

HRANT DINK MURDER CASE – One Year After

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Case and investigations

A total of nineteen (19) people [eight (8) detained, eleven (11) released on pending trial] are being tried at the case of Hrant Dink, who was shot dead in front of the building of the newspaper where he worked.

The first hearing of the case was held on 02.07.2007 and the second on 01.10.2007. The third hearing will be held on 11.02.2008.

In addition to this case known as principal case of Hrant Dink's murder, no progress has been achieved in the last one year at the investigations and cases launched on charges of culpable negligence of the security forces in Hrant Dink's murder, concealing evidence, destroying evidence and protecting the offender, despite the involvement of the Inspection Board of The Prime Ministry and the TGNA Human Rights Commission at later stages of the case and the actual perpetrators of Hrant Dink's murder could not be delivered before the judiciary.

For a better explanation of the process the principal case (carried out by the 14th Aggravated Felony Court of İstanbul) and other investigations and cases will be dealt with individually under separate headings.

PRINCIPAL CASE (14th AGGRAVATED FELONY COURT OF İSTANBUL File No: 2007/428)

The investigation phase of the case lasted more than three months and a case against the defendants had been filed on charges of "holding a managerial post in a terrorist organisation, being a member of a terrorist organisation, aiding a terrorist organisation, homicide as part of a plot, manufacturing explosives, throwing explosives, deliberate injury, damaging property, threatening, hiding the offender, holding unlicensed arms."

A brief overview of the deficiencies and errors involved in the investigation phase of the case, prior to the prosecution phase;

1.) The investigation phase had been conducted in confidentiality that covered the entire file, which deprived the investigation from the contributions of the complainant in achieving the substantive truth, therefore many aspects of the investigation could not be addressed.

2.) The legal description of the indictment is correct and pertinent in principle. However within the scope of joint decisions and action plans which entirely harbour ideological motives are not limited to those included in the indictment. The investigation has fallen short of revealing the entire actions.

3.) During the investigation in a short time the "hit man" and some of his close circle, namely a group living in the province of Trabzon and Pelitli sub-district of Trabzon were apprehended and their links were revealed. However a long **preparation process for the murder** is involved prior to the murder and this process is known in detail. Nonetheless the pre-trial investigation which got stuck merely in the province of Trabzon and sub-district of

Pelitli, without establishing any links between this process and the act of murder, has fallen short of revealing this highly well-organized structure.

4-) Although before and after the murder the links of certain security forces in Trabzon –where the hit men of the murder got prepared for the murder- İstanbul and in Ankara - where all intelligence was collected-, with the suspects, their contribution in the murder in the form of premeditation, possible premeditation or negligence, their involvement in acts of concealing the criminal evidence after the incident and praising the crime and the criminal have been evidently revealed, and all of these acts have been ascertained also by the investigating prosecutors,

the fact that these officers were not included in the principal case and were referred to Chief Public Prosecutor's Office of Trabzon for the investigation of the claims, eventually led to disintegration of the investigation and resulted with the execution of trial in parts rather than as a whole.

5-) It has been revealed that the transcriptions of the telephone tapping of the defendants which were reflected into the case file were not handled by relevant experts and institutions.

6-) The surveillance camera recordings of the ATM of Akbank branch until 12:48 p.m on the day of the murder could not be obtained. Despite all our efforts and persistence the camera recordings could not yet be found and the suspicions that they are irreversibly deleted could not yet be dispelled.

It has also been ascertained that the recordings of the surveillance cameras of the numerous shops on the escape route of the hit man O.S. had not been collected and were not included in the file.

7-) Which means of transport was used by O.S. from Trabzon to İstanbul, when and with whom he arrived in İstanbul, whom he met, by which means of transport and with whom he arrived in front of the Agos building and by which means of transport and with whom he run away after the murder are yet to be revealed. Furthermore the apparent discrepancies concerning O.S.'s mobile phone and telephone card could not be eliminated, nor was a serious research conducted for that purpose.

At the prosecution phase of the case;

Although nine months passed since May 1st 2007 when the case was launched only two hearings were held during which it was observed that the trial process had many deficiencies, errors and insufficiencies in terms of revealing the substantive truth. These deficiencies can be listed as follows;

1.) First of all the venue of the hearing was extremely insufficient for a reasonable trial due to its physical conditions. Due to the small size of the hearing room many attorneys could not enter the room, those who could attend the hearing could hardly see the defendants during the hearing because of the large columns in the middle of the hearing room.

2) Due to the poor physical conditions of the hearing room even breathing became difficult from time to time during the day-long hearing, furthermore under these disabling conditions numerous mistakes were made in recording the statements of the defendants to the minutes which eventually led to several quarrels, and a sound trial could not be held. In order to avoid these quarrels, prevent interruptions during trial and to ensure necessary circumstances for a

fair trial the hearing should be recorded through technical devices. The intervening lawyers submitted their demands on the matter to the Court.

3.) Although seven months passed since July 1, 2007 when the first hearing was held, only the trials of three defendants could be completed and the hearings were delayed for three or four months. Thus the “uninterruptability of interrogation” one of the most significant principles of penal trial was violated and the requests of the attorneys of the intervening party to “hold uninterrupted hearings for a few days” were disregarded.

4) Some of the demands of the attorneys of the intervening party for the deepening of investigation were rejected in the absence of any justifications. For example although it was requested that the reports provided to the Security by Erhan Tuncel during his employment in the security forces, be delivered to the case file this request was overturned. The rejection of demands were either groundless or their justifications were far from being satisfactory.

5) It is in controversy with the principle of fair trial and direct contact with the evidence and the witnesses* that in order to take the statements of the witnesses outside İstanbul letters rogatory were sent to the provincial courts of where these witnesses were residing and their statements were taken through instructions at these courts. The demand of the attorneys of the intervening party to invite the witnesses to the trial of the principal case and to listen to them before the defendants and intervenors by means of asking questions to the witnesses and to the defendants when need be, was deemed inappropriate by the Court thus another important opportunity to reveal the substantive truth was missed.

OTHER INVESTIGATIONS AND CASES

Office of Chief Public Prosecution of İstanbul which conducts the investigation of murder, ascertained the criminal acts of the members of Trabzon Provincial Command of Gendarmerie and Trabzon Directorate of Security, both before and after the murder such as neglect of duty, concealing, destroying and distorting criminal evidence and protecting the offender however referred the case to the Office of Chief Public Prosecution of Trabzon for lack of jurisdiction on grounds that these actions did not fall under its jurisdiction. Office of Chief Public Prosecution of Trabzon divided the criminal acts of the members of Trabzon Provincial Command of Gendarmerie and Trabzon Directorate of Security into two groups as before and after the murder; assessed their negligence before the murder in other words their negligence in taking the necessary protection measures despite the fact that they had the information that Hrant Dink will be murdered, within the scope of crimes stemming from the duty and launched investigation against several members of the gendarmerie and the security forces through individual files and within the scope of the “Law on the Trial of Public Servants and Other Public Officials” with no: 4483.

The Office of Chief Public Prosecutor launched investigation through a separate file against several public officials for their acts such as neglect of duty, misconduct in office, concealing, destroying and distorting criminal evidence and protecting the offender after the murder however despite the presence of such serious claims and important findings Public Prosecutor’s Office of Trabzon through its decision of 10.01.2008 ruled that there was no need to launch a public prosecution concerning Muhittin Zenit, Yahya Öztürk, Engin Dinç, Ercan Demir, Tefik Cantürk, Bayram Sazlı, Hüseyin Yılmaz at Trabzon Directorate of Security as well as some police officers at Trabzon Directorate of Security and some officers at Provincial Command of Gendarmerie. The intervening lawyers will appeal this decision at Rize Aggravated Felony Court.

* The principle of the witness being summoned to be heard in court and the necessity that all relevant parties are present when the witness testifies and is cross-questioned

INVESTIGATIONS CONDUCTED UNDER THE SCOPE OF LAW NO: 4483

1.) Concerning the Officers of Trabzon Security

A) Based on Law No: 4483, the Ministry of Interior launched an investigation against a number of officers in relation to allegations that, **“The act of staging a bombed attack in Mc Donalds-Trabzon on 24.10.2004 was carried out jointly by Yasin Hayal and Erhan Tuncel, the bomb had been prepared by Erhan Tuncel, although the trousers worn by Erhan Tuncel during the incident (with blood stains on it) had been given to the security officials they were not used as evidence, Erhan Tuncel was convinced into becoming an Assistant Intelligence Personnel of the security and was excluded from the scope of the investigation”**.

During the inquiry, it was understood that the incidents under investigation had occurred during the performance of the judicial duties of the police and not administrative, therefore, the inquiry was suspended and the file was referred to the Office of the Chief Public Prosecutor of Trabzon together with a legal opinion stating that in accordance with the general provisions the investigation should be conducted by the judicial authorities directly. The investigation on this matter is currently being conducted by the Office of the Chief Public Prosecutor of Trabzon.

B) In addition, an investigation was conducted about certain officers of Trabzon Security Directorate on charges of failing to duly fulfil their public duties for the prevention of Hrant Dink’s murder. As a result of the investigation, with its decision dated 07.08.2007, the Provincial Administrative Board of Trabzon Governorship decided that the officers of Trabzon Security Directorate had duly fulfilled their public duties, there was no wrongdoing on their part and – following the preliminary inquiry- it was concluded that there was no need to authorise an investigation against these officers.

Through their attorneys, the complainants lodged an appeal to Trabzon Regional Administrative Court against the decision of the Trabzon Governorship. The appeal was unlawfully rejected by the Regional Administrative Court of Trabzon on 03.10.2007 without citing any justifications.

According to the law, the decision of the Regional Administrative Court on this matter is final. With this decision, the Regional Administrative Court of Trabzon has blocked any investigation against the officials of Trabzon Security Directorate, who did not prevent Dink’s assassination despite being informed about all details, preparations and the plan of the murder, including the information that Hrant Dink would be assassinated in front of the premises of his office with a bullet to be fired at his head.

2) Concerning the Officers of Trabzon Gendarmerie Command

In his statements given during the pre-trial investigation, Coşkun İğci –the husband of Yasin Hayal’s (one of the suspects of the murder) paternal aunt – said he had reported to the intelligence staff of Trabzon gendarmerie every detail that Yasin hayal was going to kill Hrant Dink. Coşkun İğci said, “I shared with JITEM staff everything I had heard about the plot to assassinate Hrant Dink. I did not feel the need to inform anyone else as they told me that they would take the necessary action...”.

Upon this development, an inquiry was launched on the basis of Law No: 4483 to inquire whether there was any negligence or flaws of the personnel of Trabzon Gendarmerie Command regarding the prevention of Hrant Dink’s assassination, whether it was possible to easily obtain the information that Dink was going to be assassinated, whether Coşkun İğci had actually reported the plot to assassinate Dink to the intelligence officers of the

Gendarmerie and the Gendarmerie statements and allegations that they had not received such information.

The Preliminary Investigation Report prepared by the Administrative Inspectors as a result of the inquiry held that “authorisation should be granted for an investigation” against Gendarmerie Director of Intelligence Section Metin Yıldız, Central Gendarmerie Station Commander Sergeant Major Cevat Eser, Gendarmerie Expert Sergeant Veysel Şahin and Gendarmerie Sergeant Major Okan Şimşek, and the report was submitted to the Governorship of Trabzon for a decision.

With its decision dated 04.04.2007, the Provincial Administrative Board of Trabzon Governorship issued authorisation for investigations against only two of the officers; namely, Veysel Şahin and Okan Şimşek and declined to issue any authorisation for investigations against the other officers without citing any justifications. It is still not known why the Provincial Administrative Board of Trabzon Governorship refused to authorise investigations against two officers when the Preliminary Investigation Report had requested authorisation for investigations against 4 officers. However, according to the law such decisions should normally be given together with their justifications.

On 20.05.2007, the lawyers of the complainants lodged an appeal to the Regional Administrative Court of Trabzon against the decision of the Provincial Administrative Board of Trabzon, however, the appeal was rejected by the Court on 06.06.2007 again without citing any justifications. As the decision of the Regional Administrative Court is final according to Law No: 4483, lawsuits have been filed in the 2nd Magistrate Criminal Court of Trabzon against only Veysel Şahin and Okan Şimşek from the Gendarmerie, on charges of neglecting their duty by failing to prevent Dink’ s murder despite being informed about it. The first hearing of this case was held on 22 January 2008.

This lawsuit was filed on grounds that Veysel Şahin and Okan Şimşek “did not prevent the murder which is a requirement of their intelligence duties” despite being informed about the assassination plot against Hrant Dink. At this stage of the investigation, it has been acknowledged that the intelligence officers of the gendarmerie did have important information about the plot to kill Hrant Dink. If the intelligence officers have received this information in an area falling under the responsibility of the Gendarmerie, then in line with the law and procedure it must be considered that the officers of the intelligence section of the provincial gendarmerie command, the provincial gendarmerie commander and the gendarmerie general command were also informed about the incident. Because according to the Law on the Duties and Powers of the Gendarmerie and the relevant legislation, the intelligence officers of the gendarmerie have the obligation of reporting the data collected to the intelligence section of the provincial gendarmerie command, the director of the intelligence section has to report it to the provincial gendarmerie commander and the provincial gendarmerie commander has to report it the gendarmerie general command. Given the fact that this is a requirement prescribed by law and that military institutions follow a strict discipline, it is obvious that Ali Öz the Provincial Gendarmerie Commander of Trabzon and the officers of the Gendarmerie General Command were informed about the plot to kill Hrant Dink, and anything to the contrary cannot be alleged. For that reason, the intervening lawyers have submitted to the Prosecutor’s Office of Istanbul an indictment against Ali Öz the Provincial Gendarmerie Commander of Trabzon and other officers on charges of hiding and changing criminal evidence, misconduct in office and negligence of duty, by failing to report to the Prosecutor’s Office of Istanbul –which is carrying out the investigation- the “Communication Report” in the dossier about the telephone tip-off made to the gendarmerie on 20 January 2007 as well as the “Information Registry and Report Form” containing the information reported to the gendarmerie by the informant.

3) About the security personnel at İstanbul Security Directorate

With the letter dated 17.02.2007 sent by the intelligence branch under Trabzon Security Directorate to İstanbul Security Directorate, information was provided that Yasin Hayal was planning to come to İstanbul to murder Hrant Dink; that Yasin Hayal was the perpetrator of the bombing of Mc Donald's; and that Yasin Hayal [was a person] that could realize the act of the killing of Hrant Dink. After the letter was sent, Intelligence Branch Director at Trabzon Security Department phoned the Intelligence Branch Director at İstanbul Security Department -A. İlhan Güler- and informed him verbally about this development. All these points were brought into light during the investigation. Upon this, an investigation was launched to scrutinize the following allegation concerning İstanbul Provincial Security Director Celalettin Cerrah and Intelligence Branch Director Ahmet İlhan Güler: **“Detailed information that Hrant Dink might be murdered was provided by the intelligence branch under Trabzon Security Directorate through the letter numbered 027248 and dated 17.02.2006; though this letter from Trabzon Security Directorate had to be taken up seriously by İstanbul Security Directorate, the undertaken action was insufficient, protective measures were not taken and Hrant Dink was slain on 19.01.2007”**.

With its decision dated 28.02.2007, the Provincial Administrative Council of İstanbul Governorship ruled that authorization for investigation be granted with respect to Ahmet İlhan Güler but not with respect to Celalettin Cerrah, about whom a preliminary examination had been done.

Attorneys of the complainant objected to the decision, which deemed unnecessary the launching of an investigation concerning İstanbul Security Director Celalettin Cerrah; however, this objection was rejected by İstanbul Provincial Administrative Court. On the other hand, the objection raised by Intelligence Branch Director A. İlhan Güler, was accepted due to the reason that it was necessary to deepen the investigation and there were some gaps therein. Thus it was decided to re-examine the case with respect to A. İlhan Güler.

In line with the decision of İstanbul Provincial Administrative Court, an additional examination was made; and at the end of this examination, a decision was taken to authorize the investigation about A. İlhan Güler, and the dossier was conveyed once again to the provincial administrative court. It has been learnt that the Court has made its decision yet the final decision has not been notified to us so far. However, the conclusion reached by the expert report prepared by two specialized security officers during the course of this investigation is extremely significant.

In the framework of this investigation undertaken with respect to İstanbul Security Director Celalettin Cerrah and Intelligence Branch Director A. İlhan Güler, the experts have made the following observation: **“Due to the procedures and transactions that should have been performed in accordance with the relevant legislation, yet, which have not been performed, it has been concluded that from the lowest to the highest, the officers and managers at İstanbul Security Directorate may have responsibilities stemming from penal and disciplinary laws and mainly due to failure in fulfilling their duty of inspection.”**

Despite the expert reports and relevant legislation, investigation authorization was given only about one person from İstanbul Security Department.

Upon this, the attorneys of the intervening party - taking into account of the experts report – have filed a complaint at the İstanbul Republican Prosecutor against the İstanbul Security Director Celalettin Cerrah and officials of the directorate under the accusations of: deliberate killing through neglect (TPC Article 83) and assisting a terror organization (TPC Article 220/6-7).

CONCLUSIONS:

* It has been revealed with utmost clarity during all stages of the investigation that as of early 2004 until his assassination on 19.01.2007, Hrant Dink had been the evident target of organizations, people and institutions that aim at the elimination of the democratic law system and the fundamental rights and freedoms; and his life had been under close, real and serious threat.

* Although it had been determined by security forces and all intelligence units that Hrant Dink's life in was under close, real and serious threat; and moreover, although all details of the commission of the was known by intelligence officers, no measures had been taken; on the contrary, it has been revealed that some civil servants had attempted to cover up evidence and findings, hidden the severity and gravity of the situation, hidden information from one another, and involved in conflicts amongst each other in a way to even forget about their own duties.

* State, whose fundamental duty is to protect the lives and to ensure the safety of persons, is obliged to establish the organization required to fulfil this responsibility, provide for and enable every means and tools to that end. Security Department, MIT (National Intelligence Agency) and the Gendarmerie organizations were in fact established to fulfil these objectives. Furthermore, since it is a part of this duty, affiliated intelligence units have been established to take measures aiming to prevent the emergence of certain incidents and dangers by way of observing the daily situations and conditions.

* It is foreseen in law that the intelligence acquired by intelligence units be shared with other intelligence units and necessary measures be taken. Despite the governing rule enshrined in the law, with respect to the murder of Hrant Dink, the gendarmerie, security directorate, and the MIT have not shared any intelligence among themselves. It has been observed that no coordination existed among them with a view to discuss information, hearsays, and necessary measures; on the contrary, it has been understood that these institutions hid information from each other and blamed one another in the post murder period.

* Inter-institutional competition has also been reflected on the investigations and each institution has chosen to protect its own employees instead of reaching a lawful and fair result. (Our perception of this grew stronger when we saw that during the Gendarmerie investigation in Trabzon, the gendarmerie inspectors did not refer any offences to the gendarmerie officers, while administrative inspectors did the same during the investigation by the security department.)

*** Investigations were kept restricted in terms of the number of people, scope and length.**

* The murder of Hrant Dink, the preparation process, rendering of Hrant Dink a target, encouraging the commission of the murder, inclusion of the security forces in the process, preparation of the shooter, and commission of the murder are all parts of a coherent process. This process, which should be conducted as a whole, has been divided into parts thus its connection to the whole was interrupted; and the authorities conducting the investigation was prevented from seeing the process as a whole. Unless the murder is assessed and investigated together as a whole with the pre- and post- murder periods, it is not possible to reach a conclusion in the investigation on the murder of Hrant Dink.

* Therefore, it is not only necessary that the investigation should be conducted with a view to involve all people and institutions that participated in the process, but it is also required that the date of the offence should be expanded so as to encompass the period that Hrant Dink

was “warned” by some institutions and people (February 2004) until the murder on 19.01.2007.

* These investigations have been performed on the basis of the information and documents submitted by the officers, senior officers, directors, and commanders, who are claimed to have been involved in the incident.

* During the investigation, some of the investigated public officers continued to perform their duties and they inserted some evidence in the case file just the way they do in any another incident. These people are in the “head, director, commander” positions at the units they are serving. Investigations were undertaken on the basis of the evidence submitted by these public officers. Even this mere example is sufficient to prove that the investigation cannot be a reliable and independent one, and the result cannot be efficient and sound.

* These officers about whom an investigation has been conducted, did not only present evidences and documents related to the administrative investigation but also related to the investigation launched by İstanbul Chief Public Prosecutor’s Office, in relation to the murder of Hrant Dink. Furthermore, some of these officers –even today- present evidence and documents to the court case that is underway at İstanbul 14th Aggravated Felony Court.

* It is very clear that as long as these officers are kept in their posts, continue to submit information, documents, and evidences to the investigation process, the murder of Hrant Dink will not be clarified.

Investigation in Samsun

The suspected murderer of Hrant Dink was identified by his family after his images were broadcast on the national media, and chasing of O.S. was began. It was discovered that O.S. was travelling to Artvin-Hopa on a bus belonging to the bus company named Metro Turizm. At the Samsun Bus station, he was captured by the gendarmerie and security officers. After his capture, O.S. was taken to the Anti-Terror Branch of Samsun Security Directorate, at the cafeteria of which he was treated as a hero and where the gendarmerie and security officers competed with each other to have their pictures taken with him (O.S). Relevant images were broadcast on the national media and TV stations.

A court case had been filed against 23 security staff from Samsun Security Directorate and Samsun Gendarmerie, who have been observed in the the pictures and video recordings shot in front of the Turkish flag and the calendar with Atatürk’s words “The soil of the motherland is sacred. It cannot be left to its destiny.” at the cafeteria of Trabzon Security Department Anti-terror (TEM) Branch Directorate on grounds of allegations such as ‘praising the offence and the offender, abusing duty by way of negligence, sparing the offender etc.’ It was concluded that “prosecution was not required” concerning 21 of these staff members, since (due to justifications like) “the cafeteria was small in size and there were no other places to take pictures at; there was no evidence proving that they were sparing the offender on the contrary, they had exerted special effort for him to confess the offence he had committed; the flag had not been taken away from him thinking about the public interest that would stem from shedding a light over the offence by way of making him speak about it following a humanely approach; they were competing with each other for the sake of serving the public etc.”

Although the attorneys of the intervening party objected to this decision; however, they have yet not received any decisions with respect to this objection.

This court case, which was filed against only two people from among 23 about whom investigations were undertaken, is still going on at Samsun 4. Criminal Court of First

Instance. According to the indictment, one of the two people under trial is the deputy Branch Director of TEM (anti-terror unit) under Trabzon Security Directorate. The allegation says the following: he could not prevent the photography of O.S. at the cafeteria of TEM Branch Directorate, that he was not able to prevent the creation of warm dialogues between the public servants and the suspected murderer as well as sympathetic images; thus, he neglected his duty. The other defendant is being tried with the accusation that he has violated the confidentiality of the investigation by way of leaking the images to the media.

Attorneys of the intervening party requested this court case to be taken up together with the main case in accordance with the 'linked offence' concept, the conditions of which have been enshrined in the law. In order to examine the dossier, İstanbul 14th Aggravated Felony Court requested it from Samsun Criminal Court of First Instance in line with the demand of the attorneys of the intervening party. No decision has been taken in this respect.

Inspection Board of the Prime Ministry

Writing a letter to PM Erdoğan on 17 April 2007, Hrant Dink's spouse Rakel Dink drew attention to the present deficiencies and errors in the investigation, and claimed that the investigation should not have been limited only with a part of the security and gendarmerie organizations; but should also have encompassed other units and institutions as well people and bodies.

In her letter Rakel Dink said, "since we observe that the undertaken investigations are insufficient, I request the assignment of the Inspection Board of the Prime Ministry to ensure an effective investigation of the murder of my husband, along with its background, planning as well as the post-murder period."

It has been learnt from the media that PM Erdoğan established a committee to investigate those allegations, and that the committee undertook some examinations in Trabzon and İstanbul. Again in accordance with the news covered in the media organs, this committee has completed its examinations and has started write its report.

Still, there is no official reply or information provided to Rakel Dink or her lawyers.

TGNA Human Rights Commission

TGNA Human Rights Commission requested the indictment of the case from İstanbul 14th Aggravated Felony Court, and established a sub-committee of five members to investigate the murders of Hrant Dink and Festus Okey. In the scope of its work, the commission, which has declared that it would work on the claims and facts other than the ongoing cases, paid visits to the Governor and Deputy Governors at İstanbul governorship, and then visited the family of Hrant Dink and listened to their complaints and demands. After that, the commission passed to Trabzon, and its examinations and studies still continue.