

## CASE OF ATILLA TAS

**Atilla Tas**, is a singer, journalist and author. His Twitter account is @AtillaTasNet. He had written columns for the Newspaper Meydan for a short period.

**What happened?** Atilla Tas was detained within the scope of the FETO/PDY investigation and arrested pursuant to the Article 220/7<sup>(1)</sup> (knowingly and wittingly aiding a terrorist organization) of the TCK [Turkish Penal Code].

**Investigation and First Indictment:** The indictment which charged him with being member of the FETO/PDY terrorist organization, pursuant to the Article 314/2<sup>(2)</sup>, had no substantial evidence that clearly indicated that Atilla Tas had connection or affiliation with the relevant organization. Only were his tweets and columns adduced as evidence. Some of his tweets were alleged **to prepare the ground** for the failed coup attempt on July 15<sup>th</sup> 2016.

**Prosecution Phase:** The trial for Atilla Tas began on March 27<sup>th</sup> 2017 at the Istanbul 25<sup>th</sup> Assize Court<sup>(4)</sup>. On March 31<sup>st</sup> 2017, he was released together with other 20 defendants **after he had remained imprisoned for 7 months**. However, some pro-government journalists and some senior advisors of President Erdogan heavily criticized the verdict via social media even before the release warrants were issued to the Silivri Prison, where the defendants have been imprisoned. They called the HSK [The Council of Judges and Prosecutors] for taking action against those judges who ruled that Atilla and others to be released. **HSK [The Council of Judges and Prosecutors] suspended the judges of the Istanbul 25<sup>th</sup> Assize Court and the trial prosecutor and launched an investigation against them on April 3<sup>rd</sup> 2017.** A new prosecution, which was ordered to be confidential, was launched against Atilla Tas. **A warrant was issued for him to be detained and arrested.**

Tas and other 12 journalist gave their statements on 13.04.2017 after having being held in custody for fourteen days. Tas was accused this time of and arrested for “attempting to subvert the constitutional order and the government by using violent means” (the Articles 309<sup>(5)</sup> and 312<sup>(7)</sup> of TCK [Turkish Penal Code]). **There were no new evidence in that case file.**

**Second Investigation and Second Indictment:** The so-called evidence that were incorporated into the second indictment issued against Tas were as follows: 1) He has written columns for the Newspaper **Meydan**, which was then closed down by the emergency decree No. 668 for “being affiliated with the Fetullahist Terrorist Organization/Parallel State Structure, which has been established to pose a threat to national security”. 2) He was also falsely accused of writing columns for the website **Haberdar**. 3) It was also stated in the indictment that he has travelled abroad for many times, without mentioning what was wrong with it. 4) He has been in contact with some persons accused of being members of the FETO/PDY and of using ByLock. The prosecutor considered these so-called accusations to be sufficient to charge Atilla Tas with “attempting to subvert the constitutional order and the government by using violent means”, pursuant to the Articles 309 and 312 of the TCK [Turkish Penal Code] that regulate “the crimes against the constitution and the government”. The prosecutor requested him be sentenced to double life imprisonment. There were, however, no evidence except his tweets and columns.

**Release: First and second indictments were then joined.** Considering “**the possibility of the crime being re-classified**”, the court ruled on 24.10.2017 that Atilla Tas, who has remained imprisoned for almost fourteen months in total, be released.

### **Second Trial and Conviction:**

The prosecutor dropped the charges incriminated pursuant to the Articles 309 and 312 of the TCK [Turkish Penal Code] during the trial held on 06.02.2018 at the Istanbul 25<sup>th</sup> Assize Court. However, claiming that Atilla Tas has been a member of the FETO/PDY armed terrorist organization, the prosecutor requested he be sentenced pursuant both to the Article 314/2 of the TCK [Turkish Penal Code] and to the Article 5 of TMK [Anti-Terror Law].

Atilla Tas was acquitted of the charges incriminated pursuant to the Articles 309/1 and 312/1 of the TCK [Turkish Penal Code] in the final hearing held on 08.03.2018, notwithstanding that he was sentenced to five year imprisonment due to “knowingly and willingly aiding the FETO/PDY armed terrorist organization without being involved in its hierarchical structure, pursuant to the Articles 220/7<sup>(1)</sup> and 314/2<sup>(2)</sup> of the TCK [Turkish Penal Code]. His sentence was then reduced to three years and forty five days. The prosecutor requested Atilla Tas be re-arrested. But the court rejected it considering the time he already served in prison.

### **Appeal Procedure:**

Istanbul Regional Court of Appeal 2. Criminal Chamber refused the appeal applications against the decision of 3 years 1 month and 15 days in prison for “knowingly and willingly aiding the FETO/PDY armed terrorist organization without being involved in its hierarchical structure”.

### **The Execution of the Sentence:**

Atilla Taş was detained on November 9<sup>th</sup>, 2018 for the execution of his prison sentence of 3 years, 1 month and 15 days and sent to Metris Prison. According to his lawyer’s statement Atilla Taş will be released approximately in January 2020.

## **JUDGING THE JUDICIARY**

*The “Shadow Court”, which has closely and carefully examined the investigation and prosecution processes launched against Atilla Tas and other twenty journalists over new coverages, and documents included in the case file, ruled as follows:*

### **SUMMARY OF THE SHADOW COURT’S JUDGMENT**

1. Arrest of Atilla Tas is unlawful. Posting tweets<sup>(3)</sup> and writing columns, which are already performed publicly, cannot be used as evidence to charge someone with being member of a terrorist organization. The defendants being re-arrested after having released and the suspension of the court board of the 25<sup>th</sup> Assize Court have clearly indicated that there has been political pressure on the case.
2. Like the first one, the second indictment had no substantial evidence, with charges based only on assumptions. Issuing an indictment devoid of substantial evidence and consistence, the prosecutor has committed a crime.
3. The court should have returned the inconsistent and unlawful indictment to the prosecutor and rejected to file the case. Having done otherwise, the court itself has become complicit in the crime.
4. The court should have ruled acquittal of the defendants at the first hearing of the trial. Having done otherwise, it perpetuated another crime.

5. The court's rule on Atilla Tas was based only on an assumption. In a country where there is an independent and impartial, the court's verdict is dismissed and the judges are brought to book.

6- Suspending the board of the 25<sup>th</sup> Assize Court, the HSK [The Council of Judges and Prosecutors] has become a body that "*interferes even in courts' interlocutory judgments*". Judges will henceforth feel that they would immediately be suspended if their verdicts are not considered by the HSK [The Council of Judges and Prosecutors] to be appropriate. Judicial independence has de facto disappeared in Turkey.

## **JUDGMENT:**

### **Introduction: The circumstances surrounding the cases and judicial processes**

After the State of Emergency (OHAL in Turkish abbreviation) being declared on July 15<sup>th</sup> 2016, a massive witch hunt has been launched against the dissident journalists, academics, trade unionists, artists and intellectuals.

What has been common in the investigations and prosecutions conducted against those people is to forge evidence out of "things", which are unacceptable even by Turkish judicial standards.

Investigations and prosecutions have mostly been initiated and conducted, considering the social status of the accused, pursuant either to the Article 314 of TCK [Turkish Penal Code] "acting on the behalf of a terrorist organization without being its member" which requires a sentence of imprisonment from one year and eight months to three years and nine months; or to the Article 309 of TCK [Turkish Penal Code] "attempting to subvert the constitution using force and violence" which requires aggravated life imprisonment; or to the Article 311 of TCK [Turkish Penal Code] attempting to subvert the Grand National Assembly of Turkey [TBMM in Turkish acronym] using force and violence"; or to the Article 312 of TCK [Turkish Penal Code] "attempting to subvert the government of the Republic of Turkey using force and violence".

Those who have faced investigations and prosecutions launched pursuant to the articles are, as mentioned above, mostly journalists, intellectuals and the HDP's members and executives.

For example, nationally- and world-renowned journalists and intellectuals such as Ahmet Altan, Mehmet Altan, Nazli Ilıcak, Osman Kavala as well as HDP's co-chair Selahattin DEMİRTAS, the party's members and Kurdish intellectuals have faced the aforementioned investigations and trials. Those people were arrested based on the so-called "evidence" and sentenced to aggravated and long-term imprisonment.

Other cases such as the case of "Buyukada [Prinkipol]", the defendants of which include executives of the International Amnesty Organization, the case of Deniz Yucel and the case of American Pastor Bronson are also based on fabricated evidence.

Another characteristic of those cases are to be used as foreign policy tools. That German citizen Deniz Yucel, who had remained imprisoned for almost one year, was released the day after the meeting of Chancellor Merkel and the then Prime Minister Binali Yildirim is a clear example of that policy.

Almost all those cases used as foreign policy tools have had long prosecution processes, most of which have spanned over one year.

Another characteristic of the cases is that the prosecution phase is kept confidential, meaning that the defendant and his/her lawyer are not able to access to the evidence on which charges are based. After the defendant gives his/her statement, prosecution is ordered confidential and remains so until a case is filed.

Yet another characteristic of those cases is that prosecution process being kept confidential is unlawfully disclosed by prosecutor to the pro-government media outlets. That is aimed at publicly discrediting the defendant.

The case of “Atilla Tas and 20 journalists” has all those characteristics.

What makes that different from the other cases is that it is the most obvious example of how the independence both of judiciary and of judges has been undermined.

### **Legal Status of Atilla Tas**

The reasons for arrest of Atilla Tas: (1) His post-coup-attempt tweets, (2) writing columns for a journal, which was then closed down by an emergency decree, and (3) acting in solidarity with a TV channel, which had already been confiscated by the state before the coup attempt took place.

A case was filed against Tas based on those charges, pursuant to the Article 314/2 of TCK [Turkish Penal Code].

It is clear that his social media posts and newspaper columns are not sufficient to incriminate Tas with the above-mentioned charges. Activities before the public cannot be accepted as evidence for being a member of a secret terrorist organization.

A case was filed against Tas and the other twenty journalists after they had remained jailed for almost one year. Tas and the other twenty journalists were lawfully acquitted at the first hearing.

That was also the beginning of a process that has swiftly undermined the judicial experience and knowledge of the country and that has made judges feel that they have no longer had judicial independence.

After the court ruled that they be released, the National Judiciary Informatics System [UYAP in Turkish acronym] was deactivated. The prosecutor appealed the 26<sup>th</sup> Assize Court, which is the court that sentenced Altan brothers and Nazli Ilıcak to aggravated imprisonment, for the defendants to be re-arrested.

The defendants were re-arrested. The prosecutor’s office initiated another investigation based on the same evidence and appealed to the Criminal Peace Judgeship for the defendants to be arrested pursuant to the Articles 309, 311 and 312 of TCK [Turkish Penal Code]. This time Prosecutor requested the defendants be sentenced to triple aggravated life imprisonment.

### **Legal actions taken by the HSK/The Council of Judges and Prosecutors**

The judicial disaster was yet to end. Exceeding its authority, the HSK [The Council of Judges and Prosecutors] suspended the court board of the 25<sup>th</sup> Assize Court and launched an investigation for them to be dismissed from the profession.

The reasons for suspension and investigation are stated as follows:

*"It is observed that the evidence-collecting process is still to be completed, meaning that the case file is far from being sufficient for the judge to use his judicial discretion to release the defendants. That the defendants were released is therefore not based on reasonable, valid and convincing reasons, and thus inconsistent and illegitimate. When it is considered both that the defendants have been charged with “attempting to subvert the government of the Turkish Republic or preventing it from fulfilling its duties, and forming and heading a terrorist*

*organization” and that the trauma caused by the coup attempt, which left martyrs and wounded people, has still been persisting, it is seen that the defendants being released without evidence being sufficiently collected and examined as well as the release being disproportionate to the charges incriminated to the defendants, when the sentences stipulated in the Turkish Penal Code are born in mind, have caused public indignation”.*

Mehmet Yılmaz, the head of the HSK [The Council of Judges and Prosecutors], told the media that:

*"How could the court release 21 of the defendants as the digital evidence were yet to be analyzed? 90 percent of evidence was yet to be collected. Why were 21 of the defendants released although there was a strong suspicion of crime based on the available evidence? And why have 5 of the defendants remained imprisoned? Those rulings have raised intriguing doubts, which are required to be clarified. That the court board remains suspended is a necessary measure as such a heavy suspicion is being investigated."*

It is clear here that the HSK [The Council of Judges and Prosecutors] has become a body that unlawfully interferes even in interlocutory judgments of courts.

Judges will henceforth feel that they would immediately be suspended if their verdicts are not considered by the HSK [The Council of Judges and Prosecutors] to be appropriate.

No matter what is said in the Constitution and laws, independence both of judiciary and of judges are thus de facto non-existent.