

**Marital Rape in Croatia:
Law, Economic Precarity and the Politics of Professional Judgement**

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Abstract

This dissertation explores the socio-legal structures and power dynamics that affect the perception, prosecution, and penalisation of marital rape in Croatia. Drawing on in-depth interviews with a diverse range of professional actors – including lawyers, judges, prosecutors, social workers, coordinators of feminist NGOs, women’s shelters’ workers, psychologists, journalists, and academics – I develop new insights into the legal, political and social implications of marital rape in a post-conflict, post-socialist context. Supplementing these expert interviews with first-hand observation of a court trial and a wide range of secondary texts, I show how the institutional and professional practices of police officers, prosecutors, judges, and social workers can either enable or curtail access to justice for the victims and survivors of marital rape. A key aim and contribution of the dissertation are to illuminate how victimhood is imagined by different professionals encountering the issue of marital rape and to theorise how their decisions are influenced by the combination of both professional and personal judgement. I explore this legal reasoning through three key themes: firstly, the institutional limitations imposed by resource-constrained social welfare systems in post-socialist contexts; secondly, the legacy and influence of cultural norms and beliefs that affect how professionals perceive victims and perpetrators; and lastly, the political and economic circumstances and economic precarity of different classes of men and women in Croatia. Building on feminist philosophy and legal theory and interweaving it with literature from political economy and law studies, I reach new conclusions about the role of materialistic aspects of victim’s support systems and how economic violence and epistemic injustice can feature as part of the identification and prosecution of marital rape.

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1. Introduction

In Croatia, marital rape was first deemed a criminal offence in 1998. Since then, very few cases have reached the courts leaving the issue largely underrepresented in the official statistics. Below I describe one of these cases and its specificities to set the scene for the introduction of the socio-legal context of marital rape in the Croatian post-conflict, post-socialist setting. While the details of the case¹ below might seem overly shocking or provocative, they are taken *verbatim* from the judge's explanation of the verdict, as much as the translation from Croatian to English allow. With this case, I want to delineate important themes which are present throughout my research of marital rape in Croatia.

Between 2001 and 2010, in Zagreb, the capital of Croatia, husband X was threatening his wife L with beatings and murder if she did not agree to have sexual intercourse with him. He was slapping and repeatedly hitting her head and body while hurling insults at her. He insisted that she had to have sex with him 'according to the law' because she is his wife, while she begged him to stop. He called her a whore, threatened to kill her, mutilate her, cut her into pieces and exclaimed that there will be a 'bloodbath.' After some time, she gave in without further resistance and was subsequently exposed to years of abuse and fear for her life and the lives of her six children who were living together in cramped housing conditions. He was jealous and possessive and frequently stalked her workplace, hiding in the bushes to see with whom she communicated, which often enraged him further.

X was a decorated war veteran who illegally kept weapons from the 1990s war² including shotguns, bombs, and grenade guns. Their children later testified to seeing the weapons in their flat on several occasions and their dad showing them how to throw bombs. All children were

¹ The case described has been obtained from the online jurisprudence data of the Supreme Court of the Republic of Croatia. The online information system of the Supreme Court of Republic of Croatia developed under the PHARE project in 2006 called "Harmonization and Disclosure of Judicial Practice"

² The dissolution of Yugoslavia in 1990s and the war in Croatia. This is explained in depth in the section on the socio-legal context of Croatia in chapter 3

witnesses to the horrible physical and sexual abuse suffered by their mother at the hands of their father. Alongside the emotional abuse, some of the children were also physically abused. One of the elder children confided in their teacher at college and decided to report his father who was subsequently arrested on charges of rape, violation of children's rights, stalking and illegal possession of weapons. The same son also testified to the court that his father did not appreciate his female children and regarded them as lesser beings.

In 2014, X was sentenced to 15 years in the first instance. The Supreme Court of Croatia reduced the penalty to 11 years in 2015 agreeing with the complaint of the defendant that the original sentence was too harsh. The Supreme Court stated that the defendant was not previously convicted which was considered as a mitigating circumstance. Although marital rape is now defined as an aggravated offence committed against an intimate partner as defined by the Criminal Code amendments in 2011, the rape was not qualified as aggravated in this case, since the Criminal Code came into power after the crime took place, as explained by the decision of The Supreme Court.

The case above is one of the few convictions for marital rape since its criminalisation in 1998. In this case, there were multiple witnesses mostly consisting of children and siblings of both the perpetrator and the victim. The victim's testimony was deemed credible and her suffering was acknowledged by the court. The perpetrator was sentenced to what can be considered a lengthy sentence of 11 years imprisonment. The sentence included not only the criminal charge for marital rape but also child abuse and neglect, stalking and illegal possession of weapons. Few cases of marital rape have multiple witnesses, the acknowledged credibility of the victim and end with a lengthy sentence.

Despite many marital rape cases never reaching the courts, they share a common pattern of long-term psychological suffering behind closed doors for the victims. This includes feeling ashamed and judged for not being able to remove oneself or one's children from living in an

everyday atmosphere of fear, violence and suffering and also the experience of living in fear of not being believed or acknowledged by society. My main motivation for focusing on the analysis of marital rape is the knowledge that most marital rape cases will never be known to anyone outside of the household where they take place, and that those that do might get lost somewhere along the long way of the legal process. This is why I want to illuminate marital rape cases within the wider socio-legal and political context, not as individual problems, but as issues of collective responsibility and structural oppression. My interest in marital rape is also due to how it is legally defined, though this does not mean I want to exclude intimate partner violence and sexual abuse among former intimate partners. By focusing on marital rape, I highlight throughout my thesis how the state's privileging of the institution of marriage and the nuclear heterosexual family leaves non-heterosexual or non-normative unions outside of legal protection from abuse.

Other than the judge, defence attorney and prosecutor whose presence in legal proceedings is clear from reading the court case report, many other important professionals are working with this issue. These professional actors can also influence the perception, prosecution, and penalisation of marital rape. How marital rape is considered, judged, and reasoned within the professional practices of state agents and service providers exemplifies the wider societal understanding of gender, consent, violence, marriage, and family? In this dissertation, I investigate the reasoning and practices of professionals (lawyers, prosecutors, judges, social workers, shelter providers, psychologists, feminist NGO coordinators, journalists, and academics) to make sense of the reality of marital rape in the legal and social welfare systems in Croatia.

Throughout this thesis, I use the term 'victim' interchangeably with the term 'survivor' to acknowledge both the traumatic experience of being victimised and feminist scholarship which problematises the notion of victimhood as a permanently defining feature of women's lived

experience (Lees, 2002). I explain this further in Chapter 3 in the literature review and explanation of the Croatian legal system. The terms used to reflect the discourse used by the professionals themselves in their narratives of marital rape cases.

My primary research questions are as follows: How is marital rape conceptualised and understood among professionals encountering marital rape in their work practice within the current socio-political context of Croatia? What are the institutional practices related to marital rape and do they enable or curtail victims' access to the legal system? Is victim-blaming prevalent in legal practice and how does it manifest? Is the current economic system complicit in devaluing victim support systems, and if so, how?

These questions are explored through a mixture of qualitative, semi-structured interviews and a rape trial observation, alongside an overarching feminist legal framework. My first research question is approached as a thread that runs through all the chapters investigating the conceptualisation and understanding of marital rape among diverse professionals. The remaining questions are addressed in the data chapters starting with Chapter 5 which discusses conflicting institutional practices of state agents such as police, prosecutors, judges, and social workers concerning marital rape. Chapter 6 investigates the prevalence of victim-blaming narratives in the legal practices and the constructions of victimhood by the professionals working with the issue of marital rape. Chapter 7 engages with the connections between the current economic system and the defunding of the victim support systems while drawing on the feminist political economy related to gender-based violence.

While there has been some research and literature into the issue of marital rape as both a problem of interpersonal intimacy and a wider societal issue (Russell, 1990; Bergen, 2006; Goodmark, 2013; Frieze, 2014; Yllö and Torres, 2016; Valdovinos and Mechanic, 2017), there lack a comprehensive detailed study of the legal, political and social implications of marital rape situated in a specific geopolitical context. This thesis offers two distinct contributions to

the study of marital rape. First, by combining feminist socio-legal studies and gendered political economy studies, I show how marital rape is perceived and marginalised by professional actors as a problem of personal intimacy and misjudgement and is thus treated in practice as a matter outside of the state's ability or responsibility to provide adequate support and resources to victims and survivors. Second, the thesis also looks at the specific political and social context of post-conflict, post-socialist Croatia and thereby situate the issue of marital rape in the wider societal framework. By contextualising marital rape, the specific histories of patriarchal institutions, political-economic conditions, activism, and feminism are located to portray a holistic and encompassing setting in which marital rape takes place.

The structure of this dissertation is organised as follows: this introduction is followed by the methodology and literature review chapters. Following this are three data chapters and the conclusion. I provide a summary of each chapter below.

Chapter 2 explains my epistemological and ontological position and the overarching feminist methodology I adopted. I describe and explain the methods I have used, and I discuss the data collection process and present my in-depth interviews with professionals encountering the issue of marital rape in the scope of their work. In the fieldwork observation and the reflexivity section, I reflect on the data collection process and the ethical considerations ending with a discussion on the limitations of the scope of this study.

In Chapter 3 I combine a literature review with a contextual section on the Croatian legal system and victim protection rights. I present the relevant literature used to develop my theoretical framework and contextualise it according to the specific context of Croatia. I argue that contextualising marital rape is needed to counter the ahistorical narratives of sexual violence, patriarchy, and capitalism. Inspired by both feminist poststructuralism and feminist materialist perspectives, I bring together both the symbolic and the materialist consequences of marital rape in the wider Croatian societal context. To comprehend the complexity of marital rape as a

societal issue I use a multi-pronged theoretical approach which includes feminist theories on sexual violence, feminist political economy, literature on women and nationalism, critical victimology, feminist legal theories, and postcolonial scholarship.

In the contextual section on the Croatian legal system, I explain the specificities of legal texts and court practices, describing important laws and their implementation processes. I highlight the importance of The Council of Europe Convention on preventing and combating violence against women and domestic violence (further in text: the Istanbul Convention)³, not just because of its contents in which gender-based violence was for the first time defined by an international instrument, but because of the mobilisation of religious conservative actors who tried to prevent the ratification of the Convention in Croatia.

Both methodology and literature review chapters set the scene for the three data chapters analysis which each explore an important social aspect of marital rape. Chapter 4 explains and examines the conflicting institutional practice of state agents in the legal and social welfare systems. I argue that regardless of the recent legal and structural strengthening of victims' rights and protections, including the professional education of state agents on victim's rights and media exposure of sexual violence, problems such as victim-blaming and misunderstanding trauma are still prevalent in the practices of police officers, social workers, prosecutors and judges. Victims of sexual violence are still more disbelieved than victims of any other type of crime (Belknap, 2010).

In Chapter 5, which explores the construction of victimhood, I examine the judgement and reasoning of professionals encountering marital rape in the scope of their work. I argue that victimhood is understood in a normative way, either as something invented and performed for personal gain or as a sad reality of certain individuals whose trauma is deemed credible. The

³ Signed by Croatia in 2013, and ratified in 2018

criteria for obtaining victim status is unclear in the judgments and practices of both judges and prosecutors while women's shelters and feminist NGO workers allow for a more complex understanding of victimhood and trauma-induced behaviour.

Chapter 6 concerns the political economy of gender-based violence and examines the materialistic position of abused women in Croatian society as well as the victim services and state resources available across the country. I argue that the shrinking of social welfare services and the financial devastation of the civil sector has pernicious effects, ultimately individualising the problem of violence while the state withholds necessary financial resources. Both the non-profit civil sector and the non-profitable governmental sector of social welfare find themselves underfunded and abandoned by the government's neoliberal agenda. Without the support of a well-funded social welfare sector and civil society organisations, the opportunity for leaving violent situations shrinks.

In the conclusion, I summarise my findings and highlight their significance for the study of marital rape. I reflect on the study's limitations and raise important questions for further research.

2. Methodology

2.1 Methodological Framework

This research is conceptualised following feminist methodology as an empirical exploration of marital rape to produce broader analytical points which have relevance beyond this specific issue. I have collected data by conducting in-depth interviews during 2018 and 2019, observing a rape trial in 2019 and analysing secondary sources like NGO reports, legal changes and legal commentaries, newspaper articles and relevant research studies. This chapter presents these aspects in detail. I begin by outlining my methodological framework which also explains my epistemological positioning, then I explain the methods, data collection and analysis, and finally the critical reflections on fieldwork and ethics.

The feminist methodology is shaped by feminist theory, politics and ethics grounded in women's experiences (Ramazanoglu and Holland, 2002). There is a strong emphasis on notions of "reflexivity" and "situated knowledge(s)," where the researcher's position concerning the data is recognised and becomes an internal part of the data. Reflexivity is important for acknowledging and understanding one's aims and biases, which then become part of the research. The hierarchical position inherent to the research process can be overcome through reflexivity by exchanging knowledge and collaborating with the research participants. This framework is also informed by postcolonial scholarship, which stressed the awareness of "who is speaking for whom, how and where, as well as who is listening and to what end" (Kapur, 2005, pp. 3–4), and decolonised methodologies which place compassion at the core of the research process which was historically implicated in the colonial and imperial knowledge production of the Other (Smith, 1999). This is relevant for situating my research in the specific context of post-socialist, post-conflict Croatia to avoid anachronist exploration of marital rape and its surrounding socio-political forces. I elaborate on my reflexivity further in section 2.6 on fieldwork reflexivity and ethics.

Feminist methodology, as well as theory, encompasses different ontological and epistemological positions. Bartlett (1990) thoroughly describes three theories of knowledge that arise from feminist theory: 'rational empiricism', 'standpoint epistemology', and 'postmodernism'. She propositions another theoretical position, 'positionality,' which "provides for feminists the best explanation of what it means to be 'right' in law" (Bartlett, 1990, p. 829). Positionality refers to accepting contingent truths that are rooted in experience. In other words, it combines the three theories mentioned above to widen the scope of knowledge. It is a way to resolve the problem of essentialism without losing the analytical category of gender. Bartlett (1990, p. 885) explains that truth cannot be "universal, final, or objective," thus 'knowledges' are "partial, locatable, critical." In other words, feminist knowledge is sensitive to context and gender is regarded as relational. Positionality has been criticised for placing too much emphasis on one's experience and falling prey to epistemic deference, where personal viewpoints are treated as unquestionably authoritative sources of truth (Selim Alkan, 2012). However, feminist legal methods have to be rooted in the belief in women's experiences of abuse which have been historically silenced by the mainstream legal scholarship. This does not mean uncritically exploring the experiences of abuse but constructing feminist thought that is sensitive to the context. This is an approach I take in my research, which avoids essentialising the category of women while maintaining feminist transformative politics in which gender is viewed as a political position.

Drawing on Bartlett's positionality, my research is informed by poststructuralist feminist thought which conceptualises gender as social rather than natural and deconstructs the idea of a single, coherent identity (Butler, 1990; Monro, 2005; Deutsch, 2007). Gender is not considered in its singularity but explored as it intersects with other identities. Intersectionality shows how intersecting social identities, such as race, ethnicity, class and sexuality, relate to the systems of discrimination and oppression (Crenshaw, 1989). Moreover, to fully grasp the

context of marital rape in Croatia, feminist political economy is used as a tool to explore wider political and economic structures with the class structures, conflicts and contradictions inherent within them. This is explained in depth in the literature review in Chapter 3.

Researching an underreported and statistically almost invisible issue such as marital rape renders the official statistical data usually gathered by the police and state attorney's office incomplete. This is known as the problem of dark figures, which refers to the number of unreported crimes, usually associated with crimes of sexual and domestic violence (Skogan, 1977). For this reason, qualitative research methods, more specifically, in-depth interviews, trial observation, feminist legal and socio-legal methods, provide a more in-depth understanding of the issue and help to uncover the wider social structures in which marital rape and the legal system are understood. The following section elaborates on these methods.

2.2 Research Methods

2.2.1 In-Depth Interviews

Qualitative interviews are a powerful way of producing knowledge of a social situation (Kvale and Brinkmann, 2009). In my research, I adopt in-depth interviews with professionals working with the issue of marital rape. These include representatives of women's NGOs, shelters for victims of domestic violence, the police force, and the judiciary as my main participants. To fully understand the scope and different needs and experiences of victims and survivors it is important to explore how and why practitioners might intentionally and/or unwittingly reproduce a normative culture that leads women's testimonies to be discredited or undermined. Interviewing professionals who are working closely with cases of domestic and sexual violence provides greater insight into the factual and personal experiences of people dealing with the issue of marital rape. The research interviews are conceptualised as conversations to learn and increase the knowledge about marital rape, but at the same time are

intended to probe participants' understanding and their meaning of the legal and political system in Croatia. In this way, research interviewing is understood as a craft that avoids a rigid set of procedures but, relies on the interviewer's knowledge of the topic and the utilisation of personal judgment (Kvale and Brinkmann, 2009).

In-depth interviews can also be seen as a part of socio-legal methods since they reveal how the law works in practice (Banakar and Travers, 2005). Interviewing professionals who work with cases of marital rape reveals their understanding of the law and their experiences of the law in practice, and how this may vary depending on their professional positions, from a lawyer to a judge, and from a social worker in the Centre for Social Welfare to the psychologist in the NGO. To some extent, my interviews can be considered elite interviews since research participants such as judges, state attorneys and lawmakers hold powerful positions in society. Acknowledging that there is a prevailing power asymmetry in the interview process, elites and experts as interviewees can overcome the asymmetry with their powerful positions (Kvale and Brinkmann, 2009). As for my other participants, NGO workers, activists and feminists, the asymmetry is overcome with previously mentioned reflexivity and recognition of my positionality as a feminist, activist and former NGO worker which allows the data collection process to become more collaborationist.

Data collection and participants

I approached my interview participants through nonprobability purposive sampling and included only those with expertise in the legal and welfare systems related to the issue of marital rape, such as the police, social welfare workers, judiciary members, employees of feminist NGOs, academics and journalists. I have selected two journalists who have been reporting on the topics of sexual and domestic violence. I also used a partial snowballing method to identify additional interviewees through existing participants but most were contacted directly. Most of

my participants were selected through my volunteer and workplace networks. I contacted different professionals directly, I knew most of them personally from my work or volunteer experiences and asked them to connect me with people familiar with the issue of marital rape. I have primarily contacted the participants through phone but few were contacted via email. The in-depth, semi-structured expert interviews were conducted with 25 representatives of women's and feminist NGOs, non-governmental and governmental shelters for the victims of domestic violence, the police force, the media, social welfare, academia, and the judiciary. A brief overview of the distribution of my participants by their professions and institutional affiliation is provided in the table below.

Profession	Institutional affiliation	Number of participants
Police officer	Police Academy	2
Judge	County Court	2
Professor	Academia	2
Lawyer	Private Law Practice	4
Social worker	Social Welfare Centres and NGOs	5
Psychologist	Women`s shelters, feminist NGOs, Ministry of Social Welfare ⁴ , Polyclinic for the protection of children	5
Journalist	Commercial media	2
Public prosecutor	State Attorney's Office	1
Social pedagogue ⁵	County Court and Municipal Court	2

⁴ Full official name currently is the Ministry of Labor, Pension System, Family and Social Policy. It is known for rebranding every new Government. For the sake of clarity throughout the text I use the abbreviated name of the Ministry of Social Welfare.

⁵ Social pedagogy is a well-established profession in continental Europe, but it is not well known in UK and US context. A social pedagogue is an expert who deals with prevention, detection, diagnosis, early interventions and treatment, processing and care for children, young people, and adults at risk for disorders or behavioral

TOTAL		25
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Table 1. Overview of the research participants' professions and affiliations

My former work and current volunteer experience with the Association of Youth and Family Judges and Specialists in Croatia gave me access to the members of the judiciary, social welfare professionals, and the police. Also, I had established contacts with the government officials, social workers, and representatives of women's shelters through my previous internship in the City Office of Social Welfare in Zagreb.

The average duration of my interviews was 45 minutes. The shortest one lasted 30 minutes and the longest one hour and a half. The duration depended on the participants' availability and the place of the meeting. All interviews were recorded with written permission obtained from the participants. The first round of interviews was conducted during the summer of 2018 and winter and spring of 2019, after obtaining my ethical approval on the 18th of January 2018 from the departmental Ethics Officer at the University of Essex. Ethical approval included having named professionals with the option of being anonymised. As I explain below in the ethics section, I decided to anonymise all of my participants for their protection. In the first round of interviews, I presented the participants with the choice to be anonymised or to disclose their full names and the majority wanted to be anonymised which also influences my decision to fully anonymised all of the participants using the most common Croatian surnames from the online database. Pseudonyms were not a requirement of ethical approval to undertake this study. As I explained above, to some extent my interview can be considered elite interviews and all of the participants are professionals interviewed because of their professional role and work.

disorders, and their social environment. In the scope of my research they have been interviewed because they are the ones interviewing children and victims of sexual violence through video-link outside of the courtroom.

In my semi-structured interviews, I explored four main themes centring on marital rape: concrete examples of marital rape in the scope of the participant's work, their opinions and perspective of the ratification of the Istanbul Convention, attitudes about the influence of the Catholic Church, and perspectives on the role of the media representation of marital rape and sexual violence. I followed the natural flow of the conversation, leaving most of the talking to my participants and asking sub-questions when appropriate. After the first round of interviews, I delineated additional themes, and I was more flexible in introducing the themes mentioned above. In most of the cases, the participants themselves brought up one or all the four main themes.

Approaching judges, police and state attorneys was not an easy task. Reaching some of them through personal contacts proved more fruitful than going through institutional channels. I met one of the police officers in their workplace and another in a café after hours. I met both judges and the public prosecutor in their workplace. Meeting at the Policy Academy and County Court in Zagreb proved to be somewhat intimidating to me, but I have managed to focus on the task at hand and took the opportunity to observe the buildings and people I would have not experienced in the course of my daily life. Some of my participants seemed more comfortable talking to me if they regarded their participation in my research project as a personal favour rather than work-related. Nevertheless, they were happy to explain to me the dynamics of their workplace and show me around the courtroom or hearing rooms where we met. Some participants, especially state agents such as prosecutors, judges and social workers were slightly uneasy with the recording process but felt more at ease after they signed the Consent form which guaranteed their anonymity.

Approaching NGO workers, especially from feminist organisations, was significantly easier and less hierarchical because I used to work in the NGO sector. Through my activist and feminist volunteer work, I was also already familiar with a lot of individuals and organisations

which made the interview scheduling significantly easier. The conversations themselves were usually less formal and more relaxed since many of the participants from the NGO sector were glad to share their political views and frustrations towards the government's bodies and the legal system itself. The challenge here was to mediate between our informal talk and the interview itself.

2.2.2 Observation of a Rape Trial

Observation of one rape trial took place at the County Court in Zagreb on the 8th of July 2019. Until then, I had not intended to include observational, ethnographic methods such as trial observation in my research, due to the perceived length and inaccessibility of trial dates during my fieldwork. However, the opportunity presented itself, from one of my interview participants, a judge, who suggested I attend a trial session to fully understand the layout of the courtroom and the different roles state agents played in the trial. Having already obtained my ethical approval I found the trial observation to be covered by it since it involved one of my interview participants. This is a classic example of situated ethics where the unpredictability of fieldwork is mitigated by the researcher's ethical assessment. I elaborate further on this in the ethics and fieldwork reflexivity section.

In my participant observation of the trial, I was invited and approved by the judge presiding and my presence was explained to all the parties present and logged into the court record. Rape research tends to rely on interviews and surveys rather than court observation as attending trials is time-consuming and sometimes difficult to plan due to the changing nature of court dates (Smith, 2018). Smith (2018) also notes that more debate on the ethics of the trial observation is required since trials are public affairs but they involve deeply personal issues. However, benefits to the method of court observation are the direct experience, as the judge had suggested, of the courtroom and its layout, court procedure, and people's behaviour,

without having to rely on informants. Participant observation can be defined as field-based research in which the ethnographer participates and collects data (Angrosino, 2007).

I anonymised all participants of the trial including the judge who was already anonymised as one of my interview participants. I took notes during the trial which resulted in textual data which I analysed and included in Chapter 4 on institutional practices. I noted everything that was said, some verbatim comments, and described participants' gestures and behaviours to my best abilities. As Ellsberg, Carroll and Heise (2005) note, observation has been successfully used by women's groups in researching violence against women to identify inadequate or biased practices, including victim-blaming, by the victim service providers, police, justice system, health professionals or counsellors.

2.2.3 Socio-Legal and Feminist Legal Methods

Both socio-legal and feminist legal theories aim to uncover the wider framework beyond the legal texts and the legal system. Both methods can be used to probe the objectivity and neutrality of the law and to uncover the institutional limits of legal practice (Bartlett, 1990; Banakar and Travers, 2005). In respect to my overarching feminist methodological framework, I have combined socio-legal methods with feminist legal methods to avoid a simplistic and gender-blind understanding of perspectives on the law and legal process. Socio-legal methods are concerned with the wider social structures and contexts in which laws and the legal system exists (Banakar and Travers, 2005). Socio-legal research is case-specific and context-specific research. In my research, this refers to the legal context of Croatia and the study of marital rape. Feminist legal theories can be regarded as a subgroup of critical legal studies (CLS) which point out the biases and oppressiveness of the law. However, feminist legal theories are concerned with the role of gender in the law and have their specificities (Selim Alkan, 2012). Feminist legal theorists developed feminist legal methods as tools to challenge the traditional and dominant legal doctrine. The specificities of feminist legal methods are the grounding of theory

in the experiences of women, the goal of transforming the law and combining theory with practice.

Trial observation and interviews provide rich empirical data describing “law in action” and capture the interaction of various actors involved in the legal process (Banakar and Travers, 2005). They help to reveal the application of the law and what effect it has on people’s lives, as well as the decision-making process of the legal actors and those participating in the drafting of laws. People’s understanding of the law and the legal system is connected to the values, attitudes and ideas about fairness and proposed objectivity and neutrality of the law. Interviews can reveal legal consciousness, which refers to society’s understanding and meaning of a law or, in other words, how people understand and refer to the law in their everyday lives (Silbey, 2015).

Bartlett introduces three main feminist legal methods: 'asking the woman question', 'practical feminist reasoning' and 'consciousness-raising' (Bartlett, 1990). The woman question as a legal method aims to unmask the male biases in the legal formulations, uncover their function and propose legal amendments. Practical feminist reasoning uncovers political and moral influences and interests by combining the classical Aristotelian reasoning model with the feminist perspective of recognition and validation of marginalised experiences. Consciousness-raising, as a meta-method, precedes the previous methods by emphasising women’s experiences which could alter the public perception of various problems. In my research, I am using socio-legal and feminist legal methods to uncover the wider social structures in which the legal system and the law exist as well as the patriarchal biases in the legal narratives and interpretations of the law surrounding the issue of marital rape.

2.5 Data Analysis

I have used hybrid analysis to analyse the data, combining manual analysis with the computer-assisted qualitative data analysis software NVivo. I manually transcribed all 25 interviews which were formatted and entered in NVivo. I then created 'codes' or coding themes or subthemes that corresponded to specific extracts of text. Codes generated nodes; a collection of references about a specific theme, place, person or other areas of interest (Edwards-Jones, 2014). I derived 8 nodes from my data which had approximately 10 sub-nodes for each node. Using thematic analysis, I derived broad themes from the coding nodes which were categorised and analytically reflected upon by examining concepts and meanings (Saldaña, 2016). These themes correspond to the names of my data chapters on the institutional practices of state agents (Chapter 4), the construction of victimhood by professionals operating in the field of marital rape (Chapter 5) and the political economy of gender-based violence (Chapter 6). The subthemes that emerged in the analysis were used as subheadings in each chapter.

Nodes were also drawn from the research questions identified in the introduction, with the question on the professional conceptualisation of marital rape serving as an overarching theme that corresponded not to a specific chapter but which was implicit in all data chapters. Each chapter corresponds with one of the remaining research questions: either institutional practices, victim-blaming or economic factors in the victim protection services.

I have also used manual coding by highlighting sections of printed out transcripts and colour-coding each theme. For example, I have used the yellow highlighter for all the parts of interviews that corresponded to the theme of the institutional practices of state agents, pink highlighter for the construction of victimhood and green for the political economy of gender-based violence. I have compared the manual analysis with the NVivo and I often used manual analysis to clarify for myself inputs into NVivo.

Court observation was analysed manually without the use of computer-assisted qualitative data analysis software but was done so concerning the emerging themes from the in-depth expert interviews. Immediately after leaving the field, I reviewed my notes and added detail and substance based on my recollection. Following the '24 hours of the field session' rule (Ellsberg, Carroll and Heise, 2005), which urges the writing of detailed notes within that time frame, I arranged my notes in a comprehensive text with the observation still fresh in my mind. The court observation was then written as a subsection in Chapter 4 on institutional practices of state agents to offer an insight into rape trials in the Croatian legal system with an emphasis on the different roles state agents play and the dynamics between them during a court hearing.

2.6 Fieldwork Reflexivity and Ethics

Critical reflection of one's theoretical positions and practices is necessary to avoid perpetuating the same ideas and social conditions one is fighting against. The end goal of progressive feminist politics is "the radical transformation based on social justice that opens up unlimited possibilities both for women and men as human beings" (Lazar, 2005, p. 16). There are certain advantages and disadvantages of being a feminist and social activist from Croatia when researching marital rape in this context. There are many advantages in conducting interviews in one's native language, such as the easy communication of ideas, understanding the cultural context present in the discourse and being perceived as an "insider." Whilst someone from a different cultural context would perhaps identify phenomena differently, I did not find that being a "native researcher" automatically made my reflections biased or uncritical. My decision to use a feminist decolonial framework was based on wary encounters with western ethnographies and anthropological research on the post-Yugoslav region, which under the pretence of objectivity, projected prejudices on the region and unknowingly reproduced stereotypes by never critically examining their positionality. Mohanty (1984) criticised Western

feminists' Eurocentric and imperialistic scholarship, later emphasising the need for anti-capitalist feminist transnational solidarity in fighting global capitalism (Mohanty, 2003). I return to this point in the following chapter by presenting a literature review and overview of the Croatian socio-legal context. I was aware of the dangers of privileging my positionality and essentialising my region, which would be just as much of an epistemic mistake as the one committed by non-reflexive researchers. What helped me in this process was the effort to deconstruct my own identity by challenging the construction of Croatian identity since the 90s as well as the gendered dimension of nationalistic narratives. This effort was influenced and mediated by a large body of literature on gender and nationalism, postcolonial and regional feminist scholarship (McClintock, 1993; Tétreault and Ranchod-Nilsson, 2000; Yuval-Davis, 2003; Kapur, 2005; Zarkov and Drezgić, 2006; Žarkov, 2007; Cerwonka, 2008; Todorova, 2009; Newson-Horst, 2010; Mahmood, 2011; Ghodsee and Zaharijevic, 2015; Kašić, 2016; Baker, 2018). As further developed in the next chapter, it was greatly beneficial to me and to my research to understand identity itself as a concept in flux rather than a static monolith.

As much as it was comfortable to interview people in one's own country and native language, the translation of key ideas into the English language was a significant challenge. Since language is a social practice (Fairclough, 2001) interpreting, describing and explaining the real meaning hidden in the discourse is a challenging task for translation. While translating the transcribed interviews from Croatian to English, I provided the context in which specific words or terms are used to adequately convey the meaning of my participants' narratives.

As mentioned above, my previous role as an NGO worker meant that some of the participants knew me personally or we have encountered briefly in the scope of my former work. I did find that this familiarity advantaged me in the interview process by creating a comfortable and relaxed atmosphere sooner than with the participants I have never met before. These interviews can be called 'acquaintance interviews' and they are characterised by a more conversational

style of interaction (Garton and Copland, 2010). They also involve negotiating multiple identities, since the researcher and the participant share a history, and adaptation to new roles of interviewer and interviewee (Garton and Copland, 2010). Interviews with acquaintances were indeed more conversational and more co-constructive but I found I developed similar interactions with participants I have never met before. This depended more on their professional role and the place we met. A meeting with a former policewoman in a café was very different to meeting another policewoman in full uniform at the Police Academy where I was escorted by the police in uniform.

As I mentioned in Chapter 4, I met one of the participants, a social worker in her overcrowded office which implies the general overload of cases for the average social worker in Croatia. That participant did tell me she has more cases than she has hours in a working day and that is causing a strain on her mental health. I did sympathise with her and I did explicitly share empathetic comments about the injustice of the social welfare system and the state which places increasing demands on the social workers while refusing to increase their salaries or employ more social workers in the centres. To minimize harm during the research process and to acknowledge the trauma-related stress for both the participants and researchers researching the topic of violence against women, I employed emotional support strategies such as active listening, emphasising, and reminding of the option to withdraw from the study (Ellsberg, Carroll and Heise, 2005).

Keeping in mind that feminism is not a popular or immediately understandable term in Croatia, I had to employ a strategic way of presenting my research with some of the participants. This was not hard since all of my participants were selected due to their expertise with the issue of marital rape, so they understood the importance of the topic regardless of their ideological position. As a rule, I probed their own political and personal positionality before disclosing too much of my own. Every research process inevitably has some degree of secrecy and silences

and their meanings are radically dependent on the context (Ryan-Flood and Gill, 2010). I used strategic silences to protect the data collection process by not allowing certain participants to know too much about my own political positions and so risk provoking antagonistic reactions based on our different worldviews. Some of my participants openly proclaimed to be feminist or influenced by feminism, but these were mainly the participants from feminist NGOs or women's shelters based on feminist principles. Feminism has a diverse and rich theoretical and practical underpinning so I did not assume that their idea of feminism would necessarily align with mine. I kept an open mind, asking more detailed questions to fully understand their position and to avoid projecting my expectations on them. Other participants would not label themselves as feminist but to varying degrees did acknowledge the efforts done by feminist NGOs in the advancement of women's rights in cases of violence.

Recognizing that marital rape is a sensitive topic it was important to me that all of my participants are thoroughly informed about the purpose of the research and I utilized informed consent procedures which included a consent form and general information on the research with my contact details. As stated above, all of my participants were selected based on their professional occupation, however, due to the sensitivity of the topic, I did keep in mind that talking about marital rape cases might cause trauma-related stress. Based on the practical guide for researchers and activists researching violence against women, I understood the importance of acknowledging distressing emotions present in the research process as well as supporting my participants in withdrawing from the study if feeling became too overwhelming (Ellsberg, Carroll and Heise, 2005). While there was a mixture of emotions present during all of my interviews, none of the participants were asked to withdraw from the study. Some of the professionals working with cases of marital rape have strategies of coping with distressing topics built into their work such as supervision for social workers and some NGO workers. The role of the supervision is to provide the social workers with an opportunity to develop their care

work further as well as to share their distress and anxieties with the supervisors who should guide them in their professional development (Hughes and Early, 2010). As for me as a researcher, I did, at times, actively silence my own emotions during the research process as a strategy to continue with my study and to minimize influencing my participants. However, it is important to note that emotions experienced during the research process can be useful in interpreting data and critically reflecting on the research process (Ryan-Flood and Gill, 2010). I was lucky to have supportive supervisors and to be able to afford personal psychotherapy. My emotional sensitivity about the topic also gave me the necessary drive and zeal to pursue my research.

Early on in my interviews, I realised my original idea of having named professionals identifiable with their statements in my dissertation, as long as they permitted me to do so, was implausible. As mentioned above, pseudonyms were not a requirement for ethical approval of undertaking this study. Participants from all professions shared their aggravation and grief with their work-life, some of them made politically inflammable comments and criticised the state and the Church in Croatia. As a researcher, it is my ethical duty to protect my participants in the best way I can, so I decided to anonymise all participants, describing them only by a pseudonym and their profession. For the sake of clarity in the text, I have used pseudonyms that were selected randomly from an online database of the most common Croatian surnames.

As mentioned above, my decision to observe the rape trial after obtaining ethical approval was an example of situated ethics. As David Calvey explains ethical codes are case contingent and they often offer a sanitized version of social research (Calvey, 2008). After lengthy discussions with my supervisors and with the consent of the judge, I have decided to seize the opportunity to observe the trial. As I explained above, trial observations are usually very hard to organise due to the length and inaccessibility of trial dates. I have made the decision based on the perceived benefits to my research and non-existent risks to the participants involved in the trial.

As described above, my presence was explained to everyone present at the trial and no one objected to my presence. I have made a conscious decision to minimise any disruption my presence may cause at the trial by choosing to sit facing the judge, out of the sight of the defendant. I have fully anonymised everyone present at the trial and described the case in a way it cannot be easily recognised (this case had gained none of the media attention so the chances of someone recognising the description is close to none). Missing the opportunity to observe a rape trial would strip my research of some of its understanding and knowledge of the court proceedings and the court layout.

2.7 Limitations and Conclusion

In this chapter, I have described my overarching feminist methodological framework and methods. Since marital rape is a highly sensitive and underreported topic, choosing quantitative research methods such as surveys and other statistics-based methods was unsuitable. As mentioned above, due to the low number of reports from the official police records or court statistics one might wrongly conclude that cases of marital rape are almost non-existent. My qualitative research challenges that perception by examining the social and judicial factors that make the detection of cases difficult, helping to shed more light on the context and complexities of marital rape cases.

Through carrying out 25 expert interviews, I was able to gain insight into a fairly diverse number of professional social actors, but I also aim in the thesis to be careful not to generalize from a relatively small number of interviews. This leads me to conclude with some considerations of the limitations of my methodological approach. Since my research had a limited time scope it was not possible to carry out a longitudinal study with more experts across different regions in Croatia. This would be a task for future studies which could go beyond Croatia and encompass the whole Former Yugoslav region to gain a comprehensive picture of

work conditions, policies, beliefs and discourses of experts working with the issue of marital rape. Another limitation is that the interviews were predominantly conducted with experts from Zagreb. Encompassing the whole of Croatia would give further insights into the complexities, settings and circumstances of state agents and victim service providers outside the capital. Furthermore, I initially wanted to examine closed court cases of marital rape and seek out interviews with state agents involved in those particular cases. This proved to be almost impossible due to access issues and time constraints. Concentrating on professionals, rather than the direct victims of marital rape, was more apt and also offered insights into an understudied demographic. As elaborated on in the following chapters, some women may not consider marital rape as rape or may decide not to report or even talk about it, finding it easier to disclose other forms of abuse. When I was interviewing several feminist NGOs employees and women's shelter workers, one of them thanked me for not asking to interview the victims, explaining that they often had encounters with journalists and researchers who requested access to interview victims, only to publish their report or study of highly personal, trauma-provoking interviews, and never communicating with the victims or the organisation again.

My point is not that there should be a firm rule against interview-based research with the victims of sexual violence, but that, in my case, the recent passing of Croatian laws against marital rape and the cultural and economic taboos surrounding reporting this crime meant there was an added onus on me to not to further jeopardise the relationship between professional services, NGOs, and victims. Indeed, my reflexive position and the personal aim is to create positive change. Concentrating on professionals also offered insights into an understudied demographic. I believe that interviewing professionals working with the issue of marital rape can contribute to amplifying the voices and troubles of the victims since some of the participants dedicated their life's work to fighting all forms of violence against women and some of them have been

victims of abuse themselves. Feminist ethics of care was placed at the core of my methodology as well as the radical desire to break the taboo of marital rape in Croatian society.

3. Literature Review and Contextualisation of Marital Rape in Croatia

3.1 Introduction

In this chapter, I introduce and engage with feminist literature and scholarship on rape and gender-based violence. I also introduce critiques of some outdated premises and concepts related to feminist thought and reasoning concerning marital rape and the wider societal context in which it takes place. The discussion of these issues is organised as follows: I start by giving an overview of the empirical and conceptual understanding of marital rape by focusing on feminist poststructuralist scholarship on gender-based violence as well as some critiques that inform my research. I introduce critiques of both radical and liberal feminism and elaborate on feminist legal theories. Then I look specifically at the Croatian context and its relationship between nationalism, military conflict, and the legitimisation of marital rape during both the war and the post-war nation-building period. I explain the relevant laws and the socio-legal context in which relevant legislative changes took place. The interplay of national, ethnic, and religious identities in post-socialist, post-war Croatia and how they relate to each other and construct gender identities and expectations is crucial for the contextual understanding of marital rape. While the majority of the literature stems from the Global North, feminist scholars from the Global South are included to criticise the dominant western feminist knowledge production and to highlight the contextualisation of marital rape in the post-socialist, post-Yugoslav space.

3.2 Conceptualising Marital Rape

Marital rape is a relatively underdeveloped research area in criminology and studies of interpersonal violence (Yllö and Torres, 2016). Experiences and narratives of sexual violence, especially in the institution of marriage, were historically silenced and not recognised as a social

and public issue. The perceived sanctity of marriage in most cultures has kept marital rape under the radar for a long time. However, prominent critiques of marriage and family emerged alongside the anti-rape feminist movements of the late 1960s, the issue has been brought out in the open (Brownmiller, 1975; Gelles, 1977; Finkelhor and Yllö, 1985; Bidwell and White, 1986; Hanneke, Shields and McCall, 1986; Russell, 1990; Herman, 1992; Johnson and Sigler, 1997; Harway and O'Neil, 1999; Bennice and Resick, 2003; Jackson, 2015; Yllö and Torres, 2016). Most of the feminist scholarship on rape and domestic violence developed in the late 1960s and 1970s in the Global North following the women's rights movement. Feminist thinkers helped to render gender-based violence not only visible but also as a central issue of the women's rights movement by highlighting the intersection of gender, power relations and structural violence (Harway and O'Neil 1999). The movement produced both theoretical and practical means of addressing the violence against women by producing feminist scholarship on violence and establishing women's shelters and consciousness-raising groups that addressed problems that were not given a platform before. Feminist advocacy and activism strongly influenced policies and practices and transformed the understanding of rape and domestic violence from a family or private issue to one of social power and gender inequality (Brownmiller 1975).

Crucial work on domestic violence was Leonore Walker's 1979 "The Battered Woman" which identified the "battered women syndrome" which refers to the cumulative abuse as a trigger for women who murder their husbands or partners, rather than the single incident. Walker also coined the term "cycle of abuse" which explains the patterns of behaviour in abusive relationships (Walker, 1979). While her findings remain extremely valuable to the study of abuse and interpersonal violence, her work was criticized for reinforcing the idea of victims' mental instability and denying the victim's agency and their right to defend themselves (Garcia and McManimon, 2011). Dobash and Dobash's 1979 "Violence Against Wives: The Case

Against Patriarchy” was an important contribution to the study of domestic violence which argued that families can be places of violence, unhappiness and insecurity for women and children imposed by the patriarchal domination of men and subordination of women and children (Dobash and Dobash, 1979). Furthermore, in response to the claims of gender symmetry in the use of violence in the family Dobash and Dobash conducted another research in 1992 to explore women`s violence to men in intimate relationships. Their findings were that “women`s violence does not equate to men`s in terms of frequency, severity, consequences and the victim`s sense of safety and well-being” (R. Dobash and Dobash 2004:324).

Further ground-breaking works of exposing the tolerance for the crimes of domestic violence and marital rape in the United States were the works of Diana Russell`s 1982 “Rape in Marriage” and David Finkelhor and Kersti Yllo`s 1985 “License to Rape: Sexual Abuse of Wives” which included the detailed experience of the survivors and emphasized the relationship between marital rape and battering (Finkelhor and Yllö, 1985; Russell, 1990). Based on the experiences of the interviewed survivors the authors concluded that marital rape is an extension of other violence, not necessarily a triggered act and it cannot be reduced to a conflict over sex (Finkelhor and Yllö, 1985; Russell, 1990; Tellis, 2010). Liz Kelly`s concept of a continuum of sexual violence in 1987 highlighted the importance and originality of the feminist research practice in identifying different forms of sexual violence and their interconnectivity: trafficking, incest, child sexual abuse, stalking, harassment, intimate partner violence, unwanted contact and rape (Kelly, 1987). The concept of a continuum of sexual violence was especially important for the practitioners working in the women`s shelters as well as for the general public since it explains sexual violence holistically.

However, some of the feminist advocacy and activism produced unintended consequences by uncritically engaging with the criminal punishment system and endorsing law-and-order responses to sexual and domestic violence. Elizabeth Bernstein coined the term ‘carceral

feminism' to criticise white middle-class American feminists who collude with evangelical Christians to fight sex trafficking, and by conflating it with all forms of sex work, have led to the growing incarceration of poor black people (Bernstein, 2007). Chloë Taylor argues that prisons cannot be a feminist solution to sexual violence since the institution of incarceration itself is plagued by violence, homophobia, misogyny and hatred, and is a place where rape is structurally normalised (Taylor, 2018). She also engaged with Lise Gottell's critique of the anti-carceral feminism by showing how feminist law-and-order responses to sexual assault contributed to the rise of incarceration rates which have nothing to do with women and children's safety but with punitive state agenda (Powell, Henry and Flynn, 2015; Taylor, 2018). However, as Taylor notes, Gottell herself was critical of the Canadian punitive agenda during the conservative Harper government from 2006 to 2015 which saw a 7 per cent increase in the incarceration of aboriginal and racialised inmates in Canadian federal prisons (Powell, Henry and Flynn, 2015; Taylor, 2018). In her other works, Gottell turned away from punitive responses to sexual assault towards grassroots feminist responses to rape and has been a vocal critic of neoliberalism related to the sexual assault law in Canada (Gottell, 2012).

The criminal justice system often traumatises victims of sexual assault with the disbelieving, probing and intrusive nature of the criminal proceedings. As mentioned previously, sexual violence and rape are rarely reported and when they are, they are often met with more disbelief and scrutiny than any other crime. As Asher Flynn argues, the needs of survivors of sexual assault are "diametrically opposed" to the inner workings of legal procedures and "the failings of the legal system as a mechanism to secure justice are further evidenced by the persistent low reporting, attrition and conviction rates globally" (Flynn, 2015, p. 96). Flynn's argument resonates with and builds upon Herman's (2005) research on how victims of sexual and domestic violence perceive justice, which stressed the importance of the community's acknowledgement of pain and suffering rather than delivering purely carceral solutions in

responding to violent crime. Rape laws can be complicit in disadvantaging victims and disrespecting their sexual autonomy by allowing the reconstruction of ordinary women's behaviour as implied consent or by allowing 'mistake of the fact' defence which permits the perpetrator to claim he mistakenly believed he has obtained consent (Crowe, 2011; Burgin and Flynn, 2019).

Complexities of experiencing rape, especially in partnerships such as marriage, is pointedly described by Nicola Gavey who problematises the language of victimisation and women's understanding of what happened to them (Nicola, 2018). Conceptualising victimhood from a feminist perspective is an important part of researching sexual assault and domestic violence. Victimology, the study of victimisation, is a fairly young branch of social science developed after the 1980s. It is sometimes perceived both as a subgroup of criminology and as an independent discipline (Mawby and Walklate, 1994). Feminist interventions in victimology criticised positivist, masculine rationality which focused mostly on street crime by placing the focus on criminal victimisation that happens behind closed doors, such as domestic violence, rape and other forms of abuse (Mawby and Walklate, 1994). Feminist critiques of positivist victimology made visible what had been invisible and brought the problems from the so-called private sphere into the public eye. The value of critical victimology in my dissertation lies in its ability to problematise the law and the role of the state, and in its placement of conceptual and empirical questions of the feminist movement at the centre of its agenda.

Furthermore, when discussing victimhood, Stringer (2014) challenges the neoliberal demand to move swiftly from victimhood to survivorship to re-emerge in the capitalist mode of production. By denouncing the term 'victim' in favour of survivor, victimhood is depoliticised. There is also a degree of victim-blaming, as the focus is placed on the individual's refusal to be a victim rather than on the wider social forces and workings of power that resulted in their victimisation. Stringer (2014) argues there is a need to reclaim the term victim by utilising the rich heritage

behind the construction of victim feminism. This involves politicising victimhood and survivorship; moving beyond the victimhood-agency dichotomy; and utilising intersectionality and the critique of colonialism, imperialism and class in constructing victimhood (Stringer, 2014). I elaborate on this point in the sections below.

Feminist scholarship on rape has developed and changed throughout the years, offering new insights and critiques into the seminal texts on the topic. Catharine MacKinnon, a renowned American radical feminist and feminist legal scholar, positioned rape as a logical extension of dominant heterosexual norms and behaviours, somewhat erasing the difference between sexual violence and other (hetero)sexual acts (MacKinnon, 1989). Susan Brownmiller, most famous for her pioneering work *Against Our Will*, identified how power plays an important role in the act of rape and criticised the emphasis placed on sexuality and sociobiological explanations (Brownmiller, 1975). Ann Cahill criticised both Brownmiller and MacKinnon in their different approaches to the issue of rape by emphasising the notion of power and sex, pointing out that they both fall prey to the restrictive dichotomies of self/society and mind/body which ignores the political and social construction of body and sexuality (Heberle and Grace, 2009).

Rape is distinct from other forms of violence precisely because of the interplay of the positionality of bodies, sexuality and power dynamics. Cahill also criticised Foucault's proposal⁶ to decriminalise rape as a sexual crime and redefine it only as an act of violence, since, according to Foucault, sexuality cannot be the object of punishment (Cahill, 2000). Foucault intended to change the legal discourse on rape and free women's bodies "from the defining elements which produce them as pre-victims" (Cahill, 2000, p. 57). However, changes to the legal discourse alone are not enough to render rape equivalent to any other violent crime.

⁶ This proposal was made during the round table discussion in 1977 on his work "Discipline and Punish" and French penal reform of that time, and was limited only to legal realm and to legal discourse (Cahill, 2000)

The complicated meanings that are prescribed to gendered bodies, femininity, masculinity, power, and sexuality make sexual violence different from other types of violence.

Defining sexual violence and rape by providing a clear-cut definition based on the law was often too narrow, excluding the wide range of harm experienced by victims. The World Health Organisation has a broad definition of sexual violence as any sexual act, or an attempt of the sexual act, unwanted sexual comments or suggestions directed against a person's sexuality which can be perpetrated by any person regardless of their relationship with the victim or the situation in which they find themselves (Oram, Khalifeh and Howard, 2017). It is characterised by the use of force, threat, or blackmail against the wellbeing of the victim or persons close to her. Rape is often more narrowly presented in legal definitions as involving penile-vaginal, oral or anal penetration. To avoid the reductionism of narrow definitions of complex social phenomena, the study of rape and sexual violence has to involve unpacking the hidden "politics, ideologies and cultural, legal and academic practices that undergird the ways intimate violence is represented" (Yllö and Torres, 2016, p. 11). Gender roles and stereotypes in certain cultural contexts mediate the way sexual violence is approached and understood in the community as well as in the legal system, especially in the court. Individual experiences of rape, as well as the societal response to it, are formed by the wider social context and the cultural understanding of gender, sexuality, law and ethnic identity (Heberle and Grace, 2009).

Statistically, men commit the majority of sexual assault and violence towards women and women to find themselves largely as victims of said violence (Taylor, 2004). However, to break with essentialist and sociobiological explanations, we need to look at the cultural and social production of gendered identities. From the early process of socialisation differences between boys and girls are amplified and gender stereotyping is sustained through both family and educational institutions. This difference is the justification for gender inequality and sexual stratification (Risman, 2004). Perceptions of violence are also gendered: boys are usually

encouraged to subscribe to dominant masculinity traits such as aggression and dominance and their use of violence in certain situations is often socially legitimised or tolerated. Furthermore, culture and society as a whole are often complicit in shaming boys and men for not displaying dominant masculinity traits and denying their vulnerability, and this denial can lead to hatred and violence towards femininity and women in general. It could be argued that men's violence against women is a way of performing gender (Butler, 1990; West & Zimmerman, 1987). The social construction of masculinity as the main recipient of all the society's actual and symbolic power enables and justifies domestic violence and marital rape as a way of controlling and subordinating the Other. In this sense gender is a social accomplishment based on the definitions and interpretations of other people (West and Zimmerman, 1987; Tellis, 2010).

To further the debates on gender, I engage in the next section with critiques with some of the legacies of second-wave feminism by exploring the importance of the gender constructivism approach and feminism as a liberation project for all and not the selected few.

3.3. Critiques of Radical and Liberal Feminist Approaches to Sexual Violence

As well as demanding abortion rights and workplace equality, the second wave of feminism which emerged in the late 1960s contributed greatly to exposing the prevalence of violence against women and sexual violence. Many feminist theories today are indebted to the works of radical feminists from the second-wave feminism of the late 1960s and 1970s. However, some of their premises are outdated and problematic. Essentialist approaches to gender difference, the positioning of all women as victims, equating sex with violence, ignoring issues of race and class, whitewashing, heteronormativity and western hegemony are some of the problems of second-wave feminism were criticised by Marxist and intersectional feminists (Rodriguez Martinez 2011). Gender binary relies on essentialism which attributes a fixed essence to men and women. Although this view remains popular in uncritical considerations of

social phenomena, many poststructuralist feminist scholars have proved its reductionist position by pointing out that it erases the identities and experiences of people outside of the gender binary and ignores the social and cultural construction of gender (Butler, 1990; De Beauvoir, 1973; DiQuinzio, 1993; Stone, 2004). The social and cultural construction of gender needs to be explored to understand the intricate relationship between violence and identity. The analytical category of gender is a valuable tool along with race, class and ethnicity for understanding any complex social phenomena (Tétreault and Ranchod-Nilsson, 2000).

Furthermore, certain legacies of second-wave feminism, especially the battered women's movement, have cemented a specific vision of a passive victim of abuse in mainstream feminism. As Goodmark (2013, p. 54-55) asserts: "The image of the victim of domestic violence morphed from low-income woman of colour to a passive, middle-class, white woman cowering in the corner as her enraged husband prepared to beat her again- a vision consistent with the dominant feminist conception of subordinated women in fear of all-powerful men." Goodmark argues that this is the dominant view of the victim that the legal system wishes to see, leaving the vast majority of victims who defy this expectation at a disadvantage (Goodmark, 2013).

Currently, there is a backlash in the global north against LGBT movements and queer theory, specifically the experiences and narratives of transmen and transwomen, which is spreading to other regions. A problematic branch of radical feminism insists on the biological determination of the category of women while sidling and attacking any experience of transgender people, accusing them of endangering women's rights. I believe positioning women in an essentialist and biologically determined way goes against the legacy of progressive feminism which aspired to deconstruct and destabilise both categories of gender and sex and liberate all people from the constraints of heteronormative society (MacDonald, 1998; Scott, 2008; Fraser, Bhattacharya and Aruzza, 2019). Gender is dependent on the perceptions and expectations of others while

simultaneously operating regardless of individual desires or wishes. In other words, gender identities are not natural: they are produced and performed according to social conventions. While there is certainly a need to use strategic essentialism⁷ to be politically mobilised as a collective of shared identities, it is imperative one does not fall into an essentialist trap, especially at the expense of excluding other, more vulnerable social groups. To avoid identity essentialism, identities need to be understood as multiple and contradictory rather than unitary. Furthermore, moving beyond identity as a rigid category can open up possibilities of exploring collective organising and community building based on ethical solidarity rather than shared identity (MacDonald, 1998). In my thesis I use terms men and women while being informed that there is no essence of womanhood (or manhood), thereby refuting the notion that gender is a stable subject whilst using its terms to provide an analytical category of research.

Similar to radical feminism, liberal feminism has problematic blind spots. Nancy Fraser criticises the coupling of feminism with neoliberalism which embraced the subtle, market-friendly ideas of gender equality, understood in terms of women's meritocratic advancement within the existing corporate structure which is defined by men's life patterns (Fraser, 2013). This brand of feminism has focused on encouraging educated middle-class women to break the glass ceiling or climb the corporate ladder. This ultimately means that only women of the professional-managerial class can benefit from these interventions. Moreover, due to the lack of structural change in a capitalist society, these women can only benefit by relying on others, shifting childcare and household chores to low-paid, precarious workers from racial minorities or immigrant backgrounds (Fraser, 2013).

⁷ Strategic essentialism was introduced as a concept in postcolonial theory by Gayatri Chakravorty Spivak in 1980s as a way of fighting for equal political rights by marginalized groups, who for the sake of group identity 'essentialize' themselves (Pande, 2017). The term is also used in queer and feminist studies and in the works of Luce Irigaray (Fuss, 1988; Irigaray, 2002).

Women's marginalisation and discrimination are systemically determined and are a constituent part of the societal socio-economic order which, among other things, influences the interpersonal relationships between men and women. Liberal feminism reduces the problem of patriarchy in terms of individual antagonisms between men and women whilst holding onto an ahistorical understanding of patriarchy and decontextualised considerations of the marginalisation and discrimination of women (Burcar, 2020). Building on this, I consider women's issues to be issues of the whole of society and violence against women as a problem of the whole community, rather than of individual men and women. Emancipation of women is not possible without wholesome socio-economic change, while individual, partial reforms only serve as a plaster on the current capitalist system of exploitation. Keeping this in mind, I move on to explaining and examining the usefulness of feminist legal theories and their relevance for my research.

3.4 Feminist Legal Theories

Feminist theories and activism influenced changes in policies and legislation, with specific feminist legal theories emerging from the women's rights movement in the 1960s as an important tool in fighting for equality under the law and the state. The most well-known example of the importance of feminist legal scholarship is Catharine MacKinnon's 1979 book *Sexual Harassment of Working Women*, which outlined a way for the legal system to more effectively handle instances of harassment as cases of sex discrimination, under Title VII of the Civil Rights Act of 1964 (MacKinnon, 1979). However, Chloe Taylor challenges whether feminist sexual assault legislation reforms, in general, have been successful since sexual assault remains common, heterosexual scripts continue to be prescribed for the legal understanding of rape, and sexual assault trials continue to be traumatising experiences for victims (Taylor, 2018). To critically engage with both the legal system and the feminist advocacy for criminal justice reform, I draw upon feminist legal theories and analyse the legal system's response to

the issue of marital rape. This includes researching legislation, court practice and legal consciousness. Through my focus on marital rape, I also critically analyse feminist and women's organisations' responses to legislation and court practice, with the emphasis on investigating the effectiveness of policing and incarceration in the prevention of marital rape and gender-based violence. To understand the present-day conceptualisation of marital rape legislation I briefly provide a historical global overview of rape laws.

In the early rape legislation, since a wife was considered the property of her husband and through marriage men were given free access to women's bodies and sexual reproduction, rape was perceived as a property crime rather than an issue of personal violence (Yllö and Torres, 2016). Women's consent to any sexual activity within marriage was implied and represented as a marital duty without the option of retraction. Carole Pateman (1988), in her famous work *The Sexual Contract*, argues that marriage as a contract recognised by the state has never been a "proper" contract in which both parties have equal rights since the terms and conditions of it have been already established as detrimental to women. Since women were deprived of civil rights such as owning property or entering the workforce and were therefore never a part of the social contract, marriage was the only possible solution to sustain their livelihood. Pateman (1988, pp. 181–182) explains this further:

Only the marriage contract- the contract into which women must enter, women who lack the standing of owners- includes the explicit commitment to obey. If the promise of universal freedom heralded by the story of an original contract is not to appear fraudulent from the start, women must take part in the contract in the new civil order. If men's civil status as equals and patriarchal master is to be maintained, the contract into which women enter must be separated from other contracts. A woman agrees to obey her husband when she becomes a wife; what better way of giving public affirmation that men are sexual masters, exercising the law of male sex-right, in their private lives?

Before the criminalisation of marital rape, a marriage license could be seen as an actual "license to rape" (Finkelhor and Yllö, 1985) since there was no legal basis for prosecution. By

exempting marital rape the law assumes that marital intimacy overrides the possibility of violation since the parties in question are legally one entity (MacKinnon, 1989). Legal unrecognition of marital rape also implies a great undervaluing of women's sexual agency and a heterosexist approach to women's autonomy. Peterson describes heterosexism as the "institutionalization and *normalization* of heterosexuality with the exclusion of non-heterosexual identities and practices" (Peterson, 1999, p. 39). Heterosexism also includes the constant reproduction of a gender binary that positions men and women as opposites with distinctive biological, psychological and innate traits. As mentioned above, the social and cultural construction of gender needs to be explored to understand the intricate relationship between violence and identity.

Furthermore, uncritical considerations of the legal system assume the objectivity and neutrality of laws and legal measures, when in fact laws have been written and formulated through a patriarchal framework (Taylor, 2004). People's understanding of the law and the legal system is connected to their values, attitudes and ideas about fairness and the proposed objectivity and neutrality of the law. Nevertheless, the alleged objectivity and neutrality of the law can also be seen as a "male" conceptualisation that hides its androcentric biases. Legal consciousness refers to a society's understanding and meaning of the law or, in other words, how people understand and refer to the law in their everyday lives (Silbey, 2015).

The important characteristics of feminist legal scholarship are the grounding of theory in the experiences of women, the goal of transforming the law, and the combining of theory and practice. Feminist legal scholar Katharine Bartlett (1990, p. 837) states that:

'Doing Law' as a feminist means looking beneath the surface of law to identify the gender implications of rules and the assumptions underlying them and insisting upon applications of rules that do not perpetuate a woman's subordination. It means recognizing that the woman question always has potential relevance and that "tight" legal analysis never assumes gender neutrality.

Adding to this, “tight” legal analysis also looks at gender as inseparable from class and race and therefore acknowledges the multidimensionality of gender discrimination. As Audreya Lorde famously explained: “There is no such thing as a single-issue struggle because we do not live single-issue lives” (Lorde, 1984, p. 138).

Feminist legal scholars from the Global North, such as Robin West and Catharine MacKinnon, pointed out the importance of experiences of women and the role of law in sustaining male dominance (West, 1985; MacKinnon, 1989). Patricia Cain and Angela Harris criticised both MacKinnon and West for presenting the experiences of white, heterosexual women as universal and for neglecting the intersectionality of identities (Cain, 1989; Harris, 1990). Kimberlé Crenshaw developed the theory of intersectionality to point out how intersecting social identities, such as race, ethnicity, class and sexuality, relate to systems of discrimination and oppression (Crenshaw, 1989). Women with overlapping marginalised identities are exposed to multiple discrimination and their experiences need to be taken into account to avoid a one-dimensional understanding of gender discrimination. Crenshaw coined the term in a legal context, showing how the law did not take into account overlapping identities as a basis for discrimination but separated gender discrimination from racial discrimination.

Before the establishment of the term ‘intersectionality,’ noted authors of the Combahee River Collective, a radical Black feminist organisation formed in 1974 in Boston, United States, introduced the terms “interlocking oppressions” and “identity politics” (Taylor, 2017). This is important because of the popular use and misuse of intersectionality and identity politics as fashionable concepts devoid of their original meaning. Even though the Collective did not use the term intersectionality, they did describe the experiences of Black women as a form of interlocking oppression: multiple oppressions reinforcing one another to create new categories of suffering (Taylor, 2017). Their radical contribution also focused on Black women’s oppression under capitalism and argued for a redistribution of resources based on the collective

needs of the most oppressed. The women of the Combahee River Collective believed in internationalism and the struggle against the colonial, imperialist, and capitalist domination of the West, led by the United States (Taylor, 2017). Their ideology aligns more with the partisan, anti-fascist women's movement in Yugoslavia after the Second World War than with liberal, lean-in, free-choice⁸ feminism today.

Feminist legal scholar from the Global South, Ratna Kapur (2002), argued that the international women's rights movement, based on the western-centric theories of MacKinnon, conceptualised women as victims. This is especially the case in a post-colonial context that perpetuates gendered and cultural essentialism. Her argument states that the subject of victimhood and emphasis on violence through the western-centric gaze encourages legal remedies and state measures that have nothing to do with the promotion of women's rights and can provoke paternalistic and conservative state responses (Kapur, 2002). Kapur's point is related to the wartime and post-wartime context of Croatia and the role that McKinnon and other western feminists played in advocating the recognition of wartime rape as an act of genocide. I elaborate more on this in the following section.

The construction of women solely through the victimhood framework provoked an international an after the UN Declaration on the Elimination of Violence against Women in 1993. The Declaration focused on the penal code in the form of legal reforms and find local response cases this further restricted women's rights in the name of their protection. Kapur (2002) criticised the international campaigns on violence against women arguing that they do not consider how their discursive mechanisms produce the subject of victimhood and identity politics in post-colonial countries. In other words, such campaigns can unintentionally reproduce racist perceptions and stereotypes about third world women. A similar point was made by Gayatri

⁸ Presenting feminism as any choice that a woman makes goes hand in hand with the neoliberal ideology which conflates the idea of freedom with personal choice, no matter what that choice is (Čakardić, 2017)

Spivak (1988) in her famous essay “Can the subaltern speak?” which analysed the relationship between Western discourses and the possibility of speaking of or for subaltern women. There is a perceived hegemony of western feminism over eastern Europeans among the feminist scholars based in Central and Eastern Europe but, as Cerwonka (2008) notes, feminist theory should not be viewed as static. The demarcation between “local” and “global feminism” is therefore not so clear.

3.5 Socio-Legal Context of Marital Rape in Croatia

The context of sexual violence during the 1990s in wartime former Yugoslavia highlights the problematic orientalist and Balkanist narratives of women as victims of sexual violence in this specific regional context. These discourses on former Yugoslavia, the Balkans, (post) socialism, nationalism and war were produced by local feminists and then imported to the West, as well as being produced by Western feminists themselves⁹. Todorova (2009) criticised western narratives of the Balkans by coining the term “Balkanism¹⁰”, which draws from orientalism but acknowledges specific differences between the two forms of representation. While the Orient is positioned as non-European Otherness, the Balkans are positioned as the European Other or an undeveloped region of Europe. The other difference is that the Orient is usually presented through female sexuality and violence against women, while the Balkans are presented through traditional notions of masculinity that are almost entirely absent of women (Zarkov and Drezgić, 2006). Numerous Balkanist narratives came back into public discourse during and after the war and the dissolution of Yugoslavia due to the national and international media reproducing ethnic differences and bolstering nationalistic propaganda. Media coverage of certain issues in conflict zones and the framing of those issues influence public opinion and impact decision-makers (Carpenter, 2009).

⁹ See: Zarkov and Drezgić (2006) and Slapšak (2000)

¹⁰ For further discussion and critique of the term see: Baker (2018) and Mishkova (2018)

Western feminists' works on the wartime rape in Yugoslavia, such as MacKinnon (1994) and Olick and Stigmayer (1995), uncritically accepted the Balkanist narratives which dominated the media at that time. The themes of orientalism were also prominent in their works, especially regarding Bosnia and Muslim¹¹ women victims of wartime rape who were presented not only as deeply traditional and patriarchal but also as shunned by their own communities (Helms, 2003). MacKinnon, as co-counsel, represented Croatian and Bosnian women survivors of sexual violence in *Kadic v. Karadzic*, a civil lawsuit against Serbs accused of genocide. In August 2000 MacKinnon won \$745 million in damages under the United States Alien Tort Claims Act. The verdict recognised rape as an act of genocide and a tool of torture. It expresses the nationalistic trope of 'woman as a nation' presenting rape as a violation not only of the bodies of individual women but of the nation itself (McClintock, 1993).

Framing wartime rape as an ethnic and nationalistic issue conceals the gendered dimension of wartime sexual violence and can be used to further war propaganda. By the virtue of its hypervisibility and usefulness for the political discourse, it excludes all other kinds of sexual violence, including marital rape. Wartime rape was also used to uphold the idea that ethnicity is produced through paternity and that woman is simply an object for carrying a man's offspring. Consequently, men are the only ones who have real agency in the nation-building process, with women serving as symbolic signifiers of the nation (McClintock, 1993). Yugoslav anti-war feminists opposed the term genocidal rape by pointing out that rape was carried out on all sides of the conflict. MacKinnon's attack on Croatian feminists was used by the nationalist press in Croatia to further discredit feminists who opposed the war and to bolster their anti-feminist agenda (Žarkov, 2007).

¹¹ In Yugoslavia being Muslim was considered an ethnic category and people were able to declare themselves as belonging to Muslim ethnicity on the state census (See Žarkov, 2007)

Dubravka Žarkov (2007) analysed Croatian and Serbian media press by examining the representation of ethnicity, gender and sexuality in the wartime context of former Yugoslavia. Žarkov (2007) wanted to destabilise ethnicity by introducing gender and sexuality into the analysis, claiming that the production of ethnicity directly depends on heterosexual norms and gendered notions. A similar point is made by Meyer (2000), who states that sexuality is the key to the nation-building process and the sustainment of national identity. Žarkov argued that the media representation, as well as the war in former Yugoslavia, produced ethnicity. In her own words: “I perceive both the media war and the ethnic war as wars that produced ethnic groups” (2007, p. 2). Power relations influence media discourses and vice-versa meaning that the media never provides objective, neutral observation of the events taking place. Mass media acts as a dominant agent of ideological reproduction since it represents social and power relations (Dzihana *et al.*, 2011).

Croatian media reported little on the topic of rape during the war. There were some reports of it during the beginning of the conflict, but its attention quickly turned to Muslim women being raped by Serbian men, leaving Croat women (and men) out of the equation (Zarkov, 2001). This enabled Croatian nationalist discourse to emphasise victimised Bosnian bodies and the brutality of the Serbian perpetrators, thereby positioning them as the Other. Mass media has the power to highlight certain issues while drawing attention away from others (Carpenter, 2009). As I have mentioned before, this is linked to my research because media representations highlight how certain problems are perceived. The production of ethnic identities and the dichotomy between Balkan and European identities still underpins media reports on sexual violence. For example, the conservative Catholic press places blame on the European Union and its “liberal” and decadent values which allegedly erodes traditional family values. Meanwhile, the liberal leftist press places emphasis on moving away from the savage Balkan towards European civility. Both discourses serve to obscure the societal responsibility for the

violence, erasing the real struggles of recognition and justice for survivors of wartime and marital rape. I come back to this point when explaining the issues with The Rights of Victims of Sexual Violence in the Homeland War Law in section 3.5.2.

In my pursuit of acknowledging the specific geopolitical context in which my research takes place, I avoid falling into the trap of false universalist claims, while simultaneously resisting the temptation to essentialise my subjects. Through this, I aim to problematise marital rape and the notion of victimhood from a critical feminist perspective which recognises the blind spots of both liberal and radical feminism, including essentialism of gender differences, positioning women primarily as victims, dismissing the issues of race and class, whitewashing, and making assumptions based on heteronormativity and western hegemony (Rodriguez Martinez, 2011).

To avoid transposing feminist discourse which emerged in a Western context with a very specific history of racism, it is necessary to acknowledge that the post-Yugoslav region (and Eastern Europe more broadly) was long considered as a state of exception when it comes to race. The Post-Yugoslav region was not implicated in colonialist projects and the groups who were defined as the main actors after the war (Serbs, Croats, Muslims) were all white (Zarkov and Drezgić, 2006). However Baker (2018, p. 119) argues against regional exceptionalism, not only because racism exists in the region (for example the racism against Roma people), but because, “intersectional and anti-essentialist understandings of power, identity-making and individual and collective histories, however, reveal that – far from the region being outside ‘race’ – the tools necessary to contextualise it are precisely those that expose how racialisation works the spatial and socio-economic peripheries of Europe and beyond.” When discussing the divide between Western feminists and Central and Eastern European (CEE) feminists, it is important to acknowledge uneven power relations of knowledge production and conceptual frameworks that ignore the historical and social specificity of theory. However, taking the East/West divide as stable identities or analytical categories is problematic:

If we only or even mainly focus on the CEE experience (or the Romanian, Hungarian, or Polish experience) in feminist scholarship, we unwittingly reproduce the highly political assumption that the East-West border was/is a fundamental marker of difference for how women's and men's lives are gendered. And by un-critically continuing to use national and/or regional categories for their analyses of gender, feminists uncritically reproduce the Cold War paradigms that continue to haunt academic knowledge production and institutionalization. (Cerwonka, 2008, p. 821)

Keeping this point in mind, the following section describes the importance and legacy of Yugoslav women's rights in the legal system and beyond.

3.5.1 Yugoslavia's Socialist Legacy and Women's Rights

Yugoslavia's history and legacy regarding women's rights cannot be neglected when explaining the Croatian political context and the issues of domestic violence and marital rape. The socialist legacy was abandoned during and after the war in the 1990s due to strong anti-Yugoslavian and anti-socialist sentiment in the newly formed Croatian society. In certain regards, legislation in Yugoslavia was more advanced on the issues of gender equality than that in Croatia today. The Socialist Federal Republic of Yugoslavia (1945-1992) declared gender equality as a fundamental value in its 1946 Constitution. Marriage law from the same year established civil marriage, enabling interfaith marriages¹² and de-centring religion's authority and prerogative when it comes to marriage as an institution (Gudac Dodic, 2006). For the first time, women across Yugoslavia had obtained legal protection and rights based on state secularism. These included equal rights to men in inheritance and family law (in particular the right to request divorce), political rights (such as voting rights), the right to work and equal pay, the right to abortion and access to social protection (Gudac Dodic, 2006). In 1952 abortion was legalised and women were thus given the right to choose whether they wanted to have children

¹² During the Kingdom of Yugoslavia marriage was under the jurisdiction of religious communities: Catholics, Orthodox, Muslims and other communities all had their own rules. Only a small part of the Kingdom of Yugoslavia was subject to the Hungarian Civil Code. Divorce was very difficult to obtain and depended on the religious community, and marriage rights and obligations were different everywhere. For more info see: (Simic, 2018)

or not. This was called “the right to family planning” which later, in 1974, became a Constitutional provision (Gudac Dodic, 2006). The legalisation of abortion was the Yugoslav Communist Party’s way to prevent illegal abortions, which were seen as endangering the health of Yugoslav women (Gudac Dodic, 2006). However, the law from 1952 defined the exact, strict conditions of performing abortions. During the 1960s the procedure was completely liberalised, meaning that women were no longer required to justify their demands for abortion to an ethics committee. Yugoslavian abortion law was considered very revolutionary at that time, as abortion was still criminalised in many other European countries (Gudac Dodic, 2006). All republics in Yugoslavia passed abortion laws following the Constitution between 1977 and 1979.

Currently, abortion in Croatia is still regulated by the same law from 1978. In 2017, following the dissolution of Yugoslavia and the proliferation of various religious conservative groups supported by the Catholic Church in Croatia, the abortion law was brought before the Constitutional Court of Croatia under the charge of being an unconstitutional remnant of Yugoslavia’s legal system. The Constitutional Court decided in 2017 that the new abortion law should be written and enforced by the end of 2019. There was a justified fear that the new law might be more restrictive and conservative than the current one since the Minister of Health at that time invited the Catholic Church to the law drafting group. The deadline was missed and two years later there is no sign of the law being drafted (Aljazeera Balkans, 2020). This delay in the drafting of a highly debated law on abortion shows the reluctance and inability of the current right-wing government to reach compromise between their more conservative factions, who demand stricter conditions for the abortion procedure, and the more liberal ones.

Even though abortion in Croatia remains legal, it is not easily accessible. Many doctors have proclaimed their appeal of conscience as a justification for not performing abortions in public hospitals, but many of them perform abortions in private practices (Milekic, 2014).

Furthermore, the first Croatian Constitution passed on 22nd December 1990 proclaims gender equality but no longer guarantees women`s free choice in family planning, which means it does not guarantee the right to abortion. Rather, the Constitution states in Article 21 that every human being has a right to life, which has been (mis)used as an argument for an abortion ban by conservative religious groups.

Following constitutional changes in 1974, each Yugoslav state had their own Criminal Code. Only Slovenia (then known as the Socialist Republic of Slovenia) criminalised marital rape, including it in their Criminal Code in 1977 (article 100, paragraph 1 and 4). According to Alenka Šelih, a Slovenian professor of Criminology at the University of Ljubljana, who was also part of the original law-making group which drafted the criminal code in 1977, the reasoning behind criminalising marital rape was to grant equal rights to women victims of marital rape with other victims of rape¹³. She noted that the motivation for introducing marital rape as a criminal offence was concerned with the legislative level of elevating the status of women in marriage and upholding the principles of socialism where all comrades (both men and women) were equal. She remembers that there was a backlash, with critique coming from other federal states in the Former Yugoslavia but claims that no one in Slovenia objected to the proposition of criminalising marital rape in the 1977 Slovenian criminal code. Nevertheless, the backlash in other parts of Former Yugoslavia reflects the endurance of social conservatism concerning gender roles in Yugoslavia regardless of legally established gender equality.

Andrei Simic notes in his qualitative research of Yugoslav families that traditional ideas of men`s and women`s roles prevailed in creating a double burden for women working outside the home and labouring in the home (Ramet *et al.*, 1999). However, socialist policy after 1945 guaranteed women`s rights to permanent and full-time employment alongside newly

¹³ Personal email correspondence between December 2017 and January 2018

established supportive public services such as kindergartens and nurseries. An integral part of this emancipatory policy and set of social rights was the right to maternity leave before and after childbirth, during which financial compensation was provided (Burcar, 2020). There was a ban on terminating employment for all pregnant and nursing women who were also guaranteed to be able to return to the same job or in the event of a reorganisation of the collective, an equivalent job with the same salary.

Contrary to liberal feminist interpretations, gender equality in former Yugoslavia was not imposed purely top-down since women workers' groups in the region were already starting to organise and lobby for the right to vote in 1939 (Burcar, 2020). The Women's Antifascist Front of Yugoslavia was established in 1942 and they were responsible for obtaining equal rights since a lot of women fought alongside men against fascist occupations and obtained positions as leaders of partisans' boards (Jovanovic, 2015). Even though legally-established gender equality, Yugoslavia did not eradicate patriarchal institutions. The position of women worsened after the dissolution of Yugoslavia under the influence of nationalist state-building projects and, for Croatia specifically, the influence of the Catholic Church. I elaborate on these points in more depth in Chapter 6 on the political economy of gender-based violence.

After the breakup of Yugoslavia, alongside the deterioration of women's social and political rights, the image of women workers and partisans from the second World War was largely forgotten and replaced by the image of raped women victims of war (Zarkov and Drezgic, 2006), thus marking the process of retraditionalisation of the position of women in society.

3.5.2 Socio-Political Context of the Post-War Period

The process of Croatian independence resulted in a war that lasted from 1991 to 1995. This wartime period is called "The Homeland War" and in some cases the "Greater Serbian

Aggression on Croatia” by the official¹⁴ Croatian nationalist narrative. Women were the first to lose their jobs during the transition period and they went back to their traditional roles of homemakers (Kamenov & Galic, 2011). The employment opportunities became scarcer, especially for women with lower qualifications, those who had more than one child and those who were in older age groups (Kamenov and Galic, 2011). I discuss this point further in Chapter 6.

The Roman Catholic Church played an important role in Croatian independence. The Vatican was among the first states to recognise Croatia as an independent country. The Croatian Democratic Union (HDZ) won the first multiparty elections in Croatia in 1990 and Franjo Tuđman¹⁵ was elected as the first president. He was a devout Catholic and a traditionalist but regardless of the Church`s pressure declined to remove the statue of Tito¹⁶ from his presidential office and refused to de-legalise abortion. During his presidency, the media was heavily censored, government-owned and side-lined any opposition to his regime.

The war had a destructive effect on the women`s network in former Yugoslavia. The organisations Autonomous Women`s House Zagreb and Women`s Help Now founded in 1989, developed from the SOS phone for women and children within the Women`s Group Trešnjevka (Boric, 2003). These groups were helping with the war relief, but the clash of political attitudes created rapture in the wider network of feminist organisations. The social activists and women`s organisations who emphasised transnational solidarity and peace were called traitors of their homeland (McClintock, 1993; Tétreault and Ranchod-Nilsson, 2000; Boric, 2003). Nations are constructed through the notion of family, which confirms the social hierarchy of

¹⁴ By official I mean the terms are used in the official historical records, history schoolbooks, laws and by-laws.

¹⁵ He was also the founder and the first president of HDZ

¹⁶ Josip Broz Tito, the president of Yugoslavia, leader of the Partisans in the WWII and one of the leaders of non-aligned movement during the Cold War. His statue was removed from the president`s office in 2015, during the presidency of first female president from a right-wing party HDZ, Kolinda Grabar Kitarović. She decried Tito as a ‘dictator.’

subordination of women, and holds that nations belong to men (Meyer, 2000). Since nation-building processes depend on gender inequality, it is doubtful that feminist goals can be achieved inside nationalist movements. The feminist-nationalist groups supported the war even though the newly founded Croatian state and the Catholic Church suppressed everything related to the socialist past, including gender equality. Despite this, however, the groups disappeared after the 1990s. The construction of gender and sexuality is similar to the construction of nation and state since they all involve power relationships and active opposition to the constructed 'Other' (Peterson, 1999).

Victims of wartime sexual violence in Croatia had to wait until 2015 for legal recognition of their rights in the Law on the Rights of Victims of Sexual Violence in the Homeland War. Implementation problems and delays were the results of an absence of material evidence due to the lengthy passage of time and the unwillingness of victims to come forward. The few who did come forward received acknowledgement of their victim status and were promised some financial compensation, but the procedure itself remains lingering and problematic since the Committee for approving claims was founded by the Ministry of War Veterans.¹⁷ There were complaints of the Ministry's biases, highlighted in a refusal of Serbian victims who claimed to be raped by the Croatian Armed Forces in 1993 (Nacional, 2018). The focus on ethnic dimensions coloured by nationalistic sentiments still prevails in the afterwar period, regardless of the legislation which regulates victims' rights and protection. Another problem on which I elaborate further in my data chapters is the court procedure itself which often reproduces trauma and makes the victim re-experience their abuse within a legal frame to seek justice. Kašić, (2007, p. 3), referring to the court trials of International Criminal Tribunal for the former Yugoslavia, states that:

¹⁷ *Ministarstvo branitelja*, literal translation should read "Ministry of Defenders".

“Women-survivors of rape who were looking for a fair and just trial found themselves in a very human trap: to achieve justice- they had to allow themselves to pass through an unbearable traumatic experience of injustice by using and exposing their own selves, especially their bodies which became a significant field to determine the border of truth versus justice or justice versus care.”

As seen so far, sexual violence in the wartime period gained media attention in the 1990s for political purposes relating to ethnocentricity and the nation-state building project. Currently, wartime rape has been pushed back to the margins, almost completely disappearing from the public eye. Marital rape, due to its public invisibility and lack of politicisation, is easily dismissed as a private problem and therefore never gained much media attention. Nevertheless, there has been a narrow opening for the acknowledgement of marital rape as a societal problem following the recent cases of sexual violence brought forth by the media. These have sparked protests in Croatia pressuring the Government for criminal justice reform. I elaborate on this point below.

3.5.3 Victim Protection in the Croatian Legal System

Before I move on to the exploration of criminal reform and the laws concerning sexual violence, I will briefly explain important characteristics of the Croatian legal system in comparison to other legal traditions, such as that in the UK. Like many European countries, Croatia derived its legal tradition from Roman Law. In contrast to English Law (common law), where previous decisions of the court constitute a binding source of law for future decisions, in the tradition of Roman Law (civil law) there are no judicial precedents and court practice is therefore based solely on the legal code (Sočanac *et al.*, 2017). The Croatian legal system is inquisitorial as opposed to the UK's adversarial system. In inquisitorial systems the judge is significantly more involved and has a crucial role throughout the proceedings in questioning the parties, deciding on the evidence and steering the proceedings. Both Croatian and UK legal systems distinguish between criminal and civil law, with the former involving prosecution of

crimes by the State, and the latter is concerned with disputes between private parties (Sočanac *et al.*, 2017). However, Croatian law also maintains a distinction between misdemeanour¹⁸ and criminal law. Misdemeanours can be roughly explained compared to the torts and infractions as they are conceived as less dangerous acts and lower sentences are prescribed for them.

It is important to mention two further principles in the Croatian criminal justice system: the presumption of innocence, and *in dubio pro reo*¹⁹. *In dubio pro reo* means that in case of doubt, the defendant will not be convicted by the court. This principle will be problematised further in my data chapters, but for now, can be exposed as prejudiced against victims of marital rape and sexual violence. Since these offences are difficult to prove due to a lack of material evidence and the passing of time, and given that there may already be doubts about the offence due to rape myths, victim-blaming and gender stereotypes, this principle works in favour of the defendant.

Since the 1990s, Croatian criminal law reform introduced important legislation concerning victims' rights and gender equality legislation. This reform was also influenced by the European Union legal *acquis*, which Croatia had to adopt in the accession to the EU period. In the Croatian Criminal Code of 1993, rape was defined as committed against the female person, *to whom the offender is not married*, using force or threat on her life or body. This legal definition aligns with theories of rape from the 1980s, in which rape was presumed to be "a rare and random act primarily perpetrated by a stranger who represented a small portion of the male population" (Johnson and Sigler, 1997, p. 53). Rape was also defined in a gender determined way, positioning only women as victims and privileging the institution of marriage by excluding marital rape. As mentioned above, in early rape legislation, rape was perceived as a property

¹⁸ Misdemeanour Law (NN 107/07, 39/13, 157/13, 110/15, 70/17, 118/18) defines misdemeanours as "behaviours that threaten or violate public order, social discipline and social values protected by the Constitution of the Republic of Croatia and international laws which are not regulated by the criminal law."

¹⁹ Latin for "[when] in doubt, for the accused"

crime rather than an issue of personal violence. Through marriage, men were given free access to women`s bodies and sexual reproduction (Yllö and Torres, 2016). Legal unrecognition of marital rape also implies great undervaluing of women`s sexual agency and a heterosexist approach to women`s autonomy.

In 1997 the Criminal law reform enabled the prosecution of marital rape and made the definition of rape gender-neutral (Official Gazette of the Republic of Croatia 110/97). This was a result of persistent lobbying by women`s and feminist organisations in Croatia to change the legislation concerning domestic violence, as well as to raise public awareness of the issue of sexual violence. Nevertheless, a heteronormative assumption remained in the definition of rape which insisted on the use of force or threat as a qualifying characteristic of rape.

It is difficult to determine the prevalence of marital rape in the Croatian criminal justice system in purely statistical terms since, as mentioned previously, it is a matter of dark figures and therefore consists of largely unreported or undiscovered crimes (Skogan, 1977). There are no statistical records from police reports specifically on marital rape. However, court practice available online²⁰ shows nine resolved court cases of marital rape in the period from 2003 to 2015.

Table 2, below, briefly explains important aspects of laws related to the issue of marital rape which is then discussed in greater detail.

²⁰ Judicial decisions and cases obtained from the online information system from the Supreme Court of Republic of Croatia developed under the PHARE project in 2006 called "Harmonization and Disclosure of Judicial Practice" which provides insight into the jurisprudence of the Supreme Court of the Republic of Croatia and other courts in the Republic of Croatia, <https://sudska-praksa.hr/>

Law	Noteworthy and relevant aspects
Criminal Code (Official Gazette of the Republic of Croatia 125/11, 144/12, 56/15, 61/15, 101/17, 118/18)	<ul style="list-style-type: none"> -Defines rape as two criminal offences: 1. Sexual intercourse without consent, 2. Rape -Prescribes a maximum of 3 years imprisonment for aggravated domestic violence
Criminal Procedure Act (Official Gazette of the Republic of Croatia 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17)	<ul style="list-style-type: none"> -Defines victim's rights in the criminal proceedings, a victim has special status with special procedural rights -Classifies groups of victims in several categories which grants them certain rights
The Law on Protection Against Domestic Violence (Official Gazette of the Republic of Croatia 70/17)	<ul style="list-style-type: none"> -Defines domestic violence -Determines sanctions against the perpetrators and prescribes protective measures
Family Law (Official Gazette of the Republic of Croatia 103/15)	<ul style="list-style-type: none"> -Regulates domestic violence by primarily focusing on the protection of children, -Defines marriage as a union between a man and a woman -Defines personal rights and responsibilities of spouses, including mutual trust, support and equality of spouses

Table 2. Noteworthy and relevant aspects of laws concerning domestic and sexual violence in Croatia

The Law on Protection against Domestic Violence (Official Gazette of the Republic of Croatia 137/09, 14/10, 60/10), which was first adopted in 2003, presents a milestone in the protection of women. The Law prescribes emergency and long-term protection measures for the security of victims of domestic violence, such as the removal of the perpetrator from home, stalking and harassment restraining orders, seizure of weapons and psychosocial and addiction treatment for the perpetrator. Article 4 of this Law defines domestic violence as comprising of sexual

violence and harassment, physical violence, corporal punishment, psychological violence and economic violence. The drafting of this law was prompted by the removal of domestic violence as a criminal offence from the Criminal code due to the verdict of The European Court of Human Rights against Croatia based on the principle *ne bis in idem*²¹. This meant that domestic violence was prosecuted only under the jurisdiction of a misdemeanour, which entailed lower sentences for the perpetrators. Even though domestic violence was later reinstated as a criminal offence, most perpetrators are still prosecuted under the misdemeanour proceedings. In misdemeanour proceedings the perpetrator can be punished with a fine or their sentence can be replaced by community service.

Feminist NGOs have warned that the gravity of domestic violence is not understood in judicial practice, which often equates the victim with the perpetrator. Misdemeanour judges often issue greater fines to the victim than the perpetrator²². Moreover, the State Attorney's Office does not insist on detention for the perpetrators while awaiting the sentencing, meaning that even before the verdict they can abuse their spouse again (The Advocates for Human Rights and Autonomna ženska kuća Zagreb, 2012).

A Criminal Code that came into power in 2013 did not change the definition of rape but defined two separate criminal offences: 1. Sexual intercourse without consent and 2. Rape. Introducing sexual intercourse without consent was a way to prosecute offences where there was no use of force or threat which disqualifies it from being legally recognised as rape. The Code also defines that consent exists if a person decides of their own free will to engage in sexual intercourse or a similar sexual act, and they can make and express such a decision (Official Gazette of the

²¹ A person cannot be on trial for the same offense twice. A perpetrator of domestic violence at that time was on trial both at the criminal court and at the misdemeanour court, he sued Croatia and won. This is known as the case of *Maresti v. Croatia* in which the court has ruled that the same act of a person cannot be prosecuted as criminal and misdemeanour offense.

²² Because of the wide definition of domestic violence, there are sentences pronounced equally for physical as well as emotional violence, so for example, a judge can pronounce greater fine for the wife who called her husband an idiot than for the husband who beat up his wife. I elaborate more on this in the next chapter 4

Republic of Croatia 125/11, article 152, paragraph 3). The Code further defines circumstances in which there can be no consent, such as the use of threats or deceit; abusing one's position towards a person who is in a situation of dependence vis-à-vis the perpetrator; exploiting conditions in which the person is unable to express his or her refusal; or if it was performed against a person unlawfully deprived of liberty.

The Code also identified serious criminal offences against sexual freedom as an aggravated form of rape,²³ which brought confusion in differentiation between criminal offences in practice (Radačić, 2014). This is seemingly in alignment with the Rec(2002)5²⁴ and the Istanbul Convention,²⁵ which prescribes that states need to prosecute the crime of rape with a focus on consent rather than the use of force and resistance. However, rape remains defined by the use of force and threat in the Croatian Criminal Code. Penalties for sexual intercourse without consent are extremely low, from six months to a maximum of five years (Radacic, 2007). Penalties can be doubled if sexual intercourse is carried out in a particularly cruel way, for example, with the use of dangerous tools or resulting in severe health consequences. Penalties for rape range from one to ten years. In Croatia, it is often the case that the prosecution for rape lasts four to five years, though after the verdict the perpetrator may spend only eight months in prison (The Advocates for Human Rights and Autonomna ženska kuća Zagreb, 2012). This means that most cases of marital rape and partner rape will be prosecuted as sexual intercourse without consent because the victim does not have any injury, or did not physically resist and

²³ Serious criminal offenses against sexual freedom are defined in Article 154, as committed towards a close person, who was later defined in the article 87, paragraph 9, as member of the family, former marital or extramarital spouses, former life partner or informal life partner, persons who have a child together and persons living in the same household (NN 144/12, 101/17). Other serious criminal offenses against sexual freedom described in Article 154, paragraph 1, include: a victim especially vulnerable because of her or his age, illness, addiction, pregnancy, disability, severe physical or mental disorder; when the crime was committed in especially cruel or especially humiliating manner; out of hate; together with one or more perpetrators with several acts of sexual intercourse or equivalent sexual acts being committed against one and the same person; using weapons or dangerous instruments and, in such a manner that resulted in serious bodily injury or pregnancy of the raped person (NN 144/12, 101/17).

²⁴ The Recommendation Rec(2002)5 of the Committee of Ministers of Council of Europe to member states on the protection of women against violence.

²⁵ Council of Europe Convention on preventing and combating violence against women and domestic violence.

did not scream, which is why it cannot be proven that it happened under threat. In many cases, most of the women raped by their partners endure rape by crying and providing minimal resistance, in silence, in order not to wake their children (Mamula, 2011). The new Criminal Code which came into force on 1st January 2020 erased the separate criminal offence of sexual intercourse without consent and widened the definition of rape. I come back to this point further below.

The Criminal Procedure Act from 2008 introduced special rights for victims of sexual violence. Until then the victim was regarded merely as a witness, meaning they had the obligation to testify except in cases of spousal privilege²⁶. The victim was usually questioned twice, during the investigation and in the main hearing, though the Act did not prescribe any restrictions. Victims of rape were not considered as vulnerable witnesses and a special way of testifying was foreseen only for minors and children. This involves testifying in the presence only of a psychologist or other expert and was introduced for children and minors in 2003. The new Criminal Procedure Act in 2008 brought new specificities for Croatian criminal procedural law, bringing it closer to the Anglo-American, adversarial model. For example, cross-examination was introduced which led to problems in court practice due to unfamiliarity with the method. Ivana Radačić (2014), a feminist legal scholar, warns that the introduction of cross-examination is problematic for the victim's protection. Many feminists from the common law system criticised the adversarial model and the cross-examination of victims as a restrictive way of questioning which allows attorneys to use various incriminating techniques to confuse victims (Taylor, 2004; Radačić, 2014). Judicial authority in restricting such interrogations is not practised enough. Cross-examination was later removed from the law.

²⁶ Spousal privilege is a legal right to refuse to testify against your spouse. Exemption from testifying also included blood relatives, in-laws' relatives, adoptive parents, and foster children. Spousal privilege is denied when there are crimes involving children.

Furthermore, the Law from 2008 enabled special rights for victims of sexual violence which included: the right to testify via video recording outside the courtroom and without the presence of the accused; the right to exclude the public from the courtroom during the testimony; the right to free legal aid and psychological counselling; the right to privacy and personal data protection; and the right to be questioned by a person of the same gender in the police or prosecutor's office. Nevertheless, judges rarely systematically applied these rights, and even though the law forbids interrogation into the sexual past of the victims, the victims were still interrogated about their private lives and medical history (Radačić, 2014).

The Rules of Procedure in Cases of Sexual Violence issued by the Government and adopted in 2012, prescribe obligations of all relevant bodies and other actors involved in the detection and prevention of sexual violence, including assistance to victims and cooperation between relevant bodies. The Rules warn against the misconception that a low number of reports means that sexual violence is a rare crime.

Croatian Family Law asserts the principle of equality between spouses and forbids domestic violence also noting its regulation in a separate law which is The Law on Protection Against Domestic Violence. Family Law obligates parents to protect their children against domestic violence and corporal punishment. Marriage is defined as a union between a man and a woman while extramarital union (cohabitation) is defined as a union of an unmarried woman and an unmarried man of at least three years' duration, shorter if they have a child or if the cohabitation has resulted in marriage. In 2013 a referendum was held on the constitutional definition of marriage as a union between a man and a woman. This was prompted by the religious organisation "U ime obitelji" ("In the name of the family") and supported by the Catholic Church. It is significant to note the insidious use of the notion of the family in the name of a religious organisation ('In the name of the family'). Their paternalism in trying to 'protect' the Croatian family can be explained through McClintock's reasoning that nations are constructed

through the notion of family (McClintock, 1993). According to this logic, invoking the protection of the traditional family and its values means protecting the nation itself. The significance of the family trope for national identity and unity serves to sanction a social hierarchy that subordinates women to men and sustains the heteronormative model (McClintock, 1993). This was the first referendum where citizens were voting directly on a constitutional provision in Croatia. The idea to define marriage as heterosexual in the Croatian Constitution came as a response to the legalisation of same-sex marriages in Great Britain and France in 2013 even though in Croatia such a proposal was not yet on the political agenda (Paternotte and Kuhar, 2017). Despite the low turnout of voters,²⁷ the majority voted for the definition of marriage as a union between a man and a woman in the Croatian Constitution, opening a space for contesting same-sex marriage as unconstitutional. This is an example of the insidious new ways that conservative and religious movements have been mobilised in denying the rights of the LGBT population using populist strategies such as referendums.²⁸ It also shows how the efforts of conservative religious groups have resulted in a constitutional change that affects current applied laws and policy measures.

The Socialist Democratic Party (SDP)²⁹ was in power at the time of the referendum. They wanted to distance themselves from the actions of the organisation “In the name of the family” and the referendum, and the Civil Partnership Act was passed the same year enabling same-sex partners to obtain their rights³⁰ through a civil union.

²⁷ According to the Croatian State Electoral Committee only 37.40% of Croatian population voted in the referendum.

²⁸ See: Kovats and Poim (2015) and Paternotte and Kuhar (2017)

²⁹ The Social Democratic Party of Croatia (SDP) built its reputation as a successor of League of Communists of Croatia and is self-identified as “left-centre” but during their time in power they usually take the populist route rather than pushing for actual social reform policies, by favouring Croatia joining the EU, introducing of neoliberal policies, austerity measures and privatization of public goods.

³⁰ Same rights as guaranteed to married people (except child adoption): right to inheritance, right to hospital visitation and etc.

Another conservative religious organisation called Vigilare, which has ties with the Polish organisation Ordo Iuris and the ruling Law and Justice party in Poland (Brakus, 2018), has written a new proposal of the law on abortion requesting a total abortion ban. Their proposal was largely ignored by the Government and, as I mentioned previously, there is no new abortion law on the political agenda. Vigilare is also known for organising a prayer initiative called “40 days of prayers for the unborn children” that has taken place in front of hospitals every year since 2014. Representatives of these organisations, together with the clergy of the Church, have on numerous occasions warned the public against the perils of the so-called “gender ideology³¹” which seeks to erase the perceived natural difference between men and women, corrupt children by normalising homosexuality, and destroy traditional Croatian families. The Catholic Church in Croatia has also lobbied³² against the ratification of the Istanbul Convention, especially against the positioning of domestic violence as gender-based violence, which highlights the historical oppression of women as well as the social construction of gender. I will elaborate on this in the section below on the Istanbul Convention.

The Government announced³³ on their official website in November 2019 that a criminal justice reform would take place soon and would include increasing the sentences for domestic violence and erasing the offence of sexual intercourse without consent while elaborating the criminal offence of rape. This happened after increased pressure from the Initiative #Spasime³⁴

³¹ “Gender ideology” is an empty signifier; it can mean wide range of things, usually homophobic and transphobic ideas which serve a particular political agenda. See: Kovats and Poim, (2015) and Paternotte and Kuhar, (2017).

³² “Croatian Catholic Church asks members of the parliament to vote against the Istanbul Convention” <https://www.vecernji.hr/vijesti/crkva-poziva-zastupnike-katolike-protiv-istanbulske-konvencije-1194697>, date accessed: 10.11.2107

³³ <https://vlada.gov.hr/vijesti/poosttravanje-kazni-te-brze-i-ucinkovitije-procesuiranje-kaznenih-djela-nasilja-nad-zenama-djecom-i-u-obitelji/26760>, published on 11.09.2019

³⁴ Initiative #Spasime formed in the March 2019 prompted by the Facebook post of Croatian actress Jelena Veljača who was expressing her shock at the recent events of domestic violence in Croatia and called for a mass protest urging the state to adequately protect the victims of domestic violence. Many women’s and feminist organizations supported and advised the initiative. The protest gathered more than 48.000 people in Zagreb including the attendance of the Prime Minister. The initiative’s fund gathered 400.000 HRK (48.494 GBP) for the victims of domestic violence. Veljača’s visibility and popularity contributed to governmental proposal of the criminal justice reform.

(#Saveme) and women's and feminist associations following the high-profile media reports of cases of domestic violence in 2017. While feminist and women's organisations are celebrating this accomplishment as a crucial breakthrough after years of lobbying for criminal justice reform, this new development needs to be critically explored by taking into account the consequences for legal practice once the changes come into power. Croatia took over the presidency of the European Union after Finland in the first half of 2020. This new development should be interpreted alongside the political interests of the Prime Minister and the parliamentary elections held in May 2020, which saw HDZ as a relative winner of the election with 66 secured seats (from 151) and party leader Plenkovic's position as the Prime Minister firmly secured. In other words, I argue that heightened political interest in sexual violence can be seen as a useful political agenda rather than actual involvement and practical focus on the issue.

Another prominent media case, where a judge released five young adults accused of gang-raping, blackmailing and threatening a fifteen-year-old girl, contributed to the additional public scrutiny of the judiciary. This triggered mass protests across Croatia gathering thousands of people under the slogan "Justice for Girls" (Vladislavljevic, 2019). This case initiated public debates on issues of victimhood, sexual violence, internalised misogyny and legal procedures. In the following chapter on the conflicting institutional practices of state agents working in the legal and social welfare systems, I reflect on these issues while exploring the everyday practices and routines of state agents and professionals working with the issue of marital rape.

3.5.4 The Significance of the Istanbul Convention

During the accession process to the EU in 2013, Croatia had to consolidate its legislation with the EU legal *acquis* and EU directives and subsequently adopted many directives and

regulations related to the topic of sexual violence and victim protection³⁵. As a member of the United Nations since 1992 and being the 40th member state of the Council of Europe since 1996, Croatia has since adopted various international instruments for the protection of women against violence³⁶. International treaties have superior authority over the laws of the Republic of Croatia. Despite these international legal documents and international legal practice, Croatian legislature and legal practice related to the protection of women against violence are still inadequate. There is no systematic education on women's human rights at the state level and not all relevant international documents and legal practice are translated, published, and implemented in the Croatian legal practice. Many international standards are not implemented in practice, which is a point I return to in Chapters 4 and 5 on institutional practices and the professional construction of victimhood.

³⁵ Directive on the right to interpretation and translation in criminal proceedings (2010/64/EU)
 Directive on Trafficking in Human Beings (2011/36/EU),
 Directive on combating the sexual abuse and sexual exploitation of children and child pornography (2011/93/EU)
 Directive on establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU)

Directive on the rights of the accused and suspects in criminal proceedings (2013/48/EU)
³⁶ 1992 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), General Recommendations 12 and 19
 1993 UN Declaration on the Elimination of Violence against Women
 1995 Beijing Declaration and Platform for Action
 2001 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
 Resolution 2003/45 on Elimination of Violence Against Women
 2008 UN Declaration on Human Rights, Sexual Orientation and Gender Identity
 Declaration on Equality between Women and Men, 1988
 Recommendation on The Protection of Women Against Violence (Rec (2002) 5
 Declaration on Achieving Real Gender Equality, 2009
 Recommendation CM / Rec (2010) 5 of the Committee of Ministers to Member States on measures to combat discrimination based on sexual orientation and gender identity
 Resolution 1728 - Discrimination Based on Sexual Orientation and Gender Identity
 Resolution 1751 - Suppressing sexist stereotypes in the media
 Resolution 1715 - Gender pay gap
 Gender budgeting as a guarantee of women's health, 2010
 Convention on the Prevention and Combat of Violence against Women and Domestic Violence, 2011
 Against gender stereotypes in education, 2011
 Study on Discrimination against Lesbian and Bisexual Women and Girls and Transgender People, 2011
 Discrimination on the basis of sexual orientation and gender identity in Europe, 2011
 Council of Europe's Gender Equality Strategy 2014 - 2017

An international convention that has been seen by feminist and women's NGOs as crucial in providing a systematic basis for protection against domestic violence was The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) which was adopted in Croatia in April 2018 after strenuous public debate and misconceptions promoted by conservative organisations. No other international document has caused such public uproar as the ratification process of the Istanbul Convention and it serves as a case in point to show the retraditionalisation of Croatian society as well as the mobilisation of conservative groups utilising the discourse of human rights to deny rights to abortion, same-sex marriage and adoption. The Istanbul Convention is the first document that explicitly defines gender-based violence as the basis for its protective mechanisms and educational reforms and gender is the term that "triggered" the conservative uproar. Women's shelters and feminist NGOs in Croatia have been lobbying for the ratification of the Convention since Croatia signed it in 2013, but at the time there was no such outcry. Rather, the outcry over the Convention came at a specific time when it was fruitful to mobilise and employ anti-gender discourse (Kujundžić, 2019). The economic crisis and austerity measures in many countries, including Croatia, enabled anti-gender protests by providing an outlet for frustration with corrupt elites and the scapegoating of minorities as culprits of the crisis. Since religious conservative organisations have been active since 2013 in Croatia, opposition to the Istanbul Convention has used this window of opportunity to deploy existing discourse and strategies. Paternotte and Kuhar (2017) explained the travelling strategies of the anti-gender initiatives and how certain anti-gender campaigns travelled a certain time from the US to Eastern and Central Europe.

Since 2012, conservative organisations associated with the Catholic Church, but not limited to it, have been mobilising and lobbying in countries across Europe and Latin America for the abortion ban (Paternotte and Kuhar, 2017) and to oppose LGBT rights and the ratification of

The Istanbul Convention. The opponents of the ratification staged protests in Croatia and tried to push for a referendum on the ratification in 2018. The discourse they used during the protest was highly transphobic, declaring that the Istanbul Convention has smuggled in “gender ideology,” which will allow children to choose their own gender, and also that the EU and Europe are trying to colonise Croatia to destroy its traditional Christian family values (Kujundžić, 2019). Not enough signatures were gathered for the referendum, but they did manage to legitimise the term “gender ideology,” which prompted the government to respond by issuing an interpretative statement, stating that Croatia is not obliged to introduce “gender ideology” in its educational or health institutions alongside the ratification of the Convention.

A more moderate argument from the opponents of the ratification was that Croatia does not need such a convention since it has all of its mechanisms already in its laws (Kovačević Barišić, 2018). This is untrue, however, as Croatian laws which regulate domestic violence and sexual violence are not aligned with the provisions of the Convention. The Convention provides a comprehensive system to address the needs of victims and introduces additional obligations for the country to implement. According to the Official website of the Ministry of Foreign and European Affairs³⁷, the implementation process of the Convention began in 2019 and the working group has been founded. However, the Gender Equality Ombudswoman warned in her 2020 report that key laws and regulations remained largely unchanged and inconsistent with the Convention, which certainly did not contribute to the effective fight against gender-based violence (Ljubičić, 2021). Many laws, in their provisions, still do not recognise violence against women as gender-based violence, do not criminalise it, or do not order ex officio prosecution, and if they do it does not protect all victims³⁸ which in some cases resulted in femicide.

³⁷ <http://www.mvep.hr/hr/vanjska-politika/multilateralni-odnosi0/multi-org-inicijative/vijece-europe/opcenito-o-vijecu-europe/>, date accessed: 03.09.2019

³⁸ Such as unmarried partners or ex-partners who have not cohabitated.

Ratification of the Convention should ensure financial support and human resources for the implementation of programs for prevention and the combatting of all forms of violence, including the programs already implemented by NGOs and civil society (article 9). I come back to this point in Chapter 6 on the political economy of gender-based violence when discussing the promises of the Istanbul Convention.

3.6 Conclusion

The main purpose of this chapter has been to provide an overview of relevant literature and the theoretical framework governing this thesis and to contextualise the socio-legal context of victim`s rights concerning domestic and sexual violence in Croatia, with a specific focus on marital rape before and after the 1990s. This thesis is contextualised within a feminist theoretical framework, combining post-structural feminist thought with materialist feminism. The theory surrounding feminist political economy is later developed in Chapter 6, which looks at the economic aspects of marital rape and the legal and welfare systems. Special emphasis is placed on the construction of gender identities including the construction and neoliberal demands placed on victimhood. I have engaged with important critiques of both radical and liberal feminism, explaining how each has its own pitfalls which prevent equality for all. Essentialist radical feminism, and neoliberalist liberal feminism, both fail to combine politics of recognition with politics of redistribution (Fraser, 2013) and therefore are unable to truly advocate liberation for all and not just a selected few. I am using the terms women and men throughout my thesis as analytical categories rather than essential subjects and I am scrutinising economic conditions which prevent freedom from violence and facilitate the erosion of wider social care.

I have engaged with feminist legal theories to scrutinise how the relationship between the law, gender identities and feminist legal methods help to uncover unconscious biases against

women. Since rape was historically perceived as a property crime, it is important to challenge the gender blindness and alleged objectivity of the current laws and legal provisions. As mentioned previously, the women`s movement globally influenced changes in public awareness as well as in legislation, but it also had some unintended consequences such as cementing a particular image of victimhood in the criminal justice system.

Furthermore, to show the importance of contextualising social issues, I have presented the importance of feminist theories of women and nationalism in the post-Yugoslav context space and uncovered the ways gender identities are constructed in the nation-state building processes. It has been important to contextualise the specificities of the legal, judicial, and social welfare systems and the adoption of international legal instruments before analysing in the following chapters the complexities of the socio-economic, social welfare and legal systems surrounding marital rape. I have briefly provided an overview of the specificities of women`s rights at the legislative level in former Yugoslavia. Slovenia was the only socialist republic in Yugoslavia that criminalised marital rape in 1975.

Even though victims` rights and legislation concerning domestic and sexual violence were absent from Yugoslavia`s criminal justice system, certain provisions in the Yugoslav Constitution were more progressive than in the current Croatian one. A notable example of this is women`s right to abortion which was a constitutional right in the former Yugoslavia but was omitted in the first Croatian Constitution in the 1990s as a concession to the Catholic Church and Vatican`s acknowledgement of Croatian independence. Furthermore, the focus moved from workers` rights in socialism, which included women`s right to work and better social care in Yugoslavia before the 1990s, to the rights of private companies in the so-called free market at the expense of social solidarity and communal ownership in Croatia after the 1990s.

The discourse regarding women in Yugoslavia dramatically shifted as a result of the war in the 1990s, from emancipated, partisan, politically and socially engaged Yugoslav women to

ethnically marked (mostly Croatian and Bosnian) victims of wartime sexual violence. Wartime rape was largely exploited by state-controlled media to further the political agenda of the nation-state building project and was also utilised by international feminist scholarship in insisting on ethnic markers of victims and perpetrators. In the current period, the topic of wartime sexual violence has been pushed to the margins.

Since the 1990s Croatia has adopted various international standards related to victim's protections and protections against violence against women. However, there are problems with implementation stemming from larger societal attitudes towards gender equality and women's rights. Traditional views of family, marriage and gender roles were strengthened after the Yugoslav war through the nationalist state-building project coupled with the dominant role of the Catholic Church in Croatia. International standards somewhat improved the Croatian legislation and legal practice concerning the rights of victims of sexual and domestic violence, but detrimental gender stereotypes proved to be harder to eradicate. Marital rape was criminalised in 1997 following persistent lobbying from feminist and women's groups. However, the reporting of marital rape remains low. The principle of *in dubio pro reo* in the Croatian criminal justice system tips the scale for the perpetrator by urging the court not to convict the defendant if there are any remaining doubts about his guilt. In cases of sexual violence and marital rape, this can prove devastating for victims as the whole burden of proof is placed on them, placing their lives under scrutiny and subjecting them to another form of institutional violence after having already suffered at the hands of the perpetrator.

The Istanbul Convention caused political turmoil, mobilising religious conservative actors who opposed the ratification under the pretence of "protecting the traditional family." These new conservative and religious movements in Croatia are also present across Europe and Latin America and pose a threat to gender equality. With the current right-wing wave sweeping across Europe, xenophobia and anti-gender sentiments are also presenting a challenge to the

progressive politics of the left. The implementation of the Istanbul Convention in Croatia is yet to be followed and disseminated in the current political climate. In the following chapters, I investigate and describe how marital rape remains at the margins of societal responsibility despite criminal justice reform, the provision of legal instruments and the recent media attention on the topic of sexual violence, as well as how the attitudes of professionals working with the issue are shaped and constructed.

4. Conflicting Institutional Practices of State Agents in the Legal and Social Welfare Systems

4.1 Introduction

This chapter focuses on institutional practices of legal and social welfare practitioners and victim service providers (lawyers, prosecutors, judges, social workers, shelter providers, feminist NGO coordinators, and psychologists) who have a bearing on legal responses to marital rape. It addresses the following research question: “What are the institutional practices related to marital rape and do they enable or curtail victims’ access to the legal system”? I explore overlapping themes such as institutional barriers to accessing justice, the formal and informal contestation of bureaucratic indifference and the diverse experiences of victims accessing justice in the post-socialist, post-conflict context of Croatia. Drawing on feminist legal literature, which argues that state practices are already gendered (Lacey, 1998; Garcia and McManimon, 2011; Neumann, 2017; Roberts, 2017), as well as my qualitative interviews, I examine how state institutions, welfare systems and individual practitioners can enable, sanction or curtail access to justice for victims and survivors of marital rape.

Professionals involved in marital rape cases all have important roles to play within the justice and social welfare system. However, their positionality and social power differ from one another. Judges, prosecutors, and lawyers hold a significant amount of social capital and power in the legal system in different ways from social workers, psychologists, journalists, shelter workers and feminist activists. This difference, I argue, is related to legal consciousness and the authoritative status of law in society (Silbey, 2015). Through a legal consciousness lens, it is possible to observe how the law and its power in determining the outcome of cases are variously understood by legal and non-legal professionals as well as survivors and victims of marital rape. As shown below, some of the legal remedies and legal instructions are unclear, both to shelter workers and victims, so they must seek interpretation from legal aids such as lawyers. Law has

the power and institutional authority not only to proclaim what is “true”, but also to assert its superiority to other fields. As part of this perceived superiority, it has the authority to endorse or deny other disciplines’ claims to “truth” (Smart, 1989). By association, a certain amount of power derived from the law is also projected onto legal professions. Decisions and practices of judges, prosecutors, and lawyers in legal arenas such as courtrooms have powerful consequences for victims of marital rape. Categorically different but still powerful positions are occupied by low-level state employees such as social workers and police officers. As I demonstrate below, decisions and routine practices of police officers and social workers can significantly impact the access to justice for victims of marital rape. However valuable for victims, out of all these professions shelter workers, feminist activists, journalists and psychologists hold the least social power in the rigid hierarchy of the legal system. The way power operates in the legal system is connected to gendered hierarchies and institutional practices which can be both contested and perpetuated by the professionals working in the system. Their power can be understood as the ability to influence the fate of marital rape victims and survivors who come into contact with the legal and social welfare systems.

Going through the legal system is typically a traumatic experience for victims of marital rape, as well as for victims of domestic and sexual violence (Lees, 2002). They are forced to relive and translate their lived trauma into the cold-rational legal language of the courtroom, often having to endure multiple questionings and probing by antagonistic police officers, unsympathetic prosecutors, and hostile defence attorneys through excruciatingly long trials. Even if successful, the legal system often prescribes lenient sentences for the victims’ abusers. Perpetrators of domestic abuse in Croatia are usually sentenced with fines and probation and then released without effective measures to prevent or re-socialise perpetrators, according to the report of Gender Equality Ombudswoman (Ljubičić, 2021). The findings of the report have also been supported by my fieldwork data as shown below. Legal jurisprudence has a history

of reproducing social inequalities while proclaiming objectivity and neutrality by prioritising the voices of the dominant social agents and silencing the marginalised. As Taylor (2004, p.7) states: “Law’s colonization of knowledge allows judges to decide what counts as valid knowledge and to reject that deemed to be invalid knowledge.” Positioned at the intersection of personal intimacy and the state’s assertion of regulating individual behaviour, marital rape has a precarious position in the legal system (Yllö and Torres, 2016). Navigating the legal system as a victim and survivor of marital rape means encountering not only institutional barriers to justice but also interpersonal ones, such as threats and shaming from one’s own family and the local community. I explore below the examples of negotiating and managing the process of accessing justice for victims of marital rape, as well as the professionals working with them.

This chapter is structured as follows: firstly, I outline the steps and procedures that should legally be adhered to whenever a suspected marital rape case is reported. Secondly, I explore and explain the police practice known as dual arrest, and critically analyse its consequences for cases of marital rape. Thirdly, drawing on my participant observation of a marital rape trial, I explore the different roles that judges, prosecutors, social workers and defence attorneys play in a court setting. I examine the perspectives of prosecutors and judges, their views of victims’ testimonies, and their rationalisation of their decisions. Finally, I examine the role and authority of social workers concerning marital rape cases, focusing on their simultaneously powerful and precarious professional status.

4.2 Specificities of Marital Rape as a Crime

When a crime is committed, the legal process usually begins when it is reported to the police. In cases of marital rape, however, this is more of an exception than a rule. It is unusual for a person to walk into a police station to report marital rape. Marital rape more commonly

emerges during the processing of another criminal or misdemeanour offence, such as domestic violence or violence against children (Bennice and Resick, 2003). Literature indicates that victims of domestic violence are at higher risk of sexual violence and marital rape (Finkelhor and Yllö, 1985). This was corroborated by most of my research participants, especially those working in feminist NGOs and women`s shelters. One of my participants, Rendulić³⁹, a psychologist working in a feminist NGO that specialises in sexual rights, explained that their organisation had found that if domestic violence lasts for more than two years, there is over an 80% chance that there will be sexual violence present in that relationship. She explained: “The idea that a woman will willingly have sexual intercourse with the abuser every time is not realistic in real life.” Another research participant, Bilić⁴⁰, a lawyer specialising in human rights protection working for a non-governmental women`s shelter, conducted desk research on marital rape court cases at the County Court of Zagreb from 2009 to 2013. She discovered there were four court cases of marital rape in that period. In all four cases of marital rape, domestic violence was also perpetrated against the victim. In two cases marital rape was reported directly to the police, but two more were uncovered in other criminal proceedings in which the victim was already involved.

Judge Krznarić⁴¹, a specialist in juvenile justice, recalled in the interview a very rare case where the victim reported marital rape directly to the police and where there was no domestic violence present. While a divorce proceeding was underway, the woman and her soon-to-be ex-husband were still living together due to economic circumstances. They slept in separate rooms, the woman together with their two small children. One night, her ex-husband dragged her into the living room, and she did not scream or resist because, said the judge, “she was afraid for her children.” He tied her hands and feet with duct tape and raped her. When he released her in the

³⁹ Interview conducted in Zagreb, 17.7.2019

⁴⁰ Interview conducted in Zagreb, 6.9.2019

⁴¹ Interview conducted in Zagreb, 7.8.2018

morning she went to the police and reported him. The judge explained this process of reporting is exceptional in cases of marital rape. Furthermore, the trial resulted in a conviction and was one of the first court cases of marital rape after the criminalisation of the offence in 1998. However, as pointed out by Martinović⁴², a coordinator of a feminist NGO which specialises in sexual rights, as a result of the legal distinction between rape and sexual intercourse without consent that was repealed in 2019, many marital rape cases were trialled not as rape but as sexual intercourse without consent. Consequently, lower sentences were prescribed for these offences, ranging from six months to five years of imprisonment, whereas for a rape they would range from one to ten years.

As mentioned previously, the crime reporting process in Croatia starts with the police receiving a report, taking the statements of the victim and/or witnesses and gathering evidence. If the police decide that the case has merit, they send the initial report to the prosecutor's office confirms if there is enough evidence to initiate criminal proceedings. The case may be dismissed first by the police or later on by the prosecutor if there is insufficient evidence. If the lawsuit is filed, there will be an initial hearing of the indictment presided by the investigating judge. At a hearing, the case may be dismissed if the investigating judge finds that there is insufficient evidence. At the hearing, if the accused pleads not guilty, a trial is instituted in which the accused will be either acquitted or convicted. If the accused pleads guilty the sentence is determined, after which an appeal may be lodged.

No courts in Croatia are specifically focused on adjudicating cases of marital rape or sexual violence and domestic violence. Some countries like Spain, Liberia and San Salvador have established specialised courts for sexual violence and violence against women (Hettiarachchi, 2017). Even though specialised courts do not guarantee better conditions or protections for the

⁴² Interview conducted in Zagreb, 31.8.2018

victims, the important accomplishment of the specialised courts in South Africa was the victims' satisfaction with their court case, regardless of the outcome (Flynn, 2015).

In Croatia, any judge, within the scope of their jurisdiction, can preside on different cases including those on marital rape. However, departments specialising for juveniles exists both at the county and municipal level courts in Croatia.

I met with a prosecutor, whom I have named Tomić⁴³, in the impressive, tall, Brutalist style building where the Zagreb County State's Attorney's Office is placed. As she explained, when the prosecutor dismisses the charge of marital rape this does not necessarily mean that the victim is not believed but is rather a cold-rational decision of the prosecutor that the case will not hold in court due to the lack of evidence. However, in cases where the victim withdraws their lawsuit for rape, most institutions, like social welfare centres or the police, consider the claim to be fraudulent (Mamula, 2011). As Raphael (2008, p. 317) points out though: "Just because the victim recants does not mean the abuse did not happen." Prosecutor Tomić added that when there is no material evidence or witness, and the victim reports her husband for rape, the case is built on the victim's testimony. If she withdraws, "We call it being 'abandoned by the victim' and you cannot pursue the case because you don't have anything without her." She also noted that when withdrawing from the case, victims sometimes claim that they lied, though Tomić often believed that this was not the case. This point will be elaborated further below in section 4.6 on judges and prosecutors. A commonly cited number for false rape reports varies between 2% and 5%, but not being able to establish whether all withdrawals can be considered false makes it challenging to establish the actual number of false reports (Raphael, 2008). Former prosecutor Mandić⁴⁴, who currently works as a private practice lawyer, told me that apart from discussing mere facts of the case, she never talked thoroughly with the victims let

⁴³ Interview conducted in Zagreb, 29.8.2018

⁴⁴ Interview conducted in Zagreb, 10.9.2019

alone discussed the emotional, psychological and historical aspects of their marriage or relationship, or their interpretation of why they endured the violence. “As a prosecutor, you just do not have that perspective, nor is it your duty or authority to inquire on such things,” she clarified. Even if the police and later the prosecutor compile enough evidence and the case ends up in court, there is no guarantee that the victim will see the end of the legal proceedings, since there are other barriers that might prove insurmountable.

4.3 Reporting Marital Rape and Persisting Ideas of False Reports

In one case of marital rape, described to me by the lawyer Bilić, a victim placed in a women’s shelter who had reported domestic violence committed against her and her children confided about marital rape to the counsellor in the shelter but was not ready to report it. After a while, she felt empowered and adequately supported to file a report. A policewoman came to take her statement and, after listening to her story, asked her: “Are you aware that filing a false report is a criminal offence?” In the course of the same conversation the policewoman asked her if she owned a gun, stating that “if it were her, she would get a gun and end him herself.” In the second conversation with the same policewoman, the woman was asked again if she is aware that filing a false report is a criminal offence. The policewoman also asked her why she was only now reporting marital rape since she previously reported domestic violence, without mentioning that rape had taken place. According to the lawyer, at this point, the victim felt inclined to withdraw from the process because of this ordeal but persisted.

Her case was assigned a date for the first investigative hearing, during which she was called to testify via video link. She called the lawyer just before the hearing saying that she would not testify because of the pressure put on her by her family. Her mother, father, brother, and others told her that she was bringing shame to the entire family, that these matters should not be spoken about, and that it was not proper to speak publicly about marital rape. The lawyer recalled how,

even though she understood and empathised with the victim, she was frustrated to observe the way that both the policewoman, in an implicit way, and the woman's family more explicitly had exhorted her not to proceed. In the end, the woman called upon her spousal privilege not to testify against her husband in front of the judge. The lawyer told the judge that her client had claimed spousal privilege under illicit pressure from her family and asked the court to provide support for her client and to include this in the record for future decisions in the course of this proceeding. The judge refused to include this in the report and dismissed the case. "For him [the judge] the case is closed since the victim claimed her spousal privilege," explained the lawyer.

During another case, which involved police intervention in a situation of domestic violence, Pavlović⁴⁵, a psychologist and former shelter worker, recalled how the police did not end up filing a report. Her client told the police that the fight between husband and wife broke out for a trivial reason: the woman had not bought fresh bread for that day since they had a whole loaf left from the day before. Two police officers attended, a policewoman and a policeman, which Pavlović clarified is common practice in cases of domestic disturbances. The woman told the policewoman that her husband is easily provoked and that he often assaults her around in front of their three-year-old child, which in itself constitutes a criminal offence. The policewoman replied to her:

"Okay madam but why didn't you buy that bread to avoid all of this?" To which the woman persists and says: "Now that you [the police] are here I want to report it all," but the policewoman reiterates: "Okay madam, he pushes you around and occasionally slaps you, we can detain him and you can report him, maybe he will be held [in detention] overnight, maybe not, in any case, you will have to pay a fine."

⁴⁵ Interview conducted in Zagreb, 1.9.2018

Pavlović stressed that in saying ‘you will have to pay a fine’, the policewoman meant both the victim and her husband. Lastly, the policewoman also asked the woman: “Do you have an extra 1000 HRK [100 GBP] lying around to pay the fine? You are unemployed and your husband’s salary is small, it is better not to report anything at all.”

As shown in both cases, the presence of female police officers and prosecutors does not guarantee the better treatment of women victims of sexual or domestic violence (Neumann, 2017). Victim centred women-led police stations have been established in Latin America in the 1980s to mitigate the masculine police culture and the problems of low reports of gender-based violence (Carrington *et al.*, 2021). They were successful in encouraging women to report and preventing further re-victimisation. However, being a policewoman is not enough to challenge the often-internalised misogynist attitudes and masculinist police culture but rather a specialised, educated and gender-orientated force with the emphasis on prevention rather than funnelling cases into the criminal justice system. While women-led police stations in Latin America are used as success stories they are still an example of the state taking the lead role in policing gender-based violence (Carrington *et al.*, 2021).

In the first case, the policewoman perpetuated a stance of disbelief inherent in the patriarchal culture towards victims of marital rape, signalling a hyperbolic, macho response in suggesting that the most appropriate action might be for the victim to confront her husband with a gun. This does not come as a surprise considering that the police force, like the Croatian army, is a male-dominated and highly masculinised profession that emphasises discipline, obedience and state-sanctioned violence. In other words, police culture is the institutionalisation of male subjectivity which influences police officers regardless of their gender. Discussing gendered hierarchies of the Nicaraguan police and their attitudes towards women victims, Neumann (2017, p. 1120) points out: “In their quest for legitimacy and status, these female officers arguably seek to differentiate themselves from less privileged women (those seeking help) to

preserve their relative power and symbolic position.” The policewoman in the first case was also in violation of the Rules of Procedure in Cases of Sexual Violence, which clearly state that the victim should not feel disbelief, disapproval, hostility or condemnation from police officers when giving a statement (Official Gazette of the Republic of Croatia 70/2018). Policewomen’s attitudes can act as an institutional barrier to accessing justice: In the first case, the woman victim managed to persist in her report despite the hostile policewoman’s behaviour, whereas the woman in the second case who was dissuaded from filing a report by the policewoman. Such routine practices can negatively influence a victim’s decision to engage with the legal system and can impact crime statistics, contributing to the low prevalence of rape reports.

The influence of family values and the perceived acceptability of discussions on what happens behind closed doors proved to be an especially detrimental barrier in the first case. Rape is often considered a shameful topic to discuss overtly, especially marital rape, which discloses abuse happening in an intimate setting. Rape is distinct from other forms of human rights violations in that societal reactions can include rejection and condemnation, invoking shame and guilt in the victim (Kašić, 2007). Drawing on Goffman, Taylor (2004) asserts that the victim of sexual violence suffers from multiple forms of ‘social death as they can be ostracised and condemned by their own family, community, and the legal system.

Laws and legal procedures are not enough to challenge institutional gender stereotypes and society’s traditional ideas of a woman’s role in the family and community in the countries of former Yugoslavia (Walklate, Fitz-Gibbon and Mcculloch, 2018; Impunity Watch, 2019). This does not imply laws are not helpful or necessary, but placing too much reliance on the law to solve social problems and curtail deep-seated gender prejudices misses the fact that numerous women lack the resources and representation to access formal legal procedures. Another important aspect of the legal system explored in this chapter is the implementation of the law. As the examples above have shown, there is a large gap between what is written in the law and

what is done in practice. Focusing solely on the content of the law and recommended penalisations leaves the underlying structural social and economic conditions that enable marital rape intact and unchallenged.

4.4 The Issue of Dual Arrests in Domestic Abuse Cases

One of the main issues concerning the role of the police in cases of marital rape, and domestic violence in general, is the practice of dual arrest. The dual arrest is the term, commonly known in the context of domestic violence, where the police arrests both the victim and offender (Miller, 2001).

When the police are answering a distress call for a domestic disturbance, their conduct is regulated by The Law on Protection from Domestic Violence, The Rules of Procedure in Cases of Sexual Violence and The Rules of Procedure in Cases of Domestic Violence. The Law on Protection from Domestic Violence in article 10 defines domestic violence as the use of physical force which does not cause serious bodily injury, the corporal punishment of children, psychological violence which causes a violation of dignity or anxiety, sexual harassment, economic violence, and negligence of the needs of persons with disabilities or older persons which causes a violation of dignity and physical or mental pain (Official Gazette of the Republic of Croatia 70/2017, 126/2019). Both Rules of Procedure prescribe that the police must investigate and examine all facts related to the event of violence objectively and comprehensively, determining its grounds, cause, continuity and consequences by securing the scene and obtaining evidence of the committed criminal act.

Pavlović, a former shelter worker and a psychologist recalled a case of attempted marital rape that included physical violence. In this case, the victim was 20 years younger than her husband and managed to fight him off while name-calling him “an impotent horse.” She called the police and told them she was almost raped. When the police came, the husband told them what she

called him and arrested them both. They eventually both dropped their charges, Pavlović noted, since the woman knew that her husband would pursue his charge unless she dropped hers. The woman was held in detention for more than three hours while her three-year-old child was watched by their neighbours. Pavlović concluded that a victim who gets this kind of treatment will never call the police again.

One of the many reasons for victims' reluctance to report domestic or sexual violence is the fear of institutions, including the fear of the police. This fear is grounded in reality, as seen in the case above, but is also corroborated by a comprehensive research study. Ljubin conducted qualitative research on a sample of students of the Higher Police School in Zagreb in 2004, finding that male students are significantly more likely to attribute blame to victims of domestic abuse than female students, while both male and female students equally do not fully trust the victim (Ljubin, 2006). The results of the feminist organisation B.A.B.E's⁴⁶ 2007 survey indicated that police officers with secondary school education, and without additional training on working with victims, show more negative attitudes towards rape victims than more educated officers (B.A.B.E, 2008). The most positive attitudes towards rape victims are shown by officials with a higher education level who have attended additional training on gender-based violence. The low number of police reports of sexual violence creates a false sense of rape being an extremely rare form of violence and that therefore should not be a major focus of social interest (Mamula *et al.*, 2010).

Judge Krznarić commented on the Rules of Procedure for the police, stating that the wide definition of domestic violence permits the practice of dual arrests:

If he says, 'She threw my phone!' and she says 'He slapped me' the police counts the first as property damage and the second as physical violence, and accordingly arrests

⁴⁶ Be Active, Be Emancipated is a feminist organization founded in 1994 with the purpose of promoting and protecting women's human rights, publicly recognized for the uncompromising struggle for the respect of human rights on an equal basis to all citizens. More info: <http://www.babe.hr/>

them both. There is no bargaining with the police, they stick to the letter of the law, sparing no thoughts about who the primary aggressor is.

Police occupational culture has been described as highly masculine and authoritarian, glorifying violence and executing orders in a strict hierarchy similar to the military (Brown, 2007). The police have been criticised for being historically indifferent to domestic violence: “The classic police response for most of the 20th century was the do-nothing response” (Garcia and McManimon, 2011, p. 90). In a way, dual arrests can be viewed as a practice of fulfilling mandatory arrest policies in line with the law. Furthermore, the practice of dual arrests can be used to demonstrate support for gender symmetry which aims to portray women as equally capable of abuse as men and normalise conflict in the family as a common occurrence without underlying power relations (Dobash and Dobash, 2004; Garcia and McManimon, 2011). Less explicitly, a factor underpinning dual arrests is likely to be the Croatian state’s attempt to challenge gender-based violence campaigns and feminist movements’ demands for equality.

An experienced social worker, Kovačević⁴⁷, whom I met in an overcrowded office, recalled a case where a woman was arrested alongside her abuser because she tried to defend herself. She recalled this in the context of her own professional experience of fieldwork and of being unable to explain to the police officers the dynamic of domestic violence:

There was one situation where a husband was detained on the charge of domestic violence and after his release, his wife, with their child, was too afraid to let him back into their apartment. The police came to arrest her, claiming she was perpetrating economic violence because the apartment was his. I tried to intervene with the police officers, but they arrested her and pressed charges anyway.

Arresting the woman will deter her from calling the police in case of future incidents, putting her at greater risk. In a way, the woman may have been punished twice: first by the possibility

⁴⁷ Interview conducted in Zagreb, 11.9.2019

of original abuse by her husband and second by the system that does not take the context of violence into account (Miller, 2001).

Martinović⁴⁸, the coordinator of a feminist NGO that specialises in sexual rights, explained that police records show dual arrests happen in 10-12% of all cases of domestic violence, which means that in 2000 of the 14,000 cases of domestic violence which were reported in 2018 both the victim and perpetrator were arrested. While there is no official data solely for dual arrests, according to the Croatian Bureau of Statistics in 2018, 22,6% of accused of misdemeanour domestic violence were women, as opposed to 77,4% of accused who were men (Državni zavod za statistiku Republike Hrvatske, 2019).

Martinović emphasised that:

The lawmaker made a mistake [with the wide definition of domestic violence], how can you equate violence with self-defence⁴⁹? There is no concept of self-defence. It seems like you should just stand there and take it and keep repeating 'Calm down'. You are not allowed to shout or to curse him. Unbelievable.

A police officer, Radić⁵⁰, stated during our interview that the police were currently carrying out a major review, examining dual arrests and looking over 1700 cases to establish whether the police was wrong to arrest both parties. She stressed that she did preliminary research on 20 cases, in 18 of which the investigative judge confirmed charges against both parties. Radić took this as confirmation of good police practice:

⁴⁸ Interview conducted in Zagreb, 31.8.2018

⁴⁹ This refers to the wide definition of domestic violence in The Law on Protection from Domestic Violence which includes as the use of physical force which does not cause serious bodily injury, corporal punishment of children, psychological violence which causes a violation of dignity or anxiety, sexual harassment, economic violence and negligence of the needs of persons with disabilities or older persons which causes violation of dignity and physical or mental pain

⁵⁰ Interview conducted in Zagreb, 25.2.2019

It would seem as if the police officer can choose not to press charges against one person when it was evident that she too has insulted, belittled, and beaten [him]. The law says to press charges, so the police officer does not have a choice.

After being asked if the police can establish the primary aggressor, Radić responded that they can, but that it is very hard to determine what is going on at the scene:

It is easy to judge a case after it happened but when you come to the scene and you see both of them yelling and fighting it is difficult to establish who is wrong and who is right, was it self-defence or not. We never consider those police officers who are the first respondents to come to the scene, which is a truly difficult situation [for the police officers].

Dual arrests can be seen both as a backlash to women's equality and as a gender-specific implementation of a gender-neutral law that has damaging consequences for women victims of violence. Police function as the gatekeepers of the criminal justice system and their actions can deter a victim from trusting the system again (Garcia and McManimon, 2011). Closer examination of dual arrests in cases of violence in intimate relationships suggests that women's violence is usually categorically different than men's: women are rarely the primary aggressor and are usually the victims of their male partner (Miller, 2001; Dobash and Dobash, 2004). The practice of dual arrests further disempowers women by creating a false sense of gender equality in violence and obscuring existing power relations. Furthermore, the police's routine practice of dual arrests can be viewed as practising equality with vengeance (Minaker and Snider, 2006), promoting the myth of women being equally abusive as men which can be used to incite zealous penalisation as a criminal justice solution to social problems. Decades of feminist research, theory and activism are being challenged and undervalued by what is becoming a common-sense narrative of violence equality among men and women (Minaker and Snider, 2006). This simplistic narrative is likely to appeal to conservative groups which object to all legal interventions which include the terms gender and gender-based violence in the domestic sphere. It is also likely to appeal to conservative policymakers and the mainstream media, which tends

to privilege sensationalistic and reductionist narratives. It, therefore, has the potential to become dominant in the public understanding of domestic violence.

4.5 Observing the Law in Practice: Rape in the Courtroom

On 8th July 2019, I obtained permission from judge Krznarić to observe a rape trial in their courtroom to gain insight into the inner dynamics of the court. The observation of this trial is not representative of all rape trials, especially since the case in question is not a case of marital rape, which is the focus of this research, but rather is a telling vignette of the different roles judges, prosecutors, social workers, and defence attorneys hold in a courtroom. It also serves to depict the dominant narratives of victims and rape that are present in legal trials. This specific case involved a sexual offence committed against a minor, a girl of sixteen, by her next-door neighbour, a man of twenty-three.

A preliminary hearing was held after the confirmation of the indictment by the investigative judge. Excluding myself, six people were present in the courtroom: the prosecutor, the defendant and his defence attorney, the social worker, judge Krznarić and a typist. The prosecutor, the defendant and his defence attorney were men, and the judge, typist and social worker were women. The judge always presides and leads the preliminary hearing. The public is excluded from the trial and the victim is not present, her testimony being presented via video link. During the whole process, the judge dictated everything to the typist. The judge stated aloud who was present in the courtroom and briefly explained my presence as a researcher. I could see that the defendant, a young man in his mid-twenties, was uneasy with my presence since he kept glancing at me, so I decided to sit in a way that I was facing the judge and not him. First on the agenda was establishing the personal information of the defendant as well as his material status, salary, and property ownership. As later explained to me by judge Krznarić, this was done to establish the cost of the procedure he may be liable to pay in case he is

proclaimed guilty. The defendant was then asked if there are any other criminal procedures currently pending against him. He answered no. When asked how he pleads, he pleaded not guilty. The judge indicated that there has been no agreement reached between the prosecution and the defence. The deputy prosecutor read out loud the indictment and the evidence gathered as well as the victim's statement. The defence attorney proclaimed to show that the criminal offence did not happen as it was described in the indictment. He proposed a reconstruction of the event, since the rape took place in a car, and even inquired as to whether it is possible to rape someone in a car. The defence attorney also asked for expert evaluation of the victim, stating that the victim's sister proclaimed her as manipulative. He also stated that the victim goes to a special needs school and has a psychological diagnosis. The prosecutor was opposed to the reconstruction as well as the re-examination of the victim, stating that the defendant was present in the prosecutor's office when the evidence was presented. The prosecutor made a joke at the defence attorney's expense: "Obviously the defence never had sex in a car so they are not familiar with the possible positions one might find themselves in." Judge Krznarić retorted: "I will pretend not to hear this" and asked for respectful demeanour in the courtroom, telling the typist to strike the remark from the record.

The social worker said she was in continuous contact with the victim and has weekly scheduled meetings with the victim's family to provide support and supervise the implementation of parental rights. The defence attorney claimed that the victim and her mother came to the prosecutor's office to recant the statement, but they did not, and that they called the police saying they want to recant but were directed to the prosecutor's office. The defence concluded that this meant the case has no merit. The social worker confirmed that the recantation attempt was made by the victim but highlighted that there has been physical and verbal violence against the victim perpetrated by her sister who is married to the defendant's brother. The social worker also testified that the victim has been under pressure to recant from the accused's family who

are also their first neighbours. The judge dismissed the defence's claims, stating that reconstruction cannot be used to establish whether a criminal offence happened since that will be decided by the court. The judge closed the hearing by scheduling the date for the continuation of the trial. I waited until everyone but the judge and typist had left the room so I could ask additional questions and thank the judge for letting me observe the trial. Even though I was not present at the later hearings the judge generously offered to send me a copy of the verdict once it had been made available to the public.

This case sets the stage for the discussion of the victim's credibility, the prosecutor's demeanours, and the judge's power in deciding the case. Trials can be seen as a form of theatre (Felman, 2002; Taylor, 2004), where social actors have a role to play and their performance is assessed alongside the evidence presented. The vignette above comes across, at times, as a skit, especially when the prosecutor jokes at the expense of the defence attorney as if they were sitting in a work cafeteria and not in a rape trial. This can be seen as an act of homosocializing, in which men bond with each other while excluding women to preserve male dominance (Sedgwick, 1985). Both the social worker and the typist remained stone-faced, not acknowledging the remark. The judge did not humour the remark, asserting her authority which put a stop to whatever response the defence attorney had considered. In a way, the judge can be seen as a 'killjoy' refusing to give in to the banter. Making an inappropriate joke at the rape trial can be interpreted as a part of wider societal minimisation of sexual abuse and dismissal of the violence suffered by women. In a way the joke functions as an additional insult to injury since it comes at the end of the defence attorney's claims of the victim's incredibility and the request for a reconstruction of the act of rape. The wording of the defence attorney's comment seems to conflate consensual sex with rape, and seems to reduce the agency of the defendant: it's a 'possible position a woman might find herself in', rather than a position she was forced

into. The defence attorney's narrative constructs the victim as manipulative, deceitful and untrustworthy.

This is what Taylor (2004, p. 7) calls "an ageless dictum" of viewing women and children as fabricators of sexual offences, one which is perpetuated in legal trials, which "present narratives that continue to be accepted in society: women and children lie about rape and assault, fantasize about it, exact revenge through false stories, consent to sex and then claim rape, and are complicit in their protracted abuse and thus culpable for the crimes committed upon them" (Taylor, 2004, p. 28).

As I elaborate in the section below, in the Continental legal system, judges hold decisive power in orchestrating and steering the trial. This is opposed to the Anglo-Saxon system, where the judge has a more passive role and more freedom is given to prosecutors and attorneys. This was observed in the courtroom as the judge-led by asking questions, interrupting the prosecutor and the defence attorney, deciding what will be included in the record and establishing order during the proceeding.

Women comprise 71% of judges in Croatia and so are not a rarity (Aranjoš Borovac, 2019). However, this percentage drops in higher positions such as the Supreme Court, which is formed of 39% women, and the State Judicial Council (which decides on appointments of judges), which has only one woman out of seven members (Aranjoš Borovac, 2019). Even though the judiciary can be seen as a feminised profession in Croatia, the top positions are still reserved for men, thereby reproducing a patriarchal culture in which men are the final arbiters of power. Hence, the system of law can be understood as "a legal cartel deliberately designed to promote a male elite class system of power and dominance" (Taylor, 2004, p. 19).

Trials hold a symbolic role in the criminal justice system and have a significant impact on the earlier stages of the process (Smith, 2018). Both the police and prosecutors situate their

decisions on whether the case has enough merit to reach a trial. Many of the themes identified in this observed trial are explored in more depth in the cases described below.

4.6 The Prosecutor's Role and the Importance of the Indictment

Prosecutors play a crucial role in criminal cases since they are responsible for the whole course of the case. This involves conducting the investigation after the initial police report, gathering evidence, properly wording the indictment, and representing the case in court. They evaluate whether there is merit in the victim's claims and have the power to dismiss the case. Bogović⁵¹, a lawyer with a private practice, remarked that she sees a problem with prosecutors who do not process cases sufficiently, ultimately resulting in acquittal. She clarified that in cases of domestic violence prosecutors sometimes file a misdemeanour indictment instead of a criminal one because the procedure for a misdemeanour is much quicker and simpler. Misdemeanour offences are usually punished with a fine or a prison sentence which can be replaced with community service. As mentioned in Chapter 3, feminist NGOs have warned that some prosecutors do not even insist on the detention of offenders during the trial, which leaves the victim in an extremely vulnerable position (The Advocates for Human Rights and Autonomna ženska kuća Zagreb, 2012). Fear of retaliation and the unwillingness of the court to protect the victim has been identified as one of the main obstacles to victims' participation in intimate partner violence court cases (Garcia and McManimon, 2011).

In an interview that took place before I observed the rape trial, judge Krznarić voiced her frustration with the prosecutor's drafting of the indictment:

Even if the judge sees there is a crime beyond the one described in the indictment – for example I can tell that within domestic violence the woman was also raped but I don't have the indictment for marital rape – the judge cannot go beyond the indictment. One accused jumped on his cousin who was testifying against him in my courtroom in front

⁵¹ Interview conducted in Zagreb, 10.5.2019

of the whole court, causing grave bodily injury. The prosecutor refused to file another indictment for a criminal offence even though it was perpetrated right in front of her!

Trials are governed by the rules of procedure and judges are bound by the wording of the indictment which is put forward by the prosecutor. To understand the routine practices of the prosecutor's office, I asked prosecutor Tomić to walk me through procedures in investigating and collecting the evidence in cases of marital rape.

Prosecutor Tomić explained that the prosecutor usually receives the report filed by the victim from the police. The victim can report the crime directly to the prosecutor's office, but Tomić noted that this rarely happens. The deadline for the police to file the report to the prosecutor's office is thirty days. Tomić recalled one case where she got a call from the police about a marital rape report. The woman came to the police station at 3 a.m. reporting her husband for rape. "The police immediately called the prosecutor on call, which was great!" remarked Tomić. The victim was raped by her husband near her workplace on a remote hillside. Afterwards, the husband dragged her into his car and took her home, but she managed to escape once they arrived in front of their apartment. She went to the police station and reported the rape. The victim refused to have a medical exam but agreed to give her clothes to the police.

"This was the first information we got," said Tomić, "I needed her medical exam to establish if she has any injuries or anything else would point to violent intercourse." The next morning, Tomić sent the police officers again to the victim's house to persuade her to agree to the medical exam. "I wanted a female police officer to talk with her and explain how important that is [to agree to a medical exam]." The woman finally agreed, and she had not showered yet which is important for the medical exam. The husband was arrested, and the first informative interviews were conducted with their two daughters. The daughters testified about their mother's poor mental state. Tomić sent out the police to investigate the scene of the crime, but the police said the victim could not remember where she was exactly raped:

After speaking with the police again I have arranged that after the medical exam, the victim goes with the police to the crime scene, no matter how traumatic or difficult it may be for her.

The victim went with the police and found the spot where the grass was laid and where her mobile phone and keys were found. The husband was detained, and the victim described the crime in depth. Tomić stressed that in this situation as a prosecutor she had not only personal but material evidence as well. She clarified that more often than not defendants will not deny that sexual intercourse took place but they will deny it was non-consensual. A complete denial of rape was more common before there was forensic evidence identifying sperm to the defendant (Belknap, 2010). In the case above, the material evidence, in addition to the victim's and her daughters' testimonies, were sufficient for Tomić to pursue the case.

A 'stock-story' of rape is that a legitimate victim will report the crime straight away. Stock stories are a set of standard, typical or familiar stories that usually support "narratives of commonly held beliefs" (Taylor, 2004; Wheatcroft, Wagstaff and Moran, 2009, p. 266). Acquiring the daughters' testimonies in the victim's favour also contributed to her credibility. The bureaucratic curtness of wanting to solve the case can be seen in Tomić's pressure on the victim to go with the police to the crime scene immediately after her medical exam. While acknowledging the victim's distress, it did not dissuade Tomić from collecting the necessary evidence and securing the crime scene. Many victims are dissuaded from reporting because of the fear of re-traumatisation: reliving the traumatic experience again. While pressuring the victim to identify the crime scene as soon as possible resulted in the collection of sufficient evidence for the prosecution, it is unclear whether any help or psychological support could have been provided to reduce re-traumatisation. State officials' responses to women's demands are usually based on their assessments of women's needs. This is a process sometimes referred to as "need interpretation" (Fraser, 1989; Neumann, 2017). Their interpretations can be warped

by the judicial, administrative, and technical orientation of problem-solving rather than prioritising women's wellbeing.

Tomić went on to explain that there were cases in which there was no material evidence, only the victim's testimony against the defendant's testimony, which can result in halting the investigation and dismissing the case, at times even prosecuting the victim for making a false claim. "And these are the cases being reported many years after the alleged crime happened," explained Tomić. During her career as a prosecutor, Tomić indicated that she had three cases of false rape reports in which she prosecuted the claimant for false claims, one example of which I explore in more detail below. Tomić was certain these were indeed false claims, even though she mentioned previously that some victims claim they lied because they were pressured into recanting their charges.

Judge Marković⁵² used a similar discourse to Tomić when talking about rape cases and how they usually have limited material evidence: "They are the hardest to rule over since they are assessed based on 'he-said, she-said.'" The literature on rape reports also shows that this is the general characterisation of rape cases by state officials: "As a 'he said-she said' situation in which there is little more than an accusation and a denial" (O'Donohue and O'Hare, 1997, p. 247). However, as Belknap (2010) indicated, for that exact reason of treating rape as a 'he-said, she-said' situation, proving that a person is lying about being raped and falsely reporting it might prove unfalsifiable.

An extremely careful approach is needed when establishing whether a charge of rape is false, especially as most cases of rape are never reported to officials in the first place (Lees, 2002; Belknap, 2010). Also, since the majority of studies continue to support the thesis that women are still being revictimised by the police and the legal system, the fixation on false reports can

⁵² Interview conducted in Zagreb, 28.8.2018

obscure the fact that the risk of mistreatment during reporting rape is higher than any personal gain imagined by falsely reporting rape (Weis and Borges, 1973; Herman, 1992; Kilby, 2007; Wheatcroft, Wagstaff and Moran, 2009; Belknap, 2010; Taylor and Norma, 2012; Yllö and Torres, 2016; Neumann, 2017). This was echoed by Pavlović, a former shelter worker and psychologist, who clarified:

Most women are ashamed of what happened, it is said that they falsely report but in my working experience, they do not falsely report because the only thing they get is maltreatment by the system. What do they gain from [false] reporting? By reporting you are entering the system of social welfare, police and legal system and you may think, well at least he will be punished. But he will not! Usually, it is minimal or probation sentences.

In the section below I turn to explore a specific case of alleged false rape report.

4.7 Ideations of Widespread False Rape Reports

One specific case lends itself as an example of an arbitrary evaluation of a victim's credibility and alleged false report. The case involved a minor, a girl of 17, reporting her ex-boyfriend of 19 for rape, and included Tomić as the prosecutor and Marković as the presiding judge. In Tomić's own words:

We established in the end that the whole story was made up even though she was very persuasive and other circumstances supported that she was raped. She confided to her two best friends in school, and she told the same story to the school counsellor, she continued to repeat the story consistently. And in the end, we established she lied.

Tomić and Marković concluded she lied based on the online Facebook communication between the victim and her ex-boyfriend that occurred during the trial. The victim denied the communication but just before the verdict, the defendant managed to uncover one of his five Facebook accounts where they exchanged messages. Marković also expressed that the girl was

very persuasive, “in her demeanour, her looks, and her behaviour” and that the court already prepared the verdict when everything was overturned. Marković elaborated:

You see the victim in a different light if she maintained contact with her rapist. [Rape] is one ugly offence on personality and privacy. After that, if they communicated systematically, hundreds of messages, meetings in person, and then you start to question if [rape] really happened.

Judge Marković also relayed how both her and the prosecutor, Tomić, felt stunned and alarmed after that case: “We wondered, petrified, how many other meek girls led us astray with their testimonies.” Furthermore, the victim was called again to testify and Tomić conveyed her breakdown: “She broke down and confessed to falsely reporting her boyfriend out of fear of her parents since she did not make her curfew that night.”

In the case above the victim was deemed credible at first by both the judge and the prosecutor. They both stated that everything pointed to the fact that the victim was raped and that a verdict was already prepared. However, the discovery of the victim’s contact with the accused led them to question her story and re-examine her in court. It is incredible, albeit not impossible, that a false report would have gotten to such a late stage of a legal process. Also, the curiosity of the defendant having several Facebook profiles and using one of them to keep in contact with the victim was not remarked upon at all. When confronted with the possibility that something indeed had happened to the girl in the case described above, Marković replied ambiguously: “Yes, but this was a serious accusation since it involved two young persons.”

In disclosing another rape case, this time involving minors, a boy and a girl fifteen years of age, Marković characterised the accused as “a respectable and educated young man.” The rape, allegedly, happened at a party. Marković explained how it was obvious to her as a judge that the girl was highly traumatised, without disclosing more details, and how the girl later confided in her sister’s boyfriend about what happened. Marković recalls how the prosecutor pressed for

a higher sentence but there was a “terrific social worker who mediated that [the demand for stricter punishment].” Marković continued in characterising the accused:

He is a boy of fifteen years, he is not mature in a sexual sense, he has no way of knowing exactly what ‘no’ means, and he does not know what forcing someone means.

In a way, Marković’s characterisation of the accused echoes the dominant narrative of excusing boys and men for their behaviour, especially educated, middle and upper-class men, and highlights the lack of social consensus on the meaning of consent. Sexists’ perspectives on women’s sexuality allow perpetrators of rape to invoke implied consent as their defence and to claim ignorance to the fact that the victim claims otherwise (Burgin and Flynn, 2019). Also, acting with disregard to the victim’s sexual autonomy is overlooked by the judge in favour of allowing the young man a mistaken belief that he had obtained consent (Crowe, 2011).

Furthermore, this example shows how misogyny supporting the legal response to assault and rape is not always expressed clearly or straightforwardly but can be used and perpetuated in more inconspicuous ways to hide its presence (Taylor, 2004). The way Marković or judges, in general, determine who is a trustworthy victim is not clear.

Martinović, a psychologist and a coordinator of a feminist NGO specialising in sexual rights, pointed out that expert testimony is needed to explain the behaviour of victims of sexual violence to the court. She pointed out that most of the objections raised by the court about the victim’s inconsistency are unrecognised symptoms of posttraumatic stress disorder, misinterpreted as malice and deceit. Kilby (2007, p. 20) calls “the unrepresentability of trauma” the inability to adequately convey the traumatic experience to others, including the problem of interpreting a traumatic narrative from a non-survivor standpoint. Martinović elaborated:

The whole legal system is constructed in a way that places the victims of domestic and sexual violence in extremely unfavourable positions and conditions. The system is set up in a way that you [as a victim] are not retelling what happened to you but answering

yes and no to questions, without continuity, often faced with the abuser. We [the feminist NGO] are finally managing to push more for the rape testimonies [at the court] to be conducted through video-link.

Victims usually must retell their story multiple times even though the law prescribes a minimum amount of questioning to avoid re-traumatisation. Secondary victimisation triggered by multiple questionings can prompt the victim to withdraw from the process or retract her statement altogether (Wheatcroft, Wagstaff and Moran, 2009; Smith, 2018). As mentioned previously, once the victim retracts her statement the case is closed for most judges. Some legal practitioners consider the retraction as proof that the violence was not ‘serious enough’ or that it never happened. In that sense, trauma-specific behaviour can be used as a weapon against the victim by raising suspicion about their credibility which brings about the exoneration of the perpetrators (Taylor, 2004). Keeping in touch with the assailant could be one of the coping mechanisms triggered by an abnormal situation as well as the pressure to recant the statement in front of a suddenly suspicious and hostile courtroom. Victims are often caught between societal and cultural assumptions about the assault and individual feelings as they try to come to terms with the experience (Fanflik, 2007).

As mentioned previously, there are no judges specialising in sexual violence and rape cases and there is no mandatory education required for judges on these topics. The Croatian Judicial Academy holds educational workshops on a wide range of topics related to the legislation and implementation of laws. However, education on traumatic responses is not included in their curriculum. Judge Marković disclosed that there are workshops on criminal offences in general:

There is no psychological education or rules of procedure. That is something that is lacking. We [judges] learn mostly through our own cases and from previous judicial decisions, we live in the age of the internet; everything is available online, so it is on the individual to educate themselves.

Mandić, a former prosecutor whom I met in her private practice lawyer's office, stated that in her opinion:

The problem of the system is that people who work on the cases [of rape and marital rape] have not had the basic education, not only the legal part but the psychological, emotional and historical part. People like to live in ignorance.

Prosecutor Tomić, on the question of education, stated straight-forwardly:

Our professional experience is the best education. When you have worked on a dozen rape cases you can estimate for yourself what is right and what is wrong. Our experience tells us if a fact is true or not.

Decisions on cases of sexual violence depend gravely on the competence, awareness and education of individual judges and prosecutors. Different judges interpret the elements of criminal acts differently, which means that there is no legal certainty whether the perpetrator will be prosecuted for each offence and how the prosecution and the verdict will be pronounced (Radačić, 2014).

Martinović, a psychologist and coordinator for a feminist NGO that specialises in sexual rights expressed her frustration with the prosecutors:

If you call them [the prosecutor's office] to attend educational workshops [on sexual violence] they do not respond! We have uneducated police officers and prosecutors, not to even mention judges, and after initial police questioning, no one really talks with the victim. They often decide themselves what the victim needs or does not need, and then they put on the record "the victim did not explicitly ask for" so they did not do it. Even those basic things that are guaranteed as basic victims' rights in cases of sexual violence we [victim service providers] need to fight again for!

Radačić (2012) emphasised that the main reason for prosecutors dropping charges in cases of rape on the grounds of inconsistency is the lack of understanding of the experiences of raped women. This stems partly from the absence of comprehensive mandatory education on the topics of women's rights, sexual violence and trauma in law schools, bar associations and the

Judicial Academy. On the other hand, feminist and women's organisations have been raising awareness in Croatia of sexual violence and rape myths since the 1990s. Carol Smart (1989) explains how the discursive power of law denigrates and disqualifies the experiences of women, which can account for the resistance of legal practitioners to feminist claims. Moreover, prosecutors' and judges' inability to understand victims can be seen as a case of hermeneutical injustice: victims' experiences are deemed unintelligible to judges and prosecutors largely due to biased flaws in collective resources for the social understanding of rape and assault (Fricker, 2007). In other words, if collective social understanding of rape is embedded with rape myths, inconsistency and incoherency of testimonies by survivors of rape will be interpreted as proof of their duplicity and falseness. I discuss this point further in Chapter 5 on the professional construction of victimhood.

4.8 Social Workers: Between Power and Precarity

Social work as a profession in Croatia has undergone significant changes since its first institutionalisation⁵³ in Yugoslavia in 1952. It is worth noting that communist authorities at the time considered that educated social workers would help resolve social issues acknowledging that socialist ideology alone cannot remedy such issues (Knežević, Ovsenik and Jerman, 2006). The process of privatisation during the war and post-war period in Croatia mediated the systematic devaluation and defunding of the social work sector. Social work is also a highly feminised profession, as most of the "helping" professions are, including nursing and teaching, and is therefore routinely recommended for women representing the institutionalisation of care work usually performed and expected from women (Duran, 1988). In the past few years in Croatia, social workers have been routinely under attack by the media whenever a case gains

⁵³ A school for the education of social workers was founded in Zagreb in 1952 and it was the first school for social workers both in former Yugoslavia and the whole socialist bloc (Knežević, Ovsenik and Jerman, 2006).

negative public visibility⁵⁴. Martinović, a psychologist and a coordinator of a feminist NGO specialising in sexual rights, explained how patriarchy conditions scapegoating of social welfare centres dominated by women, as opposed to the police which is dominated by men.

Martinović explained further:

Enormous responsibilities and expectations exceed their [social workers'] capacities. I am not defending them, and the whole structural organisation of the ministries and [social work] centres is flawed. In terms of education, I always had the feeling that social workers and few [male] social workers are basically positive beings who are simply being swallowed and clogged by the system where they begin to feel powerless and then they start behaving indifferently. Because they want to reach out and come to the educational workshops [about sexual violence], and you see that there are people who are trying and who want to do something.

Bačić, a journalist, echoed some of Martinović's remarks:

I think our social welfare system is very inert. They do work but the question is under which conditions, our social workers have too much area to cover. I am not defending them, but there are hard conditions to work in. And it is very easy to place blame, but when something happens, and we look to assign blame we should also inquire under which conditions those people [social workers] worked.

Kovačević, an experienced social worker, reiterated:

We don't have adequate working conditions, I am not putting it as a justification, and the only justification is that we work beyond all norms and we don't have enough workers, money is spent elsewhere instead of being spent on hiring social workers in the centres.

Because of the understaffing and lack of support, social workers in Croatia tend to be more focused on administration and closing an appropriate number of cases than on the depth and

⁵⁴ Social workers are often the targets of public criticism and media scrutiny for not doing their jobs. For more info see: <https://vijesti.hrt.hr/583805/ispovijest-socijalne-radnice-kao-da-smo-na-vjesalima>

quality of counselling provided to their clients (Rajter, 2015). Social worker Kovačević corroborated this point:

I've noticed, especially among young colleagues who come straight from university, this tendency to prioritise administration and paperwork more than getting through to their clients and really talking with them.

The idea that the collective solidarity of the previous system in Yugoslavia has been lost in today's Croatia is stressed by another social worker, Kašić⁵⁵. Drawing on examples from the social welfare system, she notes how the loss of collective actions and social solidarity destabilised the social welfare system the most:

During Yugoslavia each social worker was affiliated with a [elementary] school, forming a small team with a teacher, general practitioner and a pedagogist. When a child enrolled in the first grade of school, they [the team] would work together determining social anamnesis, family dynamic. They would meet each child before it entered the school, and they could determine where we needed to intervene or prevent. As soon as our sovereign country was established, they removed that, and social work disappeared from schools.

This point is corroborated by social worker Kovačević:

A social worker used to be a known person in the field, you knew who your social worker was just like you knew your general practitioner and your on-call nurse. In comparison to current times, this has been lost.

The transition period from socialism to capitalism exacerbated social, political and economic inequalities facilitated by the wartime reallocation of assets⁵⁶ and resources that continued in the post-war period (Kostovicova, Bojicic-Dzelilovic and Henry, 2020). More precisely, as Kostovicova, Bojicic-Dzelilovic and Henry (2020, p. 6) argue:

⁵⁵ Interview conducted in Zagreb, 8.5.2019

⁵⁶ See Lorand (2015) and Čepo (2020)

“Abundant evidence in feminist political economy studies shows how post-war economic recovery through neoliberal transition reproduces conditions of poverty such as joblessness and restricts access to social welfare for women and men alike. Under these conditions, women’s already marginalised socioeconomic position leads to increased vulnerability to male control and violence.”

As mentioned above, the social welfare system was systematically defunded during the privatisation process, influencing the everyday working conditions of social workers and their clients. Violence and marital rape cannot be understood divorced from the political and economic structure of capitalism, especially in the post-war and post-socialist context. I explore these themes further in Chapter 6 on the political economy of violence.

Social worker Kašić conveyed that there is no time for counselling work or communication skills because social welfare centres are understaffed. She also noted that laws change frequently without any analysis on the ground level needed for their implementation. “There is no horizontal approach to law drafting, only vertical. A lot of laws have been drafted because of EU demands without any subsequent analysis on the ground level,” elaborated Kašić. Research conducted in Croatia has shown that various legal reforms concerning the human rights of women have been superficially introduced in Croatia following the process of accession to the EU, but no analysis or research on either a practical or theoretical level was conducted to follow up with the implementation process (Radacic *et al.*, 2009). More precisely, “International policymakers, such as the EU and the UN, remained obsessed with short-term success stories⁵⁷. What is left out, however, is the continued existence of deeply ingrained systems of impunity that undermine women’s access to justice” (Impunity Watch, 2019, p. 26). Frustrations with the bottom-down approach of lawmaking for low-level state bureaucrats such as social workers can have detrimental consequences on their work practices which impact the most vulnerable groups in society. Also, Kašić’s perceptions of law drafting can be seen through

⁵⁷ For a critique of Croatia’s status as a success story of EU enlargement process see: Čepo (2020)

the lens of the legal consciousness of social workers who are the ones implementing the laws while having no say in their drafting (Silbey, 2015).

Kašić elaborated on the systemic issues that take a toll on social workers:

Because of the [social welfare] system's overload, social workers in their first year of work experience burnout and deterioration of emotional and professional health, and in time, lack of professional responsibility. They start to lack the capacity to work with people and it is a full-time job where the pay is low so they get used to working with lower motivation and working superficially, not going deeper in the case which, I think, is very dangerous and this is when dangerous situations can happen. Elsewhere in the world, it is recommended for those in helper professions to change their workplace position every five years. At our [Croatian] social welfare centres in the departments for marriage and family people have been working there for more than 30 years, I don't know how they are even alive.

Social work has been identified as a profession with a high risk of stress and burnout (Soderfeldt, Soderfeldt and Warg, 1995; Lloyd, King and Chenoweth, 2002). There are many definitions of burnout (Soderfeldt, Soderfeldt and Warg, 1995) but, in simple terms, it is a state of emotional, physical and psychological exhaustion related to work. As outlined above, problems for social work as a profession in Croatia are both institutional and personal, because understaffing and underfunding exacerbate stress and burnout. Kovačević stressed how the state as the employer of social workers should also take care of their professional health:

Social workers are more and more suffering from depression and stress-related illness; we have pain medication and Xanax proliferating like candy in [social welfare] centres. If they [the state] want professionalism on the European level then they need to provide adequate working conditions with systematic medical exams, psychotherapies and more frequent supervisions. We cannot be given nothing while being expected [to do] everything.

Kovačević also spoke about her own experience of being held captive by a violent client in her office and explained how there is no form of protection for the social worker either in the centres

or out in the field. Rendulić, a psychologist working in a feminist NGO specialising in sexual rights, commented on the scapegoating of social workers:

We get so easily riled up against those who hold the least social power because we need to have an outlet for our righteous anger. This is why we are furious at social workers who have the least power in the segment of our society. No one is furious at prosecutors, and they cause far more damage. No one is furious at the judiciary or the police. It is not a coincidence that the social welfare system is populated largely by women.

From the discourses presented above on working conditions of social workers it is clear that they find themselves in the precarious position of being understaffed, underpaid, and overworked. They are often first in the firing line when the media assigns blame for prominent cases of domestic and sexual violence. However, social workers also have a power-laden role, as their reports greatly matter in cases of marital rape, divorce procedures and custody hearings. I elaborate further on these points in the section below.

4.9 Individualising and Justifying Violence in Marriage

Even though social work is a profession dominated by women its organisational, hierarchical structure and managerial approach tends to perpetrate wider social processes of male domination (Hudson, 1985). Social workers can reinforce patriarchal and traditional attitudes towards gender roles and expectations in the family as well as to downplay the structural dimensions of gender-based violence. Furthermore, similarly to the UK's Women's Aid organisation, which grew out of dissatisfaction with social services' treatment of battered women (Hudson, 1985), the first Croatian SOS Phone (Telefon Trešnjevka) was also founded in 1988 by feminist activists dissatisfied with the lack of state services and legalisation protecting battered and raped women (Mamula *et al.*, 2010). Pavlović, a former shelter worker, explained her professional experience with social welfare centres:

Social welfare centres tend to view abuse as the individual problem of a woman, if she did not report it early, if she did not testify about it, [they even think] it could be a form of manipulation, she wants to keep the child [in divorce proceedings] so she makes it up and accuses him of something he did not do. But my professional experience is completely opposite: most women keep it a secret, downplay, minimise, and talk about a very small portion [of violence], either consciously or subconsciously.

Pavlović also explained the pressure that social welfare centres place on abused women to organise meetings for their children with their abusive partners. Abused women are also often threatened with the removal of children for failing to protect them from witnessing domestic violence. Sometimes the social workers propose mediation in divorce procedures even though mediation is forbidden by law in cases of domestic violence. Pavlović elaborates how she often found that social workers were often very lenient towards abusers unless there is violence against children present:

She [a social worker] said to my client: ‘Madame, you need to take the child to see the father, he loves his child so much, a child should not be separated from his father for a long time, you need to put your issues on the side.’

Blažević⁵⁸, a former police officer, recalls a domestic violence case where a husband threatened his wife with a knife, and she managed to escape their apartment with their children. The social welfare centre was involved when she filed for divorce and custody of the children.

The social welfare centre told him, the abuser, her new address! I called the police and the centre; they did not issue any protective measures. The children were afraid of him because he used to beat them as well. So now, while the whole process is going on, he remained in the apartment that she is the owner of!

⁵⁸ Interview conducted in Zagreb, 25.2.2019

Blažević concluded that the institutions are unreliable since the social worker disclosed the location of the victim to her abusive husband. Prosecutor Tomić expressed her anger towards the social welfare centres:

I am especially furious with the social welfare centres, they usually don't know anything, and the system is so disorganised they do not know about each other's cases or decisions!

Social workers occupy a conspicuous juxtaposition as victims of a negligent, overloaded system, and as decision-makers who have the power to further victimise their clients, especially more vulnerable groups such as victims of marital rape and domestic violence, with their own negligence or detrimental reports.

Perpetuating detrimental attitudes towards women victims of sexual or domestic violence can be seen in a telling case of the former Minister of Demographics, Family, Youth and Social Policy, Nada Murganić. Nada Murganić (HDZ⁵⁹), in January 2017, publicly remarked on the withdrawal of domestic violence charges against the prefect of Požega-Slavonia County by his wife⁶⁰. Murganić told the press: "That's how it is in marriage. In these marital, personal and family relationships, it's a dynamic I can't go into. A woman probably has her reasons. It's within a family; I really wouldn't go into that." She also remarked that this matter should have been resolved earlier within the family. This statement caused public outrage, especially from women's and feminist organisations.

Rendulić, a psychologist working for the feminist NGO specialised in sexual rights, noted:

⁵⁹ In my previous chapters an overview of the importance of HDZ, a centre-right demo-Christian party, and the party who won the first multi-party elections in Croatia in 1990, was given. The party is currently in power. For more info see: Čepo (2020)

⁶⁰ Mara Tomašević, wife of the prefect of Požega-Slavonia County Alojz Tomašević (HDZ), had pressed charges against her husband for domestic violence (repeated humiliation, threatening, grabbing by the neck, hitting and slapping), which resulted in calls for his resignation as prefect and expulsion from HDZ. She suddenly withdrew charges she filed with the Požega County Court against her husband. Mara Tomašević warned that she was under a lot of pressure because she had come out publicly with allegations against her husband who is a public figure. Supporters of HDZ came to the defence of the prefect when the party expelled him. More info: <https://www.total-croatia-news.com/politics/24239-wife-beating-county-prefect-to-be-expelled-from-hdz>

We [feminist and women's organisations] worked so hard from 2003 to make it publicly clear that violence is not a private matter but public. Now the message is [from Murganić's statement] that you cannot talk publicly about the violence you suffered!

Social worker Lukić⁶¹ stated that Minister Murganić should have resigned for that statement immediately and that she would have been made to resign in any other country:

It's a terrible gaffe, what kind of message is that to society; that it's normal for your husband to beat you up?! She is a Minister for a certain sector, not someone in casual conversation stating their opinion. I do not know if that would be the case in France, for example, that she would be able to have said that and remain in office.

Lukić also explained, in her professional experience, that victims sometimes have the need to reconcile with the abuser and overlook the abuse, but she stressed that it is a bad thing when underage children are involved since they “are not to blame and they are not obliged to put up with such things.” I come back to this implication of children's against women's rights in Chapter 4 on victimhood.

Another social worker, Kašić, said it was horrific to have as the head of the social welfare sector an individual who “has not worked in the field as a social worker a day in her life.” Blažević, a former police officer, stated that to understand the aetiology of the submissive behaviour of women in Croatia we need to look at the *imperative* “to submit to the person we love, a learned behaviour instilled in us by our mothers, fathers, grandparents who taught us to respect men”. Blažević compared Murganić's statement to another former Minister of education, Ljilja Vokić, who is remembered by her statement that women should stand up whenever a man enters the room⁶². Former police officer Blažević called it a ‘paradigmatic’ outlook on the position of women in Croatian society. Vokić, as well as Murganić years after her, claimed that their statements were taken out of context and misinterpreted. However, these statements made a

⁶¹ Interview conducted in Zagreb, 30.8.2018

⁶² See: Slapšak (2000)

public impact which is still present in the memory of legal practitioners and social workers. Their statements can also be seen as a way in which masculine power is achieved without the use of violence: by women in power reproducing the discourse of naturalising masculine privilege and authority. In a way, such discourse represents a 'patriarchal bargain' (Kandiyoti, 1988). In an attempt to maximise their strength and potential, women adhere to and comply with patriarchal norms, adopting gender roles that are harmful to all women. In that sense, antifeminism expressed by these women aligns them with men, which makes them worthy of protection, and also provides scapegoats (feminists) on whom men can pinpoint their current alienation and dissatisfaction (Kandiyoti, 1988).

Social workers may not hold authoritative power in the legal system as judges and lawyers, but their actions and practices impact many people. They are the ones writing recommendations to the court and they are the ones in direct contact with victims and survivors of violence. As a largely feminised profession, they encounter a large number of women in their work. Their practices can reflect dominant patriarchal attitudes towards victims of rape, or they can provide support and solidarity in advocating for victims' rights. What may be lacking in the social work profession in Croatia is a form of shared class consciousness as women working in a patriarchal, neoliberal system that oppresses care providers and their clients. Currently, the prospect of radicalising social work through solidarity and encouraging social workers to identify with feminist and workers movements in Croatia does not seem very likely. This is likely due to the current political climate, the multiple positions social workers occupy as women and as state agents, and the institutional constraints they face.

4.10 Conclusion

In this chapter, I have identified several important themes for understanding institutional practices related to the issue of marital rape in Croatia. These themes answer the following

research question: “What are the institutional practices related to marital rape and do they enable or curtail victims’ access to the legal system?” The process of entering the legal system and reporting marital rape proves to be a traumatic experience for many victims and survivors of abuse. In cases of dual arrests especially, police officers can obstruct access to the criminal justice system by doing what they see as conscientiously following the law. On the other hand, the police can also hinder access to justice by deviating from the procedures, as in the case where the officer attempted to dissuade a woman from reporting abuse by pointing out the criminality of false reports. Police officers still hold prejudices against victims of marital rape and domestic violence, anticipating false reports. Some of the victims and survivors are faced with interpersonal obstacles to participating in the legal process, such as family pressure to retract their reports and remain silent.

Rape trials hold a symbolic role in the legal system, affecting procedures and practices of police officers and prosecutors assessing the case. My observation of the trial enabled me to witness first-hand the different roles judges, prosecutors, social workers and defence attorneys hold in the courtroom. Despite a large number of women judges in Croatia, the courtroom remains a place of male dominance where minimisation of abuse in the forms of jokes is present. Victims are portrayed as manipulative and fabricators of abuse whose own behaviour are used as evidence against them. Both judges and prosecutors are at times complicit in not comprehending the experiences of rape victims which has devastating consequences for the outcome of the trial. Judging which victim is believable seems to depend on the arbitrary evaluation of an individual judge or prosecutor. Systematic training and expert testimony which would explain the traumatic behaviour of rape victims is lacking. Social workers are an important part of victims’ service providers who are both at times victimised by the system and victimisers of their own clients.

Detrimental attitudes towards victims of domestic violence are present in high politics, causing occasional outrage but confirming the dominant narrative of assault being a private issue. Individual efforts in supporting victims and survivors of marital rape are obstructed by larger systemic problems such as the lack of economic and political support for victim service providers. Laws are not operationalised in a vacuum. Rather, they are put to work in a gendered, classed and racialised context which tends to disadvantage in this case historically ignored victims of marital rape. In the next chapter, I look at the professional construction of victimhood to further the understanding of the decision-making processes and internal reasoning of professionals working with victims and survivors of marital rape.

5. The Constructions of Victimhood

5.1 Introduction

In this chapter, I discuss how the category of victimhood is constructed by professionals who operate within the field of marital rape. The following research question is addressed in this chapter: “Is victim-blaming prevalent in legal practices and how does it manifest?” As previously mentioned, these professionals are judges, prosecutors, social workers, shelter workers, journalists, academics and psychologists, working in the governmental or non-governmental sector. While the previous chapter focused on institutional practices and victims’ access to the legal system, this chapter looks at the demands and labels placed on victims of marital rape. In the legal and social welfare systems, victims’ identity, behaviour, and relationships are often under scrutiny and victims are expected to translate their trauma into legal language and to rationally communicate it in a socially acceptable way. I show how some state agents, service providers and other professionals working with marital rape challenge or reinforce secondary victimisation within their professional practice. I explore victimhood in the context of marital rape widely, encompassing discourses of womanhood and gender roles that influence expectations surrounding victims’ behaviour. Victims’ rights and protections are an important part of marital rape discourses because they provide guidance for service providers and influence the decisions of the judiciary. In this chapter, I engage both with perceptions of victims’ rights and discourses on carceral solutions to showcase the wider socio-legal architecture of marital rape.

Ivana Radačić (2014), a Croatian feminist legal scholar, has identified patriarchal biases in the Croatian legal system’s approach towards cases of sexual violence by analysing court cases. Building on her findings I explore the background of these claims in the discourses of professionals working with the issue of marital rape. Society’s prejudices influence court practices and the lack of social consensus makes it possible to express these prejudices in court

proceedings and verdicts (Radačić, 2014). I explore throughout the chapter how discourses on victimhood in Croatia confirm or challenge prejudices in these proceedings.

This chapter is organised in the following way. First, I start by discussing the construction of gender identities related to the category of victimhood in the post-conflict and post-socialist context of Croatia. As explained previously in Chapter 3, victimhood of rape and sexual violence in the Croatian context is tied up with the complexities of post-war ethnic-nationalist identity construction. Even though my current research does not specifically deal with wartime sexual violence,⁶³ it is important to view all sexual violence, including marital rape, on a historical continuum to acknowledge how wartime and post-wartime discourses intertwine and enable the continuation of violence.⁶⁴ Therefore, I explore various discourses of womanhood as shared by my participants, analysing these against the backdrop of feminist literature on victimhood. Attitudes towards womanhood and constructions of gender identities, in general, can influence expectations of victimhood. I elaborate on this point by critically situating my participants' comments alongside mainstream feminist concepts such as battered women's syndrome and learned helplessness (Walker, 1979). These concepts are critically examined to highlight their usefulness or harmfulness in understanding the experiences of women survivors of abuse.

Secondly, I discuss expectations of victimhood in responses to marital rape from my participants in the context of their professional work, considering also their observations and interpretations of the treatment of victims in courts, by the police and in social welfare centres. One of the responses to marital rape emphasised by my participants is the increasingly popular discourse, in Croatia and the Balkans more generally, of parental alienation and "manipulative

⁶³ The subject of my MA thesis was wartime sexual violence in Croatia: Kujundžić, J. (2014) *Wartime Sexual Violence in Croatia: Shifts in the Public Discourse*. Central European University.

⁶⁴ See: Kostovicova, Bojicic-Dzelilovic and Henry (2020)

mothers.” I will show that themes of high-conflict divorces⁶⁵, parental alienation and “manipulative mothers” are currently being reproduced in professional welfare and wellbeing circles in Croatia, having harmful consequences for the victims of marital rape and domestic violence. Women are being held responsible for their own predicaments in violent relationships and sometimes even punished as unfit mothers for not protecting their children from either witnessing or living in close proximity to violence. Placing responsibility for the abuse on women and painting them as unable to protect their children can be seen as an indirect but still pernicious form of victim-blaming.

Lastly, I examine discourses about victims’ rights and protections comparing them with laws and legislation which protect victims’ rights. I present my participants’ views of prison sentences for marital rape as well as the idea of carceral solutions as preventative measures against abuse. Discourses on victimhood are tied with perceptions of justice, which often includes prison sentences as a desired outcome. These discourses are explored with reference to literature on carceral feminism.

5.2 Victimhood and Gender Identities

Defining who counts as a victim is a normative act. Whilst they may increase the recognition of abuse, categories adopted by the legal system may produce the unintended consequence of alienating those who do not conform with the expectations ascribed to a normative category (Goodmark, 2013). For example, early research on domestic abuse, inspired by Freud’s views on the defectiveness of female personality and penis envy (Weitzman, 2000), identified masochism as one of its root causes. Helene Deutsch, drawing on Freud, developed a theory of masochism of abused and raped women, concluding that all women are, at their

⁶⁵ High conflict divorce is an umbrella term for number of things pertaining to a divorce in which no easy compromise can be reached, including domestic and sexual abuse charges and rigours custody battle. However, the term high conflict divorce can also be used to invalidate the reality of domestic and sexual violence in order to place the blame on both parties. See: Monk (2020)

core, masochists (Goodmark, 2013). Karen Horney criticised Deutsch's theory, specifying that masochism was rooted in misogyny, women's economic dependence on men and the expulsion of women from public life (Weitzman, 2000). These conceptualisations were reproduced by most criminal justice systems in the world and often influenced the decisions of judges. Later, theories of masochism were replaced with learned helplessness theory and battered women syndrome (Walker, 1979). I elaborate further below on these perspectives and on how they apply to the specific Croatian context.

The dominant construction of victimhood is tied with public discourses and perceptions of gender identity. Conforming to society's expectations of gendered expressions of masculinity and femininity finds men being exalted for showing sexual prowess while shaming women for the same act. Violence and aggressiveness tend to be culturally glamorised (Weitzman, 2000), perhaps even more so in post-conflict settings. As I mentioned in Chapter 3, wartime in 1990s Croatia enforced a rigid, traditional set of gender identities, positioning women first and foremost as mothers and homemakers, which was at odds with the previous gender equality politics of Yugoslavia (Slapšak, 2000). This does not mean that patriarchal structures did not exist in Yugoslavia before the conflict, but rather that certain mechanisms of socialism upheld gender equality more effectively than in the post-conflict context of Croatia which was under the increasingly strong influence of the Catholic Church.

One of my respondents, Rendulić⁶⁶, a psychologist working for a feminist NGO specialising in sexual violence, explained to me her understanding of gendered constructions of victims and perpetrators:

Because over 90% of victims in cases of sexual violence have been proven to be women, and the perpetrators are men, and when men are victims, perpetrators are usually other men. And it's not that men are angry beasts born not to know how to control their urges.

⁶⁶ Interview conducted in Zagreb on 17.7.2019

We all have our urges, but society has taught us that we can release some of them, and some urges we need to control. Men have been taught that they can release and release their sexual urges. And these little boys, we make them feel bad if they are not some kind of macho guys. And we have no ways at all to talk about consent with boys.

Rendulić identified a gendered construction of violence as opposed to viewing gender-based violence in essentialist terms. She explained that boys are socialised from an early age to display “proper” masculinity in juxtaposition to femininity. This does not necessarily mean that all boys grow up to be abusers and rapists but rather that social constructions of masculinity condone the idea of violence in some contexts to uphold masculine power (Yllö and Torres, 2016). These performances of masculinity can range from more socially acceptable behaviour, such as rape jokes, name-calling women as ‘whores’ or ‘sluts’, street sexual harassment, and less socially acceptable behaviours such as physical and sexual violence towards women.

Constructing women and womanhood in passive, helpless terms influences the expectations of “proper” victimhood which might curtail women’s access to the criminal justice system. Their victimhood might be questioned if they exhibit behaviour too far from expected gender norms. I explore below how discourses surrounding the construction of womanhood feed into the expectations of victimhood.

5.2.1 Discourses of Womanhood in Croatia

Croatian society is largely seen as patriarchal (Kamenov and Galic, 2011; Galic, 2018). As mentioned previously, Croatian independence in the 1990s was strongly supported by the Catholic Church, which established and mobilised discourses of traditional family and gender roles in society. The dominance of these values is evident from my respondents’ narratives such as in the case of Blažević⁶⁷, a former police officer, who reflected on her perspective on the position of women:

⁶⁷ Interview conducted in Zagreb on 25.2.2019

I want to underline how women in Croatian society, I am generalising but it does not matter, are brought up to always fulfil someone else's expectations. For some, this is expressed in a way of having to always look pretty, look beautiful, being mommy's princess, being clean, and learning how to cook, vacuum, and iron.

Mandić⁶⁸, a former prosecutor, portrayed the reasons for the victimisation of women similarly:

The historical context of the position of women in society and the family is the cause of violence. We [in Croatia] are still a traditional society and we inherited very traditionally, archaic attitudes on how a woman should behave in marriage.

A similar point was made by a Marković⁶⁹, a judge:

We are a patriarchal society in every way, you know what a man's role is and what is a woman's role, we can say whatever we want but not much has changed.

Radić⁷⁰, a police officer, explained how she had thought that 'primitive' understanding of women has been eradicated until she heard one of the police officers in training saying: "I don't want to have a woman as my boss!" She elaborated that she thought that these kinds of attitudes belonged in the past, but she thinks that new generations, "depending on where they are coming from," harbour wrong attitudes. 'Depending on where they are coming from' refers to the geographic locations, but it has an undertone of an urban/rural divide, positioning those coming from a rural setting as harbouring backwards 'wrong' attitudes towards women.

As mentioned in Chapter 4, policing is a male-dominated, highly masculinised profession, which can explain the manifestation of resistance towards anything that would threaten the male order, such as having a woman boss. Police culture upholds a type of masculinity, that condones state-sanctioned violence and male dominance, coupled with the denigration of women (Horn,

⁶⁸ Interview conducted in Zagreb on 10.9.2019

⁶⁹ Interview conducted in Zagreb on 28.8.2018

⁷⁰ Interview conducted in Zagreb on 25.2.2019

1997). These kinds of attitudes can also prove detrimental to victims of marital rape seeking police intervention and can be the backbone to double arrests, as explained in Chapter 4.

Bačić⁷¹, a journalist, explained to me her gendered perspective on the position of women in Croatia:

I think women and mothers don't trust the system, they are not informed [about their own rights] and in a way, in our heritage and our upbringing in our region it is expected of a woman to suffer and be quiet about it, and that is very hard to eradicate.

In a way, the discourses drawing on traditionalism as an explanation of violence against women in Croatia can be seen as a more nuanced version of Balkanism. Todorova (2009) criticised western narratives of the Balkans by coining the term Balkanism⁷². The term draws on Said's 'orientalism' (1978) but with specific differences: while the Orient is positioned as non-European Otherness, the Balkans are positioned as the European Other or undeveloped Europe. The other difference is that the Orient is often presented through female sexuality, while the Balkans are presented through traditional notions of masculinity that are almost entirely absent of women (Zarkov and Drezgic, 2006). Even though not explicitly mentioned, this kind of reasoning rests on the centre-periphery worldview - more specifically, on the idea that Croatian society is backward, while the imagined West or Europe is progressive. Cultural essentialism often views culture as static and immutable, in doing so reaffirming the dominant sexual ideology by those in positions of power (Kapur, 2005). While it is true that certain traditional gendered expectations of women exist in Croatia, it is not clear if this kind of discourse helps to identify the reasons behind violence and abuse or whether it is a justification by an explanation (Weitzman, 2000). Justification by explanation refers to justifying abuse or unacceptable behaviour by providing rationale and explaining it away. Exploitation,

⁷¹ Interview conducted in Zagreb on 8.5.2019

⁷² For further discussion and critique of the term see: Mishkova (2018)

subordination and victimisation are certainly integral parts of life for many women in former Yugoslavia. However, reducing women's lives to these determinants overlooks their abilities, as well as the results and diversity of women's activities in Croatian society (Zarkov and Drezgić, 2006). It also erases social and class differences among women that give them different opportunities and the power to influence outcomes in their lives.

Kolar⁷³, an academic and women's rights activist, stated her opinion on traditionalism in Croatian society:

I would say that the extreme intolerance of women's and LGBT emancipatory movements has increased, and so has the level of intolerance and hatred, for example of persons of other sexual orientation or persons who, in a feminist vocabulary, do not follow the traditional heteronormative matrix in the public space. I think that the idea that a woman's responsibility is giving birth to children, caring for children, caring for the elderly, very little is being said [publicly] about it, but it all falls on the shoulders of women. Take into account the situation in which we find ourselves today when the unemployment rate is extremely high, and the state encourages the employment of middle-aged women in what professions? To be a gerontic-hostess [care worker], that is a transfer of the patriarchal matrix that she [a woman] should take care of the elderly. I say if that is the idea of employment it should be made available to everyone.

Kolar's feminist vocabulary of 'emancipation' and 'heteronormative matrix' presents a more nuanced gendered understanding of women's roles in Croatian society. She also identifies a certain deterioration of attitudes towards women's and LGBT emancipatory movements in the current social climate. This increase of intolerance towards emancipatory movements shows a more general awareness of the proliferation of new religious and conservative movements in Croatia (and across Europe), which advocate against LGBT and women's reproductive rights (Paternotte and Kuhar, 2017). Kolar's points also convey the entwinement of material and economic conditions with struggles for emancipation, including the state's reproduction of

⁷³ Interview conducted in Zagreb on 5.7.2018

gendered expectations in their employment measures, solidifying the idea that women are caretakers by nature. I will elaborate on this point further in Chapter 6, which addresses the political economy of violence.

The narratives of love and violence that emerge from the quotes above are explored below and tied with the analysis of discourses on victimhood.

5.2.2 Delayed Affect and Narratives of Love

Many victims and survivors of marital rape do not come into contact with the legal system until they are faced with charges against them, often concealing a long history of abuse for which help was never provided. This is often the case for older women in rural areas who cannot access support or protection (Goodmark, 2018). I elaborate on this point at length in Chapter 6, section 6.4.1. Tomašić⁷⁴, president of a feminist women's shelter, explained one of the reasons why accessing help is difficult for women from rural areas:

The problem that women face in smaller towns is the fact that often the police officers are friends with the abuser, so when they go on the intervention for domestic violence, they do not write a report but convince the woman that it is better not to report anything because the abuser has ties with the police.

The situation described above can lead to fatal outcomes. Former police officer Blažević shared her experience of working as a correctional officer in the prison system and encountering women victims of sexual and domestic violence who ended up in prison for killing their husbands.

Since I worked in the prison system, I know a lot of women who endured violence for more than forty years, and who ended up in Požega⁷⁵ prison. They endured all kinds of violence, usually, they had three or four children, because, and this was their life script, they told themselves: 'When I raise my children and they move away, I will judge him'.

⁷⁴ Email correspondence on 30.4.2019

⁷⁵ Požega is town in Eastern Croatia where a penitentiary for adult female prisoners is located.

It's a delayed affect because this [child rearing] is more important, this is on the top priority list, but when the last child moves out, gets married, leaves school, gets a job... I had three women who were seventy-three and older because that's the age [when the children have grown up], they killed their husbands with axes while they were sleeping.

Blažević shared with me that she had an education in psychotherapy, evident in her use of terms such as life script and delayed affect. Her education influenced her understanding of why women who suffer long term abuse decide to kill their partners in their old age. Life script is a term coined by Eric Berne and used in transactional analysis. It refers to a set of unconscious beliefs originating in childhood, reinforced by the parents and solidified later in life by attributing meaning to events according to those beliefs (Berne, 1972). According to Blažević, women who end up killing their abusers after enduring long-term abuse do so because of unconscious childhood decisions. However, while there may be some causes in childhood that would contribute to the likelihood of a person being abused later in life, this explanation is simplistically deterministic. It also does not explain the cases of abused women with adverse childhood experiences who manage to leave their relationships without fatal outcomes. Since transactional analysis views these decisions or beliefs as happening unconsciously, it is impossible to verify such claims, which might also lead to oversimplifying relationship patterns. However, it is worth noting that transactional analysis appealed to many feminist therapists and women's therapy groups because it paved the way⁷⁶ for radical therapy as a political movement (Burstow, 1992). Blažević's outlook on abused women's life scripts aligns with the teachings of transactional analysis combined with consciousness-raising. Transactional analysis was often used in combination with consciousness-raising in women's therapy groups to problematise the oppression of women in society and the internalised oppression of women by themselves (Whalen Harrison, 1980). Radical therapy as a political movement refers to the

⁷⁶ See: (Wyckoff, 1975; Whalen Harrison, 1980)

psychiatry-critical movement in the 1970s which asserted that most mental illnesses were not best treated by individual behaviour modification but rather with social change.

A mainstream feminist explanation for women who murder their partners has been the “battered women syndrome,” which refers to cumulative abuse as a trigger for women who murder their husbands or partners, rather than a single incident (Walker, 1979). The term has been criticised for reinforcing the idea of the victim’s mental instability and denying the victim’s agency and right to defend themselves (Garcia and McManimon, 2011). It is interesting to note that Blažević’s perspective differs from the battered women syndrome explanation, in that it perceives abused women as active agents with a delayed affective response to the abuse rather than as passive victims who reached a tipping point after cumulative abuse and killed their husbands. This is important to note because it presents a shift in thinking about women victims of abuse who kill their husbands and it positions them as active agents in their own lives which is not a perception common to state agents (Goodmark, 2013). I elaborate more on this point below.

Mandić⁷⁷, a former prosecutor and a private practice lawyer who worked with numerous women’s organisations in Croatia, explained her view of relationship violence:

The story of violence always starts with a story of love and the belief in all people, especially women. Sometimes I call this a pipe dream, that ‘there is an ugly world around me, but in my story, roses will bloom’. That is the hallmark of the belief in a relationship, a desire for community. When women are not educated to recognise and set a boundary [which should not be crossed], that boundary is being crossed a little bit more every day.

bell hooks asserts that despite overwhelming evidence to the contrary we still assume that we will learn how to love and be loved in our primary family (hooks, 2000). Many families are

⁷⁷ Interview conducted in Zagreb on 10.9.2019

dysfunctional in various ways but are not necessarily harmful to child development. Early childhood experiences of violence and abuse within the family can end up associating abuse with love, which has a detrimental effect on adult relationships. There are many ways our society and culture justifies intimate partnership abuse which influences the individual justifications: “So that just as we would cling to the notion that those who hurt us as children loved us, we try to rationalise being hurt by other adults by insisting that they love us” (hooks, 2000, p. 9). This rationalisation might justify staying in abusive relationships by drawing from the childhood experiences a skewed expectation of what love is. There is also the societal perception that a woman’s value is tied to the perceived success and longevity of their romantic relationship. A heterosexual union of marriage is still viewed as proof of fully belonging in society and of being socially recognised as mature, well-adjusted and well-functioning adults (Roseneil *et al.*, 2020). Heterosexual marriage is protected and modelled by the laws, policies and social relations which normalise the couple-norm and determine outline experiences of self-determination, belonging and recognition in intimate life (Roseneil *et al.*, 2020).

Mandić explained that women deluded themselves into staying in abusive relationships:

And then there is always that hope: 'Other times it will be better, he is tired, he was in the war, his boss insulted him.' Finding excuses because it is very difficult to sit down and look and say: 'I have been in this marriage for fifteen years, I have two children, I am financially ruined, I am physically ruined, destroyed, and alone, I do not see any perspective.' Or there is no parent [to help], or a brother does not think he needs to help his sister.

Mandić views women as victims of their hopeless romanticism and naivety which can be located in the mainstream feminist conception of women victims as subordinate and passive. This is a stereotypical image that some state agents also expect to see. As a result, women who defy this stereotype can find themselves unrecognised as victims and denied victimhood in the legal system (Goodmark, 2013). Women who refuse to testify against their partners and who

counter the idea that the goal of every victim is to leave the abusive relationship might encounter exasperated and hostile responses from state agents as well as service providers.

5.3 Expectations of Victims

“It came to me at one point to grab her by the shoulders and tell her: ‘So do something for yourself finally!’”⁷⁸

Victimhood is gendered and there are prevalent expectations of how a “proper” victim behaves during police interviews, in the court and in social welfare centres, that are determined by wider societal gendered expectations and stereotypes. When it comes to marital rape, police officer Radić states that, from her own professional experience, many victims do not recognise marital rape as rape:

I had one or two marital rape cases, it started with domestic violence and then this [marital rape] came to light as well. All forms of domestic abuse were present, both the wife and children were abused, and there was also physical, verbal, economic violence. He [the husband] would forbid her from communicating with other people, locked her in and prevented her from going out. If she had made any money, he would have taken it, he would always limit how much money he would give her and then she told me of one incident of marital rape which happened against her will. But she did not perceive it as a criminal offence because there is still an awareness that you have to be of service to your husband and your man and that this is okay.

Even though marital rape can occur in marriage without physical violence, marital rape is more likely to be recognised and taken seriously if other more apparent forms of violence are also present. For the victims, it also may be easier to report physical violence than marital rape out of fear of not being believed or having the burden of proof placed on them by sceptical police officers or social workers (Wiehe and Richards, 1995). Furthermore, during divorce proceedings, the rape charge can be used against the wife in her attempt to secure a better position in the divorce. This last point will be explored further in section 5.5 on constructing women as manipulative mothers.

⁷⁸ A quote from the interview with police officer Radić in Zagreb on 25th of February 2019

Research on marital rape has shown that the reasons why some victims do not recognise marital rape as rape are due to the socialisation of women in which they are conditioned to believe that violence in marriage is normative and expected, a sense of duty towards fulfilling the expectation of sexual availability and associations of rape with strangers lurking in the dark alleys (Gelles, 1977; Yllö and Torres, 2016). Furthermore, not recognising marital rape as rape can be sustained by a just world hypothesis which is a cognitive bias that assumes that everything happens for a reason and that people get what they deserve in life (Lerner, 1980). This bias explains and justifies victim-blaming by providing a false sense of control in an unpredictable world (Hayes, Lorenz and Bell, 2013). Furthermore, not recognising one's victimisation as rape, might function as a coping mechanism that sustains the just-world belief. In other words, not recognising marital rape as rape but as a violation that a woman must endure in marriage (Yllö and Torres, 2016) upholds the patriarchal order in which men hold power over women and normalises (women's) suffering as a part of that order.

Moreover, perceptions of victimisation may be influenced by what Nils Christie (1986) calls the 'idea victim.' According to Christie to be considered an 'ideal victim' certain characteristics need to be present: being weak, being young or old, is engaged in a respectable and legal activity, getting attacked by a stranger in a public place, explicitly struggling against the attack and reporting the incident immediately to the police (Christie, 1986). It is easy to see how a victim of marital rape already lacks several characteristics to be considered 'ideal victims.' Their attacker is their partner, the incidents most commonly happens in the privacy of their own home and, as I show in the examples below, struggling against the attack might not be an option for these women.

Radić also relayed feelings of frustration with cases of domestic and sexual violence and her reasons for not working on such cases anymore:

And the situation when I estimated that I should leave [working on cases of domestic violence] was precisely to do with women victims of violence when it came to me at one point to grab her [the woman victim of violence] by the shoulders and tell her: "So, do something for yourself finally!" That was the moment I withdrew, and I could not listen to that anymore. These are difficult situations: one tries to understand but the worst is when you collect all the evidence and everything and build up the case and then she refuses to testify in court. This is a really difficult area to work in. A person must have extraordinary empathy, understanding, and understanding of all these processes that are going on in the head of a woman victim of violence to be able to do it well.

As explained in Chapter 4, professional burnout is not uncommon for service providers working with abuse cases. Radić's acknowledgement of her professional fatigue and reasons for leaving abuse cases provides an insight into the feelings and frustrations of state agents. It may be the case that, the frustration expressed by Radić is misdirected at the individual victim rather than facing the fact that the justice system fails to deliver justice to victims. The account also shows more generally how state agents are reluctant to or incapable of making the connection between the personal and the political, instead of perceiving the abuse and violence as individualised without taking into account the wider societal context. Moreover, the victim's inability to 'do something for herself' might be a symptom of larger, systematic issues and institutional constraints as identified in Chapter 4 which remain ignored by many state agents.

Former prosecutor Mandić corroborates the point that many women do not even recognise marital rape as illegal as they think that they are not able to deny themselves to their husbands:

You don't recognise this as sexual violence because 'he is my husband', so everything is allowed, you have no family support, you don't work, you have no money, your community condemns you, you have nowhere to go. We all want to survive and that's how we act. 'I am withdrawing my statement because I want to survive, he has promised to change, and I have no choice'. And you have no right to be angry with these women from the perspective of your cases and statistics.

Mandić was referring to the anger sometimes expressed by state agents such as the police or prosecutors when abused women drop their charges or refuse to participate further in the proceedings. Her portrayal of abused women might be pessimistic but it serves as a case in point for the reasons of refusing to testify which can be ignored or overlooked by other state agents focused on the penalisation of the abuser.

Judge Marković conveyed her discontent with the spousal privilege of having the right to refuse to testify against one's spouse:

I had a case recently involving marital rape which also involved a child being present, so it was two offences in one case: marital rape and a violation of children's rights. With spouses and ex-spouses, there is a problem that they have a legal right to call upon their spousal privilege. This is quite a big problem, especially when it comes to the situation where the victim initiated, the victim filed a criminal complaint! The wife or ex-wife filed a criminal complaint against her husband, and then the whole legal apparatus is set in motion, from the police, the State Attorney's Office to the court and then the victim comes and says: 'I accept the spousal privilege, I don't want to testify.' I am not a supporter of this, because if you have reported a crime, regardless of whatever motives, regardless of the later circumstances of life, I am not sure we should allow victims that right [to refuse to testify]. Because ultimately it can be economically motivated, it can be blackmail, family pressure, I don't know what, and once the violence happens it's evident that the violence will happen again, maybe it could have been prevented by simply saying 'you reported and you must testify.' Only in cases of violation of children's rights, no one can refuse to testify about that.

Forcing women to testify against their husbands might be seen as not prioritising the needs of victims and survivors and placing the law's truth-seeking above all else (Smith, 2018). It is not clear how denying spousal privilege would resolve the issues of blackmail, economic dependency, and family pressure when there are no mechanisms in place that would protect or

help the victim after testifying. Pavlović⁷⁹, a former shelter worker provides a rationale for the withdrawal that judge Marković wants so adamantly to curtail:

Her intimacy, all the traumas she went through, all taken out, and the state agents act with it [at the court], often completely insensitively as if it were just one case file in a row. Most often, abusers get very angry and intensify their violence, so I don't see why women would report at all. Because most of the time, they don't get any support from the system, they just get condemnation, they get a very large number of condemnatory comments.

Women withdraw from the legal process for various reasons, some of which were listed by Marković above. However, culpability for withdrawal can be found within the legal system's processes, which revictimize the victim. Many rape victims withdraw when they experience distrust, doubt, or condemnation from the court, or when they realise that their testimony worsens their situation or endangers them (Belknap, 2010). Moreover, as Pavlović pointed out, many abusers intensify their violence during the court trial which can consequently endanger victims' lives.

5.4 Responses to Marital Rape

*“We don't need our clients to be ideal victims”*⁸⁰

Women who experience physical abuse in their relationships are more at risk of marital rape (Bennice and Resick, 2003). Martinović, a coordinator for an NGO specialising in sexual rights, confirmed from her professional experience that marital rape happens as part of domestic violence. Martinović elaborated on the process of reporting marital rape and the problems with the legal system:

Sexual violence committed by a husband, ex-husband, partner, ex-partner, is still largely unreported. Even when a woman reports domestic violence, she does not talk about this

⁷⁹ Interview conducted in Zagreb on 1.9.2018

⁸⁰ A quote from the interview with psychologist Rendulić in Zagreb on 17th of July 2019

[marital rape]. For example, in one case it happened during the process of divorce, they still live together since custody and property rights have not been settled yet. She slept in the living room, he came to get her in the middle of the night, gagged her and raped her. She did not yell or scream, of course not, she had two small kids sleeping in the next room. In court, it ended up being classified as sexual intercourse without consent instead of rape.

As I explained in the previous chapter, the introduction of sexual intercourse without consent in Article 152 of the Criminal Code was a way to prosecute in cases where no use of force or threat was present. This meant a lot of marital rape cases ended up being qualified as sexual intercourse without consent instead of rape, which also resulted in lower sentences. After years of lobbying from feminist and women's organisations and increasing political pressure from countrywide protests against sexual violence in 2019⁸¹, the Government announced a criminal justice reform. On 1st January 2020 article 152 was removed from the Criminal Code and the definition of rape was widened in article 153. The description of sexual intercourse without consent was placed in the first paragraph under the criminal offence of rape in article 153, which prescribes one to five years imprisonment. In the second paragraph of the same article, rape is still defined by the use of force or threat and the prescribed sentence is three to ten years imprisonment. Whether the increase in sentences and removal of article 152 in the Criminal Code will foster real change in practice is yet to be seen. It can be seen as a matter of *signalpolitik*, referring to legislation changes for the sake of appearance that are unlikely to make a real difference (Edwards, 2019). Some scepticism is warranted since no broader reform

⁸¹ In Croatia in 2019 thousands of people joined in mass protests under the slogan "Justice for Girls" following a prominent media case which reported on a judge's decision to release from custody five young adults accused of gang-raping, blackmailing and threatening a fifteen-year-old girl (Vladisavljevic, 2019). This was the first protest ever in Croatia which focused exclusively on the issue of sexual violence and rape. The protest was organized by the Initiative #Spasime which formed in the March 2019 prompted by the Facebook post of Croatian actress Jelena Veljača who was expressing her shock at the recent events of domestic violence in Croatia and called for a mass protest urging the state to adequately protect the victims of domestic violence. Many women's and feminist organizations supported and advised the initiative. The protest in Zagreb gathered more than 48.000 people including the attendance of the Prime Minister. The initiative's fund gathered 400.000 HRK (48.494 GBP) for the victims of domestic violence. Veljača's visibility and popularity contributed to governmental proposal of the criminal justice reform.

and cultural change is foreseen beyond the criminal law which, on its own, cannot remedy deeper societal gender biases and patriarchal values (Walklate, Fitz-Gibbon and McCulloch, 2018).

The psychologist Rendulić,⁸² a participant who works directly with victims of sexual violence in a feminist NGO, stated that the crux of their work as NGO workers is to help women make sense of the legal and administrative information coming from different institutions because the system itself is badly connected. She stressed that sometimes the information about their cases is confusing and not understandable to a layperson: “If the information these women get is unclear or not understandable it is the same as having no information at all,” concluded Rendulić.

Rendulić’s NGO often helps their clients to interpret legal and social welfare reports, verdicts and evidence. Rendulić also stated that many women victims of sexual violence that she had worked with had issues with their mental health, which was often taken as a discrediting factor by low-level bureaucrats. Rendulić reported that in the scope of her work she witnessed situations where low-level bureaucrats such as police officers and social workers made fun of the victims because of behaviour that was a consequence of their poor mental health caused by violence and trauma.

We [victim service providers] have seen a lot of inadequate reactions of state officials on some truly uncomfortable behaviours of our clients. We don’t need our clients to be ideal victims, they have lived through all kinds of things and they behave in all kinds of ways, which is completely fine. That cannot be an excuse for officials who encounter victims, they need to know better, sometimes they have made fun of the victims. Some police officials and social workers in the welfare centres used to mock them [the victims].

⁸² Interview conducted in Zagreb on 17.7.2019

She recalled a case where she accompanied a woman who was pregnant, as a consequence of rape, to a doctor's examination:

And the doctor yelled, actually he did not yell, he said out loud- in the room for the examination which is full of other people, patients and nurses: 'This is that rape case.' You cannot do that! That is something that completely devastates the woman at that moment.

Belittling and erasing the harm that abused and raped women experienced from state officials and service providers further dissuades victims from engaging with the legal system or withdrawing during the process. A woman's status as a legitimate or illegitimate victim depends not only on the type of violence she experienced but also on the way she presents herself: women who appear visibly distressed or act in what deems to be an inappropriate way by state officials will be taken less seriously, obstructing her process of seeking justice (Neumann, 2017). The insensitivity of the doctor in the vignette above shows how rape cases are still treated as a curiosity rather than with awareness and sensitivity.

Lukić,⁸³ a social worker told me she thinks there is more than one reason why victims of domestic violence do not talk about rape:

It is probably shame involved and that notion of duty, 'Did I have to do that or not, did I want it or not' that is probably also not clear [to the victim]. Again, shame, since you need to tell a lot of details about it, and there is an investigation, an intrusion, you need to have a lot of details and evidence, which is very unpleasant [for the victim] and specific to these cases [of marital rape]. That is all very intimate which is why probably it is easier to talk about physical and verbal abuse. I think there are many more cases than we are aware of, it is a dark figure.

She added that victims sometimes feel the need to reconcile with their abuser which presents problems for social welfare centres when there are children involved:

⁸³ Interview conducted in Zagreb on 30.0.2018

If there are underage children involved, we need to respond to that [as social welfare centres] because they [children] are innocent, and it is not their duty to put up with such things or to be exposed to it [the abuse].

Invoking the innocence of children is reminiscent of conservative discourses that exploit the notion of protecting children from real or imagined harm by scapegoating marginalised groups such as the LGBT population (Paternotte and Kuhar, 2017). Also, the statement above can be put further blame on both parents for exposing the children to violence. It places the responsibility of protecting children on abused women without naming the perpetrator and identifying the victim, which is a gender-blind approach to domestic violence. I elaborate on this issue in the vignette below.

I met Pavković⁸⁴, a clinical psychologist working in the Centre for Abused and Neglected Children in a newly built compact square building located in the city centre. The interior design of the building was reminiscent of a private polyclinic, even though the Centre was founded by the City of Zagreb and is a public service. Pavković had trouble remembering cases of marital rape since her work is primarily with children, but she did remember a few cases of children witnessing violence where the mothers claimed they were raped. Throughout the interview she referred to women as mothers, stating her professional occupation as a child psychologist looks at the issue from the perspective of children's best interests:

I know we had a few cases [which involved marital rape] and these were highly traumatising cases since women who are victims usually have very low capacity to help the children out and they can be very punishing towards their children. There is high stress in the family and a horrible fear present.

⁸⁴ Interview conducted in Zagreb on 5.3.2019

Interestingly, the sentence above does not mention the perpetrator of violence and his responsibility at all: the focus is squarely on the women victims of violence who are characterised as inadequate mothers who do not protect, and even punish, their children.

Goodmark (2013, p. 66) asserts that abused women are usually seen as unprotective mothers:

Mothers subjected to abuse face a classic Catch-22: if they act in conformity with victim stereotypes, they lack the agency to be trustworthy, protective, “good” mothers. If they defy the stereotype, they can’t really be experiencing domestic violence. Either way, mothers subjected to abuse lose in the legal system.

Other system actors may share the same sentiment that abused women cannot adequately care for their children. Pavković elaborated on a domestic abuse case that left a lasting impression on her because the woman managed to protect her children:

That woman was in mortal fear, real mortal fear. But what set her apart from other women, in my opinion, is that when she realised her children were also endangered, she managed to push aside her fear and she took them to the police station claiming she will not leave until they make it safe for them to return home. It was a horrible case, and it made a lasting impression on me. As child experts we have trouble with the fact that children are exposed to abuse for years, it is one thing to fight for yourself and not have the strength to fight off your abuser, I sympathise with that as a psychologist. But as a child expert, it is hard to accept that mothers don’t protect their children.

The narrative above presents a false dichotomy between abused women who protect their children and those who fail to do this. The first are good mothers- they have protected their children despite their fear- and the second are selfish, bad mothers, who have succumbed to their fear of the abuser. Again, the abuser’s responsibility for the violence is absent from the narrative. This tendency of placing the responsibility of violence on the victim ultimately hurts women and discourages them from seeking help. Blaming the victim, in this case, stems partly from misunderstanding the gendered dynamics of violence and minimising the trauma of

intimate partner violence and sexual assault, but most of all, it stems from systemic misogyny which positions women primarily as mothers.

Former shelter worker Pavlović remarked on the circumstances of the victims, offering a strikingly different perspective from Pavković:

Some [women's] shelters function in a way they place a woman in crisis in the shelter for a week, two weeks or three months which does not solve anything since the victim has not resolved her own material existential situation, custody has not been resolved, and she becomes disheartened and return [to her abuser], which in my opinion, means she will not seek help again. If a woman returns to her abuser, and the social welfare centre was notified about the abuse, they automatically see her as an accomplice to the abuse because they think she purposely subjects her children to the abuse. They ask: 'Why didn't she leave?' and they conclude that maybe both of them need to be put under the supervision of their parental responsibilities. They are both put in the same boat. In Croatia we have very little of that, which I think is standard in the world, to delineate the abuser from the victim and to identify the primary aggressor. In Croatia that is completely irrelevant.

The legal system tends to be suspicious of mothers who claim to be abused, and this suspiciousness becomes very evident in the areas of child custody and divorce procedures (Goodmark, 2013). In the vignette above it can be seen how the economic circumstances of abused women are not considered by social welfare centres. Instead, a victim-perpetrator reversal takes place, and an abused woman is moved from her position of being a victim to being a perpetrator for returning to her abuser and exposing her children to the violence. It is alarming to see how easily state agents engage in victim-blaming when allegations of abuse are connected to divorce procedures. Prosecutor Tomić's⁸⁵ statement portrays this sentiment in her explanation of false reports:

⁸⁵ Interview conducted in Zagreb on 29.8.2018

False reports are usually related to divorce or breakup, these are troubled relationships and they [women who falsely report] want to get out of it and this is the fastest ticket to do it.

Police officer Radić's statement resonated with that sentiment:

Nowadays, among women there is a trend if they don't want their partner to see the children, they report him for domestic abuse and that is settled. We need to look at the matter from all sides, there is always misuse [of reporting]. And when real, serious victims have a hard time even deciding to report.

As I mentioned in Chapter 4, it is unclear what exactly women gain by falsely reporting, given that getting involved with the legal system is a long and arduous process. Also, it is unclear how this is the quickest way out of a relationship since the legal procedure takes a significant amount of time, and multiple questionings and scrutiny about what happened inevitably ties women to their partners for a prolonged period. It is a well-known fact that in cases of domestic abuse and marital rape, women who try to leave the relationship are more likely to get murdered by their husbands and partners than in relationships without abuse (Miller, 2001; Ellsberg, Carroll and Heise, 2005). As I will show in the section below, Radić's suggestion that it is relatively simple for women to prevent their abusive husbands and partners from seeing their children is not accurate. In the cases discussed below, abused women who are mothers have much to lose when engaging with the legal system.

5.5 Constructing Victims as Manipulative Mothers

*"You will be labelled as an abuser of your own children"*⁸⁶

The Centre for Abused and Neglected Children (the Centre) is the first of its kind in Croatia, founded by the City of Zagreb in 2002. It plays an important role in assessing and providing support for children victims and witnesses of abuse and other crimes. This includes

⁸⁶ A quote from the interview with psychologist Rendulić in Zagreb on 17th of July 2019

forensic interviews with children which can be used as evidence in court via video link. Judges in Croatia can use the services of the Centre and include their reports and recommendations in their decisions. The Centre does not take gender into account when assessing cases, which is something that has been noted by feminist service providers and especially feminist women's shelters and NGOs, who sometimes clash with the gender-blind ideology of the Centre. For example, a well-known feminist NGO B.a.B.e (Be Active, Be Emancipated) collected court verdicts in which abused women were pronounced as emotionally abusive towards their children by the Centre and this label was then used by the courts against them and negatively affected custody of their children (B.A.B.E, 2012). These abused women were considered manipulative mothers and emotionally abusive towards their children because the children refused to see their father. This was seen as the mother's fault, because she allegedly turned the children against the father when in fact, the father was the abuser.

Martinović,⁸⁷ the coordinator of an NGO specialising in sexual rights, commented on several problematic issues with the work of the Centre:

It is better [for Croatia] to have the Centre than not to have it but I do not agree with all their decisions. We had a case of a woman whose husband attempted to kill her three times, he was a real psychopath, they had two sons, and the Centre wrote a report labelling her as a manipulative mother, suggested that she turned the sons against him and he was given custody of both sons. It is unbelievable, you have a serious perpetrator of violence who did everything else except sexually abusing the children and you give him both sons, full custody. The Centre is very important for children across the region, but they can cause damage in Croatia, Slovenia and Montenegro, I see that because I was often involved as an expert trainer in the workshops with them. We don't disagree when it comes to children [exposed to abuse] but we do have a disagreement when it comes to the context.

⁸⁷ Interview conducted in Zagreb on 31.8.2018.

The courts take recommendations from the Centre seriously and often call on the psychiatrists and psychologists from the Centre to testify as expert witnesses. As described in the cases NGO B.A.B.E collected, abused women recounted that if their children refused to see their abusive father and social welfare centres accused them of emotionally abusing their children. The women explained how the centres often ignored previous verdicts of domestic violence against the father and insisted on the father's visitation rights despite women voicing concerns for theirs and their children's safety.

The Centre was specifically called out for labelling these abused women as manipulative mothers. The term manipulative mother is used colloquially in Croatian, whereas in the literature disseminated by the Centre the term used is "parental alienation or induced psychological splitting after divorce or separation."⁸⁸ Interestingly, leading educators on this concept, who were hosted many times by the Centre in Zagreb, are United Kingdom-based psychologists Karen and Nick Woodall, founders of the Family Separation Clinic based in London. Parental alienation is recognised by feminist researchers and practitioners as a problematic concept that enables the perpetrator of violence to renounce accusations of domestic violence and sexual assault as attempts to alienate him from his children (Monk, 2018). It is not only feminist researchers and practitioners who have found this concept problematic and a high risk for victims of domestic violence. The European Association of Psychotherapy stated in 2018 describing the concepts of 'Parent Alienation Syndrome' (PAS) and 'Parental Alienation' (PA) as 'unsuitable for use in any psychotherapeutic practice' (European Association of Psychotherapy, 2018). They elaborated on how these terms can further pathologize and victimise children and other victims of domestic abuse, as well as that these concepts ignore the gender-based dimensions of domestic violence. The statement urges practitioners to distinguish between an antagonistic divorce or separation and divorce or

⁸⁸ <https://www.familyseparationclinic.com/reading/book/>, date accessed: 3.6.2020

separation where domestic violence is present. It is highlighted that ‘neither PAS nor PA are included in any international classifications of mental disorders (DSM and ICD) and psychotherapists should therefore not use these terms as diagnostic categories’ (European Association of Psychotherapy, 2018).

Separating children’s services and services for abused women enables children service providers to separate domestic violence and the right of the child to have access to both parents. Women’s Aid, a leading United Kingdom charity working to end domestic abuse against women and children, emphasised in their 2014 report that a child’s contact with a known abuser puts both women and children at risk (Women’s Aid, 2014). Insisting on child contact during and after conflict divorce can also be seen as a conservative outlook on the necessity of a nuclear heteronormative family for the healthy upbringing of children. There were several cases in which both women and children were known to be killed by the abuser during unsupervised court-ordered contacts (Women’s Aid, 2014).

Martinović remembers a case of domestic and sexual violence where a young teenage girl was sent for evaluation to the Centre for abused and neglected children:

The girl’s mother was a factory worker and she could not get a day off, so the girl went to the Centre alone. But you could see the girl was tough because she asked to see the paper with the report after her evaluation and when she saw that they have characterised her mother as ‘not supportive’ she ripped the report in front of them and told them to ‘fuck off’ since her mother was a saint! And she turned around and she left. I am so angry at my own profession [of psychology]; they do not take the context into account. It does not occur to them to question the system; they question her mothering! There is no context, only ripped out pieces and something misogynistic in the foundations [of such reasoning]. Women’s rights are not something very popular.

In the vignette above the interesting aspect is not only the quickness of discrediting the mother for not accompanying her child for the evaluation but also the class dimension with middle and

upper-middle-class professionals working in the Centre juxtaposed with the factory-working victim of abuse. Martinović's anger can also be seen as anger towards the gender-blind approach of various psychologists working with abuse and sexual assault who miss out on the complex gendered dynamics of violence which in turn can lead to the further victimisation of women and children.

Psychologist Rendulić explained her professional and personal grief with the concept of parental alienation, in a way comparable to the statement issued by the European Association of Psychotherapy:

Now the abusers can use this term [PA] against the victims, and in all honesty, of course, there are all kinds of parents out there, mothers of all kinds and child manipulation is not something that happens rarely. But we cannot look at the cases outside of the socio-economic context and think that it is 'ideological' to say that men have more power in society, that's terrible. Now women will stop speaking out about violence out of fear of being labelling as manipulative mothers. Before it was: 'You cannot leave me, I have the money, it is my house and it is not good for the children to have separated parents' now it is: 'You will be labelled as an abuser of your own children' and that is a big problem. Of course, parental skills can be poor in both mothers and fathers. But the way this topic is approached is very worrying to me.

There is a difference between the awareness and approach of professionals working with the issue of marital rape who take socio-political and socio-economic context into account and those who do not. Understanding how gender and power operate in society helps to address the problem of abuse and rape without falling into the gender-blind trap that ultimately hurts victims of abuse the most. Unlike Rendulić, social worker Lukić conveyed her lack of understanding of the intricacies of abuse and divorce. She stated her suspicions towards a woman who reported child abuse during the divorce procedure by claiming that a lot of acceptable behaviours in marriage becomes unacceptable when a divorce takes place:

In one case, a dad used to take baths with his small child, which I thought was strange, but the mother knew about it as she was there. When she filed for divorce, she suddenly reported her husband for sexually molesting the child by bathing with him naked. Whether she reported him out of revenge, or something really happened, I do not know. These are very delicate situations with children, and women usually report their husbands when the divorce procedure starts.

While it is impossible to determine whether sexual child abuse happened or not in the case above, Lukić's discourse of possible revenge and ulterior motives is indicative of a knee-jerk reaction towards women who report their husbands during divorce procedures. Stereotypes of women seeking revenge against their partners by reporting them for abuse seem to be present in the perception of many agents, even though there is no legitimate data to verify this perception. Following from the narrative above it seems that a woman reporting abuse during the divorce procedure is automatically under suspicion. Professionals who lack experience with domestic and sexual violence may rely on assumptions and stereotypes they hear from other professionals about the dubiousness of abuse reports and build unfounded impressions of the ulterior motives of women who file the reports (Goodmark, 2013).

Child psychologist Pavković, elaborated on her perception of responsibility women have as mothers:

I had terrible cases in which the mothers escaped from their houses during the night and left children alone and then the sexual violence happened [towards the children]. I asked these women openly why they left the children and they often say 'he never touched the children' but then their children tell a different story. We who work from the perspective of children see [in that] long-term neglect and unprotection [of children]. We learned from working with children involved in domestic violence that there is an abuser, mother, father, and there is the other parent who may not be abusive, but they are not protective. As far as I know from other fellow psychologists, in American laws, there are categories of those unprotective parents. From those who never did anything to the child and did not know anything, to those who never did anything to the child, but they

knew [about the abuse]. And in between are those who didn't do anything, but they suspected [the abuse].

In the quote above abused women are blamed for the sexual assault their children suffer at the hands of their father. Pavković's classification of abused women on the scale of their protectiveness towards the children is not only victim-blaming but holding the abused women responsible for the actions of the abuser. Subsequently, women are punished by this label of non-protectiveness not only for their own abuse but also for the abuse of their own children. The invisibility of the abuse happening behind closed doors becomes visible during the divorce procedure but instead of illuminating the woman as a victim in her own right, it spotlights her as a culprit, culpable for the violence and harm.

In my discussions with the coordinator of an NGO that specialises in sexual rights, Martinović remarked that the Centre approaches domestic violence cases by completely removing the perpetrator of violence from the picture and focusing on the other parent, most commonly the mother. She emphasised that in focusing solely on the mother they constantly undermine her, labelling her as unprotective or with other negative connotations, instead of acknowledging her parenting capacities. Those working with abused children and women sometimes adhere to mother-blaming frameworks which leaves the cultural construction of motherhood unexplored (Miller, 2001). Understanding the social expectations of motherhood illuminates institutional constraints which create additional stress for mothers and influence their behaviour towards their children.

As Adams points out, "The romanticization of maternity has divided mothers into the categories of either naturally good or pathologically bad"(2014, p. 12). The social construct of motherhood as the ideal of unconditional and unproblematic love and sacrifice suppresses any possibility of the presence of ambivalent feelings in the mother-child relationship and quickly and effectively condemns the slightest transgression of what an extensive network of social norms and

corrective mechanisms have established as an inalienable maternal instinct. These social norms and corrective mechanisms range from informal to formal ones: from a disapproving remark from another mother at a parent-teacher meeting, to a court-ordered sanction in a custody hearing. Even though their motherhood is socially and legislatively sanctioned, heterosexual women are still under more pressure to have children than their lesbian counterparts, and then to subscribe to specific motherhood norms (Ryan-Flood, 2009). As feminist researchers have argued, biological and genetic motherhood is no guarantee to developing or maintaining a close bond with a child. Studies on adoptive parents, as well as recent studies of queer kinship, showed the importance of the notion of 'chosen kin' in de-essentialising parenthood (Ryan-Flood, 2009).

A well-known Croatian feminist and founder of a prominent women's organisation, Savić, also commented on the cases the Centre labelled as manipulation of children. She said to me:

They call it emotional abuse of the child and use this against women, in our legal counselling we would come across such cases and it turns out the Centre follows some Norwegian psychologist who talks about manipulative mothers. I must confess that often the mother is manipulative because that is the only way she has any power, so she uses it. If her husband left her for another [woman], the child will be the tool to seek revenge against him. But there is an important distinction when they talk about high conflict divorce, they apply this to the cases of domestic abuse as well! Of course, the divorce is a high conflict if he used to beat me, what am I supposed to be, nice to him?! That is very bad, that complete lack of distinction between a victim of abuse and a person who can manipulate. They [the Centre] are not at all interested in the socio-political context.

In her narrative, Savić explicitly shows her feminist understanding of power, parenthood, and abuse. Her concession that some women do indeed manipulate and use their children against their partners as a way of obtaining power can be seen as a critical understanding of the gendered dynamics of motherhood in a patriarchal society. Even if individual women do try to

exercise power over their children, this may be because patriarchal institutions have historically upheld the idea that children belong with their mothers. Furthermore, modern understandings of fathers being involved in child-rearing are relatively new (LaRossa, 1988). Historically, men were not expected to perform child-rearing activities, which were seen as the mother's or nanny's job, depending on the social class (Marsiglio, 1995). The father's role was limited to being the breadwinner and disciplinarian, conveying moral and religious values to his children. The women's liberation movement in the Global North and the changing economic position of women greatly impacted the position of fathers. Research on child-rearing, once focused solely on mothers, now explores the parental role of fathers (Dowd, 2000). As mentioned previously, former Yugoslavia's state ideology was one of gender equality, stressing that all jobs are men's and women's jobs. However, despite more modern and equalising approaches to parenthood, mothers are still more involved with child-rearing activities, including housework and domestic labour, than fathers, regardless of their employment status (Kamenov and Galic, 2011).

When I confronted Pavković with these concerns during our interview she brushed them off by standing firm in her professional reasoning:

When you say that the mother was unprotective others say 'but', you know 'but' is a word that just confuses us, but the father was the abuser, well yes but the mother left the child with the abuser. There is always an interest group speaking on behalf of someone, some speak on behalf of women, I speak on the behalf of children. There is one great article written by a psychologist about cats and dogs, he says don't say we hate cats just because we are talking about dogs. When we say that women are more likely to manipulate children during the divorce someone always says 'yes, but...' We need to let it go and deal with this [the manipulation of children]. I do have a wider perspective as a psychologist, I can understand why she [the mother] is unprotective.

Positioning children's rights against women's rights is a false dichotomy that is conceivable in a conservative, patriarchal framework. Progressive feminism has a goal of liberation for everyone, breaking and surpassing power hierarchies. Historically, social order was established

within the family hierarchy through children being subordinated to their parents and wives to their husbands who were authorised to use violence to uphold the order (Smart, 1992). Conservative outlooks on separating children's and women's rights do so out of paternalist concern, which often seeks to support the status quo of the nuclear family. Critiquing the nuclear family as a site of violence for both women and children threatens the patriarchal framework of society, which might trigger backlash towards women's rights advocates. As a child psychologist and an expert in her field, Pavkovic justifies her position as 'science', almost neutralising the claim that she can be 'biased' or uncritical.

It is possible to advocate for the protection of both women's and children's rights without contradiction. Pavković seems to ignore the wider socio-political system in which expectations of womanhood, manhood and parenthood operate. A former women's shelter worker who I spoke with, Pavlović, offered a different perspective in remarking on the collaboration of the feminist shelter with the Centre for Abused and Neglected Children:

We have had mutual cases in which we worked together, in some [cases] we had very good collaboration, in others very bad. We differed mostly in the questions of protection of children and women with certain experts in the Centre. We struggled to find a common language because there is a psychiatrist there, in one of our most extremely violent cases, he persistently argued to the victim how they [she and her husband] are joined together, that they are one and that the father has to see his children even though the violence was terrible towards the children too. We had the opposite opinion, that the visitations will be harmful to the children and for the length of evaluation, there were informal pressures on the victim to allow visitations. The Centre does not consider the wider context of abuse and violence. There should be a holistic approach to the family and non-abusive parent, experts should estimate whether it is good for the child to remain in contact with the other parent and there should be protection and support for the mother, not accusations of women's manipulation. From my professional experience, women do not even want to remember all that they lived through.

When I challenged Pavković with the claims that the Centre insists on visitations for children with an abusive parent she became defensive and dismissed the claim as a matter of ‘activism’:

First of all, I do not write recommendations, that is not a part of my clinical report, that is the job of the [court] expert, that is expert opinion. I only write how the child feels about it all. If the case involves heavy abuse and the child expresses fear, I write that into the report, that he or she feels strong fear and asks for protection. I think they [professionals working in the shelter] were referring to the expert evaluation, I do not want to meddle in that, but sometimes the expert [expert psychiatrist from the Centre] has more information than the shelter. I can understand activism and all that, but the expert has a hugely wide perspective, all the documents that the judge has, and contact with both parents. I can understand there might be some dilemmas that the colleagues [from the shelter] told you about. When visitations start, the social welfare centre, for example, has more information than I as a clinician have.

There is a long history of dismissing feminist and social justice research and practice as a matter of activism (Faludi, 1991). Furthermore, the discourse that discounts activism as something less objective and serious shows a narrow understanding of historically important scholarship which stemmed from activist movements. Pavković’s narrative above can also be seen as justification by an explanation (Weitzman, 2000). By explaining away the concerns raised by the feminist shelter, Pavković solidified her claim that the Centre’s expert has more information than an ‘activist’ from a women’s shelter. Even if that were true, having more information does not necessarily translate into understanding the dynamics of domestic violence and making the right decisions regarding visitation rights and custody.

5.6 Views on Victim's Rights and Protections

“The victim now has endless rights guaranteed in the law⁸⁹”

As discussed in Chapter 3, the Croatian legal system and court practices have gone through significant changes since the 1990s and many criminal law reforms were considered victories for feminist and women's organisations. For example, the introduction of the Law on Protection Against Family Violence established victim support offices at county courts and enabled the use of video links for rape victims' testimonies. Bilić, a lawyer specialising in human rights, reflected on victims' rights from her own professional experience as a legal practitioner:

Working with victims has changed a lot, from my point of view as a lawyer, it got better since standards have been raised for the state's involvement with working with victims. I differentiate my working experience by the time when there were no victim's support offices and now when they exist as such.

Judge Marković explained to me her views on victims' rights in cases of domestic violence and marital rape. As I reported in Chapter 4, she perceived these cases as very difficult to preside on because they are based on “she-said, he-said” assumptions. She also explained that sometimes there is a need to re-examine the victim and then the court calls the victim and asks her what way she would like to testify. “The victim has endless rights now guaranteed in the law. They [the lawmakers] keep enhancing them and if the victim requests a video-link testimony we [the judges] grant that,” explained Marković. However, it seems that those ‘endless rights’ do not extend into minimising the extent of questioning and avoiding re-examination of the victim to prevent re-traumatisation.

Moreover, as reported by Bilić, a lawyer, the request for a video-link testimony is not respected by every judge:

⁸⁹ A quote from the interview with judge Marković in Zagreb on 28th of August 2018

Regardless of the advancements of victims' protections we still have situations where you ask a judge for a video link and they say 'No, we are overbooked, the video link is never free, I will be careful not to face the victim with the perpetrator in the courtroom.' So, there is a sensibility of not facing the victim with the perpetrator, but the problem is if you allow the victim to testify that way that enables the court to re-examine her again in person and that is re-traumatisation. With a video link, you can re-watch the tape as many times as you like without making her come to the court again. And then you find yourself [as a lawyer] in conflict with the judge, causing the hearing to be postponed until the video link is ready.

The perceived victim's rights and protections from a judge's perspective can differ from a lawyer's perspective in practice, especially in Croatia's continental legal system where the judge holds more decisive power, including the power to allow or deny requests from the victim's lawyer. In Chapter 3 I indicated that Croatia has adopted the Directive on establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU). However, as explained below, the actual implementation of this legislation remains an issue. The Directive guarantees the victim's right to compensation and the right to testify without the presence of the perpetrator. It also prescribes the individual assessment of the victim's needs.

Bilić, a lawyer, explained her experience with compensation claims:

Through the implementation of the Directive, I have decided to always ask my clients if they want to file for financial compensation in criminal proceedings and in 100% of my cases my claim has been rejected in the first instance at the court because the courts do not implement the Directive.

She also noted that some judges completely ignore the Directive when it comes to the victim's testimony:

I remember a judge telling me I cannot ask for the video link for the victim since the Law on Civil Procedure does not include that right and that he will keep the order at the hearing and request the presence of the police officer. I told him: 'But that is not following the Directive for minimum standards, you need to implement it in your

proceedings since the victim's integrity has been violated and she cannot testify in the hearing.' In another case, I requested the same thing from a different judge, and he said, 'no problem'.

Returning to the issue of education for the judiciary as explained in the previous chapter, the lack of systematic education for judges is apparent in cases of sporadic implementation of international standards, as seen in the example of the Directive on establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU). A coordinator of an NGO specialising in sexual rights, Martinović, commented on issues of inconsistency in the law-drafting groups appointed by the Ministry of Justice which must adapt international standards into national laws:

I think that something has improved with [adopting] the Directive on minimum standards for victims, even though we [Croatia] implemented it late and then we introduced this individual assessment, everything is done out of obligation, you make one working body and then another and they do not communicate between themselves, and then you implement it in the Criminal Procedure Law in a really okay way. Lanzarote⁹⁰ is also in our Criminal Procedure Law, but ask anyone if they know what Lanzarote is. On the other hand, what happens in practice with living cases, again everything falls into the water, to one degree where everything is fine, and then you have a new working body that introduces individual assessment in a wrong and inappropriate way completely refuting what the previous group did. There is no logic, no coherence.

Bilić told me that she had personal experience of participating in a couple of law-drafting groups as a representative of a feminist battered women's shelter. She reported that there are often patriarchal ways of thinking present in the minds of expert members of law-drafting groups.

Often the leaders of these law-drafting groups are actually people who are very often selected for political reasons, and then they represent how the ruling majority views the

⁹⁰ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse also known as Lanzarote Convention since it was concluded and signed on 25 October 2007 in Lanzarote, Spain. Croatia ratified it on 21/09/2011 and it entered into force on 01/01/2012

problem so they are very often resolved in their own mindset ignoring very strong arguments that are being made and proposals that are argued by facts and research. Why? Because all change is very difficult to accept.

This point is corroborated by Radačić's (2014) claim that if laws are unclear, legal practice is inconsistent as seen in the examples above. The ways the laws are drafted have important implications for their implementation. If the law is biased against victims the arguments and understanding of legal practitioners and the judiciary will be influenced by this, especially in cases involving marital rape and domestic violence (Schneider, 2008). Bilić's experience of law-drafting groups illuminates the fact that the political and legal systems are connected. Hence, the politically selected members of these groups can be seen as gatekeepers preventing more progressive or radical changes in legislation. To further complicate the nature of law and the drafting of legislation, the law cannot be viewed in separation from other social institutions which function in a quasi-legal way and demand the backing of the law when necessary (Smart, 1984). The law does not necessary produce patriarchal relations but it can, "in a complex and often contradictory fashion reproduce the material and ideological conditions under which these relations may survive" (Smart, 1984, p. 22). As mentioned previously, many of the international treaties and directives were adopted for the sake of the EU joining process and they have not been adequately translated into the local context. However, understanding of the law cannot be conflated with the decisions of individual judges or court practice even though the individual judge has a responsibility in interpreting and enforcing the law (Smart, 1984). The example above shows the complexities of both implementation and the legislative drafting process in Croatia, especially concerning victims' rights and protections.

5.7 Invoking Harsher Sentences

Considering justice for victims of abuse requires examining the existing criminal justice solutions which often include prison sentencing as an ideal end goal of a trial. Taylor (2018) asserts that most mainstream feminist scholarship can be regarded as carceral feminism since it neglects to interact with critiques of the criminal justice system and often supports carceral solutions, such as pleas for harsher sentences for sexual and gendered violence. A plea for higher prison sentences would be expected from state agents and service providers frustrated with generally low sentences in Croatia for rape and domestic violence. However, some of them are sceptical about what is achieved with long-term prison sentences. Judge Marković said:

The purpose of [carceral] punishment is defined by the law as general prevention but as far as I know, the research did not show, I mean, then those in the U.S would be without any crimes given how high sentences they give out. It is questionable if general prevention is achieved, you have a long-term prison sentence for one horrific murder and then a few days later the same thing happens again. Or a few weeks later. It is questionable if those sentences reach those who are out to commit those kinds of crimes.

She elaborated on sentences for rape:

Sentences for rape are very low, that is what I have seen. The sentences for rape range from three to fifteen years, which is for me very low. But I was a judge in a judicial council have to decide on the punishment depending on the individual case and the individual person, taking into account all circumstances, what were the consequences for the victim, what were the relations between them, and so on. So, it is a very variable span. Even one year, in a case where we agreed with the victim [that she had been assaulted], he had no prior felonies so we could not judge it as an aggravated assault since it was his first offence. And that is considered a high sentence, I don't know the consequences and effects of that punishment so I cannot say if it is good or bad. People [in Croatia] call for high sentences thinking that will solve everything, but it will solve nothing.

Novak⁹¹, a shelter worker, working in the city-founded shelter, conveyed what she felt was wrong with the sentencing process in rape cases:

I've heard recently that judges before sentencing consider the consequences of rape for the victim, so if there are no [visible] consequences, then rape is ok? I know it is not so black and white, but it makes me so angry, who cares about the consequences, if someone raped someone they should be punished. In general, I think sentences for rape or sexual violence are so low it is embarrassing. What I have seen in my line of work is that when someone is raped it looks like the worst form of torture. Like in the concentration camps in Second World War, that's how you torture people, physically and psychologically all in one act. And then someone gets a one-year sentence. It infuriates me.

Novak also elaborated on her view of the general public's sentiment towards rape sentences. Usually, there is wider societal condemnation or there is short-lived outrage to media exposed cases:

What I have seen working in the shelter is that if someone is beating his wife for ten years and gets a prison sentence of one year, his entire family and half of her family will say 'that is so horrible, poor him!' The court gave a too lenient sentence, but half of his acquaintances think it is a horrible punishment. On the other hand, sentences are not all-powerful and people should be given a chance to learn to communicate and to learn non-violence.

On one hand, lenient sentences for rape can be seen as sending a message to society about the gravity of the crime. On the other hand, it is unclear how successful higher sentences are in preventing other perpetrators from committing rape. Marković's assertion that if high sentences were successful in the prevention of crime, then the United States, which in certain states still has the death penalty, would not have as much crime, presents an interesting view on the effects of sentencing. But it is important to note that in the United States the prison industrial complex (Taylor, 2018) operates very differently from the prison system in Croatia, which would in part

⁹¹ Interview conducted in Zagreb on 10th of July 2018

explain the US's perceived high sentencing. There are no private prisons in Croatia which means there is no incentive for higher imprisonment rates. Taylor (2018, p. 30) explains the growth rate of the overall carceral population in the U.S, focusing on sex offenders: "Importantly, the dramatic increase in the number of people locked up for sexual offences has not been in response to rising instances of sexual crime." Sexual offences in this case are not synonymous with rape but also include sex work and pornography which explains the high incarceration rates in the US.

Incarceration rates for sex offenders, significantly excluding rape, have skyrocketed in the U.S in the 1980s and 1990s (Wacquant, 2009). Like Wacquant, Gottschalk notes that these increases in incarceration rates, for sex offenders in the U.S, excluded rape and were primarily due to the charges for possession of child pornography (Gottschalk, 2015). As Taylor (2018, p. 41) explains: "The escalation in sentences for sex offences has been fuelled in the U.S. by laws such as Jessica's Law, which requires a mandatory minimum of twenty-five years to life for some sex crimes, two-strikes laws that require life sentences for certain sex crimes and make some sexual offences eligible for the death penalty, and mandatory minimums for each illegal image that is possessed; for instance, in Arizona, there is a mandatory minimum of ten years for each pornographic image one possesses of a child, which has allowed an Arizona court to pass a sentence of two hundred years for an individual who possessed twenty illegal images of children." This is a staggering example of incarceration in comparison to Croatian Criminal Law which proscribes prison sentences from a minimum of one to a maximum of ten years for possession of child pornography.

As I have explained in Chapter 4, due to the obstacles that victims face in the criminal justice system convictions for rape are more of an exception than a rule. Marital rape and domestic violence can still be largely considered crimes of impunity (Herman, 2005). Not only is rape, and marital rape especially, rarely reported, but victims often face disbelief and a long,

intrusive, and often re-traumatising process in the criminal justice system. It is questionable if longer prison sentences should be the ultimate goal for rape offences in feminist advocacy since prison environments often foster a culture that condones violence and rape (Taylor, 2018). For the crime of marital rape specifically, but also domestic violence more broadly, the perpetrator does not expect to be caught, since the abuse is happening in a private, intimate setting. The high sentencing for rape would not have the desired effect of deterring the crime, since marital rape is often not even considered a crime by perpetrators and victims, but rather as a husband's right and wife's obligation (Yllö and Torres, 2016).

5.8 Performative Cruelty

“If these people were willing to destroy someone’s life, I don’t see why we should not destroy theirs”⁹²

Katanić, a lawyer (and the only male participant in the study) who works for a feminist NGO for sexual violence, expressed his view in favour of harsher punishments:

Sentences in Croatia are significantly too lenient, there should be a harsh repressive policy towards paedophiles and sexual predators, our society is deeply backward and deeply bigoted. I think these people [paedophiles and sexual predators] should be stripped of their human rights and deprived of liberty forever since they violated someone else’s human rights. I know that sounds harsh and repressive, but no one ever asks how it was for the victims who lived through that kind of abuse.

Katanić also expressed his favour of the death sentence and chemical castration for sex offenders. He commended the United States on their prison and criminal justice systems:

If these people were willing to destroy someone’s life, I don’t see why we should not destroy theirs. Forget about human rights, I think the US did a great job, once you enter their system, you are forever in the system.

His statements can be read as performative cruelty and they seem in conflict with what most survivors and victims want since survivors seek validation and accountability of the assault more than incarceration and punishment (Herman, 2005; Taylor, 2018). Also, it shows that someone working for a feminist NGO does not necessarily internalise all of the basic tenets of feminist ethics of care or, alternatively, that feminism can be used as an umbrella term for many attitudes, including pleas for harsher sentences and endorsements of the prison system. Nina Power (2009, p. 12) explained that: “As a political term, feminism has become so broad that it can be used to justify almost anything, even the invasion of other countries.”

⁹² A quote from the interview with lawyer in Zagreb on 17th of July 2018

In line with Taylor's point, however, I argue that incarceration cannot be a feminist solution to the issue of sexual violence as the prison system is designed not to rehabilitate offenders but to continue to expose them to brutal violence, homophobia and misogyny (Taylor, 2018). Prisons also disproportionately incarcerate the poor, racial minorities and disabled, which is antithetical to the goals of feminism as a social liberation project.

Rukavina, a law professor specialising in sexual criminal offences, explained her views on the public endorsement of harsher punishments:

Now, if the state were to accept this and to impose astronomical punishments for rape, it would violate the principle of proportionality and such a decision would be unconstitutional. What the public does not know is that if we accept such a way of resolving things in society then we have made possible the unlimited expansion of the power and authority of the state.

However, Rukavina's construction of the state as a monolith or a single entity designed to sustain itself through repression obscures its multiple facets. As Wendy Brown (1995, p. 174) points out:

“Despite the almost unavoidable tendency to speak of the state as an “it”, the domain we call a state is not a thing, system, or subject, but a significantly unbonded terrain of powers and techniques, an ensemble of discourses, rules, and practices, cohabitating in limited, tension-ridden, often contradictory relationship with one another.”

The state is not synonymous with the legal system and imposing harsher sentences in legislation does not necessarily alter court practices. In the last criminal law reform, sentences for rape were raised but this did not result in the unlimited expansion of the power and authority of the state. Rukavina overestimates the significance of higher sentences for rape in Croatia since reports remain low. Low reporting cannot be addressed by harsher sentences, and it indicates, as I have previously shown, a more insidious problem with the workings of the criminal justice system. For a holistic analysis of the penal state, we need to broaden our focus beyond crime

and punishment by reuniting social-economic and penal policy (Wacquant, 2009). Rather than focusing on victims' needs, Rukavina chooses to focus on the principles of proportionality and constitutionality, which can both be seen as highly theoretical approaches to the question of justice for victims of rape.

Legal systems do not necessarily represent or uphold what is best for everyone: legal instruments were historically used to justify slavery, segregation, and discrimination. Furthermore, the spousal exemption in the law in Croatia (legitimising marital rape) was only recently repealed. Legal scholar and critical trans theorist Dean Spade (2011, p. 128) argues against blind belief in legal rights:

We must stop believing that what the law says about itself is true and that what the law says about us is what matters. Our goal cannot be to get the law to say “good” instead of “bad” things about people who are marginalized, criminalised, impoverished, exploited and exiled. Law reform and investment in winning “rights” has proved to legitimize and shore up the very arrangements that produce the harm we seek to eradicate.

These arguments resonate with the concerns I raised above regarding criminal law reform, in which sexual intercourse without consent was removed as a separate offence and included in the definition of rape. It will take more than just legal reform to remedy some of the problems I have identified above.

5.9 Conclusion

In this chapter, I have focused on the construction of the category of victimhood from the perspectives of judges, prosecutors, lawyers, women's shelter workers, social workers, psychologists and journalists. I addressed the following research question: “Is victim-blaming prevalent in legal practices and how does it manifest?” The construction of victimhood is necessarily tied with the discourses on womanhood and gender identities in the post-conflict,

post-socialist setting of Croatia. Traditional gender attitudes emerged strongly under the influence of the Catholic Church in the post-wartime period. Victims of wartime sexual violence are still waiting for justice and support, while their pain and trauma were largely used by the nation-state building project to consolidate Croatian victimhood and righteousness in the 1990s war. Discourses of patriarchal society in Croatia are connected to Balkanist interpretations of European progressiveness and Balkan/Post-Yugoslav backwardness. Patriarchal expectations of gender roles have a detrimental effect on the expectations of victims' behaviours. Narratives of love in violent relationships present ways of trying to understand victims' actions and behaviours while society's insistence on couple-norms as a way to prove one's worth has detrimental effects on abusive and violent relationships. I have shown in the examples above how victims are expected to behave in a way that aids state agents, and that if they do not comply, they might provoke anger and frustration in the agents' responses. Social pressures to maintain a marriage or a partnership and the construction of women's worth in terms of their ability to preserve relationships clash with the expectations many state agents and service providers have that an abused woman should immediately leave her partner. This outlook also ignores the societal, financial, and emotional constraints which curtail the victim's ability and willingness to leave the abusive relationship.

When an abused woman decides to leave a relationship, and if her decision to report the abuse coincides with the divorce procedure, she is immediately met with suspicion. I have identified and described one of the increasing popular discourses in welfare circles in Croatia as the discourse of "manipulative mothers" or/and parental alienation. This terminology is used to discredit women's claims of abuse during divorce procedures. This discourse was adopted from a UK organisation that works with children and parents suffering from so-called parental alienation during divorce, and whose gender-blind approach proved to overlook the real abuse happening in many homes. Certain child protection organisations in Croatia adopted this

outlook and, as a result, often clash with feminist and women's organisations in their views on abused women victims' responsibilities for protecting the children from witnessing or experiencing violence in their homes.

The problematic construction of motherhood in a patriarchal society places a crushing burden on abused women who are blamed not only for their victimisation but for the victimisation of their children. Meanwhile, the abuser's responsibility and the societal construction of masculinity as the main vehicle of power in society is ignored and overlooked. However, there is pushback from feminist and women's organisations, as well as the European Association of Psychotherapy (European Association of Psychotherapy, 2018), who warned against labelling abused women as bad or manipulative mothers since it hides abuse and prevents access to the help and support needed in domestic violence cases. Service providers need to adopt a more nuanced view of motherhood and abuse in cases of marital rape to mitigate victim-blaming and place responsibility squarely on the shoulders of perpetrators. Support for abused women with children cannot be provided by institutions and services which do not account for the many facets of abuse and power in society.

Some judges perceived victims' rights as very expansive in the Croatian legal system. However, the experiences of other legal practitioners and shelter workers showed implementation problems and inconsistency in drafting laws and adopting international standards. I have explored the discourse on sentencing and presented different outlooks on the solution of harsher prison sentences. Many professionals working with the issue of marital rape are sceptical about the impact of long-term prison sentences, although most agree that sentences for rape in Croatia are too lenient. However, there is a divergence of opinion among professionals regarding punitive sentences with some of them advocating for harsher prison sentences for the crime of rape. However, that line of reasoning leaves prison conditions and the effects of imprisonment

unexplored and unchallenged. In the next chapter, I problematise the economic and materialist conditions of marital rape.

6. The Political Economy of Gender-Based Violence

6.1 Introduction

In this chapter, I will emphasise the importance of considering the material conditions of marital rape in legal procedures. I will also address the research question: “Is the current economic system complicit in devaluing victim support systems, and if so, how?” Material conditions of marital rape include both the economic violence suffered by victims, as well as the new pressures placed on social services as a result of austerity measures within the current economic system. Following the process of privatisation, the state has delegated a large share of social welfare work to NGOs and the civil society sector but has failed to fund them systematically, letting them rely on state or local tenders and EU funds. The social welfare sector is underfunded and understaffed (Stubbs and Sertić, 1996; Stubbs and Lendvai-Bainton, 2020) but is still expected by the media and general public to prevent atrocious cases of violence. Furthermore, I explore the wider political, social and economic changes brought forth since the wartime period in the 1990s to contextualise marital rape, victim’s rights, and the legal and social welfare systems.

The economic and political transition from one system to another affected women in numerous ways. Most notably, it resulted in a high proliferation of low-paid, temporary jobs and long periods of unemployment, whilst it simultaneously pushed women into idealised roles of homemakers and mothers by the nation-state-building project. In Croatia, an unemployed woman who is a primary caretaker of children often has no means of financial support and is dependent on her husband for survival. If she presses charges against her abusive husband and he is taken into custody she loses the financial support needed to take care of her family, which may lead her to drop the charges (Goodmark, 2013). This decision is also mediated by society’s belittlement of the abuse, the pressure to preserve a nuclear family, and her internal conflict about the gravity of the abuse. Women are expected to pursue prosecution until the end, which

signals a systemic obliviousness to the fact that no economic support is provided for the woman in the legal process. Most research literature views economic violence as a concealed part of marital rape and domestic violence, attributing this to economic and financial gender inequality (Smart, 1984; Sharp, 2008; Yllö and Torres, 2016). Furthermore, the imperative placed by institutions and the broader public on victims of abuse to leave their abusers side-lines the fact that the divorce procedure has the power to determine the materialistic conditions of women's lives, especially when they are also involved in the criminal procedure as victims of marital rape or domestic violence. Divorce might leave these women financially destitute and, as shown in Chapter 5, their report of abuse might be used against them. Lack of social security nets and the precarious position of women victims of violence with low socioeconomic status are particularly indicative of systemic issues.

This chapter is structured as follows: firstly, I begin by describing and analysing the wider political and economic context of abuse, including economic dependency and the consequences of the transition period on women and their status in post-conflict, post-socialist society. This section also includes more specific political and economic consequences of the war and post-war period and an exploration of research conducted on economic violence in Croatia. Secondly, I focus on the costs of reporting abuse and getting involved with the legal and social welfare systems. There are hidden or neglected costs for women participating in legal proceedings against their partners or husbands. Thirdly, I describe and analyse more specific structural economic factors related to abuse, including the problems of rural access to facilities and services for women victims of abuse. Finally, I present the promise of the Istanbul Convention in tackling systematic issues of economic nature concerning domestic violence and marital rape in Croatia.

6.2 The Political and Economic Context of Abuse

The Law on Protection from Domestic Violence defines economic violence as “prohibiting or debilitating the use of personal or joint property, disposing of personal income or property acquired through personal work or inheritance, preventing employment, denying funds to maintain a joint household and caring for children” (Official Gazette of the Republic of Croatia 126/19). The Law uses the term economic violence rather than economic abuse, which is more common in the UK. Economic violence is often connected to other forms of domestic abuse, including marital rape, in cases where the victim does not have sufficient funds or independent income to facilitate their escape from the relationship. Having to navigate the legal system as a result of reporting marital rape often requires financial support, even if the attorney is provided by the state. Attending court dates might mean missing time from work and incurring costs for transportation and childcare. I will come back to this point in the section below on the costs of engaging with the legal system. Economic violence is connected to economic dependency and is exacerbated by gender inequality. For example, only 11.5% of women in Croatia are owners of the property in which they live with their partners (Sarnavka and Markulin, 2013).

Mandić, a former prosecutor and a private practice lawyer,⁹³ told me she had a recent divorce case in which the woman did not know anything about her and her husband’s finances.

I asked her: You have been working for 38 years, how much was your salary and where did that money go? She told me: ‘I don’t know, I would give him [the husband] my whole paycheck every month’. She did not know anything about the bills, about the mortgage, not even in which bank he had his account.

In the case above, despite working and earning her living, the family arrangement in which the husband oversees all the finances leaves the woman in a desolate position if she wishes to leave.

⁹³ Interview conducted in Zagreb on 10.9.2019

However, a working woman is still in a better position if she chooses to leave the relationship than a homemaker. An unemployed, economically dependent woman has significantly reduced opportunities to confront violence and achieve successful parenting. Unlike the employed woman, she does not have the opportunity to draw on the manifest and latent employment functions that enable her to cope successfully with the separation. She is therefore more likely to be in a state of deprivation that can multiply the severe psychosocial consequences of abuse (Maslić Seršić, 2010). Manifest employment functions can be seen as directly related to income-earning and financial security, while latent functions are related to time structuring, meeting and socialising with other people, social status and social activity. Unemployment, coupled with abuse, can lead to women becoming socially excluded from society and unable to access support (Maslić Seršić, 2010). The economic dependency of women on their partners deepens inequality and provides a context for economic violence. However, this economic dependency also seems to be socially accepted and favoured, enabling economic violence to be the most neglected and hidden part of domestic abuse.

Savić, a renowned feminist and a founder of a well-known feminist organisation that helps women victims of violence and fights for gender equality,⁹⁴ remarked on research she conducted on the position of women in Croatia and attitudes towards them:

It was established that there is this tendency in modernity in Croatia, even in the attitudes of the most conservative women, that a woman should work and be employed, even if all their other attitudes are retrograde. They think it is important to get married and give birth but working is important as well. Every third marriage in the urban areas ends up in divorce and then women who did not work fare very badly and often never manage to leave, especially if the relationship was abusive because they don't have any financial means. Research has also shown that single parents are by far mostly women and they are at risk, often living on the verge or below the poverty line.

⁹⁴ Interview conducted in Zagreb on 19.7.2019

The acceptance of the idea of the working woman is the legacy of a former socialist political system in which women's emancipation was tied to productive labour. Economic changes following the transition to the market economy had major consequences on collective life. The privatisation process of the 1990s and the transition from socialism to capitalism mediated by wartime conditions had consequences on the employment of women. Women were the first to be laid off during the transition period and 'went back' to their traditional roles of homemakers (Kamenov & Galic, 2011). The employment opportunities became scarcer, especially for women with lower qualifications who had more than one child and were in older age groups (Kamenov and Galic, 2011). The proliferation of low-wage, part-time and precarious employment for these women meant that they were at greater risk of becoming economically dependent on their husbands and partners, complicating their decision to leave or to press charges in cases of violence. How power, gender relations and kinship dynamics are constructed makes economic violence a fundamental contributing factor to domestic and sexual violence (Yllö and Torres, 2016). Furthermore, mediated by capitalism, housework is presented as an innate women's duty, or work of 'love,' and therefore not real work which requires financial compensation. Competitive labour markets devalue care work done primarily by women, but at the same time, they thrive on women's unpaid labour at home which enables the social reproduction of male workers (Ghodsee, 2018).

The consequences of the transition period in the 1990s were not unique to Croatia but had similar effects across the region. Research conducted in 1999 and 2000 in North Macedonia, Serbia, Hungary and Bulgaria discovered that 53.6% of women thought that the quality of their family life has worsened in the past ten years (Nikolić-Ristanović and Dokmanović, 2006). These countries had the greatest decline in the number of employed people between 1989 and 1997, with one million registered as unemployed in 1989 rising to between eight and nine million in 1993 and 1994 (Nikolić-Ristanović, 2002). Family relationships worsened when the

husband or wife, or both, lost their jobs, or when they had trouble finding a job and their financial and/or living situation worsened. On the other hand, the new reality of certain members of society getting rich quickly⁹⁵ also contributed to the deterioration of relationships, especially if the husband entered the *nouveau riche* echelon (Nikolić-Ristanović and Dokmanović, 2006). The attainment of a better social and economic position for these men entrenched notions of their superior masculinity and the renewal of traditionalism regarding gender roles in the family. However, the majority of men in the region of former Yugoslavia have seen their social and economic position deteriorate after the war and during the transition to capitalism contributing to the social stress and isolation which increased the risk of domestic violence (Nikolić-Ristanović and Dokmanović, 2006).

An additional risk factor was the crisis of femininity from the socialist period related to women's job losses. This was especially significant for well-educated women who had enjoyed relative economic independence during communism, and so felt degraded in their new role of the homemaker. Factors connected with the transition period also included distrust in state institutions and corruption (Nikolić-Ristanović and Dokmanović, 2006). As mentioned previously, the increased influence of the Catholic Church in Croatia also marked the transition period, and coupled with the ethno-nationalistic agenda, often insisted on keeping the nuclear family together at any cost.

6.2.1 The Political and Economic Consequences of Wartime and Transition Period on Women

UNICEF conducted research in 1994 on the position of women in countries in transition from centrally planned economies to market-orientated ones. Research showed that violence against women was widespread in these countries and it was noted specifically for Croatia that

⁹⁵ There were some who profited of the wartime and transition period, either by war profiteering or by buying and reselling what was once state property. See: Čučković, (1993); Čengić, (1996); Kostovicova, Bojicic-Dzelilovic and Henry, (2020)

economic and political changes brought about a series of negative consequences for women, especially in the social and economic spheres (UNICEF, 1994). Despite democratisation, free elections and constitutional rights in the 1990s,⁹⁶ women almost entirely disappeared from the public and political scene, constituted the majority of the unemployed, and some of their rights were debated and revised, such as the right to abortion and one-year maternity leave⁹⁷ (UNICEF, 1994). I have briefly explained the deterioration of some women's rights after the breakup of Yugoslavia in Chapter 3. UNICEF also remarked on the national strategy of demographic renewal, which was constructed by the HDZ⁹⁸ as a conservative plan to entice families to have three or more children, placing responsibility for the progress, future, and happiness of the nation on women. At the same time, there was no adequate legal protection for women against violence and marital abuse, rendering all forms of domestic violence hidden (UNICEF, 1994). I have explained in Chapter 5 how legal protections, laws and measures in Croatia have changed since the 1990s. Although there are no empirical studies in Croatia⁹⁹ to confirm the idea that the war exacerbated domestic violence, it had devastating consequences on the position of women more generally (UNICEF, 1994). Many women became widows struggling to adapt to their new family role, whilst some men came back from the war to their families with PTSD and were unable to control violent outbursts. The war also increased societal tolerance for violence and the transition period was marked by decreased social security and rises in unemployment and poverty. It was reported that there was an increase in police

⁹⁶ This changed in the 2000s when Social Democratic Party (SDP) came to power encouraging more women to rejoin the public and political scene with their focus on gender equality shaped by the EU accession process. See: Hassenstab and Ramet (2015).

⁹⁷ Maternity leave in Croatia nowadays is 28 days (exceptionally 45) before the expected birth and 70 days after the birth of the child. After the expiration of the mandatory maternity leave, the mother is entitled to additional maternity leave until the child reaches six months.

⁹⁸ I gave an overview of the importance of HDZ (Croatian Democratic Union) in my contextual chapter on the Croatian legal system, a centre-right demo-Christian party, and the party who won the first multi-party elections in Croatia in 1990. The party is currently in power. For more info see: Čepo (2020).

⁹⁹ There are important comparative studies from other countries which mention Croatia as well in their exploration of the influence of ethnic violence and war on domestic and sexual violence, see: (Dobash and Dobash, 1998; Slapšak, 2000; Nikolić-Ristanović, 2002; Wood, 2006).

interventions due to domestic violence in the post-war period from 1995 to 2002. Data from the Women's Counselling Centre for the period from 1997 to 1999 also showed that out of 6050 women 57% of them sought help due to domestic violence (Ajduković and Pavleković, 2003).

Another important point to note concerning war veterans and domestic violence is that not only did a consensus emerge that war veterans who suffered from PTSD were not responsible for their violent actions but in the law and the courts being a war veteran was used as a mitigating circumstance, especially in cases of domestic violence. This point was remarked on by a former minister of social welfare who I met and interviewed in April 2019 in an upscale café in the Zagreb city centre. Former minister Bajović¹⁰⁰ was a member of HDZ and known for her Catholic devotion. Her reflection on the issue of war veterans and domestic violence was based on situations she observed as a social worker. Bajović remarked that we still have a lot of people who were war veterans, and the older they get, the weaker their nerves become, “and he needs one wrong word and later he is sorry but he can really hurt you.”

She elaborated on what she sees as a problem and a solution to war veterans' abuse issues:

Often the woman doesn't know when to stop, she doesn't realise that she has a barrel of gunpowder next to her, nobody told her that, and instead of working with her and telling her to, look, when he is like that, don't provoke him, in the end, you chose him, and the older he gets the worse it will be and you have to be prepared to be tolerant. If he's okay as long as you don't oppose him if he's bearable, then don't provoke when you can't listen to him, just go away, and if it's really unbearable, then move away, break up, don't create a bad situation. I've seen a lot of cases where a woman starts [provoking] and then she doesn't stop and I would tell her: 'Don't you hear yourself; can't you see he will blow up?!' Because I could see that he was refraining himself because there are strangers present otherwise, he would strike her. And if there is no one around, if that is the pattern of behaviour, of course, he will hit her. And if a child sees it, and it has happened a few times there you have domestic violence. And actually, when you look

¹⁰⁰ Interview conducted in Zagreb on 30.4.2019

at it, it was provoked by nothing, because someone has a problem they didn't deal with, didn't treat, just a man with a short fuse and he just cracks.

Bajović's point showcases a more widely accepted attitude towards war veterans when it comes to domestic abuse. War veterans simultaneously hold both a powerful and precarious position in Croatian society: they are organised in influential organisations, they influence and are influenced by HDZ, and they are revered as the nation's heroes (Čepo, 2020) but at the same time no adequate in treating their PTSD was provided by the state. From 1991 to the end of 2014, 2,734 war veterans committed suicide, an entire brigade of the Croatian Army (Komar and Koić, 2015). However, these hardships do not relieve them of responsibility for their own violent behaviour which is what Bajović seems to imply. Trauma does not justify inflicting more trauma upon others. With this example, I wanted to show how the state's refusal to reckon with the consequences of the war and the social status of war veterans spills over into cases of marital rape and domestic abuse.

Bajović's own positionality is worth briefly exploring since she can be seen as an incarnation of the traditional attitudes to women symbolised by the Church while being less of a "gender ideology" type who are further to the right. As explained in Chapter 3, "gender ideology" discourse was used by religious and far right groups in lobbying against the ratification of the Istanbul Convention. It encompasses homophobic and transphobic discourses to protect the "natural order." Bajović did not express explicit agreement with this type of discourse during our interview. Due to her work experience as a social worker and a social welfare minister, she understands and is interested in advancing the occupation of social workers not just as 'paper-pushers' but as fieldworkers. Throughout our conversation, she expressed clear devotion to care work and placed it at the heart of the social work in reforms she tried to accomplish during her tenure. At the same time, she expressed some deeply seated prejudices against victims of domestic violence and displayed epistemic injustice (Fricker, 2007) towards their experiences.

Epistemic injustice can be seen in her negation of battered women's experiences, silencing their accounts of abuse and instating on their responsibility for their behaviour towards their abuser. However, from her statements, it is evident she is well-meaning, but also clearly unaware of her own biases. By exonerating war veterans of their abusive and violent behaviour towards their spouses and their family, Bajović's discourse perpetuates the privileges awarded to the war veteran status.

Furthermore, the principal part of clientelism in social policy in Croatia is the existence of a wide scope of advantages, in cash and in-kind, to war veterans, their families and survivors (Stubbs and Lendvai-Bainton, 2020). These rights, claimable by nearly 500,000 registered war veterans, constituting approximately 12% of the total Croatian population, are to a great extent passive and passed on generationally, with the offspring of war veterans being entitled to positive discrimination regarding higher education enrolment (Stubbs and Lendvai-Bainton, 2020). These benefits constitute around 2% of GDP for war veterans while social assistance for the poor constitutes only 0,4% of GDP (Stubbs and Lendvai-Bainton, 2020), which shows the prevalence of nationalist pandering to war veterans at the expense of other socially vulnerable groups. State-embedded favouring of war veterans in economic, societal, and legal terms leaves women victims of violence in a disadvantaged position.

6.2.2 Economic Violence in Croatia

The global economic crisis of 2008, arriving only twelve years after the end of the war in Croatia, further disadvantaged women and increased their economic and labour inequality vis-à-vis men. Compared to men, women pay a higher price for negative economic trends. Women were more likely to lose their previous jobs and earnings, and the affected, typically female, sectors of the economy (for example the textile industry and trade) attracted less state attention than typical male sectors (the shipbuilding and metal industries) (Maslić Seršić, 2010). In this way, the social and economic position of women in Croatia has been further disturbed,

having already been disrupted by the transition period and retraditionalisation of gender relations.

A 2010 study of a women's shelter population in Croatia, conducted on a sample of 260 women, mostly current and former users of the Shelter and Women's Counselling of the Autonomous Women's House in Zagreb, showed that economic abuse is prevalent in different forms as a part of domestic violence rather than as an isolated form of abuse (Maslić Seršić, 2010). The study found that violent strategies related to economic abuse could involve the following situations: exclusive control of joint financial resources and deprivation of women's economic autonomy; impoverishing and putting women in a state of financial and material deprivation; placing women in a position of economic dependence on the abuser; violent control and confiscation of personal material resources available to women; forcible obstruction of an employed woman in the performance of her work duties and deprivation of her autonomy in deciding how to manage the financial income (Maslić Seršić, 2010). The average duration of such violence is 10 years.

More recent research conducted in 2013 focused on economic violence as an often neglected and underreported form of abuse (Sarnavka and Markulin, 2013). The research was conducted in five countries: Croatia, Serbia, Bulgaria, Bosnia and Herzegovina and Montenegro. The main findings were that both employed and unemployed women are exposed to economic violence, although the consequences and forms that it takes are different in these two groups. Most women have raised bank loans, during their marriages and partnerships, to finance the renovation of apartments or houses in which they lived with their partner's parents, which they repaid alone or have continued to repay them after the relationship or marriage ended (Sarnavka and Markulin, 2013). In already unstable economic conditions, this kind of burden is a significant barrier for women with children who want to start their lives again.

This point was also advanced by Mandić concerning the scope of her lawyer work:

I had cases in which all the property was signed in the man's name and the women agreed to it and often they took out loans in which she is the co-debtor or the guarantor and if she wants to leave the relationship, he will stop paying the loan and her salary will be repossessed.

Financial dependency ties women down in the relationship and if the relationship is abusive the lack of means debilitates her capacity to leave. Research on economic violence suffered by victims of abuse pointed out that its goal is to strengthen the abuser's power and to diminish the power of the victim through several typical methods: control of the financial and material resources available to the family, deprivation of autonomy of the woman in using financial and material resources, prohibition of the acquisition of material resources through work and impoverishment of the woman (Maslić Seršić, 2010). The method of impoverishment would sometimes apply to children as well.

Pavlović, a psychologist and a former women's shelter worker,¹⁰¹ pointed out that victims should not expect too much help from the system since it is usually the victim's responsibility to secure employment and material conditions:

Without a job, there is no way out of violence for any woman. And that is a major issue in Croatia, employment, and employment of women, and especially employment of women victims of abuse who have been outside the job market for a long time. I think every woman who wants to break the circle of abuse has to primarily think about herself and persist in her decision. No system will do that for her, she needs to do that alone and, in the end, it all falls on the individual.

Pavlović identifies a systematic problem when it comes to securing financial means for victims of any kind of abuse, including marital rape. With the deterioration of social security nets and lack of funding for the social welfare sector, including women's shelters and NGOs working

¹⁰¹ Interview conducted in Zagreb on 1.9.2018

with domestic abuse, often the sole responsibility for securing adequate financial conditions falls on the victims.

In the report of the Croatian Gender Equality Ombudswoman for 2019 and 2020, it is stated that most complaints filed to the Ombudswoman were in the area of labour, employment, and social security. Most complaints were filed by women because they make up the majority of the unemployed, are in the most underpaid sectors, are the most common victims of sexual harassment in the workplace, are underrepresented in high business decision-making positions, have reduced access to opportunities for promotion and have lower salaries and pensions (a gap in salaries of about 13.3% and pensions of 22.3% (Ljubičić, 2020, 2021)). According to citizens' complaints, age and motherhood continue to be the main challenges of gender discrimination against women in the labour market.

Croatia has in place a National Strategy for Protection against Domestic Violence 2017-2022 which had allocated state funds for the year 2019 in the amount of 69,076,264 Croatian Kuna¹⁰² (HRK) and an additional 1,490,000 HRK¹⁰³ for the implementation of the Istanbul Convention (Ljubičić, 2020). However, the Gender Equality Ombudswoman reiterates her concern that the financial situation has not improved at national or local levels, despite the implementation of measures from the National Strategy, and in particular the implementation of the Recommendation of the United Nations Committee on Elimination of Discrimination against Women, which requires adequate funding for shelters and support services for women victims of violence (Ljubičić, 2020). The fact is that there are still no new shelters nor increased financial resources for the infrastructure of existing shelters. As for the housing of the victims of domestic violence, despite new regulations governing housing, the results achieved are minimal. There is a decrease in the number of registered unemployed victims of violence, a

¹⁰² Approximately 7,932,580.01 GBP

¹⁰³ Approximately 171,220.37 GBP

decrease in the number of employed victims of violence due to the overall reduced involvement in active employment policy measures. The Ombudswoman has previously emphasised that much more financial resources need to be provided for better implementation of certain measures, both at the national and local levels.

6.3 Costs of Reporting Abuse

Getting involved with the legal system requires financial support. Having a lawyer means better representation at court but the fees involved may put this out of reach for some victims of abuse. The presence of a legal advocate might provide a favourable outcome in that it signals the victim's commitment to the legal process, adding legitimacy to her claim, and also adding an additional measure of accountability for state officials (Neumann, 2017). Every victim in a criminal proceeding in Croatia is entitled to a court-mandated attorney and any attorney can be on the court's list, but this information is not always readily available to victims. In previous legislation, prosecution for minor bodily injury was undertaken by a private lawsuit filed with the relevant municipal court. This meant that abused women were required to initiate the prosecution themselves by filing a private lawsuit with the relevant municipal court. To do this is the victim must be familiar with her rights and have significant financial funds to pay court fees. This can begin at 500 HRK¹⁰⁴, rising to 1800 HRK¹⁰⁵ to hire an attorney and to pay for a forensic examination, and may further rise to several thousands of HRK to account for attorney expenses and the cost of any court fees on appeal. This changed with the alterations and amendments to the Criminal Code in 2011 which dictated that minor bodily injury committed against a spouse, family member or partner is no longer prosecuted privately but officially by the state attorney's office. I highlight this point about minor bodily injury here because, as mentioned in previous chapters, marital rape is often a hidden aspect of domestic abuse and, as

¹⁰⁴ Approximately 57.46 GBP

¹⁰⁵ Approximately 206.84 GBP

professionals working with victims of marital rape have pointed out, it is often easier to report physical violence than marital rape.

Katanić, a private practice lawyer who works for a women's organisation¹⁰⁶, stated his opinion on the impact of his own presence in the courtroom:

I think the legal aid is necessary, it is so difficult to be alone in the legal process, not only but prosecutors and judges look at you differently if you have legal backup and that is clear as day that it goes *in favorem* to those that have a legal backup, and it can harm those who don't.

Unless it is a state-mandated attorney, however, legal representation costs the victim. According to Katanić, at the time of the interview, the cheapest lawyer still cost around one thousand HRK plus value-added tax for every legal action in the proceedings.

As mentioned in the previous chapter on victimhood, victims withdraw from proceedings for numerous reasons, including being exposed to exacerbated violence and high financial costs. Even if they stay involved in the proceedings to the end, they are often disappointed with the sanction pronounced for the perpetrator of abuse. Nationwide, judges issue fines in 50.8% of cases of domestic violence (The Advocates for Human Rights and Autonomna ženska kuća Zagreb, 2012). A sentence for the perpetrator of abuse can have financial consequences for the whole family.

Blažević, a retired police officer,¹⁰⁷ confirmed that most domestic abuse reports are sentenced as misdemeanours, for which the most pronounced sentence is fine:

If he gets a fine of one thousand five hundred HRK that is punishment for the entire family, that might mean that they cannot buy clothes or books for their children for that month. So, the punishment reflects on the deprivation of the family life, by depriving basic family needs.

¹⁰⁶ Interview conducted in Zagreb on 17.7.2018

¹⁰⁷ Interview conducted in Zagreb on 25.2.2019

A fine does not seem to adequately address the issues of domestic abuse, neglecting the consequences for the family, especially if that family is dependent on the abuser's economic support. Fines can also be considered ineffective because perpetrators may fail to pay and victims remain unprotected. If the perpetrator pays the fine, there is also no further penalty or supervisory measures to prevent him from reoffending (The Advocates for Human Rights and Autonomna ženska kuća Zagreb, 2012). Punishing the perpetrator with a fine may therefore unintentionally punish the victim, especially when the victim is economically dependent on the perpetrator or when the payment of the fine must come from joint family funds. There can even be cases where the victim has to pay the perpetrator's fine herself (The Advocates for Human Rights and Autonomna ženska kuća Zagreb, 2012). This type of punishment presents a financial risk that may deter victims from reporting violence again.

Rendulić, a psychologist working at the feminist NGO for sexual rights,¹⁰⁸ also pointed out that reporting domestic violence often means it will fall under the qualification of a misdemeanour:

The longest prison sentence he can get for domestic abuse is 90 days. After that he can come home which in most cases is his own; he is the owner of the property.

Social welfare centres may provide victims with one-off financial assistance for basic expenses, but this is not always an available or sufficient option for victims. This assistance is often not enough for the victim to cover living or legal expenses. Furthermore, some welfare centres do not inform victims of this possibility (The Advocates for Human Rights and Autonomna ženska kuća Zagreb, 2012). When a woman submits a request for one-time financial assistance it is also not guaranteed she will be able to secure it. Another option is permanent financial assistance, but this compensation is even rarer than one-time financial assistance.

¹⁰⁸ Interview conducted in Zagreb on 17.7.2019

As mentioned in previous chapters, social welfare centres in Croatia have been systematically defunded and understaffed for years (Stubbs and Sertić, 1996; Stubbs and Lendvai-Bainton, 2020). Kovačević, an experienced social worker¹⁰⁹ who has been working in the social welfare sector for more than thirty years, explained to me all she has seen in terms of reform of the social welfare system was ‘outward touches,’ such as new buildings, new computers or new cars, but nothing concerning the actual work conducted with clients or the hiring of sufficient experts and investing in continuous education:

We don’t have adequate working conditions, and I do not say that as an excuse but as a fact; we work far above any quotas and we don’t have enough employed staff. Money is being spent on things it should not be spent, it should be spent on hiring enough experts in the centres. Not on hiring social workers in the Ministry of Social Welfare, not for educating experts from the Ministry, because we are the ones that work directly with people, not the Ministry who is our supervisor and our founder. The Ministry should be, regardless of being our supervisor, our helper and our educator.

If one of the main bodies in charge of providing social support cannot provide help, then it is nothing more than a formality in a bureaucracy. Victims and survivors of marital rape from low socio-economic classes depend on state support more than their middle and upper-middle-class counterparts. Even though economic violence cuts across class lines, having financial support via family or inheritance goes a long way in mediating the opportunity to leave the abusive relationship. Problems with state bodies such as the Ministry of Social Welfare shows how the state is indirectly complicit in perpetuating the victimisation of women while at the same time expecting them to leave violent marriages and relationships. Focusing solely on domestic abuse and marital rape at an individual level neglects the political-economical level which situates acts of abuse in the historical context of a society organised through social inequality. As Goodmark (2013, p. 177) explicitly notes: “Even if cases did move this perfectly through the

¹⁰⁹ Interview conducted in Zagreb on 11.9.2019

system, the legal system still could not provide some of what women subjected to abuse need: long-term economic stability, fundamental changes in men who abuse their partners, and a society that rejects domestic violence.”

In theory, victims of marital rape and domestic abuse involved in criminal proceedings are entitled to financial compensation for harm suffered. This is called a property-right claim. Property-right claim means that the victim is entitled to compensation for damages, which can be material or immaterial (pain or fear suffered), return of property if the victim can prove that she was the owner or a legal holder of the item in question, and the annulment of some legal transactions if they arose due to the criminal offence (for example, if the defendant forcibly induced the victim to conclude a contract). The victim (or rather the victim’s attorney) can file a property claim in criminal proceedings or a special civil lawsuit against the defendant. If the request is made during the criminal proceedings, the precondition for its acceptance is that the court finds the defendant guilty. Bilić, a lawyer specialised in human rights who works with several women’s organisations,¹¹⁰ explained to me that this right to compensation is also guaranteed by the Directive of the European Parliament and Council (2012/29/EU), which establishes minimum standards on the rights, support and protection of victims of crime. She explained to me her work practice:

Through the implementation of the Directive, I have taken the position that I will ask all my clients whether they want to file a property-right claim in criminal proceedings and give me the authority to do so in accordance with the Directive. In 100% of cases, I was rejected because the courts do not implement the Directive. And we do not prolong the procedure with this property-right request because we conduct expert examinations on some other circumstances anyway so that the same expert can report on the same circumstances for determining the amount of the property-legal claim. We will see what the appellate court, possibly the Constitutional Court, will say about this issue, I hope we will not have to go that way, but there is also the European Court [for Human Rights].

¹¹⁰ Interview conducted on 6.9.2019

In this attempt to help an individual victim you see that the system is not working in some segment where it should, and you try through an appeal or questioning of a human rights violation to make the system work.

Courts can avoid implementing the Directive, especially if there is no appeal made to such practice. Bilić's approach shows how doing everything according to the law still does not mean that the victim is guaranteed justice.

Other hidden costs of getting involved with the legal system in cases of marital rape or domestic abuse are incurred by the proceedings' impact on the victim's everyday life, such as taking time off from work to attend court dates or arranging childcare. Also, if the abusive husband or partner is the sole provider, his imprisonment in custody might mean increased food insecurity and trouble paying rent or utility bills, resulting in dependence on welfare benefits and state support. Women who leave violent relationships often struggle financially which is reflected in the fact that women's shelters offer time-limited housing for six to twelve months.

Novak, a shelter worker in a women's shelter founded by the City of Zagreb,¹¹¹ explained how this time is often not enough to secure independence for victims:

All safe houses in Croatia have a limit of one year, therefore by the law, it is temporary accommodation, even the law says from six months to a year in exceptional cases. That sounds awful and is awful sometimes, but the work is being done in the meantime to make the victim independent. To reconnect her with her primary family, to seek help from everyone where help can be sought, to get a job, for children to enrol in kindergarten, school, so that someone can work and earn. It doesn't always end fabulously, it happens to some that they have nowhere to go after that one year, then they can ask to be transferred to another safe house and get more time until they secure independence. Some, therefore, decide to return to their partner, but most do not return to their partner but return to their primary family. Financial insecurity is just as difficult a problem as the threat of abuse from the perpetrator. Most of the victims are unemployed and without secured housing. Some women have only finished primary or

¹¹¹ Interview conducted in Zagreb on 10.7.2018

secondary school with which it is difficult to find a job, or they find work in the trade sector where all salaries are around 3000 HRK¹¹², so now you need to rent an apartment, buy food, pay for electricity and you have two or three children to care for. This can often be an impossible mission. All this can be solved, but it takes time, for example, to collect alimony from the perpetrator of violence for the children, and to find a decent job.

From Novak's explanation, it is evident that shelters try to mitigate the financial problems of abused women but often strain to provide adequate help due to this legal time constraint. The city-founded shelter in which Novak works also only accepts women who have proof that they reported the abuse to the police, or who have been referred to the shelter by the social welfare centre after reporting abuse to the police. This leaves one less option for women who are unable or unwilling to report their partner.

The number of shelters in Croatia is still insufficient to host thousands of women seeking their services. Shelters are often located in urban centres, making them inaccessible to women without transportation and other resources. The Council of Europe recommends having a women's shelter in every region, one per 10,000 inhabitants, and one social work centre for victims of sexual violence per 200,000 women (Mamula et al., 2010). In article 23 of the Istanbul Convention, it is stated that specialised shelters should be available in each region. President of the Autonomous Women's House Zagreb, Neva Tölle, disputed the Ministry of Social Welfare's claim that there are 19 women's shelters in Croatia. Tölle explained that there are eight shelters for women and children and the remaining eleven are care homes that receive women and children amongst other service users (Index Vijesti, 2020). She also indicated that systematic financing of the shelters remains a burning issue. I return to this point below in section 6.4.2 on the Istanbul Convention.

¹¹² Approximately 344.74 GBP

6.4 Structural Economic Factors and Abuse

In the previous sections, I have touched on structural issues with the systems providing support for victims of sexual and domestic violence. Macroeconomic politics, deindustrialisation and neoliberal economic policies are all linked to gender-based violence (Goodmark, 2018). As mentioned above, women were particularly disadvantaged by the neoliberal economic reforms and shifts from central to private ownership and competitive markets in the post-war economy of former Yugoslavia (Kostovicova, Bojicic-Dzelilovic and Henry, 2020).

The decline and waning of once strong industries in Yugoslavia, such as textile and manufacturing, made migrating to the private sector harder for some women due to their age and lack of required technological skills (Hassenstab and Ramet, 2015). Strong Catholic religious traditionalism pushed for traditional gender roles with women as homemakers and stay-at-home mothers, making women more vulnerable to economic dependency and abuse. Some types of work do provide women with the economic stability that can protect them in cases of abuse. However, the proliferation of low-paying, flexible and precariat jobs further destabilises women's financial situations. Finding and keeping a job for an abused woman is difficult. Former shelter worker Pavlović explained a state measure designed to employ women victims of domestic violence and the unintended consequences:

For a time, employers could get incentives for the employment of women victims of violence and there were subsidies by the state. This was exploited by employers *en masse*, for some ridiculous salaries of 2000 or 3000 HRK.¹¹³ But even that starting salary and initial employment meant a lot to [abused] women because a lot of them would enter the labour market for the first time after X years. Some employers would notice them, see that they were valuable and eager to prove themselves, and then hire them on a permanent contract, it was a step out of violence for them. Most women need this

¹¹³ Approximately 229.83 and 344.74 GBP

financial help because in most of these marriages a woman is unemployed. After all, if she is employed then there are accusations like: ‘What are you doing, who knows who you’re hooking up with,’ and when she stops working then he says: ‘You just want to spend my money, you are nobody and nothing without me, you have nothing without me.’ Such pressures become so terrifying that she usually resigns herself. And then at work, she says, ‘It’s hard for me to be apart from my children’, she invents some reason without actually saying what the reason for her resignation is.

As Pavlović explained, the importance of work can be negatively skewed by the opportunities presented to the victims of intimate partner violence even when they are incentivised by the state. Her statements also show how the state’s incentives can be exploited by employers looking for cheap labour rather than providing opportunities to aid abused women on the path to financial independence. Furthermore, keeping a job while being involved in an abusive relationship is a difficult task. Abused women are less likely to maintain long-term employment and report being late and absent from work than other women (Goodmark, 2018). Abusive partners may deter victims from going to work by destroying job-related documents and work clothes, inflicting visible injuries or harassing them at work.

Judge Krznarić¹¹⁴ recalled a case of marital rape¹¹⁵ and domestic violence where the husband stalked his wife at her workplace:

He was pathologically jealous, and he would come on his bike and hide in the bushes in front of her workplace. I even know that specific parking lot, where he would wait for her and hide so she cannot see him. He wanted to see with whom she exits the building, talks, smiles at and says goodbye.

The judge also noted that in this case economic violence was also present as the husband took the victim’s salary and refused to provide money for groceries, housekeeping and childcare. This example shows the type of situations that might hinder the capacity of an abused woman

¹¹⁴ Interview conducted in Zagreb on 7.8.2018

¹¹⁵ This case was described in more detail in the introduction

to keep a stable job and deplete her resources even if she keeps the job. As mentioned above, in the gender equality ombudswoman's report, women in Croatia make up the majority of the unemployed and often work in underpaid sectors. Deindustrialisation in Croatia had a major impact on the employment of women in the textile and manufacturing sector. The manufacturing industry used to make up 30% of GDP in the 1980s and employed more than 219,900 people, while now it only makes up about 13% of GDP (Bonfiglioli, 2019). In the 1980s Yugoslavia became one of the leading producers of textiles and garments. The mass industrialisation led by Tito after the Second World War prompted a large number of young women to find jobs in the textile sector (Bonfiglioli, 2019). After the Yugoslav war in the 1990s, many manufacturing factories closed, resulting in liquidation and cutbacks and constraining thousands of textile workers into dubious and exploitative private-sector occupations. Conditions in which intimate partner abuse abound are linked to the effects of deindustrialisation, specifically economic deprivation and community insecurity (Goodmark, 2018).

A neoliberal state is organised around the principles of increased economic growth and by reducing the control and provisions provided by the state. Private companies, civil organisations and individuals are therefore encouraged to take responsibility for the services the state no longer provides (Goodmark, 2018). By systematically defunding education, health and social welfare centres the state has handed down a large portion of care work to civil society organisations that rely on state tenders or international bodies for funding. Civil society organisations that offer services to abused women in Croatia often cannot afford to have full-time staff. Issues related to finance are cited as one of the main problems identified by 87% of such organisations and in particular the lack of systematic and continuous funding from donors (Mamula *et al.*, 2010). The main donors for such organisations are the local government (the city or the county) and the relevant Ministry (usually the Ministry of Social Welfare, Ministry

of Health and Ministry of Science, Education and Sport). However, these funds are often symbolic, ranging from one thousand to ten thousand HRK (Mamula *et al.*, 2010). As Sarah Jaffe explains, the non-profit sector tries to alleviate some of the worst effects of inequality in society but at the same time is funded by the same exploitative capitalist system whose issues they are trying to mitigate (Jaffe, 2021). In other words, the non-profit sector is embedded in the capitalist system and often ends up exploiting and overworking its staff in the name of social justice. NGO employees take on care and service work, which resembles the work done by state agents such as social workers, but unlike them, they may not receive a steady (albeit low) income.

Kašić, a social worker with a long experience of working in civil society organisations¹¹⁶, explained to me that because of the strain on the social welfare system, social welfare centres collaborate and work with a lot of civil society organisations:

Social welfare centres in Zagreb have long-term cooperation with [civil society] associations that provide counselling services, schools for parents, psychotherapy, etc. Those associations are crucial to the centres, but again there is the problem of NGO funding. At one point they [social welfare centres] rely on the help and the next year you don't have that help anymore.

The precarious funding of the NGO sector means that funding is often provided for the duration of the approved project or program but once the project is ended the work is either continued on a volunteer basis or the services are no longer provided. Project tenders often require innovation as one of the main conditions for funding, which poses a problem to NGOs who offer the same, essential programs every year, such as counselling or free legal aid for victims of sexual violence. This kind of precarious work takes a toll on employees' work-life balance and can result in burnout (Jaffe, 2021). The same is true of social workers. The majority of

¹¹⁶ Interview conducted in Zagreb on 8.5.2019

NGO workers, especially in organisations offering services to victims of domestic and sexual abuse, are women. The devaluation of care work done by women is evident in the problem of funding both NGOs and social welfare services.

Kašić also told me about the first organised strike of social workers which took place in Zagreb in April 2019 after the media and public outrage provoked by a case of domestic violence on the island of Pag, where a father threw four of his children out of a window. The Social Welfare Centre on Pag was heavily criticised in the media for not preventing the violence. Kašić told me:

It happened again that everyone shifted the responsibility from the neighbours, police, kindergarten, school, passers-by, and they always somehow focus on the Centre for Social Welfare as the main culprit, which is ok, the supervision came and determined that there were some irregularities in their work [that of the social workers assigned to the case]. What was really pointed out by this strike is the number of clients that an average social worker has, which is up to 300, and that number should be 50 on one social worker to be able to work normally. In the case of 300 clients, a social worker has only 6 minutes of work for each of them, which is very little, what can you do in 6 minutes, and the bureaucracy that accompanies each case is terribly extensive.

I have already mentioned the gendered precarity of the positions of social workers and the media scapegoating in Chapter 4, but here I want to stress the influence of the economic factors that reverberate throughout the system and affect people who need to use social welfare services the most. Kašić's narrative shows more closely why social welfare centres are often unable to provide adequate help to abused women and how their reliance on civil society organisations also depends on the funding provided by the state or international bodies.

6.4.1 Where You Are Matters

Accessing help and support services is considerably worse for the abused women seeking services outside Zagreb and the urban centres. Women in rural areas are more exposed

to poverty and exclusion. They are more likely to get sick, malnourished or die from preventable circumstances and they are particularly disadvantaged in relation to access to health care (Ljubičić, 2020). Of all the civil society organisations that offer services to abused women, 56% of them operate in large urban areas. Eleven of them are based in Zagreb, seven in Rijeka and Split, more than a third operate in other towns such as Pula, Karlovac, Virovitica and Slavonski Brod, and only three organisations operate in smaller areas such as Pakrac, Dalj and Tenja (Mamula *et al.*, 2010). None of the organisations is based in villages. As mentioned above, abused women living in rural areas are more dependent on means of transportation and other resources if they need to reach services such as women's shelters. Living in a rural, geographically isolated place might exacerbate the already isolating effects of the abuse. As Goodmark (2013, p. 74) explains: "Men intentionally isolate their partners geographically, both as a form of abuse and because isolated rural settings are conducive to abuse. Men who abuse in rural areas remove phone receivers and disable or destroy motor vehicles to prevent their partners from seeking assistance." Scarce economic opportunities in the rural areas contribute to economic insecurity, which can also prevent victims from leaving abusive relationships. In a small place, it is also statistically likely that the abuser's relatives are working as police officers, medical staff or social workers, which makes seeking help more daunting and dangerous for the victim. Police forces in rural areas might also be unable to answer distressed calls quickly, even if they are inclined to, due to limited resources and large coverage areas (Goodmark, 2018).

Lawyer Katanić told me he witnessed staggering differences between Zagreb and rural areas in the proceedings of cases of marital rape and domestic abuse:

Prosecution outside of Zagreb is at the level of tragicomedy, they are understaffed and undereducated [for the crimes of marital rape and domestic abuse], I'm not talking about everyone in general, but there are bigger problems than in Zagreb. In Zagreb, there is a department for victims and witness support [at the county court], so there is some

infrastructure, there is a well-established practice, there are expert associates at the court that other courts do not have.

Departments for victims and witness support exist in the county courts of seven larger cities across Croatia: Osijek, Rijeka, Sisak, Split, Vukovar, Zadar and Zagreb. However, most of the resources in terms of staff capacity and services are concentrated in Zagreb. Katanić identified the limited availability of infrastructure in rural areas in a blunt manner, but this is corroborated by the under-representation of women in rural areas in decision-making bodies (such as agricultural cooperatives, trade unions and municipal governments) as well as a gender pay gap in rural areas. The Gender Equality Ombudswoman's in 2019 report also recognised the precarious position of rural women, especially those exposed to intimate partner violence who often do not have access to justice and effective legal remedies (Ljubičić, 2020). A significant number of rural women do not have regulated health and/or pension insurance, paid maternity and parental insurance leave and pensions. If they do have pensions, then they are likely to be significantly lower than men's (Ljubičić, 2020). Rural women often face systematic discrimination in access to land and natural resources. They bear most of the burden of unpaid work due to stereotypical gender roles, inequality in the household and lack of infrastructure and services, including those related to food production and care work. Even if they are formally employed, they often do jobs that are precarious, dangerous, poorly paid, and not covered by social protection (Ljubičić, 2020). Rural women have less access to education and are more at risk of becoming victims of human trafficking, forced labour, child and/or forced marriage, and other harmful practices (Ljubičić, 2020). Women in rural areas are also more likely to be excluded from leadership and decision-making positions at all levels. Kašić, a social worker, explained to me that opportunities for education and supervision for service providers outside of Zagreb are limited:

Social workers in Zagreb have a greater opportunity for education and supervision, many social welfare centres in Zagreb organise supervision which is not the case with the institutions outside of Zagreb.

The lack of supervision in care work can have drastic consequences. In the Pag case, supervision came only after the incident and found irregularities in the work of the social welfare centre. Supervision and team support are also protective factors against stress and burnout for social workers (Lloyd, King and Chenoweth, 2002). Stress and burnout can be dangerous not just to social workers' and service providers' health, but it can lead to superficial casework or omissions in recommendations which can endanger women subjected to marital rape and domestic violence.

Nonetheless, having residence in Zagreb does not solve all of the problems related to legal proceedings for victims of domestic violence and marital rape. Courts are often insensitive towards victims' financial capacities when it comes to being present and involved in legal proceedings. Lawyer Bilić told me she had a client who was involved in two proceedings: proceedings on domestic violence at the municipal court in Zagreb and criminal proceedings on marital rape at the county court in Vukovar (a far-eastern town in Croatia, close to the border with Serbia). She explained that the domestic violence proceeding was about threats towards the woman and her children and the other proceeding was about marital rape, highlighting that these proceedings are always separate because of the different jurisdictions for these crimes. In cases of domestic violence towards the wife and the children the jurisdiction falls to municipal criminal courts, while rape is in the jurisdiction of county courts. She told me how advocated that her client be able to testify in Zagreb to avoid the long trip to Vukovar:

Then I called the county court [in Vukovar] and demanded that an individual assessment be made, that my client gets a video link, and the department for victims and witness support there responds very nicely, they say 'No problem, we will provide a video link'. And I said 'Yes, but my client lives and works in Zagreb and she has already testified

several times before the courts, she is a single mother who works and has two or three children, please allow her to be heard via a video link in Zagreb. Don't make her come to a remote court.' Then the answer arrived, 'No, it cannot be like that, it is more convenient for us like this because we have already booked a room at the court, we have booked a video link, let the lady come and what's the problem anyway, she has to participate in the procedure.' I say of course she wants to take part in the proceedings but they should try to imagine the victim's perspective, she doesn't have a car, she has to travel by public transport on a four to five-hour journey, alone with her thoughts, before testifying about the most intimate, painful, ugliest moments of her life. In front of complete strangers, and according to my instructions she must speak in detail, to give in the best possible way all the information that should be given so that she would not be called in later for further clarification. She has to talk about the event, come to court, testify at the court in front of total strangers, and after that, she has to return alone, traumatised, to the city where she is awaited by two children cared for by a neighbour and throw herself back into all the jobs that await her as a mother. I said: 'Why can't you allow her to be heard in Zagreb, I don't understand?!'

The case above shows not only how important it is to have a legal advocate who will try to fight for your rights, but also how despite the advanced technology now used in courts, bureaucracy trumps sympathy. Being forced to travel a long way from home to testify about the violence committed by your former or current intimate partner, to organise childcare and to return on the same day, followed by the reliving of painful memories on the way back to housework and child-rearing, is an arduous ordeal. It is indicative of how the court employees in Vukovar interpret Bilić's request to have the hearing in Zagreb. Assuming that the request means that the victim does not wish to take part in the proceedings, they automatically scrutinise her motives and insist that she has to participate. It is also important to note, however important and valuable video link has been for the rights of victims of sexual and domestic violence, that it still does not solve the possibility of encountering the accused and his family or allies at the court. Trial practicalities should not be neglected because they can cause a lot of anxiety and distress for survivors (Smith, 2018).

6.4.2 The Promise of The Istanbul Convention

I have briefly explained the context of the ratification of the Istanbul Convention in Croatia in Chapter 3, but here I focus on the implementation process. The Istanbul Convention guarantees financial means to help with the infrastructure necessary to combat violence against women. The Convention entered into force in Croatia on 1st October 2018. Among other things, the Istanbul Convention guarantees financial assistance to victims. Article 20 of Chapter IV states that: “Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment” (*Council of Europe*, 2011). An important segment brought by the Istanbul Convention is that the state will have to fund an adequate number of shelters for women. That has not been the case so far. In addition, public bodies and non-governmental organisations and civil society organisations should be involved in the implementation of the Convention.

In July 2020, the Worker’s Party campaigned for the Government to implement urgent and effective implementation of the Istanbul Convention and the National Strategy,¹¹⁷ warning that shelters for women are being closed because they are not being paid the promised financial resources (Hina, 2020). Martinović, a coordinator of an NGO for sexual rights,¹¹⁸ expressed her scepticism with the expectations surrounding the implementation of the Istanbul Convention:

I am sceptical when it comes to the implementation of the Istanbul Convention, I think the government will focus on shelters and SOS lines, and in that way, Caritas and others [Catholic women’s shelters] who were against the Istanbul Convention will be first in line to get the money so that will shut them up. I am afraid that the government will run the SOS phone line in a way that has nothing to do with what is stated in the Convention.

¹¹⁷ National Strategy for Protection against Domestic Violence for the period from 2017 to 2022

¹¹⁸ Interview conducted in Zagreb on 31.8.2018

This was confirmed by the Government in their statement in April 2018 on the financial resources intended for women's shelters, which are financially supported by the Ministry of Social Welfare (N.C, 2018). Funding was planned to be distributed in two ways: by contracting services in the social welfare network through the "head" system (3200 HRK per beneficiary per month) to finance the work of homes/institutions/associations that provide accommodation to victims of domestic violence, and through tenders which provide financial support to autonomous women's shelters for victims of domestic violence, run by civil society organisations (N.C, 2018). Financial support was guaranteed to the following shelter providers which are financed based on the first model of the "head" system: Caritas of the Zagreb Archdiocese, Home for Victims of Domestic Violence "St. Nikola", Home for Victims of Domestic Violence "Safe House", Safe House of Vukovar-Srijem County-Association B.a.B.e., Association for the Protection of Women and Children Victims of Domestic Violence "Iris", Rehabilitation Centre-Shelter for Victims of Domestic Violence Osijek, "St. Ana" Caritas Home for Women and Children Victims of Domestic Violence in Rijeka, Caritas of the Archdiocese of Split, and Caritas of the Diocese of Šibenik and DUGA - Association for Assistance to Women and Children (N.C, 2018). As can be seen from the names of the organisations, five of these organisations are run by the Catholic Church and the "head" system of financing means that, unlike the autonomous women's shelters run by civil society organisations, they never have to apply for tenders for financial support. This gives the Catholic shelters an unfair advantage which is rightly called out by Martinović, especially as they did not speak up against the mainstream Catholic narrative in Croatia which staunchly opposed the ratification of the Convention.

The former social welfare minister Bajović also expressed her scepticism but from a different perspective. She claimed that Croatia already has laws for protection against violence and that it is simply a matter of obeying the laws and every institution doing its job. As mentioned in

Chapter 3, this kind of reasoning was seen as a more moderate argument from the opponents of the ratification (Kovačević Barišić, 2018). Nothing could be further from the truth, however, as Croatian laws which regulate domestic and sexual violence are not aligned with the provisions of the Convention, especially in the sense of full adherence to standards of effective protection for victims. In her report for 2020, the Gender Equality Ombudswoman also warned that the Convention has not been properly implemented in national legislation, specifically stating that the Law on Protection from Domestic Violence and the Criminal Code are still not in line with the Istanbul Convention because they define intimate partnerships too narrowly and therefore do not provide adequate protection to victims of intimate partner violence (Ljubičić, 2021).

The Convention provides a comprehensive system to address the needs of the victims and introduces additional obligations for the country to implement. This was pointed out by Bogović, a private practice lawyer:¹¹⁹

In any case, we should have ratified the Convention, you can have as many laws as you like but if they are not implemented in the right way, they are just dead letters on paper. A lot of it depends on the education [of barristers], of judges, that's the most important matter. It's not just about having good laws but having proper education because if laws are not implemented, they are useless.

As I explained in Chapter 3, there has been a lot of turmoil and fake news surrounding the ratification of the Istanbul Convention, most notably the idea that the Convention will smuggle “gender ideology” into the Croatian legal system, thereby allowing children to choose their own gender, and the notion that the EU and Europe are trying to colonise Croatia and destroy its Christian traditional family values (Kujundžić, 2019). While more liberal media tried to portray the opponents of the Istanbul Convention as deluded, uneducated masses, in reality, a lot of

¹¹⁹ Interview conducted in Zagreb on 10.5.2019

different people complied with this discourse, including some members of law drafting groups who should have been familiar with the content of the Convention. This example was given by lawyer Bilić, who is also a member of law drafting groups for the Criminal Law and Law on Protection against Family Violence:

I said [to the law drafting group] now that we ratified the Istanbul Convention we need to implement it, but they [the members of the law drafting groups] said I was wrong because the Istanbul Convention talks about same-sex couples, not couples who are in a sexual or emotional relationship, which is rubbish of course, so I had to practice patience. All this panic was created with jumbo billboards spreading lies about the Convention and it managed to mobilise large groups of people who believed those lies. And I wonder if we should have some system of responsibility and punish these intentionally placed lies which mobilise people in a way that has nothing to do with democracy but with its obstruction.

The reasons why people who should be able to think critically and who find themselves in positions of relative power, like the members of the law drafting groups, might be susceptible to the confusion and panic surrounding the Istanbul Convention are complex. Most of them are more or less generally related to populist fatigue with gender and gender equality policies, economic crisis, austerity policies and right-wing narratives transforming minorities into scapegoats (Paternotte and Kuhar, 2017). Disinformation about the content of the Istanbul Convention also included inflated figures of how much money the Croatian state will have to provide for the Convention's implementation, usually stating figures like one billion HRK, while in reality the state budget annually provides approximately 70 million HRK for the implementation of the National Strategy and the Convention (N.C, 2018).

After much delay, the Government did provide funding for establishing six new shelters so by the end of 2020 there were a total of 25 shelters for victims in Croatia. However, it remains a priority to introduce systematic, safe, and timely financing for all existing shelters for victims of violence. Women's Aid Now, the first and the oldest women's shelter in Croatia, almost

closed due to non-payment of promised funds. Allegedly, the government was withholding the requests for donations on the pretext that the distribution of funds was prevented due to Covid-19 (Hina, 2020). Withholding funding for organisations and shelters which provide services to abused women has devastating consequences, especially since worldwide reports have shown that the Covid-19 pandemic has exacerbated domestic violence. While opening new shelters is much needed, systematic funding needs to be provided for existing shelters and all other organisations which provide services to abused women.

6.5 Conclusion

In this chapter, I have explored the economic factors underlying the issues of marital rape and domestic violence. To begin to answer the research question: “Is the current economic system complicit in devaluing victim support systems, and if so, how?”, I have explained the consequences of the transition and post-war period and its significance for the position of women in society, including its political and economic implications. The post-war period was marked by poverty, unemployment and the devastation of the social networks entwined with a nationalist agenda that favoured traditional gender norms coupled with rising religiousness. War veterans are still held in high esteem even when they appear as abusers in courts. Excuses are made for their behaviour, and their privileged position is enshrined in law. Using the status of war veterans as a mitigating circumstance for domestic abuse shows the state’s inability to condemn violence against women in favour of the nation-state-building agenda. This not only has devastating consequences for victims of abuse but on society as a whole since the message is sent to future generations that wartime participation is a glorified excuse for violence. The consequences of the transition period are felt to this day, in devaluing the commons,¹²⁰ favouring private enterprises and systematic defunding of what are seen as non-profitable

¹²⁰ The commons or the common goods are cultural and natural resources available to all members of the society which are publicly owned. See: Frederici (2004) and Christine and Wendy (2018).

sectors such as the social welfare system and civil society organisations. However different, both the social welfare system and civil society organisations often work for the same cause and both face similar problems of underfunding, even though they do differ in terms of employment security.

Although many socialist legacies have been abandoned, the idea of a working woman still prevails even in conservative circles, which embraced the roles of wives and mothers as ultimate goals of womanhood in Croatia. However, the working woman's position in socialism and the state-supported mass industries which employed women in former Yugoslavia is vastly different from the position in which women find themselves in relation to employment today. For abused women, having a job and independent income is crucial to leaving an abusive partner. However, due to the proliferation of low paid, insecure, part-time jobs and the devastation of social security nets, abused women find themselves in a precarious situation. Many are financially dependent on their abusers, which is one reason why they may be unable and unwilling to participate in criminal procedures against their partners.

Many women who decide to report their partners or husbands for abuse or rape face hidden costs that are often neglected by the system or insufficiently remedied. The availability of services also depends on geographical location: as I have shown, rural women in Croatia are more vulnerable to dire consequences of marital rape and abuse due to the lack of accessible services. One of the recent legal solutions incorporated in the Croatian legal system is the Istanbul Convention, which should provide an overarching system for battling violence against women and, for the first time, a guarantee for financial support. However, the main problem remains inconsistency in the implementation of the Convention. The essence of the Istanbul Convention is to ensure that the experiences of women's civil society organisations are taken into account by governmental bodies, which should establish cooperation with them. However,

instead of using their knowledge, the state ignores their experiences and sometimes excludes them from the decision-making process.

7. Conclusion

This dissertation has aimed to portray the conceptualisation of marital rape in the inner workings of the legal and social welfare systems, as well as to situate marital rape in the specific context of post-conflict, post-socialist Croatia. By combining feminist legal theories and empirical studies of sexual violence with feminist political economy, this dissertation adds to the body of knowledge on marital rape in all of its contextual complexities.

I have explored the issue of marital rape with a mixture of qualitative research methods – in-depth interviews, a rape trial observation and socio-legal and feminist legal methods – within an overarching feminist methodology. To capture the complexity of the socio-legal context of marital rape, I used a multipronged theoretical approach, which considered feminist scholarship of sexual violence and abuse, feminist political economy, literature on women and nationalism, critical victimology, postcolonial studies, and feminist legal theories. The research questions are answered and elaborated upon below in section 7.1, together with reflections on the limitations of the study, and the main contributions it makes to the fields of gender studies, socio-legal studies and feminist political economy.

In the introduction, I described a specific case of marital rape drawn from the court verdict to set the scene for understanding the themes and responses to marital rape in the Croatian legal and welfare systems. In the methods and literature review chapters, I stressed the importance of a feminist methodology and epistemology with the critiques of orientalist, Balkanist, liberal and radical feminist approaches to the issue of sexual violence in general. Chapter 4 discussed institutional practices of judges, prosecutors, police officers and social workers in cases of marital rape. Victim-blaming practices and justifications were identified alongside the overwhelming tendency of state agents to focus on false rape reports. Chapter 5 examined some of the justifications of welfare and health experts for focusing on false reports and victim-blaming. The narratives of ‘manipulative mothers’ in cases of divorce procedures serve as a

way to dismiss abuse claims as a means way for women to falsely accuse their husbands and win custody over their children. Chapter 6 explained the overlooked dimension of marital rape and sexual violence which is the socio-economic aspect of accessing the legal system. Economic circumstances are extremely important for victims of marital rape to increase the chances of leaving the abusive marriage, whilst the wider economic politics influence their chances of accessing support and victim services.

7.1 Understanding Marital Rape

This thesis explored marital rape in Croatia in its complexity as a part of the cultural history of a nation and region, a kinship structure and norms, and an economic system. One of the more significant findings to emerge from this study is that even though marital rape is understood among various professionals as a serious crime of intimate violation, that understanding does not necessarily translate to the delivery of practice that is beneficial to victims. For some professionals, marital rape is explicitly connected with patriarchal, traditional gender norms, in which sexual intercourse in marriage is considered a duty and not a choice. Attorneys with a background in human rights or feminist education, NGO employees and shelter workers resist victim-blaming attitudes and take the socio-economic context of violence into account when assessing their cases. Others, such as child experts, police officers, judges, and prosecutors, fail to understand the complexities of marital rape and its effects on victims' behaviours and socio-economic circumstances. Being a professional who works in this field does not, however, automatically guarantee either victim blaming or supportive attitudes. Rather, the response and approach taken depend more on the individual ideology and the broader norms and assumptions of the socio-cultural context.

Employees of feminist NGOs and women's shelters confirmed that many abused women do not recognise marital rape as rape but rather as a violation they must endure in marriage. This

is in line with Yllö and Torres' (2016) findings on the global context of marital rape. Often, women endure marital rape as a part of domestic and economic violence. As shown in Chapter 5, it is often easier for a woman to report domestic violence than marital rape. In some cases, marital rape is disclosed later following a report of domestic abuse in a safe, supportive setting such as a women's shelter, where women may feel empowered to share this part of their story. Their willingness to disclose marital rape is sometimes met with disbelief and contempt from state agents such as police officers and social workers.

This dissertation has also shown that victim-blaming and misunderstandings of trauma in the legal and social welfare systems are still prevalent. Alongside this, there are implementation problems and inconsistencies in drafting relevant laws and adopting international standards. Progressive laws on victims' protection from domestic and sexual violence in practice do not create positive change if they remain positioned within the framework of capitalist socio-economic relations and institutionalised patriarchy (Burcar, 2020). In other words, laws do not go far enough in tackling the problem of gender-based and sexual violence holistically. Lawmakers need to go beyond a punitive focus, instead prioritising the prevention of the conditions that enable the continuation of marital rape. A holistic approach would entail socio-economic support for victims as well as re-socialisation and re-education programs for perpetrators funded and supported by the state. The Istanbul Convention, an important international tool in combating violence against women, for the first time in an international legal document, defined the gender-based aspect of violence. However, it also caused the mobilisation of religious conservative actors who tried to prevent the ratification of the Convention in Croatia. These same actors successfully lobbied for the heteronormative definition of marriage to be included in the Croatian Constitution in 2013 as a pre-emptive strike against same-sex marriages and they continue to advocate for a total abortion ban. In former Yugoslavia, such an attack on gender equality would have been unconstitutional. Even

though the Istanbul Convention was ratified in 2018, three years later there are still problems with its implementation and the state has not yet included women's civil society organisations in their decision-making process, a measure demanded by the Convention.

Wartime sexual violence, the post-conflict period and the transition from one economic system to another had a great impact on the underlying politics, ideologies, and cultural representations of intimate violence. Even though marital rape was not criminalised across the whole of Yugoslavia, gender equality among men and women was a Constitutional right and obligation throughout the country. Many women fought side by side in the national liberation struggle against fascism in the Second World War and demanded full equality under socialist ideology. Socialist politics in Yugoslavia guaranteed women the right to abortion, the right to permanent and full-time employment, and the right to maternity benefits, including a guarantee to return to the same or an equivalent position in the organisation at the end of the leave period (Burcar, 2020). With the ethno-nationalist conflict in the 1990s, the dissolution of Yugoslavia, the strengthening of the Catholic Church in Croatia and the transition to capitalism, the position of women in society was eroded.

People in post-war Croatia perceived the social position of women as worse than in the previous periods, especially for women who are highly educated and employed outside the home (Leinert Novosel, 1998). Those who believed that the position of women is better than before make up a smaller group, who also hold that women belong in domestic space, that the Church should decisively influence the position of women, that women should be excluded from politics, and that freedom on abortion decisions should not be tolerated (Leinert Novosel, 1998). Throughout my thesis I have explained the causes of the re-traditionalization of gender roles after the war, demonstrating its connection with the transition to capitalism coupled with the erosion of a socialist legacy that championed gender equality and workers' rights. Where does this leave women victims of marital rape? I argue that despite increased legal protections from the 1990s

onward, victims are socio-economically worse off than before and have reduced access to social support nets due to hostile neoliberal policies. All of the interviewed experts agree, from state agents to NGO workers, that the only way out of the cycle of violence is for women to achieve economic independence. In a neoliberal setting, individualising the problem of sexual violence leads to the displacement of collective responsibility and structural oppression (Stringer, 2014). With the state no longer interested in the collective protections of workers' (especially women's) rights and its prioritisation of austerity policies, the problem of marital rape and gender-based violence is positioned as an individual responsibility.

7.2 Institutional Practices and Access to the Legal System

Professionals following the law and legal guidelines do not necessarily do all they can to help victims in the legal system. As shown in Chapter 4, following the law to the letter sometimes disadvantages victims, such as in the cases of dual arrests, where an abused woman is arrested alongside the abuser. This is due to the wide definition of domestic violence which includes not only physical, but also emotional, psychological, and economic violence. The dual arrest can be regarded as equality with vengeance (Minaker and Snider, 2006) and supports the myth that men and women are equally abusive and violent in intimate relationships. The practice of dual arrests can be seen as a backlash against the women's rights movement and their claims (Garcia and McManimon, 2011). In the Croatian context, it can also be regarded as pushback against gender equality laws and victims' protection legislation prompted by the European Union.

The thesis has shown that victims of domestic violence and marital rape are still overwhelmingly met with disbelief and victim-blaming and are commonly undermined and discredited by the professionals tasked with aiding them. This may be the main reason for low reports of marital rape. The criteria for prosecutors and judges' determinations of false and

legitimate victims are not clear. The lack of credibility that is often associated with extremely ambiguous evidence of false claims, such as the victim keeping in contact with her rapist, shows the depth of the global cultural obsession with false rape reports. In reality, rape reports are rare and false rape reports even rarer (Belknap, 2010). Despite the small number of false reports in crime statistics, public and media discourse is disproportionately fixated on false rape reports. This discourse seeps into the practice and reasoning of some state agents such as judges, prosecutors and police officers who express over-cautiousness when it comes to rape reports.

As I have shown in Chapter 5, the prevalent idea behind over-cautiousness is that women falsely report rape to facilitate divorce procedures and turn the custody of children in their favour. In practice, however, this is not proven to be an easy way of obtaining child custody, precisely because of the suspicion of false reports and the perceived commonality of ‘manipulative mothers’ who lie about abuse and rape. Feminist NGO coordinators and employees of women’s shelters have stressed that women gain very little from reporting rape and abuse as the whole legal and social welfare system is already biased against them, and the legal proceedings are quite long with no guarantee of the desired outcome.

Another important finding is that some professionals find themselves in more precarious positions than others, especially social workers and NGO workers. This position may in part explain their inability to provide adequate help and care for victims of marital rape and domestic abuse. Thus, as shown in Chapter 4, social workers find themselves in a simultaneously powerful and precarious position: they have the power to decide and write recommendations on cases of marital rape and child custody, however, at the same time, they are underpaid, understaffed, and often vilified by the media. Social workers in Croatia would benefit from class consciousness and gender solidarity to politicise their own social position and develop a better understanding of the experiences of their own clients to fight against violence and abuse. Class consciousness could lead to collective organizing beyond isolated protests with demands

for better work conditions and salaries alongside gender solidarity among predominantly women social workers whose clients are also predominantly women. This awareness could lead to challenging the neoliberal, male-dominated stakeholder positions in social work and radical reconfiguration of care politics as a vital aspect of a healthy society.

Both NGO workers and social workers find themselves at great risk of burnout (Lloyd, King and Chenoweth, 2002), which can be connected to larger systematic problems such as the lack of economic and political support for victim service providers. The state's refusal to systematically fund women's shelters and NGOs service providers, alongside the low salaries awarded to both NGO and social welfare workers, ultimately undermines the staff's ability to support victims and survivors of marital rape. Policies and laws are not operationalised in a vacuum. Rather, they operate in a gendered, classed and racialised context which tends to disadvantage the historically ignored victims of marital rape.

As shown in Chapter 5, being a lawyer working for a feminist NGO does not necessarily translate into understanding or exhibiting a feminist position, partly because feminism can be understood very broadly, with some who identify with the term supporting harsh incarceration sentences and even the death penalty. Feminism is also not a popular term in Croatia. However, state agents such as police officers and social workers do exhibit awareness that campaigns led by women's organisations' influenced criminal justice reforms and paved the way for stronger victims' protections in legislation.

Many state agents, women's shelters and feminist NGO staff support higher sentences for crimes of rape and sexual violence even though there is a prevalent understanding that longer prison sentences are not a solution but rather a last resort. The general sentiment among the interviewed experts was that sentences for rape are too lenient and that there is palpable frustration among victims' services providers regarding the durations of trials and the resulting court decisions. On the other hand, state agents and NGO workers alike are disillusioned with

prison sentences as a method of prevention. Every court decision in the explanation of the verdict states that a prison sentence is not just a punishment for the individual crime but serves as a means of prevention. Even judges, prosecutors and lawyers express their scepticism for prison sentences as an effective method of prevention.

7.3 Victim-Blaming in Professional Practice

The legal system exhausts the victim of her time, energy, money and in many cases, her dignity, whilst the outcome of these long trials is often a lenient sentence for the rapist. The alleged gain for women who are seen to make false rape reports is unclear. As shown in Chapter 5, some professionals working in the social welfare and the health systems claim that women fabricate rape claims during divorce procedures to secure child custody. Discourses of parental alienation and ‘manipulative mothers’ are used against abused women to label them as unfit parents and to challenge their reports of abuse. Feminist researchers and practitioners have recognised parental alienation as a problematic concept that enables the perpetrator of violence to renounce accusations of domestic violence and sexual assault as the victim’s attempts to alienate him as a parent (Monk, 2018). Some of the professionals in the child welfare and health systems place great responsibility on abused women as mothers and fixate on the victim’s protectiveness towards her children whilst neglecting the responsibility of the perpetrator. This positions women primarily as mothers and presents a constrictive conceptualisation of motherhood as a false dichotomy of ‘good’ and ‘bad’ mothers (Adams, 2014).

The ‘good’ mother protects her children from witnessing or experiencing abuse in the household, while the ‘bad’ mother cannot prevent or leave the violent situation in the home and therefore exposes her children to violence, regardless of whether it is solely inflicted upon her or upon the children as well. Not only can this be seen as a sophisticated form of victim-blaming, but it can also be connected to Rebecca Stringer’s (2014) identification of the

neoliberal demand to abandon victimhood in favour of survivorship. This imperative instructs abused women to ‘get over’ their victimisation, encouraging them to reframe their experiences in terms of survivorship, which would make them again productive, fully functioning members of society, fulfilling the primary duty of protecting their children. Meanwhile, the societal construction of masculinity as the main power holder and the abuser’s responsibility for the violence is left uncontested. To properly support victims of marital rape and their children, a more nuanced view of motherhood needs to be adopted by service providers. This would mean challenging and opposing patriarchal constructions by divorcing the idea of motherhood from innate biological instincts and religious sanctity. Thus parenthood could be understood as a life-long learning process of caring and not intrinsic within gender identity. With strong societal support in terms of state-funded and regulated kindergartens and pre-schools, any negative parental influence could be mitigated and remedied by specially trained teachers. The idea of the nuclear family as the only healthy place for child development also needs to be challenged. The responsibility for violence needs to be placed squarely on the perpetrator, whilst the response should focus on supporting the victim and re-integrating her into the community.

7.4 The Current Economic System and Devaluing of Victim Support Services

The results of this research support the idea that even if a marital rape case moved perfectly and quickly through the legal system and ended in the incarceration of the abuser, this cannot be considered justice for the victim (Goodmark, 2013). Even if some victims wish to see their partner incarcerated, the legal system cannot offer them the financial support they need, the acceptance and support of wider society, and the unwavering condemnation of rape and abuse with radical changes in men’s behaviour. As shown in Chapter 6, the current economic system is complicit in devaluing victim support systems by failing to fund women’s shelters and civil organisations systematically, leaving them to rely on short-term project tenders offered by national and international bodies. By privileging private enterprises,

devaluing common goods, and misusing resources, the social safety nets from the previous political system have been effectively eroded. Defunding and devaluing social welfare centres and civil society organisations that provide services to abused women individualises the problem of violence and negates the state's social responsibility for the abuse.

In former Yugoslavia, women had opportunities for free education and mass employment in state-supported industries and so were able to attain financial independence for the first time in the region's history (Bonfiglioli, 2019). Currently, with the proliferation of low paid and precarious part-time jobs, employment no longer guarantees financial independence for women. In the after-war period, with the mediation of the Catholic Church, many women found themselves unemployed due to the privatisation and transition process, making them dependent on their spouses or partners. This strengthened traditional gender roles, normalising the financial dependency of women. Without visibility, socially accepted financial dependency can turn into economic violence (Maslić Seršić, 2010). Part of the explanation for abused women's inability or unwillingness to participate in criminal justice proceedings against their spouses is their financial dependency on their partner and the hidden costs of being involved with the legal system. These hidden costs include legal fees but also missing time from work to attend court dates, organising childcare, and transportation costs of attending court dates. Most state agents, such as judges or court administrators, show little sympathy for these issues, insisting that the victim must participate in legal proceedings. The availability of victims' services depends on the victim's geographical location, leaving women outside of Zagreb, especially in rural settings, more vulnerable.

Further research needs to be done on the effect of the wartime and transition periods (from socialism to capitalism), the growth of the Catholic Church in Croatia, and the neoliberal agenda of privatisation, crony capitalism and commodification on the re-emergence of traditional gender attitudes. Some regional and national research has already shown the detrimental effects

of the wartime and transition periods on the position of women in post-Yugoslav society (Papic, 1994; Leinert Novosel, 1998; Nikolić-Ristanović, 2002; Loncar *et al.*, 2006; Nikolić-Ristanović and Dokmanović, 2006; Burcar, 2020). Traditional gender attitudes, coupled with ethno-nationalist identity construction and social pressure to sustain the heteronormative nuclear family and couple-norms, complicates the decision for abused women to leave their partners. State agents often pressure women into leaving violent relationships whilst ignoring the societal, financial, and emotional constraints which curtail the victim's ability to leave. Furthermore, if the victim decides to leave, files for divorce and reports the abuse, she is met with suspicion from child protection services and social welfare centres, as explained above.

7.5 Limitations

A limitation of this study lies in the fact that it was conducted in a limited time frame with a limited number of experts, mostly based in Zagreb. Interviewing victims and survivors of marital rape raised a lot of ethical concerns most notably being the possibility of re-traumatising, access issues and not recognising marital rape as rape. For the purpose of this study, experts working with the survivors of marital rape have been selected instead. To address a non-diverse and limited sample of stakeholders, in-depth interviews were conducted with the goal to access as much as information possible about certain professions, the written and unwritten rules and guidance in the profession and possible space of dissident and subversion of these rules. All this was important to understand the nuances of working with marital rape in a different occupational setting.

In the future, this study could be augmented by research from a longitudinal comparative study, including not only experts across Croatia but also from Serbia, Slovenia, Bosnia and Herzegovina and Montenegro to compare countries with a common history and language. It

would be interesting to see common trends and differences in the conceptualisation of marital rape and institutional practices across the region.

7.6 Concluding Remarks

The findings of this study have several important theoretical implications. One notable implication involves the examination of the politics of professional judgment. As an understudied area, this dissertation focused on the reasoning and practices of professionals encountering marital rape in the scope of their work. It tried to uncover the thinking and decision-making processes of judges, attorneys, prosecutors, police, social workers, NGO employees and service providers in cases of marital rape. The narratives constructed by different professionals offered an insight into the participants' ideologies, but also the influence of the wider socio-cultural context on their decisions. For example, for judges, prosecutors and social workers the narratives surrounding divorce procedures in domestic violence cases show a traditional outlook on the importance of motherhood and its connection to victim-blaming. These findings are not limited to the Croatian context and they are connected to the wider understanding of intimate partner violence also found in rape trial research in the UK (Smith, 2018), problematising the legal system's approach to domestic violence in the US (Goodmark, 2018) and moving beyond criminal justice solutions to sexual and domestic abuse in the Australian context (Powell, Henry and Flynn, 2015).

Another important theoretical implication of this research stems from its focus on a non-western cultural context. Most research studies conducted on the issues of domestic and sexual violence tend to focus on the Anglo-American context. Therefore, illuminating a less known region of the world and a specific country contributes to the broader knowledge production on marital rape and beyond. Croatia, with its specific socialist, post-conflict history, coupled with the influence of the Catholic Church, lends itself for both stand-alone study and comparative work

on different legal systems and legislations. Comparisons to other countries could map out examples of good practices and new approaches to the issue of marital rape and sexual violence. This approach was also adopted by Yllö and Torres (2016) as editors of *Marital Rape: Consent, Marriage, and Social Change In Global Context* whose study explores how marital rape is experienced, sanctioned and understood globally. By centring on different cultural contexts, such as Guatemala, Turkey and Vietnam for example, the scholarship on marital rape was enriched cross-culturally. Illuminating other regions of the world in researching marital rape offers a study of both commonality and difference in intimate violence.

Furthermore, this research has shown the limits of legal consciousness which does not consider the broader political-economic dimension. There is a clear need to address the economic reality of sexual violence since the legal system does not offer material support to victims and survivors. If it does offer some financial support, the application process is usually complicated or impossible to complete without a legal representative. There are hidden expenses during the legal proceedings such as travel expenses, childcare expenses, missed work, and attorney fees. This implicates class differences among victims of marital rape which necessarily determines their access or lack of access to victim service providers. The legislation also has its limits: it can operate against gender justice and at the same time be neutralised by socio-political and economic forces. As mentioned previously, broad definitions of domestic violence in the law criminalise victims' defensive behaviours, equating them with perpetrators. On the other hand, the Istanbul Convention, which guarantees financial support for the victims of domestic and sexual violence, is neutralised by the careless and slow implementation processes of governing bodies.

These findings extend beyond the Croatian context as the countries such as Bulgaria, Turkey, Russia, Poland and Hungary that also dismiss the provisions of the Istanbul Convention and weaken the legal framework against gender-based violence by invoking the threat of 'gender

ideology' which serves as a floating signifier to shift the attention from economic problems to ideological ones (Kovats and Poim, 2015; Paternotte and Kuhar, 2017; Korolczuk and Graff, 2018). This opens up wider implications for the struggles and challenges of the Left globally and its ability to mitigate ideological attacks and to return to gathering and representing working-class people. In other words, left-wing politics need to incorporate politics of recognition with politics of redistribution (Fraser, 2013) to fight the existing conditions under neoliberal capitalism.

Legislation and court procedure alone does not provide justice and adequately address the needs of victims of marital rape. It cannot provide unwavering support for the victim from the wider community for the victim and lead to a cultural shift that causes radical changes in perpetrators' behaviours and prevents future violations. Criminal justice reform cannot change society's attitudes towards intimate relationship violence and challenge rape myths in a productive way. Solutions to sexual violence and marital rape need to go further than the legal system. Prevention needs to start in early education and be supported with better health care and social welfare systems.

Due to its lack of politicisation, marital rape is silenced and hidden from public view. In part, this can be explained by the hypervisibility of wartime rape in the 1990s, which was used to further the nation-state-building agenda but also contributed to the silencing of other forms of rape. In contrast, this dissertation focused on marital rape to illuminate other forms of sexual violence and to understand this issue as part of a historical continuum.

Lastly, this study highlighted the challenges posed by the moral panic of false rape charges. This is evident in state agents' preoccupation with false rape reports despite the absence of statistical evidence available to justify this focus. In legal proceedings, the belief in the prevalence of false rape reports may prejudice judges and prosecutors against the victim. Some of the victim's behaviours may be interpreted as evidence of a false claim when in reality they

can be the result of a traumatic experience. There is a lack of understanding of trauma-provoked responses which can negatively influence the outcome of the trial or custody decisions.

In an ideal world, any violation or abuse in intimate relationships would be approached with care and with the desire to remedy the violation in the wider community. Marriage should not be a privileged institution that permits abuses due to its perceived sanctity and role in the social order. Religion should also not allow retrograde attitudes towards women's bodies, sexuality, and reproductive rights. Gender identities would be understood in their plurality and freedom would be imagined beyond liberalism and rights accumulation. This would mean collective organising based on solidarity and communal care. Toxic masculinity would be eradicated from all aspects of society. In a truly ideal society, rape and any other forms of violence would be entirely absent. Sadly, this is not the lived reality of social actors anywhere. There is a need for a radical rethinking of justice in cases of sexual violence in general and further discussions of the role of the state and the legal system in enabling or curtailing access to victim service providers. In line with the consciousness-raising method of feminist movements across the world, this dissertation presents a small contribution to the visibility of marital rape and its wider societal context in Croatia.

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