

FOURTH-YEAR REPORT ON HRANT DINK'S MURDER

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In our previous reports, we had discussed the process having paved the way to Hrant Dink's murder as well as individuals and organisations that played a role in this process, the real perpetrators of the crime and the reasons behind the murder; we had also raised questions regarding the subject and given potential answers. As of today our answers - being shaped up by the progress made at the proceedings, the content of the case files, the evidence generated from those files, inquiries and investigations conducted outside this case and the ECHR judgment - do form the basis of our opinion about the substance of the case.

In the 3rd year report, we had made the following statement:

“It would not be an exaggeration to note that we are back to square one 3 years after the murder. However, despite the lack of any considerable progress in revealing the actual perpetrators of the murder by the end of these three years, the process that paved the way for the murder and the developments that took place in the following three years present significant evidence on who the perpetrator or perpetrators may be. It brings us closer to answers to the questions we posed in the report of the second year.

Failure to solve the murder despite the operations of psychological war and action plans revealed by some investigations and trials particularly in the current process we have been going through, as well as the statements that “[murder] will be investigated until the end” and hundreds of pages of reports, necessitates once again to pose the question “Why was Hrant Dink murdered?” and answering it and re-examining where Hrant Dink's murder stands in the Turkish political scene.”

And had continued as follows:

“It is not possible to believe that this murder was conducted by a couple of youngsters with nationalistic sentiments; moreover, it is also not possible to believe that a more organized structure, which --in one way or another-- has leaked into the National Police and the Gendarmerie and which uses illegal powers and authorities, has gotten those three-five youngsters to commit the murder. From the General Staff to the judicial authorities, from the government speakers to security units, from media to paramilitary forces, all official/political actors have a responsibility in the murder of Hrant Dink, the failure to prevent the murder and the failure to bring to light the real perpetrators.”

There is a striking harmony between the organisations and mechanisms pointed out here in terms of the preparation and perpetration of Dink's murder, concealing and tampering with evidence after the murder, burying the truth, drawing the boundaries and limits how far the trial proceedings could go, and making sure that those boundaries are not crossed. In fact,

such a harmony corresponds to the existence of a powerful apparatus and a mentality that only legitimizes the murder but makes impunity something ordinary.

It is possible to clearly state that this system, which legitimizes the immunity and impunity of the real perpetrators of the murder – in other words the instigators, gives birth to such a mentality that transforms the murder into something ordinary; and that the failure to throw light on Hrant Dink's murder as well as other similar murders each time reproduces the very same apparatus and mentality.

This report has been prepared with the aim to examine the characteristics of the aforementioned apparatus, its functions, the way it is reproduced in this case and in similar cases by specifically looking at Hrant Dink's murder case; and with the anticipation that for the sake of conducting a complete assessment it will be more appropriate as a method to start - right in the investigation phase- the examination of the facts and evidences that underpin the statements presented above.

THOSE WHO REMAINED UNTOUCHABLE DURING INVESTIGATION

When Hrant Dink was killed on January 19th, 2007 two prosecutors with special powers were assigned to investigate the murder and in line with Article 153 of the Turkish Code of Criminal Procedure it was decided to maintain confidentiality for the entire case.

The prosecutors began investigating the murder through law enforcement officers under their command. Two articles written by Hrant Dink shortly before his death were broadcasted on TV stations on the same day the murder took place and covered by almost all newspapers on the day after. In his articles **'Neden Hedef Seçildim?' ('Why was I Targeted?')** and **'Ruh Halimin Güvercin Tedirginliği' ('A Dove's Skittishness in My Soul')** Hrant Dink had clearly mentioned individuals and organisations that made him a target, that threatened him in different ways, had expressed his restlessness; and in a way had pointed out where the murderer should be sought.

In any ordinary murder case, had the person who was killed previously received death threats or written a note or left a letter stating him/her being targeted, then the prosecutor conducting the investigation should take into account such letters and accordingly launch investigation against those mentioned in the letter. As a matter of fact as stipulated by Articles 160 and 161 of the Code of Criminal Procedure, Public Prosecutors are liable in the following matters:

“As soon as the public prosecutor is informed of a fact which gives an impression that a crime has been committed, he shall immediately investigate the factual truth, in order to make a decision on whether to file public charges or not. In order to investigate the factual truth and to secure a fair trial, the public prosecutor is obliged, through the law enforcement officers under his command, to conduct all kinds of inquiries and investigations; with a view to achieve the outcomes mentioned in the above article, he may demand all kinds of information from all public servants. Accordingly, public servants are obliged to provide all types

of information and documents required for the investigation to the public prosecutor without any delay.”

The prosecutors who conducted the investigation turned a blind eye to Hrant Dink’s articles mentioned above. Yet, in their testimonies given in the capacity of plaintiff to the public prosecutors right after the murder on February 12th, 2007; the members of the Dink family clearly stated their complaints about the individuals and organisations that were mentioned in the articles. Just as they ignored the articles of Hrant Dink, the prosecutors did ignore the complaint of the Dink family and they did not make any inquiry or investigation upon the family’s complaint. Even though since then we presented a lot of evidence supporting Hrant Dink’s articles and the complaint of his relatives and despite our repeated demands, to this date there has not been any investigation launched against those individuals and organisations that played a role in the preparation phase of the murder.

Even though - through all the evidence submitted - it has become inarguably clear that the murder took place as a result of a process which began with the statement made by the General Staff and Hrant Dink being summoned by the İstanbul Governate - including all other events occurred in the course of the time elapsed; the process itself as well as the individuals and organisations that played a role were decisively excluded from the investigation.

However as very clearly formulated in Article 160 of the Code of Criminal Procedure, for prosecutors to take action it was sufficient “to have an impression that a crime has been committed”. There was not even a requirement to have “strong suspicion”, which is a requirement for issuing indictments.

Untouchable individuals and their acts

A brief account of the individuals and organisations that played a role in the preparatory phase of the murder as well as their acts might give an idea on untouchables and why they remain immune.

Upon the coverage of news articles in Agos on 6 February 2004 and later on in Hürriyet Daily which noted that “Atatürk’s adopted daughter Sabiha Gökçen was an Armenian girl from an orphanage”, the General Staff issued an extremely harsh statement against these articles while making it very clear where the boundaries of the freedom of the press ends and where the duties of Turkish citizens and organisations begin. The individuals and organisations who received this message started acting from the next day onwards.

Right after this statement Hrant Dink was summoned to İstanbul Governorate. The meeting was held in the office of Ergun Güngör, the Deputy Governor responsible for carrying out procedures related to minority issues, and was attended by two intelligence officers; the meeting was described by Hrant Dink as the beginning of an operation that aimed to teach him a lesson and in his article he wrote ‘**I am now a target**’. As Özer Yılmaz, one of the intelligence officers present at that meeting, became a defendant in the Ergenekon case it turned out that those who were present at the meeting were indeed high-ranking intelligence officers. In its correspondence sent to the Court on July

19th, 2010, literally three years after the murder, the Undersecretariat of the National Intelligence Organisation (MIT) acknowledged the meeting and confirmed the meeting attendants being MIT members.

Two days after this meeting, during a demonstration staged in front of the Agos Newspaper, Levent Temiz - the Head of İstanbul Provincial Branch of Ülkü Ocakları (Turk-Islam Idealists) made the following statement on behalf of the demonstrating group, **“From now on, Hrant Dink will be the object of our rage and hatred, he is our target”**.

A similar demonstration took place a few days later, again in front of Agos, held by the **“Federation of Fight against Unfounded Armenian Allegations”**.

Immediately after these incidents a new smear campaign was launched which picked just a single sentence from Hrant Dink’s article series entitled **“On Armenian Identity”** and used it as a pretext. Some individuals and organisation filed complaints against Hrant Dink by identical petition.

The systematic attacks which seemed to be orchestrated from one single center continued in several internet sites and newspapers, and Hrant Dink was constantly fingerpointed as a target.

Upon the authorisation of the Ministry of Justice, a court case was filed against Hrant Dink under Article 159 of the former Turkish Penal Code which regulated the offence of “insulting and denigrating Turkishness through publication”. The persons who had filed complaints did also participate in the hearings of this case in an organised fashion and submitted petitions in order to take part as intervenors.

Despite the experts’ report, the trial ended with the conviction of Hrant Dink.

The decision was appealed. In the notification issued by the Office of Chief Public Prosecutor of Court of Cassation (CoC) it was stated that the expert report was valid and the decision should be reversed. However 9th Chamber of the CoC unanimously upheld the decision on the merits of the case. The Office of Chief Public Prosecutor of the CoC appealed this decision as well, yet the Penal Board of the CoC which is the appeal authority unanimously rejected this appeal.

Throughout this entire process as the court decisions were covered in the press, those circles which fingerpointed Hrant Dink as a target continued their attacks against Dink defining him as “certified enemy of Turks” based on the Court decision. The verdict by the Court of Cassation was the final step in the process of making Hrant Dink a target, and in a way through its verdict – which actually meant the approval of Hrant Dink’s death warrant – the Court pushed him right into a fatal attack.

The day he was convicted Hrant Dink made a statement to the press whereby he said; **“According to my perception this offence is racism and I have not committed that offence. This is an attempt to cast a slur on my dignity; if the judiciary does not remedy this I shall leave my country and leave for good”**. Upon this statement, the complainants of the court case where Hrant Dink was convicted, Kemal Kerişsiz and the Great Union of Jurists in particular, filed yet another complaint against Hrant Dink this time on the ground of **“influencing fair trial”** through uniform petitions. Thus another court case was launched upon this complaint.

Here we need to underline that Hrant Dink's statement is a natural and legal right of a person facing charges and does not correspond to any type of offence defined by law. Despite that, it was used as a good pretext for those in charge of paving the way to Hrant Dink's killing. These persons had already fulfilled their task to turn Hrant Dink into a target. Yet, the prosecutor launched the case although he knew that there were no elements of crime in those words and the judge dragged the case in each hearing accompanied by lynching attempts although he could have simply returned the indictment or could have immediately absolved due to the absence of criminal element. The conduct of judicial authorities is an important indicator of their place and roles in this process.

The Great Union of Jurists and its members which triggered the launch of a court case against Hrant Dink through their complaints as well as other groups came to the court hearings and demanded through identical petitions to become intervening parties to the case. Oktay Yıldırım, Veli Küçük, Sevgi Erençerol and Kemal Kerişsiz who are currently being tried at the Ergenekon case were among them as well. The fact that one group under the guidance of Kemal Kerişsiz opened a banner in front of the court house which read as **"Hrant, the son of a missionary, do not disturb the peace of Turkish Armenians, Hrant do not betray the bread you ate"**, and the stress put on the word **missionary** was giving us an important clue about the plan that was pursued and its very center.

The physical attacks, threats and insults during the hearings of the cases filed against Hrant Dink were widely covered in the press. Hrant Dink was saved from a possible lynch attack thanks to the security measures taken upon the request of Hrant Dink's attorney. Yet both Hrant Dink and his attorneys were only able to leave the court house in g0llice vehicles.

Assessment

- What is striking here is the fact that from state organs to 0lk0 ocakları (Turk-Islam Idealists), from the intelligence organisation to judicial authorities all individuals and organisations playing a role in this process have acted towards the same goal. This manifested us that this process was orchestrated from a single hand in a planned manner.
- A second point which drew attention was that those who played an active role in this process were attacking Hrant Dink by labelling him as a 'missionary'. Missionary activities were declared as a 'domestic threat' at the National Security Council Meeting in December 2001 and in addition to 'activities of the minorities' being described as a threat to national security, 'missionary activities' were also included in the National Security Policy Paper. Law no. 2945 on National Security Council and National Security Council Secretariat-General, Article 2, paragraph (a) provides a comprehensive definition of national security, and right after that paragraph (b) reads as follows:

"The State's National Security Policy stands for policies covering the principles of the course of internal, external and defense actions determined by the Council of Ministers, **within the views set by the National Security Council**, with the aim of ensuring national security and achieving national objectives."

When these two paragraphs are read together, it becomes evident that the executive branch is obliged to comply with this paper. According to the national security paper, in addition to actions against individuals and groups that are assumed to have undertaken minority activities, actions to be taken against individuals and groups who are portrayed as missionary are recognized as a defense measure. As a requirement of this paper, which defines domestic enemy based on assumed differences and foreignness, the battle against those who are considered as having undertaken 'activities of the minorities' as well as 'missionaries' has duly become a part of the policy to defend the state against "the enemy" (legitimate self-defense).

Upon the adoption of the National Security Policy Paper that refers to "missionary activities" as domestic threat along with "activities of the minorities" – very blur expression without any definition or a defined scope, and in particular upon the introduction of a number of legislative amendments in 2003-2004 to the Law on National Security Council and Law no. 3194 on Provinces as part of the EU harmonization package; a new period started during which we witnessed increasing number of attacks against minorities in all possible fields, media coverage against minorities and Christians, the inclusion of new chapters in textbooks that incite hatred and enmity towards minorities in conformity with the declared threat, the practice of obliging teachers to attend compulsory seminars, the widespread practice of logging and keeping records of personal data.

The very fact that Sevgi Erenerol, who assumed an active role in the preparatory phase of Dink's murder, was giving seminars at the General Staff, at military force commands and universities under the course title "missionary activities" - during which she was making propaganda of the view that missionary activities were undertaken by minorities in the country, and that threats against Turkey were like a pyramid on top of which minorities were sitting - has been revealed during the investigation of the Ergenekon case.

In the wake of the abovementioned publications and seminars, attacks targeting non-Muslims and non-Muslim clergy suddenly increased. There came a new process during which Priest Santoro was murdered, Hrant Dink was murdered; Tilman Geske, Necati Aydın and Uğur Yüksel were brutally murdered in Malatya on ground that they were missionaries, Edip Daniel Savcı – the priest of Mor Yakup Assyrian Church was kidnapped by three unidentified men and released three days later, Adriano Franchini – the priest of St. Antuan Church in İzmir was stabbed.

Yasin Hayal, one of the defendants in Hrant Dink's murder case, battered Pierre Brunissen - the priest of St. Maria Catholic Church in Trabzon (the predecessor of Priest Santora) to the degree of coma in March 2002 on his leave day while he was performing his military service by showing "missionary activities" as a justification. This act should be taken into account within this respect as well. Furthermore, in the course of recent operations, quite many defendants affiliated with 'gangs' and 'mafia

cliques' were found in possession of the national security policy paper and confidential documents related to state policies that are not even in the reach of ministers. This is an interesting matter, though not a coincidence.

- Another point that deserves our attention is the fact that some of the individuals and organisations having assumed active roles in the preparation of Hrant Dink's murder, yet remained untouched, were later on touched during the investigation of the 'Ergenekon' case as is called. In this case, those people including Veli Küçük, Kemal Kerinçsiz, Sevgi Erenerol, Özer Yılmaz and Levent Temiz are accused of a number of criminal offences including setting up, managing and being members of a terrorist organisation all requiring severe penalties. However, up until now, it has not even been possible to question those people about Hrant Dink's murder. **This has shown us that the boundaries and lines of immunity and touchability are pre-drawn by the state and touchability is only possible when the state deems it appropriate, which is not the case for Hrant Dink's murder.**
- Despite all the requests made by the Dink family and their attorneys, it has not been possible to break the "unwillingness" of investigating prosecutors with respect to going deeper in the investigation and exploring all connections.

THINGS NOT INVESTIGATED DURING INVESTIGATION

As mentioned above, the prosecution is the judicial body authorized for decision-making in the investigation phase. Prosecution executes the investigation either directly and/or through the judicial law enforcement. In the investigation into the murder of Hrant Dink, the process of preparation for the murder was not taken into consideration despite all our insistence, as explained above. However, what we have explained above were not the only shortcomings of the investigation. Evidences that were of utmost importance in terms of unearthing the factual truth and identifying the motive for murder were not collected; some evidences were destroyed during this phase, some very important evidence were hidden from the prosecutors running the investigation; evidences were tampered with, and fake evidences were produced, yet those failing to collect the evidence, those hiding or destroying the evidence somehow remained untouched and immune. Below are a few examples:

- A significant portion of the ATM camera recordings of the murder day confiscated by the law enforcement officers from Akbank Osmanbey Branch were destroyed at the Police units and no one has been able to reach these recordings to date despite all efforts. The suspicion that the person or persons who were recorded and who could very possibly reveal the motive and organisation behind the murder have thus been secreted could not be addressed to date, and no steps have been taken to eliminate these suspicions.
- Though a very important piece of evidence, the complexity and contradiction between the statements regarding Ogün Samast's cell phone and sim card have not been solved; the truth of the matter has not been researched and this matter was left to remain a puzzle much like the others. Yet, according to witness statements, after the murder Ogün

Samast had used his cell phone frequently. These witnesses could not be located and it has not been possible to hear them in any of the hearings to date.

- Right before the murder, Ogün Samast spent more than an hour at the Internet Cafe on Şafak Sokak (Street) next to the Sebat Apartment Building where Agos is located, and chatted with someone. Although the place visited by the murder suspect right before the murder, the testimonies of the eye witnesses who were also at the same place and of the owners of the place, and the log records from the computer used by the suspect are very important; the police did not inquire into any of them. The statement of Cavit Kılıç, the police officer operating the cafe, was taken only upon our request and two months after the murder date. And computer records remain as yet un-accessed.
- However, the internet cafe which Samast used to chat with unknown persons right before the murder was on the second floor of a building and its sign said “Kritik Güvenlik Sistemleri, Temizlik Hizmetleri ve Danışmanlık Şirketi” (Kritik Security Systems, Cleaning Services and Consultancy Company); in other words, it was impossible to understand, looking from outside, that this place was an internet cafe. Cavit Kılıç, son of the company’s owner and employed as a police officer at the Feriköy Police Station was at the bureau on the day of the murder. In his statement, taken two months after the murder, he said he had not seen Ogün Samast. Yet at a later date, Cavit Kılıç, in his statement at the court, described some very important details about the murder day and Ogün Samast; when asked, he told he had also imparted the same information to the anti-terror teams on the day of the murder.
- Following the murder, when running in the Şafak Sokak (Street), Ogün Samast was caught by the security cameras of Saray Kumaşçılık Textile Company. No inquiry was made into the two people following right after Samast and disappearing inside a building under construction at the corner of the street after seeing Samast getting away. Yet the descriptions of these two persons arousing suspicion with their behaviours were consistent with the evidence given by some witnesses who had said Samast was not alone.
- The identity of the person caught on the security cameras of Akbank ATM and Saray Kumaşçılık Textile Company while making phone calls at various locations on the day of the murder and looking highly suspicious was never made a subject of investigation. Our demands to this effect have not been met to date and this person remained a mystery.

The actions of the law enforcement officers described above and constituting a crime under the Code of Criminal Procedure (CCP) Article 161/5 have not been investigated to date, and no attempts have been made for their investigation despite our demands to that effect. An attempt that can be viewed as an exception to this general attitude was hindered by another authority, not allowing breaking the rule, as described below:

The investigating prosecutors identified the identities of some officers of the Trabzon Provincial Gendarmerie Command and Trabzon Police Department as persons responsible for actions such as neglecting duty before and after the murder, misconduct in office, destroying, hiding or altering criminal evidences and favouritism towards the criminal.

However, although the initial establishment of identities and charges were due and appropriate, the decision of non-jurisdiction was equally inappropriate and off the mark and

this decision, in one aspect, determined the course and fate of the trial. The offences listed under eleven headings by the prosecutors were within the scope of crimes related to the murder case on the basis of CCP 8/2 and should have been prosecuted together with the main case. However, the prosecutors decided for non-jurisdiction on the ground that these actions were outside of their sphere of jurisdiction, and sent the file to the Chief Public Prosecutor's Office of Trabzon for execution of the investigation. The Trabzon prosecutor did not make any inquiry, and did not allow a hole in the immunity shield surrounding the officers in question by giving a decision of nolle prosequi despite the evidences included in the file.

Some of the acts listed under eleven headings by the investigating judges were as follows:

- The cell phones of Yasin Hayal and Erhan Tuncel were tapped for preventive purposes, yet this was hidden from the investigating judges. When it was learned and the phone recordings were demanded, the missing information was sent, and when the demand was repeated, it was stated that the records had been destroyed.
- Officers of Trabzon Police Department concealed from the prosecutors that the telephone communications of Mustafa Öztürk, one of the suspects, were also tapped for preventive purposes. When the telephone-tapping was revealed accidentally upon a letter to Telecommunications Communication Presidency (TIB) by the prosecutors, relevant questions were asked, yet this time they gave misleading information to investigating prosecutors. And it was understood later on that these information were not true.
- It was established that Trabzon Anti-terror Division Director Yahya Öztürk said, prior to the murder, to Yasin Hayal words such as "The flag has been dropped. Either Yasin or Erhan will lift it, it is your duty", and that Yasin Hayal showed his father Bahittin Hayal the photograph of BBP (Grand Unity Party) leader Muhsin Yazıcıoğlu on his cell phone screen.
- In the DVD containing the voice and message recordings sent from Trabzon Police Department, and in the communication report regarding SMS records prepared by the Trabzon Police Department, the content of the message dated 16.12.2006 and sent from Tuncay Uzundal's cell phone to the cell phone belonging to Erhan Tuncel was altered by officers of the Trabzon Police Department.
- It was established that Erhan Tuncel was made an assistant intelligence agent in return for clearing him from any responsibility in the incident of the bombing of Mc Donald's, and that although the bloodied pants of Yasin Hayal, who was injured, were delivered to the officers after the bombing, this evidence was destroyed by police officers.

Assessment

- It was revealed as the most marked and systematic phenomenon of this investigation phase that the security and intelligence units hid, altered or destroyed information and documents that were of the nature to unearth the factual truth, that they attempted to mislead the investigating authorities by giving false statements, and that they tampered with the evidence. Although each and every one of these acts are

crimes requiring severe penalties, no investigations were initiated against the security and intelligence officers regarding these crimes, or any attempts to launch an investigation by investigating prosecutors were left inconclusive by other authorities.

- The decision for confidentiality taken as per CCP 153/2 was used to conceal, destroy and sort through the evidence, within pre-drawn limits, with an implementation that was completely opposite to the purpose stated in the law. In the law, the grounds for a decision of confidentiality are described as follows;

“reveal the truth, prevent any tampering with the evidence, prevent the criminals from escaping and taking precautions, and ensure that innocent persons are not accused unjustly, so as to abide by the principles of criminal justice of verity, integrity and reaching the truth”

Whereas in the Hrant Dink investigation, this decision was turned into the most important instrument of doing the exact opposite of what is stated in the law. **The confidentiality decision effectively covering the entire file, and the possibilities created by this decision, were used to bury the truth instead of unearthing it, tamper with the evidence instead of preventing any tampering, and to allow the criminals to take all precautions instead of preventing them from escaping or taking precautions.**

THOSE HELD IMMUNE DURING PROSECUTION

Following the investigation carried out confidentially due to the decision of confidentiality effective on the entire file, Hrant Dink’s murder case was initiated with the indictment dated 20.04.2007 and no 2007/368. According to the indictment, which had an essentially accurate and due legal delineation, the murder was executed by an organized structure as a result of actions all of which had an ideological purpose and which were spread over time within the framework of joint decisions and action plans. However, the same indictment limited the organisation behind the murder to the gunman and his close circle, that is, the organisation’s section in the Pelitli neighbourhood.

Demands that would force the limits and frameworks drawn by the indictment, that would offer critical opportunities on the way to unearthing the factual truth and that would thus affect the course of the trial were systematically rejected.

The demands accepted were not fulfilled by the relevant institutions; letters sent to them failed to receive satisfactory answers; some officers even attempted to give their opinions on the trial, virtually seeing themselves above the Court. These same officers from time to time showed disrespect to the ongoing trial with their answers that lacked seriousness, and sometimes they misled the court by giving untrue statements. Although these behaviours also constituted crime, the rule of immunity and impunity was implemented decisively over this matter as well.

To give some examples to our demands which were systematically refused:

- Hrant Dink, in his article “Neden Hedef Seçildim” (Why I Was Targeted) published in Agos newspaper on 12 January 2007, was describing the process of his being selected as a target and was pointing out to the meeting he was summoned to at the Istanbul Governor’s Building as the beginning of this process. In the section where Hrant Dink describes that meeting in the office of Ergün Güngör, Deputy Governor of Istanbul, accompanied by two other State officials, Hrant Dink ends the section with the following words. “I had to know my place ... I had to be careful ... Otherwise it would not be good!...” And right after that, Dink says “I am now the target” and adds: “It really was not good afterwards.”

We demanded that the identities and duties of the state officials present in the meeting which Hrant Dink points at as the start of the process which turned him into a target and which he perceived as a threat, as well as the titles/positions under which these officers were present at that meeting be asked and inquired. Upon our demand, the Court gave the following interim decision on 02.07.2007:

“It has been decided to ask in writing from the Istanbul Governorate Office the **identities, duties and titles** of the security officers present at the meeting with murdered Firat Dink in the office of Ergün Güngör, Deputy Governor of Istanbul”.

Although the question was extremely clear, in its response letter the Istanbul Governorate did not answer any of the questions requested to be answered in the interim decision. The requirements of the interim decision were not fulfilled. Since concrete questions were left unanswered, we demanded a new letter be written to ask again for the identities, positions and titles of the security officers present at the meeting with Hrant Dink, yet the Court refused it on the grounds that the request had already been fulfilled. Yet, as described above, this request was not fulfilled; despite the legal obligation, the Governorate’s officials failed to fulfil the requirements of the Court’s interim decision. The questions posed by the Court were not answered. Despite our numerous requests regarding the issue, it has not been possible to persuade the Court to write another letter to the Istanbul Governorate. The Court acted as if the requirements of said interim decision were already fulfilled.

- To reveal the organized structure behind the murder, all evidence representing the incident should have been collected, all pieces that had the possibility of representing the whole should have been put together, and all leads that could have exposed the organisation should have been evaluated. Therefore, it was important in terms of reaching the factual truth to carry out the entire case and investigations related to the murder from a single hand. Yet the requests to consolidate the legal actions were refused every time.
- Similarly, due to the reasons stated above, our demand to hear as witnesses at court Celalettin Cerrah, the Istanbul Police Director of the time; Ahmet İlhan Güler, Istanbul Intelligence Division Director of the time; Ramazan Akyürek, Head of Intelligence Department of the General Directorate of Security (TNP); Reşat Altay, Director of the

Trabzon Police Department at the time; and Colonel Ali Öz, Commander of the Trabzon Gendarmerie Regiment, so as to ensure that whether the state officials in question had any role in the murder be investigated through the Court were also refused. Hence, it could not be possible to hear as witnesses these persons who were protected with immunity.

The refusal of these demands, in a way, confined the trial to the limits drawn by the indictment and drew it away from its original purpose, shifted it from the main axis, and caused it to lock onto a small part of the incident and organisation. As a result, out of the entirety of the actions starting from 2004 and constituting a crime, the case was locked onto the moment the trigger was pulled and only on the gunman of the organised structure executing these actions within a specific plan spread over a specific timeline.

Our demands that were granted by the Court were not fulfilled by the relevant institutions, and the questions asked remained unanswered. Our efforts in this regard met the wall of systematic, conscious and insistent resistance of institutions such as TIB (Telecommunications Communication Presidency) and MIT (National Intelligence Organisation). For example;

- Since it was revealed within the scope of the file and through external investigations that a huge body of intelligence on the preparation and planning of Hrant Dink's murder had been delivered to the Turkish National Police Organisation's (TNP) Intelligence Department, we demanded that this information be requested from the TNP Intelligence Department. In line with our request, the Court, with an interim decision, demanded that all intelligence related to the murder be sent. Although the interim decision asked for the intelligence and information received prior to the murder, the Intelligence Department sent the Court the information and statements belonging to the time after the murder, which were already present in the file.

Upon this, we demanded that the pre-murder intelligence and information be queried again with another letter to the Intelligence Department stating that their reply was not in concordance with the interim decision. The Court, granting this request, wrote another letter to the Intelligence Department; our petition was also attached to this letter. However, the result did not change and the Intelligence Department did not fulfil this and other subsequent interim decisions. And our demand to have legal action initiated against those failing to fulfil the requirements of the interim decision has not been granted to date.

- From the beginning of the trial, in almost all the hearings, we had demands related to the Telecommunications Communication Presidency (TIB) and questions to this institution. The Court accepted almost all of these demands, and sent the questions and requests to TIB through interim court decisions.

TIB replied to the letters sent by the Court, yet in none of these letters did it answer the questions posed in the interim decision of the Court; in other words, it did not fulfil the requirements of the interim decisions.

It was seen that TIB particularly avoided answering the posed questions in its replies to the Court, particularly avoided fulfilling the requirements of the interim decisions, and that these letters were exact copies of templates prepared by the institution and only containing quotes from laws, regulations and relevant legislation, irrelevant statements that were all far from responding to the questions asked by the Court.

- Since, in accordance with the Law no. 2937 on the National Intelligence Organisation, MIT is the institution where state intelligence is gathered and where gathered information is coordinated, and because of the roles of the officers of MIT Istanbul Regional Directorate in the beginning of the process of turning Hrant Dink into a target, we demanded that the Undersecretariat of the National Intelligence Organisation be asked to supply any and all information related to Hrant Dink's murder and the accused individuals, starting from the meeting at the Istanbul Governorate.

The Court granted our request and furnished a letter to MIT asking MIT to reply to the questions asked in our petition. The MIT Undersecretariat, in its response letter, stated they had no information relayed to them prior to the incident that there would be an assassination or a similar assault on Hrant Dink by the accused or other persons, that no information was transferred to them prior to the murder from the security and intelligence units of the Provincial Police Departments, Provincial Commands of Gendarmerie, the General-Directorate of Security (TNP) or the General Command of Gendarmerie, and that they had no information relayed to them regarding any actions related to this murder by the accused or by any illegal or legal or even political organisation.

The contents of said letter, first of all, did not reflect the truth. The officials of the largest intelligence organisation of the country where all the information was collected were not telling the truth; they were hiding information from the Court.

Acceptance of the contents of such letter as true meant, above all, that the MIT officials have seriously neglected their duties by failing to acquire any of the information obtained by other intelligence units that have more limited powers and facilities, and that they were unaware of what was going on in the country.

In addition, this statement by MIT also contradicted openly with the existence of the 'National Intelligence Coordination Committee' regulated in the MIT Law no. 2937 and established under the chair of the MIT Undersecretariat, and with the duties of said Committee as specified in the law.

If the information given in the letter were to be accepted as the truth, then it would be necessary to accept that MIT and all the other intelligence bodies in the country had failed to fulfil their duties and responsibilities regarding Hrant Dink's murder and that they had acted in violation of the law. The coordination obligation between intelligence organisations is regulated not only in the MIT Law but also in Law no. 2559 on the Duties and Powers of the Police and Law no. 2803 on the Duties and Powers of the Gendarmerie.

According to this response, MIT had not done its duty. However, since it had already confirmed the meeting at the Istanbul Governorate, it had to explain under which definition of duty such a meeting was carried out. However, MIT did not make any statements on that regard and hence it has not been possible to understand under which of their duties specified in the law the MIT officials had met Hrant Dink at the Governorate.

Assessment

- The most important element affecting the course of the case was that it was not permitted to cross the boundaries drawn by the indictment. When the unwillingness of the judicial authority was combined with the resistance shown by state institutions and bureaucracy, a pseudo judicial activity was carried out which was far from being effective and extensive. In this process, every institution appeared to be performing the role given to it in a play designed by a strong will.
- Those with definitive duties in preventing the murder and responsible for the commission of the murder remained untouched and immune. It was striking that those held immune were all state officials serving at critical positions.
- It was mentioned above that in the National Security Policy Paper, minorities and missionaries are determined as domestic threat (domestic enemy). According to the MIT Law no. 2937, MIT's foremost duty is to work towards realising the National Security Policy Paper. All other intelligence institutions of the state are also held responsible for working in this line. Even the state institutions with no intelligence-related duties have the responsibility to take duty in bringing this document to life. All these, and the resistance and harmony of the bureaucracy after the murder should be noted as another striking point.

LAW NO 4483 ON 'IMMUNITY'

It was revealed during the investigations and inquiries that all the forces responsible for protecting the safety of life and property of the State took no precautions despite being informed, to the smallest detail, about the murder plans against Hrant Dink. Upon these findings and information, an investigation was launched against those taking no precautions despite being informed about the possible murder of Hrant Dink, pursuant to Law no. 4483

on Trial of Civil Servants and Other Public Employees. In these investigations against officers of the Trabzon Police Department, officers of the Trabzon Provincial Gendarmerie Command, officers of the Istanbul Police Department and officers of the Samsun Police Department and Gendarmerie Command, it was revealed that the security forces and intelligence officials had tracked and followed Hrant Dink and his murderers, had failed to act despite being in full knowledge that Hrant Dink's life was in immediate and serious danger, and had failed to take any preventive measures against the murder. However, despite the concrete proofs and infinite documents to this effect, the investigations and inquiries carried out as per law no. 4483 left unanswered the question why Hrant Dink was not protected, and no sanctions were administered against the criminal actions of those failing to provide such protection.

Here are some examples:

- In the three inquiries conducted against officers of the Istanbul Police Department, investigators found out and established that the evidences were destroyed, fake documents were created and duty posts not attended by the officers were shown as if they had attended them, and submitted their comment that investigation should be initiated against the officers at least on the grounds of their actions that may be deemed to constitute neglect of duty; yet, not a single investigation has been launched to date against any of the officers in question.

Despite the three inquiry reports, expert reports and tangible evidences in the file, this time it was the Istanbul Regional Administrative Court that put a stop to the attempts to pierce the immunities of the officers of the Istanbul Police Department, closing the door to judicial action against these officers. Our complaint claiming that the judges of the Istanbul Regional Administrative Court who definitely closed the door on any judicial remedy despite dozens of evidences did not act impartial and did not fulfil their obligations arising from the constitution and the laws was rejected by the High Council of Judges and Prosecutors on the grounds that it was unjustified. The High Council of Judges and Prosecutors (HSYK) was also playing its role and function in the process with its decision of 'unjustified' which kept the officers of the Istanbul Police Department immune.

- In the investigation against the gendarmerie officers in Trabzon, it was established that false documents were forged after the murder and some documents were destroyed; yet no action was brought against any of these crimes. In the ongoing lawsuit, it became clear that it would be impossible to get any results in terms of accountability and sanction. It was understood that this lawsuit would result in no sanctions and hence would not be able to be an exception to the rule of immunity and impunity as a result of a decision to put off the sentence or statute of limitations since the crime charged against the accused was a simple crime of neglect of duty.
- The investigation and inquiry launched when it was revealed that Oğün Samast, apprehended in Samsun, was treated as a hero by police and gendarmerie officers

and when the photos and camera recordings proving this were leaked into the media also failed to reach any conclusion.

- Another investigation process was the preliminary inquiry against officers of the Trabzon Police Department. Officers of the Trabzon Police Department, accused of being in possession of the information that Hrant Dink was to be murdered, with all the pertinent details, and taking no measures to prevent such, and of hiding and destroying etc the evidences after the murder, came out of all investigation and inquiry processes clear, with not even the smallest default attributed to them.

During all these investigations and inquiries, despite the fact that the responsible persons were identified and their criminal actions were established, the responsible persons and their actions were not made the subject of any lawsuits and as a result these crimes were left unpunished. In the law case that had to be initiated against gendarmerie officers of Trabzon as a result of tremendous efforts, acts of the accused persons that required heavy penalty were not included in the indictment.

Law no. 4483 that regulates the conditions and procedures for trial of civil servants and public employees and that was applicable in the abovementioned investigations binds the trial of public employees established to have committed a crime as a result of inquiries conducted by the civil servants of the administration to the permission of administrative authorities.

Yet, in order for an investigation carried out against public employees due to their responsibilities in preventing a murder to be accepted as an effective investigation, as a general rule, the persons responsible for the investigation and carrying out the inquiries must be independent from the persons involved in the acts that are under investigation.

However,

- In investigations carried out against members of the executive pursuant to law no. 4483, the issue under investigation is investigated on the merits by other civil servants involved in the issue and members of the executive organ. For example, in the present case, The Istanbul Governor Muammer Güler is both the person responsible for the incidents and the decision-making authority.
- In addition, relatives of Hrant Dink were not included in this process and were only given the right to appeal against the decision, which is a very important shortcoming in terms of protecting the legal-interests of those injured from the crime.
- In addition to all these, the Regional Administrative Court, which is the appellate authority, carries out the review directly on the file, without any hearings, without hearing the parties and without summoning any witnesses.

Due to all these reasons, it is not possible to accept the process provided for in Law no 4483 as an effective and in-depth investigation oriented to reveal the factual truth.

However, in the judicial process following Hrant Dink's murder, the law was used as a shield to virtually protect the civil servants who had role and responsibility in the preparation of the murder, who concealed criminal evidences after the murder and who treated the murder suspect as a hero. All civil servants of the state involved in the crime were allowed to take advantage of the protective umbrella of this law.

JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS

In its Hrant Dink judgment dated 14.09.2010, ECHR came to the conclusion that the European Convention on Human Rights was violated four times and convicted Turkey unanimously. The Court (ECHR) concluded that the Turkish State had violated the substantive aspect of Article 2 of the ECHR on the right to life by not taking positive measures to protect the right to life of Hrant Dink. In addition, the Court decided that Turkey had also violated the procedural aspect of Article 2 of the ECHR by not conducting an effective investigation against the security forces who knew that Hrant Dink's right to life was under immediate and real danger. Furthermore, the Court decided that the right to freedom of expression regulated in Article 10 of the Convention and Article 13 of the Convention had also been violated.

One of the most striking aspects of the judgment was that it concluded that the concrete events and facts in the process of making a target of Hrant Dink indicated the existence of a serious, imminent and real threat against Hrant Dink's life and emphasized that the last link of the process was the approval by the Court of Cassation (Yargıtay) of the conviction decision against Hrant Dink.

ECHR concluded that the Trabzon Police Department and Trabzon Gendarmerie Command were the responsible authorities in the place where the murder was planned and prepared, and that the Istanbul Police Department was the responsible authority in the place where the murder was done and where the victim was residing, and hence that all three authorities were responsible for protecting the life of Hrant Dink, and determined that these authorities did not make any moves to prevent the murder of Hrant Dink, either separately or in a coordinated manner, although being informed that the murder was planned and would be performed soon. Then, the court concluded that the investigations initiated against the officers after such findings were in the nature of violation of the obligation to carry out an effective investigation since they were left inconclusive in terms of revealing why the security forces had failed to act and in terms of punishing them.

In addition, the court decided that the low-ranking officers had been forced to give false statements to the investigators, and that this was a case of a manifest breach of the duty to take steps to gather evidence concerning the events in question and of concerted action to hamper the capacity of the investigation to establish who was responsible.

ECHR also determined that the investigations into the security forces had all been examined on merit by other civil servants (governor, Provincial Administrative Board) who were all members of the executive and who were not completely independent from those involved in the incidents, and that this situation alone showed the weakness of said investigations.

The section of the decision evaluating the view prevailing in the Turkish judiciary regarding the breach of freedom of expression of Hrant Dink is another striking aspect.

The ECHR shared the view of the Chief Public Prosecutor at the Court of Cassation that an analysis of the full series of articles in which Hrant Dink used the impugned expression showed clearly that what he described as “poison” had not been “Turkish blood”, as held by the Court of Cassation, but the “perception of Turkish people” by Armenians and the obsessive nature of the Armenian Diaspora’s campaign to have Turkey recognize the events of 1915 as genocide. After analysing the manner in which the Court of Cassation had interpreted and given practical expression to the notion of Turkish identity, the Court concluded that, in reality, it had indirectly punished Hrant Dink for criticizing the State institutions’ denial of the view that the events of 1915 amounted to genocide.

According to these conclusions of the ECHR judges, which are extremely thought-provoking and which should be a cause of shame for the Turkish judiciary, the judges of the Court of Cassation had punished Hrant Dink for his other words and views that were not the subject of the case and that did not constitute a crime, yet that were contrary to the official thesis. The basis of these decisions which violated the most fundamental principles of law was the prejudices and commitments of the judges to the official thesis regarding the 1915 events. However, again according to the ECHR, to seek and discuss historical truths is an integral part of freedom of expression and Courts and judges do not have the authority to “arbitrate” in a historical problem.

ASSESSMENT

- Immunity and impunity came to the fore as the main problem in the investigation and trial process of Hrant Dink’s murder. Officers of the state remained immune despite all investigations, inquiries, trials, legal initiatives and public pressure. This resulted in crimes remaining unpunished, and, combined with previous experiences, created a domain of power for security and intelligence officers, reinforcing the perception that they are untouchable and immune and they cannot be held accountable.
- All the legal and non-legal processes related to Hrant Dink’s murder proved that practices of immunity and impunity are systematic and have become the rule. It also became clear that the judicial processes and authorities were also designed as a mechanism to implement this rule without allowing any leaks, that any possible attempts to break the rule were prevented by yet another mechanism, and any accidental cracks were repaired by another authority.

- In addition to the domain of arbitrariness created by immunity and impunity, it was once again understood that the lack of a political will also increased the resistance and daring of the civil servants and that unless there is a political will, it will not be possible to break the resistance of state institutions.
- The Hrant Dink murder, investigation, review and trials showed that judicial authorities address some crimes committed by civil servants with an approach differing from other trials, that instead of deepening the trial processes, they display a common behaviour of conducting a pseudo trial and investigation within pre-drawn boundaries and with only what is handed to them.

When it comes to the state and the civil servants of the state, this approach differs on the basis of avoiding penalty and sanctions, which was revealed clearly, in its most concrete form, with the Hrant Dink judgment of the ECHR.

The judges of the ECHR came to conclusions that were completely different than those arrived at by their colleagues in Turkey, although the files and file contents they examined were identical.

It is not possible to explain this difference with a contradiction between domestic and international law or a difference of legislation. The domestic law also has sufficient materials and legal bases, if only the judge chooses to use them. This difference despite the legal arrangements protecting the fundamental rights and freedoms, the conventions and Article 90 of the Constitution can be explained with a judicial culture in which ECHR judges and their colleagues in Turkey approach judicial processes touching on the State with different mental codes and which assumes it as its mission to protect and safeguard the state instead of protecting and safeguarding human rights and freedoms.

This approach is the reflection of the mentality that sanctifies the best interests of the state and that normalizes illegality by state institutions for the sake of these interests. It once again became fully clear with Hrant Dink's murder that it is not possible to access justice with this mentality and with this judicial practice.

The investigations, prosecutions and conviction against Hrant Dink and the approval of the conviction by the Court of Cassation, the post-murder investigations and prosecutions made it clear that the judicial authorities involved in the process make their decisions based not on law but on the state's ideology and according to the signals coming from the depths of the state. It became very clear that a judicial mechanism that has accepted it as its mission to protect and safeguard a nationalist, racist and discriminatory official ideological formation, or judicial authorities that have become a part of this mechanisms since they are left without any protection, cannot come to the same conclusions as judicial authorities acting with a conscience of protecting fundamental rights and freedoms.

CONCLUSION

- The facts described under separate headings above, the ideological partnership and harmony between the indicated institutions and mechanisms in the preparation and perpetration of the Dink murder, in concealing and tampering with the evidence following the murder, in burying the truth, in drawing the boundaries and limits how far the trial proceedings could go and in ensuring that these boundaries are not crossed are all striking. In fact, this harmony and partnership corresponds to the existence of a powerful apparatus and mentality that not only legitimizes the murder but also makes impunity something ordinary. This powerful instrument is the State itself. All facts of the process, from the painting of Hrant Dink as a target to the judicial processes resulting in his conviction and murder, and the blockages in the murder trial, point at the state ideology and policy.
- It once again became clear that although the persons and groups covered by the state that has the obligation to protect the lives of its citizens may change in time, the state has decided that a portion of its citizens are in fact its (domestic) enemies and that the state has designed a giant mechanism in which, when it comes to fighting this enemy, acts -including murder- defined as crime in the laws are not tried and therefore criminals are left unpunished and officers going out of the boundaries of law are held immune for these acts.
- This design, shaped around the political culture and mentality of holy state, made it possible for the state to maintain a system that legitimized and even encouraged illegality and murder and that made heroes out of murderers.
- It was found that the definition of domestic enemy is based on the prediction of differences that disturbs the state's ideology and the society's homogeneity, and that all actors taking part in the process of Hrant Dink's murder either with their actions or inactions were united under this definition.

In addition to all these establishments;

It is now known that in the process during which Hrant Dink was made a target, there were coup preparations, assassinations were plotted against the most prominent journalists, writers and intellectuals of the country, and that death lists were created, which included these prominent figures as well as Hrant Dink.

Again in the same process, Turkey witnessed a change in the structure of the state and a differentiation and even a conflict between its institutions. This change and differentiation resulted in taking some measures to protect the lives of some intellectuals who were targets. The inter-institutional conflict became the guarantee of the right to life of many intellectuals and journalists. For example, a security team was assigned to Orhan Pamuk although he had not requested any. Mehmet Ali Birand disclosed a few days ago that he was saved from being murdered by being put under protection by the Undersecretary of the MIT. It was also observed that the measures taken to protect the lives of the valuable intellectuals of this country like Orhan Pamuk and Mehmet Ali Birand and which we find absolutely right and just, were again withheld from Hrant Dink during the same time period.

The harmony displayed by these conflicting institutions in contributing to the murder of Hrant Dink, in facilitating the perpetration and in treating the murder suspect as hero has shown another powerful mentality widespread and internalized among the state cadres. When the process is viewed as a whole, it would not be wrong to say that this mentality is an extension of the ittihadist tradition that internalizes, legitimizes and normalizes murders and that is an enemy of differences and particularly Armenians.

In this case in which the Armenophobia forming the basis of the century-old ittihadist tradition of the state is an important factor bringing together all the institutions, persons and groups playing a role in this murder process, the way to reach justice is through confronting this enmity and the historical process and state traditions feeding such enmity.

Its decision processes, preparation methods and trial methods do not make this case any different than other similar cases. Yet this case has the potential to reintroduce all similar assassinations and unsolved murders into the judicial domain and settling the account with the traditional view of the state and the judiciary.

This case offers important opportunities to everyone, and foremost to the political will, to confront and cope with the heavy and dark burden of the past. It is up to us to use this opportunity.