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Mother-activism before the European Court of Human Rights: Gender sensitivity towards Kurdish mothers and wives in enforced disappearance cases

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Abstract

The Kurdish population in South-Eastern Turkey has been heavily subject to a widespread policy of state-sponsored and state-performed violence, with the predominant strategy being that of enforced disappearances. Those targeted by state agents as enemies and subsequently forcibly disappeared tend to be predominantly male, while their wives and mothers are left behind, often tortured, harassed and threatened, however rarely kidnapped. This international crime distorts traditional family roles and relations and leaves women in a particularly vulnerable position due to the gender-biased realities which isolate men as victims of this particular crime. Remarkably, the struggle to find the remains of the disappeared often becomes the sole priority of these women who therein enter public arenas in search for their loved ones. What this paper wishes to examine is this kind of (assisted) agency of Kurdish wives and mothers of the disappeared, its presentation, interpretation, acceptance by the European Court of Human Rights, and the lessons it transmits about women's experiences of conflict.

Keywords: women's activism; forced disappearance; ECHR; Turkey; gendered crime.

ABSTRACT IN KURMANJI

Çalakiyên dayikan li ber Dadgeha Mafên Mirovan a Ewropayê: Hesasiyeta cinsiyetê beramber dayik û jinên kurd di de'wayên bêserûşûnkirinan de

Gelê kurd ê başûr-rojhilatê Tirkiyeyê bi giranî ketiye ber pêleke siyaseta şideta bi piştgirî û kiryara dewletê, ku tê de stratejiya serekî bêserûşûnkirinên bi darê zorê bûye. Ewên wek dijmin dibine armanca bikerên dewletê û paşê jî bi zorî têne bêserûşûnkirin bi piranî mêr in, û jin û dayikên wan ên mayî gelek caran tûşî şkenceyê dibin û dikevine ber gefan lê kêm caran têne revandin. Ev tawana navneteweyî rol e têkiliyên edetî yên nav malbatê têk dibe û jinan di nav rewşeke pir nazik de dihêle ji ber rastiyên di lehyê cinsê mêran de ku mêran wek tenya mexdûrên vê tawanê didine xuyakirinê. Girîng e bê dîtin ku têkoşîna peydakirina bermayên bêserûşûnkiriyan gelek caran dibe tenya xem û pêşaniya van jinên ku bi vî rengî têne nav meydanên giştî li pey hezkiriyên xwe. Ev meqale berê xwe dide lêkolîna vê cureyê bikeriya (arîkarîkirî) ya jin û dayikên kurd ên bêserûşûnkiriyan, li temsîl, şirove û wergirtina wan ji aliyê Dadgeha Ewropayê bo Mafên Mirovan, û dersên ku ew li ser tecrubeyên jinan ên derheq şer û dubendiyan de vediguhêzin.

ABSTRACT IN SORANI

Çalakwanîy dayikan le berdem Dadgay Mafî Mirovî Ewrupî da: Hestewerîy cenderîy le hember dayikanî û jinanî kurd le naw keysgelî şwênbizirkirdinî be zor da

Danîştuwanî kurdî başurî rojhellatî Turkiya gelêk be dijwarî kirawnete amancî tundûtîjîy ke le layen dewlletewe parey bo dabîn dekirêt û le layen dewlletîşewe encam dedirêt. Stratîjîy serekîy

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ew tundûtîjîyeş brîtiye le şwênbizirkirdinî be zor. Ew kesaney ke le layen ecêntekanî debinewe weku dujmin dekrêne amanc û dwatirîş be zor şwênbizir dekrên zorbeyan nêrînen, le katêk da ke hawser û daykanyan piştgwê dexirên, gelêk caran eşkence dedrên, sûkayetîyan pê dekirêt û herreşeyan lê dekirêt, bellam kemcar derrifênrên. Em tawane cîhanîye roll û peywendîye nerîtîyekanî naw xêzan têkdedat û jinan dexate ẖalletêkî fre naskewe, eweyş be hoy ew rasteqîne pêşbirryarîye cenderîyaneweye ke piyawan weku qurbanîyanî em tawane taybete dadebirrên. Ewey serincrrakêşe eweye ke xebat bo dozînewey şwênbizirkrawan xallî le pêşîneye bo ew jinaney ke le pênawî dozînewey xoşewîstekanyan da dêne naw erêna giştiyekanewe. Ewey ke em meqaleye deyewêt be taqî katewe ke bikerîy (yarîkirawekanî) jinanî û daykanî be şwênbizirkirawanî kurd çonahî le layen dadgay Ewrûpîy Mafekanî Mirovewe nîşan dedirên, lêk dedirênewe û qibûll dekirên û herweha ew wananey derbarey ezmûnî jinan le buwarî şerr da ke pexşyan dekat.

Introduction

In the 1990s, as numerous societies were emerging from violent wars and conflicts, the aim within feminist circles in the international criminal legal arena was to first and foremost establish that gendered forms of harm exist, and as such leave a great impact on each of the two sexes differently. Unsurprisingly, discussions about gender and conflict largely focused on the issues of sexual violence and rape, that is, those crimes where women suffered more than men due to their gender.[1] While the international focus shifted nearly solely onto Bosnia and Herzegovina and Rwanda, due to how widespread sexual violence towards women was in these two cases, any gender specificities to the more silent conflict in the east of Turkey between the Turkish government and Kurdistan Workers' Party (*Partiya Karkerên Kurdistan*, PKK), which was reaching its peak in the second half of the 1990s, were overlooked. This conflict continued well into the 2000s, without attracting much attention within the feminist legal arena. With the absence of large-scale reports of sexual violence in the country, Kurdish women in Turkey were not seen as inevitably suffering different kinds of harm than men.

Nonetheless, relatively novel concepts such as gender justice and gendered crimes expand beyond rape as a tool of war.[2] They remind us that women experience conflict, as well as the subsequent transition, differently *because* they are women and because of what being a woman represents, and that there are violations that are disproportionately pertinent to them.[3]

The critique is that women's experiences in conflict are heard by international criminal law only when they relate to men (e.g. rape) and not so much as "stand-alone" experiences (Alam, 2014: 50). Furthermore, guilt and responsibility are embodied in a single (or a handful of) individuals being tried

[1] As also shown in international criminal law since sexual violence had been included as both a war crime and crimes against humanity in the statute of the International Criminal Court, see: Article 8 (xxii) and Article 7(g), respectively, of the Rome Statute (2002).

[2] In fact, authors like Franke (2006) have argued that the singling out of sexual crimes might have impeded further development of gender justice, as the crimes and ways of dealing with them project a specific image of femininity, with insufficient agency attached to it.

[3] For instance, women in conflict zones are more likely to die of diseases or malnutrition, and they comprise a majority among civilian casualties and refugees (see Cockburn, 2010).

and the gendered, state-centred order is reinforced. It is the regime that is being prosecuted and humiliated; the state that hosted it lives on (Buss, 2011).

International human rights law, on the other hand, carries a great potential to hold these state structures responsible as a whole, pinpointing structural gender biases that exist. It accepts that sexual violence is not only gender-specific harm, and acknowledges a series of human rights violations women experience differently than men. For instance, the United Nations Beijing Declaration and Platform for Action, established at the Fourth World Conference on Women (1995), explains that women and girls in conflict situations are affected in a whole array of ways, namely, through suffering "displacement, loss of home and property, loss or involuntary disappearance of close relatives, poverty and family separation and disintegration", all resulting in "life-long social, economic and psychologically traumatic consequences of armed conflict" (para 135).

Enforced disappearance is a perfect example of a violation that is often not perpetrated on a woman's body, yet most definitely leaves life-long traumatic consequences. Namely, the gender dimension to the crime in the concrete example of Turkey (and elsewhere) is twofold. First, it is men who are targeted and made to disappear due to the traditionally more active roles they take in a conflict (UNWEID, 2012: 2). Secondly, it is women who live with the never-ending anguish and suffering created both due to the uncertainty about their male relatives' whereabouts and the gender discriminatory structures which only further suppress them after the disappearance.

For these reasons, this paper focuses on women who took their unique form of women's activism to a different level and rallied against not one individual, but the state as an apparatus which failed to prevent and actively hosted these gendered violations. Women relatives of the disappeared have, in that regard, not only been active on the grassroot level calling for transitional justice mechanisms to be put in place in Bosnia and Argentina, as well as in Turkey. They have also entered the international public and human rights sphere when national authorities failed to fulfil their duties. This cross-border activism moves past the well-recognised role of women as witnesses before international criminal courts; their efforts as applicants before international human rights bodies, like the European Court of Human Rights (ECtHR), are equally noteworthy. It is this court that Kurdish women from Turkey marked as a public space where they could bring their human rights claims against the state, and this area is the major focus of this research.

A word on methodology

Turkey is well-known within the European human rights system, with thousands of cases tried against the state before the ECtHR.[4] There are a number (44) of enforced disappearance cases completed against Turkey, most

[4] More than any other Council of Europe member state.

of them concerning group claims that were not of interest for this research, or cases where the bodies of the disappeared were found. Seven cases decided between 1996 and 2013, satisfied the criteria by having one or more applicant who was female, Kurdish and a relative (mother or wife) of a disappeared man whose body has not been found to date.[5] For the purposes of this research, their applications before the ECtHR have generally been labelled as "mother-activism" as a unified term (Simić, 2009), even in cases where the female applicant has a non-maternal familial relationship with the disappeared male.

Based on these cases and feminist legal scholarship, I begin by elaborating on the need for women's activism in relation to enforced disappearance, before moving on to examine more specifically the narratives frequently used by Kurdish mothers and wives before the ECtHR. This study then examines the claims and alleged violations these female applicants *do not* bring before the ECtHR and looks for manners in which the court could adopt a gender-sensitive approach that accommodates the unique way this group of applicants' experiences conflict. Furthermore, I will also elaborate on intersectionality before the ECtHR in these cases. More precisely, as it is men from the Kurdish minority who disappear in Turkey, these female applicants stand as important channels of the less-heard, marginalised voices of non-Western, and more often than not, non-educated women. Finally, the paper attempts to draw some conclusions as to why this matters for the studies of women and conflict and what impact the ECtHR's judgments actually have on law and policy towards the Kurdish population in Turkey.

Mother-activism in Turkey

> "We're talking about your own blood, a child you carried for nine months and gave birth to… The child that was then taken away from you and who you know nothing of. How can you, as a mother, keep living?"
> – S. looking for a son who disappeared in 1992 (Šoštarić, 2012: 30)

That enforced disappearances in Turkey are gendered is shown primarily through sheer numbers, as 97% of those who disappear are men.[6] The absence of men in a predominantly patriarchal society can both serve as a spark for women's activism and a factor aggravating women's hardships. Focusing on the former, the absence of men can create new spaces for women's leadership, both within their household, as well as on a larger community scale (O'Rourke, 2012). Women's civic participation increased after disappearances, and such engagement, in contrast to those who join the Kurdish female guerrilla

[5] Çiçek, Kurt, Meryem Çelik, Haram, Sarlı, Türkoğlu and Tekdağ (nearly all applicants are female). Here the comment refers only to Meryem Celik. In all other cases, all applicants were female.

[6] Based on a study by the Truth Justice Memory Centre and REDRESS Team of 252 court cases and petitions. (See Bozkurt and Kaya, 2014).

movement for instance, has often been carried out entirely under the umbrella of motherhood or widowhood. Such a phenomenon has been seen elsewhere. Even the famous Madres of the Plaza de Mayo from Argentina *performed* motherhood by wearing their missing children's nappies as headscarves and appealing to their roles as mothers in all public appearances, in order to achieve incredible progress with respect to the search for their missing loved ones (Edkins, 2011). Women's activism in that sense then becomes a "natural", maternal reaction, more so than a political response, and as such is bound to receive wider support from the public as it is no longer seen as a movement of women that failed to be proper mothers, but instead as an act of proper motherhood in itself (Bejarano, 2003).

The effect of this is often twofold. First, many of these women report that they assumed paid labour for the first time or had to significantly intensify the labour they conduct outside the home (Bozkurt and Kaya, 2014). Second, women have manifested their presence in the society through protests. While the former occurs through the coercion of state abuse, the latter serves as a response to the very same abuse. Not wanting to see their disappeared relatives being forgotten, they are the "chronic mourners" (Bozkurt and Kaya, 2014: 22). In that way, they maintain their traditional roles of being the more caring gender, even after the presumed death of their loved one. In fact, despite their diverse and multiple experiences, until well into the 2000s, Kurdish women were solely perceived as "mothers who suffered" (Çelik, 2016).

Yet, the absence of men also causes further hardships. Generally speaking, in cases of enforced disappearance, the stigmatisation and societal disapproval of some of the newly-acquired roles can discourage or even actively prevent women from assuming agency and push them back towards the more restrictive gender roles that pre-existed the conflict. For example, the UN Working Group on Enforced or Involuntary Disappearances (2012) admits that gender-biased perceptions in a society put an additional burden on women as mothers or wives of the disappeared who can be seen as having failed to take proper care of their children, to bury them according to the traditions, and to mourn at their graveside. These situations can lead female relatives of the disappeared to avoid participating in the public life. Moreover, it is quite frequent that female relatives of disappeared political opponents, especially when they are vocal, are seen as "the enemy" and targeted by the military and other oppressive regimes, harassed, detained, tortured, or even murdered for refusing to give information (Rubio-Marín, 2009).

The disruption of family relations often leads to psychological damage, exacerbated in cases where women affected already belong to marginalised groups such as ethnic minorities or poor communities, like women in this case study. These disappearances are normally not the only events which destabilise the family, but they trigger a series of other misfortunes, such as being subject to harassment, violence and forced migration (Bozkurt and Kaya, 2014: 37).

Further complications arise in relation to marital status, which determines a woman's identity in the society. Wives of the disappeared are neither divorced nor widows. Even when state authorities want to turn them into widows by offering benefits if they declare the disappeared's death, women often refused to do so (Robins, 2012). The lack of clarity in their social status adds to the ambiguity they feel about their own identity, as well as to the problems they face in their communities. In these specific cases, the average age at which the Kurdish wives of the disappeared married was 15 (Bozkurt and Kaya, 2014). This seriously disturbs the notion of "standard widowhood" (Rubio-Marín, 2009: 74), as these women become widows at a much younger age than in cases where the cause of death is natural.[7] They have a number of defendants to support and do not enjoy the care of the community that older widows would attract.

Although the conditions for any kind of women's activism never seemed to be ripe, already in 1995, a group of mothers, now known as the Saturday Mothers (*Cumartesi Anneleri*), began to gather outside the Galatasaray High School in Istanbul for a silent ritual (Gokpinar, 2012). This act, repeated every week, represented a form of protest against enforced disappearances. Indeed, all of the participants had family members who had disappeared in the wave of disappearances in 1994. These women were arrested week after week, attacked with tear gas, and beaten up until they eventually gave up, at least on occupying the public arena (Lauer, 2015). They have since returned, demanding the release of information about their missing family members, as well as trials for the violations perpetrated by the state. Saturday protests spread to Cizre, in response to the *Temizöz and Others* case before the Diyarbakır court in 2009, and have now been held regularly, not only in Istanbul, but also in Diyarbakır and Batman (Göral, Işık and Kaya, 2013).

Some women went even further and became Members of parliament, for example Pervin Buldan, who upon her husband's abduction went from being a full-time housewife to a Speaker in Parliament and the founder of the Yakay-Der association of the families of the missing. The organisation not only works with the families but also aims to assert direct pressure on the Turkish government to act, e.g. to sign the Convention on Enforced Disappearances (Yakay-Der, 2017). All of the above taken into account, Kurdish women therefore seem to embrace the potential for women's activism in the post-disappearance reality, while at the same time experiencing the distortion of their families and the inevitable psychological and even physical damage.

We must also acknowledge that women's participation in the public sphere has undoubtedly been affected by the Kurdish political movement, more specifically the PKK. From the party's early days, women have been drawn to the principles of gender equality that superseded those present in the everyday lives of Kurdish people in Turkey (Al-Ali & Tas, 2017). These women have

[7] They are sometimes left without a husband and with two or more children before the age of 20.

lived through the application of discriminatory policies towards the Kurdish people, including the banning of the Kurdish language and Kurdish names (Kurban, 2014), so the concept of inequality has been encountered on several fronts. The movement gave these women space to demand improvement by showing that the judicial arena can be an essential part of the collective strategy against discrimination and inequality. A number of Kurdish women and men became applicants in strategically litigated cases before the ECtHR, repeatedly raising concerns about the government's discriminatory policies towards them until they could no longer be ignored (Kurban et al., 2008). Nevertheless, Kurdish women's struggle expands beyond the scope of the Kurdish movement. Gender justice and women's rights go further than "changing articles in the constitution" as stated by Ayla Akat Ata, a Kurdish women's rights activist and Member of Parliament for Batman between 2007-2015 (cited in Al-Ali and Tas, 2017: 362). Among the myriad of specific demands that Kurdish women have in comparison to men, the ways in which they suffer as a consequence of enforced disappearances is among the most apparent ones.

The preceding insights have shown that the gendered dimension to the crime of enforced disappearance is quite visible in southeastern Turkey. Women relatives of the disappeared experience a series of harms due to the very act of disappearance, and furthermore tend to be exposed to new violations in their search for their disappeared loved ones. It is hence essential that these issues are approached in a gender-sensitive manner. However, the Turkish state is very rarely cooperative, and clashes with the PKK, and anyone accused of being their affiliate, continue; new disappearance cases emerge and the old ones are forgotten (Busch, 2017). When all efforts at home fail and these women turn to a regional human rights court instead, what is it that they demand?

The issue of standing

In the absence of a clear physical harm perpetrated onto the female relatives' bodies, the primary purposes of women's applications before international courts are to reveal the truth about the act of disappearance and receive remedy for the consequences thereof. This means that they are, at least initially, not considered to be direct victims, but representatives of the victim as well as indirect victims who suffered due to his disappearance.

In the ECtHR's jurisprudence, Article 34[8] has been cited as allowing direct victims of violations of the European Convention on Human Rights (ECHR) to submit their applications (Schneider, 2015). In cases where this was not possible due to death or disappearance, the court has allowed the next of kin to represent the victim (*Deweer v. Belgium*, 1989) and, since the very beginning, this

[8] Article 34 states the following: "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

was extensively practiced in the disappearance cases coming from Turkey, some of them counting more than a dozen applicants.[9] The names of indirect victims, and therefore applicants, must be included in the application, or else other relatives who might have been affected by the disappearances will not be eligible for reparations (Rubio-Marín, Sandoval and Diaz, 2009). That said, in cases concerning Turkey, familial relationships to the disappeared victim have included parents and spouses (*Akkum and Others v. Turkey*, 2005; *Çiçek v. Turkey*, 2001; *Kurt v. Turkey*, 1998), children, siblings, and partners (*Meryem Çelik and Others v. Turkey*, 2013). Such an accommodation is greatly helpful for Kurdish families where the disappeared man might have been the sole breadwinner and, in addition to his wife and children, his mother and/or sister could also benefit from the reparations package awarded by the ECtHR.

What is of further importance is that the ECtHR previously accepted that partners who did not perform a civil marriage may also stand as applicants and representatives of a disappeared or murdered person. In the case of *Haran v. Turkey* (2005), the Turkish government objected to the admissibility of Mrs. Haran's application on the account that her name and the name of her alleged husband, who had disappeared, did not appear on the same page in family records and the two of them were therefore not married. In the absence of proof that it could have been otherwise, the court concluded that Mrs. Haran was at least the disappeared victim's partner with whom she had three children and could therefore legitimately claim to be the victim due to her partner's disappearance, therein showing sensitivity to more diverse forms of family.

All of this serves to prove that nearly all familial relationships, and the suffering that these family members experience due to the disappearance, will be acknowledged by the ECtHR and the applicants will be given space to present their claims. Yet, it is always mothers and wives who stand at the forefront of this struggle. Thus, this study's interest as a corollary is what these women (did not) say about their own rights and freedoms and violations thereof.

The claims and the ECtHR's response

Although enforced disappearances are not explicitly mentioned in the ECHR, the ECtHR has dealt with many enforced disappearances cases in the past few decades, mainly coming from Turkey and Russia.[10] In developing its jurisprudence regarding enforced disappearances, the court has made reference to a variety of human rights instruments and institutions, as well as specific

[9] For instance, the application in Er and Others v. Turkey was lodged by nine applicants.

[10] For example, Osmanoğlu v. Turkey, 48804/99, (ECtHR 24 January 2008); Akdeniz v. Turkey, 25165/94, (ECtHR 31 May 2005); İpek v. Turkey, 25760/94, (ECtHR 2004); Akdeniz and Others v. Turkey, 23954/94, (ECtHR 31 May 2001); Taş v. Turkey, 24396/94, (ECtHR 14 November 2000); Timurtaş v. Turkey, 23531/94, (ECtHR 2000); Ertak v. Turkey, 20764/92, (ECtHR 2000-V); As regards Chechnya see Imakayeva v. Russia, 7615/02 (ECtHR 2006); Baysayeva v. Russia, 74237/01, (ECtHR 5 April 2007); Aslakhanova and Others v. Russia; 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, § 122, (ECtHR 18 December 2012).

landmark cases from other jurisdictions. In doing so, the court relied on the United Nations Declaration on the Protection of All Persons from Enforced Disappearance to establish enforced disappearance as a crime against humanity, which violates rights to legal recognition, liberty and security, life, and freedom from torture (*Kurt v. Turkey*, 1998). For this reason, violations stemming from this crime have been linked to a number of articles found in the Convention, such as the right to life (Article 2), freedom from torture (Article 3), fair trial rights (Article 6) and right to remedy (Article 13).

Nonetheless, apart from a few cases where these mothers and wives were tortured or harassed along with the disappeared or due to their affiliation with the disappeared, these women are generally not seen as conventional, direct victims of human rights violations. Their suffering is, first and foremost, personal and psychological, caused by the perpetual uncertainty and not knowing what happened to their loved one. Consequently, female applicants have claimed very little on their own behalf, most frequently relying on violations of their freedom from torture, not on the basis of direct state abuse, but of the deleterious impact of the disappearance on their mental health, and the right to remedy, as domestic authorities failed to address their case effectively.

The ECtHR seems to be more likely to find a violation of Article 3 (freedom from torture) with respect to the applicant than to the applicant's disappeared relatives. This was the case in both *Kurt* (1998) and *Çiçek,* (2001) where it was up to the applicants to prove that their arbitrarily detained relatives were tortured in the hands of state agents, which was too daunting a task. Still, the court recognised that the pain and suffering the uncertainty over the disappeared's fate caused them amounted to a violation of Article 3. However, later case-law suggests that there must be a clear negative reaction or attitude (if not abusive or oppressive behaviour) of state authorities towards the indirect victims in order for breaches of Article 3 to be found (Rubio-Marin, Sandoval and Diaz, 2009). What this means is that a woman standing before the ECtHR will only have an opportunity to be remedied if abused or ignored by the state, and the very crime of disappearance does not suffice for a violation of the right to be free of psychological (and) physical torture to be found.

While assessing whether or not a family member is a victim of a violation of Article 3, the ECtHR will take into consideration the following: the proximity of family ties, the extent to which the family member witnessed the events in question, the involvement of family members in the attempts to obtain information about the disappeared, and the way in which the family responded to those enquiries (*Haran v. Turkey,* 2005: 82). Therefore, it is not about the uncertainty that accompanies the disappearance but rather the attitudes of the authorities and other *special features* that will make this suffering different from the inevitable distress that is caused by losing a family member. The psychological harms caused by the disappearance itself and the fact that the applicant is a *woman*, with all the community and family burdens this entails, will

have little to no place in the ECtHR's jurisprudence. So for these reasons, in the case of *Haran vs Turkey* (2005), Mrs. Haran's distress was not acknowledged because she did not witness the event nor did she pursue "enough" requests and petitions to find her husband, according to the ECtHR's evaluation. Instead of making her vulnerability visible and understanding why a Kurdish woman looking for her disappeared husband is in a more disadvantageous situation than a majority ethnicity citizen, the ECtHR punished her for it.

Inhuman treatment is not the only human rights violation these women experience in the aftermath of a disappearance: however, it does remain the most frequently brought claim. Part of the reason why female applicants will rarely bring other claims on their behalf may be in describing all of the harms they suffered as a violation of freedom from torture (A. Hanušić Bećirović, personal communication, 2 August 2017). Yet, when it comes to institutional failures, a commonly raised claim, as far as Kurdish female applicants from Turkey are concerned, is the right to remedy, protected under Article 13 of the ECtHR.[11] A violation of the right to remedy was found in each case where such a claim was raised, except in the *Haran* (2005) case, where the court thought that the procedural aspects of the right to life covered the substance of the right to remedy, i.e. the right to an effective investigation. The remedy required by Article 13 must be "effective" in practice as well as in law. In particular, its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent state (*Kurt v. Turkey*, 1998). Raising such a claim successfully matters as remedying a violation of Article 13 requires, in addition to the payment of compensation, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and granting effective access to the investigation procedure to the applicant (*Tekdağ v. Turkey*, 1996). What this means is that the female applicant who successfully raises a right to remedy claim before the ECtHR could not only obtain more money from the state but also point to specific vulnerabilities related to her gender, as she is likely not to be taken seriously by the authorities and excluded from the investigation process.

Other accommodations

Before even deciding to make a particular application admissible, the ECtHR allows for several exceptions to some of its rules that can aid female applicants in disappearance cases. For example, exhausting domestic remedies is a well-known pre-requisite for admissibility before the ECtHR: however, there are exceptions that particularly benefit women. More precisely, a complete absence of any effective investigation into the complaints brought by the applicant before state authorities counts as a special circumstance due to which

[11] Article 13 on the right to remedy includes access to courts which effectively enforce rights and laws. It states: *"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."*

exhausting domestic remedies is not necessary (*Kurt v. Turkey*, 1998). That means that if a female applicant has tried to bring the case to the authorities' attention to no avail, it is not necessary for her to assume expensive litigation all the way up to the Constitutional Court before reaching Strasbourg. Such a strategy has helped several female applicants bring a case against Turkey, repeatedly demonstrating the state authorities' unwillingness to investigate enforced disappearance cases.

In addition, the passage of time, or *ratione temporis*, between the crime and the application before a human rights body is known to be problematic in a number of cases, especially when family members are unaware of international human rights systems or are unable to access them. The ECtHR has, however, reiterated a number of times that the six-month rule may not apply provided that there were no remedies available or they were ineffective, but only so in exceptional circumstances (*Meryem Çelik v. Turkey,* 2013). In other words, in normal circumstances, the applicants should not wait for years to pass before realising the ineffectiveness of the situation. Yet, the finest of the ECtHR's gender sensitivity portrayal was arguably performed here, when the court stated that what distinguishes these exceptional cases from others can be, for example, the fact that applicants were rural women who were illiterate and did not speak the language of the administration (Turkish), or furthermore had to abandon their village and live as refugees for years (*Er and Others v. Turkey*, 2012). For them, *ratione temporis* did not apply.

Challenges of intersectionality

In the above-mentioned applications and accommodations, very little discussion has been raised about the fact that these applicants are not only female but also from a minority group, and that alone may have placed them in a vulnerable position. Yet, Kurdish women have picked up this fact of intersectionality themselves and claimed potential violations of the right to individual petition[12] and the non-discrimination clause.[13]

Hampering women's activism by bullying

The ECHR suggests that state parties must enable all applicants to communicate freely with the court once the application is made and that applicants must remain free from any pressure to amend or withdraw their application. Allegations of being subject to that kind of pressure were made in a number of disappearance cases coming from Turkey (*Salman v. Turkey*, 2000; *Aydn v. Turkey*, 1997; *Kurt v. Turkey*, 1998).

[12] Under former Article 25(1), which asserts that the states which, through a declaration, recognise the competence of the Commission to hear individual complaints "undertake not to hinder in any way the effective exercise of this right."

[13] Non-discrimination clauses can be found under Article 14 of the European Convention, which states: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Although the ECtHR never accepted to see it as a common, systemic practice perpetrated towards the Kurds, it did importantly stress that such pressures did not only involve direct coercion and intimidation, but also any *indirect* acts of dissuasion or discouragement of family members who are applicants or potential applicants, as well as their legal representatives (*Kurt v. Turkey*, 1998). For instance, in *Kurt v. Turkey* (1998), the fact that state authorities made pressures on the applicant to make a statement regarding the case and threatened to criminally prosecute her legal representative had she failed to do so amounted to a breach of the former Article 25(1), now Article 34, on the right to individual petition. Sometimes, the harassment is recognised if there is proof that it impeded the applicant's right to individual petition to the ECtHR without any relation to what happened prior to it. For instance, in the *Şarlı v. Turkey* (2001) case, the ECtHR found a violation of the right to remedy, elaborating that the act of criminally prosecuting Mrs. Sarli's lawyer because he had been involved with the European Commission on Human Rights constituted a violation of the right to individual petition. Not all such allegations are successful as the burden of proof still largely rests with the applicant. By way of example, in *Tekdağ v. Turkey* (1996), the same claim was dismissed on account of the ambiguity of whether the people who raided the house of a disappeared Marxist's wife were the police.

In *Salman v. Turkey* (2000), the principles behind these decisions were elaborated in more detail. Decisions are made on individual, case-by-case basis taking into consideration the vulnerability of the applicant, as well as the "susceptibility to influence" as performed by authorities. In that regard, the ECtHR considered the social context the applicants came from, failing however to mention explicitly the specific vulnerability of *female* and *Kurdish* applicants. Nonetheless, the court accepted that in the rural environments these women live in, fear of reprisals by the authorities on no legal grounds and solely for having previously made complaints about them can be expected. This is a small, but important achievement, as it has the potential to decrease the amount of fear and intimidation experienced by some female applicants and to suggest that there is no scope for bullying of these women by local authorities.

Enforced disappearance: a crime for the Kurds?

These pressures can also pinpoint the abuse of power that the majority group exercises over ethnic minorities, which is why Article 34 claims often came hand-in-hand with the non-discrimination claim under Article 14. After all, violence in the southeast of Turkey has been a result of historical discrimination towards the Kurdish population in Turkey (Çelik, 2016). A couple of applicants before the ECtHR attempted to point to Turkey's systemic practice of torture, arbitrary detention, killings, and hampering access to remedy towards Kurds. That such practices are systemic should be seen through the number of cases coming from southeast Turkey and the common, Kurdish profile of the victims (*Süheyla Aydın v. Turkey*, 2005). For instance, in the *Akkum*

v. Turkey (2005: 45) case, the applicants called this "a practice of conducting inadequate investigations into the killings of individuals in south-east Turkey […] and a practice of failure to prosecute those responsible." Other female applicants have focused on the element of ethnicity and raised Article 14 claims, arguing that their disappeared relatives and they themselves had been treated poorly and violently because of their ethnic origin (*Meryem Çelik v. Turkey*, 2013; *Çiçek v. Turkey*, 2001; *Süheyla Aydın v. Turkey*, 2005). More specifically, they believed that the men were arbitrarily detained and potentially murdered because they were Kurdish and that the women were prevented from accessing effective remedy and/or harassed because they were Kurdish too. The court failed to examine these concepts further and has not reflected on the great number of disappearance cases with similar facts coming from the same region in Turkey, refusing to even consider the allegations in all cases except one (*Çiçek v. Turkey*, 2001). Article 14 cases are usually found to be unsubstantiated *(Haran v. Turkey*, 2005; *Tekdağ v. Turkey*, 1996) on account of an administrative practice of discrimination based on ethnic origin, due to the lack of proof of discrimination towards the Kurds on a large scale, which is something rural Kurdish women are not in a position to obtain.

Although it is important that these allegations have emerged, they arguably have a long way to go before they are acknowledged. The ECtHR case-law (e.g. *Horváth and Kiss v. Hungary*, 2013) suggests that more comprehensive statistical data and written proof, which individual female applicants of Kurdish ethnicity in Turkey might not have access to or funds for, would be needed for a violation of Article 14 to be found and the whole Turkish system punished for it. If not a violation, at least an elaborate discussion on this claim before the ECtHR is necessary for several reasons. Firstly, it would matter because it could potentially result in an acknowledgment of the systematic persecution of an ethnic group a member-state of the Council of Europe has been engaged in during the past decades. Once that is achieved, it could, secondly, trigger more direct action from the Council of Ministers (CoM), the Council of Europe's political body, to urge Turkey to change its oppressive policies towards its Kurdish population. Thirdly, and more closely related to the scholarship on gender justice, these claims represent traces of intersectionality (Curran, 2016). The applicants are not only more vulnerable because they are female, but also because they are female *and* Kurdish. These applicants' claims inevitably call for an approach by the court that would be sensitive to their especially vulnerable position in relation to other non-minority female applicants when deciding on the reparations package. Only then can reparations carry a transformative power for the betterment of these women's lives.

Room for improvement

This study has shown that the ECtHR does not employ much gender-sensitive language, even in cases where it accepts claims that are unique or more pertinent to women. Similarly, in awarding reparations, the ECtHR will stick to

monetary compensation to be paid by the Turkish state to the female applicant (Rubio-Marin, Sandoval and Diaz, 2009). Requesting a state party to provide merely monetary compensation may to some extent remedy the violation by recognising the crime and providing some financial assistance to the next of kin. Yet, it fails in every way to reduce the threat of similar violations occurring in the future by not tackling the law and/or the practice of the state party which enabled the violation in the first place. The continuous appearance and the high number of Turkish disappearance cases serve as a case in point.

Nevertheless, the power of the ECtHR goes beyond simply awarding financial compensation, and it has in the past ruled on legislative amendments in a number of national systems (*Airey v. Ireland*, 1979), including constitutional amendments (*Sejdic and Finci v. Bosnia and Herzegovina*, 2009). That being said, if more understanding of the relevance of gender and ethnicity of these applicants is shown, the reparations packages ordered by the ECtHR may ultimately serve to decrease discriminatory practices towards the Kurdish population in Turkey and improve the ways in which state officials treat female relatives of the disappeared. Hopes that this may happen remain high for two reasons. First, the power and the potential of the court must be examined beyond a narrow reading of brief judgments issued by the Grand Chamber, and must instead be evaluated hand-in-hand with the practices of the Committee of Ministers. The committee, which monitors the compliance with the court's judgments, seems to be more willing to point to systemic violations in its reports and urge the member state to undertake meaningful transformations to challenge such a discriminatory system that puts a disproportionate burden on women in their pursuit of justice and in their everyday lives. To that end, in the CoM's Interim Resolution DH(2002)98 (2002), Turkey was urged to train its police and gendarmerie. In the 2005 Recommendations DH(2005)43), significant progress had been noted in that regard, since substantial legislative reforms, including a new Penal Code and Code of Criminal Procedure, had been in force since 2002. These did not only involve professional training of security forces, but also the improvement of procedural safeguards to prevent ill-treatment in police custody, and awarding adequate compensation for the damage caused, all of which are directly linked to the practice of disappearances. Among the changes Turkey made, the setup of a Compensation Commission which provides redress to those who witness excessive delays in judicial proceedings, as well as the granting of supremacy on international human rights law over national law,[14] are among the most relevant ones for this case study. Finally, the majority of fact-finding hearings organised by the convention organs to adjudicate on the disagreements between applicants and the government come from Turkey (Bakircioglu and Dickson, 2017). This helped discover instances of local authorities refusing to disclose important evidence and further weaken the government's authority to mistreat its people.

[14] Law on the Amendment of Various Provisions of the Constitution of the Turkish Republic, No 5170, 7 May 2004, the Republic of Turkey Official Gazette No. 25469, (22th May 2004).

This shows that the mere fact that the ECtHR repetitively issued judgments with great monetary repercussions for Turkey, and that the CoM then repetitively reported on these practices triggered major changes in legislation and policy-making in Turkey. Ultimately, Turkey's persistent non-cooperation with the ECtHR would simply be too costly, provided that Turkey still values its candidate status within the European Union. The EU candidacy was the sole turning point in Turkey's relationships with the court and respect for human rights in general (Kurban, 2014), at least until the attempted coup d'état in 2016.

Sensitivity towards what it means to be a woman in a particular situation in a certain country has already had its breakthrough in the ECtHR's case law. In a landmark judgment in the *N. v. Sweden* (2010) asylum case, the court for the first time took into account original research on what would await the applicant in her home country Afghanistan if she, as a less conservative woman separated from her husband, were to return. In conducting such analysis, the court decided to shield the applicant from deportation solely on the basis of the gender-specific harms such as domestic violence and social stigma that she would have encountered in Afghanistan. There is no reason why the same specificities should not be considered in the Kurdish context in Turkey.

Furthermore, instead of blaming the female applicant for not taking enough action to look for her disappeared male relative and cooperate with state authorities, the ECtHR should first and foremost understand why she might have been prevented to do so. In a study done by the Truth Justice Memory Centre, many Kurdish women reported that they did not trigger or participate in the investigation because they had small children who needed to be nursed, did not speak the only official language which is Turkish, or could not afford the journey financially, having been left without their sole source of income (Bozkurt and Kaya, 2014). The premise is that those who did end up as applicants also had similar struggles. While all these could be grouped under the "social context" the ECtHR sometimes looks for, it is also important that they are recognised for their gender dimension as representing unique experiences of Kurdish women in conflict so that the full comprehension of the human rights violations at stake is made possible.

For example, the Inter-American Court of Human Rights (IACtHR) does not only attempt to repair the direct consequences of a violation, but also to enhance the living conditions and social realities of the victims, who are usually the poorest, most vulnerable and most marginalised. Many of these female applicants are members of indigenous communities from countries such as Guatemala, where widespread practices of enforced disappearances took place. They, like Kurdish applicants, belong to oppressed marginalised minorities, and bring claims of psychological damage (see, for instance, *Bamaca Velasquez v. Guatemala,* 2010) which are, in essence, similar to those brought in the European system. In spite of these similarities, stark differences are noticed in terms of how these claims are received and accommodated. For instance, psychological harm brought to family members of the disappeared is seen as an inevitable

event in an enforced disappearance case. That said, violations of the right to personal integrity protected under Articles 5(1) and 5(2) of the American Convention are expected to be found vis-à-vis all recognised indirect victims. In addition to monetary compensation, the IACtHR sometimes requires the state to provide free medical and psychological treatment of the female relative of a disappeared, pay for the funeral costs (*Chitay Nech et al. v. Guatemala*, 2010), or otherwise apply a set of measures to ensure the female applicant participates in the investigation process (*Tiu Tojin v. Guatemala*, 2008), acknowledging the particular vulnerability they experience as females *and* as indigenous people. None of these measures are outside the mandate of the ECtHR.

Women's experiences in conflict as human rights violations claims

The question we have come to at last is: what can these court cases tell us about how Kurdish women experience conflict in southeastern Turkey? One thing that is notable is the process of becoming an activist that many of these mothers and wives go through. More often than not, these women were completely apolitical and would have probably remained so if the main role of being a mother, the only role in these societies that women are valued for, was not taken away from them (Miller, 2009). They appeal to their maternity as the main justification for their (unorthodox) actions and the primary grounds of their worth. This has been challenged by many feminist circles that essentially raised the question of whether women who undoubtedly fight against gender inequality by assuming agency despite refusing to declare feminist can still be considered to represent what feminism stands for (Wright, 2008). Arguments in defence of these women are multiple. Boundaries, both symbolic and material, between public and private spheres are blurred every time these women occupy public spaces, squares, streets, parliaments, and courts.

Yet, the same process of becoming an activist would not be the same (or even possible) without assistance. In fact, the slow development of the ECtHR as a more interventionist court has much to do with applicants' lawyers (Bakircioglu and Dickson, 2017) and not so much with these female applicants. Gender-sensitive progress is up to lawyers' skills to present applicants in a way which is innovative yet within the logical limits of the convention. Who are the lawyers who assisted this form of Kurdish women's activism?

Even though the right to individual petition became applicable in 1987, before 1992 and the arrival of human rights lawyers from Essex University, Kurds who had their human rights violated were by and large not aware of the ECtHR. In a short time, Kurdish cases overwhelmed the ECtHR system. The court's jurisprudence on issues such as counterinsurgency practice and forced displacement was born and grew due to the great number of cases submitted against Turkey. Already in 1997, there were over 500 conflict-related applications at the ECtHR. Needless to say, these cases rightfully reached the ECtHR after the national courts widely failed to exercise effective jurisdiction. Until Turkish law was amended to accept individual applications before the

Constitutional Court in 2010, as a prerequisite for the EU accession process,[15] the female applicants observed here, like thousands of others, sought refuge in the ECtHR. Furthermore, Kurban et al. (2008: 4) argue that the influx of Kurdish cases at the ECtHR was not so much a proof of strategic litigation, but more "a necessity" since national remedies were entirely inaccessible by the Kurds.

However, it is important to note that they are not direct manifestations of women's (and men's) agency among the Kurdish population in Turkey. It is first and foremost the effort of foreign lawyers such as Kevin Boyle and Francoise Hampson who engaged in these cases. Moreover, Kurdish lawyers from the Diyarbakır branch of the Human Rights Association and the Kurdish Human Rights Project are also considered pioneers in taking these cases to an international human rights court. They, without a doubt, all acted as decisive factors in how female applicants presented their claims and why certain claims present in the Inter-American system, for example, like the violation of the right to a private life, were completely absent. By pushing for greater numbers of Kurdish cases, lawyers were greatly responsible for showing that a wide-scale human rights problem existed in Turkey (Kurban et al., 2008). When the cases began to be counted in hundreds, Turkey had to accept there was, indeed, a large human rights problem in the country, and this was reflected in the changes in the law and policies.

Hence, the cases analysed here should essentially not be discussed in isolation, independent from the Kurdish movement and the collective (and assisted) Kurdish activism before the ECtHR which brought light to a myriad of violations done to this ethnic group. Individual women's voices emerged through torture claims and narratives, although they were perhaps not a part of a greater strategy. Inevitably, they have a potential to represent the entire group of women whose husbands and sons disappeared. On the surface, the claims these women raise before the ECtHR clearly show their priorities in a post-atrocity setting which are: that their missing loved one is found, that truth and justice regarding the disappearance are established, that their own psychological suffering that arises from the disappearance is recognised, and that it is acknowledged that the crimes are committed on the basis of ethnic discrimination. The reasons why no other claims which frequently appear in the Inter-American context, such as the right to a private life, are brought before the court concerning Turkey can also be considered a part of the strategy that was to some extent replicated in all of these cases.[16] The reasons behind them can be as simple as the fact that a) they would not make a big difference in the European setting in terms of the reparations awarded, b) the multiple harms Kurdish women experience are all encompassed under one great claim of

[15] Turkish Law No.. 5982, 7/5/2010

[16] See, for instance, *Garcia and Family Members v. Guatemala, Bamaca Velasquez v. Guatemala* before the Inter-American Court of Human Rights.

torture c) the priorities of these women are their disappeared men and their discriminated communities, and not necessarily they themselves.

These applicants were mobilised by third-party actors, so essentially their applications cannot be seen as *only* their voices. That certain, more gender-sensitive claims (and therefore responses) are lacking partly has to do with the fact that this form of activism is an assisted one. That said, the responsibility of increasing the level of gender sensitivity towards this group of victims does not only lie with the ECtHR but also with the applicants' legal representatives.

Finally, these applications before the ECtHR teach us about the gender dimension to the practice of enforced disappearances recognised on other fronts, too,[17] and what it means to be a widow and/or a childless mother in conflict. Although there is no "human right not to be widowed" (Rubio-Marín, 2009: 31), the gender-specific harms that emerge from the kind of widowhood triggered by a disappearance find their place in the international arena when these women are recognised as not only representatives of the disappeared, but also as victims themselves. Even if their victimhood is solely observed through the act of a (man's) disappearance, it is nonetheless important that this is accommodated because it does, after all, reflect the gender unequal reality that pre-existed the atrocity. If the ECtHR wishes to use its capacity to inspire changes in the structure that hosts inequality, it is of great importance that it acknowledges that gender inequalities exist in less traditionally gendered crimes, and that they lead to enforced disappearances and result in an array of women's human rights violations. These are some of the initial steps in fostering discussion on gendered crimes other than sexual violence that are welcome in all public arenas, especially human rights courts which prosecute states, not individuals.

Conclusion

This brief review of the enforced disappearance cases Kurdish women have brought before the ECtHR against Turkey offered a gender reading of a crime in a rather reverse way, focusing on violations that are not perpetrated on female bodies, but cause harm when perpetrated against men. Relatives of people who are imprisoned, tortured, disappeared or killed during a particular time remain vocal even in times of peace, as they tend to demand more than what is given by the government. They maintain their presence in the public arena even when everyone has forgotten about the crimes committed against their relatives, and Kurdish women in Turkey have been doing that for more than two decades. At the same time, these women hold great moral authority;

[17] In 2013, the UN Working Group on Enforced or Involuntary Disappearances published a general comment that deals with the detrimental effect enforced disappearances have on women, in which it astoundingly accepted that these effects have a gender dimension precisely because of the pre-conflict discrimination and differences deeply embodied in the culture, religion and traditions. That women as family members of the disappeared ought to be given victim status was also recognised in the 2006 International Convention for the Protection of All Persons from Enforced Disappearances, one of the core UN human rights treaties.

non-corrupted, they pursue their just causes, and not even for themselves, but for others who cannot speak anymore (Strassner, 2013). In this paper, I acknowledged their just cause, but have also attempted to explore them as agents who could inspire transformations of the gender and ethnic reality in Turkey.

These cases pinpoint a gap in the practice of a major locomotive of human rights in Europe, the ECtHR, and the need that Kurdish female relatives of the disappeared have for acknowledgment, the accommodation of specific claims and for reparations. As this paper has shown, these needs are created because of the intersection of gender and ethnic realities in Turkey. Gender inequality and atrocities in conflict both lie on a continuum, serving as push factors for each other to the detriment of Kurdish women, who feel the ramifications of both throughout their lives. Human rights courts must remain, or rather become, the appropriate forums for relieving such burdens.

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