

REPORT FOR THE 2nd ANNIVERSARY OF HRANT DINK'S MURDER

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Two years have gone by since Hrant Dink was murdered. These were the observations we made in the conclusions and comments section of the report we wrote on the first anniversary of the murder:

** The murder of Hrant Dink, the process of preparing the murder, turning Hrant Dink into a target, encouraging the murder, the inclusion of the security forces in the process, the preparation of the shooter, and the commission of the murder are all parts of a single process. This process, which should have been investigated as a whole, has been divided into parts, thus concealing the general picture; and what is more the authorities conducting the investigation were prevented from seeing the process as a whole. **Unless the murder is assessed and investigated as a whole, including the pre- and post- murder periods, it will not be possible to reach a conclusion in the investigation of the murder of Hrant Dink.***

** Even though security forces and all intelligence units had learned that Hrant Dink's life was under close, real and serious danger, and moreover, even though all details of the commission of the murder were known by intelligence officers, no counter measures were taken. On the contrary, it has been revealed that some civil servants attempted to cover up evidence and findings, that they hid the seriousness and gravity of the situation, that they hid information from one another, and also that they were involved in conflicts between each other to such an extent that they neglected their own duties.*

** There was no information sharing of any kind concerning the murder of Hrant Dink between the gendarmerie, the police and MİT (Milli İstihbarat Teşkilatı – National Intelligence Organisation). It has been observed that there was no coordination between them as far as a discussion of information, intelligence and the required precautions to be taken was concerned; quite the opposite, these institutions hid information from each other, and blamed each other after the murder.*

** During the investigation, the public officers under investigation continued to serve their active duties and hence continued to provide evidence to the file, just as they would have in the case of any other file. These people under investigation are the superiors, directors or commanders of the units, in which they are serving. Investigations were run basing upon the evidence submitted by these public officers. Even this single example is sufficient to prove that the investigation cannot be a reliable and independent one, and that its results cannot be useful and sound.*

** These officers under investigation, presented evidence and documents not only for the administrative investigation but also for the Hrant Dink murder investigation carried out*

by the Istanbul Chief Public Prosecutor's Office. Furthermore, even currently some of these officers are presenting evidence and documents to the court case that is underway at the Istanbul 14th Heavy Penal Court. It is quite clear that the Hrant Dink murder will not be solved as long as these officers are kept on duty and continue to provide information, documents and evidence for the ongoing investigations.

Unfortunately, the above observations and predictions are still valid, even though two years have gone by since the murder, and not only has there been no significant development during the last year. Quite the opposite the trial and related investigations have been made more complex and fragmented. This resulted in each fragment to be detached from the whole and has been rendered meaningless, obscure, and serious obstacles have been placed on the path to justice.

To be able to follow more comfortably the developments of the previous year, the various processes of the Hrant Dink trial and investigation have been classified within the following titles.

THE MAIN TRIAL

The most important development within this trial, which last year had 19 defendants, of which 8 were in detention and 11 free on bail, was that the number of defendants increased by one, reaching a total number of 20. Having ascertained that Osman Hayal, elder brother of Yasin Hayal, who is one of the defendants of the trial, was in Istanbul on the day of the murder, an additional indictment was prepared, and this person, who had testified as a witness, was made a defendant of the trial.

The sessions of the trial with file number 2007/428 at the 14th Heavy Penal Court of Istanbul continued to be held in the same hall, since no more suitable hall was available; however, equipment for the technical recording of the sessions was provided.

Because the suspect charged for the murder had reached the age of 18 in June 2008, the decision requiring sessions to be closed to the public was annulled. From that date on, sessions have been held in the presence of the public and of the press, still within the limits of the physical conditions of the court room.

Requests to merge the investigations and trials held separately in Trabzon, Istanbul and Samsun, based on the existence of actual and legal connections and of the fact that the subject matter of the ongoing trials and investigations concern connected crimes were all rejected at every level and every instance. It was furthermore noted that the reasons for these rejections were neither of a legal nature nor convincing.

The plaintiffs' lawyers repeatedly submitted complaints about "security forces, who even though they knew that Hrant Dink was going to be murdered did not prevent it and did not provide protection to Hrant Dink," on the basis of article 83 of the Turkish Penal Code, to the

Trabzon Court of First Instance, to the Trabzon Prosecutor's Office, to the Istanbul Prosecutor's Office, and to the 14th Heavy Penal Court of Istanbul, and on the same basis they requested the merging of these trials within the main trial. However, both the prosecutor's offices and the courts rejected these requests every time, notwithstanding the definite and clear requirements of the law, putting forward reasons that were not convincing from the legal point of view, but at the same time did not formulate a precedent setting interpretation of the circumstances of the use and of the nature of the persons, to whom article 83 of the Turkish Penal Code can be applied, even though this article is considered to be particular suitable for this case.

About the Officers of the Istanbul Security Directorate

The preliminary investigation concerning officers of the Istanbul Security Directorate, which was initiated just after the murder, on the basis of law number 4483, was terminated by the Regional Administrative Court, following the third examination of the matter, with no official presentation of opinion and in a way that was manifestly in contravention of the law.

During the examination of the matter carried out by state inspectors appointed by the Ministry of the Interior, the file was twice sent to the experts, and the specialised intelligence officers selected as experts were asked to prepare a report on whether or not the officers of the Istanbul Security Directorate had acted as they should have upon receiving the communication sent by Trabzon, or whether they had neglected their duties. The reports prepared by these experts said to be specialists on this matter, and the reports prepared by the inspectors following their examination, both stated that all relevant officers at the Istanbul Security Directorate from top to bottom bore responsibility for what happened, including Celalettin Cerrah.

Even though the functionaries of the Istanbul Security Directorate claim that upon receiving the written communication of the Trabzon Security Directorate dated 17th February 2006 they immediately did what was necessary, reports by experts and preliminary inquiry reports have clearly proved that this is not true, and that all operations concerning Yasin and Osman Hayal were carried out after the murder.

Experts and inspectors have even expressly voiced their suspicions that false documentation was prepared to hide the fact that these operations had been carried out after the murder.

Six police officers, including Istanbul Intelligence Department Director Ahmet İlhan Güler, about whom there have been three preliminary inquiries and two expert reports, all which have stated that it was necessary to authorise investigations of these people, and about whom the Governor's Office thrice issued authorisation for investigation, have been exempted from being investigated and from responsibility by the Istanbul Regional Administrative Court, with a simple uncommented two line decree, notwithstanding

thousands of pages of documentation held in 5 folders, an expert report and pre-inquest reports.

The result of this decree that exhausted all legal solutions within Turkey, and that profoundly affected all plaintiffs, lawyers and people of conscience, was that the lawyers of the plaintiffs applied to the European Court of Human Rights, and submitted a complaint about the judges of the Istanbul Regional Administrative Court to the High Council of Judges and Prosecutors.

The Officers of the Trabzon Security Directorate

While so many irregularities have occurred in the Istanbul Security Directorate, the officers of the Trabzon Security Directorate, who have been accused of not having taken any action whatsoever even though they knew all the details of the upcoming murder of Hrant Dink, as well as of hiding and destroying evidence after the murder, and who, for these reasons, may be even more suspect, have come out of all examinations and investigations, with not the smallest negligence being ascribed to them.

According to the preliminary inquiry report prepared on the basis of law number 4483, and according to the decree of the Provincial Administrative Council of the Governor's Office, the officers of the Trabzon Security Directorate were not to blame and there was no need for investigating anybody. The appeal presented by the lawyers of the plaintiffs was rejected by the Trabzon Regional Administrative Court with a simple unjustified two line decree, thus exhausting all domestic legal means.

The investigation of the officers of the Trabzon Security Directorate conducted by the Office of the Trabzon Prosecutor of the Republic, concluded that there was no need for further investigations. When the appeal by the plaintiffs' lawyers against this decision was turned down by the Rize Heavy Penal Court, all domestic legal means of redress were exhausted as far as this investigation was concerned.

Plaintiffs' lawyers have applied about both proceedings concerning the officers of the Trabzon Security Directorate to the European Court of Human Rights.

Trabzon Gendarmerie Officers

During the court session which took place at the 2nd Court of First Instance of Trabzon on 20 March 2008 in the course of the trial for dereliction of duty of Gendarmes Okan Şimşek and Veysel Şahin following a preliminary inquiry of these two gendarmes serving at the Trabzon Gendarmerie Command, the defendants testified that following the intelligence received from Yasin Hayal's uncle Coşkun İgci concerning the preparations for the murder of Hrant Dink, they reported the situation to their superiors, but that during a meeting their commander Ali Öz closed the matter by saying "let's talk about this later" and that he never again broached the subject. Following this striking testimony, other gendarmes also gave testimony confirming the statements of Okan Şimşek and Veysel Şahin.

Following the testimony of Okan Şimşek and of Veysel Şahin, the 2nd Court of First Instance of Trabzon sent the file to the office of the prosecutor so that indictments could be prepared against the various officers, and mainly for Colonel Ali Öz, Commander of the Gendarmerie Regiment of Trabzon. Upon this, the Office of the Prosecutor of Trabzon merged this report and the complaint of the plaintiffs' lawyers' and asked the Ministry of the Interior to conduct a preliminary inquest. The preliminary inquiry carried out by the inspectors appointed by the ministry resulted in a request for an investigation of the gendarmes, upon which the Office of the Prosecutor of Trabzon conducted an investigation and, having prepared an indictment against Ali Öz, Metin Yıldız, Hüseyin Yılmaz, H. Ömer Ünalır, Gazi Günay, Okan Şimşek, Veysel Şahin and Önder Araz, decided to initiate a trial.

Even though some developments within the of trial Okan Şimşek and Veysel Şahin have led us to be more optimistic, there have also been signals indicating that the state tradition would once again manifest itself. In the light of the proof revealed during the trial, the 2nd Court of First Instance of Trabzon decided that the crime in question could not be considered a simple matter of negligence of duty and it decided that, since the conditions indicated in article 83 of the Turkish Penal Code requiring the matter to be taken up by an heavy penal court existed, it would send the file to such a court. However the court appointed to investigate the matter decided that the trial should continue in a court of first instance and rejected this decision; once more without any satisfactory justification.

The Samsun Security Directorate and the Gendarmes

Yet another development to have happened during these two years and to have damaged the faith in justice of the people with a conscience has been the acquittal of the officers of the Samsun Security Directorate. Following the murder, Ogun Samast was caught in Samsun and brought to the security directorate. Once there, instead of being held in a cell, as is the case of other suspects, or in consideration of the fact that he was younger than 18, in another appropriate place, he was made to wait in the canteen. He was not alone while waiting; security and gendarmerie officers queued to have their photos taken with the murder suspect Ogun Samast. The suspect was handed a Turkish flag and made to pose and special efforts were made to have a calendar depicting a flag and with the inscription "the nation's land is sacred, it cannot be abandoned to its destiny" included in the photo shoot.

Even though the people who had treated a murder suspect as if he were a hero rather than a suspect, and having their photographs taken with him while they were wearing their uniforms, and also the people taking these pictures were known, only two of these individuals were brought to trial. And these two individuals were only charged with not having prevented the leaking of these photos to the media and of having kept the suspect in the canteen.

The Office of the Prosecutor of Samsun decided that there was no need for an investigation

of this matter or of any of the security or gendarmerie officials, apart from these two, who were later indicted. The plaintiffs' lawyers appealed to the Heavy Penal Court of Çarşamba, and when this appeal was rejected, they decided to apply to the European Court of Human Rights, since all domestic legal remedies in Turkey had been exhausted.

As for the two security officers, their trial at the 4th Court of First Instance of Samsun ended with an acquittal, and the plaintiffs' lawyers appealed against this sentence.

The Report of the Human Rights Commission of the Turkish Parliament

The Human Rights Commission of the Turkish Parliament, made its report concerning the Hrant Dink murder public .

In the 183rd page of the conclusions chapter, the commission stated the following about its investigation of the matter:

“Our citizen Hrant Dink has lost his life, because, even though Security and Gendarmerie officers had heard of a threat to Hrant Dink's life, the written communication alerting them to the presence of a threat was not followed up sufficiently and the necessary precautions were not taken,; and because even though Coşkun İgci was not a registered intelligence element of the Provincial Gendarmerie Command, not having the news and information provided by him investigated and evaluated sufficiently, administrative authorities at every level, who were in a position to be aware of this kind of risk, neglected the matter and did not take the necessary precautions, leading to the realisation of the danger,

Consequently, there have been deficiencies concerning the enforcement of the right to life enshrined both in article 17 of the Turkish constitution and in article 2 of the European Human Rights Convention that is an integral part of Turkish jurisprudence, and a situation where the state has not been able to carry out a positive obligation it had manifested itself.”

This report and all previous investigations have documented clearly and once more that even though all law enforcement units were aware that Hrant Dink was going to be killed, no precautions were taken.

The Report of the Inspection Council of the Office of the Prime Minister

Thanks to the report dated 2 December 2008 prepared by the Inspection Council of the Office of the Prime Minister at the end of the investigations run, not only have all previous observations concerning the responsibilities of law enforcement units have been confirmed, but also new information has been uncovered.

Although this report may look like providing new clues and hope that will lead to the solution of the assassination, it is worth considering why an institution with less authority

than the investigative and juridic powers was able to have revealed the information which were not accessed by these powers during the numerous enquiries and investigations, as well as during the ongoing murder case trial.

Reserving our our evaluation of this matter, the following are some of the conclusions stated in the report:

“Even though the Trabzon Provincial Security Directorate obtained intelligence approximately one year before the murder of Hrant Dink, it did not use this information to formulate a planned operation, and it did not inform the Istanbul Security Directorate and the Intelligence Department Headquarters of these developments, even though this was its duty and responsibility to do so.

In a similar way; in its letter dated 17 February 2006 to the Istanbul Intelligence Department Directorate, the Trabzon Intelligence Department Directorate wrote, “Activities connected to the individual are ongoing,” and when officers from Istanbul called Trabzon about this letter they were told, “Istanbul will be notified of developments,” but this notwithstanding, the additional information and developments obtained by means of the report dated 7 April 2006 were not shared with the relevant bodies”

“... In addition to the intelligence concerning Yasin Hayal’s plan against Hrant Dink, other noteworthy elements that have been indicated in our report, like the petition of Mesrob Mutafyan, the Armenian Patriarch, the suicide threats to Hrant Dink, and other events that happened during the trials of Hrant Dink, were not taken into consideration and the Istanbul Security Directorate did not take steps for the protection of Hrant Dink, and in this way did not show the required sensitivity towards its duty.”

According to these observations of the Inspection Council, the officers of the Trabzon and Istanbul security directorates neglected their duties.

The Inspection Council made a further observation:

“...In the light of these observations, since following the letter dated 17 February 2006 of the Trabzon Intelligence Department there were enough elements of information that showed a planned operation to be probable (especially after the police informant Erhan Tuncel was expelled of his duties), the neglect in coordinating the two intelligence departments and in following up the question, and also in taking steps to protect Hrant Dink as required by the circular concerning the Programme for the Protection of Threatened Individuals, have led us to conclude that Ali Fuat Yilmazer, C Department Director, and the then vice-chiefs of the connected Central Intelligence Office, who did not carry out their duties as they should have, and

Ramazan Akyürek, Chief of the Intelligence Department, who from the time he was Trabzon Provincial Chief of Security to the time he was appointed Chief of the Intelligence Department was aware of all the stages of the matter, and who had the opportunity to take the necessary steps, and other eventual officers whose neglect might be proved, should be subjected to a preliminary inquiry by the Ministry of the Interior, for neglecting their duty, according to law number 4483.”

Now we are curious about steps to be taken as a result of this report, which has been approved by the Prime Minister.

ASSESSMENT

Law number 4483 served as a shield for state officials

During this process, it became clear that investigations conducted in accordance with Law Number 4483 Regulating Trial Procedures Concerning State Employees and Other Officials are not at all suitable to the discovery of material truth, which is the objective of penal trials. The acts attributed to the public officials subjected to preliminary inquiry as part of the examinations and investigations carried out in accordance with this law are all crimes defined by the penal code, and each of these acts are subject to penalties. In other words, the above-mentioned public officials are suspects, not because they contravened the rules of the administrative units for which they work, but because they contravened the penal code, which is applicable to all the citizens of this country. Consequently, only a penal investigation can determine whether or not these individuals committed the crimes described in the penal code, and this determination cannot be made by means of inquiries conducted by administrative officers. It is, therefore, a fact that the aim of these kinds of investigations is not to discover the material truth; and this being the case, these investigations are not organised or equipped in a way to discover the material truth.

The main points are:

An investigation carried out about a public official based on law number 4483 does not change the professional status of these people, who can thus continue to carry out their duties as usual; also, the law does not impose any precautions to be taken to prevent those under investigation from preparing false documents to hide their responsibilities in the matter, or from influencing victims (like transferring them or changing their positions) during this process. Consequently, because the public officials being investigated feel no threat of any kind of penalty, they manage to thwart investigations by making false statements.

In this way, a decision reached at the end of an investigation that has not been carried out according to the required methods is then subjected to the examination of a Regional Administrative Court, which also is not an effective and independent body. Since the only thing that a Regional Administrative Court can do according to this law is to run a formal

audit concerning the file, it cannot discover the deficiencies in the investigation carried out by the inspectors.

Why does article 83 of the Turkish Penal Code exist?

This article did not exist in the former Turkish Penal Code, it is an article that was included in the new Turkish Penal Code in 2005 (Law Number 5237).

Article 83 of Law Number 5237 for a new Turkish Penal Code defined the crime of “voluntary manslaughter by means of negligent behaviour”.

Anybody can commit the crime of voluntary manslaughter. However according to article 83, the perpetrator of a voluntary manslaughter by means of negligent behaviour can only be a person, or persons, who does not carry out an action that he or she was legally obliged to carry out. The perpetrator has to have willingly abstained from carrying out an obligation or neglected a responsibility, even though he or she was under the obligation of carrying out an act that would have prevented a certain result from happening. According to this article, this crime can be committed voluntarily or by remission.

The perpetrator has to have contributed to or caused a death resulting from neglecting an obligation, by not performing an act, by not behaving as required, or by means of a delay. The perpetrator is not actively acting to kill or carrying out the act of killing, but causing the result by not getting into action.

For a person to be responsible for causing death by means of neglect, the presence of an abstract moral obligation to prevent a result from happening is not enough. The presence of a legal obligation or of a duty assigned by law is also necessary.

According to the paragraph 2 of the Article 83 of the Turkish Penal Code, for negligence and actual action to be equivalent, a person has to,

- a.** Have an obligation deriving from legal regulations or from a contract, for carrying out certain actions,
- b.** Have acted in a way that creates a situation endangering other people’s lives.

What we have in the case of active crimes committed by act of negligence is a failure to prevent a result from happening, even though the law required the prevention of it. According to what the article prescribes, the source of the obligation to prevent a certain outcome may be a legal regulation, because in certain cases the law gives certain people the obligation of protection and surveillance. Law enforcement forces have the duty of protecting, safeguarding and guarding society and all members of society and the right to life of the people.

In the murder of Hrant Dink, it is obvious that the crime described in this article has been committed, both materially and morally. The complaints of the plaintiffs' lawyers, based on this article were always rejected, but the reasons have never been convincing.

BBP-ALPERENLER

There is another element which has to be taken into consideration in the context of the Hrant Dink murder. The defendants in this trial are all either members of the *BBP-Alperen Ocakları*, or even if they are not members they are in close contact with these organisations. (BBP is the ultrnationalist Grand Unity Party; and Alperen Ocakları is its youth branch)

Yasin Hayal has, since 2002 been in constant contact with the *Nizam-ı Alem Ocakları* (Hearths of the World Order), which has ideological and political bonds with the BBP, even if this contact acquired varied guises from attending meetings, to serving tea. His connection continued even after the *Nizam-ı Alem Ocakları*, changed its name to *Alperen Ocakları*. Yasin Hayal was a BBP member when he beat up the priest of the Santa Maria Church, when he falsely reported a bomb attack, when he bombed a McDonalds, and also during the process of planning and carrying out Hrant Dink's murder.

Similarly, Erhan Tuncel was also in close contact with the BBP and the *Alperen Ocakları*; these places were even where he met Yasin Hayal. The *Alperen Ocakları* were so important for Erhan that he got into a conflict with Mustafa Öztürk for the chairmanship. As far as we can see Erhan Tuncel was also important for the BBP. When the BBP President came to Trabzon, Erhan Tuncel was among those escorting him. He was so close to the the president that he could even discuss Yasin's situation with him. According to Erhan's testimony during the trial, he still has the keys to the office of the local office of the *Alperen Ocakları*.

Mustafa Öztürk was the head of the *Alperen Ocakları* when the murder was being planned; future murderers were being brought to the office and presented to him, and the details of the plan were also discussed at the office.

Yaşar Cihan, who for a certain time was Trabzon Provincial Head of the BBP and who helped Yasin while he was in prison, both materially and morally, is another of the defendants. The same goes also for Halis Egemen, who was a BBP Headquarters Secretary, and who helped Yasin Hayal and his family while he was in prison for bombing McDonalds.

The meaning that Hrant Dink had from the point of view of the BBP, and the way he was perceived in the BBP sphere, was once more made clear on the occasion of the documentary *Şahların Labirenti* (The Labyrinth of Shahs), which was broadcast recently in the state television network TRT. Ökkeş Şendiller, suspected of participation in the Maraş massacre, who served as a consultant for the documentary, and who stated his opinions in the broadcast, is a founding member of the BBP. Ökkeş Şendiller, whose statement was completely false, and also libellous, once more expressed the racist views of his party by

insulting Hrant Dink and by making a target of him and of Armenians during the documentary. BBP, the ideological and political viewpoint of which is openly based on racism and hatred of foreigners, should be watched closely.

Until politics, language and culture are not cleared of these racist elements of hatred and of discourses inclusive of violence, and people uttering these words are not subjected to the necessary penalties, there is no guarantee that we shall not have more of this kind of murders.

CONCLUSIONS

* Notwithstanding all the developments before the murder, all the legal enactments, and the concrete observations in the reports of the Human Rights Commission of the Turkish Parliament and of the Inspection Council of the Office of the Prime Minister like, "*the fact that Hrant Dink's life was under a close and serious threat should have been evaluated by security forces, and he should have been provided protection,*" **questions like why Hrant Dink was not protected and why those who did not provide this protection were not tried have continued to remain unanswered.**

* **At this point, it has become painfully clear that the *MIT*, the Gendarmerie and the Security Department were all guilty of neglecting their responsibilities and of not cooperating and not coordinating among themselves as far as the murder of Hrant Dink is concerned, that they also hid information and documents from each other, and that they accused each other to save themselves. It is noteworthy that these three institutions, which quarrel among themselves have united and acted in unison in two matters:**

***Their determination in not taking any steps to protect Hrant Dink even though they knew he would have been killed,**

***Treating the suspect/suspects of the murder of Hrant Dink as heroes.**

***As we have so far explained in detail, it is clear that the inquiries and investigations conducted in this manner will not fully shed light on the murder unless the process before and after the murder is taken up as a whole and merged with the main trial has once more been reached.**

***According to documents that were included to the file during the trial, Yasin Hayal, who was one of the planners of the murder, Osman Hayal, about whom there are strong suspicions that he was present at the crime scene as the crime was being committed, and the murdered Hrant Dink were all under the surveillance of the security department. Taking this information to account together with the information that the Reverend Santoro and the Zirve Publishing House employees murdered in Malatya were also under the police surveillance at the time of their murder, one can reach at striking conclusions. People being followed by the state so closely get murdered, but all the same the state**

cannot reach the material truth concerning the perpetrators, who were also being followed. This situation is worth considering.

The state, in the light of the conclusions of the investigations run by its own bodies, should at least bring the responsible to justice, and the judicial institutions should combine all the trials and the investigations with the aim of taking up the issue as a whole and by a single body, if it wishes to get rid of the burden of responsibility of Hrant Dink's murder.