



DEFENSE SANS FRONTIERE - AVOCATS SOLIDAIRES
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**DSF-AS MISSION REPORT– ISTANBUL – CHD TRIAL
HEARING BEFORE THE 37th CRIMINAL CHAMBER OF THE
HIGH CRIMINAL COURT OF SILIVIRI
December 03rd to 05th, 2018**

Objectives of the mission:

- Support our colleagues;
- Witness the conduct of the hearing;
- Defend the fundamental principles of the profession, including the liberty of the defence and the right to a fair trial.

As part of the trials of the lawyers of the CHD (Progressive Lawyers Associations) and the HHB (People's Law Office).

This case was first brought before the 37th criminal chamber of the High Criminal Court of BAKIRKÖY at the hearing of September 10, 2018.

On September 14, 2018, at the end of the first week of hearing, the High Criminal Court of BAKIRKÖY ordered the release of all the detained lawyers and postponed the case to the hearing of February 19-20, 2019.

The day after, however, upon appeal of the Prosecutor, the same chamber of the Court, presided by another judge, rule again on the pretrial detention and ordered to arrest 6 of the released lawyers:

- Behiç AŞÇI Selçuk
- KOZAĞAÇLI Ahmet
- MANDACI Aycan
- ÇİÇEK Aytaç
- ÜNSAL Engin
- GÖKOĞLU

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6 other lawyers did appear free before the Court:

- Ayşegül ÇAĞATAY
- Didem BAYDAR
- ÖZDEMİR Yağmur
- EREREN EVİN Ezgi
- ÇAKIR Yaprak
- TÜRKMEN

Other lawyers were still under arrest warrant.

The list of Bars and Organizations represented is attached.

International representation was assured by Sibylle GIOÉ, a Belgian lawyer, and me. The representative of the OIAD, whose visit was announced, and the representative of the AED could not be present.

It should be noted that this absence is due to the precipitation with which the hearing has been scheduled.

At the end of the hearing in September 2018, the continuation of the hearing had been announced for 19 and 20 February 2019. It was only fifteen days before the expected hearing date that the parties were notified of the advancement of the date.

The September hearing held at the BAKIRKÖY Court was moved to SILIVRI for security reasons. SILIVRI is located 75 km from Istanbul, the hearing is held in a Court, located inside a military camp.

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a) First day of hearing

1. Context

The Istanbul Bar provided a bus for the travel of Turkish and international lawyers. We were welcomed and guided by a colleague who also acted as our interpreter, and I sincerely thank him.

At the entrance to the Court, we obtained a Lawyer badge and then we have been able to enter with all our possessions.

Defending colleagues were in the Lawyers' Office, located within the Court.

The hearing was scheduled for 10 a.m. and was to begin with the interview of various witnesses.

We entered the room after waiting a few minutes outside.

Indeed, a scramble occurred inside the room and the Gendarmerie closed the doors of the room in order to stop people entering in the room.

We then have been informed that the reasons of the scramble were related to the impressive security measures that impede communication between the detainees and their lawyers or the detainees and their family, friend members.

After a few minutes, we were able to enter the courtroom on the public benches.

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2. Conduct of the hearing

- The defense, composed of more than a hundred Turkish lawyers, was seated in the first rank of the public benches.
- The Bar President of Istanbul and the Bar President of Izmir were present.
- **The hearing began with an intervention of Ezgi CAKIR**, accused lawyer appearing under judicial supervision. She underlined the subjectivity of the definition of a terrorist who can also be considered as a freedom fighter.
- **Intervention of the Bar Presidents:** they intervened to remind the procedural conditions in which this trial have to be conducted and to request that the witnesses have to be present in person, and not by visioconference at the hearing, when they are heard. This request was immediately rejected.
- **Intervention of Defense lawyer:** he requests that the documents on which the witnesses base their charges (e.g. electronic documents) have to be produced. This request was immediately rejected too.
- **Intervention of The Prosecutor:** he requests that witnesses were not interrogated directly by the defendants but only by their Counsel, resulting in an outcry from the defense.
- The first witness has to be heard by videoconference: at the last moment, he asks to not appear on the screen because his safety could be compromised. The President granted his request.

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- The defense objects because the witness does not have the status of an anonymous witness, hence, he has to appear before the camera. This request is immediately rejected. We will therefore assist to a witness testimony without a witness present at the hearing and in front of a blank screen.
- **The first witness interrogated is a DHKCP repentant** who had access to the organization's computers. His testimony is very general, he doesn't cite facts where he might be directly a witness, which could constitute offences. The President asks various questions trying to clarify the facts he might have noticed or the reasons why he is convinced of the guilt of the accused.
- The question of the guilt of Hamed MANDACI, an intern who had been working for 9 months after obtaining his lawyer's diploma at the time of his arrest is addressed. The main documents on which the charge is based date from 2013, it was clear that Hamed MANDACI could not have committed the acts alleged against all the defendants.
- After the break, the second witness was heard who has the status of an anonymous witness: his image is blurred, and his voice distorted. He was interrogated about the membership of some lawyers in the terrorist organization. This witness is a repentant person who benefits, in return for his testimony, from immunity or a remission of sentence. The defense questions him about the presence of several people when he makes his statement. It seems that when it makes his statement, there were three people present, including the Prosecutor.

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- The **third witness**, also heard as an **anonymous witness**, has been in prison at SILIVRI. He indicates that he knows that there are terrorist lawyers, but he cannot remember their names. He states that he is ill, thus he does not remember the names of the lawyers concerned. The defense asks him if his health problems are psychological problems. The witness replied in the affirmative.
- A courtroom incident occurs: the defense points out the fact that the President uses polite forms to address the witnesses, but he not uses polite forms to address the Defense. After this incident, a scramble and shouts from the public made the audience totally inaudible.
- The President brings out the accused Lawyers prisoners of the Courtroom who leave chanting revolutionary slogans to the applause from the public.
- The President asks to evacuate the public; we refuse to go out.
- After a rather tense few minutes face-off with the Security forces, we exit through the rear door reserved for the public, we come back via the side door and sit down on the defense bench.
- Then the Security forces try to kick us out, but our Turkish Confreres direct them to ask for the Court's opinion, which allows us to stay on the defense bench.
- Our Turkish Confreres will not remain a long time at our side: as a matter of fact, the President will continue the hearing without the imprisoned accused lawyers.
- In protest, the defense leaves the Courtroom.

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- **We remain, single observers**, along with our interpreters for the 5th witness audition whose testimony, still under the status of anonymous witness, is as vague and imprecise as the previous ones.
- After the witness has been heard, **the President issues quite a few decisions** and in particular to reduce the number of Lawyers down to 3 per accused person.

Hearing is suspended until **tomorrow**.

Hearing Day 2:

- **We are experiencing issues before entering the Court:** indeed, the security forces do not provide our Barrister pass like the day before but only passes for the Public and ask us to leave our mobile phones at the reception desk.
- We firmly refuse.
- We go out of the Court, present our mobile phones to our Turkish Confreres and come back in with them.
- Due to the **decision taken the day before**, in the Courtroom, the number of lawyers is less; **therefore, the other Confreres sit down** with us along with the public.
- The witness who will be seen via videoconference is ready. We see his image on screen.

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- Before the start of his audition, **the defense submits an application asking the disqualification of the judges** for the following grounds:
- Absence of respect of the defense and of the Equality of the arms, the defense being constantly interrupted by the President who issues many warnings in order to intimidate the Lawyers, is not informed of all of the witnesses...
- The witness who was not granted the status of anonymous witness could not be seen during the hearing, nor by videoconference.
- Some objections from the defense have not been transcribed. When the defense underlined that, the Judge has not accepted to write it down on the minutes of the Court,
- A question also arise about the publicity of the hearing as the public is not authorized to enter in the Courtroom.
- Lawyers who submit this request and who speak up, one after another, are all interrupted by the President who beg them to end quickly, and he issues a warning against one Lawyer considering that the recusation request would be a contempt of Court
- One of the Confreres then asks that the warning issued against one Lawyer is issued against all of them.
- Tension is **again tangible**

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- A Lawyer mentions to the President that the witness during the videoconference can hear the whole discussions contrary to the rules applicable on this matter.
- Acting in haste, the President orders to cut off the sound.
- The defense also underlines that the audition of this witness was not scheduled and therefore the defense is not prepared for the latter's hearing.
- Suddenly, four men dressed up in civil burst into the Courtroom, wearing Press pass and sit down on the Benches full with the security forces.
- **The Lawyers immediately stand up and mention to the Court that these four men are not journalists but policemen** whose presence in the audience room is an attempt to intimidate the Court, the defense and the witnesses.
- Without interruption, the four men leave right away.
- The Defense starts again building up her reasoning for its application for recusation: she adds that Judges are not independent and the way the discussions are conducted demonstrate their belief.
- **The Lawyer speaking at that moment is interrupted, a big hubbub starts, the President, without even going out and discussing with his assessors, dismisses the application, orders to take out the accused detained lawyers and explains that the trial will carry on notwithstanding the appeal which would submit the Defense.**

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- **General outcry, the hearing is suspended.**
- Starting again, the Court orders to call back the accused but free persons who did not come back on the benches: they will not come back, in solidarity with their jailed Confreres and denied the hearing.
- The witness is here via videoconference, the President is concerned about his lunch break, which brings laughs from the Defense in front of such deference.
- One of our fellows Hassan FEMIR DEMIT starts talking and advises he is leaving the hearing for the following reasons:
 - the absence of the accused detained lawyer
 - the decision of the Court to carry on the discussions notwithstanding the appeal from the Defense against the refusal of examining the submission for recusation.
- We decide to stay in the courtroom in order to observe the progress without the accused persons and without the defense.
- The witness, Ismet ORDEMIR is detained.
- He specifies that he has asked to make declarations in this trial, hence his surprise-audition. This witness will testify in several trials, he cannot recall who are the accused people in the current one and the President must recall them for him.
- He was an Intelligence services member and a member of the DHKPC.

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- He explains that he has climbed the ladder of this organization and held a leading role.
- This witness' declarations were obviously known by the defense. As a matter of fact, he had been interviewed during a trial held in 2013, and evidence against his false statements were brought in during the previous hearing.
- **Hearing is suspended at 12:30 PM and should restart on Wednesday morning.**
- On my end, I will leave Istanbul on Wednesday morning and I will not be able to observe the end of the trial.
- Please note that after the hearing, **Ahmed MANDATI** arrested 9 months only after being qualified as a Lawyer, whose case was described in one and a half section of a 500-page indictment from the Prosecutor, and still a student at the time of the testimonies, has **been released under judicial supervision**
- The detention has been confirmed for the other jailed Confreres.
- **The third and last part of the trial is scheduled during the week of 18 March 2019.**

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We still must support our Turkish fellow Lawyers and show it by coming in force numerous to this especially important hearing as we will be able to listen at the Prosecutor requisitions and the Defense pleadings.

Toulouse, 14 February 2018

Isabelle DURAND

Professional Organizations and French Bars represented

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At 3-5 December 2018 Hearing

SILIVRI, Turkey

Conférence des Bâtonniers de France et d'Outre-Mer.
Défense Sans Frontière-Avocats Solidaires (DSF-AS)

Me Isabelle DURAND
Me Isabelle DURAND

Representing as well:

Aix en PROVENCE Bar

BAYONNE Bar

BORDEAUX Bar

BRIVE Bar

CLERMONT-FERRAND Bar

EPINAL Bar

RENNES Bar

TOULOUSE Bar II

Maître Sibylle GIOE representing:

Liège Bar, Belgium

OBF, Ordre des Barreaux Francophones et Germanophone de Belgique

CCBE : European Bar Council (Conseil des barreaux européens)

UIA, Union Internationale des Avocats

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