



**Report**

**Explicit and unrestricted attacks  
against the lawyers at the Asrin Law Office**

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# Explicit and unrestricted attacks against the lawyers at the Asrin Law Office<sup>1</sup>

## A) Introduction

One of the more fundamental discussions in the juridical and political arena is the implementation of a special regime that is distinct from general and average juridical implementations defined to be an “exception” and implemented against some social categories.

Does it change anything if the special and discriminative implementation is not against the whole of the society but against a relatively narrow category, which is marginalized or assumed to be marginalized, under the influence of political and ideological rhetoric? Then shall the regime not be considered anti-democratic? Is there a difference between the unlawful implementations against the whole of the society and against a narrower section of the society?

This matter directly concerns the contents of this report. The specific subject of this report is the implementations of a special attack against a group of lawyers in Turkey. The exception here is that these lawyers are the lawyers that defend Öcalan.

## B) Consequences of being the lawyer of Abdullah Öcalan

Abdullah Öcalan is the founder and leader of a political party called the Kurdistan Worker's Party (PKK) which has Kurdish society's popular support and which after the 1980s significantly influenced and at times determined the politics within Turkey. PKK began its armed struggle in 1984 and secured the popular support of the Kurdish people who lived within the borders of Iraq, Iran and Syria as well as the ones living in other Middle Eastern countries, Europe and Russia.

The Turkish states wishes to counterbalance this political movement that has influenced the last thirty years with the terminologies of “terror” and “terrorists” and views the employment of all unlawful methods to fight against these sections as legitimate.

As a result 4,000 villages in Kurdistan have been either burnt or evacuated, thousands of civilian people, where most were Kurdish intellectuals, were killed in a manner called “killing by unknown perpetrators” (“faili meçhul”) and where it has not even allowed for some of the bodies to be found. This period of savagery had been coordinated by a military unit called JITEM. There were assassination attempts and bomb attacks against the PKK leader Öcalan when he was in Syria, but they were not successful.

In the last thirty years all the television stations and newspapers that address the Turkish society have been broadcasting against Öcalan and PKK and all these efforts are been guided by a unit called Psychological Operations Centre. The funeral of the soldiers and military officers that lost their lives in the conflict are turned into sites where slogans in general against the Kurdish people but more specifically against Öcalan and PKK are chanted. In addition, nearly all the political parties construct their propaganda and work upon this political atmosphere and upon the axis of “terror”.

In conclusion, nearly half of the society in Turkey has been raised, shaped and nourished around the political rhetoric of this concept of “terror”.

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<sup>1</sup> The name of the Istanbul based bureau of lawyers who have taken on Abdullah Öcalan's defence

In short, this was the atmosphere when Abdullah Öcalan was brought to Turkey on 15 February 1999.<sup>2</sup>

As Öcalan was yet under custody, the then President of Turkey Süleyman Demirel had publicly declared that he was quite curious to know who would defend Öcalan. Hence, he had from the start described the juridical treatment lawyers of Öcalan would get from the state.

All attempts of the lawyers, after they received a power of attorney from Öcalan's family, to go to Imrali Island in order to see their client were realized under a political and physical lynch atmosphere. They faced attacks not only from organized masses but also from security forces who were assigned to protect the lawyers.

The first example of these attacks occurred when the lawyers attended the initial hearing at Ankara DGM (State Security Court) on 24 March 1999 in the absence of Öcalan and in relation to procedural matters. After the hearing they were attacked by the police and beaten. As can be predicted nothing came out of the criminal complaint filed at the time.

When the court hearing began there was a need to stay somewhere close-by as the hearings would be held on a daily basis. As a result the lawyers looked for a hotel where they could stay all together in Bursa. However, each hotel that they made an agreement with was threatened by the police. As a result they had difficulties in finding themselves a hotel to stay. Finally they were able to find themselves rooms in a hotel which was really old, with no customers and had terrible conditions. On 2 June 1999 civilian fascists gathered before the hotel under the supervision of the police and began chanting slogans and throwing stones. The attackers who threatened to burn the hotel grew in numbers and were just outside the hotel. Hence in the middle of the night the hotel was evacuated and the lawyers returned to Istanbul. The next day, that is on 3 June 1999, they did not attend the hearing. When the possibility for official lodging was given upon the request of the court, the lawyers continued to attend the hearings. These were the conditions under which the lawyers tried to prepare their defence during the court trial.

Each week as the lawyers went to realize their weekly consultation with Öcalan firstly they would be subjected to the insults and attacks by the police and then the families of soldiers and civilians would insult, swear and try to attack them. Finally in order to travel to Imrali Island which was declared a prohibited military zone the lawyers would then be security checked by the gendarmerie. Then would begin the physical and verbal insults of the soldiers. There would be three to four checks until the lawyers would go into consultation with their client, but these security checks increasingly became more degrading and reached the level of harassment and torture.

Öcalan's lawyers were also subjected to a special regime juridically. For example, generally there is no need for a power of attorney for the lawyers to see their client at the beginning. Those lawyers wanting to defend Mr Öcalan not only had to have a power of attorney but they also had to lodge an application with the »Crisis Desk« which was a unit that was directly supervised by the National Security Council and had extraordinary authority. There are lawyers who had to wait for one and a half year to defend their client just because this special unit did not authorize it. In addition, although it is an unusual practice, the finger prints of those lawyers going for the first time were taken. Furthermore, it was attempted to pressure the lawyers so that they would sign a document that forbade them from telling anyone what they saw in the island and threatened them with criminal consequences if they did not abide with the document. Each week when the lawyers

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<sup>2</sup> Abdullah Öcalan was forced to leave Syria on 9 October 1998 as a result of threats made by Turkey with the support of NATO against Syria. The period between this date until 15 February 1999 can be regarded as an international act of piracy that as yet has not been settled and stands as an unlawful act.

would go to the consultation they would be reminded of the “three prohibitions”: it is prohibited to shake hands, to talk in Kurdish and exchange documents!

To date none of the lawyers that held consultations with Öcalan at the Imrali Island Prison were neither able to take any documents nor the case file nor were given the necessary conditions to take notes during the consultations. In addition, the consultations have always been under continuous and strict supervision, the consultation room had been tapped and was under observation at all times.

There have been no results attained from the criminal complaints and juridical steps taken about the practice, summarized above, against the lawyers. It may be interesting to note that since 15 February 1999, that is for the past 12 years, none of the applications made by the lawyers either in relation to their client or in relation to themselves have ever been approved of, none of the complaints have been accepted and they have never had a positive result from a juridical appeal. Indeed, not a single exception can be pointed out.

### **C) Turning point: 1 June 2005 Laws**

Between 1999 and June 2005 the attacks against the lawyers continued in the form of physical attacks, abuse and degrading practice. In addition, there would have been some penal action against the press statements they made at times. However none of these cases ever have resulted in anything.

During the AKP government's term the changes that were made within the CMK (Penal Code) and CIK (penal execution code) led to two important arrangements that concern the lawyers.

First of these was an exceptional arrangement that allowed for a third person to listen to the consultations held between Öcalan and his lawyers although consultations are to be held under confidentiality according to Turkish law as well. The very same day that this law was enforced, which coincided with the day the weekly consultation with Öcalan took place, an official from the judiciary was present during the consultations with a tape-recorder recording the consultation. From this date on all the lawyer-client consultations have been taped without an exception. A precautionary measure has been turned into a routine and a permanent measure. In the case that the lawyers would like to take notes during the course of the consultation they are then taken away from them, examined and of course not given back to them.

The tape-recordings of the consultations held between Öcalan and his lawyers were then examined by the prosecutor and turned into an investigation which was then used to file a law suit against the lawyers.

The second arrangement was made in the CMK with which they could dismiss lawyers from their assignments for up to two years. For this procedure to begin it is enough to have a commencement of an investigation. Prior to the commencement of the case, without any defence being made and hence still being unclear whether there will be any penalties involved, upon the request of the prosecutor and the decision of a judge lawyers can be dismissed from representing Öcalan for a year violating the principle of presumption of innocence. This period can be prolonged twice for six months once again upon the request of the prosecutor.

It can hence be concluded that the physical pressures applied until 2005 were then continued to be implemented under a judicial disguise with the enforcement of 1 June 2005 laws which were called “Öcalan Laws” by the general public.

An interesting point from a juridical point of view would be to note that one of the many violations found by the European Court of Human Rights in the case of Öcalan v. Turkey was that in the very first consultation there was a masked person present during the consultation within a hearing distance. The ECtHR found this to be a violation of the right to a fair trial (12 May 2005, Grand Chamber judgement). However only 15 days later, on 1 June 2005 all consultations were not only listened to but openly tape-recorded. The only difference was that such a violation was now possible through a special law.

Before we go into the practical results of such laws we should underline the fact that ever since this law has been enforced the only consultations that have been heard and tape-recorded have the consultations between Öcalan and his lawyers and the only lawyers dismissed from duty have been Öcalan's lawyers.

#### **D) The trials of lawyers**

It would not be possible to count all the law suits against Öcalan's lawyers since 1999 here. Instead we would like to give information on some of them:

1. “The 'Mr.' law suit: The consultations with Öcalan have been restricted to once a week, and this has been taking place on Wednesdays for a long time now. A day before the consultation it is mandatory to inform the Mudanya Communication Bureau in writing which lawyers shall attend the consultation. This procedure which consists of a fax being sent from the lawyers' office to the Mudanya Communication Bureau or Bursa Prosecutor's office became the subject of an investigation. In the text of the application written to the Prosecutor it reads: “The following lawyers [...] shall come to attend the consultation with Mr. Öcalan”. The Mr. that had been used in these applications later became the subject of an investigation against 29 lawyers who had their names under these faxes at different times for “praising the crime and the criminal”.
2. To date there are many lawyers who have been sentenced after a trial and these are now with the Court of Cassation awaiting judgement.
  - a. Lawyer Mr İrfan Dünder has been given a sentence of 3 years and nine months of imprisonment for opposition to Article 169 of the TCK (Turkish Penal Code),
  - b. Lawyer Mr Bekir Kaya, Mr Muzafer Akad and Mr Doğan Erbaş were sentenced to 6 years and three months of imprisonment for opposing Article 314/2 of TCK (Turkish Penal Code),
  - c. Lawyer Mr İrfan Dünder and Mr Fırat Aydınkaya sentenced to 10 months of imprisonment for opposing Article 7/2 of TMK no. 3717 (Anti-Terror Law) but has been postponed for 5 years. In addition, it was decided that they be dismissed from representing the client for one year.
  - d. Lawyer Ms Asya Ülker sentenced to 6 years and 3 months of imprisonment due to Article 314/2 of TCK.
  - e. Lawyer Mr İbrahim Bilmez sentenced to 6 years and 3 months by the Istanbul 14<sup>th</sup> Assize Court on 28.10.2009 in accordance with Article 314/2 of TCK.

## E) Review of a sample case and its penalty

At the time this report was being prepared lawyer Mr. İbrahim Bilmez was given a penalty of 6 years and 3 months imprisonment by the Istanbul 14<sup>th</sup> Assize Court<sup>3</sup> (appointed by Article 250 of the CMK). We may get an idea about the cases in general if we look at the indictment and judgement of this case:

1. Istanbul Chief Prosecutor initiates an investigation in relation to the consultation that takes place on 12 March 2010 at Imrali Island and against Lawyer Ibrahim Bilmez. The indictment is prepared on 5.5.2010.
2. The criminal evidence that is included in the indictment is the record of the consultation with his client Mr. Öcalan. Here we should underline the fact that the dialogue between the lawyers and Mr Öcalan was not in the news or did not become a public knowledge but something that has been extracted from an unlawful tape-recording of the lawyer-client consultations.
3. In this case the records of the consultations included in the indictment are one and a half pages and does not include the whole consultation. Lets have a closer look at the what is in these records, bearing in mind that Mr Öcalan is a political prisoner who has been in total isolation, not having the right to a TV set and only allowed to read the newspapers censored and much later than their date of being published. He asks his lawyers what the latest developments are outside and let's see what the lawyers have said:
  - ⤴ The operations against ROJ TV and Kurdish politicians in Belgium and some names who had been arrested at the time,
  - ⤴ the news about the incidence where one soldier died and three wounded after stepping on a mine in Şemdinli,
  - ⤴ the number of people taken into custody – also known as the KCK operations – in operations against the Kurdish politicians all over Turkey (there is an effort to establish a direct link with Öcalan hence this is a matter of juridical importance to the client),
  - ⤴ The situation of those who have been given the death penalty and are waiting to be executed in Iran where some of them have sent their greetings to Mr Öcalan by contacting the lawyers.
4. The consultation that has been the back bone of the indictment is indeed about some information given to the client that are news all over the televisions and newspapers. Hence if Öcalan would have been given his right to have a TV set and be able to read the papers on time he would have been informed about these political and humanitarian issues.
5. However the prosecutor claims that the information given to Öcalan comes to mean that there is a link established between Öcalan and the organization, which means that they are knowingly and willingly helping the organization (i.e. the PKK). Therefore the prosecutor demands that they be tried in accordance with Article 314/2 of TCK (Turkish Penal Code).
6. On 10.12. 2010 in the last hearing the prosecutor repeats his views. In return Mr Bilmez who is tried as an accused states that it is unlawful to tape-record the lawyer-client consultations as well as it being a violation of the essence of the right to defence. He also adds that the dialogues that are shown in the indictment are nothing special and are publicly

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<sup>3</sup> These courts were established in place of the DGM (State Security Courts). They were turned into civilian courts through a simple name change while their location, the judges and even the court attendants were not changed!

available news. As there are many news in relation to his client daily it is also natural that his client learns about them and concludes with his request to be acquitted. The many lawyers that defend Mr Bilmez repeat similar statements.

7. The judges of the Court agree with the mentality that is laid down in the indictment and decided that he was a messenger between his client and the PKK and that he knowingly and willingly helped the organization. Article 312/2 of the TCK prescribes a minimum of 5 years of imprisonment, this penalty is increased by half of what it is in accordance with Article 5 of Anti-Terror Law numbered 3713<sup>4</sup> and hence becomes 7 years and 6 months of imprisonment. Finally the judges make use of their discretion based on Article 62<sup>5</sup> of TCK to implement a 1/6 reduction to the sentence and the final imprisonment is given to be 6 years and 3 months.
8. This judgement has been sent to the Court of Cassation for appeal. The judgement made by this court shall be a final decision.

## F) Conclusion

Juridical, vital issues, injustices and unlawful implementations in relation to Mr Öcalan are seen normal and natural amongst the general public and juridical circles within Turkey. If at all there are any criticisms these are not reflected at all. Such a mentality can also be seen in the approach to the lawyers of Mr Öcalan as well. As a result actions taken against his lawyers do not meet serious reactions. The only reaction shown in Turkey against such repression is from the Kurdish society.

The pressure applied against Öcalan's defence lawyers and the special laws put into force that are directed only against them indeed show the true colours and quality of law in Turkey. Although for the moment these new regulations have been used against Öcalan's lawyers there will come a time when they will be used against other lawyers in the country. This can be seen in the spread of use of isolation that was intended only for Öcalan but is now being implemented against many others.

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<sup>4</sup> Stiffening of the penalties; Article 5 - those who have committed a crime described in Article 3 and 4 shall be given prison sentences or fines that will be increased by half the punishment itself in accordance with the related laws. The penalties determined in this manner can exceed the upper limit of the penalty. But for penalties of custodial sentences this limit can not exceed 36 years of aggravated imprisonment, 25 years of imprisonment and 10 years of light imprisonment.

<sup>5</sup> Reasons for making use of discretion to reduce the sentences: Article 62 - (1) For the benefit of the offender in the case of presence of reasons that shall alleviate the penalty instead of aggravated life sentence life sentence and instead of life sentence 25 years of imprisonment shall be given. In relation to other penalties they are reduced at the most by 1/5 of the given penalty. (2) The reasons for discretion used to reduce the sentence may include the past of the offender, social relations, his attitude after the action and during the trial and the possible effects of the penalty on the offender's future. The reasons for discretion used to reduce the sentence shall be indicated in the decision.