalized in the modern world. World War II and traumatizing level of violence which affected the whole world and resulted with nearly death of 60 million people, 5 million of them were subjected to the systematic holocaust, led to the creation of the first international criminal court, Nuremberg Trials in order to prosecute and punish the leaders of German Army. This trial was not the only one in that period, the Tokyo Trial was also established for prosecuting major Japan war criminals (Futamura, 2008). After the end of these two trials, efforts were started for forming the draft statute of an international criminal court by the United Nations and when war raged in Bosnia in 1992, it urged the establishment of international criminal tribunal because of the range of war crimes and crimes against humanity have been detected until that day and seemed to be occurred after that day. And in 1993 the International Criminal Court for Former Yugoslavia was established by the decision of Security Council and became responsible for prosecuting persons who were responsible for the violation of international humanitarian law in the region since 1991. In 1994, this *ad hoc* tribunal was followed by the International Criminal

Court of Rwanda upon the request of Rwanda (Schabas, 2017). After these two tribunals, efforts have concentrated into the formation of a permanent court for the violation of international humanitarian law. In 1998, by the Rome Statute of the International Criminal Court, this permanent judicial body established and its headquarter was situated in Hague. The jurisdiction of ICC is granted over four main crises: genocide, crimes against humanity, war crimes and crime of aggression. It entered force in July 2002 which is a significant point since the Court cannot prosecute crimes before this day. The Assembly of States Parties was established in the same day to adopt instruments such as the Elements of Crimes, and the Rules of Procedure and Evidence moreover plans were made for the election of eighteen judges and the Prosecutor. Because of the Article 17 of the Statute of Rome, the Court has a complementary position in prosecuting which means that it can only proceed with a case when the State, that is responsible for prosecution, is unable or unwilling to do so (Schabas, 2017). The Court's first hearing was held in 2006 and first trial started in 2009. Apart from the head quarter in Hague, the Court has several field offices around the world and also has a trust fund for the victims in order to provide psychological, physical and material assistance, and to implement ordered reparations of the Court (ICC, *nd.*). The International Criminal Court is a well-organized institution; however, it has not been fully effective and satisfying in terms of justice because of its limited power and abilities, and long processes of its trials. It has not been possible to provide reconciliation and restorative justice only with decisions of the Court in the past. Moreover, there have been incidents which were not prosecuted by the Court but also needed reconciliation and restorative justice. Here, practices and efforts of civil society constitute importance. Truth and Reconciliation Commissions (TRCs), can be accepted as a supplementary tool in this respect. According to Hayner, the first TRC was established in Argentina in 1983 and it was named as "the National Commission on the Disappeared" (CONADEP), it was followed by Chile and El Salvador in 1990 and 1992. It is still not possible to talk about a single or accepted definition of TRC; however, it can be defined as a commission that focusing on the past, investigating a pattern of abuses over a period of time and the causes and consequences of these abuses, being temporary which is aimed to conclude with a public report, operating



relatively independent from the State and that it is victim-centered (Hayner, 2011). In this context, a TRC can be helpful about prosecutions of criminals as a complementary since all types of courts, national, international or special courts, are limited in effectively prosecuting and in addition to that they are not designed to reveal underlying causes, motives and perspectives of perpetrators in this sense it aims to provide a restorative justice. Since TRCs were mostly state driven or motivated, there has always been a risk for the perpetrators to escape from prosecution by letting them to cover up certain realities that reveal their crimes. However, there are also certain criticisms to the TRCs about their use which underline that TRCs might undermine the work of ICC as an attempt to deviate from an obligation to prosecute and with this point, it might violate victims' fundamental right to judicial process which might be problematic for establishing a stable democracy and reestablishment of the rule of law (Villa-Vicencio, 2005). Moreover, TRCs have the possibility of breaking peace in some occasions since the truth is tough. This tension between "justice" and "peace" is also an important critical point in the processes of TRCs (Hayner, 2011). Apart from all of these negative possibilities, it is very important to underline that TRCs can be effective in breaking the silence on past, providing significant forms of memorialization and reparation, and creating the public and safe spaces in which victims can tell their stories without procedural restrictions of court rooms (Villa-Vicencio, 2005).

In conclusion, it should be underlined that these transitional justice mechanisms have not been sufficient in terms of reparations and justice for the ones who were subjected to violence. Especially, women, who had been subjected to the most violent types of treatment during the war, have not been satisfied with these mechanisms and there are several reasons for that. Before explaining the struggle of women's movements in international law, it is important to explain these reasons. As it was mentioned above, justice is coming really slow or not coming in most of the cases in the International Criminal Court. The processes are always long, and it is not possible to bring a restorative justice only with the decisions of the Court because of the limited resources and power. Dasa Duhacek underlines that "...after having followed and supported

ICTY it became clear to women's and feminist groups in successor countries of Yugoslavia that the process conducted by the existing institutional system and embedded in the *mainstream concepts of justice*,... will not address all grievances of those who suffered." (2015) In other aspect, the ICTY prosecutions were criticized because of giving less importance to the sexual violence in comparison with their prevalence during the war and concerns were also raised regarding the adequacy of witness protection and support in which witnesses' experiences were narrowed by the rules of evidence and procedure which revealed the constructing survivors of sexual violence as helpless, feminize victims and led to the reproducing gendered hierarchies of power (O'Reilly, 2016).

Apart from the ICC, TRCs are also found problematic by women and feminists. Since truth commissions are institutional mechanisms for addressing past injustices and usually investigate the enabling conditions of abuse and identify the patterns of human right violations, they are expected to analyze and reveal the gendered side of the conflicts or authoritarian regimes in their broad field of topics; however, women's groups indicate that TRCs often failed to address gender and to appreciate the significant and specifically gendered effects of political violence (Nesiah et. al, 2006). For instance, The South African Commission acknowledged that its definition of gross violation of human rights resulted in a blindness to the types of offenses that were experienced by women in its final report (Hayner, 2011). Duhacek underlines that in "Regional Commission Tasked with Establishing the Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Theory of Former Yugoslavia in the period from 1991-2001" (RECOM) which was established for the former Yugoslavia countries, it was not possible to include all of the elements about the violences and crimes that women were subjected to due to its overwhelming task (2015). After underlining what are the problems and deficits of the two transitional justice mechanisms, below, a brief introduction about the emergence of the alternative mechanisms that women created for providing justice and healing for their societies is going to be given.

### 3.5. Women in the Search of Justice and Healing in the Times of “Peace”

Until 1990s, women have suffered rape, forced pregnancy, sexual slavery and other brutal forms of sexual and gender violence in times of war and armed conflict but this fact had always been marginalized or dismissed, unlike other issues that international community made some strides in outlawing and punishing atrocities since it has been seen as a natural consequence of war (Bedont & Hall-Martinez, 1999). Before, international community and laws had seen gender-specific crimes as not as grave breaches and only with the Article 27 of Fourth Geneva Convention states that women shall be protected against “any attack on their honor, in particular, rape, enforced prostitution or any form of sexual assault” it recognized the situation (Bedont et. al., 1999). One can understand that even though this regulation puts gender-specific crimes in the agenda, at the same time it maintains the stereotype that a woman is shamed because of the rape or prostitution and ignore the fact of being emotionally or physically harmed. In July 1998, as it was mentioned above, the permanent International Criminal Court was established to investigate and punish genocide, crimes against humanity, war crimes and crime of aggression in the condition which national authorities fail to do so. By then, feminists have been started to struggle against the gaps of the international community about gender and sexual crimes. At the beginning of the 1990s, first women’s tribunal was established in order to judge sexual crimes committed in South East Asia during WWII, moreover, they were also successful to draw attention to atrocities suffered by women in recent conflicts in Bosnia and Rwanda which will be explained below (Göral & Kaya, *nd*: 35). Their efficient struggle and successful lobbying in this issue led to the formation of the gender provisions of the Rome Statute. “Women’s Caucus”, a group of women’s human rights activists, was established with the objective of ensuring a gender perspective throughout the Statute, they were active lobbying in the capitals of their countries’ and also in the PrepComs (the Preparatory Commission)<sup>3</sup> and Rome

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<sup>3</sup> The Preparatory Commission was established for the establishment of International Criminal Court in 1995 by the General Assembly of UN (Benedetti & Washburn, 1999).

Diplomatic Conference. This group rapidly expanded its base of support to include, approximately two hundred women's organizations from all over the world, they were actively lobbying in their countries and participating in the PrepComs and Rome Diplomatic Conference. Especially during the early stages of the Statute, they became successful in utilizing "gender crimes" in many provisions of the Statute instead of the narrow concepts like "sex" and "sexual violence" (Bedont et. al., 1990). In addition to this process, Articles 7 and 8 in the Statute include a subparagraph listing a broad definition of gender-specific crimes, like sexual slavery, enforced prostitution, enforced abortion while also defining war crimes and crimes against humanity. Moreover, two other gender-based crimes have been included to the list. The first is the crime of persecution against any identifiable group or collectivity on any ground, including gender. Secondly, the crime of "enslavement" is meant to be any power attaching to the right of ownership over a person and this part includes women or children trafficking (Bedont et. al., 1990). Another important revolutionary side of the Statute is codifying a mandate for the Court to adopt specific investigate, evidentiary and procedural mechanisms that are essential to ensure gender justice. For instance, Article 68 of Part 6 concerns the protection of victims and witnesses and their participation in proceedings and this provision echoed in other parts of the Statute. Finally, as a revolutionary decision, Rule 96, Court provides that no corroboration of the victim's testimony is required and that consent shall not be allowed as a defense except in limited circumstances, and that no prior to sexual conduct of the victim may be introduced (Bedont et. al., 1990). So, defense cannot use the "consent" in the cases of rape and sexual violence cases and the Court will not look into corroborating victim's statement.

Even though Women's Caucus was able to exert pressure through its members' presence as NGO observers during the negotiations as well as through national-level supporters lobbying government officials at home, it is possible to say that international law has not gone so far about gender-specific crimes. Not only national concerns of the members of the international community but also a whole history of patriarchy have been preventing them to do so. Women, who entering into focus at all

in international law, are seen viewed in a very limited way, often as victims, mothers or potential mothers in need of protection (Charlesworth, 1999).

Talking with each other, talking to world, enlightening the embarrassing truths that other half of the world tries to cover up. The tribunal is a success as itself. I am praising this tribunal for starting the radical decolonization of women (Russell & Van de Ven, 1976).

First women's court/tribunal, the International Tribunal for Crimes against Women, was opened with the above words of Simone de Beauvoir in Brussels. It lasted five days and hosted more than 2000 women from 40 different countries. In this court there was no judge nor prosecutor and women accepted every behavior of men which pressure woman was accepted as crime (Göral et. al.,). This unique example was followed by other tribunals/courts. Although there are more than 40 women's courts/tribunals were created until today, below, this study is going to examine only three of them since they were established after significant periods of war and reveal the struggle of women for healing and justice. In this chapter it will be more appropriate to narrate two of them: The Women's International War Crimes Tribunal, which was held in Japan and the Courts that were held in Colombia. Last one, the Women's Court of Sarajevo, will be explained much more broadly in the next chapter as the subject of this study.

It is necessary to understand what is "comfort women" in order to understand what happened in the East side of the world during World War II. During the war, 100,000 to 200,000 women was subjected to sexual violence and forced to provide sexual service to Japanese soldiers as "comfort women". For women who lived in Korea, Philippines, China, Indonesia during World War II that notion meant sexual slavery, rape and violence (Mertus, 2000). However, this war crime did not have a significant place during the Tokyo Trial, and it was only seen as a crime against the honor and rights of the families which created a problem for prosecuting kidnappings of women. So, the Trial did not cover "comfort women" in terms of prosecuting. With the

beginning of 1990s, individual cases by former “comfort women” was begun to be opened against Japan. Even though all of these cases were dismissed, in 1993, with the “Declaration of Kono” Japan publicly acknowledged the issue and decided to support an NGO, the Asia Women Fund, in order to provide “sympathy money” for the victims. But this support did not constitute a direct compensation from the Japanese government and because of that women did not want to accept this compensation since it did not involve any official recognition (Futamura, 2008: 84 & 95). In 1998, “Violence Against Women in War Network” (VAWW-NET) opened the issue for the discussion on the formation of a women’s court/tribunal in the “Conference of Asian Women’s Cooperation” and this idea was supported highly by the other women’s organizations in that conference. Establishment and organization of the Women’s International War Crimes Tribunal took 2 years and structure of the formal courts was used. In 2000, the Court was started and lasted five days, with the testimonies of 35 women and 2 former soldiers, this Court documented and proved the crimes of systematic rape, forced abortion, sexual slavery, sexual violence and forced castrating. In the end the Court convicted the state of Japan as guilty for committing crimes against humanity and also found former soldiers and governments after the war as legally responsible for the crimes that were committed (Göral et. al.).

The Civil War in Colombia was explained earlier. This conflict, which lasted more than 50 years and mass murder, displacement, forced disappearance and sexual violence highly affected Colombian women during these years. Because of the long period of time, Colombian women reflected to the Civil War with more than one women’s court/tribunal in which women’s local organizations were highly active. First Court was organized in 2005 in Cali with the target of countrywide participation. This Court aimed to place women at the center as the actors but not the victims and included stories of women who were seen as heroines, too. More than 200 women participated. In contrast to The Women’s International War Crimes Tribunal, which was made in Japan, “Corte de Mujeres, Contra el Olvido y para la Re-Existencia”, the Colombian women’s court, included theatre, art performances and it gave importance to the verbal testimonies of women since during that time it was important to form a union between

women from different ethnic backgrounds and who have different personal histories. At the end of the Court, commission of judges who were called “Women of Memory” stated their judgment and called Colombian government to honor women victims and to support them. In 2011, a countrywide women’s court was organized in the name of “Symbolic Tribunal against Sexual Violence”. With this Court, sexual violence was defined in a broad term that includes rape, sexual slavery, forced pregnancy, forced prostitution, forced castration, and in addition to this, it was decided for not making any differentiation between the political groups who committed these crimes. Significant strategies for protecting women and organizers were developed and international participation was aimed while women who gave testimonies in this Court had psychological support during and after the process. In the final report of the Court, suggestions that were requiring not only economic but also social reparations programs were made. Two other Courts were organized in 2012 with the leadership of “Organizacion Femenina Popular”, one was in the city of Cali and the other one was in Bucaramanga and they aimed to stay regional. These two Courts were organized with three purposes; first one was for talking about the societal and political sanctions for crimes that were committed, second one was for determining the violence that women were subjected region by region and the last one was for identifying areas where women should make political advocacies (Göral et. al.).

All in all, this chapter made a general explanation of gender and its positioning in the three important conflicts/wars were made in order to create a broad explanation for the continuation of this study. These three conflicts are important for this study because these are the conflicts that women reacted with women’s courts. And also, Women’s Court of Sarajevo made use of these experiences while structuring the Court’s format. While Women’s International War Crimes Tribunal was based on a more formal setting, Colombian examples followed a more experimental style. The former one verdict specific crimes and obligations for the defendants; however, the latter one did not pursue to do this and chose to make recommendations because there was an ongoing conflict. To conclude, even though the subject of this study, the Women’s

Court of Sarajevo is unique from a lot of aspects, these examples from the world gave the ability and solidarity to it.



## **CHAPTER 4**

### **THE WOMEN'S COURT OF SARAJEVO: A FEMINIST APPROACH TO JUSTICE**

After explaining the theoretical and conceptual framework and what gender is in a war field and how women have been positioned in warzones, this study is going to focus on the main subject in this chapter. A detailed explanation of the Women's Court of Sarajevo is going to be given and then, the possibility of a feminist judgmental process is going to be evaluated through the practice of the Women's Court of Sarajevo since it was named as a feminist approach to justice. Here, I am going to evaluate the issue from the three methods of Katharine Bartlett that were mentioned in the Chapter 2: asking the woman question, consciousness-raising and feminist practical reasoning. Finally, this study is going to explain and evaluate the experiences and thoughts of women in this issue while understanding that whether it is possible to construct a feminist judgmental process in formal courts for them.

#### **4.1. Former Yugoslavia after the War**

The Women's Court of Sarajevo was held in Sarajevo between May 7<sup>th</sup> and 10<sup>th</sup>, 2015. But it is not an event of four days. With its comprehensive method, the Court has an impressive preparation and afterward period. Below, this part is going to explain the Court in detail. Before understanding what the Court brought to the women of Former Yugoslavian countries, it is important to know why there was a necessity for establishing a women's court. In the end of 20<sup>th</sup> century, SFRY divided into seven successor states. As it was mentioned before, this division has been a bloody, violent and long one and women constituted an important part of this period of conflict. They

suffered a lot from sexual violence, loss of relatives, displacements, and ethnic violence altogether. So, the word “justice” for them signifies a long period of searching. In this point, it is important to mention about this period and what it contains.

After the end of the Yugoslavian Civil War, with the Resolution 827 of United Nations Security Council, an International Criminal Tribunal for the Former Yugoslavia was established in 1993, in order to prosecute serious crimes and to try the perpetrators. Until 2017, the ICTY has indicted 161 persons and this year also marked the end of the mission for ICTY. After 2000, the year that Milosevic was arrested, regional courts for special causes started to be formed by the successor states of the SFRY. Croatia and Serbia established specialized war crimes chambers in 2003 and followed by Bosnia and Herzegovina in 2005. In 2008, the European Union Rule of Law Mission in Kosovo (EULEX) permitted international judges, lawyers and prosecutors to serve along local professionals in individual war crimes before local courts. Even though Macedonia did not pursue to issue a special court for war criminals, Montenegro also established special departments for these cases in Podgorica and Bijelo Polje Superior Courts (“Post-war justice and durable peace in the Former Yugoslavia”, 2012). Both international and national legal mechanisms have not been sufficient for the region and women. Firstly, the ICTY, even though it contributed a lot since it convicted individual war criminals and recognized sexual violence, could not force the states to cooperate with itself in executing arrest warrants and other orders and could not directly communicate with the states in this issue, it had to report the issue to the Security Council. This situation weakened and slowed down the process of trials and prosecutions (Kirk McDonald, 2004). In addition to this situation, the ICTY also remained as a poorly understood institution because it did not or could not outreach the local communities. According to Clark, since it was not successful for reaching out the grassroots levels, people do not know anything about how it gave it verdicts instead of this, they remain interested how many years of prison term the convicted ones were subjected to (2009). On the other side, there were specific problems of women concerning the ICTY, too. Even though women’s problems about the ICTY were

mentioned in Chapter 3, it will be efficient to discuss and explain the issue in here again in order to make an easier connection with the emergence of the Women's Court.

ICTY recognized the 4 violations in international law as crimes: grave breaches of the Geneva Conventions of 1949, violations of the laws and customs of war, genocide and crimes against humanity. What is important in here is that rape was, firstly in the history, added to crimes against humanity in the Statute of ICTY; however, the Statute only recognized rape but not the other forms of sexual violence. In addition to this, most of the women who testified in the ICTY about sexual violence are not satisfied with the sentences that have been given to their perpetrators and also some of them indicated that modern prison might not be so bad compare to the conditions that they have faced during the War (Mischkowski & Mlinarevic, 2009). It is also important to talk about special regional courts in here since after the ending of the mission of ICTY, regional courts get more important for the women who seek for justice.

In 2003, Croatia established specialized chambers within country courts in Osijek, Zagreb, Split and Rijeka. However, in the following five years it came out that number of courts were lacking expertise and infrastructure for the witness protection. For instance, witnesses and the accused ones entered the court room from the same entrance. Although in 2009, with a special regulation, necessity for victims' physical attendance to the courts was abolished, this positive development was shadowed by Croatian Parliament's law which proclaimed null and void all legal acts relating to the 1991-1995 war in which Croatian nationals were sentenced to war crimes ("Post-war justice and durable peace in the Former Yugoslavia", 2012). Also, according to the report of Human Rights Watch, there is an ethnic bias in the sentences, too. The report indicates that while 83 percent of Serbians were found guilty in the courts, only 16 percent of Croatians were found guilty in 2002. In addition to this situation, there is a problem of poor case preparation in which nor prosecutors' offices neither investigative judges, but nongovernmental organizations obtain critical information and evidences about the case in most of the cases (2004).

Serbia also established a special court for war crimes in 2003, the “War Crimes Chamber of the District Court” in Belgrade and the “Office of the War Crimes Prosecutor of the Republic of Serbia and until 2011, 383 persons have been prosecuted for war-related criminal proceedings (“Post-war justice and durable peace in the Former Yugoslavia”, 2012). The problem of poor case preparation exists within the war crimes tribunal of Republic of Serbia and also there is a problem of lack of cooperation of the police forces. Especially in Serbia, police forces are responsible for war crimes, too and in this condition the office of prosecutor needs this police force to conduct investigations for the trials. In addition to these problems, prosecutors and judges have been receiving death threats along with the problems of witness protection, there is no effective protection measures for judges and prosecutors (Human Rights Watch, 2004).

These establishment of regional war crimes tribunals and chambers were followed by Bosnia and Herzegovina in 2005. With the Dayton Agreement in 1995, Bosnia now consists of two separate entities as the Federation of Bosnia-Herzegovina and Republika Srpska and each of these entities has its own judiciary, parliament and government. In addition to that situation, there is another autonomous district that is called as Brcko District. The War Crimes Chamber’s law enforcement is divided between the central state and the districts (Ivanisevic, 2008). Because this division is leading to an insufficient coordination between the districts there is a lack of progress (“Post-war justice and durable peace in the Former Yugoslavia”, 2012). Most of the witnesses of the WCC complain about lack of preparation, security and disrespectful treatment. In most of the cases, witnesses have to go through a long process of testifying and in addition to that they have to testify several times. In this situation, the defense in the WCCs always uses different statements of the witnesses and dwells on contradictions to question the credibility of the witnesses. In order to not to confused with this strategy of defense, witnesses demand a re-reading process with the prosecutor’s office but in the procedure of the WCC it is not possible. In addition to that WCC witnesses do not feel that they were well-informed before the trials and after the trials no one wants to communicate with them, so in this situation witnesses feel

that they are only necessary for testifying and they are not seen as people (Mischkowski et. al., 2009).

Even though Kosovo's independent Judicial Council and the Ministry of Justice was established in 2005, because they were insufficient to solve the cases, the war crimes' tribunals started to be carried out by the War Crimes Investigation Unit of EULEX (European Union Rule of Law Mission in Kosovo) in 2008 which is composed of international judges and prosecutors who have experiences in war-related crimes before, and until 2010, 14 judgments were delivered by the tribunals. However, there are serious problems within these tribunals, too. Inadequate witness protection and a lack of willingness among people to give testimonies against ethnic Albanians who were allegedly involved in war crimes ("Post-war justice and durable peace in the former Yugoslavia", 2012). On the other hand, it is possible to say that EULEX's poor performance and grave mistakes confirmed the untouchable status of the criminal segments of Kosovo's elite, and thereby, indirectly assisted them to strengthen their control over the country (Capussela, 2015).

In the case of the Republic of North Macedonia legal mechanism for fighting against war-related crimes are particularly difficult and challenging since its judiciary has been described as weak. Even though the reform program of 2004 for strengthening the independence and efficiency of judiciary has been perceived as a promising development, the parliament's decision of 2011 that applies the 2002 Amnesty Law to all cases returned from the ICTY in 2008 to this state for prosecution in this country, has been seen as a negative sign in this path ("Post-war justice and durable peace in the former Yugoslavia", 2012).

Montenegro started to handle the war-related proceedings by specialized departments that were established in 2008, in the Podgorica and Bijelo Polje Superior Courts ("Post-war justice and durable peace in the former Yugoslavia", 2012). During the period from 2011 to 2013, four trials for war crimes or crimes against humanity were proceeded and among them, only one of these cases ended with a final judgment.

However, there are several problems with the courts of Montenegro. Instead of interpreting humanitarian and criminal law for providing extensive protection of victims of war crimes, the courts in Montenegro appear to be trying to find a restrictive interpretation of domestic and international legal norms so as to reduce the possibility of punishing the members of Montenegrin police and former JNA. For instance, the Appellate Court of Montenegro does not allow prosecution of crimes against humanity by limiting the term “customary international law” which was applicable in FRY and prohibits crimes against humanity (“War Crimes Trials in Montenegro”, 2013).

All in all, it is possible to understand that justice is either coming slow or not coming at all in the republics within the territory of former Yugoslavia. As it was explained above, the states tend to protect the war criminals and procedures of the trials are slow and torturing for the ones who were subjected to violence during the war. Here, it is important to explain how women reacted against this situation. It should be underlined that women did not give up searching for justice in formal mechanisms; instead, they were not satisfied with what is going on in these mechanisms and demanded more. In addition to this situation, women together with the men were also the victims of economic, political and psychological violence. They chose to be the voice of their situations. For instance, forced mobilization was a major problem for the people from Serbia and Montenegro or after the war labor rights were violated much more than before and women also directly started to speak at loud about this situation.

#### 4.2.Preparation and the Event: The Women’s Court of Sarajevo

In this chapter, this study is going to explain how the Women’s Court of Sarajevo comes out a reaction of women and also it is a research by them in order to reveal injustices in all fields of their lives. Moreover, this event also is a reunion of the citizens of former Yugoslavia and their fight against fascism and ethnic divisions. With revealing the different aspects of the war-tormented countries of them, they targeted

to abolish the “hierarchy of pain” and proved that a woman who was subjected to sexual violence could hug a woman whose son was sent to war without his consent (Zajovic, 2015). Aim of the Court was to point out the experiences of women since they cannot express what they feel and how they live during and after the war freely because of fear and public pressure. After realizing that institutional legal mechanisms have been restricting women to speak freely in the court houses, encouraging women to talk at loud about what they have been going through, the whole process was centered around women and their testimonies throughout the region.

The event was carried out in Sarajevo between 7<sup>th</sup> and 10<sup>th</sup> of May 2015. However, the process of preparation was much longer than these four days. Although establishing a Women’s Court was first voiced in Sarajevo in 2000 by Zarana Papic, who was a feminist activist and theorist from Serbia and Corinne Kumar, who is an international peace activist from India, after Papic’s death in 2002, the initiative lay dormant and postponed owing to other issues. After the death of Milosevic in 2006 without being pronounced guilty, Women in Black, one of the most significant feminist pacifist groups in the region, revived the initiative to work on Women’s Court again (Duhacek, 2015). This initiative was called as the Peoples’ Women’s Tribunal for Crimes against Peace which had an informal character. However, this initiative also has not been maintained because in 2007 RECOM (Regional Commission Tasked with Establishing the Facts about All victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia) was launched and almost all of the members of the initiative were the participators of this regional initiative, too<sup>4</sup>. In the beginning RECOM was an exceptionally important initiative but because of its broad scope of activities, it did not meet the expectation of fulfilling the women’s perspective (Zajovic, 2015).

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<sup>4</sup> RECOM was a 6-year initiative led by civil society organizations for establishing a truth commission for the Former Yugoslavia and it was not an initiative of international community in contrast it came from local the local initiatives ((Jeffrey & Jakala, 2012).

After understanding that RECOM would not be a satisfactory mechanism for the needs of women in the region, the initiative started to gather again. Thanks to the preparations of initiative between the years of 2008 and 2010, a preparatory workshop was made in Sarajevo in 2010 in the name of “Court of Women for the Balkans: Justice and Healing” and in this workshop discussions about why to establish a women’s court is necessary for the region were made. In the same year the initiative “The Women’s Court for the Region of Former Yugoslavia” was accepted, this name was changed to “The Women’s Court- A Feminist Approach to Justice”. When it came to 2013 the Initiative Board was renamed as “Organizational Committee” which was consisted of 10 organizations: The Movement of Mothers of Zepa and Srebrenica Enclaves, and Foundation CURE from Bosnia and Herzegovina; Anima- Center for Women’s and Peace Education from Montenegro; Center for Women’s Studies, and Center for Women Victims of War from Croatia; Kosovo Women’s Network from Kosovo; National Council for Gender Equality from Macedonia; Women’s Lobby from Slovenia; Center for Women’s Studies, and Women in Black from Serbia. Women in Black was selected as the holder of the program of the Court and became responsible for arranging and coordinating all activities with organizations that are part of the Organizational Committee (Zajovic, 2015).

Problems of the region and women were not only about the war crimes. Women who have been living in war-tormented countries, also living in an atmosphere in which corruption, privatization, serious economic crisis and also ethnic tensions were arising. So, in order to be comprehensive about these problems, the Organizational Board of the Committee focused on these different aspects of the post-war period, too. Together with this focus, Organizational Board also started to search about alternative justice proceedings throughout the world, mainly women’s courts that were mentioned in the previous chapter. In this learning process, it came out that women’s courts strengthening women for not being only survivors but also being a part of the politically articulated resistance to injustice. And also, it became clear that the region needed to build its own specific approach for setting up the process and organizing the women’s court (Duhacek, 2015).



Here, it is necessary to explain the preparation period and how the Organizational Board designed the communication the women and itself and it is important to explain the issue from the perspective of one of the members of Organizational Board and an activist from the holder of the program, Women in Black, Stasha Zajovic. According to Zajovic, understanding the approach of the Women's Court to the process is very important. First, there was an equality in obligations which means that the movement was assumed as responsible for the whole event. Second, there was an also equality and elimination of hierarchy between the theoretical contributors and activists in the field that also meant getting the work on the organizing of the Women's Court to the level of each individual country. And third, establishing a balance between the emotions and principles which included relationships, goals and ideas that were important for the members of the Organizational Board; in which activists' work on the field was combined with the knowledge of women from academic community on the issues for deepening the knowledge necessary for the continuation of the process of work. Moreover, the approach to justice can be called as feminist because of following themes of the Women' Court. First of all, the Women's Court makes visible the continuum of violence and injustice against women during the war and in the post-war period in both private and public level. Secondly, it reveals the structural violence against women in ethnic, economic and political aspects. Thirdly, it is also a process of common learning how to listen and understand the other women. Fourthly, it gives equal value and importance to the process and the result. Finally, the process also gives high importance to the feminist ethics of care. Realizing that institutional mechanisms have not been careful with women, the process of the Women's Court is focused on building a safe-space for women in which they can make communication and establish solidarity, friendship, and support among each other (Zajovic, 2015). All in all it is possible to sum up the Women's Court of Sarajevo's aim as to encourage women to testify about all kinds of structural injustice: poverty, exploitation at the workplace and everywhere, uncontrolled rule of market laws, social and health threats, and abuse of religion for political purposes, to write alternative history: through publications that inform about the experiences of previous Women's Courts and Tribunals, and that collect women's experiences related to the organization of the Women's Court for the

former Yugoslavia and finally to strengthen global feminist-pacifist alliances and coalitions: in order to bring punishment to violence and crimes, to influence the international institutions of justice, to start making documents and resolutions based on everyday experiences of injustice against women and all those with diminished social, economic, and political power (Women in Black, 2012).

From 2010 to the event, there was hard work, extensive organization and tireless commitment in the frame that was mentioned above. Apart from the 10 organizations of the Organizational Board, more than 200 civil society organizations participated in the process (Clark, 2015). This process of organization involved included many methods of work which are going to be explained below. Firstly, there were 10 training sessions which aimed to inform public, especially local communities about the concept and context of the Court. Moreover, there were 16 regional educational seminars that were consisted of workshops, lectures, video presentations and screenings of featured documentary and films. In these three-day seminars different subjects were presented and discussed with the participants such as international institutions on international and national levels, Hannah Arendt's "ethics of responsibility", alternative models of justice, etc. In addition to these, there were 136 public presentations between 2011 and 2014 in about hundred towns throughout the region and these presentations aimed to inform public about the process, to gather information, proposals, suggestions considering the Court. However, public presentations also were for women and men and in time Organizational Board realized that women have hesitated in testifying throughout these meetings. In order to create a safe-space for women in which they can freely express themselves and their stories, feminist discussion circles were also formed. For each of these sessions, reading materials have been prepared and read together. The target was to improve the exchange among women who have been coming from different difficulties, among them there are women who have been subjected to sexual violence or have lost their relatives or send their sons to the warfare because of the mobilization during the war and also there were women from academic or activist circles. In this preparation period, witnesses for the Court have been selected. An extensive work was scheduled with these potential witnesses. Firstly,

witnesses were encouraged to speak in regional meetings in which men were not allowed to enter. At the same time psychological support was given to the witnesses and it is still continuing. Then, witnesses were helped to write their own testimonies with a mentor for each of them and after that witnesses started to join group meetings in which they could read their testimonies if they wanted to do so (Zajovic, 2015).

According to Zajovic there was also an obstacle in the process of organization of the Court: the negative impact of projectization or so “NGOization”. She underlines that

...the experience has shown that in some communities, women outside the activist circles are more rebellious, expressing their critical attitude toward centers of power more often and more directly than the NGO activists who are – primarily due to reasons pertaining to projects as well as to fight for the survival of their groups – subordinated to the state and donors (2015).

In order to not to fall into this situation, the Organizational Board denied most of the impositions of the donors and this led to the extension of the preparation period.

During the preparation period, Sarajevo was selected as the place of event because of two reasons. Firstly, the city was under a siege between 1992 and 1996, which made the city the symbol of suffering and on the other hand Sarajevo is remembered as “the most Yugoslav city” since it is a multi-ethnic city and in the center of the former Yugoslavia geographically (Bora, 2018; Zajovic, 2015)<sup>5</sup>.

The Women’s Court of Sarajevo was consisted of five different parts which reflected five different types of violence against women. The first part was the “War Against Civilians” which reflected the ethnic, militaristic and gender-based violence while the second part was much more about sexual crimes with the name of “Woman’s body - a battlefield”. Third part was called as “Militaristic violence and women’s resistance” which covered the resistance against forced mobilization and women’s resistance to

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<sup>5</sup> For further reading “Sarajevo under Siege” by Ivana Macek and “The Cellist of Sarajevo” by Steven Galloway can be useful for the reader.

the War. This part was followed by “The persecution of the different at wartime and peace time alike” in which women testified about how their ordinary lives were changed not only in the wartime but also in the peace time because of rising ethnic tension and discrimination in the regions that they were living as a part of ethnic minority. And the last part was called as “Un/declared war – socioeconomic crimes against women and resistance”. In this part, women testified about their problems in their work fields and social lives, and the exploitation of labors and how they resisted against these problems (Zajovic, 2017). Even though the testimonies were the most important part of the Court it is important to underline that a certain methodology was applied while the testimonies have been giving. This specific methodology linked the subjective text (a woman’s testimony) with the objective analysis of the political, social, economic and cultural context of the violence that took place. So, The Court followed a certain procedure with three dimensions: first was the expert witnesses at this tribunal/court explained the political, gender, social-economic, ethnical-racial and cultural context of violence, analyzing its causes and consequences before the witnesses and their testimonies. These experts formulated the context for individual testimonies, which clearly shows the significance of personal testimony intertwined with political analysis. Second, there was a jury at local and regional level consisting of women and men who enjoy high level of respect among women and women’s organizations and they are primarily women activists, scientists, legal, economic and media experts etc. And the final dimension was the international jury consisting of women and men who have an excellent knowledge of the situation and the context and who enjoy great international respect and moral integrity. In addition to these, before the court rules were published. Among these rules following are found important in the context of these work. First, the court shall not determine individual criminal responsibility for war crimes and violence committed against women, nor the responsibility for compensation for damages. Second, witnesses shall testify not only about crimes and violence committed to them during the war but also about acts with long-term effects and those committed after the war under the influence of post-war, economic, militaristic, religious violence, as well as other forms of state, social and domestic violence. Witnesses shall also testify about individual and/or organized

resistance of women against all forms of violence. Third, based on the testimonies made by witnesses and expert witnesses, Women's Court shall give a public verdict on the political and civic responsibility of perpetrators, appealing to judicial institutions with its requests and proposals, and monitoring the response of the said institutions. Fourth, this court is stated as a regional civil society initiative from the successor states of SFRY. It shall not institutionalize nor merge with any state institution. To sum up, the court does not deliver judgments, but does deliver public condemnations and does put pressure onto national and international institutions although it can initiate appropriate measures against a perpetrator of a crime, including collecting evidence for legal action. It is also important to underline that aesthetics is an important dimension of the court – introducing this dimension enabled women to transform the pain they have experienced into yet another form of resistance. Through various forms of artistic expression, from poetic expressions, painting, and music to dance, handicrafts and theatre forms, women have conveyed their most painful experiences to others. This fact is important because it removes the formal procedures of the law from women. Marching, exhibitions and protests have been made in order to include women's actual participation in the process. "Solidarity", "Responsibility" and "Memory" have been the slogans of women during the court. In the final declaration, five types of crime were determined: war crimes against civilians, using female body as a war zone, crime of militarist violence, crime of torturing the different ones during the war and post-war period and crime of social and economic violence. Moreover, every individual who participated in the war was founded guilty and the Court underlined that the international community also did not protect people in the war zones (Perovic, 2017).

2015 did not mark a finishing date for the women's struggle in the successor states of the former Yugoslavia. On the contrary, it remarked an area that their struggle has been growing. To begin with, women who testified in the Court started to open cases against the war criminals if they have not done so before the Court. For instance, one of the women from Bosnia and Herzegovina who was raped during the War by the Serbian paramilitary forces, opened a case against the perpetrator after the Court and the

defendant was sentenced to 7 years. On the other side, women continue to inform the public about the Court. They arrange regional meetings and talk with men and women about their experiences. They support each other in the formal courts when there is an open case and also in the ordinary life (Zajovic, 2017). Below, I am going to explain what the Court means for them and how their experience is helpful in order to understand the possibility of a feminist judgmental process through their own words and impressions together with evaluating whether the Court applied a feminist judgmental process.

#### 4.3. The Methods of the Women's Court of Sarajevo: Was it Feminist?

Before evaluating the possibility of a feminist judgmental process, it is important to give several details and information about the thoughts of the participants of this research in order to understand their lives, thoughts and motivations for participating in the Court. First of all, all of the women think that their lives were much better before the War. When I ask them how their lives were before the War, they talk about their lives as “good”, “normal”, “excellent” and they say that they were happy during that period. Secondly, I ask them what they think about justice and legal mechanisms during that time and they express that they did not think much about this concept. For them, there was a fair system and ordinary people did not get involved with this system because they did not do illegal things. Thirdly, I ask them whether they had thoughts about women's situations during that time and they answer me in different ways in this question. Some of them participated in political activities and became members of political organizations such as the Communist Party, workers' unions, and NGOs and struggled for the rights of women in their workplaces. Even though most of them think that women were seen as the equals of men and they had much more rights compared to today's world, one of them answered that she realized that women were expected to act differently in the private sphere. One of them answers this question in the following way “...I did notice like my mother and father were not equal in a way, that my mother

despite she was working she had to cook or clean. And it was looking normal in the society” (Dragana from Montenegro, 2019). From these points, I understand that most of the participants have not faced the patriarchy and problems about legal institutions before the war.

I also ask about what the most traumatic side of war for them and I get different answers again. They were all subjected to different types of violence, they lost their jobs, houses, became refugees, sent their sons to the battlefield because of forced mobilization, they were raped, or they lost their relatives. The sections that they testified are different; so, while they are talking about the general frame of war, they also mention about their own problems. This point shows me that the Court did not focus on one aspect of the war; in contrast, it had a multi-layer perspective that focusing on different time periods and different types of problems.

Another significant point in the answers is that the dissatisfaction with the international and national legal mechanisms. In line with the problems that were mentioned before, most of the women complain about small sentences for war crimes, protection of war criminals and neglect or misuse of their testimonies. When I ask them what they think about the ICTY, participants answer in the following way:

I don't have a high opinion about the Court in the Hague<sup>6</sup> and I don't think that the Court was hundred percent fair. Because Croatian army committed big crimes during the War but not convicted because of these, especially the “Operation Storm” in 1991 and after that (Mia, Croatia, 2019).

I don't have a good opinion about ICTY because only 2 people were convicted and judged in the Court but there were a lot of them who were responsible. After that these 2 guys left the prison, came to Macedonia as war heroes and they were welcomed. But there are still missing people in Macedonia, and no one is doing something about this issue (Eva, Macedonia, 2019).

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<sup>6</sup> Head quarter of the ICTY was in Hague.

To be honest, I think that it is a fake political court that doesn't do its job. For example, we had Sesel, we all know what he did to the minorities and now he is a deputy in the parliament. So, the Hague didn't do its job. There are a lot of examples especially in Croatia and here (Bojana, Serbia, 2019).

So, from these three answers from women who are coming from different countries, it is possible to understand that the ICTY has not been a mechanism that satisfies their demand for justice. After this question about ICTY, they tell that national courts and legal mechanisms are much worse than the international one. It is important to underline that the experiences of women with the national legal mechanisms are not only about war crimes. They express that even the case is about workers' rights, the legal institutions act on a ground that has enmity toward women or just neglect their demands at all. Ilda, whose husband and 8 other male relatives were among 700 men who were killed by Serbian military and paramilitary forces in a village near to Zvornik in 1992, expresses her experience about the court that she applied as following:

I applied to the Belgrade Court of War Crimes. It was for that commanding accountability. These people, these perpetrators were the nationals of Serbia and Montenegro and that's why they were being trialed in the Belgrade. One was sentenced to 13 years and the other to 5. And the one who was sentenced to 5 years was released after the sentenced because he was in prison for a time period before the court. It was very difficult for families because he immediately turned to Zvornik and started to work as a deputy in the local community. And so, you live in that town and you try to fight, how can you seek any help or apply for anything from such authorities? ... (Bosnia and Herzegovina, 2019).

Dragana from Montenegro says that

I only had experiences with the courts when I was fired because I was loud against the government and what is going on in the society and when I gave birth to my first child they used it against me and fire me...this trial was 15 years ago but nothing change in the meantime...I saw that the whole system is against me. The director of the institution that fired me was appointed by the government, then I had the judge, he is working for the ruling party and I had a lawyer who was afraid



of doing something and there were witnesses who were instructed to testify against me. So, even my doctor, who was in charge of my pregnancy, testified against me. He said that he didn't give me the report that allowed me to go to pregnancy leave but he did actually and then I told the judge to initiate another process for fraud he told me that, come on it is just a labor court and we don't need to do that. So, this trial lasted for 3 years and I couldn't get any salary during that time (Montenegro, 2019).

Another woman, Mia, whose husband and 4 other neighbors were also killed by paramilitary forces but this time in Croatia with the reason of them ethnically being Serbian, says that at first, she couldn't open charges against criminals as they committed a war crime. In the beginning, the courts took the issue as a murder out of the lowest motives and when she finally opened a case against them as they committed a war crime, she tells that "It was very difficult because I took this issue to the court by myself privately me against the government and it was very hard to looking at these criminals and they were looking back at me, just laughing at me ironically..." and "...all those trials came down nothing but covering up the crime..." (Croatia, 2019). In the end, the judge closed the case in favor of the defendants by saying that they could have been killed by anyone. And Mia was obliged for covering up the expenses of the all court processes that she has been through.

As it was mentioned in the previous chapters, women were not provided restorative justice by the international legal mechanisms, mainly ICTY. Moreover, national legal mechanisms have deepened their feel of distrust and led them to the search for alternative ways. These formal courts and processes have entailed women into a position in which they felt that high politics of states and nationalist politics have no room for what they have been through. From this point, I understand that they are suffering from the gender bias in courthouses and in the system, so, because of this situation they have begun to search for alternatives to heal themselves. The Women's Court of Sarajevo as the subject of this study and its resemblances with feminist methods is going to be discussed below and it is going to continue with what women

think about a feminist judgmental process and whether it is in line with the Court's proceedings.

After understanding the dissatisfaction and distrust of women about the formal legal mechanisms, it is also necessary to understand what the Women's Court of Sarajevo has changed in their lives and perspectives. Since the Court was claimed to be a feminist one, one should compare the methods of feminist legal theory and the Court's features. Here, I am going to evaluate the Court's features from the experiences of women with three main methods that were mentioned in the Chapter 2 as asking the woman question, consciousness-raising and feminist practical reasoning.

#### 4.3.1. Asking the Woman Question

Earlier, asking the woman question was mentioned as a process of unmasking patriarchy and in this regard Bartlett aimed two things: firstly, experiences of women are required in order to understand locate gender bias and secondly it is also necessary to have a corrective action that infuses women's experiences into the political and legal mechanisms. So, the Women's Court of Sarajevo can be found successful in this manner. To begin with, the preparation part of the Court has been highly politicizing for the women of the region. By giving them the necessary background, psychological support and solidarity with other witnesses, activists and academicians; it directly made women involved in the process of demanding more from legal mechanisms. Women in the region had been frightened to talk about what happened to them during the war. But thanks to the special tools of the preparation period they began to think that talking about something wrong was necessary for the next generation and also for today's world.

First, I was afraid of the reactions of my family and the society because it was a taboo but then I found strength in the idea that this story should be told, and I am responsible to show my society and my children to say the truth. It was important to say the truth... (Eva, Macedonia)

Another witness, Nermana, whose husband was killed by the JNA during the Srebrenica massacre in 1995 expresses her feelings about the preparation period in following words:

It was very hard. They worked a lot with us, witnesses. All of us, otherwise we wouldn't even talk about. It was very hard for me back then but later on I felt a relief what happened to me between 1992 and 1995 (Bosnia and Herzegovina, 2019).

In the beginning I was prepared to testify in the economic part because I didn't have the strength to testify about the sexual violence that was committed against me. At the same time I wasn't even sure who were organizing the Court because it could be the same with the people who were working with veterans at that time and they worked a lot with me to come to this point and I got a lot of help from psychologists and therapies (Jaka, Croatia, 2019).

Jaka was raped in a Croatian paramilitary unit where they were taken because they are ethnically Serbian and afterward, they lost their jobs. After testifying in the Court, she handed over her testimony to a special Commission in Croatia which evaluates sexual crimes that were committed during the war and received a compensation of 13000 euros after the Committee concluded that she was subjected to sexual violence during the war. In addition to this, she told her husband what happened to her after 10 years of hiding.

From these answers it is possible to understand that patriarchy forces women to be silent about what they have been through. Because they fear about the reactions of their relatives and the society, they prefer to stay silent about their traumas or what they have been through in specific periods. By talking in the Court as strong women who can speak at loud about their histories, women also find strength to talk about

their stories in their normal lives, too. On the other hand, being formed by the testimonies of women, the Court also asked the woman question itself, too. And as it was mentioned above, in some cases, these experiences were infused to the legal and political mechanisms. In addition to these points, Bartlett underlines that asking the woman question can also lead to the asking the excluded question and by requiring asking a women from Bosnia and Herzegovina who testified in the War Crimes Tribunal in Belgrade about her experiences, the Women's Court of Sarajevo succeeded to make visible how women felt about testifying as a Bosniak in a Serbian court.

For me, the most important point of the Women's Court of Sarajevo in that matter is that by asking the woman question, by asking what happened and is happening to women after the war; it changed the perception of women in the context of war field and peace time. It is significant that women started to see themselves as the subjects who demand justice and emotional or financial compensation, not as victims. In this point, it is possible to turn out the method of Bartlett and to say that women actually asked themselves the woman question before, during and after the Court. Moreover, they were empowered through this process. For instance, Ilda mentions an event that happened when she turned back to her hometown after long years of being a refugee:

...I returned to home and my first neighbors were Serbians who were settled in there. As women who just turned back to our homes, we did not have cellphones, we did not have electricity, we couldn't even lock our doors. And these intimations went on through the nights they were signing national songs and they were shouting...one morning a Serbian neighbor told me that 'you know what, I don't think that it is logical for you to stay in here because you see the other house, their son was killed in the war and who knows what they can do to you' and then I told him 'what? Why would I be intimidated or afraid, I came here because I want justice, I want my rights and who is going to come my door?' and after that day they never sang in the night and never threatened me... (Bosnia and Herzegovina, 2019).

At the Women's Court we were being heard as women as victims while on other national courts we were not heard, and you can see solidarity between women. During these 3 days, we cried, we laughed together. And at the end we signed a song together. I was the decisive factor and one point I was empowered. I found the strength to go on with my fight for justice (Mia, Croatia, 2019).

All in all, from most of the answers I understand that women question their places and rights by giving testimonies and they finish the process with empowering themselves. By making women to revolt against the enforcements of patriarchy such as being silent, hiding what they have been through; the Women's Court of Sarajevo applies the method of asking the woman question successfully.

#### 4.3.2. Consciousness-Raising

This method means a process in which women become aware with discussions and debate on their situations and disabilities which are imposed by society and law and through participating in this process, both the group and the individual empowered (Barnett, 1998). They share their experiences with the public and learn about other experiences. For feminists, this method is used as a tool for revealing insights and using these insights to challenge the dominant versions of social reality (Levit & Verchick, 2016). This method also constitutes the most important place in the Women's Court of Sarajevo. First of all, it helped women to learn about other women's lives and situations. After the war, all of the successor states of the SFRY witnessed a nation-building process and former citizens are also divided because of the events that were happened in the war. However, with the preparation period's regional meetings, workshops and training sessions; women started to know and realize what happened in the other countries during the war.

During these preparations I learned a lot of new things. I heard about other crimes from Bosnia, Kosovo...I heard personal stories and these contributions enriched me (Mia, Croatia, 2019).

I learned a lot about women from other regions, I learned what they have been going through ...Women's Court helped a lot through these workshops that we listened testimonies from other people, we learned about Serbian women. I wasn't aware of that how much women in Serbia had been struggling against the war. I created a different image and I spread this image through my community by telling them what had happened. I was inspired with strength and principles (Ilda, Bosnia and Herzegovina, 2019).

I found out a lot of things. Many things happened; I became aware. These women lost their families and houses, but they were there for each other (Lana, Serbia, 2019).

...Women's Court helped a lot through these workshops that we listened testimonies from other people, we learned about Serbian women. I wasn't aware of that how much women in Serbia had been struggling against the war. I created a different image and I spread this image through my community by telling them what had happened. I was inspired with strength and principles (Ilda, Bosnia and Herzegovina, 2019).

So, from these statements of the participants, I understand that even nearly 15 years later than war, women in the region have not learned what happened to the ones in other countries and what they have been through in detail. Learning the experiences of others build a strong solidarity and empathy among them and they began to see each other as family members. This togetherness led them to stood together in demanding justice.

...I also found some kind of belonging, I found peace among them. My parents are died, my children are living abroad but this is another family. I can talk with them whenever I feel depressed and sorry (Stana, Serbia, 2019).

...I had a fear of talking in front of a crowd, but it was an atmosphere that you realized you should have talked to bring light to the history and it was a very supportive group to help

us about the speech. I could see the support and compassion in every eye that I saw while I was testifying. In that moment, I felt like I can do everything, I was so empowered... (Eva, Macedonia, 2019).

I, now, have a family around the former country that I was a citizen of it. And I am much more self-confident thanks to knowing that I will never be alone again (Dragana, Montenegro, 2019).

...I only wished this Women's Court had been organized before I testified in the special court (The War Crimes Chamber in Belgrade) because I would have been much stronger and bolder (Ilda, Bosnia and Herzegovina, 2019).

I have a family other than my children and my relatives. You saw us, we are very connected to each other and we encourage each other to do things. This solidarity is one of the best experiences that one can feel (Nermana, Bosnia and Herzegovina, 2019).

Women's togetherness achieved another point. Formal courts try to establish some kind of hierarchy between the situations of women. For instance, labor cases are much more unimportant compare to the heavy crimes such as murderer, violence, etc., and when one thinks about a situation of a woman who sent his son to the war and found out that he came back with post-traumatic stress disorder should be silent when at the same time there is a woman who lost all his relatives in that war. In the preparation period, the Women's Court method was designed to reject this "hierarchy of pain" in order to build a strong and mutual ground for the resistance of women against the whole patriarchal structure of the society (Zajovic, 2015). As it was mentioned above, women learned about what each other has been through in the war and also after the war. And in some occasions, they also thought that their stories or experiences were not important or significant compared to the ones who lost their whole lives in the war. However, in time they realized that their experiences were also important because they reflected the core of patriarchal structure of the society, too. And in order to fight this unfair and unjust situation, they should bring together all of their stories.

Dunja is a Bosniak woman who lives in Slovenia. She was also living in Slovenia before the war. In 1991, Slovenia declared independence and the next year it gave a window period to buy Slovenian citizenship for all those who were not born in Slovenia during Yugoslavia. Dunja and some other people didn't do this, and they were erased from the system. She said that she was born in Slovenia actually but "...it was a patriarchal system and my father was from Croatia and they signed me born in Croatia because of that..." and after that erasure from citizenship they could not work, they didn't have health insurances because they were not citizens. At the same time, Slovenia required them to bring papers from the countries that they were signed but there was a war in those countries so that was impossible for them. Only in 1994, she could take the papers from Croatian border and became a citizen again. So, they started a movement against Slovenian government in order to receive compensation for the emotional and financial harms. There were 25,000 people who had to go through this situation and among them there were a lot of people committed suicide because of the things that they have been through. "...the biggest burden was on women. They couldn't work, they had to stay at home, and they didn't have any rights..." Finally, they managed to receive 50 euros for every month as a compensation; however, Dunja expressed that her daughter became a drug addict in this period. One can think that Dunja's situation is not important as much as the other witnesses who lost their families or were raped as Dunja thought in the beginning:

At the first meeting when I first heard from Bosnia and Croatia who were raped, or a woman from Serbia who had to send her 2 sons to army, I felt terrible and I thought I didn't belong to this, that my case wasn't terrible as theirs. It took some time for me to think about all of these, to find myself in these surroundings with all these women. Fortunately, we had psychiatric support...so I realized that even the crime that was committed onto us, was a crime. Because we also had big tragedies, many people committed suicide, even the leader of the movement. Family of many of us fell apart. That is the point. The crime is crime (Slovenia, 2019).

Dragana, her experience was mentioned above, also underlines that this elimination of the hierarchy between the pains of women made them much stronger, she says:



I was a bit uncomfortable because there were women who were testifying, lost their families or friends and my part of economic insecurity is not that heavy and cannot be compared with their stories. But my main thoughts were during this event, after I heard all stories actually, we were together just we had been together before the war. It brought me back to that time... (Montenegro, 2019).

...women from Bosnia lost everything in the war, their relatives, homes and jobs but listening to other women, for example, a woman who only lost her job, well for her that it is the worst thing that happened in her life and that's a different experience. I never said: 'You only lost your job, but I lost everything', each woman bares a burden, has different suffering (Ilda, Bosnia and Herzegovina, 2019).

All in all, it is possible to understand that for women it is very hard to find a common ground for their struggle in the Women's Court because they are coming from different backgrounds and their problems and sufferings have been placed to a hierarchy. It is also very hard to fight for an economic damage and express their feelings after they have been through this period while other women speak about their permanent loses. However, together they find the main starting point of their sufferings. It is the patriarchal society in which men open war against the other ones in ethnic and economic growth and in which men also open war against women in social and economic manners in order to continue to the exploitation of women. Here, I think the women consciousness groups of women before the Court and the event, itself, help women to find a ground to fight against this structure together.

I think that one of the significant sides of the consciousness-raising method of the Court is also encouraging women for being effective on a worldwide scale. Before it was mentioned that the Women's Court used the experiences of the other women's courts examples throughout the world and in interviews, I find out that they are also hopeful about spreading their experiences to the world. As a feminist method, consciousness-raising shows women that they have the power to effect other women around the world, too. Levit & Verchick argued that consciousness-raising can be used in the formal settings like trials, hearings and interviews and Bartlett also mentioned

that it can provide a collaborative decision-making among judges (2016, 1990). I think that through spreading their experiences to their countries and to the world, witnesses of the Women's Court can be efficient in this regard.

...and we also learned from the experiences of other women like Colombians and like women who joined the Court in Japan. We reflected this in the Court. Now you are here, and you will take this experience to your country, to... (Stana, Serbia, 2019).

...the word has already spread to the world. Many have contacted with us from that event on (Ilda, Bosnia and Herzegovina, 2019).

#### 4.3.3.Feminist Practical Reasoning

According to Bartlett, feminist practical reasoning means a questioning of basic structures that legal thought assumes and acts upon. For instance, legal thought accepts the legitimacy of the community whereas feminist practical reasoning questions what is community and which community that it accepts as the legitimate one. It also aimed to unmask the patriarchy in the judicial techniques and in the decision-making process of the judges or prosecutors. It is possible to say that feminist legal thought tries to enlarge the legal reasoning by looking to the context. In this regard, I think that one of the most important applications of the Women's Court is that it made women the truth tellers of their own stories. Formal judicial mechanisms tend to take the issue from one perspective and make decisions according to this one perspective whereas women want to tell the whole story. They demand a judgmental process that does not only depend on the official summary of the history but also a process that is reflecting their own lives and histories. Most of the women that I interviewed talk about the legacy of their stories. They think that their grandchildren, children, relatives and other people should listen and know the history from their perspectives. Because of that in the preparation period women, the witnesses, while shaping the methodology of the Court,

women wanted to talk about their past and rewrite this past through their words. Because of this also testifying constitutes an important action for them (Perovic, 2017).

Mia also mentions this gap by saying:

...when I compare the previous court process, that I mentioned before, and the Women's Court I realized how it is important to be listened as a woman in a court. As women, we just gather to tell the truth. But in national or international legal mechanisms, one doesn't have the opportunity to tell the complete truth... (Mia, Croatia, 2019).

Other women talk about the importance of transferring the truth via the Women's Court to the next generations as a method of changing the existing order of law.

I think Stana's words are very important for understanding this situation. She is a Bosniak woman who lives in Serbia. During the war, she was in Serbia also and she was fired from the factory that she has been working before the war with the reason that she was not coming to the work. However, between the town she was living and the factory, there was a war zone which was controlled by Serbian paramilitaries and it was actually impossible for her to go to work because she would have been killed by them any day. Among with the other Bosniaks, they protested this decision of the factory for a long time and after a while they found out a way for going work which required to walk for kilometers with a little possibility of to be killed compared to the first option. She was traumatized because of this period and she want to tell that everyone should know that

This is the place that I can say everything. In the end of the 20<sup>th</sup> century my life was threatened by my own country. I want my children to know that what I went through between 1992 and 1994, because in that period you didn't have anything if you were not working and I had to work under these risks...my granddaughter is now growing up in Slovakia and maybe she will not know her roots...I thought about this fact and I wanted to leave a legacy for her with my words (Serbia, 2019).

The preparation part was very hard actually. At the same time, it was really good because we, women, learned a lot about each other and we began to see ourselves as the truth tellers, that is the legacy that I want to leave for my children and my grandchildren (Nermana, Bosnia and Herzegovina 2019).

From these three methods, I think that the Women's Court's most successful application is on the consciousness-raising method. The other methods are transferred and transformed during the Court's process and it can be said that these transformations are successful at feeling women that they were achieving justice and fairness. However, in the meantime consciousness-raising is applied in its original format and I think that it is very effective on changing women's thought about the courts' process and other important things about the region such as nationalism and ethnic divisions that have a high salience in the region. From the experience of the Women's Court of Sarajevo, I think it is possible to construct a feminist judgmental process in which women participate as a subject and express themselves broadly and freely. The Court itself is an example that the methods, which were theorized by Bartlett as a summary of all feminist legal theories, are applicable to the formal courts. I think that spreading women's courts to all over to world when there is a problematic situation can be a successful tool for the construction of feminist judgmental process because of two reasons. Firstly, the women's courts are tools for organizing women and raising their consciousness in a specific topic. After focusing on this specific topic, women start to struggle for changing this situation and from Sarajevo example, one can understand the importance and efficiency of this method. Secondly, the courts can be an efficient tool for forcing legal mechanisms to apply the rules and procedures that women are insisting by formulating courts and declaring what they want in the end of these courts. Again, the Sarajevo example shows that even in the former Yugoslavia which is formed by highly patriarchal and male-dominated states, the testimonies and events are started to be accept by the legal mechanisms. In order to evaluate the main argument of this study, I also asked the participants what they think about a feminist judgmental process and how it should be like for them. In the next section I am going to explain what they think or imagine about this possibility.

#### 4.4. What Women Think about Feminist Judgmental Process?

Before asking what they are thinking about a feminist judgmental process and its possibility, I asked what they think about feminism, or whether they define themselves as feminists because I think that it is very important to know what they think about feminism in order to understand their thoughts or predictions. All of the women define themselves as feminist; however, they define a strict line between feminist state politics and what they think about feminism. In this point, I realize that they do not think that feminism means an equality between women and men in the public sphere which is driven by state politics. Dragana, who struggled for her work with a long process of trials, became a member of parliament after that struggle and she expresses that

...I am a member of parliament and I can see that other women in the parliament because of the quota and they are just like the soldiers of their parties and they don't have any different idea against their parties but for me it is not important I only defend or say what I think even it is the opposite to my party. Women politicians do not have that much space in the media and even they are called they are just called for some topics like education or social politics but not for the issues like NATO membership or armament of the country or economics that are so called important topics for the sake of the country. Women politicians are expected to be concerned about childcare and things that are related to the private sphere... (Montenegro, 2019).

...Feminism today is misused by the state. Even the institutions of governments don't do their jobs. They are saying Europe 'hey we have a feminist prime minister' but then Vucic (the president of Serbia) and the government allows church to interfere with women's lives. I think it is abused that doesn't work in here... (Bojana, Serbia, 2019).

In addition to these answers, they also underline that because of positive discrimination policies, the legal institutions are highly consisted of women but for all of the participants this is not an actual progress because women in these positions are also

supporting state policies which leads to the continuation of male-dominated decision-making process in the judiciary.

...Female judges make almost 70% of our judges in Serbia but criminal justice is almost in the hands of men; civil justice, family issues, succession issues, divorcing are covered mostly by female judges. But it doesn't change anything...most of the female judges are conservative and they don't want to change something. For example, there is no protection for rape victims in here. You know they are also the witness of the trials and we have no organized system to protect those victims... (Tijana, Serbia, 2019).

...We have now special courts for war crimes or organized crimes like heavy crimes and judges, prosecutors they are mostly women. But they do not reflect feminism, you cannot see that they are giving importance to what women are saying actually in the trials... (Eva, Macedonia, 2019).

...Now we have like pro-women politics that is applied to the judiciary and it is a fact that majority of the people working in the courts are women, but it doesn't change anything. They are questioning about consent in a rape trial again. They are thinking like men... (Dragana, Montenegro, 2019).

It is important to underline in here that participants only give examples from the cases of sexual violence and they do not talk about other issues such as divorce, custody rights or workers' rights and the decision-making process of female members of judiciary. I think that it is related to their experience of being in a post-war situation in which women had been subjected to a systematic sexual violence by the all sides of the war.

Another thing that I observe from their answers is that they see feminism as something that is highly connected to activism. Most of them work in feminist organizations such as SOS Hotlines and NGOs that help women to turn back their lives normal after the war.

I am a feminist...in 1990s I was a part of one NGO about women's rights and my city was a mixed place with a lot of nationalities such as Albanians, Serbians and we were together in that organization. We were living together, working together... (Eva, Macedonia, 2019).

My first association is "Women's Solidarity" and that is my expectation for feminism, struggling for women's rights together with all women... (Dragana, Montenegro, 2019).

...we should never stop. Because if you don't stand up for yourself no one else will do it for you...we became so empowered after what happened and we started to make every decision in the community...and we managed to fight for our children. Out of 100 children of that generation maybe 7 or 8 who have not a university degree and before war maybe 5 or 6 women had university degree in our community...we learned through the experience together and now they are powerful (Ilda, Bosnia and Herzegovina, 2019).

And after these answers, when I ask them what they think about a feminist judgmental process and its application to the formal courts, most of them think that it is possible and link this possibility to the struggle for it again. Here, they also give importance to make women's courts in every problematic area, talk with women about their experiences and make them believe that they are not alone in their struggle.

I think that especially in post-war periods women's solidarity and their actions together are very important but in our national court is very hard to talk for a woman...for me it is possible to change this situation, if we empower women by helping them to talk about their problems... (Mia, Croatia, 2019).

For me, as a feminist, it should be like women's court. Women should be listened during the process of judgment and they shouldn't be victimized or neglected by the authorities. This is the main point that we should change... (Stana, Serbia, 2019).

If we can organize other small women's courts, it can be possible to change the current situation in courtrooms toward a feminist process, but it is not possible only through states' initiative... (Tijana, Serbia, 2019).

All in all, I realized that the most important part of feminist judgmental process for them is that women are becoming subject and to be listened by the judiciary. So, it is possible to understand that women do not think about a feminist judgmental process where methods of asking the woman question, consciousness-raising and feminist practical reasoning are applied. Instead, they develop a method for themselves in which they use these methods unconsciously and seek to be seen as the subjects of the process.

...it is very important that women feel the strength in themselves while seeking justice. If it will be like it was in Sarajevo, it will be very helpful for women. Because in Sarajevo, we saw that we changed in a better way., our lives were getting better when we listened and understood as persons... (Nermana, Bosnia and Herzegovina, 2019).

...for me women should be the subjects and women should be heard as it was in the Sarajevo event. For 5 years we tried to open our experiences to other women, and we learned a lot from this process, we learned that we wanted to be listened. It can be a way to change whole patriarchal culture and society if we succeed to apply this to a wider circle... (Lana, Serbia, 2019).

So, this Women's Court was like publicly testifying with the hope that formal justice systems would hear that and maybe listen to them. And based on that, few cases were actually solved in formal courts and we hope that it will be the case. We are trying to change the current situation and I think we will succeed. For me, it is important to make them listen to women and then it will be more permanent in the system... (Ilda, Bosnia and Herzegovina, 2019).

To conclude, I think that the Women's Court of Sarajevo shows that a feminist judgmental process is applicable and possible. Witnesses' experiences and their current situations show that this kind of a judgmental process, even though it does not solve the problems of women, empower women and change their thoughts about life and struggle. In the end, they become much stronger actors in their own lives. On the other hand, I understand that from most of the participants' perspective, a feminist judgmental process is highly linked to be an issue in the formal courts and judiciary.



Especially in transitional justice periods for receiving restorative justice, they demand to be listened and perspective that is focusing on what women are struggling for. In this point, too, it is understood that Bartlett's methods of feminist legal theory are sufficient for making women to feel that they are the subjects of the process and restorative justice is going to be provided, as the example of the Women's Court of Sarajevo shows.

## **CHAPTER 5**

### **CONCLUSION AND DISCUSSION**

This study is conducted for understanding whether it is possible to construct a feminist judgmental process in formal court mechanisms. For understanding this possibility, I decide to make interviews with the participants of a real-life example, the witnesses of the Women's Court of Sarajevo because of two reasons. Firstly, before conducting this research, as a woman who is living in a patriarchal world, I always think that law is an important part of women's subordination and the continuum of the system. Laws and legal decision-making are always counted as objective, neutral and rationalist but on the whole these values usually do not work in favor of women. For instance, the concept of "consent" is still a problematic issue in rape trials and most of the judges and prosecutors question the outfit or the actions of the victim in these trials. Defendant can usually claim that he thought that s/he gave the consent for their actions. And this situation can be seen in most of the other trials such as labor, divorce or custody trials. After observing this point, as a feminist, I try to learn the solutions of feminism in this field. Secondly, after learning about feminist legal theories and methods, I discover the women's courts as the practice of these theories and methods; however, it is not possible to find a detailed field work about women's perspectives who participated to these events. So, I decide to study about this significant topic since, experiences of women constitute an important point because they determine whether theories and methods of feminist legal thought are efficient for women to solve their problems. Moreover, I also think that women mostly are deprived of justice in the times of armed conflicts and post war periods so, for me, these regions and women's experiences in these regions constitute importance. While conducting a research on women's courts, I realize that three of them were made in order to reveal how women have been deprived of justice and their rights in post war regions: the tribunal which was made in Japan for demanding justice for the comfort women of the World War 2, the

Colombian experiences of women's court and the Women's Court of Sarajevo. Among them, I decide to study on the experience of women from the former Yugoslavia because of two reasons. Firstly, I am also a Bosniak from my mother side and as a member of a family that lost their last family members in Bosnia and Herzegovina during the war; I have always been curious about this topic. Secondly, during my research I realize that the Sarajevo experience is unique because of the efficient preparation process which gathered a women's group from different classes, ethnicities and backgrounds, and also because the participants decided the format of the event during the preparation part as active members of the process together with the activists and academicians from the region of the former Yugoslavia.

Therefore, I design my study in the following structure: first of all, I clarify my standpoint and how I conduct the field work. I adopt a feminist methodology while conducting my research and use a qualitative research method. I make semi-structured interviews with 11 women from the witnesses of the Women's Court of Sarajevo and I try to learn their situations before, during and after the war. I also ask questions them to understand their feelings and struggles in the post war period. And finally, I try to understand their perspectives and thoughts about the Women's Court. After explaining my aims and the methodology of this study, I continue with the explanation of feminist legal theories and methods in order to provide information about the feminist judgmental process from different aspects within the feminist theory. In Chapter 3, I explain the connection between women and war and how women are perceived in times of conflict. I also add information about two transitional justice mechanisms: The International Criminal Courts and TRCs for the better understanding of women's situations in post conflict periods and to prove that why they search for alternative mechanisms for achieving justice and healing in those times. In addition to these explanations, I clarify the two experiences of women's courts before the Sarajevo experience: The Women's International War Crimes Tribunal (Japan) and four experiences of the women's courts from Colombia. Together with the Chapter 2, this chapter prepares a concrete perspective for the reader to understand the importance, evolution and event of the Women's Court of Sarajevo. Finally, before making a

summary and a conclusion for this study, I explain the Sarajevo experience in detail. First of all, I give information about the post war situation of the region which began with the initiative of international community, mainly ICTY, and its continuation by the successor states up until today. I design this part according to this timetable and explain the process of each country in detail because I think it is important to understand the motivation, aims and current situation of the participants of this study. Following these explanations, I clarify the preparation part, aims and structure of the Women's Court of Sarajevo. Here, it is important to underline that this court targeted all of the problems of the women of region: economic, social and ethnic and in addition to this, it created a safe-space for women to talk about their experiences freely and to embrace the experiences of other women in a region that is strictly divided by the ethnic and economic problems. These women had been the citizens of a single country before the war but until the preparation part most of them were prejudicial about women from the successor countries other than theirs.

After explaining these points, I start to analyze the thoughts of the participants and I understand that for all of them life before the war was better than their current situations. I also observe that they are not pleased with the international and national formal legal mechanisms. So, this observation proves my first argument in Chapter 3 which claims women do not feel that the justice is ensured about the war crimes. Moreover, they talk about their economic and social situation of the post conflict period and these answers also support the claim that in post conflict regions a much broader restoration is needed, and this process of restoration has not been actualized for the witnesses of the Women's Court of Sarajevo. Following these realizations, I examine the experience of Court within the frame of three feminist methods as following asking the woman question, consciousness-raising and feminist practical reasoning. In the first section, asking the woman question, I observe that the Women's Court of Sarajevo was successful because of several reasons. First of all, the Court help women to unmask what patriarchy has been doing, to make them feel that they stay silent about what happened to them during the war and what is happening now by helping women to tell their stories in their own terms in the Court. When I ask women

how they feel about the preparation part they answer me that they changed a lot during this time and started to talk openly about their problems and experiences. Secondly, the Court is itself asking the woman question since it was established to understand and to reveal the point of view of the women since it was formed by testimonies in 5 sections which were focusing on different problematic areas. Thirdly, by asking the woman question, the Court led to think about asking the excluded question because it also included the experiences of women who have to live under oppression not only because of being women but also because of being women from ethnic minorities in their own countries or in the countries that they have legal processes. All in all, I think that the Women's Court of Sarajevo is successful in the method of asking the woman question since it helped women to deconstruct their positions from being victims to become subjects who are seeking for justice and healing.

On the other hand, the second section, the method of consciousness-raising, can be seen as the most successful method that was applied to the Court. This method is used to reveal insights and use them to challenge the dominant version of social reality while making women to share their experiences and to learn from the experiences of other women (Barnett, 1998; Levit & Verchick). In the Women's Court of Sarajevo, too, women learned about the experiences of other women and this process built a strong relationship among them which is defined as "being a family" by all of the participants. In addition to this, the solidarity and togetherness among them led to the togetherness in the upcoming struggles and help them to reject of the "hierarchy of pain" among their stories. To conclude, it can be said that by applying the method of consciousness-raising, the Women's Court of Sarajevo was successful in bringing together the women from all over the region, who have different experiences and sufferings, in a common ground: struggling against patriarchy and it is also possible to claim that the experience of this togetherness helps women to struggle in worldwide, too since most of them tell me that they are eager to share their experiences with other women throughout the world.

Finally, the third method of feminist legal thought, feminist practical reasoning, was also applied successfully to the process of the Women's Court of Sarajevo from the aspect that it aimed to widen the perception of legal mechanism by placing women as truth-tellers. One of the participants, Mia says that she had the chance to talk about reality in the Court which has not been provided for her in her experience in national tribunal. Most of the participants want to rewrite their own histories from the perspective of woman and criticize the formal judicial techniques.

After understanding whether the Women's Court of Sarajevo was successful at applying methods of feminist legal thought and proving that it was successful from the perspectives of women about their experiences in the Court, I also want to learn what women think about feminist judgmental process and whether it is compatible with these methods. For understanding this, firstly, I ask them what they think about feminism. Since the Court targeted a "feminist approach of justice" and acted in line with this aim, I intend to prove that the witnesses also participated with this standpoint. Here, I observe that all of them define themselves as feminism and express good feelings about feminism. In addition to this, I understand that most of the participants make a distinction between state politics about women and their ideological stand. They highly criticize the quota policies of their countries and express that this is not "real" feminism for them because they think that women in these positions are also directed by the ruling parties in all of the states. For them, it is not important to have a higher ratio of women joining to the public spaces such as judiciary or parliament if women in these positions are controlled by men and decide according to their plans. Moreover, they think that these politics of state are tools for showing international community that they are successful about empowering women which is not true for the cases of witnesses. On contrary to this situation, they see feminism in terms of activism which is highly concentrated after the war in order to provide help other women to turn back their normal lives.

Following the question of feminism, I ask them what they think about a feminist judgmental process and whether it is possible to construct this process within the

formal mechanisms. I realize that they take the issue from a different side which is compatible with the methods of feminist legal theory. They want to be the subjects of the process and to be listened by the judiciaries but they do not mention the two methods of feminist legal thought which are asking the woman question and feminist practical reasoning, they only touch on the method of consciousness-raising by saying that small women's courts which are specifically established for the widespread problems of women can be efficient tools for feminist judgmental process. However, I think that wanting to be seen as subjects in the judicial system also reflects that the other two methods of feminist legal theory are necessary. On the other hand, most of them express that it is possible to construct a feminist judgmental process within the formal legal mechanisms with two condition: firstly, most of them think that it is necessary to struggle for this aim and secondly, the small women's courts can be efficient tools for spreading the struggle to other women and show that how it can be possible through the experience.

On the whole, I aim to prove that a different option of judgmental process, beside the current one, exists for the women within the frame of an experience of women. In this path, the Women's Court of Sarajevo and the experiences of its witnesses show that constructing a feminist judgmental process is possible with significant methods of feminist legal thoughts. Moreover, it can be a better experience for women compare to the existing one.

It is possible to add two further discussions to this study. Firstly, because of the hardships of field research I cannot make interviews with the women from Kosovo who testified in the Women's Court of Sarajevo. At the same time, I think that their experiences and thoughts about the feminist judgmental process are important since they have been the ones who lived under the longest period of conflict during the war. So, for me, it is necessary to widen this research with the experiences of them, too. Secondly, although it is proven that the experience of the Women's Court of Sarajevo shows that a feminist judgmental process is possible, it should be underline that this study is restricted with the experiences of women who have lived an armed conflict.

So, their expressions cannot be fully counted similar to the experiences of women who have not been through this situation. In order to understand the problem from a broader perspective, this study should be continued for understanding the thoughts and experiences about other women. For instance, consciousness-raising is seen as an effective tool for the participants of this research; however, this method can also be seen as a negative tool for other women because it may lead to normalize certain experiences such as heterosexual relations (Bartlett, 1990).



## REFERENCES

- Abbott, P., Wallace, C., & Tyler, M. (2005). *An Introduction to Sociology: Feminist Perspectives* (3rd ed.). London and New York: Routledge.
- Akçabay, C. (2018). *Hukuk ve Toplumsal Cinsiyet Çalışmaları* (G. Uygur & N. Özdemir, Eds.). Ankara, Türkiye: Seçkin Akademik ve Mesleki Yayınlar.
- Alcoff, L. (1988). Cultural Feminism versus Post-Structualism: The Identity Crisis in Feminist Legal Theory. *The University of Chicago Press Journal*, 13(3), 405–436.
- Alkan, Y. S. (2012). Feminist Legal Methods: Theoretical Assumptions, Advantages, Potential Problems. *Ankara Law Review*, 9(2), 157–174.
- Bagley, B. M. (2005). Drug Trafficking, Political Violence, and U.S Policy in Colombia under Clinton Administration. In J. Meltzer & C. Rojas (Eds.), *Elusive Peace: International, National, and Local Dimensions of Conflict in Colombia* (pp. 22-51). Palgrave Macmillan.
- Barnett, H. (1998). *Introduction to Feminist Jurisprudence*. Cavendish Publishing Limited.
- Bartlett, K. T. (1990). Feminist Legal Methods. *Harvard Law Review*, 103(4), 829–888.
- Bedont, B., & Hall-Martinez, K. (1999). Ending Impunity for Gender Crimes under the International Criminal Court. *Brown Journal of World Affairs*, 6, 65-85. Retrieved October 19, 2018.
- H. C. (1999). Drafting the International Criminal Court Treaty: Two Years to Rome and an Afterword on the Rome Diplomatic Conference. *Global Governance*, 5(1), 1-37. Retrieved from <http://www.jstor.org/stable/27800218>
- Benson, L. (2006). *Yugoslavia: A Concise History*. Houndmills, Basingstoke, Hampshire: Palgrave Macmillan.
- Berg, B. L. (n.d.). *Qualitative Research Methods for Social Sciences* (4th ed.). A Pearson Education Company.
- Berktaş, F. (2012). *Tarihin Cinsiyeti*. İstanbul: Metis.

- Bernstein, B. (1990). Difference, Dominance, Differences: Feminist Theory, Equality, and the Law. *Berkeley Women's Law Journal*, 5(1), 214–225.
- Bora, T. (2018). *Milliyetçiliğin Provakasyonu: Yugoslavya*. İstanbul: İletişim Yayınları.
- Bourke, J. (2001). *The Second World War: A peoples history*. Oxford: Oxford Univ. Press.
- Brock, P. (1972). *Pacifism in Europe to 1949*. Princeton University Press.
- Brownmiller, S. (1975). *Against Our Will: Men, Women and War*.
- Butler, J. (1999). *Gender Trouble*. Routledge.
- Capussela, A. (2015). *[Opinion] Eulex report exposes EU failure in Kosovo*. [online] EUobserver. Available at: <https://euobserver.com/opinion/128343> [Accessed 10 Aug. 2019].
- Charlesworth, H. (1999). Feminist Methods in International Law. *The American Journal of International Law*, 93(2), 379-394.
- Clark, J.N. (2009). International war crimes tribunals and the challenge of outreach. *International Criminal Law Review*, 9, 99-116.
- Clark, J.N. (2016). 'Transitional justice as recognition: an analysis of the women's court in Sarajevo' *International Journal of Transitional Justice*. <https://doi.org/10.1093/ijtj/ijv027>
- Cook, B. A. (2006). *Women and War: A Historical Encyclopedia from Antiquity to Present* (Vol. 1). ABC-CLIO.
- Council of Europe Commissioner for Human Rights. (2012). *Post-war justice and durable peace in the former Yugoslavia* (Issue brief). France: Council of Europe Publishing.
- Çağlar, F. İ. (2014). Feminist Hukuk Kuramı Nedir? *Hukuk Kuramı*, 1(5), 28–44.
- De Beauvoir, S. (2010). *The Second Sex*. New York: Vintage Books.
- Dombrowski, N. A. (1999). Soldiers, Saints, or Sacrificial Lambs? Women's Relationship to Combat and the Fortification of the Home Front in the Twentieth Century. In N. A. Dombrowski (Ed.), *Women and War in Twentieth Century* (pp. 1-30). Routledge.
- Echols, A. (1983). Cultural Feminism: Feminist Capitalism and Anti-Pornography Movement. *Duke University Press*, 7, 34–53.

- Echols, A. (1989). *Daring to be bad: radical feminism in America: 1967-75*. Minneapolis: University of Minnesota Press.
- Eisenstein, Z. (1989). *The Female Body and the Law*. University of California Press.
- Elster, J. (2004). *Closing the Books: Transitional Justice in Historical Perspective*. Cambridge University Press.
- Fejic, G., & Idekovic, R. (2015). Women and Armed Conflicts. *Cosmopolis*, 168-184. Retrieved June 30, 2019.
- Finlan, A. (2004). *The collapse of Yugoslavia, 1991-99*. Oxford: Osprey.
- Francis, Leslie and Smith, Patricia, "Feminist Philosophy of Law", The Stanford Encyclopedia of Philosophy (Winter 2017 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/win2017/entries/feminism-law/>>.
- Freedman, E. B. (2003). *No Turning Back*. New York: Ballantine Books.
- hooks, bell. (2000). *Feminism is for Everybody*. Cambridge: South End Press.
- Futamura, M. (2008). *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy*. Routledge.
- Gascoigne, B. (2010). *A Brief History of Second World War*. Richmond, United Kingdom: HistoryWorld.
- Göral, Ö. S., & Kaya, Ö. (n.d.). Barış Aramak, Hukuku Dönüştürmek: Kadın Mahkemeleri Örneği.
- Hammersley, M. (1992). On Feminist Methodology. *Sociology*, 26(2), 187-206.
- Harders, C. (2018). Toplumsal Cinsiyet, Şiddet ve Çatışma Dönüşümü. In N. Alıcı & G. Daşlı (Eds.), *Toplumsal Cinsiyet ve Barış* (pp. 23-71). Dipnot Yayınları.
- Harding, S. (1996). *Feminism and methodology: Social science issues*. Bloomington, IN: Indiana Univ. Press.
- Hart, L. B. (1971). *History of the second World War*. New York: Capricorn.
- Henderson, L. (1991). Laws Patriarchy. *Law & Society Review*, 25(2), 411-444. doi:10.2307/3053805
- Herbolzheimer, K. (2016). *Innovations in the Colombian Peace Process* (Rep.). Norwegian Peacebuilding Resource Center.

- Heyink, J. W., & Hamstra, T. (1993). The Function of Qualitative Research. *Social Indicators Research*, 29(3), 291-305.
- Human Rights Watch, *Justice at Risk: War Crimes Trials in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro*, 14 October 2004, D1607, available at: <https://www.refworld.org/docid/42c3bcf70.html> [accessed 9 August 2019]
- Jeffrey, A., & Jakkala, M. (2012). Beyond Trial Justice in the Former Yugoslavia. *The Geographical Journal*, 178(4), 290-295.
- Irony in the Social Study of Science. (1983). In K. D. Knorr-Cetina & M. Mulkay (Eds.), *Science Observed: Perspectives on the Social Study of Science Observed: Perspectives on the Social Study of Science* (pp. 239-266). Sage Publications.
- Ivanisevic, B. (2008) *The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court*, International Center for Transitional Justice.
- Kesic, V. (2000). From Reverence to Rape: An Anthropology of Ethnic and Genderized Violence. In M. R. Waller & J. Rycenga (Eds.), *Frontline Feminisms: Women, War and Resistance* (pp. 25–39). Routledge.
- Kirk McDonald, G. (2004). Problems, Obstacles and Achievements of the ICTY. *Journal of International Criminal Justice*, 2, 558-571.
- Kyte, R. (1996). Moral Reasoning as Perception: A Reading of Carol Gilligan. *Hypatia*, 11(3), 97–113.
- LeGrand, C. C. (n.d.). The Colombian Crisis in Historical Perspective. *Canadian Association of Latin American and Caribbean Studies*, 28(55/56), 165-209.
- Levit, N., & Verchick, R. R. M. (2016). *Feminist legal theory (second edition): a primer*. NYU Press.
- Lorber, J. (1995). *Paradoxes of gender*. Yale University Press.
- Mischkowski, G., & Mlinarevic, G. (2009). "...and that it does not happen to anyone anywhere in the world"(Rep.). Cologne: Medica Mondiale.
- Mertus, J. E. (2000). *War's Offensive on Women: The Humanitarian Challenge in Bosnia, Kosovo and Afghanistan*. Kumarian Press.

- Nesiah, V. (2006). *Truth Commissions and Gender: Principles, Policies and Procedure*. *Truth Commissions and Gender: Principles, Policies and Procedure* (pp. 1–56). New York: International Center for Transitional Justice.
- O'Relly, M. Peace and Justice through a Feminist Lens: Gender Justice and the Women's Court for the Former Yugoslavia. *Journal of Intervention and State-Building* , 10, 419–445.
- Prasad, D., & Smythe, T. (1968). *Conscription, A world survey*.
- Perovic, L. (2017). *Women's Court: About the Event in Sarajevo and about Continue the Process*(S. Zajovic & M. Urosevic, Eds.; S. Lazarevic, Trans.). Belgrad, Serbia: Women in Black.
- Ramet, S. P. (2018). *Balkan Babel: The Disintegration Of Yugoslavia From The Death Of Tito To The Fall Of Milosevic, Fourth Edition*. Routledge.
- Ratliff, C. (2006). Postmodern Feminism. In E. Trauth (Ed.), *Encyclopedia of Gender and Information Techniques*. IGI Publishing.
- Reinharz, S. (1992). *Feminist Methods in Social Sciences*. Oxford University Press.
- Rosenbury, L. A. (2016). Postmodern Feminist Legal Theory: A Contingent, Contextual Account. *Feminist Legal Theory in the United States and Asia: A Dialogue* (Cynthia Grant Bowman, ed., 2016 Forthcoming), 16-39.
- Russell, D. E., & Van de Ven, N. (Eds.). (1976). *Crimes against women: proceedings of the International Tribunal* (p. 219). Frog in the Well.
- Shields, S. A. (2008). Gender: An Intersectionality Perspective. *Sex Roles*, 59, 301-311.
- Smith, D. E. (1975). What It Might Mean to Do a Canadian Sociology: The Everyday World as Problematic. *Canadian Journal of Sociology / Cahiers Canadiens De Sociologie*, 1(3), 363. doi:10.2307/3340418
- Snape, D., & Spencer, L. (2003). The Foundations of Qualitative Research. In J. Ritchie & J. Lewis (Eds.), *Qualitative Research Practices* (pp. 1-23). SAGE Publications.
- Roach Anleu, S. L. (1992). Critiquing the Law: Themes and Dilemmas in Anglo-American Feminist Legal Theory. *Wiley on Behalf of Cardiff University*, 19, 423-440.
- The Colombian Peace Talks. (2018, September). Retrieved July 21, 2019.

- Transchel, K. (2007). *The breakup of Yugoslavia: Conflict in the Balkans*. New York: Chelsea House.
- Tong, R. (2009). *Feminist Thought: A More Comprehensive Introduction* (3rd ed.). Westview Press.
- Uygur, G . (2015). "Toplumsal Cinsiyet ve Adalet:Hukuk Adaletsizdir. Ankara Barosu Dergisi, (4), 121-132. Retrieved from <http://dergipark.gov.tr/abd/issue/33839/374686>
- Wendell, S. (1987). A (Qualified) Defense of Liberal Feminism. *Hypatia*, 2(2), 65–93.
- Wolff, K. (2007). Cultural Feminism. In G. Ritzer (Ed.), *The Blackwell Encyclopedia of Sociology*. John Wiley & Sons LTD.
- Wollstonecraft, M. (1996). *A Vindication on the Rights of Women*. Dover Publications.
- Women in Black. (2012, March). Zenski sud. Retrieved from [http://www.zenskisud.org/en/pdf/Novi\\_liflet\\_ZS\\_engl.pdf](http://www.zenskisud.org/en/pdf/Novi_liflet_ZS_engl.pdf)
- Villa-Vicencio, C., & Doxtader, E. (2005). *Pieces of the puzzle: Keywords on reconciliation & transitional justice*. Rondebosch: Institute for Justice and Reconciliation.
- Zabeida, N. (2010). *Not Making Excuses: Functions of Rape as a Tool in Ethno-Nationalist Wars*. In R. M. Chandler, L. Wang, & L. K. Fuller (Eds.), *Women, War, and Violence* (pp. 17-30). Palgrave Macmillan.
- Zajovic, S., Duhacek, D., & Ivekovic, R. (2015). *Women's Court: About the Process*. Belgrad, Serbia: Women in Black.

## **APPENDICES**

### **APPENDIX A : QUESTIONNAIRE OF THE INTERVIEWS FOR THE WITNESSES**

1. Where are you from?
2. How old are you?
3. What is your occupation?
4. Where were you before the war?
5. Can you tell me how was your life before the war?
  1. What is like to be a woman in your daily life? Have you had thoughts about women's place and rights during that time?
  2. How were your thoughts about a justice system? What was a fair trial for you?
6. When you think about the period of war, what is the first thing that come to your mind?
  1. What was the most negative or traumatic side of war for you?
  2. Can you tell me about the changes in your life during the wartime?
  3. Have you had thoughts about peace time or predictions about your future during that time?
7. What are your thoughts on International Criminal Court of Yugoslavia and international community's mechanisms, mainly UN, that are affective in your region?
  1. Did you participate in or get help from any of these mechanisms in the post war period?

2. Do you think that these mechanisms have been beneficial or affective for solving women's problems or bringing justice to the wartime and postwar period crimes?
8. Have you ever applied to the national law mechanisms of our region about the crimes that are committed against you?
  1. If you applied, what are your thoughts on this judgmental process? Do you think that there are problems? What are the missing points in the process?
9. What do you think about feminism?
10. How did you participate in the organization process of Zenski Sud?
  1. How were your feelings and thoughts while deciding to participate in Court's testimony part?
  2. How was the procedure before the trial? Did you feel that your thoughts or feelings have changed during that period?
  3. During the Court testimony part is the most important one. Have you felt that you were listened during this process? What were the elements that make you to think in that way? What is the meaning of testifying in the Court for you?
11. What do you think about a feminist judgmental process?
  1. What are the elements of justice for you?
  2. Are these elements being suitable with a feminist judgmental process?
  3. Do you think it is possible to apply a feminist judgement to the legal systems?
12. After 4 years, do you think that the Court changed the perception of women on the issue of how a feminist judgmental process could be like?
  1. How were your experiences during that 4 years?
  2. Have you felt differences from then on?
  3. Do you think that your experiences can be affective worldwide for women who seeks for justice?
13. What do you think about the future of your region?



## APPENDIX B: METU HUMAN RESEARCH ETHICS COMMITTEE

### APPROVAL PAGE

SOSYAL BİLİMLER ENSTİTÜSÜ  
GRADUATE SCHOOL OF SOCIAL SCIENCES



ORTA DOĞU TEKNİK ÜNİVERSİTESİ  
MIDDLE EAST TECHNICAL UNIVERSITY

DUMLUPINAR BULVARI  
06800 ÇANKAYA/ANKARA  
T: +90 312 210 20 94  
F: +90 312 210 37 03  
sbem@metu.edu.tr  
www.sbe.metu.edu.tr

Sayı: 28620816 / 294

12 Haziran 2019

Konu: Değerlendirme Sonucu

Gönderen: ODTÜ İnsan Araştırmaları Etik Kurulu (İAEK)

İlgi: İnsan Araştırmaları Etik Kurulu Başvurusu

Sayın Dr. Öğretim Üyesi Şerif Onur BAHÇECİK

Danışmanlığını yaptığınız Pınar KURANEL'in "Sarajevo Kadın Mahkemesi Örneğinde Kadınların Feminist Bir Hukuk Anlayışı İnşa Etmesi" başlıklı araştırması İnsan Araştırmaları Etik Kurulu tarafından uygun görülmüş ve 275-ODTÜ-2019 protokol numarası ile onaylanmıştır.

Saygılarımızla bilgilerinize sunarız.

Prof. Dr. Tülin GENÇÖZ

Başkan

Prof. Dr. Tolga CAN

Üye

Doç.Dr. Pınar KAYGAN

Üye

Dr. Öğr. Üyesi Ali Emre TURGUT

Üye

Dr. Öğr. Üyesi Şerife SEVİNÇ

Üye

Dr. Öğr. Üyesi Müge GÜNDÜZ

Üye

Dr. Öğr. Üyesi Süreyya Özcan KABASAKAL

Üye

## APPENDIX C: TÜRKÇE ÖZET/ TURKISH SUMMARY

Bu çalışma ataerkil toplum yapısında ve hukuk sisteminde feminist bir yargılama sürecinin mümkün olup olamayacağını anlamak üzere yapılmıştır. Tarihsel olarak cinsiyet eşitsizliği var olagelmıştır. Bunu kanıtlamak için Hammurabi yasalarından, günümüz dünyasına kadar birçok uygarlık incelenebilir ve karşılaştırılabilir. Özellikle liberal teorinin ortaya çıkması ve modernizasyon süreciyle dünyaya yerleşmesiyle özel ve toplumsal alanlar arasındaki farklılıklar derinleşmiş ve bu adaletsiz hukuk anlayışı erkeklerin özel alanda kendi ülkelerinin egemenleri olarak algılanması anlayışını derinleştirmiştir (Berktaş, 2012). Pozitivizm, objektiflik ve nötr değerlerin aydınlanma süreciyle birlikte liberal düzenin mihenk taşları haline gelmesi, erkekler tarafından yaratılan bu olguların kadınların içerisinde yer alamadığı bir sistem yaratılmasına sebep olmuştur. Özellikle tarafsız ve bağımsız olmaya çalışan hukuk sistemlerinin ve yargılama süreçlerinin birçok konuda kadınlar aleyhine adaletsiz kararlar verdiği şahit olmak mümkündür. Öte yandan modern devletlerin ilişkileri içerisinde gelişen uluslararası hukuk da bu eşitsizliği barındırır biçimde doğmuş ve bir “erkekler kulübü” olarak var olmuştur. Bu noktada, bu iki hukuk mekanizmasını aynı çizgide ve aynı şekilde eleştirmek yerinde olacaktır. Özellikle çatışma/savaş dönemlerinde ve sonrasında öngörülen normalizasyon süreçlerinde kadınların en çok zarar gören grup olduğu açıktır. Birincisinde kadınlar düşman tarafa ait objeler olarak görüldüğü için cinsel şiddete, zorla yerinden edilmeye ve yakınlarını kaybetmeye zorlanırken; savaş sonrası dönemlerde etkili bir biçimde barış süreçlerine dahil edilmemiş ve kırılgan politik ekonomik durumlarda işsizlikle, milliyetçilikle ve toplumsal önyargılarla baş etmek konusunda da yalnız bırakılmışlardır. Bu çerçevede içinde kadınların mevcut durumlarına nasıl karşılık verdiği büyük önem arz etmektedir. Kadınlar, barış dönemlerinde sadece resmi mekanizmaların içinde yer almaya çalışmamış; aynı zamanda kendilerine özel yöntemler de geliştirerek toplumsal barışı sağlamak için çabalamışlardır. Bu çalışmada feminizm tarafından geliştirilen hukuk metotlarının

kadınların geiş dnemlerinde yardımcı olabileceğini ve onların mevcut durumuyla beraber geleceklerini de deęiřtirebileceğini savunmaktayım. Feminist hukuk metotlarının uygulanışının nasıl olacağını ise Saraybosna Kadın Mahkemesi üzerinden göstermeyi ve mahkemeye tanık olarak katılan kadınların bu konudaki düşüncelerini incelemeyi hedefliyorum.

Bu konu üzerine çalışma yapılırken feminist metodoloji kullanılmış ve olaylar feminist bir bakış açısı üzerinden değerlendirilmiştir. Feminist metodoloji toplumsal cinsiyeti merkezine oturtur ve kadınların deneyimlerine önem verir; aynı zamanda arařtırmacı ve öznesi arasında hiyerarşik bir ilişkiyi reddeder (Hammersley, 1992). Bütün bu noktalara ek olarak, feminist metodoloji nicel analizin beşerî bilimlerde asıl durumun ortaya çıkmasını engellediğini savunur (Harding, 1996). Çalışmayı yaparken ben de tarafsız bir tutum belirlemedim. Öncelikle ailemin Bosna Hersek'ten Türkiye'ye göçmüş bir aile olması ve benim de bir kadın ve feminist olarak adaletsizlikleri görmüş olmam arařtırmadaki pozisyonumu belirledi. Nitel arařtırma yöntemi kullanarak, mahkemeye tanık olarak katılmış 11 kadınla yarı-yapılandırılmış ve ucu açık sorulardan oluşan mülakatlar gerçekleřtirdim.

Saraybosna Kadın Mahkemesi bir bütün olarak tek bir katmandan oluşmamakta, içerisinde birçok katmanı barındırmakta olan bir oluşum. Öncelikle, mahkeme tek başına bir adalet arayışını temsil etmekte. Bunu yaparken de kadınların savař öncesi, sırasında ve sonrası durumlarını incelemekte ve dięer insanların duymasını sağlamakta. Bunlara ek olarak, mahkeme savař sonrası 7 farklı cumhuriyete bölünmüş ve yükselen milliyetçilik ve devlet inřası etkisi altında olan insanlara bir çıkış yolu göstermeye çalışmakta. Konuyu net bir şekilde ifade edebilmek için çalışmayı altı ana bölüm halinde anlatmayı tercih ettim.

Birinci bölümde çalışmanın kökenini, amacını, metodolojisini ve önemini açıklarken, ikinci bölüm teorik ve kavramsal çerçeveyi sunmayı amaçlamaktadır. Bu bölümde öncelikle feminizmin ne olduęu açıklanmıştır. Bu noktada bell hooks'un tanımı yeterince açıklayıcı ve bütünleyici görülmüştür. Ona göre feminizm cinsiyetçi bakış

açısını, cinsel sömürüyü ve baskıyı sonlandırma amaçlı bir harekettir (hooks, 2000). Ama yalnızca bu tanımlama feminist teori içerisinde gelişen farklı anlayışları özetlemeye yetmez. Bu doğrultuda, feminist hukuk teorisine 4 farklı teorik perspektiften getirilen yorumlar ve açıklamalar, teorik arka planlarıyla birlikte sunulmuştur. Bütün teorik yaklaşımlar birbirinden farklı çözümler önermektedir: liberal feminizm kadın ve erkeğin hukuk sistemi önünde tam eşitliğini savunurken, kültürel feminizm kadının erkekten daha farklı yetiştirildiğini ve bu sayede farklı türde hükümlere vardığını belirterek, kadın bakış açısının hukuk teorisini değiştirebileceğini ve geliştirebileceğini savunur. Öte yandan radikal feminizm bilinç yükseltme grupları ile kadınların kendi deneyimlerinin farkına varmasını ve bu farkındalıkla hem devlet hem de hukuk sistemini değiştirecek yönde adımlar atmasını öngörmektedir. Bu sayede kadınların bir grup olarak baskın olacağını ve ataerkil sisteme bir son vereceğini savunmaktadır. Postmodernist feminist bakış açısı ise bütün bu teorileri tek bir özne yaratmanın feminist mücadele için doğru olmayacağını iddia etmektedir. Bu bakış açısına göre çoğulculuk en doğru metottur. Buradan hareketle hukuk alanında verilen mücadelede de öznelerin çoğaltılmasının gerekliliğinin altını çizmektedir. Teorik ve kavramsal çerçevede en önemli nokta feminist hukuk metodlarının açıklanmasıdır. Katharine Bartlett'in öne sürdüğü 3 metot: kadın sorusu sorma, bilinç yükseltme ve feminist pratik uslamlamadır. Birinci metotta önemli olan yargılama mekanizmaları ve sisteminde kadının nerede ve nasıl durduğunu sorgulamak ve kadının pozisyonunu öne çıkarmaktır. İkinci metot ise kadınların bir araya gelerek tecrübelerini paylaşmalarını ve sorunlarının kökenini ortaya çıkarmalarını amaçlar. Bu sayede kadınlar değişim için gereken motivasyonu kendilerinde bulabileceklerdir. Üçüncü ve son olarak, feminist pratik uslamlama yargı sisteminin karar alma şeklini ne kadar eril bir yapıya sahip olduğunu ortaya çıkarmayı amaçlamaktadır. Bu mekanizmanın aldığı kararları kavramsal çerçevede açıklayarak, kavramsal çerçeveyi hukuki perspektife yerleştirmeyi hedef edinmektedir (Bartlett, 1990). Özet olarak feminist hukuk metodları var olan sistemi tamamen değiştirmekten ziyade kadınlar için daha adaletli ve adil bir sistemin yaratılmasını hedefler; bu sayede yargı içindeki ataerkil zihniyetten kurtulunması mümkün olacaktır.

Üçüncü bölümde, kadınların savaş ve çatışma alanlarındaki durumları, sonrasında oluşan barış ortamında yaşadıkları ve bütün olarak bu durumlara tepkileri tarihte gerçekleşen 3 olay üzerinden anlatılmaktadır. Bunlardan önce ise, olaylara bakış açısını güçlendirmek için toplumsal cinsiyetin ne olduğunun açıklaması yapılmaktadır. Çalışmanın içeriğine uygun olarak duruma toplumsal cinsiyetlendirilmiş bir bakış açısı getirmek çok büyük önem arz etmektedir. Meseleyi sadece kadın ve erkek arasındaki ilişkiye indirgemek problematik bir yaklaşım doğurmakta, bunun yerine toplumsal cinsiyeti ve kadınlar arasındaki eşitsizlikleri de içeren bir tanımlama yaratmak mecburidir. Bu noktada ise, kesişimsel feminist teori kapsamlı bir zemin ve gerekçelendirme oluşturur çünkü bu teoriye göre sosyal yapıdan ve kimlikten bağımsız bir toplumsal cinsiyet tanımından bahsetmek mümkün değildir. Bu çalışmada da kadın kelimesi ve toplumsal cinsiyet kavramı bu doğrultuda kullanılmaktadır. Toplumsal cinsiyetin ne olduğunu ve ne doğrultuda kullanıldığını açıkladıktan sonra ise kadınlar savaş ve çatışma alanları arasındaki ilişki açıklanmıştır. Bu noktada “tecavüz kültürü” nün ne olduğunu açıklamak teorik anlayışı ve bağlantıyı gerçekleştirmek için önemlidir. Susan Brownmiller’a göre bir savaş ya da çatışma alanında tecavüz ve cinsel şiddet kadınlar için her zaman kaçınılmaz olmuştur. Kazanan taraf şiddeti uygularken iki temel motivasyona sahiptir: birincisi kadın bedenleri de kazanılan toprak parçasına ile bir bütün olarak görülür, ikinci olarak ise bir noktada bu durum askerlerin ödülü olarak algılanır (1975). Bütün bunlara ek olarak, özellikle yükselen milliyetçilik akımları ve bunların sonucunda çıkan çatışmalarda, cinsel şiddet ve özellikle tecavüz saldıran tarafın etnik temizlik için kullandığı bir metot halini almıştır (Zabeida, 2010). Fakat kadınlar ve erkekler yine yukarıda bahsedilen tanımdan hareketle sadece aktif, saldırgan ya da. Pasif ve saldırılan konumlarına sığmamaktadır. Sık bir şekilde kadınların savaşta ve çatışmada şiddet uygulayıcıları ya da harekete geçiricileri olarak görüldüğü ortadadır. Öte yandan erkeklerde vicdani ret ve seferberlik çağrılarından kaçınma eylemiyle saldıran değil saldırılan tarafta yer alabilmektedir. Bu çerçeveyi ve çalışmanın bakış açısını anlattıktan sonra üç çatışma/savaş alanı (İkinci Dünya Savaşı, Kolombiya İç Savaşı ve Yugoslavya İç Savaşı), kadınların bu çatışmalar sırasında ve sonrasında yaşadıkları ve bunun üzerine kadınların benimsediği ve yarattığı bir direniş şekli olarak kadın mahkemeleri

örnekleri anlatılmıştır. Birinci örnekte, İkinci Dünya Savaşı sırasında Japonya İmparatorluğu tarafından işgal edilen alanlardan esir alınan kadınların “rahatlama merkezleri” denen yapılarda askerler tarafından cinsel şiddete ve tecavüze uğradığı görülmektedir. Buna karşılık olarak ise, bu merkezlerden kurtulan kadınlar savaşın bitmesinden 50 yıl sonra bile tanınmadıklarını ve resmi bir özür dilenmediğini ifade ederek 2000 yılında ilk defa kadınların savaş zamanında işlenen suçlara dair konuştuğu ve ifade verdiği defacto bir mahkeme kurmuşlardır. Bu noktada kadınlar sadece Japonya devletinin değil, savaş sonrası kurulan ve bu meseleye değinmeyen uluslararası bir mahkeme olan Nürnberg Mahkemeleri’ni de eleştirmişlerdir. Mahkeme formal bir şekilde işlemiş, son karar yargıçlar tarafından açıklanmıştır. Mahkemeye tanık olarak katılan iki eski asker de savaş sırasında kadınlara karşı işlenen bu suçların belgelenmesine katkıda bulunmuşlardır. 50 yıldan fazla süren Kolombiya İç Savaşı ise yine en büyük hasarı kadınlara vermiştir. Kadınlar bu iç savaş esnasında zorla yerinden edilmeye, toplu katliamlara ve süregiden cinsel şiddete maruz kalmış hem öldürülmüş hem de yakınlarını kaybetmişlerdir. Bu duruma karşı kadınlar yine kadın mahkemesi kurarak hem dayanışmak hem toplumsal anlaşmazlıkları gidermek hem de iç savaş sona erdirecek çözümler için taleplerde bulunmayı hedeflemişlerdir. İlk mahkeme 2005’te iç savaş hala sürerken ülke çapında katılımcılarla yapılmış ve Güney Asya örneğinin aksine daha informal bir süreç yürütülmüştür. Kadınların kendilerini sanat yoluyla ifade etmeleri sağlanmış ve psikolojik desteğe büyük önem verilmiştir. Bu mahkemeyi takiben yine Kolombiya’dan üç ayrı mahkeme daha düzenlenmiştir. Bu bölümde ayrıca uluslararası adalet mekanizmalarının yargılama süreçlerinin çatışma alanından barış dönemine geçiş döneminde kadınların problemlerine çözüm bulamadığına değinilmiştir. Aynı zamanda yine çatışma dönemlerinden sonra oluşturulan Hakikat Komisyonları’nın da bu noktada yetersizliği açıklanmıştır.

Dördüncü bölümde ise savaş sonrası eski Yugoslavya ülkelerinin durumu detaylı bir şekilde incelenmiş ve kadınların neden kendileri için taleplerde bulundukları ortaya çıkarılmaya çalışılmıştır. Öncelikli olarak savaş sonrası kurulan Eski Yugoslavya Savaş Suçları Mahkemesi’nin problematik uygulamaları açıklanmıştır. Bu mahkeme

savaş suçlularını yargılama konusunda yetersiz bulunmaktadır. Sadece üst sınıf askeri ve idari personel yargılanmış; verilen cezalar da buna ek olarak yetersiz kalmıştır; özellikle mahkemede cinsel şiddet ve sistematik tecavüz hakkında ifade veren kadınlar verilen cezaların yetersizliğini belirtmişlerdir (Mischkowski et. al., 2009). Bütün bunlara rağmen mahkemenin tecavüzü insanlığa karşı işlenen suçlara dahil etmesi önemli bir gelişme olarak görülmektedir. Bölgesel olarak bakıldığında ise adaletsizlik daha sistematik ve yaygındır. İlk savaş suçları mahkemesi 2003'te Hırvatistan'da kurulmuştur. 2009'a kadar ise tanıkların korunması ve savaş suçlularının cezalandırılması bir sorun halini almıştır. Dikkat çekici olan ise bu mahkemelerde Sırp asıllı Hırvatistan vatandaşlarının Hırvat asıllı vatandaşlara oranla daha fazla hüküm almasıdır (Human Rights Watch, 2004). Bunlara ek olarak, mahkeme personelinin korunması konusu da sıkıntılı bir durumdadır. Aynı yıl Sırbistan'da da savaş suçluları için özel bir mahkeme kurulmuştur. İlk örneği takiben bu mahkemenin de karar alma mekanizması sorunludur. Suçlamalar yetersiz bulunmuş ve verilen cezalar göstermelik olarak kalmıştır. Özellikle savaş suçları konusunda sorumlu olarak gösterilen polis teşkilatına dair hazırlanan yetersiz iddianameler tepki yaratmıştır. Yine Sırbistan'da da yargıçlar ve savcılar ölüm tehditlerine ve başka tehlikelere maruz bırakılmakta, yargı personeli için yeterli olan koruma sağlanamamaktadır (Human Rights Watch, 2004). Bu örnekler 2005'te Bosna Hersek tarafından takip edilmiş fakat ülkede Dayton Barış Anlaşması tarafından yaratılan özerk mekanizmalar ciddi problemler doğurmuştur. Özellikle Sırp asıllı vatandaşların yoğunlukta olduğu Brcko bölgesindeki yargılamalar tanıklar tarafından ciddi problemlere sahip olarak ifade edilmektedir. İddianamelerin yetersizliği, sürekli olarak tekrarlanan ifade işlemleri, güvenliğin ve korumanın yetersizliği ve otoriteler tarafından ciddiye alınmama ve saygısız davranışlar yükselen şikayetler arasındadır (Mischkowski & Mlinarevic, 2009). Kosova'da ise bağımsız bir adalet bakanlığı ve mahkeme sistemi kurulmasına rağmen savaş suçları Avrupa Birliği'nin özel bir kolu olan EULEX tarafından yürütülmektedir. Fakat, bu yargılama sisteminde de ciddi kusurlar bulunmaktadır. Özellikle Arnavut asıllı vatandaşların yargılanması bağımsızlık sürecinde oluşan elit sınıf ve şükran borcu nedeniyle problematik bir hal almış, birçok adaletsizlik ortaya çıkmıştır (Capussela, 2015). Kuzey Makedonya Cumhuriyeti ise zayıf bir yargı

sistemine sahip olmakla eleştirilmektedir. 2004'te yapılan yargı reformuyla yargının verimliliği ve bağımsızlığı arttırılmaya çalışılmış fakat parlamento tarafından 2011 yılında çıkartılan aflu Eski Yugoslavya Savaş Suçları Mahkemesi'nden ceza almış suçlulara yönelik yaptırımlar ortadan kaldırılmıştır. Bu durum Kuzey Makedonya'nın yargı bağımsızlığı önünde bir engel olarak yorumlanmıştır ("Post-war justice and durable peace in the Former Yugoslavia", 2012). Bunlara ek olarak, Karadağ'da da sorunlu bir sistem mevcuttur. 2008'de savaş suçları için özel olarak oluşturulan iki mahkeme (Podgorica ve Bijelo Polje üst mahkemeleri) 2011'den 2013'e kadar sadece dört vaka inceleyebilmiş ve bunlardan sadece bir tanesini sonuçlandırabilmiştir. Bu duruma ek olarak mahkemelerin mağdurlara geniş bir koruma sağlayan uluslararası yasaları değil, sınırlı domestik ve uluslararası yasaları uygulamaya çalıştığı gözlemlenmiştir. Bu sayede Karadağ polis teşkilatı üyelerinin ve eski Yugoslavya Halk Ordusu mensuplarının koruma altına alınmaya çalışıldığı belirtilmektedir ("War Crimes Tribunals in Montenegro, 2013). Her vakada ve örnekte bölgedeki adalet sisteminin ne kadar adaletsiz olduğu ve mağdurlar için tersine işlediği apaçık ortadadır. Adalet, eski Yugoslavya ülkelerinin vatandaşları için ya çok yavaş gelen ya da hiç gelmeyen bir olgudur. Bütün ülkeler savaş suçlularını korumaya çalışmış ve kendi devlet mekanizmalarını oluştururken azınlık haklarını ihmal eder nitelikte davranışlar ve kararlar ortaya koyduğunu kanıtlamışlardır. Bu noktada kadınların duruma nasıl tepki verdiği ve direniş şekilleri yüksek önem arz etmektedir. Saraybosna Kadın Mahkemesi ise bu perspektif içinde önemli bir yer tutar. Savaşın sadece fiziksel şiddet boyutlarını değil, ekonomik, psikolojik ve siyasi zararlarını da ortaya çıkarmayı ve bölgedeki kadınlar arasında bir dayanışma ve birliktelik ağı kurmayı amaçlayan bu mahkemeyi özel kılan niteliklerden biri uzun süren hazırlanma sürecidir. Aslında 2002'de Zarana Papić tarafından öne sürülmüş bu fikir, gerçekleşmek için 13 yıl beklemek durumunda kalmıştır. Bu süreç içinde bölgedeki sivil toplum ve hak arama örgütlerini ilk başta tatmin eden sonrasında ise hayal kırıklığı yaratan oluşumlar ortaya çıkmıştır. Bunlardan biri uluslararası mahkemenin uzun süren karar alma mekanizmasıdır. Diğerisi ise, RECOM adı altında eski Yugoslavya ülkelerinde işlenmiş suçlar için oluşturulan hakikat komisyonudur. Bu iki adalet mekanizmasının yetersizliği ortaya çıkınca sivil toplum ve hak arama örgütleri tarafından kadın



mahkemesi için bir süreç başlatılmıştır (Zajovic, 2015). 2010’da başlatılan bu hazırlık sürecinde kadınların sorunları ve yaşadıkları detaylı olarak incelenmiş ve mahkeme süreci de bu haksızlıkların ve adaletsizliklerin hepsini yansıtacak şekilde hazırlanmıştır. Kadınların ekonomik, sosyal ve etnik eşitsizliklerden çektikleri savaş zamanı yaşadıkları travmalarla birlikte dile getirilmeye başlanmıştır. Kurulan organizasyon komitesi Belgrad’da bulunan “Women in Black” (Siyahlı Kadınlar) adlı sivil toplum örgütü öncülüğünde bölgesel komiteler, eğitimler ve sunumlar hazırlamış; katılımcıların tanıklık sürecine hazırlanmakta etkili bir psikolojik destek almasını sağlamıştır. Bir diğer önemli husus olarak, katılımcı tanıklar arasında acı hiyerarşisini ortadan kaldırmayı amaçlamış ve birliktelik içinde olmalarını hedeflemiştir. Yani savaşta oğlunu seferberlik yüzünden kaybeden Sırp bir kadınla, kamplarda tecavüz ve sistematik cinsel şiddete maruz bırakılmış bir kadının ortak acılarının farkına varması sağlamaya çalışılmıştır. Bu süreçte, organizasyon komitesi dışında 200 sivil toplum ve hak arama örgütü yer almıştır (Duhacek, 2015). 2015’te 7-10 Mayıs tarihleri arasında gerçekleştirilen mahkemede ise 36 kadın yaşadıklarını anlatan ifadeler vermişlerdir. Mahkeme 5 bölümden oluşacak şekilde dizayn edilmiştir: sivillere yönelik savaş, bir savaş alanı: kadınların bedeni, militarist şiddet ve kadınların direnişi, devam eden toplumsal cinsiyete dayalı şiddet ve savaş sonrası ekonomik-sosyal şiddet. Ayrıca her bölüme özel olarak oluşturulan danışma komiteleri yine mahkemede bütün bu bölümlerin neden önemli olduğunu anlatan sunumlar yapmıştır. Mahkeme sonucunda oluşturulan hakimler heyeti ise son kararı açıklamış, sadece savaş suçlularını değil; o dönemde etkili olan bütün politik tarafları sorumluluk sahibi ilan etmişlerdir.

Saraybosna Kadın Mahkemesi, adalete feminist bir yaklaşım adı altında düzenlenen bir oluşumdur. Bu noktada mahkemenin feminist hukuk metotları uygulayıp uygulamadığını incelemenin önemli olduğunu düşünmekteyim. Birincil olarak, Saraybosna Kadın Mahkemesi’nin Bartlett’in metotlarından ilkinin, yani kadın sorusu sorma metodunu tam anlamıyla uyguladığı görülmekte çünkü mahkemenin kendisi bir kadın sorusu. Savaşı geçiren 20 yıl içinde ve ayrıca savaşın içinde kadınların nerede olduğunu, ne pozisyonda tutulduğunu ve neler yaşadıklarını ortaya çıkarmayı amaçlamakta ve hukuki mekanizmalarda var olan ataerkil düşünce yapısını ortaya

çıkartmaktadır. Buna ek olarak, katılımcı kadınların yanı sıra bölgedeki diğer kadınların da eğitimlerle kadın sorusunu sormasını sağlamış ve başlarına gelenler hakkında konuşma konusunda onlara cesaret kazandırmıştır. Bu sayede kadınların kendilerini sadece mağdurlar olarak değil aynı zamanda adalet talep eden ve hak arayışında olan özneler olarak görmesini sağlamıştır. İkinci metodun, yani bilinç yükseltme gruplarının, uygulanışı ise Saraybosna Kadın Mahkemesi'nin en başarılı yanı olarak görünebilir. Sadece mahkeme süreci değil, öncesinde gerçekleştirilen 5 yıllık hazırlık programında kadınların birbirlerinin sorunlarını anlamasını ve tanımasını sağlamış, aynı zamanda bölgede uzun zamandır var olan etnik ayrımcılık ve yükselen milliyetçiliğe karşı kadınların tek bir cephede birleşebilmesine olanak vermiştir. Kurulan bu güçlü dayanışma ve birliktelik ağının yanı sıra, tanıklara bölgesel ve uluslararası alanda harekete geçme ve diğer kadınlara ulaşma gücü vermiştir. Ayrıca yukarıda bahsedildiği üzere acı hiyerarşisini yıkmaya çalışmış ve kadınların birbirlerini her türlü olumsuz, adaletsiz duruma karşı beraber mücadele veren özneler olarak görmesini sağlamıştır. Son olarak, mahkeme feminist pratik usamlamanın da doğru bir örneğini göstermektedir. Bu yöntem kapsama ve kavramsal çerçeveye bakmayı ve onları genişletmeyi hedefleyen bir amaca sahiptir ve mahkeme de kadınları kendi hikayelerinin anlatıcıları haline getirerek onları var olan sistemde gösterilmeyen/gizlenen hikayelerini anlatmaya teşvik etmiştir. Özellikle hazırlık aşaması kadınlara bu gücün verilmesinin en etkili yeri olmuştur. Kısaca, Saraybosna Kadın Mahkemesi feminist bir yargılama sürecinin nasıl olması gerektiğini ve kadınları ne kadar güçlendireceğini kanıtlar niteliktedir. Bu yargılama sürecinin katılımcı kadınlar açısından mümkün olup olamayacağını da sorgulamanın önemli olduğu kanaatindeyim. Fakat bundan önce feminist bir yaklaşım adı altında düzenlenen mahkemeye katılan tanıkların kendilerini ideolojik olarak konumlandırmasının da önemli olduğunu düşünmekteyim. 11 katılımcının tamamı da kendini feminist olarak tanımlarken feminizmi devletler tarafından ortaya konan pozitivist ayrımcı politikalardan ayırmışlar ve feminizmi aktivizm olarak yorumlamışlardır. Özellikle Avrupa Birliği uyum süreçlerinde işletilen ve kadınlara eşit bir pozisyon vermeyi hedefleyen devlet politikaları birçoğuna göre ataerkil düşünen kadınların hakimlik, savcılık ve parlamenter pozisyonlarına gelmesini

sağlamış ve kadın mücadelesinin temellerini zayıflatan bir durum yaratmıştır. Bu durumun yanı sıra katılımcıların büyük çoğunluğu Saraybosna Kadın Mahkemesi'nin feminist bir yaklaşım sergilediğini düşünmektedir. Ve yine birçoğuna göre bu, oluşturulması mümkün olan bir yargılama sürecidir. Fakat tanıklar bu süreci Bartlett'ın metotları çerçevesinde ifade etmemişlerdir; onlara göre feminist bir yargılama süreci kadınların süreç içerisinde aynı Saraybosna örneğinde olduğu gibi birer özne olarak algılandığı ve yaşadıklarını olduğu gibi ifade edebildiği bir sistemdir. Bunun yanı sıra, oluşturulacak yerel ve genel kadın mahkemelerinin kadınların bu yargılama süreci için mücadele yolunda önemli bir motivasyon olduğunu dile getirmişlerdir. Sonuç olarak Saraybosna Kadın Mahkemesi feminist bir yargılama sürecinin mümkün olduğunu ve gerçekleştirilirse ataerkil sistemi kökten değiştirebilecek bir olay olduğunu göstermiştir.

Çalışmanın sonuç bölümünde ise, olası tartışmalara ve çalışmanın eksiklerine yer verilmiştir. Kosovalı tanıklarla mülakat yapma fırsatının olmayışı mahkemenin onlar üzerinde nasıl bir etki yarattığını ve ne düşündüklerini öğrenmemi ve bunu çalışmaya yansıtmanı engellemiştir. Bunun yanı sıra, bu çalışmanın sadece savaş ve çatışma dönemlerinden çıkarak hak arayışı içerisine giren kadınlarla değil, bu zorluklara tanık olmamış kadınlarla da yapılması gerektiği kanaatindeyim. Adaletsizliğin en yüksek mertebesini yaşamış kadınların var güçleriyle mücadele içerisine girmesine ve haksızlıklara direnmesine ek olarak gündelik hayatta yaşayan kadınların sistemi ve olası bir değişimi nasıl değerlendirdiğini araştırmak gerekmektedir. Sonuç olarak feminist bir yargılama süreci zor olsa da imkânsız bir uygulama değildir ve gerçekleşmesi zaman alsa da uygulamaya konulursa mevcut dünya düzenini tamamen değiştirebilir niteliktedir.

## APPENDIX D: TEZ İZİN FORMU/ THESIS PERMISSION FORM

### TEZ İZİN FORMU / THESIS PERMISSION FORM

#### ENSTİTÜ / INSTITUTE

- Fen Bilimleri Enstitüsü / Graduate School of Natural and Applied Sciences ☐
- Sosyal Bilimler Enstitüsü / Graduate School of Social Sciences ☒
- Uygulamalı Matematik Enstitüsü / Graduate School of Applied Mathematics ☐
- Enformatik Enstitüsü / Graduate School of Informatics ☐
- Deniz Bilimleri Enstitüsü / Graduate School of Marine Sciences ☐

#### YAZARIN / AUTHOR

Soyadı / Surname : Kuranel  
Adı / Name : Pınar  
Bölümü / Department : Toplumsal Cinsiyet ve Kadın Çalışmaları

TEZİN ADI / TITLE OF THE THESIS (İngilizce / English) : Is it possible to construct a feminist judgmental process: The Women's Court of Sarajevo

TEZİN TÜRÜ / DEGREE: Yüksek Lisans / Master ☒ Doktora / PhD ☐

1. Tezin tamamı dünya çapında erişime açılacaktır. / Release the entire work immediately for access worldwide. ☒
2. Tez iki yıl süreyle erişime kapalı olacaktır. / Secure the entire work for patent and/or proprietary purposes for a period of two year. \* ☐
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A copy of the Decision of the Institute Administrative Committee will be delivered to the library together with the printed thesis.

Yazarın imzası / Signature .....

Tarih / Date .....