



Complicit masculinity of judges: Unjust provocation mitigation in femicide in Turkey

OÑATI SOCIO-LEGAL SERIES VOLUME 14, ISSUE 5 (2024), 1497-1523: NIKLAS LUHMANN'S SYSTEMS THEORY AND SOCIOLOGY OF LAW

DOI LINK: [HTTPS://DOI.ORG/10.35295/OSLS.IISL.2088](https://doi.org/10.35295/osls.iisl.2088)

RECEIVED 15 APRIL 2024, ACCEPTED 22 JULY 2024, VERSION OF RECORD PUBLISHED 1 OCTOBER 2024

EYLEM ÜMIT ATILGAN* 

Abstract

The paper focuses on how unjust provocation reduction, regulated in Article 29 of the Turkish Penal Code, is applied in cases of violence against women, LGBTI, and transgender individuals in Turkey, also known as “masculinity sentence reduction” by feminist lawyers. In particular, I will look into case files in which the “masculinity defence” made by almost all perpetrators in femicide cases is accepted by the court as a justification for reducing the sentence of the perpetrator. I will examine how masculinity is portrayed in judicial decisions, specifically looking at provocation defences to demonstrate how jurisdiction plays a part in perpetuating masculine domination within society. Using theories of masculinity and masculine domination, I will try to reveal the contribution of judges to the “masculine legal culture” as a form of “complicit masculinity”.

I would like to thank the reviewers for their thoughtful comments and efforts towards improving my manuscript. I also express my gratitude to OSLS editor, Leire Kortabarria, for her diligent efforts.

This article is based on a book that emerged from more than 15 years of empirical research and was newly published in Turkish at the time this article was accepted for publication: Atılgan-Ümit, E., 2024. *Haksız Tahrik, Bir Erkeklik Hakkı, İletişim*. My associate professorship thesis in which I analysed unjust provocation case files with this method and in the light of a broader problematic and more comprehensive theoretical framework, was published in 2015 for limited academic circulation (Atılgan-Ümit, E., 2015. *Türkiye'deki İç Hukuk Kültürü Üzerine Sosyo-Hukuki Bir Araştırma, Haksız Tahrik Kararlarında Eril Tahakkün Kodları* [A Socio-Legal Research on the Internal Legal Culture in Turkey, Masculine Domination Codes in Unjust Provocation Decisions]. Ankara: Turhan Kitabevi. For a study that follows the path I have drawn in my thesis and claims to examine sexist codes in unjust provocation cases, but is far from socio-legal analysis of legal culture and repeats the point I made in my associate professorship thesis (2015), see Muftuler-Bac, M., and Muftuler, C., 2020. The defence of provocation in femicides in Turkey: The interplay of legal argumentation and societal norms. *European Journal of Women's Studies*, 28(2), 159-174.

* Eylem Ümit Atılgan holds a PhD from the Philosophy and Sociology of Law Department of Ankara University Law Faculty. She received Philosophy and Sociology of Law associate professorship from Turkish Interuniversity Board (ÜAK) in 2015. She has worked as a visiting scholar at Humboldt, Turin, and Macerata Universities, and has conducted studies on legal culture and feminist legal theory. She is the Vice Dean of the University of Kyrenia Law Faculty, as well as a full-time associate professor at both Kyrenia and Near East University. Email: eylem.atilgan@neu.edu.tr

Key words

Feminist Legal Theory; femicide; masculinity; legal culture; socio-legal studies

Resumen

Este artículo se centra en cómo se aplica la reducción por provocación injusta, regulada en el artículo 29 del Código Penal de Turquía, en casos de violencia contra mujeres, personas LGBTI y transexuales en Turquía, también conocida como “reducción de la pena por masculinidad” por las abogadas feministas. En particular, examinaré los expedientes de casos en los que la “defensa de la masculinidad” esgrimida por casi todos los agresores en casos de feminicidio es aceptada por el tribunal como justificación para reducir la condena del agresor. Examinaré cómo la masculinidad es retratada en las decisiones judiciales, concretamente observando las defensas de provocación para demostrar cómo la jurisdicción juega un papel en la perpetuación de la dominación masculina dentro de la sociedad. Utilizando las teorías de la masculinidad y la dominación masculina, intentaré revelar la contribución de los jueces a la “cultura jurídica masculina” como una forma de “masculinidad cómplice”.

Palabras clave

Teoría Jurídica Feminista; femicidio; masculinidad; cultura jurídica; estudios sociojurídicos

Table of contents

1. Introduction	1500
2. Law in context: Understanding masculine legal culture through the court files	1501
2.1. Law in context: Legal culture and masculine legal culture	1501
2.2. Methodology: Court files and beyond.....	1502
3. Unveiling the role of unjust provocation mitigation in femicide cases: impunity pattern in femicide	1506
3.1. Masculinity defence as a pattern of impunity	1507
3.2. Masculinity defence and complicit masculinity of judges in femicide	1509
4. Conclusion.....	1516
References.....	1518
Legislation.....	1522
Jurisprudence	1522

1. Introduction

In Turkey, 407 women were killed by men in 2023.¹ Despite the fact that the number of killed women continues to rise over time, femicide is not yet recognised as a major crime in the Criminal Code. Not only is femicide not penalised, but almost all male murderers receive reduced sentences for unjust provocation reasons such as “she wanted a divorce” or “she insulted my masculinity.” In homicide cases, courts often reduce jail sentences by three-quarters based on so-called unjust provocation Turkish Criminal Code 2004, Article 29). The Ministry of Justice does not keep records of femicides sentence reductions. Feminist networks, on the other hand, unite to collect data on femicide by participating in criminal cases.² Feminist platforms report annually on gender bias and discrimination in the justice system. According to these reports, men are the ones who benefit the most from unjust provocation and receive a reduced sentence. Apart from that, so-called unjust acts of women are viewed as an assault on masculinity, whereas a man’s act of murdering is viewed as a defence of masculinity. As a result, Turkish feminists used the term “masculinity defence / masculinity sentence reduction” (Eyüboğlu 2011) to refer to the gendered nature of sentence reduction.³

Women who are murdered in Turkey are usually killed by their husbands, ex-husbands, boyfriends, brothers or fathers. Toprak and Ersoy state that 86,6% of femicide victims knew the perpetrators. (Toprak and Ersoy 2017) Other studies also show that most victims of femicide had an ongoing relationship with the perpetrator (Akkaya and Balcı 2013, 736, Yılmaz *et al.* 2015, Çalışkan 2019, 235). When the decisions are examined, it can be seen that the sentences are reduced for reasons such as refusing to have sexual intercourse with the husband, asking for more sexual intercourse, wearing white pantyhose, showering frequently, cooking pasta frequently, coming home later than the husband, going out without the husband’s permission, wanting a divorce, refusing to reconcile, using birth control pills, etc. All of these acts are seen as disobedience to masculine domination and as breaking the oppression of women by patriarchy. The judges define such acts by women as unjust provocation against masculinity and justify the femicide by granting them a masculinity sentence reduction.

My aim in this article is to show the role of the judiciary and the state in promoting femicide. I make two related arguments. First, I discuss the “masculinity defence” as a pattern of impunity. Masculinity defence demonstrates the extent of gender inequality in the courtroom and how “states of masculinity” and masculine codes are reflected in everyday practice and discourse in court decisions. Second, I argue that the masculinity defence not only serves to reduce punishment but also plays a role in the social construction of masculinity. Using the term “complicit masculinity” that Connell introduced to masculinity studies, I conceptualize the role of jurists in protecting

¹ Numbers are taken from <http://anitsayac.com>. This online Monument Counter honours women massacred by males for being women. The number of femicides may be greater. In Turkey, the state does not track violence against women. Women’s organisations monitor violence against women and publish shadow reports. The pattern of impunity in women’s cases is also based on the information we obtain from these reports. Regarding discussions of the impunity for femicide, see Atılgan 2020.

² See: <https://tkdf.org.tr/bizden-haberler/2023-yili-kadin-cinayetleri-verileri-raporu>; <https://www.instagram.com/kadincinayetlerinidurduracagiz/>

³ Sarkamo *et al.* (2017, 73) use the terms “maleness reduction” or “reduction of masculinity”. I prefer “masculinity sentence reduction” because it states the reduction arises from masculinity.

masculinity in misogynist states as “complicit masculinity” (Connell 2005, 79), referring to the jurisprudence of unjust provocation. I will support these arguments by presenting empirical data from internal and external legal culture.

2. Law in context: Understanding masculine legal culture through the court files

Since re-locating law to its social context requires not being limited to the lexicon of the research object itself, the transitivity of the boundaries of disciplines, perspectives and movements that we can count within the social sciences constitutes a kind of presupposition. In Silbey’s terms, this type of research aims at “exploring law as a cultural system” (Silbey 2013, s. 24–25). Herein lies the reason why I designed socio-legal research while researching the questions I was curious about the unjust provocation mitigation. The meaning of “socio” in the term here is not only an invitation to social sciences. I agree with Wheeler and Thomas’ view that the word “socio” refers to a kind of “interface” with the sociological, economic, historical, geographical, etc. context in which the law is embedded (Wheeler and Thomas 2000, 271). By unveiling this interface, we can understand why judges apply the masculinity reduction even though it is against the law, without having to look at whether they have this intention at the conscious level.

Furthermore, only the approach of socio-legal research can provide answers to my research questions. Indeed, the nature of the knowledge I want to reach in this research is, in my opinion, characterised by two different understandings of society. Law’s understanding of society and social relations, as a way of knowing, differs from that of sociology in general. Banakar and Travers emphasise that it is a difficult, if not impossible, task to fuse law’s picture of society shaped by formal practices, formed by the evaluation of individual and singular cases, with a sociological picture of society shaped by scientific curiosity and motivated towards a generalizable knowledge of society.

2.1. Law in context: Legal culture and masculine legal culture

It is generally accepted that unwritten cultural elements affect legal decision-making processes and corresponding consequences (Friedman and Macaulay 1969, 1003). I understand “legal culture in its most general sense as a way of describing relatively stable patterns of legally oriented social behaviours and attitudes” (Nelken 2004, 1). “Like culture itself, legal culture is about who we are, not just what we do” (1). As a descriptive concept, legal culture describes many facts, ranging from the public’s knowledge and attitude toward the legal system to the formative behaviour of citizens (Silbey 2010, 471–472).

I claim that it is the masculine legal culture, not the written law itself, that makes it possible to give reduced sentences to men who defend masculinity in femicide cases in Turkey. That is why there are precedents and policies of impunity that give men the right to kill. Impunity is a sexist and discriminatory policy, but it is much more than a form of preference for men. Since impunity, as a defence of masculinity, serves to maintain male supremacy, we can call a legal culture in which impunity is embedded a masculine legal culture.” The term masculine legal culture is commonly used by feminist legal scholars to characterise the legal profession as male-oriented and to describe the

gender bias and discrimination against women within the profession. (Rodríguez 1999, 1805–1844, Kuo 2005, 25–57, Hunter 2008, 7–36). Closer to the context I am using here, West uses the term “great (masculine) legal culture” to explain that the legal system is masculine, has double standards and ignores women’s suffering (West 1991, 115–34). Furthermore, from the perspective of cultural analysis of law, I use the term “masculine legal culture” as an extension of Friedman’s notion of “internal legal culture”. The implementation of unjust provocation is gendered, and as it is seen in the next section, masculinity defence structures gendered jurisprudence.

The only component of the masculine legal culture in Turkey is of course not the unjust provocation reduction in femicide. Misogynistic attitudes of the judiciary such as not recognising the learned helplessness syndrome, not accepting the battered woman syndrome, undermining the principle that woman’s statement is essential in cases of sexual violence are empirically researched in many feminist socio-legal studies (Birdal 2023, Maraşlı 2024).

2.2. Methodology: Court files and beyond

For a researcher interested in exploring law in its social context, judicial decisions are like treasure chests. Judicial decisions reflect the legal meaning-making processes. This analysis seeks to capture broader social and legal attitudes and values, unlike conventional “decision analysis.” Merry describes the four dimensions of legal culture and how ethnography can study the “practices of legal institutions” (which she called internal legal culture with reference to Friedman and developed to make the concept suitable for empirical research). An ethnographic analysis should map the cultural space around legal actors. While reviewing evidence and trial procedures, other cultural codes that establish gender, class, and race value judgements should be examined (Merry 2010, 48).

Jurisprudence that are used as qualitative data are beneficial for understanding the internal dynamics of a legal system. Moreover, they not only reflect the close connection and interaction between the legal system and the social context, but also enable us to understand how law constructs social images (Banakar and Travers 2009, 137). In this specific context, judicial decisions can be seen as a reflection of internal legal culture. From this perspective, I decided to follow the same path of cultural analysis of law in order to understand how masculine hegemony is maintained and reproduced through the masculinity sentence reduction. Therefore, I analysed all the decisions by combining two techniques: one is a technique of social sciences called “qualitative content analysis” and the second is the “thick descriptive” technique of an ethnographic approach (Geertz 2000, 20). For this reason, instead of giving hundreds of numbers about the court decisions I scanned, I choose to present a conceptualized context that I draw from theoretical analysis, and I mention thick descriptions and comments that I derive from these court files. The arguments I will make in this text are based mainly on research of decisions of the Turkish local courts and the Appellate Court in which the allegations of “unjust provocation” have appeared since 1978.

Legal anthropology examines legal phenomena at three levels: “legal discourse”, “practices”, and “thought and value systems” and recognises that legal discourse is embedded in written texts like laws, decisions, and courtroom discourse (Rouland 1994,

129–130). “Ethnography” is a process and product. The researcher uses it as a research from question creation to study completion (Punch 1998, 162). I conclude that what makes research ethnographic is not an inherent feature in the quality of the data, but rather the interpretive and analysis preferences, based on Geertz’s theory of “thick description”. Geertz adds that from an academic perspective, ethnography is about making connections, finding the right people to provide information, taking transcripts, taking genealogies, keeping a diary, and so on. Geertz defines ethnography only by intellectual effort (Geertz 1973, 6). For legal culture researchers, ethnography can reveal the hidden. Legal ethnography allows researchers to examine facts that appear legally irrelevant when viewed alone (Coutin 2000, 20). This differs from discourse analysis. This analysis interprets the owner’s perspective and concepts, not where or how the word is formed. Many social “things” in judicial decisions determine and influence legality but are not legal. When analysing a cultural product such as law, the cultural analysis has a stronger impact. A court decision appears to be a legal formality and technicality. It represents a cultural product, though. Indeed, the reasoning of court decisions masks the inherent injustice of the law. For instance, a Supreme Court sentence template becomes a legal thought pattern.

Citing Geertz, I believe that judicial decisions are “where general cultural material attains a material existence” (Geertz 1973, 312, 314). Judicial rhetoric becomes a “sign and symbol” for a social group (judges). We can learn the true meaning behind these symbols by reconstructing the cultural context in which they belong. Such an endeavour also promises to methodologically diversify and theoretically deepen research in socio-legal research. In brief, for the methodology of this socio-legal research study, which is not ethnographic in terms of data collection, I have structured the data analysis according to ethnographic principles. More specifically, the ethnographic approach and “thick description” are the crucial elements of this research. As a result, I have studied hundreds of court cases at the highest level. My attempt to understand unjust provocation was not limited to the Supreme Court decisions; also, pre-trial statements sometimes encompassed the entire court record, including documents, indictments, and court proceedings. Since written court proceedings apply in Turkey, it is inevitable to examine these materials in the context of legal culture research.

My effort to access judicial decisions was an adventure in itself. By scanning the mainstream and alternative media day after day (2004–2024), I flagged crime news stories about unjust provocation reductions.⁴ These reports usually consisted of a few sentences and a shared photo of the deceased and the accused from the “good old days.” Like the one below:

“She was flirty while she asked for the time”

The court first gave life imprisonment to the husband who killed his wife for being flirty when she asked a man for the time. The sentence was reduced to 10 years with reductions for provocation.” (Hürriyet 2007)



⁴ I found the decisions prior to 2000 by searching case law databases.

I requested the indictment or judgement text from the news coverage judicial journalists. I usually received judgement texts from judicial journalists by mail. They gave me the victim's lawyer, court, and verdict date if they didn't have the full verdict text. I requested the judgement by accessing bar association lawyer contact information. The lawyers never refused my requests and encouraged my work. While tracing the judgment texts, I kept the news pictures and a few sentences, which were the first things I remembered, in mind. The same ghosts haunted me during data collection and analysis. Each time I analysed the verdict, the pictures and verdicts stayed together in my mind until I reached the conclusion. The photographs prevented me from reducing the parties to letters or technical details on paper, as stated in the judgement. Both the photographs and the expression of the event in the text of the news report positioned me in a close and intimate place with the subject I was researching, inspiring me to do a descriptive analysis.

Victim attorneys helped me find several Supreme Court judgements too. They gave me other rulings or case tags. In particular, Platform to Stop Femicide attorneys sent me court hearing and case file documents. They communicate with the victim's family and children years after the case was settled, so I knew they were not "ordinary" attorneys. Their volunteer work on this topic inspired my studies and restored my faith in my profession. I frequently arrived at their offices for a judgment's text and left with a copy of the entire file, including interim decisions and prosecutor indictments. Sometimes I called the first instance court that issued the ruling for help. Court clerks sent me files despite their busy schedules. I searched online portals for legal expert judgement texts in addition to interactive data collection. Compared to other case law banks, *kararara.com* worked. Concepts, words, names, and code could help me find more time periods and courts. Searching "Kazancı case law bank" and "yargıtay.gov.tr" found high court judgements on Article 29 of the Turkish Penal Code, regulating unjust provocation, by article and date range.⁵ Following Mayring's interpretative analysis advice that "the researcher should first of all reach a general understanding of the whole" (Mayring 2023, 53), I read the former TPC's 765 period (Article 51). This extensive reading has given me a general opinion on the material, such as the comparison of old and new law on unjust provocation. I have mostly interpreted decisions from the new Turkish Penal Code No. 5237, but I have sometimes referred to old decisions to establish the legal conceptual roots of the relevant context.

After this comprehensive opening, I reviewed the material for "closeness to the case" and "representativeness to the phenomenon under investigation" (Mayring 2023, 52–54). I chose 1100 higher court judgements, 260 first instance court judgements, and 80 unjust provocation indictments from 1978 to the present. This initial sifting used a wider filter. These decisions initially included gender as a natural reality and gender-based roles. In the second screening, I identified decisions that defined the victim's action to the defendant as gender-based unjust provocation. I concentrated on 680 high court decisions, 156 first-degree court decisions, and 48 indictments among these cases and

⁵ Dear Professor Prof. Dr. Türkan Yalçın shared with me the decisions, many of which she used in her book "Women in Turkish Criminal Law" (Yalçın 2019). Consequently, I saw the jurisprudence texts together covering a wide period of time and reached decisions that I had overlooked or could not reach.

uploaded the texts of these decisions to the NVIVO 11 Pro computer assisted qualitative analysis programme.

The states of masculinity and the displays of masculine domination generally appeared to me in the text of the judgements in their most extensive form. Thus, I focused on justified first-instance court decisions and the full text of Court of Appeal decisions. I also benefited from the defence petitions, defence and witness statements, and trial transcripts that I obtained from the lawyers in the relevant cases. We use case law as the final document in the case file for law books and review the court's first instance decision if needed. However, other case file documents are crucial to analysis. According to Bourdieu's *The Power of Law*, the symbolic power of law and the logic of the legal field make marking the case file's texts' interconnections and relationships crucial. Bourdieu's view that law creates what it names, which he calls its symbolic power, makes these texts' rewriting of everyday life's lexicon worth considering (Bourdieu 1987, 837–839). Reading these texts together shows the legal field's actors' internal protocols, assumptions, and characteristic behaviours, as well as its unique logic and embodied self-sustaining values (Bourdieu 1987, 806). If we focus only on judgements, we may overlook how the investigation and trial process shapes and matures their expressions. When we use legal logic to understand this process, multiple dimensions of the legal output become apparent. Bourdieu's sociology sees law as a field of conflict and competition, like all social fields. Legal is less autonomous than artistic and scientific fields due to its proximity to politics. In the legal field, actors compete for the monopoly on deciding the nature of the law (Bourdieu 1987, 822). This struggle aims to determine the practical meaning of the law and its outcome. Once a dispute is judicially triable, field actors with different interests clash to define the law (Bourdieu 1987, 821).

Bourdieu writes in *The Power of Law* that “the “effect of appropriation” registered in the logic of the functioning of the legal field reveals the legal language in all its clarity.” A language with “elements taken directly from ordinary language and elements foreign to its own system” also has “all the traces of the rhetoric of impersonality and impartiality” (Bourdieu 1987, 819). Bourdieu warns that this “anonymised” voice in legal language should not hide the fact that legal actors are guided by their own material interests, morality, and political imagination (Bourdieu 1987, 834). These actors use “historically established, institutionally grounded and therefore socially variable” strategies (Bourdieu and Wacquant 1992, 18–19). By removing the neutralising effect of legal language's “passive and impersonal” tone (Bourdieu, 1987, 820), I aim to reveal the legal field's internal logic and the actors' historical and institutional strategies in its variability.

The stages of data collection and selection were followed by the analysis, i.e. interpretation of the data. In his poetic definition of cultural analysis, Geertz advises against “exploring the land of meanings and mapping its incorporeal space”. Cultural analysis should predict meanings, evaluate them, and draw explanatory conclusions to improve them (Geertz 1973, 36). Three characteristics define ethnography-based description in this framework. Firstly, it must be interpretative. Secondly, what it interprets should actually be the flow of social discourse, and this interpretation should consist of liberating the “said” of such discourse from the vanishing situations around it and fixing it in analysable terms (Geertz 1973, 35–36). Interpretation began with repeated, holistic reading of the decisions. Interpretive contexts that the judgement texts

reminded me of emerged before the codes. Following Geertz's path, my decision readings without ceasing to be an interpreter raised questions in my mind, and my answers formed codes. The first databased codes were inductive. After the first coding in each decision, I finished the notes. These notes were just a summary of the judgement or my initial thoughts. Similar to Roman law glossators and post-glossators' annotations.⁶

I looked for analytical themes and discoveries in the decisions after coding and short *glossa's*. In this retreat, reflection transformed recurring and prominent patterns into analytical themes. I've started reading each judgement in light of the literature, preparing *glossa's* and focusing the initial codes on the main theme. I also interpreted the judgement's legal argument in these longer *glossa's*. I also marked the cultural roots of legal concepts, formulations, and justifications using masculinity literature and masculine domination theory. In addition to *glossa's*, I made integrative short notes showing thought flow. I had the categories and golden examples in front of me. Although this was systematic data processing, I still neglected "the context of the main elements of the text", "implicit meaning structures" and "characteristic single events" (Ritsert 1972, 19–31). Thus, I interpreted my categorised decisions as separate units of meaning. This included interpreting a definition in light of the preceding paragraph or the defence counsel's petition and focusing on the decision's context. I wanted to add Geertz's "microscopicity" to the three ethnographically based description features listed above through his own practice to my data interpretation (Geertz 1973, 36–40, 40–47). As will be seen, my ethnographic approach to data processing and interpretation went beyond a preference for the first person. Building a thematic narrative was also part of ethnographic writing. Long debates about anthropology's rhetorical foundations since the 1970s have shown that writing about culture adds poetry to ethnographic writing (Clifford and Marcus 1986, 1–26). Although the culture I am writing about is not that of the *Argonauts of the Western Pacific* (as in Malinowski's 1922 masterpiece) since culture is a phenomenon that cannot be divided into parts, that is, into independent compartments, I think that one should write about LEGAL CULTURE in the same style as one writes about CULTURE (capitalised).

3. Unveiling the role of unjust provocation mitigation in femicide cases: impunity pattern in femicide

I should start by introducing the penal code article that reduces sentence for unjust provocation to explain its function in femicide cases. I would like to start by citing the recent revision to Article 51 of the old Turkish Criminal Code (765 TCC) that outlines punishment mitigation criteria. Before the article changed, it stated:

If a person commits a crime in the heat of wrath or under the influence of strong grief caused by an unjust provocation, he shall be punished in case the punishment of death is prescribed for the offence, by heavy life imprisonment; and if heavy life imprisonment is prescribed for the offence, by heavy imprisonment for twenty-four

⁶ Essentially, "glossa" means putting short notes and explanations in the margins of the page or between the lines of a text being analysed, in the nature of a commentary on that text. "Jurists at the Bologna Law School analysed legal texts with this method" (Umur 1983, 79, 80).

years. In other cases, the punishment prescribed for the offence shall be reduced by one-fourth (...).

This provision had long been criticized by feminist lawyers as one of the main reasons for the impunity of femicide cases. As a success of feminist campaigns, the amended (26.09.2004) form of Article 51 provided that:

Unjust provocation (Article 29, 5237 TCC):

Any person who commits an offence in a state of anger or severe distress caused by an unjust act shall be sentenced to a penalty of imprisonment for a term of eighteen to twenty-four years where the offence committed requires a penalty of aggravated life imprisonment and to a penalty of imprisonment for a term of twelve to eighteen years where the offence committed requires a penalty of life imprisonment. Otherwise, the penalty to be imposed shall be reduced by one-quarter to three-quarters.

In comparing the former and present provisions, the substitution of “anger or distress caused by an unjust provocation” for “anger or severe distress caused by a wrongful act” in the amended version is particularly significant. The Legislative Assembly explained the main reason for the amendment as being “to prevent misinterpretation regarding the mitigation of punishment, especially in cases of “honour killings” when women are killed by their relatives” In the justification of the law, it is clearly emphasised that only acts that are not approved by the legal order can be considered unjust acts (Grand National Assembly of Turkey, p. 434). However, a quick glance at the actions that are justified as grounds for unjust provocation reduction in cases of masculine violence because they are perceived as disobedience to masculine domination, which I have listed under the 1. Introduction heading above, reveals that this justification is not considered in the judgements rendered. In fact, this amendment has not prevented any reduction in the penalty for femicides that the legislator wanted to prevent. Despite the clear purpose and true meaning of the amendment, judges persisted in applying unjust provocation mitigation in femicide cases in the context of what the parliament labelled as misinterpretation. The fact that only one-third of the sentence for the act of killing is imposed as a penalty is a very important reduction in the penalty. When the unjust provocation reduction is applied, 75 percent of the sentence is considered to be reduced. Therefore, it is important to realise the prevalence and interpretation of this reduction in the discussion on impunity in femicide. This is an issue of interpretation that is strongly shaped by societal norms and expectations associated with masculinity. Here, the reader will discover an examination of the social interactions related to this issue, focusing on the concept of “legal culture”.

3.1. Masculinity defence as a pattern of impunity

I argue that “masculinity defence” is a pattern of the impunity of “masculine legal culture.” This is not simply an emphasis on the passive role of impunity in reducing deterrence. Judges are, so to speak, complicit, albeit indirectly, through the culture of impunity that is created and constructed. That is, my conceptualization of the role of judges as complicit masculinity is linked to the transformation of masculinity sentence reduction into a form of impunity.

According to United Nations reports, while crimes against women are among the most common crimes, most of them end in impunity (A/HRC/53/36/Add.1). Impunity is a

phenomenon related to serious and systematic violations of rights, either committed by actors created or condoned by the state itself, or due to the failure of the state and its institutions to control and, if found guilty, not being sentenced to appropriate penalties (E/CN.4/2005/102/Add.1). The role of the state and the courts in impunity is also emphasised in United Nations documents on combating impunity (Joinet 1997).

The culture of impunity in cases of violence against women is not unique to Turkey. Murders committed with the motive of maintaining female control and masculine domination in the patriarchal family are usually rewarded with impunity. A similar pattern is found in the case law in Latin American countries (Pimentel *et al.* 2005, 254). The Brazilian and Turkish jurisdictions used common terms in their justifications: The victim's rebellious acts were an attack on social morality and customary rules. If these actions of the women are not responded to, society will ostracize the accused, and therefore these actions should be classified as provocative (Pimentel *et al.* 2005, 263). The assertion that the unjust provocation reduction contributes to a pattern of impunity in femicide cases in Turkey is not solely based on the frequency (nearly 90%) at which this reduction is applied. The significance of Turkey or Brazil as a case study, as part of their contribution to the legal anthropology literature, stems from the actions of women and LGBTI+ individuals who oppose masculine dominance, which the jurisdiction views as unjust provocation.

Consequently, judges typically find a man's murder of a woman who opposes masculine dominance to be justifiable. Equipped with the knowledge that the judges will cooperate; the perpetrators know they will receive less punishment. In the files I examined, offenders did not even hide their expectation of a lesser sentence. They exercise their "right to kill", as one offender (Volkan) makes clear in his police statement. "I just learned that I have the right to kill, and I used it," says this perpetrator, who killed his wife just because she wanted a divorce (Milliyet 2015, Bilmez 2015, 1. Criminal Chamber, (CC) 19.02.2017).

We see the expectation of reduced sentence and subsequent disappointment in the qualitative studies with men who killed their wives. One of them, Veysel, is very honest as he makes the reckoning between his failed expectation and disappointment: "I thought I would only be there for a few years. If I'd only known that! It wouldn't have been worth it" (Bahadır 2014, 139). Bahadır, who conducted these interviews, believes that the convicts are well aware of and calculate the information about the years they would spend in prison, the number of years that could possibly be reduced, and the total number of years they would spend in prison. Some of them even told Bahadır, the researcher, that they know a friend who killed his wife and spent only 7 years in prison, and they contacted him to exchange information about his case (Bahadır 2014, 179–184). Some men justify this bluntly because they don't need to hide the fact that they are mentally preparing to use masculine violence long before they actually do it. Let us underline, in field research conducted with male perpetrators of violence against women, the perpetrators say that they researched on Google which types of unjust provocation mitigation and other sentence reductions were applied to femicides, and how the defendants received these reductions when they defended themselves in cases reported in the media. All these data do not show that Turkish judges and the state actively encourage and perpetrate femicides, but they are complicit and influentially

involved in the continuous increase of femicides through their interpretation of laws and judgements.

Underneath the culture of impunity offered by the defence of masculinity lies the idea that some women deserve to be killed, and that those who kill such women can be justified. As I see from the files, unjust provocation deductions are given to those who murder disobedient and rebellious women who break the bargain with patriarchy. These acts of women are seen as wrongful and thought to provoke the man. Which femicide leads to impunity is the question now. Not every femicide offender obtains a decrease, showing that masculine legal culture differentiates offences. For example, the murderer of a young female student who was beaten and stabbed to death in a minibus on her way home was not granted a reduction in sentence (Agence France-Presse in Istanbul 2015). In one case, when a woman wanted a divorce, her husband asked, "Why do you want it? Do you intend to sleep with every man you see?" "She was killed because she said, "What do you care? After the divorce, it won't be any of your business". The perpetrator received a reduced sentence and only 3 years in prison (1. CC,19.02.2015). In another case, the wife did not hear her husband ring the bell, and made him wait half an hour at the door. "How can you not open the door for me at once?", said her husband and stabbed her. The court reduced the sentence of this man who had been unjustly provoked for making him wait at the door (3.CC,01.10.2013). In another case, the offer of passive sexual intercourse resulted in a reduced sentence for an offender who cut and burned the hands of a transgender woman (Istanbul 6. Heavy Penal Court (HPC),27.02.2007). Another perpetrator, who killed a sex worker and inserted a salt shaker into her vagina, received a reduced sentence because she refused him (1.CC,27.4.2010). These men deserve reduction because they defend masculinity, binary gender norms, and above all patriarchy. The women killed in these unpunished murders fit into a very different catalogue and are valued very differently than "the innocent woman." The masculine legal culture attempts to separate the "acceptable" and "unacceptable" women by drastically reducing penalties. Unjust provocation reductions in femicide come into play when men kill women who break patriarchal bargaining, who are rebellious and disobedient, who challenge the gender binary regime, and women whose very existence is the antidote to the gender binary regime. In other words, actions of such women are considered to be wrongful and provoke the man. At this point it is necessary to make clear the kind of society which patriarchy aims at: It is a society composed only of acceptable women, purged of women who deserve to be killed for breaking or rejecting the patriarchal bargain.⁷ The law distinguishes accursed rebellious women, from acceptable-innocent women by means of unjust provocation reductions.⁸

3.2. Masculinity defence and complicit masculinity of judges in femicide

The feminist movement in Turkey, along with its campaign against femicide, has discussed unjust provocation or "masculinity sentence reduction" as a reason why

⁷ Kandiyoti uses the concept of "patriarchal bargain" to explain the consensual acceptance of the gender regime (Kandiyoti 1988).

⁸ In the following article discrimination between acceptable women and cursed rebel women under the "homo Sacer" concept of Agamben is being discussed (Atilgan 2019). Another article discusses the gender normative statements of governing politicians in reconstructing the category of the "right woman" (Atuk 2020).

femicides cannot be prevented (Kepenek 2019). Feminists go to great lengths to keep this defence on the agenda. In fact, this effort of the feminist movement is not Turkey-specific. Feminist Legal Theory has critically engaged with “masculine legal norms” and “masculine legal culture” and unjust provocation as an institution embedded in these norms and culture.⁹ Moreover, feminist legal theory also strongly criticizes these masculine interpretations and bias under the category of sexual assault and exploitation of domestic labour, which in many countries forms the basis for legal reforms regarding the defence against unjust provocation.¹⁰

The feminist critique of unjust provocation is not limited to the fact that women cannot benefit from it and that the masculine legal system ignores women’s emotions. There is a long list of unjust provocations, including not drinking a glass of orange juice made by the husband, or long phone conversations with friends (Kav 2020). It would be wrong to classify them as the violation of the duty, of loyalty, insult or morals, so as to discuss them under the heading of unjust provocation. These are only superficial excuses, and behind them lies masculine fear of losing control over women. In other words: Female “rebels” who disobey masculine oppression become the victim of masculine violence. In this context, a woman making an obscene gesture or requesting a love song from a radio station threatens the same thing as a man rejecting a relationship proposal: hegemonic masculinity (1.CC,01.06.2010, İzmir 6. HPC,28.04.2023). Since the authority to subjugate women has been given to the man, there cannot be a limited list of unjust acts that provoke the man. One day, a woman was murdered by husband simply for asking a stranger what time it was in a shopping centre. The judges counted her act as an excuse for a reduced sentence (İzmir 11 HPC,26.08.2009).

It is evident that the cases in which the justifications of the judgements involve customary rules and social morality recognize and reproduce the inequality of the sexes. These justifications are not based on mere “technical, normative theory or knowledge of law” but on a different kind of “knowledge”. When justified in decisions, provocative actions or words were coded as “an action a man cannot tolerate or accepted.” Even in some decisions, phrases such as “what kind of man are you,” “if you’re a man,” and “are you a man?” were evaluated as questioning a man’s manhood and were categorized as provocative (1. CC,31.05.2011, 1. CC,03.03. 2015, 1. CC,03.10.2011, Bursa 3. HPC, 22/08/2012, Diyarbakır 3. HPC,19/02/2013). These phrases occurred so frequently in the decisions that I had to categorize them according to the context in which they were used. At first glance, they seemed to be paraphrased in different contexts as “give me some money,” “rent a house,” “protect your honour,” or “make love” (1. CC.,22.04.2014, 1. CC.,28.04.2015, 1. CC.,26.05.2015). However, although making money or making love seemed to be different contexts, they actually reflected what Gilmore formulated as a threefold discursive practice around masculinity, namely: provider, protector, procreator (Gilmore 1990, 223). One must realise that there is a crack in the construction

⁹ Most of the current debate is compiled in this edition for Turkish readers: Soygüt and Türay 2020.

¹⁰ There is a distinction here that corresponds to the approaches that MacKinnon divides into two: “difference” and “domination”. When you look at it with an approach of “difference”, if the law is reformed to include women, equality will be achieved, and the problem will be solved. But when you look at it from a “domination” approach, the problem is related to a domination and obedience structure that cannot be solved reforming the law (MacKinnon 1987, 32-45). This reduction is a special reduction for those who defend masculinity.

of masculinity when a phrase like “are you a man” is uttered. The question is not a real question, but when it is uttered, reality and fiction/construction become visible, so we can say that the sentence very clearly points to this crack. Consequently, words and phrases like “what kind of man are you”, “you’re not a man”, “are you even a man”, “if you’re a real man, pull the trigger”, “I’m going to castrate you”, “I’m going to teach you what a real man should do”, “you can’t be a man” in unjust provocations address the same issue: the infinite/perpetual burden of proving masculinity. It is a perpetual burden because masculinity is constructed with the approval of others. Masculinity and heterosexual social order are discursive constructions, as Wittig suggested that masculinity is nothing but an illusion (Wittig 1992, 40).

The following decision may be cited as a perfect example of the discourse, repeated hundreds of times, in cases where “what manner of man art thou” was accepted as an unjust provocation. In this decision, too, the judges bore the burden of proving masculinity:

The perpetrator was at that moment so enraged and full of evil thoughts that he could not restrain himself from killing or injuring the victim for the purpose of murder. This is obviously a well-documented fact in our thousands of case files, known to the Trial Chamber and the Prosecutors and Judges. In fact, Naci and Çiğdem went out for a meal as an engaged couple and got into an argument in the restaurant, which obviously made male partner Naci ‘as a man’ angry. When Naci was angry, a group of other people made a comment and said that he was ‘a man who cannot control his girlfriend’. This was the last straw, because in an argument, a Turkish man who trusts himself cannot tolerate such comments. National, habitual and moral values, prejudices and habits play a role in people committing such crimes. According to the value judgments, the ‘character of Turkish men does not let them swallow these words so easily’. (Assembly of Criminal Chambers, (ACC), 28.06.2011)

This decision supports two propositions in the hegemonic masculinity literature: first, although there is no single definition of masculinity, its constitutive element is to control and oppress women.¹¹ Second, when a man flaunts his control and oppression over his “woman” in front of other men, he is progressing towards the achievement of ideal hegemonic masculinity (Demren 2008, 83). From this perspective, the above decision confirms the relationship between “control over the girl” and masculinity, while reproducing hegemonic masculinity over control of the woman. It also confirms the construction of masculinity through competitive performances with other men.¹²

In this decision, the court implies that in Turkey the phrase “what kind of man” can only be accepted by a man if he is a “lesser man”. With this implication, the board is also claims that Turkish men are so attached to hegemonic masculinity that they cannot tolerate such words at all. Otherwise, “to be crushed under the phrase” could be interpreted as defeat and giving up the struggle for male supremacy. Giving up is coded as loss of masculinity and castration for every male citizen living in Turkey. At first

¹¹ Connell defines hegemonic masculinity “as the configuration of gender practice which embodies the currently accepted answer to the problem of the legitimacy of patriarchy which guarantees (or is taken to guarantee) the dominant position of men and the subordination of women” (Connell 2005, 77).

¹² For Bourdieu, that means relationality of masculinity: “Manliness, it can be seen, is an eminently relational notion, constructed in front of and for other men and against femininity, in a kind of fear of the female, firstly in oneself” (Bourdieu 2001, 53).

glance, the decision may seem like societal facts and Turkish men's reality. However, a closer look reveals that it is not only a matter of stating the known facts, but moreover, it is the language of desire and longing. For example, when it is said that Naci goes out to eat with his "fiancée" and has an argument there, which then makes him angry as a man, it means that Naci as a man has the right to be angry =every man does the same=if you are a man, it is acceptable to be angry. This stream of consciousness is the reflection of hegemonic masculinity.

Representations of hegemonic masculinity, as Türk notes, "tell a story about the admiration of men, not who they are, but who they cannot become" (Türk 2011, 171). The specific sentence "In a fight, any Turkish man who trusts himself cannot tolerate such remarks" may seem like a statement of fact, but when deconstructed, it leads to the assumption that any man who does not apply violence in the face of such remarks does not trust himself. That said, it is closer to the normative statement that a man who trusts himself should respond violently.

Hundreds of files that I examined closely were not only defences of masculinity but also "demands for hegemonic masculinity." Men want to be excused for their violence by the state or the judiciary when their violence is directed against disobedient women or others who challenge their masculinity. By understanding this "masculine" burden, jurists display a complicit masculinity and consequently indirectly encourage it through impunity or reduced sentences. This is a major problem with masculine legal culture, not the institution of unjust provocation and its normative masculine structure. This position of the judges could be analysed via the concept of "complicit masculinity" by Connell, in which he explains the situation of men who benefit from patriarchy without getting their hands dirty. By this definition, even if men do not kill anyone who insults them, sympathises with them, or approves of others who choose to kill, they are complicit with hegemonic masculinity, even if they seem to accept gender equality. As Sancar notes, they are the ones who reproduce hegemonic masculinity because defining men's (violent) behaviour against women and children as normal, ordinary and natural facilitates the path to hegemonic masculinity (Sancar 2009, 38). "Complicit masculinity" does not play as active a role in the construction of gender regime as "hegemonic masculinities". Agreeing to this hierarchy means taking advantage of women's secondary position. Men who benefit from the advantages of patriarchy can be seen as signs of complicit masculinity. According to Connell, most men belong to this category (Connell 2005, 79).

In the following decision, where the hegemonic ideal of masculinity is established in legal discourse, the *complicit masculinity* role of the judiciary becomes more apparent:

The perpetrator says that at the victim's request he buys raki at a local shop and comes home. They start drinking it together. The victim says that she has not received any financial support from her ex-husband and asks for some money, but he says that he cannot help her because of his own financial situation. Hearing this, she gets angry and tells him, 'You are not a man, do I have to prostitute myself for money? During this argument, the raki is drunk. Then the victim asks him to buy more raki. He goes and buys more and they start drinking again. The victim repeats her request for financial help. He refuses her and goes to the bedroom to sleep. When he is almost asleep, the deceased lifts the covers over him and attacks him saying, 'Get up you son of a whore, you don't even have the strength to have sex with me tonight.' She scratches his face

and ears and says 'if you are a man, show your manhood or I will summon a man for you and for me from the neighbourhood'. Sometime later they are sitting at the raki table again. The victim says if she does not receive money she will sleep with other men in Germany, to which he replies 'do what you want' and returns to the bedroom. He sleeps for a while and then wakes up to the victim yelling at him and attacking him, all the while yelling, 'I 'm going to see your manhood now and tomorrow you're going to give me money'. The perpetrator then takes his gun from a closet in order to terrify the victim. They return to the table and when the victim sees him put his gun on the table, she continues to berate him, 'Are you trying to scare me with that? I will shove that gun up your ass and you will learn what it means to be a man'. (ACC, 26.03.2013)

In this case, the first instance court did not apply any unjust provocation reduction. The 1st Criminal Chamber overturned the decision of the first instance court by majority vote because it had not made an unjust provocation reduction. On the other hand, The Public Prosecutor's Office of the Appellate Court arguing that there was no legal basis for unjust provocation, brought the case before the Criminal General Assembly, demanding the annulment of the decision of the Special Chamber and the approval of the first instance court. Both the opposing vote letter in the 1st Criminal Office and the Prosecutors objection call into question the reliability of the testimony because the allegations, which cannot otherwise be proven, can only be accepted if they overlap with the substantive findings in the file. For example, they point out that the victim –Esin– worked as a teacher in Germany (had no financial difficulties) and gave a large amount of money to his husband Metin, who had financial difficulties due to the interruption of his work. According to the case, there was no real possibility that the deceased asked for money, on which Metin's defence was based. Both the grounds of the opposing vote and the request of the Prosecutor are questioning the reliability of the perpetrator's claim, which cannot otherwise be proved, in light of other evidence in the file.

Since it is not our purpose here to adjudicate the substantive truth, I refrain from making those arguments and offering that evidence. What we do see here, however, is a different face of the discourse on masculinity. What kind of woman was Esin? Could she have said those words? Even asking these kinds of questions says something important about the discourse of masculinity and the hegemonic image of masculinity. Was Esin a kind of woman who could have said those words? The reason why all seven members of the Criminal General Assembly voted against it and the decision was made by majority vote is that the judges are not sure that the answer to this question is yes. The arguments for the opposing votes and the objection request of the Prosecutor's Office are as follows: "Esin could not have said these things because she is a person who does not drink alcohol"; "she could not have said this because the person who demanded and received money was Metin and not Esin"; "the defence should not be respected because Metin is not really a calm person as he claims in his defence"; "the defence should not be respected because there are no traces of a fight in the house."¹³

¹³ These arguments reflect the discourse on the imagery of hegemonic masculinity as well as the debate about uncovering material truth. For example, in his study on the cultural representations of hegemonic masculinity discourse, Türk examines the examples in which women in the world of "heroic men". He states that women are portrayed as incomplete-naive or evil (Türk 2011, 198). A woman in the shadow of hegemonic masculinity can be the epitome of either innocence or evil. In order to understand which category a woman belongs to; one needs to know the cultural codes of that society. For example, in our case, the fact that the female victim does not drink alcohol gains special importance in the trial.

The decision is based on several internal and external threats in the defendant's statement to remove a man from the hegemonic masculinity state, which cannot be proven otherwise. Discursively, the image of an uncontrolled woman attacking all strongholds of masculinity is established above all. Here, the similarity between Esin's image in the perpetrator statement and the findings of Cengiz *et al.*'s (2004) field research is striking. In Cengiz *et al.*'s field research, women are described as an important component of hegemonic masculinity in the conversations among men as "mostly troublemakers, with inexhaustible desires, strange, incomprehensible". They emphasise that this stereotype is a symbolic violence that is considered quite legitimate for hegemonic masculinity (Cengiz *et al.* 2004, 59). Metin, who had lost her subject position until that point, becomes masculine again after gun-scaring the woman who is "too irrational to be restrained," according to Metin's statement. After Metin loses control of the event (the woman) from the beginning, he is sent to buy raki, cannot fend off a physical attack, failing to look after his wife, cannot defend his honour, is accused of sexual inadequacy, and is finally accused of losing his masculinity and being feminine, his masculinity vanishes.

Real argues that losing masculinity, that is, losing the opportunity to be someone who has the privilege to dominate, is tantamount to being "like a woman", the most hated (Real 2004, 175). The underlying idea that the words "I'm going to summon you and me a man from the neighbourhood" are considered an insult and form the basis for unjust provocation reduction is that the man's "fall" to the woman's position in sexual intercourse is understood as non-existent/absent masculinity and humiliation of masculinity. At the moment when all hegemonic codes are completely destroyed, Metin says "do what you want" and goes to sleep. However, in the face of Esin's repeated physical attack, Metin points his gun at his wife to frighten and fire her. Whether this is the case or not requires a separate discussion, but a few things should be disclosed. In the first place, all the words which the judges in the literature supposed to be insults, and to be based on unjust provocations, are concerned with the control of women. If we illuminate the statement from this standpoint, some of the themes of the triple discursive practise around masculinity that I mentioned above appear as follows: masculine dominance, gender division of labour (a man is the provider, so he is the head and protector of the family), avoidance of the feminine and having heterosexual power (being the procreator), and homophobia.

The manhood of Metin at this point is reflected in the decision by his statement. It is a kind of castrated individual who is completely removed from the "utopia" of hegemonic masculinity and thrown into a "dystopia". Metin has been so removed from the hegemonic image of masculinity that he has faced the danger of joining the subaltern, i.e. the cursed, masculinities. His wife's threat to summon men from the neighbourhood for him and for himself also threatens the privileges that heterosexuality confers on him.¹⁴ Metin faces the threat of the destruction of almost all dynamics of the gender regime, a front shared by all masculinities close to or far from hegemonic masculinity. In response to all these threats, by restoring his dominance through violence and with

¹⁴ Sancar revealed that heterosexuality is the founder of hegemonic masculinity and homophobia is its construction strategy (Sancar 2009, 204). Other field studies in Turkey also support this argument: Bereket and Adam 2006, 131-151.

the help of his masculinity, which is now “locked and loaded”, Metin finds a way to escape the myth of the man who collapsed that night. As in other cases, he calls the family of the woman he killed and says, “Come and get your daughter, I killed her.” The teams arriving at the scene find Esin, who was killed by two bullets entering from the temple, at a tidy raki table. This verdict relates to the theoretical explanations of the establishment of masculine subjectivity and the position of the husband as the head of the family, and portrays a moment when masculine subjectivity collapses. From this point of view, it is thought-provoking that the decision is seen as an unjust provocation despite all opposing votes and objections of the law of reason.

The ideal form of masculinity that Connell speaks of in hegemonic masculinity is an image that does not correspond to reality. In other words, it is in no way representative of the real personalities of the majority of men. What is important, according to Connell, is the creation of this ideal through various institutions and the maintenance and sustainability of this ideal through discursive practices. In this way, hegemonic masculinity survives (Connell 1998, 185). Speaking with Connell’s concept, we see an important discursive contribution to the hegemonic ideal of masculinity in these decisions. The affirmative language in the decisions becomes clearer when the following lines attempt to explain the reasons for the behaviour: “National, customary and moral prejudices and habits play a great part in committing such crimes. The self-perceived honour of a stereotypical Turkish man in terms of value judgments cannot easily tolerate this word.” In the case, the words: “You can’t even control a woman, what kind of man are you?” constitute unjust provocation for two reasons: The first is being a man, the second is being a “Turkish man.” Some of the hegemonic Turkish masculine codes marked by the decisions are: being confident, keeping his women under control, not avoiding violence “when necessary.” Selek, while echoing the views of the men interviewed in the field research on violence, draws attention to stereotypes and clichés such as “packing a mean punch” and “possessing a knockout punch” in Turkish society. She points out that those who enforce male hegemony use these stereotypes to justify their use of violence. She also notes that when it comes to violence, the discourse of masculinity is about “knowing what to do and when.” In other words, the man whose hegemony is accepted is the kind of man who knows “how to hit and how to love” (Selek 2008, 124–125).

To examine closely the masculine domination codes in the decision, it is useful to consider the relationship between masculinity and the use of violence in the context of “libido dominandi”, which Bourdieu defines as the fuel and energy source of male domination. According to Bourdieu, the games of male violence – originally called *illusion*, as the founder of masculinity – lie at the root of *libido dominandi*, i.e. the desire to dominate (lust for domination) with all its forms in different domains (Bourdieu 2001:14, 74). The phrase “use violence when necessary” implies the recognition that there may be situations that exacerbate the *libido dominandi* and thus justify violence. By saying in the verdict that “a Turkish man, no matter how confident, would not want to be crushed under this insult”, it is admitted that it is inevitable for any Turkish man to use violence in the face of “this insult” that activates *libido dominandi*. In the verdict, the phrase “You can’t even dominate a girl, what kind of man are you?” is seen as a stimulus that energizes *libido dominandi* and invites “righteous” violence. The verdict stated that “national, customary, and moral prejudices and habits” gave “Turkish men”

the authority to use violence. And also, it is stated that “because of value judgements, the self-perceived honour of the Turkish man cannot readily bear this word.” Therefore, we cannot expect the man to refrain from using violence.

The court’s decision establishes that the impact of dominant value judgements is strong enough to threaten universal values like the right to life. Furthermore, the court presents the effect of value judgements as a legally acceptable excuse. It is a major justice problem to argue that a defendant who attacks the value of life under the influence of value judgements of an unfair social order, such as the gender regime, deserves a lesser sentence. When the law’s values and the value judgements of an unfair society conflict, the judiciary is required to defend the right to life and ensure equality. What is called a value judgement is the idea that it is the woman who annoys the man, which is shown in the saying “*it is the oil that cooks the food, it is the woman who fills the man*”, meaning that men who are always under pressure and near or at their breaking point are driven over the edge by women who annoy them further. From this perspective, the woman must face the consequences of making her man angry and pay the price. In this case, the victim’s act of allegedly provoking the defendant violated masculinity, not the law. This is against the legal context of the unjust provocation. It is legally unacceptable. Given the injustice created by this value judgement, it is unlawful for the right to life not to be protected, and the court’s decision is bound by the burden of proving masculinity. It is also necessary to mark this indirect permission given to femicide in Turkey as a component of the masculine legal culture in Turkey, in light of Merry’s conceptualization of legal culture (Merry 2010, 48).

The campaign of feminist lawyers and advocates against Turkey’s withdrawal from the Istanbul Convention on 20 March 2021 should be evaluated in the light of the struggle against this complicit masculinity position of judges and the sexist approaches in masculine legal culture. Because many articles of the Istanbul Convention are parallel with domestic law, Turkey’s withdrawal from the Convention has not resulted in a significant legal gap. On the other hand, withdrawal from the Convention is viewed as a deliberate move by the governing party to promote sexist attitudes in masculine legal culture (Elmas *et al.* 2021, Grieve 2021).

4. Conclusion

I here explained how unjust provocation is a masculine legal concept. Unjust provocation reduction deserves to be called “masculinity sentence reduction”. This is not because it’s widely applicable to men, but it follows the patterns of behaviour that the patriarchy has dictated for men. Although the formula of anger and severe distress for unjust provocation is prescribed in the law, the moment of the incident is depicted with the feelings of extreme excitement (enthusiasm) and anger in the court decisions. These are feelings that are not forbidden to men. It is widely accepted that the expression of these feelings strengthens the man (Bozok 2011, 79–80). This is the “hidden masculine subject” in unjust provocation.

So, couldn’t unjust provocation be implemented to include the female subject? It is of course possible to attribute legal consequences to emotions such as fear and anxiety, and the traumatized (shaken) woman syndrome. We have seen examples of this development in the world for a long time. Turkey began to use this in self-defence. In

light of these feminist legal arguments being a starting point, a new unjust provocation trial could be designed where the feelings of fear and helplessness that gradually build up are considered mitigating circumstances (or mitigating factors). So, in this way, we can envision the masculine subject in unjust provocation transforming and finally achieving a masculine/feminine unity. However, it can help only one of the problems with this unlawful provocation trial. I don't believe the problem can be fixed simply by redefining unjust provocation to benefit female defendants, because in this article, interpreting legal culture using the thick description approach has shown that it is a reduction of masculinity, not a male reduction. Accordingly, Volkan's right to kill, which we encountered at the beginning of the article, is a right associated with masculinity.

The concept of "libido dominandi", or sexual desire for domination, is most apparent in the faces of rebellious women who challenge traditional gender roles. Undoubtedly, "libido dominandi" is at work in the "defence of masculinity", which opposes words such as "are you a man?" and "what kind of man are you?" I believe that assigning the right to kill to a man who fights for masculine dominance brings the "rebel" to her knees, who successfully scuttles the patriarchal bargaining table. In this case, we are facing a "defence of the status quo". Whatever name we give, this phenomenon is encoded in the unjustified and provocative trial as the "legitimate" struggle of the "libido dominandi".

Men control women in customary ways, so they consider any act to break with this to be "lèse-majesté." For society, an unfaithful woman is seen as unfair and provocative. When a woman does not obey a man's command, it is clearly shown to shake the foundations of the castle, where male subjectivity is firmly established. And the defendants are considered masculine protectors. Actually, they are not only fulfilling the expectations of society, but they are trying to be men, or they are trying to exist. The "defence of masculinity" in unjust provocation parallels findings of masculinity studies. Masculinity is easily lost. Men are always on alert because of the danger of losing their manhood; It's only a matter of time before they commit a crime as a result. In Kaufman's metaphor, "masculinity is a pressure cooker" It is apparent that not every man feels as strong of an obligation to "prove their masculinity" to those who climb ahead of them in the line, who fail to let themselves get passed in traffic, who treat them rudely, or who bump into them. Variables within classes have a major impact on the course of the story. Not every man reacts the same way when confronted with this burden of proof. While trying to categorize different masculinities and various "defences of masculinity," I could not conceptually define a categorical masculine reaction. However, I thought I could separate the various manifestations of masculinity into construction, portents, burden, and execution. Essentialism is the danger of getting stuck in a definition of masculinity that is male-centered and ignoring the big issue of masculine dominance. The literature warns us not to seek masculinity in a different place than "power". The trial footage of the injustice I saw proved it. Even if judges are people who do not kill, such as a woman who says "what kind of man are you," it is necessary to think about the interests of legal actors who code masculinity as a wrong that must be reacted. Some men will empathically welcome and acknowledge the actions of some male perpetrators. These men are in a kind of complicity-collaborative relationship with hegemonic masculinity, even as they accept equality between men and women in rhetoric and perhaps on the surface. This endorsement of violence is a major aspect of hegemonic masculinity. In complicit masculinities, men benefit from the "patriarchal share"

without having to get their hands dirty. In Connell's opinion, almost all men fit this category. We have observed that, in society, being a male prosecutor or judge is just like being an ordinary citizen. In every case where the courts accept the defence of masculinity and apply a reduction, it naturalizes masculine domination and the social reproduction of domination.

References

- Agence France-Presse in Istanbul, 2015. Three men get life sentence for murder and attempted rape of student in Turkey. *The Guardian* [online], 4 December. Available at: <https://www.theguardian.com/world/2015/dec/04/three-men-life-sentence-murder-student-turkey-ozgecan-aslan>
- Akkaya, K.H., and Balcı, Y., 2013. An analysis of the murder of women in a 10-year period in Eskişehir Province located in western Anatolia in Turkey. *Journal Forensic Legal Medicine* [online], 20(6), 736–739. Available at: <https://doi.org/10.1016/j.jflm.2013.04.007>
- Atılgan-Ümit, E., 2015. *Türkiye'deki İç Hukuk Kültürü' Üzerine Sosyo-Hukuki Bir Araştırma, Haksız Tahrik Kararlarında Eril Tahakküm Kodları*. Ankara: Turhan.
- Atılgan-Ümit, E., 2019. Şehrazat, Homo Sacer İstanbul Convention. *Vira Verita* [online], November. Available at: <https://viraverita.com/sehrazat-homo-sacer-ve-istanbul-sozlesmesi/>
- Atılgan-Ümit, E., 2020. Cezasızlığın Kadın Cinayetlerini Teşvik Rolü [The Role of Impunity in Promoting Femicide]. In: M.B. Soygüt and A. Türay, eds., *Kadına Yönelik "Erk" ek Şiddetiyle Mücadele* [Combating Male Violence Against Women - Problems and Remedies]. Istanbul: Beta, 103–111.
- Atılgan-Ümit, E., 2024. *Haksız Tahrik, Bir Erkeklik Hakkı*. Ankara: İletişim
- Atuk, S., 2020. Femicide and the speaking state: woman killing and woman (re)making in Turkey. *Journal of Middle East Women's Studies* [online], 16(3), 283–306. Available at: <https://doi.org/10.1215/15525864-8637409>
- Bahadır, B., 2014. *Ölü Kadınlar Memleketi*. Ankara: Ayizi.
- Banakar, R., and Travers, M., eds., 2009. *Theory and Method in Socio-Legal Research*. Oxford: Hart.
- Bereket, T., and Adam, B.D., 2006. The Emergence of Gay Identities in Contemporary Turkey. *Sexualities* [online], 9(2), 131–151. Available at: <https://doi.org/10.1177/1363460706063116>
- Bilmez, D., 2015. "Öldürme hakkımı kullandım" diyen koca: Beni aldatmış. *Milliyet* [online], 19 January. Available at: <https://www.milliyet.com.tr/gundem/oldurme-hakkimi-kullandim-diyen-koca-beni-aldatmis-2000760>
- Birdal, Y., 2023. *Erkek Adalet Kıskaçında Kadınlar: Örselenmiş Kadın Sendromu ve Feminist Kriminoloji*. Istanbul: Sel.
- Bourdieu, P., 1987. The Force of Law: Toward a Sociology of the Juridical Field. Trans.: R. Terdiman. *Hastings Law Journal*, 38(5), 805–813.

- Bourdieu, P., 2001. *Masculine Domination*. Trans.: R. Nice. Redwood City: Stanford University Press.
- Bourdieu, P., and Wacquant, L., 1992. *An Invitation to Reflexive Sociology*. Oxford: Polity Press.
- Bozok, M., 2011. *Soru-Cevap Erkeklikler*. Istanbul: Sosyal Kalkınma ve Cinsiyet Eşitliği Politikaları Merkezi Derneği (SOGEP).
- Çalışkan, M., 2019. İstanbul’da “Kadına Şiddet” ve “Kadın Cinayeti” Vakalarına Yönelik, Nicel- Nitel Bir İnceleme. *Bolu Abant İzzet Baysal Üniversitesi Sosyal Bilimler Enstitüsü Dergisi* [online], 19(1), 221–241. Available at: <https://doi.org/10.11616/basbed.vi.513032>
- Cengiz, K., Tol, U., and Küçükural, Ö., 2004. Hegemonik Erkekliğin Peşinden. *Toplum ve Bilim*, 101, Güz, 50–70.
- Clifford, J., and Marcus, G.E., eds., 1986. *Writing Culture: The Poetics and Politics of Ethnography, A School of American Research Advanced Seminar*. Berkeley: University of California Press.
- Connell, R., 1987. *Gender and Power: Society, the Person and Sexual Politics*. Cambridge: Polity Press.
- Connell, R., 2005. *Masculinities*. 2nd ed. Cambridge: Polity Press.
- Coutin, S.B., 2000. *Legalizing Moves: Salvadoran Immigrants’ Struggle for U.S Residency*. Ann Arbor: University of Michigan Press.
- Demren, Ç., 2008. Kadınlık Dolayısıyla Erkeklik Öznelliği. *C.Ü. Sosyal Bilimler Dergisi Mayıs* [online], 32(1), 73–92. Available at: <https://kutuphane.dogus.edu.tr/mvt/pdf.php?pdf=0004137&lng=1>
- Elmas, T., Overdorf, R., and Aberer, K., 2021. *Tactical Reframing of Online Disinformation Campaigns Against the Istanbul Convention* [online]. Available at: <https://dblp.org/db/journals/corr/corr2105.html#abs-2105-13398>
- Eyüboğlu, O.M., 2011. Şiddet Değil, Erkek Şiddeti. Blog post. *Sosyalistfeministkolektif.org* [online], 18 December. Available at: <https://www.sosyalistfeministkolektif.org/web-yazilari/bedenimiz-ve-erkek-siddeti/iddet-deil-erkek-iddeti/>
- Friedman, L.M., and Macaulay, S., 1969. *Law and the Behavioural Science*. Indianapolis: Bobbs-Merrill.
- Geertz, C., 1973. *The Interpretation of Cultures: Selected Essays*. New York: Basic Books.
- Geertz, C., 2000. *Local Knowledge, Further Essays in Interpretive Anthropology*. 3rd ed. New York: Basic Books.
- Gilmore, D., 1990. *Manhood in the Making: Cultural Concepts of Masculinity*. New Haven: Yale University Press.
- Grieve, M., 2021. *Turkey’s Withdrawal from The Istanbul Convention A Step Backward for Women’s Human Rights* [online]. Briefing paper. Minneapolis: The Advocates for

- Human Rights. Available at:
<https://www.theadvocatesforhumanrights.org/res/byid/9110>
- Hunter, R., 2008. Can feminist judges make a difference. *International Journal of the Legal Profession* [online], 15(1–2), 7–36. Available at:
<https://doi.org/10.1080/09695950802439759>
- Hürriyet, 2007. Cinayete kot pantolon ve cilve indirimi! *Hürriyet* [online], 9 November. Available at: <https://www.hurriyet.com.tr/gundem/cinayete-kot-pantolon-ve-cilve-indirimi-7649495>
- Joinet, L., 1997. *Question of the impunity of perpetrators of human rights violations (civil and political): final report / prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119 (E/CN.4/Sub.2/1997/20)* [online]. Geneva: United Nations, 26 June. Available at: <https://digitallibrary.un.org/record/240943?ln=es&v=pdf>
- Kandiyoti, D., 1988. Bargaining with Patriarchy. *Gender & Society* [online], 2(3). Available at: <https://www.jstor.org/stable/190357>
- Kav, G., 2020. *Yaşasın Kadınlar-Türkiye’de Kadın Cinayetleri Gerçeği ve Çözüm Yolları*. Istanbul: Doğan Kitap.
- Kepenek, E., 2019. Haksız Tahrik İndirimi Bir Erkeklik İndirimidir [Unjust Provocation Reduction is Masculinity Reduction]. *Bianet* [online], 8 December. Available at: <https://m.bianet.org/bianet/toplumsal-cinsiyet/216827-haksiz-tahrik-indirimi-bir-erkeklik-indirimidir>
- Kuo Shu-Chin, G., 2005. Rethinking the Masculine Character of the Legal Profession: A Case Study of Female Legal Professionals and their Gendered Life in Taiwan. *American University Journal of Gender, Social Policy & The Law* [online], 13(1), 25–57. Available at: <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1283&context=jgspl>
- MacKinnon, C.A., 1987. Difference and Dominance: On Sex Discrimination. In: C.A. MacKinnon, ed., *Feminism Unmodified: Discourses on Life and Law*. Cambridge, MA: Harvard University Press, 381–391.
- Malinowski, B., 1922. *Argonauts of the Western Pacific: An Account of Native Enterprise and Adventure in the Archipelagoes of Melanesian New Guinea*. London: Routledge & Sons.
- Maraşlı, G., 2024. *Yargılama Faaliyetlerinde Kadınlara Yönelik Düşmanca Tutumlar ve Düşman Ceza Hukuku Uygulamaları*. Near East University. Unpublished master’s thesis.
- Mayring, P., 2023. *Einführung in die Qualitative Sozialforschung. Eine Anleitung zu Qualitativem Denken* (7. Auflage). Weinheim: Beltz.
- Merry, S.A., 2010. What Is Legal Culture - An Anthropological Perspective. *Journal of Comparative Law*, 5(2), 40–58.

- Milliyet, 2015. 'Öldürme hakkımı kullandım' demişti... *Milliyet* [online], 26 January. Available at: <https://www.milliyet.com.tr/gundem/oldurme-hakkimi-kullandim-demisti-2004149>
- Muftuler-Bac, M., and Muftuler, C., 2020. Provocation defence for femicide in Turkey: The interplay of legal argumentation and societal norms. *European Journal of Women's Studies* [online], 28(2), 159–174. Available at: <https://doi.org/10.1177/1350506820916772>
- Nelken, D., 2004. Using the Concept of Legal Culture. *Australian Journal of Legal Philosophy*, 29(1), 1–28.
- Office of the High Commissioner for Human Rights, 2023. *A/HRC/53/36/Add.1: Visit to Türkiye-Report of the Special Rapporteur on violence against women and girls, its causes and consequences* [online]. 25 April. Available at: <https://www.ohchr.org/en/documents/country-reports/ahrc5336add1-visit-turkiye-report-special-rapporteur-violence-against>
- Pimentel, S., Pandjarian, V., and Beloque, J., 2005. Legitimate Defence of Honour: Illegitimate Impunity for Murder, A Critical study of legislation and case law in Latin America. In: L. Welchman and S. Hossain, eds., *'Honour' Crimes, Paradigms and Violence Against Women*. London: Zed Books, 245–262.
- Punch, K.F., 1998. *Introduction to Social Research: Quantitative and Qualitative Approaches*. London: Sage.
- Real, T., 2004. *Erkekler Ağlamaz*. Trans.: K. Koltukçuoğlu. Istanbul: Kuraldışı.
- Ritsert, J., 1972. *Inhaltsanalyse und Ideologiekritik. Ein Versuch über Kritische Sozialforschung*. Frankfurt am Main: Athenäum Fischer Taschenbuch.
- Rodríguez, C.M., 1999. Clearing the Smoke-Filled Room: Women Jurors and the Disruption of an Old-Boys' Network in Nineteenth-Century America. *The Yale Law Journal*, 108(7), 1805–1844.
- Rouland, N., 1994. *Legal Anthropology*. Trans.: P.G. Planel. Redwood City: Stanford University Press.
- Sancar, S., 2009. *Erkeklik İmkansız İktidar*. Istanbul: Metis Yayınları.
- Sarkamo, V., et al., 2017. Honour, Dishonour and Homicides in Britain, Namibia and Turkey. Historical and Contemporary Perspectives. In: M. Husso et al., eds., *Interpersonal Violence Differences and Connections*. Abingdon: Routledge.
- Selek, P., 2008. *Sürüne Sürüne Erkek Olmak*. Ankara: İletişim.
- Silbey S.S., 2010. Legal Culture and Cultures of Legality. In: J.R. Hall, L. Grindstaff and M.C. Lo, eds, *Handbook of Cultural Sociology*. London/New York: Routledge.
- Silbey, S.S., 2013. What Makes a Social Science of Law? Doubling the Social in Socio-Legal Studies. In: D. Feenan, ed., *Exploring the "Socio" of Socio-Legal Studies*. London: Palgrave, 20–36.
- Soygüt, M.B., and Türay, A., 2020. *Kadına Yönelik Erk'ek Şiddeti ile Mücadele; Sorunlar ve Çarele* [Combating Male Violence Against Women - Problems and Remedies]. Istanbul: Beta.

- Toprak, S., and Ersoy, G., 2017. Femicide in Turkey between 2000 and 2010. *PLoS ONE* [online], 12(8), 1–16. Available at: <https://doi.org/10.1371/journal.pone.0182409>
- Türk, B., 2011. Hegemonik Erkek(lik) ve Kültürel Temsil. In: İ. Erdoğan, ed., *Medyada Hegemonik Erkek(lik) ve Temsil*. Istanbul: Kalkedon, 11–39.
- Umur, Z., 1983. *Roman Law Dictionary*. Istanbul University Press.
- UN Commission on Human Rights, 2005. *Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*, (E/CN.4/2005/102/Add.1). 8 February.
- West, R.L., 1991. The Difference in Women’s Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory. In: M.A. Fineman and N.S. Thomadsen, eds., *At the Boundaries of Law: Feminism and Legal Theory*. New York: Routledge.
- Wheeler, S., and Thomas, P., 2000. Socio-Legal Studies. In: D. Hayton, ed., *Law’s Future(s) British Legal Developments in the 21st Century*. Oxford: Hart, 267–29.
- Wittig, M., 1992. *The Straight Mind and Other Essays*. Boston: Beacon Press.
- Yalçın, S.T., 2019. *Türk Ceza Hukukunda Kadın*. Ankara: Yetkin.
- Yılmaz, E., et al., 2015. Analysis and Comparison of Domestic Femicide Cases in the Cities of Diyarbakir & Tekirdag, Turkey: A preliminary study. *Journal of Forensic and Legal Medicine* [online], 34(August), 17–23. Available at: <https://doi.org/10.1016/j.jflm.2015.04.018>

Legislation

- 765 Turkish (Former) Criminal Code, 51. Article.
- 5237 Turkish Criminal Code, 29 Article.
- Grand National Assembly of Turkey, Term: 22, Legislative Year: 2, Number of Sessions: 664, p. 434.
- Istanbul Convention.
- TBMM, (National Assembly of Turkey) 2009. Session: 22, Legislation Year: 2, Sequence Number: 664.

Jurisprudence

1. CC,01.06.2010, 2008/5843, 2010/4039.
1. CC,03.03. 2015, 5506/1140.
1. CC,03.10.2011, 1659/ 5607.
1. CC,19.02.2015,2014/1917,2015/834.
1. CC,22.04.2014, 3714/2632.
1. CC,26.05.2015, 413 /3353.
1. CC,27.4.2010,2009/6525,2010/3023.
1. CC,28.04.2015, 2014/3299 E, 2015/2704.

1. CC,31.05.2011,2574 /3496.
1. Criminal Chamber, (CC) 19.02.2017, 2016/4567,2017/629.
3. CC,01.10.2013,2012/28544,2013/33263.
ACC, 26.03.2013, 2012/1-1573, 2013/104.
Assembly of Criminal Chambers, (ACC), 28.06.2011, 114 /150.
- Bursa 3. HPC, 22/08/2012, 254/323.
- Diyarbakır 3. HPC,19/02/2013, 2012/381,2013/79.
- Istanbul 6. Heavy Penal Court (HPC),27.02.2007, 2006/172, 2007/26.
- İzmir 11 HPC,26.08.2009,200/187.
- İzmir 6. HPC,28.04.2023, 359/259.