

PERSECUTING PUBLISHERS, STIFLING DEBATE: FREEDOM OF EXPRESSION IN TURKEY

TRIAL OBSERVATION REPORT

May 2008

PERSECUTING PUBLISHERS, STIFLING
DEBATE: THE TRIAL OF AHMET ÖNAL

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KURDISH HUMAN RIGHTS PROJECT
BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES

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Kurdish Human Rights Project is an independent, non-political human rights organisation founded and based in London, England. A registered charity, it is dedicated to promoting and protecting the human rights of all people in the Kurdish regions of Turkey, Iraq, Iran, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include Kurdish and non-Kurdish people.



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FOREWORD

The European Parliament resolution of 24 October 2007 on EU-Turkey relations at point 13 states that the EU

Deplores the fact that a number of people are still being prosecuted under Article 301 of the [Turkish] Penal Code; strongly condemns the recent conviction of Saris Seropyan and Arat Dink under this article; urges the government and the newly elected parliament to make sure that all provisions of the Penal Code allowing for arbitrary restrictions on the expression of non-violent opinions are removed and that freedom of expression and freedom of the press are guaranteed; regards this as a top priority for the new government

Throughout Turkey's long courtship of the EU and its moves towards accession, the right to freedom of expression has been a constant problem. Legislative changes brought into force back in June 2005 have continued to allow for the restriction of this right, in spite of Turkey's obligation to redraft its Penal Code in line with the Copenhagen Criteria.

Reform of the Penal Code has thus far involved the rearrangement and renumbering of what are effectively the same provisions.¹ The perception of these changes is that they are merely cosmetic rather than substantive.

The drafting² and application of these particular provisions make it clear that despite the fact that the objective of revising the Penal Code was to bring Turkey into line with the requirements for EU membership, these amendments fall a long way short of what is internationally acceptable in this sphere. They have led to the persecution of writers, journalists, publishers and translators for exercising what should be the basic human right of freedom of expression.

In light of the above the KHRP sent a mission to observe the final hearing of the trial of Ahmet Önal, the owner of Pêri Publishing House in İstanbul. The charges against him related to 'disseminating propaganda for the PKK/Kongra Gel terror organisation'. This dissemination was alleged to have taken place in a book he

1 Interview with Ahmet Önal, 12 February 2008, İstanbul

2 Review of the Draft Turkish Penal Code, Freedom of Media Concerns, Miklos Haraszti, http://www.osce.org/documents/rfm/2005/03/14223_en.pdf (last accessed 17th April 2008)

published, Diaspora Kürtleri (Diaspora Kurds). The offending paragraphs deal with the role and influence of the PKK amongst Kurds in the former Soviet Union. The 'offence' of publishing the book occurred in November 2005 and has taken over two years to get to the final hearing stage for decision. This report attempts to put this trial into the context of the wider issue of Turkish accession to the EU. In light of this, the mission met with representatives of the publishing and legal community in İstanbul who either face similar charges themselves or are assisting in similar cases.

The mission requested a meeting with the Public Prosecutor at the final hearing but this request was not granted.

In general, the mission found that the situation in Turkey for anyone involved in the media or press was repressive when delving into certain subjects. Individuals often face trial on numerous charges simply for doing their job and exercising their right to freedom of expression.

Part One of this report provides a background analysis of the situation surrounding freedom of expression in Turkey. It outlines the present situation in Turkey, details the EU accession process and provides the framework for the analysis that follows. Part Two deals with the requirements that can be expected in a country in order to ensure a fair trial. This framework is then applied in the context of the trial and final hearing of Ahmet Önal in İstanbul in February 2008. The case is then reviewed and evaluated both in terms of the final decision, and also in terms of the trial process itself. Besides being politically motivated to result in convictions, trials such as this also seem to be aimed at obstructing the operation of the publishing and journalism professions and to stifle debate. This effect of such prosecutions on freedom of expression is also reviewed.

Part Three examines and evaluates the views of other people in Turkey who have been subject to prosecution in freedom of expression cases themselves, or who have been involved in protecting others who have faced such prosecutions. It focuses primarily on the ongoing trials of other publishers who are facing similar charges. Particular attention will be given to the case of Muzaffer Erdoğan, who published a copy of the 'Blue Book', a report on the Armenian Genocide commissioned by the UK Parliament in 1915-16 and written by Viscount James Bryce and Arnold Toynbee.

Part Four contains the conclusions made by the mission and sets out recommendations for Turkey and the EU.

1) FREEDOM OF EXPRESSION IN TURKEY

Background

Turkey was founded as a modern state relying heavily on secular and nationalistic principles to give the new state a strong sense of homogenous Turkish identity, with all citizens defined as being ‘Turks’, irrespective of their ethnic or linguistic background.

The definition of citizen as ‘Turk’ has led to great difficulties in the relationship between the state and the Kurdish people, amongst others. This insistence on one ‘identity’ and one way of looking at the state’s citizens is reinforced by the Turkish Penal Code, which reinforces the ‘one nation’ outlook by criminalising ‘public denigration’ of Turkishness, and by restricting free speech and other acts that seek to deal with the issues of minorities, which might reflect badly on the state or push at the boundaries of ‘acceptability’.

Turkey has long faced criticism over laws that severely restrict the exercise of freedom of expression, and has yet to fulfil its obligations under the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR).

The jurisprudence of the European Court of Human Rights has been very clear in underlining that the limits of acceptable criticism are broader as regards politicians than private individuals (*Lingens v Austria*, 1986 8 EHRR 407); are wider with regard to government (*Castells v Spain*, 1992 14 EHRR 445); and that the authorities of a democratic state must accept criticism even if this criticism is provocative or insulting (*Özgür Gündem v Turkey*, 2000).³

The revised Penal Code of July 2005, having been amended as part of the EU accession process, maintained some of the most controversial articles of the former Penal Code. For example, Articles 312 [incitement to hatred] and 159 [insult of ‘Turkishness’] reappeared in almost identical form in the revised Penal Code as Articles 216 [incitement to hatred] and 301 [denigration of ‘Turkishness’].

³ Amnesty International. Turkey: Article 301: How the law on ‘denigrating Turkishness’ is an insult to free expression, EUR 44/003/2006

Article 301 in particular of the July 2005 Penal Code became something of a cause celebre. It stated that:

1. Public denigration of Turkishness, the Republic or the Grand National Assembly of Turkey shall be punishable by imprisonment of between six months and three years.
2. Public denigration of the Government of the Republic of Turkey, the judicial institutions of the State, the military or security structures shall be punishable by imprisonment of between six months and two years.
3. In cases where denigration of Turkishness is committed by a Turkish citizen in another country the punishment shall be increased by one third.
4. Expressions of thought intended to criticize shall not constitute a crime.

It is to be assumed that Article 301(4) was meant to provide a possible defence against charges filed under Articles 301(1) - 301(3). But it is hard to envisage where a line can be drawn with any sort of clarity on issues such as this. Is it in legal terms possible to criticise Turkey but not publicly denigrate it?

The Turkish parliament passed a bill on 1 May 2008, with 250 votes against 65, which changed the content of Article 301. The new form of Article 301 is as follows:

The person who denigrates openly the Turkish Nation, the State of the Turkish Republic or the Grand Assembly of Turkey and the judicial institutions of the State shall be punishable by imprisonment from 6 months to 2 years. The persons who denigrate the military and police organizations of the State will too receive the same punishment.

Expressions of thought with the intention to critique shall not constitute a crime. The prosecution under this article will require the approval of the Ministry of Justice.

However, commentators have argued that the changes made are merely cosmetic.

The ECHR and the jurisprudence of the ECtHR make it clear that freedom of expression is not an absolute right, and that it can be restricted by measures 'prescribed by law'. However, in order to qualify as a measure 'prescribed by law', any legal provision restricting the exercise of the right to freedom of expression must be accessible, unambiguous, narrowly drafted and precise enough to guarantee that the individuals subject to the law can foresee whether a particular action is unlawful. Furthermore, the law prescribing restrictive measures should provide

for adequate safeguards against abuse, including prompt, full and effective judicial scrutiny of the validity of the restrictions by an independent court or tribunal.⁴ It is submitted that Article 301(4) is nowhere near as clear as it needs to be. In practice, Article 301 has also been the subject of some quite narrow interpretation by the Court of Cassation.⁵ Secondly, any restrictions on freedom of expression must be objectively justified as being necessary in a democratic society. As discussed above, the ECtHR has been clear that with regard to, for example, criticism of politicians, a high degree of protection is afforded to freedom of expression because of the importance of maintaining scope for such criticism in a democratic society. It is hoped that the requirement to obtain the permission of the Minister of Justice will prevent further cases being brought under this article. Yet, in view of the mission, the need to abolish Article 301 remains.

The mission learned that the provisions of June 2005 as a whole have been used in a consistent manner by the authorities to stifle debate and freedom of expression in Turkey. The Turkish Human Rights Association⁶ records that in 2007 alone 190 cases were opened under these new codes against a total of 1232 people. This is a huge amount for what effectively amounts to ‘thought crime’.⁷ There are a number of other articles that were brought into effect in 2005 which add extra penalties if the crimes are committed by the media or publishing houses. For example in Article 216 a person who:

incites groups of the population to breed enmity or hatred towards one another by, for instance, denigrating religious values, shall be sentenced to imprisonment for a term of one to three years but if such offence is committed through media and press, the penalty to be imposed shall be increased by half

In Article 217, a person who commits the crime of

“inciting people to disobey laws” is given an imprisonment of 9 months to 3 years, but if such an offence is committed through media and press, the penalty to be imposed shall be increased by half

This seems to make the promotion of peaceful civil disobedience through the power of the press an action which could lead to imprisonment or large fines, or both.

4 The principles are enshrined in paragraph 1.1. of the Johannesburg Principles on National Security, Freedom of Expression and Accession to Information, UN Doc. E/CN.4/1996/39 (1996)

5 Commission Staff Working Document, Turkey 2007 Progress Report, Brussels 6.11.2007, SEC (2007) 1436

6 http://ihd.tilda.com.tr/images/pdf/human_rights_violation_in_turkey_summary_table_of_2007.pdf (Human Rights Violations in Turkey Summary Table of 2007 – Human Rights Assoc. Turkey – last accessed 17th April 2008)

7 Interview with Ahmet Önal, 12 February 2008, İstanbul

In Article 220/8, a person who “makes propaganda – through the medium of press and media - about the goals of an organization which has been established in order to commit crimes” can be imprisoned for 3 to 9 years.⁸

Given the views of the authorities about reporting on organizations such as the PKK, as in the Önal case, it seems that there are clear dangers in reporting on this subject at all.⁹

Further, the punishments that have been meted out in the past few years have generally taken a more pecuniary angle. The courts can now, for example, confiscate the materials of a publishing house after a finding of guilt in a freedom of expression case. However, as of yet no cases where this punishment is available have been concluded. Fines are being aggressively pursued at an amount of YTL 20,000 on average. When this is not paid, the approach adopted is an equivalent jail sentence being calculated at about YTL 100 per day as a consequence. This financial route could actually in the long-term be more effective in stifling expression as fighting case after case on books and paying legal fees and fines have a very detrimental impact on the ability of publishing houses to continue their operations. Further, in some cases this may even lead to self censorship as people are aware that they have their own personal financial commitments to meet.¹⁰

The mission learned that it is felt that in the last two years progress on the EU accession project has dramatically slowed down. Thus, the number of cases that are being brought against people by the state for ‘thought crime’ under the repressive penal code are increasing. Many directly link this to this slow down of the accession project¹¹ but others take a longer view of the whole issue. They would say that although there is obviously some link to the EU question, they have been dealing with these types of cases for years. They would argue that the problem in Turkey is entrenched and that the system works negatively. The numbers of the articles are changed to give the impression of change but at its heart Turkey does not want to change these laws. It simply wants to maintain the content of the laws whilst getting through the accession process by doing enough good public relations work, including amendments to the code and moves such as timely acquittals in order to

8 Review of the Draft Turkish Penal Code, Freedom of Media Concerns, Miklos Haraszti, http://www.osce.org/documents/rfm/2005/03/14223_en.pdf (last accessed 17th April 2008)

9 For further information on these sections see KHRP Mission Report – “Reform and Regression: Freedom of the media in Turkey”, December 2007

10 Commission Staff Working Document, Turkey 2007 Progress Report, Brussels 6.11.2007, SEC (2007) 1436

11 Interview with Ahmet Önal, 12 February 2008, İstanbul

show a better face to the world at large¹² and the EU in particular, so it can hope to meet the Copenhagen Criteria.

In short they would say that Turkey will require change from within if this change is to be effective, but that at present there is no sign of such a movement from inside Turkish political life.¹³

The June 2007 Turkish Publishers' Association Report on Freedom of Publishing¹⁴ provides a useful source for assessing the progress or otherwise of the Turkish state in its dealings with freedom of expression issues over the past few years. There are a few positive announcements in the report but by and large the report is one of continuing difficulties faced by Turkish Publishers. It rates 2006 as being "one of the most negative years in terms of freedom of expression and publishing". For the year 2006-07 24 publishing houses were taken to court for 43 books they had either written or published. There were 8 acquittals, 13 convictions and 5 dismissals of proceedings, with a further 7 pending a decision.

This concern is shared by the European Union and in the Commission Staff Working Report on Turkey 2007. The Commission noted that the numbers of prosecutions and convictions for expression of non-violent opinions under certain provisions of the Penal Code are a source of serious concern. The number almost doubled in 2006 compared from 2005 and there was a further increase in 2007. Most were brought under the Criminal Code and particularly under Art 301. The restrictive jurisprudence of the Court of Cassation on 301 remains in force. The Commission notes that Art 301 needs to be brought into line with the relevant EU standards. As a result of these findings the Commission notes that the "Turkish legal system does not fully guarantee freedom of expression in line with European Standards"¹⁵.

Unsurprisingly Chapter 23 (Judiciary and Fundamental Rights) of the Accession Process for Turkey to join the EU remains very much open and the conclusion notes that "there has been limited progress in legislation and in practice and no major issue has been addressed and significant problems persist."¹⁶

12 Interview with Rıza Dalkılıç, Chairperson, Human Rights Association, İstanbul Branch, 13 February 2008, İstanbul

13 Interview with Gülseren Yoleri, Attorney at Law, Human Rights Association, İstanbul Branch, 13 February 2008

14 Available at: <http://www.european-writers-congress.org/upload/turkish.pdf> (last accessed 23 may 2008)

15 Commission Staff Working Document, Turkey 2007 Progress Report, Brussels 6.11.2007, SEC (2007) 1436

16 Commission Staff Working Document, Turkey 2007 Progress Report, Brussels 6.11.2007, SEC (2007) 1436 at p63

On a more general basis the perception among human rights groups is that Turkey has deep-seated problems with expressions of free thought and conscience and that many cases are being taken against individuals such as publishers and authors. The Chairperson of the İstanbul Branch of the Human Rights Association Rıza Dalkılıç makes the point that unless you are actually personally involved in one of the cases there is no provision to make submissions to Turkish courts on the wider issues involved, as might happen in the UK through Amnesty International or another interested body. This, he argues, is an attempt to stymie proper debate in the judicial arena.

Further, groups such as theirs are not consulted directly by the government. And while they can give submissions to the government in regard to issues such as the revision of statutes, the effect of these submissions is unclear.¹⁷

The case of Mr. Ahmet Önal must, therefore, be considered within this overall context of the state of the protection afforded to freedom of expression in Turkey. The recommendations made in light of the operation and outcome of this case are shaped by the background against which it took place.

¹⁷ Interview with Rıza Dalkılıç, Chairperson, Human Rights Association, İstanbul Branch, 13 February 2008, İstanbul

2) THE TRIAL AND ITS ORIGINS

The Right to a Fair Trial

The right to a fair trial is a fundamental safeguard to ensure that individuals are protected from unlawful or arbitrary deprivation of their human rights and freedoms, and the right is provided for in various international and regional treaties. The right was set forth in the Universal Declaration of Human Rights (UDHR) in 1948, and it has since been elaborated on and recognized by several international and regional human rights standards. This includes the ICCPR and the ECHR, both of which are binding on Turkey.

Article 14 of the ICCPR stipulates:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

- (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
 6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
 7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 6 of the ECHR stipulates:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order

or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and the facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

The Defendant¹⁸

Ahmet Önal is the owner and chief editor of Pêri Publishing House in İstanbul, which was founded in 1992. Despite being relatively small-scale in terms of book sales, Pêri Publishing House is nonetheless significant with regard to the type and number of publications that it chooses to produce. Alongside works on contemporary politics, literature and texts in translation, many of its publications focus on the Kurdish people, specifically their history as a people divided between several states.

Mr Önal himself is no stranger to the criminal justice system in Turkey. Given the subject matter of many of the books he publishes and Turkey's ongoing failure to afford its citizens the basic right to freedom of expression, he has been an almost monthly attendee at the various courts of İstanbul. Furthermore, his publishing

¹⁸ The following section is based on interviews and evaluations with Mr Önal on 12 and 13 February 2008 and also with his lawyer Ümit Timoçin on 13 February 2008 after the trial concluded.

activities have resulted in a seven-year spell in prison and large fines from the Turkish courts. Nonetheless, he is recognised by his peers for his work and dedication to his beliefs, and was as a result awarded the Turkish Publishers Freedom of Expression Award in 2001 for his efforts.

According to the record of Mr Önal's lawyer, there are currently 12 cases pending against him in the courts, including the trial that was observed during this mission. Having been denied legal aid or public assistance for his legal expenses, this lengthy process is likely to exact a heavy financial toll on his publishing business. Moreover, it is common for publication sales to be restricted during legal proceedings. However, it is clear that the primary drive of Mr Önal's publishing business is not to increase profit margins due to the inherent difficulty of such a prospect in the context of the attitude and practice of the Turkish authorities. (Indeed if a similar law to the UK Proceeds of Crime Act operated in Turkey this would undoubtedly prove ruinous for Mr Önal and his fellow publishers.) In contrast, when the court convicts, it does take into account the price of the book, the number of copies published and amount of copies sold in assessing where to fix the fine level.¹⁹

The Case

Ahmet Önal was charged with disseminating propaganda on behalf of the PKK/Kongra Gel Terror organisation, under Articles 220/8 and 53 of the Turkish Penal Code, law no. 5237 with reference to Article 314/3.²⁰

The evidence against him is the content of certain sections of the book *Diaspora Kürtleri* (Diaspora Kurds). The book came to the attention of the authorities because of publishing laws that require numerous copies to be sent to government departments to undergo official review. The fact that the basis for this prosecution is only a few paragraphs found on page 182 of the book suggests the particularly comprehensive nature of this government review process. This helps to explain the huge number of prosecutions against publishers and writers at present.²¹ The author of *Diaspora Kürtleri* is not in Turkey at present, and has therefore not been prosecuted alongside Mr Önal.

The prosecutor's final opinion of 14 December 2007 states that;

Since it has been ascertained that on page 182 of the book, the *Diaspora Kurds*, published by the Peri Publishing House, of which Ahmet Önal is the owner, the activities of the PKK armed terror organisation, which has adopted terror and

¹⁹ Interview with Ahmet Önal, 12 February 2008, İstanbul

²⁰ See Appendix A – Indictment Against Ahmet Önal

²¹ See Appendix D - Investigations against those who expressed their opinions in 2007, İHD

violence as a method, is praised and its propaganda disseminated, the offence in question has thus been committed. It is therefore requested that the accused be prosecuted and convicted...²²

The Response of Mr Önal in his defence statement sets out that the case is to be fought on the basis of factual, contextual and also legal rights grounds.²³ Firstly, Mr Önal asserts that no such organisation as the “PKK/Kongra Gel” was mentioned anywhere in the book, and indeed the name did not even exist during the period covered by the book (1989-1999).

Secondly, he submits that the book must be set in its proper context. The author, Hejare Samil, endeavours to analyse the wishes and desires of the Diaspora Kurds. Accordingly, the book explains how the PKK had the chance during the period in question to gain broad support amongst the Kurds of the former Soviet Union, and ultimately how this opportunity was missed as a result of the policies it pursued, resulting in its marginalisation. On this basis, he describes the book as a ‘Historical and Contemporary Study’.

Lastly, having established the contextual basis for contesting the case, Mr Önal asserts that the book is published clearly within the boundaries of press freedom and freedom of expression. To conclude, he reminds the court of Turkey’s responsibilities under the European Convention on Human Rights, of which it is a signatory. In short, in light of this duty under the ECHR, cases such as his should not be considered.

The Hearing on 13 February 2008

The final hearing in Ahmet Önal’s case took place at İstanbul’s Heavy Criminal Court Number 11, two years and four months after the date of his alleged ‘offence’. His lawyer, Ümit Timoçin, who acts on his behalf regarding all the cases against him, represented the defendant.

The KHRP mission member was the only international observer present for the final hearing at the court. There were no problems experienced during the observation of the trial and free access was granted both to the building and also the courtroom. However, it was noted that the defendants, lawyers and supporters entered the court only as the court clerk summoned each case. Thus, although the court was nominally public, in practice it appeared that each case was kept very separate. This contrasts with the practice in the UK, according to which they would remain in the court awaiting their turn.

²² See Appendix B – Final Recommendation of the Prosecutor

²³ See Appendix C – Brief Summary of the Defendant’s Statement.

The mission's request to meet with the prosecutor did not meet a positive response. In this instance, notes were taken by KHRP's interpreter Kawa Nemir and relayed to the mission afterwards. The court had been made aware of the presence of KHRP prior to the hearing.

It was noted that the layout of the court differed considerably from that of a standard UK court. Unusually, the public prosecutor sat on the same bench as the three judges on their right, and his robes appeared to be the same as those of the judges. Further, it was observed that the prosecutor and judges rose together during the hearing and appeared also to retire together. Such proximity between prosecution and tribunal could very easily lead to the suspicion or perception that the court was not 'fair and impartial', the standard required by Article 6 of the ECHR.

By contrast, a considerably long distance separated defence counsel and the defendant. The former was placed at a small school-like desk on ground level to the left of the judges, who were sat on a raised bench with the prosecutor. The layout of the court, therefore, resulted in the impression that it was designed to intimidate and belittle the defendant due to his position in the middle of the court looking up at the judges and prosecutor, whilst also isolated from his own counsel. Defence counsel made no mention of the court layout before or after the trial, indicating that such an arrangement probably represents the norm.

Defence Counsel opened his case before the three judges by initiating a process similar to the abuse of process application. He stated that in 2005, at the very start of the entire process, it had been indicated that if Mr Önal paid a fine of 20,000 YTL he would be acquitted in this case. He added that this suggestion breached No. 75 of the Turkish Criminal Code and also No. 36 of the Constitutional Code, and as a consequence, the trial should be heard *ab initio* in front of the Constitutional Court. Accordingly, under such review the case should then be dismissed. Indeed, such statements by the court in the early stage of proceedings represent a major departure from the presumption of innocence under Art 6(2) of the ECHR and 14(2) of the ICCPR.

The court then adjourned, but after a brief period of consideration, came back out and stated simply that the submission was rejected as unacceptable.

The public prosecutor (sitting on the same bench as the three judges) then addressed the court, stating that Ahmet Önal, as owner and chief editor of Pêri Publishing House, was responsible for the book in question. Furthermore, he stated that the book was representative of the author's beliefs and statements, namely his support for an illicit organisation known as the PKK.

In addition, it was alleged that by using photographs of Abdullah Öcalan (the incarcerated PKK leader), the author was willingly producing propaganda for the PKK. Accordingly, as publisher, Ahmet Önal was to be held responsible due to the author's unavailability to the court, and should be convicted as charged.

Following this, defence counsel re-addressed the court and outlined Turkey's responsibilities under the ECHR, dismissing the claim that the book contained pro-PKK propaganda, and that as per the ECHR there were no grounds for a finding of guilt in this case.

Ahmet Önal then addressed the court in defence of himself and his actions. He claimed that cases such as his were indicative of Turkey's inability to overcome the paranoia that permeates its legal system. He submitted that the book in question clearly does not advance propaganda for the PKK, but actually offers a critique of the group in reviewing the rise and fall of its popularity in the former Soviet Union. In any case, he observed that as a publisher he had evaluated the book and decided to proceed because he believes in freedom of thought and that such works deserve to be circulated.

The lead Judge subsequently read out the court's decision, stating that although any individual promoting propaganda for a group such as the PKK should be punished, it was obvious that the book as a concept was simply researching the Kurds living in the former Soviet Union.

The mission noted the unusual manner in which the decision was handed down. The fact that it was pre-typed and then handed down for the record gave the impression that the 'final hearing' was very much a cosmetic exercise, and that the decision was a foregone conclusion, regardless of any arguments advanced during the final hearing.

The court 'understood' that the book did not attempt to be propaganda on behalf of the PKK. Thus under Code No. 223/2 they directed the acquittal of Ahmet Önal and directed that a copy of the book be kept on file. The Court also ordered the payment of 1,100 YTL by the state to Ahmet Önal.

The public prosecutor was granted 15 days by the court to appeal its decision. KHRP has subsequently learned that, as expected, the prosecutor did lodge an appeal with the Appeal Court. Ahmet Önal is, as a result, awaiting the decision of the higher court. This will either overturn the lower court's decision and send the case back for a rehearing, or it will accept the decision of the court as final, thus terminating proceedings. No indication has been given at this point as to when a decision can be expected in this appeal. KHRP is unaware as to whether the appeal is based on factual or legal grounds, or elements of both.

Analysis of the Trial

The court's decision to acquit Ahmet Önal is a welcome, if unexpected, conclusion. Both Mr Önal and his defence counsel had been very clear beforehand in admitting that they expected a conviction in the case due to the political nature of the charges and their previous experiences with similar situations.

They identified the presence of the KHRP mission as being very significant in the outcome of the case. It was felt that as the court knew that there was an international observer present it would want to have Turkey and its criminal justice system portrayed in a better light than would otherwise have been the case. They also expressed a belief that the prosecution would appeal in due course and that the case was in all likelihood far from over. As was outlined above, this prediction proved to be correct. The question must be asked as to whether there is likely to be a different outcome on appeal, given the fact that the international observer element may not apply.

The application made by defence counsel at the start of the hearing was notable because it raises the concern that there was not a 'fair trial' within the meaning of Article 6 of the ECHR despite the acquittal. Given the court's comments at the beginning of the trial process in 2005 about the payment of a fine leading to an acquittal, it seems clear that the 'independent and impartial' requirement of the court was clearly lacking in this case. Given this indication the KHRP mission presence cannot be underestimated, nor can the exposure of the Turkish courts to outside pressures.

As indicated above the comments of the court that led to the 'abuse of process' application reflects the fact that the 'presumption of innocence' is not afforded protection by the court. Furthermore, given that the case took approximately 2.5 years to complete, it is of concern that Mr Önal was not afforded a trial within a reasonable period as required under the ICCPR and ECHR.

The facts of Mr Önal's case very clearly indicated not only that the prosecution should not have been brought in the first place, but that he was fully legally entitled to his acquittal. The public interest in bringing a case like this seems to be minimal. What is to be gained by bringing a prosecution over a few paragraphs of a book with a circulation of only a few thousand copies when these paragraphs obviously do not reflect what the prosecution purport them to say? The simple answer is that they are designed to cause disruption and exert pressure on what people choose to think, write and publish.

This case also made clear to the mission the severe economic impact such cases have on publishers. The amount of money spent on legal costs coupled with the time which is spent in courts instead of running a business is significant. The prosecutions,

whilst having the possibility of leading to convictions and imprisonment and large fines, also seem to have a dual purpose in that while not always successful in legal terms they keep the publishing houses occupied and disrupt their businesses. Furthermore, it can also lead people to practice self-censorship so they can avoid unnecessary attention and run their businesses at a profit.

3) OTHER PUBLISHERS ON TRIAL

During the course of the mission, KHRP had the opportunity to meet with other publishers facing trial and human rights groups and lawyers who are helping them to defend the ‘political’ cases being taken by the Turkish authorities.

Muzaffer Erdoğan

Muzaffer Erdoğan is the owner of the Pencere Publishing House. Pencere Publishing House published an historical report known as the ‘Blue Book’. The authors, Viscount James Bryce and Arnold Toynbee, were commissioned by the British parliament 90 years ago to write an account of the situation of Armenians in the Ottoman Empire amid the reports of the ‘Armenian Genocide’.

Bryce and Toynbee wrote the report as commissioned and, as a result of their findings in 1916, the Blue Book was published by the UK parliament. The report is quite clear in its conclusion, identifying the events of 1915–16 as a systematic effort to exterminate the Armenian people. The Blue Book has as a result become one of the most solid and influential sources on the Armenian Genocide.

Pencere Publishing House published this book in Turkish, and as a result the publisher has had to face the politically-driven legal consequences. It has become a very high-profile case, which has been the subject of comment by highly-placed individuals within the Turkish state.

Former diplomat and current CHP (Republican People’s Party known for his mainstream Kemalist Party stand) MP Şükrü Elekdağ personally filed a libel case against the publisher,²⁴ translator Ahmet Güner (not the translator’s real name),²⁵ and renowned Turkish historian Taner Akçam who had an excerpt published in the book. The claim on behalf of Elekdağ is that as a member of the Turkish parliament he has been insulted in the foreword of the publication. Such action taken by a

24 <http://www.armtown.com/news/en/asb/20060418/2006041804/>, Armenian News, April 16 2006

25 Interview with Muzaffer Erdoğan, 13 February 2008, İstanbul

representative of the state demonstrates a clear willingness to use both criminal and civil sanctions in order to stifle freedom of expression.²⁶

This case is still proceeding through the court system. The last hearing took place on 14 February 2008 in Ankara. However, as is often the case, very little of a substantive nature occurred and the matter was adjourned until September 2008.

It seems hardly credible that a libel case can be brought by a MP against the publication of a 90 year-old book in Turkish about the Armenian Genocide, which does not appear to personally defame him in any way. The politicised nature of this case is illustrated by the fact that Şükrü Elekdağ was able to obtain the signature of the approximately 550 members of the Turkish parliament to a resolution that was sent to the UK parliament. This resolution denied the existence of the Armenian Genocide identified in this book, and more specifically the excerpt by Taner Akçam²⁷.

Mr. Erdoğan is acutely aware of the reality of the problems he faces in defending the case against him. At one of the early hearings of the case Şükrü Elekdağ actually warned the judge in the case that he was a MP and that he had previously been a diplomat for Turkey abroad, and asked the judge to bear those factors in mind when he finally comes to give a decision in the case. It is hard to think of a more explicit example of political interference in the judicial process than this warning. This lends further credence to the belief that when his case is finally heard in this matter it is unlikely to be before an Article 6-compliant court. It is unclear how a court could be expected to be 'fair and impartial' when subject to such comments.

However, the mission learned there have been some encouraging signs in terms of dealing with 'political' interference in the judicial process. In January 2008 the lawyer Kemal Kerinçsiz, who had prosecuted Orhan Pamuk and other prominent writers, was arrested along with 32 others following the discovery of a weapons cache in İstanbul last year. Arrested alongside him was a retired general and other army officers. The cases he brought, primarily under Article 301, became the settings for ultra-nationalist demonstrations and intimidation. One of the people

26 In fact the greatest number of libel cases instigated by one person in recent times is by Prime Minister Erdoğan at 57. Of these only ten were rejected by the courts, 21 ended in him being awarded damages by the courts and 28 more are still continuing. Although the secularist mindset in Turkey is deep seated, the PM himself now faces the prospect of his own AKP party being banned because it stands accused by the Chief State Prosecutor of 'anti-secular activities' <http://news.bbc.co.uk/1/hi/world/europe/7298291.stm> (last accessed 17 April 2008)

27 Interview with Muzaffer Erdoğan, 13 February 2008, İstanbul

he pursued under this law, Hrant Dink, was shot dead outside his office in İstanbul in January 2007.²⁸

Hamit Kankılıç

Hamit Kankılıç is the director of Aram Publishing House in İstanbul. This is very much a new incarnation of an older business operating as 'Aram Publishing House' under director Fatih Taş. The previous Aram Publishing House faced many cases about translations of books by American authors including Noam Chomsky, many of which are still ongoing.

In an interview with KHRP Hamit Kankılıç outlined how his publishing house is expecting to be the subject of a new indictment in the near future.²⁹ The anticipated indictment relates to the publishing of a book entitled *What do the Kurds Demand?* This book is a compilation of the thoughts of the Kurdish people since PKK leader Abdullah Öcalan was captured, and discusses the issues that need to be addressed if there is to be a solution to the Kurdish political problem in Turkey.

The first indication of a problem with the content of the book came when an order was issued requiring the confiscation of the book and also the banning of its distribution. However, by the time this order had been issued some copies of the book had already arrived in Elazığ in eastern Turkey at a bookstore that has known links with the Aram Publishing House. As a result, the authorities came looking for these copies. Aram sent a paper to the court protesting the confiscation order. However, the public prosecutor is expected to press on with the indictment against the author Sarya Baran who is abroad, and, therefore, as a consequence bring an indictment against the publishing house.

The book is considered to be very important by Aram because it he believes that such books should help to find a solution to the problems faced by the Kurds and Turkey. The book, according to the publisher, tries to explain what exactly the problems that are faced are, and where compromise can be made. Undoubtedly, similar books will be printed in the future, thus it is important that the anticipated prosecution of this book be successfully challenged to enable the free discussion and dissemination of ideas that are important in a 'free' society.³⁰

These two publishers are facing very similar problems to those faced by Ahmet Önal. By simply publishing books that contain ideas which do not accord with the views of those in positions of authority they will face harassment, persecution and prosecution for their actions. In the view of the mission, books such as these are necessary in a healthy democratic society, and these individuals in publishing such

28 Pamuk Prosecutor Arrested, Charged in Plot, Pen, www.pen.org/viewmedia.php/prmMID/1877 (last accessed 21 May 2008)

29 Interview with Hamit Kankılıç, 13 February 2008, İstanbul

30 Interview with Hamit Kankılıç, 13 February 2008, İstanbul

works are displaying no small amount of personal courage in terms of not only the potential risks for the health of their business interests, but also their personal liberty. The prosecutions being brought are further evidence that Turkey has a long way to travel in its protection of freedom of expression before it fulfils the requirements for accession to the EU.

4) CONCLUSIONS AND RECOMMENDATIONS

The trial of Ahmet Önal at first instance signifies that although the Turkish judicial system is capable of coming to the 'right' result, the process by which it arrives at that result is a very flawed one indeed. Cases like this should simply not occur in a modern democracy. The ability to criticise the state and debate awkward issues, such as the Kurdish issue and the Armenian Genocide, in a rational and controlled way should be the sign of a healthy democracy.

The mission learned that the state, through various devices and practices, is able to stifle debate, repress comment and generally restrict the exercise of the right to freedom of expression. Moreover, this power continues to grow. KHRP now awaits its decision of the Appeal Court.

It has become evident that the problems surrounding the protection of freedom of expression are ones with which Turkey is going to grapple for some time to come. The sheer number of prosecutions and personal defamation actions being brought are indicative of a state that is not yet ready to fully comply with the Copenhagen Criteria in order to be able to conclude satisfactorily the EU accession process. This is not to say that this is the only problem Turkey faces in its attempts to join the EU but it is a very important one indeed.

The mission learned that the window of opportunity for the EU to have a real influence on Turkey in regard to these restrictive laws may be reduced if the support levels for joining the EU continue to fall as they have done over the past 12 months. If Turkey was to reach a stage where the people no longer saw EU membership as the way to proceed, then the will for amending these restrictive laws may not exist. It is much easier for the EU to influence these matters in Turkey when it is able to offer inducements for compliance. However, if the EU project is scrapped or continues to drift along aimlessly as it seems to be doing at present, then the likelihood of the necessary reforms taking place appears slim. It is important that the EU continues to consider each of the 35 Chapters being negotiated in the EU accession process as being necessary. Indeed it should be the case that concerns about freedom of expression and personal freedom are as important, if not more important, than economic concerns and that this should be reflected in the negotiation process.

This report urges the Republic of Turkey to;

- Uphold its commitment to reform and to honour the obligations that flow from the EU accession negotiations, including the Copenhagen Criteria, in order to guarantee the right to freedom of expression and to facilitate the arrival of a political and cultural dialogue in Turkey.
- Repeal any anti-democratic provisions that impinge upon the right to freedom of expression, and to bring its legislation in line with relevant European standards through full implementation of the EU accession reforms, including but not limited to Article 301.
- In the interim period prior to the formal repeal of these provisions Turkey should commence no further malicious prosecutions and those pending should be withdrawn to lessen the financial burden on those affected by these prosecutions.
- Honour the obligations which follow from the country's membership of the Organization for Security and Cooperation in Europe (OSCE), including the obligation to play a positive role in order to contribute to the facilitation of freedom of expression, and to guarantee the independence of the media, including publishers, as envisaged in the 1989 Vienna and 1991 Moscow Documents.
- Ensure more generally that all non-violent expressions of dissenting or alternative opinion are free from censure, harassment or criminal prosecution, and that any unjustified restrictions imposed on the right to freedom of expression are not tolerated.
- Introduce further training for the judiciary, prosecutors and state officials regarding international human rights standards in order to ensure that judges and prosecutors are aware of, and implement the principles of freedom of expression as established in the jurisprudence of the ECtHR.³¹
- Actively support and encourage civil society organisations in Turkey in order to promote a climate of political and cultural dialogue that could herald the arrival of democratic reform.
- Recognise the important role that civil society organisations play in a democratic society, and in this regard adopt policies in accordance with EU

31 Commission Staff Working Document, Turkey 2007 Progress Report, Brussels 6.11.2007, SEC (2007) 1436 at p63

and OSCE strategies in order to guarantee the involvement of civil society organisations in Turkish society.

This report urges the European Union to;

- Continue to closely monitor the reform process in Turkey, including the situation regarding freedom of expression, and to exert considerable influence in order to ensure that Turkey stays committed to reform and complies with the Copenhagen Criteria.
- Uphold its commitment to the reform process in order to ensure that the integrity of the principle of freedom of expression is upheld throughout the accession reform process. This commitment should form a touchstone issue for the EU in the accession process, and should not be lost in the consideration of the economic issues of Turkey joining the EU.
- Continue its criticism of the Turkish Penal Code, and to continue to closely monitor all trials in Turkey related to freedom of expression ‘offences’.
- Take into account that there are provisions of the Turkish legislation other than Article 301, including in the Press and Anti-Terror Laws, which impose restrictions on the right to freedom of expression.
- Actively support and encourage civil society groups in Turkey in order to promote a climate of political and cultural dialogue that could herald the arrival of democratic reform.

Appendix A- Indictment Against Ahmet Önal³²

T. R.
İstanbul
Public Prosecutor's Office
(With jurisdiction from law no. 5190)

Investigation no: 2005/2194
Principal no: 2005/876
Indictment no: 2005/876

Indictment

To the İstanbul no. () Serious Criminal Court

Plaintiff: Public Law

Accused: Ahmet Önal/ son of Rıza and Güllü, born in Kiğı in 1956, registered in Çevreli village, Adaklı district, Bingöl province. Currently domiciled at Söğütlü çeşme sok. Pavlonya sok Nuhoglu apt. No. 10/19 Kadıkoy, İstanbul.

Offence: Disseminating propaganda for the PKK/Kongra Gel terror organisation

Date of offence: November 2005

Place of offence: İstanbul

Article of law: articles 220/8 and 53 of the Turkish Penal Code (TCK) law no. 5237, with reference to article 314/3

Evidence: The book 'The Diaspora Kurds' published in November 2005, the defence of the accused and criminal record

Investigation documents examined

In an article penned by Hejare Şamil, who resides in Moscow, published on page 182 of the book 'Diaspora Kurds', published by the Peri Publishing House, owned

32 Unofficial translation of original document provided to mission member

by accused Ahmet Önal, the following passage appears: “In this period, the growth of the PKK movement, originating in northern Kurdistan, profoundly excited the Kurds of the Diaspora. The commencement of organisational activities by the PKK in the former Soviet republics from 1992 onwards further increased the interest of the Kurds in these countries in the freedom struggle. The PKK played a significant role in the organisation of diaspora Kurds towards national goals between 1993 and 2000. A significant section of the Soviet Kurdish intelligentsia, attached through natural patriotic feelings towards their motherland and nation, took its place under the organisational umbrella of the PKK.

The PKK rapidly became the favourite of the Kurdish Diaspora. The early 90s were from the political and military aspects the PKK’s years of rise and peak. Due to the fact that this organisation was fighting a NATO ally, Turkey, it had a terrific potential for propaganda, resulting in it gaining support from not just the Kurds, but also from other nations in the former Soviet Union, who were still affected by the disappointment of its collapse.

The reasons the PKK influenced Soviet Kurds and established a broad organisational network may be summarised as follows:

During the years that the Soviet Union was disintegrating national consciousness developed amongst the Kurds, and national-cultural organisations were created, like amongst other peoples who constituted the ‘Soviet people’. The coinciding of this process with the PKK’s military and political rise in North Kurdistan aroused sympathy amongst politically aware patriotic sections of the Kurds even prior to the commencement of actual organisational activities..... In this respect, the PKK, waging an armed struggle against Turkey in order to establish an ‘independent Kurdish state’ was greeted enthusiastically in the diaspora.

The PKK was able to recruit more than 200 young people to its armed struggle ranks and attached importance to establishing local cadres. These fighting cadres established emotional links with the people, serving to consolidate organisation. Consequently, the natural patriotic base and the recruitment abilities of the PKK made this organisation a force in the CIS. The work carried out by the PKK over a more than 10 year period had a beneficial effect on developing national consciousness, feelings of solidarity and social/political organisation amongst the Kurds of the CIS”

It has been ascertained that by the publication of these statements propaganda was made for the armed PKK/Kongre-Gel terror organisation.

In his defence taken at our Prosecutor’s Office accused Ahmet Önal said the writer of the book was Hejare Samil, born in Azerbaijan and living in Russia, that the book

had been published by his publishing house, but rejected the charges, saying that it did not contain propaganda for the organisation.

Since the writer is abroad then in accordance with article 11 of press law no. 5187 penal responsibility lies with the accused who published the work, therefore it is necessary for a public prosecution to be filed.

It is therefore requested that the accused be tried in accordance with article 175 of the law on criminal court procedure and prosecuted and convicted in accordance with articles 220/8 and 53 of the TCK law no. 5237, referring to article 314/3, and that the book remain in the file as evidence.08.12.2005

Fikret Seen-34460
İstanbul Public Prosecutor

Appendix B - Final Recommendation of the Prosecutor ³³

T. R.
İstanbul
Public Prosecutor's Office
(With jurisdiction from article no. 250 of law on criminal court procedure)
Principal no. 2007/304

Recommendation regarding the principal
To the Presidency of the no. 11 Serious Criminal Court
İstanbul

Plaintiff: Public Law
Accused: Ahmet Önal
Offence: Contravention of law no. 3713
Date of offence: November 2005

When the case filed, trial and all evidence is evaluated:
Since it has been ascertained that on page 182 of the book, the Diaspora Kurds, published by the Peri Publishing House, of which Ahmet Önal is the owner, the activities of the PKK armed terror organisation, which has adopted terror and violence as a method, is praised and its propaganda disseminated, the offence in question has thus been committed.

It is therefore requested that the accused be prosecuted and convicted in accordance with article 53 of law no. 5237 and article 7/2 of law no. 3713 prior to its change to law no. 5532, which is in favour of the accused, and that the confiscated copy be preserved in the file as evidence.

14.12.2007

Celal Kara-36921
İstanbul Public Prosecutor

33 Unofficial translation of original document provided to mission member

Appendix C - Brief Summary of the Defendant's Statement³⁴

Summary of the Defence by Ahmet Önal

To the İstanbul no. 11 Serious Criminal Court

Preliminary no: 2005-240

Regarding: My defence with regard to the numbered file above

Allegation: It is alleged that the book titled 'Diaspora Kurds' written by Hejare Samil and published by Peri Publishing House, of which I am the owner, committed the offence of 'disseminating propaganda of the PKK-Kongra Gel terror organisation, in contravention of articles 314/3 and 220/8 of the Turkish Penal Code'.

My defence:

Prosecution: It dwelt in a biased way on a section of the book on page 181 under the sub-heading 'The existing social, political and organisational position of the Kurds of the CIS', virtually plucking with tweezers a few paragraphs, in which the author explained, while examining the PKK's activities amongst Soviet Kurds, how, for a period, the PKK had an influence amongst the Kurds in the CIS, thus reaching a highly erroneous conclusion separate from the general context of the book.

In the book as a whole processes and developments were addressed as a whole and emphasis is placed on how the PKK became marginalised in CIS countries in the period subsequent to 1999. The writer, Hejare Samil, endeavours to analyse the wishes and desires of the Diaspora Kurds, explaining how the PKK gained the chance between 1989 and 1999 to gain broad support amongst the Kurds of the CIS, how and as a result of which policies it subsequently lost that support and became marginalised, dwelling on how the 'passion' of the PKK militants enabled them to quickly get involved with the people, analysing the reasons that 'centralist', 'undemocratic' and 'purely ideological' approaches lost them their support, providing an academic, analytical study of 'Soviet Kurds' or 'Diaspora Kurds' living

34 Unofficial translation of original document provided to mission member

in the CIS republics, endeavouring to give a historical analysis of the situation of the Kurds spread all over the region. For this reason he described the book as a 'Historical and Contemporary Study'.

The writer endeavoured to document and analyse the situation of the Kurds in the Diaspora by observing their political and intellectual tendencies.

In brief: there is no aim in the book to 'make propaganda for any organisation.' As regards the PKK, as mentioned above and in the book, it explains the situation of the people, the inclinations of the Kurds, the approach of the PKK, its working methods, how the yearning of the people initially meant it reacted warmly to the PKK, whereas after 1999 the people distanced itself from the PKK and, in essence, criticised the PKK. It dwells upon the many solutions sought by the Kurds in the Diaspora, that is, in the Commonwealth of Independent States (CIS), reaching the conclusion that they were insistent in their identity and democratic demands, this being the summary of this section.

Nowhere in the book does the name 'PKK-Kongra-Gel' crop up. This trial is entirely the result of the prosecution's 'forcing itself to open a case'. In the period in question (1989-1999) there was no such organisation as PKK-Kongra-Gel. As far as I know this organisation was founded after 2003 when the PKK had abandoned many of its old views and proposed the idea of a 'Democratic Republic'.

The prosecution acted with such prejudice that it proved it could not even tolerate criticism of the PKK, that even concerning Kurds in any part of the world it endeavoured to show it had no tolerance, submitting an indictment virtually forgetting such human virtues as human rights, democracy and freedom of expression. If with the book I had had an idea to make PKK propaganda it would not have been possible for me to publish a book using concepts such as the PKK is 'extreme centralist', 'anti-democratic', 'not seeing the specific situation of the people, thus becoming marginalised' etc.

It is necessary to point out that all states and organisations that take a peasant mentality as a basis and feature populist approaches have anti-democratic characteristics, since these formations have not modernised or become enlightened and are thus intolerant of the free debate of ideas. In this respect I believe that the prosecutor, in launching an investigation into a book that criticises the PKK form of organisation, if he has understood the content of the book, that is, then his intolerance of the freedom of expression and the PKK's 'centralism' and attempts to punish those who criticise it are on the same parallel.

I must clearly state that the violence of the state and the violence of the PKK have nourished each other. This situation has prevented academic research on the

Kurdish question and the production of solutions. Linked to the 'Kurdish question' solutions to the question of democracy, human rights, the consolidation of law, economy, migration, competition with the world, integration, employment, health, planned urbanisation, traffic and other problems have also been blocked. Everyone with common sense knows that this environment of conflict has for years created instability by nourishing a gang culture, as exposed by the events in Semdinli, Hakkari on 9 November 2005, and detailed by the Van prosecutor in his indictment. Both these two mentalities which have chronically worsened problems are far from democratic and are not modern. Both are from the Middle Ages. Since they aim to profit politically and economically in an entirely dark environment it is first and foremost the state and on the other front the PKK acting in parallel that do not want us to resolve our problems in a democratic, free and entirely violence free environment through research and debate.

State officials have from time to time said 'there is a Kurdish problem'. They have said: 'the state has also made mistakes'. But they have never explained what the mistakes were. The authorities virtually dread the idea of debating the Kurds and the Kurdish question. The academics are timid about debating the issue. Our politicians fear developing policies on this question. The one thing they have memorised is: 'Terrorist PKK', which they parrot, the real aim being to manipulate the 'Kurdish question'. Those who wish to debate the issue and those who wish to go beyond the official limits do not want to even think about it given the fact they will be subjected to investigation. This vicious circle has facilitated/facilitates the emergence of violence rather than democracy.

In fact the indictment containing the accusation is more of a slander than an indictment. This is what I feel I am faced with.

The book is, in general, a document detailing the political history of the Kurds of the Diaspora, that is, the CIS, with its various aspects. It is a great injustice to accuse the book of disseminating propaganda as it diminishes its scope. The accusation is entirely wrong and I reject it vehemently.

Additionally: The views aired in the book are entirely within the boundaries of press freedom and freedom of expression, since there are no attacks on persons or encouragement to commit violence or a crime. The content is of the character of a critique.

As a publisher while not agreeing with the content of all publications I publish them within the limits of freedom of expression. I published this book as I saw it in this framework.

Ideas should be debated in public and on platforms, not in court judgments. Sanction for ideas and research should be in public interest, not in imprisonment and fines. It is opposition views that need protection, not generally accepted views. The concept of freedom of expression and of the press developed in order to protect unorthodox views.

Law is universal. The freedom to think and to publish what you think is one of the most natural rights. Turkey is a signatory to the European Convention on Human Rights, but with its existing practice I am of the opinion that in Turkey this convention is being violated.

Conclusion: For the reasons I have laid out I believe the investigation and case against me is inappropriate/unjust.

24/03/2006 Ahmet Önal

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