

## **‘We Are Not Leaving the Istanbul Convention’: Disappearance of Istanbul Convention from Türkiye and presence of unlikely feminist legal spaces in international law-making**

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### **Abstract**

International law is typically a State-centric space, consisting of a body of positive laws made by sovereign States. Law and the production of laws are dominated by vertical and linear legal spaces, governed by a hierarchical normative order, whose single author is the State. Feminist engagements with law can sometimes be reduced to interactions with the laws made within those vertical legal spaces and pertain to demanding new rights. As pointed out by Margaret Davies, an absence of feminist legal spaces is presumed when feminist analyses of law are made. In this article, we investigate feminist legal spaces that are part of the legal realm, but not an extension of vertical normativity. Feminist legal spaces co-constitute law, along with different scales of law, including vertical State law. Therefore, those feminist spaces create feminist legality, and they are not visible when looked at through vertical and linear lenses. In this article, we put our untraditional lenses on, decentralising the vertical sight of law while aiming to find feminist legal spaces within the feminist resistance against Türkiye’s withdrawal from the Istanbul Convention. With this aim, we interviewed eight activists who resisted Türkiye’s withdrawal from the Istanbul Convention. Considering law as a non-vertical space, we examined the interviews through a combined reading of Zoe Pearson’s ‘unlikely’, Sally Engle Merry’s ‘hybrid’, and Margaret Davies’ ‘horizontal’ or ‘flat’ analyses of legal spaces. Following their analyses, we deprioritise vertical legalities, focussing instead on the middle, sideways, backwards, around, hybrid, horizontal, unexpected, and unpopular spaces of international law-making. In the example of resistance against Türkiye’s withdrawal from the Istanbul Convention, we identified feminist legal spaces in the activists’ words, emotions and campaign slogans, emerging from the land and found on platforms and in courtrooms.

### **Introduction**

Türkiye denounced the Council of Europe Convention on Violence against Women and Domestic Violence (the Istanbul Convention) on 20 March 2021.<sup>1</sup> Ironically, Türkiye pioneered the drafting of the Istanbul Convention and Recep Tayyip Erdogan, the president of the Republic of Türkiye, publicly acknowledged this leadership as follows: ‘Violence against

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<sup>1</sup> Official Gazette of Türkiye (20 March 2021), No: 31429, p 268. Available at: <https://www.resmigazete.gov.tr/eskiler/2021/03/20210320.pdf> accessed 6 June 2023. Note, all translations from Turkish to English for the purposes of this article have been done by the authors.

women is now a “human rights violation”. The Convention was prepared under the leadership of Turkey.<sup>2</sup> Türkiye experienced a handful of firsts in its relationship with the Istanbul Convention. Türkiye was the first State to both sign and ratify the Istanbul Convention and sadly the first State to denounce it.<sup>3</sup>

When Turkish authorities expressed their intention to withdraw from the Istanbul Convention, feminist activists gathered around a platform called EŞİK.<sup>4</sup> This country-wide platform, which consisted of various organisations and individual activists, became the hub for resistance against the proposed denunciation of the Istanbul Convention. There were more than 220 legal cases filed in the administrative courts seeking a judicial review of the legality of the withdrawal decision,<sup>5</sup> and a considerable campaign was organised.<sup>6</sup> This article is a product of interviews we conducted with eight of those EŞİK activists.

At first glance, those cases and campaigns could be seen as feminists engaging with the State to reform the law. However, reading the interviews through the theoretical lenses of Sally Engle Merry, Margaret Davies and Zoe Pearson showed us that our interviewees were *creating* feminist legal spaces and that they did not assume law as a single space.<sup>7</sup> This article contributes to feminist legal scholarship by analysing the empirical feminist knowledge collected via our interviews through a combined reading of Sally Engle Merry’s ‘hybrid space’, Margaret Davies’ ‘flat law’ and Zoe Pearson’s ‘unlikely spaces’.<sup>8</sup> We argue that feminist resistance against the disappearance of the Istanbul Convention in Türkiye brings about feminist legal spaces that are not visible within the top-bottom and vice versa vertical space of State-centric law.<sup>9</sup> Empirical feminist knowledge obtained through interviews led us to discover that the campaign and cases were beyond interactions with State law.

Our theoretical reading on non-vertical spaces allowed us to locate feminist legal spaces in unlikely, hybrid and horizontal locations that are in a non-linear order and created by feminist

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<sup>2</sup> See public post by Recep Tayyip Erdogan on social media platform Twitter (now known as X) on 3 June 2011, available at <https://twitter.com/RT Erdogan/status/76645089455247361> accessed 24 Dec 2022 at 20:27. The Istanbul Convention was opened for signature in May 2011 and entered into force in August 2014. See further: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=210> accessed 8 August 2023.

<sup>3</sup> İlayda Eskitaşçıoğlu, ‘Turkey’s Withdrawal from the Istanbul Convention: A Sudden Presidential Decision in the Dead of the Night and an Alarming Setback’, *Völkerrechtsblog on International Law and International Legal Thought*, 27 March 2022, available at <https://voelkerrechtsblog.org/de/turkeys-withdrawal-from-the-istanbul-convention/> accessed 24 Dec 2022.

<sup>4</sup> <https://esikplatform.net> accessed 13 April 2023.

<sup>5</sup> For more information, see the day-to-day chronology compiled by Women for Women’s Human Rights (WWHR) – New Ways Association, available at <https://istanbulsozlesmesi.org/day-to-day-chronology/> accessed 2 June 2023.

<sup>6</sup> For further detail, see EŞİK platform, available at <https://esikplatform.net/kategori/istanbul-sozlesmesi-basin-aciklamalari/72142/istanbulsozlesmesi10yasinda/> accessed 13 April 2023.

<sup>7</sup> Sally Engle Merry, ‘Transnational Human Rights and Local Activism: Mapping the Middle’ (2006) *American Anthropologist* 108, 38-51; Margaret Davies, ‘Feminism and Flat Law’ (2008) *Feminist Legal Studies* 16, 281-304; Zoe Pearson, ‘Spaces of International Law’ (2008) *Griffith Law Review* 17, 489-514.

<sup>8</sup> Ibid.

<sup>9</sup> On this configuration of law in the international context, see further, Jacob Katz Cogan, ‘A History of International Law in the Vernacular’ (2020) *Journal of the History of International Law* 22, 205-217.

activism within the intersection of various scales of legalities.<sup>10</sup> Those feminist legal spaces would otherwise be mislocated as reform feminism.<sup>11</sup> Different to reformism, feminist legal spaces do not only attempt to improve vertical patriarchal State-centric law, nor solely aim to include feminist demands within the limits of vertical legal spaces. They host feminist legality and challenge the core foundations of these legal norms. Feminist legality could be defined as a feminist conception of law. In other words, according to feminist legality what makes law lawful is its adherence to feminist legal approaches. They could be found in unusual spaces such as emotions, words, slogans, and land. For example, the land could be the source of an international Convention rather than the interaction of States; feminists could stay with a Convention while the State leaves it, and the courtroom could host feminist legalities. Feminist legal spaces do not sync with the vertical State-centric law and do not follow its rhythms. Those spaces not only encompass progression by expanding rights. They are also versatile and fluid spaces that include multi-directional engagements with existing rights, loss of rights and future of rights.<sup>12</sup> Accordingly, we are not examining feminist law-making or feminist legalities in relation to granting new rights to women. On the contrary, we are examining the emergence of feminist law-making and feminist legal spaces when the opposite happens; when rights are taken away from women. We flatten out our understanding of legality to enter spaces of feminist resistance against the loss of rights and investigate new possibilities and pathways for feminist engagements with international law.

In the first section we discuss the theoretical foundations of feminist legal spaces, referring to Sally Engle Merry's hybrid space, Margaret Davies' flat law and Zoe Pearson's unlikely spaces and our methodology.<sup>13</sup> Using this combined theoretical approach, we analyse our interviews and identify the feminist legal spaces created by the feminist resistance against Türkiye's withdrawal from the Istanbul Convention. The second section analyses the courtroom as a feminist legal space. In the courtroom, activists felt powerful – albeit temporarily – and were able to create feminist legal spaces where feminist legalities and vertical legalities were in constant conflict and conversation. They were not operating solely on the vertical legality of States but providing their account of law – feminist legality – in a space they created with their resistance. In the third section, we discuss the feminist critiques of international law mentioned in our interviews and reflected in their slogans. Taking these slogans as feminist legal spaces, we analyse feminist legality present in these slogans, such as staying in the Convention while the State leaves it. In the final section, focusing on our interviewees' description of the land as a source of law, we analyse the land as an unlikely feminist legal

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<sup>10</sup> Katherine Brickell and Dana Cuomo, 'Feminist Geolegality' (2019) *Progress in Human Geography* 43, 104-122.

<sup>11</sup> Hilary Charlesworth, 'Feminist Critiques of International Law and Their Critics' (1995) 13 *Third World Legal Studies* Article 1; Drucilla Cornell, 'The Philosophy of the Limit: Systems Theory and Feminist Legal Reform' (1991-1992) *New England Law Review* 26, 783-804; Elena Louzidou, *Judith Butler: Ethics, Law, Politics* (Routledge 2007) 19.

<sup>12</sup> Sari Kouvo and Zoe Pearson 'Introduction' in Sari Kouvo and Zoe Pearson (eds), *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance?* (Hart Publishing 2014).

<sup>13</sup> Merry, Davies and Pearson (n 7).

space. According to the activists we interviewed, instead of States being the sole makers of laws, they identified their land as the author of the Istanbul Convention.

### Feminist legal spaces and Türkiye’s withdrawal from the Istanbul Convention

As mentioned, Türkiye denounced the Istanbul Convention on 20 March 2021 through a presidential decision made by Recep Tayyip Erdoğan. There were two main reasons given for this withdrawal. The first was the Istanbul Convention’s approach to gender which explicitly protects sexual orientation and gender identity.<sup>14</sup> The second was that the Istanbul Convention undermined Turkish culture and family values.<sup>15</sup> The Istanbul Convention’s inclusion of sexual orientation and gender identity, and its comprehensive intersectional protection for violence against women and domestic violence also received similar reactions from several other Council of Europe countries. The Convention’s approach is often labelled as so-called ‘gender ideology’, that is, according to proponents, harmful for national cultures as it undermines the ideal of ‘a return to a patriarchal dream-order’.<sup>16</sup> Opposition to the Istanbul Convention became a proxy for a gender war in Europe.<sup>17</sup> The Istanbul Convention was either challenged or blocked by constitutional mechanisms. Bulgaria’s ratification of the Convention has been found unconstitutional by the Bulgarian Supreme Court, identifying the term gender in the text of the Convention as vague and ambiguous and therefore incompatible with legal certainty.<sup>18</sup> Poland expressed its intention to withdraw from the Convention and, like Bulgaria, took the Convention to the Polish Constitutional Court; the judgment is yet to be delivered.<sup>19</sup> The Hungarian Parliament refused to ratify the Convention because it could bring illegal immigration and ‘gender ideology’ to the country.<sup>20</sup> The UK ratified the Convention, with reservation, in 2022, ten years after signing it.<sup>21</sup> In most of these

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<sup>14</sup> Hayrunnisa Dokuyucu Solak, ‘Gender Tendencies of Conservative Women in the Context of the Istanbul Convention’ (2022) *Şırnak Üniversitesi İlahiyat Fakültesi Dergisi –Şırnak University Journal of Divinity Faculty* 28, 125-152.

<sup>15</sup> Ibid.

<sup>16</sup> Judith Butler, *Who’s Afraid of Gender?* (Allen Lane 2004) 7. Butler further qualifies that this dream-order may never have existed, but rather, is one that occupies the place of ‘history’ or ‘nature’ as an order that only a strong state can restore.

<sup>17</sup> Andrea Krizsán and Conny Roggeband, *Politicizing Gender and Democracy in the Context of the Istanbul Convention* (Palgrave Pivot 2021) 223.

<sup>18</sup> Ruzla Smilova, ‘Promoting “Gender Ideology”’: Constitutional Court of Bulgaria Declares Istanbul Convention Unconstitutional’, *Oxford Human Rights Hub Blog*, 22 August 2018, available at <https://ohrh.law.ox.ac.uk/promoting-gender-ideology-constitutional-court-of-bulgaria-declares-istanbul-convention-unconstitutional/> accessed 4 May 2022.

<sup>19</sup> European Parliament, ‘Answer given by Ms Dalli on behalf of the European Commission’, *Parliamentary question - E-002075/2021*, 20 July 2017, available at [https://www.europarl.europa.eu/doceo/document/E-9-2021-002075-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2021-002075-ASW_EN.html) accessed 4 May 2022; Radosveta Vassileva, ‘A Perfect Storm: The Extraordinary Constitutional Attack against the Istanbul Convention in Bulgaria’ (2022) *Osteuropa Recht* 68, 78-96.

<sup>20</sup> European Parliament, ‘Refusal of the Hungarian Parliament to ratify the Istanbul Convention’, *Parliamentary question - E-002981*, 14 May 2020, available at [https://www.europarl.europa.eu/doceo/document/E-9-2020-002981\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2020-002981_EN.html) accessed 4 May 2022.

<sup>21</sup> Council of Europe, Treaty Office, ‘Reservations and Declarations for Treaty No.210 - Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210)’, 1 Nov 2022, available at <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=210&codeNature=2&codePays=UK> accessed 1 April 2024.

countries, feminist movements demonstrated a strong resistance against the State-wielded attacks toward the Istanbul Convention.<sup>22</sup> Acknowledging that this is a wider regional trend, in this article we focus on the feminist resistance that took place in Türkiye pioneered by a feminist campaign and more than 220 cases brought against the withdrawal decision.

Since its foundation in 1923 and until 2017, Türkiye was governed by a parliamentary democracy. Following a referendum in April 2017, Türkiye adopted a presidential system.<sup>23</sup> Before this change, the president played a symbolic and neutral role in the political governance of the country.<sup>24</sup> After April 2017, the president became a political figure, aligned to a political party with highly increased executive powers, which some refer to as a one-man rule.<sup>25</sup> The Istanbul Convention was ratified in 2011 through a parliamentary vote of 263 acceptances and 1 abstention.<sup>26</sup> Recep Tayyip Erdogan denounced the Istanbul Convention in 2021 via a presidential decree, without passing the decision through the parliament.<sup>27</sup> He was ironically the Prime Minister when Türkiye ratified the Istanbul Convention. The procedure that was followed for the denunciation of the Convention did not include parliamentary consent. This triggered a constitutional crisis in Türkiye, as this decision-making process contradicts the public law principle of parallelism of form (and legitimacy). This principle means the same procedure should apply when entering and withdrawing from Conventions.<sup>28</sup> Therefore, without the consent of the parliament, many argue that the presidential decision was unconstitutional and invalid.<sup>29</sup>

<sup>22</sup> Elise Ketelaars, 'Geographical Value Spaces and Gender Norms in Post-Maidan Ukraine: The Failed Ratification of the Istanbul Convention' (2019) *Review of International Studies* 45, 731-747; Cemre Baytok, 'The Istanbul Convention, Gender Politics and Beyond: Poland and Turkey' (2021) *Haftza Adalet Merkezi e.V.*, available at <https://aramizda.org.tr/wp-content/uploads/2021/09/012-The-IstanbulConventionGenderPoliticsandBeyond.pdf> accessed 6 June 2023; Marianna Szczygielska, "'Good Change' And Better Activism: Feminist Responses To Backsliding Gender Policies In Poland' in Andrea Krizsán and Conny Roggeband (eds), *Gendering Democratic Backsliding in Central and Eastern Europe. A comparative agenda* (Central European University Press 2019) 120-140; Anna Gwiazda and Liana Minkova, 'Gendered Advocacy Coalitions and the Istanbul Convention: A Comparative Analysis of Bulgaria and Poland' (2024) *International Feminist Journal of Politics* 26, 31-53; Krizsán and Roggeband (n 17).

<sup>23</sup> Ceren Zeynep Pirim, 'The Legal Effects of the New Presidential System on Turkey's Treaty-Making Practice' (2022) *European Journal of International Law* 33, 579-606.

<sup>24</sup> *Ibid.*

<sup>25</sup> Nicole Pope, 'Turkey: Marching Towards One-Man Rule' (2017) *Journal of International Affairs* 71, 17-30; Burak Bekdil, 'Dateline: Erdoğan's One-Man Islamist Show' (2016) *Middle East Quarterly* 23, 1-8; A Ekber Doğan, 'The Construction of Erdogan Autocracy: Balancing Hegemonic Crisis with Promises of Accumulation Regime' (2020) *Journal of Socialist Theory* 48, 95-111.

<sup>26</sup> Turkish Parliament 24<sup>th</sup> legislative year, 23<sup>rd</sup> session on 24 November 2011, p 58, available at [https://cdn.tbmm.gov.tr/TbmmWeb/Tutanak20230120/24/2/23/132b7a41-d758-4e0a-8945-c4ea1822aa18.html#\\_ftn3](https://cdn.tbmm.gov.tr/TbmmWeb/Tutanak20230120/24/2/23/132b7a41-d758-4e0a-8945-c4ea1822aa18.html#_ftn3) accessed 6 June 2023.

<sup>27</sup> Official Gazette of Türkiye (n 1).

<sup>28</sup> Basak Cali, 'Withdrawal from the Istanbul Convention by Turkey: A Testing Problem for the Council of Europe', *EJIL:Talk!: Blog of the European Journal of International Law*, 21 March 2021, available at <https://www.ejiltalk.org/withdrawal-from-the-istanbul-convention-by-turkey-a-testing-problem-for-the-council-of-europe/> accessed 6 June 2023; European Commission for Democracy Through Law (Venice Commission), *Report on The Domestic Procedures Of Ratification And Denunciation Of International Treaties* (Opinion No. 1045/2021 adopted by the Venice Commission at its 130<sup>th</sup> Plenary Session 18-19 March 2022) available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2022\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)001-e) accessed 6 June 2023 p 25-26.

<sup>29</sup> See further, EŞİK -Women's Platform for Equality, available at <https://esikplatform.net/?fbclid=IwAR3vMbZqYrvaZO8Ls0Bc7W0f3M71aiJUEJErUpQZw8cnFfBKkxwCLxP RUWY> accessed 6 June 2023; Margaret Grieve, *Turkey's Withdrawal from the Istanbul Convention: A Step*

This article is part of a broader research project that focuses on the establishment and the working mechanisms of feminist resistance, organised before and after Türkiye’s unlawful withdrawal from the Istanbul Convention. Part of this research is presented in this article. This article looks at the withdrawal and the political attacks against the Convention itself and its social significance by analysing this process as a feminist resistance. The interview phase is part of the broader research and started in early March 2022, continued during the hearings held at the Danıştay (Council of State, the highest administrative court) in Ankara and concluded in November 2022. We had access to direct information from within the courtroom.<sup>30</sup> This article draws empirical knowledge from questions that focused on three themes: the slogans used in the campaign; the 220+ legal cases that were brought against the withdrawal decision; and how the interviewees perceived feminist engagements with law in the context of the disappearance of the Convention in 2022. We conducted online, in-depth interviews for at least one-hour duration with eight activists involved in the campaigns against the withdrawal process. We chose our interviewees from different political, social, and religious backgrounds and political groups. While seven identified as feminists, one of the participants underlined that her political group does not use and accept the term ‘feminist’. Despite this, they participated in a feminist-led platform. We interviewed two journalists, four lawyers, one former civil servant (who was unlawfully sacked from her position by a decree during the State of Emergency (2016-2018)), one political scientist and a columnist in the media. One of the journalists is from a socialist media provider that reports on the intersection of class and women’s issues. The other specialises in feminist and LGBTIQ+ centered news. Both journalists consistently reported on this campaign. Seven of the interviewees are cis-gendered women and one of them is a trans woman. In terms of geographical coverage, four interviewees are based in Istanbul, two in Ankara, one in Mugla, one in Canakkale and one in Diyarbakir. Although nearly all our participants asked us to use their names in the article, we anonymised our respondents for ethical reasons.<sup>31</sup>

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*Backward for Women’s Human Rights* (2021) available at <https://www.theadvocatesforhumanrights.org/res/byid/9110> accessed 6 June 2023; Eskitaşçıoğlu (n 1); Cali (n 28); Özlem Altıok, ‘From Zoom to the Courtroom: The Ongoing Struggle for Women’s Rights in Turkey’, *Transforming Society* blog, 1 July 2021, available at <https://www.transformingsociety.co.uk/2022/07/01/from-zoom-to-the-courtroom-the-ongoing-struggle-for-womens-rights-in-turkey/> accessed 6 June 2023.

<sup>30</sup>The information was posted live on social media platforms and was also available through announcements on ESİK’s website, available here <https://esikplatform.net/kategori/istanbul-sozlesmesi> accessed 13 April 2023.

<sup>31</sup> Our participants are publicly known for their involvement in the Istanbul Convention cases, and their participation in this project was considered low-risk. We selected our participants from among the many activists who have publicly expressed their ideas about their involvement in the Istanbul Convention cases on TV, YouTube, websites and social media. We shared our detailed consent form and interview questions with the participants before arranging an interview date. They participated in the interviews after reading the consent form and interview questions. We discussed the consent form at the beginning of each interview and obtained their informed consent before the interview began. The consent form covered information including but not limited to: the aims of the project, the planned academic outcomes, the participants’ right to withdraw from the project and the fact that the project is not funded by any institution including universities. Participants agreed to be named in the project, but we took the decision to anonymise them to maintain their unidentifiability and further reduce risk.

As mentioned earlier, in Türkiye more than 220 cases have been brought before the court arguing that President Recep Tayyip Erdoğan's decision to withdraw from the Convention was unconstitutional, unlawful, and therefore invalid.<sup>32</sup> While these cases challenged the legality of Erdoğan's decision in its vertical and State-centric meaning, they also called into question the foundations of this vertical order through its nonconformity with feminist legality. The term legality is defined as what makes things legal, or the state of being in accordance with law.<sup>33</sup> We use feminist legality as being in conformity with feminist approaches to law; in other words, a form of legality that is in accordance with legal visions that feminists from different strands of feminism propose on how the law should be to meet feminist ideas. In this regard, feminist approaches to law represent various feminist engagements with law.<sup>34</sup> Therefore, feminist legality is where legality is dictated according to feminist understandings of law. Deeming law to embody multiple spaces beyond its positive and vertical scale, feminist legality is the legal order that exists in feminist legal spaces.

Margaret Davies' discussion on flat law and feminism provides us with a tool to recognise a flattened space of law. She argues that constraining engagements with law to positivist and vertical boundaries assumes a colonial, hierarchical and thus patriarchal legal reality. Davies critiques the vertically limited definition of law, observing that 'the entry point for feminist legal analysis is constituted by a denial of other possible legal spaces'.<sup>35</sup> These cases brought against Erdoğan's withdrawal were one of the outcomes of the feminist campaign against the denunciation of the Convention. The campaign centred around the sentiment that even if the State leaves the Convention, we (feminists) will not leave it. This was demonstrated with the slogans: 'The Istanbul Convention is still in force',<sup>36</sup> 'We do not Give Up on the Istanbul Convention',<sup>37</sup> 'We Give Up NOT A WORD of the Istanbul Convention'.<sup>38</sup> Feminists' refusal to accept the withdrawal decision expresses a vital critique of the vertical, state-centric order of international law. It is a predicament that breaks the vertical hierarchies of law-making by demonstrating different scales of law and law-making. This approach recognises feminists as actors within these law-making processes, who have power to reject decisions made on the State-centric dimension of international law. The slogans manifest a feminist legality whereby the feminists stay with the Convention while the State leaves it. Thus, these campaigns and cases observe broader and multiple legalities that are not necessarily state-centric, nor operate through binaries such as national-international, public-private etc. For example, Katherine Brickell and Dana Cuomo discuss spaces of resistance as part of the international order.<sup>39</sup> They analyse feminist geolegality by observing 'the complexity of the legal arena as a space of domination, but also as a means of resistance by which women and other socially

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<sup>32</sup> See further EŞİK platform, available at <https://esikplatform.net/kategori/istanbul-sozlesmesi-basin-aciklamalari/73943/istanbul-sozlesmesi-icin-temyizler-suruyor/> accessed 7 April 2023.

<sup>33</sup> See further The Law Dictionary entry for 'legality', available at <https://thelawdictionary.org/legality/> accessed 7 April 2023.

<sup>34</sup> Elif Ceylan Ozsoy, 'Critical Feminist Law-making: Imitative Spaces and Improvised Coalitions' (2023) *Australian Feminist Law Journal* 48, 265-294.

<sup>35</sup> Davies (n 7) 286.

<sup>36</sup> See further EŞİK platform, available at <https://esikplatform.net/kategori/istanbul-sozlesmesi-basin-aciklamalari/72142/istanbulsozlesmesi10yasinda/> accessed 13 April 2023.

<sup>37</sup> See further, *ibid.*

<sup>38</sup> See further, *ibid.*

<sup>39</sup> Brickell and Cuomo (n 10).

marginalized people strive for transformation'.<sup>40</sup> Zoe Pearson, in her analysis of international law as a space, talks about 'concepts of space to encourage exploration of the unlikely spaces where international law may indeed be found, but which are not visible on traditional maps of international law'.<sup>41</sup> We argue that feminist resistance in Türkiye against the State's withdrawal from Istanbul Convention displays one of those 'unlikely spaces'.<sup>42</sup> It is an unlikely feminist legal space, which exists in non-vertical spaces of law.<sup>43</sup>

[Feminist and post-colonial] critiques provide us with an opportunity to see that spaces within the terrain of international law are not static, linear and ordered, but rather complex, fluid and uncertain, evolving continuously along with the interactions of the different actors present, and emphasising varying sites of legal and non-legal regulation.<sup>44</sup>

Deeming law as composed of various legal spaces allows this article to uncover feminist legal spaces created by the feminist activism in Türkiye which are not linear, not vertical nor State-centric. These feminist spaces are governed by feminist legality. In these spaces what is in accordance with law is in accordance with feminist legal approaches. One could also call it feminist law-making or feminist law. We call these feminist legal spaces that host feminist legalities. Taking inspiration from Zoe Pearson, this article will consider law as a space, and to discover those 'unlikely spaces' we will combine Sally Engle Merry's vernacularisation theory and Margaret Davies' analyses on the subject of flat law.<sup>45</sup> Both Merry and Davies further expand our understanding of feminist legal spaces by going beyond the limitations posed by vertical legalities, which are either top-down or bottom-up, and provide us with a method to discover non-vertical legalities.<sup>46</sup>

Sally Engle Merry in her well-known theory, 'vernacularisation of transnational human rights', sees local activists — while problematising the duality of local and global — as the people in the middle between international law and domestic situations.<sup>47</sup> The third space hybridity in Merry's theory challenges the binary in which subject formation is trapped between universality and culture, or local and international crisis.<sup>48</sup> Vernacular theory refers to the reception, transformation or rejection of global rules by local realities and communities.<sup>49</sup> In other words, 'vernacularisation means the localization or indigenization of transnational'.<sup>50</sup> Although this is generally assumed to have happened from transnational to local, with the activists translating the international to local or local to international, what Merry identifies

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<sup>40</sup> Ibid.

<sup>41</sup> Pearson (n 7) 491.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid; Zoe Pearson, 'Non-Governmental Organizations and the International Criminal Court: Changing Landscapes of International Law' (2006) *Cornell International Law Journal* 39, Article 2.

<sup>44</sup> Pearson (n 7).

<sup>45</sup> Merry (n 7); Davies (n 7).

<sup>46</sup> Ibid.

<sup>47</sup> Merry (n 7).

<sup>48</sup> Ibid.

<sup>49</sup> Daniel M Goldstein, 'Whose Vernacular? Translating Human Rights in Local Contexts' in Mark Goodale (ed), *Human Rights at the Crossroads* (OUP 2013) 110-121.

<sup>50</sup> Ibid.111.

as the middle is an obscure space which is generated through contact and resistance. It is a hybrid place, where negotiation occurs in a transformative way.

Thus, rather than offering local interpretations of abstract and universal rights principles, vernacular rights cultures work to transform and shape transnational imaginaries, principles, and practices of rights. Transnational practices and principles of rights thus reflect a history of struggle that is both local and transnational.<sup>51</sup>

Opposed to a top-down or bottom-up linear understanding of law-making, vernacularisation of rights creates a space that does not belong to the local or international, and this space can emerge through resistance and activism. This space is safeguarded by the people in the middle, the activists, who are the translators of local to transnational and vice versa. This space is transformative, enabling possibilities and the new to emerge.<sup>52</sup>

The activists in the 'middle' translate international law and apply it to local situations where the violation occurs, while also translating local demands of legal recognition to international law.<sup>53</sup> They deal with the conflict and contradictions arising from international law-making.<sup>54</sup> They become the negotiators between international law and people in the domestic jurisdiction who will benefit from the international law's provisions.<sup>55</sup> The translators re-make the law within the local, but the hybrid space they created through resistance cannot be located within the local or international; rather, it is neither.<sup>56</sup> It is a feminist translation of micropolitical situations that reproduce the international law in the vernacular.<sup>57</sup> Instead of a one-way and vertical stream translation, it is a remaking of human rights in a feminist legal space. This remaking is done within a hybrid space.<sup>58</sup> The hybrid space is one of the unlikely spaces where feminist law-making can be observed. A hybrid space emerges where there is resistance against the dominant culture. Feminist resistance therefore creates this hybrid space by challenging the State, international law and their local and international patriarchal allies. This hybrid space is transformative and obscures the top-bottom, bottom-up binary direction of law-making by not adhering to a singular, vertical space of law.

At this point, Merry and Davies' approaches share a similar view that challenges the positive and formal limitations of law that constrain legality to a State-centric space. While Merry critiques the linear law-making mechanisms, Davies analyses the broader legal spaces that are horizontal. In other words, Merry identifies the space between international and national legal spaces, while Davies determines horizontal, sideways and flattened-out legal spaces. Legal spaces are multiple and non-vertical. Merry and Davies' understanding of legal spaces could

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<sup>51</sup> Robin Frederick Dunford and Sumi Madhok, 'Vernacular Rights Cultures and the "Right to Have Rights"' (2015) *Citizenship Studies* 19, 605-617, 614.

<sup>52</sup> Charlesworth (n 11).

<sup>53</sup> Merry (n 7).

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Natalya Lusty, 'Riot Grrrl Manifestos and Radical Vernacular Feminism' (2017) *Australian Feminist Studies* 32, 219-239.

<sup>58</sup> Merry (n 7).

be further expanded through Sabine Muller-Mall's trifold analyses of legal spaces whose interconnection produces law. According to Muller-Mall, the first space is the space of legal norms, the second is the space of judicial decisions, and the third is the space of legal thinking. The interconnection among these spaces produces law as a 'hybrid, relational and dynamic constellation'.<sup>59</sup> Therefore, feminist legal engagements with law do not only include engagements with formal and linear mechanisms of law but also encompass a form of law-making hidden in unlikely, horizontal, hybrid spaces of feminist resistance, as can be found in feminist activism in Türkiye against the State's withdrawal from the Istanbul Convention. This approach of recognising other possible legal spaces could also be observed in Catherine O'Rourke's analysis of feminist campaigning.<sup>60</sup> O'Rourke identified three different strands of feminist engagement with international law, analysing the feminist campaign for the implementation of the United Nations Security Council Resolution 1325 on Women, Peace and Security (2000) in Northern Ireland. In her analysis, '[i]nternational law is understood, first, as a system of rules to which states are bound; second, as an avenue for the articulation of shared feminist values; and third, as a political tool to advance feminist demands.'<sup>61</sup> She in sum reads feminist engagement with law as not limited to positive law and vertical legalities.<sup>62</sup> These three features O'Rourke identifies are omnipresent in the campaign against Türkiye's withdrawal from the Istanbul Convention. Feminist engagement with law is not restricted to positive law as binding rules, but also embodies the creation of intersectional and global feminist values and a political tool to realise feminist demands.

Returning to Davies' critique that asserts 'the entry point for feminist legal analysis is constituted by a denial of other possible legal spaces', our entry point for feminist legal analysis is the recognition and exploration of other possible legal spaces where feminist law-making takes place.<sup>63</sup> With that aim, we focus on unlikely, horizontal and hybrid spaces that emerged as a resistance to the disappearance of the Istanbul Convention and illustrate feminist legal spatiality. We will neglect and de-centralise vertical and traditional lenses to detect those places that are not visible if our vision of international law-making is limited to vertical, State-centric law. If we again return to Davies' flat law, it 'names and prioritises the multiple locations, manifestations and interpretative possibilities of law'.<sup>64</sup> According to Davies, flat law is an intrinsic, inseparable part of vertical state law.<sup>65</sup> The vertical legal order clouds the landscapes of different normativities and legal spaces. Davies sees these non-vertical spaces of law as 'state law expressed, constructed and transmitted by relationships by people'.<sup>66</sup> Similar to hybrid spaces, it is a space where laws are remade in an alternative horizontal legality.<sup>67</sup> This article attempts to make these alternative feminist legal spaces visible. Pearson maps them out as unlikely spaces, Merry calls these spaces hybrid, Davies identifies them as horizontal, flattened out legal spaces.<sup>68</sup> Merry's vernacularisation finds this

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<sup>59</sup> Sabine Müller-Mall, *Legal Spaces: Towards a Topological Thinking of Law* (Springer 2013) 49.

<sup>60</sup> Catherine O'Rourke, 'Feminist Strategy in International Law: Understanding its Legal, Normative and Political Dimensions' (2017) *European Journal of International Law* 28, 1019-1045.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> Davies (n 9) 286.

<sup>64</sup> *Ibid.*, 289.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*, 289.

<sup>67</sup> *Ibid.*

<sup>68</sup> Merry (n 7); Davies (n 7).

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space within local activism that is neither international nor national.<sup>69</sup> This approach also tackles the binary delimitation of law between national and international. Following her analysis, local activism that does not adhere to this vertical and binary hierarchy but takes part in law-making creates a hybrid space. Davies' horizontal lens surpasses the vertical order by expanding our vision to the surroundings of this vertical legality by drawing our attention to flat law 'based on relationships of actual proximity or contiguity'.<sup>70</sup> Pearson talks about the unlikely spaces where we would not imagine finding law.<sup>71</sup> A mixed reading of these theories provide us with a theoretical framework that stipulates law as consisting of various legal spaces, beyond vertical top-down, bottom-up binary legality.

This section has laid out the theoretical lens for the article. Doing so has allowed us to locate feminist legality in spaces that are in the middle, sideways, around, within, or in unexpected spaces to a normative and vertical legal order that regards the State as the superior author of law. In the following section, we employ this theoretical framework to examine the cases brought against the denunciation of the Istanbul Convention and to evaluate the insights provided by our interviewees on these cases and their experiences in the courtroom. It was this method that brought feminist legalities to the forefront of our analysis.

### **Cases against the withdrawal, thinking of the courtroom as a space of hybridity**

In this section we focus on the 220+ cases brought against the withdrawal decision. Our interviewees found the court hearings empowering. Almost all of them described the atmosphere as feminist. Reading their experiences in the courtroom through the combined theoretical lens provided by Merry, Davies and Pearson, we argue that feminists created a feminist legal space in these courtrooms where they experienced the presence of feminist legality

Entering and withdrawing from international treaties happens between States and international institutions. The hierarchal and patriarchal design of international law creates State-centric spaces. It is a vertical process meaning that international law takes place between international institutions and States. Consequently, its legality is limited to the international law that governs entry and withdrawal from treaties. Verticality is constrained to hierarchical engagement with law where States dictate the creation of, participation in, and retraction of, international treaties. This assumes law as a singular space dominated by States that operates top down without reciprocity and delivered to the people. The vertical law is a denial of other laws and legal spaces. What is called law could only emerge from State action.

When States enter a Convention, it is generally assumed that the Convention will change State behaviour within their territories and have a top-down effect. As aforementioned, Erdogan withdrew from the Istanbul Convention without the consent of the parliament. The claimed unconstitutionality of the procedure followed when leaving the Convention was legally challenged at Danıştay (the highest administrative court). There are 220+ cases brought against

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<sup>69</sup> Merry, *ibid.*

<sup>70</sup> Davies (n 7) 281–282.

<sup>71</sup> Pearson (n 7).

Erdogan's withdrawal from the Istanbul Convention by feminist associations, political parties and Bars around the country. This article will not go into vertical legal details about the constitutional crisis this withdrawal created in Türkiye. However, one of the interviewees, a member of EŞİK, criticised the Convention for not being clear on the procedure for leaving it.<sup>72</sup> Another interviewee pointed this out as a weakness of the Istanbul Convention, in that it leaves the withdrawal procedure to the States' domestic constitutional arrangements.<sup>73</sup> There is not an international platform that these unconstitutional withdrawals can be taken to.<sup>74</sup> The cases brought against Erdogan's decision to leave the Convention, compelled feminists to participate in these State-only mechanisms.

The cases arguing that Erdogan's withdrawal is unconstitutional took place at Danıştay in the capital city Ankara. The first hearing (when the Danıştay Prosecutor also submitted his opinion stating that the withdrawal was unlawful) was held on 28 April 2022. After this hearing the subsequent hearings were scheduled to be held in June on three different days.<sup>75</sup> All hearings were attended by a historic crowd of women's, LGBTIQ+ and human rights associations that also included nearly one thousand lawyers representing those who brought the cases. In our interviews feminist activists talked about the two hearings that took place on 13 and 17 June 2022.

Melinda Morgan defines courtrooms as legal spaces where

[p]arties enter to manifest legal realities that in turn order the world. In this way, these spaces of law are portals through which legal meanings are channelled out into the social world in ways that contours and configures the material world. When access is denied, the search for justice may be truncated and desired interventions blocked.<sup>76</sup>

In these hearings the opposite was happening. The feminist legal reality was channelled into the state's legal space. Feminist understandings of law manifested themselves in the courtroom by challenging the vertical constraints of the law. In a way by channelling in, feminists were flattening out the vertical law. Feminists were talking to international law, to the State, and among themselves, to create the unlikely and unusual space for feminist legality.

Most of the interviewees talked about the emotional side of the courtroom. As a space of resistance most of them talked about emotions. This also challenges the patriarchal legal spaces where emotions are not regarded as a legitimate source of law. Legal spaces are expected to be reasonable, insensible and rational within the vertical arrangements of law.<sup>77</sup>

<sup>72</sup> Interview 4.

<sup>73</sup> Interview 5.

<sup>74</sup> Interview 5.

<sup>75</sup> See the day-to-day chronology compiled by Women for Women's Human Rights (WWHR) – New Ways Association (n 5).

<sup>76</sup> Melinda Morgan, 'Rules of Engagement: The Spatiality of Judicial Review' in Irus Braverman, Nicholas Blomley, David Delaney, and Alexandre Kedar (eds), *The Expanding Spaces of Law* (Stanford University Press 2014) 215-238, 234.

<sup>77</sup> Kathryn Abrams and Hila Keren, 'Who's Afraid of Law and the Emotions?' (2010) *Minnesota Law Review* 94, 1997-2073; Susan Bandes, *The Passions of Law* (NYU Press 2000); Linda Åhäll, 'Affect as Methodology: Feminism and the Politics of Emotion' (2018) *International Political Sociology* 12, 36-52.

Emotions do not belong to legal spaces; they have long been affiliated to women and the private sphere, where the majority of gender-based violence take place.<sup>78</sup> Law has been identified with reason as opposed to emotions.<sup>79</sup> Linda Åhäll reminds us that ‘much of feminist scholarship has worked to problematize binaries such as emotion/reason, mind/body, and domestic/international’.<sup>80</sup> In that courtroom, we can find feminist legal spaces in the unlikely presence of emotions.

In these hearings feminist lawyers and activists expressed emotions from anger to sadness and happiness to hope. The lawyers read out loud the names of the women who were murdered. Without prior arrangement all feminist attendees stood in silence.<sup>81</sup> There were lawyers who had been victims of gender-based violence themselves and they talked about their own experience. It was ‘traumatic’ according to one of the interviewees to hear in detail about stories of cis and trans women who were murdered, raped and sexually assaulted.<sup>82</sup> The same interviewee stated that feminists in the space listened to the stories with applause. Feminists in that courtroom did not feel lonely. The court hearing was about international law, and they spoke the language of emotions and experiences of gender-based violence. The vertical hierarchies of international law do not accept that emotions and experiences have a space in law.<sup>83</sup> In those unlikely moments of feminist legality, emotions and experiences became the law.

The creation of space started with the physical space of the court room. The Istanbul Convention hearings were held in big conference halls. It was unusual for the court to hold hearings in that space. The court first offered a small courtroom which would not accommodate the hundreds of feminists who attended the hearing, coming from all over the country. One of the interviewees said that several different feminist groups were there on that day.<sup>84</sup> All these feminist groups strongly objected to the court’s initial decision to have the hearings in a small space.<sup>85</sup>

The court finally agreed to hear the cases in the conference room where all women waiting outside the courthouse could attend. This can symbolically be read as safeguarding the physical conditions for creating feminist legal space. For a feminist legality to emerge, we must ensure no feminists are excluded from the space. The courtroom becomes a hybrid space with feminists compelling the highest administrative court in the country to expand its space. The room is physically a hybrid of a conference hall and a courtroom and to accommodate all feminists expanded its capacity. The usual space where the hearings take place could not fit all the feminists waiting outside of it. This is again symbolically manifesting the limits of vertical legal spaces. An interviewee told us that the president of the court admitted that he had never

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<sup>78</sup> Åhäll, *ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*, 36–37.

<sup>81</sup> Interview 4.

<sup>82</sup> Interview 7.

<sup>83</sup> Abrams and Keren (n 77); Bandes (n 77).

<sup>84</sup> Interview 1.

<sup>85</sup> Interview 7.

seen such a crowded hearing; it was a first in Danıştay's history.<sup>86</sup> The hearing was not one of the usual ones, it was unusual. To discover a feminist unlikely legal space, we need the unusual instead of the usual and traditional. This unusual could start with people, walls and rooms. One of the interviewees shared an anecdote where the police tried to shut the door of the courtroom, and the feminists inside physically resisted to keep the door open for the feminists waiting to enter the room. She said: 'we were determined not to leave even one single feminist sister behind'.<sup>87</sup> She continued with saying that they collectively leaned on the open door to keep it open while the lawyers were negotiating. The police behaviour was unilinear. They would let some in then close the door unexpectedly causing some feminists to become physically stuck between the doors.<sup>88</sup> This again resembles feminist legal struggles within the international and national vertical State-centric spaces with some demands entering into the realm of law, while some are denied. In the end, all feminists were in the hall. Recalling Davies's analysis that posits 'the entry point for feminist legal analysis is constituted by a denial of other possible legal spaces',<sup>89</sup> feminist activists began the hearing maintaining that no-one was left out, no one was denied a space.

A number of interviewees mentioned the politeness of the judges towards them.<sup>90</sup> According to them, the politeness was an outcome of feminist power in the courtroom. In one of the interviewees' words:

The will of the feminist movement was so powerful in the courtroom. Although it was performative judges were polite, compelled by the feminist will in that space.<sup>91</sup>

Another interviewee confirms the feminist legality created in that courtroom by sharing their observation that even conservative political party representatives were using feminist terminology and lexicon.<sup>92</sup> An anecdote she shared was that a male lawyer, president of a bar association, wanted to be one of the speakers in defence of the Istanbul Convention. However, feminist lawyers objected, arguing that it would be taking away space from women. The conservative party representatives supported this decision. She said that the 'feminist language and politics that were used in that space were impressive'.<sup>93</sup> Özlem Altıok argues that feminists were giving a lecture to the judges about feminist law during the hearing.<sup>94</sup> We could think of that court room (hall) as a hybrid space, a feminist legal space where State, international law, feminists and lawyers engaged with one another, and feminist principles were not dismissed. This coincides with another interviewee's observations. She described

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<sup>86</sup> Interview 7; see further, Union of Turkish Bar Associations announcement, 'We Were at the Most Crowded Council of State Hearing in History: We Are Not Abandoning the Istanbul Convention', 28 April 2022, available at

<https://www.barobirlik.org.tr/Haberler/tarih-in-en-kalabalik-danistay-durusmasindaydik-istanbul-sozlesmesinden-vazgecmiyoruz-82654> accessed 13 April 2023.

<sup>87</sup> Interview 5.

<sup>88</sup> Interview 5.

<sup>89</sup> Davies (n 7) 286.

<sup>90</sup> Interview 7; interview 3; interview 1.

<sup>91</sup> Interview 2.

<sup>92</sup> Interview 2.

<sup>93</sup> Interview 2.

<sup>94</sup> Altıok (n 28).

that the courtroom was a space where they felt free.<sup>95</sup> She continued, stating that the court allowed the activists to go crazy (as in pushing the boundaries) under the control of the court. She described the court experience as ‘controlled madness’.<sup>96</sup> Although it is primarily a feminist intervention to State law, the vertical law also intervenes into the feminist legal space. There is a constant battle between vertical and non-vertical spaces of law.

Three of our interviewees confirmed that the judges were polite until they heard lesbian, gay, bisexual, trans, queer, intersex, plus words spelled out in the courtroom. They interfered by warning the lawyers of time constraints whenever LGBTIQ+ subjects or themes were mentioned. The judges were noticeably impatient according to three of the interviewees.<sup>97</sup> The politeness was discontinued for LGBTIQ+. This perhaps manifests the vulnerability of the movement when it comes to LGBTIQ+ rights. As aforementioned, some Council of Europe countries did not ratify the Convention arguing that it aims to spread ‘gender ideology’.<sup>98</sup> As mentioned earlier some Council of Europe States use ‘gender ideology’ in a negative way that signals danger to their nation and family values. Under the name of gender ideology, they refuse the intersectional approach of the Convention that clearly extends protection to sexual orientation, gender identity and immigrants. For example, the UK ratified the Convention in 2022, 10 years after signing it, with a reservation to article 59 aiming to leave immigrant women outside the protection of the Convention.<sup>99</sup> The conflict between different spaces of law sometimes materialises itself in forms of interventions, aiming to verticalise the protection by bringing restrictions and exclusions, whilst feminist legal spaces attempt to flatten out the protection with inclusion.

If we return to Türkiye’s withdrawal from the Convention, at the beginning of the withdrawal process, all activists we interviewed criticised the Convention for being shy and insufficient in terms of protection afforded for LBGTIQ+ and the fact that the Convention is predicated on gender binarism. Türkiye utilised the anti-discrimination clause that protects sexual orientation and gender identity to divide the women’s movement. The aim was to gain support of some women by arguing that the domestic law that solely protects heterosexual and cis gendered women was adequate.<sup>100</sup> The women in that courtroom rejected leaving LGBTIQ+ and non-binary people outside the Convention’s protection and outside the feminist legality. The lawyers told the stories of trans murders despite the interventions by the judges. One of the interviewees, a trans-feminist activist, expressed clearly that, ‘I generally feel lonely in the courtrooms, in that one I did not’.<sup>101</sup> Feminist legality found in the hybrid, middle, sideways, around, unexpected and unpopular spaces of vertical legalities does not feel lonely and does not leave anyone behind. The hybridity of the space encompassed all sexual orientations and

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<sup>95</sup> Interview 1.

<sup>96</sup> Interview 1.

<sup>97</sup> Interview 7; interview 3; interview 2.

<sup>98</sup> Katarzyna Sękowska-Kozłowska, ‘The Istanbul Convention in Poland Between the “War on Gender” and Legal Reform’ in Johanna Niemi, Lourdes Peroni and Vladislava Stoyanova (eds), *International Law and Violence Against Women* (Routledge 2020), chapter 13, 264.

<sup>99</sup> Charley Coleman, *The Istanbul Convention: Preventing and Combating Violence against Women and Domestic Violence* (House of Lords Library 2022), available at <https://lordslibrary.parliament.uk/istanbul-convention-preventing-and-combating-violence-against-women-and-domestic-violence/> accessed 2 June 2023.

<sup>100</sup> Solak (n 14).

<sup>101</sup> Interview 1.

gender identities. The same interviewee told us that a representative of a political party known for their transphobic and homophobic policies smiled at them and they exchanged greetings during the hearings.<sup>102</sup> They were in the same space, on the same side. Another interviewee described the court room as a feminist manifestation of Türkiye where no one was discriminated based on their sexual orientation and gender identity.<sup>103</sup>

The space created by the feminists in that courtroom was in constant negotiation with vertical law. When the vertical hierarchies took over, the feminists needed to re-establish feminist legality. The space was unilinear, and the activists were reminded of vertical legalities many times. There were moments of feminist legality. This space of hybridity left feminist activists with a sense of empowerment. Almost all our participants commented on how powerful they felt, how freeing the experience of being in that court room was. The interviewees described the courthouse as follows:

The courtroom was full of feminists who knew one way or another the Istanbul Convention will be in force. There was a collective consciousness of defending their rights and pushing for accountability... It was beyond the Convention. We were reminded of our own strength.<sup>104</sup>

It was such a powerful space. We all knew that regardless of the outcome we will not give up. We knew if the court decided to ask the Parliament they would approve Erdogan’s withdrawal decision. It did not matter.<sup>105</sup>

This section examined the formation of feminist spaces through the lens of the legal cases filed in response to the decision to withdraw. The interviews revealed that the courtroom became a hybrid space where the conditions for the emergence of feminist legalities were upheld through the presence of emotions and a collective feminist will. Notwithstanding the Court's decision on the matter at the vertical legal level, the feminist movement continued to adhere to the tenets of the Istanbul Convention. The recognition of unlikely horizontal spatiality of law made this possible.

### **Flattening out the vertical: The State gives up but ‘We Do Not Give Up on the Istanbul Convention’<sup>106</sup>**

The vertical legalities of law-making operate through State centric, top-down, bottom-up spaces. Via the decisions of States individuals benefit or lose rights that come from international Conventions. Individuals or groups cannot make a decision to become a

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<sup>102</sup> Interview 1.

<sup>103</sup> Interview 4.

<sup>104</sup> Interview 4.

<sup>105</sup> Interview 3; interview 2.

<sup>106</sup> See further EŞİK platform, available at <https://esikplatform.net/kategori/istanbul-sozlesmesi-basin-aciklamalari/72142/istanbulsozlesmesi10yasinda/> accessed 13 April 2023.

beneficiary of a Convention or decide not to leave it. The campaign slogans were: 'We Will Never Give Up the Istanbul Convention', 'Istanbul Convention is Ours. We are not Giving it Up!'<sup>107</sup> The slogans of the feminist resistance in Türkiye bring a fundamental critique to the vertical legality by indicating that even if the State leaves the Convention, they (feminists) will not. These slogans are based on the premise that there are spaces of law where the State is not the single author. These feminist slogans are in a way a declaration of feminist legal spaces and feminist legalities. The feminists in Türkiye collectively expressed that they are not withdrawing from the Istanbul Convention, meaning that even if the State leaves, they will not. This led feminists in Türkiye themselves to denounce the denunciation of the Convention. This was both a formal and a feminist objection to the whole process. In this section we evaluate the feminist legality communicated by these slogans. We consider these slogans as feminist legal spaces where the feminist resistance flattened the vertical legality by declaring that it is possible not to leave the Convention when the State leaves it. By doing so they assumed horizontal pathways in international law and a feminist legality which is not constrained by State behaviour.

The majority of the interviewees stated that they knew that the vertical spaces of law would find this withdrawal legal by identifying the State as the only legitimate entity to make the choice about the Convention. Their point was that feminists will never give up regardless of what happens within the vertical limits of law.<sup>108</sup> This approach manifests that the feminist resistance in Türkiye starts from a point of recognition of other legal spaces rather than denying them, as argued by Davies.<sup>109</sup> The activists we interviewed did not take law to be limited to this vertical and linear space. In almost all interviews we heard a critique of law and its singular verticality. One of the interviewees stated that there is a need for decentralisation of vertical law when thinking about addressing violence against women.<sup>110</sup> Even the Istanbul Convention itself recognises a holistic spatiality of law. In the words of the interviewee:

the most important novelty of the Convention is that the Convention does not buy into the belief that if we have a well-functioning criminal law system, if we persecute the perpetrators effectively the violence against women would be solved. In this way the Convention does not restrain violence against women with criminal law and law in general.<sup>111</sup>

Following her comments, we discussed that even though the text of a Convention recognises different spaces of law or takes the law in a broader sense, the procedures of ratification and withdrawal in international law-making are strictly vertical and do not treat different spaces of law as equal. In addition to this, we heard further critiques of law and international law-making during the interviews. The interviewees used the terms 'shallow' and 'inconsistent' when describing international law. Three of the activists mentioned that their resistance to the denunciation of the Istanbul Convention was not because the Convention was so efficient or

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<sup>107</sup> Ibid.

<sup>108</sup> Interview 1.

<sup>109</sup> Davies (n 7).

<sup>110</sup> Interview 2.

<sup>111</sup> Interview 2.

effective. Indeed, they noted that when in force the Convention was not adequate, with some judges not even knowing anything about it.<sup>112</sup> They reminded us that the United Nations Convention on the Elimination of All Forms of Discrimination Against Women is still in force. There was an agreement among the activists that the feminist resistance embodied a greater critique than the Istanbul Convention’s situation in Türkiye.<sup>113</sup> This might sound odd as the campaign was designed to save the Istanbul Convention. However, it also acknowledges that even maintaining the Convention would not be the solution. The feminist resistance was also about resisting how laws are made and taken away.<sup>114</sup> An interviewee mentioned that if Türkiye can withdraw from the Istanbul Convention with a presidential decree, this would put all international conventions at the same risk of withdrawal without parliamentary consent.<sup>115</sup> Another interviewee described the similar possibility that this would open the gateway for Türkiye to leave any human rights convention, which makes them fearful about human rights protection in general.<sup>116</sup> Thus, the most crucial aspect of their campaign was against the State’s ability to leave a human rights Convention overnight.<sup>117</sup> Most argued that this highlights a deeper pitfall of international law-making, especially for women’s and LGBTIQ+ rights, as international protection is fundamental for these groups.<sup>118</sup>

Another aspect that came to light in the interviews was that the vertical operation of international law became more visible when Türkiye decided to leave the Convention. Feminist activists were aware that international law would not easily challenge the behaviour of the State when it came to treaty ratifications and denouncements. It is a State-centric system that favours vertical legalities of States. This understanding of law tends to undermine feminist legalities, creating inconsistencies within the very vertical system they rely on. Two feminist activists criticised the international legal system for its inconsistent governance of withdrawals and treaty reservations in their interviews.<sup>119</sup> They pointed out the Venice Commission’s immediate approval of Erdogan’s decision to withdraw without waiting for the outcomes of the Court cases brought against that decision.<sup>120</sup> An interviewee mentioned that the Council of Europe recorded that the withdrawal decision was valid from 1 July 2021, while the first hearing only took place in April 2022.<sup>121</sup> The vertical legality of State-centric international law might not even recognise judicial legal spaces such as courts.<sup>122</sup> By not questioning the undemocratic constitutional arrangements and outcome of the court cases, they legitimised the withdrawal decision although it was still a matter of judicial review.<sup>123</sup> The Venice Commission of the Council of Europe adopted a lenient approach to withdrawals from its conventions. As mentioned above, the Istanbul Convention is a site of feminist conflict within several other Council of Europe countries. By choosing to follow strictly vertical

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<sup>112</sup> Interview 1; interview 3; interview 5.

<sup>113</sup> Interview 1; interview 4; interview 5.

<sup>114</sup> Interview 5.

<sup>115</sup> Interview 4.

<sup>116</sup> Interview 6.

<sup>117</sup> Interview 3; interview 1.

<sup>118</sup> Interview 3; interview 4; interview 5; interview 6; interview 7.

<sup>119</sup> Interview 5.

<sup>120</sup> Interview 5; interview 4.

<sup>121</sup> Interview 4.

<sup>122</sup> See day-to-day chronology compiled by Women for Women’s Human Rights (WWHR) – New Ways Association (n 5).

<sup>123</sup> See further EŞİK platform (n 106).

interpretations of international law, the Venice Commission chose to be an observer of State behaviour.<sup>124</sup> One of the interviewees mentioned their call to the Council of Europe<sup>125</sup> and described their reaction, especially the Venice Commission's engagement with the Istanbul Convention's withdrawal by Türkiye, as 'shallow'.<sup>126</sup> According to them, the Venice Commission performed a flat, vertical spatiality of law where even within the limits of this State-centric space another interpretation was an option, as discussed by Başak Çalı and Laurence Helfer.<sup>127</sup> They argued that it is possible to impose a special procedure for withdrawals from Conventions about human rights and gender in international law as laid out in the Inter-American Court of Human Rights (IACHR)'s advisory opinion:

64. The Court emphasizes that, regardless of the different domestic procedures for denouncing treaties in the region, the denunciation of a human right treaty - particularly one that establishes a jurisdictional system for the protection of human rights, such as the American Convention - must be subject to a pluralistic, public and transparent debate within the States, as it is a matter of great public interest because it implies a possible curtailment of rights and, in turn, of access to international justice. In this regard, the Court considers it pertinent to have recourse to the principle of parallelism of forms, which implies that if a State has established a constitutional procedure for assuming international obligations it would be appropriate to follow a similar procedure when it seeks to extricate itself from those obligations, in order to guarantee such public debate.<sup>128</sup>

In line with IACHR's opinion two interviewees identified that international law did not have effective deterrence mechanisms pertaining to States that withdraw their commitment to protecting the lives and rights of humans.<sup>129</sup> One activist mentioned that reservations to international treaties about women's rights and gender are also very flexible.<sup>130</sup> Acceptance of State consents with fundamental reservations to Conventions renders States' adherence to international protection regimes perfunctory and performative.<sup>131</sup>

Another critique of the inconsistency of international law — mentioned in almost all interviews — is that entering into and leaving the Convention did not follow the same

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<sup>124</sup> European Commission for Democracy Through Law (Venice Commission) (n 28).

<sup>125</sup> See further EŞİK platform, available at <https://esikplatform.net/en/category/english/73874/urgent-appeal-to-the-council-of-europe> accessed 30 December 2022.

<sup>126</sup> Interview 5.

<sup>127</sup> Başak Çalı and Laurence Helfer, 'The Gender of Treaty Withdrawal: Lessons from the Istanbul Convention', *EJIL:Talk! Blog of the European Journal of International Law*, 28 November 2022, available at <https://www.ejiltalk.org/the-gender-of-treaty-withdrawal-lessons-from-the-istanbul-convention/> accessed 14 April 2023.

<sup>128</sup> *The Obligations in Matters of Human Rights of a State That Has Denounced the American Convention on Human Rights and The Charter of the Organization of American States*, Advisory Opinion OC-26/20, the Inter-American Court of Human Rights (IACHR), 9 November 2020, available at [https://www.corteidh.or.cr/docs/opiniones/seriea\\_26\\_eng.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_26_eng.pdf) accessed 5 May 2023

<sup>129</sup> Interview 1; interview 5.

<sup>130</sup> Interview 5.

<sup>131</sup> Interview 4.

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procedure and was not in conformity with the principle of parallelism of form. This principle guarantees that States follow similar procedures when ratifying and denouncing human rights Conventions. In the case of the Istanbul Convention, it was ratified by parliament but denounced by a president. This was one of the main legal arguments made by the feminists at the Istanbul Convention hearings in front of the Danıştay. An interviewee maintained that this was not solely about the Istanbul Convention, but also implies a crisis of international law.<sup>132</sup> It exposes the binary foundations of international law, which is limited to a national-international binarism. This binarism also governs the ratification-withdrawal processes. Following this logic, who withdraws from the Convention is tied to the question of who entered into the Convention and who made it. The following section employs a non-vertical lens to examine this process of State-centric law-making. This raises the question of whether withdrawal is even a possibility, when we analyse who made the law and where it was made, deprioritising the vertical legal paradigms of law-making.

### **The unlikely space where laws are made: Opuz was from our land, Diyarbakır**

This section discusses law-making in international law from the feminist perspective of our interviewees. In vertical legality, Conventions are made by States and brought to the national sphere. Our interviewees brought a feminist legal approach to this formation of international law by questioning the origins of international norms. According to the feminist legality they proposed, the emergence of the Istanbul Convention could be traced back to their land when Nahide Opuz complained about gender-based violence, as her case was a catalyst for the Istanbul Convention. The Convention's draft minutes on the Council of Europe's website clearly identify the *Opuz v Türkiye*<sup>133</sup> judgment as the inspiration for creating the Istanbul Convention. Türkiye, as the name of the Convention suggests, was a leading State in the preparation of the Convention, which launched in May 2011, with Türkiye being one of the first States to sign it. The *Opuz v Türkiye* judgment of the European Court of Human Rights in 2009 had been groundbreaking with regards to the recognition of gender-based violence as a form of torture and the discriminatory passivity of the Turkish authorities when it came to protecting women from violence.

198. ...the Court considers that the applicant has been able to show, supported by unchallenged statistical information, the existence of a *prima facie* indication that domestic violence affected mainly women and that the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence.

Our interviewees also recognised *Opuz* as the starting point for the Convention. It was mentioned in the interviews as the creator of the Convention:

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<sup>132</sup> Interview 1.

<sup>133</sup> *Opuz v Turkey* App no 33401/02 09 (ECHR, September 2009).

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When Türkiye was found in violation of the Convention by the ECtHR, the prime minister of the time ...in general the government decided to deal with this issue.<sup>134</sup>

The Istanbul Convention was shaped by the Nahide Opuz judgment. They have taken the reasoning of the judgment through which Türkiye was found in breach of ECHR for its failure to protect women from domestic violence and turned it into an international Convention.<sup>135</sup>

In 2008 violence against women increased by 1400% over the past 10 years in Türkiye. A year later *Opuz v Türkiye* judgment was delivered and in 2011 Istanbul Convention was opened for signature.<sup>136</sup>

Türkiye's passivity regarding combatting violence against women led to the emergence of the Convention. The Convention was drafted as a response to the inaction of Türkiye to protect women's lives. The making of the law stemmed from what happened to Nahide Opuz in Türkiye. The interviewees were seeing withdrawal as a continuation and consolidation of the State's behaviour toward Nahide Opuz and many other women who were not protected by Türkiye. An interviewee<sup>137</sup> underlined that Nahide Opuz, who complained about Türkiye, was from their land, Diyarbakır. The Convention, thus, came out from 'our land' she said. The land of Diyarbakır is the space where the Convention flourished. One of the arguments for the withdrawal was that a Convention made in the West could not solve gender-based violence in Türkiye.<sup>138</sup> The pretext for denouncing the Istanbul Convention was that it was made by external foreign powers. As aforementioned, one of the feminist activists stressed that the Convention was from their land, it did not come from abroad, and it belonged to their geography.<sup>139</sup> This makes it ambiguous who made the Convention, where it originated from, where it travels from and where it travels to. Positive law dictates that Conventions are made among the States at international level. Our interviews propose a different way of looking at this dynamic and hierarchy among domestic and international legal spaces, firstly, by questioning the vertical procedure of entering Conventions, and secondly, one of the interviewees cast doubt on where the Convention came into being by decentring the State-centric verticality of treaty making. In their interpretation, the Convention emerged when Nahide Opuz objected to what happened to her, on their land. The Convention was drafted as a response to the unhindered gender-based violence that happened in Türkiye. It belonged to and emerged from this land

It was important that *Opuz* led to the creation of the Convention from the vernacular standpoint. The violence took place in the land of Diyarbakır, a Kurdish city in Türkiye, and the

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<sup>134</sup> Interview 4.

<sup>135</sup> Interview 1.

<sup>136</sup> Interview 7.

<sup>137</sup> Interview 8.

<sup>138</sup> Solak (n 100); Gizem Güney, 'One Step Forward, Two Steps Back: An Analysis of Turkey's Implementation of the Istanbul Convention in Addressing Gender-Based Domestic Violence,' in Gizem Güney, David Davies, Po-Han Lee (eds), *Towards Gender Equality in Law: An Analysis of State Failures from a Global Perspective* (2022; Palgrave Macmillan) 133-152.

<sup>139</sup> Interview 8.

Convention also emerged from the violence that took place in Diyarbakir. Therefore, the defence of the Convention is not only resistance to withdrawal, but it is also a continuous fight against gender-based violence that created the Convention in the first place. This was also expressed via the slogans like 'Istanbul Convention is Ours', implying that contrary to the vertical understanding of law, the Convention was not made abroad, then travelled to Türkiye. It was 'ours', it emerged from the land of Diyarbakir, created in a moment of gender-based violence against Nahide Opuz and her mother.

Thinking about space and hybridity, in the interviews we were told that the campaign against the withdrawal created a space where Kurdish and Turkish women worked together. It was not one helping the other, it was a joint resistance. The campaign was led through a flat organisation, EŞİK, the campaign's umbrella organisation, where decision making is strictly dependent on consensus. A feminist struggle to challenge international law has a long history. However, the Istanbul Convention's seeds were sown in Diyarbakir. When the Convention disappeared, EŞİK became a space where diverse feminist critiques of law, from different and conflicting geographies of feminisms, found a space to generate the hybrid:

One of the most important achievements of this process was in my view that this resistance carried Türkiye and Kürdistan's women's movement to a shared space. Despite our differences, we managed to enhance the shared values and good...despite our different perspectives and disagreements on certain issues... for the first time we were in such a close contact, perhaps not face to face but online.<sup>140</sup>

From the land from which the Convention emerged and the jurisdiction in which the Convention is no longer a law, the hybrid space of resistance did not leave the Convention, as it would mean leaving a space where women are kept alive. The Convention as a piece of legislation translated into a space where women are kept alive. The feminist denial of the withdrawal has become the defence of women's lives. EŞİK's prominent slogan, 'The Istanbul Convention Keeps Us Alive', promises a hybrid reframing of the right to life. The space Türkiye left but feminists stayed in, is the unlikely feminist legal space where the lives of women are possible. The slogans of the campaign challenge the fundamental operation of international law. We could interpret this slogan as a claim for the right to life in the private sphere for women, and States' obligations to protect the lives of women from the criminal acts of their partners and/or family members. In the end, women's right to life requires specific protection regimes and the Istanbul Convention extensively regulates how to effectively protect a woman's life. Two of the interviewees talked about the fact that even though the Convention is removed by law, feminists are now equipped with and aware of this knowledge on how to combat violence against women and how to keep women alive.<sup>141</sup> They said that the removal cannot take this knowledge from women. Although the Convention can be removed from vertical legal spaces, its knowledge cannot be undone within the non-vertical spaces of law. In this sense, the Convention still exists in feminist legal spaces. This correlates with Merry's concept of local legal consciousness by giving power to the activists in the local regardless of the status of the Convention. Even though the Convention is not in force in vertical legal spaces

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<sup>140</sup> Interview 8.

<sup>141</sup> Interview 8; interview 3.

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anymore, it created a feminist legality, became part of the hybrid consciousness, and still exists in unlikely horizontal spaces of law.

## Conclusion

Türkiye's withdrawal from the Istanbul Convention met with feminist resistance. Drawing from the empirical knowledge obtained through interviews made with eight activists, this article argued that there are feminist legal spaces that co-constitute vertical State-centric positive law. These feminist legal spaces host feminist legalities, feminist accounts of law, and their presence is not dependent on the creation of new rights. Feminist legal spaces can emerge when rights are taken away. This means that feminist law-making is not constrained to reforming the State centric laws. In this regard, our interviews showed us that law making in feminist legal spaces co-constitutes vertical state law but does not follow its rhythm and form. Our interviewees' perception of law helped us to identify several feminist legal spaces within the feminist resistance against Türkiye's withdrawal from the Istanbul Convention. Unless vertical legalities are deprioritised, feminist activism could be mislocated within the likely, binary, and vertical space of State-centric law. These feminist legal spaces became visible in the interviews when we applied a combined reading of Zoe Pearson's unlikely, Sally Engle Merry's hybrid and Margaret Davies's horizontal spaces. By applying their feminist lenses, we decentred vertical and State-centric spaces in our analysis. This meant neglecting the vertical and binary, top-down, bottom-up spatiality of state law and aiming our attention at the middle, sideways, backwards, around, hybrid, horizontal, unexpected and unpopular spaces of international law-making. Instead of the linear, ordered space of law, we looked at the disappearance of rights. Rather than the claims for new rights we looked at the space where established rights are taken away. Instead of focusing on national-international verticality, we looked at the land and feminist campaigns. Instead of legal norms and hierarchies we looked at words, emotions, and slogans. This analytical approach allowed us to locate feminist legal spaces that might otherwise be missed or mistaken for reformism.

These unlikely feminist spaces manifested that the term legality is not limited to a likely vertical meaning but also embodies feminist legality. Feminist legality exists in feminist legal spaces and distinguishes what is lawful from what is unlawful based on feminist legal approaches. By shouting 'We Do Not Give Up on the Istanbul Convention', the feminists created a feminist legal space in which it is possible and lawful for feminists to stay with the Convention even though the State leaves it. Through the slogan 'The Istanbul Convention Keeps Us Alive' activists convey that they stayed within the feminist legal space where the lives of women are possible.

When we deprioritised the vertical legality expressed in binary national-international law, we could identify land as a feminist legal space from which the Istanbul Convention emerged. Interviewees claimed that the Istanbul Convention is local, vernacular, from their land where Nahide Opuz was not protected by the discriminatory judicial passivity of the Turkish State. In addition to vertical legal norms, emotions, solidarity and experiences of gender-based violence became the legitimate source of legality in the courtroom. The feminist principles and language were dominant in the feminist legal space created in that courtroom. The walls of

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the room expanded in order not to leave anyone, any sister, behind. Women in the courtroom felt powerful and free. They understood and experienced law beyond its vertical space, so that whatever the vertical State law decided did not matter. The feminists maintained the norms of protecting the lives of women and this could not be withdrawn from feminist legal spaces. In the end, the feminists did not leave the Istanbul Convention even though the cases were lost and the Turkish State officially denounced it.