

# POTEMKIN COURTS

A RADICAL CRITIQUE OF THE JUDICIAL SYSTEM IN TURKEY

SELÇUK KOZAĞAÇLI





July 2020

**Selçuk Kozağaçlı.** A member of the People’s Law Office and the Chair of Progressive Lawyers’ Association of Turkey. He is well known for his and office’s involvements in various worker’s rights, human rights and revolutionary activism cases as a lawyer. Together with his colleagues, Kozağaçlı was arrested in November 2017 and has been in prison since then. He received the Lawyers for Lawyers Award in 2019.

This text was his defence delivered to the 37<sup>th</sup> Assize Court of Istanbul as to the accusations.

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TRANSLATED BY *Eren Buğlalılar*



## 1.

It's useless to talk about the file.

Not just because the file is prepared too badly to deserve comment, but also it's because for you to know that we don't share with you the illusion that we are facing an actual "case file" here. Instead, it's going to be much more meaningful to start immediately talking about the real issue between us.

The Soviet novelist Sholokhov tells a story in *And Quiet Flows the Don*. It's in that section where the youngsters tease each other while waiting for the ataman's meeting to start: "... *Have you heard the story of a gypsy who spent the night in the steppe and had nothing but a fishing net to cover himself? When the bitter cold began to bite him, he woke up, put his finger in one of the meshes in the net, then turned to his mother and said 'See? It had been the draught from the hole and I thought the weather was getting cold.'*"

We refuse to put our finger in one of the many meshes in your "case file" and say, "Here! We found the place that was creating a draught!"

A defendant who tries to protect his rights by trusting the "*Turkish Criminal Justice System*" will surely freeze to death, very much like the Gypsy who lied to himself as he was trying to keep himself warm with a fishnet. Because you're not real, you're not institutional, you're not trustworthy. In short, you do not exist and "have never existed".

## 2.

You are all nothing but administrative "*Potemkin Villages*" restructured to meet the needs and perpetuate the existence of one single power centre, and this is so despite the judicial titles you continue to hold.

When tasked with greeting the neighbouring emperor at the border and bringing him to the capital on a boat through the river for a visit to Empress Catherine, Marshall Potemkin of the Russian Empire did not want show his guest the wretched villages that were visible on both sides of the river along the way. Thus hastily, he got panels installed in the villages by the river, which were painted like the facades of some elegant and wealthy village houses. In front of the panels were the well-dressed and well-fed "model" villagers waving at the passengers. Thus the term "Potemkin Village" or "Potemkin Panel" is coined for the objects that have a polished facade and stand for something that is not actually there.

You are not a court, you are a Potemkin Village. But you are overlooking the fact that we are not the passengers of the ship that is navigating in the river but the real villagers hid in the miserable dunghill behind the panels. Besides, it's now clear that the ship's passengers are well aware of the situation as well. Countries like Germany, the United States, France, Greece, etc. have been resorting to threats and bribery as they were trying to save their imprisoned citizens from your hands. Everyone realized that behind the painted and polished courthouses of the country, there lies no real judiciary.

You may not feel comfortable saying it to the foreigners, but you can feel free to say it to us: "*You are socialists, right? Hasn't the law always been serving the interests of the ruling classes? What's the deal here? Why do you care so much about the difference between a real and a fake judiciary*" In a way yes. Basically, the law does what you do here but it achieves the same effect by creating much more complex and elegant uncertainties and by getting a lot of acknowledgements for the performance. Just to make a comparison, let's say that you and the law, both want to fish in a frozen river: You are trying to fish by effectively punching a hole in the ice with an axe and beating the fish with the handle. The law, on the other hand, initially performs figure skating on the river. You may ask, "Well, how do they catch the fish?" And I say, fish fall in love with the beauty of figure skating so that you can even catch them with spoon nets, effortlessly. Look at how Western Europe does it: Is there a single uprising there, despite excessive exploitation and desperation, apart from those by the immigrants of course? Do

they raid houses at night? Do they keep the lawyers in solitary confinement for a year without a judge? No. Rendered unable to think about anything else, desperate audiences are sitting, watching, and cheering the rule of law and democracy, meanwhile, they are robbed of their income, security and happiness every day. That's how the law works.

### 3.

I don't want to be unfair though. I was able to see one of your recent works, which besides resorting to coercion and polished fraud, managed to create "consent" as well. There's a monthly institutional magazine called "*Değer/Value*" in prison, which is distributed free of charge to all of us. I'll quote you a letter from the June 2018 issue of the magazine written by an inmate who is on a "pre-trial arrest". And keep this in this mind because it is relevant. He says, "*The information you give us every month, the tolerance you show us in the penal institution and the courses you teach make it inevitable for us to be integrated back into the society.*"

Here it is! Here there is a happy citizen who was "mercilessly" reintegrated back into the society while he is fully confident that the justice will be served: This is Mr. Durdu. Looks like the law is what makes you feel that you have been inevitably reintegrated by the Administration of Kozan M Type Prison into that society from which you have no idea when you have been separated. It's called "manufacturing the consent" or "hegemony." And it looks like that is the very part we refuse to buy.

Antonio Gramsci talks about an interesting balance in his *Prison Notebooks*: "... the supremacy of a social group manifests itself in two ways, as "domination" and as "intellectual and moral leadership". A social group dominates antagonistic groups, which it tends to "liquidate", or to subjugate perhaps even by armed force. A social group can, and indeed must, already exercise "leadership" before winning governmental power (this indeed is one of the principal conditions for the winning of such power) (...) it subsequently becomes dominant when it exercises power, but even if it holds it firmly in its grasp, it must continue to "lead" as well."<sup>1</sup>

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<sup>1</sup> GRAMSCI, Antonio, *The Prison Notebooks*.



Legal practice is one of the typical examples of this leadership. It's this effect that attracts a lot of audiences, handcuffs them and "reintegrates" them back into society while they are too busy watching the artistic performance. This is greatly dangerous for the impoverished and the oppressed.

But your style, of course, is dangerous too. Yet you are dangerous rather because stuck in between "consent" and "coercion", you function like the promoters of corruption, fraud and moral decay, which are typical for those periods when the political power finds it hard to become hegemonic, loses its persuasiveness and it becomes increasingly risky to use coercion.

In short, either you're going to try to build a society back to which we shall "unavoidably" be reintegrated like it is the case with Mr. Durdu or your regime is on its way to collapse. Let's say it didn't collapse in the end. You should know that we will stand against all kinds of normalization attempts based on the already existing cadres, legislation and court practices. Don't you say "we should avoid criminalizing our own past" or "perpetuity is vital for the state". We shall never agree. You must be abolished and you will be. We will never forget what you did or forced to do.

#### 4.

In short, simply for the reasons I have introduced here, there's no value for me in talking about the file, but for our lawyers, it's both possible and necessary to do so.

Now let us take the joy of being a defendant and be frank, and let our lawyers do an autopsy of this judicial corpse called the "case file" which is obviously historically dead and legally exhumed and brought into the courtroom.

If I happen to come to your court again sometime in the future and this time as a lawyer; I promise, I'll talk about the file.

#### 5.

This autopsy analogy is highly befitting. The profession of law is a serious and extremely dangerous one.

John Marshall Harlan, the prominent Judge of the U.S. Supreme Court once said: "*in the discharge of his duties, a lawyer, out of necessity, may become an obstacle to truth-finding.*"<sup>2</sup> We have become obstacles to truth-finding, more than once and we are proud of it. "*What kind of people are you? Why are you proud of preventing the court from finding the truth?*" you may say.

This happens when a defendant is tortured, intimidated, misled and deceived by promises of a false reward and has the potential to "reveal the incident" by telling the truth. In these cases, the lawyer unwaveringly makes the defendant use her right to remain silent and obfuscates the truth. Article 30 of Mecelle [the late Ottoman code] said: "*It's more important to fend off the harm than to provide benefits.*" To me, eliminating the damage inflicted or aimed at human dignity is much more valuable than providing that benefit you call "truth-finding".

In fact, this has to be the same for you. It is given its proper place in the "new" law but I won't mention it. I know you don't like the law. Maybe you're right, they're worthless compared to the decree laws of your president. Let's follow Mecelle when we have to refer to a law because it is even more concise.

The damage caused to the system by the lawyer goes beyond that. The lawyer is the person who listens "the story" told by her client and explains clearly the possible consequences if the client told the same story to the "police, prosecutor, judge, jury and the inspector", thereby giving the client another chance to rethink his "story". To grasp the scale of the potential damage, you should hear as many "*first stories*" and then "*second stories*" as we do. I won't deny that there are lawyers who offer the defendant a better-looking story, but it's a professional flaw. Smart lawyers stay away from it because this could bring extremely serious economic and social consequences, especially when things get worse. There is even more: Lawyer can be the person who manages to have disqualified a bloody knife with a clear fingerprint on it just by insisting that it was obtained wrongfully. I know it looks terrible, but that's what the lawyer does.

The "*legal truth*" is not the kind of "*truth*" that must be reached at all costs and in any way. It is a truth that can be achieved to the extent permitted by the constitutional order and human dignity.

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<sup>2</sup> KEYES, Ralph, *The Post-Truth Era*.

And even in this case, neither the truth of the defendant, witness and the police nor of the judge is the proper truth. When captured and brought into the court, sniper John Allen Muhammad was asked to swear to tell "*the truth, the whole truth and nothing but the truth*" and he was completely justified when he questioned if those words had any meaning. Nobody at no moment in time could know "*nothing but the truth*"<sup>3</sup> and swear to tell it.

For this reason, you would need a "social reintegration" the kind of which you imposed on Mr. Durdu. A reintegration, in his case, did not even need a verdict to be imposed but still managed to make Mr. Durdu willing to agree on your version of the truth. This is what we call "consent." "The rule of law" is the commercial business that conceals the difference between "consent" and "submission" and repackages it as "consensus". But that's what you don't have. You look more like street vendors, tradesmen without a shop.

## 6.

In short, if you tell us that you want to reveal your version of the truth and to deliver a judgment, that we must help you, and that we have to work with you against the own interests of the suspect regardless of what his crime is; then it means that you are practically telling us to collaborate with you in breaking the will of the suspect, keeping him ignorant about the gaps in the law, misleading him so that the process goes smoothly, getting a confession from him and tell it to you. If so, there is only one thing to be said against that: "Cold Iron!" I read somewhere that when the Scottish sailors accidentally say a bad word about God while on board, they usually shout out loud "Cold Iron!" Every sailor who heard this would find a piece of iron nearby and hold it for a while to try to avoid bad luck.<sup>4</sup> Do not underestimate the function of this totem: Your ship that is called the Courthouse, with you in the bridge, could easily be sunk if it is left without any rituals to intimidate and fend off those who reviled its god. You are trying to lure the lawyers into a collaboration coated with the sweet "truth, homeland, nation and law" which would harm their clients' interests; and this is blasphemy. It would still be wrong regardless of whether the client is merely accused of stealing your

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<sup>3</sup> Ibid., p. 192.

<sup>4</sup> FRAZER, James G., *The Golden Bough*.

watch or of attempting to overthrow the constitutional order. We're not going to collaborate.

## 7.

Interestingly, in the past, there have been actual legal deviations in the positivist tradition of Continental Europe, the kind of deviations you have been dreaming about. In the Hamburg State Supreme Court ruling, dated 1978 it was said: "*As an independent body of the judiciary, the lawyer must help the law to prevail. Therefore (in this respect) the lawyer stands with the judge and the prosecutor.*"<sup>5</sup> This faint shadow of the Nazi legal tradition, which itself was the inheritor and the product of continental law and used to believe that every crime was a crime committed "*against the state*", and this tradition is still poisoning the culture of all the three professions, although its influence is diminishing.

## 8.

Another historical example may help us to talk about what is going on here today. Before 1962, our Attorneyship Law too carried the stamp of this statist approach: "*The lawyers,*" it said, "*who make it a habit to handle cases about the reactionary forces or the criminal acts that contradict with the national unity or consciousness, shall be dismissed by the decision of the Disciplinary Board upon the request of the Administration Council of the Bar, without any need for a disciplinary investigation first.*"<sup>6</sup>

That's about what's happening today. The alleged crime is of "identity" that is, we are accused because of the type of cases that we have "*made it a habit to handle*". But can these cases be tried without a lawyer? No. Are there any regulations as to the maximum number of such cases that could be handled by a lawyer? No. It is not a crime to handle those cases occasionally or for one single time, but a crime to make it a habit!

We are indicted not because of what we do but because of who we are. This makes it legally difficult to talk about the issue between us on the one hand but makes it

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<sup>5</sup> HANNOVER, Heinrich.

<sup>6</sup> Attorneyship Law No. 3499

politically easy and understandable on the other. You want us to side with the state, or more precisely with the president who now claims to represent the state by himself. That is a political demand, and so should the answer be.

## 9.

Then, does it mean we argue that some truths are legal while others are political?

When we label an issue as "economic" or "political" (legal, scientific, artistic, etc.), we by no means say that it is exclusively cut out of that particular material nor that the label is exhaustive. What we usually try to say is that the subject matter is more prone to be explained and evaluated with that particular theoretical discipline.<sup>7</sup>

Let's assume somebody says, "*I am on a trial because of my 'revolutionary', 'socialist' or 'communist' identity. But you can't demonstrate any crimes or deeds I have committed.*" To such a complaint, do you think you can answer, "*yes, these are the ideologies associated with illegal armed organizations and therefore you should just admit guilt.*" I mean, effectively this is what you are already saying. But here the discussion is about if you can do it legitimately. We need both a "legal" and a "political" reference to clarify the issue. The legal reference will be remembered immediately; they were the Articles 141 and 142 of the now-repealed Turkish Penal Code. So yes, it used to be a crime "*to be a communist*" in the past and that was regardless of whether we did anything that constituted a crime. It is not, however, a crime anymore. And don't forget the former Attorneyship Law no. 3499, which I just reminded you about. So yes, in the past, regardless of whether you did anything criminal, you could have been disbarred on the grounds that you acted "*as the lawyers of communists*". But you cannot be anymore.

Now let's talk about the political reference. In one of the most classic texts in this field, the issue is examined on three levels: ideological, economic and political. Although the struggle is waged in all the three fronts, says Çayan\*, the political warfare "*...consists of struggles targeting directly the rule of the reactionary*

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<sup>7</sup> JAMESON, Frederic, *The Prison-house of Language*, p. 9.

\* Mahir Çayan (1946-1972), revolutionary leader and the founder of People's Liberation Party and Front of Turkey. His writings, compiled posthumously under the name *Uninterrupted Revolution* has been highly influential. (t.n.)

*classes*."<sup>8</sup> This is really important because political struggle or "*political warfare*" as Çayan calls it, especially in its armed forms can be a crime under the applicable law.

## 10.

It is always said that the political violence has a criminal aspect, and that's why you can easily imply that we had a direct or indirect contact with political violence: "You have been their lawyers, you acted as mediators, you knew them, you have visited them, you have handled their detention procedures..."

Look at the files we're handling and compare the amount of political violence in them with the other cases you are dealing with. You are surrounded with organizations that can kill 100 people at once by bombs, as it was the case in Ankara Railway Station, with men who killed 50 people at a time, as in the Reina Massacre<sup>9</sup>, with groups that arm thousands of individuals under the name of "Party, Sect, Army, Movement, Committee" and trained and equipped by international arms monopolies and states. You're not even slightly interested in their cases nor you're dealing with their criminal potential. Of course, you don't harass their lawyers either.

Because those are nothing but pawns to be occasionally trained, equipped and purged when you are done with them. You won't be politically concerned, no matter how many "beheadings, incinerations, rapes, chemical destruction" is carried out by them. You don't feel uncomfortable arming them as you don't when they bomb people. Because you know political power is not what they want.

They are producing a cycle of violence in a field that is carved for them and sometimes they carve their fields themselves after a lot of hardship and sacrifices. Almost all of this violence is produced by the poor and imposed on the poor, while it never poses a holistic threat, though sometimes it infiltrates your territories of sovereignty. You are obviously taking advantage of this kind of violence to tame

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<sup>8</sup> ÇAYAN, Mahir, *Collected Writings*, p. 446.

<sup>9</sup> Ankara Railway Station Bombing took place on October 15th, 2015, killing 109 people. Reina Nightclub shooting took place on January 1st, 2017, killing 39 people.

the opposition, to divert the agenda, to stave off the "crises" and for a list of other dirty businesses too long to mention here.

That makes it clear that the main problem, the main reason why some acts are "criminalized" and rendered into felonies has nothing to do with the illegality of the act or the terror itself. You're concerned not because the public order is disturbed but because the perpetrator lays claims to the political "power". Because that kind of violence lays claim to law.

Romans used to say, "*The law is helpless against force/violence.*"<sup>9</sup> It completely depends on how you understand it. Because "*...Violence is inherent in the legal order. It doesn't come from the outside but threatens the law from the inside. Benjamin argues that what is fundamentally unsettling for the state and the law is not the crime directed at the real interests but the founding violence.*"<sup>10</sup> Here we are dealing with a qualitative criterion rather than a quantitative one. In other words, "*The state is afraid of founding violence — that is, violence able to justify, to legitimate (begründen), or transform the relations of law (Rechtsverhältnisse), and so to present itself as having a right to right and to law.*"<sup>11</sup>

This is why you insistently want to speak about the Prosecutor Kiraz incident<sup>∇</sup> and the subsequent deaths. And this is so, even though you couldn't establish any links between those incidents and the lawyers in the file, except the single fact that we "*have been the lawyers of those who committed the acts.*" The amount of time, anxiety and fabrications spared from the organizations with thousands of members using heavy conventional and even chemical weapons is instead unleashed for a single action that was carried out with a single gun. And this is because you can correctly identify its political essence.

Although worthless as a legal document, your indictment -we must admit- manages to demonstrate a certain level of political consciousness, or shall we

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<sup>9</sup> "Contravim non valet jus"

<sup>10</sup> Cited from Alain Badiou in ZIZEK, Slavoj and GUNJEVIC, Boris, *God in Pain*.

<sup>11</sup> BENJAMIN, Walter, *Critique of Violence*

<sup>∇</sup> Prosecutor Kiraz incident or Istanbul Justice Palace Siege took place when two militants of Revolutionary People's Liberation Party/Front took hostage a public prosecutor who had been conducting the investigation of the Berkin Elvan case, on March 31st, 2017. (t.n.)

rather say subconsciousness, for the former inevitably requires a minimum amount of reasoning.

We have been continuously targeted for the fact that we are the lawyers of those revolutionaries, whom you are trying to suffocate through a normalized and chronic "*state of exception*."

## 11.

I already spoke about the fact that we are being accused of our "identity", which we gained as a result of defending the individuals "who" have been our clients in the last thirty years. I already explained the disagreement between us and the prosecutor regarding "what" we have been defending. An illegal organization cannot have lawyers. The term "*illegal*" refers not to the actions that break the law but to a presence outside the law, which does not recognize even the law itself. An illegal armed organization is not established according to the association law; it does not pay any taxes and does not hire any accountants nor any lawyers. An illegal organization is not a legal entity but a political one. Let's say that somebody works as a lawyer in various lawsuits of the same political organization continuously and with a great frequency. Doesn't that make her "*the lawyer of the organization*" as well? Of course not.

The "what" we have been defending emerges at the intersection point between our rights and obligations as recognized by the Attorneyship Law and by our professional deontology and our political and cultural existence. The crucial point is to let everybody know our basic precept.

If there are allegations of violence, we have to know which types of violence we will defend as a lawyer exclusively; if there is a legal case about money, we should openly demonstrate the direction of the money traffic we are willing to defend as a lawyer and if the rights and obligations are to be discussed, we openly declare in advance for whose rights and obligations we will be willing to fight: That's what the **People's Law Office** does.

It serves as the lawyers of the revolutionaries, impoverished, oppressed, women, children, workers and nature. In legal terms, you know it because we practice it and in political terms, you know it because we declared it in advance.



## 12.

Let's clarify what we mean by the terms "You" and "We" in a way that leaves no doubt. Had we taken you as "Judges" in the basic sense of the term and your actions against us as mere legal "mistakes" or "faults" -and therefore consented to them- it would have been shameful for us to complain even slightly. Abdülmüteal es Saïdî of al-Azhar school says "*The judge has the right to set a legal precedent when he is to deliver a verdict. If he is accurate, he would have done two good deeds, if he makes a mistake only one. But no one has the right to criticize him, except for the one against whom the judged delivered a verdict.*"<sup>12</sup> Judges enjoy some kind of immunity.

Unfortunately, this immunity of yours which was taken away by the political power has never been recognized by us in the first place. To us, it is not possible to qualify you as a "judge" nor your acts as "mistakes-faults".

## 13.

Who are you then?

**a)** You do not constitute a social class or a nobility such as landowners (*i.e. feudal lords, junkers*) who retain jurisdiction over their lands,

**b)** You are not officials with own characteristics and privileges (in the manner that forms a religious-cultural cadre) such as priests, Muslim judges (*kadis*), kazaskers or imams who are members of investigation commissions that bring justice ordained by a god and his holy book.

**c)** You are not a third power to balance the relationship of a king (or someone who is the first among equals) to the princes close to him, and to the urban dwellers who have no vassalage ties with him.

But who are you?

In fact, you are formal descendants of a separate caste of judges who had been recruited from the children of the impoverished classes and stratified based on age, seniority and, to a certain extent, merit. This had been the case during the early period of the Republic. Qualitatively, however, you hold no similarities with

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<sup>12</sup> SAÏDÎ, Abdülmüteal, *The Most Important Legal Decisions in the History of Islam*, p. 170.

them anymore. You look less like a recruited crowd than a decimated one, or rather "the remains of the sword" of that late caste.

The Turkish Judiciary is what survived the swinging swords of many military juntas, nationalist factions, opportunistic liberal governments, religious and commercial sects, and finally of July Coup of 2016. It is no longer in a position to claim a factual existence, let alone an identity (i.e. of a tradition or a caste).

#### 14.

At the beginning of this text, I mentioned the make-shift boards, the so-called Potemkin Villages but I do not want this analogy to cause an illusion: The illusion that you have a center (a focal point) which could act like your ideological core.

The "legal core" that the Republic created for itself based on the example set by its contemporaries, has now been destroyed. It's not a reference point anymore. Even though they try to sell you as the "Courts of Order" of a new regime, you are nothing but courts of "varosh" or "ban". You're like moons without any planet to orbit around.

#### 15.

"*Var*" means a castle, a fort in Hungarian. Like the German word "*burg*". Hungarian word "varosh" means a place outside the perimeters of the castle walls. The letter (s) is pronounced as (sh) in Hungarian and that is why we pronounce it as "varosh" in Turkish, says the Etymology Dictionary of Nisanyan.

The word was introduced into the Turkish language by the 16th century with the meaning "a settlement outside the castle walls". It had been forgotten for a while but was revived during the 1980s. Maybe actually you are exactly what we deserve because we too come from the suburbs, the slums, the "banlieue". We may not be worthy of an inner castle court. But you too have drifted away from the center that is no longer present, as the legal definition of the word "banlieue" implies. As one of the basic concepts of feudal law, "*Ban*" means a feudal contract, the jurisdiction of a landlord. Surrounded by walls, the cities were the

"new" centers and were exempted from the *Ban*. Thus "banlieue" was used in the sense of the place that continues to be subject to feudal law because it is outside the city walls. This is also the origin of that famous label "*banal*" and it means peasant behaviour, taste, attitude. Since the 13th century, "banlieue" continued to be dependent on the landlords in terms of tax and judiciary despite the fact they were physically within the boundaries of the cities. Criticizing the village law bill in the late 1880s, Prince Otto von Bismarck refers to the still-in-force "bans", even in the 19th century.

I don't think this political power will survive long enough to be able to replace what it destroyed and to institutionalize an inner castle for itself. Therefore, probably you will spend the rest of your lives as a "varosh" court under the Ministry of Interior. A mere "Ban" ruled by the feudal lords Mehmet Ağar-Süleyman Soylu.<sup>+</sup> Currently, the landlord of the health sector is the religious order called Menzil, while the education is ruled by the Kadiri religious order, if I'm not wrong. The so-called new "center" would probably last until the death of the president and his family at worst. Then, chaos.

This can be considered your greatest chance on the one hand and your greatest disaster on the other.

## 16.

The upside is: You can commit any "*banality*" you want. There isn't any city or any tradition left to blame you or to issue you with a reprimand. *Banality* was a concept utilized by the inner castle dwellers to sniff at the non-urbanized suburban community. There is no such a centre anymore. President, the almighty interpreter of law could say "I am not going to abide by the ruling of the Constitutional Court because it is incorrect" and could still be glorified; a judge could say, about a member of the parliament, "*It means nothing if she/he is re-elected, my interpretation of the article is different*" and lift the immunity of the entire parliament with one single decision. Everything's allowed now.

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<sup>+</sup> Mehmet Ağar was the General Director of Security and later, the Minister of Interior back in the 1990s. This period saw a sharp increase in the number of tortures, extrajudicial killings and disappeared individuals. Süleyman Soylu is the current Minister of Interior of JDP government and is known to have strong links with Mehmet Ağar. (t.n.)

I'm afraid you think that everything is allowed if there's no God to condemn and punish your behaviour. My advice is, settle down and read *The Brothers Karamazov* once again. You may still have something to learn from Dostoyevsky.

## 17.

During this period of decadence, you must be feeling very avantgarde when you issue some certain rulings but they have a price attached to them, which is disfavour.

Your quality of life is on the decline, you are constantly uneasy under professional and inhumane intimidation. The typical timidity of certain public officials who know that they could be discharged, excommunicated, or even arrested anytime because of a ruling that she/he would issue this afternoon: Apparently, this haunts you in a way that contradicts with the very idea of "judge".

You seem to be content, though. In fact, you even seem to underestimate the morally, intellectually and physically impairing effect this may have on you. It is up to you.

## 18.

Here's the issue that begs to be clarified: Am I accusing you of abusing the law for the interests of those who hold the political power? I'm afraid this is not the case. Legal abuse requires creative potential.

There have been highly advanced examples in the past when people went so far to say "*Führerworte haben Gesetzeskraft*" (Führer's words have the force of law) and almost completely stayed within the boundaries of the law.

Judge Freisler, who died in the ruins of the collapsed courtroom while conducting a trial on behalf of his Führer as Berlin was bombarded, represented the climax of not only commitment but of the creativity of your class. Freisler said, "*The Führer may not have said anything about a particular situation, but your duty is to understand what he would think about it and to decide accordingly.*"

And now think about your mediocrity and compare it with that. In your case, it would be an overestimation to claim that "*The judicial apparatus of fascism is abusing the law for the aims of those who hold the political power.*" Your

"banalities" do not originate from your faith, your commitments, or from the ideological background you have. Your attitude is simply the product of your timidity which is itself the result of your being pushed and shoved as nothing but the sticks of the government and extensions of the police. I don't want you to think this is an underestimation of your capacity to harm. As other institutional bodies of organized brute force with the potential to tell lies and generate hostilities, you can destroy people's lives and cause permanent damage to the country. There is no need for intellectual excellence for this capacity.

Even worse, you might be actually believing in what you're saying: *"This is why enemy propaganda against radical emancipatory politics is by definition cynical—not in the simple sense of not believing its own words, but at a much more basic level: it is cynical precisely insofar as it does believe its own words..."*<sup>13</sup>

## 19.

Let's get to us.

Let's put aside your phony accusations and try to be as frank as we were when describing you so that the issue between us can be seen with all its clarity.

Why don't we start with the first thing that will come to your mind: We are not in power, we are poor, we are in prison, we have lost our freedom since a year and we are about to lose our profession for the rest of our lives. So we are the losers of this legal profession, right!?

You'd be wrong if you believe that we failed in obtaining the privileges that the establishment is ready to give us or that we lack the necessary skills and opportunities to do so. On the contrary, we are presented with many opportunities to do this every day. But we never forget John Berger's analysis of Picasso: *"His experience proves that success and honour, as offered by bourgeois society, should no longer tempt anyone. It is no longer a question of refusing on principle, but of refusing for the sake of self-preservation. The time when the bourgeoisie could offer true privileges has passed. What they offer now is not worth having."*<sup>14</sup>

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<sup>13</sup> 2nd Notebook.

<sup>14</sup> BERGER, John, *The Success and Failure of Picasso*.

We abstain from your order to keep our hands clean of its dirt so that we won't be consumed and corrupted by it.

## **20.**

It is the phenomenon of "getting into touch with the revolutionaries" that changed our lives. All other ideological, philosophical and political factors follow that or are built later on. This touch is of constituting importance for a lawyer.

Our clients with whom you are interested in this case are people accused of sympathizing with, conducting propaganda for, aiding and being a member of or directing armed organizations, particularly the Revolutionary People's Liberation Party-Front. Many of those accusations are unsubstantiated but of course, some of the people were actual members of the organization and its directors. It's a legal position that seems very clear for you. If a militant is captured alive, however, upon carrying out an armed action on behalf of the organization and if she still argues for the organization in the court, then to be her lawyer involves a series of challenging and complex processes which begin almost from the moment of that armed action. And this could take years for the lawyer. To this network of contacts, add the family and friends of the client, the public who needs information and news because of their interest to, sympathy with or curiosity for the militant, and as a lawyer, you will find out that you are building yourself a wide circle that will continue to exist until the end of your life.

Take this example of a single political militant client and multiply it with hundreds of them throughout the years and do not forget the fact that your letters of attorney will grow geometrically while the years grow arithmetically.

In short, at the end of two decades in the profession, today, I am surrounded by a network of clients, families and relatives which number around tens of thousands. And the Turkish state linked this entire social-political-professional network with RPLP-F, at least once. But what you mean by "being a member of the organization" probably has more elements than that. Let's move on.

## **21.**

A defendant who is charged with membership despite having no ties with the organization implies a family and relatives who want to get more information

about her condition. Likewise, a member and a director of the organization imply an organization that wants to get information about her condition too.

Yes, the organization reaches out to the lawyer and gets information about its member's health, his legal and political condition and his needs. If that's what you're asking, the lawyers will laugh at you because they have made this "contact" hundreds of times in their professional lives. Let me give you an example from myself: For twenty years, my phone calls have been tapped uninterruptedly, my entire electronic communications have under inspection, you searched my house, my office and my body many times; I am under technical surveillance for at least two or three months a year. But so far, you have never accused me of "establishing contact with the organization"! Because the public administration would humiliate itself if it brought such a charge against the lawyer. At least it was so in the past. But we are now witnessing the legal collapse of the varosh-ban administration. Therefore, in an environment where even the interior minister is not ashamed to bring such a charge against us, you may well think that it is viable for you to do so since you have long lost what once resembled an institutional ethics or dignity. In the past, we used to have courts at least with *that* minimum amount of awareness, despite all their perversity. "Martial Law Courts", "State Security Courts", "Courts of Special Authorities", they all had a certain level of awareness which now became a luxury for you to have. It's hard for a person not to be horrified by such institutional humiliation and timidity, but let's not talk about you once again.

Yes, the organizations reach out to criminal lawyers of the political cases and learn the outcomes of their members' cases. If that's the accusation you are bringing, then at least as part of the legal tradition, add some information about the date, location and the content of that particular contact, so that we can have some "facts" to talk about.

## 22.

Now, let's get to the most important thing: The accusation that we, as the lawyers, not only defend them but "speak, behave and resist" like them.

Namely, let alone reminding the client of "her right to remain silent", the lawyer himself is "using his right to remain silent, refusing to eat, resisting the collection

of fingerprints, tissue and DNA samples, chanting slogans, abstains from undersigning any documents..." What are we going to do with all that?

It is claimed that this is "a plot of silence" or the organization's "oath of silence" (omerta). The shallow literature that the police managed to compile over the years, calls this "*The Organizational Attitude*". You'd be mistaken if you think that they are referring to an attitude that requires effort and creativity in the sense that was argued by Lenin in his "Party Attitude in Philosophy" or Brecht in his "Party Position in Theatre". Apparently, they are referring to a more straightforward attitude: "*The organization instructed them to remain silent and that's what they do,*" is what they have in mind. Yet, unless there is an organizational manual such as "The Code of Conduct in Custody" which is endorsed and supervised by the lawyers; how come this "right to remain silent", which must be considered to be a natural manifestation of the "prohibition of self-incrimination", could be transformed into such a strong inaction?

To understand this, it is necessary to form an idea of the police's role in the preliminary investigation and to determine whether the police itself is a judicial subject. Namely, is the police institution a judicial subject and does it have the willingness and capacity to act upon you as a judicial subject?

In the famous "talisman of silence (*Il maleficio della taciturnita*) it said:

*"O santa corda che legasti Cristo  
lega la lingua mia  
Che non dica né bono né tristo"*

*"O holy rope which tied Christ (to the Cross),  
tie my tongue so that I say nothing, good or bad."<sup>15</sup>*

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<sup>15</sup> 1st Notebook.



This was the prayer not of a defendant, a judicial subject but of a victim, namely of a simple object who was pushed into the investigation process (*inquisitions prozess*).

The trial was being held in secret (Today that's what we do). The trial was being made in writing (Today, you are not willing to listen to anyone either). They did not need any defendants during the trial (Your decisions to send the prisoners into far distant prisons and your new toy SEGBIS, Audio-Visual Hearing System clearly demonstrate your willingness to hold trials without defendants).

The defendant was nobody but merely the "topic" of the trial. In our times, behind the closed doors or unabashedly on the media, some defendants are nothing more than case names such as "priests, journalists, citizens, prisoners-to-be-exchanged" and who desperately wait for the results of the bargains that will seal their future.

Therefore this old model, the notorious judiciary procedure known by the famous and bloody Papal Inquisition is now back and the "impeachment" model which we used to imagine as a "gain" has now been banished with all its safeguards.

Malign law banishes the benign one, as it has always been. Just a version of the Gresham Law, if you like.

Papal Inquisition allowed the defendant to speak as well, but that was not for the sake of evidence acquisition. It functioned as a tool that will cut the connection between the defendant and her "own reasoning", a step which would then subordinate her to the reasoning of the inquisition procedure. This was completely different from the confession as "evidence". The goal was to crush the resistance; that was what would save the soul. Your body was no longer the subject of trial but of punishment and purification.

People knew this and that was why they wrote in their talismans their wish to not to say anything, "ne bono ne tristo".<sup>16</sup> Protect your mind so you can protect your body and let's think about salvation sometime later.

The contemporary political policing as an exposed and rotten environment of violence merits not the "right to remain silent" but "the talisman of silence and inaction". The political police itself is not a judicial subject, even if there are

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<sup>16</sup> Neither good nor bad.

attempts to create such a perception. The political police never regard you as a criminal case but as an enemy. The police are not a judicial interlocutor.

Therefore, our attitude towards the police is not based on "The Custody Manual" of any organization, but on an open and analyzable life experience.

### 23.

Is it justified, however, for you to say that "this may be your life experience about the police but you should have a trust relationship with the court"?

No.

Because the cultural/personal field where the professional ethics of this group (of policemen, prosecutors and judges) is constructed is not conducive to producing a normative attitude, i.e. to recognize the restrictions that are set by the constitution and imposed on them by the law.

An examination of the historical experience demonstrates that the Muslim-Turkish "Kitman" (Hypocrisy) culture, the Muslim-Arabic "Takiye" (Deception) culture and the Catholic-Jesuit "Mental Reserve" culture have a similar way of reasoning on the issue of hostility. It clearly shows that the people who have been trained with similar functional moral norms or who have been subjected to the social environment of this morality can never be trusted in terms of their oaths, commitment promises, or their normative obligations (e.g. the prohibition on the neglect of duty).

We have been observing that those groups of people are encouraged to tell lies, as its price is mitigated (even completely canceled out) for them, provided that the lie is told to defeat a certain enemy (or for the sake of the cultural/religious big ambitions, interests or political expectations). So you have no morals, and we believe you are exactly trained to not to have any.

That's why you feel no shame ignoring the marks of torture or violating your professional and ethical oath, even though you know that a certain document is fake or a certain "confidential" witness is committing perjury. You have been taught that it is "permissible" if it is against us.

The success of the Quaker and Huguenot merchants in "building commercial trust" had stemmed from the fact that such a culture of deception is completely

banned for them, as mentioned by Weber in his "Protestant Ethics". It's a completely alien world for you.

This means that a shopkeeper is not allowed to tell any lies even to his enemies when it comes to "purchasing prices, defects, costs and quality"; a characteristic that we appreciate even today. A "Protestant" judge trying his enemies with no tolerance for dishonesty and forgery would be an interesting scene to watch. But unfortunately, all the judges I've known for a quarter-century were of the types who could recklessly cover the lies up for the sake of accommodation, their careers and futures. The Zuhd (Arabic: "detachment") movements that began during 3rd century AH and were active until the 6th century AH, had functioned as a protest against such a corrupt accommodation which resembled yours. A dervish who does not bargain away his salvation for the sake of accommodating the convention (a dervish who does not lie to obey the orders and who does not abandon his morality to adjust to the community) is still worthy of respect. He does not want to risk the eternal salvation and accommodate a congregation which consists of wicked men. But you're very brave. I mean, assuming that you are devout people, what you are now doing is indulging yourselves in the mundane to the detriment of the eternal. The God you believe or can understand only sketchily must be very hard to fool, unless of course, It is an extremely naive one or as deceitful as you are. Here comes the crucial question: "Would you still join the flock even if they are about to wander off a cliff?"

Yes, you joined them.

## 24.

As soon as we shatter the belief that we are here playing a game that has "rules" agreed on by both parties, then the consensual element within the "Criminal Justice System" would be undermined.

Figure skating performance would be interrupted.

The audiences would disperse before they could be trapped.

Mr. Durdu would violate the conditions of his probation.

A rule, a duty, an oath, a civil service, a constitution that even you won't honour, cannot oblige me either.

This is how the bourgeois-democratic society collapse. When the consent, that low-cost and painless manufacturer of hegemony disappears, the coercion is all that you have.

## 25.

Shall we say: "Woe to the vanquished!"

Upon capturing Rome in 390 BC and after a 7-month long siege in Capitol, Commander Brennus of Gaul finally agreed to leave the city in return for some gold. When the gold to be paid as part of the agreement was being measured on a scale, Brennus threw his sword on the weights and exclaimed "Vae Victisi!" ("woe to the vanquished!"), so the story goes. Now that you have the power, are you throwing your sword on the weights, violating the constitutional order which used to represent the agreements between us?

No. This could be the way how those who capitulate may be treated.

But we have never stopped fighting and will never stop. This is not a bargain to lift the siege. We are going to definitely crush the siege by ourselves.

## 26.

In his novel about the Germans before the Great War, Ernst Glaeser remembers the exciting meetings where Hugo v. Kleist's poem "Children of Germania" was recited: "*Kill! For there is no power in the world to judge you!*"

Is that how you feel? Do you believe that you can get away with it and that there is no power to judge you? Is that why you're so reckless?

You've indeed weakened us. Those of us who have been in prison for a year have lost their relatives, their health is compromised, we have been imprisoned and attacked. Broken arms, broken ribs, torture...

There is, however, a power in the world that can judge you.

As it is said in the ballad about the Battle of Maldon where the Anglo-Saxons fought until their last breath against the invading Vikings (Danes) who landed on their country in 991:

*"Courage shall be greater as our strength grows less."*

**Indeed.**

These two balance each other out.

We will prevail.