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Law as the game of truth in the case of Xerzan Cemetery

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Introduction

On 19 December 2017, the governorship declared a curfew in Oleka Jor village of Tatvan district in Bitlis, Northern Kurdistan. During the curfew, F16 jets of Turkish Military Forces (TMF) bombed Xerzan Cemetery in the village, destroying all the gravestones and the mosque inside. After the bombardment, the graves were opened one by one with ladles, and 267 excavated dead bodies were abducted without families being informed.[1]

Xerzan Cemetery was also called the Martyrs' Cemetery by the villagers and the Kurdish Freedom Movement, as those buried there were mostly the Kurdistan Workers' Party (PKK) guerillas who lost their lives during the ongoing war in Northern Kurdistan.[2] Xerzan was one of those cemeteries built in different cities during the Peace Process between the Turkish state and PKK, marked by negotiation meetings and ceasefire. Under the relatively positive political atmosphere prompted by the Peace Process initiated in March 2013, more than ten cemeteries were built by civil initiatives supported by some local organisations (İnsan Hakları Derneği 2018). The dead bodies of the PKK guerillas taken from their temporary graves in the guerilla zones and those excavated from the mass graves belonging either to guerillas or forcibly disappeared civilians in the 1990s were reburied in these cemeteries. Xerzan Cemetery was reorganized in 2014, and the bodies taken there were reburied without facing any intervention from the state. Even though these cemeteries were not recorded officially, most of the bodies buried were provided death certificates. In other words, by providing death certificates to officialise the graves, the state approved the cemeteries in practice.

After the collapse of the Peace Process in 2015, the war in Northern Kurdistan ensued, and extrajudicial killings, home raids, and destruction of the villages were increased and systematised (Halkların Demokratik Partisi 2016). The TMF attacked particularly these cemeteries built during the Peace Process. After surviving two military attacks, Xerzan Cemetery was eventually destroyed on 19 December 2017. Whereabouts of the abducted dead bodies belonging to 267 guerillas remained unknown until the governorship of Bitlis was pressured to make a statement by the families and public on 2 January 2018. The governorship stated that 278 graves were opened, eleven were

[1] This article uses the Kurdish names of the places, villages, and cities rather than their official Turkish names. Besides them all, I find it particularly significant to note that the cemetery is also referred to as Garzan Cemetery by various sources, following its Turkish spelling.
[2] The ongoing guerilla warfare is initiated by Kurdistan Workers' Party (PKK) against the Turkish State in 1984.

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empty, and 267 bodies were excavated and taken to the Istanbul Forensic Medicine Institute (Bitlis Valiliği 2018).

The DNA samples taken from the dead bodies were designated numbers by the forensic institute. Following the protests against the abduction of the bodies from the destructed graves to Istanbul, the state invited families to prove their kinship to the dead with DNA tests to take them back. More than thirty families took the DNA test, and the samples from eleven of them were matched to the samples from the bodies. However, only five bodies returned to the families on condition to be reburied in different cemeteries.

The remaining 262 bodies were discovered to be buried at the Cemetery of the Nameless in Kilyos, Istanbul, in October 2019. Journalists brought to light that these dead bodies that were thought to be in the forensic institute had actually been buried in the Cemetery of the Nameless in March 2019 with a secret midnight operation by the state officials accompanied by the police (Gazete Karınca 2019). In other words, these 262 bodies were once again abducted from their families. The public was still discussing this, and legal paths were being taken by the human rights lawyers on 22 May 2020, when a video went viral on social media, shared and spread by the journalists, showing the excavation of the plastic boxes filled with human bones from the concrete pavements and by the sewer in the Cemetery of the Nameless which were later understood to be those excavated from Xerzan. Bones that remained from these 262 dead bodies were packed in plastic boxes, piled on top of each other, and buried either in the concrete pavement surrounding the Cemetery of the Nameless or by its sewer (Kamer 2020). Only twenty-one dead bodies out of 267 were returned to the families and reburied for the fourth time as of February 2022 (Çelik 2021).

Xerzan Cemetery became a publicly well-known case in Turkey and Kurdistan. Beyond the personal interest, it attracted my academic attention during the ethnographic fieldwork I conducted for my PhD research project in Amed, Northern Kurdistan, from April to September 2019. Within the scope of the project, I also conducted interviews with human rights lawyers and inhabitants of the city, including journalists, forensic scientists, and families of PKK guerillas and victims of enforced disappearances, and visited mass graves and cemeteries. Some research participants were directly involved in the case of Xerzan, as a lawyer or a relative made to wait for DNA results. However, some other respondents I interviewed also referred to the case considering it similar to what they experienced. After the fieldwork, following the reports, media coverage, and

new information brought to light, I remained updated and continued collecting relevant empirical material.

During the fieldwork, reflexivity was not merely an ethical but also a methodological concern for me. The war in Northern Kurdistan is referred to as the “Kurdish question” in the political realm of Turkey, which literally ethnicizes the question. It is characterized by the determined limits of geographical and social spatializations. This question has the capability to position, produce and reproduce Kurdishness and Turkishness simultaneously but in different forms, revealing what determines the forms of subjectification. Therefore, it has been transforming Kurds, Turks and geographies. It both ethnicizes a space and spatializes an ethnicity. It is multidimensional and complicated, considering its impacts on the spaces, temporalities and bodies, and multilayered in differentiating the temporalities and spaces of Turkishness and Kurdishness. The social is, in this regard, in a continuous reconstruction within complex relationalities, forming both subjectivities on an asymmetrical surface. Therefore, I cannot be safe from such interrogations.

As a Turkish woman doctoral student coming from Sweden, these interrogations occupied a significant part of my research process. The insider-outsider dichotomy is not sufficient to define my position. My first encounter with the research participants during my fieldwork began with our given identities by the context. In other words, I was not only non-Kurdish but Turkish, a carrier of the sovereign identity, which made them only Kurdish correspondently. Our relationships were not free from these binaries constructed by the years-long subjectification processes which shape Kurdishness and Turkishness. However, in time, ethnography's intersubjective, relational and dialogic characteristics facilitated the research process to be a shared experience between the research participants and me. Even though I mostly draw on the written statements as the empirical material in this article, their framing and analysis are informed by this ethnographic research. My methodological considerations are shaped by drawing on these ethical reflections. I informed my ethnographic practice to go beyond the social scientific method's imposition of a single truth that is referred to as the “violence of the method” by poststructuralist scholars that problematize not only positivism but also interpretivism as Michel Foucault (1990, p. 64) suggests that "there is nothing absolutely primary to interpret because at bottom everything is already interpretation." In this way, my reflections on my positionality did not only facilitate the data collection on a sensitive topic touching upon ongoing violations but also helped me to problematize my own subjectification process during the analysis. It thus opened the path toward revealing

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epistemic uncertainties/pluralities and multiplicities of truth that are shaped mainly by the historical relationalities triggering the attachment of trueness within a multilayered context.

The Xerzan case reveals a complex web of relationalities and provides significant understanding for the studies on Northern Kurdistan problematising politics, death, space, power and resistance. Inquiries on the case can contribute to the literature on enforced disappearances and the significance of death inscribed in collective memory, unspoken loss, and interfered mourning, drawing on subjectivities in the context of temporality, violence, and legal space (Alpkaya 1995, Göral 2021, Göral et al. 2014) and on the compelling literatures of anthropology, sociology of resistance, legal anthropology and area studies that engage in scrutinising neoliberal space-making, Kurdish resistance, subjectivity, and politics of death (Gambetti 2005, 2009, Jongerden 2007, Özsoy 2010, 2012, Watts 2010, Yüksel 2011, Özsoy and Yörük 2013, Gambetti and Jongerden 2015, Yıldırım 2019). However, characterised also by the strategical utilisations of law by different actors throughout, the Xerzan case offers promising insights concerning the relation of law to the truth. Therefore, by relying on the empirical material collected for the extensive ethnographic research conducted for my PhD project, this article takes up a particular issue of how the legal framing is used for making different truths in the case of Xerzan Cemetery.

The relation of law to truth is much discussed by different schools and literature. The legal positivist portrayal of law as "a rational system of rules" (Banakar 2015, p. 10) is based on an exclusion of particular questions to formulate law through an empirical certainty and normative coherence claimed by rationality, engaged in the equalisation of law to its interest in discovering the truth which in return characterises the law by its unquestionable correctness. "Legality is constituted by a complex set of facts" (Marmor 2011, p. 4), and law gains its ultimate meaning in its correspondence to social facts. On the other hand, critical scholars challenged law's formal truth pursuit by problematising law's relation to not only truth but also justice (Goodrich et al. 2005). Law's function of truth-seeking is further revealed to be not its determinant characteristic by empirical studies on law's operations in everyday life domains ranging from minor lawsuits, traffic tickets, and petty crime (Ewick and Silbey 1998, Merry 1990, Sarat and Kearns 1993). There is also a compelling scholarship that problematises not law's function of truth-seeking but the truth in general by looking into the ways of deployment of multiple knowledges in legal processes, making the truth in law (Ericson et al. 1991, Moore and Valverde 2000), and similarly "the constitution, contestation, and circulation of truth in

law" (Valverde 2003). Therefore, the law's relation to truth is mainly handled either through legal procedures' characterisation through truth-seeking, the law's detachment from the truth and so justice and the extent of the law's engagement in truth-seeking, or the making of truth in the law.

In this article, I also draw on an understanding of truth that depends on the deployment of various knowledges informed by Foucault and take an interest in law. However, the inquiries of this article are not focused on revealing the constitution of truth in law but rather on the law's participation in truth-making. In other words, I take a different approach and do not problematise the truth-seeking function of law but attempt to understand truth-making via law.

What is striking throughout the Xerzan case is the legal framing engaged in by different actors. Law is operationalised by the governorship and human rights lawyers to contextualise the Xerzan case in different, competing, ways. Throughout these competing legal framings of the case, either to provide a legal grounding for the destruction of the Xerzan Cemetery and the excavations of the graves or to initiate a legal fight against it, dead bodies are assigned different meanings. Actors involved in the case engage in a constitution of knowledge in the very process of referring to the law. That is to say, various legal framings of the case facilitate the case's representations in different ways. I aim to show how competing legal framings engaging in representations of the case in different ways enact different orders of truth through which dead bodies are attributed different meanings by understanding the law as the game of truth.

The game of truth

Modernist approaches to knowledge determine its form by a fictionalisation of an empty, pure place for power to operate, considering the reformation and distribution of political power in a more centralised and repressive way. In this modern condition of knowledge characterised by its absoluteness and universality, Foucault (2013, p. 193) argues that "a fictitious place was fixed where power is founded on a truth which is only accessible on guarantee of purity." Therefore, the truth under the "guarantee of purity" makes the power relations behind it invisible, and reciprocally, a given pure truth is what portrays power as centralised and solely repressive. Consequently, truth is not universal but appears through an assignment of trueness or falseness to the propositions and discourses within certain power relationalities and "linked in a circular relation with

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systems of power which produce and sustain it, and to effects of power which it induces and which extend it. A 'regime' of truth." (Foucault 1980, p. 133). The truth value of the statement does not come from the statement's correspondence to the facts; rather, it originates from locating that statement in a regime that reciprocally makes that very regime. This relationship cannot be separated from either the "subjectification" or "objectification" because, in Foucault's words, the "game of truth" arises from and organises the very interaction of them all.

The game of truth is "not the discovery of true things but the rules according to which what a subject can say about certain things" depending "on the question of true and false" (ibid., p. 460). Therefore, the "game of true and false", or the "game of truth" (jeux de vérité), is the interplay of the rules assigning trueness or falseness to the propositions, statements, and discourses coordinated with a truth regime. It points out the rules that take place within a particular truth regime and, at the same time, make a truth regime by arranging the attachment of power to true. By looking into such rules, the production of the subjectivities offered by that truth regime can also be revealed, as this set of rules producing particular truths is what problematises, or in other words, historically constitutes, the subject as well.

In the Xerzan Case, dead bodies travel across different spaces from their temporary graves in guerilla zones or mass graves to Xerzan Cemetery, Istanbul Forensic Medicine Institute and the Cemetery of the Nameless in Kilyos Istanbul. They gain different meanings throughout. The meanings attributed offer them different subjectifications (and/or objectifications) from people's martyrs to illegal occupants, forensic evidence to someone's children, and abject corpses to legal objects over which one can claim rights. This changing subjectification surrounding dead bodies in different ways throughout their journey across different spaces is remarkably triggered or strengthened by the legal framings of the case. To be subjected to the law is to be subjected to the truth. Therefore, to which laws they (dead bodies) are subjected is revealed to be determinant in who/what they are. In this way, law participates in the game of truth by working as a framework informing the rules of the game. Representation of the case by different (legal) framings is the representation of "reality" produced by the very use of the law, draws on particular social, political, cultural, and historical trues, and reciprocally reproduces these trues.

To trace these representations, I first look into the spatial arrangement of Xerzan Cemetery before its destruction and the meaning attributions in play, followed by the two contesting legal framings of the case, first by the governorship and then by the human

rights lawyers. I thenceforth continue by looking into the subjectification that dead bodies are exposed to in different ways. In lieu of a conclusion, by drawing on the discussions on Xerzan and law's function in truth-making, I invite future discussions on the limits of human dignity and the emplacement of death and deceased in the rights discourse by problematising the borderline they hold between legal subject and legal object.

Symbolic architecture of Xerzan Cemetery

The rural area in Xerzan, Oleka Jor village, was referred to as a "cemetery" dating back to the Ottoman records, and it was holding the status of the cemetery in practice wherein the civilians were being buried. It was during the Peace Process that Xerzan Cemetery became one of the ten cemeteries which gained a different meaning after the transfer of the dead bodies of the PKK guerillas from their temporary graves in guerilla zones or mass graves. One of the lawyers, in a meeting organised by the Respect for the Dead and Justice Initiative (Ölüye Saygı ve Adalet İnisiyatifi) consisting of the lawyers, politicians, activists, and NGOs gathering against the attacks on the cemeteries and graves, describes the process of reburials between the years 2013-2015 as follows:

> *A death certificate and burial license were obtained when a militant died or his body was brought. When families were asked where they would be buried, they were saying 'Xerzan Cemetery'. This is how the bodies were buried there. In other words, there were no legal obstacles to the burials in Xerzan. (Ölüye Saygı ve Adalet İnisiyatifi 2021)*

Therefore, although the place was designated as a cemetery for so long, it was after 2013 that Xerzan gained its naming as "martyrdom" among the Kurds. After the reburial of the guerillas that had lost their lives during the clashes, when it was possible due to the relatively peaceful atmosphere prompted by the Peace Process, Xerzan Cemetery gained a new face.

Cemeteries are considered to affirm negotiated identities equipped with symbols and rituals (Reimers 1999). They not only consist of the individual inscriptions on the gravestones thought to represent the dead but also collectively construct the social context of the society they take place in and engage in a representation and continuity of that social order. Cemeteries, therefore, "construct an idealised map of the permanent social order" wherein they take place (Bloch and Parry 1982, p. 35). They form a "representation of the society of the living (…) embedded within the complex dynamics

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of social interaction and self-representation in the collective and in the individual level" (Gusman and Vargas 2008, p. 217).

This representation was very particular in Xerzan until its destruction, starting with the inscriptions on the gravestones. On most gravestones belonging to guerillas, rather than their names given at birth, the code names they received after participating in the PKK were engraved, which by themselves are representations. The code names read from the gravestones were symbolic in the sense that they were the names of either a village, region, or city in Kurdistan or were the names of some other people who had lost their lives in the war before them, echoing a cycle of dying. This cycle was further emphasised in the inscriptions of the dates on the stones. While their date of participation in the PKK was written instead of a birth date, the death date was missing on most gravestones. Even if it can be because it was unknown for most of those excavated from the mass graves, another reason could be openly read from the sentence on the stones written instead of the death date: "Martyrs are immortal." A few lines from a slogan, anthem or poem were inscribed, accompanied by drawings of figures, symbols, and flags. Xerzan Cemetery was a clear example of an architecture of memory representing a cyclical history of the war for Kurdish guerillas from their rebirth after participating in the war either as someone else who had died before in the same war or as a place whose name was changed (Turkified).

The brother of one of the guerillas who lost his life in 1994 and was brought to Xerzan in 2015 tells me about his memories of participating in this delayed funeral, remarkably illustrating the collective representation of these deaths and the different subjectification they are subjected to after being brought to Xerzan for a collective burial:

> *We had not even seen his grave since we learned he was martyred in 1994. We visited his grave for the first time in 2015 in Xerzan. It is impossible to describe that moment. I had been feeling like I had lost my brother and not even able to visit his grave before that, but when I saw him being buried in the cemetery, I felt like he was not the brother I lost anymore, but as if we, Kurdish people, reunited with our martyr. (Interview, Amed, 2019)*

Respondent's words point to a shift in the subjectification of guerillas from the familial to the public-political after their reburial in Xerzan. They gain a new subject position inscribed in the collective memory as "martyrs of the people", exceeding their kinship bond. The loss is not only of the family but of the society as a whole, resonating in the symbolic architecture in Xerzan. The representation engaged in by Xerzan Cemetery is

a particular one – as the inscriptions on gravestones signify by carrying the names of the places that had been changed throughout the Turkification of Northern Kurdistan or of the people who died numerous times, constructing Xerzan Cemetery as a martyrdom.

Representation of the Xerzan case by the governorship

It was not only the physical space of the Xerzan Cemetery but also the representation of the society it engaged that was attacked on 19 December 2017 by TMF. Fourteen days after the destruction of the cemetery, excavations of the graves and exhumation of the bodies, the governorship of Bitlis made a statement with rife references to different laws. By framing the case legally, the governorship forms a narrative pointing at the laws through which the case should be discussed, that is, engaged in a legal representation enacting a different truth order. By referring to Xerzan as the "so-called cemetery", legal framing acts upon the historical status of Xerzan as a cemetery despite its use as such since Ottoman times. The legal framework is made by the compilation of references to five different laws and regulations.

Three of the laws referred to are on the allocation of space without any references to procedures and regulations concerning cemeteries. Law on Pastures (1999), setting procedures and rules for defining and the allocation of pasture areas to various villages and municipalities, Law on Land Development and Control (1985), regulating the compliance of the settlements and development with plans, science, hygiene and environmental conditions and Law on Prevention of Infringement of Immovable Property Ownership (1984), that set out the procedures for the immovable properties whose interests belong to the public, introduced into the legal grounding by the governorship. Another regulation included in the framework is the Regulations on the Construction of Cemetery Places and the Funeral Transport and Burial Procedures (2010). Interestingly, even though the governorship includes this regulation as a reference in its framework, article 10 of the regulation defining the procedures concerning "[c]emeteries that do not qualify as cemeteries" is far away from providing a regulatory ground for the destructions and exhumations:

> *(1) The burial in the existing cemeteries that do not qualify as cemeteries shall continue, and the necessary arrangements shall be made to guarantee that the burial procedures continue.*

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> *(2) If it cannot be qualified as a cemetery with the necessary arrangements, new burials are prevented with the decision of the provincial or district public health board. The maintenance and repair of these cemeteries shall continue to be carried out by the municipality or village council of elders. Even after the prevention of new burials, these areas cannot be used for any other purposes than the cemetery. (2010, translated by the author)*

This inconsistency between the content of the regulation and the actions it presupposed to provide a ground for is not a simple deception, especially when considered within the framework it is introduced. It is operationalised to present Xerzan as not even "a cemetery that is not qualified as a cemetery but should be treated as one." It removes any status of cemetery attached to Xerzan and frames it as an illegal occupation of a rural public area when references to other laws on the allocation of space are considered. The dead bodies are assigned a new meaning within this representation of the case. They are not dead bodies anymore since otherwise, they would be sufficient to make Xerzan at least a "cemetery that does not qualify as a cemetery". However, they are made illegal occupants of the public space. This illegal occupancy is further criminalised by the addition of the reference from the criminal code into the framework. With reference to article 220(8) of the criminal code, the governorship criminalises the gravestones. The relevant paragraph of the article states that:

> *A person who makes propaganda for an organisation in a manner which would legitimise or praise the terror organisation's methods, including force, violence or threats or in a manner which would incite use of these methods shall be sentenced to a penalty of imprisonment for a term of one to three years.*

The governorship's reference to the criminal code is further strengthened by its statement highlighting: "[i]n the transaction; 279 graves decorated with illegal propagandist symbols were opened" (Bitlis Valiliği 2018). On the other hand, this reference does not turn into a public prosecution even though such a public statement made by a public administrative authority is not only deemed sufficient to initiate the process but is obligatory to be treated as a criminal complaint. In other words, a criminal offence is described through the inscriptions on the gravestones, whereas the offender is a question mark. Not only the reference to the criminal code without pointing at any offenders alive but also the laws referred representing the case through an illegal occupancy engage in the attribution of a legal subjectivity to the deceased: the dead who illegally occupy public places and who can carry on committing criminal offences.

Therefore, the legal framework embraced by the governorship enacts a different truth order by representing the Xerzan burials as an illegal unprocedural occupancy of the space and a criminal offence of making the propaganda of "terror organisation". In this enacted truth order, dead bodies are attributed accountability for this illegal, unprocedural occupancy and criminal offence. Strategic utilisation of legal framing engages in truth-making by performing as the rules within the game of truth. It forms a narrative of truth informing how the Xerzan case should be discussed and what can be said about it. Law is not only about the social facts but turns into what makes these social facts by presenting a framework surrounding and simultaneously making the external reality.

Representation of the Xerzan case by the human rights lawyers

In response to the legal framing of the case by the governorship, human rights lawyers immediately presented a report (see İnsan Hakları Derneği 2018) engaging in a different, even competing, legal framework, published under the name of different organisations they gather, including the Association of Lawyers for Freedom (*Özgürlük için Hukukçular Derneği*) and Human Rights Association (*İnsan Hakları Derneği*), to name a few. This report on the legal evaluation of the Xerzan case also informed the steps they took in the legal fight they initiated afterwards. In their legal evaluation, they frame the case under three different sections, namely relevant national law, relevant international law, and relevant international court decisions. That is to say, they contextualise the case of Xerzan domestically, internationally and by likening it to the relevant previous cases held in international courts, which I particularly look into the first two.

Their domestic framing follows a similar operation with the governorship in attributing a legal subjectivity to the deceased. This reference can be read as an operation acting upon the governorship's representation. If the deceased does have criminal accountability, then s/he has rights as well. Lawyers' domestic framing begins with a reference to "human dignity" from the constitution's preamble. It continues with reference to article 17 of the constitution on the "[p]ersonal inviolability, corporeal and spiritual existence of the individual", formulating the right to develop one's material and spiritual existence and the prohibition of torture (TR Const. 1982). Even if whether human dignity is limited to the living is a question that I revisit in the concluding section, lawyers indeed

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attribute inviolability to the dead bodies as well and frame the case (from the attacks to the exhumation) as the violation of the prevention of torture.

In their subsequent reference to article 20 of the constitution, they introduce the case back in the familial and consider it a breach of the "privacy of private life" and "the right to demand respect for private and family life". This reference represents the case as intimate and familial and introduces the deceased back in their family relationalities, unlike the subject position of dead bodies offered in the Xerzan Cemetery – exceeding the familial by gaining public-political meanings. Here, families who the governorship's framing has ignored, are introduced as the actors, and the dead bodies are reformed as legal objects, over which families can claim rights within the scope of their "private life".

Legal framing within the domestic sphere further articulated interpretative responses to the representation of the case by the governorship by compiling the laws and regulations on the cemeteries, unlike the governorship's avoidance of representing Xerzan as such. To this end, they compile article 2 of the Law on the Protection of Cemeteries (1994) prohibiting corruption, destruction or pollution of graves, article 42 of Regulations on the Construction of Cemetery Places and the Funeral Transport and Burial Procedures (2010) that regulate necessary permissions, obtained when the transfer of corpses is required, and the same article 10 that the governorship referred on the procedures concerning "cemeteries that do not qualify as cemeteries". Therefore, lawyers engage in a representation of Xerzan as the cemetery, its destruction as illegal and the exhumation of dead bodies and their transfer as unprocedural. Emplaced within the larger contextualisation drawing on the status of Xerzan as a cemetery, article 10 on the "cemeteries that do not qualify as cemeteries" finds its meaning different from its reference by the governorship and is utilised to point at unduly and ill-functioning procedures. This changing function of the very same article, when contextualised differently, signifies the enactment of a different truth order by the lawyers, wherein dead bodies are dead bodies and the place of their burial, therefore, is a cemetery and even if it is not qualified as one, it should be treated as one according to the regulations.

These violations of law and regulations are criminalised by lawyers pointing at the criminal code. Article 130 defines removal and degradation of the "body and bones of a person" as a criminal offence requiring a penalty of imprisonment and article 153 concerns the damage and destruction of "places of worship and cemeteries" as a criminal offence to be sentenced to a penalty of imprisonment. Unlike the governorship's criminalisation of the case, lawyers make a criminal complaint too, which is prevented

from turning into a public prosecution. The victim of crime is pointed out as the society, as all criminal offences are considered to be committed against society as a whole. This aspect is in line with the construction of Xerzan Cemetery as the representation of society. Therefore, the criminalisation of the case referring to the criminal code corresponds to the societal meaning attributed to Xerzan. In contrast, its prevention from turning into a public case signifies the detachment of society represented by the Xerzan Cemetery from "the public". Coming back to the governorship's framing of Xerzan as an (illegal) occupancy of public space conflicting with the public interest, this detachment of the society from the public can be comprehended fully within the clashes of the two truth orders enacted by different legal framings of the case.

Contextualisation of the case within an international framework is in line with the domestic references to the constitution and mainly draws on the fundamental principle that all people are equal in rights and dignity in the UN Universal Declaration of Human Rights (1984), article 3 on the prohibition of torture and article 8 on the right to respect for private and family life of the European Convention on Human Rights (ECHR). The lawyers' further references to article 3 shared by all four Geneva Conventions, however, introduce a different framework.

The article defines the provisions to be implemented by both parties involved in an "armed conflict, not of an international character occurring in the territory of one of the High Contracting Parties." It underlines the humane treatment and prohibition of "cruel treatment and torture" for the persons, including "members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause" without any discrimination (Geneva Convention 1949). As an elaboration of the meaning they want to convey, lawyers introduce the relevant provisions concerning the cemetery places and those who died in the wars by referencing the "treatment of prisoners of war" by the third additional protocol to the Convention. According to these relevant provisions, parties should pay attention to the honourable burial of the deceased and, if possible, with the ceremony of their religion, respect their graves, mark them to be found again, and care for the burial places. The lawyers then further highlight this framework within which they have placed the case, listing the recommendations of the International Committee of the Red Cross (ICRC) according to applicable international law in armed conflicts (see International Committee of the Red Cross 1999).

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Through these references to Geneva Conventions, all signed and ratified by the Turkish state and PKK, and ICRC recommendations, lawyers frame Xerzan as a cemetery on the battlefront. Dead bodies exhumated from Xerzan are not merely someone's children defined within the familial, but parties of an armed conflict and war. In this way, attacks on the cemetery, excavations and exhumations are represented as violations of the laws of war.

Finally, the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol 1991) is introduced into the framework by the lawyers taking the beginning of the case to the previous stop of some of the dead bodies before their reburial in the Xerzan Cemetery: to mass graves. The protocol provides preventive recommendations and obligations to states to prevent crimes against humanity, genocide or mass murders from happening ever again, taking up the issues of political assassinations, deaths resulting from torture and ill-treatment in prisons and detention, enforced disappearances, excessive use of force by law enforcement officers, executions without a fair trial, and acts of genocide. This last addition to the international contextualisation of the case engages in a different historicisation from all the others discussed so far. As mentioned before, the dead bodies reburied in Xerzan are not only those brought from the temporary graves in the guerilla zones but also those exhumated from the mass graves, some of which were excavated during that time. Therefore, the problematisation of the case is not starting with the Xerzan Cemetery but with the mass graves.

According to the interactive map of mass graves, prepared by the Human Rights Association Amed Branch based on their extensive research, there are 348 mass graves in Northern Kurdistan, in which 4201 corpses are estimated to be buried, among which only 45 of them are registered by the state authorities, as of the year 2011 (İnsan Hakları Derneği Amed Branch 2011). In other words, mass graves and enforced disappearances are significant issues in Northern Kurdistan, and are resonating in the case of Xerzan as well. By including relevant provisions of the Minnesota Protocol into the framing, reasons for death and ways of dying are problematised.

The legal framework embraced by human rights lawyers is multilayered and enacts an entirely different truth order in the representation of the Xerzan case. Most remarkably, by introducing the relevant provisions concerning the armed conflicts, wars and crimes against humanity, Xerzan is framed as a representation of the 38-year-long war that is still ongoing. Lawyers' framing does not only concern the attacks, excavations and

exhumations in Xerzan Cemetery but forms a narrative of truth informing how the Xerzan case should be historicised and emplaced within a broader socio-political context. Again, by compiling different legal references, they engage in a representation, broadening and complicating the external reality attached to the Xerzan case. This representation is as complex as the social memory attached to it. In another interview I conducted with a relative of a victim of enforced disappearances, highlighting the Xerzan as a symbolic case, the respondent links it to her experience of asking for a grave for her relative and continues by underlining the significance of graves and cemeteries:

> *When we look at those graves, we remember the persecution inflicted on us. Cemeteries remind us of our roots. They want to make us forget these things by attacking our graves. (Interview, Amed, 2019)*

The social representation portrayed by cemeteries is not limited to the very place and organisation of the cemetery; cemeteries engage in history writing as well. Therefore, lawyers' framing of the case, by drawing on not only familial and individual portrayal but a collective one, presents a corresponding representation of the case to the representation that the cemeteries reflect.

Subjectification/objectification through procedures

It was not only through the legal framings of the case but also through the procedures implemented in the rest of their journey after Xerzan that the dead bodies were attributed different meanings, changing who and what they are. This subjectification remarkably oscillates across the familial and beyond. Following the exhumation of the bodies and their transfer to the Istanbul Forensic Medicine Institute, families are invited to take DNA tests to prove their kinship to the deceased for being able to take the bodies back. Only the parents were allowed, which remarkably decreased the number of people who could take the tests, as most of the deceased's parents also passed away long before, after all these years. Parents of only thirty deceased out of 267 were able to take the tests. Eleven of them matched, five of whom returned to families from the Forensic Medicine Institute.

The requirement of DNA testing to prove kinship to the deceased and allowing only the parents to take the test introduced the deceased back into the familial network. Dead bodies, assigned the meaning of the people's martyrs, were reduced to someone's daughters and sons. This time, through the procedures, truth is produced based on the

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kinship bond and within the heteronormative productive family model promoted by the state, disrupting the collective architecture they formed in the Xerzan Cemetery, inscribed in the collective memory and mourned for collectively. When five of the bodies were returned to the families from the Forensic Medicine Institute, the state authorities' condition was their burial in different cemeteries than one other, further revealing the prevention of their collective engagement in a representation by being buried together.

The dead bodies remained in the Forensic Medicine Institute for more than one year, unprocedurally. Lawyers defending the families and relatives asked for the implementation of article 10/3-b of Law on the Implementation of Forensic Medicine Institute (1982) that limits the legal stay of the dead bodies, whose identity cannot be determined in the Forensic Medicine Institute, by a maximum of 15 days. They did not get any official responses, nor were the time limits defined by the law restricting its temporality taken into account, though one of the lawyers I interviewed, who is also involved in the case, made the following remarks revealing the new meaning attributed to the dead bodies:

> *There was absolutely no scientific approach during the Forensic Medicine process. (…) We saw that they put the bones of more than one corpse in the same boxes… Whose bone belonged to which body part… Everything was messed up. You want a DNA test but have not even separated the bones. I mean, there were not any actual concerns about identification. We said the law limits this to 15 days, and it has been months. They told us that they do not keep them for identification but for different kinds of forensic study. Whatever it means. (Interview, Amed, 2019)*

The law referred to by the lawyers concerns the identification, and the unofficial response they get, as the respondent tells, is the use of the bones for different forensic purposes. These different motives can also be traced in the avoidance of returning the six of the bodies, despite the matching DNA tests to the families triggering a switch in the subject position offered to the deceased. Moving beyond the familial, they are stored in the institute and turned into a piece of forensics evidence. The bodies' shift to forensic evidence signifies their collection from a crime scene. Xerzan Cemetery and the previous stops in the mass graves gain their representations as the crime scene hidden behind the unprocedural implementations and unofficial responses. In an interview I conducted with a forensic scientist, he describes the function of the institution as follows:

> *The Turkish state's expectation from its forensic units is not to reveal the truth but hide it. One famous forensic scientist defined the field as a laundry machine that helps the*

> *states wash their dirty laundry. It works totally like that here, too, for the state to hide the political murders and systematic torture. (Interview, Amed, 2019)*

In the light of his description, mass graves and the bodies exhumated from them can indeed be considered the strongest evidence of the enforced disappearances and extralegal killings or war crimes committed. Forensic Medicine Institute is utilized in this process, and the bones remained there until it was learnt that they were long before secretly buried in the Cemetery of the Nameless in Kilyos, Istanbul, including some of those whose identification was achieved through the matching DNA tests.

In this transfer, not only the dead bodies but also families are excluded from the acceptable family model. This exclusion becomes visible when the dead bodies are learnt to be reburied in the Cemetery of the Nameless. It is significant to note that the cemetery's name would be the Orphans' Cemetery of Kilyos in its direct translation from Turkish. In other words, the dead bodies are taken out of their family network, made "orphans", and anonymised.[3] The Cemetery of the Nameless provides an almost unique example of a material space representing anonymised, dehistoricised deaths by not engaging any representation that the cemeteries do. It only represents the edges of the social and the history-making. It is impossible to grasp the stories of the deceased unless looked behind the homogenous spatial arrangement of it. There are no gravestones in the Kilyos Cemetery. The graves are instead separated from one another through small signboards only with numbers on them. The portrayal of the space is not only nameless but is deprived of any personal information. These numbered graves lining up side by side portray a homogeneity that hides the stories of mostly the homeless people, transgender women rejected by their families, undocumented migrants, and guerillas whose bodies were excavated from the destructed cemeteries.

However, it is later understood that the dead bodies taken from the Forensics Medicine Institute were not even buried in these numbered graves. The video footage clearly shows that they are put under the broken pavements and by the sewer in small plastic boxes on top of each other. Most plastic boxes filled with bones are thrown next to garbage bags. In other words, the video footage showed that it was actually a mass

[3] In the relevant literature, such cemeteries are called the "cemetery of the nameless" or the "potter"s field." The English news outlets also refer to the Kilyos Cemetery as the Cemetery of the Nameless. This article, therefore, adopts the existing translation to follow the common terminology in English despite the difference in the direct translation of the cemetery's name from Turkish.

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grave in the Kilyos Cemetery, in a way that completely reifies these dead bodies and turns them into abject things.

This is still an ongoing case, and after the exhumation of the plastic boxes from the mass grave in Kilyos, only seventeen more dead bodies were returned to the families, making twenty-two bodies out of 267 excavated from Xerzan. The legal fight initiated by the families and lawyers is still ongoing. After the video recording of the mass grave in Kilyos was spread, the investigations by the human rights and bar associations were carried out, followed by numerous allegations and submissions, mainly drawing on the prohibition of torture and the violation of the privacy of private life. Most of the files concerning the case are now at the Constitutional Court, waiting for the exhaustion of the domestic legal means for the applications to the European Court of Human Rights (ECtHR) (Özgürlük için Hukukçular Derneği, 2021).

In lieu of a conclusion: Do the dead have rights?

Drawing on these inquiries taken up by this article, I want to extend an invitation for socio-legal discussions on the limits of rights and human dignity in lieu of a conclusion.

Critique of law sometimes makes us overlook its potential uses by the people whose experiences inform the motives of that very critique in the beginning. In the review that they made in the introduction of their edited volume, Goodrich *et al.* (2005) highlight that the critique of law is mostly external to law, "professionally or existentially and politically" (p. 10). The initial project of critical legal studies is characterised by an escape from the law, an aspiration for its end. Despite the changing forms of the critique in later phases, to a jurisprudential form addressing legal form under the influence of structuralism and to a political and ethical concern with the textuality of law in the latest poststructuralist phase (p. 10), the project remains in a position of "both propounding and denouncing the law" adverting "to the conflictual coupling of belonging and the desire for escape." (p. 13)

This is why I find the inquiries held by this article significant in raising questions about the function of truth-making of law. It is not possible to escape from the law, nor its portrayal of external reality, its operationalisations for representation. The answers to the everlasting question of converging and receding formulations of law and justice are informed mainly by the extent of correspondence of the legal framing of "social reality" to the ways that "social reality" is experienced. It is significant to recall that, especially in the contexts marked by political and legal violence and colonial domination, such as

Kurdistan, Palestine, Kashmir, Western Sahara, and many more, this function of truth-making of law can turn into an instrument by the hands of those who want to insist on their own representation, communicate their experiences via law. In Northern Kurdistan, the legal fight is remarkably articulated in the political struggle. Justice aspirations are translated into the rights discourse. The limits of this translation are indeed apparent in the case of Xerzan. Especially when the emphasis on collective justice as a transformative goal is considered, it becomes clear that the universal categorizations, including those of the rights discourse, fail to correspond to the particular subjective experiences of injustice; therefore, it would be misleading to understand them as providing emancipatory mechanisms.

On the other hand, the discourse on rights continues to provide an important strategic tool to those who want to communicate their experiences within the legal sphere occupied by categorizations, the collectivity of which is shaped by the homogeneity ideal of nation-states as the prominent organizational model. International law and courts then turn into the places for documentation of a memory that is attempted to be absorbed inside by any means possible, as seen by the hundreds of applications against the Turkish state made to the ECtHR by the human rights lawyers in Northern Kurdistan. In other words, notwithstanding finding the critique of rights theoretically and politically significant, I still think that reconsidering the limits of rights in order to bring their formulation closer to the experience of the violation of these very rights is a significant task for socio-legal studies.

To narrow down the discussions within the particular scope of this article, whether human dignity is limited to one's life appeared as a significant question to be addressed throughout my inquiries. When cases held by the ECtHR are looked at, the lack of principles and regulations on the respect for the dead and rights of the dead in the ECHR are revealed to be obstacles in the representation of relevant cases. The procedures of the ECtHR and its jurisprudence also interpret this very narrowly. As human dignity is fundamental to all conventions on human rights and the rights discourse in general, its boundaries are significant to comply with the violations experienced.

When considering the translation of these fundamental rights in terms of the dead, there is indeed a discourse on the rights that we can get articulated. To illustrate it from the dead bodies left on the ground by preventing their burials or the different ceremonial procedures, we can consider this from the angle of the freedom of religion and conscience. However, the question coming to the fore is then not which rights, but whose

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rights? Is it the family's freedom of religion and conscience violated or the one of the deceased? This discussion relies on and necessitates a significant question. Are the deceased legal subjects equipped with rights? Or are they legal objects over which one can claim rights? When the cases on the torture of dead bodies, destruction of cemeteries, mass graves, and enforced disappearances brought to the ECtHR are looked at, we see that they are mostly subjected to article 8 on the "right to respect for private and family life" and article 13 on the "right to an effective remedy" of the ECHR. These framings signify that the ECtHR looks at this issue mainly through relatives and families, pointing at the end of human dignity with the end of life. The verdicts on the Turkish state's violation of article 3 on the prohibition of inhuman treatment also draw on the families, taking the inhuman treatment that the dead bodies exposed out of the rights discourse, suggesting that:

> *[M]oral distress caused by intervention in the corpse of the person killed after the armed conflict, and moral distress caused to the relatives of the deceased, is considered within the scope of the prohibition of inhuman treatment (…). (Akpinar and Altun v Turkey, no 56760/00, ECtHR, 2007)*

When we consider all this and ask whether the dead have rights, we can say that it is about the living in current practice and regulation. From this point of view, I find it important to engage in critical socio-legal discussions and to talk about reconsidering the dead as a carrier of rights in terms of dignity and honour and about the limits of rights since the political violence that dominates life over the dead bodies in many places continues, while, in response, many actors engage in a portrayal of the violations that they are exposed to, by bringing their experiences to the international courts referring to the human rights discourse.

There are some countries that somehow introduced the crimes committed against the dead in their national criminal codes, ranging from South Africa, the United Kingdom, Canada, Australia, Ethiopia, Ireland and Congo (Kurban 2021), which we can learn from. The Oñati International Institute for the Sociology of Law (IISL) is one of the places offering such unique encounters for intellectual and academic debates informed by various experiences globally. Therefore, I would like to invite such gatherings wherein we can hold socio-legal discussions on whether the limits of human dignity and, therefore rights, is set by the limits of one's life.

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