

EXECUTIVE SUMMARY

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DISAPPEAR-

ANCES

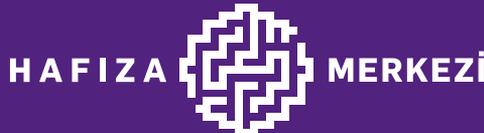
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ENFORCED DISAPPEARANCE: DEFINITION AND INTERNATIONAL FRAMEWORK

The crime defined in international literature as *enforced disappearance* or *enforced* or *involuntary disappearance* in international literature was in Turkey, for a long time, referred to as 'kayıp' or 'gözaltında kayıp' ['lost' or 'lost in detention']. The most significant reason for this was that, in the example of Turkey, the disappeared were often taken into detention by public officials in the presence of witnesses from their homes, workplaces or public places, and were disappeared following a clear statement that they were being taken into detention.¹

However, the term enforced/involuntary disappearance is more appropriate both since the definition contains the element of force involved in the act, and because the act of enforced disappearance does not only take place by official 'detention', and because it helps to differentiate the act from other types of disappearances. According to the United Nations International Convention for the Protection of All Persons from Enforced Disappearance, the term 'enforced disappearance' "(...) is considered to be the arrest, detention, abduction, or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law".²

¹ Alpkaya, G. "Kayıplar Sorunu ve Türkiye [The Problem of the Disappeared and Turkey]". 1995: 40-41. http://www.politics.ankara.edu.tr/dergi/pdf/50/3/8_gokcen_alpkaya.pdf.

² United Nations International Convention for the Protection of All Persons from Enforced Disappearance. Entered into force on: 23 December 2010. <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>

One of the first known implementations of the enforced disappearance strategy is *the Nacht und Nebel Erlass* (the Night and Fog directive) implemented in 1941 by the Nazi regime. After the 1960s, it was rendered systematic in order to neutralize political dissidents in South American countries, the history of which was strewn with coup d'états, ethnic clashes and civil wars. In Brazil, Uruguay, Chile, Peru, Guatemala and Argentina, very different social segments were branded 'internal enemies' and faced the enforced disappearance strategy.³ Significantly, in Argentina, from the estimated 30 thousand forcibly disappeared individuals, known as *desaparecidos*, according to data provided by the Argentina National Commission on the Disappearance of Persons (CONADEP) the names of only 8,960 were determined. Salvador, Colombia, Ecuador and Honduras were the other Southern and Central American countries where this strategy was practiced.⁴

The enforced disappearance implementation showed renewed increase from the 1980s on. According to the annual reports of the United Nations Enforced or Involuntary Disappearances Work Group, in regions where internal clashes and civil wars are prevalent such as Sri Lanka, the Philippines, Iraq, Iran and Algeria, enforced disappearance is a systematic method of repression implemented against separatist and dissident forces. Besides, in the post-9/11 world, the policy of 'war against terror' presents a suitable platform for the emergence of new cases of enforced disappearance.

³ Vermeulen, M.L. *Enforced Disappearance, Determining State Responsibility under the International Convention for the Protection of all Persons from Enforced Disappearance*. 2012:8.

⁴ United Nations General Assembly (2011), *Report of the Working Group on Enforced or Involuntary Disappearances*. http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A_HRC.16.48_en.pdf

BACKGROUND

Cases of enforced disappearance emerged in a relatively widespread manner after the 12 September 1980 coup d'état.⁵ From the beginning of the 1980s, the ethno-political issue we refer to as the Kurdish question which has shaped the last 30 years in Turkey also appeared on the stage of history: On 15 August 1984, the PKK (Partiya Karkerên Kurdistan-Kurdistan Workers' Party) announced its military presence with the Eruh and Şemdinli raids. During this initial period, official discourse generally referred to the PKK as 'a few bandits', claiming they would be stamped out as soon as possible. However, by the late 1980s and early 1990s, it had become clear that it was no longer possible to treat this question with an approach that perceived the organization as 'a few bandits'. The voicing of theses along the party-line of the PKK in the legal political field by Kurdish intellectuals and a section of the important names of the Kurdish public, the entering into the political arena in 1990 of Halkın Emek Partisi (People's Labour Party) under the leadership of Fehmi Işıklar and the mass support the guerrilla movement possessed significantly changed the approach that perceived the organization as 'a few bandits'. It was precisely at this point that two transformations took place in the official approach: The first was the implementation of a state of emergency, and

⁵ To remember the September 12 coup d'état with some of its significant events, and especially with figures: The Grand National Assembly of Turkey was closed, the constitution was repealed, political parties were shut down, 650 thousand people were detained, 1 million 683 thousand people were blacklisted, 230 thousand people were tried, the death penalty was demanded for 7 thousand people, 517 people were sentenced to death, 50 of which were executed by hanging, the citizenship of 14 thousand people was revoked, 171 people were documented to have murdered by torture, a total of 299 people died in prisons and the activities of 23 thousand 677 associations was halted. See "Rakamlarla 12 Eylül Darbesi [The September 12 coup d'état in numbers]", Ntvmsnbc, 04 April 2012. <http://www.ntvmsnbc.com/id/24999286/>

the second was the military, political and administrative transformation suitable to this new concept of 'enemy'. A state of emergency [OHAL] was declared in 8 provinces on the basis of decree no. 84/7781 dated 01.03.1984 of the Council of Ministers. On 19 July 1987, the Governorship of Region in State of Emergency was formed. State of emergency and martial law became the administrative regime in some provinces for an uninterrupted 23 year period, and OHAL was extended every 4 months for a total of 46 times. For different durations, Diyarbakır, Hakkari, Siirt, Van, Bingöl, Elazığ, Mardin, Bitlis, Batman and Şırnak, spent this period under the OHAL regime.⁶ The Emergency Region Governorate was given extremely broad powers; besides, through statutory decrees, the status and practices of this institution were carried entirely beyond the law.⁷ The state of emergency implementation was ended following its final extension until 30.11.2002 in the provinces of Diyarbakır and Şırnak.⁸

Secondly, a military, political and administrative transformation was carried out in line with the

⁶ "23 yıl sonra resmen 'olağan hal' [Officially back to 'normal state' after 23 years]", *Hürriyet*, 30 November 2002. <http://hurarsiv.hurriyet.com.tr/goster/ShowNew.aspx?id=112742>

⁷ Hayri Kozakçıoğlu (1987-1991), Mehmet Necati Çetinkaya (1991-1992), Ünal Erkan (1992-1996), Necati Bilican (1996-1998), Aydın Arslan (1998-1999) and Gökhan Aydınar (1999-2002) respectively served as Emergency Region Governor.

⁸ Tanrıkulu, S., Yavuz, S. "İnsan Hakları Açısından Olağanüstü Hal'in Bilançosu [Balance Sheet of the State of Emergency in Terms of Human Rights]", 2005: 493-521. For a more comprehensive debate on this subject see Kemal Gözler, *Kanun Hükümünde Kararnamelerin Hukuki Rejimi [The Judicial Regime of Statutory Decrees]*, Ekin Kitabevi Yayınları, Bursa, 2000; Mehmet Semih Gemalmaz, *Olağanüstü Rejim Standartları [Standards of the State of Emergency Regime]*, Beta Basım Yayım, İstanbul, 1994.

new concept of 'enemy'. The first example of this was an increase in recruitment to the institution of temporary village guards, first implemented in 1985; and the constant expansion of the actual movement range of guards throughout the 90s. By 20 June 2003, in the OHAL region provinces, 58,511 temporary village guards and 12,279 volunteer village guards were on duty. The Turkish Armed Forces (TAF) were restructured according to the concept of 'low intensity conflict' and in 1993, the Özel Harp Dairesi (Special War [Operations] Department) was renamed Özel Kuvvetler Komutanlığı (Special Forces Command). Again in line with the low intensity conflict strategy, in order to increase speed and mobility in fighting the guerrillas, the army switched to the corps-brigade-battalion structure.⁹

During the low intensity conflict period, many different institutions of the State also restructured themselves in line with the conflict. From 1993 on, a special security strategy was implemented by the team led by Prime Minister Tansu Çiller and Chief of General Staff Doğan Güreş around the concept of 'Regional Supremacy and Prevention of the PKK's Habitation in the Region'. This security strategy primarily meant the recovery of regional supremacy by cutting off the support provided by civilians to guerrilla forces. The visible increase in the number of the forced evacuation of villages and other settlement units, murders by 'unknown assailants', executions of civilians, and enforced disappearances took place after the implementation of the new strategy.¹⁰ Especially in the years from 1993 to 1995, when Süleyman Demirel was President, Tansu Çiller was Prime Minister, and Doğan Güreş and İsmail Hakkı Karadayı were, respectively, Chief of General Staff, this strategy was implemented along with systematic, various and integrated [holistic] human rights violations. It is no secret

that the paramilitary/counter guerrilla structures formed during this period were equipped with unlimited powers, that their members were protected with a shield of impunity even if they did commit crimes, and were accountable to no other institution within the State. Especially the Gendarmerie Intelligence and Counterterrorism Unit, known as JİTEM, the existence of which has almost never been accepted by the State, occupies the centre of the narratives of the few confessors, and even fewer army members who have spoken about the issue. According to responses given to questions asked within the scope of a lawsuit investigation: "It has been determined that the entity called JİTEM was established with the own initiative of the Gendarmerie General Command, without the approval of the Ministry of the Interior or the opinion of the Presidency of General Staff."¹¹

Cem Ersever's confessions contain important data on this issue. According to these confessions, mixed teams made up of confessors (who were former PKK members), village guards, civilian elements of gendarmerie intelligence and army members, abducted and forcibly disappeared persons who were alleged to have ties with the PKK, or were militia, tortured and murdered them, and carried out assassinations against them. The region was divided into three groups, the first group was formed of the Diyarbakır, Bitlis, Bingöl, Elazığ, Tunceli line; the second group of the Şırnak, Cizre, Uludere, Şenoba line; and the third group of the Nusaybin, Midyat, Mardin and Kızıltepe line.¹² Among these individuals - some of which were tried within the scope of the Balyoz case and some the Ergenekon case, some who have passed away, and some who have never been tried, and are alleged to have ties with these teams - are Cem Ersever, Veli Küçük, Mahmut Yıldırım (Yeşil), Arif Doğan,

⁹ Balta Paker, E. "Dış Tehditten İç Tehdide: Türkiye'de Doksanlarda Ulusal Güvenliğin Yeniden İnşası [From External Threat to Internal Threat: The Reconstruction of National Security in Turkey in the 90s]", 2010: 413-414.

¹⁰ Üstel, F. *Zorunlu İç Göç Sonrası Köye Dönüş [Return to the Village after Forced Internal Migration]*, 2004:4.

¹¹ "Ve devlet JİTEM'i resmen kabul etti [And the State officially admits existence of JİTEM]", *Radikal*, 09 July 2011. <http://www.radikal.com.tr/radikal.aspx?aType=RadikalDetayV3&ArticleID=1055684&CategoryID=77>

¹² Yalçın, S. 2003:136.

Cemal Temizöz, Cahit Aydın, Eşref Bitlis, Mete Sayar, Necati Özgen, Hulusi Sayın and Hasan Kundakçı.¹³

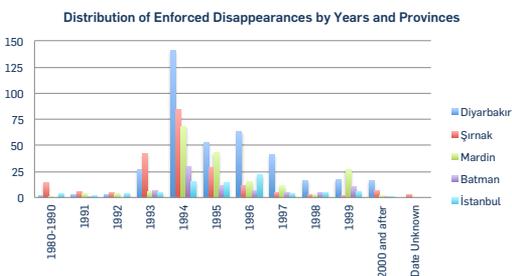
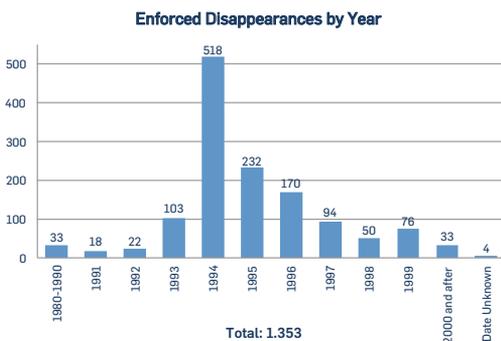
Enforced disappearance began to be used again as a method by the State after the 12 September 1980 coup d'état, and picked up speed in the political momentum of the early 90s. There were a number of different structures within the State that competed with each other, believed that the Kurdish question could only be solved with 'heavy-handed' methods, and operated with absolutely no legal supervision [inspection, accountability]. Even if it was 'low-intensity', war provided an unequalled climate for counter guerrilla organisations.

13 Kılıç, E. *JİTEM - Türkiye'nin Faili Meçhul Tarihi [JİTEM – Turkey's Unidentified History]*, 2011:43. The most remarkable common trait of the military personnel is that all of them had at one point during their career served in Northern Cyprus.

ENFORCED DISAPPEARANCES

IN TURKEY: A GENERAL OVERVIEW

At present, there is no list that includes all those who have been forcibly disappeared in Turkey since 12 September 1980, and there is no final figure, either. Therefore, we examined the lists drawn up by all institutions that have worked in this field, and formed a non-conclusive list of the forcibly disappeared.¹⁴ According to this non-conclusive [incomplete] list, the number of people forcibly disappeared in Turkey since September 12 stands at 1,353. The distribution of this figure by years and provinces is as below:



¹⁴ This list has been prepared using the reports of the Human Rights Association (İHD) and the Human Rights Foundation of Turkey (TİHV/HRFT), the book titled *Sımsıcaktı Elleri* [His Hands Were So Warm] published by the Association for Solidarity and Support for Relatives of Disappeared Persons (YAKAY-DER), Mazlum-Der [Association for Human Rights and Solidarity for the Oppressed] data, the list published on the internet by Helmut Oberdiek, the list published in 2008 in the *Radikal* newspaper as the İHD list of the disappeared, and European Court of Human Rights applications.

The non-conclusive data on enforced disappearances displays two very clear tendencies: The first is that enforced disappearances primarily took place between 1991 and 1999, with the period between 1993 and 1996 the most intense. The second is that during the 1990s, enforced disappearances primarily and most intensely took place in the OHAL region. İstanbul and Adana stand out as the two other prominent provinces outside the OHAL region. Besides, again on the basis of our non-conclusive list, we can say that the cases of disappearances in these two provinces were frequently the politicians, notable figures and local leaders of Kurdish society. However, especially in terms of the areas outside the OHAL region, university students related to leftwing politics, militants related to different leftwing political movements, different names from the local democratic public, or in brief, people from the entire spectrum of opposition were forcibly disappeared during the 90s.

IV.

RESEARCH TOPIC AND METHODOLOGY

During the first year of our field research on enforced disappearances, we aimed to select a specific location and try to understand its conditions by carrying out a number of interviews that would adequately represent it. We selected the province of Şırnak. Şırnak is important for a few reasons: First, Şırnak is, according to our non-conclusive list, the 2nd site after Diyarbakır where the highest number of people have been forcibly disappeared; 211 people in total were forcibly disappeared in Şırnak. Second, especially on the basis of the case file Cemal Temizöz and Others, it is a place where important information has been unearthed regarding the functioning of enforced disappearances and military official-confessor-village guard groups. Third, Şırnak is a place where many high ranking military officials who were stationed here were tried not only in the Temizöz and Others case, but also in the Ergenekon and Balyoz trials, were sentenced and various testimonies and witness accounts regarding them emerged. Fourth, Şırnak is a place, which, both because of its geographical proximity to the Habur border gate and its intense political mobility, has formed resistance practices and has been subjected to policies of oppression.

It was for all the reasons above that we carried out our field research in Şırnak. Since the offices of the Truth, Justice and Memory Centre are in Istanbul, we also carried out interviews with relatives of the disappeared residing in Istanbul. Within the scope of the field research we visited

Şırnak for one-week periods for a total of three times.¹⁵ We would also like to underline that the support and help, both for the Istanbul interviews and the Şırnak field research, of YAKAY-DER (Association for Solidarity and Support for Relatives of Disappeared Persons) and the Mesopotamia Solidarity Association for Relatives of the Forcibly Disappeared (MEYA-DER) was vital.

In the field research, we carried out semi-structured interviews with a total of 86 relatives of 69 forcibly disappeared persons. In addition to the relatives of the disappeared, we also interviewed lawyers and rights' organisation representatives. The interviews were held in Cizre, Silopi, İdil, Diyarbakır and Istanbul. Interviews on 21 of the disappeared were held in Turkish, 3 were held in both Turkish and Kurdish, and 45 were held in Kurdish. Interviews with individuals other than relatives of the disappeared were held in Turkish.

¹⁵ The first field research was carried out on 1-7 September 2012, the second on 12-18 October 2012 and the third on 30 November-6 December 2012. The field research team is made up of Özgür Sevgi Göral, Gamze Hızlı, Özlem Kaya, Ayhan Işık, Berivan Hicret Turhan and Zeynep Ekmekçi.

A FEW NOTES ON THE SPACE

We recall Şırnak in the social memory of the 80s and 90s with the Güçlükönak ambush, Yeşilyurt village incident, the Cizre Newroz massacre, Silopi executions; or in brief, to use Levent Ersöz's expression, as the 'Republic of Şırnak'. One of the two provinces where the state of emergency was lifted last, the history of Şırnak is also the history of the normalization and structuralization of regimes of exception in Turkey. Şırnak was made a province in 1990¹⁶, and it has a total of 7 districts, which are Merkez [Şırnak Centre], Beytüşşebap, Cizre, Güçlükönak, İdil, Silopi and Uludere. The total population of Şırnak is 290,307 according to the 2011 census. With its population of around 100 thousand, Cizre is the largest province of Şırnak, followed by Silopi, with a population of around 80 thousand.¹⁷

All provinces of Şırnak shaped the political climate of the 1990s. Among the experiences inscribed in the memory of the province from the late 80s until the 2000s are the Yeşilyurt Feces Case in 1989, when gendarmeries forced villagers to eat feces on the night of January 14-15, 1989; the "bloody Newroz" of 1992, when security forces opened fire onto the public in Cizre, and 57 died according to official sources, while people we interviewed in Cizre stated that the figure was in the hundreds; the siege of Şırnak that begun on 18 August 1992 and continued for weeks on the basis of the claim that 'the PKK had ambushed Şırnak'; the Güçlükönak Massacre on 15 January 1996 following which the murdered and burned remains of 11 village guards were

¹⁶ "Şırnak tarihi [The history of Şırnak]", *Zaman*, 1 July 2007. http://www.zaman.com.tr/sehir_sirnak-tarihi_565263.html

¹⁷ For Şırnak's population by districts according to the 2011 census see <http://www.webcitation.org/6BuHLiC8t>

discovered; and the enforced disappearance on 25 January 2001 of two administrators of the Halkın Demokrasi Partisi [People's Democracy Party] Silopi District Administration, Serdar Tanış and Ebubekir Deniz.¹⁸

According to the non-conclusive data we have in hand, an overview of the numbers of the disappeared in the case of Şırnak reveals that a total of 211 people were forcibly disappeared since 12 September 1980 in the Şırnak Province and its districts; Cizre, with 79 cases, is the district with the highest number of disappearances, and Silopi is second with 69. Not only enforced disappearances, but the other two systematic rights' violations of the 90s, forced migration and unlawful and arbitrary executions are also frequently encountered in Şırnak.

The bill of indictment no. 2009/972 of the Temizöz and Others file dated 14.07.2009 that provides us with a significant amount of information especially about the forcibly disappeared of Cizre was written on the basis of the testimonies of Kamil Atak's brother Mehmet Nuri Binzet, a person who had served as a temporary village guard and two secret witnesses with the codenames Sokak Lambası [Street Lamp] and Tükenmez Kalem [Ballpoint Pen]. According to testimonies in the bill of indictment, no identification is ever found on the bodies of the disappeared or the executed if the remains are discovered, because the 'inter-

¹⁸ Başlangıç, C. *Korku İmparatorluğu [The Empire of Fear]*, 2001:9-201; "21 Mart 1992: Cizre'de Newroz kutlamalarında kontrgerilla katliamı yaptı [21 March 1992: Counter-guerrilla carries out massacre in Cizre during Newroz celebrations]", *Mark-sist.org*, <http://www.mark-sist.org/tarih-te-bugun/3270-21-mart-1992-cizrede-newroz-kutlamalarinda-kontrgerilla-katliam-yapti>

rogation team' first tortures the persons it has abducted for at least a few days to make them talk, to find out who in the area supports the PKK forces, and to get them to provide names and show locations; the interrogation and torture is at times carried out in the bunker beneath the house of Kamil Atak and Kukel Atak; the person or persons whose identification documents are taken are turned over to Cemal Temizöz after they are executed; the 'interrogation team' made up of confessors and soldiers uses Kalashnikovs and not the weapons used at the gendarmerie command;¹⁹ they place the persons they have executed either beneath rocks in a very casual manner, or leave them as they are at the site they execute them; and the village known as Basîk in Kurdish, and Kuştepe in Turkish, and is controlled by the Hizbullah is the specially preferred site for executions, and executions are carried out in collaboration with the Hizbullah members in the village.

Village guards and confessors play a very special role in the 'interrogation team': The 'localization' of the murder mechanism, and the transmission of local relations, social texture and its knowledge to counter guerrilla activities is carried out primarily via village guards and confessors. The 'localisation of the murder mechanism' means the inclusion in the 'interrogation team' of knowledge of the place, the political and social relations established in the place, the demographic structure of the place and its political consequences, relationships and animosities between families and tribes; and also the localization and embedding of the destructive practices and perhaps also of the 'interrogation team' itself. Thus, the 'interrogation team' does not only acquire the knowledge of the place, but it also embeds its own practices in the place, and renders itself an inherent part of the site.

19 Again, both in Ersever's accounts, and in different confessors' accounts it is stated that the special counter guerrilla team did not use the weapons generally used by the gendarmerie command, but frequently used kalashnikovs [AK-47s] retrieved from PKK guerrillas killed in clashes, and that these weapons, described as 'unclean weapons', were left at the scene of the crime after executions carried out by the counter guerrilla team, see Yalçın, S. 2003:144, Kılıç, E. 2011:126.

FINDINGS OF THE FIELD STUDY

We will share the outcome of the interviews we have carried out in Şırnak and İstanbul with 86 relatives of 69 forcibly disappeared individuals and also with leading figures, human rights defenders and lawyers in two parts. In the first part, we tried to recount, on the basis of interviews, the State's methodical repertoire regarding enforced disappearances, and with which tactics this strategy was realized. In this part, following a general discussion of the State's approach, the techniques with which the State realizes the enforced disappearance strategy were examined one by one.²⁰ In the next part, we discussed how relatives of the disappeared experienced the enforced disappearance process, during the periods both before and after the incident; and departing from that experience, what kind of conclusions one may derive in the context of the concepts of State, search, justice, citizenship, politics and lack of graves.

A) The State's Repertoire Regarding Enforced Disappearances

According to recent studies in the field of the anthropology of the State and historical sociology, the structure we define as the State, is a totality of contradictory and mutually articulated practices in which different

²⁰ Since the impunity for perpetrators and the statute of limitations, among the most important of these techniques, are assessed in the report titled *Enforced Disappearances and the Conduct of the Judiciary* they will not be dealt with in this report. http://www.hakikatadalethafiza.org/images/UserFiles/Documents/Editor/Yayınlar/Zorla-Kaybetmeler-Yargi_ENG.pdf

institutions display certain contradictions, and different actors act by building different processes. Likewise, tension between the central structure of the State and its local units is also often emphasized in studies.²¹ For instance, Gökçen Alpkaya emphasizes an element of 'irregularity' ['başibozukluk' in Turkish] in the implementation of the practice of enforced disappearance: "There wasn't a lot of data that would give rise to the thought that these implementations were planned and coordinated, in contrast, there were clues suggesting they were arbitrary and 'irregular'."²² Such activities involve an arbitrary, 'irregular' and improvised nature outside top-down processes that follow plans to the letter. As one of the interviewees said, these local initiatives and the position of the central institutions of the State need to be assessed in relation with each other: Here, the 'concept' designed at the level of the centre, and the 'autonomy' of local perpetrators coexist. On the one hand, there is the concept of 'regional dominance' that is the central concept, however, on the other hand there are the specific *modi operandorum*, procedures and differences of approach rising from local relations of each team in its own region. For instance, Kamil Atak and his team of village guards seek to sort out their issues with their local adversaries within the Special War Strategy. This totality contains improvisation, dealing with personal foes and resorting to local initiatives to certain extents,

²¹ For a more detailed debate on this subject see Thomas Blom Hansen and Finn Stepputat (eds). *Sovereign Bodies: Citizens, Migrants and States in the Postcolonial World*, Princeton University Press, Princeton and Oxford, 2005; Aradhana Sharma and Akhil Gupta (eds.) *The Anthropology of the State - A Reader*, Blackwell Publishing, Padstow, Cornwall, Great Britain, 2006; Thomas Blom Hansen and Finn Stepputat (eds.) *States of Imagination, Ethnographic Explorations of the Postcolonial State*, Duke University Press, USA, 2001.

²² Alpkaya, G. "Kayıplarımız [Our Disappeared]", 2009:102.

but in any case, the concept is based on giving the green light to all of this. After all, “the State was Kamil Atak’s friend.”²³

1) Denial

Denial is the most important, and perhaps first technique different representatives and institutions of the State unite under, and renders the enforced disappearance strategy possible. The most significant expression of this attitude at the central level is the response Süleyman Demirel, the Prime Minister of the period, gave to relatives of the ‘disappeared’ who demanded from him that their relatives were found: ‘You think your child is in my pocket for me to take out and give to you?’²⁴ This attitude of central political power was adopted on the local level as well, and was broadly implemented. The denial of the enforced disappearance of the person by the gendarmerie or security forces, even in the most blatantly obvious cases, is one of the most fundamental characteristics of the Şırnak practice.

2) Threats

Almost all relatives of the disappeared in Şırnak have faced threats and intimidation. The most typical form of threat those seeking their relatives face is a death threat. In some instances the death threat is carried out by perpetrators who actually say what they have done to the disappeared. In such cases, denial is blatantly replaced by acknowledgement, and the relative is told that he or she will suffer the same fate if he or she does not give up the search. In relation to the incidents of disappearance, secretiveness and showing-off coexist, and both emphasize the same thing in different ways: That team members have the last word on the lives of people.

3) Criminalization

In more than half of the interviews we carried out, relatives told us that the Special Operations teams in the region alleged that the forcibly

²³ Interview: Şırnak-Cizre / 03.09.2012

²⁴ Quoted by Alpkaya, G., 1995:56

disappeared person was a PKK militia. Another allegation is that the disappeared were carrying out political activities on behalf of the PKK, that they provided ‘logistical’ support to PKK guerrillas, or that they aided persons who were about to go to the ‘rural’ area to join the guerrillas. The disappeared are detained for such reasons. In addition to threats, those who ask after the fate of their relatives are accused of being PKK members, sympathizers or militia. The relationship of the disappeared or their relatives with the PKK points to the same thing for both the local actors of the State, and its central representatives: That they can easily be destroyed.

4) Securing Institutional Cooperation

Cooperation between different State institutions is of paramount importance to sustain the enforced disappearance strategy. The creation of a ‘scientific silence’ around the issue is imperative to continue this strategy. Throughout the 1990s, the enforced disappearance strategy was met with deadly silence by the academia, with few, highly significant exceptions. With the efforts first and foremost of the Human Rights Association, and later the Human Rights Foundation of Turkey the stand-out cases, apart from the annual reports of rights’ organisations, this issue did not receive the attention it deserved from organisations in the field of civilian society.²⁵ Almost no journalist had spoken to relatives of the disappeared we interviewed in Şırnak, apart from the Özgür Gündem newspaper and the Dicle News Agency. Thus, in brief, the State is not a uniform and monolithic structure, but throughout the 1990s, it seems to have managed not

²⁵ Following the silence throughout the 1990s, research in this field showed a relative increase in the 2000s. At this point, it is necessary to remember the report titled *Adalet Vakti/Time for Justice* published in 2012 by Human Rights Watch (<http://www.hrw.org/reports/2012/09/03/time-justice>), the work carried out by TESEV to follow the Temizöz and Others case, and to end impunity in general, the work of regional bar associations, and first and foremost of the Diyarbakır Bar Association. The organisation and solidarity work of YAKAY-DER and MEYA-DER, as the relatives of the disappeared are important from another aspect. However, since YAKAY-DER and MEYA-DER, as associations founded by relatives of the disappeared themselves, focus exclusively on the struggle of the disappeared, their work should not veil the broader silence of civilian society organisations in Turkey.

only to have formed an institutional totality over enforced disappearances, but also to convince a large part of different knowledge production fields such as the press, academia and civilian society to act in line with the requirements of this totality.

B) Experiences of the Relatives of the Disappeared

Considering the whole of the disappeared, Gökçen Alpkaya examines the disappeared in three groups. The first group is the militants of leftwing organisations carrying out armed struggle; the second group is provincial and district administrators of Halkın Emek Partisi (People's Democracy Party) and the political parties that followed in its wake, who live in cities and openly express their dissident identities, employees of the Özgür Gündem newspaper, union members, and renowned Kurds who are members of the Human Rights Association, and the third group is Kurds who live in the OHAL region.²⁶ The disappeared about whom which we carried out interviews in Şırnak were mostly in the third group. Kurds from all age groups and professional fields were forcibly disappeared through different methods. Relatives of the disappeared, when talking about the process and aftermath of disappearance, constantly referred to, and underlined certain concepts. These concepts were, respectively, State, search, justice, citizenship, lack of graves and politics.

1) State

For almost all relatives of the disappeared, enforced disappearance was not the first time they had faced the State, and the practices produced by its strategy of 'protecting regional dominance' implemented in the 90s. In the great majority of narratives rights' violations such as being forced to become village guards, village evacuations,

²⁶ Alpkaya, G., 1995:45.

forced migration, unlawful and arbitrary executions were recounted as experiences that took place before the disappearance. Therefore, the first component, that needs to be emphasized is the totality of State strategies in the 1990s. Relatives of the disappeared call the murder mechanism either JİTEM, or Tim [Team], and they recall the perpetrators name by name, sometimes adding their rank. The relatives of the disappeared have a very strong memory when it comes to names, and they state that they will never forget these names. Storing in mind the names of the perpetrators also means not forgetting the names that will need listing if one day the possibility of justice, unrealized so far, emerges. Another issue that frequently emerged in interviews was the demand of sums of money from the relatives, referred to as the 'Temizöz Sector' by a rights' defender in Şırnak. Relatives of the disappeared told us that persons emerged during that period who claimed they could arrange for the release of the disappeared person in return of a certain sum of money. Besides, a great majority of the families of the disappeared had actually paid the demanded ransom to the person who asked for it.

For the great majority of people we interviewed, JİTEM and the State were synonymous structures. When relatives of the disappeared are asked whom they deem responsible for the disappearance of their relatives, the term 'State' was added with great clarity next to the names of the perpetrators. For the people, perhaps because it has been so savagely inscribed in their bodies, this piece of information is exceedingly clear: "No one knows better than the State who is killing who, and how the killing is done."²⁷

2) Search

A ceaseless search begins with the story of those who remain after the forcibly disappeared. This is exactly what the State wants, those who remain should both know what happened and who was responsible, and at the same time, not know exactly. As Calveiro says, what makes en-

²⁷ Interview: Şırnak-Cizre / 16.10.2012

forced disappearance so terrible is that it both makes itself visible, but at the same time, denies it.²⁸ In this ceaseless search, the great majority of relatives of the disappeared underlined the supportive efforts of the Human Rights Association.

As it is across the world, in Turkey, too the struggle of the relatives of the disappeared is one that has taken to the streets. Saturday actions were another reference oft mentioned by the relatives of the disappeared. In 2011, following a meeting between a group of lawyers and human rights defenders and the relatives of the disappeared following the Temizöz and Others case, the first Saturday action was carried out in Cizre on 29 January 2011.²⁹ Today, relatives of the disappeared take to squares every Saturday in Istanbul, Diyarbakır, Batman and Cizre carrying photographs of the disappeared.

3) Justice

From the viewpoint of the relatives of the disappeared the search for justice after the disappearances can be divided into two periods: before and after 2008. There are almost no lawsuits that reached a verdict in the pre-2007 period; yet after 2007, especially within the scope of the Ergenekon investigation, the events of the 90s appeared once again on the public agenda. Following the arrest in 2008 of Veli Küçük, a demand for the "broadening of the investigation to include the East of the Euphrates River" was voiced; and the Ergenekon case, especially during its first period, created genuine excitement in the region. In March 2009, following the application of the Şırnak Bar Association, excavations were carried out in the Sinan facilities and the BOTAŞ pits, and bones were discovered.³⁰ During this period, the Şırnak Bar Association collected petitions from

28 Calveiro, P. "Torture in the heart of 'democracies'", 2008. http://www.boell.org/downloads/Calveiro_torture_democracy.pdf

29 Interview-report with Veysel Vesek. <http://hakikatadalethafi-za.org/duyuru.aspx?NewsId=118&LngId=1>

30 "Silopi BOTAŞ Kazısında Kemikler ve Bezler Bulundu [Bones and Fabrics Found in Silopi BOTAŞ Excavation]", *Bianet*, 10 March 2009, <http://bianet.org/bianet/bianet/113040-silopi-botas-kazisinda-kemikler-ve-bezler-bulundu>

120 complainants and made legal applications. Another important development in 2009 was the Cemal Temizöz and Others file becoming a lawsuit, and the commencement of the trial of the perpetrators of a major part especially of the disappeared of Cizre.

Almost all relatives of the disappeared we interviewed carried no hope that a just outcome would come from these trials. Nevertheless, almost all of them emphasized the importance of pressing charges, and those who conditions were suitable said that they followed up the cases. At the same time, almost all of them stated that their cases "would be heard one more time in the presence of God", underlining another, different moment of justice. This moment of justice at the final judgment, or a messianic perception of justice; evokes a moment when the rights of the innocent and good will absolutely and definitely be given their due, and the guilty will be punished in the true sense.³¹ Relatives of the disappeared, as a group of people who seek justice until their last breath and believe in messianic justice, also state that they will pass this struggle onto their children and future generations, adding: "The perpetrators stand accused in the after life. We accuse them in the presence of God."³²

4) Citizenship

Many times during interviews, the relatives of the disappeared emphasized the contradiction between enforced disappearance and citizens' rights. They told us how unacceptable it was for the forces of the State to harm its own citizens, and especially by committing the crime of enforced disappearance. Relatives of the disappeared underline the unlawfulness and unacceptability of the State's enforced disappearance of its own citizens, while on the other hand they make a call for those who listen to their accounts to affirm and recognize this unacceptability. As they object to the systematic human rights violations carried out in the place they live, they

31 Salzani, C. "Violence as Pure Praxis: Benjamin and Sorel on Strike, Myth and Ethics", 2008:23.

32 Interview: Şırnak-Silopi / 30.11.2012

also object to these practices by reminding us that they are citizens of the Republic of Turkey. Thus, the emphasis on citizenship serves a dual function: On the one hand, there is the fact that the disappeared of Şırnak and their relatives have equal rights like all the other citizens of this country/State, and on the other hand there is the unacceptability of the enforced disappearance by the State of its own citizens in violation of the legal norms itself has established. And they also ask a very important question that problematizes the position of the State:

5) Politics

According to the accounts of relatives of the disappeared, if a person is believed to be intimate [in close contact] with, or supportive of the PKK, then that person is placed in the centre of the state of exception. This person's treatment then does not have to comply with any legal norm, or any standard earned through the struggle for human rights. Therefore, politics occupies the most significant place in regard to enforced disappearances, both in terms of political arguments that render enforced disappearances possible, and because it points to the political affiliation of the disappeared. This is also why a significant percentage of the disappeared are persons who are allegedly PKK militia, supporters or 'patriots'. Perhaps one of the examples where the relationship between politics and enforced disappearances can be most visibly seen is the enforced disappearance on 25 January 2001 of the People's Democracy Party (HADEP) Silopi District President Serdar Tanış and district administrator Ebubekir Deniz.³³

³³ In his additional testimony in the Temizöz and Others file Mehmet Nuri Binzet provided information about the fate of Serdar Tanış and Ebubekir Deniz. According to this testimony, on Levent Ersöz's orders, and the collaboration of Hazım Babat and Kamil Atak, the decision was taken to murder Serdar Tanış and Ebubekir Deniz. The trigger was pulled by the confessors, and the two young men were buried in an Assyrian village on the hillside of the Cudi Mountain. For more detailed information see "Kaybolan HADEP'liler Cudi Dağı'na gömüldü [Disappeared HADEP members buried in Cudi Mountain]" (2009). *Radikal*, 18 August 2009.

6) Lack of graves

There are two fundamental criteria in the policy of enforced disappearance: The first is not to return the remains of the forcibly disappeared person in order to create a sustained tension and trauma in the lives of the relatives. The second is the position and cultural, political status of individuals of disappeared individuals.

The common statement the relatives of the disappeared made in interviews was that the person in question was generally a respected person in society. At this stage, the issue is not being unable to face the death of a relative, but to be left without a grave. The lack of a grave, in other words, not even being able to find the remains of the disappeared person causes relatives to lose their hope.

Perhaps one of the most fundamental differences between human beings and other beings in nature is that human beings bury their dead.³⁴ The remains of the dead, or the murdered person is returned to the family so that religious rituals can be carried out. Yet in enforced disappearance, there is no body to be interred. The absence of a member of the family, of a father, a sibling, a spouse or a child not only prevents the carrying out of religious requirements, but also suspends the period of 'mourning' which is essential for life to eventually return to normal. The lack of the remains and a grave renders mourning impossible. In this regard, the lives of the relatives of the disappeared are left in a void, desperately oscillating like a pendulum. To refer to the words of the sibling of one of the disappeared, "Their lives are paralysed, they cannot carry on living in such circumstances."³⁵

³⁴ Özsoy, H. 'Arafta Kalmak: Tarih mezarda başlar [Stuck in Purgatory: History begins at the grave]' *Politikart*, 7 May 2012 <http://politikart1.blogspot.com/2012/05/arafta-kalmak-tarih-mezarda-baslar.html>

³⁵ Interview: Istanbul / 21.07.2012

VII.

EPILOGUE: “HE WAS SO SPECIAL, HE WAS SUCH A PERFECT PERSON”

In her book *Eichmann in Jerusalem: On the Banality of Evil*, Hannah Arendt strongly emphasizes how Adolf Eichmann speaks in clichés. Adolf Eichmann, who played a major role in the Holocaust, both in his responses during his trial at the Jerusalem District Court, and also in his correspondence during the war, communicates in an unconvincing, routine style, with a consistent use of clichés. Arendt states that Eichmann's discourse is related to a lack of thought communication skills; and clichés provide a shield against the truth.³⁶ The military officials, commanders, prosecutors, judges, lawyers and the different representatives of the State working in different fields, whom relatives of the disappeared face throughout the time they looked for their relatives, spoke with the same clichés almost as if they had made a prior agreement. These clichés did, in fact, serve the same function they did during the Holocaust in Germany: They provided a shield against the truth.

In describing how different and how perfect their lost ones were, the relatives of the disappeared were actually describing that which cannot be described in clichés, and also the mourning that emerges from the uniqueness of each person once he or she is lost. They were unwilling to let their own story of their disappeared relative to be remembered merely as a number among the disappeared of Şırnak, and this was how they underlined his uniqueness. “Ask anyone in Şırnak, if a single person speaks bad of him, if a single person says he caused the smallest harm, I will give up my claim,”³⁷ they said, the whole town of Şırnak was witness to the goodness, uniqueness and humaneness of their disappeared relative.

³⁶ Arendt, H. 2012:59.

³⁷ Interview: Şırnak-Sitopi / 30.11.2012

CONCLUSION AND RECOMMENDATIONS

In the light of the findings above, the most important conclusion we have reached is that enforced disappearance policies in Şırnak form a systematic whole as a specific type of State policy. We also believe, in line with international academic literature on this topic, that it is necessary to describe what is displayed by these systematic policies as 'State terror'. Under the guise of 'counterterrorism' different representatives of the State formed an absolute sphere outside the law; and wilfully murdered, disappeared and destroyed people. These policies, just like those implemented in El Salvador, Argentina and Peru, target both the disappeared and their relatives, but they are also used to frighten and intimidate society as a whole.³⁸

As for how the harm caused by an implementation of State terror of this kind can be remedied, we believe that certain mechanisms within the scope of transitional justice must be applied. The basic demands of the relatives of the forcibly disappeared validate our approach.

Before we move on to our proposals as the Truth, Justice and Memory Center, it will be helpful to pay attention to the proposals of the relatives of the disappeared. For the demands and proposals of the relatives of the disappeared overlap with the main elements of transitional justice briefly mentioned above, which are recognition, acceptance, prosecution, compensation and reparations. In demanding 'justice', relatives of the disappeared also demand a broadly defined justice, just as it is defined in transitional justice.

³⁸ Menjivar C., Rodriguez, N. "State Terror in the U.S.-Latin American Interstate Regime", p.20.

In addition to the punitive justice that involves the trial and sentencing of those who are guilty, a reparative/restorative justice involving elements such as the revelation of the truth, the official acceptance in public of the violation, and an official apology are among the demands of the relatives of the disappeared. These proposals may be grouped under the following headings:

- The perpetrators must be tried, and in view of the nature of the crime they have committed, serve their sentence with no recourse to any amnesty or extenuating circumstance;
- The State must accept the events, and its premeditated role in the events, thus openly recognizing its crime;
- After recognizing and accepting the crime it has committed, the State must apologize to the whole of society, and first and foremost to the relatives of the disappeared;
- After the trials, the acceptance of the crime and the apology; material and non-material compensation must be paid. Regarding compensation, relatives of the disappeared underlined very clearly that this would only be meaning if the prior conditions are met, and that otherwise compensation would be perceived as blood money, leading even greater anger.

In addition to the proposals of the relatives of the disappeared, and again in the framework of transitional justice targets and its main mechanisms, we would like to add the following proposals:

State-oriented mechanisms:

- Following the recognition and apology processes, all State officials who were involved in the first degree in the enforced disappearances of the 90s as part of the military and civilian security apparatus must be removed from office, and institutional reform must be implemented;
- The village guard system must be terminated, the institution of temporary village guardsmen must be annulled; the judges and prosecutors who worked within the judicial apparatus during the intense period of enforced disappearances and displayed systematic indifference in regard of relevant case files must be removed from office, and institutional reform must be implemented;
- Trials must be carried out swiftly, in a just manner, within the scope of crimes against humanity, and with no recourse to the statute of limitations; and during the process, other international examples must be taken into consideration so that the international knowledge and experience in the field can be conveyed to Turkey.
- Kurdish must be officially recognized by State institutions, comprising multilingual public services and the right to education.

Mechanisms oriented towards relatives of the forcibly disappeared

- Truth Commissions must be established with the commitment of Parliament and participation of civilian society organisations so that the process is designed not only via criminal procedures, but also in a victim-oriented manner. In this way, alternative narratives will be enabled to enter into collective memory regarding the events of the past;
- On the basis of the opinions of relatives of the disappeared multi-dimensional compensation programs oriented towards meeting the various needs of the families must be created;
- The organisation and continuation of the compensation and reparation process must be secured with the cooperation grassroots organisations founded by relatives of the disappeared.

Community-oriented mechanisms

- Through the establishment of monuments, museums and commemorations, a “Never Again!” approach must be disseminated so that the events of the past become part of public memory, are not forgotten and are not repeated;
- The truth about enforced disappearances must be transmitted to different social sections with works created in different artistic forms such as films, plays, music, installations and video clips;
- The history of Turkey's last thirty years must be included in history books in order to broadly teach the country's youth about systematic rights' violations, including enforced disappearances;
- Especially through lessons taught, research carried out and projects developed at universities, a dissemination of the historical knowledge about the state of exception in the 90s, and first and foremost the issue of enforced disappearances, must be carried out using new methods.