

Politics in court – a weekly news review

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Sarah Glynn

Courtrooms have become important battlefields of Kurdish struggle. Judicial systems can be used to attack critics of the authorities, both through authoritarian laws – such as Turkey’s law against insulting the president – and by interference in judicial independence. Meanwhile, international bodies provide a theoretical, but deeply flawed, route to a wider justice.

As in other battles, when the terrain is too unfavourable, it can be wisest to avoid direct confrontation. This is what has happened in Turkey’s “Kobanê Case”, where 108 people – including the former co-chairs of the Peoples’ Democratic Party (HDP), Selahattin Demirtaş and Figen Yüksekdağ, and other leading party members – face life sentences without parole. Their ‘crime’ was calling on the public to demonstrate in support of the city of Kobanê in 2014, when it was under siege from ISIS. The European Court of Human Rights

made it clear in their ruling on Dermitaş's continued pretrial detention that there is no legal justification for this case, but, President Erdoğan has made no secret of his view that all the defendants are guilty. And, as noted in my recent news reviews, government interference had already manifested itself in a change of the presiding judge, and in a uniquely condensed timetable that makes it impossible for the lawyers to prepare their defence. On Monday, after the authorities replaced another member of the court, the leading defence lawyer announced, "It is no longer possible for us to continue with this hearing. The court delegation seems to have made their decision already. We will not be a party to this crime. We are faced with a delegation that does not respect the ECtHR ruling and does not cooperate with the defense. We will not attend the hearings unless a fair trial is ensured. Only then are we and our clients ready to be present in the courtroom."

This can't have been an easy decision to make. Even when they know that institutional dice are stacked against them, political defendants may still welcome their day in court as an opportunity to put their case to the public. But the HDP's position is already well known, and they will, doubtless, be making sure that every move by the court is met with a well-publicised comment.

Already, Turkey's compromised courts have convicted one young man to a lifetime behind bars in order to satisfy the Turkish government's determination to make political gains from the deadly violence that engulfed the Kobanê protests. The people who came onto the streets for Kobanê were met by state repression and violent counter-protests. The majority of the people who died in the violence were supporters of the HDP, but some others were killed too, including Yasin Börü, who was associated with the Kurdish Islamist (and pro-Erdoğan) Hüda-Par. Mazlum İçli, who was only 14 at the time, has been found guilty of the murder of Börü and three others, despite multiple evidence that he was at a wedding 140 kilometres away when the killings took place. Hopes that new evidence of his alibi would see him released were crushed when a witness, identified only by his initials, claimed that İçli was active in the PKK's youth wing. Although the witness was not in Diyarbakır at the time of the protests this was enough to ensure his conviction. In a long piece on the case, published by Deutsche Welle's Turkish

service on Monday, İçli's lawyer, who is appealing the verdict, is quoted explaining how the ruling is entirely political. The Börü case has been much quoted in Erdoğan's speeches, where he blames the HDP (which he doesn't distinguish from the PKK) for the violence. The lawyer argues that an acquittal has not been allowed because it would threaten the legitimacy of the main Kobanê trial against the HDP.

Turkey's round-up and detention of dissidents continues. It is a measure of the strength and determination of the HDP and of progressive community groups that, even after tens of thousands of arrests and with thousands of members in prison and others in exile, these organisations are still busy, and there are still more activists to be arrested.

The European Union Turkey Civic Commission observed that, last Saturday, 'at least 58 people were detained during house raids in Mardin, Şırnak, Kars and Van.'

Most of the politicians and activists arrested are accused under terrorism legislation: an example of both bad law – poor definition of terrorism allows the law to be abused – and of heavily politicised judicial process. The breadth of the terrorism net was demonstrated by a display of terrorism "evidence" put together by the police after raids on the homes of HDP members a week ago. This included books by Demirtaş, and photographs of Kurdish children who had been killed by police fire.

Simply being investigated under terrorism law is enough to destroy a person's life. Twenty-one Diyarbakir teachers who were detained last November have now been dismissed from their profession, despite being acquitted.

And when it comes to insulting Turkey's leaders, even international fame does not provide protection, as Nobel Prize-winning author, Orhan Pamuk, is finding out. Pamuk is being investigated on the grounds that his novel, Nights of Plague, "insulted Mustafa Kemal Atatürk, the founder and first President of the Republic, and the flag of Turkey, thereby provoking the public to hatred and hostility."

As Erdoğan continues to preside over a tumbling currency and rising prices, there will be more protests by people unable to make ends meet, and – because this is the only way the government knows how to respond to protest – more arrests. At least nineteen people – including a reporter from Jin News – were detained in a protest in Ankara last Sunday.

Independent economists have calculated Turkey's current inflation rate as nearly 60% – a far cry from the official figure of 21%. The leader of the opposition People's Republican Party (CHP) asked to visit the state's Statistical Institute for clarification, but was refused entry.

Erdoğan's vision for economic recovery sees Turkey competing in competitive export markets; but with rising costs for raw materials this will put greater pressure on wages, which is hardly good news for those struggling to make ends meet. Turkish citizens are already under pressure from growing levels of personal debt. (Interest rates for private loans remain high despite the rate drops by the central bank.)

The Turkish police are supportive of the most reactionary elements, especially the Grey Wolves, the militant wing of the far-right National Movement Party (MHP). Last Sunday in Ankara, Grey Wolves attacked a rival far-right group who were celebrating the birth anniversary of the MHP's founder, Alparslan Türkeş, and thus, in their eyes, usurping their legacy. Duvar reported that "Former Grey Wolves head Hakan Ünser claimed that the attackers collaborated with the police and the attack was made possible as a result." MHP Chair, Devlet Bahçeli, has attempted to put the blame for the attack on Ankara Mayor, Mansur Yavaş, who, as a former MHP member who joined the CHP, must be a focus of particular bitterness. He has threatened, "Mr. Mansur should be careful. The breath of the Grey Wolves is now on his back,"

In this climate of violent impunity, it is, perhaps, unsurprising that the lack of sympathy shown by the Turkish police towards others is reflected within the force itself. The result is a growing number of police suicides – 100 since the beginning of this year.

In the midst of all this, the European Union's announcement of the successful completion – with two million Euros of EU funding – of the first step in setting up an internship system for the training of Turkish judges and prosecutors seems to come from a parallel universe.

But international institutions can also put Turkey in the dock. That happened this week at the Council of Europe – and failed to happen at the Organisation for the Prohibition of Chemical Weapons.

The Council of Europe, which is a completely different organisation from the European Union, with a much wider membership that includes Turkey, was established after the Second World War to uphold human rights, democracy and the rule of law. Member states sign up to the European Convention on Human Rights, and if they breach this they can be brought up before the European Court of Human Rights (ECtHR). The court's decisions are binding, but difficult to enforce. The task of following up on non-compliance falls to the Committee Of Ministers, made up of foreign ministers from member countries, or their deputies, which meets four times a year. At this week's meeting the Committee's agenda included four politically important cases from Turkey.

For the first time, the Committee discussed Turkey's failure to act on the court's ruling, made over seven years ago, that imprisonment without parole is in breach of Abdullah Öcalan's human rights, as every person must be allowed the possibility of hope. They also discussed, again, Turkey's continued refusal to comply with the court's recent rulings for the immediate release from pretrial detention – which the court regards as politically motivated – of Demirtaş and of businessman-philanthropist, Osman Kavala. And they looked at a collection of cases in which Turkey had been found to be ignoring the rights of children who are not Sunni Muslims in school religious classes, and to be discriminating against Alevis, who are excluded from the state subsidies and benefits given to other religions.

To remind them of the importance of the Öcalan case, Kurds from across Europe have been rallying opposite the council building. Different community groups will take turns to be there each weekday until the 17th December, as

they are also calling on the Council's Committee for the Prevention of Torture (CPT) to put more pressure on Turkey to end Öcalan's isolation. Both the use of solitary confinement, and the prevention of visits by family and lawyers, contravene international rules on human rights. Öcalan has had no contact with the outside world since March, and his lawyers were informed this week that he was given a six month ban on lawyers' visits in October for an unspecified disciplinary punishment.

The Committee 'urged' Turkey to 'adopt without further delay' a review mechanism for life sentences in compliance with the Convention, and also requested information on the numbers of people currently serving an irreducible life sentence. But there is no real sense of urgency. They have "invited the authorities to submit information on the progress achieved in the adoption of the general measures by the end of September 2022 at the latest". In the Demirtaş case, while the committee expressed 'profound concerns', the only action decided on was to resume their examinations at the next quarterly meeting at the latest.

The Kavala case is further along the Council of Europe's protracted legal road – and also less overtly political. The Committee had warned Turkey that if Kavala was not released, they would take the first steps on the route that could lead to sanctions and eventually even to Turkey's expulsion. The Council's credibility was on the line, and they had little choice but to take action. The process they have embarked on is long and slow and begins by referring the case back to the court to assess whether Turkey has fulfilled its obligations. This process has only been used once before – for Azerbaijan, which eventually chose to comply before its council membership came into question. (For a fuller explanation of the process see here.)

Although the Alevi cases were described as having longstanding issues and lack of progress, they won't be on the agenda again until March 2023.

The Council of Europe systems are protracted and cumbersome, but at least matters have been discussed. This has not been the case with the Organisation for the Prohibition of Chemical Weapons (OPCW), which has

been holding its annual conference in the Hague, and which has failed to respond to growing calls to investigate the numerous reports of Turkey's use of chemical weapons in the Kurdistan Region of Iraq. In a press release timed to coincide with the conference, the Kurdish National Congress (KNK) once again invited the OPCW to send an expert delegation to the affected area, observing, "If the OPCW were to ignore its responsibility to protect all people against chemical weapons, it would violate its own regulations and seriously harm the credibility of the Chemical Weapons Convention (CWC)."

There have been protests outside the OPCW building, and activists who tried to get in have been forcibly detained by the Dutch police.

In the absence of an OPCW delegation, the newly-formed Coalition Against Chemical Weapons in Kurdistan is putting together its own international delegation to visit the area. Meanwhile, PKK Executive Committee Member, Murat Karayilan, has told viewers of Stêrk TV that they have identified five different gases that are being used against them: "Nerve gas, which is mainly Tabun (an extremely toxic chemical substance), a suffocating gas containing Chloropicrin, Sulphur Mustard, which is the burning gas, Pepper gas and a gas that causes memory loss and periodic paralysis..."

Karayilan observed that two of these gases originated in Germany – though they could now be being produced in Turkey. As reported in the Morning Star, Germany has just made a million Euro donation to the OPCW. Germany has also been pulled up by German television company ZDF, whose programme, Frontal, argued that the drones Turkey has used to destroy a Şengal hospital and bomb Maxmur refugee camp and Kurds in Syria and Iraq, cannot be made without the help of German company, Hensoldt, which is quarter owned by the German State.

Yet again, Turkey seems to have monopolised my news report, leaving me space for little more than headlines for other areas.

Reports of human rights abuses continue to come out of the Kurdistan Region of Iraq. Five activists detained since last December have told of torture in prison, and have started a hunger strike until they are given trial dates. A

political refugee from Turkey, who was evicted from Hewlêr (Erbil) last week, along with his family, was detained over night after setting up a protest tent in front of the UN office in Suleimaniyah. And the Kurdistan Regional Government has accused the PKK – the usual scapegoat – of interfering in the student protests and helping people migrate to Belarus.

In Syria, a gang law of kidnap and plunder continues in the areas under Turkish occupation, which are controlled by various mercenary groups. A report by Afrîn Activists Network for November documented three murders, seven people tortured, and at least 71 kidnapped in the Afrîn region. And North Press Agency has listed kidnappings, killings, armed clashes, and looting in Sere Kaniyê and Girê Spî, as well as repeated Turkish violations of the ceasefire.

A complaint has been put into the UN about crop thefts and land seizures.

More positively, there are reports of “a new round of dialogue between the Kurds and the Damascus regime”, with “American ‘cover’ and Russian ‘sponsorship’”.

But Turkey remains key to peace in the region, and Mazlum Abdi, the commander of the Syrian Democratic Forces (SDF), told Meghan Bodette that they believed only the United States – which works with both Turkey and the SDF – is in a position to resolve Turkey’s Kurdish question. As Bodette acknowledges, US-Turkish history is not encouraging, but she does find signs that “bringing an end to Turkey’s longest endless war—and reexamining the destabilizing U.S. role in prolonging it—has registered as a common-sense policy.” A more holistic view from US policy makers is certainly long overdue.