

# SUMMARY OF TRIAL AGAINST 20 LAWYERS

16 lawyers who were the members of Progressive Lawyers Association (CHD) and some of whom were lawyers from People's Law Bureau have been detained and arrested in 12 September 2017<sup>1</sup>, two days ago before the court hearing of their clients, Nuriye Gülmen and Semih Özakça.<sup>2</sup> Their arrest warrant included the decision to collect and incorporate the evidence against Nuriye Gülmen and Semih Özakça. The number of lawyers under arrest rose to 17 when the President of Progressive Lawyers Association, Lawyer Selçuk Kozağaçlı and Lawyer Yaprak Türkmen were also arrested under the scope of the same investigation.<sup>3</sup>

On 15th of July 2017, the official webpage of the Ministry of Interior published an online booklet about Gülmen and Özakça which directly targeted the lawyers of Gülmen and Özakça and the lawyers of People's Law Bureau. Pro-government media reported numberless fake news about Selçuk Kozağaçlı and other lawyers.<sup>4</sup> After the lawyers are arrested, the Minister of Interior Süleyman Soyulu voiced some allegations in his speech in the Parliament. On the 3rd of November 2017, during a public rally in Manisa province where the Soma Miners' Massacre had taken place, President Erdogan said "the extremist left, unfortunately they are provoking the families by exploiting the event. They are playing games on the families. We very well know who they are. The families of our martyrs should spoil the plot." Five days after the speech, Lawyer Selçuk Kozağaçlı, the lawyer and the spokesperson of the victims' families in the Soma Miners' Massacre case has been detained and arrested.<sup>5</sup>

When the bill of indictment (Date: March 22, 2018; No.: 2018/12766) that forms the grounds for the public case (Merits No.: 2018/84) is examined it is observed that it starts with the inference related to the assumption that HHB is an institution of an illegal organization named RPLP/F on the basis of the documents of the public case (Merits No.: 2014/117) which is still pendent. It is also understood that the indictment is based on the statements of a suspect named B.E. who was detained under the scope of another investigation. The accusations against many defendant lawyers were not personalized; a statistical report has been prepared which shows how many times the lawyers were present during the criminal procedures of their clients who have been either detained or in prison and the video clips from the previous case files that the lawyers obtained through the legal means were brought as accusations. Another accusation was that the lawyers followed the socially influential court cases such as Soma Miners Massacre and Ermenek Miners Massacre on the orders of the illegal organization and

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<sup>1</sup> Ahmet MANDACI, Aycan ÇİÇEK, Ayşegül ÇAĞATAY, Aytaç ÜNSAL, Barkın TİMTİK, Behiç AŞÇI, Didem BAYDAR ÜNSAL, Ebru TİMTİK, Engin GÖKOĞLU, Naciye DEMİR, Özgür YILMAZ, Süleyman GÖKTEN, Şükriye ERDEN, Yağmur EREREN EVİN, Zehra ÖZDEMİR who were taken under custody on 12th September 2017 were kept under custody for 8 days and then arrested on 21st September 2017; A judicial control decision was given for Ezgi Çakır who was also taken under custody as she had a little child in need of nursing. A warrant was issued for the arrest of advocate Günay dağ and advocate Oya Aslan who had been issued for custody.

<sup>2</sup> After their baseless dismissal with the emergency state decree law, the academician Nuriye GÜLMEN and the teacher Semih ÖZAKÇA sat in front of the statue of human rights in Ankara for 120 days; then they started a hunger strike and demanded to return to their jobs on 09.03.2017. While they were continuing their strike Gülmen and Özakça were arrested on 23.05.2017 due to the claim that they were members of an illegal organization and their court date was determined as 14th September 2017.

<sup>3</sup> Advocate Selçuk Kozağaçlı was taken under custody on 8th November 2017 within the same investigation file, kept under custody for 5 days and was arrested on 13rd November 2017; and Advocate Yaprak Türkmen was taken under custody on 18 December 2017 within the same investigation file, kept under custody for 2 days and arrested on 20 December 2017 by Justice Of The Peace Court.

<sup>4</sup> <https://www.sabah.com.tr/gundem/2017/07/13/orgutten-avukata-avukattan-gulmene>

<sup>5</sup> <https://www.sabah.com.tr/ekonomi/2017/11/03/erdogandan-somada-sehit-olan-madencilerin-ailelerine-mujde>

that their purpose was to trigger a social unrest. Finally, the press statements that they attended and newspaper and social media reports about the lawyers by the third party entities were included in the accusations.

## **17 LAWYERS HAS BEATEN ON THE COURT AFTER ONE YEAR ARREST**

In the first hearing on Monday 10 September 2018, 17 lawyers have been battered by the gendarmerie in front of the court panel, their clothes have been torn out and they were handcuffed within the courtroom. Despite the fact that there were no problems in the following days, the court decided on the fifth day that the trial should continue in the courtroom that is located within the Silivri Prison Campus. More than 300 lawyers worked as defence counselors, 17 defendants and 30 lawyers took the floor to make their statements and voice recordings that amount to 45 hours in total and 9 hours per day in average have been made.

## **REASON OF THE COURT DECISION WHICH WILL REVOKING IN 10 HOURS WITH SAYING “PARDON”**

The interim court decision numbered 16, dated 14/09/2018 said the following: Considering the present state of the evidence within the file for each defendant, the possibility that the classification of offence may be subject to change, that the defences of the defendants have been collected and that they are lawyers and also considering the time spent under arrest, the decisions by the European Court of Human Rights and the Constitutional Court given for the applications on arrest and that the measures aimed at during the trial could be implemented by implementing the judicial control provisions, the court decided to properly release each and everyone of the defendants.

## **EVEN THOUGH RELEASING DECISION, LAWYERS HELD IN PLEDGE**

The court decision has been announced on 14 September 2018 at around 22:10. After the announcement of the release decision, 9 lawyers who were being kept in İstanbul Silivri Closed Prison (No. 9) were kept waiting for 8 hours illegally and then released on 15 September 2018 at around 6:30 in the morning. Likewise, 8 lawyers who were being kept in İstanbul Bakırköy Women’s Closed Prison were kept waiting for 6 hours illegally and then released at around 4:30 in the early morning.

## **OBJECTION ON MIDNIGHT**

An enquiry on the National Judicial Network (UYAP) showed that the public prosecutor respectively objected the release decision for 17 lawyers on 15 September 2018 at around 01:00 o’clock at night. It became clear that the cause behind the delayed release of our colleagues was the prosecutor’s unlawful attempts to enforce his objection.

## **A “PROCEDURE” IN LAW PROCESS WHICH IS NOT FOUND IN TURKISH PENAL LAW**

The court panel of 37th Heavy Penal Court has convened during the weekend, on 15 September 2018 at around 16:30 upon the objection of the public prosecutor’s office -a practice that has not been in the procedures. The Panel issued a new bench warrant aimed at the detainment of 12 lawyers whom they had released anonymously ten hours ago.<sup>6</sup> The objection of the public prosecutor against the 5 other

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<sup>6</sup> The Code of Criminal Procedure (CMK) which was put into practice in 2005, revoked the decision called “sentence in absentia”. Even the old practices that were revoked by the new law have been used. There is no legal basis to give “warrant of arrest” about either the suspect or the defendant by referencing arrest causes in CMK item number 100. There is no legal basis for the practices such as applying the decision of the court which enacted the warrant “aiming to arrest” or “reading the decision to defendant’s face” just after having

lawyers has been rejected and sent to Istanbul 1st Heavy Penal Court for an assessment.

In the evening on Thursday, 19 September 2018, place of duty of two judges of the court were changed by a decree of Council of Judges and Prosecutors; the chief judge of Istanbul 37th Heavy Penal Court who conducted the trial between 10-14 September 2018 was appointed as a judge to Istanbul 18th Criminal Court of First Instance and the senior judge of the same court was appointed as a judge to a commercial court.<sup>7</sup> The judges of the Istanbul 26th Heavy Penal Court who decided on the detainment of Selçuk Kozağaçlı without the presence of his lawyers, were appointed to Istanbul 37th Heavy Penal Court.

After the Court has, in violation of the Constitution and the laws, issued a bench warrant aimed at detainment of 12 lawyers 10 hours after their release, 6 lawyers are already detained

### **RE-BUILDING OF SPECIAL AUTHORIZED COURT BOARD AFTER REMOVING THE OLD COURT BOARD WHICH HAS DECIDED RELEASE DECISION SHOWS US CLEARLY THAT THE NEW COURT BOARD HAS NON-LEGAL BUT POLITIC AUTHORISATIONS**

In this process which we try to sum up above text, it is clearly understandable that the state try to make political process above judges of 37th Heavy Penal Court.

Thus, dismissing and sending other courts of president of the court Kadir Alpar and member of the Court Serkan Baş by a decision about permanent jurisdiction which issued in 19.09.2018 is certain evidence about our opinions. After this illegal process it is impossible to talk about President Akın Gürlek's independence and objectivity. Must remember that he was the judge who arrested Selçuk Kozağaçlı without his lawyers although his one day transient assignment and after that his assignment became lasting 2 days ago.

Both in his proceedings during his assignment as the temporary judge and as the presiding judge later on, Akın Gürlek maintained an attitude of ensuring the lawyers of Progressive Lawyers Association are punished, rather than of revealing the material truth.

Formerly, the presiding judge Akın Gürlek acted as the judge of 2nd Criminal Court of Peace during the investigation and -later on- as the president of the 26th Court of Assize during the ongoing prosecution that was conducted about B.E., who has been shown as the basis of the allegations in the file. Meanwhile, he sentenced Canan Coşkun, a journalist who reported about B.E., to 2 years and 3 months in prison on the grounds that she "targeted the people who took charge in anti-terrorism".

This means that Akın Gürlek has expressed his opinions as to the evidence on trial from various positions.

Another dimension of this special assignment is the appointment of a judge who has been directly involved in the formation of the informant as the presiding judge during the trial. The attorneys of the defendant filed an application to the Board of Judges and Public Prosecutors on 15 March 2019 with their demand to have an investigation regarding the possible extraordinary contacts between Akın Gürlek and Can Tuncay, the public prosecutor of the investigation.

Rejecting the demands of the defendant attorneys without giving any justifications, Akın Gürlek

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identification after he is caught. The directory provisions that were claimed to be the basis for the practice were repealed in 2005.

<sup>7</sup> The judgement of HSK(Supreme council of judges and prosecutors) on 19/09/2018, number 1322.

glossed over the processes of taking the statements of the informants and numerous undue proceedings during the investigation.

Even the simplest demands such as asking about the current status of the digital materials that were not present in the file but nevertheless used as the basis of the ongoing imprisonment; or demanding the return of the digital materials after they are copied and having expert investigations on the digital material are rejected. This decision of the judge has openly violated the principle which says the verdict that underlies the criminal procedure should be given on the grounds of the evidence that is presented to the audience and discussed over.<sup>8</sup>

In his rejection decision, the judge relied on a digital report that was not in the file.

Since 3rd of December 2018, the judge kept deciding on the continuation of the detention based on a highly dubious record that does not constitute a digital report. This is a clear evidence of the judge's bias which establishes a ground for recusation.

The court ignored the interlocutory decisions that were made during the hearings that took place between 3-5 December 2018. Overriding the motions on the extension of inquiry and ignoring the demands, the court invited the public prosecutor to give his opinion as to the merits of the case and made it clear that it is going to reject all the demands about the proceedings and displayed its bias. The court's persistent invitations to the public prosecutor to deliver his opinions as to the merits led the public prosecutor to send a notification to the file which says "as part of the pre-decided division of labour, the opinion as to the merits will not be given by him".

As a reaction to that unlawfulness, the detained lawyers went on a hunger strike by 24th January 2019 (Day of Endangered Lawyers) with the demand of a "fair trial".

The opinions of the prosecution as to the merits of the case are presented on 21st of February 2019 by a public prosecutor who was not involved in the trial before. Obviously it is impossible for a public prosecutor who was not involved in the trial so far to be ready to give his opinions as to the merits of the case within one week.

During the hearing on 18th March 2019, presiding judge Akın Gürlek declared that he will not let the defence speak and then rejected all demands to extend the inquiry on the grounds that "all the evidence is collected during the investigation phase" which made the entire proceedings nonfunctional. The evaluations of the defense lawyers as to the evidence and their related demands, plus their demands about clarifying the proceedings of the investigation phase were rejected even before the evaluations began. The court also declared that it will not let the defence speak its demands afterwards and decided that "no demands about the extension of the inquiry will be collected during the hearing tomorrow.)

Presiding judge Akın Gürlek actively prevented the non-transparent and shady investigation process that he was involved as a judge of Criminal Court of Peace from being enlightened. He led the witnesses during the examination which produced completely fictitious witness statements.

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<sup>8</sup> The defendant should be notified about the presented evidence according to the CMK article 206/1 and it shall be rejected if the evidence is gathered unlawfully according to the CMK article 206/2- ( a )  
Accused and the defence lawyer should be given the opportunity to discuss the presented evidence according to CMK article 216/1.

The sentence can only be based on the presented and discussed evidence according to the CMK article 217/1 and the alleged offense could be proven by any kind of evidence that is collected lawfully according to the 2nd paragraph of the same article.

On 19th March 2019, as the accused announced their recusation request, the presiding judge interrupted Selçuk Kozağaçlı's words as he was justifying the recusation. The detained defendants were forcibly taken out of the courtroom and it was decided that the defence lawyers should be taken out of the room. The defence lawyers are not received in the courtroom after the break and the doors were locked.

The court announced the verdict as to the merits of the case on 20th March 2019 hearing, in the absence of defence lawyers and detained defendants; without inviting the accused to make their defence or to say their last words.

Prison sentences by the Court:

- 18 years 9 months of prison service for Atty. Barkın Timtik
- 13 years 6 months of prison service for Atty. Özgür Yılmaz
- 13 years 6 months of prison service for Atty. Ebru Timtik
- 12 years of prison service for Atty. Behiç Aşcı
- 12 years of prison service for Atty. Şükriye Erden
- 10 years 15 months of prison service for Atty. Selçuk Kozağaçlı
- 10 years 6 months of prison service for Atty. Engin Gökoğlu
- 10 years 6 months of prison service for Atty. Aytaç Ünsal
- 10 years 6 months of prison service for Atty. Süleyman Gökten
- 9 years of prison service for Atty. Aycan Çiçek
- 9 years of prison service for Atty. Naciye Demir
- 7 years 12 months of prison service for Atty. Ezgi Çakır
- 3 years 9 months of prison service for Atty. Yağmur Ereren
- 3 years 9 months of prison service for Atty. Yaprak Türkmen
- 3 years 9 months of prison service for Atty. Didem Baydar Ünsal
- 3 years 9 months of prison service for Atty. Ayşegül Çağatay
- 2 years 13 months of prison service for Atty. Zehra Özdemir
- 2 years 13 months of prison service for Atty. Ahmet Mandacı

The detentions of the lawyers Selçuk Kozağaçlı, Barkın Timtik, Behiç Aşcı, Aycan Çiçek, Aytaç Ünsal and Engin Gökoğlu were continued. A home detention is sentenced for Ezgi Çakır who had not been detained, despite the fact that she has a 6 year-old daughter that she takes care of herself alone.

### **The other scandalous sentences by the presiding judge Akın Gürlek**

Below are some of the scandalous sentences passed by Akın Gürlek when he was the president of İstanbul 26th Court of Assize:

- 4 years 8 months of prison service for the co-president of HDP, Selahattin Demirtaş; 3 years 6 months of prison service for the former Ankara MP of HDP, Sırrı Süreyya Önder,
- The author İhsan Eliaçık has been sentenced to 6 years and 3 months of prison service without any remissions on the charges of “propaganda for an armed terrorist organization” just because he criticized some activities of the state security forces in his speech that he delivered in Democratic Islam Congress and his articles that were published in various websites in 2015 and 2016.

Below are some of the scandalous sentences passed by Akın Gürlek when he was the president of

İstanbul 37th Court of Assize:

- The president of Human Rights Foundation of Turkey Prof. Dr. Şebnem Korur Fincancı was sentenced to 2 years and 6 months of imprisonment on the grounds that she was making “propaganda of a terrorist organization” because she undersigned the declaration titled “We will not be a party to this crime”. And no remissions were made because of Fincancı’s “negative attitude and behaviour observed during the hearing” and of the fact that “she showed no signs of regret after committing the crime”.
- Prof. Dr. Gençay Gürsoy was sentenced to 2 years and 3 months of imprisonment after he was put on a trial on the charges of making “propaganda of a terrorist organization” because he undersigned the declaration titled “We will not be a party to this crime”. The justification for this higher punishment and lack of remission was presented as such: “considering as a whole that the defendant gave statements that are supporting the content of the declaration together with the Turkish Medical Association to which he has been presiding; his interview conducted on 15th January 2016 and published in t24.com.tr right after the declaration, the copies of which are in our file; his social media statements and tweets which support and own the declaration, the copies of which are in our file; the way the crime is committed; the position of the defendant during the time of offense; the impact of the offense on the population because the published declaration is backed by the Turkish Medical Association to which the defendant has been presiding; the defendant’s willingness to accept and stand by with the declaration; therefore the intensity of the defendant’s willfulness and the impact of the resulting danger...”
- Assist. Prof. Dr. Gülsün Güvenli was sentenced to 1 year and 3 months of imprisonment on the charges of making “propaganda of a terrorist organization” because she undersigned the declaration titled “We will not be party to this crime”. She was also imposed a judicial control which dictates that “the wife and family of Ahmet Çamur who was killed in Şemdinli town of Hakkari province after an armed attack by PKK in 15 August 2015 shall be visited by Güvenli to express her condolences.” The judicial control was lifted on 13.02.2019 after the public prosecutor objected the judicial control decision dated 12.02.2019 and the objection was sustained.

Below are some of the scandalous sentences passed by Akın Gürlek when he was serving as a judge in İstanbul Criminal Court of Peace:

- News Director of the Cumhuriyet newspaper website Oğuz Güven was issued an arrest warrant in 15.05.2017 after he sent and quickly deleted a tweet using the official Twitter account of cumhuriyet.com.tr.
- A book titled “Confidential: Turkey’s Secrets in Secret Documents” and numerous media reports were banned on 28.09.2017 after the request of Celalettin Güvenç, an AKP member of parliament from Kahramanmaraş. The book and the news reports were about a 15 year-old girl, S.Ö. who was raped by 84 people in Erzurum during Celalettin Güvenç’s office as the governor of the province and about the details of the way the lawsuit has been glossed over.