
2nd International expert conference

“The so-called anti-terror-struggle using the example of Kurds –
practice in the European legal sphere”

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**AZADİ
FREHEIT**

I. Recent developments in Turkey

1. Political show trials

1. Example: So-called KCK trials

So-called “KCK trials”

Cihan Aydin, Diyarbakir bar association

I. BEGINNING OF THE INVESTIGATION AND THE COURSE IT TOOK

This investigation began as a result of an alleged denouncement via a telephone call to the Diyarbakir Police Department. This denouncement alleged to be made on 14.02.2007 was about Cihan Deniz who later died in a car crash and was as follows; **“He channelled everyone on behalf of PKK to participate in protest and manifestations. He invites people to come out to the streets to rebel. He also organizes other provinces. His telephone number is 0537 968 0013”**.

Immediately after receiving such a denouncement TEM (Fight Against Terrorism) Department makes a request to the Chief Prosecutor with Special Authority so that the phone number can be tapped and is technically traced. The Chief Prosecutor then makes the request from Assize Court judge. Hence with the decision dated 16.02.2007 of the Assize Court judge the investigation thus officially begins.

In later dates all those who have talked to Cihan Deniz over the phone have also been tapped into due to the same argument and procedure. This went on more than 2 years with tens of people's phones being tapped. But this must not have been seen sufficient as the office of Ecology and Local government commission, which was established and its members appointed by DTP (Democratic Society Party) assembly administration committee, was watched by cameras and all the dialogues in the bureau were tapped. The office of the commission was tapped for more than 6 weeks although the decision of the judge was for one week. Nearly everyone who has entered the office has become a defendant.

As a result of these operations there were thousands of detentions and arrests. The political activities of DTP and BDP has become the target of criminal investigations. As of today there is a Şırnak KCK court case, 2 KCK courts cases where those caught in Batman are being tried, Mardin KCK court case, Van KCK court case, 2 KCK court case where those caught in Adana are being tried, Mersin KCK court case, Gaziantep KCK court case opened and the trials continue. The court case of those caught in Siirt under the KCK court case is still at the investigation level although it has been six months since its commencement. Similarly in an operation in Kars all the members of the administration in the province have been arrested but as yet there are no court cases opened against them. This is the court case that is the source that determines all the cases mentioned above. This is because in all the indictments not only the language used and the format are the same the essence is also highly similar. I see no reason to go into further details about the cases mentioned. All I want to do is draw your attention to the fact that the operations of detention and arrests against the DTP (Democratic Society Party) and after it was shut down against BDP (Peace and Democracy Party) and DTK(Democratic Society Congress) by the name of KCK were not local operations. On the contrary, a general decision is being implemented. Therefore these operations

were taken up in many provinces and there is a direct similarity between them.

a. The commencement of the Operation

DTP (and after the ban on DTP BDP took its place) operation commenced on 14 April 2009 at around 05:00 am in a raid simultaneously organized against all the 60 members and administrators of DTP. After hours of searching many computers, USB sticks, written documents, CDs, books and similar materials were confiscated and 60 people were detained. After 4 days in detention they were taken before a court and 53 of them were arrested. Later, in June, September and finally on 24 October 2009 similar operations were taken up in accordance with the same investigation. As a result the number of people arrested reached 103.

b. The Process of Investigation

The investigation was conducted from the beginning to the end in secret and both the lawyers and those arrested were prevented from learning what the charges against them were and hence to defend themselves against these charges. All appeals raised against the classification of files were rejected.

During the course of the investigation many appeals were lodged against the arrest warrants but all the appeals were rejected by the court. Only one of our clients, Mayor of Sur Abdullah Demirbaş, was released as a result of much effort and health problems.

Finally, approximately 14 months after the very first operation was taken up, in June 2010 the indictment was submitted to the court. The court accepted the 366 files of supplementary documents and the 7580 pages of indictment within one week and decided to begin the trial on 18 October 2010.

c. The profile of those tried

1- An important section of those tried in this court case had previously been imprisoned for 24, 20, 15 or 10 years in the 1980s and 1990s in most cases Times New Romanes for "belonging to PKK" and "having ties with PKK". After being released at the beginning of the year 2000 they took part in social, cultural, academic and political areas and activities,

2- Women who took part in Democratic Free Woman Movement's (DÖKH) legal and legitimate work and made an effort to remove discriminative implementation and behaviour,

3- An important section of those tried in this case are the founders of Democratic Society Congress (DTK), its co-chair, council, administrators (former MPs) and personnel.

4- An important section of those tried are the deputy co-chairs, executive board and council members, treasurer, election commissions, other central commission personnel including chairs, administrators and members of provinces and towns of DTP who was the last party of this tradition to be banned. As you know there were many such parties who were banned, and despite grave oppression and difficulties these parties continued to insist on democratic politics and hence were re-built each time that they were banned.

5- Members of Local Government Commissions who played an important role in implementing the model of democratic free municipality,

6- Former and present mayors from DTP and BDP who have been elected with majority of

the votes, (In total 22; 14 arrested and 8 not)

7-Elected heads and members of general assemblies of the provinces,

8- Members of the municipal councils, deputy mayors, heads of departments in different areas of municipality and personnel of the municipality, Times New Roman

9- President, administrators and members of Human Rights Association,

10-Lawyers,

11- Academics,

12- Heads, administrators and members of NGOs,

13- Members and personnel of unions,

14- Administrators of local TV and newspaper personnel,

15- Administrators and personnel of local, cultural and environmentalist associations,

16- members and personnel of neighbourhood, town, district and province assemblies of DTP and BDP.

The one thing in common of all those people who profile I tried to summarize above is the fact that they are opposed to the current rule, its implementations and its policies in relation to the Kurdish question.

The aforementioned investigation has commenced in 2007. Since then many telephones have been tapped into for 2 years including the persons arrested at present. In addition, the bureau of the DTP local government commission, various outdoor meetings conducted by and dialogues of those suspected have been recorded and were included in the file as evidence.

There were also statements made by "secret witnesses" against the defendants included in the file.

Due to the presence of many unlawful approaches, behaviour and dealings in relation to the investigation up until the present we have grave concerns that such behaviour and approach shall continue. In fact, we witnessed many unlawful and unethical attitudes and approaches such as; the way our clients were detained, the way they were negatively exposed by being brought before the court with handcuffs, the fact that they had been arrested for nearly 16 months before they were brought before a court, despite giving the investigation a classified status they serviced the allegations to certain media establishments and statements that have nothing to do with the investigation but are related to individual's private life were also placed in the indictment. There has been criminal complaints made against those responsible in relation to such irresponsible behaviour and approaches to the competent authorities. Here are some examples of how things are interpreted:

- When calling out PKK not using a degrading phonetic,
- Everyone who has gone to Federal Kurdistan Region of Iraq has also been to Kandil,
- Anyone who has gone abroad has also definitely gone to see Sabri Ok,
- All activities and protests taken up against cross border operations are organizational activities,
- Lawyers who have taken cases to European Court of Human Rights are sympathisers of the

organization and share the compensation they receive with the organization,

- sending applications to Turkish Grand National Assembly and European Court of Human Rights
- Lobbying against the human rights violations within Turkey domestically and internationally is totally considered to be an organizational activity,
- All the activities of the Ecology and Local Government Commission which has been established as a result of a decision taken by DTP executive board to ensure coordination between municipalities are considered to be organizational, and anyone who works in that commission is a administrator of the organization. ,
- Protesting Prime Minister's visit of Diyarbakır,
- To determine candidates for municipal elections by forming election commissions,
- Organizing and participating birthday celebrations for Öcalan,
- To participate in funerals of members of the organization who have died and to give support to their families,
- Organizing meetings for 8th of March, 21st of March and 1st of September throughout the province,
- Organizing activities so that the construction of a dam in Hasankeyf can be prevented,
- The criminalization of contributions voluntarily made by the personnel of the municipality by saying that the money was collected forcefully and transmitted to KCK,
- Membership fees paid by the mayors to the party they are a member of,
- Not participating in celebrations of the Republic Day as a result of a general decision,
- The human shield actions to protest the operations,
- Hunger strikes,
- Protest actions in relation to cell confinement penalties issued to Abdullah Öcalan and his hair being cut
- 15 February protest actions which is the day Abdullah Öcalan was kidnapped,
- Youth camps and organizational activities that are reflected to be cultural activities

II. ACCEPTANCE OF THE INDICTMENT

The preparatory investigation that continued for more then 14 months ended on 18 June 2010 when the indictment was accepted. This also meant that the decision on secrecy of the case was also removed. The Court in 10 days has examined the 7586 pages of indictment and 366 files of additional documents and decided to accept the indictment. Before the indictment was even accepted it was leaked to the press and speculative information was already printed in the press about our clients. The indictment was in the hands of the press before it was in the hands of lawyers and arrested defendants.

III. COMMENCEMENT OF THE TRIAL AND PROBLEMS EXPERIENCED DURING THE TRIAL

The first hearing was held exactly 18 months after the operation of 14 April 2009, on 18 October 2010. The court case began with determining the identities and social status of the clients. The clients wished to speak Kurdish when their identities were being determined. But the court rejected the request of the clients and determination of identities rested upon the information available in the case file.

Later Hatip Dicle, who is one of our clients, spoke before the court making some general remarks (in Turkish) and has presented the court with an evaluation of how as a result of a decision taken amongst all defendants intend to approach the court case. Mr Dicle said that they have a written statement which has been jointly prepared by all the defendants and is a reply to the indictment. He added that he shall read this in Kurdish first and then read it Turkish. He requested the discretion of the court.

Following this the question of whether or not the indictment should be read was brought on the agenda. Both the clients and us the lawyers argued that the reading out of the indictment was nothing but a waste of time because trial was conducted on the basis of a general principle that the indictment was read by all parties. In fact the fact that the prosecutor is a party to the trial was the person who actually prepared the indictment, and the court by accepting the indictment had displayed that it had examined the indictment and since the indictment was communicated to the defendants and their representatives we brought to the court's attention that there was therefore no need for it to be read out. However despite all the requests and discussions the court decided to read a summary of the indictment. As a result of such a decision the hearings started with an 11 day summary of the indictment.

After the summary of the indictment being read out it was time for the statements of our clients. The court has rejected this request when the defendants said that the joint defence representing all clients shall be read in Kurdish. The court has based its reason for deciding to reject it to be because the defendants had already given their statements in Turkish during the different phases of the investigation, its decision to reject it Mahkeme red gerekçesini müvekkillerin soruşturmanın diğer aşamalarında müvekkillerin Türkçe ifade vermeleri, Article 202 of the Penal Code and the judgement of European Human Rights Court in the case of Mehdi Zana v. Turkey. In short the ability of our clients to speak Turkish has been an obstacle before them giving their statements in Kurdish.

Our colleagues have taken the stance and drew the courts attention to the implementations in the world and especially within the member states of the EU and have requested the court to reconsider its decision due to Article 39 of Lausanne Treaty which is the founding treaty of the Republic of Turkey. However despite repeated requests the court did not revised its decision.

The defence team has requested from the court that Professor Baskin Oran who is known for his work on the Lausanne Treaty be listened as an expert in order to give his views on whether or not the defendants could give their statements in Kurdish to the court. However despite all claims the court has also rejected to listen to Mr Oran as an expert. The court has reasoned this decision by saying that this topic did not require explanations by an expert and that the court had the necessary information and knowledge to resolve the topic.

In conclusion the court did not accept our clients request to make their statements in Kurdish. Our clients who were not brought before a court for the past 18 months were unfortunately were unfortunately deprived from the opportunity to defend themselves before a court after 18

months.

IV. BACKGROUND TO THE CASE AND ITS EFFECTS ON THE KURDISH POLITICAL MOVEMENT

In order to be able to understand the background to this case one needs to understand the results of the 2004 and 2007 elections well. In 2004 local elections, when compared with AKP's votes in the previous local elections within the Kurdish provinces, there was a serious rise in votes for AKP. AKP was able to snatch Van and Siirt municipalities from DTP. AKP thinking that this atmosphere would continue determined its next targets to be Diyarbakır and Tunceli municipalities. Prime Minister Erdoğan himself has stated publicly before the press; "I want Diyarbakır and Tunceli". But 2007 March elections did not quite go the way AKP desired. Let alone AKP snatching away Tunceli and Diyarbakır it also lost Siirt and Van in the elections. DTP raised the number of mayors from 50 in 2004 to 99 in 2007 elections. Such a defeat has meant a great frustrations for AKP. After such a defeat AKP started a "witch hunt" and initiated a hasty arrest campaign against the Kurds in the area of legal politics.

In addition the public discussions in Turkey about the contributions made to the operations by the advisers of the government and especially that of the Prime Minister are also to an important degree justified. In fact it has not escaped anyone's attention that these people who have taken on the duties of being an advisor have also given statements to various media organs. The thesis of these people rest on the idea that civilian politicians organize themselves under the banner of KCK, that they are trying to establish an alternative state mechanism, that the whole of civilian politics are administered by this core group and therefore in the event that this group is eliminated the civilian area of politics would be cleared for Kurds even more.

Another aspect of these hasty arrests which have caught everyone's attention is that they have tried to establish an equilibrium in the eyes of the general public as it coincides with the operations against Ergenekon and some illegal formations within the army. In fact immediately after the operations against Ergenekon and members of the army the operation against the Kurdish politicians were initiated. The government has hence tried to alleviate the reactions of the nationalist.

V. THE PERCEPTION THIS CASE HAS GENERATED FOR KURDS

The target of this case undoubtedly was the civilian politicians being active in politics on behalf of the Kurds and elected Kurdish politicians. This operation and arrests against the civilian political area coming especially at a time when the government has talked about civilian quests for resolving the Kurdish issue has no doubt dealt a major blow to the civilian quests for a resolution. It has at the same time caused a just concern about the government not being sincere in its quest for a civilian solution.

It can be seen that the government has not as yet sufficiently understood that as the Kurdish civilian politics is weakened as a direct result of the last few year's judicial clamp down it is most natural and inevitable that armed struggle shall be strengthened. Hence it is quite possible to deduce from this that either the government has no project in relation to the resolution of the issue and that it is not sincere or it has not understood the issue well and hence does not have a perspective about the appropriate methods of resolving the issue.

In addition approaches centred around "public order" for more then the past 30 years have shown us that this is one of the fundamental reasons why the Kurdish question is stuck in a bottle neck.

But in the last few years we have seen that in addition to the public order approach we now have the judiciary stepping in as the supplementary force. This judiciary clamp down that has reached its peak with this case serves to further weaken the “citizenship ties” of the Kurds with that of the state. In fact the stance of the judiciary to penalize all actions that do not call for violence or make use of violence in any way results in a perception of “breaking off with the state” in the subconscious of the Kurds. It is not wise that the state, no matter if it is called KCK or not, instead of encouraging and promoting arrests and punishes the quests for civilian politics by the Kurds. That is why the below statement of one of our clients, Mr Hatip Dicle was of importance and explains the whole issue. He said “I saw, read and got information on the KCK accord for the first time because of this investigation. But I liked it. An organization (meaning PKK) can not make more of an effort to change and transform itself and become civilian. The state should promote this”.

In conclusion, the judicial clamp down on the Kurds which have put the Kurds once again on the domestic and international agenda has also positioned the Kurdish question at a junction. In the case that the judicial clamp down continues in this way it shall lead to the perception by the Kurds that civilian political quests are useless. The result of such a perception would be the dangerous and unwanted re-opening of the doors to the spiral of violence. Hence in order to immediately correct the already made mistake there is a need to make the necessary legal arrangements.