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## Haunted by Debt: Calculating the Cost of Loss and Violence in Turkey - [Zerrin Özlem Biner](#)

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This essay is concerned with debt-producing mechanisms that exist between the Turkish state and Kurdish citizens. Focusing on lawsuits known as "compensation recovery cases" (*rücu tazminat davaları*), I argue that the Turkish state uses the legal devices to transform reparative justice mechanisms into debt-producing mechanisms that create new compulsory bonds between the state and Kurdish citizens. Here, debt refers to the material and intangible relationship that the Turkish state has established with Kurdish citizens through which militaristic state violence transforms itself into forms of dispossession. Through this process, Kurdish citizens come to be haunted by repression in both the space of loss and reiterated violence and the space of (un)anticipated debt. What does it mean to imagine loss as debt? Who is indebted to whom? In this current context of extreme violence that could result in the death of all of the subjects living under curfew, how can we talk about debt as a type of relationship between the state and the Kurds? How does living in debt blur the boundaries between the violence of the present and the future?

The military conflict between the Turkish Armed Forces and the Kurdistan Workers' Party (*Partiya Karkeren Kurdistan - "PKK"*) spans three decades. It has claimed the lives of more than 45,000 civilians, militants and soldiers, resulted in thousands of casualties and disappearances, led to the forced evacuation of nearly 4,000 villages and towns, and caused the displacement of millions of people as well as the formation of ethnic, social and political enclaves in contemporary Turkey.<sup>1</sup> Following the unilateral ceasefire declared by the PKK, which was triggered by the arrest of its leader, Abdullah Öcalan, in 1999, the state sought to capture the effect of violence and harness the political and moral values of Kurdish citizens. In an effort to control the sphere occupied by the PKK under the surveillance of transnational organisations such as the European Union, the state produced contradictory policies. These ranged from the enactment of reforms aimed at introducing democratisation, rehabilitation and reparation to military operations and serial acts of legal repression including the imprisonment of human rights activists and political militants aligned with the pro-Kurdish party. In the post-1999 period, the state never explicitly acknowledged its violent practices under emergency law. Nor did it offer an official

apology for economic and moral injuries that had devastating effects, particularly on the lives of Kurdish citizens. There was no attempt to establish a political and social mechanism for revealing the “truth” and identifying the perpetrators and victims of the 1990s. Instead, the state eluded accountability for violations of citizenship rights by crafting legal devices that would respond to claims of material damages and losses under the scrutiny of the European Court of Human Rights (ECHR)<sup>2</sup>

In 2004, the Turkish parliament passed the “Law no: 5233 on Compensation for Losses resulting from Terrorism and the Fight Against Terrorism”. The law was designed to compensate citizens who had incurred material damages as a result of the conflict between the PKK and the Turkish Armed Forces between 1987 and 2004. The compensation law applied to all civilians except for those who had been convicted under the Anti-Terror Law because, by legal implication, their alleged acts of terror were presumably the cause of the damages and losses in question. In addition, damages that had previously been covered through monetary or other forms of aid granted to returnees were deducted from the award, and damages already covered by decision of the ECHR could not be addressed under the new legislation.<sup>3</sup>

Compensation was awarded by mutual agreement between the applicants and the provincial committees (known as Damage Assessment Commissions), which were staffed by local public officials and the governor of the province in the conflict zone. Through these ‘friendly settlements’ (*sulhname*), applicants were awarded compensation in exchange for renouncing their right to litigation. As stated in the preamble, the compensation law was not derived from the recognition of the accountability of the state, but rather, from the “doctrine of social risk based on the objective responsibility of the state.”<sup>4</sup> People who had suffered damages were compensated as a “requirement of justice and of the principles of a social state based on the rule of law”<sup>5</sup> regardless of whether the state was accountable. They would not have to pursue the cases through litigation. The Damage Assessment Commissions were tasked with reaching friendly settlements for the claimed damages and, in so doing, were expected to reduce the number of cases carried to the ECHR and thus “prevent the use of compensation as a means of unjust enrichment.”<sup>6</sup>

Based on these political and economic expectations, in 2006 the government sent a report on the applications made under the Compensation Law from people who had filed cases with the ECHR. Evaluating the mechanisms and results of these assessments, the ECHR ruled that the Compensation Law provided an effective domestic remedy and that applicants must exhaust these procedures before filing action in Strasbourg, The ECHR then returned all pending cases.<sup>7</sup>

The Compensation Law thus became an effective tool for re-establishing the credibility of the Turkish state in the international arena.<sup>8</sup> The state reconciled with global standards of accountability and created internal mechanisms designed to cut off access to international institutions of justice. The Compensation Law helped justify the legitimacy of the state and shut out the possibility of making claims about state terror and demanding retributive justice.<sup>9</sup> The majority of the Kurdish

applicants agreed to sign the friendly settlements with the state and renounced their right to litigation, which means that they consented to the legal closure of their files with respect to the injuries that they suffered under emergency rule between 1987 and 2004. They often did not perceive the settlements to be compensation for past injuries and injustices. Instead, they viewed the process as another form of charity, which was historically and politically a familiar mode of interaction with the state.<sup>10</sup> The process for applying for compensation for the injuries suffered between 1987 and 2004 ended in 2008. However, the Compensation Law remained the sole legal instrument for providing reparations for all future material damages resulting from “terrorism” and the “fight against terrorism.” After 2004, members of the military and the police, village guards, and civilians who suffered material and intangible damages would be subject to the terms and conditions of the Compensation Law and submit petitions to the Damage Assessment Commissions instead of taking the matters to court.

There was also a second form of compensation that underpinned the relationship between the Turkish state and Kurdish citizens. It was known as compensation recovery cases (*rücu tazminat davaları*). These cases involved compensation paid by the state to the members of the military and the police for injuries and losses incurred during the fight against the PKK beginning in the 1990s. These transactions have never fully settled the matters in question, but instead have led to a new cycle of litigation in which the Ministry of Defence or Interior Affairs as the payee of the compensation sues the other party in the conflict, in this context, the pro-Kurdish party activists and/or the PKK guerrilla fighters, in order to recover the compensation that the state had paid to a member of the military or the police and/or their families.

These cases were not grounded in special articles of the Anti-Terror Law or the Compensation Law. The right to litigation for compensation recovery was instead based on Article 41 of the Law of Obligations (*Borçlar Hukuku*), which states: “A person who wrongfully harms another intentionally, negligently or imprudently is under the obligation to compensate the other party for this harm.” This provision is mostly used by insurance companies to recover any compensation they make to their policyholders from a third party when the responsibility of the third party has been proven. A classic example is a traffic accident in which the policyholder has little or no fault and the liability of a third party is established. The state adopts a similar logic. Acting like an insurance company, it uses this procedure to regulate its relationship with its citizens in cases concerning material and intangible damages incurred as a result of acts that were committed during political protests, marches and demonstrations. In the case of injured member of the military or the police, the state pays compensation to its staff members and then recovers it from third parties whose actions are proved to have caused the damage to public property and officers.

The compensation recovery process is as follows: First, the ministry sends the file to the lawyers at the Treasury Department with accompanying information on the identities of the perpetrators allegedly involved in the incident against the Turkish

member of the military or the police officer. The lawyers investigate the financial situation of the accused person/people and document all of their assets. They then file a lawsuit with the Civil Court, where the accused is asked to cover the compensation that has been paid to military or police staff. The lawyers start the legal procedure prior to the final decision of the Criminal Court that determines the responsibility of the accused person for the claimed deeds. However, the final verdict of the Civil Court relies on the decision of the Criminal Court. Should the Criminal Court find the defendant responsible for the injury and penalise it, the Civil Court immediately finalises the case and forces the accused to make a payment to the Ministry. The payment is meant to include reimbursement for the compensation with interest and court expenses. The consecutive decisions of the Criminal and Civil Courts turn the accused into both a criminal and a debtor. His/her debt becomes an inclusive and inevitable part of his/her sentence. Yet the life of this debt is not contingent on the life of the militant. The debt stands even if the militant died at the scene of the incriminating event, or afterwards.

His/her name remains on the list of responsible parties included in the file sent to lawyers by the Ministry. The fact that his/her responsibility for the alleged injury has not and cannot be investigated and judged at the Criminal Court does not block the Ministry's request to file a compensation recovery claim. While the decision on the criminal responsibility of the dead militant for the act is put on hold, the state uses the civil law to perpetuate the crime-punishment-debt relationship: it forces the militant's family to take responsibility for their child's deeds. Following the orders of the ministry, state lawyers track the heirs of the militant and bring a lawsuit against them in the Civil Court, seeking repayment of the lingering debt, which would amount to the recovery of the compensation paid by the state to the members of the military or the police.

According to human rights lawyers, despite the complicated implications of these practices, the state is not breaking the law. Rather, in the absence of the accused militant, the state circumvents the general principle of the criminal law (*ceza hukuku*) that stipulates the connection between the individual, the crime and the punishment, and instead justifies its claim on the basis of the inheritance law (*miras hukuku*), which rules that heirs inherit both assets and liabilities, including the debt of the deceased. The liability for the debt is what made them subject to the verdict of the Civil Court (*hukuk mahkemesi*) for the reimbursement of the compensation. Through compensation recovery cases, the state has been using the force of the law to redefine the connection between the families and the dead militant, between the heirs and the corpse, and to craft forced ties through the legally invented relationship of indebtedness. In this context, the families of Kurdish guerrillas are imprisoned by debt until they find the means to pay to the state.

This confinement has neither spatial nor temporal limits. Once these files are opened by state lawyers, they remain open until the debt is paid. The state generates urgency around the recovery of the compensation paid to the members of the military or the police by requiring state lawyers to bring these cases to the court

within one year of receiving the files from the ministry. Should the lawyers miss the deadline, they fall into the status of debtors and are themselves held liable for the damages. Despite the pressure applied by the state, compensation recovery cases take a long time to close. Reaching the families can be difficult because they tend to be scattered or settled outside of Turkey. Some do not register their current address. The trials often take place without the presence of the family members. State lawyers appear in court as claimants representing the ministry, and most families are not notified. They often learn about the debt only upon receipt of a letter containing the terms of the final verdict, which can come years after the death of their children. The closure of the cases can also be delayed due to the continuous deferral of the final verdict by judges who avoid making decisions that go against the will of the state, leaving the case in limbo for an unlimited period of time. In the interim, the parents of the dead militant might pass away and in turn leave younger members of the family liable. Their inheritance includes both the memory of past violence and the future debt of siblings who died in the war against the state.

Upon receiving the final verdict, the families can choose to follow one of two paths. First, they are advised to apply for the renunciation of inheritance (*reddi miras*), which involves disclaiming their legal connection to their children and hence the obligation to inherit their debt. This route has a temporal constraint, as the renunciation can only be done within a certain period of time after the death of the person. More significantly, the families often feel divided between the urgency to escape the heavy burden of the debt and the desire to remain loyal to the memory of their children. They are also informed that they have a right to appeal the decision of the Civil Court to the Supreme Court. Such appeals can be based on a lack of the evidence of the injuries and the alleged crime/fault of the dead militant. If their appeal is refused, they are forced to pay the debt including court fees, the compensation paid to the members of the military/police or their families, and the interest that accumulated starting on the day that the transaction between the state and the injured families was initiated. If the family does not have assets or other financial means that can be appropriated, they are given the status of “*aciz*” (not able). Even this status as someone who does not own property does not exempt them from the debt. The file is never closed. The debt does not vanish. It lingers behind the scenes, continues living and breathing in the files and inhabits the past, present and future of the family as the material ghost of protracted violence.

The ministry requires its lawyers to return to the file every five years and re-investigate the financial conditions of the “*aciz*” to see whether the family members have accumulated any means that could be confiscated in order to settle the debt. The lawyers follow orders. Before they move to their next post, they leave notes in the folders reminding their successors of the timeline to be followed in order to reactivate the process of hunting down the debtors. As the gatekeepers of the law, state lawyers continue to wait for the re-emergence of the debtor.

The implicit suggestion of the foregoing discussion is that the analysis of state violence in Turkey requires looking into legal practices related to the political

economy of conflict, which in turn involves revisiting the relationship between loss, compensation and debt. Through the implementation of the Compensation Law and compensation recovery cases, the state has effectively operated as if it were an insurance company, generating new forms and domains of debt-producing management and creating its own internal mechanisms of investment in death. This mode of compensation/debt economy has served the re-distributive logic of the neo-liberal state, which accumulates capital through dispossession, effectively continuing its war against the opposition by economic means.<sup>11</sup> The state used the Compensation Law to dispossess those who had suffered losses during the conflict of the right to appeal to a transnational institution for justice. It also managed to standardise its own compensation system -at rates much lower than those used by the ECHR- and calculate the economic and political costs of death and life in the context of “the fight against terrorism.” This manoeuvre functioned as an effective way of reducing the official expenses spent by way of compensation and, as envisioned and stated in the preamble of the Compensation Law, to “prevent the sudden enrichment of the applicants” who filed claims to the ECHR. In this political context, the rule of recovery (*rücu*) has operated as a complementary practice, supporting the accumulation logic of the neo-liberal state that redistributes capital by converting the compensation paid to the members of the military and the police into the debt that would be paid by the Kurdish families of dead militants.

David Graeber defines debt “as an exchange that has not been brought to completion.”<sup>12</sup> Debt brings inequality into relationships and creates a forced bond between two parties. Yet, Graeber notes, “There is no such thing as a genuinely unpayable debt ... we call it a ‘debt’ because it can be paid, equality can be restored, even if the cost may be death by lethal injection.”<sup>13</sup> Maurizio Lazzarato makes a counter-argument stating that in contemporary capitalist societies, “Debt is a promise of repayment and therefore concerns open and indeterminate time, the radical uncertainty of the future which the logic of probabilities cannot anticipate or control.”<sup>14</sup> With the formation of states, empires and monotheistic religions, Lazzarato argues, debt turns into life debt and becomes unpayable, and not reimbursable.<sup>15</sup> The relationship between creditor and debtor is never settled and continuously reproduced as it “assures political domination and economic exploitation.”<sup>16</sup> Hence, debt can never be paid through monetary reimbursement, but only as Walter Benjamin implied, through political redemption, notes Lazzarato.<sup>17</sup>

Following Lazzarato’s critical analysis, I argue that the debt that the families in these cases are made to pay is also unpayable. It is not reimbursable. Using the rule of recovery (*rücu*), the state produces legal violence that mortgages the past, present and future of the families. The state uses the relationship of indebtedness to disclaim its responsibility for the loss of lives and to pass the cost of that violence onto its opponents. Legal violence seeks to transform all losses into material transactions between debtors and creditors. It establishes the families as subjects who are accountable for the pain and losses that they suffer and forces them to take responsibility for actions that are not their doing. While the Compensation Law

justifies the monopoly of the state to execute and then repair the effects of violence, punishment through compensation recovery instils guilt and fear through a relationship of indebtedness. While the Compensation Law erases the accountability of the state and sets the rule of the friendly settlement in exchange for the renunciation of the right to litigation, the compensation recovery cases create an unmovable and permanent relation between the state and families of the dead militant as the inheritors of punishment in the form of debt.

The state uses law and debt to channel the force of the past on the present and future and redefine the limits and form of continuity and responsibility between citizens and generations. In this context, neither the local governors nor the members of the military/police were imprisoned for violent acts that caused the destruction of the environment and lives of Kurdish citizens. Nor were their families held responsible for the compensation paid to the Kurdish citizens who applied for and received compensation in exchange of the loss that they incurred during the conflict. Only Kurdish citizens were held responsible for the acts of their older and younger relatives and held liable for the recovery of any compensation that was paid.

The bodies of dead militants were often not returned to the families; they either disappeared or were buried by PKK militants or the Armed Forces in unknown locations. Families received the news of the deaths of their children through PKK networks and channels or an official letter from the government that registered and certified the death. These families were forced to continue their lives suspended between mourning for their loss and melancholia for the absence of the grave. Even though the person responsible for the action was absent, and even in cases in which no body was made available for burial, the state used the rule of inheritance and recovery to define what would live on from that incident and what would haunt the people who were left behind. As the rule of inheritance became the key component of this forced contract, its renunciation became the only clear path to escape the obligation of this bond. In other words, the erasure of the legal debt was conditioned on the parent's renunciation of their bond with their child. The debtor-creditor relationship would be voided through the legal dissolution of the parent-child relationship. The state was offering another opportunity for closure by forcing the families to disown their children, which would in turn mean disowning their connections to themselves.

The war in Turkey grows bigger and bitterer everyday. The crossfire between the state's vengeance of sovereign violence and the Kurdish militants' claim to self-governance and self-defence kills people from different generations who happen to be witnesses, agents, activists, residents, new-borns and passers-by in the region. It generates more ditches, barricades and hence more wreckage and ruins as evidence of the destruction of lives. In the meantime, the possibility of justice and reconciliation decreases and evidence of material losses accumulates. This will soon produce claims for compensation for some and debt for others, haunting both the present and the future.



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## Notes

[1.](#) Cengiz Gunes and Welat Zeydanlıoğlu, "Introduction: Turkey and Kurds," in *The Kurdish Question in Turkey*, ed. Cengiz Gunes and Welat Zeydanlıoğlu (London: Routledge, 2014), 1.

[2.](#) Zerrin Özlem Biner, "Documenting Truth in the Margins of the Turkish State," in *Law Against the State: Ethnographic Forays into Law's Transformations*, ed. Julia Eckert et al. (Cambridge: Cambridge University Press, 2012), 229.

[3.](#) For a detailed and comprehensive analysis of the Compensation Law, see Dilek Kurban et al. ed. *Coming to Terms with Forced Migration: Post-Displacement Restitution of Citizenship Rights in Turkey* (Istanbul: TESEV, 2007). For the recent comprehensive analysis of the implementation of the Compensation Law, see Dilek Kurban and Mesut Yeğen, *Adaletin Kıyısında: Zorunlu Göç Sonrasında Devlet ve Kürtler* (Istanbul: TESEV, 2012).

[4.](#) Official Gazette 2004, cited in Turgay Unalan et al., "Internal Displacement in Turkey: The Issue, Politics and Implementation," in Kurban et al., ed. *Coming to Terms*, 92.

[5.](#) Official Gazette 2004, cited in Turgay Unalan et al., "Internal Displacement in Turkey: The Issue, Politics and Implementation," in Kurban et al., ed. *Coming to Terms*, 90-91.

[6.](#) *Ibid.*, 90.

- [7.](#) For a detailed analysis of this process, see Dilek Kurban, “Human Rights Watch, Kurdish Human Rights Project, and the European Court of Human Rights on Internal Displacement in Turkey,” in Kurban et al., ed., *Coming to Terms*, 291-313.
- [8.](#) For a critical analysis of the compensation law, displacement and international actors, see Bilgin Ayata and Deniz Yüksek, “A Belated Awakening: National and International Responses to the Internal Displacement of Kurds in Turkey,” *New Perspectives on Turkey*, no. 32 (2005): 5-42.
- [9.](#) Biner, “Documenting the Truth,” 231.
- [10.](#) Zerrin Özlem Biner, “The Logic of Reconciliation: Between the Right to Compensation and the Right to Justice in Turkey,” *Humanity: An International Journal of Human Rights, Humanitarianism and Development*, spring 2013, no.4 (1): 75.
- [11.](#) David Harvey, *The New Imperialism* (Oxford: Oxford University Press, 2005), 137-180.
- [12.](#) David Graeber, *Debt: The First 5,000 Years* (London: Melville House, 2011), 121.
- [13.](#) *Ibid.*, 120-121.
- [14.](#) Maurizio Lazzarato, *Governing by Debt* (Semiotext(e): South Pasadena, 2015), 86-87.
- [15.](#) *Ibid.*, 77-78.
- [16.](#) *Ibid.*, 88.
- [17.](#) *Ibid.*, 84.