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**THE FUSION OF GENDERED HORIZONS:
A FEMINIST PERSPECTIVE ON THE
RIGHT TO CONSCIENTIOUS OBJECTION/
A POSSIBLE PATH TO OVERCOME
MILITARISM ?**

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Summary

In this thesis, I look for the possibilities to claim the right to conscientious objection on feminist grounds under international law to achieve gender equality. As a departure point, this thesis supports the hypothesis that the recognition of the right to conscientious objection on feminist grounds is substantially essential to overcome structural causes of all kinds of violence perpetrated against all identities including women, homosexuals and transgendered people who are considered to be subordinate to certain form of hegemonic masculinities in any society. At this point, it is also significant to emphasize that I do not exclude men from the category of subordinate identities since they also suffer from patriarchal system as it would be seen throughout this thesis.

This thesis begins with explaining the philosophical grounds of conscientious objection in order to see whether the right to conscientious objection could be considered as an individual right or collective right. The purpose of examining the philosophical grounds of conscientious objection is to see its potential as a transformative action towards achieving gender equality.

This thesis, then, presents the legal framework of the right to conscientious objection at UN level and Council of Europe level, respectively.

The next section introduces main concepts such as gender, hegemonic masculinity and militarism from a feminist perspective in order to establish the link between militarism and feminism. Accordingly, this section also displays the unignorable need for a feminist approach towards the right to conscientious objection.

This thesis then goes on with introducing the legal framework in Turkey in the context of military service. Furthermore, I give examples from Turkey in order to show how certain form of hegemonic masculinity is constructed during the performance of military service by trivializing all the characteristics associated with femininity.

In the last section, in order to see whether there are legal possibilities to claim the right to conscientious objection on feminist grounds, I examine relevant articles of CEDAW, the report of CEDAW Committee and the report of CSW regarding the role of men and boys in achieving gender equality in the context of UN. Later on, for the same purpose, I examine the relevant articles of ECHR, the Convention on Preventing and Combating Violence Against Women and Domestic Violence and the report of Parliamentary Assembly entitled as “Advancing Women’s Rights Worldwide.”

After showing the mutual relationship between militarism and constructed gender inequalities and analyzing the relevant UN and COE documents, I conclude that there are no hindrances against the recognition of the right to conscientious objection on feminist grounds in international human rights law. On the contrary, the right to CO on feminist grounds should be promoted by states in order to make gender equality a reality for all identities.

Preface

"I think that we can get further by saying the truth:

(...) That no-one can be forced to follow a call-up order - that therefore we firstly have to eradicate the psychic obsession, which makes one believe that he has to, has to, has to march, when they blow the horn.

You do not have to.

Because this is a simple, a primitive, a simply great truth:

You can also stay at home."¹

The support of war and accordingly the militarization of a society has always been in the centre of the agenda of nation-states. Even though, today, in most COE countries, the military service is not compulsory anymore, there are still 15 countries which retain the compulsory military service. According the press release of COE in 2012, no less than 7 of them still put conscientious objectors in prison especially including Armenia, Azerbaijan and Turkey.² Among 47 members of COE, Turkey has the 'title' of the sole country which has not recognized the right to conscientious objection on any grounds.

The right to conscientious objection is itself very significant issue since the militarization of the society reaches its peak during the performance of military service. However, I choose to focus on the significance of the recognition of the right to conscientious objection on feminist grounds by displaying the mutual relationship between militarism and subordination of identities from a gender perspective.

I consider conscientious objection on feminist grounds as a transformative action that will achieve the gender equality among all identities by, at least, leading to public discussion on taken-for-granted forms of gender identities even though it is not the only way to eliminate gender inequalities.

In that context, this thesis claim that the recognition of conscientious objection on feminist grounds will provide the fusion of gendered horizons by deconstructing all stereotypes associated with femininity and masculinity that exclude all marginalized identities such as homosexuals and transgendered people.

¹ Kurt Tucholsky (as Ignaz Wrobel): *Über wirkungsvollen Pazifismus*, in *Weltbühne*, 11 October 1927 Quoted from: Kurt Tucholsky: *Unser Militär! Schriften gegen Krieg und Militarismus*. Büchergilde Gutenberg, Frankfurt/Olten/Wien 1982, p396-401

² Available at : <<https://wcd.coe.int/ViewDoc.jsp?id=1902207&Site=DC>>

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Abbreviations

| | |
|--------|---|
| CEDAW | Convention on Elimination of All Forms of Discrimination Against Women |
| CO | Conscientious Objection |
| COE | Council of Europe |
| CPCVAW | Convention on Preventing and Combating Violence Against Women and Domestic Violence |
| CSW | Commission on the Status of Women |
| ECHR | European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| ECOSOC | Economic and Social Council |
| ICCPR | International Covenant on Civil and Political Rights |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| UNCHR | United Nations Commission on Human Rights |

1 Introduction

1.1 Conceptual Framework

The nation-state which is, in fact, an “imagined community as a sovereign”³ has a claim of monopoly over the use of violence. This claim in order to be realized, requires “an unprecedented amount of disciplined organization”⁴ which is simply, run by organizational principles of capitalism. In such a system of control, every person is determined to function as a part of this system within a legal discourse of duties and responsibilities.⁵ One of the best examples for that might be the organization of armies which are the fundamental institutions within a modern-state. The reason for the right to conscientious objection to military service which is the main theme of this research, has been contested for many years by nation-states, could be understood from this perspective.

Under the principles of international law, the military conscription is considered as a significant and necessary tool for preserving the power of the state in the defence of its territory where it claims to have an absolute sovereignty.⁶ Therefore, a conscientious objector who refuses to take part in the military service, has been seen as a challenge to the sovereignty of the state. It could be said that this attitude has been reversed recently by recognition of a right to conscientious objection by many states with parallel to embracement of human rights principles in contemporary international law. States are no longer considered as autonomous entities but rather they are taken as interdependent on each other which legitimize the restrictions in domestic sphere with regards to their obligations towards other states and people in their jurisdiction.⁷

However, the fact that modern state is only an “imagined community” requires a myth to be believed and internalized, in a reflexive way, by the members of this community. The main claim of this thesis is that the legitimization of the nation-state myth operates through nationalism which uses militarism as a tool for maintaining already-existent norms which are, in essence, heterosexist. In this sense, militarism is not taken only in relation to the military service. Instead, militarism is defined as a significant tool for the transference of the hierarchical, authoritarian, normalizing and totalitarian values of armies in every aspect of social life. By doing that, militarism helps to preserve and reproduce many essentialist and discriminatory mentalities which maintains the subordination of all the

³ B. Anderson, *Imagined Communities*, Verso, London, 1990, p.33

⁴ C. Üsterci & Ö.H Çınar, Introduction in Özgür Heval Çınar, Coşkun Üsterci (ed.) : *Conscientious Objection Resisting Militarized Society*, Zedbooks, 2009, p. 3

⁵ Ibid., p.3

⁶ M. Mthombeni, ‘Forced Recruitment: A Violation of Human Rights?’, 17 *South African yearbook of International Law*, , (1991/1992), pp.12-14

⁷ Ibid, pp.12-13

identities excluded from heterosexual matrix.⁸ I use heterosexual matrix as a concept that refers to the cultural perception that provides the ‘naturalization’ of gender and gender-related desires as Judith Butler proposed. In that context, being a man is identified with hegemonic masculinities⁹ as well as being a woman is identified with femininity, vulnerability and weakness. Accordingly, it seems so significant to question the relationship between militarism and these ‘naturalized’ and stagnant categories of gender identities in order to deconstruct these gender categories which causes the exclusion and subordination of many people from society with the help of contemporary legal structures.

By focusing on the right to conscientious objection specifically, this thesis aims to demonstrate why feminist theory must also embrace the practices which seems to belong to only men domain such as military service. At this point, legal and social practices regarding the mandatory military service in Turkey would be very useful to comprehend the severity of this issue. For instance, even though women are considered to be out of conscientious objection debate, the existence of women conscientious objectors in Turkey point out to the undeniable fact that the lives of women are also affected and shaped by militarism as well as the lives of those who are obliged to perform military service. The attempt of women conscientious objectors to be involved in this debate is eminently significant to expand the claim of representation of women in public discourse. The very existence of women conscientious objectors also prove that ‘woman’ is “an ongoing discursive practice... open to intervention and resignification”¹⁰ as Butler mentioned.

It should be noted that the feminist claim in this thesis, by no means, support the inclusion of women in military service. Otherwise, the thesis would have fallen into contradiction by proposing the conscription of women in the army where they would play the role of ‘men’ by internalizing the hegemonic masculinity.

In such a context, this thesis aims to give a militarism critique from a feminist perspective by moving from the question: ‘Where are women situated in anti-militarist movement in the context of the recognition of right to conscientious objection to military service?’, to the question ‘Are there any possible ways to expand the legal grounds to feminism for claiming the right to conscientious objection in international law?’ In other words, the main research question of this thesis is to look for the possibility to declare conscientious objection on feminist ground in order to achieve gender equality under international law. For this purpose, I will examine several

⁸ J. Butler, *Gender Trouble: Feminism and the Subversion of Identity*, London: Routledge, 2007, p.7

⁹ Hegemonic masculinity is a term used by Robert W. Connell for the first time in order to refer to limited, reductionist and essentialist forms of masculinity that exclude all other forms of masculinity which does not fit into the framework of hegemonic masculinity. For more information: R.W. Connell, *Gender and Power: Society, the Person and Sexual Politics*, CA: Stanford University Press, Stanford, 1987

¹⁰ J. Butler, *Gender Trouble: Feminism and the Subversion of Identity*, 1999, p.33

binding and non-binding international documents at Council of Europe Level and United Nations as well.

Focusing exclusively on the right to conscientious objection from a gender perspective, this thesis does not examine neither deficiencies in international law regarding the right to conscientious objection nor the situation of conscientious objectors based on religious grounds.

1.2 Methodology

This research will follow a textual and descriptive method based on a combination of traditional library research and qualitative analysis. By using qualitative analysis, I will try to understand the reasoning of conscientious objectors (both male and female) due to the declarations made by themselves.

The research material consists of several academic articles and books related to feminist theory as well as international law documents, COE documents, ECtHR decisions and national regulations. Due to the lack of national regulation in Turkey regarding the right to conscientious objection and accordingly the impossibility of collecting official data on the situation of conscientious objectors in Turkey, sources such as a website¹¹ formed by conscientious objectors in Turkey and an almanac¹² consisting of declarations of conscientious objectors in Turkey between 1989-2010 will be used in order to overcome the shortage of information due to the lack of official data. Furthermore, a field study regarding the military experiences of men in Turkey¹³, conducted by sociologist Pınar Selek will be used as a source for displaying the role of military service in Turkey on constructing the male identity.

Taken into consideration that conscientious objection is a philosophical concept, it is essential to touch upon how it is considered at the legal field, especially with regards to the differences between civil disobedience and conscientious objection. (in the next section) This thesis also aims to analyze whether the recognition of the right to conscientious objection based on feminist grounds could be transformative at a general level in the society as if it is a collective right as civil disobedience.

This study made by following a deductive method, starting with the current situation of conscientious objection in international law and COE by introducing UN general recommendations on ICCPR and case-law of ECtHR as well as relevant documents of COE. Through a feminist lens, an analysis of such international documents will be made in order to see until what extent international human rights law present opportunities for

¹¹ www.savaskarsitlari.org (only available in Turkish)

¹² Vicdani Ret Açıklamaları Almanığı (1989-2010) , (ed.) Can Başkent, available at: <http://propagandayayinlari.net/kitap/vr.pdf> (only available in Turkish)

¹³ Pınar Selek, Sürüne Sürüne Erkek Olmak(Being a Man Through Creeping), İletişim Yayınları

recognition of conscientious objection on feminist grounds. For such an analysis, international law documents related to gender equality such as CEDAW, expert reports under UN Division for the Advancement of Women will be examined.

For emphasizing the undeniable interconnectedness of anti-militarism and gender equality, examples from Turkey which is chosen as a sample country by the author, will be presented. Besides, being the sole country that has not regulated the status of conscientious objectors among the members of COE, Turkey was chosen as a sample for involving feminist women conscientious objectors even though military service is not mandatory for women.

Admitting the importance of socio-legal studies to show how legal field could be shaped by social movements, this thesis also tries to reflect the voices of both male and female conscientious objectors in Turkey by using interpretative phenomenological analysis based on the field study conducted by Pınar Selek and declarations made by the conscientious objectors in Turkey as long as limitations allow.

1.3 Philosophical Grounds of Conscientious Objection- Individual or Collective Right?

1.3.1 Conscience as a Symbol

In order to have a clear understanding of conscientious objection, first, ‘conscience’ as a notion must be apprehended since the philosophical grounds of conscientious objection stems from ‘conscience’. Only after this apprehension, it would be possible to discuss whether the right to conscientious objection linked to feminism could be considered as an individual or collective right.

Relying on the distinction made by Michael Polanyi between symbols and signs¹⁴, I consider ‘conscious’ as a symbol rather than a sign. Signs acquire meaning since they indicate something whereas symbols stand for something. In other words, they *symbolize* something. In Schinkel’s terms, conscience “must be understood as a symbol expressive of a certain class of experiences.”¹⁵ One can question the difference between the experiences that form conscience and the others that do not. At that point, Schinkel refers to the core element of symbol of conscience which is

¹⁴ For detailed information: M. Polanyi & H. Prosch, *Meaning*, The University of Chicago Press, Chicago, 1975. (chapter 2 and 4)

¹⁵ A. Schinkel, *Conscious and Conscientious Objection*, Pallas Publications, Amsterdam, 2007, p. 33, 53

ultimate concern.¹⁶ The experiences to which the subject approaches with ultimate concern, find its expression in the conscience. The element of ultimate concern is extremely related to the meaning attached to certain class of experiences by the subject. The interpretation that comes from the subject, is needed. It does not have to occur in a deliberate way but can also occur at subconscious level. Conscience becomes intrinsic to the integrity of the subject through interpretation of these experiences which the subject attributes a meaning with ultimate concern. Since the interpretation of these experiences encompassing ultimate concern is highly relative, the subjectivity becomes very significant when it comes to conscience. Therefore, here comes the question: Can it be claimed that conscientious objection is just an individual right with reference to the subjectivity of the conscience?

1.3.2 Conscientious Objection as an Individual Right or Civil Disobedience as a Political Action?

The conscientious objection is often regarded as a moral stand dependent upon the subjectivity of the individual for the reason that the philosophical origins of the concept of conscientious objection is rooted in the notion of conscience. The decision of the individual, as a conscientious objector, regarding not to obey the law is pertinent to her/his deep conviction that she/he is obliged to act in accordance with her/his conscience. Otherwise, the deterioration will occur in her/his integrity.

The conscientious objector acting in accordance with her/his subjective conviction, does not aim to change the law which is in contradiction with her/his morality. She/he does not intend to act on behalf of the ‘general good’ of the society. Rather, she/he displays ‘non-compliance’ on behalf of preservation of her/his moral integrity.¹⁷ Correspondingly, Hannah Arendt points out: “the rules of conscience hinge on interest in the self. They say: beware of doing something that you will not be able to live with.”¹⁸ For the reason that the objection is based upon subjectivity of the individual who embraces “the fear of being alone and having to face oneself can be a very effective dissuader from wrongdoing, but this fear, by its very nature, is unpersuasive of others.”¹⁹, the right to conscientious objection tends to be considered as an individual right.

Unlike the conscientious objection that embodies the conflict between the individual’s own conception of ‘good’ and the ‘common good’

¹⁶ Ibid. p.33

¹⁷ N. T. Kılınç, The Morals and Politics of Conscientious Objection, Civil Disobedience and Anti-militarism in Özgür Heval Çınar, Coşkun Üsterci (ed.) : *Conscientious Objection Resisting Militarized Society*, Zedbooks, 2009, p. 62

¹⁸ H. Arendt, *Crises of the Republic*, New York: Harcourt Brace, 1969, p.64

¹⁹ Ibid. , p.67

of the society, civil disobedience attaches to the public sphere by referring to the distinction between legality and legitimacy.²⁰ At the very beginning, the acts of the civil disobedient are also motivated by subjective concerns as it is in the case of the conscientious objection. However, the civil disobedient, “never exists as a single individual”²¹ since the refusal of the civil disobedient appears on the ground that questions the legitimacy of the law which imposes general obligations on every single individual. In essence to the generality of the law, civil disobedience bears upon everyone even though it is motivated, at the very beginning, by subjective concerns.

As mentioned above, the conscientious objector does not aim to change the law in principle. Rather, she/he aims to be excluded from the law that contradicts with her/his personal convictions. On the other hand, in Rawl’s terms, civil disobedience is “ a public, non-violent, conscientious yet political act contrary to law usually done with the aim of bringing a change in the law or policies of the government.”²² The intention behind the civil disobedience towards altering the law on behalf of everyone, constitutes the civil disobedience as a political action rather than an individual act.

The distinction between conscientious objection and civil disobedience in parallel to the tension between private sphere and public sphere, does not have to be taken as sharp as it is mentioned. Even though the conscientious objector only acts upon her/his moral convictions, the declaratory nature of the conscientious objection blurs the borders between civil disobedience and conscientious objection. As the conscientious objector declares her/his objection by means of press or media, the action of refusal becomes a part of public sphere, itself. Recalling Habermas, the declaratory nature of the objection makes the refusal pertained to the sphere of the communicative action of citizens²³ and leads to a public discussion.

Besides the declaratory nature of the conscientious objection, the moral motives of the objection could also be related to political sphere where civil disobedience takes place. When the conscientious objector declares her/his objection in terms of anti-militarism, the military and the laws related to military service also become a part of public discussion. In that respect, the refusal to military service could be regarded as an action leading towards alteration of the law which is not on behalf of the general ‘good’. Hence, it can be claimed that struggles for the recognition of the right to conscientious objection confirm the character of the conscientious objection as a transformative civil disobedience.

²⁰ *supra* note 15, p. 66

²¹ *supra* note 16, p.55

²² J. Rawls, Definition and Justification of Civil Disobedience in Hugo Adam Bedau (ed.), *Civil Disobedience in Focus*, London: Routledge, 1999, p.104

²³ J. Habermas, ‘ Aux limites du pouvoir démocratique: désobédience civile et droit a la resistance’ *Actuel Marx*, p.24 (cited in N. T. Kılınç, The Morals and Politics of Conscientious Objection, Civil Disobedience and Anti-militarism in Özgür Heval Çınar, Coşkun Üsterci (ed.) : *Conscientious Objection Resisting Militarized Society*, Zedbooks, 2009, p.68)

1.3.3 Feminism: a path towards conscientious objection as a transformative action

Following the discussion whether the right to conscientious objection could also be considered as a transformative civil disobedience due to its existence in the public sphere by the declaratory nature, in this section, feminism as a means of transformative action will be discussed.

It is, without doubt, that feminism is a political movement which requires political action for the equality of women in all terms. Therefore, a declaration of conscientious objection with feminist motives would also be regarded as civil disobedience as a political action.

However, in the case of a conscientious objector who has moral/personal convictions related to feminism that require her/his exclusion from the military service where the subordination of women or femininity in general, is reproduced, it has also to be admitted that such a conscientious objector acts upon her/his subjectivity. Even though she/he has no intention to change the discriminatory practices during the military service or the laws regarding the military, her/his objection carries a transformative character since such a declaration in the public sphere also leads to a public discussion that might change gender perception in the society. Hence, starting from moral/personal conviction, a conscientious objection based on feminism could be considered as a transformative action in the realm of public sphere.

1.4 Outline of Chapters

Chapter Two introduces the legal framework of the right to conscientious objection at UN level and Council of Europe level, respectively. In the first part, within context of UN, general recommendations and covenants relevant to the right to conscientious objection will be presented.

Chapter Three looks at the mutual relationship between gender and militarism from a feminist lens, thereby aiming to show how significant it is to recognize the right to conscientious objection on the basis of feminism on a theoretical basis.

Chapter Four goes on with examples related to the practices of military service from Turkey in order to display the gender-based persecution people have experienced. Further, this chapter demonstrates the correlation between the military service practices and subordination/oppression of people who do not fit into heterosexual matrix.

Chapter Five reviews the legal framework of the right to conscientious objection in international law by analysing whether feminism could be a ground for claiming this right.

Lastly, Chapter Six concludes the thesis.

2 The Legal Framework of The Right to Conscientious Objection

2.1 The Right to Conscientious Objection in the Context of United Nations

Conscientious objection is not a concept that has only one meaning. Because of the fact that this kind of action contains the will of ethical or political actors, not the will of collectivity, the meaning of the concept also depends on the different interpretations of these actors. Besides, there is no explicit reference to ‘the right to conscientious objection’ in UN System.

After the recognition of conscientious objection as a legal right by many countries all around the world, in 1983 UN offered a meaning for conscientious objection: “By conscience, is meant genuine ethical convictions, which may be of religious or humanist inspiration ... Two major categories of convictions stand out, one that it is wrong under all circumstances to kill (the pacifist objection), and the other that the use of force is justified in some circumstances but not in others, and that therefore it is necessary to object in those other cases (partial objection to military service.)”²⁴ Even though conscientious objection is not recognized explicitly in UN system, in its resolution, (former) UN Commission on Human Rights²⁵ have acknowledged “the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion” with reference to Article 18 of ICCPR and Article 18 of UDHR.²⁶ What is meant by thought, conscience and religion is mentioned in General Comment 22 of UN Human Rights Committee like this: “Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief... Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.”²⁷ This view of Human Rights Committee is also closely connected with Commission on Human Rights Resolution 1998/77 which states: “that conscientious objection to military service derives from

²⁴ Question of conscientious objection to military service. Report by Mr. Eide and Mr. Mubanga-Chipoya, 27 June 1983, E/CN.4Sub.2/1983/30, para. 21

²⁵ The UN Human Rights Council replaced the UN Commission on Human Rights in 2006.

²⁶ UN Commission on Human Rights Resolution 1998/77, ‘Conscientious objection to military service’.

²⁷ Human Rights Committee General Comment 22 on Article 18 of ICCPR, paragraph 2

principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives.”²⁸

Therefore, it can be, explicitly, said that UN Human Rights System does not impose an obligation such as basing on formal religion to be a conscientious objector. On the contrary, according to UN standards, the right to conscientious objection is also considered in the context of anti-militarism by pointing out ‘ethical, humanitarian or similar motives.’ As a matter of fact, there is no distinction made between religion and belief, with regards to the reason of conscience, by both the committee and the commission.²⁹

2.2 The Right to Conscientious Objection In the Case-law of The European Court of Human Rights

In the context of ECHR, there is also no explicit mentioning of ‘the right to conscientious objection’. However, similar to the Article 18 of ICCPR, the right to conscientious objection is also raised under the Article 9 of ECHR on “freedom of thought, conscience and religion” before the Court. Until very lately, the view of ECtHR was that the issue of conscientious objection did not fall in the scope of Article 9 when it is taken into consideration with Article 4(3)(b) which states that forced or compulsory labor does not include “any service of a military character or, in cases of conscientious objectors, in countries where they are recognized, service exacted instead of compulsory military service.”³⁰ According to ECtHR, the wording of Article 4(3)(b) provides a choice to regulate conscientious objection in the domestic law of State Parties to ECHR but under no circumstances, it puts an obligation on States to recognize such a right. In other words, the Court was holding a point of view that the rights and freedoms guaranteed by ECHR does not include the right to conscientious objection. However, recently, the Court has changed its view regarding the right to conscientious objection. Now, I will touch upon case-law of ECtHR in order to show the evolutionary process with regards to the right to conscientious objection.

²⁸ To the same effect, the Council of Europe Parliamentary Assembly Resolution 337 (1967), ‘the Right of Conscientious Objection’, 26 January 1967 (22nd Sitting). The Council of Europe Committee of Ministers Recommendation R(87) 8, ‘Conscientious objection to compulsory military service’, 9 April 1987, directly mentions to ‘compelling reasons of conscience’.

²⁹ Human Rights Committee General Comment 22, para 11; Commission on Human Rights Resolution 1998/77.

³⁰ *Grandrath v. the Federal Republic of Germany* (no. 2299/64, Commission report of 12 December 1966, Yearbook, vol.10, p.626), *X. v. Austria* (no. 5591/72, Commission decision of 2 April 1973, Collection 43, p. 161), *Conscientious objectors v. Denmark* (no. 7565/76, Commission decision 7 March 1977), *A. v. Switzerland* (no. 10640/83, Commission decision of 9 May 1984)

2.2.1 Thlimmenos v. Greece³¹

The case of *Thlimmenos v. Greece* involves a Jehovah witness who was refused to be appointed, by authorities, as a chartered accountant of his criminal conviction. His conviction is based on insubordination for having refused to wear military uniform relying on his religious beliefs as a Jehovah witness.

The applicant, Thlimmenos, claimed before the Court that he had been subjected to discrimination with regards to the refusal of appointment as an accountant because of his religious beliefs. Therefore, he argued that his rights had been violated under Article 14 of ECHR taken in conjunction with Article 9.

In this case, the Court ruled in favor of the applicant that there had been a violation of Article 14 of ECHR taken into conjunction with Article 9. However, with regards to the alleged violation of Article 9 with reference to the right to conscientious objection, the Court did not find necessary to examine whether his conviction due to his refusal of compulsory military service as a conscientious objector, violate the right to freedom of thought, conscience and religion guaranteed under Article 9.³²

2.2.2 Ülke v. Turkey³³

The case of *Ülke v. Turkey* involves an anti-militarist from Turkey who refused to perform military service on the ground that he had strong pacifist convictions. He was sentenced to imprisonment several times by the authorities and he spent 701 days in imprisonment as a result of eight separate convictions which are related to his refusal to perform military service.³⁴

With regards to Article 9 of ECtHR, the applicant argued that the state is responsible under ECHR to recognize and to protect his freedom of conscience. Before the Court, he also presented specific legal arguments on the essence of conscientious objection to military service and movements of conscientious objection all over the world.³⁵

The state opposed the argument of Ülke by claiming that the right to conscientious objection is not covered by ECHR. The government relied

³¹ *Thlimmenos v. Greece*, Application no. 34369/97, judgment of 6 April 2000

³² *Ibid.* para.43

³³ *Osman Murat Ülke v. Turkey*, Application no. 39437/98, judgment of 24 January 2006

³⁴ For additional information: K. Boyle, Conscientious Objection in International Law and Osman Murat Ülke Case in Özgür Heval Çınar, Coşkun Üsterci (eds.) : *Conscientious Objection Resisting Militarized Society*, Zedbooks, 2009

³⁵ *Ibid.* p.216

on the previous rulings of Commission on Human Rights³⁶ which suggest that recognition of the right to conscientious objection to military service does not fall in the scope of article 9. However, the earlier decisions of the Commission had been grounded on the interpretation of article 4 of ECHR on forced labour. What is mentioned in article 4 is that the alternative service to compulsory military service demanded of conscientious objectors does not count as forced labor “ in countries where conscientious objection is recognized”. Relying on that article, the government claimed that the right to conscientious objection was not regulated in all states and therefore, it is not possible to oblige the Turkish government to recognize this right under the article 9 of the ECHR. Here, it must be noted that article 4 is only defines what a forced labour is even if it seems that it is strongly related to the article 9. However, there is no reference in the convention that gives authority to article 4 to control the scope of article 9.³⁷

In its judgment, the Court held that there had been a violation of article 3 on degrading treatment by avoiding coping with Article 9 arguments which are presented in the pleadings as it was in the case of *Thlimmenos v. Greece*. However, the Court drew attention to the humiliating treatment of Osman Murat Ülke by defining his situation as “civil death”³⁸ with reference to his liability to repeated prosecutions which prevented him from having a ‘normal’ life.

2.2.3 Bayatyan v. Armenia

As mentioned above, in two cases concerning the issue of conviction of conscientious objectors, although the Court did not find necessary to examine the applicability of article 9 once more, it dealt with this issue under Article 14 and 3 of ECHR.³⁹

Apart from its earlier judgments, in the case of *Bayatyan v. Armenia*, concerning a Jehovah’s Witness who was sentenced to two and a half years’ imprisonment because of his refusal to participate in military service owing to his religious beliefs, the Court held that article 9 is applicable in terms of conscientious objection.⁴⁰ After determining that the “belief”, “thought” or “religion” of the applicant is covered by the Article 9, the Court, secondly, examined whether the constraint on the right is “prescribed by law” ,“necessary in a democratic society” and has

³⁶ C. Ovey and R. C. A. White (2006) *Jacobs and White, European Convention on Human Rights*, 4th edn, Oxford: Oxford University Press, p. 270–72.

³⁷ *supra* note 32, p. 217

³⁸ *Osman Murat Ülke v. Turkey*, Application no. 39437/98, 24 January 2006. para. 62

³⁹ *Thlimmenos v. Greece*, Application no. 34369/97, judgment of 6 April 2000, paras. 43-53; *Osman Murat Ülke v. Turkey*, Application no. 39437/98, judgment of 24 January 2006, paras. 53-54, 63-64.

⁴⁰ *Bayatyan v. Armenia*, Application no. 23459/03, Admissibility Decision – Third Section, 12 December 2006.

“legitimate aim” which are the only reasons to restrict “freedom of thought, conscience and religion” as mentioned Article 9(2) of ECHR.⁴¹

In this case, the Court mentioned that the conviction of the applicant was not necessary in a democratic society within the scope of Article 9 of ECHR relying on its findings that States only have limited margin of appreciation where an alternative service to compulsory military service was not introduced and accordingly, States must show that such an interference is necessary because of ‘pressing social need’.⁴²

By means of this decision of the Court, it can be said that the right to conscientious objection has been recognized in the context of COE under the article 9 of ECHR on freedom of thought, conscience and religion even though it was not mentioned in any binding COE documents. In other terms, the Court paved the way for the conscientious objection to apply before the Court in order to acquire the recognition of the right to CO.

This decision is particularly significant for the conscientious objectors in Turkey where this right has not been introduced yet even though the military service is compulsory. According to the Court’s decision, Turkey would be considered as having a limited margin of appreciation since there is no alternative service to compulsory military service. Therefore, Turkey would need to show that there is a ‘pressing social need’ to interfere with the applicant’s right to conscientious objection in the context of Article 9 of ECHR.

⁴¹ *Bayatyan v. Armenia*, Application no. 23459/03, Grand Chamber, 7 July 2011 paras. 113-128

⁴² *Ibid.* para.123

3 Gender, Militarism & Hegemonic Masculinities

In this chapter, I will touch upon basic concepts such as gender, militarism and hegemonic masculinity in order to show how the social construction of these concepts are interrelated to each other and therefore, a feminist perspective on militarism and accordingly, on the right to conscientious objection are severely needed to overcome the inequalities and discrimination created among human beings based on their 'sex'.

3.1 Constructing the Feminist Field

3.1.1 Gender

The most traditional view on gender supports the idea that gender is determined by sex differences which is assumed to be a biological phenomenon, claiming that some people are men whereas some people are women by birth. This essentialist approach of gender identifies femininity with being a 'woman' as well as it identifies masculinity with being a 'man'.⁴³ From that perspective, gender is taken for granted as a part of the process of naturalization of sex differences.

Many feminists opposed this traditional view by questioning "the conventional assumption that gender differences (and subordination) are rooted in biological differences between women and men."⁴⁴ Rather, they claimed that all the characteristics acquainted with masculinity such as rationality, aggression, domination and public life, are a result of social construction as well the characteristics acquainted with femininity such as weakness, vulnerability, submission and privacy. In other terms, masculinity and femininity become 'configurations of gender practice.'⁴⁵ Since the social construction of gender as a project associate some characteristics with femininity and masculinity in an exclusive way from each other, the characteristics associated with masculinity are also attributed a meaning which is desirable. In contrast, femininity associated with weakness and submission becomes a value which is undesirable. Therefore, feminization of someone or something is defined as subordination of "that person, political entity, or idea, because values perceived as feminine are lower on the social hierarchy than values perceived as neutral or masculine."⁴⁶ In that

⁴³ L. Sjoberg&S. Via, 'Introduction' in Laura Sjoberg, Sandra Via (eds.) : *Gender, War and Militarism Feminist Perspectives*, (Praeger Security International, 2010), p. 3

⁴⁴ L. Sjoberg, *Gender, Justice, and the Wars in Iraq*, Boulder, Colo.: Rowman&Littlefield, 2006a, p.32

⁴⁵ R.W. Connell, 'The Social Organization of Masculinity' in Connell, *Masculinities* (California University Press, 2005), p. 72

⁴⁶ *supra* note 42, p.34

context, gender is seen as a reflection of cultural interpretation of sex differences linked with social construction of meanings attributed to biological differences among people.

The view on gender as a project has also been criticized for the reason that it does not question whether sex is also a concept which has been socially constructed and therefore taken-for-granted. Accordingly, Butler asks questions such as: “Is there a history of how the duality of sex was established, a genealogy that might expose the binary oppositions as variable construction? Are the ostensibly natural facts of sex discursively produced by various scientific discourses in the service of other political and social interest?”⁴⁷ Accordingly, many feminist research has shown how thinking about sex in terms of binary oppositions as if it is scientifically ‘natural’ phenomenon, serves the political interests that reproduce discriminatory practices.⁴⁸ So, if it is admitted that sex, itself, is a social constructed reality, then how one can draw a line between sex and gender which is also considered as a reflection of cultural interpretation of sex? Claiming that gender also occurs as a result of construction as well sex which is also constructed through many disciplines that suggest certain norms, might also lead to despairing conclusion that culture is a destiny as well as it is said to be for biology.⁴⁹ In order to avoid such a trap, it is necessary to question ‘pre-discursive’ establishment of sex which is considered to be on “politically neutral surface on which culture acts.”⁵⁰ Otherwise, our thinking would be limited by the presupposition that suggest to analyse gender in terms of so-called predetermined two sexes.

In relation to the discussion on gender mentioned above, I suggest to think gender in terms of having a transitional character. In a very similar way to Butler, embracing the idea that sex is constructed as well in the pursuit of political interest and maintenance of the system that reproduce the subordination of people who are not in conformity with ‘pre-given’ categories of sex, I prefer to define gender in a way that rejects all dualist and epistemological explanations. Instead, rather than being an identity, gender must be considered to be as a performance which is, itself, a result of reflections or in Butler terms, ‘expressions’ that are considered to be result of gender in analogy to Nietzsche’s claim that “there is no ‘being behind doing, effecting, becoming; ‘the doer’ is merely a fiction added to the deed—the deed is everything.”⁵¹ Since the surface on which gender roles are performed is very ‘slippery’ due to the lack of any ‘predetermined’ category, I define gender as having a transitional character which lead to

⁴⁷ *supra* note 6, p.9

⁴⁸ See R. Hubbard&M. Lowe(eds.) *Genes and Gender*, vols. 1&2 (New York: Gordian press, 1978, 1979); E. F. Keller, *Reflections on Gender and Science* (New Haven: Yale University Press, 1984; A. F. Sterling, *Myths of Gender: Biological Theories About Women and Men* (New York: Norton, 1979)

⁴⁹ *supra* note 6, p. 11

⁵⁰ *Ibid.* p. 10

⁵¹ N. Friedrich, *On the Geneology of Morals*, trans. Walter Kaufmann (New York: Vintage, 1969), p.45 (cited in J. Butler, *Gender Trouble Feminism and the Subversion of Identity* , New York: Routledge, 2007)

intertwining of all categories based on sex. In a way, even though it can be said that the definition of gender I have suggested, renders gender impossible to define, I claim that thinking gender in transitional terms would eradicate all the limited way of thinking in contrast with dualist/essentialist approaches and would open up a possibility to get rid of the imprisoned mentality that reproduces subordination in a vicious cycle. By this definition, I try to overcome the problem that gender discourse, in fact, serves to oppress all similarities among men and women rather than expressing the ‘natural’ differences.⁵²

3.1.2 Hegemonic Masculinity

As it is mentioned above⁵³, ‘hegemonic masculinity’ is a term first used by Robert William Connell in order to refer to limited, reductionist and essentialist forms of masculinity that exclude all other forms of masculinity which does not fit into the framework of hegemonic masculinity. It is not a fixed type that exist in every society in the same way. Rather, it refers to the masculinities that capture the hegemonic position in a given structure of gender relations.⁵⁴

Accordingly, I define ‘hegemonic masculinity’ as a certain way of performative acts that people believe to acquire power if they continue to act in this way in order to maintain the hegemonic position. Since the very existence of hegemonic masculinity derives from occupying the hegemonic position by acquiring power, it does not only need to be related to men. By acting in the same way along with the given structure of gender relations, women can also become the reproducers of hegemonic masculinity. Women soldiers/guerillas that I will talk about more in the next section(3.1.3), can be a very good example of that. In such a context, I prefer to consider hegemonic masculinity independent of sex. Instead, it consists of performative acts that fit into the norms of patriarchal culture.

Even though the form of hegemonic masculinities can change from time to time or from space to space, there are still main patterns of hegemonic masculinities that constitute its very essence as suggested by Connell.⁵⁵ In order to have a insightful understanding of hegemonic masculinity, now, I will talk about two main patterns of hegemonic masculinity in relation to this research especially in the context of military service, briefly.

⁵² T. Atay, ‘ Erkeklik En çok Erkeği Ezer!’(Masculinity Mostly Oppresses Men) translated by the author, *Toplum ve Bilim*, Autumn 2004, p.28

⁵³ See *supra* note 7

⁵⁴ *supra* note 43, p.76

⁵⁵ *supra* note 43, p.76-81

3.1.2.1 Hegemony

With reference to Antonio Gramsci's conception of 'hegemony'⁵⁶, hegemonic masculinity can be defined as the formation of gender practice which integrates the actual acceptable answer for the purpose of maintaining the legitimacy of already-existent structure of patriarchy which guarantees the subordination of identities, especially women, homosexuals and transgendered people and even men.

In order to establish a hegemony, there must be a compliance between cultural ideal and institutional power. When such a compliance occurs, it becomes unnecessary to use direct violence to maintain the dominant position in a society. In the context of military service where cultural ideals of manhood correspond with its institutional power, it can be said that the military is a hegemonic institution where the means for the legitimacy of already-existent norms of patriarch are used through reproduction of hegemonic masculinities. As long as the presumption that military service is identified with cultural ideals of manhood, is not challenged, the hegemonic masculinities would continue to dominate subordinate groups. Hence, I consider that every action/movement which opposes the military in any way, is a very significant step towards emancipation of subordinate groups in a feminist context.

3.1.2.2 Subordination

As mentioned above, hegemony is related to the dominance of some groups who perform the approvable gender practices in a given structure. Within the context of hegemonic masculinity, the dominant group which is in correspondence with heterosexual matrix⁵⁷ provides the continuity of the 'naturalizing' gender practices by maintaining hegemony over subordinate groups.

In the system of heterosexual matrix, a man is only considered as a man as long as he functions as a man as well as a woman is counted as a woman only if she performs gender practices in the same line with heterosexual norms. Hence, for the dominant group, it becomes too significant to preserve heterosexuality in order to provide sustainability of hegemonic masculinity. In such a system, homosexual males are also subordinated as well as woman. With regards to military service, the conviction that men have the necessary strength for fighting due to their biological characteristics, lead to subordination and oppression of homosexuals since they get out of heterosexual matrix by rejecting to

⁵⁶ For comprehensive understanding of Gramsci's conception of hegemony see: A. Gramsci, *Prison Notebooks I-II*, (ed&trans) Joseph A. Buttigieg, (New York; Chichester: Columbia University Press, 2010;

⁵⁷ *supra* note 6

perform 'natural' gender practice. For instant, until very recently, homosexuals who has been 'exposed' to be gay, were being excluded from German army for the reason that they are not 'mentally stable' or for other medical reasons.⁵⁸

For sure, males who endeavor to fit in heterosexual matrix but 'fail', also become part of subordination process. For instant, such males who are excluded from the domain of hegemonic masculinity, are very often called as sissy, lily river, candy ass, ladyfinger, motherfucker or mother's boy.⁵⁹ As it could be obviously seen unsurprisingly, all these labeling words evoke femininity. This situation indicates that the subordinate is always identified with women even though the women are, most of the time excluded from the domain where such discourses are reproduced. For instant, in a military conscription system where only men are recruited, homosexual as well as heterosexual who do not fit into norms of hegemonic masculinities, are trying to be subordinated by locating them into femininity. Women are rendered powerless to challenge such a discourse since they are totally excluded from military institution. In other words, the category of women do not fit into neither category, the subordinate nor the dominant.⁶⁰ Therefore, it seems important to me to call women into the discourse of feminism by challenging militarism on feminist grounds in order to establish them as subjects.

3.1.3 Militarism

Even though, most of the time, militarism has been taken into consideration in conjunction with armed-conflict, the context of militarism is much more broader than armed-conflict. According to Peterson and Runyan, "militarization refers to processes by which characteristically military practices are extended into the civilian area- as when business become dependent on military contracts, clothing fashions, celebrate military styles, or toys and games embody military activities."⁶¹ This definition of militarism misses the point that the differentiation between the times of armed conflict and peace, military and civilian life are, actually, indistinct.⁶² In essence, the distinction between military and civilian needs to be blurry for sustaining a mentality that would be in favour of war when it comes to support the so-called political operation of states that have militarist purposes. Accordingly, in general sense, militarism could be defined as glorification of militarist values, war as well as the popularization and acceptance of the mentalities that exalt militarist characteristic among

⁵⁸ C. Moskos, *The Postmodern Military*, (New York: Oxford University Press, 2000), p.14-30

⁵⁹ *supra* note 43, p.79

⁶⁰ J. Butler, *Contingent Foundations: Feminism and the Question of "Postmodernism"* in Linda Nicholson (ed.) : *Feminist Contentions A Philosophical Exchange* (New York: Routledge, 1995), p. 47

⁶¹ V. Spike Peterson & A. S. Runyan, *Global Gender Issues: Dilemmas in World Politics* (Boulder Colo: Westview Press, 1999), p. 258

⁶² *supra* note 41, p.7

civilians. To some extent, this definition helps to comprehend the artificial boundaries between war and peace times.

Starting from the claim that militarism is not gender-neutral at all, in this section, I will try to present the relationship between militarism and gender by touching upon its affinity with nationalism, citizenship and the effect of this relationship on women.

3.1.3.1 The Gendered Nature of Nationalism

In order to have an insightful understanding of how gender is articulated in militarism, in this section, I will introduce a general picture of the construction of gendered nationalism in terms of hegemonic masculinities.

Until recently, the gendered nature of national myths has been neglected in feminist scholarship.⁶³ With reference to Anderson's 'imagined community'⁶⁴, by national myth, I refer to all created ideologies, discourses and processes affiliated with nation-state building. As stated above, the continuum of nation-building could not be considered as gender-neutral since "nationalist projects are simultaneously gender projects".⁶⁵ In Cynthia Enloe's terms, "the militarization of any nationalist movement occurs through the gendered workings of power."⁶⁶ The construction of a 'nation' requires high level of militarization since the creation of a nation requires an internalization of artificial border between itself and 'others'. Through militarization, the 'we' of the nation is taught to be prepared to defend its country against 'others' of other nations. The gendered nature of this process becomes visible when the main security providers of a nation are considered to be man since the gendered process of militarization is putting pressure on men "to prove their manhood by being tough, adversarial, and aggressive... In one highly legitimated and organized institution within most societies, men not only can, but-to be successful-must prove their masculinity"⁶⁷ whereas women are only seen as supporters because of the essentialist explanation that women are weak by nature. Hence, during the process of nation-making which requires a continuum, militarization through the discourse of national defence defines the relationship between male and female citizens as well as it defines the relationship between 'we' and 'others'. In the most traditional sense, gender stereotypes are reproduced in a way that men are main carriers of the nation while the

⁶³ For understanding complex relationship between nationalism and gender see:

J. Vickers, 'Some Methodological and Conceptual Issues In Connecting Feminism With nationhood and Nationalism', *International Feminist Journal of Politics*, 8:1, March 2006, 84-109

⁶⁴ *supra* note 1

⁶⁵ S. Walby, *Woman and Nation* in Gopal Balakrishnan (ed.) *Mapping the Nation* (New York: Verso, 1996), p.243

⁶⁶ C. Enloe, *The Morning After: Sexual Politics at the End of the Cold War*, (Berkeley: University of California Press, 1993), p.246

⁶⁷ *supra* note 59, p.118

women are the supporters as if they play the most traditional roles in a family.⁶⁸

Furthermore, in the context of military service, patriotism⁶⁹ is used as a way to convince men to perform violence against the 'other'. Besides being a way of legitimizing the use of violence, the problematic part of patriotism is its use as a means of convincing men with regards to the heterosexist connotations of nation and homeland. In the nation-building discourse, the body of women is identified with homeland which needs to be protected from other men as well as the women are considered to be guarantor of reproduction of the nation by their ability to fertile.⁷⁰ This analogy helps to explain why rape has been used as a weapon during war since ancient times. The 'conquer' of women is regarded as the proof of the superiority of 'winner' men as well as it becomes a proof of the loss of the defeated men.⁷¹

3.1.3.2 'Maleship' or Citizenship

The strong link between use of arms and citizenship has been existed since Aristoteles.⁷² This link becomes more obvious in countries where military conscription is mandatory such as Turkey.⁷³ Imposing this obligation on male citizens as a result of their status of citizenship, reproduces the perception that men is privileged compared to women in parallel with taken-for-granted gender stereotypes since military conscription is put forward as a condition for 'deserving' the citizenship. In such a context, the status of women as citizens are trivialized. At this point, in analogy to Cynthia Enloe's question that "where are the women?"⁷⁴ in the process of citizenship, I would like to ask the question : since women are excluded from military service which is regarded as a condition for citizenship, is citizenship, in fact, male-ship in which only the roles such as sacred mother and supporting wives, are attributed/ 'granted' to women?

⁶⁸ Anne McClintock, "'No Longer in a Future Heaven': Women and Nationalism in South Africa" in *Transition*, vol.51, 1991, p.104

⁶⁹ I define patriotism as subjective appearance of nationalist ideology in order to legitimize the use of violence against 'the other' who does not belong to the nation, in the pursuit of interests of power-holders in the nation-state.

⁷⁰); George Mosse, *Nationalism and Sexuality: Respectability and Abnormal Sexuality in Modern Europe*, (New York: Horward Fertig, 1985), p.98-111 For a comprehensive understanding of the the analogy between the reproduction of the nation and women from a gender perspectivesee: Joane Nagel, *American Indian Ethnic Renewal: Red Power and the Resurgence of Identity and Culture*, (New York: Oxford University Press, 1996

⁷¹ Susan Brownmiller, *Against Our Will: Men, Women and Rape*, Ballantine Publishing Group, United States, 1975, p.309-310

⁷² Ann J. Tickner, *Gender in International Relations*, Columbia University Press, 1992, p.37

⁷³ Turkish Military Service Act No. 1111 of 21 June 1927, Article 1: Every male who has Turkish nationality is compelled to do military service

⁷⁴ C. Enloe, *Bananas, Beaches and Bases* (London: Pandora, 1989)

3.2 The Need For Feminist Approach Towards Right to Conscientious Objection

This section begins with the explanation of feminist approach embraced in this research and then moves on showing the necessity of having feminist approach towards the right to conscientious objection in order to, at least, take a step towards accomplishing gender equality.

3.2.1 Feminist Approach

It is certain that ‘feminism’ has many meanings depending on many different femininities and masculinities. Therefore, it appears to be a necessity to clarify how I interpret feminism, especially in the context of this research.

First of all, I would like to mention that I consider feminism as a critical perspective that could open up the ways to transform the society shaped by limited mentalities stuck into taken-for-granted norms of gendered system. In other terms, besides being a means to understand and interpret the gendered way of lives, feminism has also strength to be counted as transformative action.

When it comes to question why feminist approach must be taken into account in terms of anti-militarism and accordingly, the right to conscientious objection, I should, explicitly, state that my feminist perspective is not exclusively related to women. According to my feminist perspective, it would refer to fall in trap of normative heterosexuality if only women are regarded as the subject of feminist movement. Women as a category “cannot be solidifying ground of a feminist political movement.”⁷⁵ Since any identity category would be exclusionary due to the normative essence, the perspective embracing the view that only women (as if it is a universal category) are the subjects of feminism, would be in accordance with taken-for-granted norms of heterosexual matrix. In a system where ‘women’ are expected to be ‘feminine’ and ‘men’ are expected to be ‘masculine’, attributing the status of being the subject of feminism to women sounds total absurd. Rather, I prefer to consider every human being who suffers from patriarchal system for not being able to or refusing to fit into normative heterosexuality, as the subject of feminism. In other words, the deconstruction of the subject of feminism is quite significant to emancipate it from essentialist dichotomies that limits the space of manoeuvre.

Accordingly, it appears to be significant to handle with the issue of militarism from a feminist perspective even though it is regarded as a

⁷⁵ *supra* note 58, p.50

domain only related to men. As, in the section above(3.1) , I tried to explain the mutual relationship between militarism and reproduction of gender roles in accordance with norms of hegemonic masculinity, the subject of feminism should be deconstructed in a way that would grasp all the categories that are excluded from heterosexual matrix or that are aware of the consequence that trivialization of femininity is interrelated to subordination of all who are out of heterosexual matrix. This act of deconstruction is necessary since in the context of militarism, the only subject is the one who can/able to perform the given hegemonic masculinity. All the other categories are identified with ‘devalorization of femininity.’⁷⁶

In that context, I also find this way of thinking as useful to have insightful understanding of other masculinities and femininities towards a transformative action. In accordance with what Gadamer calls ‘fusion of horizons’⁷⁷, for me, a feminist approach must grasp all alienated categories such as ‘men’, especially if the aim of feminist approach to understand and transform the reasons of gendered subordination. In a few words, it does not seem possible to me to transform a society without understanding ‘the other’ who, in a way, has been exiled from the feminist movement.

3.2.2 The Right to Conscientious Objection: Overcoming of Gender Inequality?

As I try to explain above, my departure of point has a claim that all the exclusionary practices that confine feminist theory in a notion of ‘women’ as subject, put hindrances in front of feminist purposes in order to transform gendered mentalities.⁷⁸ The movement of conscientious objection gains more importance at this point since it has also claim to refuse military service that reproduces the subordination of all categories rather than hegemonic masculinities. A male who is a conscientious objector on feminist grounds should not be excluded from the construction of the subject of feminism. Otherwise, the very fact that subordination of certain gendered categories work through management and production of subjects, would be neglected.⁷⁹ This is one of the main reason of my feminist persistence in the domain of conscientious objection movement.

In the words of Butler, “ My position is mine to the extent that ‘I’... replay and resignify the theoretical positions that have constituted me, working possibilities of their convergence, and trying to **take account of**

⁷⁶ S. Peterson, Gendered Identities, Ideologies and practices in the Context of War and Militarism in Laura Sjoberg, Sandra Via (eds.) : *Gender, War and Militarism Feminist Perspectives*, (Praeger Security International, 2010), p. 17

⁷⁷ For detailed information about the concept ‘fusion of horizons’ see: H.G Gadamer, *Truth and Method*, 2nd rev. Edition, Trans J. Weinsheimer and D G. Marshall, New York: Crossroad, 2004

⁷⁸ *supra* note 6, p.7

⁷⁹ *supra* note 58, p. 48

possibilities that they systemically exclude.⁸⁰ It is without doubt that gendered system based on hegemonic masculinities, does not want subordinate people to challenge it by rejecting its construction of subject. For instant, concerning a case from Israel where separate legal provisions are applied to men on strict terms and women conscientious objectors on softer terms in relation to their taken-for granted sex characteristics, the women soldiers complained that the softer provisions for women conscientious objectors made the conscientious objection of young women stay as a private matter, “not to mention a silenced one.”⁸¹ After the complain of women who try to challenge the language of the gendered system, the military authorities start to apply the same strict rules even resulting in imprisonment to women conscientious objectors in the name of achieving gender equality. The military authorities followed a way to restrict the right of conscientious objection of women instead of granting this right to male conscientious objectors as it is explicitly exercised by women.⁸²

In that context, I would like to propose that it is vital that all movements aiming legal transformation with a feminist claim should act in a very considerate way not to face ‘vengeance’ instead of transformation towards gender equality. The feminist claim regarding the right to conscientious objection, in general, should encompass male as subject not to fall into the trap of reconstruction of normative heterosexuality.

⁸⁰ *supra* note 58, p.42

⁸¹ Open Letter from Shani Werner (Dec. 31, 2002), available at

<http://www.newprofile.org/showdata.asp?pid=143> (Hebrew) translated by Noya Rimalt

⁸² N. Rimalt, ‘Equality With a Vengeance: Female Conscientious Objectors In Pursuit Of A Voice and Substantive Gender Equality’, *Columbia Journal of International Law*, Vol. 16.1, p. 97-145

4 Military Service in Turkey From a Feminist Lens

In this chapter, first of all, I will present national law in Turkey concerning the military service in order to have a clear understanding of the legal context I am talking about. Later on, I will give a picture of how the legal context shapes the perception of ‘becoming a man/citizen’ in society. Then, I will talk about the experiences during military service which leads to develop a perception that legitimize the subordination of people out of the heterosexual matrix. Throughout the chapter, I will give references to the declarations of conscientious objectors with regard to issues concerning the devalorization of femininity and accordingly, the legitimatization of gender inequality.

4.1 Legal Framework: Military Service in Turkey

4.1.1 The Constitution

Under the section entitled ‘Political Rights and Duties’, Article 72 of the Constitution demonstrates that “ ‘national service’ is a right and duty of every citizen in Turkey. The manner in which the service shall be performed, or considered as performed, either in the Armed Forces or in the public service is regulated by law.”⁸³ As it can be seen the wording of Article 72, the national service obligation can be fulfilled in the armed forces or in the public service or it can either be considered as performed. Therefore, military service is not regulated as the only option to fulfil the national service obligation and accordingly, alternative service to military service does not violate the constitution. However, in Turkey, based on the view of the Courts, there exist a false assumption that there is a tension between the constitution and individuals’ objection to military service.⁸⁴

Contrary to the false belief that military service is a constitutional directive, Article 24 and Article 25 supports the conscientious objection to military service. Article 24 states that “everyone has the right to freedom of conscience, religious belief and conviction”, Article 25 states that “everyone has the right to freedom of thought and opinion... nor shall anyone be

⁸³ Article 72 of the Constitution of the Republic of Turkey ,
<www.anayasa.gen.tr/1982Constitution-1995-2.pdf> , visited on 16 April 2012

⁸⁴ For detailed information about the non-existence of so-called tension between the constitution and conscientious objection see: H. Üçpınar, The Criminality of Conscientious Objection in Turkey and Its Consequences in Özgür Heval Çınar, Coşkun Üsterci (eds.) : *Conscientious Objection Resisting Militarized Society*, Zedbooks, 2009, p. 241-253

condemned or accused on account of his thoughts and opinions.”⁸⁵ Therefore, with very simple analytical way of thinking, it can be said that national service is regulated including the alternative service under the constitution with reference to Article 72 and conscientious objection based on conscience, religious or political belief cannot be limited or condemned with reference to Article 24 and Article 25. Furthermore, according to Article 15, freedoms regulated under Article 24 and Article 25 cannot be suspended even in times of war, mobilization and martial law.⁸⁶

However, Turkey as the sole country among the members of Council Europe that has not regulated the right to conscientious objection, grounds its persistence to the right to conscientious objection on its relevant legislation regulation military service in specific. Now, I will touch upon laws regarding this issue in order to show that the real tension exists between the military service acts and the constitution rather than the right to conscientious objection and the constitution. Before that, I would also like to point out that in Turkey , the constitution has supremacy and binding force that obliges legislative, executive and judicial branches to be in accordance with constitutional provisions.⁸⁷ Therefore the tension between the constitution and legislation must be resolved in favour of the constitution.

4.1.2 Military Service Act No. 1111

Article 1 of Military Service Act no. 1111 of 21 June 1927 mentions that “Every *male* Turkish citizen is obliged to perform his military service.”⁸⁸ The problem occurs at that moment since the constitution provides that nation service is the right and duty of every Turk whereas this obligation is only brought up for men. Even though it can be considered as positive discrimination in favour of women, this way of thinking which supposes that women are not qualified/trustable for being armed because of their femininity, just legitimizes the view which is intrinsic to patriarchal society that women are vulnerable and need to be ‘protected’. Here, I would like to make it clear that I do not claim that military service must be introduced for women as well. Rather, I suggest that alternative service must be introduced for men who do not want to be part of militarist practices if the women are already ‘considered as performed the military service’ with parallel to positive discrimination attitude in favour of women. By this way, it might be possible to overcome the problem of gender inequality rooted in the heterosexist mentalities.

⁸⁵ Article 24 and 25 of the Constitution of the Republic of Turkey, <<http://www.anayasa.gen.tr/1982Constitution-1995-1.pdf>>, visited on 16April 2012

⁸⁶ Article 15 of the Constitution of the Turkey, <<http://www.anayasa.gen.tr/1982Constitution-1995-1.pdf>>, visited on 16April 2012

⁸⁷ Article 11 of the Constitution of the Turkey, <<http://www.anayasa.gen.tr/1982Constitution-1995-1.pdf>>, visited on 16April 2012

⁸⁸ Article 1 of Military Service Act No. 1111, <<http://www.unhcr.org/refworld/docid/3ae6b4d020.html>>, visited on 16 April 2012

By narrowing the content of the constitution which provides alternative service under Article 72, the wording of Military Service Act No. 1111 contradicts with the constitution. In specific, when Article 15 of the Constitution which demonstrates that the interference in freedom of conscience cannot be legitimized even during the country's struggle for life, is taken into consideration, the obligation on men to perform military service is itself contradictory to the constitution. According to Article 15 of the Constitution, all the citizens including both male and female, have the freedom to act in accordance with their conscience and therefore, they can not be compelled to perform military service for national security reasons. In other terms, the real tension exists between the constitution and Military Act, which is a means for the militarization of society in accordance with subordination of people out of heterosexual matrix through male citizens.⁸⁹ In contrast with the imposition by Military Service Act No. 1111, the Constitution allows male citizens to be excluded from military service when they encounter coercion for fitting into mould of hegemonic masculinities as opposed to their conscious.

4.1.3 Military Penal Code No. 1632

According to Article 45 of Military Penal Code No. 1632 of 22 May 1930, "Individuals may not evade military service, and penalties may not be revoked, for religious or moral reasons."⁹⁰ This article turns the obligation to perform military service into absolute obligation by stating that religious or moral reasons cannot be a ground for being exempted from military service. However, as mentioned in the section above (4.1.2), Article 15 of the constitution explicitly stipulates that no one can be accused on account of his religion, conscience or opinion. Taken into consideration with the constitutional directives as such, I would like to emphasize that Article 45 of Military Penal Code contradicts with constitutional freedom as well as Military Service Act does. Accordingly, in the next section I will try to display the oppression people encounter when they try to realize their freedom of conscience and opinion which is 'guaranteed' under the constitution.

4.1.4 The Persecution Faced by Conscientious Objectors

As mentioned above, the constitution of the Republic of Turkey does not introduce a military service obligation and does not contain any provisions that make conscientious objection unacceptable. However, the

⁸⁹ *supra* note 82, p.244

⁹⁰ Article 45 of Military Penal Code No. 1632,

<<http://www.mevzuat.adalet.gov.tr/html/496.html>>, visited on 17 April 2012 (available only in Turkish)

militarist state ideology neglects the constitutional freedom by asserting that the security problem of Turkey renders the recognition of the right to CO impossible even though Article 15 of the constitution demonstrates that freedom of conscience cannot be suspended even in times of state emergency. For instant, the mentality of militarist state finds its expression in a brochure published by the Armed Forces in 1999 which states that: “ In our laws there are no provisions on exemption from military service for reasons of conscience. This is because of the pressing need for security, caused by the strategic geographical position of our country and the circumstances we find ourselves in. As long as the factors threatening the internal and external security of Turkey do not change, it is considered to be impossible to introduce the concept of ‘conscientious objection’ into our legislation.”⁹¹ By criminalizing the exercise of the constitutional freedom, the legislative and judicial authorities turn the lives of many conscientious objectors and their supporters into vicious cycle of trials and imprisonment. Now I will present the legal maltreatment encountered by the conscientious objectors and their supporters in two sub-sections.

4.1.4.1 The Legal Process Regarding the Conscientious Objectors

The conscientious objectors are regarded as soldiers even though they refuse to perform military service before recruited by the army. As a result, they are tried by military court in accordance with Military Penal Code.

The first threat of punishment faced by the conscientious objectors occurs when they fail to go through the ‘drafting examinations’. Depending on the circumstances, they encounter the threat of imprisonment of between one month and three years.⁹²

After being recruited to military service, the conscientious objectors face second threat of being accused of committing the crime of ‘desertion’ if they do not return to the army unit. In that case, the punishment is one to three years of imprisonment.⁹³

When a conscientious objector join the army, he faces being accused of ‘persistent disobedience’ if he refuses to obey the orders or act in accordance with military service law. Being charged of ‘persistent

⁹¹ Netherlands Ministry of Foreign Affairs, 2003(cited in War Resisters’ International, Turkey: Human Rights and the Armed Forces, *Report to the Human Rights Committee, 104th Session*, London, December 2011, <<http://www.wri-irg.org/node/14403>>, visited on 17 April 2012)

⁹² Article 63(1) of Military Penal Code No. 1632, <<http://www.mevzuat.adalet.gov.tr/html/496.html>>, visited on 17 April 2012 (available only in Turkish)

⁹³ Article 66 of Military Penal Code No. 1632, <<http://www.mevzuat.adalet.gov.tr/html/496.html>>, visited on 17 April 2012 (available only in Turkish)

disobedience' is the source of frequent trials and punishments that lead to a vicious cycle. In that case, conscientious objectors face imprisonment of between three months to two years.⁹⁴ In every act of disobedience, they face the threat of being charged of 'persistent disobedience' again and again.⁹⁵

4.1.4.2 The Legal Process Faced by the Supporters of Conscientious Objection

The declarations of conscientious objection including the one of males who are not yet tried by military courts and of female conscientious objectors, are accused as being means for 'discouraging people from performing military service' pursuant to Article 318 of Turkish Penal Code.⁹⁶ The prescribed punishment is imprisonment for up to three years. If 'the act' which is basically freedom of expression guaranteed under the constitution of the Republic of Turkey, is committed through press and publications, the sentence is increased by one half,

It is noteworthy that Article 318 of Turkish Penal Code is mostly used against those who publish the declarations of conscientious objectors or write articles that support them.⁹⁷ This situation brings up to the mind that the real purpose of criminalizing conscientious objection is not about maintaining the security of the country but rather, it is about preventing society from freeing their minds shaped by militarist attitudes.

4.2 Becoming a Man Through Military Service

4.2.1 Military Service: Approved of Being Adult Male

Sara Helman states that military service "should be conceptualized as an array of disciplinary practices constituting the subjectivity of participating individuals."⁹⁸ This statement is substantially true for Turkey

⁹⁴ Article 87 of Military Penal Code No. 1632, <<http://www.mevzuat.adalet.gov.tr/html/496.html>>, visited on 17 April 2012 (available only in Turkish)

⁹⁵ For a summary of recent cases that conscientious objectors encounter see: War Resisters' International, Turkey: Human Rights and the Armed Forces, *Report to the Human Rights Committee, 104th Session*, London, December 2011, <<http://www.wri-irg.org/node/14403>>, visited on 17 April 2012

⁹⁶ Article 318 of Turkish Penal Code, available at: <http://www.tuerkeiforum.net/enw/index.php/Translation_of_selected_Articles_of_the_Turkish_Penal_Code#Section_4:_Offences_against_State_Security>

⁹⁷ *supra* note 82, p. 248

⁹⁸ S. Helman, 'Militarism and the Construction of Community', *Journal of Political and Military Sociology*, vol.25 winter, 1007, p.309

when the perceptions people with regards to military service are taken into consideration. In Turkey, having performed military service is considered as an approved way of being adult male. For instant, in an interview made by Ayşe Gül Altınay, a young man reflects such a perception by simply saying that: “ you become a man only after you have done your military service.”⁹⁹ This mentality is also reflected by another man from tekirdağ in Turkey as such: “ In the past, they used to tell us a man who hasn’t performed military service, is not a man yet.... In my hometown, nobody is considered to be man if he hasn’t performed the military service. I performed the military service and came back as a man.”¹⁰⁰

According to this reasoning, you are no more ‘man’ if you refuse to do your military service as conscientious objectors do. There might not be nothing wrong with not to be considered as a man unless being ‘unman’ is identified with femininity as a worthless characteristic. This is the point where the problem begins to appear.

4.2.2 Devalorization of Feminity Through Military Service

The mentioned part of the interview(I quoted above) made in 1999, also shows that nothing concrete has changed so far since 1933 of the early Republican period. In 1933, in a story published in a popular monthly magazine, *Ülkü*, gender differences created through military service practice are presented as if they are culturally given from a taken-for-granted perspective.¹⁰¹ In the story, Hüsmen, a young peasant from western Turkey, is spending his last days in the army unit and he starts daydreaming about transforming the things he learnt during the military service into civilian life: “ After he is back in the village and has his wedding, he will tell Kezban all about the things he learnt in the military service... When Hüsmen says it all to Kezban she will be dumbfounded ; the fascination of his wife... will make Hüsmen proud. He will first teach Kezban how to identify herself. When he calls “Kezban,” Kezban will run to him like a soldier, stand in front of Hüsmen and, after giving the official greeting, she will say “Ali’s daughter Kezban, 329 Poturlar [presumably her address]. . .yes, sir! and will wait for his orders.”¹⁰²

⁹⁹ A. Altınay, *The Myth of Military Nation: Militarism, Gender and Education in Turkey*, Palgrave, 2004, p.61

¹⁰⁰ *supra* note 11, p.33-34 (translated by the author)

¹⁰¹ *supra* note 97. p.77

¹⁰² Celal Sıtkı, ‘Askerlikten Dönüş’, *Ülkü* 1(3), 1933, p. 250-251 (cited in A. Altınay, *The Myth of Military Nation: Militarism, Gender and Education in Turkey*, Palgrave, 2004, p.77)

As it can be understood from that story published in 1933, military service has always been seen as a way of establishing ‘man’ power by subordinating the feminine subjects as passive objects.

Hence, in the next two sub-section, I will try to display how military service is interrelated to devalorization of femininity in Turkey by dividing the issue in two parts.

4.2.2.1 Trivialization of Women Through Military Service

The compulsory military service in Turkey is one of the most effective ways to maintain the internalization of militarist system. In such a structure, men are transformed into ‘real men’ with respect to the norms of hegemonic masculinity. In other terms, military service undertakes the role of glorification of masculine manners.¹⁰³

During the period of military service, all men are expected to obey the commands without questioning whether they are reasonable or not. Otherwise, they might encounter physical violence as well as psychological attacks. In Kandiyoti’s terms, “as conscripts, all men will have known the experience of utter helplessness in the face of total, arbitrary authority, where each man will have been controlled by the whims of another man and where, in the absence of compliance, public humiliation and physical punishment may follow.”¹⁰⁴ After getting through such a process of endurance of humiliation and ‘feminized forms of hardship’¹⁰⁵ (working in the kitchen could be a good example), men believe that they will possess the position of commander in their civilian life, especially towards women. As stated by anthropologist Carol Delaney, “a woman is the prize or reward for having endured the hardships of military service.”¹⁰⁶ In order to gain such a ‘prize’, men are expected to resist all the difficulties during their military service. This mentality clarifies the reason behind the widespread reality that men are not considered to ‘deserve’ to marry a woman until they perform the military service. Another interviewee explains such a situation in these words: “ This is how military service is. People were telling me, ‘before military service, you are not a man, you can’t marry, you can’t have children. They were comforting me in this way. I went to perform like this.”¹⁰⁷

¹⁰³ Carol Cohl, Clean Bombs and Clean Language in J.B Elshtain& S. Tobias(eds.) *Women, Militarism and War: Essays in History Politics and Social Theory*, MD, 1990, p.75

¹⁰⁴ Deniz Kandiyoti, The Paradoxes of Masculinity: Some Thoughts on Segregated Societies in *Dislocating Masculinity: Comparative Ethnographies*, London: Routledge, 1995, p. 297

¹⁰⁵ *supra* note 97, p.78

¹⁰⁶ Carol Delaney, *The Seed and the Soil: Gender and Cosmology in Turkish Village Society*, Berkeley: University of California Press, 1991, p.109

¹⁰⁷ *supra* note 11, p.34 (trans. by the author)

Besides objectifying women as prize, during the military service, all the masculine/feminine values and characteristics that are not fit into hegemonic masculinity, are subjected to humiliation and trivialization. For instant, by calling inexperienced soldiers as slut and bitch, they are taught to be not like 'women' and accordingly they are indoctrinated to hate women which are considered as inferior to men in this process of militarist socialization. This is the one of the main reasons why I regard the army as an institution which distinguish femininity from masculinity the most. One of the women conscientious objectors from Turkey declares her objection by emphasizing the interrelation between military service and sexual violence as a result of devalorization of femininity as such: "...For just being a WOMAN, I do not want to be in possession of someone, I do not want to be imprisoned in a perverted mentality, I do not want to be neither beaten nor killed. For just being a WOMAN, I do not want to be commanded by men and the society who regard me as possessed by putting label on me such as 'mother', 'wife' or 'daughter'.... For just being a WOMAN, I do not want my smile to be 'rewarded' with sexual abuse and rape and accordingly, I do not want to be a victim of a murder. I refuse subordination and being subordinated, ... war, military service and the militarist mentality that engraves the violence into every inch of our lives."¹⁰⁸ By being a conscientious objector, this woman proves the reality that military service as part of whole militarist system, reproduces the stereotype roles for men and women by several discourses that presents being 'woman' as a worthless thing.

Even though I am not saying that the military service is the main source of all gender inequality, I claim that certain form of gender inequality is maintained through military service practice promoted by the state and masculinist discourses. Furthermore, the cliché that women are vulnerable object that needs to be protected, is also reproduced by militarist practices. Cynthia Enloe also touches upon this point by analyzing the discourses of military operations, security and nationalism that build the state and the army as masculine institutions that protect 'womenandchildren.'¹⁰⁹ A man from Turkey verifies this discourse while talking about his commando training: "There is a small, reconstructed village in the training site. One regular aspect of the training is to stimulate a village operation where the terrorists have gone into the home of the *muhtar* (head of the village) and taken his daughter hostage. The aim of the operation is to save the *muhtar*'s daughter and to catch the terrorists."¹¹⁰ As it could be seen that the honor of all the village and accordingly of the state are projected onto the body of the daughter of *muhtar*. Male soldier who is masculine enough to save 'womanandchildren' will intervene and protect 'vulnerable female object' in

¹⁰⁸ Nazan Askeran in The Declarations of Conscientious Objection –Almanac (1989-2010) (ed.) Can Başkent, p.30, <<http://propagandayayinlari.net/kitap/vr.pdf>> , visited on 20 April 2012 (available only in Turkish, trans. by the author)

¹⁰⁹ C. Enloe, Feminism, Nationalism and Militarism: Wariness Without Paralysis in R. Sutton (ed.) *Feminism, Nationalism and Militarism*, 1995, p. 13-32, Association for Feminist Anthropology/American Anthropological Association

¹¹⁰ supra note 97, p.79

the name of providing the security of the nation. This is another aspect of how hegemonic masculinity is articulated in the state discourse.

After all these examples, I can say that all the practices performed during military service, aim to lead men to internalize the stereotype gender roles and make them fit into heterosexual matrix by reproducing discourses that put women into subordinate/vulnerable/inferior position.

4.2.2.2 Exclusion/Trivialization of Homosexuality

In Turkey, every male is under obligation to perform military service. However, if it is proven that they are homosexuals, they can avoid this obligation. According to relevant legislation, only heterosexual males are recruited in the military service.¹¹¹ By considering homosexuality as a sexual distortion¹¹², from its beginning, this regulation reflects the heterosexist mentality behind the military service. A male who do not fit into heterosexual matrix, is not allowed to perform military service for the reason that he does not carry the characteristics of hegemonic masculinity. In other words, he does not ‘deserve’ to get into the rite of passage for being an approved adult man.¹¹³

A verbal declaration of a person stating that he is homosexual is not accepted as sufficient proof, and the person is requested to prove his ‘disease’¹¹⁴ in order not to be conscripted. In accordance with health regulations, during the conscription stage, the main mechanisms of power are physicians at military medical institutions which have already embedded in heterosexist mentality. In specific, the candidates are subjected to rectal examination to determine the elasticity of anal tonus; and they are even demanded to show a photo during sexual intercourse where the candidate plays an ‘active’ role.¹¹⁵ Besides being compelled to define his existence as a ‘disease’, the candidate is also subjected to humiliation for being asked to expose photos during sexual intercourse which can be considered as most intimate parts of his life.

¹¹¹ Türk Silahlı Kuvvetleri Sağlık Yeteneği Yönetmeliği (‘Turkish armed forces’ Health Eligibility Regulations), Provisional Clauses Art. 17-B/3 and 17-D/4, <<http://www.mevzuat.adalet.gov.tr/html/20176.html>> (available only in Turkish)

¹¹² Homosexuality is regulated under the section entitled as ‘psychosexual diseases’ under ‘Turkish armed forces’ Health Eligibility Regulations

¹¹³ For more information on the process of ‘becoming man’ in Turkey, see E.S Webb, Our Bülent is commando: military service and manhood in Turkey in M. Ghoussoub&E.S. Webb (eds), *Imagined Masculinities: Male Identity and Culture in the Modern Middle East*, London: Saqi, 2000, p. 74-78

¹¹⁴ The reason for categorizing homosexuality as a disease is that Turkish armed forces are still using the American Psychiatry Society’s DSM II guide on mental diseases.

¹¹⁵ For more information on the process of medical examination at military hospitals in the context of military service see: Alp Biricik, Rotten report and reconstructing hegemonic masculinity in Turkey in Özgür Heval Çınar, Coşkun Üsterci (eds.) : *Conscientious Objection Resisting Militarized Society*, Zedbooks, 2009, p.112-115

Unbelievably, there are additional aspects to these demands of exposure which amount to explicit patriarchal cruelty. The article ‘ The Military makes interesting decision’ (Askeriyeden ilginç karar) published on 9 May 2006 in the daily newspaper, *Milliyet*, displays the perception of military medical authorities on homosexuality and masculinity. According to this article, a homosexual man, ‘ A.A.’, stated that he did not want to perform his military service since he was a homosexual. Even though he gave in all the requested evidence including the photos taken during the sexual intercourse and a rectal examination, he was declared to be fit for military service on the grounds that he is ‘not effeminate enough’.¹¹⁶ This decision could be interpreted in a way that a person who can be identified with the norms of hegemonic masculinity, is also considered to be fit enough to perform military service which excludes ostracized masculinities as well as all kinds of femininity.

In a case that a person is categorized as unfit for military service, he was submitted a ‘rotten report’ which is a health report certifying physical and mental disorders of a person in the military service, delivered by military doctors in Turkey. Even the name of this report ‘rotten’ displays the perception of military institution in Turkey which I would, rather, call it as rotten. By defining homosexuality as a disease and considering homosexuality in terms of stereotype gender roles with regards to femininity, the discourse of militarist institutions lead to reproduction and maintenance of the perverted mentality that continue to turn the lives of many into an insufferable stage.

In that context, the opposition of homosexual conscientious objectors to being labelled as sick/rotten, must be considered to be vital in order to bring a transformation in society at a general level. For this reason, I would like to end this sub-section by mentioning the words of one of the most important conscientious objectors in Turkey, Mehmet Tarhan: “ I perceive the rotten report which is presented to me as a ‘right’ due to my homosexuality, as the rottenness of militarist system itself. As an individual, I will never be in the service of an army of any state. I reject all the military day offs and the postponement of military service which I consider as an insult to myself and humanity. ... The way for ending the wars is to exhaust its human resources. Any kind of violence is a crime against humanity.”¹¹⁷

¹¹⁶ <www.milliyet.com.tr/2006/05/09/guncel/gun01.html>, visited on 21 April 2012 (only available in Turkish)

¹¹⁷ Mehmet Tarhan in *The Declarations of Conscientious Objection –Almanac (1989-2010)* (ed.) Can Başkent, p.20, <<http://propagandayayinlari.net/kitap/vr.pdf>>, visited on 21 April 2012 (available only in Turkish, trans. by the author)

5 Claiming The Right to Conscientious Objection on Feminist Grounds

In this chapter, I will analyze relevant international instruments and documents as well as the documents of COE in order to see whether there is a possibility to claim the right to conscientious objections on feminist grounds from a gender perspective. In the first section, I will examine relevant UN documents, especially, in the context of CEDAW with regards to achieving gender equality. In the second section, relevant COE documents will be reviewed in the same context.

5.1 UN Perspective on the Right to CO With Respect to Gender Equality

As mentioned above (section 2.1), the right to conscientious objection has been acknowledged by UNCHR in its resolution 1998/77 with reference to Article 18 of ICCPR. According to the same resolution, “conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives.” Relying on the reasoning that feminism is a moral and ethical motive which aims to achieve gender equality encompassing those who are excluded from heterosexual matrix, it should/must be considered as a ground for claiming the right to CO in the context of UN perspective. Accordingly, I will analyze relevant UN documents that can be considered as being in favor of feminism as a ground for claiming the right to CO.

5.1.1 UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

5.1.1.1 Article 2(f) of CEDAW

Article 2(f) of CEDAW obliges all the state parties to “take all appropriate measure, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” The term ‘discrimination against women’ is defined as “any distinction, exclusion or restriction made **on the basis of sex** which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women,....., on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social,

cultural, civil or any other field.”¹¹⁸ Taken into consideration the fact that compulsory military service for male, as in the example of Turkey, prioritizes the citizenship of men over women by considering military service as a condition for ‘deserving’ to be a citizen, I claim that non-recognition of an the right to CO leads to discrimination against women in the context of CEDAW.

The restriction/distinction brought by the law for male on the basis of their sex, causes the reproduction of prejudice against women that women are less competent to be successful in economic, political and social life in comparison to men. Accordingly, this might have ‘impairing’ or ‘nullifying’ effect on the enjoyment or exercise of fundamental freedoms and human rights as stated in the context of CEDAW such as exclusion/subordination of women from economic or social life, for instant, when it comes to recruitment for a job. However, in a case that men are allowed to claim the right to CO, the reproduction of such a perception that subordinates women could be overcome as a result of that military service is not a condition for citizenship for men anymore as it is also not for women. Therefore, I claim that states like Turkey is under obligation to take all appropriate measures to modify their existing laws regarding military service and recognize the right to CO in order to fight against the sexist perception behind militarist customs and practices ‘which constitute discrimination against women’.

With regards to the General Recommendation No.19 of CEDAW Committee saying that “ traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion...”¹¹⁹, military service as mentioned above (4.2.2), also justifies the mentality that regard all femininities and masculinities out of the hegemonic masculinity, as subordinate by reproducing traditional attitudes. Hence, taken into conjunction with Article 2(f) and Article 1 of CEDAW, states are under obligation to modify the law regarding military service in a way that would allow men to claim the right to CO on feminist grounds for making anti-discrimination against women a reality.

5.1.1.2 Article 5(a) of CEDAW

Article 5(a) of CEDAW mentions that states must take all appropriate measures “ to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of sexes or on stereotyped roles for men and women.” It is without doubt that compulsory military service for men is based on or at least reproduces the idea that women are inferior to men as mentioned in the chapters above (3.1.3 & 2.2) For this reason, enactment of law regarding conscientious objection becomes extremely

¹¹⁸ CEDAW Committee, General Recommendation No.23 (16th Session,1997), para.3

¹¹⁹ CEDAW Committee General Recommendation No.19 (11th Session, 1992), para.11

significant to annihilate all the prejudices and practices that maintains the subordination of women in a society. If such a law is enacted with reference to CEDAW, it would mean that a huge step has been taken for achieving gender equality by promoting the idea that men could be also in favor of anti-militarism in contrary to their stereotyped roles such as ‘masculine’ and ‘aggressive.’

In that context, I claim that it is the duty of states to promote the right to CO to military service where, in practice, devalorization of femininity is imposed, while leading to a result of vicious cycle based on the inferiority of women. The compulsory military service without recognition of an alternative service for the reasons of gender equality, put tremendous obstacle in front of the goal that aims to eliminate discrimination against women. Hence, in parallel thinking with General Recommendation on Article 5 of CEDAW, it is highly significant to recognize the right to CO with the support of “education and public information programmes, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women.”¹²⁰ Here, it is noteworthy to mention that public information programmes must be provided in a way that would transform the idea that men who do not perform military service, are not ‘enough’ men in order to prevent the exclusion of conscientious objectors from social and economical life. Therefore, it is highly important to promote education based on gender equality which aims to deconstruct stereotyped roles for male and female that identify them with masculinity and femininity, respectively as mentioned by CEDAW Committee with similar reasoning.¹²¹

5.1.2 The Annual/Sessional Report of CEDAW Committee¹²²

In its last report, CEDAW Committee pointed out the fact that armed conflicts are often come along with gender-based violence and “an increasing scale and brutality of sexual-violence with rape are often used as a tool of war.”¹²³ with reference to UN Security Council resolution 1325.¹²⁴ In its resolution, UN Security Council has drawn attention to the gender equality agenda in conflict and post-conflict situations relying on the fact that females suffer most during the conflict and the peace process including

¹²⁰ CEDAW Committee General Recommendation No.3 (6th Session, 1987)

¹²¹ CEDAW Committee General Recommendation No.19 (11th Session, 1992), para.24(t)(ii)

¹²² The Report of CEDAW Committee, Forty-sixth session (12-30 July 2010), Forty-seventh session (4-22 October 2010)- Forty-eight session (17 January-4 February 2011), A/66/38, 06/04/2011, available at: < <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/290/>> (hereinafter: CEDAW Report)

¹²³ Annex I to CEDAW Report, pp. 13-14

¹²⁴ UN Security Council Resolution 1325 (2000), adopted at 4212th meeting on 31 October 2000, available at: < [http://www.un.org/womenwatch/ods/S-RES-1325\(2000\)-E.pdf](http://www.un.org/womenwatch/ods/S-RES-1325(2000)-E.pdf)>

peace-keeping, peace-building and post-conflict reconstruction.¹²⁵ Therefore, it can be said that CEDAW Committee as well as UN Security Council has admitted the fact that conflict and post conflict situations which are brought into life by people who had military training, are closely related to gender-based violence and accordingly, subordination and insultment of women. During these periods, violence against women is very intrinsic to the mentality reproduced during military service which trivialize all the characteristics associated with femininity.

In that context, I claim that non-recognition of the right to CO on feminist grounds amount to ‘indirect discrimination against women’. According to the CEDAW report, indirect discrimination against women “occurs when a law, policy, programme or practice appears to be neutral insofar as it relates to men and women, but has discriminatory effect in practice on women because pre-existing inequalities are not addressed by apparently neutral measure.”¹²⁶ When states fail to recognize the right to CO of people who do not want to perform military service where the violence against women is legitimized as it can also obviously be comprehended from UN Security Council Resolution 1325, states also lead to indirect discrimination which “can exacerbate existing inequalities owing to a failure to recognize structural and historical patterns of discrimination and unequal power relationship between women and men.”¹²⁷ Since the existence of violence and discrimination against women is also admitted by UN authorities as mentioned above, compelling men to perform military service means to act in contradiction with obligations under CEDAW as long as the sexist and patriarchal nature of military service is annihilated. At that point, I would like to remind that states parties to CEDAW are obliged to “pursue by all appropriate means a policy of eliminating discrimination against women.”¹²⁸ The recognition of the right to CO on feminist grounds could open a path towards transformation of society by leading a public discussion on the issue of gender inequality while supporting men who take action in favour of gender equality in accordance with their conscious.

The recognition of CO on feminist grounds would be absolutely a step towards achieving the goal of CEDAW that aims to fully eliminate all forms of discrimination against women. Even though there is no reference to discrimination and violence producing nature of military service in CEDAW, the recognition of CO would be in accordance with the purpose of the Convention. As a matter of fact, CEDAW report mentioned that “the policy must be comprehensive in that it should apply to all fields of life,

¹²⁵ For examples showing how females suffer during and after the conflict times see: Human Rights Watch, “UN: Punish Abuse of Children in War”, 28 May 2009, available at: www.hrw.org ; Human Rights Watch World Report 2010, 20 January 2010, available at: www.hrw.org; M. Perpinan, L. Soledad, “Militarism and Gender Insecurity: The Philippine Experience”, Foundary Chair and CEO, 41 Rajah Matenda Project, Quezen City, Philippines, p.3; Sandra Withworth, Men, Militarism and Peacekeeping: A Gendered Analysis, Boulder, CO, Londra: Lynne Rienner, 2004, p.13

¹²⁶ Annex III to CEDAW Report, pp.111-112

¹²⁷ Ibid.

¹²⁸ Ibid. p.113

including those which are not explicitly mentioned in the text of the Convention.”¹²⁹ Therefore, besides that there are no obstacles for the recognition of CO on feminist grounds under CEDAW, it seems like a requirement to achieve the goal of the Convention for the reasons I mentioned above.

5.1.3 The Report of CSW on the Thematic Issue before The Commission: The Role of Men and Boys In Achieving Gender Equality¹³⁰

The report of CSW provides an overview of the report of the UN Division for the Advancement of Women regarding the role of men and boys in achieving gender equality.¹³¹ With reference to Beijing Declaration which expresses the determination for encouraging men to participate fully in all actions towards gender equality¹³², the report of UN Division for the Advancement of Women draws special attention to the sexist ideologies that “justify men’s supremacy on grounds of ... cultural tradition or organizational mission, for example in the military.”¹³³ In accordance with my claim that the military service reproduces the form of hegemonic masculinity which lead to subordination of women, the same report also demonstrates this fact by saying that “ armed forces,...are often places that promote competitive and violent forms of masculinity. ...the military also participate in this socialization. In many parts of the world, thousands of young men are recruited to armed forces, which generally reinforce the notions of manhood associated with violence.”¹³⁴ Relying on the findings of this report with regards to the hegemonic masculinity nature of military service, non-recognition of the right to CO on feminist grounds seems totally in contradiction with the aim of achieving gender equality, for not being in favour of supporting men who challenge existing stereotypes of masculinity by refusing to perform military service on feminist grounds.

¹²⁹ Ibid.

¹³⁰ Report of Commission on the Status of Women, “Thematic Issue before the Commission: The role of men and boys in achieving gender equality”, 48th Session, E/CN.6/2004/9, 1-12 March 2004, Follow-up to the Fourth World Conference on Women and to the special session of General Assembly entitled “Women 2000: gender equality, development and peace for the twenty-first century: implementation of strategic objectives and action in the critical area of concern and further actions and initiatives” (hereinafter: CSW Report), available at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/671/62/PDF/N0367162.pdf?OpenElement>>, visited on 24 April 2012

¹³¹ United Nations Division for the Advancement of Women, The Role of Men and Boys in Achieving Gender Equality: Report of the Expert Group meeting from 21 to 24 October 2003, Brasilia, available at <<http://www.un.org/womenwatch/daw/egm/men-boys2003/reports/Finalreport.PDF>>

¹³² Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995, para.25

¹³³ *supra* note 129, para.29

¹³⁴ Ibid. para. 55

In this respect, first of all, by touching upon the perception of masculinity which is considered as “being stoic, self-reliant, tough, brave, vigorous, daring and aggressive” in many countries, CSW Report puts an emphasis on men’s role and capacities that can be “utilized to positively influence gender relations and end violence against women.” While criticizing the military institution that strengthens traditional and sexist norms, CSW supports male groups that “actively promote alternative, more gender-equitable attitudes and behaviours.”¹³⁵ From that perspective, the conscientious objectors who refuse to perform military service on feminist grounds aiming to challenge stereotyped roles of men and women, can also be regarded as male groups/activist promoting gender equality. The support of conscientious objectors and according the recognition of the right to CO on feminist grounds must be deemed essential for overcoming gender inequality problem problems faced by many people all over the world.

With regards to the role of men to achieve gender inequality, CSW Report also acknowledges that sexist norms associated with stereotype roles of women and men have an oppressive effect on men as well as women. Similar to the view in this thesis that feminism is for all who are subordinated by patterns of hegemonic masculinity, the report supports the idea that inclusion of men into a movement towards gender equality will improve ‘overall social inclusion’ while benefiting men as well as women.¹³⁶

Accordingly, in its recommendations for action, CSW suggests the active involvement of men in developing and implementing legislation and policies in order to make gender equality a reality, and in providing positive role models for the promotion of gender equality in society at large.¹³⁷ Hence, supporting the conscientious objection on feminist grounds could be an effective way for the reason that it challenges the traditional norms attributed to men, especially when it comes to military service. As a matter of fact, CSW calls on the governments to encourage the military to promote gender equality.¹³⁸ Within this reasoning, it would not be an exaggeration to claim that the states should promote conscientious objection among men in order to utilize their capacity to transform heterosexist perceptions which are intrinsic to the process of military service rather than punishing or imprisoning those men as it is the case in Turkey.

¹³⁵ *supra* note 128, CSW Report, paras. 20-21, 23

¹³⁶ *Ibid.* para.14

¹³⁷ *Ibid.* para.57

¹³⁸ *Ibid.* para. 61(j)

5.2 The Approach of COE on the Right to CO with regards to Gender Equality

As mentioned above in the section (2.2.3), ECtHR has, very recently, recognized the right to CO under Article 9 of ECHR in the case *Bayatyan v. Armenia*.¹³⁹ In this section taken into consideration that the right to CO has already been recognized in the context of COE, I will analyze recent COE documents and ECHR with reference to *Bayatyan v. Armenia* decision of ECtHR in order to see whether it is a possibility to recognize the right to CO on feminist grounds.

5.2.1 Article 9 of ECHR regarding *Bayatyan v. Armenia* decision

Article 9(1) of ECHR states that “everyone has the right to freedom of thought, conscience and religion; this right includes freedom ..., either alone or in community with others and in public or private, to manifest his religion or belief, in worship, ... , practice and observance.” With regards to the limitations, Article 9(2) mentions that freedom to manifest one’s religion or belief can only be subject such limitations “as prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedom of others.”

In the context of Article 9, the first issue I would like to determine whether feminism can be considered as a belief under Article 9 in order to regards feminism as a legitimate ground for claiming the right to CO under Article 9. In my view, feminism is a political conviction that aims to transform gendered stereotype roles attributed to males and females in order to achieve gender equality. On 12 May 2009, the Committee of Ministers, in its declaration ‘ Making gender equality a reality’, urged member states to act to “eliminate the structural causes of power imbalances between women and men, including in political, public and economic decision-making process at all levels.”¹⁴⁰ Regarding this call on states by Committee of Ministers, I would like to emphasize that militarist practices internalized through the process of military service, may lead to concrete maintenance of ‘the structural causes of power imbalances between people’.¹⁴¹ Therefore, it can be said that the claiming the right to CO on feminist grounds could be considered as a legitimate as long as the claimant aims to be a part of the

¹³⁹ *supra* note 39

¹⁴⁰ Council of Europe, The Committee of Ministers “Declaration: Making gender equality a reality”, 119th Session, Madrid , 12 May 2009

¹⁴¹ For the effect of military service on the maintenance of patriarchal structures *see* section 4.2 above

transformation process that would make gender equality a reality or at least, she/he wants to stay out of the military institution that causes to, directly or indirectly, reproduction of power imbalances between people in the context of gender inequalities.

After determining that feminist belief or approach could be considered as a part of freedom of conscience under Article 9 of ECHR, the second issue that must be evaluated is what the limitations could be brought to the right to CO on feminist grounds according to case-law of ECtHR, in specific with reference to *Bayatyan v. Armenia* decision. Before examining whether the interference with the freedom to manifest one's belief could be justified under Article 9(2), it is noteworthy to mention that the intervening organizations, regarding *Bayatyan* case, delivered an opinion stating that no limitations on freedom to manifest one's belief on the ground of national security under Article 9(2) of ECHR.¹⁴² Assuming that the Court also shares the same reasoning from its decision, this opinion is substantially significant for the reason that the governments cannot submit an argument against conscientious objectors on the basis of national security. The need for the protection of freedom to manifest one's religion or belief against the arguments of national security has also been found essential by UNCHR in the cases of *Yeo-bum Yoon* and *Myung-Jin Choi* concerning two Jehovah's Witnesses from a country where the right to CO was not recognised.¹⁴³

In order to determine whether there is an interference with freedom to manifest one's belief, the Court examines whether the interference is 'prescribed by law', pursues one of the legitimate aims mentioned in Article 9(2) and is 'necessary in a democratic society.'

Regarding the question whether the interference is 'prescribed by law', the Court finds it unnecessary to examine this issue in a case where there is no legislation on the use of the right to CO even though the penalty for draft evasion is prescribed by law. In other terms, the Court leaves the question of whether the interference is prescribed by law.¹⁴⁴ Hence, the interference with right to CO on any grounds could not be regarded as 'prescribed by law' unless there are specific legislation concerning the use of the right to CO.

Concerning the question whether the legitimate aim is pursued, the Court also finds it unnecessary to examine this question relying on the following reasons which lead to the conclusion that the interference could not be considered as 'necessary in a democratic society.'¹⁴⁵

With regards to the question whether the interference is 'necessary in a democratic society', first of all, the Court starts with mentioning that the

¹⁴² *supra* note 39, para.87

¹⁴³ UNCHR, Communication nos. 1321/2004 and 1322/2004, U.N. Doc. CCPR/C/88/D/1321-1322/2004, 23 January 2007

¹⁴⁴ *supra* note 39, paras. 113-116

¹⁴⁵ *Ibid.* para.117

freedom under Article 9 is one of the basic elements of a democratic society within the meaning of ECHR. The Court, considers this freedom as “one of the vital elements that go to make up the identity of believers and their conception of life” including religious people as well as “atheists, agnostics, sceptics and the unconcerned.”¹⁴⁶ Following the reasoning of Court, it can be claimed that feminism which appears as one’s profound conviction on gender equality, could also be regarded as integral part of her/his identity, and therefore, it is under the protection of Article 9 of ECHR since the Court does not consider religion as the only way to build one’s conception of life. Depending on the circumstances, feminism could also be inherent to one’s identity indissociable from the conscious of the person.

Secondly, assessing the criteria for being exempted from military service, the Court emphasizes that the applicant’s request is “not for reasons of personal benefit or convenience but on the ground of his genuinely held religious convictions.”¹⁴⁷ Relying on the Court’s opinion that no differentiation could be made between one’s religion and one’s belief on unreligious grounds, genuinely held belief could also sufficient to claim to be exempted from military service unless it is based on ‘personal benefit or convenience.’ Feminism as a genuine conviction on gender equality and accordingly, on struggle for elimination of all structural causes of gender inequality, could also be regarded as sufficient to claim the right to CO as long as the request for exemption is “based on solid and convincing grounds.”¹⁴⁸ Taken into consideration that the perception that men is superior to women, is being reproduced during the performance of military service, it would be reasonable for a person to ask for an exemption in order to not to be under surveillance and control of such an institution that lead to subordination of other human beings with regards to their gender. Otherwise, she/he would be left to be in conflict with her/his conscience arising from her/his profound convictions.

In order to sum up, I would like to say that even though there is no reference to gender equality or feminism as a ground to claim the right to CO within the case-law of ECHR, there is not any obstacles to claim this right on feminist grounds aiming gender equality neither under Article 9. On the contrary, as I tried to show above, the Court’s reasoning regarding the criteria for claiming the right to CO, supports such a claim.

¹⁴⁶ Ibid. para.118

¹⁴⁷ Ibid. para.124

¹⁴⁸ Ibid. para.125

5.2.2 Article 4 of Convention on Preventing and Combating Violence Against Women and Domestic Violence¹⁴⁹

Article 4(1) of CPCVAW obliges states “to take the necessary legislative and other measures to promote and protect the right for everyone, particularly for women, to live free from violence in both the public and the private sphere.” In Article 4(2), CPCVAW call on states to “condemn all forms discrimination against women and take ... the necessary legislative and other measures to prevent it, in particular by embodying in their national constitutions or other appropriate legislation the principle of equality between women and men” and “abolishing laws and practices which discriminate against women” for the ‘practical’ realisation of this principle.

Even though the convention is entitled as ‘Convention on preventing and Combating Violence Against Women’, as mentioned in Article 4(1) and 4(3), the obligation on states for protection the right to live free from violence is for everyone without discrimination on any ground such as “sex, gender,...sexual orientation, gender identity...” Hence, men’s rights as well the rights of homosexuals and transgendered people are also under protection of CPCVAW.

In that context, I would like to give an example in order to show that a country would be in violation of CPCVAW unless it recognizes the right to CO on feminist grounds. For instant, in Turkey, the military service is compulsory for male without an option of an alternative service. As mentioned above(chapter 4), the law regarding the military service and the rules for an exemption contain many discriminatory practices against homosexuals and transgendered people based on the idea that the characteristics associated with femininity are inferior compared to hegemonic form of masculinity. The coercion on people to declare their sexual orientation in order to be exempted from army amount to psychological violence as well as physical violence when, especially, rectal examination is taken into consideration, to ‘prove’ their homosexuality. Besides, homosexuality is defined as sexual sickness according to military service act in Turkey as mentioned above. (chapter 4) Unless these laws and discriminatory practices change, Turkey must be counted as in violation of CPCVAW for its failure to protect one’s right to live free from violence.

Furthermore, even if such laws and practices are abolished, admitting the fact that the elimination of the perception of militarist system behind these laws and practices would take time, compelling male who are

¹⁴⁹ This convention has been opened for signature on 11 May 2011 in Istanbul by Council of Europe . For entry into force, it is still waiting for adequate number of ratifications by the date of 25 April 2012. (hereinafter: CPCVAW)

not in conformity with hegemonic forms of masculinity, would also lead to violence against those people since they could be subjected to humiliation and trivialization of their gender identity in the social environment of military unit.

Considering that this perception subordinating all the identities except the approved way of hegemonic masculinity, is rooted in “historically unequal power relations between men and women”¹⁵⁰ and finds its reproduction mechanisms through military service, a state would be in violation of CPCVAW unless it recognizes the right to CO on feminist grounds for the realisation and internalization of gender equality that could lead to eradication of violence against women.

5.2.3 The Report of Parliamentary Assembly “Advancing Women’s Rights Worldwide”¹⁵¹

In this report of the Parliamentary Assembly, the Assembly calls on member states “to encourage political decision-makers to take into account the gender dimension in all policies and legislation through gender mainstreaming.”¹⁵² According to UN ECOSOC, “mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated.”¹⁵³

According to the policy of gender mainstreaming, the legislation should take into account the concerns and experiences of men as well as women. With regards to military service, the situation of male who refuse to perform military service should also be considered for the reason that they are, socially, compelled to fit into a taken-for granted form of hegemonic masculinity. Due to the imposition of patriarchal state of mind, during military service, which trivialize femininity and all kinds of masculinities that do not fit into ‘approved’ way of masculinity, male must be allowed to claim the right to CO on feminist grounds. This challenge by male, should be supported by policies of member states in order to realize a transformation in the heterosexist perception of the society where violence against all forms of femininities, is legitimized through this perception.

¹⁵⁰ Preamble of CPCVAW

¹⁵¹ Parliamentary Assembly of Council of Europe, “Advancing Women’s Rights Worldwide”, Doc.12812, 5 January 2012

¹⁵² Ibid., Draft Resolution, para.9.2

¹⁵³ UN, “Report of Economic and Social Council for 1997” A/25/3, 18 September 1997

In accordance with the call of the Assembly on states in conjunction with UN ECOSOC's definition of gender mainstreaming, I suggest that the recognition of the right to CO on feminist ground is one of the best strategies to achieve gender equality since this challenge to heterosexist mentality in all areas of life, could make gender equality as well as women's rights¹⁵⁴, a reality by leading to public discussion which could also cause people to question all taken-for granted forms of stereotype roles of gender.

¹⁵⁴ Ibid. para.133

6 Conclusions

“ As we have accumulated more and more evidence from more and more societies, we have become increasingly confident in this assertion that to omit gender from any explanation of how militarization occurs is not only to risk a flawed political analysis: it is to risk, too, a perpetually unsuccessful campaign to roll back that militarization.”¹⁵⁵

During this thesis, the interdependent relationship between militarism and heterosexist construction of the society has been tried to be displayed. The military service which is used as a means of crystallizing and reproduction of hegemonic values of masculinity, is regarded as specific aspect of militarism, even if not only. As it is seen from the example of Turkey, the more the practices and laws impose the values associated with ‘being a heterosexual man’ to be approved in a society, the further they tend to be in conformity with the strategies of maintaining the dominance of hegemonic masculinity.

Throughout this thesis, it is claimed that military service as a specific form of militarism, leads to legitimatization of the values attributed to ‘being a man’ by normalizing ‘male violence’ in every inch of the life. By ‘male violence’, I refer to the action in itself, in terms of its consequences distributing the status, power and advantages through power relationships, rather than referring to the gender identity of the person who commits the act of violence.

Seen from the perspective that militarism perpetrated through military service, has an effect of subordinating all the identities who do not fit into heterosexual matrix, it must be admitted that it is related to every inch of the life with regards to its imposing perception about the inferiority of the values associated with femininity.

Even though the military service is not compulsory for women in Turkey, the existence of women conscientious objectors is used as a proof for that military service has not only affect on male but every subordinate gender identity. By declaring their conscientious objections, women aim to emphasize that the militarist mentality can not only be confined to military service.¹⁵⁶ I share the same thinking with antimilitarist feminists who claim that to the extent that anti-militarist movement “fail to produce a feminist agenda and public debate against militarism, nationalism and politics that organise war through integration with micro powers”, anti-militarist attempt

¹⁵⁵ C. Enloe, “ Beyond ‘Rambo’: women and the varieties of militarized masculinity”, in E. Isakson (ed.), *Women and the Military System*, proceedings of a symposium arranged by the International Peace Bureau and Peace Union of Finland/New York/London/Toronto/Sydney/Tokyo

¹⁵⁶ See above section 4.2.2.1, p.35

would be doomed to stuck into vicious cycle of reproduction of hegemonic masculinity which provides the maintenance of patriarchal system.¹⁵⁷

In that context, I suggest that the recognition of conscientious objection on feminist grounds, is substantially significant to overcome structural causes of all kinds of violence perpetrated against all excluded identities such as women, homosexuals and transgendered people from heterosexual matrix.

For that reason, in this thesis I looked at international documents at the level of both UN and COE in order to see whether there are possible ways to recognize the right to CO on feminist grounds in international law. With regards to my main research question regarding this issue, I have come to a conclusion that there are no obstacles to the recognition of CO on feminist grounds in international law, both at the level of UN and COE even though there are not any specific references to the relationship between military service and subordination of women. However, as deduced by the wording of UN documents as well as COE documents I have analyzed, I assume that international community intends to transform patriarchal norms intrinsic to many mentalities in a society by achieving the goal of gender equality.

I suggest that necessary legislation and implementation must be brought into life for the recognition of the right to CO on feminist grounds only if the international community is sincere about its goal to achieve gender equality and to overcome structural causes of patriarchal system subordinating women, homosexuals and transgendered people. In fact, I support the idea that states are obliged to promote the right CO on feminist grounds in order to fulfil their commitments under international law and COE context with regards to making gender equality a reality and preventing all structural causes of violence against women.

¹⁵⁷ P. Selek, “Feminizme ve anti-militarizme ihtiyacımız var” (We need feminism and anti-militarism), Amargi, Vol.2, Autumn 2006, p.27 (available only in Turkish) (cited in <<http://www.wri-irg.org/es/node/11984>>)

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