

AN EFFECTIVE INVESTIGATION AND HRANT DINK'S TRIAL

Two years have already passed in the trial concerning Hrant Dink's assassination (registered with case no: 2007/428 at Istanbul's 14th Heavy Penal Court), which is a considerable period of time. At this point, it is of crucial importance for a fair, effective and efficient investigation to assess whether the on-going trial has come closer to reaching its goal and to what extent the proceedings and interim decisions have been able to reveal the material facts.

In this trial, we –as the intervening party- were not involved in the investigation phase due to the confidentiality decision taken for the whole dossier.

Although we are making great efforts in the prosecution phase to reveal the material facts, we cannot possibly assert that our efforts yielded results and brought us closer to the material facts as the court systematically declines our requests; which –in our opinion- will push the limits and boundaries of the prosecution that were drawn with the indictment, will offer new opportunities in the process of revealing material facts and may therefore affect the course of events in the trial.

As for our requests which have been accepted, they are not being fulfilled by the relevant institutions and satisfactory replies are not being given to the letters sent by the court.

I) If we are to give examples to our requests which are declined systematically;

For instance;

1. Our assertion that the accused persons in this case are merely part of a deeper, larger and more professional organisation is being corroborated each day with inquiries, investigations and developments taking place outside the scope of this case.

The case at Trabzon 2nd Criminal Court of Peace where Gendarmerie officers from Trabzon are on trial, the investigations underway concerning the officers of Trabzon and Istanbul Security, the report of the Prime Ministry's Inspection Report and the report of the TGNA's Human Rights Committee all point to a fact that can no longer be concealed; the security and intelligence units of the State have a significant role in Hrant Dink's assassination.

For that reason, we stated that all cases and investigations related to this case should be carried out by a single authority starting from the investigation phase and that it was impossible to reach the material facts through separate and fragmented cases and investigations. We underlined that all cases and investigations had to be consolidated under the main case. However, our requests for consolidation were turned down by the court each time.

2. We had requested that Istanbul Security Director of the time Celalettin Cerrah, Istanbul Head of Intelligence Section Ahmet İlhan Güler, Head of Intelligence Department at the Security Directorate General Ramazan Akyürek, Trabzon Security Director of the time Reşat Altay and Trabzon Gendarmerie Regimental Commander Colonel Ali Öz be heard as witnesses in order to investigate the murder and the roles and flaws of State officials. However, our demands have been rejected by the court.

3. In his article “Why I’ve been chosen as a target” published in Agos newspaper on 12 January 2007, Hrant Dink recounts the process whereby he was shown as a target and cites the meeting at Istanbul Governorate as its starting point.

Due to the importance of this meeting, we requested an inquiry about the identities and titles of the State officials present in the meeting as well as in which capacity they participated. Following our request, the Court decided with its interim decision dated 02.07.2007 to have a “letter sent to Istanbul Governorate inquiring about the titles and duties of security officers present in the meeting held with slain Firat Dink in Istanbul Deputy Governor Ergün Güngör’s office”. Although the question is fairly simple and clear, the Istanbul Governorate did not give the answers to these questions in its reply.

For that reason, we requested the renewal of the mentioned decision and asked them to send another letter requesting the identities, titles and duties of the security officers present in the meeting with Hrant Dink. However, the court turned down our request on grounds that the request had already been accommodated.

Such rejections entail, in a way, the risk of distracting the trial from its purpose and turning it into a sham trial.

II) As we have mentioned above, the Court accepted some of our demands. Nevertheless, [the requirement stemming from] the accepted demands of ours have not been met by the relevant State institutions, and no satisfactory responses were given to the letters sent by the Court.

For instance;

- 1- During the investigation phase, decision was taken to examine the computer records of the prison where the suspect -Yasin Hayal- was kept arrested. At the end of the inspection, the staff of the Cyber-crime Section under Data Processing Branch Directorate drafted a report where it was noted that no examination could be conducted since the passwords of the folders could not be broken.

Since there was information in the case file, which drew attention to the relations/connections Yasin Hayal established during the time he was under arrest, we demanded that these passwords be inquired from the Directorate General for Prisons and Detention Centres under the Ministry of Justice, and that the folders be opened.

The Court agreed with this demand, and wrote a letter to the relevant institution. However, the answer received in return said that the demand was not fulfilled ‘since the content of the demand was not fully comprehended’.

Upon this development, we reiterated our demand, attaching the relevant correspondence to our petition. This time a CD, which was claimed to have Yasin Hayal’s voice records, was sent to the Court. For the purposes of deciphering the CD, a letter was addressed to the Forensic Medicine Institution, which -as a response- said that the issue was not calling for specialization and thus did not fall under its mandate, thereby sent the CD back.

After this development, we managed to get one copy of the CD; however, the CD -which allegedly had Yasin Hayal's voice records on- only had a computer program serving merely to intercept fax signals and voice.

2) Concerning the accused Erhan Tuncel who worked at the Security Department as an intelligence personnel; we demanded that the minutes, which were sent to Istanbul Chief Prosecutor's Office as an attachment of the letter no 23018 dated 06/02/2007 and drafted by Security Directorate General-Department of Intelligence, and **which were destroyed after having been examined**, be sent -as a requirement of the principle of fair and effective trial- in order to be integrated into the court file so as to ensure that they are examined by the parties of the court case as well as the Court.

The Court decided that a letter be drafted with the objective of requesting from the Department of Intelligence under the Security Directorate General of the Ministry of Interior any CD -if there is- which establishes the foundations of the minutes destroyed by Istanbul Chief Prosecutor's Office or the certified copies of the list of the minutes sent to Istanbul Chief Prosecutor's Office. However, with the presupposition that among those documents there might be some with other content that are not closely or remotely linked with the subject matter of the court case as well as [there might be] information regarding 'the inseparable integrity of the State together with its country and nation, constitutional order and security in general', the Court decided that these documents be examined by the Delegated Judge; the irrelevant documents be taken out; and the documents be sent back after the completion of the examination.

From the examination minutes prepared by the Delegated Judge, it has been understood that from among 90 documents conveyed to the Court, the certified copies of only 15 encompassing 16 pages in total have been inserted into the dossier.

We have demanded that these documents are summoned once again and examined in the presence of the attorneys of the parties on grounds that the content and composition of the 90 pages sent by the Intelligence Department was known to merely the Head of Intelligence Department and the Delegated Judge, that the parties to the case and the Court have not seen these documents that were sent back, that it was imperative to carry out the examination in the presence of the parties in order to ensure the right to fair and effective trial and that denial of these documents from the case, the Court, the parties to the case as well as their legal representatives had no legal justification.

However our demand was rejected by the Court.

4) Since the beginning of the trial almost in every hearing we raised demands concerning the Telecommunication Communication Presidency (TİB) and questions to pose to this institution. The court has accepted almost all of these demands and conveyed these questions and demands to TİB through its interim decisions.

TİB has sent the letters vis-à-vis the court's letters however it did not respond to any of the questions posed in the interim decision of the Court in any of these letters, neither did it take action in accordance with the interim decisions.

It has been observed that TİB deliberately avoided responding to the questions and taking any action according to the decisions in its letters sent to the Court. These letters were merely printed copies of each other prepared by the concerned institution which contained information on the law, regulation and relevant legislation, and statements totally irrelevant to the interim decision.

5) According to the evaluations contained in the Prime Ministry Inspection Board report, wiretapping conducted within the scope of interceptions revealed that the transcript of telephone conversation between Erhan Tuncel and Dilek Bedir, as well as the recorded interception was cut to leave the impression that they do not contain the entire conversation. This voice recording which was among the audio CDs lasted 00:00:19 seconds. However this conversation which is recorded among conversation details contained in html file no (17) at İstanbul TEM (Anti-Terror Unit of Security Directorate) Unit with no: 79 231970619 lasted 00:01:14 seconds.

Prime Ministry Inspection Board had requested that letters be sent to Trabzon Security Directorate, İstanbul Security Directorate and TİB in order to elucidate the evaluation regarding this conversation between Erhan Tuncel – Dilek Bedir, and this demand had been accepted at the hearing on 26.01.2009.

In accordance with the interim decision a letter was sent to İstanbul Security Directorate and in response to the letter on 28.02.2009 the following reply which totally contradicts not only with the truth but also with the documents contained in the file; “No record of any contacts between Erhan Tuncel’s and Dilek Bedir’s telephone has been identified”.

In the light of the interim decisions and Court processes, only a part of which have been given above as an example, it would not be an exaggeration to say that in consideration of the point arrived today the investigation that is being conducted is far from elucidating the backstage of Hrant Dink’s murder, from revealing the organized structure, from revealing the truth hence too far from the aim of the trial.