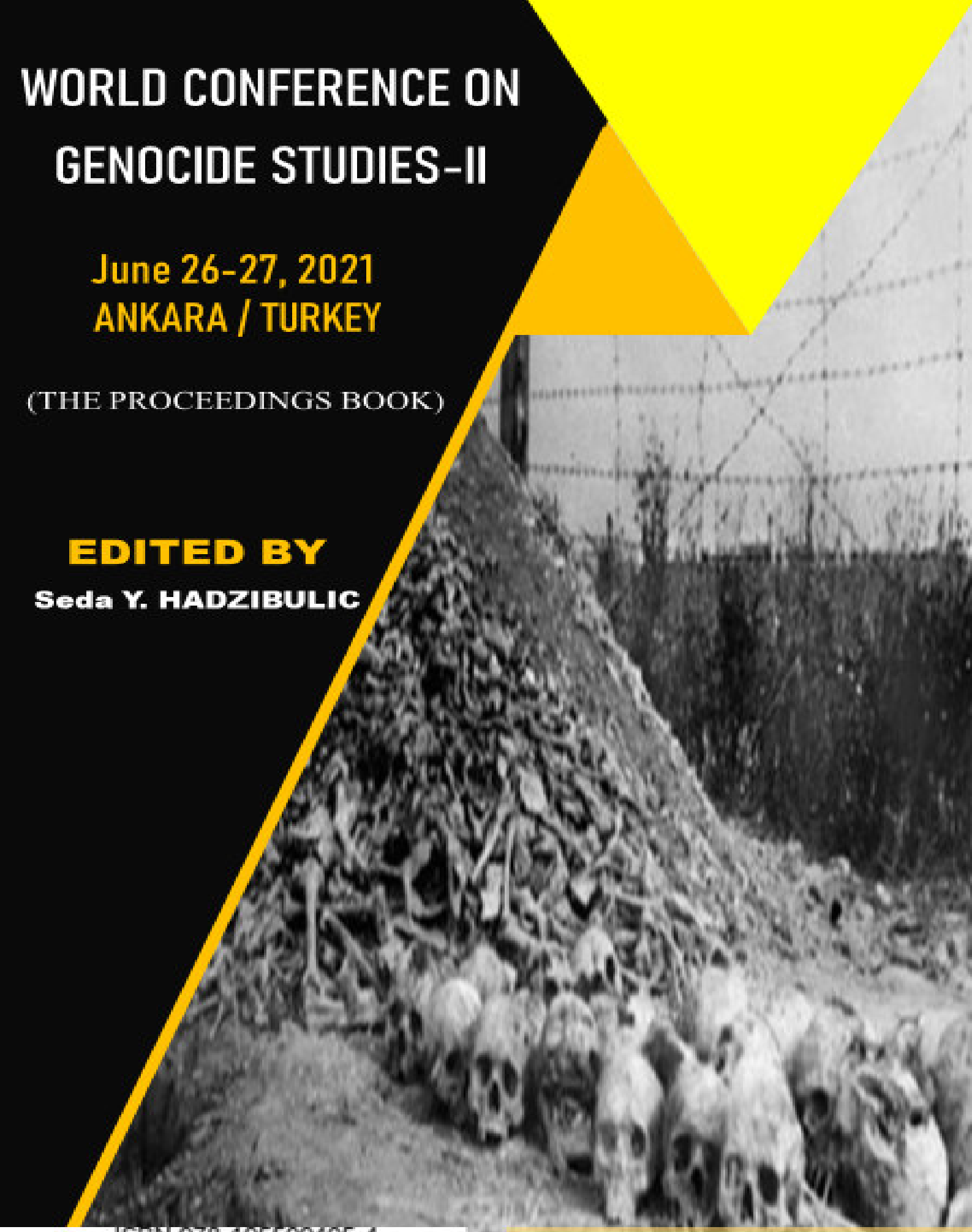
WORLD CONFERENCE ON GENOCIDE STUDIES-II

June 26-27, 2021
ANKARA / TURKEY

(THE PROCEEDINGS BOOK)



EDITED BY

Seda Y. HADZIBULIC

ISBN 978-195509405-4

Issued: 30.06.2021

ISBN: 978-1-955094-05-4

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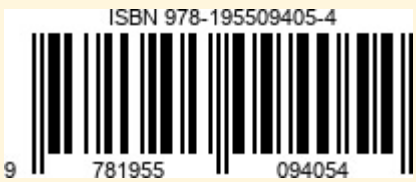

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ÖNSÖZ

İnsanın insana zulmü olarak tanımlayabileceğimiz katliamlar, şüphesiz kötülük yolunda ulaşabilecek en son noktadır. Saldırganlık, ölüm içgüdüsüyle yaşam içgüdüsünün kaynaşmasını temsil eder. Böylece insan, doğuştan gelen ölüm ve kendini yok etme eğiliminden dışa dönerek, ölme korkusunu öldürme arzusuna dönüştürür ve ölümü bastırır. Bu şekilde insanın doğasında bulunan saldırganlık, hükmetme ve ölümden kaçma duygusu; öldürme, tahrip etme ve tahakküm kurma arzusuna dönüşür.

MÖ 250'li yıllara ait bir Hint öğretisi olan "Ahımsa" inancına göre, tüm canlılar akrabadır ve bu yüzden hiçbir insan birbiri ile savaşmamalıdır. Bu düşüncenin karşısındaki "Bagavad" anlayışına göre ise, insan hem kendi içinde hem de yeryüzünde başkaları ile savaşmak zorundadır. Buna göre "kötülük", insanın insanlık yükünden kurtulma yolunda giriştiği trajik çabada kendisini yitirmesi demektir.

Öldürme ve yok etme düşüncesinin en uç derecesi olan katliamlara tarihin her döneminde rastlanmakla birlikte, sömürgecilik ve her şeye sahip olma anlayışında zirveye çıktığı görülmektedir. Keşfedilen Amerika kıtasındaki yerlilerin planlı bir şekilde yok edilmesi, Avustralya yerlilerinin ortadan kaldırılışı ve Cezayir ve Ruanda katliamları bunlar arasında en çok bilinenleridir. Amerikan yerlilerine karşı acımasız şiddet "Sonuna kadar öldürmezsen katliam sayılmaz." noktasına kadar ulaşmıştı. 1800'lü yıllarda Avustralya'yı ziyaret eden İngiliz yazar Anthony Trollope ise Aborjinlere uygulanan katliam hakkında şöyle diyordu: "Biz onların topraklarını ve ellerinde ne varsa aldık. Kendilerini ve mallarını kendilerince korumaya çalıştıklarında ise onları katlettik."

Katliamlar konusunda en şaşırtıcı olan ise olmamış bir olayı abartarak ve yanlış algılarla dünya gündeminde tutarak, yapılan gerçek katliamların üstünü örtmeye çalışmak olmuştur. Böyle olduğu sürece de insanların gözü önünde katliamlar yapılmaya devam edilmekte, bundan da en fazla sivil halk ile çocuk ve kadınlar etkilenmektedir. Algı operasyonları ile gizlenmeye çalışılan bu katliamların ortaya çıkarılması, bundan sonra yapılacak benzer eylemlerin önlenmesi adına önemli çalışmalardan birisi olacaktır. Bu açıdan İKSAD tarafından ilki 20-22 Kasım 2020 tarihleri arasında Azerbaycan'da düzenlenerek, akademik dünyada başlatılan inisiyatifi oldukça önemli buluyoruz. İKSAD tarafından 26-27 Haziran 2021 tarihleri arasında Ankara'da düzenlenen "Soykırım Çalışmaları Dünya Konferansı- 2" isimli çalışma ise bunun kurumsallaşarak geniş kapsamlı olacağının işaretlerini veriyor ve tüm dünyayı insanlık dışı katliamların önlenmesi konusunda bilinçlendirmeyi amaçlıyor.

Konferansta emeği geçen herkesi kutluyor ve yapılan çalışmaların gerçekleri ortaya çıkararak dünya barışına katkıda bulunmasını arzu ediyoruz.

Doç. Dr. Güray ALPAR

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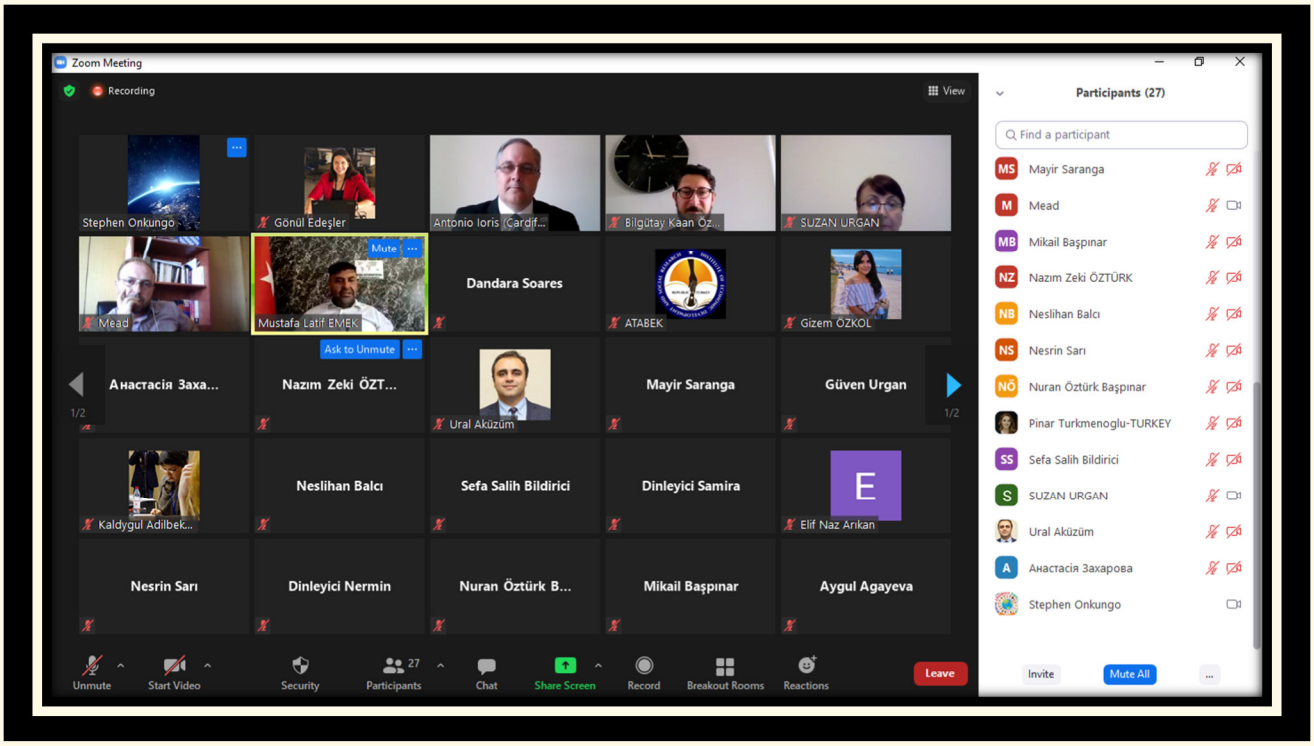
27.06.2021
SESSION-1 HAL-1
MODERATOR: Dr. Mustafa Latif EMEK

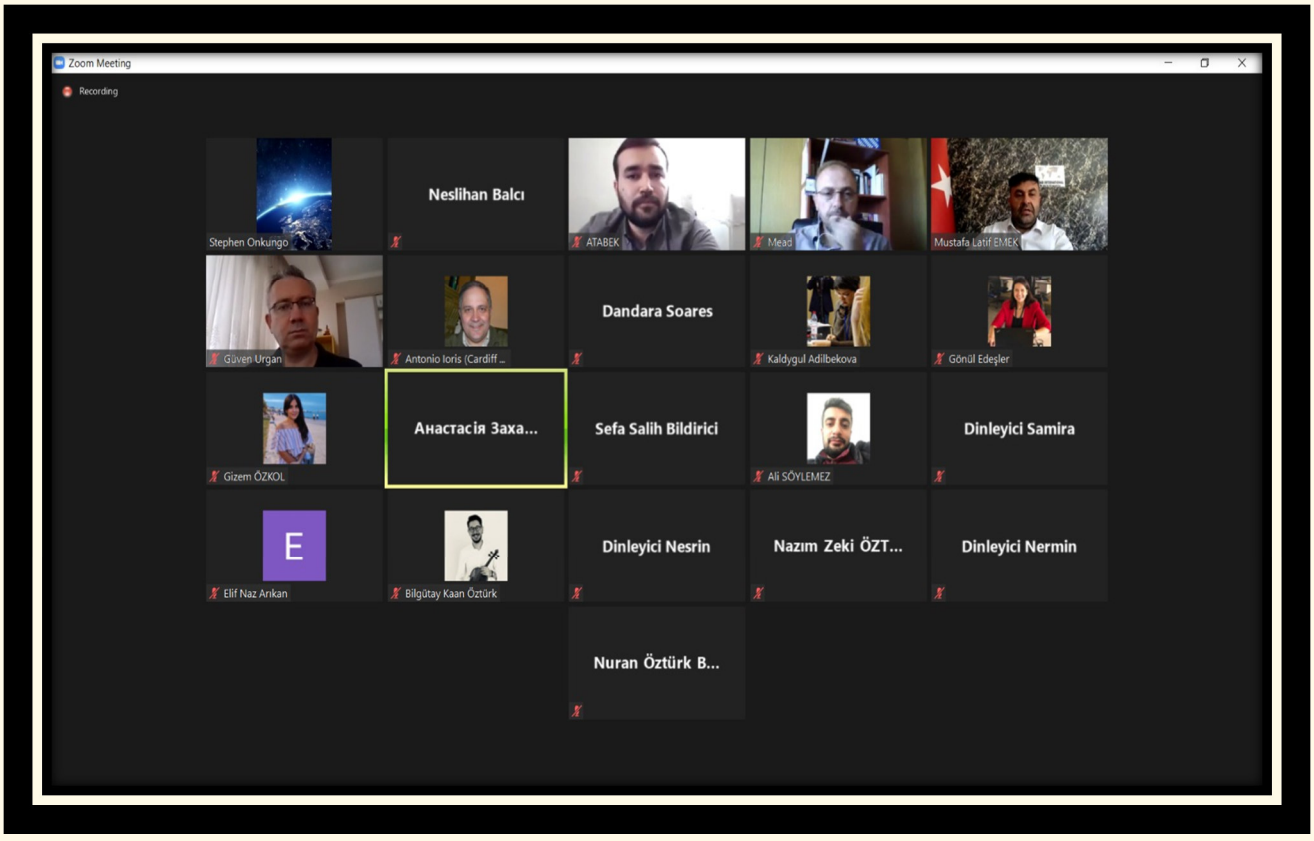
TURKEY TIME: 14:00-16:30 | **AZERBAIJAN TIME:** 15:00-17:30 | **UNITED KINGDOM TIME:** 12:00-14:30 | **KOSOVO TIME:** 13:00-15:30

UKRAINE TIME: 14:00-16:30 | **INDIE TIME:** 16:30-19:00 | **BREZIL TIME:** 08:00-10:30

AUTHORS	UNIVERSITY/INSTITUTION	TOPIC TITLE
Анастасія Захарова	Київський Університет імені Бориса Грінченка	Конвенція ООНпро запобігання злочину геноциду і покарання за нього9 грудня 1948 року
Leyla GAFAROVA		HISTORY OF KARABAGH GENOCIDE
Prof. Dr. Emre ÖKTEM & Asst. Prof. Dr. Ural AKÜZÜM & Lecturer Mehmet Cengiz UZUN	Galatasaray University Law Faculty & Gedik University Law Faculty & Bahçeşehir University Law Faculty	ON THE PROSPECT OF APPLYING TO THE EUROPEAN COURT OF HUMAN RIGHTS WITH REGARDS TO THE HODJALI GENOCIDE
Dr. Güven URGAN & Dr. Öğr. Üyesi Suzan URGAN	Şube Müdürü, Ceza ve Tevkifevleri Genel Müdürlüğü & Bafra İşletme Fakültesi	CIRCASSIAN GENOCIDE
Master Student Dandara Vicente Soares	University Federal Fluminense, Program in Sociology	THE STRUGGLE OF MOTHERS OF ACARI FOR JUSTICE
Bilgütay Kaan ÖZTÜRK	Afyon Kocatepe Üniversitesi	SONGS OF THE ŁÓDŹ GHETTO: YANKELE HERSHKOWITZ EXAMPLE
Antonio A. R. Ioris	Cardiff University, School of Geography and Planning	AGRARIAN CAPITALISM'S GENOCIDAL TRAIL: THE SAGA OF THE GUARANI-KAIOWA
Assistant Professor Dr. Sajna.A	University of Kerala, Department of History	'OTHERING' AND COMMUNAL GENOCIDES OF INDIAN MUSLIMS: A HISTORICAL CRITIQUE
Prof. Ass. Dr. Mead OSMANI	Institute of History	EXPULSION, CAUSES AND VIOLENCE AGAINST THE POPULATION OF THE SANJAK OF NIS (1877-1878)

PHOTO GALLERY





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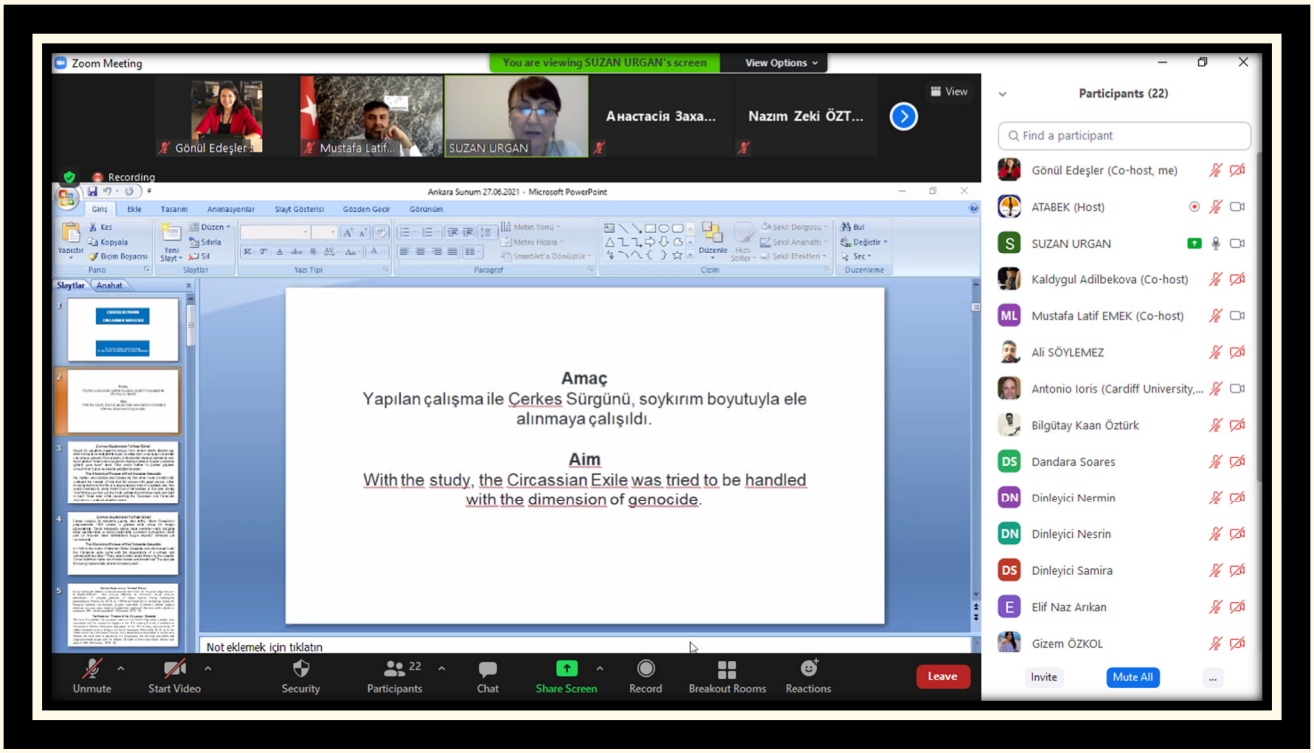
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Анастасія Заха...
Nazım Zeki ÖZT...
Recording
Ankara Sunum 27.06.2021 - Microsoft PowerPoint
Amaç
Yapılan çalışma ile Cerkes Sürgünü, soykırım boyutuyla ele alınmaya çalışıldı.
Aim
With the study, the Circassian Exile was tried to be handled with the dimension of genocide.
Not eklemek için tıklatın
Participants (22)
Find a participant
Gönül Edeşler (Co-host, me)
ATABEK (Host)
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Ali SÖYLEMEZ
Antonio Ioris (Cardiff University,...
Bilgütay Kaan Öztürk
Dandara Soares
Dinleyici Nermin
Dinleyici Nesrin
Dinleyici Samira
Elif Naz Arıkan
Gizem ÖZKOL
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Start Video
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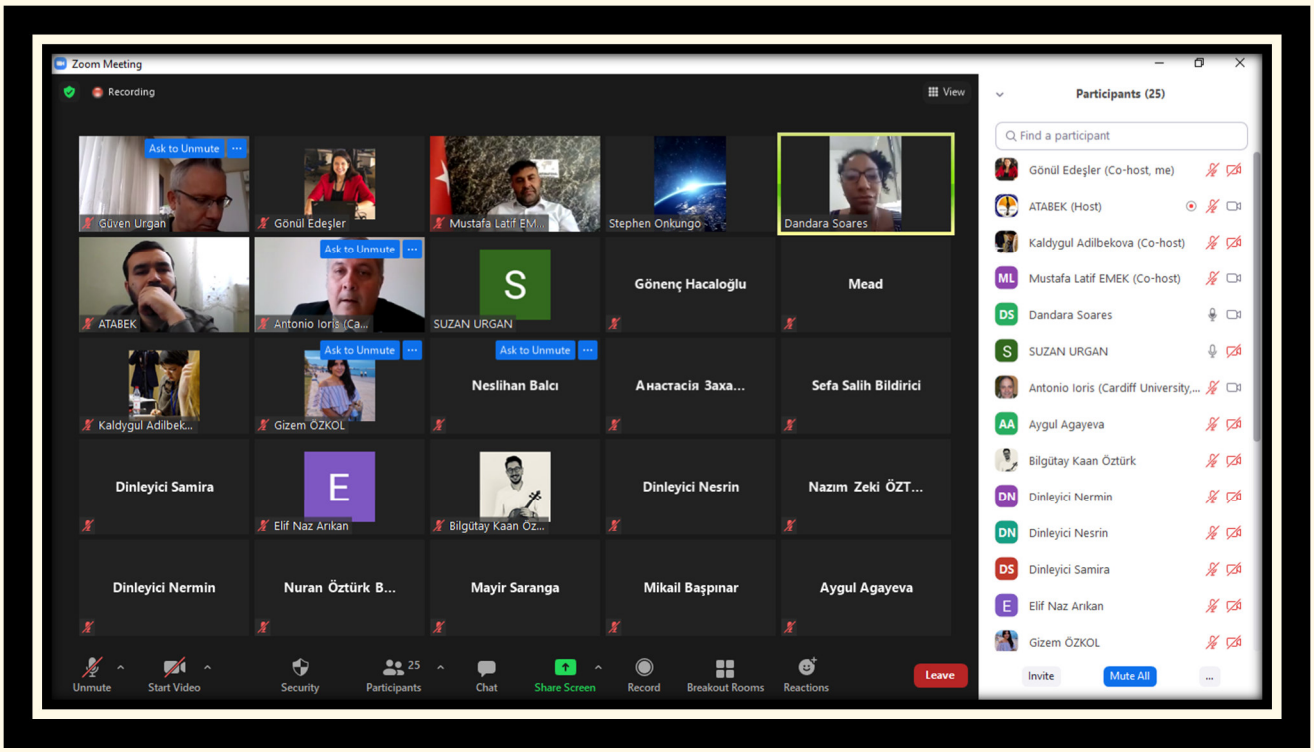
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Gönenç Hacaloğlu
Mead
Kaldygul Adilbek...
Gizem ÖZKOL
Neslihan Balcı
Анастасія Заха...
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Dinleyici Samira
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Bilgütay Kaan Öz...
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Dinleyici Nermin
Nuran Öztürk B...
Mayir Saranga
Mikail Başpınar
Aygul Agayeva
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Mustafa Latif E...
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SONGS OF THE ŁÓDŹ GHETTO: YANKELE HERSHKOWITZ EXAMPLE
• The people in the ghetto named Herskowitz as "one-man caberet".
• When the censorship which had been applied on the stages before was applied on the street singers, one of the people who was affected by this regulation most was Hershkowitz.
דער לאדזשער געטא זינגער
ŚPIEWAK ŁÓDZKIEGO GETTA
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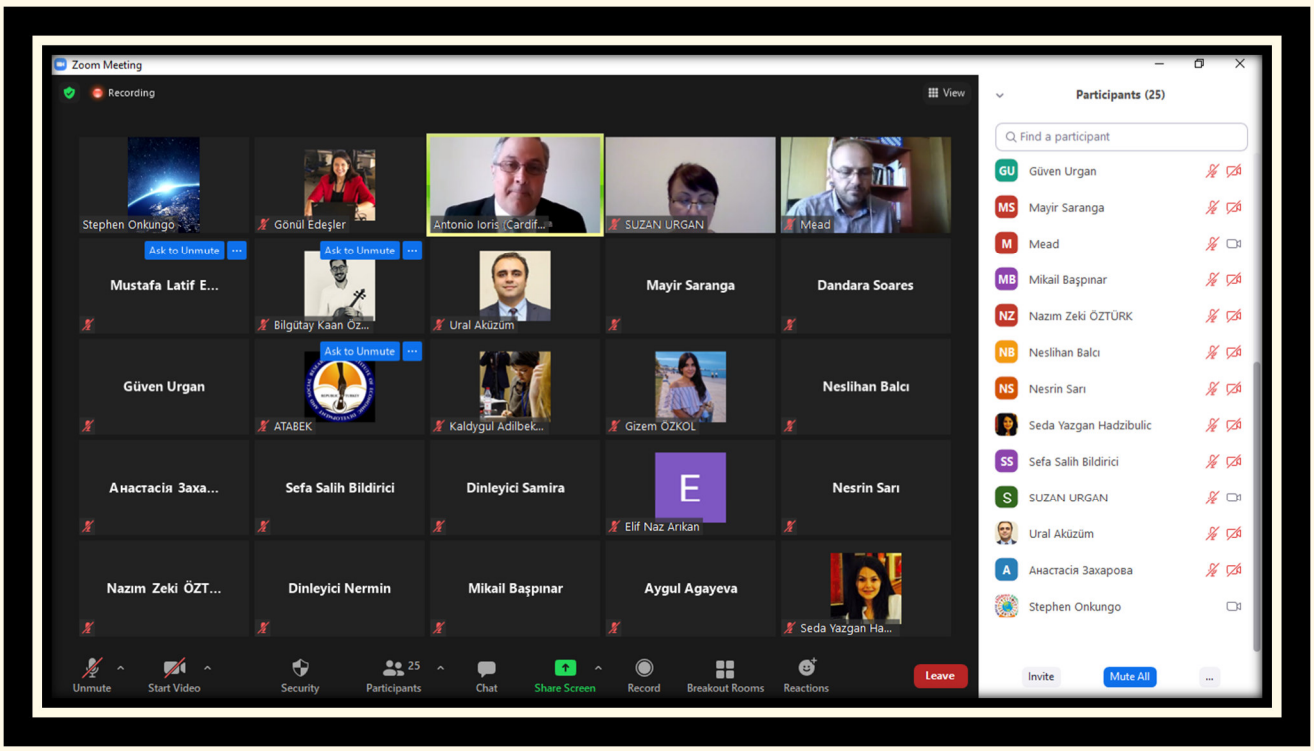
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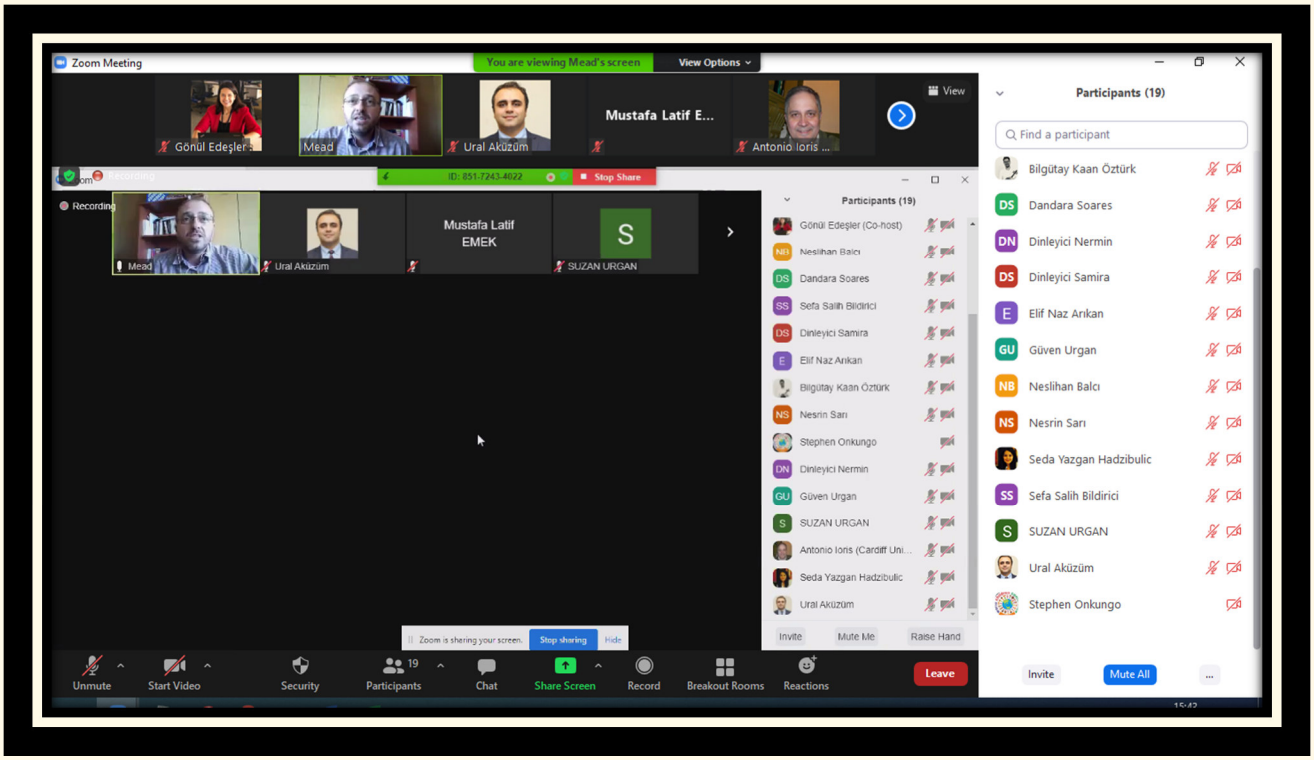
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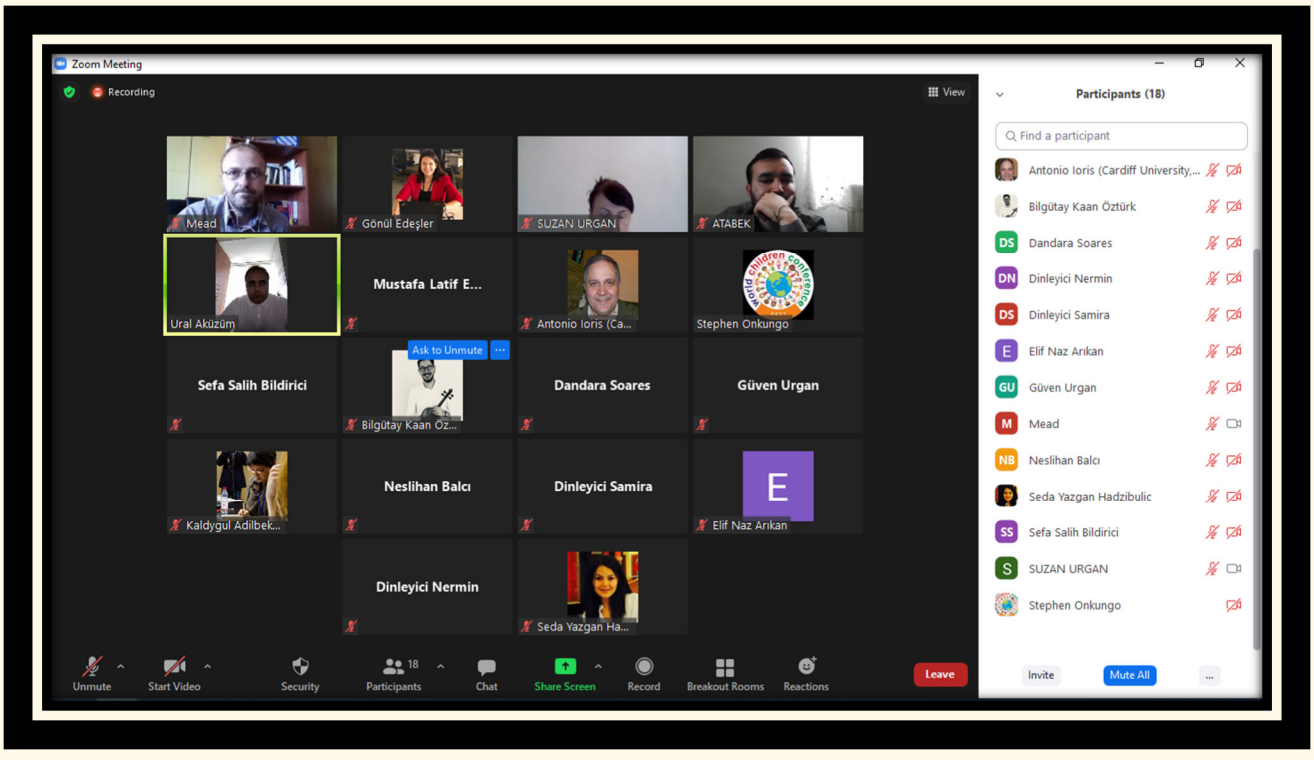
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Bilgütay Kaan Öztürk
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Анастасія Захарова
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АНОТАЦІЯ

Україна в 1932–1933 роках пережила страшну трагедію – Голодний Мор, який забрав життя мільйонів наших земляків. Жорстокість Голодомору полягає перед усім у тому, що голод не був наслідком стихійного лиха, посухи або неврожаю, він став результатом навмисної політики більшовицького режиму. Шляхом насиль ницького вилучення продовольства, бло кади сіл та цілих районів, заборони виїзду за межі охопленої голодом України, згор тання сільської торгівлі, репресій супроти незгодних тоталітарна система створила для українців умови, які були несумісні з життям. Така політика більшовицького режиму – злочин проти людяності, який відповідає Конвенції ООН про геноцид. Згідно зі статтею 2 Конвенції геноци дом визнаються дії, які вчиняються «з наміром знищити, цілком або частково, якунебудь національну, етнічну, расову або релігійну групу як таку», зокрема через «навмисне створення для якоїне будь групи таких життєвих умов, які роз раховані на її повне чи часткове фізичне знищення». Тому Голодомор – штучно організо2 ваний у 1932–1933 роках голод – був геноцидом української народу. Хоча політика комуністичного керів ництва призвела у 1932 році до голоду в багатьох регіонах СРСР, але ніде репресив ні заходи і, як їх результат, жертви, не мали таких масштабів і такої зловмисності, як в Україні та на Кубані, заселеній пере важно українцями. Саме тут діяла заборона на виїзд, яка прямо підтверджує злочинні наміри організаторів Голодо мору. Ціллю людинонена висницької політики тоталі тарного режиму було зни щення незалежного укра їнського селянства — ядра нації, носія споконвічних традицій і національних цін ностей, які суперечили кому ністичній ідеології та викли кали неприховану ворожість більшовицьких лідерів

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HISTORY OF KARABAGH GENOCIDE

Leyla GAFAROVA

ABSTRACT

The history of the Armenian nationalists` policy of genocide against the Azerbaijani people starts from 18th century when tsarist Russia was exploiting the Armenians by promising them to create an Armenian state in the Caucasus in order to increase its expansionist policy towards the South Caucasus. On November 10, 1724, Peter I issued a decree allowing the Armenians to settle in Baku and other regions of Azerbaijan. Using this opportunity, the Armenians committed horrific crimes against the Azerbaijani people in different regions of Azerbaijan in order to build an Armenian state in our historical lands. The Armenians` intermittent, but well-thought out policy of genocide resulted in the slaughter of thousands of innocent Azerbaijanis, burning down of their homes and plunder of their property. In this paper we will study on the history of Armenian radicals against to Azerbaijani Turkish

Keywords: Armenian nationalists, genocide, caucasus

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ON THE PROSPECT OF APPLYING TO THE EUROPEAN COURT OF HUMAN RIGHTS WITH REGARDS TO THE HODJALI GENOCIDE[1]

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INTRODUCTION

On the night of 25-26 February 1992, within the setting of the Nagorno-Karabagh War of 1988-1994, Armenian armed forces sieged the town of Khodjalı located in Nagorno-Karabagh and killed 613 individuals. During the events that took place that night 487 people were seriously wounded, 1275 were taken hostage and 150 disappeared. Inspections after the events revealed horrific details: Bodies were burned, their eyes were taken out, their heads were cut off, their head skin was peeled, and victims were tortured before being killed[2]. The existence of gunpowder residue around the wounds of those killed by firearms indicated that they were shot from a very close range, most probably executed. Amongst those who were taken hostage were Ahıska / Meskhetian Turks who had returned from exile in central Asia, seeking refuge in Azerbaijan. Most of those who survived the massacre died of cold weather in the forests which they had sought sanctuary[3].

The Hodjalı Events have already been explicitly recognized as a genocide by numerous states and many more agree that they correspond to an unacceptable massacre and constitute a crime against humanity. Moreover, it is undisputed that from many angles – such as from that of the law of armed conflicts – Hodjalı was the theatre of unignorable serious violations of international law[4]. To this respect, it is known that Azerbaijan has embarked upon many initiatives for the recognition of the Hodjalı Events as an act of genocide by the international community.

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[1]The original Turkish version of this article was published in Bahçeşehir University Law Review (V.15/193-194, September-October 2020). This English version has been translated by the authors and includes very minor modifications from the original text.

The authors would like to thank their friend and colleague Assoc. Prof. Dr. Ceren Zeynep Pirim Kızıla for her sincere support. The ideas presented in this article belong solely to the authors.

[2] See, Ministry of Foreign Affairs of the Republic of Azerbaijan Department for Analysis and Strategic Studies, Khojaly Genocide, 21 February 2020, ss. 1 ff., online source: https://mfa.gov.az/files/shares/Khojaly%20Gen ocide_21.02.2020.pdf

[3] De Waal, Thomas, Black Garden-Armenia and Azerbaijan through Peace and War, New York University Press, 2003 p. 171.

[4] International reaction to the Hodjalı Events has been compiled by the Ministry of Foreign Affairs of Azerbaijan. See, Ministry of Foreign Affairs of the Republic of Azerbaijan Department for Analysis and Strategic Studies, Khojaly Genocide, 21 February 2020, ss. 1 ff., online source: https://mfa.gov.az/files/shares/Khojaly%20Gen ocide_21.02.2020.pdf, pp. 39 ff.

Yet the legal responsibility that these Events entail has not been the subject of a contentious case between Armenia and Azerbaijan before an international court. However, under international law, the legal responsibility of Armenia for the numerous crimes committed during that night is not only vis-a-vis Azerbaijan; it is clear that damages incurred by individual victims of the Events must be repaired, for this is a necessity not only under law but also under conscience.

In recent years individuals alleging violations of their rights protected under the European Convention on Human Rights in connection with the Nagorno-Karabagh War have applied to the European Court of Human Rights. A number of these applications have already been resolved and the Court has determined violations of certain rights protected under the Convention. However, most of these cases appear to concern violations of the right to property that took place within the scope of the war[5] and grievances caused by the non-enlightenment of the crimes that took place during the Hodjalı Events have not yet been brought before the Court. Written with the intention to tackle this void, this article aims to discuss the possibility of bringing the Hodjalı Events before the Court within the scope of the duty to investigate emanating from the right to life protected under Article 2 of the Convention[6].

There can be no doubt that the crimes committed at Hodjalı constitute a massive and grave violation of the right to life. In this context, regardless of the time that may have passed, Armenia is under the obligation to enlighten these crimes and prosecute those responsible. This article will focus on the fact that in case Armenia does not fulfill this obligation, the prospect of applying to the Court by way of individual application is available, and more importantly, there is a large possibility of obtaining a positive result from such an initiative.

In line with the aims elaborated above, firstly, we shall examine the general framework of a state's duty to investigate deprivations of the right to life in light of the well-established jurisprudence of the European Court of Human Rights. Secondly, we shall demonstrate that within the context of the Hodjalı Events this duty binds Armenia because this crime took place within its jurisdiction. Moreover, we shall elucidate why Armenia may not put forward any ratione temporis objection with regards to the application of the Convention to the Events.

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[5] Until today, matters related to the Nagorno-Karabagh War which have appeared before the European Court of Human Rights have involved the right to property. Within this context, for example, in the Chiragov and Others v. Armenia case, the Court found a violation of Article 13 of the Convention due to the fact that Armenia had not repaired the damages caused to the homes and property of the applicants and reasonable satisfaction of their demands was not seen possible within Armenian domestic law. Chiragov and Others v. Armenia, ECHR, Grand Chamber, No. 13216/05, 16 June 2015. Likewise, in the Sargasyan v. Azerbaijan case, again concerning the Nagorno-Karabagh War, yet this time against Azerbaijan, the Court reached a similar judgment. See, Sargsyan v. Azerbaijan, ECHR, Grand Chamber, No. 40167/06, 16 June 2015.

[6] European Convention on Human Rights, Article 2 (Right to Life):

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape

of a person lawfully detained;

(c) in action lawfully taken."

Thus, we will establish the fact that Armenia bears the responsibility to enlighten the fate of those killed and those who disappeared on the night of 25-26 February 1992 and that in case Armenia does not satisfy this responsibility the next-of-kin of the victims will have the right of individual application to the Court. Thirdly, we shall deal with the legal procedure to be followed so that Armenia satisfies its duty to investigate and in case it does not satisfy it at the domestic law level we shall dwell upon the invalidity of possible objections that might be raised during legal processes at the international level. By way of this three party analysis we will be able to expose the high possibility of success of determining the violation of the procedural aspects of the right the life under Article 2 of the Convention by Armenia due to the Hodjalı Events and we will also be able to consider the legal and political consequences of an individual application to the Court on this subject matter, especially if the desired result is obtained from such an application.

I. General Framework of the State's Duty to Investigate Deprivations of the Right to Life under Article 2 of the European Convention on Human Rights

The right to life differs from other rights and freedoms enumerated under international and regional human rights documents because it constitutes the fundamental guarantee of both the individual and social existence of the person[7]. The importance of the right to life is self-evident considering that the first condition for a person to enjoy any fundamental right and freedom is that the person is and remains alive. Hence, the right to life undisputedly occupies a special place within the hierarchy of human rights law[8]. This has been explicitly recognized by the European Court of Human Rights: According to the Court, the right to life, as guaranteed under Article 2 of the European Convention on Human Rights, "ranks as one of the most fundamental provisions in the Convention", and together with the prohibition of torture foreseen under Article 3 of the Convention[9], "enshrines one of the basic values of the democratic societies making up the Council of Europe"[10].

Due to its importance a strict adherence to the provisions of the Convention on the right to life is a necessity, such that, this right might not be restricted in peace time according to the procedure foreseen under Article 15 of the Convention[11].

[7] Tomuschat, Christian, "The Right to Life – Legal and Political Foundations", (Ed.) Tomuschat, Christian / Lagrange, Evelyne / Oeter, Stefan, The Right to Life, Marchinus Nijhoff Publishers, 2010, p. 3.

[8] Dinstein, Yoram, "The Right to Life, Phyrical Integrity, and Liberty", (Ed.) Henkin, Louis, The International Bill of Rights. The Covenant on Civil and Political Rights, Columbia University Press, 1981, p. 114.

[9] European Convention on Human Rights, Article 3 (Prohibition of Torture) "No one shall be subjected to torture or inhuman or degrading treatment or punishment."

[10] McCann and Others v. United Kingdom, ECHR, Grand Chamber, No. 1898/91, 27 September 1995, § 147.

[11] European Convention on Human Rights, Article 15 (Derogation in time of emergency):
"1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed."

Moreover, the Court does not find it sufficient to only regulate under national law those legal guarantees that derive from the right to life, it also requires that these guarantees are in fact effectively implemented under all circumstances[12].

Under Article 2 of the Convention the right to life involves two substantial obligations. According to the Article, on the one side, states undertake a general obligation to protect the right to life within their legal order and, on the other side, they accept the prohibition on intentional deprivation of life, save in case of those legal exceptions foreseen by the Convention[13]. However, Article 2 is not only construed around these two negative obligations based on the protection of the right to life and the obligation to refrain from depriving the person of this right. The right to life is naturally accompanied by certain positive obligations, including the obligation of actually protecting individuals against interventions to their right to life from third parties[14]. According to Court's jurisprudence, within the context of the right to life, "[t]he positive obligations […] must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake"[15].

The Court has already raised the issue of positive obligations deriving from the right to life in numerous areas. For example, positive obligations derive from the right to life in the field of healthcare, with regards to risky industrial activities, concerning environmental disasters, transportation, road safety, maritime activities and care services afforded to individuals in need[16]. However, one can observe that the concept of positive obligations within the scope of right to life has been mostly referred to in cases concerning police activities, especially with regards to criminal law implementation. The most important positive obligation from this perspective is without a doubt the duty of the state to conduct an investigation after any event that results with the loss of life.

The duty to investigate is considered a procedural human rights obligation deriving from the fundamental nature of the right to life[17].

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[12] McCann and Others v. United Kingdom, § 146; Giuliani and Gaggio v. Italy, ECHR, Grand Chamber, No. 23458/02, 24 March 2011, § 174.

[13] See, Boso v. Italy (Admissibility), ECHR, No. 50490/99, 05 September 2002; Armani Da Silva v. United Kingdom, ECHR, Grand Chamber, No. 5878/08, 30 March 2016, § 229.

[14] See, L.C.B. v. United Kingdom, ECHR, No. 23413/94, 9 June 1998, § 36. In the implementation of the Convention the concept of negative obligation, in its most extensive sense, is used to express the obligation of states to not intervene illegally to the rights and freedoms protected by the Convention. The concept of positive obligation, on the other hand, is used to define the obligation of states to actively behave in a certain way in order to implement the rights and freedoms protected by the Convention. Most rights and freedoms recognized by the Convention have been formulated as establishing negative obligations for state parties. Positive obligations, however, in general, have not been explicitly foreseen by the Convention, but have gained existence in time through the jurisprudence of the Court. For the concepts of positive and negative obligations within the context of the European Convention on Human Rights, see in general, Akandji-Kombe, Positive Obligations under the European Convention on Human Rights: A Guide to the Implementation of the European Convention on Human Rights, Human Rights Handbooks No. 7, Council of Europe, Strasbourg, 2007; Mowbray, A. R., The Development of Positive Obligations under the European Convention on Human Rights, Hart, 2004; Lavrysen, Laurens, Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights, Intersentia, 2016.

[15] Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania, ECHR, Grand Chamber, No. 47878/08, 14 July 2014, § 130.

[16] For examples of jurisprudence see, European Court of Human Rights, Guide on Article 2 of the European Convention on Human Rights: Right to Life, Council of Europe, Strasbourg, 2020, p. 8.

[17] Armani Da Silva v. United Kingdom, § 229.

This obligation which has not been explicitly stipulated under Article 2 of the Convention is a jurisprudential construct elaborated by the Court[18] so as to ensure that states effectively respect the rights and freedoms foreseen under the Convention[19].

The Court has initially recognized the duty to investigate deprivations of the right to life within the scope of loss of life resulting from the use of force by public officials in the case McCann v. United Kingdom,: "[…] there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alios, agents of the State"[20]. In its subsequent jurisprudence the Court has extended the situations and circumstances in which the duty to investigate may arise so as to encompass loss of life not directly resulting from the actions of public officials[21]. For example, in the Ergi v. Turkey case individuals who had died during a counter-terror operation were not found to have been killed due to the acts of public officials. Nevertheless, the Court reiterated the state's duty to investigate: "[…] this obligation is not confined to cases where it has been established that the killing was caused by an agent of the State"[22].

The importance afforded by the Court to the duty to investigate is associated with the aim of this obligation. For the Court, the existence of the duty to investigate provides effectiveness to the provisions of the Convention on the protection of the right to life:

"The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility […]"[23].

The requirements of the duty to investigate "may well vary from case to case", however, its satisfaction depends on guaranteeing its effectiveness[24]. In other words, whether the duty to investigate fulfills the primary function it aims to achieve is related to whether its effective or not. Effectiveness, on the other hand, involves the capability to determine the legitimacy of the use of force in a given situation and in case of an illegitimate use of force, the capacity to determine and punish those responsible[25].

[18] For example, see: İlhan v. Turkey, ECHR, Grand Chamber, No. 22277/93, 27 June 2000, § 23; Salman v. Turkey Türkiye'ye Karşı, ECHR, Grand Chamber, No. 21986/93, 27 June 2000, § 106 ; Tanrıkulu v. Turkey, ECHR, Grand Chamber, No. 23763/94, 8 July 1999, § 109; Çakıcı Türkiye'ye Karşı, ECHR, No. 23657/94, 08 July 1999, §§ 80, 87 ve 106; Mahmut Kaya v. Turkey, ECHR, No 22535/93, 28 March 2000, §§ 106-107 ; Güleç and Others v. Turkey, ECHR, No. 21593/93, 27 July 1998, §§ 81-82; Oğur v. Turkey, ECHR, Grand Chamber, No. 21594/93, 20 May 1999, §§ 91-92; Ergi v. Turkey, ECHR, No. 23818/94, 28 July 1998, §§ 83-84; McKerr v. United Kingdom, ECHR, No. 28883/95, 04 May 2001, § 128; Hugh Jordan v. United Kingdom, ECHR, No. 24746/94, 04 May 2001, § 120 and Kelly v. United Kingdom, ECHR, No. 30054/96, 04 May 1996, § 114.

[19] Doswald-Beck, Louise, "The Right to Life in Armed Conflict: Does International Humanitarian Law Provide all the Answers?", IRRC, V.88(864), Decembre 2006, p. 887.

[20] McCann and Others v. United Kingdom, § 161.

[21] Mowbray, Alastair, "Duties of Investigation under the European Convention on Human Rights", The International and Comparative Law Quarterly, V. 51(2), 2002, s. 437.

[22] Ergi v. Turkey, § 82.

[23] Anguelova v. Bulgaria, ECHR, No. 3836/97, 13 June 2002, § 137.

[24] Issaïeva, Youssoupova and Bazaïeva v. Russia, ECHR, No. 57947/00, 57948/00 and 57949/00, 24 February 2005, §§ 209-213.

[25] Bknz. Hugh Jordan v. United Kingdom, § 107.

In connection to this, the satisfaction of the duty to investigate in a given situation necessitates the cumulative existence of certain elements that enables the characterization of the concluded investigation as effective[26].

First of all, it is necessary that once a deprivation of the right to life takes place an official investigation is conducted. According to the Court, the existence of an official investigation must be considered independent from all forms of application or complaint procedures. In the words of the Court, "whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention" [27], because "they cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures" [28]. In this sense, "[…] mere knowledge of the killing on the part of the authorities [gives] rise ipso facto to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the death"[29].

In addition, the effectiveness of an investigation is subject to its independence. For the Court, especially in case of an investigation concerning an illegal act of killing by public officials:

"[…] it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events […] This means not only a lack of hierarchical or institutional connection but also a practical independence" [30].

The effectiveness of an investigation is at the same time subject to the fact that it has been concluded in a speedy manner and with reasonable diligence. For the Court:

"[…] a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts."[31]

Moreover, the effectiveness of an investigation is correlated to the inclusion of procedures of public scrutiny and accountability. As clarified by the Court:

"[…] there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests."[32]

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[26] These elements were formulated as a result of the Court's jurisprudence and were developed in light of the 2011 Committee of Ministers Guiding Principles on Eradicating Impunity for Serious Human Rights Violations. Binienda, Maria Szonert, "Standards of Investigation under Article 2 of the European Convention on Human Rights and Investigations of Incidents of Historic Significance", Law and Administration in Post-Soviet Europe, V. 7(1), 2014, ss. 34-35; also see: Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations adopted by the Committee of Ministers dates March 30, 2011 r., CM/Del/Dec (2011) 1110.

[27] Issaïeva, Youssoupova and Bazaïeva v. Russia, §§ 209-213.

[28] Shanaghan v. United Kingdom, ECHR, No. 37715/97, 4 May 2001, § 88.

[29] Ergi v. Turkey, § 82.

[30] Issaïeva, Youssoupova and Bazaïeva v. Russia, §§ 209-213.

[31] Ibid.

[32] Ibid.

According to the Court, the element of public scrutiny and accountability exists in order to establish public control which is in fact necessary so as to guarantee that the possibility and capacity of perpetrators of violations of the right to life to collude with the state is nullified.

"There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory, maintain public confidence in the authorities' adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests"[33].

The issue of the effectiveness of an investigation within the scope of the duty to investigate under article 2 of the Convention is not related to the result of the investigation. In other words, the satisfaction of the state's duty to investigate does not require that a specific result be obtained by the investigation, since, the duty to investigate "[…] is not an obligation of result, but of means"[34]. In addition, the Court, has traditionally refrained from elaborating a detailed consideration on the content of the investigation and how it was conducted. In the Court's own words: "[it] is not for this Court to specify in any detail which procedures the authorities should adopt in providing for the proper examination of the circumstances of a killing by State agents"[35]. However, it has been observed that in certain exceptional cases, especially in those where allegations on the violation of the right to life carry a certain degree of seriousness, the Court has been closely interested with the details of the investigation, which in itself is a natural result of the fact that the scope of the duty to investigate is directly related with the circumstances of the case[36].
To be clearer, in cases where there are serious violations of the right to life, the Court has not only required that authorities take steps but has also declared certain requirements with regards to the scope of the steps that should be taken:

"The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including inter alia eye witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death."[37]

The requirements stipulated by the Court are in fact those elements that are perceived as necessary for the enlightenment of any event resulting with the deprivation of the right to life.

[33] Anguelova v. Bulgaria, § 140.
[34] Issaïeva, Youssoupova and Bazaïeva v. Russia, § 211.
[35] McKerr v. United Kingdom, § 159.
[36] This difference in approach has been observed, for example, in cases concerning the Chechenia War. For a short analysis see: Chevalier-Watts, Juliet, "Effective Investigations under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on a State?", EJIL, V. 21(3), 2010, pp. 715-717.
[37] Hugh Jordan v. United Kingdom, §§ 105-106.

In this sense, in addition to official authorities not taking any steps concerning the event resulting with the deprivation of the right to life, deficiencies in the steps taken of a nature as to prevent the truth from coming out and / or determine those responsible will also result with a violation of international standards accepted as required for the satisfaction of the duty to investigate[38].

Difficulties of the environment in which the event where the loss of life took place, especially situations such as armed conflicts where violations of right to life frequently occur, do not exclude states party to the Convention from their duty to investigate. For the Court, "[…] the procedural guarantees concerning the duty to investigate continue even if the security situation related to an armed conflict is difficult"[39]. In this context, this obligation has been explicitly foreseen with regards to cases of internal armed conflicts[40], and it is accepted that it also applies to cases involving international armed conflicts and occupations[41]. In any event, neither the frequency of hostilities nor the number of victims "[…] can displace the obligation under Article 2 to ensure that an effective, independent investigation is conducted […]"[42]. We can clearly observe that the jurisprudence of other regional human rights organs has developed in this same manner[43].

Finally, the duty to investigate deprivations of the right to life does not only apply to situations which result in a clearly unexpected death. It is also applicable with regards to individuals who disappear under the authority or control of the state. The importance of enlightening the circumstances of individuals who have disappeared for the effective implementation of the right to life has been explicitly recognized in international human rights law practice[44]. The Court's jurisprudence is in line with this affirmation; when an individual has been detained by a state's security forces (or put under their de facto authority), the state is responsible for the fate of this individual[45].

According to this principle which accompanies the obligation to protect the right to life, in case security forces do not produce a convincing argument about the fate of a detained individual, the Court accepts a form of presumption of death[46] and rules on the violation of Article 2 of the European Convention on Human Rights. In other words, it is up to the state to explain the fate of an individual who was last seen under its authority:

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[38] Idem., § 107

[39] Vasalou, Evangelia, "Les Rapports Normatifs entre le Droit International Humanitaire et la Convention Européenne des Droits de l'Homme", Revue Trimmestiere des Droits de l'Homme, 112/2017, p. 985.

[40] Issaïeva, Youssoupova and Bazaïeva v. Russia, §§ 208 - 213

[41] Jaloud v. Netherlands, ECHR, No. 47708/08, 20 November 2014, § 142; Varnava and Others v. Turkey, ECHR, Grand Chamber, No. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16072/90 and 16073/90, 18 September 2009, §§ 174 ff.; Al-Skeini and Others v. United Kingdom, ECHR, Grand Chamber, No. 55721/07, 07 July 2011, §§ 161 ff..

[42] Kaya v. Turkey, ECHR, No. 158/1996/777/978, 19 February 1998, § 91.

[43] For example, see: Myrna Mack-Chang v. Guatemala, Inter-American Human Rights Court, Series C No. 101, 25 November 2003; also see: Droege, Cordula, "Droits de L'homme et Droit Humanitaire: Des Affinités Électives?", RICR, v. 90 (871), Septembre 2008, p. 38 (online version).

[44] Wicks, Elizabeth, The Right to Life and Conflicting Interests, Oxford University Press, 2010, p. 67.

[45] See: Aslakhanova and Others v. Russia, ECHR, No 2944/06, 332/08, 42509/10, 50184/07 and 8300/07, 18 December 2012, §§ 97-98.

[46] Gölcüklü, Feyyaz; Gözübüyük, Şeref, Avrupa İnsan Hakları Sözleşmesi ve Uygulaması- Avrupa İnsan Hakları Mahkemesi İnceleme ve Yargılama Yöntemi-11. Protokole Göre Hazırlanıp Genişletilmiş, 3. Bası, Turhan Kitabevi, Ankara, 2002, p. 158.

"[…] where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which an issue arises under Article 3 of the Convention […] In the same vein, Article 5 imposes an obligation on the State to account for the whereabouts of any person taken into detention and who has thus been placed under the control of the authorities […] Whether the failure on the part of the authorities to provide a plausible explanation as to a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention will depend on all the circumstances of the case, and in particular on the existence of sufficient circumstantial evidence, based on concrete elements, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody […]"[47]

While the time that has passed since an individual was detained is not considered a decisive factor by itself, it is still an important element that has to be taken into consideration. In other words, concerning the presumption of death, time does not initiate the presumption of death:

"The Court has on numerous occasions made findings of fact to the effect that a missing person could be presumed dead. Generally, this finding has been reached in response to claims made by the respondent Government that the person was still alive or has not been shown to have died at the hands of State agents. The presumption of death is not automatic and is only reached on examination of the circumstances of the case, in which the lapse of time since the person was seen alive or heard from is a relevant element"[48]

However, the passage of time without receiving any information from the person detained fortifies the possibility that this individual has died. Consequently, the passage of time influences significantly the weight put on other elements of evidence concerning the situation before presuming the individual dead[49]:

"[The Court] observes that no explanation has been forthcoming from the authorities as to what occurred following his apprehension, nor any ground of justification relied on by the Government in respect of any use of lethal force by their agents. Liability for [the victims] death is therefore attributable to the respondent State and there has accordingly been a violation of Article 2 on that account."[50]

[47] Timurtaş v. Turkey, ECHR, No. 23531/94, 13 June 2000, § 82. Also see: Çakıcı v. Turkey, § 85; Ertak v. Turkey, ECHR, No. 20764/92, 9 May 2000, § 131-133; Akdeniz v. Turkey, ECHR, No. 25165/94, 31 May 2005, § 96; Taş v. Turkey, ECHR, No. 24396/94, 14 November 2000, § 63; Çiçek v. Turkey, ECHR, No. 25704/94, 5 September 2001, §145.
[48] Aslakhanova and Others v. Turkey, § 98-100.
[49] Timurtaş v. Turkey, § 83.
[50] Çakıcı v. Turkey, § 87.

In any event, it can be seen that in cases related to armed conflicts in which injuries, deaths or disappearances take place in regions under the exclusive control of a state and when there are a number of prima facia evidences and signs that indicate state officials might be responsible, the burden of proof with regards to exposing the truth by conducting an effective investigation and determining whether the state bears responsibility for injuries, deaths and disappearances shifts to the state[51].

II. The Basis of Armenia's Duty to Investigate Loss of Life and Disappearances due to the Hodjalı Events under Article 2 of the European Convention on Human Rights

Debating whether Armenia has the duty to investigate deprivations of the right to life due to what was experienced on the night of 25-26 February 1992 could be considered tragicomic in contrast to the dimensions of the disaster. Nonetheless, technically, the attributability of the Hodjalı Events to Armenia must be discussed due to the fact that the crimes were committed outside of Armenia's borders. According to Article 1 of the European convention on Human Rights, states party to the Convention "[…] shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention". In other words, a state's obligations under the Convention are limited within the framework of its jurisdiction. Moreover, in the case of Armenia, the Convention has entered into force approximately ten years after the Hodjalı Events, on the 26th of April 2002. This by itself would make it probable that any judicial process with regards to Armenia's responsibility would come against a ratione temporis objection. Consequently, in order to establish Armenia's duty to investigate, firstly, we must clarify the fact that the Hodjalı Events took place within the jurisdiction of Armenia and secondly, we must demonstrate that the duty to investigate under the Convention is applicable to the Events.

A. Attributability of the Hodjalı Events to Armenia

Under international law a state's jurisdiction is essentially territorial. The territoriality of state jurisdiction has been explicitly accepted in the implementation of the European Convention on Human Rights; the obligation of states to ensure respect to the rights and freedoms foreseen by the Convention within their territory has been frequently expressed by the European Court of Human Rights[52]. However, the Court has, gradually, by way of jurisprudence, accepted that a state may also be held responsible for certain acts and operations realized outside of its own territory. This has come up especially in cases of use of policing powers or use of force outside of the state's own territory. When jurisprudence is examined, we can observe that in certain circumstances the Court holds a state responsible for violations with regards to acts and operations of its armed forces outside of its own territory and this threshold of responsibility has been expanding to the disadvantage of states. In other words, currently it has become easier to attribute responsibility to states for their conduct outside of their own territory and, generally, the Court has held the state responsible for such conduct without any difficulty.

The Court's finding to this respect in its pilot judgment Loizidou v. Turkey was as such:

[51] Aslakhanova and Others v. Russia, §§ 97-98.

[52] Soering v. United Kingdom, ECHR, No. 14038/88, 7 July 1989, §86; Al-Skeini and Others v. United Kingdom, §131; İlaşcu and Others v. Moldova and Russia, ECHR, Grand Chamber, No. 48787/99, 8 July 2004, §312; Assanidzé v. Georgia, ECHR, Grand Chamber, No. 71503/01, 8 April 2004, §137-139; Banković and Others v. Belgium and 16 Other States (Admissibility), ECHR, Grand Chamber, No. 52207/99, 12 December 2001, § 67; Treska v. Albania, ECHR, No. 26937/04, 29 June 2006.

"[…] a Contracting Party may also arise when as a consequence of military action - whether lawful or unlawful - it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration."[53]

From the Loizidou judgment onwards, the Court has required that for a state to be held responsible under the Convention for acts and operations outside of its territory it would have to hold effective control over the discussed region. In other words, a state possessing effective control over a region has to respect in that region the rights and freedoms foreseen under the Convention. As expressed by the Court in the Cyprus v. Turkey case: "any other finding would result in a regrettable vacuum in the system of human-rights protection in the territory in question by removing from individuals there the benefit of the Convention's fundamental safeguards and their right to call a High Contracting Party to account for violation of their rights in proceedings before the Court"[54].

According the Court's judgment in the case Issa and Others v. Turkey, a state may be held responsible for violations of the rights and freedoms foreseen under the Convention against individuals under its authority and control which has been established by state officials functioning on its behalf while found outside of the state's territory – whether lawfully or unlawfully. Therefore, the obligation to ensure respect to the Convention in a region is established from the states control over that region, either directly, by way of a states armed forces or by a subordinate local administration. The foundation of this form of responsibility is the principle that: Article 1 of the Convention cannot be read as allowing a state to commit violations of the convention on the territory of another state which it cannot commit in its own territory[55].

By lowering the threshold concerning whether a region is within the jurisdiction of a state in the Ilaşcu and Others v. Moldova and Russia, the court has concluded that the effective control criteria does not necessitate "[…] to determine whether a Contracting Party actually exercises detailed control over the policies and actions of the authorities in the area situated outside its national territory, since even overall control of the area may engage the responsibility of the Contracting Party concerned"[56] and especially when de facto regional governments are involved the states decisive influence was taken into consideration within the framework of attribution of responsibility[57].

In the Isaak v. Turkey[58] and Solomou v. Turkey[59] judgments the Court has held Turkey responsible for the killing of protestors in the United Nations buffer zone in Cyprus and on the territory of Turkish Republic of Northern Cyprus.

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[53] See: Loizidou v. Turkey (Preliminary Objections), ECHR, Grand Chamber, No. 40/1993/435/514, 23 March 1995, § 62; also see: Loizidou v. Turkey, ECHR, Grand Chamber, No. 40/1993/435/514, 18 December 1996, § 52.

[54] Cyprus v. Turkey, ECHR, Grand Chamber, No. 25781/94, 10 May 2001, § 78.

[55] Issa and Others v. Turkey, ECHR, No. 31821/96, 30 March 2005, §§ 69-71.

[56] Ilaşcu and Others v. Moldova and Russia, §§ 314-315.

[57] Idem, § 392.

[58] Isaak v. Turkey, ECHR, No. 44587/98, 24 June 2008.

[59] Solomou v. Turkey, ECHR, No. 36832/97, 24 June 2008. Also see: Kallis and Androulla Panayi v. Turkey, ECHR, No. 45388/99, 27 October 2009 (citing Solomou v. Turkey, § 27).

Taking a further step in the Mansur Pad and Others v. Turkey case, the Court concluded that individuals shot by a Turkish helicopter outside of Turkey's territory were to be considered within the jurisdiction of the state[60]. If we are to apply these principles to the Hodjalı Events, taking into consideration that even inadvertent and solitary conduct would involve the responsibility of the state, the systematic and deliberate massacre of 613 individuals during an occupation without a doubt exceedingly satisfies the "jurisdiction" criteria.

In addition to situations where the state was found to have extra-territorial effective control or decisive influence, one can come across examples where the Court has found the state to possess jurisdiction by way of using personal authority over an individual in an extra-territorial context. In the Abdullah Öcalan v. Turkey case, having to deal with the question whether the applicant who had been caught by Turkish officials in an airport in Kenya / Nairobi, the Court concluded that: "[…] the applicant was arrested by members of the Turkish security forces inside an aircraft registered in Turkey in the international zone of Nairobi Airport. It is common ground that, directly after being handed over to the Turkish officials by the Kenyan officials, the applicant was effectively under Turkish authority and therefore within the "jurisdiction" of that State for the purposes of Article 1 of the Convention, even though in this instance Turkey exercised its authority outside its territory"[61].

In the case Al-Saadoon and Mufdhi v. United Kingdom, after the 2003 Iraq operation, the applicants which were transferred to the authority of English officials by Iraqi officials alleged being a victim of violations of the Convention. Observing that in the detention center where the applicants were held English officials held initially de facto then de jure full and exclusive control, the Court concluded that these individuals were within the jurisdiction of the United Kingdom[62]. In the judgment to the case Al-Jedda v. United Kingdom concerning the internment of an Iraqi civilian by English forces, the Court accepted that during internment the individual was within the jurisdiction of the United Kingdom[63]. It can be seen that in these cases the state had violated the Convention although the acts constituting a deprivation of liberty possessed a clear legal basis.

In the Al-Skeini and Others v. United Kingdom judgment the Court concluded that the United Kingdom had jurisdiction with regards to civilians killed during operations conducted by United Kingdom soldiers in order to ensure security in South-East Iraq[64]. In the Jaloud v. Netherlands judgment the Court decided that an individual who was killed by Dutch soldiers at a military checkpoint in South-East Iraq was within the jurisdiction of the Netherlands in the sense of Article 1 of the Convention[65]. It can be observed that in this judgment effective control of the State over the region was not required, control over a checkpoint was seen as sufficient in establishing the necessary jurisdictional tie.

As it can be clearly observed, under the Court's jurisprudence, for a state to be held responsible for its acts which manifest outside of its territory due to being accepted as having taken place within the state's jurisdiction, the concept of "jurisdiction" is considered under two separate models: According to the first model named "spatial" and which has been developed in the Loizidou v. Turkey judgement, in case the state possesses effective and global control over a region it would be considered to have jurisdiction over this region.

[60] Mansur Pad and Others v. Turkey (Admissibility), ECHR, No. 60167/00, 28 June 2007, §§ 54-55.
[61] Öcalan v. Turkey, ECHR, Grand Chamber, No. 46221/99, 12 May 2005, §§ 84 and 93.
[62] Al-Saadon and Mufdhi v. United Kingdom (Admissibility), ECHR, No. 61498/08, 30 June 2009, §§ 84-89.
[63] Al-Jedda v. United Kingdom, ECHR, No. 2702/08, 07 July 2011, §§ 76-86.
[64] Al-Skeini and Others v. United Kingdom, ECHR, Grand Chamber, No. 55721/07, 07 July 2011, §§ 149-150.
[65] Jaloud v. Netherlands, § 142 ff..

The second model named "personel" is based on the state using authority and control over an individual by way of its agents, in other words, it is based on the authority that state officials possess over individuals. However, the relationship between these two models have never been clearly outlined in the Court's jurisprudence and a state's extraterritorial responsibility has never been dealt with methodically, hence the jurisprudence has fluctuated between these two models[66]. On the other hand, one can question whether it is possible to distinguish between these two models. Would not the spatial model also involve state official's use of factual authority over individuals? Likewise, would not control over individuals by state officials tend to extend to the space that they are found? Concerning the Hodjalı Events, the responsibility of Armenia can be clearly established under whichever model is taken into consideration,

The region in which the Hodjalı Events took place is situated in the Republic of Nagorno-Karabagh, a non-recognized entity which is de facto dependent on Armenia. Therefore, Armenia possesses effective control over the region by way of "subordinate local administration"[67] in the terms used in the Loizidou v. Turkey judgment. In fact, the Court has brought the following observation in the Chiragov and Others v. Armenia case concerning applicants who were not able to return to their homes found under the authority of the Republic of Nagorno-Karabagh:

"The Court need not solve this issue as, based on the numerous reports and statements presented above, it finds it established that Armenia, through its military presence and the provision of military equipment and expertise, has been significantly involved in the Nagorno-Karabakh conflict from an early date. This military support has been – and continues to be – decisive for the conquest of and continued control over the territories in issue, and the evidence, not least the Agreement, convincingly shows that the Armenian armed forces and the "NKR" are highly integrated."[68]

At this point we must remind that in cases such as the Al-Skeini and Others v. United Kingdom case and the Jaloud v. Netherlands case the Court has found a violation of the Convention although the disputed acts had a legal basis and the loss of life were mainly due to a mistake. Whereas, the Hodjalı Events involved absolutely illegal conduct which constituted the intentional, organized, and systematic violation of the right to life. Moreover, in Hodjalı those individual's whose liberty had been restricted arbitrarily and illegally, in the sense that they practically been taken hostage – also in clear violation of the prohibition on hostage taking under the law of armed conflicts – were under the authority of Armenian armed forces. The violations of the right to life took place due to Armenian state officials use of illegal public power in the occupied region. Moreover, we must remind that whether the massacre was carried out by regular soldiers or irregular armed elements bears no importance and effect with regards to the state's responsibility.

[66] Milanovic, Marko, "Al-Skeini and Al-Jedda in Strasbourg", EJIL, Vol. 23(1), 2012, p. 122.
[67] See: Loizidou v. Turkey (Preliminary Objections), p. 24.
[68] Chiragov and Others v. Armenia, § 180.

What is important is that the conduct of these individuals is attributable to the state, which is a well-established rule under international law implementations and international jurisprudence[69].

What is more horrifying at this point is that in light of the conduct and declarations of Armenian political leadership, high level office holders and public opinion leaders concerning what happened at Hodjalı, it can be clearly observed that these unimaginable crimes were not only embraced, they were also protected. For example, the declarations of Serj Sarkisyan who was one of the military leaders of the period and who later on also held high offices such as the Minister of Internal Affairs and National Security (1996-1999), Minister of Defense (2000-2007), Prime Minister (2007-2008, 2018) and President of Armenia (2008-2018) leaves no doubt with regards to the issue of attribution:

"Before Khojali, the Azerbaijanis thought that they were joking with us, they thought that the Armenians were people who could not raise their hand against the civilian population. We were able to break that [stereotype]. And that's what happened."[70]

Sarkisyan's gruesome confession which proves that the clearly evidenced belligerent acts against civilians were in fact the result of a deliberate policy of vengeance[71]. This and similar declarations should be considered from the perspective of the theory of unilateral acts of state under international law. It has long been accepted in international jurisprudence, as well as by scholars that "unilateral declarations of States capable of creating legal obligations" constitute a source of international law[72]. In fact, the International Law Commission took upon the question whether unilateral acts created obligations for states in 1997 and adopted the Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations in 2006[73]. Under Article 4 of the document:

[69] See: UN General Assembly, Responsibility of States for Internationally Wrongful Acts, Resolution adopted by the General Assembly, 8 January 2008, A/RES/62/61, Art. 4-11; Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), International Court of Justice, Merits, ICJ, 27 June 1986, I.C.J. Report 1986, § 109 ff.; also see: Ortega, Elena Laura Álvarez, "The Attribution of International Responsibility to a State for Conduct of Private Individuals within the Territory of Another State", Revista Para El Analisis del Derecho (InDret), 1 / 2015.

[70] De Waal, Thomas, Black Garden-Armenia and Azerbaijan through Peace and War, p. 172.

[71] According to Thomas De Wall: "Sarkisian's account throws a different light on the worst massacre of the Karabakh war, suggesting that the killings may, at least in part, have been a deliberate act of mass killing as intimidation". Ibid. Likewise, Markar Melonian, brother of Monte Melkonian who was one of the Armenian commanders during the Nagorno Karabagh War and was also within the leadership of the ASALA terrorist organization clearly expresses that Hodjalı was not only a "strategic target" but at the same time it constituted an "act of vengeance". See: Melkonian, Markar, My Brother's Road: An American's Fateful Journey to Armenia, I.B. Tauris, London, 2007, pp. 213-214

[72] See: Pirim, Ceren Zeynep, "Uluslararası Hukukta Tek Taraflı Sözvermenin Bağlayıcı Niteliği", Bahçeşehir Üniversitesi Hukuk Fakültesi Kazancı Hakemli Hukuk Dergisi, 2013, Cilt 9, Sayı: 105-106, pp. 117-144.

[73] Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto Text adopted by the International Law Commission at its Fifty-eighth session, in 2006, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/61/10).

"A unilateral declaration binds the State internationally only if it is made by an authority vested with the power to do so. By virtue of their functions, heads of State, heads of Government and ministers for foreign affairs are competent to formulate such declarations. Other persons representing the State in specified areas may be authorized to bind it, through their declarations, in areas falling within their competence."

According to this principle, having held the office of president and prime minister of Armenia, the binding nature of the declarations of Sarkisyan is self-evident. In addition, it can also be accepted that as Sarkisyan was a commander at the time of the Khojaly events, his declarations would bound the state. Because, according to Article 4 of the Guiding Principles, declarations on their acts and functions from commanders of official or unofficial armed forces of a state are declarations within their competence. It must thus be accepted that in light of the word and spirit of Article 4 of the Guiding Principles, they must be considered binding for the state. While under classic international law the declarations of heads of state, heads of government and ministers of foreign affairs were considered binding, today this principle has extended to other individuals within their domain of competence. In the 2006 Armed Activities on the Territory of the Congo case International Court of Justice stated that:

"The Court notes, however, that with increasing frequency in modern international relations other persons representing a State in specific fields may be authorized by the State to bind it by their statements in respect of matters falling within their purview"[74]

It must not be forgotten that while the binding force of declarations of state officials was being discussed, the abovementioned principles were considered within an "ordinary" situation such as within the framework of committing the state to an obligation in a legal matter. It might even not be very meaningful to discuss the binding nature and power of attribution of such declarations when it comes to an "extraordinary" declaration such as the admission of committing a massacre. On this subject, the European Court of Human Rights distinguishes between the declarations of state officials that are favourable to the state and those that are unfavourable: The Court "[…] [treats] with caution statements given by government ministers or other high officials, since they would tend to be in favour of the government that they represent or represented. However, statements from high-ranking officials, even former ministers and officials, who have played a central role in the dispute in question are of particular evidentiary value when they acknowledge facts or conduct that place the authorities in an unfavourable light"[75]. Consequently, declarations that praise or embrace a committed crime, by itself could be interpreted as a confession and admission of guilt.
Finally, it must be reminded that in fact the Court has recently put an end to the discussion and possible objections concerning attribution of responsibility with regards to the Hodjalı Events.

[74] Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of Congo v. Rwanda), International Court of Justice, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p. 27 § 47.
[75] See: Chiragov and Others v. Armenia, § 177. The Court cites the Nicaragua judgment of the International Court of Justice, see: Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), § 64.

It must not be forgotten that in the Chiragov and Others v. Armenia case, concerning all forms of jurisdictional objections coming from Armenia the Court held that in relation to the Nagorno-Karabagh War, the acts of the Republic of Nagorno-Karabagh were attributable to Armenia:

"186. All of the above reveals that Armenia, from the early days of the Nagorno-Karabakh conflict, has had a significant and decisive influence over the "NKR", that the two entities are highly integrated in virtually all important matters and that this situation persists to this day. In other words, the "NKR" and its administration survive by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercises effective control over Nagorno-Karabakh and the surrounding territories, including the district of Lachin. The matters complained of therefore come within the jurisdiction of Armenia for the purposes of Article 1 of the Convention.
187. The Government's objection concerning the jurisdiction of Armenia over Nagorno-Karabakh and the surrounding territories is therefore dismissed."[76]

B. The Ratione Temporis Applicability of the European Convention on Human Rights to the Hodjalı Events

Having dealt with the jurisdiction issue, the second matter to discuss concerning Armenia's duty to investigate within the context of individuals who lost their life or who disappeared during the Hodjalı Events is the ratione temporis applicability of the European Convention on Human Rights. It is highly probable that Armenia's counsels would base their defense, both at the domestic law level and before the European Court of Human Rights, on a ratione temporis objection. That is, taking into consideration that Armenia became party to the Convention only in 2002, they would argue that the Court would have jurisdiction to look at a case concerning crimes committed in 1992. However, such an objection would be ineffective in the face of the Court's established jurisprudence. Since the Court clearly distinguishes between the obligation to protect the right to life and the duty to investigate violation of this right.
Truly, the duty to investigate facts that happened before the "critical date" in which the state became party to the Convention (or recognized the right of individual application in the period before the 11th Protocol) may sometimes arise with the ratification of the Convention and the Court may decide that while it does not possess ratione temporis jurisdiction to look at events that took place within an armed conflict which happened before the critical date, the state would still be under the duty to investigate after the critical date serious violations of human rights that were committed during the armed conflict[77]. In other words, even if a violation of the right to life attributable to the state took place before that state became party to the Convention, the duty to investigate that violation gains validity once the state has become party to the Convention.

[76] Chiragov and Others v. Armenia, §§ 186-187.
[77] Coussırat-Coustère, Vincent, "La Cour Européenne des Droits de l'Homme et le Droit International Humanitaire: Impressions de Lecture", Vers un Nouvel Ordre Juridique - l'Humanitaire? Mélanges En L'honneur De Patricia Buirette, LGDJ, Paris, 2016, s. 101.

At this point, we see it beneficial to directly share the relevant parts of the Court's judgement in the Šilih v. Slovenia Case[78] since here the Court not only provides a synthesis of its previous jurisprudence on the subject matter[79], but this judgment will form a fundamental reference for Court's following jurisprudence[80]:

"140. The Court reiterates that the provisions of the Convention do not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the Convention with respect to that Party or, as the case may be, prior to the entry into force of Protocol No. 11, before the date on which the respondent Party recognized the right of individual petition, when this recognition was still optional ("the critical date"). This is an established principle in the Court's case-law […] based on the general rule of international law embodied in Article 28 of the Vienna Convention […]

141. The Court further notes that, in applying the principle of non-retroactivity, it has been prepared in previous cases to have some regard to facts which occurred prior to the critical date because of their causal connection with subsequent facts which form the sole basis of the complaint and of the Court's examination. […]

148. The Court has dealt with a number of cases where the facts concerning the substantive aspect of Article 2 or 3 fell outside the period under the Court's competence while the facts concerning the related procedural aspect, that is the subsequent proceedings, fell at least partly within that period.

153. The Court recalls that procedural obligations have been implied in varying contexts under the Convention […] where this has been perceived as necessary to ensure that the rights guaranteed under the Convention are not theoretical or illusory, but practical and effective […] In particular, the Court has interpreted Articles 2 and 3 of the Convention, having regard to the fundamental character of these rights, as containing a procedural obligation to carry out an effective investigation into alleged breaches of the substantive limb of these provisions […]

154. The Court notes the State's obligation to carry out an effective investigation or to provide for the possibility of bringing civil or criminal proceedings as may be appropriate to the case […] has in the Court's case-law been considered as an obligation inherent in Article 2 which requires, inter alia, that the right to life be "protected by law". Although the failure to comply with such an obligation may have consequences for the right protected under Article 13, the procedural obligation of Article 2 is seen as a distinct obligation […]

[78] Šilih v. Slovenia, ECHR, Grand Chamber, No. 71463/01, 9 April 2009.
[79] For previous jurisprudence see: Šilih v. Slovenia, § 153.
[80] For example see: Şandru v. Romania, ECHR, No. 22465/03, 10 May 2010, § 57; Varnava and Others v. Turkey, § 138; Jelić v. Croatia, ECHR, No. 57856/11, 12 June 2014, § 57.

156. The Court observes that the procedural obligation has not been considered dependent on whether the State is ultimately found to be responsible for the death. When an intentional taking of life is alleged, the mere fact that the authorities are informed that a death had taken place gives rise ipso facto to an obligation under Article 2 to carry out an effective official investigation […] In cases where the death was caused unintentionally and in which the procedural obligation is applicable, this obligation may come into play upon the institution of proceedings by the deceased's relatives […]

157. Moreover, while it is normally death in suspicious circumstances that triggers the procedural obligation under Article 2, this obligation binds the State throughout the period in which the authorities can reasonably be expected to take measures with an aim to elucidate the circumstances of death and establish responsibility for it […]

158. The Court also attaches weight to the fact that it has consistently examined the question of procedural obligations under Article 2 separately from the question of compliance with the substantive obligation and, where appropriate, has found a separate violation of Article 2 on that account […] In some cases compliance with the procedural obligation under Article 2 has even been made the subject of a separate vote on admissibility […]What is more, on several occasions a breach of a procedural obligation under Article 2 has been alleged in the absence of any complaint as to the substantive aspect of Article 2 […]

159. Against this background, the Court concludes that the procedural obligation to carry out an effective investigation under Article 2 has evolved into a separate and autonomous duty. Although it is triggered by the acts concerning the substantive aspects of Article 2 it can give rise to a finding of a separate and independent "interference" within the meaning of the Blečić judgment […] In this sense it can be considered to be a detachable obligation arising out of Article 2 capable of binding the State even when the death took place before the critical date.

160. This approach finds support also in the jurisprudence of the United Nations Human Rights Committee and, in particular, of the Inter-American Court of Human Rights, which, though under different provisions, accepted jurisdiction ratione temporis over the procedural complaints relating to deaths which had taken place outside their temporal jurisdiction […] [81]

163. Second, there must exist a genuine connection between the death and the entry into force of the Convention in respect of the respondent State for the procedural obligations imposed by Article 2 to come into effect.

Thus a significant proportion of the procedural steps required by this provision – which include not only an effective investigation into the death of the person concerned but also the institution of appropriate proceedings for the purpose of determining the cause of the death and holding those responsible to account (Vo, cited above, § 89) – will have been or ought to have been carried out after the critical date.

[81] For the cited judgment and relevant international law practice see: Šilih v. Slovenia, §§ 111-118.

However, the Court would not exclude that in certain circumstances the connection could also be based on the need to ensure that the guarantees and the underlying values of the Convention are protected in a real and effective manner."[82]

At this point we should remember that unlike the case Šilih v. Slovenia, the Hodjalı Events do not involve an unexpected death in a state's territory, but mass killings and disappearances directly attributable to a state in connection to an armed conflict. To this respect, the parameters are different. In the latter, the issue of revealing the truth is not a matter of determining where a crime was committed but it is about the identification and punishment of the perpetrators of an already established crime. In this regard, in considering the facts of the Hodjalı Events it is clear the state's responsibility is of a much more serious character.
There are naturally certain limitations to the retroactive application of the obligation to investigate deprivations, as determined by the Court. In the Janowiec and Others v. Russia case concerning the mass slaughter of Polish prisoners of war by the Soviet armed forces, the Court has determined that: "Like the Chamber, the Grand Chamber considers the reference to the underlying values of the Convention to mean that the required connection may be found to exist if the triggering event was of a larger dimension than an ordinary criminal offence and amounted to the negation of the very foundations of the Convention". After emphasizing that this "[…] would be the case with serious crimes under international law, such as war crimes, genocide or crimes against humanity", the Court warns that: "[…] the "Convention values" clause cannot be applied to events which occurred prior to the adoption of the Convention, on 4 November 1950, for it was only then that the Convention began its existence as an human rights treaty. Hence, a Contracting Party cannot be held responsible under the Convention for not investigating even the most serious crimes under international law if they predate the Convention". Hence, according to the Court, in that specific case "the events that might have triggered the obligation to investigate under Article 2 took place in early 1940, that is, more than ten years before the Convention came into existence. The Court therefore upholds the Chamber's finding that there were no elements capable of providing a bridge from the distant past into the recent post entry into force period"[83].
When the aforementioned jurisprudential principles are applied to the Hodjalı Events we can clearly state the following observations: The date in which the Events took place is 1992, that is after the Convention came into existence in 1950, hence the Convention had already been in force for forty two years. While Armenia became party to the Convention in 2002, according to the Court's jurisprudence, there is no difficulty to establish the "genuine link" necessary for the duty to investigate deprivations of the right to life to apply retroactively. In the period from the events, the declarations of Armenian officials admitting the crimes prove that this link has been deliberately kept alive. Considering the degree with regards to the quantity and quality of the violations of the right to life reached in the Hodjalı Events, by all manner of means, the duty to investigate "[…]binds the State throughout the period in which the authorities can reasonably be expected to take measures with an aim to elucidate the circumstances of death and establish responsibility for it"[84].

[82] Idem, §163.
[83] Janowiec and Others v. Russia, ECHR, Grand Chamber, No. 55508/07 ve 29520/09, 21 October 2013, §§ 150-151.
[84] Šilih v. Slovenia, § 157.

Finally, when discussing the ratione temporis jurisdiction of the Court with regards to the retroactive application of the duty to investigate a distinction must be dealt with: The retroactive application of the duty to investigate from the "ciritical date" and a state incurring responsibility due to a "continuing violation" which began before the "critical date" are different concepts[85]. The concept of continuing violation adopted by the Court in its relevant jurisprudence concerns a violation which began before the state became party to the Convention (or recognized the right of individual application in the period before the 11th Protocol), that is a violation which took place before the critical date (to a large extent concerning property rights) which in turn gives rise to a state's responsibility after the critical date. In this case, the state is held responsible from the critical date onwards and the fact that the violation began before the critical date does not save the state from the Courts ratione temporis jurisdiction. The concept of retroactive application of the duty to investigate, on the other hand, is completely different with regards to its characteristics and consequences. Here, while the violation took place before the critical date, once a judicial process is initiated after the critical date the requirement to conduct an investigation that extends to before the critical date comes into effect. When a continuing violation is concerned, the state is anyway responsible for violations that continue after the critical date. As a matter of fact, even if the concerned state ends the violation at one point, it will still be responsible for the period in which the violation continued after the critical date. However, in the retroactive application of the duty to investigate, the state may in theory be freed from responsibility. If national judicial organs conduct an effective and diligent investigation which elucidates the truth and in case of a crime the perpetrators are prosecuted and punished, then the state would have fulfilled its duty. With regards to the Hodjalı Events such a development could only be characterized as an "hypothetical". Since, until today not only has no effort been made to enlighten the crimes that took place during the Hodjalı Events and prosecute and punish the perpetrators, to the contrary, a discourse openly embracing and in fact praising these crimes has been widely adopted.

III. The Procedure to Evoke Armenia's Duty to Investigate Crimes Committed During the Hodjalı Events Before the European Court of Human Rights

Not finding and prosecuting in a speedy and systematic manner the criminals responsible for the taking of 1275 hostages, killing of 613 individuals and the disappearance of 150 individuals during the Hodjalı Events constitutes without a doubt clear and serious violations of the right to life. Since in light of the principles elaborated above, Armenian judicial organs should have by themselves initiated investigations with regards to both those individuals who died and those who disappeared. Consequently, if the next of kin of those killed, taken hostage or disappeared apply to Armenian authorities and demand an investigation in to the violations of the right to life, conducting an effective investigation and obtaining definitive information about the fate of these individuals would be a legal obligation. If a convincing explanation is not provided for the disappearance of any of the individuals who have not been heard from since 1992, under the Court's jurisprudence, a "presumption of death" would be valid and the state would be held responsible for the violation of the right to life.

[85] For the concept of continuing violation in the jurisprudence of the Court see: Van Pachtenbeke, Andy / Haeck, Yves, "From De Becker to Varnava: The State of Continuing Situations in the Strasbourg Case Law", European Human Rights Law Review, V. 1, 2010, ss. 47 vd.; Buyse, Antoine, "A Lifeline in Time – Non-retroactivity and Continuing Violations under the ECHR", Nordic Journal of International La, V. 75, 2006, pp. 63 ff.

However, in order to evoke this responsibility before the Court, in other words, to bring an individual application to the Court on this subject matter, it is clear that the procedural conditions foreseen under the European Convention on Human Rights must be satisfied. In this context, the applicants must possess the status of victim within the framework foreseen under the Convention and they must have finalized their application within six months after having exhausted all domestic remedies in Armenia.

A. The Victim Status of the Applicants

Article 34 of the European Convention on Human Rights has foreseen the rights of individual application to the European Court of Human Rights for allegations of violations of the rights and freedoms stipulated under the Convention and its additional protocols to any person, non-governmental organization or group of individuals[86]. In the Court's practice the term victim is interpreted independently and autonomously from domestic laws[87] and the Court reiterates that in the interpretation of term extreme formalism should be avoided[88].

The general rule on individual applications to the Court is that, obviously, the applicant must have been directly affected by the complained act[89]. In other words, an individual application concerning the violation of a right guaranteed by the Convention must be by an individual or on behalf of an individual who has lost a right due to the violation[90]. However, this general rule is not without exception: The Court interprets the term victim under Article 34 as not limited to an individual or individuals who allege damages due to the violation of a right guaranteed under the Convention. According to the well-established jurisprudence of the Court, in certain circumstances, the term victim under Article 34 covers individuals who have been indirectly damaged due to the violation or who have a valid and personal relationship with regards to having the violation terminated[91]. This situation has especially come up in conjunction with those individuals who were alleged to have been the direct victim of a violation of their rights and yet who had died before an application. This is due to the nature of allegedly violated right and born out of the necessity for the effective implementation of the Convention's most important provisions[92].

[86] European Convention on Human Rights, Article 34: "The Court may receive applications from any person, non-governmental organization 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."

[87] Vallianatos and Others v. Greece, ECHR, Grand Chamber, No. 29381/09 and 32684/09, 7 November 2013, § 47.

[88] Gorraiz Lizzarraga and Others v. Spain, ECHR, No. 62543/00, 27 April 2004; § 38; Stukus and Others v. Poland, ECHR, No. 12534/03, 1 April 2008, § 35; Zietal v. Poland, ECHR, No. 64972/01, 12 May 2009; §§ 54-59.

[89] Burden v. United Kingdım, ECHR, Grand Chamber, No. 13378/05, 29April 2008, § 33; Lambert and Others v. France, ECHR, Grand Chamber, No. 46043/14, 5 June 2015, § 89.

[90] Micallef v. Malta, ECHR, Grand Chamber, No. 17056/06, 15 October 2009, § 45; Karner v. Austria, ECHR, No. 40016/98, 24 July 2003, § 25; Aksu v. Turkey, ECHR, Grand Chamber, No. 4149/04 and 41029/04, 15 March 2012, § 51.

[91] Sarl du Parc d'Activités de Blotzheim v. France, ECHR, No. 72377/01, 11 July 2006, § 20; Defalque v. Belgium, ECHR, No. 377330/02, 20 April 2006, § 46; Tourkiki Enosi Xanthis and Others v. Greece, ECHR, No. 26698/05, 27 March 2008, § 38.

[92] Fairfield v. United Kingdom (Admissibility), ECHR, No. 24790/04, 8 March 2005.

To this respect, especially in examples where the direct victim has died or disappeared under the responsibility of the state, even if they are not the legal inheritors, the right of the next of kin to apply to the Court has been recognized in jurisprudence[93]. In short, by adopting the concept of indirect victim, the Court has accepted that the next of kin of the direct victim of the violation may bring forward violations of the right to life[94]. In this context, the concept of next of kin in the sense of indirect victim is used as covering spouses, partners outside of marriage, parents, children, siblings and there are examples of cases in which cousins have also been considered within this framework[95]. It has been accepted that, in conjunction with allegations of violations under Article 2, these individuals can also apply on behalf of the direct victim under Articles 3, 5 and 6[96].

On the other hand, when serious violations of human rights are concerned, the next of kin of the individual who died due to such a violation, beyond being considered an indirect victim, may also evolve into a direct victim in the sense of Article 3 of the Convention in connection with the suffering which they have had to endure caused by the violation[97]. However, for this evolution to take place and for the determination of the right to apply to the Court of the next of kin of the victim of a violation of the right to life as a direct victim certain criteria are taken into consideration such as the closeness of the family ties, the subjective circumstances defining the relationship between the individuals, the scope of being witness to the violation and to what extent the next of king has shown initiative in order to be informed on the fate of the victim[98].

In light of the explanations above, it can be seen that the legal inheritors of those who have died or disappeared during the Hodjalı Events or those next of kin who possess legal interest may bring an individual application to the Court alleging the violation of the right to life and they may also, if the criteria are satisfied, realize an individual application on their own behalf as direct victims.

B. Exhaustion of Domestic Remedies in Armenia

According to Article 35 of the Convention, in order to bring an individual application to the Court, first of all, the domestic remedies of the state alleged to have committed a violation must be exhausted[99]. Consequently, before committing to an individual application to the Court the next of kin of the victims of the Hodjalı Events must first of all exhaust the possible and effective domestic remedies in Armenia.

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[93] Varnava and Others v. Turkey, § 112; Van Colle v. United Kingdom, ECHR, No. 7678/09, 13 November 2012, § 86; Tsalikidis and Others v. Greece, ECHR, No. 73974/14, 16 November 2017, § 64; Khayrullina v. Russia, ECHR, No. 29729/09, 19 December 2017, §§ 91-92 and §§ 100-107; Magnitskiy and Others v. Russia, No. 32631/09 and 53799/12, 27 August 2019, §§ 278-279; Vallianatos and Others v. Greece, § 47.

[94] Van Colle v. United Kingdom, §86; Tsalikidis and Others v. Greece, § 64.

[95] For the relevant jurisprudence see: European Court of Human Rights, Practical Guide on Admissibility Criteria, Council of Europe, 31 August 2019, p. 11, § 22.

[96] See: Khayrullina v. Russia, ECHR, No. 29729/09, 19 December 2017, §§ 91-92 and §§100-107; Magnitsky and Others v. Russia, §§ 278-279.

[97] Janowiec and Others v. Russia, ECHR, Grand Chamber, No. 55508/07 and 29520/09, 21 October 2013, §§ 177-181; Selami and Others v. Former Yugoslav Republic of Macedonia, ECHR, No. 78241/13, 1 March 2018, §§ 54-56.

[98] Janowiec and Others v. Russia, , § 177; Selami and Others v. Former Yugoslav Republic of Macedonia, § 54.

[99] European Convention on Human Rights, Article 35: "1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken […]".

To this respect, what the next of kin should do is to bring a criminal complaint concerning those killed by way of assigning power of attorney to a lawyer and disappeared in 1992 under Armenian law and thus initiate the criminal prosecution procedure before Armenian judicial organs.
Faced with such an application, Armenian judicial organs may not refuse these applications relying on statute of limitations, in the sense of based on the time that has passed since the Hodjalı Events. Under international law, the massacre committed during the Hodjalı Events constitute the crime of genocide and statute of limitations are not applicable to crimes of genocide.
Truly, according to the definition of genocide under Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide:

"In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group."

The term "in whole or in part" which appears in the Convention does not mean that the targeted group be killed as a whole everywhere in the world. Killed individuals are an element of the targeted group and by killing them a larger purpose is tried to be satisfied[100]. For example, in the Krstic case the prosecutor of the International Criminal Tribunal for the Former Yugoslavia has characterized the killing of 7475 Bosnian Muslim males, both quantitively and qualitatively, as the destruction of a substantial part of a group which in total numbered around 38.000 to 42.000[101]. In its judgment to the Brdjanin case the Court has considered the extent of the actual destruction, the existence of a genocidal plan or policy, the perpetration and / or repetition of other destructive or discriminatory acts committed as part of the same pattern of conduct as indirect evidence of the specific intent to commit genocide[102]. In the Kayishema and Ruzindana case the International Tribunal for Ruanda has considered it sufficient for a noteworthy amount of group members to have been targeted for belonging to the group was seen as sufficient for the formation of the crime of genocide[103]. When these criteria, also supported by many other judgements, are applied to the Hodjalı Events, it can be seen that the victims were massacred for only being Azeri, that is "due to their national and ethnic characteristics". Then again, in Hodjalı and generally in Nagorno-Karabagh, the acts against Azeris carry a troublesome resemblance to the "ethnic cleansing" program executed in Bosnia-Herzegovina.

[100] Töner Şen, Semin, Uluslararası Hukukta Soykırım, Etnik Temizli ve Saldırı, XII Levha Yayıncılık, İstanbul, 2010, p. 94.
[101] See: Prosecutor v. Radislav Krstic (Trial Chamber), ICTY, IT-98-33-A, 2 August 2001, §590-592.
[102] See: Prosecutor v. Radoslav Brdjanin (Trial Chamber), ICTY, IT-99-36-T, 1 September 2004.
[103] See: Prosecutor v. Clément Kayishema and Obed Ruzindana (Trial Chamber), ICTR, ICTR-95-1-T, 21 May 1999, §97.

The concept of pattern of conduct constituting evidence of the existence of a genocidal plan or policy developed by the International Criminal Tribunal for the Former Yugoslavia is also meaningful with regards to the the systematic conduct that unfolded in Nagorno-Karabagh. Within this framework, in our judgement, the crimes that took place during the Hodjalı Events clearly constitute the crime of genocide and thus any form of statute of limitations is inapplicable. Hence, Armenian judicial organs should prosecute these crimes without applying any statute of limitation and if not, the Court would not accept claims that these crimes were subject to statute of limitations.
On the other hand, even if those crimes committed in Hodjalı were to be characterized as crimes against humanity or war crimes rather than the crime of genocide, the above conclusion concerning the non-applicability of statute of limitations would still be valid. Because, under Article 1 of the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity to which Armenia is a party of and which has reached the level of customary international law[104]:

"No statutory limitation shall apply to the following crimes, irrespective of the date of their commission:
(a) War crimes as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, particularly the "grave breaches" enumerated in the Geneva Conventions of 12 August 1949 for the protection of war victims;
(b) Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, eviction by armed attack or occupation and inhuman acts resulting from the policy of apartheid , and the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, even if such acts do not constitute a violation of the domestic law of the country in which they were committed."

Today, beyond treaty law, the principle that statute of limitations cannot be applied to criminal responsibility born from war crimes and crimes against humanity is considered as a part of customary law[105]. The jurisprudence of the European Court of Human Rights on this issue is in line with this rule of international law and does not allow for statute of limitation objections for these two types of crime. In fact, while developing its jurisprudence on the subject matter the Court has made an ethical choice: When rules of form such as statute of limitations and superior values of humanity come into conflict, the Court leans heavily in favor of the latter. As expressed by the Court in the Aslakhonova and Others v. Russia case:

[104] See: Yamaner, Melike Batur, Öktem, Akif Emre, "Imprescriptibilité des crimes de guerre : réflexions à partir d'un casconcernant la Turquie", L'Homme dans la Société Internationale: Mélanges en hommage au Professeur Paul Tavernier, Bruylant, Bruxelles, 2013, p. 1181.
[105] See: HENCKAERTS Jean Marie, DOSWALD-BECK Louise. çev. Emre Öktem, Melike Batur Yamaner, Dolunay Özbek, Bleda R. Kurtdarcan, Mehmet Cengiz Uzun, Abdullah Kaya, "Uluslararası İnsancıl Teamül (Örf-Adet) Hukuku", Uluslararası Kızılhaç Komitesi, Galatasaray Üniversitesi Hukuk Fakültesi Yayınları: 66, 2005, pp. 160 ff..

"Bearing in mind the seriousness of the crimes, the large number of persons affected and the relevant legal standards applicable to such situations in modern-day democracies, the Court finds that the termination of pending investigations into abductions solely on the grounds that the time-limit has expired is contrary to the obligations under Article 2 of the Convention […] The Court also notes that there is little ground to be overly prescriptive as regards the possibility of an obligation to investigate unlawful killings arising many years after the events, since the public interest in obtaining the prosecution and conviction of perpetrators is firmly recognized, particularly in the context of war crimes and crimes against humanity."[106]

Moreover, while exploring Armenia's domestic law one comes across provisions that in fact clearly stipulate that statute of limitations may not be claimed with regards to the crimes committed during the Hodjalı Events. Article 75 paragraph 6 of the Armenian Criminal Code which regulates statute of limitations foresees that such limitations are not to be applied in case of crimes against peace and human security. Within this context, provisions of the Code on certain crimes such as the use of forbidden methods of warfare (Art. 387), grave breaches of international humanitarian law during armed conflicts (Art. 390), failure to act or give unlawful orders during armed conflict (Art. 391) and genocide (Art. 393) have been excluded from the rules on statute of limitations[107].
In this context, under the norms of international law which have been explicitly accepted by Armenia and thus binds it, and regardless of the date of Armenia's ratification of the Convention, the duty to investigate the crime of genocide and crimes against humanity always endures. And according to the Court's jurisprudence, this duty is to be considered independent from the substantial obligation on the protection of the right to life and its violation is to be considered independently. At this point we must remind that the jurisprudence of the Court distinguishes the obligation to protect the right to life and the duty to investigate violations of the right to life. Consequently, if Armenian prosecutors decide that there are no grounds for legal action or if Armenian courts refrain from adjudicating such a case, these acts would by themselves constitute a violation of the right to life and entail Armenia's responsibility.
If we are to speculate on the approach that Armenian judicial organs might adopt once the next of kin of the victims bring a criminal complaint, we can elaborate three scenarios:

(a) The possibility that Armenian judicial organs decide that there are no grounds for legal action, or they remain silent / unresponsive: In considering the political background, this would be the most probable scenario. In such a case, once an applicant's complaint is openly refused or authorities remain silent then all domestic remedies must be exhausted. If a positive result cannot be obtained upon applying to available remedies, it would be clear that the rule on exhaustion of domestic remedies foreseen under Article 35 would have been satisfied and it would be possible to file an individual application with the European Court of Human Rights in due time.

[106] Aslakhanova and Others v. Russia, § 237; also see: Benzer and Others v. Turkey, ECHR, No. 23502/06, 12 November 2013, § 129.
[107] The authors have had to rely upon a non-official online translation of the law. See: <https://www.legislationline .org/documents/action/popup/id/8872/preview>.

(b) The possibility that Armenian judicial organs accept the criminal complaint but do not satisfy the conditions of the effective local remedy requirement: There is a weak possibility that upon a criminal complaint Armenian judicial organs could begin the necessary judicial process, however, and probably, they would attempt to prevent the disclosure of truth and prosecution of those responsible by way of prolonging legal procedures. Once the reasonable time requirement foreseen under the right to a fair trial under Article 6 of the Convention[108] is surpassed, the applicant could apply to the Court without necessarily waiting for the termination of domestic law procedures, based on the fact there lacks an effective local remedy[109]. Another way Armenian judicial organs could try to prevent a positive outcome for the applicant is by way of discontinuing the trial on the justification that it is impossible to reach evidence and witnesses. However, providing impunity to the clearly identified crimes and its well-known perpetrators in such a case where there is in fact no need for any further evidence then the explicit confessions of Armenian leadership would not only constitute a violation of the substantial obligations deriving from the right to life but would also correspond to the violation of the procedural obligation to conduct an "effective investigation" and thus entail Armenia's responsibility.

(c) The possibility that Armenian judicial organs realize an effective investigation and prosecute and punish the perpetrators of those who committed crimes during the Hodjalı Events: This scenario which is practically impossible to come true has only been mentioned in order to exhaust all possibilities. The highest state officials have already confessed to having participated in the massacre. It is quite probable that the soldiers who executed the massacre are today some of the most high-ranking officers in the armed forces of the state. Consequently, the realization of an effective investigation and the prosecution of some of the most important civilian and military cadres of the Armenian state on charge of murder is not possible under normal circumstances. A prosecution of a number of low-ranking officers in a show trial, on the other hand, would not satisfy the effective investigation criteria and would allow for an individual application to the Court.

[108] European Convention on Human Rights, Article 6 (Right to a Fair Trial):
"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
(b) to have adequate time and facilities for the preparation of his defence;
(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."
[109] For further information on the right to have a speedy trial within the terms of the right to a fair trial in light of the European Court of Human Rights' jurisprudence see: Roagna, Ivana, The Right to Trial within Reasonable Time under Article 6 ECHR, Council of Europe, 2018.

Whichever scenario plays out, a very sensitive legal strategy must be followed during the legal procedures in Armenia which takes all possibilities into account. Considering that the matter would and could not be resolved at the national level, it is possible to say that in the end the road will lead to Strasbourg. And once that road is taken, in light of the Court's standing jurisprudence, wining the case at Strasbourg is highly probable.
In addition, if the applicants are willing to take on the risk of the Armenian government's objection on non-exhaustion of local remedies, we must not ignore the possibility of directly applying to the Court without engaging Armenian judicial organs at all. In fact, in the Chiragov and Others v. Armenia case, Armenia's refusal to accept that it had jurisdiction in Nagorno-Karabagh and the continuing conflict between Armenia and Azerbaijan lead the Court to come to the conclusion that there did not exist any effective local remedy:

"119. It should also be noted that Armenia has denied that its armed forces or other authorities have been involved in the events giving rise to the complaints in the present case, or that Armenia exercises – or has at any point in time exercised – jurisdiction over Nagorno-Karabakh and the surrounding territories. Given such a denial of involvement or jurisdiction, it would not be reasonable to expect the applicants to bring claims for restitution or compensation before the Armenian courts and authorities. Regard must further be had to the political and general context. As a consequence of the war, virtually all Azerbaijanis have left the disputed territories. No political solution of the conflict has been reached. Rather, the hostile rhetoric between the leaders of Armenia and Azerbaijan appears to have intensified, ceasefire breaches are recurrent and the military build-up in the region has escalated in recent years. In these circumstances, it is not realistic that any possible remedy in the unrecognized "NKR" entity could in practice afford displaced Azerbaijanis effective redress.
120. In these circumstances, the Court considers that the Government have failed to discharge the burden of proving the availability to the applicants of a remedy capable of providing redress in respect of their Convention complaints and offering reasonable prospects of success. The Government's objection of the non-exhaustion of domestic remedies is therefore dismissed."[110]

Until this point, we have dealt with the issue of bringing the Hodjalı Events before the European Court on Human Rights by way of individual application. Either during this process or independent from it, Azerbaijan may make this issue the subject of an inter-state application against Armenia under Article 33 of the Convention[111]. However, since the central argument of such an application is the violation of the duty to investigate the violation of the right to life, we consider it more appropriate that the next of kin of the victims initiate the process by applying to Armenian judicial organs and only after having failed at that level that they invoke their right to individual application to the Court. Naturally, the involvement of Azerbaijan to the process by way of an inter-state application is always possible.

[110] Chiragov and Others v. Armenia, §§ 119-120.
[111] European Convention on Human Rights, Article 33 (Inter-State Cases): "Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party".

Conclusion

We believe that brining the Hodjalı Events before the European Court of Human rights based on the allegation that the right to life was violated should be considered to be more than a simple legal action, it would correspond to an initiative of historical importance. At this point there is a natural expectation on the recognition of the Hodjalı Events as an act of genocide. We must immediately state that the Court does not have the jurisdiction and function to prosecute the crime of genocide, to identify and prosecute the perpetrators. In fact, the European Convention on Human Rights does not include a specific provision with regards to the crime of genocide. What will be requested from the Court in the context of Hodjalı is the determination of violation of the duty to investigate the massive violations of the right to life protected under Article 2 of the Convention. However, an international court judgment which acknowledges that 613 individuals were exclusively killed and more then a thousand disappeared because of their national / ethnic identity would be a declaration of the crime of genocide, even if that term is not explicitly used. The concussion that such a determination would cause at the international level is self-evident. It is clear that if the issue is brought to the Court it will morph into a gigantesque legal battle and the parties to the case would receive legal aid from various authorities. Consequently, the meticulous and multi-dimensional execution of legal strategy from the onset of the process will be defining with regards to its chance of success.

Moreover, once the case is brought to Strasbourg it will be subject to intense media attention. The information and documents that would be exhibited during trial (including visual material presenting the atrocities) will appear in the Court's case file and will be discussed diligently. The manifestation of these information and documents in the finalized judgment of a highly esteemed international court would present the opportunity to enlighten international public opinion and maybe shatter existing biases on the subject matter. Moreover, these information and documents would become part of international jurisprudence and would constitute a beneficial point of reference with regards to the development of future international policy decisions on taking the matter before other international judicial organs and also aid further strategic initiatives against the ongoing illegal occupation of Azerbaijan's territory[112]. Additionally, once the violation of the right to life has been determined or even while the case is pending the surviving victims of the Hodjalı Events could also bring claims to the Court against Armenia based on the violation of the prohibition of torture (Art. 3) and the right to property (Article 1 of Add. Protocol I to the Convention).

The major aim of taking the Hodjalı Events before the European Court of Human Rights by way of an individual application is, without a doubt, to win the case; that is, a Court judgement ascertaining that the right to life was violated. Considering the Court's well-established jurisprudence, this would be the highly expected and anticipated outcome. However, even if minimal we cannot rule out the possibility of political considerations influencing the process, resulting with the rejection of the case. The strategy to be followed against such a possibility is to confront the Court with is own jurisprudence during the whole process and induce it to reach a decision based on justice, neutrality, and integrity, hence void of all political considerations. A judgement rejecting the application would be in conflict with its own well-establish jurisprudence and equity, it would imply serious contradictions, inconsistencies, and bias and would force the Court to deny its previous jurisprudence.

[112] At the date the original Turkish version of this article was written, Azerbaijan had not yet initiated its successful war of self-defense against Armenia in Nagorno-Karabagh.

Yet even such a negative outcome would honor the applicants, for as the saying goes: “Whoever has lost for this cause is a winner”. Whatever the outcome, the just cause of seeking justice for the victims of the Hodjalı Events would have been won before historical conscience.

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June 26-27, 2021 / Ankara-TURKEY
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ÖZET
Kafkasya, Karadeniz ve Hazar Denizi arasında yer alan, Avrupa ve Asya ile sınır oluşturan coğrafi bölgenin adıdır. Bu bölgede tarih boyunca etnik ve kültürel olarak birbirinden farklı boylar, topluluklar ve milletler yaşamıştır. Bununla birlikte, Kafkasya toplulukları içerisinde Kafkasya ile özdeşleşen tek halk Çerkeslerdir. Çerkesler bölgenin kadim halklarındandır. Bu bölge Ruslar tarafından yüzyıllar boyunca savaşlara ve istilalara uğramıştır. Kafkas halkları bu saldırı ve istila girişimlerine karşı sürekli tarih boyunca direnmiş ve topraklarını savunmak zorunda bırakılmışlardır. Kafkas halkları ve Çerkesler süreklilik arz eden bu savaşlar ve istila girişimleri karşısında, 1860'lı yıllarla beraber sayıca ve mühimmatça kendilerinden oldukça fazla olan Ruslara karşı direnme güçlerini kaybederek sürgüne ya da çalışmanın ortaya koymaya çalışacağı üzere soykırıma tabi tutulmuşlardır. Binlerce yıldır yaşamakta oldukları anayurtlarından sürülerek çıkartılan Çerkesler, insanlık dışı şartlarda gemilere bindirilerek Osmanlı İmparatorluğu'nun Rumeli, Anadolu ve Ortadoğu coğrafyasına yerleştirilmişlerdir. Öyle ki, sürgün esnasında yaşanan olaylar ve çekilen derin acılar kuşaklar boyunca anlatılan sözlü kültürün bir parçası haline gelmiştir. Bu çalışma ile Çerkeslerin ve diğer Kafkas halklarının Çerkeslerin anavatanlarından koparılma nedenleri tarihsel süreç içerisinde ele alınmaktadır. Çalışma kapsamında, soykırıma dönüşen sürgün sonucunda Osmanlı topraklarına gelebilenlerin durumu Osmanlı arşivlerindeki kayıt ve belgelerle ortaya konulmakta ve son olarak bu belgeler ışığında yaşanan sürgünün soykırım olarak nitelendirilmesine ilişkin hukuki değerlendirmelerde bulunulmaktadır.
Anahtar Kelimeler: Kafkasya, Çerkesler, Göç, Sürgün, Osmanlı Arşivleri, Soykırım

CIRCASSIAN GENOCIDE

ABSTRACT
The Caucasus is the name of the geographical region between the Black Sea and the Caspian Sea, bordering Europe and Asia. Throughout history, ethnic and culturally different tribes, communities and nations have lived in this region. However, Circassians are the only people identified with the Caucasus among the Caucasian communities. Circassians are among the ancient people of the region. This region has been subjected to wars and invasions by the Russians for centuries. The Caucasian peoples have always resisted these attacks and invasion attempts throughout history and were forced to defend their lands. In the face of these continuous wars and invasion attempts, the Caucasian peoples and Circassians lost their power to resist the Russians, who were much more numerous and ammunition, and were subjected to exile or genocide as the study would try to demonstrate.

Circassians, who were driven out of their homeland where they lived for thousands of years, were put on ships under inhumane conditions and settled in the Ottoman Empire's Rumelia, Anatolia and Middle East geography. So much so that the events during the exile and the deep suffering have become a part of the verbal culture that has been narrated for generations. In this study, the reasons for the separation of Circassians and other Caucasian peoples from their homeland of Circassians are discussed in the historical process. Within the scope of the study, the situation of those who came to the Ottoman lands as a result of the exile that turned into genocide is revealed with the records and documents in the Ottoman archives and finally, legal evaluations are made regarding the qualification of the exile as genocide in the light of these documents.

Keywords: Caucasus, Circassians, Migration, Exile, Ottoman Archives, Genocide

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A LUTA DAS MÃES DE ACARI POR JUSTIÇA

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ABSTRACT
The present article aims to analyze Acari's Mother acting, a group of women that had their sons and daughters murdered by Rio de Janeiro State Military Police in July 1990. It was born after a slaughter occurred on one site in Magé, county belonged to Baixada Fluminense. Eleven young people who lived in Acari Slum, localized in the North Zone of Rio de Janeiro city, were brutally murdered by a death squad – Horse Runners – and their bodies were clandestinely placed in some places of Magé city, according to the police official investigations and those parallels of mothers. These women, along their pilgrimage for justice and memory of their sons and daughters and for the right to bury them, trigger the institutions from Legislative and Judiciary powers from Rio de Janeiro State: Rio de Janeiro State Assembly, forums and courts. The motivating question is: what is the effectiveness of these spaces for the embodiment of the purpose of these mothers' fight for justice for their sons and daughters?
Keywords: Slaughters – Murders – State victims – Mothers – RJ – Disappeared

Introduction
If someone told such story, I would say that it is a lie, that nobody lives this, but I live it in my body, I know and I don't find words to tell me what it is in my life, how my life transformed itself from this disappearance.
When I was young I dreamt a lot of things, but mainly to have children and I always said that the sin that I wouldn't carry to God it was an abortion. And then I got pregnant young, I didn't have any experience, but I fought, because my mother thought that I had to abort and I didn't do the abort, my mother thought I had to give the child, I created, worked, and then I created a story, an expectancy and then comes someone and take out all this.
Above, we have the excerpt in which Marilene Lima e Souza, one of the leaderships of Mothers of Acari, speaks about her daughter disappearance case in Acari Slaughter. This snatch is in the documentary I fight like mother, whose direction is of Luis Lomenha.
At the night of 26th July, military police who composed a death squad known at the time as Runner Horses, got in a farm in Suruí district, in Magé, murdered and kidnapped eleven young black people. The Runner Horses were commanded by the colonel Emir Campos Larangeira. The group was created to fight drug trafficking.
The young people murdered are: Rosana Souza Santos, 17; Cristiane Souza Leite, 17; Luiz Henrique da Silva Eusébio, 16; Luiz Carlos Vasconcelos de Deus, 32; Hudson de Oliveira Silva, 16; Edson Souza Costa, 16; Antônio Carlos da Silva, 17; Hédio Oliveira do Nascimento, 30; Moisés Santos Cruz, 26; Wallace Oliveira do Nascimento, 17; e Viviane Rocha da Silva, 13.
To list their names it is not a mere detail, once to report what happens with their children, every mother whose child was victim of State violence starts its speech in public events, such as public hearings, courts and activities in slums and in universities with its offspring and his life trajectory. One of Mothers of Manguinhos, Ana Paula Oliveira, went to a activity at Federal Fluminense University in October 2019 – entitled " Memories, Reparation and Rights Seminar" – in which I was present.

In this event, Ana Paula started her report with her son's full name, his age when he has been died, the local of the murder and how happened. Monica Cunha, Rafael da Silva Cunha mother, foundress and coordinator of Tomboy Movement, tells in another activity, also occurred in October 2019 in FAETEC Adolpho Bloch, that the Mothers of Acari trace this route in her explanations. Monica herself, to expose her son walking, cast such elements present in Ana Paula speeches and of Mothers of Acari. Then it concludes that this type of narrative construction is common to all mothers who had their children murdered and/or disappeared.

Three boys have run away upon knowing that have been sought: Moisés, Luiz Carlos e Wallace do Nascimento. Together with them, their friends and girlfriends have been with them to the farm, and Rubens Ramos da Silva, 25 years old, who has been to Magé too and has come back one day before the kidnap.

The farm has belonged to Wallace family and has been localized in End of the Sting Road, described by Nobre (1994) as an " inhospitable region, with few habitations that has stood out on the police news as an area dominated by death squad" (NOBRE, 1994, p. 28).

The Baixada Fluminense is inserted in Metropolitan Region of Rio de Janeiro, and brings together thirteen municipalities according to the public administration, as Rodrigues (2017) makes explicit. The author traces a historical perspective to explain the violence that Baixada lives, exposing the "articulation between organized criminal groups and segments of formal society (traders, entrepreneurs, etc.) and by a strong influence of crime in the local politics existing in this territory (RODRIGUES, 2017, p. 105)", which goes against with the studied case, in which a detective- inspector of Civil Police away because of various processes called João da Silva Bistene – ou Peninha –was a strong suspect of participation in this barbaric crime and was murdered in June 1991 in Ilha do Governador district, evidencing the relation among crime, violence and politics in this area. He was old known of Acari communitu, accused of kidnapping and murder of a mentally handicapped and of a trader (drug dealer Cy de Acari brother). Anonymous reports said that the boys and girls would had been in Peninha farm in Magé until the rescue payment being effected. Other reason to link Peninha to the crime it is the fact of he has been booked six graves in Magé Municipal Cemetery, but the suspection couldn't be put proof because the register box of the burial had been destroyed in an accidental fire.

This is a region known to be chosen by death squads as sede de cemitérios clandestinos, uma vez que ali o Estado não garante direitos civis e sociais, se tornando uma localidade inóspita e repleta de problemas estruturais, como ausência de saneamento básico, esgoto não tratado, calçamento deficiente, difícil acesso por causa de transporte precarizado, dentre outros fatores. Em relação à Chacina de Acari, os corpos dos jovens foram espalhados por lugares do município de Magé, dificultando as buscas do Corpo de Bombeiros e das Polícias Civil e Militar.

Os jovens eram moradores da Favela de Acari e adjacências, por isso o caso ficou conhecido como Chacina de Acari. Deste evento trágico, nasceu o movimento de Mães de Acari, composto pelas mães das onze moças e rapazes assassinados.

A Favela de Acari é um conjunto existente entre os bairros de Acari e Irajá, formado por sete favelas (Parque Proletário Acari, Parmalat, Parque Columbia, Beira Rio, Vila Esperança, Coroado ou Vila Rica e Fim do Mundo), além do entorno do Conjunto Habitacional Amarelinho. Christina Vital (2015) relata que a Favela de Acari surge nos anos 1940 fruto de um Parque Proletário, projetado para a ocupação do território por trabalhadores de uma fábrica de tecidos. Apesar de fechada a fábrica, os moradores ali permaneceram.

Ela é conhecida nacional e internacionalmente por causa de acontecimentos negativos, como tráfico de drogas, a Chacina de Acari e a Feira de Acari, também conhecida como Robauto, pois lá se vendiam produtos roubados.

Segundo dados do Instituto Pereira Passos (IPP) em seu estudo Uma Análise do Índice de Desenvolvimento Humano Municipal para a Cidade do Rio de Janeiro, baseado no último censo brasileiro realizado pelo Instituto Brasileiro de Geografia e Estatística (IBGE) em 2010, a região da Pavuna, na qual o bairro de Acari está circunscrito, apresenta um Índice de Desenvolvimento Humano (IDH) baixíssimo. Esta se posiciona no décimo lugar dentre 11 regiões da cidade do Rio de Janeiro mapeadas por este documento. O censo 1991, o primeiro da série histórica do IBGE, e o mais próximo à data da chacina, mostra que Acari ocupava a 126ª colocação, isto é, último lugar dentre todos os bairros da capital do Estado do Rio de Janeiro.

Os números revelam duas constatações: a primeira é que a cidade do Rio de Janeiro apresenta uma alta desigualdade social, como coloca Cunha (2015). Em 1991, o bairro com IDH mais alto era a Gávea. Em 2010, há uma mudança no diagnóstico do censo, passando a interessar para o IBGE a medição comparativa entre as regiões da cidade e não mais entre os bairros. Vemos, portanto, que a Zona Sul da cidade ocupa a primeira posição do ranking.

A segunda é que o governo do Estado do Rio de Janeiro – historicamente - ingressa nas favelas e periferias com seu aparato policial. A Polícia Militar do Estado do Rio de Janeiro provém da Guarda Imperial, criada pela Família Imperial Portuguesa para capturar negros advindos de diversos países da África e que eram subjugados no Brasil colonial e imperial como força de trabalho escravizada.

As antropólogas Das e Poole (2008) expõem o conceito de "margens". As autoras trabalham com a Antropologia das margens, que segundo elas "ofrece una perspectiva única para comprender al estado, no porque capture prácticas exóticas, sino porque 5 sugiere que dichos márgenes son supuestos necesarios del estado, de la misma forma que la excepción es a la regla" (DAS e POOLE, 2008, p. 20). As estudiosas (2008) entendem que a relação estabelecida entre violência e as funções que ordenam o estado são o ponto chave para se compreender o problema das margens. Elas citam Weber e sua definição de estado: esta entidade detém o monopólio legítimo da violência. Daí se entende porque as margens são impostas pelo estado. Das e Poole estabelecem três usos de "margens", como menciona Feltran (2010): "margens da legalidade oficial; margens da legibilidade estatal (por referência à burocracia escrita); e margens da normalidade (relação entre corpos, lei e disciplina), tendo por referência o biopoder foucaultiano" (FELTRAN, 2010, p. 203). Lendo Das e Poole se apreende o motivo de o Estado brasileiro se utilizar de termos como "marginalizados" para justificar o uso da violência em territórios de favela e periferia.

As Mães de Acari têm consciência que a não elucidação do assassinato de seus filhos tem total relação com sua condição: mulheres, negras, pobres e moradoras de favela. Ou seja, o racismo institucional impede seu acesso à justiça. O Estado trata não só seus filhos como seres matáveis, mas a elas como sujeitos desprezáveis. Como afirma Araújo, o Estado se recusa a "reconhecer o pleno pertencimento à sociedade dos indivíduos em situação de inferioridade social" (ARAÚJO, 2007, p. 89).

Political and economic landscape from 1970 to 1990

Between 1968 e 1973, no auge da ditadura civil-militar, o Brasil passou pelo designado "milagre econômico", durante os governos de Artur Costa e Silva e de Emílio Garrastazu Médici. Dentre os variados fatores, Veloso, Villela e Giambiagi (2008) destacam que a conjuntura econômica externa favorável e as variáveis de política econômica foram pouco determinantes para o "milagre" ocorrer. Já o efeito das reformas institucionais estabelecidas pelo Programa de Ação Econômica do Governo (PAEG) anterior – Castello Branco foram bastante relevantes para o período bem-sucedido economicamente já citado. A década de 1970 apresentou números na economia de crescimento do PIB e de emprego e renda estáveis. No plano econômico, os anos 1980 são conhecidos como a década perdida, por apresentar uma estagnação da economia com alta inflação, desemprego alto e renda baixa, o que se estende aos anos 1990, pois os últimos governos militares e o governo de transição de José Sarney não obtiveram êxito em suas projeções e política econômicas.

Politicamente, o Brasil passava por um período de muita repressão, com prisão em massa de opositores políticos. Entre 1968 e 1973, vivenciamos os Anos de Chumbo, momento em que houve os mais absurdos casos de violação dos direitos humanos da 6 época ditatorial.

Paralelo a isso, nascia nos anos 1970 o Comando Vermelho, facção que até os dias de hoje hegemoniza o tráfico de drogas nas favelas do Rio de Janeiro.

O Brasil do ano de 1990, quando acontece a Chacina de Acari, vivia o período de transição da ditadura civil-militar instalada em 1964 para o período democrático iniciado em 1985. Politicamente, o país inspirava uma instabilidade existente em um momento de transição, com a ascensão de Fernando Collor de Mello ao cargo mais alto do Executivo Nacional no dia 15 de março de 1990. Este era o primeiro presidente eleito por voto popular após 21 anos de regime ditatorial. Collor de Mello não era conhecido pela grande população, mas ao mesmo tempo ofereceu uma esperança em seus eleitores de que estes teriam emprego e renda estabilizados.

Entretanto, no segundo dia de governo, Collor lança o Plano Brasil Novo – o famoso Plano Collor –, colocando em prática as reformas econômicas e planos de estabilização da inflação que prometeu e que são bastante necessários à população, sobretudo a periférica e de comunidades. Sua política econômica não deu certo, pois os brasileiros continuavam sentindo a recessão em seus bolsos. Aliado a isso, o confisco das cadernetas de poupança pelo governo federal frustrou as esperanças iniciais em um novo momento do país, onde a estabilidade seria alcançada.

O país chega em 1990 assolado por uma grave crise político-econômica. Gabriel Feltran (2010) coloca o desemprego estrutural como fundamental para entender o mercado de trabalho popular dos anos 1990, uma vez que o país enfrentava crises de emprego, algo que atinge em cheio a juventude, como a que se encontra em Acari, onde dois dos jovens assassinados e desaparecidos eram acusados de roubo de caminhão de carga, o que faziam porque não tinham emprego formal. Aqui há outra problemática: o roubo de caminhão de carga vinha sendo acobertado pelos policiais do 9º BPM de Rocha Miranda, os quais cobravam propina para acobertar tal crime.

Nobre (1994) destaca que as empresas da cidade do Rio de Janeiro estavam demitindo os trabalhadores, ação fruto da recessão: "os mais atingidos eram os moradores da periferia da cidade" (NOBRE, 1994, p.19). O Rio de Janeiro não está descolado do que acontece no resto do país durante a década em 1990. O Estado do Rio de Janeiro era governado por Moreira Franco no ano da Chacina. No campo da segurança pública, o ex-governador prometeu, ao longo da campanha eleitoral, acabar com a violência do estado em seis meses.

Nesse período 7 (1987-1990), o governo estimulava a repressão de policiais à criminalidade através de prêmios e promoções por bravura.
O tenente-coronel da Polícia Militar, Nilson Pinto Madureira, que trabalhou no 14º BPM, em Bangu, Zona Oeste do Rio, destacou que "esses estímulos levaram a corporação a adotar o critério de que a população era a grande inimiga, sobretudo a de baixa renda" (NOBRE, 1994, p.74). O oficial realizou um estudo – A PM e as tensões sociais através de uma visão da comunidade do Rebu – no qual descreve os resultados da política implementada pelo governo Moreira Franco para expurgar a violência do estado do Rio de Janeiro: os policiais militares entravam nas favelas, arrombavam as casas, o que gerava resistências tanto dos moradores quanto da corporação: as comunidades não colaboravam com a PM, e a PM via o favelado como um criminoso em potencial. O resultado de toda essa repressão foi a não redução da criminalidade e o pânico se alastrando pela população, que exigia policiamento ostensivo.

The antecedents of the case, the fateful day and the immediate unfolding of the tragedy
As chacinas, um tipo específico de violência – as quais são assassinatos coletivos de pessoas – começaram a ocorrer com bastante frequência em 1990, ganhando espaço no noticiário carioca, nacional e internacional.
Seis policiais militares do grupo Cavalos Corredores invadiram a casa de Edméia da Silva Eusébio, 47 anos, no dia 14 de julho de 1990, na favela de Acari. Havia três reféns: Edson Costa; Moisés Cruz; e Viviane da Silva, namorada de Luiz Henrique Eusébio, que não se encontrava ali. Uma moça identificada por Nobre (1994) por S. foi à casa de Edméia e quando saiu de lá um policial foi até ela e pediu que ela procurasse os traficantes para conseguir a propina de Cr$5 milhões para que os reféns fossem libertados. S. pediu a Edson Cruz, irmão de Moisés, o qual falou com Luiz Carlos Vasconcelos de Deus, ex-taxista e que junto com Moisés era perseguido por policiais por causa de assalto a caminhões de carga. Os dois propuseram a
liberação dos reféns por Cr$2 milhões e os PMs aceitaram. No entanto, faltaram Cr$150 mil, os quais seriam pagos dois dias depois. Os policiais apareceram no dia combinado e S. disse a eles que o encarregado de entregar o dinheiro fora o advogado Salvador Meneses do Couto, que não estava na favela. Três 8 dias depois, um PM apareceu na casa de Edméia, disse que não tinha recebido o dinheiro ainda e que por isso 'passaria o rodo' em todo mundo.
No dia 26 de julho, os PMs entraram no sítio e sequestraram os onze jovens, incluindo Hédio do Nascimento, tio de Wallace. Os policiais pertenciam ao 9º Batalhão de Polícia Militar do Estado do Rio de Janeiro, localizado no bairro de Rocha Miranda, apelidado à época de Triângulo das Bermudas: os detidos pelos PMs ligados ao Batalhão iam para lá e não eram mais vistos.
O taxista Carlos Roberto Lafuente Freire, o Beto, era conhecido pelo pessoal de Acari e inspirava confiança. Rubens e Wallace trataram com Beto dele levar parte dos onze jovens a Magé. Outra parte foi até Magé no Fiat Uno preto do sogro de Luiz Carlos. Beto se tornou o principal suspeito por envolvimento no sequestro, desde o início das investigações, tanto pelos parentes das vítimas quanto pela polícia, afinal ele conhecia muito bem a localização do sítio de onde os desaparecidos foram sequestrados. O taxista mentiu diversas vezes em seus depoimentos. Rubens – que não voltara a Magé com o restante das pessoas – era um segundo suspeito, pois alegou ter perdido a hora de voltar para o sítio, o que despertou a desconfiança dos policiais. Beto e ele poderiam ter levado os sequestradores ao sítio. Após o depoimento de Rubens, os policiais convocaram Beto a depor de novo, já sabendo que ele era informante da Delegacia de Roubos e Furtos de Cargas (DRFC) e do 9º BPM.

Finalmente, se confirmou que Beto participou do sequestro e ele foi indiciado. Em meados de 1992, havia boatos na favela de que Rubens tinha sido assassinado.

A conclusão mais óbvia desse caso foi o envolvimento de policiais civis e militares, principalmente do 9º BPM e da Delegacia de Roubos e Furtos de Cargas (DRFC). Porém a Comissão Especial não tinha autonomia para intimá-los a depor, uma vez que instâncias superiores tinham que fornecer essa autorização. Além disso, um dispositivo do Código de Processo Penal respaldava a impunidade dos policiais: não havia provas – os cadáveres das onze pessoas – portanto não havia assassinato.

No início das investigações, o responsável por investigar o sequestro era o delegado titular da 69ª DP, em Magé, Heralmir Ramires Gomes. Com a pressão popular exercida pelas mães dos jovens, pelas organizações de direitos humanos e por parlamentares progressistas, o então secretário da Polícia Civil – delegado Heraldo Gomes – prometeu repassar o caso para a Comissão Especial, órgão que investigava crimes que os grupos de extermínio praticavam nos municípios da Região Metropolitana do Rio de Janeiro.

O Centro de Articulação das Populações Marginalizadas – CEAP – foi um grande aliado na luta das Mães de Acari. Arcélio Faria José, integrante do Programa Racial do CEAP em 1990, e Ivanir dos Santos, secretário-executivo do CEAP à época da chacina, entraram em ação assim que souberam do ocorrido. Organizaram um protesto em frente à Secretaria de Polícia Civil, que contou com a participação de favelados, familiares dos sequestrados, políticos progressistas e militantes de entidades de direitos humanos. A partir daí, era nítido que as mães começavam a conhecer seus direitos e como a democracia brasileira usava suas armas políticas.

Arcélio levou a imprensa internacional para noticiar a tragédia ocorrida na favela de Acari e dar visibilidade ao caso. Os jornalistas estrangeiros se tornaram presença constante no momento imediato ao crime, o que colaborou para que os moradores passassem a lutar por seus direitos. A realidade da favela, entretanto, pouco mudou.

Paiva (2015), ao analisar a Chacina ocorrida na região da Grande Messejana, em Fortaleza, verifica inicialmente o motivo da morte dos conhecidos como “bandidos” serem colocados pela sociedade como “normal”. Ele entende que a população, influenciada diretamente pelas notícias da mídia, não associa a morte dos “bandidos” à violência de imediato, assim que ouvem a notícia de uma chacina. Isso ocorre, segundo o autor, porque esses seres são matáveis, pois a “posição social do morto tem implicação no seu destino” (PAIVA, 2015, p. 271).

É interessante notar, entretanto, que na reportagem intitulada “Mistério no sumiço de 11 jovens em Magé”, do dia 04 de agosto de 1990, do Jornal O Globo, veículo de imprensa com circulação nacional, os desaparecidos são citados como “jovens” e o grupo de extermínio como “criminosos”. O Jornal O Globo apoiou as vítimas do caso de Acari, humanizando essas pessoas e indo contra, no pano de fundo, à política de segurança pública implementada pelo governador do Estado do Rio de Janeiro, Moreira Franco, ao colocar os PMs como “criminosos”. Desta forma, o jornal assumia sua posição política contra uma política que não estava funcionando, pois os índices de violência não abaixaram conforme o prometido por Moreira Franco em sua campanha eleitoral de 1986. Ainda segundo a notícia, “os outros jovens teriam sido mortos como “queima de arquivo” (O GLOBO, 1990, p.13). Portanto, a opinião do jornal se dá não porque os jornalistas e 10 donos das Organizações Globo defendem esses meninos e meninas, mas porque eles almejavam desqualificar a governança de Moreira Franco e posteriormente de Leonel Brizola, chefe do Executivo estadual entre 1991 e 1994.

Em 16 de maio de 1992, o mesmo jornal fez uma matéria com a manchete "Polícia procura ossada e acha leões em Magé". O discurso do jornal quase dois anos depois da situação trágica mudou em relação à chamada dos partícipes do evento: os policiais de "criminosos" passaram a "policiais" na linguagem do veículo de comunicação. Naquele momento, cinco policiais militares, cinco civis e dois alcaguetes envolvidos diretamente no caso respondiam a um processo por extorsão, mas não por assassinato, sequestro e desaparecimento, pois para a delegacia de desaparecidos, se não há corpo, não há crime.

Após o assassinato de uma mãe em janeiro de 1993 – Edméia Eusébio – o acontecimento retomou o fôlego. Na reportagem "Chacina de Acari: Polícia acha ossadas", de 17 de fevereiro de 1993, o jornal destaca que o Secretário de Polícia Civil do governo Brizola – Nilo Batista – recebeu um mapa juntamente com uma carta apontando o local das ossadas onde estariam os corpos de dois dos onze jovens. Ao se referir aos policiais, a linguagem se modifica mais uma vez, apontando os assassinos como "autores da chacina".

O caminho seguido pelas Mães

Após o impacto inicial da perda e para compensar a culpa que sentiam pelo ocorrido aos seus filhos, as mães começaram a se movimentar. Primeiro, realizaram reuniões para pensar seus passos: inicialmente elas se reuniam na casa de Edméia, em Acari. Em seguida, começaram as buscas pelos corpos desaparecidos de seus entes, nos lugares onde possivelmente eles teriam passado. O trabalho de investigação das mães – paralelo às investigações das autoridades policiais – ganhou o apoio e a adesão dos moradores de Acari, os quais foram em busca de informações.

A partir do momento que conseguiram se organizar, as Mães de Acari montaram cinco caminhos que levavam a uma estratégia de como realizar uma denúncia pública, como pontua Araujo (2007): depoimentos que denunciavam o caso em diversos eventos; o luto reivindicativo transformado em luta por justiça; exposição ao mundo do caso através de denúncia à Anistia Internacional; levada do caso aos meios de comunicação em forma de denúncia; e a denúncia em livros.

As Mães de Acari passaram por diversos locais em vista de solucionar a questão e dar visibilidade a ela: idas a cemitérios clandestinos, penitenciárias; escavações em sítios e supostas covas; participação na novela da Rede Globo 'Explode Coração'; participação em um show de Roberto Carlos; gravação de um clipe do músico Marcelo Yuka; aparições no programa da Rede Globo 'Linha Direta'; e ida a Europa para participar de um Encontro de Mães e realizar um tour político.

A força dessas mulheres pobres e negras advinha da luta coletiva na qual se colocaram, marchavam com seu luto e sua sede por justiça, mas não por vingança, nem com o uso da violência para alcançar seu objetivo. Elas avançam pacificamente até seu propósito. O choque da perda as fez tornarem-se sujeitos políticos, como afirma Araújo, pois não tinham outra alternativa a não ser lutar pela solução, junto às autoridades, desse trágico acontecimento.

Muitas mães morreram sem ver a justiça ser feita. A primeira a morrer foi Edméia da Silva Eusébio, mãe de Luiz Henrique Eusébio da Silva, 17 anos, assassinada no centro da cidade do Rio de Janeiro no dia 15 de janeiro de 1993. Ela lutava por informações e punição dos Cavalos Corredores, apontados pelo Ministério Público como responsáveis pela chacina de Acari. Sua morte continua impune. Os sete suspeitos de seu assassinato ainda não foram julgados, apesar da campanha encampada pela Anistia Internacional para que isso aconteça.

As mães se colocam em situações nas quais suas dores possam ser expostas e materializadas concretamente, e como dizem Vianna e Farias (2011), para que aqueles que se encontram em lugares de poder as vejam, saibam que estão em luta por seus filhos, pois a morte de seus filhos não foi em vão e o recado mais explícito dessas mulheres é que seus filhos vivem na luta delas.

Com o evento brutal ocorrido em suas vidas, as mães saem do seu lugar comum – a casa – para se colocarem em marcha rumo às ruas, pois o assassinato de seus filhos significa o rompimento de suas relações de mãe e filho, e a cisão de um papel social primordial em suas vidas: a maternidade. As mães em luta batem na tecla de que tiraram seu direito de ser mãe. Porém, ao não deixarem a memória de seus filhos se apagarem, exibem a continuidade de sua história familiar. Assim o fazem através de faixas, banners e camisetas com as imagens de seus filhos. E no caso das Mães de Acari, esse direito foi retirado com uma pitada de crueldade a mais – a de não poder enterrar seus filhos. Como relata uma das mães – Marilene – o objetivo último de sua procura é dar um enterro digno a seus filhos. A militância em um coletivo de mães também é um fator de continuidade de sua relação com seu filho e de sua maternidade.

Expor essas mortes em espaços públicos é uma das ferramentas que as mães dispõem, para que os assassinatos não caiam no esquecimento de mais um caso corriqueiro no dia a dia de uma cidade grande brasileira como o Rio de Janeiro, e como apontam Vianna e Farias, uma "baixa de guerra", e portanto, algo desimportante.

A questão de gênero aparece muito forte em todos os movimentos de mulheres que lutam contra violência policial materializada no assassinato de jovens periféricos. Em grande parte dos casos os grupos reivindicadores de justiça são compostos apenas por mulheres – mães que perderam seus filhos. As mulheres entendem a busca por justiça como uma missão inerente a elas, natural e definitiva. Faz parte do papel de mãe seguir os rastros que levem à honra da memória de seus filhos. Dentro de uma família, cabe à mulher historicamente, dentro de nossa construção social, tudo o que se refere ao cuidado: mais uma vez essas figuras estariam cuidando de seus entes que tiveram suas vidas ceifadas brutalmente.

As Mães de Acari têm consciência que a não elucidação do assassinato de seus filhos têm total relação com sua condição: mulheres, negras, pobres e moradoras de favela. Ou seja, o racismo institucional impede seu acesso à justiça. O Estado trata não só seus filhos como seres matáveis, mas a elas como sujeitos desprezáveis. Como afirma Araújo, o Estado se recusa a "reconhecer o pleno pertencimento à sociedade dos indivíduos em situação de inferioridade social" (ARAÚJO, 2007, p. 89).

As Mães de Acari procuram os espaços públicos não porque estão preocupadas com a eficácia jurídico-legal de tais ambientes, mas porque, através da sua luta, permanecem vivas, dia a dia, em busca de redes de solidariedade que extrapolem elas próprias. O mais importante para essas mulheres é o vínculo entre essa rede ampla que elas obtiveram ao longo de 29 anos de luta incessante pela memória, justiça e verdade de seus filhos. A maior justiça não é a punição dos assassinos e sim a sua vida ser preservada diariamente e seus filhos não terem sido apagados da roda da História do Estado do Rio de Janeiro e do país.

Considerações finais

Movimentos de mães que surgem após tragédias abatidas sobre as famílias com os assassinatos de seus entes queridos por forças policiais têm um recado a ofertar ao Estado: não vão se calar diante das atrocidades cometidas por aquele que deveria garantir segurança, cidadania, dignidade, educação, saúde, e todos os direitos civis que constam na Constituição.

Como relata uma mãe: "são pessoas de dentro da comunidade que não aguentam mais ficar calados, vendo seus filhos serem assassinados. Se o país não tem pena de morte, porque que toda comunidade favelada está condenada à morte e à exclusão?" (FARIAS, 2007, p. 148).

As Mães de Acari ficaram conhecidas como mães-coragem de Acari, pois tinham muita coragem de enfrentar um Estado que exterminou seus filhos e não puniu os responsáveis por esse crime bárbaro. Elas simbolizam a luta por justiça mais ampla – a que é contra o extermínio dos jovens negros no Brasil, tendo sido precursoras nessa luta.

Essas mulheres fazem parte de um conjunto maior de familiares de vítimas de violência policial que existe nacionalmente, mas sobretudo no Rio de Janeiro, que vão de encontro ao Estado para interpelá-lo em decorrência do sofrimento causado pela violência direta ou pela incapacidade de o Estado promover segurança pública, sobretudo nos espaços periféricos e segregados.

As Mães de Acari representaram um grito dessa comunidade de pessoas que têm seus direitos furtados pelo Estado constantemente. Esse movimento é de suma importância para escancarar o problema social grave no qual a democracia se alicerça: extermínio de populações que não são do interesse do Estado fornecer Justiça, direitos sociais, civis e políticos.

O caminho traçado pelas Mães de Acari rumo à resolução foi penoso e o seu desígnio final não foi alcançado: o aparecimento dos corpos dos seus filhos para que elas os enterrassem;
o atestado de óbito emitido pelo Estado; o julgamento e a subsequente condenação dos policiais envolvidos no sequestro, tortura e assassinato dos jovens negros residentes em Acari e adjacências.

Entretanto, elas ganharam em força para seguir vivendo mesmo com a ausência diária de seus meninos e meninas as massacrando; solidariedade; consciência de classe; conhecimento de seus direitos enquanto cidadãs; consciência política. Ganharam tanto que nenhum dia em luta foi em vão: a memória dessa juventude para sempre estará marcada na história de violência da cidade do Rio de Janeiro e sempre vai haver quem lembre desse crime bárbaro. Essas conquistas simbólicas se exemplificam nas falas das mães captadas por Brites e Fonseca: "Ao fazerem-nos os relatos dessa época, as mães insistiam no quanto encontravam consolo na interação com outras pessoas que sentiam "na pele" aquela mesma dor e compartilhavam relatos sobre as moléstias físicas que as assolavam" (BRITES e FONSECA, 2013, p. 862).

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SONGS OF THE ŁÓDŻ GHETTO: YANKELE HERSHKOWITZ EXAMPLE

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ABSTRACT
Music is the form of statement with sound for a thinking person. It has been considered as a way of expression at times of happiness and hope as well as sadness and despair in every part of human history. Music, which was the supporter of basic needs of individuals at first, has evolved and developed in time and has been attached new meanings in line with the increase in the need of expression of the individual.
The total population of province Łódź, which had the second crowded Jewish population after Warsaw in Poland in 1939, was 672.000. 230.000 of them were Jewish. Various ghettos were established in Poland after invasion of Nazi Germany of the country. Łódź Ghetto (Litzmannstadt) which was one of the ghettos established became the second biggest ghetto in Poland after Warsaw Ghetto. Łódź Ghetto was established in 1940 and it was used as an industrial labour camp where the Jewish and Gypsies were prisoned and its connection with outer world was controlled by Nazis until the summer of 1944 when it was started to be disbanded. When the Jewish sent to Chelmo and Auschwitz was added to the loss of lives due to the typhus epidemics and hunger in ghetto, it was seen that there were only 800 Jewish survived when Soviet Army entered in the city in 1945.
Even though nonhuman living conditions offered to the captives, art, especially music continues to be a part of daily life in Łódź Ghetto between 1940-1942. A lot of street musicians and songs contributed to the presence of music in Ghettos, which were really under hard living conditions, are listed in the records kept by Łódź History Committee. One of the musicians listed in the records is Yankele Hershkowitz. Hershkowitz, who was inspired by daily life in Łódź, past and future which he held with hope in his songs, was the composer, writer and performers of tens of songs that were popular in Ghettos.
Art was evolved from stage to streets after being shut of the only art center in Ghetto in 1942. The reflection of this evolution on music was experienced especially in anti-war and anti-hunger politic songs. Street performances that attracted the attention of Local Jewish Administration were banned after a while. Along with the bans, street performances ended. Artists just like the vast majority of people kept in the ghetto were employed as workers in the factories. Therefore, the new home for the music which was first banned in ghettos and then in the streets became the factories.
In this study, it was aimed to provide an insight for the nonhuman daily life in Łódź Ghetto and ghetto music through the songs of Herskowitz.
Keywords: Music, Łódź Ghetto, Ghetto Music, Yankele Hershkowitz, Holocaust

INTRODUCTION

The start of the invasion of Poland by German Forces on 1 September 1939 affected the lives of The Jewish living in Poland. Łódź, which was enzoned on 8 September 1939, was one of the biggest cities in Poland before the war with a population of 672.000. Łódź which had the most crowded Jewish population following Warsaw was the home for 223.000 Jewish in 1939 (United States Holocaust Memorial Museum, Washington, DC, 2019). After the invasion, the city was renamed as Litzmannstadt in the memory of German General Karl Litzmann who invaded Łódź in the First World War (United States Holocaust Memorial Museum). German Regime arrested the Jewish starting from the first day of the invasion by justifying the protests in the city and forced them to work as workers. Economic difficulties appeared in the city due to lock down between 17.00-18.00 imposed only on the Jewish. After that implementation, worshiping in synagogues was also forbidden for the Jewish via a new regulation. Łódź was formally accepted as a German land on 9 November 1939 and all synagogues were demolished between 15-17 November 1939. After the demolition, the Jewish were obliged to wear "Jewish badge" which was an indication of their religious identities.

"The yellow badge was a kind of stamp. A stamp that distinguished me from the rest of the population. Anyone could approach me, tell me, do to me whatever they wanted."

—Jutta Szmirgeld, age 12 (United States Holocaust Memorial Museum, Washington, DC, 2019)

Members of a Jewish family pose outside their home. Courtesy of Theodora Basch Klayman (United States Holocaust Memorial Museum, 2012).

The Jewish were periodically exiled from the city from 8 September 1939 to 30 April 1940. Nearly 70,000 Jewish were deported from the city until 30 April 1939 when Jews and other minorities were forced to live in the ghetto.

“One day, little Rysia asked if Jews looked different before the war from the way they looked now and if they ever looked like non Jewish people. After hearing that there is no real difference between non-Jews and Jews, she contemplated this for a moment and finally asked: ‘So why do they separate us from them?’”

—Sara Plagier, age 15 (United States Holocaust Memorial Museum, Washington, DC, 2019)

After 164,000 Jewish had been forced to live in the ghetto, the Łódź Ghetto, which was established on 30 April 1940, became the second largest ghetto in Poland after the Warsaw Ghetto. In addition to the Jewish who survived the invasion of Łódź, the Jewish, who were brought from the Sinti and Roman ethnic groups and other regions and sealed, were segregated from the rest of the world in the ghetto in the spring of 1940. The ghetto which was isolated by the German was surrounded by barbed wire in addition to wooden fences, and the entrances and exits to the ghetto were under the control of the German Police. The Łódź Ghetto, which was divided into three parts by two main roads passing through it, was connected by bridges. While non-Jewish drivers of Łódź City can travel within the city via these roads, they were prohibited from stopping in the areas connecting the ghetto.

“The establishment of the ghetto is only a transitional measure. I reserve for myself the decision as to when and how the city of Łódź will be cleansed of Jews. The final aim must be to burn out entirely this pestilential boil.”

—Friedrich Übelhör, German governor of the Kalisz- Łódź district, December 10, 1939 (United States Holocaust Memorial Museum, Washington, DC, 2019)

View of Łódź ghetto residents crossing a pedestrian bridge. Courtesy of Zydowski Instytut Historyczny imienia Emanuela Ringelbluma (United States Holocaust Memorial Museum)

The fact that access to basic resources in the ghetto, which was segregated from the outside world became more and more difficult, affected the living conditions in the ghetto negatively. It was not possible to meet the basic needs of more than 160,000 people who started to live in houses as 8-10 people in a room, on top of each other. Inadequate sewage system, being unable to access clean water and fuel needs resulted in serious conditions.

“When it’s so cold, even my heart is heavy. There is nothing to cook today; we should be receiving three loaves of bread but we will be getting only one bread today. I don’t know what to do. I bought rotten and stinking beets from a woman, for 10 marks. We will cook half today and half tomorrow. Does this deserve to be called life?”
—Anonymous girl diarist, March 6, 1942 (United States Holocaust Memorial Museum, Washington, DC, 2019)
The population started to decrease in the Łódź ghetto from the first day it was sealed due to the reasons such as hunger, inadequate hygiene conditions and epidemic diseases such as typhus.
“In the ghetto we had no need for a calendar. Our lives were divided into periods based on the distribution of food: bread every eighth day, the ration once a month Each day fell into two parts: before and after we received our soup. In this way the time passed.”
—Sara Plagier, age 14 (United States Holocaust Memorial Museum, Washington, DC, 2019)
Economy and the Jewish were forced to work in the factories established in the Łódź Ghetto. The perception, which was created by the local administration appointed by the German, stating that if the Jewish had kept the working discipline and quality high, they would have had hopes of getting rid of the ghetto. Through the positive guidance of not only the police but also the clergymen, the people were advised to adapt to the ghetto life. In addition, the telephone lines of private properties in the region were destroyed, radio broadcasts were restricted and letters were started to be transmitted by censorship. Thus, the means of communication of the minority living in the ghetto were eliminated in order to cut off connection of the ghetto with the outside world. Although ghettos were seen as temporary solutions, they continued to exist until the end of the war, when the Nazi forces gave up the Jewish workforce. 38,500 Jewish were transferred to the Łódź Ghetto from Germany, Austria, Czechoslovakia, Luxembourg and the Warthegau region between 1941 and 1942.
The victims of the first Nazi death camp established in Chelmo on 7 December 1941 were the Jewish living around Łódź, Gypsies and the Jewish living in the Łódź Ghetto. 55,000 Jews, approximately 3/1 of the Łódź Ghetto population, were massacred between January and May 1942. In addition, 20,000 child prisoners, sick and elderly living in the ghetto were transferred to the Chelmno death camp between 5 and 12 September 1942. 15,000 of the children sent to the death camp were under the age of 14. Hundreds of victims died during their transfer to the death camp.
“A grievous blow has struck the ghetto. They are asking us to give up the best we possess—the children and the elderly. I never imagined I would be forced to deliver this sacrifice to the altar with my own hands. In my old age, I must stretch out my hands and beg. Brothers and sisters: Hand them over to me! Fathers and mothers: Give me your children! . . .
—Chaim Rumkowski, September 4, 1942.
“I went home. I got closer and then I saw my brother in front of the house. I approached my brother and he said, ‘Jutta, they took Grandma, they took Mom, but Mother said that you should not cry, that she will return.’ I am nothing without my mother. What could I do to save my mother?”
—Jutta Szmirgeld, age 15
“I saw two wagons full of little children drive past the open gate. Many of the children were dressed in their holiday best, the little girls with colored ribbons in their hair. In spite of the soldiers in their midst, the children were shrieking at the top of their lungs. They were calling out for their mothers.”

—Sara Plagier, age 16 (United States Holocaust Memorial Museum, Washington, DC, 2019)

A child who has been selected for deportation, bids farewell to his family through the wire fence of the central prison, during the "Gehsperre" action in the Lodz ghetto. Courtesy of Moshe Zilbar (United States Holocaust Memorial Museum , 1942).

After the death transfers carried out in 1942, the restrictions and control on the Jewish and minorities who continued to live in the ghetto increased more. The workforce in the ghetto was employed in factories used to build and repair Nazi war machines. 77,000 Jewish who stayed in Łódź were forced to work in harsh conditions after the transfers carried out before September 1942. No transfers were made from the Łódź Ghetto to the death camps from September 1942 to May 1944.

The encounter between East and West has occured theree times in the history of European Jewry. First, in the Middle Ages, masses of Jews from western and central Germany moved eastward; then the Jews from East moved westward in the wake of the wat of 1914 – 1918; finally, a reverse movement took place as the Jews were expelled from the West into the territories occupied by Germany. In the course of hundreds of years which had passed since the first migration, we had overcome its ethnological and psychological consequences. On the other handi we still feel the living connection between the last two migration movements, although they are separated by a 30 – year time span. Two generations are facing each other; two generations of Jews who have not yet dşgested the experience (Barkai, 1989:378).

The text above, written in German in the Łódź Ghetto, was written by Oskar Singer, a Jewish from Prague, who grew up in German culture. As it is clearly seen in the text written in June 1942, the Jewish were forced to live in different geographies from the Middle Ages to the Second World War.

Youth movements and established secret parties created illegal meeting places for the Jewish living in the ghetto in this process. Political and cultural activities were organized within the scope of these meetings. However, these political formations could not prevent the last transfer in May 1944. 7,000 Jews from the decreasing population of the ghetto were transferred to the Chelmno death camp. After the last transfer from the Łódź Ghetto to Auschwitz and Chelemno on 30 August 1944, only 1200 Jews remained in the ghetto. About 600 of them were sent to labor camps in Germany. Remaining 600 people were imprisoned in the Rodogoszcz Prison in the ghetto. All the prisoners were planned to be killed until the Soviet Army entered the city of Łódź on 19 January 1945. However, some of the prisoners managed to escape. From the beginning to the end of the war, the total number of the Jewish living in or surviving from the Łódź Ghetto is less than 7,000.

ART IN THE ŁÓDŻ GHETTO

The State of Israel was established in the period from the destruction of the Second Temple in A.D. 70 until 14 May 1948. In this process, the Jewish who were forced to migrate took their religious culture and religious music, which is a part of their religious worship, with them to the geographies where they settled, were exiled, and were forced to live. Jewish Music influenced and was influenced by local cultures in the new geographies where the Jewish community lived. It is possible to see the reflection of this interaction in the performance of Jewish melodies with the same title in different regions of Europe and the Middle East, with different details and musical ornaments (Idelsohn, 1994). Therefore, it can be said that the Jewish culture and music in the Łódź Ghetto is a small reflection of a thousands of years old tradition.

The social conditions in the pre-war Łódź City and the wartime Łódź Ghetto were quite different from each other. Hence, it is useful to remind that the cultural life in the ghetto within the scope of the dates covered in the study was very different from the period before the war. The city of Łódź where the Jewish traces were encountered in the 13th century turned into the Łódź Ghetto in 1939. Although economic, social and religious restrictions came to the foreground and were implemented through this transformation, cultural life managed to survive. Despite all the bad conditions, there were voluntary organizations established by the people living in the ghetto behind this success. Many people living in the ghetto took serious risks in order to meet their basic social needs, to ensure that their children could access education, to maintain their religious traditions and to continue their cultural activities. Considering the negative living conditions in the ghetto; It is possible to say that books, intellectual meetings, social events and concerts were very valuable for the community. Likewise, these cultural wealth were the last values they had from their previous lives.

In this context, the "House of Culture" established in the Ghetto served from 1939 to the summer of 1941. The management of the House of Culture was given to Chaim Rumkowski (1877–1944), the head of the Jewish committee elected by the Germans. The optimism of the social atmosphere in the early years of the ghetto could be seen clearly in the cultural life of the Łódź Ghetto. Theater plays, choir and orchestra performances were staged at the events held at the House of Culture during these years. However, in many events, in which Rumkowski, the director of the Culture House, personally participated, songs and works were censored considering that they could disturb the German forces. It was especially taken into consideration that the expression of opinion during these performances did not reach the level of criticism. In this way, it was aimed to avoid risks that might harm the art and the artist.

More than 85 events were held at the House of Culture, which had a capacity of 400 people. It is estimated that more than 70,000 people attended the events.
The fact that art is the most risk free version of self-expression had strengthened the bond between artists and art lovers. The conditions in the ghetto got worse gradually, and the economic downturn appeared. In these periods, when it was necessary, the artists met the expenses such as the artist, the decor, and the electricity of the works they wanted to stage. The well-known painter of the Łódź Ghetto, Oskar Rosenfeld (1884–1944), tackled themes such as workers, factories and hunger in his paintings that depicted the daily life in the ghetto. As Rosenfeld stated, artists who performed their art in very difficult conditions tried to perform their art under all conditions. One of the greatest heroes of this effort was Thedor Ryder (1881-1944), who managed to get the ghetto orchestra to play very difficult pieces without even the notes.

Orchestra of Łódź Ghetto. Yad Vashem Photo Archives (Yad Vashem).

According to Rosenfeld's notes, Ryder had to end the orchestral concerts held on Wednesday as the solo violinist and then other orchestra members were transferred to death camps (Miranda Brethour, 2005). Keeping the artistic pulse of the Łódź Ghetto, the House of Culture was officially closed in the summer of 1942 and turned into a pillow and quilt factory (The World Holocaust Remembrance Center). As the living conditions got worse in 1942, the artists living in the Łódź Ghetto had to perform their art on the streets in exchange for a tip in order to meet their basic needs. Maestro Kellerman as one of the former violin professors of the Leipzig Conservatory played in the streets for a piece of bread and a piece of coin and it was one of the most tragic examples of this situation (Miranda Brethour, 2005). After the closure of the House of Culture, youth clubs were established in an area in the ghetto known as Marysin.

In these clubs, children and adults continued to perform performances depicting the troubles and difficulties of daily life in the ghetto (The World Holocaust Remembrance Center).

YANKELE HERSHKOWITZ

The pulse of the city in the Łódź Ghetto was felt by street musicians, who can be described as a reflection of the traveling musician "Troubadour" tradition of medieval Europe (Idelsohn, 1994). The singers, who got to the streets after the stages were banned, performed songs and anthems with themes such as political satire, hunger and freedom (The World Holocaust Remembrance Center). The most famous street artist and also known as the Jewish Troubadour of the Łódź Ghetto was Yankele/Jankiel Hershkowitz (1910–1972). Herskowitz was born in Eastern Bohemia in 1910. Herskowitz had continued his life as a tailor and traveling trader like his father until he was transferred to the Łódź Ghetto (1940). After being transferred to the ghetto, Herskowitz sang and performed in the streets and factories. He became one of the most well-known ghetto residents of the period with the songs he sang and the critical and political criticisms he made in his shows (Flam, Yankele Hershkovitsh, 1992). The people in the ghetto named Herskowitz as "one-man caberet".

Jewish New Year's card from Jankiel Herszkowicz, showing the performer singing his famous parody about Mordechai Chaim Rumkowski, chairman of the Lodz ghetto Jewish council. Courtesy of Joseph Wajsblat. (United States Holocaust Memorial Museum, 2003)

When the censorship which had been applied on the stages before was applied on the street singers, one of the people who was affected by this regulation most was Hershkowitz. A lot of transfers were made to the death camps in 1942, and the population in ghetto decreased. The streets of the Łódź Ghetto were completely empty, as the Jewish who remained in the ghetto were forced to work in the factories. For this reason, Hershkowitz and other singers were unable to receive food or tips from the public for their performances. He still continued to sing in factories (The World Holocaust Remembrance Center). However, these performances were ended in June 1943 by Rumkowski who considered one of the songs in these performances as a rebellion against his authority (Flam, Songs of the Łódź Ghetto, 1992).

Hershkowitz was transferred to Auschwitz in the summer of 1944. In the same year he was deported to a labor camp in Braunscheig, Germany. Hershkowitz, who had been unsubjected in 1945, returned to Łódź and continued to be an indispensable part of the cultural life of the Jewish community. Anti-Zionist/anti-semitic oppression started in Poland in 1968. The surviving Jewish were also the victims of this oppression after the war. Hershkowitz, who could not stand the pressure, did not want to emigrate from Poland like other Jewish. He ended his life at the age of 61 (March 25, 1972) (Jewish Music Research Centre).

Yankele Hershkowitz relaxes in a grassy field circa 1965. Courtesy of Joseph Wajsblat.
(United States Holocaust Museum, 2003)

YANKELE HERSHKOWITZ'S SONGS

Music was a means of sharing, communication, expression and protest not only in Poland but also in all ghettos, camps and partisan police stations in Nazi Europe. With the addition of the diplomatic, political and social developments experienced during the war, the popular music repertoire developed. Protest songs and new anthems were added to the developing repertoire. The main themes covered in these works were generally politics, loss of family and relatives, migration, hunger and disease. It is, of course, not possible to consider artists independent from their works. Brave and protest character of Hershkowitz was also reflected in his works. Hershkowitz was critical not only of Nazi policies, but also of the Jewish Administration of the Łódź Ghetto. In his works, he became a spokesperson for the feelings of thousands of Jewish who suffered the same problems as the works complained of hunger and persecution. Here are four songs, which were popular in the Łódź Ghetto, by Yankele Hershkowitz, performed in Yiddish, written by himself, with anonymous melodies:

-Vos zol men ton Yidn?
-Vayl ikh bin a Yidele
-Hunger Marsh
-Kartofl
-What shall we do Jews?
-Because i am a Jew
-Hunger March
-Potato

Vos zol men ton Yidn?-What shall we do Jews?

Many Jewish, including Hershkowitz, blamed Rumkowski for the hunger and misery that was experienced since the first day of the establishment of the ghetto. Hershkowitz, who had mastered the art of satire, criticized Rumkowski through his sarcastic attitude throughout the song. Rumkowski's name is not mentioned in the song. However, it was clear that Rumkowski, who was chosen by the German administration as the representative of the Jewish in the Łódź Ghetto, was targeted. The introduction of the song begins with unanswered questions. The questions reveal the helplessness of people while experiencing hunger.

The second part of the song refers to the statement in a speech by Rumkowski where he addressed the starving Jewish, he said "One day we shall have bread and butter, and meatballs from horse meat". Sukkot, Simchat Torah and Purim mentioned in the lyrics of the song are traditional Jewish holidays. These festivals contain different themes and are celebrated in different atmospheres. In this song, Hershkowitz combined the Jewish holidays with opposite themes in the same sentence, and melted two different poles such as mourning and festival in one pot. Likewise, it is not possible to mourn in festival costumes. Just as Purim was never celebrated in the Łódź Ghetto because it is not suitable for festivals.

In the following parts of the song, Hershkowitz talks about the Jewish who were forced to sell their valuables due to poverty and still starved. The part that refers to Rumkowski in the song ends with the lyrics that reminds the rumbles from hungry stomaches, hardship and cruelty of hunger.

Vos zol men ton yidn?	What shall we do, Jews
Az es iz aza min klog!	When there is such tragedy?
Vos zol men ton mentshn?	What shall we do, people?
Esn darf men yedn tog!	We have to eat, every day!
Az der mogn vil nisht visn,	Because the stomach doesn’t want to know
Fun keyn geto zakh,	Anything about our ghetto business
Nor er shrayt un er farlangt	It only screams and demands
Tsu esn zeyer a sakh.	To eat and eat some more.
S’geyt der libe vinter	Here comes our beloved winter,
S’falt a shrek a moyre,	Bringing fear and terror,
M’et nokh purim zitsn in di sukes,	We’ll sit in the sukkah for Purim
S’vet zayn simkhes toyre,	And celebrate Simchat Torah.
Undzer prezes khayim	Our president Khayim
Iz a mentsh a guter,	Is a good man,
M’et nokh in di geto esn	And we’ll eat in the ghetto
Zemelekh mit puter.	Rolls with butter.

Vos zol men ton yidn?	What shall we do, Jews
Az es iz aza min klog!	When there is such tragedy?
Vos zol men ton mentshn?	What shall we do, people?
Esn darf men yedn tog!	We have to eat, every day!
Az der mogn vil nisht visn,	Because the stomach doesn't want to know
Fun keyn geto zakh,	Anything about our ghetto business
Nor er shrayt un er farlangt	It only screams and demands
Tsu esn zeyer a sakh.	To eat and eat some more.
S'geyt der libe vinter	Here comes our beloved winter
S'falt a shrek a moyre,	Bringing fear and terror,
M'et nokh purim zitsn in di sukes,	No overcoat, no clothes,
S'vet zayn simkhes toyre,	Soon it will be Simchat Torah.
Undzer prezes khayim	I've already sold the cabinet
Iz a mentsh a guter,	And my mother-in-law's bed.
M'et nokh in di geto esn	I'll get bread and butter
Zemelekh mit puter.	And horse meat meatballs.
Vos zol men ton yidn?	What shall we do, Jews
Az es iz aza min klog!	When there is such tragedy?
Vos zol men ton mentshn?	What shall we do, people?
Esn darf men yedn tog!	We have to eat, every day!
Az der mogn vil nisht visn,	Because the stomach doesn't want to know
Fun keyn geto zakh,	Anything about our ghetto business
Nor er shrayt un er farlangt	It only screams and demands
Tsu esn zeyer a sakh.	To eat and eat some more.

Note: Translation of this song has been made by anonymous user. (Vos zol men ton yidn?, 2011).

Vayl ikh bin a Yidele–Because i am a Jew

The changes in economic balance that occurred due to the war and the difficulties faced by the Jewish due to their ethnic origins are told throughout the song. The lyrics at the beginning of the song can be considered as acceptance as one is seen and the internalization of Jewish identity. However, the lyrics after the first chorus of the song is an indication that the song is a protest, expressionist declaration of identity.

In the first chorus of the song, materialistic losses that start with the war such as hunger and the disposal of valuable goods for nothing are discussed. In the second chorus, the human losses during the war are emphasized. In the third chorus of the song, material and moral losses aree melted in one pot, and the song ends with a protest identity declaration.

Vayl ikh bin a yidele	Because I'm a Jew
Zing ikh mir dos lidele	I sing this song
Vayl ikh bin a yid	Because I'm a Jew
Zing ikh mir dos lid.	I sing a song.
Milkhome 't ongefangen	The war broke out and
Nisht gehat kay' shtik kolatsye	No one had anything for dinner
Yidelekh hobn ongehoybn	Folks began
Mit a shpekulatsye.	Wheeling and dealing.
's iz bald gevorn a mangl	Soon there were shortages
In zilber, drobne gelt,	Of silver money, small change
Gevalt yidn mir hobn milkhome	Oy people, there's war
Oyf der gantser velt.	Throughout the World
Vayl ikh bin a yidele	Because I'm a Jew
Zing ikh mir dos lidele	I sing this song
Vayl ikh bin a yid	Because I'm a Jew
Zing ikh mir dos lid.	I sing a song.
Nishto a mentsh oyf der velt	There isn't a person in this world
Vos vaynt nisht oyf dem khurbn,	Who isn't weeping at this catastrophe
Mayn shvesters a frayndine	A girlfriend of my sister
Iz oykh gefaln a korbn,	Also fell victim to it
Ikh zey dos bild bay mayne oygn:	I see the image before my eyes
Der himl veyet royt	The sky flashes red
Sha! a shrapnel iz gefloygn	Bang! A piece of shrapnel comes flying
Trakh! dos meydl toyt.	And wham! The girl is dead.
Vayl ikh bin a yidele	Because I'm a Jew
Zing ikh mir dos lidele	I sing this song
Vayl ikh bin a yid	Because I'm a Jew
Zing ikh mir dos lid.	I sing a song.
Ayner falt fin biksn shos,	One person falls from a rifle shot
Der tsvayter fun shrapneln	Another from shrapnel!
Yetst zeyen di mentshn	Now everyone can see
Vi es vert fun a gvir a tel.	How a rich man is brought to ruin.
Es geyt a yid a fabrikant,	A Jewish factory owner is walking along
Mit a grobn boykh,	With his ample paunch
Trakh! A bombe iz gefaln	Pow! A bomb falls
Oys fabrikant bloyz roykh	No more industrialist, just smoke
Vayl ikh bin a yidele	Because I'm a Jew
Zing ikh mir dos lidele	I sing this song
Vayl ikh bin a yid	Because I'm a Jew
Zing ikh mir dos lid.	I sing a song.

Note: Translation of this song has been made by anonymous user. (Vayl ikh bin a yidele, 2016).

Hunger Marsh–Hunger March

Hershkowicz refers to the hunger riot in the summer of 1940 in his song Hunger March. The riots that started after the famine in the first months of the establishment of the ghetto were an action that the entire ghetto administration, including Rumkowski, did not expect. After the rebellion that was suppressed by the German forces, Rumkowski made a speech. After the riot was suppressed, Rumkowski established the Deratment of Relief to make the poorest ghetto households get some help. This song contains excerpts from that relevant public riot and Rumkowski's speech.

At the beginning of the song, the hunger cries repeated by the people during the hunger revolt are heard. In the first verse, Hershkowitz expresses the war of people against each other and the system for food. In the following parts of the song, a reference is made to May 1, and it is underlined that the demands of the Jewish for equal and fundamental rights that started the hunger revolt are a political view. The desperation of the people who demand only enough food to survive is revealed in the song.

The repeated chorus refers to May 1 again, struggle to have enough food to survive is emphasized. The key point of the song is the verses containing Rumkowski's answer to the public. The words that ended the bloody riot give the news that "everyone, poor or rich, will have equal food". Song ends with a reference to May 1, heralding the victory of the people fighting for hunger. The song was recorded by Herszkowicz (1965) for Polish Radio (United States Holocaust Memorial Museum).

Hunger, hunger, hunger-marsh marshirn,
Tsoris, dakhkes, payn fun kamf undz firt.
Geshtelt zikh fayn tsum kampf in gas arayn,
A tel makhn fun alts, es vet azoy nisht zayn.

Hunger, hunger, hunger march, march on,
Misery and poverty force this call to arms!
Get good and ready to battle in the streets,
We'll put an end to this whole scene, we can't go on like this!

Gefloygn iz ales in der luft arayn—
Tsibl, mayren, burikes, vursht un khrayn.
Gekumen zenen di yidishe politsay—
A kamf, a tsusamenstroys, funkt vi dem ershten may.

Everything goes flying up into the air –
Onions, horseradish, beets, sausage, carrots.
Now the Jewish poliçeman have come to join the fray-
A fiht, a clash, a smash-up, just like the First of May!

Mir veln kamfn oyf lebn un toyt
Vi lang ir vet nisht gebn a teler zup mit broyt.
Git undz a bisl burikes mit salat,
S'lebn bloyz tsu derhaltn, mir zoln zayn zat.

We vow that this fight will be for life or death,
As long as you deny us a bowl of soup and bread.
Spare us some beets and a bit of salad, too,
Just to nourish us a while, so we might feel full

.

Gefloygn iz ales in der luft arayn— Tsibl, mayren, burikes, vursht un khrayn. Gekumen zenen di yidishe politsay— A kamf, a tsusamenstroys, funkt vi dem ershten may	Everything goes flying up into the air – Onions, horseradish, beets, sausage, carrots. Now the Jewish poliçeman have come to join the fray- A fiht, a clash, a smash-up, just like the First of May!
Halt, shrayt nisht ikh makh shoyn kukhn aykh, Es veln esn ale, orem un raykh. An ende gekumen tsum blutigen taykh, Es esn ale groypn a teler gor glaykh.	"All right, stop screamin, I'll open kitchens soon! Everyone will get to eat, whether rich or poor. This riot, this bloodbath, just now draw to a close, Everybody equally will get a bowl of groat!"
Gefloygn iz ales in der luft arayn— Tsibl, mayren, burikes, vursht un khrayn. Gekumen zenen di yidishe politsay— A kamf, a tsusamenstroys, funkt vi dem ershten may.	Everything goes flying up into the air – Onions, horseradish, beets, sausage, carrots. Now the Jewish poliçeman have come to join the fray- A fiht, a clash, a smash-up, just like the First of May!

Note: Translation of this song has been made by Holocaust Survivors Nobert & Henia Reinhartz (United States Holocaust Memorial Museum).

Kartofl–Potato

This song, called Potato, is performed in the badkhn style, which is a recitative performance technique specific to traditional Jewish wedding entertainers. As it is expected, the theme of many songs in the Lotz Ghetto is hunger. For this reason, the potato represents the bride and the stomach represents the wedding area, with the subtle reference to the hunger that Herszkowicz makes in the song. It is underlined in the song that the Jewish who were fighting hunger were given frozen or rotten potatoes. The smell mentioned in the song is the smell of rotten potatoes. The lyrics saying "Instead I'll get a visa" and "Instead, I'll go to the graveyard" in the song are implied and emphasized in a way that the residents of the Ghetto can understand. This song was also recorded in 1965 by Herszkowicz for Polish Radio (United States Holocaust Memorial Museum).

Oy, tayere kartofl, Du bist dokh mayn bester khaver, Du bist beser vi groypn, Khtosh du shtinkst vi an aver.	Oh, dearest potato, You're my best friend, as you know, You're better by far than barley, Though you stink like air so foul.
Ikh makh fun dir kotletn Un di beste gemize, Ven ikh hob dir nisht, kartofele, Krig ikh a vize.	I'll make you into hamburger and the finest dish of greens, If I can't have you, dear, potato, Insteas, I'll get a visa.
Tayere kartofl, Men hot dokh shoyn genug gelitn, Ikh volt dikh oyf kayn briliantn Nisht keyn mol farbitn.	Dearest potato, We've suffered enough, surely, I'd never think to trde you now, Not even for diamond jewelry.

Note: Translation of this song has been made by Holocaust Survivors Nobert & Henia Reinhartz (United States Holocaust Memorial Museum).

CONCLUSION

Many basic consumption items, from food to clothing, from coal to gasoline, decreased due to the war economy during the Second World War. The black market started, and the socio-economic situation of the people deteriorated gradually due the implemented tax policies. The experienced poverty and famine were felt intensely in every part of the society. The economic and social problems of the period were also reflected in art. The oppression and suppression that the war economy and the Holocaust brought to the people were the themes of works of art that emerged especially in music.

The invasion of Łódź began on 1 September, 1939, and it was liberated on 19 January, 1945. Although the exact number is not known, approximately 270,000 Jewish lost their lives for various reasons in the process until liberation. These reasons were hunger, disease, work accidents, death and/or labor camp transfer and forced migration etc. Only 600 prisoners and 200 victims survived when the invasion was liberated in Łódź which had a population of 230,000 Jewish in the pre-war period.

Regardless of the circumstances and conditions, the individual needs self-expression. The struggle of the Jewish in the Łódź Ghetto, who tried to survive under difficult conditions during the Second World War, was written in history by Yankele Hershkowitz and through his songs. Despite all the restrictions, censors and interventions, Hershkowitz's songs expressed the problems, complaints and wishes of the Ghetto and the Jewish. Thus, he became the hope of the minority living in the ghetto. The living conditions - inhumane conditions - in the Łódź Ghetto, which are tried to be explained in this study, have been proven by official documents. The prisoners of the Łódź Ghetto were deprived of their personal, religious freedom and all property by Nazi Germany. However; the only power they had was their songs. These songs, the only wealth that could not be taken away from the victims of the Łódź Ghetto, reveal the extent of the tragedy.

Holding on culture, especially holding on music to remember the Holocaust and raise awareness of Holocaust, can help to conserve the cultural haritage. Example of "Holocaust Reality and Positive Resistance Educational Program" created by Renan Koen is a great example of it. As Koen says:

"Positive Resistance" is the most important concept to teach young people from every religion, is highly important both for remembering the Holocaust and reflecting on this human tragedy, and for enabling young people to gain strength through their own Positive Resistance, to say "NO" to every kind of violence in their lives." (Koen).
The songs of Yankele Hershkowitz are important documents to read the second World War years and the Holocaust Movement through music. Hoping not to be able to access such new documents in the coming years…

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June 26-27, 2021 / Ankara-TURKEY
(THE PROCEEDINGS BOOK)
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AGRARIAN CAPITALISM'S GENOCIDAL TRAIL: THE SAGA OF THE GUARANI-KAIOWA

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ABSTRACT
Although genocide is an expression commonly used today in relation to the dramatic challenges faces by indigenous peoples around the world, the significance of the Guarani-Kaiowa genocidal experience is not casual and cannot be merely sloganised. The indigenous genocide unfolding in the Brazilian State of Mato Grosso do Sul – Kaiowcide – is not just a case of hyperbolic violence or widespread murdering, but it is something qualitatively different from other serious crimes committed against marginalised, subaltern communities. Kaiowcide is actually the reincarnation of old genocidal practices of agrarian capitalism employed to extend and unify the national territory. In other words, Kaiowcide has become a necessity of mainstream development, whilst the sanctity of regional economic growth and private rural property are excuses invoked to justify the genocidal trail. The phenomenon combines strategies and procedures based on the competition and opposition between groups of people who dispute the same land and the relatively scarce social opportunities of an agribusiness-based economy. Only the focus in recent years may have shifted from assimilation and confinement to abandonment and confrontation, but the intent to destabilise and eliminate the original inhabitants of the land through the asphyxiation of their religion, identity and, ultimately, geography seems to rage unabated. In that challenging context, creative adaptation and collective resistance have been the most crucial requisites if the Guarani-Kaiowa had any intention to survive through recurrent genocides. Many lessons must be learned and could directly contribute to improve democracy, justice and the rule of law in the country.
Keywords: indigenous peoples, agribusiness, Brazil

The Guarani-Kaiowa Genocidal Geography
Displacement and destabilisation of indigenous communities were among the first operations that helped to consolidate Brazil as a colony and later as a country, and all have continued ever since. From the Atlantic coast to the Western, Southern and Amazonian regions, indigenous peoples and their lived territories were the obvious targets of colonisation and national building. One of the main groups affected by enslavement, exploitation and displacement were the Guarani, who used to occupy large parts of the Plata basin and were accordingly assaulted and enslaved from the early decades of Iberian conquest.

Among the sub-groups of the large Guarani population subjected to this invasion, there is the Guarani-Kaiowa (previously described by other names), who especially in the last century were severely impacted by the invasion of their land and their confinement in small, utterly inadequate reservations.[1]

Because of the prime agricultural value of their ancestral land and resources, the strategic importance of the region for national development and the hostile attitudes of farmers, the practice of violence was the main channel of communication between the increasing number of settlers and the indigenous population. In addition to more regular aggressions in the form of massacres, cases of genocide typically happened when the Guarani-Kaiowa demonstrated their opposition to conquest and attempted to survive as a cohesive ethnic group in their original lands and territories. If brutal pressures were not sufficient to reduce their determination to recover the lost areas and restore key elements of traditional community life, genocide was the answer.

With around 50,000 individuals, the Guarani-Kaiowa are the second largest indigenous groups in Brazil today (the largest outside the Amazon) and maintain close connections with a population of the same ethnic group on the other side of the Paraguayan border, as well as with other indigenous peoples in the State of Mato Grosso do Sul (located on the border with Paraguay and Bolivia), particularly the Guarani-Ñandeva, who also belong to the Guarani nation, speak almost the same version of Guarani and live in the same or in surrounding areas. Numerous other confrontations have taken place in all over the region, attracting negative media attention and bad publicity for the farmers, although this does not seem to concern them particularly. The situation certainly became easier for the landowners to manage with the election of a neo-fascist president in 2018, who intensified the anti-indigenous and anti-life tendencies in national and local politics. Just like in Germany and Italy a century before, extreme right-wing politicians manipulated public opinion to win votes and advance a liberal, ultra-conservative agenda of reforms. The Federal Prosecution Service (MPF) recently commissioned a Brazilian and a North American university (UNISINOS and Cardozo Law School, Yeshiva University) to review the information available on twenty-four recent armed attacks on indigenous communities committed in the course of land disputes in Mato Grosso do Sul.[2] In the report, published in 2019, experts concluded that the criminal incidents were not isolated but clearly interconnected with other forms of violence and could unequivocally be classified as crimes against humanity, considering that the aim of the farmers is always to expel people from private properties established in areas legitimately and legally recognised as indigenous lands.

The authors of violent, criminal attacks are typically abusive landowners who share discriminatory attitudes against ‘the sub-human Indians’ and operate in alliance with politicians (most of whom are landowners themselves) and through their private militias, known as pistoleiros.

[1] Antonio A.R. Ioris, “Indigenous Labor and Land Resources: Guarani-Kaiowa’s Politico- Economic and Ethnic Challenges,” Resources 9, no. 7 (2020), 84; Antonio A.R. Ioris, “Political Agency of Indigenous Peoples: The Guarani-Kaiowa’s Fight for Survival and Recognition,” Vibrant, Virtual Brazilian Anthropology 16 (2019), e16207. http://dx.doi.org/10.1590/1809-43412019v16a207; Antonio A.R. Ioris, Tonico Benites and Jones D. Goettert, “Challenges and Contribution of Indigenous Geography: Learning with and for the Kaiowa-Guarani of South America,” Geoforum 102 (2019), 137-141.

[2] Reported by the Brazilian newspaper ‘O Estado de São Paulo’, 1 May 2019.

Because of the proliferation of farms and aggressive regional development policies, the Guarani-Kaiowa have lost around 99% of their ancestral land and been confined to the fringes of the hegemonic agribusiness-centred economy (according to CIMI, the Guarani-Kaiowa, in many cases together with Guarani-Ñandeva families, currently occupy only 70,000 hectares, what is less than 1% of their ancestral territory with more than eight million hectares, as officially recognised by the Federal Senate based on various technical reports).[3] Like most other indigenous peoples in the South American continent, despite their rich knowledge and complex practices, the Guarani-Kaiowa were left in a difficult social and economic situation marked by widespread poverty and clear disadvantage compared to most other groups in the region.[4] It is not difficult, therefore, to perceive that the Guarani-Kaiowa have lived, for many generations and over several centuries, at the centre of great injustices. Their existence has been significantly redefined by the struggle for land, and their world has been dramatically undermined and compressed. The Guarani-Kaiowa have paid a heavy price for who they are and where they live, amounting to a challenging geography that is complicated by the fact that their existence and intense socio-spatial interactions are deeply interconnected with the economic transformation of the region and the expansion of agribusiness production units.

Most observers believe that the situation is nothing other than genocide, and that those responsible for the genocidal fate of the Guarani-Kaiowa, including farmers, political leaders and members of agribusiness support organisations, bear criminal responsibility. For instance, in the words of professor João Pacheco de Oliveira, anthropologist at the National Museum (UFRJ), "these are the clearest circumstances in the country where the failure of the public authorities to comply with the law, and their collusion with the powerful, engenders absolute impunity, placing the Kaiowa as victims of a process of true genocide."[5] As in the case of North America, examined by Ostler[6], Guarani-Kaiowa leaders understood and denounced the fact that nation-building and frontier-making involved not only land grabbing but also the intention to totally annihilate their communities, people and nation; in other words, that the hostile intent behind development was serious and tangible. Between 2000 and 219, the Guarani-Kaiowa was the indigenous group most severely assaulted in the country, with an annual average of 45 new cases and the assassination of 14 political leaders.[7] In the years 2015 and 2016 alone, 33 attacks were perpetrated by paramilitary groups against Guarani-Kaiowa communities. Moreover, the ongoing genocide in Mato Grosso do Sul has meant much more than just the loss of land and assassination of community members, but is rather a brutal mechanism of spiritual, social, economic and environmental destruction.

Genocide was officially, and famously, defined by the United Nations in 1948 as "acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group" as Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide.

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[3] CIMI, Relatório de Violência Contra os Povos Indígenas no Brasil – Dados de 2019 (Brasília: Conselho Indigenista Missionário, 2020); Temporary Senate Commission, Relatório Parcial No 4 de 2004 da Comissão Temporária com Finalidade de Acompanhar Questões Fundiárias (Brasília: Federal Senate, 2004).

[4] Robyn Eversole, John-Andrew McNeish and Alberto Cimadamore (eds.), Indigenous Peoples and Poverty - An International Perspective (London: Zed Books, 2005).

[5] Fábio Mura, À Procura do "Bom Viver": Território, Tradição de Conhecimento e Ecologia Doméstica entre os Kaiowa (Rio de Janeiro: Associação Brasileira de Antropologia, 2019), 20.

[6] Jeffrey Ostler, Surviving Genocide: Native Nations and the United States from the American Revolution to Bleeding Kansas (New Haven and London: Yale University Press, 2019).

[7] CIMI, Relatório de Violência Contra os Povos Indígenas no Brasil – Dados de 2019 (Brasília: Conselho Indigenista Missionário, 2020), 45.

The definition was heavily influenced by the ideas of Raphael Lemkin, a Polish lawyer of Jewish descent, who clearly understood that genocide is a complex process that entails different means of destruction and, more important, it is more than 'only' mass murder or total obliteration, but it is related to various attempts to erase key features of a social or ethnic group. The shortcomings of the United Nations Convention, which largely disregarded important elements of Lemkin's rich thinking, demonstrate the limitations of this official conceptualisation and legalistic terminology when dealing with the fate of non-Westernised social groups, particularly indigenous peoples. Based on the intellectual direction of the Convention, most definitions and conceptualisations of genocide have been biased towards the European context (as in relation to the tragic Armenian, Jewish and Bosnian experiences) and reflect liberal or Anglo-Saxon analytical categories that fall short of questioning the socio-political basis of the capitalist order. The basic assumption of the time was that the Holocaust was the paradigmatic and definitive example of genocide and, consequently, the Convention consolidated the predominant view that genocide necessarily involves the intentional mass killing of certain groups under the direction of the state[8], dismissing the less intense, protracted elimination of indigenous groups attached to particular spatial settings. In this text, it will be argued that a genocide is essentially predicated upon, and starts with, the subtraction of key socio-spatial relationships that define ethnic groups (called here geocide), as has happened in processes of intense spatial and social unravelling in the Gaza Strip, Chechnya, Kashmir and Somalia.

As destructive as the grabbing of land, the killing of leaders and immiseration of Guarani-Kaiowa families is the denial of their humanity and the imposition of institutional rules centred on the market value of land and the short-term profitability of agribusiness commodities. The indigenous genocide unfolding in Mato Grosso do Sul is not just a case of hyperbolic violence or widespread murder, but something qualitatively different from other serious crimes. The phenomenon combines strategies and procedures based on direct opposition between groups of people who dispute the same land and the relatively scarce social opportunities of an agribusiness-based economy. The situation in Mato Grosso do Sul is even more painful because the Guarani-Kaiowa are fully aware of being at the centre of an unstoppable genocide that is only the most recent stage in a long genocidal cycle. In this brutal context, resistance has been crucial for the Guarani-Kaiowa to have any chance of surviving, and resist they do. The lived, often tragic, trajectory of the Guarani-Kaiowa was central for the sustenance of the exploitative, rentist and wasteful politico-economy of Brazilian extractivist and agrarian capitalism. Yet it is still to be demonstrated that, whereas the subjugation of the Guarani-Kaiowa represented an important chapter of the colonisation of South American countries, the present-day genocide continues to be crucial for the maintenance of the regional economy and for the consolidation of export-oriented agribusiness in Mato Grosso do Sul. The Guarani-Kaiowa are both survivors and victims of a series of genocidal cycles. The Guarani-Kaiowa have endured various genocides over several generations, and their current existence remains a perennial struggle to contain and reverse these processes. This calls for a more careful consideration of the causes and ramifications of a genocidal tragedy that is constantly being denounced by the victims and their closest allies (to no avail).

[8] Damien Short, Redefining Genocide: Settler Colonialism, Social Death and Ecocide (London: Zed Books, 2016).

There was historically a lack of the necessary respect for the rights of ethnic and social minorities in Brazil, despite the circumstantial change of rhetoric and some isolated measures. Not even during the almost three decades of greater social inclusion and relatively democratic rule – from 1988 to 2016 – there was much interest in addressing the demands of the indigenous peoples (as in the case of the construction of the Belo Monte dam in the Amazon, with massive negative impacts). The increasingly authoritarian regime installed in 2016 is only a more manifest expression of those tendencies and more directly reveals the persistence of old colonial attitudes and the contemporary widespread violence against the indigenous population of the country. Regarding the specific circumstances of the Guarani-Kaiowa, there was a real chance of compromise in 2007 when the federal government signed an agreement ordering the return of a minimal amount of land to indigenous families and communities. However, the promise was evidently never kept and the areas were not returned. In 1988 a similar solution had been agreed and simply ignored. Despite the fact that Brazil signed, and even helped to elaborate, the 1948 Convention and introduced legislation dedicated specifically to genocide in 1956 (Law 2,889, of 1 October 1956), convicting those accused of genocide has been impossible due to the conservative approach of the courts. No laws or agreements aiming to redress even a small part of the damage caused by land grabbing have been acceptable to those 'masters of the universe' in charge of (indigenous) life and death. Once again, national politics forced marginalised groups, living below the threshold, status and property of whiteness, into a socio-spatial position outside hegemonic economy, politics and the oppressive rule of law. Just as Germany today is less than what it could have become if not for Nazism, and the United States is dwarfed by its own indigenous Holocaust, Brazil is haunted by the failure to rectify, at least partially, this major socio-spatial liability. Life through genocide is the perpetuation of centuries of socio-ecological devastation and Western intellectual, economic and religious arrogance. Genocidal crimes were not only committed against the Guarani-Kaiowa during colonisation, they happened yesterday, are being committed today, and most likely will happen again tomorrow and next year. This large-scale waste of human lives seems unstoppable and is even accelerating.

It is perhaps odd to interrogate the extent of today's indigenous genocides, taking into account that for the for the indigenous peoples in the Americas – also described as native, ancestral, first nations, Fourth World or aboriginal peoples – the world, by and large, ended after the arrival of the European invaders several centuries ago. As observed by Viveiros de Castro and Danowski, the exploration initiated by Columbus was the 'end of the world' for most original inhabitants, and the small number who survived did so because of their usefulness as slaves or because they escaped to find refuge in remote areas.[9] They know, better than anyone else, therefore, the meaning and the consequences of genocide. The indigenous genocide that transformed the American landscapes was just part of the massive effort to deal with mounting scarcities in Europe. While abundance was promised at the new frontiers, new rounds of scarcity emerged in both areas due to the internal dynamics of capitalism, notably the exploitation of society and of the rest of nature.[10]

[9] Eduardo Viveiros de Castro and Deborah Danowski, "Humans and Terrains in the Gaia War," in A World of Many Worlds, ed. Marisol de la Cadena and Mario Blaser (Durham and London: Duke University Press, 2018), 172-203.

[10] Antonio A.R. Ioris, "Amazon's Dead Ends: Frontier-making the Centre," Political Geography, 65 (2018), 98-106.

As an important chapter of that long geography of conquest and annihilation, the contemporary genocidal pressure on the Guarani-Kaiowa is certainly unique but at the same time related to forms of prejudice and oppression employed during colonisation and the early history of Brazil, when indigenous peoples were basically treated as exotic relics of an ignoble past that had to be overcome. More than three centuries of intermittent clashes with the colonial enterprise, the commercial demands associated with the Second Industrial Revolution and the geopolitical stability that followed the end of the Paraguayan War (1864-1870) and triggered increasing exploitation of indigenous labour. From the last two decades of the nineteenth century, large-scale harvesting of erva-mate leaves was carried out by transnational corporations, making use of a semi-enslaved indigenous labour force. The process of land grabbing and commodification, which began in the early years of the last century and was augmented from the 1960s onwards with the expansion of export-based agribusiness, and led to the removal of most remaining vegetation, the aggravation of land disputes and, eventually, Kaiowcide.

A key message from Guarani-Kaiowa theology is that genocide is not unprecedented. However, that does not make it any less awful and despicable. The eschatological perspective of the Guarani-Kaiowa adds some very special features to their life through genocide since colonisation. For instance, Guarani people have a particularly troubled and disconcerting relationship with death and are always extremely concerned about losing relatives and the possibility of dying alone. It is painful and unacceptable for them to show pictures of dead bodies and they carefully avoid images of deceased people, because these may attract bad spirits which will try to take them to the next world. According to Guarani religious beliefs, death is not the end of the story, but brings additional troubles to all involved. The Kaiowa feel particularly demoralised when, as happens quite often in attacks organised by hostile farmers, a relative is murdered and the body simply disappears.[11] Another lesson from their tragic experience is that those at risk of suffering total destruction should mobilise the accumulated knowledge of the world, combined with past memories and spiritual support, and persevere in the pursuit of justice and shared goals. The Guarani-Kaiowa seem to have been doing all that for many years. They rapidly understood the methods and direction of colonisation and land grabbing since the end of the nineteenth century, and the values and attitudes of those coming to their territory in ever greater numbers, and had to develop adaptive responses to somehow mitigate the losses and coexist with aggressive competitors. Guarani-Kaiowa spatial controversies demonstrate that very few groups, if any, are more attuned to contemporary trends, or have a more active socio-spatial protagonism. Since the 1970s, the Guarani-Kaiowa, together with their brothers the Guarani-Ñandeva, have managed to reverse population decline, organised regular grassroots and inter-community assemblies [Aty Guasu], secured guaranteed spaces in public universities and forged important alliances with international organisations.

Before we progress further, it is necessary to explain that the methodological approach employed in this article can be defined as a contingent and combined ethnography, taking all methodological opportunities to accumulate information, learn together and make sense of deeply politicised processes that produce lived, contested spaces. It comprised community visits, meetings, interviews and attendance at religious ceremonies and public events, during fieldtrips between 2017 and 2020.

[11] Bruno Morais, Do Corpo ao Pó: Crônicas da Territorialidade Kaiowá e Guarani nas Adjacências da Morte (São Paulo: Elefante, 2017).

The author was based in the city of Dourados, the regional hub, working with colleagues of the Federal University of Great Dourados (UFGD), particularly in the Department of Geography and in the indigenous college (FAIND). The main study areas, which were visited several times, were the reservations of Dourados, Caarapó, Amambai, Pirajuí and Laranjeira Ñanderu. In total, 55 semi-structured interviews (mostly in Guarani, then translated into Portuguese) were conducted with members of the indigenous communities. In addition, there were 12 interviews with local authorities and social moment activists. In addition, the opportunity to entail informal conversations with multiple indigenous and non-indigenous individuals, as suggested by Mignolo, complemented formal contacts and interviews.[12] The project first entailed the construction of an equitable and productive dialogue with indigenous communities that required, first of all, an ethical and political commitment to avoid patronising stereotypes and utilitarian oversimplifications. This created an opportunity to bring together the emotional insights of personal narratives and instances of the cruel geography of exclusion and deprivation that underpins Kaiowcide. The (non-indigenous) researcher and author of this text tried to establish trusted connections with various communities and helped with the organisation of meetings and assemblies in 2018 and 2019, as the Aty Guasu and Kuñangue Aty Guasu (of indigenous women), protests against the new federal administration, meetings with regional authorities and visits of leaders to Europe. Those activities were carried out without romanticising events or political leaders, that is, avoid dealing with the 'hyperreal Indian' of many NGOs, a fantasy that reinforces the simulacrum image of indigenous people, supposedly pure, ecological, stoic, unadulterated.[13]
The investigation considered that the notion of the Guarani-Kaiowa person emerges from relations across wider categories of their society, it is an intense dialectic between the self and their collective condition (hence their discrimination against single adult males). Indigenous identities are fluid and contingent, their narratives and engagement with place and space are mutable, not linear; all that invite and prompt experimentation, innovation, affection and partnerships. One important mediator between the researcher, non-indigenous research partners and indigenous communities were the growing number of Guarani-Kaiowa academics in local and national universities. The contribution of indigenous intellectuals triggered the reconsideration of century-old research practices and their present-day condition, which raised further questions and provoked meaningful exchanges between the indigenous and non-indigenous participants in the research. Due of long-lasting conflicts and repeated cases of extreme violence practiced by farmers and the police, the situation of the Guarani-Kaiowa has attracted growing attention by graduate students and researchers. On the other hand, because of numerous graduate students dedicated to the Guarani-Kaiowa experience, research fatigue was a real problem affecting the relation between academics and members of indigenous communities, something that was denounced several times in our interviews and meetings. Although the indigenous families naturally welcome scholars interested in their culture and difficult socio-political condition, at the same time they complain about the lack of communication after the research is concluded.

[12] Walter D. Mignolo, Local Histories/Global Designs: Coloniality, Subaltern Knowledge, and Border Thinking (Princeton and London: Princeton University Press, 2012).
[13] Alcida R. Ramos, "The Hyperreal Indian," Critique of Anthropology 14 (1994), 153-171.

Many individuals expressed a deep frustration with the arrival of new researchers trying to gain their trust and inquiring about details of their family life, memories, knowledge and personal relationships, but that in the end take a lot of their time for no direct or indirect reward. It was therefore unacceptable for the Guarani-Kaiowa that researchers would not give clear feedback and yield some concrete benefit back to them in relation to their struggle for recognition, rights and land. As a response, the research effort needed to recognise that their political demands are complex, multiple and constantly changing because of lasting and rising problems.

The study also mobilised other empirical evidence, newspaper articles, government and NGO reports, statistics, historical data and multiple theoretical points to build an argument on the community-based political economy of reciprocity realised by the Guarani-Kaiowa – which has been under attack from wider socio-economic forces and also subject to internal community tensions – without going down the route of neo-populism or schematic localisms. Rather than a naïve attempt to 'give voice to indigenous people' which normally produces a simulacrum of their opinions and perspectives, the intention was to engage with real individuals and try to capture some of the complexity of their lived space. Our intention was to jointly reflect on a transformative indigenous geography that combines the commitment implicit in participatory action research and, in addition, the need to make sense of difficult situations fraught with injustices and ongoing territorial disputes. It was a challenging but rewarding attempt to remove prejudices and learn together. Indigenous co-researchers and informants were able to have control over collecting information about themselves, access and analyse information according to their own needs and goals, determining what and how it should be communicated. The research basically created a space to interrogate and theorise the world from the perspective of the indigenous groups, rethinking universal concepts and search for alternative socio-economic and political paths, particularly in relation to the ongoing and widespread violence. The next section will relate long genocidal trends with the anti-life management of the Covid-19 pandemic in 2020 that was very emblematic of long-lasting trends.

Brazilian Genocidal Context: Before and Because of Covid-19

Supernatural threats and sensitivities in relation to the afterlife have become an extra burden for the Guarani-Kaiowa because of regular massacres and persistent violence, but the dangers reached a new peak in 2020 with the Covid-19 outbreak. Like other indigenous peoples in Brazil, the Guarani-Kaiowa were severely impacted by the disease and suffered great disruption to their already difficult lives. The pandemic further exposed the commodification of conventional medicine, the acute failure of risk management approaches and, in particular, the ineptitude of the Brazilian government, which tried to deny and detach itself from the crisis, and often aggravated the transmission of the disease and undermined medical services. In this tragic context, the handling of public health by the neo-fascist administration brought a new order of magnitude in terms of threats and misinformation. The Guarani-Kaiowa have traditionally feared mystical beings, such as a well-known snake spirit, a type of boa constrictor, whose manifestation is considered a serious indication that relatives will die in unexplained circumstances, one after another.[14]

[14] Levi Pereira, Os Kaiowá em Mato Grosso do Sul: Módulos Organizacionais e Humanização do Espaço Habitado (Dourados: UFGD, 2016).

However, it is possible to infer, based on the indigenous traditions, that the mythological boa constrictor has become very real and disturbingly present in the person of President Jair Bolsonaro, a recognised fascist with an inflammatory rhetorical style and zero administrative experience, just like his German predecessor Adolf Hitler in 1933. During the electoral campaign of 2018, won in dubious political circumstances, Bolsonaro's image was shaped by systematic media and Internet manipulation.

The Covid-19 virus arrived in Brazil in 2020, brought by travellers arriving from rich countries where the outbreak was already rampant. Not much was expected from a government with a fascist-neoliberal agenda that was doing everything possible to maximise alienation, labour exploitation and environmental destruction. The attitudes of the Bolsonaro administration were not new, but displayed similarly arrogant and reckless attitudes to those assumed during the Spanish Flu pandemic in 1918, when public authorities and medical officers refused to take effective measures, leading to more than 35 thousand deaths, including the Brazilian president at the time, Rodrigues Alves. Authoritarianism, vulgarity and obscurity were not enough: the president adopted a distinctive anti-people, anti-life and pro-Coronavirus rhetoric. First, Bolsonaro ignored the risks, mocked the disease and called it a 'minor flu' [gripezinha]. Then he claimed to be immune and to have superpowers, although almost 30 people on the presidential airplane were infected with Covid-19 after a trip to Florida in March when Bolsonaro met his idol, Donald Trump. Even before the election, the president and his team made regular use of Nazi symbols. This continued after the inauguration with, for instance, the public use of the Auschwitz motto 'work sets you free' [Arbeit macht frei] by the Secretariat of Communication and a proto-Nazi video made by the Secretary of Culture that reproduced imagery from a famous advertisement made by Joseph Goebbels.

One of the most emblematic episodes happened on 28 April 2020: when asked by journalists to respond to the fact that thousands of Brazilians were sick and dying, Bolsonaro replied: "So what? What do you want me to do?" [E daí? Quer que eu faça o quê?]. Previously he had declared that he was not a gravedigger [Eu não sou coveiro, tá?] and, for that reason, could do nothing in response to the deaths. On the same day, the Covid-19 death toll in Brazil overtook that of China (5,017 compared to 4,637), which was treated as irrelevant by the government. The president's 'so what?' [E daí?] spoke volumes about the past and present of national politics, and the sad reality that the great majority of the population is regarded not only as second class, but that their lives are disposable and worthless to those in positions of power. The country was built on the same 'so what?' every time the fate of slaves and deprived groups was exposed. The terrible events associated with Covid-19 revealed a great deal again about the mindset and the political means of Brazilian conservative groups, whenever formal democracy and the rule of law become too high a price to pay.

Bolsonaro, as the palpable manifestation of the mythical boa constrictor, did everything in his power to favour the virus and dismiss the suffering of millions of families. In the middle of June, when the country was approaching 900,000 official cases and more than 44,000 official deaths, the president continued to express disregard for the loss of human lives, and the country still had no health minister (as mentioned, the ministry had been occupied by a group of army generals and colonels with no health training, but who had doubled their salaries to around US$ 200,000).

In his daily public meetings with supporters at the entrance to the presidential residence (encounters which grew so tense that the main TV channels and newspapers removed their journalists due to the risk of assault by fanatical supporters and vicious abuse from the president himself, which had repeatedly occurred), Bolsonaro concentrated on virulent attacks against any opposition movements and on trying to protect his clan from mounting accusations of corruption and mismanagement, including allegations made directly to Supreme Court judges. His only comments on the Covid-19 crisis were to defend Chloroquine, incite his followers to invade hospitals to check whether there was any spare capacity (which would supposedly indicate that the situation was not too bad, ignoring measures taken by hospitals and state governors to increase hospital capacity) and, implicitly, insult medical professionals.

The above is just a brief account of a much more complex and extremely upsetting public health catastrophe (by March 2021, more than 12 million Brazilians had been infected and rate of daily deaths was the highest in the planet, with more than 300,000 casualties and the collapse of the health system), but it illustrates how the legacy of the colonial past has never really disappeared or healed. The Coronavirus pandemic is just one of many such moments when the reality of the situation faced by the most vulnerable and exposed social groups has been highlighted, justifying the unapologetic use of the word genocide. On 25 March 2020, due to the actions and mismanagement of the Bolsonaro government, Google searches for 'genocide' increased by 100% in Brazil and the expression was briefly used by leading politicians and even the supreme court in reference to the failures of public policies. Not unexpectedly, the social group with the highest vulnerability and largest number of victims and deaths, proportionately, was the indigenous population. The genocidal attack was already being promoted by the Bolsonaro government before the Covid-19 outbreak. Since the earliest days of the administration, international media and numerous organisations had accused the president of 'declaring war' on indigenous peoples by offering incentives to farmers and ranchers to increase deforestation and burn the Amazon with impunity, undermining the protection of existing indigenous lands and the demarcation of new ones (including many already determined by the judiciary, in vain), and encouraging invaders to occupy indigenous areas and attack vulnerable communities. Despite being told by the Supreme Court, the government did not adopt any of the measures imposed by the judiciary and continued to downplay the significance of the pandemic and challenge the number of victims. The president just shrugged his shoulders and repeatedly said that it was business as usual, given that 'everybody dies one day'. As a result, the main thing the indigenous population could do was to take action independently of the health authorities and erect barriers to isolate their communities from outside contact.

That is exactly what the Guarani-Kaiowa tried to do, making use of the efficient coordination between external representatives and local leaders. Nonetheless, it was difficult to secure complete social segregation considering the need to go to regional towns to collect the meagre support offered by the government. The disease quickly spread in the reservation and soon reached other indigenous areas and neighbouring abattoirs. In May 2020, the various organisations that represent the indigenous communities declared state of emergency over Covid-19 due to the failure of public health services and the impossibility to maintain social distance in overcrowded reservations such as Dourados. In their public statement, the situation was treated as another massacre of indigenous lives that echoed colonial violence.

In interviews conducted via telephone during the pandemic, members of the indigenous communities expressed their frustration at another serious public health and services crisis, coupled with expressions of racism and misrepresentation of the most basic community needs. Community members were trying to make sense of a troubled reality and seeking additional support from the shamans, who were using all their knowledge and medicinal plants in an attempt to reduce the communities' vulnerability. At least 73 barriers were placed on the roads by the Guarani-Kaiowa communities during the 2020 lockdown and apparently contributed significantly to reduce virus transmission, somehow mitigating the most negative repercussions of the attitudes of the mythical boa constrictor.

The Geocide-Genocide-Massacre Nexus

As affirmed by Maybury-Lewis, the "Americas furnish the oldest and most dramatic example of the treatment of indigenous peoples. It was the invasion of the Americas that marked the beginning of European expansion and it was the Indians of the Americas who have borne the brunt of their indigenous status for the longest time."[15] The main tool used by the invaders was outright genocide, which paved the way for their territorial and extractive plans and for the consolidation of a mercantilist economy based on slavery and racially driven killing. The American landscapes, which had been transformed over millennia by socio-ecological interaction between human and more-than-human agents, were simply considered terra nullius by the European invaders, that is, it was nobody's property, free to be grabbed by those moving from the East hungry for profit. In effect, the aggressors themselves nullified and ruined everything blocking their way to personal enrichment, equipped with firearms and royal and papal decrees guaranteeing them access to the world of peoples never heard of before. The "expansion of the frontier, and the suppression of Indian rebellions, provided a continuing pretext for both genocidal massacres and enslavement."[16] Social destabilisation and destruction happened not only through the direct assassination of individuals and groups, but also through the spread of diseases and the imposition of the European religion. In the end, the indigenous peoples had only a handful of choices: integrate into to ethnocidal policies and Christian theology, resist (and be eliminated), or migrate to new areas where they had to cope with unfamiliar, inhospitable environments and often enemy nations.

The primary motive for the elimination of the autochthone nations has been territoriality (settler colonisation), but not always, as in the case of the fur trade in Canada or the exploitation of labour in the Peruvian mines. This rationale of displacement and conquest continued to underpin national development and state building when the management of the former colonies was transferred to newly formed 'independent' governments. Evans and Thorpe aptly propose the concept of 'indigenocide' to describe the theoretical and practical procedures that made indigenous peoples less valued than the land they inhabited and which was wanted by the invaders.[17] 'Indigenocide' contrasts with state-driven, industrial and bureaucratic genocides, such as the Jewish Holocaust, and happens when land is intentionally invaded, for as long as it is necessary or possible, leading to the killing of the original inhabitants, classified as the lowest form of humanity and deserving of extermination.

[15] David Maybury-Lewis, Indigenous Peoples, Ethnic Groups, and the State (Boston: Allyn and Bacon, 1997), 7.
[16] Nicholas A. Robins, "Colonial Latin America," in The Oxford Handbook of Genocide Studies, ed. Donald Bloxham and A. Dirk Moses (Oxford: Oxford University Press, 2010), 304-321, 311.
[17] Raymond Evans and Bill, "Indigenocide and the Massacre of Aboriginal History," Overland 163 (2001), 21-40.

According to Evans and Thorpe, 'indigenocide' has five elements, namely, land invasion, conquest of the indigenous people, killing and reduction of this population, their depreciation by the invaders, and the destruction of their religious systems. The idea of 'indigenocide' is certainly sound and helpful in terms of understanding the specificities of indigenous genocides, but it is necessary to scrutinise it in relation to the various criteria discussed above. First, the question of intentionality, which in the definition of 'indigenocide' seems to echo the provisions of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, has already been extensively considered in the previous sections, where it was argued that indirect acts of violence and incidental measures, such as the spread of contagious diseases, can also amount to genocide.

Second, it appears restricted to the classical model of land invasion followed by social and religious abuses and concentrated mass assassination, which are certainly relevant for the characterisation of the crime but fall short of exhausting other possible genocidal strategies. "A discussion of genocide as practiced against indigenous peoples should not (…) focus solely or even principally on deliberate attempts to massacre entire societies. Often the widespread dying resulted not so much from deliberate killing but from the fatal circumstances imposed by the imperialists on the conquest."[18] In effect, the historical experience shows that in almost all indigenous genocides, including the decimation of entire nations in the sixteenth century in the Americas, most victims perished in the course of short-term clashes interspersed with long phases of low belligerence but sustained antagonism and brutal treatment by the state and by companies or groups of individuals in search of resources, land or labour. The genocide of indigenous peoples is normally lived and endured over several years or decades, during which the victims are not passive but try to react and resist whenever the conditions are ripe. Many accounts of indigenous assimilation and killing, including Lemkin's own position, describe indigenous groups as lacking agency, ignoring their reactions, and adaptability and, particularly in the early stages of colonisation, the still tenuous European grip on power.[19]

Third, it is not the scale or rate of killing that determines whether an indigenous genocide is taking place but the systematic and brutal imposition of oppressive actions and norms that make it extremely difficult for indigenous people to survive and reproduce. An indigenous genocide, as a period of intense social destruction and the loss of a significant proportion of the population, is not an isolated phenomenon, but is preceded and supervened by a broader process of world grabbing, that is, the subtraction and invalidation of the indigenous world. This longer and deeper process can be described as geocide, which is not merely the recognition of a major antagonism between indigenous and non-indigenous peoples but encapsulates the intolerance and destructive impetus of more powerful invaders. Genocide is dialectically connected with, and predicated upon, the subtraction of the indigenous world, what is here called geocide. Geocide is the language and technology of colonisation, which gradually eliminates any remaining opportunities for indigenous people to maintain their collective and individual lives. It entails micro- and macro-dynamics of violence that consolidate prejudices, difference and rivalries and, depending on the nature of the disputes and the balance of power, can spark a genocide.

[18] David Maybury-Lewis, 2002, in Jens Meierhenrich, Genocide: A Reader (Oxford: Oxford University Press, 2014), 82.
[19] A. Dirk Moses (ed.), Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History (New York and Oxford: Berghahn Books, 2008).

There are also isolated or more circumscribed cases of lethal violence in the form of massacres, which also have geocide as their deep-rooted motivation. Indigenous genocides are predicated upon geocide, which is the more permanent driving-force underpinning the socio-spatial relationship between indigenous people and the potential perpetrators of genocide. In other words, genocide and massacres are the visible face of the subterranean phenomenon of geocide, and these relatively shorter processes typically erupt when indigenous groups resist and attempt to react against geocide. The geocide-genocide nexus is a dialectical synthesis of the lived spatial experience of indigenous peoples amid capitalist relations of production and reproduction. A genocide ultimately happens when the perverse geocidal order derails, not because the system collapsed, but because it needs these moments of intense destruction to maintain the perverse, highly asymmetric balance of power.

Geocide is an expression of what the indigenous scholar Taiaiake Alfred describes as situations in which native peoples have inherited "relationships founded on hatred and violence and a culture founded on lies to assuage the guilt or shame of it all," and where victims and perpetrators alike continue to deny their shared past and the corresponding moral implications.[20] World subtraction, which is implicit in geocide, is more than just the grabbing of land and resources, but entails the erosion of existing or potential social relations. Before an actual genocidal experience a series of 'preconditions' must be fulfilled, first of all the reduction of the victims to something less than human, worthless and "outside a web of mutual obligations", as well as the degradation of the perpetrators to criminals or pathological individuals.[21] It is perhaps ironic that the UN Declaration on the Rights of Indigenous Peoples, passed in 2007, itself incorporated a sense of geocide in its definition of such social groups. The text of this declaration states that indigenous peoples are those with a historical and geographical continuity with pre-invasion and pre-colonial societies, and that still consider themselves distinct from other sectors of the societies now prevailing in their territories. In this sense, they form minority, non-dominant sectors of national societies and struggle to preserve, develop and transmit to future generations their ancestral lands and ethnic identity which are the basis of their continued existence according to their own social institutions and traditional practices. The Declaration suggests that for a group to become indigenous (in general rather than in terms of any particular ethnic denomination) their land must have been invaded and there must be some geocidal antagonism from other social groups. As such, the definition has an inadvertent backward-looking connotation that perpetuates the idea that geocide is essential for a group to be considered indigenous, which is certainly important as a political gesture but is also ontological restrictive.

[20] Taiaiake Alfred, "Warrior Scholarship: Seeing the University as a Ground of Contention," in Indigenizing the Academy: Transforming Scholarship and Empowering Communities, ed. Devon A. Mihesuah and Angela C. Wilson (Lincoln: University of Nebraska Press, 2004), 88-99, 90.

[21] Frank R. Chalk and Kurt Jonassohn, The History and Sociology of Genocide: Analyses and Case Studies (New Haven and London: Yale University Press, 1990), 28.

Fourth, and also very important, significant controversy has arisen over whether the definition of genocide should be limited to the elimination of a genos, an ethnicity or nationality, evidently following the perpetrators' definition of an ethnic minority[22], or whether its scope should be broadened to include atrocities based on class identity and politico-economic disputes[23] amplified by references to ethnicity and belonging. Nonetheless, this is a false dichotomy and questions related to ethnicity of indigenous people, as demonstrated by the incidence of racism, discrimination and segregation, cannot be separated from the exploitation of the indigenous labour force by the owners of the means of production. This apparent separation between ethnic or class-based oppression, which could independently lead to genocides, is reconciled through the control of state action. There exists a politico-economy of genocide that is not restricted to past events and continues to shape political interventions in favour of or against new genocides. As observed by Bauman, genocide is a rare event but not without major socio-political repercussions, and it reveals a great deal about the shortcomings of Modernity (particularly in the twentieth century) and helps us to interrogate the present condition of the world.[24] The same global society that made the Holocaust possible still exists, and there was nothing in that society that could stop it from happening during the war or that could stop it from happening again today. Some take genocide to be an aberrant act, but its roots are really in the "process of historical development out of which our entire, global, political-economic system has emerged."[25]

Genocide is the contingent and concentrated manifestation of more perennial and dispersed forms of socio-spatial violence involved in the subtraction of the indigenous world (geocide). The long and gradual unfolding of geocide – according to a politico-economic and ideological regime that connects local circumstances with national trends – guarantees the necessary conditions for the occurrence of regular genocidal episodes during conquest and colonisation. In schematic terms, geocide is the world subtraction caused by the arrival of new groups and the imposition of new socio-economic relations, while genocide is a moment of concentrated social destruction, group displacement, violent attacks or severe negligence. The notion of geocide refers to a long-term process of brutal disqualification, exploitation and appropriation of land from the ancestral inhabitants of a territory who find themselves in the way of the economic, spatial or political gains expected by invaders and colonisers. Genocide, in turn, is the more intense destruction of social groups, carried out over a relatively shorter time, through direct or indirect measures (direct measures could include the use of firearms and the capture and execution of target populations, while indirect measures could include spreading disease or provoking regular road accidents). Genocide is nonetheless predicated upon the progress of geocide, and therefore the connection between geocide and genocide is not just temporal, but deeply dialectical and associated with acute politico-economic disputes. Geocide is the destruction and theft of somebody else's world and during the long-lasting geocidal process there will be stages when the oppressed themselves become vulnerable to elimination: these are the moments when genocides take place.

[22] Yehuda Bauer, "Comparison of Genocides," in Studies in Comparative Genocide, ed. Levon Chorbajian and George Shirinian (New York: St. Martin's Press, 1999), 31-43.
[23] Michael Mann, The Dark Side of Democracy: Explaining Ethnic Cleansing (Cambridge: Cambridge University Press, 2005).
[24] Zygmunt Bauman, Modernity and the Holocaust (Cambridge: Polity, 2000).
[25] Mark Levene, The Meaning of Genocide: Genocide in the Age of Nation-State, Volume 1 (London: Tauris, 2005), 9.

As emphasised already in the previous pages, genocides occur independently of direct intention and through actions that may be to a greater or lesser degree deliberate, but which result in the partial or total annihilation of groups or societies. Therefore, genocides do not happen by chance or in socio-spatial vacuums; rather, people are attacked or contaminated by new pathogens because of who they are and where they live. Victims of genocide may also include those who have tried to oppose geocidal violence, as in some circumstances the repressive reactions of those in charge of geocide can pave the way to genocide. As Moses argues, genocides are moments of concentrated violence that result from long gestation processes leading to growing disputes and eventual confrontation.[26] Finally, to complete the picture, not all instances of aggression and murder clearly amount to genocide, but there are also cases of sporadic and opportunistic violence committed because of the persistence of geocide. These include massacres of various numbers of individuals, who may, for example, be attacked during protests or during the reoccupation of indigenous lands. Massacres and genocides are the most striking and graphic manifestations of the ongoing processes of lower-level violence, and occasional killing, that characterise geocide. Indigenous massacres may happen as part of wider processes of genocide or take place in circumstances that appear to be isolated but are in fact associated with geocide. Figure 1 summarises the geocide-genocides-massacre nexus and shows how these processes may evolve over time.

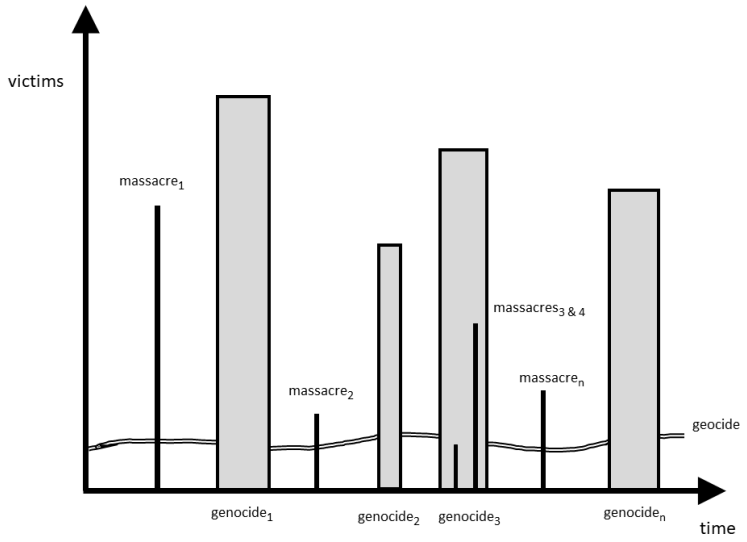

Figure 4.1 – Schematic Illustration of the Geocide-Genocide-Massacre Nexus

This conceptualisation of the socio-spatial association between geocide, massacres and genocide will facilitate the comprehension of indigenous genocides as quantitatively and qualitatively different from comparable non-indigenous phenomena. Indigenous genocides, typically associated with settler colonisation, resource exploitation and the formation of economic frontiers by attracting national and international migrants, contrast with the other forms of genocide which are more commonly caused by religious, political and ethnic rivalries between social groups with previous connections.

[26] A. Dirk Moses (ed.), 2008, op. cit.

In general terms, although these other genocides also have long-term socio-economic motivations and are the consequences of multiple tensions accumulated over time, these are primarily related to specific non-economic disputes. This was broadly the case with religious-ethnic intolerance towards Jews in many parts of Europe prior to the Holocaust, where Jewish people often occupied significant economic and professional roles and generally maintained reasonable levels of social integration before the genocides. An indigenous genocide, on the other hand, is basically a consequence of an attempt to transform and expropriate an indigenous group's whole world through denial of their very existence and undermining of their ethnic identity (geocide). Indigenous genocides are instrumental in eradicating obstacles to state power, personal gain and regional economic growth, which are all goals that require the more prolonged destruction and radical transformation of socio-spatial settings via geocide. Indigenous genocides are, therefore, predicated upon geocide as part of the formation of different social, economic and socio-ecological patterns. In other words, the recourse to genocide is perfectly justified, according to the agenda of colonisation and domination, to complement the more extensive geocidal violence employed to pave the way for appropriation of the assets and riches of indigenous inhabitants in coveted areas. Indigenous peoples are certainly victims of genocide because of who and where they are, which is ideologically transformed into something incompatible with the socio-spatial objectives of people who have become antagonists because of specific historical circumstances.

Kaiowcide: Consolidating the Power of Agribusiness

Informed by the geocide-genocide-massacre nexus discussed in the previous pages, it can be seen that the socio-spatial trajectory of the Guarani-Kaiowa in Mato Grosso do Sul has involved aggressive appropriation of their world (geocide), repeated efforts to directly or indirectly destroy their communities and destabilise their social organisation and socio-spatial relations (genocide), and numerous isolated assassinations of leaders, community members and even children (massacres). At the same time, the struggle of the Guarani-Kaiowa for the recognition of their most basic rights has important parallels with the class-based struggle of landless peasants and marginalised urban groups in Brazil. Each indigenous group is unique, and defining features of the Guarani-Kaiowa include precisely their ability to preserve their language (a version of Guarani) and maintain a relatively large and unified social identity amidst a series of interrelated genocides. It has been reported in several documentaries, movies and UN reports, and the images of protest, police repression, dead bodies, miserable living conditions and dirty children have circulated around the word. Still, the Guarani-Kaiowa remain the most threatened indigenous population in Brazil, denied recognition of their original lands and subject to systematic abuses and exploitation. The indigenous groups and extended families that are now described as Guarani-Kaiowa (and Paĩ-Taviterã in Paraguay) have been living through a series of genocides for more than four centuries.

Since the seventeenth century, after the arrival of the first Spanish and Portuguese explorers and the formation of the Jesuit reductions, repeated genocides have been perpetrated against the Guarani-Kaiowa as part of the much wider geocide carried out against Tupi-Guarani nations in the Plata river basin and along the Brazilian coast. Genocides during this period were poorly recorded but basically involved attracting indigenous people to the Jesuit missions, or capturing and enslaving them. Subsequent genocides happened for various reasons. Initially, these included the expansion of landed property and the extraction of erva-mate in indigenous lands in the context of nation building.

Later, genocides resulted from the expansion of a highly peripheral form of agrarian capitalism, which culminated in the promotion of a state-led National Agricultural Colony of Dourados (CAND), through Decree 5,941/1943, and, after its failure in the 1950s, the consolidation of an economic model based on export-oriented agribusiness production and large private properties. During this phase, genocides happened through displacement, confinement, assimilation and tutelage.

The most recent and ongoing process of indigenous genocide affecting the Guarani-Kaiowa since the 1970s – described here as Kaiowcide – corresponds to the cross-scale effort to consolidate the agribusiness-based economy, the growing neoliberalisation of production, rapid urbanisation, the serious deterioration of living conditions inside and outside the reservations, and the introduction of formal democratic legislation. From the perspective of the agribusiness sector, the presence of a contemporary indigenous population is no more than a leftover from violent skirmishes that happened decades ago during the conquest of the territory, and indigenous people constitute a horde of desolate, strange people who only have themselves to blame for their fate. According to this argument, indigenous groups wish to return to the pre-colonial past, while the future 'clearly' belongs to the expansion of agribusiness exports. The decisive cause of Kaiowcide is not simply the cumulative result of those ongoing changes, but precisely a coordinated attempt to contain the bottom-up reactions of the Guarani-Kaiowa to economic and socio-spatial forms of exploitation. Figure 2 schematically shows the three main phases of the genocidal experience.

Figure 2 – Key Phases of the Prolonged Guarani-Kaiowa Genocide

The expression 'Kaiowcide' is employed here because of its semantic connotations, as it has the advantage of being immediately comprehensible and connected with the same series of words as genocide and jewicide, as proposed by the linguist Gilles Petrequin and the historian Arno Mayer, while it is capable of recording the genocidal tragedy in all its terrible detail, without trivialising or mystifying it.[27] It is, in that sense, comparable also to the diaspora, the oppression and the killing of civilians described as kurdicide, among other similar processes affecting Armenians, Palestinians and other nations.[28] Kaiowcide has both descriptive and normative meanings, as it explains the distinctive genocidal practices adopted during a moment of formal democratic liberties but economic and judicial authoritarianism since the 1980s, as well as recognising the astute political agency of indigenous groups living through a present-day genocide. While new legislation recognised the rights of ancestral peoples to maintain their indigenous identities indefinitely (rejecting assimilation and tutelage), geocide continues through neoliberal economic and ideological constructs that guarantee high levels of alienation and homogenisation through market consumerism, evangelical protestantism and the financialisation of all aspects of life. Despite legal and constitutional improvements, most public authorities prefer to look the other way and hope that the indigenous population will renounce their ethnic claims and become indistinguishable from other poor Brazilians. Consequently, Kaiowcide has entailed killing both through the imposition of market-based interpersonal relations (e.g. hyper-exploitation of indigenous workers and the renting out of indigenous land to agribusiness) and, as in the past, 'conventional' murder by state police or paramilitary militias (and increasingly by drug dealers too). The main claim here is that Kaiowcide has dramatically impacted the Guarani-Kaiowa in recent decades – which remains clearly connected to geocide and is the continuation of previous genocidal phases – because it is a counterreaction of land grabbers, reactionary judges and politicians and the repressive agencies of the state apparatus against a legitimate and determined indigenous mobilisation for the restoration of land-based relationships and for better social, political and economic opportunities. Kaiowcide is a renewed, bespoke and ongoing phenomenon of brutal socio-spatial elimination taking place in a context dominated by agribusiness farmers and the prevalence of globalised, urban values.

It is precisely because the Guarani-Kaiowa decided to react to the geocidal violence associated with agribusiness production, making good use of novel politico-institutional spaces, that they have been targeted for further rounds of genocide, now in the form of Kaiowcide. In other words, Kaiowcide is not happening because of a lack of political resistance, but precisely as a result of the ability and determination of the Guarani-Kaiowa to fight for what they consider legitimate demands. The main argument here is that Kaiowcide is a form of genocide that has occurred because of the political reaction of the Guarani-Kaiowa, since the late 1970s, against a long genocidal process that escalated with the advance of an agribusiness-based economy. The key analytical challenge involved in making sense of Kaiowcide is to connect the widespread hardships faced by the communities with the collective mobilisation of groups dispersed in the territory and capable of coordinating effective political initiatives.

[27] Anna-Vera Sullam Calimani, "A Name for Extermination," The Modern Language Review, 94, no. 4 (1999), 978–999.
[28] Khachig Tololyan, "Cultural Narrative and the Motivation of the Terrorist," Journal of Strategic Studies, 10 no. 4 (1987), 217-233.

It is necessary to comprehend that, because of the persistence of a genocidal milieu in the region, mobilisation to oppose it has triggered a new and more sophisticated type of genocide – that is, Kaiowcide – that combines, among other strategies, the manipulation of the rule of law and court decisions with the operation of paramilitary forces and enhanced state repression. In historical terms, Kaiowcide corresponds to the violence and deception of neoliberalised agribusiness, which is both explicit and embedded in aggressive mechanisms of mass production and elitist property rights. The ambiguity of Kaiowcide, combining both innovative and apparently archaic forms of cruelty, is also an emblematic hallmark of neoliberalised agribusiness, which seems to offer a solution to food insecurity but in effect maintains and aggravates malnutrition, risks and socio-ecological degradation.

The more recent genocidal phase combines elements of state abandonment and political persecution with a range of violent measures stimulated and facilitated by the exploitative pattern of regional development. Kaiowcide has certainly incorporated additional unique features, such as the need to respond to international public opinion and give the impression that the actions of agribusiness organisations are legal and legitimate, but it also dialectically preserves elements of the most primitive brutality employed by the Jesuits, kings and conquistadores in the past. Even so, there is a subtle but important difference between previous genocides associated with space invasion and ethnic cleansing and the systematic attempts to contain and undermine the Guarani-Kaiowa socio-political revival since the 1970s through Kaiowcide. In the previous phases, the Guarani-Kaiowa were subjugated by Catholic missionaries and attacked by bandeirantes and encomienderos, were converted into semi-enslaved labourers working in the production of erva-mate and occasional farm labourers [changueiros] recruited (ironically) for the removal of the original vegetation, while also being expected to remain in small, inappropriate reservations and having their identity rapidly diluted as a consequence of individualising policies (as in the case of the division of the reservations into family plots of land instead of collective areas). These past experiences form the basic etiology of Kaiowcide, considering that the long process of colonisation, territorial conquest and settler migration paved the way for the subordinate insertion of Brazil into globalised agribusiness markets and the consolidation of agrarian capitalism in Mato Grosso do Sul.

The more diffuse and less evident basis of indigenous genocides, which the literature often treats as politicide, gendercide and culturicide, was certainly present in the previous two phases of the long Guarani-Kaiowa genocidal experience (Figure 2), but the important difference is that in the past the aim was to assimilate and proletarianise the indigenous population, while under Kaiowcide the goal is to contain the possibility of political revolt through mitigatory measures, alienating religiosity and encouraging consumerist behaviours, as well as intimidation and the suppression of legitimate land claims through lengthy court disputes complemented by the operation of paramilitaries and private farm militias. Note that the deadly features of Kaiowcide go beyond the boundaries of politicide, as the victims have been targeted because of the perpetrators' prejudices against Guarani heritage and ethnicity. Moreover, it is also more than ethnocide (as conceptualised by Mann[29]) because there has been a clear intention to kill the leaders of the indigenous mobilisation. It also has elements of culturicide, but goes beyond that because Kaiowcide entails forced movement and murder. In practice, all these processes converge and reinforce each other.

[29] Michael Mann, 2005, op. cit.

The genocidal practices of Kaiowcide have been greatly facilitated by the fabricated invisibility and neglect of indigenous communities by the vast majority of the regional population, who prefer to remain ignorant of the crude realities of life for the Guarani-Kaiowa.

As a result, Kaiowcide has not only lasted for several years now, but has created a self-reinforcing mechanism in the stimulation of novel forms of reaction and counteraction. There is a vicious circle that constantly reinvigorates Kaiowcide: the Guarani-Kaiowa react to previous genocides and then have to be crushed through new cycles of genocide, which inevitably, because of their active political agency, spark fresh reactions and enflame additional genocidal measures. The agribusiness community and state armed forces have the necessary resources to buy equipment, guns and bullets, recruit mercenaries, lawyers and judges, and sustain an aggressive media campaign in defence of the highly perverse status quo. Their strength is entirely dependent on the brutality of the state apparatus, the inscrutability of the legal system and the profitability of export-oriented agriculture production. The Guarani-Kaiowa, by contrast, forge ahead through a horizontal power network based on a family support system, reliant on the wisdom and prestige of respected community elders and religious notables (often the same individuals). The brutal elimination of any one person is bitterly felt and will be always remembered by the communities, but the non-Western mentality of indigenous peoples is much less individualistic, and they are therefore able to more effectively respond to the losses of chiefs, elders, shamans and community members. Cross-community political alliances and mutual support are centred around personal reputation, family bonds and interactions with the common ancestral land rather than money, material resources and external lobbying influence. Highly prestigious leaders live in apparently destitute conditions, whilst retaining voice and influence because of their knowledge, religious status and ability to provide effective guidance.

Kaiowcide is, therefore, the coordinated and renovated, in a particular moment of national politics and the transition to a post-industrial economy, attempt to annihilate, repress and contain the Guarani-Kaiowa precisely when they have been able to challenge the accumulated consequences of agrarian capitalism and frontier-making in the service of conservative national development. Distinct from the graphic narratives of other contemporary genocidal processes, the victims of Kaiowcide are not calculated in thousands of deaths. The total number of fatalities in the last four decades, including the murders of leaders and community members using firearms and other weapons, amounts to several hundred victims, which is certainly significant in a population of around 50,000. But this is only a small fraction of the total losses due to road accidents, suicides of adults and teenagers, child mortality and deaths related to the miserable conditions in the reservations, encampments and shanty towns. In other words, if violent murders of indigenous persons are recurrent news in Mato Grosso do Sul, a much larger number of deaths have been caused by a lack of proper housing, malnutrition, contaminated water, mental illness and inadequate medical assistance (often related to the lack of transport connections and infrastructure needed to transport patients to distant hospitals). As Levene theorises, genocides presume a reified treatment of the victims, who are considered generic strawmen and no longer seen as real people.[30]

[30] Mark Levene, The Meaning of Genocide: Genocide in the Age of Nation-State, Volume 1 (London: Tauris, 2005), 88.

Indigenous identities and social organisation have been devalued, and aspects of the Guarani-Kaiowa way of life are persistently scorned and even criminalised (as in the case of collecting medicinal plants on private farms). A new social reality was imposed by the perpetrators of genocide and reinforced by constantly renewed feelings of hatred towards indigenous people. Furthermore, the reductionist modus operandi of agribusiness, which reduces ecosystems to farmland and biodiversity to a few varieties of a single crop, echoes the reifying pressures of Kaiowcide, which contrast directly with the Guarani-Kaiowa mindset that puts strong emphasis on the uniqueness of locations, families and local priests.

Similar to other regional and global experiences, Brazilian society has become increasingly individualistic and dysfunctional because of mass consumption pressures (which accelerated after inflation controls were introduced in 1994, resulting in relatively cheaper imports due to a stronger currency, the Real) and the growing role played by fundamentalist groups and evangelical churches with a message of individualism and a focus on personal success (as well as condemnation of central elements of Guarani-Kaiowa identity). The sense of a shared social purpose has been eroded by the combined forces of conservatism, individualism and privatisation that have challenged the role of the state as protector and ultimate provider.[31] Very few people have been directly involved in the physical elimination of indigenous persons, but large sections of the population have been indirectly complicit in perpetuating anti-indigenous trends and have indirectly contributed to indigenous genocides including Kaiowcide. Regional development and agribusiness in Mato Grosso do Sul have been established through productivist, short-lived economic goals, while most of local society has tended to be intolerant towards ethnic diversity and the conservation of ecosystems (both considered superfluous and unimportant), all of which has been instrumental for the advance of Kaiowcide. All these embarrassing abhorrent trends became even more pertinent after the election of Bolsonaro, who at last provided a 'legitimate' reason for the violence and elitism of the agribusiness economy. These broad tendencies that underpin the process of Kaiowcide and its evolution will be examined in more detail below. The three main phases of Kaiowcide are connected to wider geocide pressures, as well as to national politics and related developments on the ground.

A Lived Genocide: The Offspring of Kaiowcide

In the previous sections it was argued that Kaiowcide is, effectively, the most recent phase of a long genocidal process that has, since the seventeenth century, attempted to destroy the Guarani-Kaiowa people and significantly destabilised their socio-spatiality through invasions, enslavement and persecution. Kaiowcide is the reincarnation and revival of an old genocidal practice. While the focus in recent years may have shifted from assimilation and confinement to abandonment and confrontation, there remains the same intention to destabilise and eliminate the original inhabitants of the land through the asphyxiation of their religion, identity and, ultimately, geography. Like the motto 'kill the Indian, save the man', used to try to complete the unfinished eradication of indigenous tribes in North America, in the State of Mato Grosso do Sul the rationale of Kaiowcide is 'undermine, reject and, if necessary, kill or imprison the troublemakers.'

[31] Aldaiza Sposati, "Descaminhos da Seguridade Social e Desproteção Social no Brasil," Ciência e Saúde Coletiva 23, no. 7 (2018), 2315-2325.

Behind As a background to the actual genocide, the trend of aggression and world robbery – defined here as geocide – intensified in the second half of the last century and produced multiple consequences at individual and community levels, including severe mental health issues, alcoholism, domestic violence and high levels of suicide. When it became evident that the government would continue to prevaricate, the collective decision was made to start a coordinated reoccupation of ancestral areas lost to development [via difficult and painful retomadas], which triggered a corresponding reaction from farmers and the authorities in the format and language of Kaiowcide. In practice, this means that in addition to the obstacles faced by any subaltern class or social group in the highly unequal, racist and conservative society of Brazil, the Guarani-Kaiowa also face the monumental challenge of continuing the fight to recover their land in order to rebuild basic socio-spatial relationships in the midst of a genocide.

Because of the multiple difficulties within communities and beyond the small spaces where they live, where their ethnicity is at least respected and cherished, the Guarani-Kaiowa are relentlessly propelled into a daily anti-genocidal struggle for social and physical survival. In the words of Quijano[32], they constantly have to be "what they are not", that is, there are major barriers to acceptance for their ethnic specificities and their most fundamental needs as a distinctive social group. Regular murders of Guarani-Kaiowa, both during the retomadas and in isolated hostilities, have become so common that many incidents now do not even make the headlines. Between 2003 and 2017, around 45% of the homicides involving indigenous victims in Brazil were committed in Mato Grosso do Sul (461 in total), and 95% of these were Guarani people.[33] In the same period, 813 indigenous suicides were registered in the State. This means that through suicides and murders alone, around 3% of the Guarani-Kaiowa population was eliminated in less than 15 years. When other causes of death are factored in, such as loss of life due to hunger, malnutrition and food insecurity, poor sanitation, lack of safe water, drug use and acute mental health problems, among others, it is not difficult to perceive the widespread impact of genocide in Guarani communities and settlements. There is palpable apprehension in the air over the feeling that the entire population is under attack and their future being compromised day by day. Kaiowcide is social, psychological, biophysical and existential.

Unlike sister indigenous groups in the Amazon and other parts of Mato Grosso, who fight for the preservation of ecosystems and resources in areas that are relatively consolidated and accepted as ethnic territories (although under renewed attacks and government-supported invasions since 2019), the Guarani-Kaiowa are still in the early stages of the struggle to retake their land from hostile farmers. In the meantime, there is a need to subsist in very difficult material conditions, with almost no hunting or fish left, and limited land and resources to practice agriculture. Hunger and unemployment thrive among a social group living in the middle of what is basically a vast soyscape (the landscape of soybean farms, as well as other crops) established over land 'borrowed' from them. The everyday life of most people takes place in a fuzzy, bewildering space between the concrete losses of the present and the uncertain configuration of the future.

[32] Aníbal Quijano, "Colonialidad del Poder, Eurocentrismo y América Latina," in La Colonialidad del Saber: Eurocentrismo y Ciencias Sociales – Perspectivas Latinoamericanas, ed. Edgardo Lander (CLACSO: Buenos Aires, 2000), 201-246, 226.

[33] CIMI, Relatório de Violência Contra os Povos Indígenas no Brasil – Dados de 2017 (Brasília: Conselho Indigenista Missionário, 2018).

This leaves more than 50,000 people cornered in an impossible situation and obliges them to become more and more indigenous in order to survive, but the hegemonic reaction of the non-indigenous society is to make them less and less human. Most indigenous individuals, even many of those living in the reservations, long to return to the land of their parents and grandparents. Even those who seem largely integrated in the non-indigenous world cultivate the memory and existential reference of the land lost to mainstream development. The general feeling is like being in the intermezzo of a turbulent ordeal that has lasted several decades and will hopefully be resolved, one glorious day, with the return to the area from where the family was expelled.

Although from the perspective of Guarani-Kaiowa geography itself the boundaries of their land are not absolute but associated with the long and dynamic presence of extended families in the terrain, non-indigenous institutions have imposed borders and fences in the name of national sovereignty and the sanctity of private rural properties. Because of the need to present their claims before the apparatus of an antagonistic state, their idiosyncratic understanding of space had to be translated into objectivity-seeking maps, anthropological surveys and legally valid proof of socio-spatial connections. All these legal and bureaucratic requisites mean that only the areas with the most compelling evidence of recent indigenous presence have even a minimal chance of being returned to the indigenous claimants. These are the most significant areas under dispute, or which already have some level of regularisation. Note that, despite the violence and the genocide, the indigenous demands are relatively small in relation to the total size of the region. Note also that, even if all those areas are one day restored to the original inhabitants (as stipulated in the legislation), it will remain a true archipelago of isolated indigenous 'islands' in a sea of hostile agribusiness activity. In any case, most areas in this image, especially the largest ones, are merely aspirational, as they are still controlled by the farmers and their return blocked by the courts.

Such a dialectic of forced invisibility and immanent protagonism has ethnicity as a central, but highly contested, category. Rather than separating indigenous people into an entirely distinct politico-economic condition, ethnicity influences land and labour relations (i.e. facilitating land grabbing and the over-exploitation of labour-power) and also the mechanism of adaptation and political reaction. Thus, there exists a crucial tension between an identity that is tolerated by the stronger groups only inasmuch as it increases economic gains, and a disruptive alterity that rejects exploitation and is constantly revitalised by the ethnospatial practices of the Guarani-Kaiowa. This lived reality defies any simplistic politico-economic categorisation. The prejudices of the non-indigenous sectors give rise to concrete forms of exploitation and, not infrequently, hyper-exploitation in the form of modern slavery. In July 2020, right in the middle of the Covid-19 pandemic, a group of 24 Guarani labourers, four of whom were aged only 15, and their families, including six young children, were freed by the authorities after secretly contacting an indigenous community leader. The group had been forced to stay on the farm because of unpaid debts and had to live in miserable conditions, sleeping on thin and dirty mattresses in minuscule, cold rooms, with appalling kitchen and toilet facilities.[34]

[34] Repórter Brasil, Sem Máscaras e Endividados. 24 Indígenas Guarani São Resgatados de Trabalho Escravo em Fazenda do MS. Internet article published on 9 July 2020 [accessed on 13 March 2021, https://reporterbrasil.org.br/2020/07/sem-mascaras-e-endividados-24-indigenas-guarani-sao-resgatados-de-trabalho-escravo-em-fazenda-do-ms]

Criminal cases involving modern slavery have been common since the 1990s, when enslaved people were frequently rescued from sugar cane plants; on one occasion, around 900 people were liberated in a single day. In a context of sustained transgressions committed by public authorities and businesses, Kaiowcide continues to unfold through an accumulation of anti-indigenous pressures that go beyond land-related controversies to include a whole range of ethnic-related aggressions.

The most relevant form of resistance and reaction to such a genocidal state of affairs is, clearly, the mobilisation for the retaking of indigenous areas – retomadas – which involves not only the material dimension of land but is also a source of collective hope and reinforces a sense of joint political purpose. If the reoccupation of farmland became even more dangerous after the election of the openly fascist and pro-indigenous genocide government in 2018, this has not curbed the determination to demand that the state resolve the dispute and allow the indigenous families to return to the land of their ancestors. The main pillar of the land recovery action by the Guarani-Kaiowa is their awareness that politics must be a shared endeavour that presupposes interpersonal reciprocity. This turns individual land recovery actions into a collective territorial strategy because of the common will to be recognised as a distinctive and valued social group. In that regard, the Guarani-Kaiowa are in a position of strength, because their life is intensely based on social interaction, particularly among members of the same extended family. The long road back to their ancestral areas typically ends with an intense and mixed feeling of achievement, loss and realisation of what comes next.

Indigenous genocide is the forename, surname and address of agrarian capitalism and rural development in Mato Grosso do Sul. In recent decades and since the reorganisation of the State as a self-governing member of the Brazilian federation in 1978, the last round of genocidal action came in the form of Kaiowcide, that is, a coordinated, cross-scale reaction against the well-organised mobilisation for land rights and material compensation for past aggression. Previous phases of genocide resulted in the tragic disintegration of lived, ethnic-referenced spaces [tekoha] and the confinement of the Guarani-Kaiowa in overcrowded sites with the worst social indicators in Brazil and unimaginable levels of human misery. When the Guarani-Kaiowa sensed that their total annihilation was the shared plan of farmers, businesspeople and the government, they started to organise large assemblies [Aty Guasu] to better connect with other indigenous peoples, campaign for political recognition, send their children and young people to school and university, and take back areas from where the elders and deceased ancestors had been expelled. Because the powerful sectors in Brazilian society only use genocidal language to communicate with indigenous peoples, once the Guarani-Kaiowa began confronting and denouncing the illegitimate order, the authorities put into practice what they were already experts at: a new genocide in the form of Kaiowcide. If the Guarani-Kaiowa believed from the 1970s that they could recover from the tragic legacy of previous genocides, they only received what the powerful decided was right for agribusiness-based development: more destruction, persecution and death.

The above discussion has presented the genocidal tragedy but also the defiant political struggle of the Guarani-Kaiowa, a group that is desperately trying to resist and overcome genocidal pressures associated with agribusiness-based development, using this experience to provide a heuristic account of the importance of political ontology as a tool for interrogating the impacts of Western modernity and its socio-spatial legacy.[35] The Guarani-Kaiowa had to be partially assimilated and their social institutions severely undermined so that they could be exploited through depersonalised market-based relations. Socio-spatial differences were manipulated to render them invisible from a development perspective and to justify the appropriation of indigenous land and other illegal and racist practices by the state and business sector. At the same time, the Guarani-Kaiowa's own singularisation is their best hope of resistance and the main force that allows them to continue hoping for a better life under a different world order. Meaningful social justice requires a shift to moral inclusion, what needs to be promoted and sustained at all levels and locations to avoid recreating injustices.[36] The refutation of the reductionism of a single, given reality of the world represents an ontological political practice based on the political dimension of ontology and on the ontological dimension of politics.[37] The reconstruction of their socio-spatial settings is also a form of resistance against labour exploitation, the alienating influence of evangelical churches and the homogenising pressures of urban pop culture.

An indigenous genocide such as Kaiowcide cannot be judged in terms of the number of people, the extension of reservations, seats in the parliament or media coverage, but must first and foremost be judged by the monstrousness of past and present relations between 'Indians and non-Indians', which continue to be based on violence, neglect and racism. If the indigenous problematic is important and disturbing, more important still is the prospect of the 'Indian-political' widening their role in local and national politics. This threat or hope, depending on how one perceives it, is like a shadow hanging over the Brazilian national government and sectors of civil society, because the indigenous list of demands and their higher moral ground is clear, as much as their ability to forge alliances and subvert the orderly flow of public affairs. But the identity of the 'Indian-political' is constituted through the struggle and becomes more powerful the more they know about their condition and are able to reclaim (affirm) their cultural life. There is a profound politics of identity based on the understanding that ethnic and cultural identification is neither immutable nor essentialist, but subject to various influences and fraught with internal tensions. The 'Indian-political' is not necessarily coherent and does not have a fixed, unchangeable goal, but is able to creatively learn from acts of mobilisation, confrontation and negotiation. The Guarani-Kaiowa are already doing this extremely well, even at the cost of devastating sacrifices made by many for a few, but tangible, accomplishments. The land struggle has caused considerable distress and internal tensions, but it has also strengthened the internal ability of the Guarani-Kaiowa to negotiate, take action and live through, aiming to end, Kaiowcide.

[35] Antonio A.R. Ioris, "Ontological Politics and the Struggle for the Guarani-Kaiowa World," Space and Polity 24, no. 2 (forthcoming)

[36] Susan Opotow, Janet Gerson and Sarah Woodside, "From Moral Exclusion to Moral Inclusion: Theory for Teaching Peace," Theory Into Practice 44 no. 4 (2005), 303-318.

[37] Arturo Escobar, "Territorios de Diferencia: La Ontología Política de los 'Derechos al Territorio'," Cuadernos de Antropología Social 41 (2015), 25-38.

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'OTHERING' AND COMMUNAL GENOCIDES OF INDIAN MUSLIMS: A HISTORICAL CRITIQUE

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ABSTRACT
India, one of the largest South Asian countries is famous for its unity in spite of its diversity of cultures, races, languages, religion, topography etc. The state follows democratic form of government with its emphasis on secular state system. In spite of its secular moorings the country had intermittently dragged into communal violence and sometimes it led to the genocides of the largest minority group in India, the Muslims. In India where the Hinduism being the greater culture of the land evolved in course of its time the political ideology of Hindutva with its extremist focus coveting authority led to the intensification of communalism of the state, where the process of 'othering' generated against the Muslims with the strong ideological support of the British imperialism. From the Imperial phase the demonizing of Muslims started. They had been projected as aliens since the major flow of Islam came to India with Turkish-Afgan invasion of India. In this process the image of Mahamud of Gazni became the culprit for the reason which had no sound historical proof as the prominent Indian historians supported. Here Hindu temple desecration serves as the main reason behind the genesis and spread of communal ideology against the Muslims. Communal riots and massacre had its long history even before the independence of India from the British yoke in 1947. Officially over 10,000 people have been killed in more than ten anti- Muslim riots in India. The causes of violence against Muslims are varied. The present paper tries to analyze the historical and ideological roots behind the communal violence and massacres against the Muslims in India.
Keywords: Communalism, Hindutva, Othering, Invasion, Desecration

India, being one of the biggest democratic country based on secular ideals sometimes shed its secular paraphernalia resulting in violent communal clashes and carnage of the minorities without much provocations. India, well known for its unity in diversity is the abode of number of religions and castes. The prominent Indian historian Bipan Chandra writes "communalism basically consists of three basic elements or stages, one following the other. -based on communities, and not classes, nationalities, linguistic-cultural groups, nations or such politico- territorial units as provinces or states that are seen as the fundamental units of Indian society. The Indian people, it is believed, who follow the same religion have common secular interests, that is, common political, economic, social and cultural interests. This is the first bedrock of communal ideology. From this arises the notion of socio-political communities based on religion. The second element of communal ideology rests on the notion that in multi-religious society like India, the secular interests, which are the social, cultural, economic and political interests, of the followers of one religion are dissimilar and divergent from the interests of the followers of another. The third stage of communalism is reached when the interests of the followers of different religions or of different 'communities' are seen to be mutually incompatible, antagonistic and hostile. Thus, the communalist asserts this stage that Hindus and Muslims cannot have common secular interests, that their secular interests are bound to be opposed to each other.

Communalism is, therefore, basically and above all an ideology on which communal politics is based. Communal violence is a conjectural consequence of communal ideology. Similarly, Hindu, Muslim, Sikh or Christian communalisms are not very different from each other; they belong to a single species; they are varieties of the same communal ideology". Communal ideology in a person, party or movement starts with the first stage. These were the persons who saw themselves as Nationalist Hindus, Nationalist Muslims, Nationalist Sikhs, etc., and not as simple nationalists."[1]

In the public domain it is assumed that Indian communalism revolved around the claim over indigenous Hindu and alien Muslim ideologies forgetting the inner conflicts within Hinduism among its more than 3000 castes. Hinduism, the oldest and liberal religious ideology constitutes the greater culture of the land. There were historical evidences of encouraging and invitation of foreign religionists to its coast by giving facilities to them for the economic welfare of the country. India has been occupied by different ideologies from very early times. The foremost being the Aryans, who were supposed to be the originators of Hinduism by inculcating the local belief system in India became the prominent India faithful community with more than three thousand castes of different social status as high, intermediary and low status. The second prominent ideology, the Islam came to India with the Afghan and Turkish incursions to North India, though Islam peacefully spread in the Southern part with the Arab merchants who were indulged in the coastal trade of India with full support of Hindu administrators for the economic prosperity of the land. Christianity and Judaism appeared in this way in Indian soil. However the colonial intervention thoroughly changed the fate of India with its emphasis on Eurocentric- Masculine-White Christian ideology. The present paper is trying to historically analyze the roots of Indian communalism and the consequences of it in India.

Historically the interplay of three factors (British imperialism, Hindutva politics, Muslim League) led to the emergence of Indian communalism. Undoubtedly the premier role was that of the British colonialism. Divide Indian people communally for ruling the country (policy of divide and rule) is the high weapon of the imperialist to perpetuate their rule in India. India was the biggest and most extensive British colony with abundance of resources and big markets for their products. The project of communalism finely articulated by communal construction of Indian history and culture first, then adopted policies in politico-economic spheres which divides the Indian minds communally forever. The Indian historiography is also the contribution of the colonial masters like the orientalists and the Indologists. It was the British who had introduced modern Western education and concepts which was new to India. While the ideas like modernism, secularism, humanism, scientific temper etc were the positive contributions of British colonialism; communalism, racism, and the like constitute the negative and destructive ideology of their imperial administration. The very beginning of communalization of Indian minds started with the Indologist James Mill with his prejudiced work on India, The History of British India in which he divides the Indian history into three periods, the ancient, medieval and the modern.

[1] Vide, Bipan Chandra, Nationalism and Colonialism in Modern India, New Delhi, 1979, https:// ncrtbooks.guru./ India's Struggle for Independence by Bipan Chandra.

In this he equates each period with each ideologies; ancient as Hindu, the superstitious, irrational etc, the medieval India corresponds to the ignorant dark Islamic period while the modern India instead of using the Christian period highlighted as the 'Modern' period sowed the seeds of communal thinking on its history and culture.[2] Unfortunately this book had been the standard text book for many European universities and in India to learn Indian history and culture. Similar other 'invention' about Indian culture was produced to colonize the Indian minds by the baseless and humiliating civilizational critique. The searching of Indian past to redeem the lost prestige by the Indian elites actually led to the communalization of thought which later proved dangerous to national unity.

British rule and its policy of Divide and Rule bore special responsibility for the growth communalism in modem India. It used communalism to counter and weaken the growing national movement and the welding of the Indian people into a nation, communalism was presented by the colonial rulers as the problem of the defense of minorities. Hindu-Muslim disunity — and the need to protect minorities from domination and suppression by the majority — was increasingly offered as the main justification for the maintenance of British rule, especially as theories of civilizing mission, white man's burden, welfare of the ruled, etc., got increasingly discredited. The British activities on civilizing mission actually sowed the seeds for communal and rational thinking in Indian society. The rising Indian national movement overtly or covertly nurtured the communal politics in India. The British excellently executed the idea of divide and rule for perpetuating imperial rule in India as it was the most extensive and rich colony for the British Empire. From the onset of British rule it had developed prejudices to the Muslims as they had conquered India from the hands of the prominent Muslim empire in India, the Mughal dynasty. Globally these two cultures, the Christians and Muslims have been represented contested cultures since the crusades. The Imperial British supremacy advocated through the defaming and belittling of the Indian rulers and their policies prior to them both the Muslim and Hindu rulers. This along with the intermittent favoring of one community over the other naturally led to the widening gap of the two prominent Indian communities. This was reflected in the British policies of the period. Above all, communalism was one of the by-products of the colonial character of Indian economy, of colonial underdevelopment and incapacity to develop the Indian economy. India, it was said, was neither a nation nor a nation-in-the- making, nor did it consist of nationalities or local societies, but consisted of structured, mutually exclusive religion-based communities. Official favor and patronage were extended to the communalists. The British readily accepted communal organizations and leaders as the real spokesperson for their 'communities,' while the nationalist leaders were treated as representing a microscopic minority — the elite. They encouraged communalism through a policy of non -action against it. The Government refused to take action against the propagation of 'virulent communal ideas and communal hatred through the Press, pamphlets, leaflets, literature, public platform and rumors. This was in sharp contrast with the frequent suppression of the nationalist Press, literature, civil servants, propaganda, and so on. On the contrary, the Government freely rewarded communal leaders, intellectuals and government servants with titles, positions of profit, high salaries, and so on. The British administrators also followed a policy of relative inactivity and irresponsibility in dealing with communal riots. When they occurred, they were not crushed energetically.

[2] Sanjai Joshi, Re-Publicizing Religiosity Modernity, Religion and the Middle Class, New Delhi,2002.

The administration also seldom made proper preparations or took preventive measures to meet situations of communal tension, as they did in case of nationalist and other popular protest movements.[3]

Nationalism vs Communalism

The Indian communalism emerged as an anti -thesis to nationalism. Its roots can be traced back to the socio-religious reform movement of the 18th century. This well reflected in the socio-religious reform initiatives of the 18th century encoded in the term 'renaissance'.[4] The objectification of culture[5] by the construction of Hinduism tried to Semitization of Hinduism in par with Biblical religion[6]. This project had been undertaken by the elite Hindus articulated Hinduism in tune with elite attributes. Thus Vedas and Upanishads became the scriptures of Hinduism and like churches, temples became the highest visible symbol of Hindu identity. Interestingly the Indian national heroes were part of this new cultural construct advocated nationalism as against British imperialism as the major responsibility of rescuing the Hindu culture and the country. One negative after effects of this revivalist tendency was the exclusion and 'othering' of the major sections of Indian population like the Dalits (low caste Hindus), Muslims, Christians, Parsis, Sikhs and so on. Nationalism and national symbols were constructed along the lines of Hinduism. This led to more exclusion of the "others" other than elite Hindus in India. This revivalism of 18th century served as the base for the revivalism of the new political ideology of Hindutva or the extreme advocacy for caste Hindu politics. It imagined Indian society on divisive communal line as the indigenous patriotic elite Hindu nationalist verses alien Muslims. The consolidation of communal ideologies as Muslims and Hindus led to violent clashes in India. The event of communal riots went back to the days of British Imperialism. The British authorities cruel suppressing of the rebel Muslims enmass constitutes black episodes of Indian freedom movement. The communal riots gathered momentum with politicization of Hindu religious festivals like the ganapati festival, Sivaji festival, banning of muharam festival and the like. They tried to provide a Hindu ideological underpinning to Indian nationalism or at least a Hindu idiom to its day-to-day political agitation. Thus, Tilak used the Ganesh Puja and the Shivaji Festival to propagate nationalism; and the anti-partition of Bengal agitation was initiated with dips in the Ganges. Bankim Chandra Chatterjea and many other writers in Bengali, Hindi, Urdu and other languages often referred to Muslims as foreigners in their novels, plays, poems, and stories, and tended to identify nationalism with Hindus. This type of literature, in which Muslim rulers and officials were often portrayed as tyrants, tended to produce resentment among literate Muslims and alienate them from the emerging national movement[7]. Moreover, a vague Hindu aura pervaded much of the nationalist agitation because of the use of Hindu symbols, idioms, and myths. Later it intensified and finally led to the cow protection movement of the Arya Samajist later let loose to the communal clashes all over the country even from 1870s.[8]

[3] Vide, Bipan Chandra, Mridula Mukherjee et.al, India Since Independence, New Delhi, 2008.
[4] The using of the term renaissance invited criticism from different quarters as it was a kind of revival rather than a reformation Romila Thaper, K.N.Panikkar, M G S Narayan et.al.
[5] Bernard S Cohn, "The Command of Language and the Language of Command," In Subaltern Studies: Writings on South Asian History and Society, vol.4 Ranjith Guha (ed.) Delhi,1986, 276-329.
[6] K N Panikkar, Colonialism, Culture and Resistence, Collected Essays, New Delhi, 2007, p.137.
[7] Gwilyn beckerlegge, Colonialism, Modernity and Religious Identities: Religious Reform Movements in South Asia, New Delhi, 2008,pp.91-92.
[8] Sekhar Badhyopadyay, From Plassey to Partition – A History of Modern India, New Delhi, 2004, p.217.

The subsequent period of Indian history filled with intermittent communal clashes and communal violence all over the country aiming at the highest minority group, the Muslims.

The 'Other'

The mainstream Indian Nationalism which was growing under the agies of Indian National Congress failed to maintain its separation from the blooming Hindu nationalism was first contested by the Muslims. As a counter to this emerged Muslim communal advocates in India with its own organizations and leaders ultimately found expression in the Aligarh Movement with Sir Sayyid Ahmed Khan.[9] A section of the Muslims began to see themselves in the colonial image of being unified cohesive and segregated from the Hindus started homogenizing such myths to construct a Muslim community identity that was later enlarged in to Muslim nationhood. A Hindu mobilization made progress and it simultaneously sculptured and vilified its 'other ', the Muslims. The elite aristocratic Muslims began to advocate for due space in Indian politics which they had once enjoyed under Mughal administration. The Aligarh College developed as a profoundly political enterprise to construct and consolidate Muslim students as a quam[10]. The growing majority phobia with the increasing cow killing riots added to the fervor. Above all this particular politics was patronized by the British bureaucracy. Theodre Beck, the European principle of the Aligarh College formed in 1888 Anglo- Oriental Association to oppose Congress and to plead for government patronage of Muslims. He also encouraged checking of the growing popularity of the Congress and to form Muslim public opinion against it in order to curb the national movement. The forming of the Muslim Leagues in the major Indian provinces between 1907-99 with official support and their influence in the Morley- Minto Act in case of separate electorate provided an official legitimacy to their minority status. When the nationalism began to progress there emerged the power struggles between the leaders of Indian National Congress and the Muslim League ultimately gave shape to the 'two nation theory' and the division of India in to India and Pakistan. While India became a secular state in its official status, Pakistan became a Muslim state. Unfortunately the partition did not settled the communal issues of the Indians till this late and the majority assertions and minority status further intensified the problem in India.

Distortion of history

A communal and distorted unscientific view of Indian history, especially of its ancient and medieval periods, was a major instrument for the spread of communal consciousness as also a basic constituent of communal ideology. The teaching of Indian history in schools and colleges from a basically communal point of view made a major contribution to the rise and growth of communalism. For generations, almost from the beginning of the modern school system, communal interpretations of history of varying degrees of virulence were propagated, first by imperialist writers and then by others. So deep and widespread was the penetration of the communal view of history that even sturdy nationalists accepted, however unconsciously, some of its basic digits. All this was seen by many contemporary observers. Gandhiji, for example, wrote: 'Communal harmony could not be permanently established in our country so long as highly distorted versions of history were being taught in her schools and colleges, through the history textbooks.'

[9] Vide, A Ahmed, Jinnah, Pakisthan and Islamic Identity: the Search for Saladin, London, 1997.
[10] Single community

Over and above the textbooks, the communal view of history was spread widely through poetry, drama, historical novels and short stories, newspapers and popular magazines, pamphlets, and above all, orally through the public platform, classroom teaching, socialization through the family, and private discussion and conversation. Furthermore, though the Muslim masses were as poor, exploited and oppressed as the Hindu masses, and there were Hindu zamindars, nobles and rulers along with Muslim ones, these writers declared that all Muslims were rulers in medieval India and all Hindus were the ruled. Thus, the basic character of a polity in India was identified with the religion of the ruler Later the culture and society of various periods were also declared to be either Hindu or Muslim in character.

Hindu communalist readily adopted the imperialist view that medieval rulers in India were anti-Hindu, tyrannized Hindus and converted them forcibly. All communalist, as also imperialist, historians saw medieval history as one long story of Hindu- Muslim conflict and believed that throughout the medieval period there existed distinct and separate Hindu and Muslim cultures. The Hindu communalists described the rule of medieval Muslim rulers as foreign rule because of their religion. The talk of 'a thousand years of slavery' and 'foreign rule' was common rhetoric, sometimes even used by nationalists[11]. Above all, the Hindu communal view of history relied on the myth that Indian society and culture had reached great, ideal heights in the ancient period from which they fell into permanent and continuous decay during the medieval period because of 'Muslim' rule and domination. The basic contribution of the medieval period to the development of the Indian economy and technology, religion and philosophy, arts and literature, and culture and society was denied. In turn the Muslim communalists harked back to the 'Golden Age of Islamic achievement' in West Asia and appealed to its heroes, myths and cultural traditions. While Hindus were allegedly in the ascendant during the 19th century, Muslims, it was said, 'fell' or declined as a 'community' throughout the 19th century after 'they' lost political power. Religion comes into communalism to the extent that it serves politics arising in spheres other than religion. Communalism was not inspired by religion, nor was religion the object of communal politics — it was only its vehicle. Communalism could become a popular movement after 1939, and in particular during 1945-47, only when it adopted the inflammable cry of religion in danger.

Temple Desecrations

The most effective tool of the Hindu communalist to mobilise the Hindu sentiments communally has been the descriptions on medieval temple desecrations in India. The so called nationalist historians sometimes supported this version of Indian communal history. Eminent historian Romila Thapar has deconstructed one of the highly communally articulated event in Indian history based on correct historical sources for the sake of history and the nation. The central character in her authoritative monograph is on the high-profile temple at Somnath in Gujarat desecrated by Mahmud of Gazni. After regretting the involvement of various Congress leaders, including India's first President Rajendra Prasad, in the rebuilding of the Somnath temple in 1951, Thapar refers to the most recent challenge to the "secular credentials of Indian society". That being the rath yatra organised by the VHP "in association with leaders of the BJP'. L.K. Advani, who electrified India with his 1991 campaign and put his party on the road to power by making *Hindutva* a mainstream ideology[12].

[11] Vide, Meena Bhargava, Understanding Mughal India, Sixteenth to Eighteenth Centuries, Telengana, 2020.
[12] Wendy Singer, Independent India 1947-2000, Newyork,2015,pp.100-103. Vide, Aroop Chakravarthy, The History of India(1857-2000), Noida, 2012.

Thapar has meticulously studied various accounts of Mahmud of Ghazni's destruction of the temple in the 11th century. She has carried the narrative through to contemporary times, explaining the reasons for the resurgence of Hindu sentiment in the 19th century on this issue, leading to the temple's rebuilding after Independence. Even secular fundamentalists from a non-history background would not be tempted to persevere through the Byzantine complexities of textual and interpretational rivalries among the Turks, Arabs, Chalukyas, Rajputs, Jainas, Shaivites, colonialists and the Hindu nationalists. Her findings include, Mahmud of Ghazni raided a temple at Somnath and destroyed the idol there. Although Persian sources extol his achievement and refer to the many infidels he killed, the purpose of the raid was economic, perhaps even iconoclastic, but not communal. It is even possible that Mahmud believed the Somnath icon to be that of an early Arabic Goddess, Manat, for Somnath might even be a bastardisation of the Arabic su-manat. She was one of the goddesses of pre- Islamic Arabia. Though the later day communalists pictured it as a deliberate destroying of Siva linga (or siva phallus which too depicted in black stone symbolically as that of manat) as an act of destroying Hindu pride has not even sufficient historical indications in the contemporary Jain or Brahmin works. Hindu rulers frequently raided temples for booty and there was nothing extraordinary about Mahmud's or subsequent Muslim desecrations of Somnath. Hindus were not Hindus (they still aren't), but a group of people divided by caste and sub castes residing in a place called India. The Somnath temple was repeatedly renovated by various local rulers and the worship of the deity went on. This is contrary to suggestions that it had been converted into a mosque. The reconstructions were necessitated by sea spray that routinely damaged the structure. In other words, irrespective of Mahmud's raid, the temple would have fallen into disuse and, thus, its projection as a symbol of Islamic intolerance of Hindu beliefs is unwarranted. The Arabs had settled in Sindh and Gujarat long before Mahmud's incursions and lived in perfect harmony with Hindus[13]. A merchant from Hormuz in the Gulf, who engaged in the trade of horses, was actually given land by a Hindu ruler to construct a mosque close to Somnath. This suggests there was no antagonism between the two communities. In fact, Hindus explained the destruction of Somnath as an inevitability in a dark age called the Kaliyug[14].

The entire mischief began with governor-general Ellenborough who premeditatedly relied on Persian accounts of Hindu humiliation and decided to play them up to drive a wedge between Hindus and Muslims. His efforts were challenged by Macaulay who opposed "Linga-ism" and denounced support for obscurantism and idolatry. Ellenborough mistakenly sought to appease maharaja Ranjit Singh and brought back the gates of Somnath allegedly ferried away by Mahmud, but these turned out to be fakes. In the 19th century, Hindu historians and politicians made a big deal of Mahmud's raids. While K.M. Munshi wrote emotion-charged novels, Bengali nationalists got unnecessarily worked up over these issues. Munshi was influenced by people like Bankim Chandra Chatterjee, Aurobindo and Vivekananda. Taking a cue from the likes of Munshi, Gujarati leaders, including Vallabhbhai Patel, supported the reconstruction of the temple after Independence much to the chagrin of the secular Nehru.

[13] Vide, S A A Rizwi, The Wonder That was India-II, London, 1987.

[14] Vide, SunilKumar (ed.), Demolishing Myths or Mosques and Temples? Readings on History and Temple Desecration in Medieval India, New Delhi, 2008., News Magazine Society and the Arts Books, book review of Romila Thaper's Somnatha : The Many Voices of History by Chandan Mithra , February 16,2004.

This was an assertion of Hindu, not Indian, nationalism. It only helped the "communal" forces that plotted the fall of Babri Masjid at the "supposed" Ram Janmabhoomi by launching a mobilisation drive from Somnath. Sadly for her, very few will believe her. This event was a milestone in the commencing of large scale communal carnage of Indian Muslims.

Communal Genocides

Bipan Chandra writes "Communal violence is a conjectural consequence of communal ideology is the first stage. Similarly, Hindu, Muslim, Sikh or Christian communalisms are not very different from each other; they belong to a single species, the varieties of the same communal ideology". These were the persons who saw themselves as Nationalist Hindus, Nationalist Muslims, Nationalist Sikhs, etc., and not as simple nationalists.[15]The second stage of communalism may be described as liberal communalism or, in the words of some, moderate communalism. The liberal communalist was basically a believer in and practitioner of communal politics; but he still upheld certain liberal, democratic, humanist and nationalist values. Even while holding that India consisted of distinct religion-based communities, with their own separate and special interests which sometimes came into conflict with each other, they continued to believe and profess publicly that these different communal interests could be gradually accommodated and brought into harmony within the overall, developing national interests, and India built as a nation. Most of the communalists before 1937 — the Hindu Mahasabha, the Muslim League, M.A. Jinnah, Madan Mohan Malaviya, Lajpat Rai et.al functioned within a liberal communal framework. Extreme communalism, or communalism functioning broadly within a fascist syndrome, formed the third or last stage of communalism. Extreme communalism was based on fear and hatred, and had a tendency to use violence of language, deed or behaviour, the language of war and enmity against political opponents. It was at this stage that the communalists declared that Muslims, 'Muslim culture' and Islam and Hindus, 'Hindu culture, and Hinduism were in danger of being suppressed and exterminated. It was also at this stage that both the Muslim and Hindu communalists put forward the theory that Muslims and Hindus constituted separate nations whose mutual antagonism was permanent and irresolvable. The Muslim League and the Hindu Mahasabha after 1937 and the Rashtriya Swayamsevak Sangh (RSS) increasingly veered towards extreme or fascistic communalism[16].

The pre-Independent India along with the growth of national movement witnesses the rise and growth of communal violence aiming the Muslims, most times with the help of the British official support. Indian communalism has been a project developed over a centuries old endeavor by the majoritarian communalists[17]. While the pre- independent colonial phase prominently featured the first two phases with some exceptions, the third phase of communalism started at the time of independence especially with anti-partition agitations. Large scale genocides or massacre of millions of Indians communally witnessed during the partition of India as India and Pakistan. The post independent India witnessed number communal pogroms against the largest minority group, the Muslims.

[15] Vide, Bipan Chandra, op.cit.
[16] Vide, Bipan Chandra, The Writings of Bipan Chandra: The Making of Modern India from Marx to Gandhi, New Delhi,2012.
[17] Vide, Kancha Ilaiah, Buffallo Nationalism, A critique of Spiritual Fascism, Kolkatta, 2004

The social, economic and political vested interests deliberately encouraged or unconsciously adopted communalism because of its capacity to distort and divert popular struggles, to prevent the masses from understanding the socio-economic arid political forces responsible for their social condition, to prevent unity on national and class lines, and to turn them away from their real national and socio-economic interests and issues and mass movements around them[18]. Starting from the 1964 West Bengal riots itself sacrifices the life of more than 7000 people. The consecutive Assam riots of 1983, the riots in Gujrat during 1969-89, Bihar riots of 1987, 1992 Maharashtra riots, 2002 Gujrat and 2013 Utharpradesh and the recent 2020 Delhi pogroms witnesses the pogroms against the Muslims with the full assistance and support of the central administration. The aim of the state sponsored pogrom has been fixed genocides as one of its major mode of warfare. Since 1950 there were 6933 instances of communal violence reported in different parts of India. International media opined that India has no Genocide crime Punishment Law. This leads a vacuum for criminals of such heinous crimes to get a way out but also harbors their intent of further carnage.[19] It may seem sometimes impossible as in most cases the violences had been state sponsored as a part of power politics. The international human rights organizations had condemned and reported the last occurred Delhi violence of 2020 finally forced to stop it activities in India due to its difference opinion with the present central government. The main reason for the 2020 Delhi pogrom was commenced by the fascist people in order to suppress the protests on Indian Citizenship Bill, which sought the ethnic cleansing of Muslims from India. Thus Indian communalism reached its optimum actually shaking the mansion of secularism in India as Gail Omvedt reveals “the secular minds remain incarcerated within the Brahmanical vision and the language of secular discourse is often steeped in a Hindu ethos”. [20]

[18] Vide, K N Panikkar, Colonialism, Culture and Resistance, Collected Essays, New Delhi,2001.
[19] .Sunday Guardianlive.com.news.
[20] Vide, Gail Omvedt, Dalit Visions- The Anti-Caste Movements and the Construction of an Indian Identity, New Delhi, 2006.

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NİŞ SANCAĞI HALKINA KARŞI UYGULANAN SÜRGUN, SEBEPLERİ VE ŞİDDET (1877-1878)

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ÖZET
Niş, Roma İmparatorluğu devrinde Naissus olarak bilinen önemli bir şehir merkezi olup, Orta Kol (Via Militaris) denilen meşhur yolları birleştiren bir coğrafi konuma sahipti. Niş şehri Osmanlı döneminde de birçok tarihi olayın ve gelişmenin yaşandığı bir bölge olagelmiştir. XIX. yüzyılın ilk yarısında Balkanlar'da baş gösteren isyanlar yüzünden bu bölgede önemli idari ve coğrafi değişiklikler yaşanmıştır. Bu şiddetli ve kanlı dönemde büyük acıların yaşandığı, halkının ekseri çoğunluğunun sürgüne zorlandığı ve ağır bedeller ödetildiği bölgelerden biri de Niş Sancağı olmuştur. Yine bu sancak'ın, stratejik önemi olan bir konumu da vardı. Niş sancağının düşmesi ve Osmanlı İmparatorluğu idaresinden kopartılmasının akabinde Balkanlarda büyük bir çözülmeye yol açılmış ve peşi sıra diğer bölgeler de elden kayıp gitmeye başlamıştır.
Anahtar Kelimeler: Osmanlı İmparatorluğu, Niş Sancağı, Balkan, Sürgünler

EXPULSION, CAUSES AND VIOLENCE AGAINST THE POPULATION OF THE SANJAK OF NIS (1877-1878)

ABSTRACT
In Roman period, the city of Nis was also called Naisus. This city was known for its geographical importance Centre that connected the roads of that time. One of the essential road, which played an important role in connecting with the other parts of the world, was the road named Via Militaris. During the Ottoman Empire, Nis was considered to have an important impact to the events, which took place along that period. In the first half of the XIX century with the beginning of the uprisings in Balkan, the territory went through some drastic changes in the leadership and it's geographical. So the population experienced suffering and they were violently moved from their city (1877-1878). No doubt, from all these circumstances Nis was the city that suffered the most. However, this province reached its importance strategy. Later on with the loss of Nis and the detachment from Ottoman Empire, the Balkan situation changed dramatically because the territories, which were united until then, now began to separate from Ottoman Empire.
Keywords: Ottoman Empire, Sanjak of Nis, Balkan

Giriş
Niş, Osmanlı öncesi ve sonrası olduğu gibi günümüzde de Balkanların önemli bir bölgesi olarak kabul edilmektedir. Bu çalışmada Niş şehrinin özellikle Osmanlı idaresi altında ki pozisyonu ve Osmanlının idaresinden kopartılırken buralarda yaşanan elim olaylar ve bölge insanlarının maruz bırakıldığı göçler ele alınacaktır. Bilindiği gibi Niş de içinde yer aldığı coğrafyanın büyük bir bölümü de yaklaşık beş asır gibi uzunca sayılabilecek bir zaman diliminde Osmanlı idaresi altında kaldı. Bu yönü ile de bölge araştırmacıların merakını uyandıran bir araştırma alanı olmuştur.

Niş, Osmanlı idaresi altında önceleri Semendire'ye bağlı kaza durumundaydı. 1839'da yeni idari teşkilatın gereği olarak vilayet haline getirildi ve buraya Vasıf Paşa vali olarak atandı. Sofya, Smakov ve Köstendil de daha sonra Niş'e bağlandı. Ardından isyan hareketleri sebebiyle idari durumunda değişiklik yapılan Niş, vilayet statüsünü yitirdi. Bununla birlikte daha sonraki dönemlerde yapılan teftişler sonucunda tekrar vilayet olma özelliğini kazandı (1861). Bu sefer de Midhat Paşa valisi tayin edildi. Midhat Paşa'nın valiliği döneminde Niş ve yöresinde önemli sayılabilecek birtakım reformlar gerçekleştirildi. 1864 yılında vilayet nizamnamesinin çıkartılmasıyla Silistre, Vidin ve Niş birleştirilerek Tuna Vilayeti oluşturuldu. 1876'da Bulgar isyanları sırasında son düzenleme yeniden gözden geçirilip Niş'in Üsküp ile Sofya'ya bağlanması öngörüldüyse de çıkan savaş yüzünden bu idari yapılanma yürürlüğe geçirilemedi.

1877-1878 Osmanlı-Rus Savaşı, Avrupa'da bozulan kuvvet dengelerinin doğal bir sonucu olarak meydana gelmişti. Balkanlar'da patlayan Sırp, Karadağ ve Bulgar isyanları, dini dayanışma yanında siyaseten panslavist programı da uygulama aşamasına soktu. Buna göre Rusya bütün Avrupa'nın karşı çıkmasına rağmen önce kendi istediği şekilde Ayastefanos'ta ve nihayet Berlin'de yapılan barış antlaşmasıyla Romanya adıyla ortaya çıkan Tuna prenslikleri dâhil olmak üzere bu üç devletin bağımsızlığını sağladı.

A. SÜRGÜNLER

Hammurabi kanunlarında da yer alan sürgün yaptırımının eski çağlardan beri gerek Sümerler, Asurlular, Hititler, Persler, Yunanlılar, Romalılar ve Bizanslılar gibi gayrimüslim devletlerde[1] gerekse Hz. Muhammed ve Hulefâ-yı Râşidîn dönemleriyle, Emevî, Abbasî, Osmanlı vb. diğer İslâm devletlerinde de uygulandığı bilinmektedir.[2]

Hangi millet ve din mensubu maruz kalırsa kalsın sürgün, gerçekten bir insanlık dramıdır. İnsanların kendi düzenlerini bozup iç ve dış göçlere yeltenmelerinin birçok sebebi vardır. Sözgelimi yeni ulus devletlerin oluşturulmasına bağlı olarak yönetime gelenler, otoritelerini kabul ettirmek amacıyla uyguladıkları baskıların bir sonuç vermemesi durumunda zulüm ve katliamlara müracaat etmişlerdir. Din ve inanç ayrımcılığı ve kötü ekonomik şartlar gibi etkenler göçün gerçekleşmesi hususunda en önemli sebeplerin başında gelmektedir. Bunun yanında güvenlik zaafiyeti[3], bulaşıcı hastalıklar göçü tetikleyecek bir başka faktör olarak da kabul edilebilir.[4]

Osmanlıların ilk asırlarında iskân ve/veya sürgün büyük oranda müslüman nüfusu arttırmaya yönelik olarak Anadolu'dan Balkanlara doğru uygulanmıştı. Ancak XVIII. yüzyılda, Karlofça Antlaşmasına bağlı olarak Osmanlıların toprak kaybetmeye başlamasıyla, iskân veya sürgünün istikameti de, uygulayanları da değişti ve Balkanlarda yaşayan müsülüman nüfusu korumaya yönelik olarak Balkanlardan Anadolu'ya doğru büyük bir göç hareketi oldu.[5]

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[1] Talip Türcan, "Sürgün", D.İ.A., C. XXXVIII, İstanbul: T.D.V. Yayınları, 2010, s. 164.

[2] Nebi Bozkurt, "Sürgün", D.İ.A., C. XXXVIII, İstanbul: T.D.V. Yayınları, 2010, s. 166-167; Kemal Daşcıoğlu, "Sürgün", D.İ.A., C. XXXVIII, İstanbul: T.D.V. Yayınları, 2010, s. 167.

[3] Osmanlı-Rus savaşları öncesinde Balkanlarda müslümanların sosyo-ekonomik durumu göçü gerektirecek kadar kötü değildi. Bu nedenle Osmanlıların savaşı kaybetmesiyle oluşan güvenlik zaafiyeti gerek Kafkasya ve gerekse Balkanlarda halkı zorunlu olarak göç etmeye sevk etmiştir. Bkz. Gülfetin Çelik, "Osmanlı Devleti'nin Nüfus ve İskân Politikası", Divan, Bilim ve Sanat Vakfı, 1999/1 S. 6, s. 100.

[4] Sürgün sebepleriyle ilgili olarak, Bkz. H. Yıldırım Ağanoğlu, "Balkanlarda Göç Gerçeği Ve Bölgeden Türkiye'ye Göçler", Balkan Sempozyumu Balkanlarda Gelecek Tasavvuru Kültür, Siyaset, Örgütlenme ve İşbirliği Alanları, İstanbul: İnsani Yardım Vakfı Yayınları, 2008, s. 161-162; Ali İhsan Karataş, Osmanlı Dönemi Bursa Sürgünleri (18-19.Asırlar), Bursa: Emin Yayınları, 2009, s. 61-262.

[5] Daşcıoğlu, a.g.md., s. 168.

Bu durum hıristiyan dünyanın Osmanlıları Avrupa ve Balkanlardan tamamıyla çıkartıp Anadolu'ya sıkıştırma konusundaki kararlıklarına paralel olarak giderek de artmıştır.[6] Nitekim Kırım Savaşı olarak bilinen 1853-1856 yılları arasındaki Osmanlı-Rus Savaşı sonrasında 1856 ilâ 1865 yılları arasında tahminen 2 milyondan fazla müslüman, göçmen konumuna düşürülerek Anadolu'ya yerleştirilmişti.[7] Bu hadiseden kısa bir süre sonra meydana gelen ve 93 Harbi olarak da bilinen 1877-78 Osmanlı-Rus Savaşı sonrasında, Rusya ve onun panslavist politikalarıyla hareket eden hıristiyan Balkan devletlerindeki büyük halk kitleleri Rumeli ve İstanbul taraflarına doğru can korkusuyla göç etmeye mecbur kalmıştı.[8]
Gerçekten de Niş'in demografik yapısını ve buna bağlı olarak dinî kimliğini etkileyen hususların en önemlisi müslüman nüfusa yönelik olarak uygulanan sürgün politikasıdır. Aslında sürgün ve iskân hadisesi sebep ve sonuçları itibariyle birbiriyle ilişkili iki olaydır. Sürgün, bir kişinin ya da bir topluluğun güvenlik önlemi veya ceza olarak kendi ülkesine ait topraklardan veya yaşadığı yerden isteği olmaksızın çıkartılarak başka bir yerde belli bir süre veya ömür boyu yaşamaya mecbur bırakılmasına denir. [9] İskân kavramının ise yerleştirme, mesken ve vatan kazandırma[10], sakin kılma, oturma, ev sahibi etme[11], kondurma ve yurt edindirme gibi manaları vardır. Konuyla alakalı olarak kullanılan bir tabir daha bulunmaktadır. O da bir yere yerleştirmek, kondurmak, yurt tutturmak, tavattun ettirmek anlamlarına gelen iskân etmek tabiridir. Bu ifade genel anlamda insanların belli bir yere yerleştirilmesi anlamına gelmektedir.[12]
Sırbistan'da ortaya çıkan isyanlar, daha sonra Sırplara verilen ayrıcalıklar ve nihayet 1878 senesinde Osmanlı Devleti'nin bölgeden çekilip Niş'in Sırbistan'a terk edilmesinden sonra, daha önce nüfusun çoğunluğu oluşturan müslüman ahali, bu işgalden oldukça olumsuz etkilenmiş ve kısa sürede azınlık durumuna düşmüştür.[13] Balkanlarda sadece 93 felaketinde kaybedilen toplam 1.5 milyon nüfustan göçmen konumuna düşürülen 300 bin kadarı Selanik ve Kosova vilâyetleri gibi Rumeli'nin Bulgaristan dışında kalan yerlerine, 400 bin kadarı Anadolu'ya, bunun küçük bir kısmı İstanbul ve Edirne şehirlerine, 100 bin kadarı da Suriye, Lübnan, Ürdün ve Filistin gibi Anadolu haricindeki topraklara yerleştirilmiştir.[14] Bu durum iskân sorununun sadece İstanbul ve Edirne vilâyetleriyle sınırlı kalmadığını göstermektedir. Gerçekten de Osmanlıların bütün eyaletleri bir şekilde bu meseleyle meşgul olmuştur. Selanik ve Kosova vilâyetlerine 1877 sonbaharında 300 bin kişi gelmiştir. Bu göçmenlerin bazıları farklı yerlere yerleştirilmiştir. 1879'da bile Kosova vilâyetinde hâlâ 100 bin kadar göçmen bulunmuştur.[15]

[6] Nedim İpek, Rumeli'den Anadolu'ya Türk Göçleri, 2. b., Ankara: T.T.K. Yayınları, 1999, s. 1.
[7] H. Yıldırım Ağanoğlu, Osmanlı'dan Cumhuriyet'e Balkanların Makûs Talihi: Göç, İstanbul: Kum Saati Yayınları, 2001, s. 33.
[8] İpek, a.g.e., s. 10; Ağanoğlu, a.g.e., s. 61.
[9] Türcan, "Sürgün", s. 164; Timur Bilgiç, Tarih Terimleri Sözlüğü, İstanbul: Toplumsal Dönüşüm Yayınları, 2012, s. 367.
[10] Şemseddin Samî, "İskân", Kâmûs-ı Türkî, Dersaâdet: İkdam Matbaası, H.1317, s. 111.
[11] Ferit Develioğlu, Osmanlıca Türkçe Ansiklopedik Lugat, Ankara: Aydın Kitapevi, 2013, s. 539.
[12] Mehmet Doğan, Büyük Türkçe Sözlük, 2. b., Ankara: Birlik Yayınları, 1982, s. 476-477
[13]Şemseddin Samî, "Niş", Kâmûsu'l-A'lâm**,** C. VI, İstanbul: Mihran Matbaası, H.1316 (M.1898), s. 4631; Nurbanu Duran, "Belgrad Raşide Göre XIX. Yüzyılda Sırbistan Ve Göçlerin Arka Planı", Balkanlar Ve Göç, Bursa: Bursa Kültür A.Ş. Yayınları, 2013, s. 99.
[14] Öztuna, a.g.e., C. XII, s. 430-431.
[15] Nedim İpek, "Kosova Vilâyeti Dâhilinde Gerçekleşen Göçler", History Studies, C. 2/1, 2010, s. 69.

Bir İngiliz raporunda, 13 Kasım 1878 tarihinde İstanbul'a 70 bin yeni göçmenin geldiği, 120 bin Rumelilinin de Varna ve Batum limanlarından Anadolu'ya götürüldüğü kaydedilmiştir.[16] Gerçekten de İngiliz konsolosu Baker'ın, aynı yılın Eylül ayında Londra'ya gönderdiği raporda yer alan Niş'in müslüman nüfusunun 8.300'den 300'e indiği, müslümanlara ait malların yağmalandığı ve evlerinin çoğunun da yakıldığına dair bilgiler durumun vahametini çok açık bir şekilde gözler önüne sermektedir.[17] Benzer durum Niş sancağına bağlı Leskofça için de geçerlidir. Burada da nüfusun çoğunluğunu Arnavut müslümanlar oluştururken, Sırbistan'a bağlanmasının akabinde müslümanlar Osmanlı topraklarına yerleştirilmişlerdir.[18]
Müslüman Arnavut göçmenlerin Sırbistan'a geri dönmeleri hususunda birtakım teşebbüslerde bulunulduğu görülmektedir. Nitekim Belgrad'da bulunan İngiliz diplomat Gould, konuyu yazılı olarak Sırbistan makamlarına ulaştırmışsa da kendisine sorunun, Belgrad idarecileri arasındaki hizipleşmelerden kaynaklandığı ve zamanla da kendiliğinden halledebileceği cevabı verilmişti.[19]
Balkanlardan sürgüne uğrayan ya da hayat şartlarının iyice ağırlaşması nedeniyle göçmen konumuna gelmiş kişiler Anadolu'ya ulaşabilmek amacıyla iki yol güzergâhı kullanmışlardır. Birincisi İstanbul üzerinden Anadolu'ya, ikincisi ise Varna, Ahyolu Bergosu, Tekirdağ, Dedeağaç ve Selanik gibi Rumeli limanlarından Anadolu'ya giden yol olmuştur.[20]

B. SÜRGÜNLER VE İNSAN HAKLARI İHLALLERİ

Osmanlı Devleti'nde hâkim din olan İslâm'ın, takriben beş yüzyıl bölgede başka din ve topluluklara tanıdığı yaşama hakkını, objektif Batılı tarihçiler tarafından da kabul edilmektedir. Fakat aynı hoşgörü maalesef Türk, Arnavut ve Boşnak müslümanlara gösterilmemiştir.[21]
Gerçekten de Ruslar ve Bulgarlarla yapılan savaşların başlarından Berlin muahedesine kadar, bunların Edirne ve Tuna vilâyetlerindeki faaliyetlerine bakıldığında, müslümanların dinî inançlarına saygı göstermeyip açıkça zulmettikleri görülmektedir. Nitekim müslümanların camileri ve türbelerini yağmalamış, mukaddes kitaplarını yakıp yırtmış, ezanlarını alay konusu yapmış, ibadet etmelerine de yasak koymuşlardır. Ayrıca, mezarlıklar üstünde eğlence mekânları yapılmış, bazı camiler ise kiliseye dönüştürülmüş veya ahır olarak kullanılmıştır.[22]
Böylece, Rusya'nın bu savaşa dinî bir algı vermek hususunda hiçbir şeyi esirgemediği gerçeği de meydana çıkmıştır. Ruslar ve Bulgarlar askerlerine bu katliamların sebebini, ortodoks kilisesinin kutsal bir emrinin yerine getirilmesi şeklinde açıklamışlardır. Rusların buradaki amacı bu harbin bir müslüman-hıristiyan savaşı olarak görünmesini sağlamak ve Avrupa devletlerinin savaşa Osmanlı lehine müdahalede bulunmasını engellemektir.[23]
Balkan milliyetçiliği XIX. asırdaki Osmanlı ile ilgili bütün eğitim, ekonomi ve kültür müesseselerini yerle bir etmiştir. İngiliz raporlarında yer alan bilgilere göre bütün camiler hedef seçilmiştir.

[16] Öztuna, a.g.e., C. XII, s. 432.
[17] Kiel, "Niş", D.İ.A., C. XXXIII, s. 148-149.
[18] Şemseddin Samî, "Leskofça", Kâmûsu'l-A'lâm**,** C. V, İstanbul: Mihran Matbaası, H.1316 (M.1898), s. 3991.
[19] Bilal N. Şimşir, Rumeli'den Türk Göçleri, C. II, Ankara: T.T.K. Yayınları, 1989, s. 29.
[20] Nedim İpek, "Balkanlar, Savaş ve Göç", Balkanlar Ve Göç, Bursa: Bursa Kültür A.Ş. Yayınları, 2013, s. 195.
[21] Ağanoğlu, a.g.m., s. 162.
[22] İpek, a.g.e., s. 21.
[23] İpek, a.g.e., s. 21.

Filibe'de otuz üç cami ile alakalı olarak yapılmış olan bir incelemede bunlardan sadece birinin kullanılabilir halde olduğu, diğerlerinin ise yıkılmış vaziyette yahut silahhane veya benzer şeyler için el konulmuş olduğu ortaya çıkarılmıştır. Niş'te de aynı uygulama söz konusu olmuştur.[24]

Ruslar, Balkanlarda müslüman halka katliam yapmak için Bulgarlarla Osmanlılar arasında yapılacak herhangi bir anlaşmaya izin vermediği gibi, askere alınmayı reddeden hıristiyanlara da ceza kesmiştir. Rusların, Tuna'yı geçtikten sonra başlattıkları ve büyüttükleri katliamı dehşetle izleyen müslümanlar, topluca güvenli bölgelere göç etmeye mecbur kalmıştır. Ayrıca Rus güçlerinin, göç etmeye mecbur kalan halka yetişip onları katletmeleri neticesinde, göç hareketinin bazen sekteye uğradığı da görülmüştür.[25]

Tuna vilâyetinin batı tarafında yaşayan müslümanlar, 1877 Aralık ayında doğudan gelen Rus kuvvetleri ile batıdan gelen Sırp askerleri ve her taraftan hücum eden Bulgarlar tarafından ateş altında bırakılmıştır. Büyük göçmen grubu sert kış şartları altında sığınacak bir yer aramak için üçe bölünmüş; bir kısmı Köstendil'den Üsküp'e ve Selanik'e, diğer bir kolu da Filibe yoluyla Edirne'ye ulaşmıştır. Üçüncü kısım ise Şipka doğrultusunda iken Rus kuvvetlerinin eline geçmiş ve topluca öldürülmüştür.[26]

1877 Aralık ile 1878 Ocak aylarında Niş sancağındaki Arnavutlar sürgüne maruz kalmıştır. Yerlerini yurtlarını terk etmek mecburiyetinde kalan çoluk-çocuk, kadın ve yaşlı sert kış şartlarının altında soğuktan yaşamını yitirmiştir.[27] Niş'te yapılan sürgünler o kadar geniş çaplı olmuştur ki, sürgün sonrasında bölgenin neredeyse tamamı insandan arındırılmıştır. Bu hal Kral Milan Obrenoviç'in belgelerine bakıldığı zaman da rahatlıkla anlaşılır. Nitekim onun 24 Ağustos 1879 tarihinde Niş'ten, Jova Ristiç'e gönderdiği bir mektup bu durumu açıkça ortaya koymaktadır. Mektupta bir ara ziyaret amacıyla Toplica (Ürgüp) ve Niş'e yakın Mramor'a, sonra da Prokuple'ye kadar gittiği, oralarda kimsenin kalmadığı, o bölgelerin hepsinin terkedilmiş vaziyette olduğu ve orada kendi insanlarını iskân etmeleri gerektiği bilgileri yer almaktaydı.[28]

XIX. ile XX. asırlar arasındaki harplerin hepsinde müslüman halk toplu olarak katliamlara uğramış ve yurtlarını terk etmeye mecbur kalmıştır. Bütün bu savaşlarda farklı taktikler takip edilmesine rağmen yine de müslümanlar üzerinde bıraktıkları tesir aynı olmuştur. Böylece çok sayıda müslüman katledilmiş olup geri kalanları ise sürgün edilmiştir. Hükümetin kayıpları sadece siyasî ve askerî açıdan olmamıştır. Aynı zamanda toplumsal göçlerle birlikte çok sayıda kişinin hayatını kaybetmiştir. Bu savaşlarda sayıları daha az da olsa pek çok gayrimüslim de hayatını kaybetmiştir.[29]

93 Muhacereti diye bilinen 1877-1878 göçleri, Balkan topraklarının tamamıyla yerinden oynaması görüntüsü vermiştir. Osmanlı toplumunu baştanbaşa söküp atan, çoluk-çocuk, kadın-erkek demeden yüz binlerce kişilik kitleleri önüne katan bu sosyal ve politik hâdise, sadece orduların çözülüp çekilmesiyle anlaşılacak bir vâkıa değildir. Bu hareketin temel sebeplerini anlamak için, sosyal, siyasal ve ideolojik temellerine inmek gerekir.

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[24] Kemal H. Karpat, Osmanlı'dan Günümüze Etnik Yapılanma ve Göçler, 2. b., İstanbul: Timaş Yayınları, 2013, s. 183.
[25] İpek, a.g.e., s. 18.
[26] Öztuna, a.g.e., C. XII, s. 420.
[27] Sabit Uka, Gjurme Onomastike ne Hapsiren e İlirikut me veshtrim te posaçem ne Ate te Dardanis ku ishte edhe sanxhaku i Nishit, C. 7, Priştine: Shoqata e Muhaxhireve te Kosoves Yayınları, 2005, s. 217.
[28] Sabit Uka, Jeta Dhe Veprimtarija e Shqipetareve Te Sanxhakut te Nishit deri me 1912, C. 4., Priştine: Timegate Yayınları, 1995, s. 33; Sabit Uka, Debimi i Shqipetareve nga Sanxhaku i Nishit Dhe Vendosja e Tyre ne Kosove 1878-1912, C. 1+2, Priştine: Valton Yayınları, 1994, s. 33.
[29] Justin McCarthy, Ölüm Ve Sürgün, Türk Tarih Kurum Yay., Ankara, 2012, s. 21.

Bu büyük göçün asıl sebebi, Osmanlı-Rus harbinin felsefesinde bulunmaktadır.[30] O da panslavist Rusların Karadeniz ile Adriyatik ve Tuna ile Marmara arasında müslüman nüfusun ortadan kaldırılması anlayışıdır. Bu düşünce Osmanlı Avrupa'sında yapılan sürgünlerin temel sebebinin İslâm olduğunu göstermektedir. Böylece Balkanlar'da Osmanlı tebası olan müslüman halk mümkün olduğunca yok edilerek Slavlar dışında herhangi bir ırk bırakılmaması hedeflenmiştir.[31] Rusların yanında Sırplar da XIX. başından 1878'e kadar çeşitli antlaşmalarda sürekli belirtiyorlardı ki Müslüman unsurun Sırbistan'da yeri olmaması gerektiğini ve böylece kendi topraklarını genişletme iddialarla Müslümanların yaşadığı toprakların zararına ilk başta 12 maddelik Vasojeviç Kanun[32] ile ondan sonra Ilija Graşanin'in projesi olan Naçertaniya[33] ile gerçekleştirmeye düşünüyorlardı. Bu projelerle özellikle 1877-1878 Niş sancağında ve Karadağ'daki Müslümanları katledip evlerini çalıp yaktılar ve sürgüne zorladılar. Diğer taraftan Rus kuvvetleri de Tuna'yı geçip Rusçuk'tan güneydoğuya, Balkanlar üstünden doğu Rumeli tarafına ilerlerken sivil müslüman nüfusa yönelik saldırılar başlatmıştır.[34] 93 Harbi, çok milletli bir imparatorluk toprağında tek milletli bir devlet yaratmak için girişilen köklü bir operasyon hareketidir[35].

C. SÜRGÜNÜN BİLANÇOSU

Balkanlar'da yapılan zülüm ve göçün bilançosuna bakıldığında durumun korkunçluğu daha açık bir şekilde ortaya çıkmaktadır[36]. Balkanlardaki Müslümanların sayısı yaklaşık 10 ila 11 milyon veya toplam nüfusun yaklaşık %18'idir[37]. Osmanlı topraklarında 1821-1922 arasında, 5 milyondan fazla Müslüman Topraklarından Sürülmüştü. Beş buçuk milyon Müslüman da ölmüştü; bir kısım savaş esnasında katledilmiş, geriye kalanı da mülteci olup açlık ve hastalıktan kırılmıştı[38].

Mart 1918 tarihli Meclis-i Ayan toplantısında, dönemin Aşair ve Muhacirin Müdüriyet-i Umumiyyesi Müdürü Hamdi Bey, II. Meşrutiyet'e kadar gelen muhacir nüfusunun tam olarak tespit edilemediğini, ancak 1293/1876'dan beri tetkik edilen kayıtlara göre 854.870 kişinin göçmen konumuna düşürüldüğünü belirtmektedir[39]. Osmanlılar 500.000'i öldürülmek, 100.000'i hastalık, soğuk ve açlıktan ölmek ve 900.000'ini de göçe zorlanmak suretiyle Balkanlar'da sadece 93 Felaketi'nde toplam bir buçuk milyon kişilik bir nüfus kitlesini kaybettiler. Bu nüfusun büyük bir kısmı Türk ve diğer Müslüman topluluklardan, az bir kısmı ise Tatar olarak adlandırılan Kırım ve çevresi Türkü ile 12 yıl önce Kuzey Kafkasya'dan gelen Çerkesler'di. Sözkonusu 900.000 göçmenden 300.000 kadarı Rumeli'nin Bulgaristan dışında kalan yerlerine, Selanik ve Kosova vilayetlerine, yani Makedonya'ya; 400.000 kadarı Anadolu'ya, bunun küçük bir kısmı İstanbul ve Edirne şehirlerine ve 100.000 kadarı da Suriye, Lübnan, Ürdün ve Filistin gibi Anadolu dışındaki Osmanlı topraklarına yerleştirildi[40].

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[30] Şimşir, a.g.e., C. II, s. XXX.
[31] Yılmaz Öztuna, Büyük Türkiye Tarihi, C. XII, İstanbul: Ötüken Yayınları, 1979, s. 418; Ağanoğlu, a.g.m., s. 162.
[32] Илије М. Јелића, Васојевићки закон од 12 точака, (Београду, Српска краљевска академија, 1929).
[33] Ilija Garašanin (1812-1874), https://www.britannica.com/biography/Ilija-Garasanin.
[34] Karpat, Etnik Yapılanma ve Göçler, s. 175.
[35] Şimşir, a.g.e., C. II, s. XXX.
[36] Ağanoğlu, a.g.e., s. 93.
[37] Kemal H. Karpat, Etnik Yapılanma Ve Göçler, 2. b, Timaş Yay, İstanbul, 2013, s. 233.
[38] McCarthy, Ölüm Ve Sürgün, s. 1.
[39] Ağanoğlu, a.g.e., s. 95.
[40] Öztuna, a.g.e., C. XII, s. 430-431.

Göçmen meselesi yalnızca İstanbul ve Edirne vilayetlerini etkilemekle kalmadı. İmparatorluğun bütün eyaletleri bir şekilde bu sorunla karşılaştı. Mesela 1877 sonbaharında Selanik ve Kosova vilayetlerine 300.000 göçmen sığınmıştı. Bunların bir kısmı şuraya buraya iskân edildiği halde, 1879'da Kosova vilayetinde hala 100.000 göçmen bulunuyorodu[41]. Bir İngiliz raporunda da, 13 Kasım 1878 yılında İstanbul'a 70.000 yeni göçmenin geldiğinden, 120.000 Rumeli'nin de Varna ve Batum limanlarından Türkiye'ye nakledildiğinden bahsedilmektedir[42].

Sabit Uka'ya gore Niş Sancağı'nda çoğu Arnavut nüfusdan, bir kısmı da Sırp, Türk ve Çerkezler'den oluşan toplam 708 yerleşim birimi (köy) vardı[43]. Arnavutların nüfusunun 200.000 kadar olduğu tahmin edilmektedir. Belgrad'ta bulunan İngiltere konsolosu Gould'un raporuna göre Niş'te 248 köy, Şehirköy'de 189, İvranya'da da 189 ve Ürgüp'te 372 toplam olarak 998 köy bulunuyordu[44]. 1873-74 Prizren vilayeti Salnamesine göre ise Niş Sancağında toplam olarak 1252 köy vardı[45]. Her ne kadar kaynaklarda farklı bilgiler mevcud ise de 1877-1878 Osmanlı-Rus savaşında Niş Sancağı'nın tamamını Sırplar işgal ederek halkını sürgüne zorladılar ve sürgün edilen Müslüman ahalinin yerine de Sırp ve Karadağlıları yerleştirdiler[46].

1878 yılı itibarıyla Sırbistan'dan Kosova vilayetine 93.000 muhacir geldi ise de bunlardan 14.000 kadarı daha sonra Sırbistan'ın terkedilmiş ve boşaltılmış köylerine geri döndüler. 1879-1880 yıllarında Kosova vilayetindeki göçmen sayısı yaklaşık olarak 100.000 olup, bunların da çoğu Priştine, Prizren ve Üsküp sancaklarında bulunmaktaydı. Bu göçmenlerin yerleştirilmesi ve idare edilmesi için komisyonlar kurulmuştur[47].

İngiltere'nin Belgrad diplomatik Ajanı Gould, Arnavut göçmenlerin Sırbistan'a dönmeleri konusunda Sırbistan Dışişleri Bakanı Salisbury nezdinde girişimde bulunmuş; Salisbury de meseleyi hemen Prens'e arzedeceğini belirtmişti. Prens ise, yazılı İngiliz girişimini, sözkonusu meselesinin Belgrad idarecileri arasındaki hizipleşmeler sayesinde zamanla kendiliğinden çözülebilme ihtimalinin bulunduğu gerekçesiyle şimdilik geri bırakılmasını istedi[48]. Aslında bütün Osmanlı elçileri, görev yaptıkları ülke hükümetleri nezdinde Osmanlı halkına yapılan katliamı durdurmak için, her türlü faaliyette bulunuyorlardı. Zira birçok Avrupa devleti, çeşitli tonlardan, Osmanlı halkına yapılanları Petersburg'da protestoya başlamıştı. Ama Çar'a bile hâkim olan panslavistlerin, Balkanlar'ı Slavistan haline dönüştürmeye son derece kararlı oldukları görülmekte idi[49].

Rumeli'deki Osmanlı göçünü durdurma gayesiyle, Rusya'dan halkın can ve mal güvenliği hususunda yazılı teminat istenmiş, ancak bundan da olumlu bir sonuç alınamamıştı. Ayrıca, Osmanlı Devleti, mütareke heyetindeki temsilcileri aracılığıyla da doğrudan doğruya Rus başkumandanlığı nezdinde girişime geçti. Ancak antlaşmanın imzalanmasına rağmen, bazı bölgelerdeki Rus kuvvetleri ilerlemeye devam etti[50].

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[41] Nedim İpek, "Kosova Vilayeti Dahilinde Gerçekleşen Göçlerü", History Studies, C. 2/1, 2010, s. 69; Öztuna, a.g.e., C. XII, s. 427.
[42] Öztuna, a.g.e., C. XII, s. 432.
[43] Sabit Uka, Te Dhena Te Pergjitheshme Historike Per Shqipetaret e Sanxhakut te Nishit, C. 6., Shoqata e Muhaxhireve te Kosoves Yay., Prishtine, 2004, s. 302
[44] Bejtullah Destani, Muhaxhirët-Dosja Britanike, Priştine, Botime Artini, 2019, s. 268.
[45] Salname-i Vilayet-i Prizren, H.1290 (M.1873), 1 defa, s. 112-115; Salname-i Vilayet-i Prizren, H.1291 (M.1874), 2 defa, s. 170-173.
[46] Uka, Te Dhena Te Pergjitheshme**…**, C. 6., s. 302.
[47] İpek, a.g.e., s. 175.
[48] Şimşir, a.g.e., C. II, s. 29.
[49] Öztuna, a.g.e., C. XII, s. 423.
[50] İpek, a.g.e., s. 29.

Yunanistan, Sırbistan ve Bulgaristan'daki ayaklanmalar, milli ayaklanmaları standart bir düzeye koymuştur. Yeni devletler, etnik açıdan homojen, birleştirici bir yapıya kavuşmuşlardır. Azınlık konumundaki halkların en önde gelen unsurlarından olan Müslümanlar, artık bu ülkelerde yaşamıyorlardı. Balkanlardaki milli devletler, tek etnik kimlikten gelen insanların yaşadığı devletler haline gelmişlerdi. Bu durum, Balkan milliyetçiliğinin bugüne de devam eden bir uygulaması olacaktı[51].

SONUÇ

Osmanlı Devleti'nin en uzun yüzyılı olarak kabul edilen XIX. yüzyılda, uzun süren ve bitmeyen isyanlar, kaybedilen savaşlar ve hızla gelişen olaylardan Niş Sancağı da diğer Osmanlı sancakları gibi etkilendi. Niş Sancağı, diğer bazı Osmanlı sancakları gibi pek çok milletin birlikte yaşadığı bir yerdir. Sırp, Arnavut, Türk ve daha birkaç milletin içiçe yaşadığı bu bölge, XIX. yüzyılda diğer Osmanlı coğrafyası gibi önemli olayların ve büyük değişim ve çalkantıların içine girdi. Niş Sancağı'nda, özellikle de 1877-1878 yıllarındaki Osmanlı-Rus Savaşı esnasında Sırplar tarafından yapılan katliam ve yakıp yıkmalar yüzünden büyük sürgünler başladı. Bu sürgünlerden Niş Sancağı oldukça fazla etkilendi ve bu nedenle de nüfus yapısında büyük değişikler meydana geldi. 1877-1878 yıllarındaki Osmanlı-Rus Savaşı'nın sona ermesinden sonra yapılan barış antlaşmalarının akabinde, Niş Sancağı'nda tek bir millet kalmıştı. Onlar da Rusların doğrudan desteklemiş oldukları Sırplar'dır. Zaten onların ve Rus panslavistlerin hedefi, Osmanlı İmparatorluğunun parçalanması ve daha sonra da Balkan topraklarına kendilerinin hâkim olmasıydı. Balkanlar'daki mezalim hareketlerinden şüphesiz en büyüğü, 1877-1878 Osmanlı-Rus Savaşı'ndaki Rus, Bulgar ve Sırp mezalimidir. Rus siyasetine uygun olarak savunmasız köyler zapt edilip, silahsız halk katledildi ve tecavüze uğradı. Osmanlılar 500.000'i öldürülmek, 100.000'i hastalık, soğuk ve açlıktan ölmek ve 900.000'ini de göçe zorlanmak suretiyle Balkanlar'da sadece 93 Felaketi'nde toplam bir buçuk milyon kişilik bir nüfus kitlesini kaybettiler.

Sonuç olarak Niş, XIV. yüzyıldan 1877-1878 Osmanlı-Rus Savaşı'na kadar Osmanlı İmparatorluğu'nun hâkimiyeti altında kaldı. Günümüzde, Osmanlıların yönettikleri tüm diğer yerlerde olduğu gibi, Balkanlar'da bıraktığı izler az da olsa hala devam etmektedir. Bu çerçevede günümüzde bir Balkan şehri olan Niş'te de Osmanlı döneminin eser ve tesirlerinden kalıntılar bulmak mümkündür.

[51] Justin McCarthy, Osmanlı'ya Veda / İmparatorluk Çökerken Osmanlı Halkları, (çev.) Mehmet Tuncel, Etkileşim Yay, İstanbul, 2006, s. 95.

EK. Harita: 1877-1878 yılında Niş Sancağı toprakların Sırbistan tarafından işgal edilmesi.