

FREEDOM OF THE MEDIA IN TURKEY AND THE KILLING OF HRANT DINK TRIAL OBSERVATION REPORT

September 2007

Kurdish Human Rights Project
KHRP
Established 1992



Bar Human
Rights
Committee
OF ENGLAND AND WALES

INDEX XIX
ON CENSORSHIP **ARTICLE 19**
GLOBAL CAMPAIGN FOR FREE EXPRESSION

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SEPTEMBER 2007

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ARTICLE 19

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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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Index on Censorship was founded in 1972 by a dedicated team of writers, journalists and artists inspired by the British poet Stephen Spender to take to the page in defence of the basic human right of free expression. Today it is one of the world's leading repositories of original, challenging, controversial and intelligent writing on free expression issues and continues to log free expression abuses in scores of countries world wide.



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ARTICLE 19 is an international human rights organisation which defends and promotes freedom of expression and freedom of information all over the world. Founded in 1987, it was the brainchild of Roderick MacArthur, a US philanthropist and journalist. Its International Board and Board of Trustees consist of eminent journalists, academics, lawyers and campaigners from all regions of the world.

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Executive Summary

*[M]end your speech a little,
lest you may mar your fortunes.¹*

It is undoubtedly the case that since KHRP and other NGOs first commenced routinely documenting the situation with regard to freedom of expression and freedom of the media in Turkey during the 1990s, there has been a marked improvement. The advancements made in the protection of human rights generally have been both documented and welcomed by the European Commission since it issued its first report on Turkey's progress towards accession in 1998. However, as this trial observation report highlights, problems remain with regard to freedom of expression and of the media but also with regard to the failure of the State to protect the life of one of Turkey's most prominent journalists, despite the fact that there is evidence to suggest that the authorities had direct knowledge of the threat to his life.

The murder of Hrant Dink came as a profound shock to both lawyers and human rights activists alike but events since his death have been no less shocking. That a journalist should be killed merely because of what he wrote is an affront to modern democracy; that police should be seen to revel in the exploits of his killer raises fundamental questions about the nature of the Turkish authorities and the accountability thereof. In July 2007 KHRP organised a joint mission with BHRC, Index on Censorship and Article 19 to observe the opening of the trial of Dink's alleged assassins. This report attempts to outline the background to the murder of Hrant Dink and provide an account of the progression of the trial to date. Part I gives a general overview of the situation of freedom of the media in Turkey, looking at domestic legal provisions in the context of the ongoing EU accession process. Part II outlines the background to the killing of journalist Hrant Dink and examines the indictment against the alleged perpetrators as well as claims of State complicity in the murder. Part III of the report details the progression of the trial to date and assesses the prospects of the investigation being broadened to encompass wider aspects of the circumstances of Hrant Dink's death, as requested by the lawyers for his family. Finally, Part IV of the report analyses Turkey's obligations under international law, particularly under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

¹ W Shakespeare, *King Lear*, act 1, sc. 1, ln. 135 (compact ed. Oxford University Press 1988).

A ban on public access to the trial, due to one defendant being a minor, prevented the mission from gaining access to the proceedings. The mission did, however, remain present outside the courthouse during the proceedings. In conducting its research into the trial, the mission met with and interviewed a number of people who knew or had worked with Hrant Dink. These included the lawyer for his family throughout the trial, Fethiye Çetin, Murat Çelikkan, a close friend of Hrant Dink, and a board member of the Helsinki Citizens' Assembly during a week at the beginning of July 2007. The mission also met with members of human rights organisations, including Hakan Gündüz and Yaşar Aydın from TOHAV (The Foundation for Legal and Social Studies) and Şaban Dayanan from the Istanbul Branch of *İnsan Hakları Derneği* (The Human Rights Association of Turkey - İHD), to discuss the general situation regarding freedom of the media in Turkey and the backdrop to Hrant Dink's killing. Details and dates of interviews are contained within the footnotes, for example the trial observation interview with Murat Çelikkan is cited as 'TO interview with Murat Çelikkan, Helsinki Citizens' Assembly, Istanbul, 3 July 2007'.

I. Freedom of the Media in Turkey

Problems regarding restrictions on the media in Turkey have been judiciously highlighted by KHRP and other NGOs in recent years.² Additionally, the progress reports of the European Commission have noted problems in the area on an annual basis since 1998, when it stated:

[...] freedom of expression is not fully assured in Turkey. An excessively narrow interpretation of the Constitution and other legal provisions (Articles 7 and 8 of the Anti-Terror Law, Articles 158, 159, 311 and 312 of the Criminal Code) concerning the unity of the State, territorial integrity, secularism and respect for formal institutions of the State is regularly used to charge and sentence elected politicians, journalists, writers, trade unionists or NGO workers for statements, public speeches, published articles or books that would be acceptable in EU Member States.³

The constraints on freedom of the media have largely been facilitated and exacerbated by restrictive domestic legislation, arguably not in keeping with Turkey's commitments under international law. These provisions are outlined in the following section.

1. EU Accession and Freedom of the Media

As noted above, restrictions placed on freedom of the media in Turkey have been well-documented. However, during the process of reform engendered by the EU accession procedure, a number of improvements with regard to freedom of expression and of the media have been instituted. A total of nine 'harmonisation packages' have now been passed, detailing a number of significant measures for free speech. These include:

- amendments to Articles 28-31 of the Constitution;

2 See, for example, L Whitman and T Froncek *Paying the Price: Freedom of Expression in Turkey* (Helsinki Rights Watch New York 1989); 'Silencing Dissent' in Turkey: No Security Without Human Rights (Amnesty International London 1996); *State Before Freedom: Media Repression in Turkey* (KHRP London 1998). Publishers on Trial: Freedom of Expression in Turkey in the Context of EU Accession, Trial Observation Report (KHRP London 2007).

3 European Commission Regular Report on Turkey's Progress Towards EU Accession 1998, 15.

- the adoption of the Sixth Harmonisation Package, which relaxed restrictions on broadcasting in the Kurdish language by amending Article 4 of the Act on the Establishment and Broadcasts of Radio and Television Stations, sanctioning the broadcasting, on both private and public radio and television stations, in languages and dialects used by Turkish citizens traditionally in their daily lives;
- the enactment of a new Press Law in June 2004;⁴ and
- the entry into force of the new Penal Code in June 2005.

Freedom of the media is now enshrined in the Constitution under Article 28, which states that:

The press is free, and shall not be censored. The establishment of a printing house shall not be subject to prior permission or the deposit of a financial guarantee.

The state shall take the necessary measures to ensure freedom of the press and freedom of information.⁵

Additionally, Article 8 of the Anti-Terrorism Law, which had seriously impacted upon freedom of the media, was repealed and a new Press Law was enacted in June 2004. Article 3 of the Press Law attests to the freedom of the press, which includes 'the right to acquire and disseminate information, and to criticise, interpret and create works' and stipulates that the owner or editor of a periodical 'cannot be forced to either disclose their news sources or to legally testify on this issue'. In particular, the new Press Law:

- reinforced the right to reply and correction;
- largely replaced penalties of prison sentences with fines;
- removed sanctions such as the closure of publications, halting distribution and confiscating printing machines; and
- reduced the possibility to confiscate printed materials, such as books and periodicals.

As a result of these legislative amendments, the progress report of the European

4 Law No. 5178, Published in the Official Gazette on 26 June 2004

5 Article 28 of the Constitution of the Republic of Turkey, as amended on 17 October 2001.

Commission in 2004 noted that there had been ‘a reduction in the number of prosecutions and convictions in cases related to freedom of expression.’⁶

2. Remaining Restrictions Under Domestic Legal Provisions

On 1 June 2005, a new Turkish Penal Code came into force, effectively reversing previous improvements to freedom of expression detailed in the preceding section. Article 301 of the Code provides that:

- (1) A person who explicitly insults being a Turk, the Republic or Turkish Grand National Assembly, shall be sentenced to imprisonment for a term of six months to three years.
- (2) A person who explicitly insults the Government of the Republic of Turkey, the judicial bodies of the State, the military or security organisation shall be sentenced to imprisonment for a term of six months to two years.
- (3) Where insulting being a Turk is committed by a Turkish citizen in a foreign country, the penalty to be imposed shall be increased by one third.
- (4) Expression of opinions with the purpose of criticism does not require a penalty.

Article 301 has attracted much criticism, not least due to the high profile nature of some of the prosecutions taken since its adoption.⁷ Nobel prize-winning author Orhan Pamuk was charged (and ultimately acquitted) with insulting Turkishness under Article 301 for remarks made during an interview in February 2005 in which he referred to the 1915 massacres of Armenians and the killing of Kurds in south-east Turkey. Hrant Dink had also fallen foul of Article 301 and was convicted of insulting Turkey’s national identity and given a six month suspended sentence for publishing a series of articles in which he called on Armenians in the Diaspora to stop focusing on the Turks and focus instead on the welfare of Armenia.⁸ At the time of Hrant Dink’s death, he was the subject of a further prosecution under Article 301 and was also being prosecuted under Article 288 of the Penal Code. The

6 European Commission Regular Report on Turkey’s Progress Towards EU Accession 2004, 37.

7 See, for example, *Suppressing Academic Debate: The Turkish Penal Code* (KHRP London 2006) and *Turkey on Trial: The Prosecutions of Orhan Pamuk and Others* (KHRP London 2006) which both address the prosecutions of Hrant Dink. See also Amnesty International ‘Article 301 is a threat to freedom of expression and must be repealed now!’ AI Index: EUR 44/035/2005 1 December 2005.

8 ‘Dink Convicted of Insulting Turkish Identity’ Turkish Daily News 8 October 2005.

prosecution under Article 301 centred around the publication in *Agos*, in July 2006, of an article entitled ‘I vote against 301’, which included a quote from an interview Dink had given to the Reuters news agency, in which he stated that he had no doubt that an Armenian genocide had taken place and that he would not remain silent on this issue.⁹ The second case, taken under Article 288, which penalises interference with the judiciary, concerned an article published in October 2005 which questioned Dink’s earlier sentencing under Article 301. Cases now continue against Dink’s son Arat Dink, and the current editor of *Agos* Serkis Seropyan.¹⁰

Whereas Article 301 of the Penal Code has attracted international criticism and prompted calls from the European Parliament for its abolition,¹¹ journalists also face prosecution under other lesser known Articles of the revised Penal Code. Article 288 prohibits interference with the judiciary and as the case taken against Hrant Dink demonstrates, severely limits the possibility of journalistic scrutiny of the court system and jurisprudence. Also relevant is Article 217 which provides that a person who commits the crime of ‘inciting people to disobey laws’ can be imprisoned for 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’. Of greater concern is Article 220, which establishes that 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 face imprisonment of 3 to 9 years. This very vaguely-worded provision appears to reinstate the offences in Article 8(1) of the old Anti-Terror legislation, which proved to have far-reaching consequences against freedom of expression. A recent fact-finding mission on the media in Turkey, co-organised by KHRP, was concerned to learn that in Diyarbakır alone there are presently six times more people on trial under Article 220 than are on trial under Article 301 in the whole of Turkey.¹²

In addition to the legislative constraints outlined above, freedom of the media has been further curtailed since amendments to the Anti-terror legislation came into force in September 2006.¹³ The amendments established aggravated penalties for ‘propaganda’ and ‘praise’ of terrorism. These changes did not go unnoticed by

9 See International Freedom of Expression Exchange, ‘Court Case Against *Agos* Continues’ 29 March 2007, available at <http://canada.ifex.org/en/content/view/full/82185> (last accessed, 31 August 2007).

10 See International Freedom of Expression Exchange, ‘Court Case Against *Agos* Continues’ 29 March 2007, available at <http://canada.ifex.org/en/content/view/full/82185> (last accessed, 31 August 2007).

11 See ‘European Parliament Critical of Slowdown in Turkey’s Reform Process’ European Parliament Press Service, 27 September 2006.

12 Fact-finding interview with Sezgin Tanrikulu, Chairman of the Diyarbakır Bar Association, 6 July 2007. The full report of this fact-finding mission entitled *Not Yet Assured: Freedom of the Media in Turkey*, is forthcoming.

13 Turkey 2006 Progress Report EN{COM (2006) 649 final}, 6.

the European Commission, which noted in its 2006 report on Turkey's progress towards EU accession that the definition of these crimes is not in line with the Council of Europe Convention for the Prevention of Terrorism and that '[f]reedom of the press and media could be undermined by provisions allowing the suspension of periodicals and introducing the liability of chief editors and of press and media owners for publishing terrorist propaganda or praise in press or media organs.'¹⁴

14 Turkey 2006 Progress Report EN{COM (2006) 649 final}, 6.

II. Background to the Killing of Hrant Dink

The preceding section outlined the legislative framework within which Hrant Dink worked as a journalist, editing the bilingual Turkish-Armenian newspaper *Agos*. Both prior and subsequent to Dink's conviction under Article 301 in October 2005, he had been the subject of numerous threats to his life. On 26 February 2004 a group of people who identified themselves as nationalist idealists (*Ülkü Ocakları*) gathered in front of the *Agos* newspaper office shouting threatening slogans and held placards stating 'Be Careful!', 'You Will be Held Accountable' and 'Your Hand Will be Broken'.¹⁵ Dink had also applied to the Şişli Public Prosecutor's Office for an investigation into a threatening letter he had received in which he and his son had received death threats.¹⁶ That this information was in the public domain, coupled with further information contained in the indictment, clearly demonstrates knowledge of the threat to Dink's life on the part of the authorities. On 19 January 2007, Hrant Dink was attacked outside the *Agos* office in Istanbul and died upon receiving three gun shots to the head and neck. The following sections set forth the pertinent aspects of the indictment and the subsequent allegations of State complicity in the killing.

1. The Indictment against Oğün Samast *et al*¹⁷

The initial aim of the joint KHRP, BHRC, Index on Censorship and Article 19 mission ('the mission') was to observe the opening of the trial of eighteen persons charged in connection with the murder of Hrant Dink. The trial opened on Monday 2 July 2007 at Beşiktaş Heavy Criminal Court number 14 in Istanbul. However, the mission was unable to attend the court proceedings since no members of the public were admitted. In accordance with Turkish law, as one of the defendants, Oğün Samast, the person who has confessed to shooting Hrant Dink, was under eighteen years of age and therefore a minor, the public was not admitted to the proceedings.

From the indictment it is apparent that what is being alleged is a conspiracy among a number of men in Trabzon and that the seventeen-year-old youth who allegedly carried out the killing was recruited when the plans for Dink's assassination were

15 See M Güc 'A Chronology: Hrant Dink's Murder', available at <http://www.bianet.org/bianet/kategori/english/98382/a-chronology-hrant-dinks-murder> (last accessed, 30 August 2007).

16 Ibid

17 See Appendix for a translation of the full indictment.

relatively advanced. Prominent among the other defendants is Yasin Hayal who had previously been convicted of bombing a McDonalds in Trabzon in 2004 and who allegedly planned the murder from January 2006 onwards. The first person allegedly recruited by Hayal to carry out the murder was Zeynel Abidin Yavuz but he left Trabzon for İzmir in June 2006. Another defendant is Erhan Tuncel who allegedly became a police informer after the bombing of the McDonalds. Tuncel is said to have informed Trabzon Security Intelligence Department on 17 February 2006 and again on 7 April 2006 that Hayal was planning an attack on Hrant Dink but to have withheld information about the persons recruited by him. He is also alleged to have been involved with Hayal in recruiting the seventeen year-old youth who carried out the shooting. Tuncel was dropped as an informer by Trabzon intelligence in November 2006 apparently on grounds of lying and soliciting money. Information was also provided to Trabzon Gendarmerie by Coşkun İğci, the husband of Yasin Hayal's aunt and a witness in the case. İğci told intelligence officers that Hayal had asked to buy a gun from him, instructed him to take 300YTL and then subsequently asked for the money back when he became angry that İğci had not supplied a gun. Other defendants in the trial include Yaşar Cihan, the Provincial Chairman of the extreme right-wing BBP party (Great Union Party), and Halis Egemen, also from the BBP, who are alleged to have given financial support to Hayal's family after his arrest. Both men are accused of involvement with a terrorist organisation and face prison sentences of up to ten years if convicted.

Five other men, Zeynel Abidin Yavuz, Ersin Yolcu, Ahmet İskender, Mustafa Öztürk and Tuncay Uzundal, are accused of involvement in the murder and the indictment requests that they be given life sentences. Additionally, another man, Salih Hacısalihoğlu, is accused of membership of a terrorist organisation with a request for a ten year sentence and seven other men, Alper Esirgemez, İrfan Özkan, Osman Alpay, Erbil Susaman, Numan Şişman, Şenol Akduman and Veysel Toprak are accused of aiding a terrorist organisation and hiding a criminal, with sentences of six months to five years imprisonment demanded in the indictment.

2. Alleged State Complicity in the Killing

The mission spoke to a number of people concerning the trial of Hrant Dink's assassins, all of whom expressed deep suspicions of state involvement in his murder. Murat Çelikkan, a close friend of Hrant Dink, and a board member of the Helsinki Citizens' Assembly told the mission that he believed there were secret organisations of the State as well as the gendarmerie and the military which were involved in assassinations and that there was such involvement in Hrant Dink's murder.¹⁸ Şaban Dayanan of the Istanbul branch of İHD confirmed his similar belief that that the State was complicit in Hrant Dink's assassination, noting that there had been no

18 TO Interview with Murat Çelikkan, Helsinki Citizens' Assembly, Istanbul, 3 July 2007.

proper investigation and that the investigators were intent on protecting the State. Mr Dayanan also suggested that there was evidence that persons in Trabzon knew about the plot and that it was not credible that authorities had not been informed. He stated his belief that the Chiefs of Police in Istanbul and Trabzon should also be on trial. Furthermore, Mr Dayanan asserted that the defendant Erhan Tuncel had worked for the gendarmes and the police and would have let them know all the details of the assassination plot. Mr Dayanan also related further irregularities such as the fact that the Trabzon police had informed the police in Istanbul of the threat to Dink's life. Furthermore, a report from inspectors sent by the Minister of the Interior said that the Chiefs of Police had failed to take the necessary measures to prevent the plot to kill Dink and so the Governor of Trabzon, Reşat Altay, had been moved to another job but not held to account for the failings. He had formerly been the head of intelligence in Istanbul and was, according to Mr Dayanan, notorious for his impatience with minorities.¹⁹

Particularly disturbing were reports that following the arrest of Ogün Samast, he was taken to the police station in Samsun where police took photos and video footage of Samast posing proudly behind a Turkish flag, flanked by members of both the military and security police. The mission was informed by Ms Fethiye Çetin, lawyer for Hrant Dink's family, that an investigation into 21 gendarmes and police over the fact that Samast had been taken to the cafeteria in the police station to have his photo taken instead of being held in a cell had been completed but concluded that official warnings to the officers responsible was sufficient punishment. The report concluded that it was only necessary to bring prosecutions against the two police officials who were alleged to have given the pictures to the press.

Ms Çetin was also of the opinion that the case was not just about the eighteen accused who were before the Court and that the real offenders who organised and planned the crime were not on trial. She suggested that the case could not reach a sensible conclusion unless these offenders were charged. She said that they were likely to be members of one of the illegal groups inside the Turkish State comprised of ex-soldiers or members of the security forces. Ms Çetin further noted that unless these groups are confronted and disbanded it will not be possible to build democratic structures in Turkey. She also stated that although the indictment maintained that Erhan Tuncel had ceased being an informer in November 2006, she had some evidence that his connection with the police had continued, thereby suggesting that the police should have had knowledge of the plans for the assassination of Hrant Dink. A further anomaly in the case was the fact that the murder was said to have

19 TO Interview with Şaban Dayanan, İHD Istanbul Branch, Istanbul, 2 July 2007.

been planned in Trabzon but carried out in Istanbul by a seventeen year old youth of 'limited intelligence' and initiative who did not know Istanbul at all. According to Ms Çetin, it is simply not credible that he did not have outside help.²⁰

20 TO Interview with Fethiye Çetin, lawyer for Hrant Dink's family, Istanbul, 3 July 2007.

III. The Trial of Ogün Samast et al

1. Progression of the Trial

The trial of Ogün Samast and seventeen other defendants began on 2 July 2007, but some weeks after its commencement prosecutors charged a nineteenth suspect in connection with the murder. Coşkun İğci, a relative of one of the alleged masterminds of the murder, Yasin Hayal, is now accused of belonging to an illegal organisation and aiding the killing and faces a jail term of 22-35 years if found guilty.²¹ Whilst his name appears in the indictment of Samast and the seventeen other accused, İğci was not initially accused of any crime.

On 3 July 2007, the day after the commencement of the trial, the mission attended a press briefing in Istanbul given by Ms Fethiye Çetin. Ms Çetin related that Yasin Hayal, one of the main defendants in the trial, had given evidence to the Court the previous day that responsibility for the murder lies with the State. Hayal stated that the main persons responsible were not before the Court and that the main encouragers of the murder were the police and security forces. Also, on the opening day of the trial the Court agreed to release four of the defendants, although this decision was being appealed by the lawyers for Hrant Dink's family. According to Ms Çetin, the only positive development at the first hearing had been that the Court had agreed to collect further evidence and to request the records of the intelligence services to be brought to Court.

Although criminal trials in Turkey are noted for being lengthy processes, it is possible that the international attention the trial has attracted may expedite it somewhat. The trial is nonetheless expected to last some months.

2. Demands of Hrant Dink's Family and their Advocate

With so many discrepancies in the information appearing both in the indictment and in the details as relayed to the mission by Fethiye Çetin, it is unsurprising that the Dink family is dissatisfied with the extent of the investigation to date. One of the principal demands of the family is that a case be taken against the security forces

21 'New suspect charged over Hrant Dink's murder', available at <http://www.panarmenian.net/news/eng/?nid=23052> (last accessed, 31 August 2007)

in Trabzon and Istanbul in accordance with Article 83 of the Turkish Penal Code, which deals with death due to negligent conduct.

The Court stated that there was an investigation in Trabzon against two gendarmes for neglecting their duty but it had no jurisdiction to inquire further. The family had appealed the decision and requested that the Head of the Intelligence Services should be prosecuted too but this appeal was rejected by the Court. Further, it has recently emerged that the Trabzon Governor's Office has not given permission for its security officers to be questioned in relation to the Hrant Dink murder. The governor's office has purportedly based its decision on a report by investigators of the Ministry of the Interior, which had decided that eight security officers, including the then Police Directors Ramazan Akyürek and Reşat Altay, were 'not at fault.'²² Bahri Belen, one of the lawyers for the Dink family has been denied access to the documents regarding the decision. His application to Trabzon Governor's Office seeking a copy of the decision was refused on the basis that the file is secret and not open for inspection. Mr Belen criticised this decision, stating that it is a breach of the requirement of a thorough and effective investigation.²³

The family has requested that the investigation be widened to include the intelligence service officials in Trabzon, Samsun, Istanbul and Ankara. Fethiye Çetin noted that effectively there are three aspects of the case which necessitate further investigation; the roles of the gendarmes/soldiers, that of the police and that of the BBP party. The defendants are all alleged to be members of the Youth Wing of the BBP and two BBP officials Yaşar Cihan and Halis Egemen have also been charged. Ms Çetin, however, expressed doubts about the possibility of the Istanbul Court finding out exactly the circumstances of Hrant Dink's murder and achieving justice for the family.²⁴

22 T Korkut, 'Police Not to be Questioned in Dink Murder Trial', 31 August 2007, available at <http://www.bianet.org/english/kategori/english/101486/police-not-to-be-questioned-in-dink-murder-trial> (last accessed, 1 September 2007)

23 Firat News Agency, 13 September 2007.

24 TO Interview with Fethiye Çetin, lawyer for Hrant Dink's family, Istanbul, 3 July 2007.

IV. Turkey's Obligations Under International Law

Turkey is now a signatory to almost all of the international human rights instruments.²⁵ In committing itself to the international treaty system, Turkey is bound to respect fundamental human rights, such as those with which the Hrant Dink case is concerned – the right to life and freedom of expression.

1. Freedom of Expression²⁶

As noted at the outset of this report, complete freedom of expression in Turkey remains elusive. This is partly due to both the restrictive nature of legislation on the subject and the restrictive manner in which it has been interpreted and applied. In addition, as KHRP has noted, '[l]egislative restrictions on freedom of expression, including publishing and the media, designed to prevent dissenting opinion, discussion of politically 'taboo' subjects, and criticism of State institutions, have frequently been utilised in an effort to preserve the *status quo*.²⁷ Discussion of controversial and divisive questions such as the treatment of the Kurds, the Armenian massacres of 1915 and the place that the military occupies in the hierarchy of the State structure runs the risk of falling foul of Article 301 or numerous other articles of the Penal Code. This is despite Turkey's commitments to respect and protect the right to free speech under international law. Turkey's obligations concerning the right to freedom of expression include:

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- 25 Of the main international human rights agreements, Turkey signed the International Covenant on Economic Social and Cultural Rights (ICESCR) on 23 December 2003; the International Covenant on Civil and Political Rights (ICCPR) on 23 December 2003; the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) on 16 October 2002; the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 19 January 1988; and the Convention Against Torture (CAT) on 1 September 1988. Turkey also ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) on 18 May 1954.
- 26 Turkey's obligation to respect the right to freedom of expression has been dealt with in detail elsewhere; thus this section gives but a very brief overview of the right. See, for example, L Whitman and T Froncek *Paying the Price: Freedom of Expression in Turkey* (Helsinki Rights Watch New York 1989); 'Silencing Dissent' in Turkey: No Security Without Human Rights (Amnesty International London 1996); *State Before Freedom: Media Repression in Turkey* (KHRP London 1998); 'Freedom of expression at risk: writers on trial in Turkey - Trial observation report' (KHRP London 2005) *Publishers on Trial: Freedom of Expression in Turkey in the Context of EU Accession*, Trial Observation Report (KHRP London 2007).
- 27 *Publishers on Trial: Freedom of Expression in Turkey in the Context of EU Accession*, Trial Observation Report (KHRP London 2007) 13.

- Article 19 of the Universal Declaration of Human Rights, which states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

- Article 19 of the International Covenant on Civil and Political Rights, which states:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

- Article 10 of the ECHR – the most important protection as the Convention provides for an individual right of petition to the European Court of Human Rights (ECtHR). Turkey has been found to have violated Article 10 of the ECHR in a plethora of cases. Article 10 provides:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are

prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

2. The Right to Life

The right to life is generally considered to be the most fundamental human right of all, as without the effective protection of this right, all other human rights are rendered meaningless. Like freedom of expression, the right to life is protected in all of the major human rights instruments. Article 3 of the Universal Declaration of Human Rights, for example, provides that '[e]veryone has the right to life, liberty and security of person.' That the right to life is not an absolute right is confirmed in Article 6 of the International Covenant on Civil and Political Rights which, taking cognisance of the fact that the death penalty still exists in some countries, sets forth:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons

below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Despite the acknowledgement that the right to life protected in Article 6 is not an absolute right, its importance was emphasised in a General Comment by the Human Rights Committee on the Article. The Comment noted in particular that

...

3. [t]he protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.

...²⁸

The provision in the ECHR dealing with the right to life further delineates the instances in which the taking of life may be permissible. It states:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Again, the ECHR is of greatest relevance to Turkey due to the fact that there exists

28 CCPR General Comment No. 6: The right to life (art. 6), 30 April 1982, para. 3.

a right of individual petition to the ECtHR, as noted above. The relevance of the ECHR is also underscored by the fact that Turkey has not signed the First Optional Protocol to the International Covenant on Civil and Political Rights and thus there is no individual right of recourse to the monitoring body of the Covenant, the Human Rights Committee.

The jurisprudence of the ECtHR concerning Article 2 of the ECHR has developed greatly, such that it is now considered that Article 2 implies an obligation on States Parties to carry out an effective investigation where there has been a controversial killing. In the seminal case of *McCann v. UK*²⁹ the Court noted:

The obligation to protect the right to life under this provision (art 2), read in conjunction with the State's general duty under Article 1 (art 2 + 1) of the Convention to 'secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention', requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, *inter alios*, agents of the State.³⁰

Whereas the applicants in the *McCann* case had clearly been killed by agents of the State (soldiers), the Court has found against States Parties where the connection with the State has been considerably more tenuous.³¹ Whilst Hrant Dink's assassination is alleged to have been planned by someone who was acting, or had acted as a police informer and thus it was highly likely that he would be considered a State agent in any case, the Court has also found that Article 2(1) confers a positive obligation on States parties to protect life. In *LCB v UK*³² the Court confirmed that 'the first sentence of Article 2(1) enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction...'³³ The Court repeated this sentiment in the influential case of *Osman v UK*³⁴ but crucially continued:

It is common ground that the State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences

29 *McCann v. United Kingdom*, (1995) 21 European Human Rights Reports 97.

30 *McCann v. United Kingdom*, (1995) 21 European Human Rights Reports 97, para 161.

31 See, for example, *Finucane v United Kingdom*, Application no. 29178/95, Judgment of 1 July 2003 where the Court found that the UK had violated Article 2 by failing to provide an effective investigation into a murder which had been carried out by an illegal paramilitary group, the Ulster Freedom Fighters.

32 *LCB v. United Kingdom* (1998) 27 European Human Rights Reports 212.

33 *LCB v. United Kingdom* (1998) 27 European Human Rights Reports 212, para 36.

34 *Osman v United Kingdom* (1998) 29 EHRR 245.

against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. It is thus accepted by those appearing before the Court that *Article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.*³⁵

Bearing in mind that it is unwise to prejudge the findings of the Court, it is, on the basis of the above passage in the *Osman* judgment, highly probable that a violation of the positive obligations conferred by Article 2(1) of the ECHR would be found should the case of Hrant Dink be examined by the ECtHR. This possible outcome would be further supported by the fact it was in the public domain that Hrant Dink was the subject of numerous death threats and had even applied to the Şişli Public Prosecutor's Office for an investigation into one of those threats.

35 *Osman v United Kingdom* (1998) 29 EHRR 245, para 115 (emphasis added).

Conclusion

Whilst it is neither possible nor appropriate for the mission to draw conclusions from a trial which is ongoing, the conduct of the investigations relating to this trial raises a number of concerns. In particular the mission felt that there were outstanding substantive issues to be addressed as documented in the submissions being made on behalf of Hrant Dink's family that the investigation should be widened to include an investigation of the actions and possible participation of the authorities, particularly the police, gendarmerie and intelligence services. There is strong evidence that these authorities were warned of the assassination plot by more than one source in advance and failed to take any action. An acknowledged police informer was one of the main conspirators from the outset and a witness was encouraged to take money to supply a gun. The actions of the police in photographing the alleged murderer with themselves in front of a Turkish flag were extremely troublesome and suggest support if not actual collusion. Further, the decision of 7 August 2007 by the First Administrative Court of Trabzon not to give permission for its security officers to be questioned regarding the murder is in blatant contravention of Turkey's requirement to provide an effective investigation into the killing under Article 2 of the ECHR.

It must also be acknowledged that the backdrop to Hrant Dink's murder is that of restrictive legislation which curtails the right to free speech. Had Dink not become a despised figure amongst ultra-nationalists due to his prosecutions under the Penal Code, he would likely still be alive. There is undoubtedly merit in the argument that '301 killed Hrant Dink.'³⁶

36 See MA Birand, '301 Killed Hrant Dink', Turkish Daily News, 23 January 2007.

Recommendations

This report urges the Republic of Turkey to;

- Accede to the demands of Hrant Dink's family by requesting the Court in Istanbul and the prosecution authorities involved to widen the investigation to include the relevant elements of the state, gendarmerie and police;
- Honour its obligations under Article 2 of the ECHR by ensuring that the investigation into Hrant Dink's murder is full and effective;
- Review and repeal Articles of the Penal Code which infringe upon the right to freedom of expression;
- 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 the right to life and freedom of expression as established in the jurisprudence of the ECtHR; and
- Actively support and encourage civil society organisations in Turkey in order to promote a climate of political and cultural dialogue, particularly amongst Turkey's minorities.

This report urges the European Union to;

- Continue to closely monitor the reform process in Turkey, particularly the situation regarding freedom of expression;
- Advocate for reform of the Penal Code and promote awareness of the fact that it is not only Article 301 that impinges on freedom of expression but also other provisions of the Code, as well as the Anti-Terror legislation and the Police Powers law;
- 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; and
- Actively support and encourage civil society groups in Turkey in order to promote a climate of political and cultural dialogue which could herald the arrival of democratic reform.

Appendix

REPUBLIC OF TURKEY
İSTANBUL
CHIEF PUBLIC PROSECUTOR'S OFFICE

PREPARATION NO: 2007/115
SUSPECTS ARRESTED
FILE NUMBER: 2007/617
INDICTMENT NO: 2007/368

INDICTMENT FOR THE ATTENTION OF THE İSTANBUL ASSIZE COURT NO. ()

PLAINTIFF: State

ASSASSINATED : Mr. FIRAT DİNK;³⁷ Father's Name: Serkis; Mother's Name: Gülvart; Birth: 1954; Birth Recorded at: İstanbul Bakırköy Sakızağacı Mahallesi.

PLAINTIFFS :

1. Ms. RAHİL DİNK; Father's Name: Siğamet; Mother's Name: Delal; Birth: 1959; Address: Sakızağacı mahallesi İstanbul cad. Şinasi Gürünlü sok. Sevil Apt. No 11/10 Kat 4 Bakırköy İstanbul.
2. Mr. HASROF DİNK; Father's Name: Serkis; Mother's Name: Gülvart; Birth: 1957; Address: Sakızağacı mahallesi İstanbul cad. Şinasi Gürünlü sok. Sevil Apt. No 11/10 Kat 4 Bakırköy İstanbul.
3. Ms. DELAL DİNK; Father's Name: Fırat; Mother's Name: Rahil; Birth: 1978; Address: Sakızağacı mahallesi İstanbul cad. Şinasi Gürünlü sok. Sevil Apt. No 11/10 Kat 4 Bakırköy İstanbul.

37 In 1972 Hrant Dink changed his legal name to Fırat Dink – Eds.

4. Mr. ARAT DİNK; Father's Name: Fırat; Mother's Name: Rahil; Birth: 1979; Address: Sakızağacı mahallesi İstanbul cad. Şinasi Gürünlü sok. Sevil Apt. No 11/10 Kat 4 Bakırköy İstanbul.

5. Ms. SERA DİNK; Father's Name: Fırat; Mother's Name: Rahil; Birth: 1986; Address: Sakızağacı mahallesi İstanbul cad. Şinasi Gürünlü sok. Sevil Apt. No 11/10 Kat 4 Bakırköy İstanbul.

REPRESENTED BY

1. Attorney FETHİYE ÇETİN İstanbul Bar Association 16111
2. Attorney ERGİN CİNMEN İstanbul Bar Association 11046
3. Attorney BAHRİ BELEN İstanbul Bar Association 10340
4. Attorney FİKRET İLKİZ İstanbul Bar Association 10642
5. Attorney ARZU BECERİK İstanbul Bar Association 19886
6. Attorney İNCİ İŞBULUR İstanbul Bar Association 11264
7. Attorney ERDAL DOĞAN İstanbul Bar Association

INJURED PEOPLE

1. Mr. HAKAN KARACI; Father's Name: Hüseyin; Mother's Name: Emine; Birth: 1965; Address: Yavuz Selim Bulvarı Karşıyaka Mah. Esas Apt. No 4/8 Trabzon.

2. Mr. NUMAN SEZAİ YOMRALIOĞLU; Father's Name: Yılmaz; Mother's Name: Aysel; Birth: 1983; Address: Dürbinar Mah. İnönü Cad. Sivrikaya Apt. No 103/4 Akçaabat Trabzon.

3. Mr. HASAN KOÇ; Father's Name: Halil; Birth: 1928; Address: Boztepe Mah. Seyfettin Sok. No 11 Kat 2 Trabzon.

4. Ms. DERYA DEĞİRMENCİ; Father's Name: Ömer Lütfi; Birth: 1988; Address: Çukurçayır Beldesi Özkaymaklı Mah. No 39 Trabzon.

5. Ms. GÜLÜMSERKURT; Father's Name: Asım; Birth: 1988; Address: Değirmendere Mah. 5 nolu Sezai Uzay sok. No 10 Trabzon.

6. Ms. GÜRCAN TOPRAK; Father's Name: Mehmet; Birth: 1988; Address: Değirmendere Mah. Afet Evleri 2. Blok No 5/9 Trabzon.

7. Ms. MERVE SERDAR; Father's Name: Sebahattin; Birth: 1988; Address: Kaymaklı Mah. Kaymaklı Cad. No 28/4 Trabzon.

8. Ms. ÖZLEM ARAZ; Father's Name: Erdoğan; Birth: 1988; Address: Esentepe Mah. Pırlanta Sok. No 2/3 Trabzon.

9. Mr. FERİT ORHAN PAMUK; Father's Name: Ali Gündüz; Mother's Name: Emine Şeküre Gültekin; Birth: 1952; Address: Teşvikiye Cad. No 35/17 Şişli İstanbul.

SUSPECTS

1. Mr. ERHAN TUNCEL; Father's Name: Ali Rıza; Mother's Name: Ümmügülsüm; Birth: 1981; Birth Record at: Elazığ Keban Altiyaka Köyü; Address: Yalı Mah. Şelale Sok. No 27 Pelitli Trabzon. Presently DETAINED in Tekirdağ F-Type Prison No 1. Arrested on: 26.1.2007

Defended by: Attorney Cahit Can Yanık İstanbul Bar Association 32661

2. Mr. YASİN HAYAL; Father's Name: Bahittin; Mother's Name: Huri; Birth: 1981; Birth Record at: Gümüşhane Merkez Demirören Köyü; Address: Adnan Kahveci Mah. Pehlivan Sok. No 1 Kat 2 Pelitli Trabzon. Presently DETAINED in Tekirdağ F-Type Prison No 2.

Arrested on: 24.1.2007

Defended by: Attorney Fatih Çakır Trabzon Bar Association 645

3. Mr. OGÜN SAMAST; Father's Name: Ahmet; Mother's Name: Havva; Birth: 1990; Birth Record at: Trabzon Düzköy Çalköyü; Address: Cumhuriyet Mah. Mevlana Cad. No 19 Pelitli Trabzon. Presently DETAINED in Kocaeli F-Type Prison No 2.

Arrested on: 24.1.2007

Defended by: Attorney Levent Yıldırım İstanbul Bar Association 28715

4. Mr. ZEYNEL ABİDİN YAVUZ; Father's Name: Resul; Mother's Name: Zeynep; Birth: 1987; Birth Record at: Trabzon Yorma Özdil Köyü; Address: Cumhuriyet Mah. Eski Afet Evleri Zeybek Sok. No 5 Kat 3 Pelitli Trabzon. Presently DETAINED in Kocaeli F-Type Prison No 1.

Arrested on: 24.1.2007

Defended by: Attorney Feyzullah Şama İstanbul Bar Association 27885

5. Mr. ERSİN YOLÇU; Father's Name: Tahsin; Mother's Name: Nebahat; Birth: 1981; Birth Record at: Bayburt Merkez Kop Köyü; Address: Cumhuriyet Mah. Eski Afet Evler Şahinkaya Sok. No 1 Kat 1 Pelitli Trabzon. Presently DETAINED in Kocaeli F-Type Prison No 1.

Arrested on: 24.1.2007

Defended by: Attorney Feyzullah Şama İstanbul Bar Association 27885

6. Mr. AHMET İSKENDER; Father's Name: Mühittin; Mother's Name: Fatma; Birth: 1984; Birth Record at: Trabzon Arsin Çardaklı Köyü Address: Adnan Kahveci Mah. Akçay Sok. No 9 Kat 2 Pelitli Trabzon. Presently DETAINED in Kocaeli F-Type Prison No 1.

Arrested on: 24.1.2007

Defended by: Attorney Feyzullah Şama İstanbul Bar Association 27885

7. Mr. TUNCAY UZUNDAL; Father's Name: Medeni; Mother's Name: Zinnet; Birth: 1982; Birth Record at: Erzurum Hınıs Dağçayırı Köyü; Address: Yalı Mah. No 27/1 Pelitli Trabzon. Presently DETAINED in Edirne F-Type Prison.

Arrested on: 1.2.2007

Defended by: Attorney Mustafa Eraslan İstanbul Bar Association

8. Mr. SALİH HACISALİHOĞLU; Father's Name: Ali Kemal; Mother's Name: Nurten; Birth: 1976; Birth Record at: Trabzon Akçaabat Derecik Mah. Address: Bahçelievler Mah. Derecik Nahiyesi No 9 Akçaabat Trabzon. Presently DETAINED in Edirne F-Type Prison.

Arrested on: 31.1.2007

Defended by: Attorney Ekin Bayram Koca İstanbul Bar Association 7354

9. Mr. VEYSEL TOPRAK; Father's Name: Yaşar; Mother's Name: Hurinaz; Birth: 1981; Birth Record at: Elazığ Palu Cirik Mahallesi; Address: Cihangir Mah. Meşrutiyet Cad. İncir Sok. No 5/1 Avcılar İstanbul. Presently DETAINED in Edirne F-Type Prison.

Arrested on: 23.2.2007

Defended by: Attorney Fatih Sağlam İstanbul Bar Association 31703

10. Mr. OSMAN ALPAY; Father's Name: Celal; Mother's Name: Hatice; Birth: 1983; Birth Record at: Tokat Merkez; Address: Bağkur Evleri A 2 Blok K:1/2 Tokat. Presently DETAINED in Edirne F-Type Prison.

Arrest order on: 7.3.2007

Arrested on: 9.3.2007

Defended by: Attorney Fatih Sağlam İstanbul Bar Association 31703

11. Mr. İRFAN ÖZKAN; Father's Name: Rasim; Mother's Name: Asiye; Birth: 1978; Birth Record at: Trabzon Dernekpazarı Akköse Köyü; Address: Pelitli Beldesi Cumhuriyet Mah. Görkem Sok. Akköse 2.Blok Havaalanı/Pelitli Trabzon. Presently DETAINED in Tekirdağ F-Type Prison No 2.

Arrest order on: 7.3.2007

Arrested on: 15.3.2007

Defended by: Attorney Mehmet Sami Selçuk İstanbul Bar Association 30681

12. Mr. MUSTAFA ÖZTÜRK; Father's Name: Mikail; Mother's Name: Aysem; Birth: 1982; Birth Record at: Erzurum Narman; Address: Şihköy Cad. Bahçelievler Kooperatifi C blok No:6 K:3 Erzurum. Presently DETAINED in Tekirdağ F-Type Prison No 1.

Arrest order on: 26.3.2007

Road arrest on: 27.3.2007

Arrested on: 11.4.2007

Defended by: Attorney Havva Sezen İstanbul Bar Association 16923

13. Mr. ŞENOL AKDUMAN; Father's Name: Abdullah; Mother's Name: Durdu; Birth: 1983; Birth Record at: Manisa Selendi Çınan. Presently doing his military service at Dikilitaş Mah. Beşinci Tekman Sok. No 9 Uşak. 11. Hava Ulaştırma Ana Üs Komutanlığı Etimesgut/Ankara.

14. Mr. NUMAN ŞİŞMAN; Father's Name: Cemalettin; Mother's Name: Nürşen; Birth: 1986; Birth Record at: Trabzon Yorma Gülyurdu köyü; Address: Havaalanı Adnan Kahveci Mah. Hazar Sok. No 6 Kat 1 Pelitli Trabzon.

15. Mr. ALPER ESİRGEMEZ; Father's Name: Enver; Mother's Name: Aysel; Birth: 1983; Birth Record at: Rize Ardeşen Armağan köyü; Address: Karşıyaka Mah. 331 Sok. No: 13/3 Gölbaşı Ankara.

Defended by: Attorney Fatih Sağlam İstanbul Bar Association 31703

16. Mr. ERBİL SUSAMAN; Father's Name: Mehmet; Mother's Name: Ülviye; Birth: 1980; Birth Record at: Malatya Yeşilyurt Hiroğlu Mah.; Address: Orman Bölge Müdürlüğü Lojmanları C Blok No 5 Elazığ.

Defended by: Attorney Rıza Yorulmaz İstanbul Bar Association 21492

17. Mr. YAŞAR CİHAN; Father's Name: Hüsni; Mother's Name: Fatime; Birth: 1958; Birth Record at: Trabzon Akçaabat Kavaklı Köyü; Address: Kavaklı Köyü Trabzon.

Defended by: Attorney Murat Ekici İstanbul Bar Association 23470

18. Mr. HALİS EGEMEN; Father's Name: Ali Rıza; Mother's Name: Avniye; Birth: 1954; Birth Record at: Trabzon Merkez Kemer kaya Mah.; Address: 2 nolu Beşirli Mahallesi Sahil Cad. Yıldız apt. Kat 5 Daire 20 Trabzon.

Defended by: Attorney Murat Ekici İstanbul Bar Association 23470

CRIMES: Being a Leader of a Terrorist Organization, Being a Member of a Terrorist Organization, Aiding a Terrorist Organization, Premeditated Murder, Manufacturing Explosives, Using Explosives, Inflicting Injury Intentionally, Destruction of Property, Threat, Hiding a Criminal, Possession of a Firearm Without a Licence.

LOCATION AND PLACE OF THE CRIME: İstanbul and Trabzon, 19.1.2007 and before

EVIDENCE : Affidavits of plaintiffs and witnesses, photo identification minutes of plaintiffs and witnesses statements, technical surveillance reports, crime objects, reports of experts, definitive medical reports of the injured people, confessions of the suspects, location identification minutes.

THE INVESTIGATION DOCUMENTS HAVE BEEN EXAMINED

The investigation was initiated after the assassination of Firat Dink, the editor-in-chief of Agos newspaper, and continuously deepened with the new evidences that have suggested that this act is related to a number of previous acts. It is understood so far that these acts were ideologically driven and carried out at different times by the group formed by the suspects and according to the aforesaid group's collective decision and action plans. Now these acts shall be explained.

1. The Intentional Injury of the Priest of Trabzon Santa Maria Catholic Church in the Summer of 2002

Yasin Hayal stated that when he completed and got back from his military service in or about November or December 2002, he learned that some missionary activities had been carried out in the Trabzon church; that he planned to go to the church with a wooden stick and beat whoever he would find there to protest these activities; that he went there during the day and saw a person who was dressed as a layman yet was apparently a Christian due to a cross he wore around his neck; that he hit him with aforesaid stick and left; and he was not caught after the incident.

The same suspect stated in his other statement taken by our Office of the Chief Public Prosecutor and in his letters to our office sent through the Prison Administration, that he had been incited by Erhan Tuncel to beat the priest of the Trabzon Santa Maria church through the information Erhan Tuncel had given him in 2002 or 2003 and according to their mutual political views; that he committed this act single-handedly yet he had been convinced to do so by Erhan Tuncel; that, as he had stated in his previous statement, he took an adze handle and went into the church when it was quiet and looked for the priest; that he saw a person who was dressed as a layman yet was apparently a Christian due to a cross he wore around his neck and wounded him hitting with the adze handle several times; that he escaped the scene afterwards and he was not caught and punished for this crime.

Ahmet İskender stated that he heard that Yasin had beaten a priest with an adze handle in Trabzon in 2002 and that this person had been in a coma for 40 days; and that all the young men in their neighbourhood knew about this incident.

Ersin Yolçu stated that he learnt about Yasin's beating of a priest and bombing of a McDonald's restaurant afterwards; that he heard that these acts had been perpetrated by Yasin from young men in the neighbourhood; that Yasin himself told him afterwards that he had been the one who had beaten the priest; that he told this with a smile; and that he said that the police had been looking for him.

Ogün Samast stated that the beating of the priest of the Trabzon church had taken place before he knew Yasin; that he did not know when this incident had taken place; that he did not hear about the incident when it happened; that he learned afterwards that aforesaid priest had been beaten by Yasin Hayal from Yasin's friends yet he never asked Yasin about anything relating to this incident nor did Yasin ever tell him anything about it.

Veysel Toprak stated that during the period when Erhan Tuncel lived in his house they talked about Yasin Hayal's beating of a priest while they chatted about several other things.

In the fact-finding report dated January 25, 2007 and comprising of Erhan Tuncel's parole statement, it is stated that Yasin Hayal's beating of a priest was known by everyone and that he himself said that he had committed these acts.

The documents related to this incident were requested from the office of Trabzon Chief Public Prosecutor, but it is understood that during that period neither judicial authorities nor medical facilities had been notified of such an incident.

Nevertheless, Lenuta Roman, the assistant priest of the Trabzon Santa Maria Catholic Church, stated that during the summer of 2002 there was no priest in Trabzon; that the priest responsible of the Samsun Church, Pierre Brunissen, went to Trabzon from time to time to conduct masses; that during such a visit he was kicked in the back by three unidentified children when he was standing on the gate of the church; that he flew down the stairs, but he just got a few scratches in his hand, and therefore he did not go to the police or a medical facility.

In these circumstances, it is decided that there is not sufficient evidence to conclude that such an incident ever occurred and were perpetrated by Yasin Hayal and Erhan Tuncel and to file a criminal case about it, consequently no charge has been made about the suspects related to this incident and the file has been sent to the office of Trabzon Chief Public Prosecutor with a lack of jurisdiction verdict and with a request that the evidence on the existence of the crime to be reviewed. Nevertheless, the incident was included in this indictment in consideration that it reflects the political and social views of the group formed by the suspects.

2. Hoax Bomb Warning aimed at Trabzon Airport on August 16, 2004

Yasin Hayal stated that the bomb warning to the prime minister's airplane in August 2004 was a result of a bet; that he had watched a television programme in the previous evening; that in this programme it had been stated that all warnings were taken seriously and some of them turned out to be a hoax; that he told his friends that law enforcement authorities took all warnings seriously and acted on them, yet others asserted that they just said so on television but in reality they did not do anything, so they wagered a bet; that the following day he called the gendarmerie using the cell phone of a friend called Serdar and said there was a bomb on the plane about to land; that thereupon the plane did not land and a lot of law enforcement officers came to the airport, so it is understood that he had been right, yet he was sorry that he created such a confusion and that he had not known that the prime minister had been onboard; and that the office of Trabzon Public Prosecutor prosecuted him in relation to this incident.

The documents on this incident, which happened on August 16, 2004, were requested from the office of Trabzon Public Prosecutor and it is understood; that on that day gendarmerie emergency telephone numbered 156 was called and the caller said that there was a bomb in the Trabzon Airport and it was going to be detonated when the first plane from İstanbul landed; that law enforcement officers examined the airport; that the calling number was displayed on gendarmerie's telephone; that the number was registered for the father of Serdar Ergenç, who is a friend of Yasin Hayal and apparently committed the bomb warning incident together with him; and that the gendarmerie therefore located the suspects.

Consequently, a criminal case was filed against Yasin Hayal and Serdar Ergenç with the indictment by the office of Trabzon Chief Public Prosecutor dated December 24, 2004 and numbered 2004/6031-3634-1989 and based on the charge of violation of Turkish Criminal Code No. 765 Article 283/1. After the trial, Trabzon Criminal Court of First Instance No. 1 declared the verdict dated February 16, 2006 file numbered 2005/14 and verdict numbered 2006/46 that Serdar Ergenç to be fined 33 YTL and the punishment to be postponed and that Yasin Hayal to be fined 275 YTL. This verdict was executed after the finalisation.

Since there is already a finalised verdict, we do not request a further punishment related to this act.

3. Throwing an Explosive at Trabzon McDonald's on October 24, 2004

On October 24, 2004, a handmade bomb exploded at the main entrance of the McDonald's restaurant in downtown Trabzon and the impact of the explosion wounded Derya Değirmenci, Gülümser Kurt, Gürcan Toprak, Merve Serdar,

Özlem Araz and Hasan Koç who happened to be there and caused damage to the restaurant and to a parked car.

After the incident, Trabzon Security Directorate started an investigation and determined that the perpetrator was Yasin Hayal based on the testimonies and identifications of eyewitnesses and victims. Yasin Hayal was caught in a house he used as a hiding place in İstanbul 6 days after the incident, i.e. on October 30, 2004.

In the medical examination of Yasin Hayal after his arrest, crusted wounds were found on his right lower leg. İstanbul Forensic Medicine Fatih Branch Directorate prepared a report that these wounds were not life threatening, but might prevent work for 3 days. According to this report, based on the person's own account, the wounds had been formed during the Trabzon McDonald's bombing which occurred six days previously.

In the examination of explosive residue found at the scene, it has been discovered that residue contained nitrocellulose. Samsun Criminal Police Laboratories prepared a report dated November 2, 2004 and numbered 948 related to this discovery. In the examination report dated November 3, 2004, it is stated that the bomb was activated by a lit fuse and exploding nitrocellulose and nails put inside a tin can.

Yasin Hayal stated in his defence taken in that investigation that he decided to bomb a shop of American origin to protest the US occupation of Iraq; that the only place he knew in Trabzon of this nature was McDonald's; that he planned the act single-handedly; that he bought firecrackers, nails and coal dust from shops and in a field he found some chemical fertiliser within a tin box; that he made the bomb by himself by mixing and putting all these substances in a jar; that he learned how to make a bomb from Chechen youngsters he met in Baku, Azerbaijan; and that he executed the act all by himself.

As a result of the legal investigation based on the indictment dated November 29, 2004 and numbered 2004/7964-3262-247 by the office of Trabzon Chief Public Prosecutor that Yasin Hayal should be punished for manufacturing explosives, throwing explosives, inflicting injury and damaging property, Trabzon Assize Court declared its verdict dated April 17, 2006 file numbered 2004/394 and verdict numbered 2006/250 that the suspect should be punished with a total of 3 years and 44 months of prison sentence and a fine of 1183 YTL due to his committed crimes of manufacturing explosives, using explosives, inflicting injury and damaging property. It is understood that the suspect appealed to the Supreme Court of Appeals (Yargıtay), that the file was sent to Yargıtay on June 14, 2006 and there is no definitive verdict on the case yet.

Since Yasin Hayal was tried for this act and there is already a judgement, at this stage it is impossible to make a new punishment request within this indictment. However, in case Yargıtay annuls the file the trial process shall be continued by Trabzon Assize Court and in this case it shall be in the discretion of your court to merge this case with the current file.

Yasin Hayal stated in his statements taken by İstanbul Prevention of Terrorism Branch Directorate and our office of Chief Public Prosecutor, that he decided to stage an act after his Azerbaijan trip in 2004 to express his views; that his aim was to protest the US occupation of Iraq; that the only American owned firm he knew in Trabzon was McDonald's, thus he planned to bomb there; that he produced a simple bomb; that he observed the restaurant at or about 10 am; that when he noticed there was nobody downstairs he ignited the fuse and threw the bomb at the gate; that he was caught afterwards due to this act; that he was released after 11 months of detention; that he was convicted afterwards to 6 years and 8 months of prison; and that he appealed against the verdict, therefore the punishment had not been executed yet.

The same suspect stated in his subsequent statement taken by our Office of Chief Public Prosecutor and in his letters sent to our Office via the Prison Administration, that Erhan Tuncel began to plan an act that would cause a big sensation and express their anti-Americanism; that he asked Yasin "What is there in Trabzon that belongs to the Americans?"; that immediately after this he said "Let's attack McDonald's"; that he said they would bomb the establishment and he himself would prepare the bomb; that there would be only two of them involved in this plan; that Yasin bought necessary materials like firecrackers, coal dust, nails etc. and gave them to Erhan; that he was not with Erhan when Erhan prepared the bomb; that Erhan prepared it in his own place; that Erhan bought some kind of fertiliser and put that in the bomb; that he learned about it afterwards; that he did not know how and where Erhan had learned bomb-making; that Erhan prepared two smaller sample bombs of the same kind, but he did not put nails in them; that they tried out these samples in a desolate place; that he asked Erhan if the real bomb would cause a much bigger damage since they would put nails in it; that Erhan deceived him by saying that the nails would be thrust into floor and thus would not harm people around;

That he therefore went in front of the McDonald's restaurant in Trabzon square on October 24, 2004; that Erhan followed him walking 50 metres behind him and then crossed the street and watched him pretending to read a newspaper; that he ignited the bomb's fuse sticking out of a plastic bag and left the bomb in front of the McDonald's; that he wanted to escape through a small street, but saw 3 private course students turning the corner and walking towards the bomb; that he went back and pushed of the pavement a child who was ahead of others and very close to the bomb; that the child fell between two parked cars and he attempted to escape;

that at that moment the bomb went off; that one of the nails went through his leg; that he escaped and went to Erhan's place;

That Erhan had said that he would help him to escape to İstanbul or Elazığ before the act, but afterwards he did not seem to be very friendly towards him; that Erhan said that he would send him to a friend's place and that he had to wait for him there; that thereupon he went to that house; that there were a couple of students in the house, but he did not remember who these were nor their names; that then he left that house and he stayed in an abandoned construction site for one night; that then he took the money he and Erhan had saved beforehand to use after the act and left for İstanbul; that he stayed in Hüseyin Özçiçek's house in Maltepe and the İstanbul police caught him there and took him back to Trabzon.

Yasin Hayal stated in his letter dated February 27, 2007 and sent via the Prison Administration to our Office of Chief Public Prosecutor, that he stayed in the house of two suspects, Veysel and Alper, after the act and these two gave him some money and sent him to İstanbul.

In the fact-finding report dated January 25, 2007 containing Erhan Tuncel's oral statement, it is stated that Yasin said "The holy war will be fought in Turkey, not abroad" and started to plan an armed attack on the church, HSBC Bank or McDonald's; that since Erhan did not want people to die he told Yasin, just to help discharge his energy, that he would try to make a bomb to attack McDonald's; that Yasin agreed and he prepared a simple mechanism using a firecrackers and nails and gave it to Yasin; that it was Yasin who placed the bomb; that he was on the other side of the street during the act; that Yasin came to his place after the act; that he sent him to the place of a friend whose name he did not remember; that he afterwards visited Yasin there; that Yasin wanted money from him, but he could not find any.

In the fact-finding report dated February 10, 2007 containing Erhan Tuncel's oral statement, Erhan Tuncel added that he asked Seyfi Yarımbaş "McDonald's or HSBC?"; that Seyfi replied "McDonald's"; that Yasin was telling everybody in the neighbourhood that he was going to do it; that Yasin came in his place after the act and decided to go to Veysel Toprak's house, who was a mutual friend of theirs; that Yasin took some money from Veysel Toprak and his friends and went to İstanbul.

Ahmet İskender stated that although Yasin did not tell that directly to him he guessed that the McDonald's bombs were manufactured or obtained and given to Yasin by Erhan; that Yasin had not been capable of manufacturing these gadgets; that the McDonald's bombing took place after Yasin met Erhan and shortly after Yasin moved in the house where Erhan and some other students lived in 2004.

Tuncay Uzundal stated that Erhan Tuncel visited him one day and told him that Yasin Hayal was responsible from the McDonald's bombing in Trabzon and that he manufactured the bombs.

Ekrem Furat stated that after the McDonald's bombing Erhan Tuncel told him that he prepared the bomb, that he watched the surroundings, that Yasin Hayal placed the bomb, that Yasin Hayal's leg was wounded and that they burned Yasin's clothes on vacant ground.

Veysel Toprak stated that Yasin Hayal came to their house in October 2004; that at that moment he and his housemates Alper Esirgemez, Osman Alpay and Şenol Akduman were at home; that they learned that an explosion happened in Trabzon McDonald's; that Yasin said he did it; that when they asked him why he did such a thing he replied that he wanted to protest the US occupation of Iraq and Erhan Tuncel was also aware of the act, but he did it by himself; that later Yasin showed them his leg and they understood that he was injured;

That at the night when Yasin stayed at their place Erhan Tuncel and another person whose name would be said to be İrfan Özkan in security directorate afterwards and another two or three people came to their house; that, as far as he could interpret their attitudes and behaviours, they had just heard about the event and were surprised that Yasin had done such a thing; that Erhan Tuncel seemed to be calm; that these people got together with and talked to Yasin in a separate room; and that Yasin told them he would go to Rize and left.

Alper Esirgemez stated that in October 2004 when he was at home with his friends Veysel Toprak, Şenol Akkuman and Osman Alpay, Yasin Hayal showed up in an excited mood; that they knew that he was injured when he showed them his leg; that they asked him what had happened; that Yasin did not tell them anything at first except to turn on local channels on TV; that later he told them that he bombed Trabzon McDonald's and his leg got hurt during the act; that then they learned from the TV that McDonald's had been bombed so they believed what Yasin told; that it had probably been Erhan who send Yasin to their house; that Yasin told them all the details of the act he had committed;

That shortly after İrfan Özkan -whom he had never seen before and whose name he had not known but later learned from the press- and two other people; that they went in and talked to Yasin Hayal in a separate room for approximately half an hour; that after a while also Erhan Tuncel came to the house and began to talk to Yasin Hayal, but he did not hear what they said; that Erhan Tuncel told Yasin Hayal that he had seen him when he bombed McDonald's; that therefore they knew that also Erhan Tuncel had been involved in the bombing,

That later İrfan Özkan, Erhan Tuncel and the other two unknown people left; that they wanted Yasin Hayal to leave the house; that Yasin accepted that and told them that he would leave the following day; that Yasin stayed in their house the night after the incident and the following night; that during this period Erhan Tuncel visited Yasin from time to time.

Osman Alpay stated that when he lived with Veysel Toprak, Alper Esirgemez and Şenol Akduman, the McDonald's restaurant in Trabzon was bombed; that that day Yasin Hayal showed up when they were at home; that Veysel and Alper talked to Yasin; that he did not directly talk to him; that they told him that Yasin bombed McDonald's; that he felt uneasy because of this; that Veysel Toprak told him that he would send away Yasin shortly; that Yasin stayed there for two nights; that he did not know whether they gave Yasin any money; that Veysel and Alper did not request any money from him for Yasin's behalf.

İrfan Özkan stated that at the day the McDonald's bombing took place and TV channels covered the incident Numan Şişman showed up and said that Yasin Hayal did it; that Numan showed tincture of iodine stains on his pants and said that Yasin was injured and thereupon he believed what Numan had said; that Numan said that Yasin was a friend of Erhan Tuncel's and they could find Yasin at Erhan's place; that thereupon they went to Erhan's; that Erhan told them Yasin was in Erbil Susaman's place and explained to Numan the address of the house; that when they arrived there they saw Yasin lying with a dressed wound on his leg;

That he asked Yasin why he had done this; that Yasin replied that he did it to protest America; that he met Yasin twice; that the first time was when he met him at Erbil's place; that the following day they went again to Erbil's place and learned that Yasin left for another house; that thereupon Numan and he went to this second house; that there were a few university students at home; that in both meetings he told Yasin to surrender to the police; that in the second meeting Yasin said he would surrender after his leg got better;

That at the same night gendarmeries took him to the Gendarmerie post at Karadeniz Technical University (KTÜ); that they asked him the whereabouts of Yasin, but he did not say anything considering that Yasin had been convinced to surrender and it would be better for him to surrender.

Erbil Susaman stated that after the bombing Yasin Hayal and Erhan Tuncel came to his place and explained the situation; that he felt uneasy and did not want Yasin Hayal to stay at his house; and that the suspects left his house in the same evening. Numan Şişman stated that he learned about the bombing afterwards; that he did not see Yasin Hayal after the incident; that he did not know where he stayed; that he did not help him in any way.

Şenol Akduman stated that in 2004 he was a student at Karadeniz Technical University Computer Engineering Department; that he lived with his friends Veysel Toprak, Alper Esirgemez and Osman Alpay in a rented flat; that Yasin Hayal had been just an acquaintance for him and they had not talked except greetings before; that in the evening of the day when Trabzon McDonald's got bombed he saw Yasin Hayal when he arrived; that he said hello and went to his own room; that in the morning he noticed that Yasin had gone; that that day he learned about the McDonald's bombing at university; that 2 or 3 days after he learned that it had been done by Yasin Hayal; that in the evening when Yasin was in their house he did not talk about the act; and that the claim that they pooled money in order to send Yasin to İstanbul was groundless.

All these statements and evidences clearly show that Yasin Hayal and Erhan Tuncel planned together the act of throwing explosives at Trabzon McDonald's; that Erhan Tuncel prepared the mechanism at his house; that during the execution of the plan Erhan Tuncel was present in the crime scene and monitored the operation; that after the act Yasin Hayal went to Erhan Tuncel's house and then went firstly to Erbil Susaman's and secondly Veysel Toprak, Alper Esirgemez, Osman Alpay and Şenol Akduman's houses and was hidden there; that in this period he was also helped and supported by İrfan Özkan and Numan Şişman; and that he went to İstanbul thanks to financial support of these suspects..

4. The Assassination of Fırat Dink on January 19, 2007 in İstanbul

Description of the Act:

At this point, it will be appropriate to review briefly the relations between the suspects during the period beginning from before the bombing of Trabzon McDonald's to the assassination of Hrant Dink.

Erhan Tuncel was a student at Karadeniz Technical University (KTU) Business Administration department. Yasin Hayal and Erhan Tuncel met for the first time in Trabzon Alperenler Organization in 2002. They talked about contemporary political events in Turkey and in the world and concluded that especially in Iraq and Chechnya Muslims are under an unjust attack and dying, and it would be wrong not to do anything about this.

With these considerations in mind, Yasin Hayal decided to go to Chechnya and to this end he went to Azerbaijan on August 18, 2004. Nevertheless, he could not enter Chechnya due to security conditions and he came back to Turkey on August 27, 2004.

Yasin was under strong influence of Erhan's ultranationalistic views. Erhan said that he could send Yasin, his friend Miktad Kot and other youngsters in the

neighbourhood to fight in Iraq. As a matter of fact, firstly it was Yasin who wanted to do this. But Erhan was not able to send Yasin and others to Iraq.

Therefore, Erhan and Yasin decided to stage a sensational attack against an American owned establishment in Turkey in order to protest the Iraq war. To this end, they planned to bomb a McDonald's restaurant in Trabzon in Ramadan which is a holy month to Muslims, and they staged the act described above.

Erhan Tuncel was detained after the bombing by Trabzon Prevention of Terrorism Branch, yet did not provide any information about the act.

According to the parole statements of Erhan Tuncel classified in the fact-finding reports of January 25, 2007 and February 10, 2007, he met Hüseyin Tan, one of his professors, after one day he had been released as a result of not being attributed as a suspect in that investigation. Hüseyin Tan said to Erhan that police officers at Trabzon Security Intelligence Department wanted to talk to him. Therefore, Erhan met Ahmet (code name; real name: Muhittin Zenit) and another officer. These officers told Erhan that they knew everything, that he would get a very long sentence and that he had to disclose the hiding place of Yasin Hayal. Thereupon, Erhan brought and gave to the officers the blood-stained trousers that Yasin Hayal had worn at the time of act and had changed in Erhan's place afterwards. Later, on October 30, 2004, Yasin Hayal was caught by the law enforcement authorities in İstanbul and arrested upon the crime he was accused of.

During the period when Yasin Hayal was in prison, Ahmet (code name; real name: Muhittin Zenit) from Trabzon Security Intelligence Department met Erhan and said: "From now on you are a servant of the government. You are under our control. We don't want you to be involved in any illegal activity. You'll inform us about anything. You'll struggle to prevent youngsters becoming like Yasin Hayal." Therefore, he offered Erhan the chance to be a police informer and Erhan accepted this offer.

Yasin Hayal was released on September 13, 2005 and began to meet Erhan.

In January 2006, Yasin Hayal told Erhan that there was an Armenian journalist called Hrant Dink and he was going to kill him. Erhan notified the Intelligence Branch Directorate officers of this declaration and he provided the same information afterwards and for the last time on April 7, 2006.

Yasin Hayal met Zeynel Abidin Yavuz in early 2006 to execute this plan and asked him: "There is a leader of Armenians, will you shoot him?" At first, Zeynel Abidin Yavuz accepted this offer, but since Yasin could not find money and a pistol the act was repeatedly postponed.

In May 2006, Yasin sent for Zeynel and told him that they would execute the Hrant Dink assassination plan, and asked Erhan Tuncel, who joined them at that moment, to download photos of Hrant Dink and the address of Agos newspaper.

Erhan Tuncel and his schoolmate and later homemate Tuncay Uzundal went to Akın Internet Cafe, downloaded Hrant Dink's photos and copied them to a CD. Erhan wrapped these print-outs with a newspaper and brought the packet to Yonca Market. Zeynel took the packet from Yonca Market and brought it to Yasin Hayal. Yasin Hayal opened the packet and showed the photos of Hrant Dink to Zeynel and said: "This is the man you'll shoot. He's the leader of the Armenians. He said bad things about the Turks." This way he suggested that he was an enemy of the Turks.

When Zeynel Abidin Yavuz was the planned executor of the plan Mustafa Öztürk was also informed of the plan and promised to help financially and morally.

However, Zeynel Abidin Yavuz, upon the request and advice of his elder brother Kurtuluş Yavuz, left Trabzon in June and went to İzmit to work, so the plan could not be executed in that period.

The examination of social security records of Zeynel Abidin Yavuz showed that he worked in the Kocaeli (İzmit) region of the Social Security Organization (SSK) between June, 3, 2006 and September 17, 2006, and the examination of the base station records showed that his cell phone transmitted signals in Kocaeli between July 17, 2006 and August 24, 2006 and in Trabzon after August 24, 2006.

After Zeynel Abidin Yavuz left for İzmit, Yasin Hayal started to look for another person willing to execute this plan and a pistol to be used in the act.

Coşkun İğci is the husband of Yasin Hayal's aunt and, according to his own statement, is in contact with Engin (code name; V.Ş.) in Trabzon Gendarmerie Command Intelligence Department and another intelligence officer working with him and inform them about whatever he hears around related to crime plans and executed crimes. Upon the request of Engin, he also informed them about Yasin Hayal.

Coşkun İğci, again according to his own statements, upon the request of the intelligence officers, talked to Yasin Hayal in mid-July, told him that he heard that Yasin would shoot a journalist and ask him why he would do so. Yasin told him that he was going to shoot a journalist called Hrant Dink. Coşkun passed on this information to the intelligence officers.

When Yasin and Coşkun met again Yasin said that he had 300 YTL and he was going to get a gun with this money and showed Coşkun the photo of Hrant Dink. Coşkun İğci told Gendarmerie officers of this situation. The officers instructed him:

“Take that money from Yasin and tell him that you’ll find a gun.” Coşkun took 300 YTL from Yasin to get a gun.

After two and a half months Yasin got angry that he did not have a gun yet and called Coşkun and told him to bring either a pistol or the money. Coşkun İğci consulted with the intelligence officers. They instructed Coşkun to tell Yasin that he could not find a pistol and to give the money back. Coşkun gave back 300 YTL to Yasin. He remained in contact with Gendarmerie officers. When he asked them about Yasin they said: “Yasin Hayal can’t do it. He is under our supervision. We solved the problem.”

In early August, Yasin Hayal contacted Ogün Samast, who had been his teammate in Pelitlispor football club who shared his political views, and told him about his plan. He told him that there was an Armenian journalist called Hrant Dink who insulted the Turks, and asked him whether he could kill Hrant Dink or not. Ogün Samast accepted Yasin Hayal’s offer to kill Hrant Dink.

Erhan Tuncel informed Trabzon Security Intelligence Department on February 17, 2006 and on April 7, 2006 that Yasin Hayal was planning an attack at Hrant Dink, the editor-in-chief of Agos newspaper, yet it is established that although he knew that Yasin Hayal would not do it in person and planned to have it done first by Zeynel Abidin Yavuz and then by Ogün Samast he misinformed the aforementioned organisation in regard to this point.

Muhittin Zenit stated in his statement that Erhan Tuncel told him that the act would be executed by Zeynel Abidin Yavuz, yet since he was not able to confirm this information he did not report it; and that he never was made aware of the fact that Ogün Samast had been chosen to execute the plan.

The principal cause of this fact is that Erhan Tuncel co-planned the Hrant Dink assassination with Yasin Hayal. That is to say, Erhan Tuncel deliberately misled the intelligence organisation first by saying that Yasin Hayal would execute the plan in person, then, after Zeynel Abidin Yavuz ceased to be the planned executor, by giving his name and finally not informing the organisation about the naming of Ogün Samast.

Tuncay Uzundal, one of the suspects and housemate of Erhan Tuncel, stated in his statements that one day Erhan told him that he prevented an important act and that in fact he was also the planner of it. Tuncay Uzundal’s such statements show that Erhan Tuncel was in a planner capacity in the said act.

Yasin Hayal planned to send Engin Yılmaz and Ogün Samast to İstanbul and to execute the plan with a car stolen by Engin Yılmaz. He told Engin Yılmaz this plan

at a wedding party and asked for his help approximately two months before the act. However, Engin Yılmaz rejected to participate in the act. Yasin Hayal got angry with Engin Yılmaz and told him not to tell anyone.

After accepting to execute the act, Ogün Samast started to frequent Erhan Tuncel's place together with Yasin Hayal. Yasin and Erhan repeatedly told Ogün Samast that Hrant Dink was an enemy of the Turks, that he would become a hero if he would kill this person, that there might be cameras at the scene, so he would have to hide his face and taught him the crucial points and the strategies in relation to the act.

Tuncay Uzundal stated in his statement that approximately two months before the incident, when he was at home, Yasin, Erhan and Ogün planned the operation with Hrant Dink's photos on the coffee table, and that Erhan and Yasin solicited Ogün Samast to kill Hrant Dink.

It is understood that, during this period, Trabzon Intelligence Branch Directorate officers requested that the assistant informer status of Erhan Tuncel to be cancelled on the grounds that "He tries to hide information, lies frequently, sometimes provides inconsistent information, frequently solicits money and produce scenarios to get more money." Thereupon, on November 23, 2006, Erhan Tuncel's record as confidant was cancelled by Intelligence Office Headquarters. Moreover, throughout this period nothing could be learned from Erhan Tuncel about Yasin Hayal.

Yasin Hayal, upon his uncle Coşkun İğci's failure to get a gun for him, used 300 YTL he got back to buy a 7.65 mm handmade pistol from a person whose real identity could not be established. He hid the pistol in Ahmet İskender's store.

According to the information contained in Erhan Tuncel's and Tuncay Uzundal's statements, Yasin Hayal went to Erhan Tuncel's place to obtain bullets to be used in the act, and told Tuncay Uzundal that he needed bullets, that he had to contact Erhan, and thereupon they sent an SMS from Tuncay's cell phone numbered 0505 546 10 16 to Erhan's cell phone numbered 0555 674 66 23, that read "Yasin is here and need 7.65 mm bullets".

Erhan was with Salih Hacısalihoglu when he got this message and send a message to Tuncay's phone that read "Tuncayyy" to express his anger because of the message. Later Yasin, again with the guidance of Erhan, got a box of bullets from Salih Hacısalihoglu, the owner of London Otel.

On January 14, 2007, Yasin Hayal invited Ersin Yolçu to Gözde Internet Cafe and asked him to find Ogün, but Ersin Yolçu could not find Ogün and went back to Yasin and later that day, when they walked on the street Yasin told Ersin that he would have Hrant Dink shot.

On January 15, 2007, at 10:30 am, Yasin went to the stationary shop where Ersin worked and asked Ersin to find Ogün and bring him. Thereupon Ersin went to Ogün Samast's place and brought him to Yasin who waited in the shop. Yasin, upon learning that Ogün had lost Hrant Dink's photos and addresses, gave him the address of Agos newspaper, which he had in his pocket.

On January 16, 2007, Ogün, Yasin and Ersin went to an internet cafe and printed out Hrant Dink's photos, and then they all went to Ahmet İskender's stationary shop. Yasin and Ogün told others that they would try the pistol kept in Ahmet İskender's shop and to be used in the act and they left. Yasin helped Ogün make some practice in a vacant ground nearby the Aydın Kent housing complex.

On January 17, 2007, at or about 10:30, Yasin went to Ersin's workplace and both of them waited for Ogün. Approximately 1 hour later Ogün came to the meeting point, and then both of them went to Ahmet İskender's shop where Yasin Hayal received a total of 180 YTL from Ahmet İskender -80 YTL of which belonged to Yasin and had been kept by Ahmet İskender and 100 YTL was added by Ahmet İskender- and gave the money as well as the pistol and a box of bullets he had kept in the shop to Ogün.

Ogün and Ersin went into the barber's shop across the street from Ahmet's shop. Ogün had a haircut, and at or about 14:00 he and Ersin went to bus terminal and bought a ticket from Metro Turizm company. Ogün left Trabzon at or about 15:30 and arrived at Esenler Terminal in İstanbul on January 18, 2007 at or about 08:00.

Ogün Samast called from a public telephone numbered 0212 640 42 48 to Ahmet İskender's cell phone numbered 0535 396 82 21 that Yasin Hayal had given him before he left and talked to Ersin Yolçu, and told him that he had arrived in İstanbul and that he would call again when he would arrive the newspaper office.

Ogün went to Bayrampaşa where his uncle Turan Samast lived and after he talked to his uncle for a while he telephoned Orhan Özbaş he had met via internet. They met in front of Ada Park in Bayrampaşa and they had a tour in Orhan Özbaş's car with his friends Mesout Kadri, Kaan Gerçek and Turan Meral.

Later Ogün Samast went back to his uncle's place. His uncle saw the gun on Ogün and asked him why he carried a gun in an angry tone.

In the evening of the same day (January 18, 2007), in Trabzon, Ersin Yolcu and Yasin Hayal met at Mihmandar Kafe. Ersin told Yasin Hayal that he talked to Ogün on telephone and said: "Ogün Samast is there lying in ambush."

On the following day (January 19, 2007), at or about 07:00 or 08:00, Ogün Samast left the house and went to Kaleiçi by minibus, and then went from Kaleiçi to Şişli by bus. He then walked to the address Yasin had given him, Halaskargazi Cad. No. 192, where the office of Agos newspaper is. At or about 13:00 he went into the office of Agos newspaper and told the employees there that he was a student at Ankara University and that he wanted to talk to Hrant Dink. Employees told him that Hrant Dink was not there and that he should get an appointment and gave him the number of the newspaper office on a piece of paper. Thereupon Ogün left the building.

Ogün Samast, using a public telephone numbered 0212 219 84 90 which is nearby the newspaper office, called Ahmet İskender's cell phone numbered 0535 396 82 21 and talked to Yasin Hayal. He told him that Hrant Dink was not in his office and asked him what to do. Yasin told Ogün to wait until Hrant Dink would come. Thereupon Ogün Samast started to wander around the office building. For a while he went into a nearby internet cafe and he sent instant messages to his friends. He wrote to his friend Muharrem Sayit Kahveci that he was about to kill an Armenian, but his friend did not believe him.

Then he left internet cafe and started to wait in front of the Akbank branch just on the corner of the newspaper building for Hrant Dink to come and enter the building.

At or about 14:50, he saw Hrant Dink coming out of the newspaper building and walking toward him, but since these happened very quickly he could not pull his gun and execute the plan.

Hrant Dink entered into the Akbank branch to draw some cash and at or about 14:57 he exited from the bank and started to walk towards the newspaper building. At that moment Ogün Samast went quickly close behind Hrant Dink, pulled his gun and fired 3 shots at his head from a short distance. Two of the bullets hit Hrant Dink's head and caused his death.

Suspect Ogün Samast started to run and entered into the street between Akbank and the newspaper building, Şafak Street, and escaped from the crime scene. He went to Bayrampaşa first taking a bus and then a minibus. When he arrived in Bayrampaşa he called from a public phone numbered 0212 640 81 80 to Ahmet İskender's cell phone and talked to Yasin and told him that he had shot Hrant Dink and that he would come back to Trabzon. Thereupon Yasin said "Did you really shoot him? Stay with your uncle for a few days, then come to Trabzon" and by saying so urged Ogün not to go back to Trabzon immediately for not getting caught.

On the same day, Ersin Yolçu and Zeynel Abidin Yavuz were at Mihmandar Kafe and learned from the television that Hrant Dink had been assassinated. Then Erhan

Tuncel came to the cafe and asked Ersin Yolçu the whereabouts of Yasin Hayal. Ersin told him that he had not seen Yasin. Erhan took Ersin outside the cafe and said “The guy was shot.”

Then Erhan asked the whereabouts of Ogün. Thereupon Ersin Yolçu thought that Erhan was not aware of the incident and avoided to tell him that Ogün had gone to İstanbul and instead told him that Ogün might be at home.

Ogün Samast bought a bus ticket from Metro Turizm company using his own name and on January 20, 2007 at or about 10:30 left for Trabzon. İstanbul Prevention of Terrorism Branch Directorate found that Ogün left İstanbul in a bus belonged to the aforesaid company and informed Samsun Security Directorate. At or about 22:30 the bus was stopped at Samsun Bus Terminal, Ogün Samast was identified and detained.

At the further stages of the investigation, some suspect statements and communication detection minutes suggested that suspect Mustafa Öztürk had met other suspects before and after the planned assassination and the McDonald's bombing and promised them to help financially and morally, that he was aware of the various stages of the act and thus had participated secondarily to the execution of the assassination act; and that suspects Yaşar Cihan and Halis Egemen had met other suspects after the acts and promised them to help financially and morally and supported the activities of the organisation financially.

Evidence:

According to the letter received from the Security General Directorate Intelligence Department, Erhan Tuncel had been registered for the trial records as an assistant informer by Trabzon Security Directorate on December 2, 2004; and then, on November 23, 2006, was dismissed from the duty of intelligence staff member.

According to the report of the Council of Forensic Medicine Specialized Committee Morgue dated February 6, 2007 and numbered 2007/4149, post mortem examination of the victim showed that the definitive causes of death were gunshot bullet wound related skull fracture in addition to apoplexy and brain tissue damage.

According to the accited birth registration of suspect Ogün Samast, it is ascertained that he was born in Üsküdar Zeynep Kamil Hospital on June 28, 1990 and additionally, according to the medical report taken from Kocaeli State Hospital, it is ascertained that at the time of the crime and at present he was and still is 18 years of age.

According to the report prepared following a social analysis made about Ogün Samast, it is ascertained that the suspect is able to understand the legal meaning and consequences of his own action.

Under the Location Identification Minutes dated January 21, 2007, Ogün Samast gave descriptions at the crime scene and also information about his accomplices from Trabzon.

According to the expert report dated January 22, 2007 and numbered 1208, the 7.65 mm handmade pistol was made in Turkey and the bullets both of which were found on Ogün Samast fall within the meaning of the Law No. 6136 and cannot be defined as a serious firearm; 2 empty shells and 1 bullet which were found at the crime scene was determined to have been fired from this pistol.

According to the expert report dated February 26, 2007 and numbered 3405, 2 bullets recovered from the victim's body were determined to have been fired from the pistol found on Ogün Samast.

According to the expert report dated January 21, 2007 and numbered 536, it is ascertained that the figure pictured in camera images at and nearby the crime scene and while escaping from the scene of the killing were of Ogün Samast.

According to the expert report dated January 25, 2007 and numbered 663-824, there was gunshot residue on Ogün Samast's glove.

According to the expert report dated January 26, 2007 and numbered 663-824/Annex, there was gunshot residue on the right and left wristbands of Ogün Samast's denim jacket.

According to the expert report dated January 25, 2007 and numbered 740, there was gunshot residue on Ogün Samast's left hand.

According to the expert report dated March 12, 2007 and numbered 2007/1921, following the examination of personal organizers and scripts captured during the search of the flat in which Erhan Tuncel and Tuncay Uzundal have resided together, it is ascertained that the handwriting belonged to these suspects and that the name "Hrant Dink" had been written and scribbled out.

Ogün Samast stated in his statement; that he started to see Yasin Hayal when he was about to finish his last year at secondary school; that Yasin was selling sesame rings [simit] in front of 75. Yıl School at that time; that Yasin gave information about the Chechen-Russia war and the occupation of Iraq by the USA during their conversations; that Yasin mentioned an Armenian journalist 6 or 7 months ago and told him that this journalist had insulted Turks, therefore needed to be punished; that because he, himself was a nationalistic person sensitive to those kind of things, he told Yasin "I can do my bit"; that during their next conversation, he learned that the journalist's name was Hrant Dink and he wrote articles in Agos newspaper; that

every time they talked, Yasin stated that Hrant Dink was an enemy of Turks and had insulted Turks; that Yasin gave him some pictures of Hrant Dink printed out from the internet; that about a week before the incident, Yasin Hayal told him that Ersin Yolçu, Ahmet İskender and Zeynel Abidin Yavuz also knew about this matter;

That they met with Ersin and Yasin at the stationery shop of Ahmet İskender; that Ahmet İskender was also at his shop; that those persons tried to influence him by saying that Hrant Dink was an enemy of Turks; that because he is a kind of person easily affected by those discourses and also because he was very fond of his friends, he told them that he was going to execute this action that is the murder of Hrant Dink;

That they had met with Yasin at the stationery shop of Ahmet the day before he left for İstanbul; that Ersin Yolçu was also at the shop; that they went to a remote place in Konaklar District in order to have some target practise with the gun brought by Yasin; that he fired off a clip of bullets targeting a tree from a distance of 5 meter with this 7.65 mm calibre gun brought by Yasin; that afterwards they came back to Ahmet's shop; that Ersin Yolçu was waiting for them; that Yasin gave him 50 YTL for the bus ticket; that Yasin had taken the gun out from its hiding place in Ahmet's shop and given it to him before they went to have some target practise; that this gun and money were given in front of Ersin and Ahmet; that he went to Trabzon bus station to get a ticket, but they told him there that "You don't need to buy the ticket in advance, tomorrow you can directly get into the bus";

That he left his home to go to İstanbul at 15.30; that he went to the stationery shop at which Ersin was working, around 1 o'clock in the afternoon and soon after Yasin also came to this shop; that he gave 50 YTL back to Yasin since he had not bought the ticket; that they altogether went to Ahmet İskender's stationery shop; that here Yasin gave him a total amount of 180 YTL including some amount of money he got from Ahmet; that Yasin gave the picture of Hrant Dink also in here; that Yasin had given the address of Agos newspaper at where Hrant Dink was working;

That Yasin gave him Ahmet İskender's mobile phone number of 0 535 396 82 21 written on a piece of paper and told him to call him from this number when he arrived at the newspaper building in İstanbul; that he also told him to put the gun in a safe place and stay with his relatives in İstanbul for a few days after the assassination; that he told Ersin Yolçu to take him to the bus station and send him off; that they went together with Ersin to the bus station and on the way, Ersin encouraged him by saying that "God bless you, I am sure you will succeed, you are such a brave man";

That the next day he got off from the bus at around 8 o'clock in the morning at Esenler bus station and went to the house of his Uncle Turhan living close to the

bus station; that after he had a quick chat with his uncle, he called his friend Orhan he knew via the internet and met with him; after they wandered around, at around 7 o'clock in the evening he came back to his uncle's house; that when his uncle asked him why he had come to İstanbul, he told him that he had come to meet with friends;

That on January 19, 2007 he left home at around 7-8 o'clock in the morning and went from Bayrampaşa to Kaleiçi by minibus, from there he took a bus to Mecidiyeköy and got off from the bus at Şişli; that he went to the front of Agos newspaper resident at the address of Halaskargazi Cad. No: 192 as had been told by Yasin; that he entered into the Agos newspaper offices and told the women there that he was a student at Ankara University and wanted to see Hrant Dink, but the personnel told him that Hrant Dink was not in the building at that moment and that he should get an appointment beforehand and gave him the telephone number of the newspaper written on a piece of paper, whereupon he left the building and called Ahmet İskender's mobile phone from a public phone nearby and talked to Yasin; that he told Yasin that Hrant Dink was not in his office and asked what he should do; that Yasin told him to wait until evening, in fact until Hrant Dink comes;

That after getting this directive from Yasin he wandered around the newspaper building, went to an internet cafe close to the building and stayed there chatting with friends on the internet for about two hours; that then he left the internet cafe and started to wait in front of Akbank just on the corner of the newspaper building for Hrant Dink to come and enter the building; that while waiting in front of the building he considered that he did not have to kill the person, it might be enough just to give a few punches and escape from the scene, and even he might go and call Yasin to tell that the person was in holiday at that moment and would not be back for a few weeks and then he might go back to Trabzon, but in the meantime he saw Hrant Dink coming out of the newspaper building and entering the Akbank branch; that he waited for him to exit from the bank and when Hrant Dink exited from the bank and was about to enter to the newspaper building, he went quickly close behind and fired 3 shots at his head from approximately a distance of 1 meter;

That he started to escape by turning into the street between Akbank and the newspaper building, asked somebody how to go to Bayrampaşa, went to Bayrampaşa first by taking a bus and then a minibus; that he called Ahmet İskender's mobile phone from a public phone and talked to Yasin; that he said Yasin "I have shot Hrant Dink, now I'm coming back", whereupon Yasin was surprised and replied "Really? Stay with your uncle for a few days, then come to Trabzon"; that he stayed at Uncle Turhan's house for that night, next day around 10 o'clock in the morning he went to Bayrampaşa bus station and bought a bus ticket from Metro Turizm using his own name; that he was caught by police when the bus arrived at Samsun bus station at around 22.30.

Ogün Samast stated in his second statement; that when he and Yasin went to visit Erhan in his former flat, Erhan showed him the pictures of Hrant Dink and said things like “You will shoot this man and become a hero”; that he did not remember whether Tuncay Uzundal was present or not during these conversations;

That Yasin Hayal mentioned this action to him approximately 7-8 months ago, but at that time told him that they were going to execute this action together with a person named Engin Yılmaz;

That he met with Tuncay Uzundal before coming to İstanbul, Tuncay warned him to be careful and not to use telephone, and then gave him a Turkish flag he brought from home as a present; that this flag was the one found on him when he was caught.

Yasin Hayal stated in his statement; that he had developed the idea of assassination of Hrant Dink as a punishment because of his newspaper articles and insulting Turkishness; that he let Erhan Tuncel and Zeynel Abidin Yavuz know about this idea, but Zeynel Abidin hesitated to undertake this mission; that at that time Erhan Tuncel printed out the pictures of Hrant Dink from the internet and left these pictures to the owner of Yonca Market, Osman, and told Zeynel to get those pictures from the market and deliver them to Yasin; that although Zeynel delivered the pictures to him, he thought that Zeynel was not able to execute this idea, therefore gave up on him;

That he disclosed this matter to Ogün Samast 5-6 months ago and saw that they shared the same thoughts and he understood that Ogün was able to do this job and he started to wait for the gun and cash supply; that at the same period, he bought the gun and the bullets used in the incident from a friend named Ömer Polatoğlu, who later died in a sea accident, in return for 300 YTL and also started to save some money to pay the travel expenses of Ogün getting to and from İstanbul; that in order not to spend and therefore to save, he gave any money he received to his friend Ahmet İskender, who owns a stationery shop;

That he disclosed the same matter to Ersin Yolçu and Ahmet İskender and made them informed;

That on January 14, 2007, he took out the gun, which he had wrapped in a plastic bag and had left in the stationery shop without Ahmet İskender’s knowledge, from its hiding place and showed it to Ahmet İskender, Ogün Samast and Ersin Yolçu who were all present there; that Ogün and himself went to the stream bank in Konaklar District in order to try out the gun; that after Ogün fired 5-6 shoots, therefore confirmed that the gun was working well, they came back to the shop; that while at the stationery shop they decided that Ersin would send Ogün off from

the bus station, that after arriving to İstanbul Ogün would contact him through Ahmet's mobile phone, that Ogün might get money from some tradesmen friends of Ahmet in İstanbul if he has any money difficulty, that they might pay back the amount of money borrowed to the account of that tradesman and that they might send Ogün to İstanbul on Wednesday;

That the next day he sent Ersin and Ogün to Trabzon bus terminal to get a bus ticket and upon coming back they said they had reserved a seat on the Metro Turizm bus; that on Wednesday at Ahmet's stationery shop, he gave Ogün the amount of 180 YTL he had saved before and entrusted it to Ahmet as well as the gun and a box of bullets he had hidden in the shop; that in addition he gave Ogün the pictures of Hrant Dink printed out from the internet as well as the address of Agos newspaper also learned from the internet; that in the meanwhile, when Zeynel Abidin Yavuz came to the stationery shop, he took him outside to say that they would send Ogün to İstanbul for something and directed him right away by saying "you go to the neighbourhood"; that Ogün told him that he had uncles in İstanbul, therefore accommodation would not be problem;

That Ogün and Ersin went to the terminal, he stayed in the shop and later, Ersin told him that he had sent Ogün off;

That the next day, namely on Thursday, Ogün called him a few times using Ahmet's phone to say that he reached the scene and was waiting; that he told him to wait but Ogün could not find Hrant Dink on that day;

That on the following Friday, when Ogün called him again to say that he was waiting at the same point, that he entered into the newspaper and introduced himself to the secretaries as a student who wanted to see Hrant Dink, but could not find him, that he was told to get an appointment and that he might go into the newspaper and shoot a few journalists, he suggested particularly the need to avoid any harm to innocent people and the need to wait until Hrant Dink came; that Ogün explained in his last telephone call that the mission was accomplished, that he shot Hrant, that he was in Bayrampaşa at the moment and would go to Yalova; and that on the same day he heard that Hrant Dink was killed from the media.

Yasin Hayal stated in his second statement taken later; that in January 2006, they came together with Erhan at Erhan's flat, Erhan asked him his thoughts about Hrant and he replied as "He's a worthless guy", but Erhan said things like "Hrant Dink is an extremely courageous man" and "He seems like Mustafa Kemal to Armenians"; that he now thinks Erhan had mentioned these words in order to incite him; that he said "I would tear his head off if I was younger" and Erhan replied as "We would win a great victory by killing him"; that because he had recently been released from prison, he asserted that he would not participate in such an incident, whereupon

Erhan responded as “We may need your help. You would give your gun and also prepare some money”;

That about one or two weeks after this conversation, Erhan told him he had talked to and convinced Zeynel Abidin about this action and also stated that he would leave the pictures of Hrant Dink printed out from the internet with market owner Osman in a closed envelope; that he sent Zeynel to the market to get these pictures;

That afterwards, when Erhan told him Zeynel had not been willing to agree to execute this action, he stated that he would not provide gun to such an unwilling person and discontinued to think of Zeynel for that action;

That a few months later, Erhan started to ask him questions about Ogün; that he talked to Ogün, explained the situation to him and he accepted to carry out this action; that indeed, in order not to give his own gun, he went to see his uncle-in-law (his aunt’s husband) Coşkun İğci and told him that Erhan was going to kill Hrant Dink and for that they needed a gun; that he gave 300 YTL to Coşkun for this, but since Coşkun did not get a gun in 3 months time, he got angry and took the money back;

That he saw Engin Yılmaz at a friend’s wedding nearly 2 months before the incident; that he explained the situation to him including that Ogün was going to carry out this action and asked him whether he might help them in İstanbul and help Ogün to escape from the scene of the incident after it occurred, but since Engin Yılmaz did not accept this offer, he did not mention this subject to him again;

That again a short while before the incident, they went together with Ogün to Erhan’s flat, watched a movie there, sat in the living room and talked about Hrant Dink’s assassination; that Erhan repeatedly told Ogün that he would be a hero after Hrant Dink’s assassination; that he does not remember whether Tuncay had entered into the room during these conversations;

That again a short while before the incident, he went to Erhan’s flat, but Erhan was not in, so he told Erhan’s friend Tuncay who was present at that moment that they needed bullets and he had to see Erhan; upon that Tuncay sent a text message to Erhan saying “Need bullets”;

As he had stated in his previous statement, after coming together with Ersin, Ahmet and Zeynel Abidin at Ahmet’s stationery shop and having a talk, he sent Ogün to İstanbul, but Ersin, Ahmet and Zeynep Abidin did not know that Erhan also had knowledge about this incident;

That he went to Mihmandar Cafe after the incident and as he entered, he saw the news about the assassination of Hrant Dink on television; that he expressed his pleasure by saying so to the people around and soon after Ersin came to inform him that Erhan was looking for him, upon that he went to Erhan's flat which was located right opposite to the cafe and that Erhan told him, with a smiling face, that Hrant Dink had been killed.

Yasin Hayal stated in detail in his letters written and sent from prison to our Chief Public Prosecutor Office; that it was Erhan Tuncel who had incited him to the crimes of both the McDonald's bomb attack and Hrant Dink's assassination, and who had prepared the action plans and made the bomb was behind both of these actions.

Tuncay Uzundal stated in his statement; that in June 2006 Erhan Tuncel visited him in his flat and after some talk, Erhan asked him "There is a man named Hrant Dink. Can you find the pictures of him from the internet?"; that he found Hrant Dink's pictures from the internet and probably in a few days, they went to Akin Internet Cafe with Erhan, found Hrant Dink's photos and put them on a CD; that Erhan Tuncel took this CD with him and he did not ask Erhan the reason for looking for these pictures; that when his flatmate moved out in July 2006, he moved into Erhan's house in Tekinkel and started to live in this flat with Erhan and Seyfi Yarımbaş;

That during this period Yasin Hayal visited their flat frequently and once Yasin brought Ogün Samast with him; that it was then that he saw Ogün for the first time; that this occasion took place probably in summer 2006 and Seyfi Yarımbaş was not there at that moment; that Erhan brought the pictures of Hrant Dink from his room and put them onto the coffee table; that at that moment Erhan asked him to leave the room; that after staying for a while in his own room, he got bored and went back to the living room; that when he entered, he saw Yasin showing the pictures of Hrant Dink to Ogün and heard him saying "This person is an infidel. A red infidel. An enemy of Turks" and Erhan warning Ogün as "There would be cameras around there, hide your face, be careful"; that soon after Ogün and Yasin left;

That since he knew about Erhan's duty within the police force, he did not worry much about this matter and thought that the police force must have had knowledge about this matter;

That at the beginning of January 2006, when he was alone at home, Yasin Hayal came and wanted to see Erhan, that when he told Yasin that Erhan was out, Yasin requested him to send a text message to Erhan and thus he sent a message dictated by Yasin as "needed 7.65 mm bullets" to Erhan from his own mobile numbered 0505 546 10 16 to Erhan's mobile numbered 0 555 674 66 23 and Erhan got angry and replied as "TUNCAYYYYYY....."; that because he understood that Erhan got angry, he told Yasin that Erhan did not send a reply, whereupon Yasin left; that

later, after coming home, Erhan told him “Don’t send me that kind of messages, my phone line may be tapped”;

That on January 17, 2007, after coming back from work, he saw Yasin Hayal and Yasin told him to go to Mihmandar Cafe and meet with Ogün there; that he went to Mihmandar Cafe to meet with Ogün; that Ogün told him he would go to İstanbul; that he understood that Ogün would go to assassinate Hrant Dink, but since he did not believe him capable of carrying out this action he did not pay much attention to his words; that since Ogün’s mobile phone was registered to him, warned Ogün not to use his mobile and to take care of himself; that he had a tea and paid for it; that Ogün said him “Nowadays everybody’s giving money and presents to me” and he replied as “Then I’ll give you a present as well” and they went together to his house and he gave Ogün Samast a Turkish flag; which was the flag found on Ogün after the incident was most likely the flag he had given as a present;

That he was never worried since he trusted Erhan as a member of the Security staff; that he heard about the assassination of Hrant Dink on the same day at his workplace Nuri Restaurant; that afterwards Erhan came to his workplace and told him smilingly “Ogün Samast has shot Hrant Dink”; that until then there were no images of Ogün in media, but only news of the assassination;

That when they came home in the evening, Erhan said that “After speaking to Uncle Yaşar from the BBP I am planning to hand Ogün over to the police”; that he heard Erhan from time to time talking to that Uncle Yaşar from BBP on the phone but had never met him; that Erhan also mentioned going to and getting money from Uncle Yaşar for activities going to occur following Ogün’s arrest or surrender;

That on January 20, 2007 he heard on television that Yasin Hayal was detained; that Erhan did not come home till late that night and his phone was switched off; that when he could reach Erhan’s phone very late at that night and asked where he was, Erhan replied as “There’s no problem at all”;

That the next day, when he came home around noon Erhan was sleeping and when he woke up said that “Yesterday night, they gave me the statements of suspects to read in the Security Directorate. Asked my view and released me”.

Tuncay Uzundal declared in the fact-finding report of March 12, 2007 in regard to his verbal statements that he knew Erhan Tuncel was working for Security and also he thought that Erhan was a security staff member, therefore had an officer status.

Ahmet İskender stated in his statement; that two days before the incident, on January 17, 2007 at around 11 o’clock in the morning Yasin and Ogün came to his workplace and directly went to the section behind the shop; that when he entered

this section, he saw Yasin closing the clip of a gun and giving it to Ogün; that he did not know the gun was hidden in his shop; that Yasin gave him 100 YTL; that Yasin, in order not to spend and therefore save some money left some amounts to him from time to time and by this method Yasin had saved 80 YTL;

That he put a total amount of 180 YTL onto the table and Yasin told Ogün to take the money; that Ogün took the money and went to the barber shop right across from the stationery shop and later came back to the stationery with Ersin Yolçu while he and Yasin were also present in the shop; that when Yasin went to toilet, Ersin and he told Ogün Samast, by regarding Yasin, “Don’t do what he says, if you are frightened of telling him so, you could say that you cannot find that guy” and Ogün replied affirmatively;

That Yasin, Ogün and Ersin left the shop by a Kartal car belonged to a person named Tuncay; that at the same day around 5 o’clock in the afternoon Yasin came back to the shop and said that he had given his (Ahmet’s) telephone number (0535 396 82 21) to a friend from İstanbul, so if he received a call from İstanbul (area code 212) he should leave the shop and get the phone to him;

That the next day around noon Yasin came to the shop again and then his mobile phone received a call from İstanbul (area code 212) and he gave the phone to Yasin, but realized that it was Ogün calling; that Yasin took the phone and went outside, then brought the phone back to the shop; that after almost two hours ago he received another call from İstanbul (area code 212); that when he realized that it was Ogün calling he gave the phone again to Yasin; that Yasin took the phone and went outside and came in after he had finished the phone conversation;

That on January 19, 2007 he came to his shop and found Yasin waiting for him; that Ogün called twice from İstanbul and talked to Yasin but he did not hear any part of the conversations;

That on the next day, he saw the news about the assassination of Hrant Dink on television and when he watched the images of the assassin he noticed that it was Ogün Samast, but both because he was afraid of Yasin and because he was frightened since the calls had been made via his phone, he did not inform the police.

Ersin Yolçu stated in his statement; that approximately five days ago when he went to see Yasin Hayal, Yasin disclosed, by warning him not to tell anybody else, that he would get Hrant Dink, whom he was calling as Armenian leader, assassinated and this was the first time he heard this name;

That the next day when he was at work, Yasin came and asked him to find Ogün, upon that he went to Ogün’s house and told him that Yasin wanted to see him and

then with Ogün they went to see Yasin; that Yasin and Ogün talked alone for a while; that after he went close to them, he heard Yasin asking Ogün “Do you still have the photographs and the address?” and Ogün telling that he had lost them; that Yasin took out a paper on which the address of Hrant Dink was written from his pocket and gave it to Ogün,

That the next day afternoon, upon request of Yasin, Ogün, Yasin and himself went to an internet café –he does not know the name of the café–, found and printed out the photographs of Hrant Dink from the internet and came back to Ahmet İskender’s shop; that Yasin took Ogün with him and said “We were going to target practice”; that at that moment he saw a pistol on Yasin at the stationery shop; That Yasin and Ogün came back to the stationery in 15 minutes and Yasin told that Ogün was going to finish this job; that later, when Yasin was away, he and Ahmet suggested Ogün not to execute this action, even in the case that he went to İstanbul, to tell Yasin that Hrant Dink was abroad, so that he could not find him and to come back, but he did not follow their suggestions;

That the next day, after he had opened the shop, he and Yasin Hayal started to wait for Ogün; that following Ogün’s arrival they altogether went to Ahmet’s shop and here, Yasin took 80 YTL from Ahmet and gave it to Ogün, and also took the pistol from his belt and gave it over to Ogün; that they went together with Ogün to the barber shop over the way and Ogün had a shave; that then, upon request of Yasin, he took Ogün to Trabzon bus station;

That the next day, when he went to Ahmet’s shop, Ahmet had a call, that it was Ogün calling; that, after a short talk, Ahmet gave the phone to him and Ogün told him that he arrived at İstanbul and would recall them when he reached the newspaper; that subsequently, when he saw Yasin, he informed Yasin about Ogün’s arrival in İstanbul; that later, when they met with Yasin at the café, Yasin told him that Ogün reached the scene and was lying in wait;

That on the day of the incident, in the afternoon, while they were sitting with Zeynel Abidin Yavuz at Mihmandar Cafe, they learned from the subtitles on television that Hrant Dink was assassinated; that at that moment Erhan Tuncel –he knew Erhan before, but learned his surname later– came to the café and took him out to say the guy was shot; that he first understood this expression as referring to Ogün, because he did not know that Erhan had also information about these matters;

That when he asked “Is that Ogün who have been shot?”, Erhan replied explicitly as “Hrant Dink was shot”; that he answered Erhan’s question about Ogün’s whereabouts as “maybe at home or around somewhere”; that Erhan said “If you see Yasin Hayal, tell him to find me” and went away; that himself also left the café with Zeynel Abidin and went to Ahmet İskender’s shop; saw Ahmet and Yasin sitting together

at the shop; and that Yasin shouted as “Keep your mouth shut about this issue” and swore at him.

Zeynel Abidin Yavuz stated in his statement; that about a year ago Yasin asked him “Do you have any relative in İstanbul?” and he replied as he had an uncle in İstanbul; that then Yasin asked “Would you go to İstanbul to shoot an Armenian?” and that because he was afraid of Yasin he accepted to go;

That Yasin told him a student from Karadeniz Technical University (KTÜ) named Erhan would bring the pictures and the contact information of the person going to be assassinated to Osman, owner of Yonca Market; that he went to Yonca Market and got the documents rolled in a newspaper from Osman and took them directly to Yasin waiting at the Alperen Organization; that Yasin rolled off the paper and showed him 4 different photographs of Hrant Dink and told that he was going to shoot this person whose name was Hrant Dink;

That Yasin explained he was going to be hero following this action, he would be sent abroad and his name would be mentioned all around the world; that because he was frightened from Yasin, as the perpetrator of the bombing of McDonald’s, he accepted to execute this action;

That later his brother called him back home and immediately that evening he went to İzmit for work; that after working for 4 months in İzmit he came back to Pelitli and when he saw Yasin Hayal, Yasin said “I’m done with you, I’m not going to send you”; that he worked at İzmit for another 4 months and finally came back to Pelitli two months ago for military service reasons;

That because his military service was postponed for 5-6 months, he started to hang out at Mihmandar Internet Cafe; that in the meantime, Murat Atalar, an old friend of him said that “I’ve heard that Yasin Hayal was going to send Ogün Samast to İstanbul to shoot an Armenian”;

That about 5 or 6 days before the incident, while they were sitting at Ahmet’s stationery with Yasin, Ersin and Ahmet, it was said that Ogün Samast would go to İstanbul in order to assassinate Hrant Dink;

That on January 18, 2007, Yasin came to Mihmandar Cafe and said “We’ve sent Ogün off”;

That on January 19, 2007, while he was sitting with Ersin Yolçu at Mihmandar Cafe, Erhan Tuncel entered into the cafe and took Ersin outside to tell him that the job had been done; that after Erhan left, Ersin called him outside to tell him that the job had been done, Ogün had completed the mission.

Engin Yılmaz stated in his statement; that in November 2006 he saw Yasin and Erhan Tuncel together at a friend's, Ruşen's wedding; that Yasin took him outside and talked about killing Hrant Dink, Orhan Pamuk, Hıncal Uluç and a priest from İstanbul, bombing HSBC and Russian Consulates and execute the bombing action together with Erhan; that when he asked him whether he might provide a car for this action, he refused and as a consequence they got onto bad terms with Yasin;

That a few days later, he saw Yasin wandering around with Ogün Samast at the neighbourhood and that was the first time he met Ogün; that Yasin told him "There is a journalist named Hrant Dink at Agos newspaper, he is an enemy of Turks, Zeynel Abidin is going to kill him" and asked him again whether he could provide a car; that he refused it again and told him these kind of actions should not be done in the name of God;

That 4-5 days after this conversation, Yasin Hayal and someone called Zeynel come to visit him and told him that Zeynel would not kill Hrant Kill, that they had decided to give up on this action and advised him to forget about this issue;

That then he heard rumours that Zeynep Abidin got frightened and escaped, and that Yasin was going to incite Ogün Samast to execute the action; that when he phoned Yasin and asked about these rumours, he told him to calm down and that there would be no action at all; that almost a month later, he heard about the assassination of Hrant Dink on television.

Mikdat Kot stated in his testimony; that about 5-6 months ago Ahmet İskender told him that Yasin was going to kill a journalist from İstanbul, who had insulted Turks; that when he met Yasin on the street he warned him that "To kill a person is an unacceptable action", but Yasin seemed to be very decisive;

That they decided to change Yasin's mind and for that reason to disclose the situation to Süleyman (surname not known) who was working as a tea-waiter at Pelitli Culture and Solidarity Association in order him to deter Yasin from this plan;

That they thought Süleyman, as a powerful speaker who has ability to convince other people and as a positive minded person, could deter Yasin from this idea; that after they disclosed the matter to Süleyman and Süleyman accepted to talk to Yasin, they took Yasin to meet with Süleyman; that Süleyman explained Yasin in a proper manner that his idea was unacceptable, but Yasin was not convinced; that later Süleyman warned them to end their relationship with Yasin.

Muharrem Sayit Kahveci stated in his testimony; that on the day of the incident when he logged into MSN from an internet cafe, he saw Ogün was online and started to chat with him; that in the camera images of Ogün, he was wearing a blue denim jacket and a white beret which had become popular recently among teenagers; that

during the chat Ogün said he was in İstanbul and he was going to shoot someone, but he did not take it seriously; that Ogün logged out after 10-15 minutes chat;

That he heard about the incident in the following evening and when he saw camera images of Ogün on television and remembered the denim jacket, white beret and his words mentioned the day before, he got suspicious and sent Ogün an e-mail in this regard.

Coşkun İğci stated in his statement; that in July 2006, after he had heard some rumours that Yasin Hayal was going to kill somebody, he talked to Yasin on this matter and learned that Yasin planned to shoot an Armenian journalist named Hrant Dink;

That during their subsequent meetings, Yasin Hayal showed him “printed out” photographs and addresses of Hrant Dink and said “I have 300 YTL, I will buy a gun for the action”; that he took that 300 YTL from Yasin promising him to find a gun and put him off until September 2006, but that when Yasin started to urge him, he gave the money back to Yasin.

Mustafa Öztürk stated in his statement; that between 26 May 2006 and 12 January 2007 he served as the chairman of Alperen Organization in Trabzon; that during this period Erhan Tuncel frequently visited the Alperen Organization, however because of Erhan’s inconsistent behaviours and his negative influence on regular visitors to the organization he removed Erhan from the organization;

That presumably at the end of May, Yasin, who was frequently visiting Alperen Organization back then, Erhan and a new guy called Zeynel Abidin came to Organization and during conversation, Yasin said Zeynel Abidin was going to kill an author named Hrant Dink;

That upon these words he asked Yasin the reason for this action and Yasin replied that Hrant Dink had insulted the Turkish nation; that during this conversation when he laughed at his round beard, Zeynel said “I’m changing my image”; that at that moment Erhan Tuncel told Zeynel Abidin “Following the incident I will take you to Georgia”;

That after this conversation they left the organization and although he then met up with Yasin and Erhan several times, they never mentioned this issue again;

That the claims alleging that, apart from this conversation, Yasin asked him for advice on Hrant Dink assassination and got promise for financial and moral support in regard to this murder were not true;

That he did not have any relationship or make any conversation with Yasin or Erhan after or at the time of McDonald's incident; that after Yasin had been caught and imprisoned, he heard that Halis Egemen paid for the treatment of injured persons and for legal expenses; that correspondences included in the communication detection minutes were made in this regard;

That the communication detection minutes included the fact that he told an Organization officer that Yasin, Erhan and Zeynel had previously disclosed him the plans about Hrant Dink; that afterwards, some people conveyed this matter to Party and Organization officers and also misinterpreted his behaviours, but he believed that one day the truth would be unfolded and the liars would come to light.

In the communication detection minutes regarding the technical tracking of Mustafa Öztürk, it is determined that he said "We were going to execute the Hrant plan. We assigned this duty to other persons, but they messed it up" but then, when this got spread among Great Union Party (BBP), he denied that he pronounced those words and argued that his words were misreflected to the head office of the party by some party officers.

Hakki Bahadır Cihan stated in his testimony; that after the assassination, Metin Gündoğdu, the representative of BBP Karadeniz District Organization, told him that after the incident Mustafa Öztürk had said "We were going to execute this Hrant Dink plan. But we assigned this duty to somebody else and they messed it up" to someone from Ankara, probably from the Party organization; that consequently, in the following days he saw Mustafa Öztürk at the school canteen and asked him whether he was involved in the assassination; that Mustafa replied negatively; that thereupon he asked about the words pronounced in Ankara and at that point Mustafa hung his head in shame and said "We told that kind of things without any purpose. There's not such a thing in fact".

Erhan Tuncel declared in the fact-finding report of February 10, 2007 in regard with his verbal statements that after released from prison, in Ramadan, Yasin Hayal disclosed his plans for the assassination of Hrant Dink to Mustafa Öztürk and in the meantime Yasin Hayal told him that he would get support from Mustafa Öztürk in regard with the assassination of Hrant Dink.

The witness Metin Gündoğdu stated in his testimony; that he had no information about the words attributed to Mustafa Öztürk and that he was not informed about any such incident.

Yaşar Cihan stated in his statement; that he was the Provincial Chairman of Great Union Party at Trabzon; that while Yasin Hayal was in prison following the McDonald's action, some party members told him that the financial condition of Yasin's family was poor and that they would come to ask for support; that since his

economical condition was good, he gave Yasin's family nearly 1000 YTL; that he met with Yasin's father when he came to take the money; that Halis Egemen was with him at that moment and it was also Halis Egemen who brought Yasin's father;

That Yasin Hayal came to see him after prison, but he did not remember the exact date; that he advised Yasin not to involve in those kind of things; that he did not pay the legal expenses for Yasin Hayal; that he gave 1000 YTL for his father's needs;

That he did not know Tuncay Uzundal; that Erhan did not call him and tell that he was planning to hand Ogün over to the police; that these claims were completely factitious;

That he knew Ersin Öztürk from the party since 2005; that after he became the Provincial Chairman of BBP at Trabzon he organized meetings with both old and new party members in order to bring the party altogether and prevent factions within youth organization; that in this regard he called Erhan and said that he wanted to see him and Ersin Öztürk; that Erhan told him that because of his exams he might not be able to come and he responded as "You'll drop by sometime"; that this conversation might coincidentally correspond to the days before the incident, but this conversation has nothing to do with the incident.

Tuncay Uzundal stated in his statement dated February 1, 2007; that on the day of assassination, when they came home in the evening, Erhan said that "I am planning to hand Ogün over to the police after speaking with Uncle Yaşar from BBP"; that he heard Erhan from time to time talking to Uncle Yaşar from BBP on the phone and he knew Uncle Yaşar's name in this regard but had never met him; that Erhan also mentioned to get money from Uncle Yaşar for activities going to occur following Ogün's arrest or surrender.

Salih Hacısalihoğlu declared in the fact-finding report of January 31, 2007 in regard with his verbal statements that Yaşar Cihan gave Yasin Hayal 1000 YTL financial support after the McDonald's action and Yasin went to Yaşar Cihan after his release and kissed his hand.

Yasin Hayal declared in his statement dated February 6, 2007 that after McDonald's action, while he was in prison, he received 1000 YTL support from Yaşar Cihan through his own family.

According to the telephone conversation between Erhan Tuncel and Yaşar Cihan on January 18, 2007 at 14.43, it is understood that after Ogün Samast had departed to İstanbul, Yaşar asked Erhan to visit him together with Ersin.

Halis Egemen stated in his statement; that in 2004, after he had closed his ready-made clothes shop, he distributed some of the clothing, which were not in a

marketable condition, to needy families in Trabzon for Ramadan and that Yasin Hayal's uncle and father Ali Hayal and Bahittin Hayal, of whom he knew in person, were among those families;

That it was a total calumny to claim that he said "We need to hire a lawyer for Erhan" after the arrest of Erhan Tuncel upon the assassination of Hrant Dink; that he never had such a meeting or conversation with Erhan or Salih or anyone else; that he did not know anybody called Hüseyin as the stationer's son;

That Yasin Hayal's father Bahittin asked him to accompany him while going to get his son from prison upon release after the Trabzon McDonald's bombing incident and to give some advice to his son on this matter; that he accompanied Yasin's father during Yasin's release and took Yasin back home; that he told Yasin at home and explained to him in front of some relatives that his action was wrong and those kind of actions would give harm both to him and society.

Salih Hacısalihoğlu declared in the fact-finding report of January 31, 2007 in regard with his verbal statements that Hüseyin, the son of a stationer he knew, told him that Halis Egemen said "We need to hire a lawyer" after the arrest of Erhan Tuncel and additionally, following the McDonald's action, Halis Egemen told him that he covered legal expenses of Yasin.

Yasin Hayal stated in his statement dated February 6, 2007 that after the McDonald's action, during his term in prison, Halis Egemen made a clothing contribution to him.

The support and protective attitude provided by Yaşar Cihan and Halis Egemen towards the suspects following both actions are considered as the crime of "aiding a terrorist organization", the question whether the evidence is legally sufficient for determining criminal intent on behalf of these suspects are left to the discretion of the court.

5. The Threat to Victim Orhan Pamuk on 24th January 2007

On January 24, 2007 at around 10 o'clock in the morning, as Yasin Hayal was being brought at the end of a legal detention period to our Chief Public Prosecution Office in order to make a statement, as he was being taken from the police car to court detention center, he shouted threats to reporters in the grounds of the court such as "Orhan Pamuk, be smart! Be smart!" This incident was included in minutes and added to documents by the Police Chief and police officers in charge at the scene of the incident, this threat of the suspect are submitted for the consideration of your esteemed court both in regard with the related law article and with the general character and logic of the concerned group.

6. As to the Law

At this point it needs to be discussed as to how and under which kind of organization it would be appropriate to legally classify the actions executed by a group consisting of the suspects under consensus and in a period of time.

First of all, it needs to be stated that there has been no evidence presented during the investigation showing that the suspects acquired any material interest as a result of the actions involved; on the contrary, after analyzing all statements and the nature of actions it is realized that all of the suspects were acting under a common political and social opinion to reach an ideological purpose.

In the definition of the offence of forming an armed gang, Article 168 of the former Turkish Criminal Code No. 765 provided that in order that the armed gang formed to be considered under this provision, it should certainly have been formed with the intention of committing the felonies against the state or some felonies against the authority of the state.

In fact, Article 314 of the Turkish Criminal Code No. 5237 (TCK) adopts a similar systematic approach and thus provides that any person who, with the intention of committing the offences defined in the fourth and fifth sections of the same code, forms an armed organization or takes leadership of such an organization shall be sentenced to not less than ten and not more than fifteen years' imprisonment and that other members of the organization shall be sentenced to not less than five and not more than ten years' imprisonment.

It is indicated that the fourth and fifth sections mentioned in the provision includes the felonies against the security of the state and the felonies against the constitutional order and its course. In this regard, the content of the new code seems broader than the former.

The judgment 2003/9-7 (File), 2003/46 (Decision) of the Assembly of Criminal Chambers of the Supreme Court of Appeal can be given as an example to the jurisprudence developed in regard with to the components of an armed gang within the meaning of Article 168 of the Turkish Criminal Code No. 765. It was stated in these judgments, as well as several other judgments, that:

“As a rule, our Criminal Code does not penalize preparatory acts. However, specific preparatory acts intending to achieve certain ends are defined as special offence types within the Code. Article 168, categorized under the felonies against the state, constitutes an example to this type of offence. In this article establishing “the offence of forming an armed gang”, preparatory acts are prescribed as a “special and exceptional type of offence” in order to make acts implying a “serious risk of damage” to the state punishable.

The first paragraph of Article 168 of the Turkish Criminal Code imposes penal sanctions for forming an armed gang or organisation or to assume control or special responsibility within such a gang or organisation with the intention of committing any of the offences referred to in Articles 125, 131, 146, 147, 149 and 156.

The penal sanction of belonging to such an organization and gang is prescribed by the second paragraph of Article 168 and it is ascertained that, as emphasized in several judgments, belonging to such an organization and gang implies anybody who does not assume control or special responsibility within such a gang or organisation but simply joins the gang, has a common will towards the ends, are aware of the nature of the gang and accepts the purposes of the gang.

The types of offences listed under Article 168 of the Turkish Criminal Code are ‘intent crimes’. On the other hand, to form an armed gang or organization assumed as a ‘serious and imminent risk of damage’ to the legal value aimed to be protected by ‘intent crimes’ is an ‘instrumental crime’. In this regard, the offence to form an armed gang is a ‘damage risk’ offence under the purpose established.”

In this context, it should be considered that Article 314 of the Turkish Criminal Code No. 5237, which adopts the same structure as the article mentioned above, is also an instrumental crime and the offences under the fourth and fifth sections of the same code are intent crimes.

On the other hand, Article 1 of the Prevention of Terrorism Act No. 3713 defines terrorism as any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat.

The purposes listed under this terrorism definition includes not only the purposes listed under Article 314 of the Turkish Criminal Code No. 5237, but also embraces a wider list including the acts carrying coercive factors and aimed at damaging the internal security of the State, public order or general health.

However, it can be said that until the amendment of Article 7 of the Law No. 3713 on June 29, 2006, these two definitions were not in absolute conformity; thus the acts included within the definition under Article 1 of the Law No. 3713 but not aiming to the intend crimes exhaustively listed both under Article 168 of the former criminal code and Article 314 of the current criminal code would not constitute the

offence to form an armed gang under these provisions. Both the jurisprudence and the practice support this view.

Article 7 of the Law No. 3713 was amended by the Law No. 5532 and dated June 29, 2006 and now provides for the punishment of the founders, leaders or members of terrorist organizations aimed at committing offences for the purposes listed under Article 1 in accordance with Article 314 of the TCK.

In our consideration, this implies a brand new reference. According to this new legislation, apart from limited intent crimes listed under Article 314 of the TCK, purposes stated under Article 1 of the Law No. 3713 would also constitute the offence of forming an armed gang. In this regard, actions not aimed at changing the constitutional order or separating a part of the State territory from State authority, but to damaging public order for ideological purposes and carrying coercive factors may also be considered within the offence of forming an armed gang provided that the factors of common aim and continuity are also ascertained.

From the nature of the actions respectively described above, it appears that these actions were carried out for ideological purposes by a group of suspects coming together in order to punish the holders of alternative views and to intimidate and terrorize the supporters of these views by simply denying all views other than their own social and political world view and responding to them with coercion and violence.

Considering the reactions that arose in Trabzon after each action and all around Turkey and the world after the assassination, the claims against the State for negligence and intention, the image of Turkey within international relations and the problems facing the country, it appears that following the actions public order has been seriously damaged and an internal security threat has arisen.

Under these circumstances, it would be in compliance with the law to interpret this group composed of the suspects as a terrorist organization since the “instrumental crime” they commit falls within the scope of Article 314.

Another issue needed to be determined within the scope of this investigation and criminal case is that whether the informative communication detection data known as preventive interception and collected in accordance with the legislation on related institutions could be used within the scope of judicial inquiry and prosecutions, and considered as lawfully obtained evidence.

As is known, according to the additional article 7 added to the Law No. 2559 on the Duties and Powers of Police by the Law No. 3233, the police shall carry out

intelligence activities for the purposes set out in the article, collect and evaluate data and communicate this collected data to competent authorities.

The additional articles added to additional article 7 of the Law on the Duties and Powers of Police by Law No. 5397 and dated July 3, 2005 set out the principles and procedures in regard with the detection and interception of telecommunications and the evaluation of its signals within this data collection activity described in Article 1.

Paragraph 7 of additional article 7 provides that the records obtained within the framework of the activities executed pursuant to the provisions of this article cannot be used for any other purpose different than those mentioned in the first paragraph. In this regard, the purpose of the security of the State mentioned in the first paragraph would be determinative in our case.

Paragraph 11 of the same article states that interception recorded contrary to the principles and procedures provided in this article shall not be valid in legal terms. The question of the legal validity of the data obtained within the framework of intelligence activities also includes the question of whether this data can be qualified and be used as lawful evidence during the investigation and prosecution processes.

Paragraph (d) of Article 17 of the Regulation on Organization, Duties and Powers of Telecommunications Head Office established in order to manage the works and processes in regard with both informative and judicial interceptions from one center lists the duty to transfer the data and information obtained as a result of the intelligence proceedings carried out under additional article 7 of the Law on the Duties and Powers of Police to the courts and Public Prosecutor Offices upon demand among the duties of the Head Office. This kind of technical data can be demanded by the court or Public Prosecutor Office only to be used as evidence, because in any event any other possibility of use was removed by additional article 7.

Considering these reasons, the data obtained as a result of informative communication detection carried out by Trabzon Security Directorate and reports and records by Intelligence Department was demanded from the related institution, included to the documents and presented to the court's discretion as evidence. The records related with private lives and the security of the State and fall out of the subject of this investigation were destroyed by our Public Prosecutor Office and Trabzon Security Directorate.

7. The Organizational Positions and Actions of the Suspects

In the light of these explanations, it is understood that:

Suspects Erhan Tuncel and Yasin Hayal are leaders of the organization and within the framework of the activity of this organization they carried out the bombing of Trabzon McDonald's together and incited the assassination of Hrant Dink; additionally, Yasin Hayal threatened victim Orhan Pamuk;

Suspect Oğün Samast is a member of this organization and assassinated Hrant Dink in accordance with instructions and incitement of the leaders of the organization;

Suspects Zeynel Abidin Yavuz, Ersin Yolçu, Ahmet İskender, Mustafa Öztürk and Tuncay Uzundal are members of the organization and aided the assassination of Hrant Dink in accordance with instructions of the leaders of the organization;

Suspect Salih Hacısalihoğlu, though not a member of the organization, knowingly and wilfully aided the organization by providing the bullets used in the assassination of Hrant Dink, therefore needs to be punished as a member of the organization;

Suspects Alper Esirgemez, İrfan Özkan, Osman Alpay, Erbil Susaman, Numan Şişman, Şenol Akduman and Veysel Toprak, though not members of the organization, knowingly and wilfully aided the organization by hiding Yasin Hayal in their houses, treating him, providing him with financial support after the bombing of McDonald's and not informing the authorities of crimes, therefore they need to be punished as members of the organization;

Suspects Yaşar Cihan and Halis Egemen, though not members of the organization, knowingly and wilfully aided the organization by promising to provide financial and moral support before and after the McDonald's action and also Hrant Dink's assassination, therefore they need to be punished as members of the organization.

8. Other Proceedings Related with the Investigation File

Certain documents related with the crimes of state officials were filtered out of investigation during the investigation proceedings and equitable abstentions were sent to the Public Prosecutor Offices of competent jurisdiction.

Additional dismissal decisions were awarded in regard with the suspects whose relations with the actions and the organization could not be ascertained within the scope of the investigation.

It is possible to bring other criminal cases, requesting consolidation with this file, in regard to different suspects and in the light of new incidents and evidence which have appeared after the gathering of all evidence investigated.

However, considering that it might take quite long time to carry out such an investigation and fact-finding, a criminal case was brought by this indictment in order not to needlessly delay the suspects being brought before an independent court in the light of the present evidence.

On these grounds;

Leaving the discretion and evaluation of the evidences to your esteemed court, we hereby request and claim in the name of the public that the suspects be prosecuted in accordance with Article 250 and following of the Criminal Procedure Code and be punished:

1. Suspect ERHAN TUNCEL

In accordance with Article 314(1) of the Turkish Criminal Code No. 5237 and Article 5 of the Law No. 3713 through Articles 1 and 7(1) of the Law No. 3713 for being a member of a terrorist organization,

In accordance with Article 174(1-2) of the Turkish Criminal Code No. 5237 for manufacturing explosives,

In accordance with Article 174(1)(c) of the Turkish Criminal Code No. 5237 for using explosives,

In accordance with Articles 516 (7-final) and 522 of the Turkish Criminal Code No. 765 for destruction of property,

In accordance with Articles 456(4) and 457(1) of the Turkish Criminal Code No. 765 for the actions against Victims Derya Değirmenci, Gülümser Kurt, Gürcan Toprak, Merve Serdar, Özlem Araz and Hasan Koç (6 times),

In accordance with Article 82(1)(a) of the Turkish Criminal Code No. 5237 through Article 38 for the action against Victim Fırat Dink,

2. Suspect YASİN HAYAL

In accordance with Article 314(1) of the Turkish Criminal Code No. 5237 and Article 5 of the Law No. 3713 through Articles 1 and 7(1) of the Law No. 3713 for being a member of a terrorist organization,

In accordance with Article 82(1)(a) of the Turkish Criminal Code No. 5237 through Article 38 for the action against Victim Fırat Dink,

In accordance with Article 106(2)(d) of the Turkish Criminal Code No. 5237 for the action against Victim Ferit Orhan Pamuk,

In accordance with Article 13(3) of the Law No. 6136 for possessing firearm without licence,

3. Suspect OGÜN SAMAST

In accordance with Article 314(2) of the Turkish Criminal Code No. 5237, Article 5 of the Law No. 3713 and Article 31(3) of the Turkish Criminal Code No. 5237 through Articles 1 and 7(1) of the Law No. 3713 for being a member of a terrorist organization,

In accordance with Articles 82(1)(a) and 31(3) of the Turkish Criminal Code No. 5237 for the action against Victim Fırat Dink,

In accordance with Article 13(3) of the Law No. 6136 and Article 31(3) of the Turkish Criminal Code for possessing firearm without licence,

4. Suspects ZEYNEL ABİDİN YAVUZ and ERSİN YOLÇU

In accordance with Article 314(2) of the Turkish Criminal Code No. 5237 and Article 5 of the Law No. 3713 through Articles 1 and 7(1) of the Law No. 3713 for being a member of a terrorist organization,

In accordance with Articles 82(1)(a) and 39 of the Turkish Criminal Code No. 5237 for the action against Victim Fırat Dink,

5. Suspect AHMET İSKENDER

In accordance with Article 314(2) of the Turkish Criminal Code No. 5237 and Article 5 of the Law No. 3713 through Articles 1 and 7(1) of the Law No. 3713 for being a member of a terrorist organization,

In accordance with Articles 82(1)(a) and 39 of the Turkish Criminal Code No. 5237 for the action against Victim Fırat Dink,

In accordance with Article 13(3) of the Law No. 6136 for possessing firearm without licence,

6. Suspects MUSTAFA ÖZTÜRK and TUNCAY UZUNDAL

In accordance with Article 314(2) of the Turkish Criminal Code No. 5237 and Article 5 of the Law No. 3713 through Articles 1 and 7(1) of the Law No. 3713 for being a member of a terrorist organization,

In accordance with Articles 82(1)(a) and 39 of the Turkish Criminal Code No. 5237 for the action against Victim Fırat Dink,

7. Suspect SALİH HACISALİHOĞLU

In accordance with Article 314(2) of the Turkish Criminal Code No. 5237 and Article 5 of the Law No. 3713 through Articles 1 and 7(1) of the Law No. 3713 and Articles 314(3) and 220(7) of the Turkish Criminal Code No. 5237 for aiding a terrorist organization,

In accordance with Article 13(3) of the Law No. 6136 for possessing bullets without licence,

8. Suspects ALPER ESİRGEMEZ, İRFAN ÖZKAN, OSMAN ALPAY,

ERBİL SUSAMAN, NUMAN ŞİŞMAN, ŞENOL AKDUMAN and VEYSEL TOPRAK

In accordance with Article 169 of the Turkish Criminal Code and Article 5 of the Law No. 3713 through Articles 1 and 7(1) of the Law No. 3713 for aiding a terrorist organization,

In accordance with Article 296(1) of the Turkish Criminal Code No. 765 for hiding a criminal,

9. Suspects YAŞAR CİHAN and HALİS EGEMEN

In accordance with Article 314(2) of the Turkish Criminal Code No. 5237 and Article 5 of the Law No. 3713 through Articles 1 and 7(1) of the Law No. 3713 and Articles 314(3) and 220(7) of the Turkish Criminal Code No. 5237 for aiding a terrorist organization,

10. Articles 53, 58 and 63 of the Turkish Criminal Code to be applied in regard with all suspects,

11. The tools of crime registered at the safe deposit under sequence numbers of 2007/52, 2007/56, 2007/63, 2007/95, 2007/105, 2007/174, 2007/186, 2007/188, 2007/189, 2007/196, 2007/218, 2007/240, 2007/265, 2007/301, 2007/372 to be confiscated in accordance with Article 54 of the Turkish Criminal Code and communication detection minutes to be kept in the file as evidence.

20.04.2007

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