

Sayın Yargıçlar,

İddianamenin 221. sayfasında gösterilen nedenlerle TCK 141/5. maddeye göre cezalandırılmam isteniyor.

Savcılığın tesbit etmiş olduğu kanıtları şöylece sıralayabilirim:

1- Sayın Nabi YAĞCI'nın ifadelerinde adımın geçmiş olması,

2- DİSK'e bağlı Maden-İş Sendikası üyesi olmam,

3- Maden-İş'in Pendik ve Gönen seminerlerine katılmam,

4- Nabi Yağcı'nın ifadelerinde adları geçen:

Nihat Tokmak, Mehmet Karaca, Ekrem Aydın, Halit Erdem'i tanımış olmam,

5- TKP yayınlarının ev ve işyerime postayla gönderilmiş olması,

6- Behice Boran'ın cenaze törenine katılmış olmam,

7- Otomobil-İş Sendikası Genel Sekreterliğine getirilmiş olmam,

İşte savcılık bu nedenlerle benim cezalandırılmamı istiyor.

Aşağıda bu konulara değineceğim. Ancak bu konuların suçlama nedeni olarak getirilmesini son derece şaşırtıcı bulduğumu da söylemek isterim. Gerçekten durum son derece vahimdir. DGM Savcıları, benim günlerce gözaltında kalmam için emirler vermişler, bununla da kalmamışlar, yukarıda saymış oldukları yedi konu nedeniyle yıllarca hapis cezasıyla cezalandırılmamı istemişler.

Savcılar bununla da kalmamışlar, dosyadaki bilgileri tahrif ederek iddianameye geçirmişlerdir.

Aşağıda, hakkımda gösterilen kanıtlara karşı beyanımı sunmadan önce "neden böyle bir davanın içine sokulduğum" konusundaki görüşlerimi sunayım:

Sayın Yargıçlar,

Ben 60.000 üyesi olan Otomobil-İş Sendikası'nın Genel Sekreteriyim. Sendikam temsil ettiği üyelerinin ekonomik ve demokratik haklarını hukuk ilkeleri çerçevesinde korumaya ve geliştirmeye çalışmakta, bu konuda işverenlere karşı ödünsüz mücadele vermektedir. Bu nedenle sermaye çevrelerinin saldırılarına hedef olmuştur. Ben bu suçlama ve saldırıların, özünde sendikama yönelik olduğunu düşünüyorum. Sendikam işçi hak ve çıkarları doğrultusunda kararlı bir mücadele vermekte, gücünü üyesi bulunan onbinlerce işçiden almaktadır. Sendikal demokrasiyi bütün boyutlarıyla yaşama geçirmektedir. İşte, ülkemiz patronları ve patron örgütlerinin rahatsızlık duymaları bundandır. Esasen sendikamıza yönelik saldırılar, genelin bir parçasıdır. Gerçekten de özellikle 1980 sonrasında bütün bunalmaların nedeni olarak işçiler ve onların ekonomik, demokratik örgütleri olan sendikalar gösterilmiş, onlara karşı düşmanca tutumlar alınmıştır.



Yarım milyonu aşkın üyesi olan Devrimci İşçi Sendikaları Konfederasyonu bir gecede kapatılmış, mallarına el konulmuş, yöneticileri tutuklanmıştır. TÜRK-İŞ ve bağlı sendikalar ile bağımsız sendikaların faaliyetleri durdurulmuştur. Daha sonra da yürürlüğe konulan yasalarla sendikaların çalışma alanı alabildiğine daraltılmış, sendikalar serbest sözleşme dahi yapamaz kurumlara dönüştürülmüştür. Ülkemizde özgür bir toplu iş sözleşmesi düzeni de yoktur. Oysa dünyada demokrasinin varolduğu toplumlarda görülen odur ki, sendikalar demokrasilerin olmazsa olmaz koşullarıdır.

Ülkemizde bir yandan demokrasiden söz edilirken diğer yandan sendikasıztırmaya yönelik pek çok hukuki ve fiili uygulamalar yapılmaktadır. Sözleşmeli personel, kapsam dışı personel, taşeron firma vb. uygulamalar sendikasıztırmayı hedeflemekte, fiilen örgütlü işçinin gücünü kırmaktadır. Sendikal etkinliği ortadan kaldırmaya yönelik grevle ilgili pek çok anti-demokratik yasak bugün de yürürlükte dir.

Genelde tüm sendikalara, özelde sendikamız Otomobil-İŞ'e yönelik baskılar sürüyor. Nitekim 1983'ten günümüze sendikamızda yaklaşık 8.000 işçi arkadaşımızın işine son verilmiştir. Yıllardan beri çeşitli baskılarla karşılaştığı halde sendikamızın saflarını terk etmeden mücadelesini kararlı bir biçimde sürdüren onbinler bizim onurumuzdur.

Bugün benim de böylesi bir davaya katılmam bu baskılar zincirinin bir halkasıdır. Amaç, açıkca sendikamıza ve mücadele veren işçilere, yöneticilere gözdağı vermektir. İşçilere yönelik sürdürülen baskılar artık son bulmalıdır. İşçilere doğal suçlu gözüyle bakılmamalıdır.

Bugüne değin ülkemizde çok sayıda sendikacı yargılandı, işkence gördü ve hatta yaşamını yitirdi. Bunları hatırlayınca benim bu kadar cılız ve dostlar alışverişte görsün diye yargılanmam hiç önemli değildir. Yaşamımın her anının hesabını vermeye hazırım. Ancak önemli olan bana demokratik kamuoyunun da "Demokrasi davası" denilen bu davada sanık rolü verilmesidir. Dilerim ki, ülkemizde 141. ve 142. maddelerden yargılanan son sendikacı ben olurum. Dünyada ve ülkemizde gelişen olaylar bu dileğimi güçlendirmekte <sup>dir</sup> 141-142 ve 163. maddelerin kaldırılmasını ardıcıl biçimde istememizin haklılığı da benim bu davaya katılmamla ortaya çıkmaktadır.

~~Davayın asıl sanıkları Sayın Nabi Yağcı ve Sayın Nihat Sargın'dır.~~  
Kendilerini gerek Türkiye'ye gelmeden ve gerekse geldikten sonra her fırsatta kendilerinin TKP ve TİP'in Genel Sekreterleri olduklarını beyan etmişlerdir. Ve sorgular boyunca düşüncelerinin ne olduğunu gerek Mahkemenize ve gerekse kamuoyuna açıklamışlardır. Bununla da gurur duyduklarını söylemişlerdir.

Bu dava kamuoyunda "İki komünist liderin davası" olarak da bilinmektedir. İşte böyle bir davada benim gibi bir sendikacının yargılanması



daha önce sözünü ettiğim sermaye çevrelerinin ekmeğine yağ sürmüştür. Onlar "İşte iki komünist lider ve onlarla birlikte yargılanan Otomobil-İş Sendikası Genel Sekreteri Celâl Özdoğan" deme fırsatını bulmuşlardır. Nitekim aynı işkolunda faaliyet gösteren, yöneticileri fanatik sağ görüşlü olan bir sendikanın gazetesinde, gerekse yine sağ görüşlü basın organlarında bu imaj işlenmiştir. Kısaca Celâl Özdoğan TKP'li'dir. Yani Otomobil-İş Sendikası yöneticileri komünisttir.

Devletin savcılarının böyle düşünmeleri son derece yanlış ve sakıncalıdır. Bu savın ne kadar yanlış olduğu dosya okunduğunda ortaya çıkıyor. Hatta dosyayı okumaya bile gerek yok. İddialara şöyle bir göz atıldığında bu yanlışlık ortaya çıkıyor.

Şimdi gelelim iddianamenin 221. sayfasında yer alan suçlaalara:

1- Benim Sayın Nabi Yağcı'nın ifadesinde adımın geçtiği söyleniyor. Savcının hayali iddialarından biri de budur. Çünkü Sayın Nabi Yağcı'nın ifadesinde benim adım geçmiyor. Sayın Nabi Yağcı'nın polis tarafından düzenlenen ifadesinin 42. sayfasında geçen Kartallı Celâl'in bana yakıştırmaları ancak çok geniş bir hayal gücüyle mümkündür.

İfadede adı geçen Celâl'in ben olduğumu bana gözaltındayken de söylediler. Buna çok şaşırılmıştım. Çünkü ben Sayın Nabi Yağcı'yı hiç tanımadığım gibi onun da beni tanıması mümkün değildir. Ben sorgumun 7. sayfasında konuya yukarıda belirttiğim gibi açıklık getirdim. Sonra Sayın Yağcı'nın sözkonusu ifadesine baktığımda savcılığın nasıl bir önyargı içinde olduğunu anladım. Çünkü ifade de soyut olarak "Celâl" isimli birisinden üç satırla bahsediliyordu. Ama savcılığın iradesi açık. "O Celâl mutlaka Celâl Özdoğan'dır..."

Böylelikle savcılık dosyada olmayan bir kanıtı iddianamede var gibi göstererek görevini suistimal etmiştir. Ayrıca Sayın Nabi Yağcı mahkememiz önünde suçsuz insanlara hazırlanan senaryoda rol verilme için kendisine nasıl eziyet ve işkence yapıldığını ve tüm bu dayatmalara karşı oynanan oyunları bozduğunu açık seçik hiçbir kuşkuyla yer vermeyecek şekilde anlattı. Benim bu konuda söyleyecek fazla sözüm yok.

Ancak bizim üzerimizde oynanan oyun burada da kendini gösteriyor. Peki Sayın Nabi Yağcı'nın polis tarafından düzenlenen ifadesinde benim ismin geçti. Sendikamın eski Genel Sekreteri Sayın Sami Ataç ne için gözaltına alındı? Celâl ile Sami kelimeleri arasında hiçbir benzerlik olmamasına karşın. Amaç belli hedef ben değil gelişen, güçlenen Metal İşçilerinin, işçi sınıfımızın unudu, gözbebeği olan Sendikam Otomobil-İş ve onu oluşturan binlerce üye.

2- Savcılık şaşırtıcı iddialarına devam ediyor. Ben üyesi olmaktan onur duyduğum, 1980 Temmuz ayında faşist katillerce öldürülen Kemal Türkler'in Genel Başkanlığını yaptığı DİSK'e bağlı MADEN-İŞ Sendikasının üyesi değilim.



Acaba 12 Eylül öncesi yasal faaliyette bulunan Maden-İş Sendikasına üye olanlar önce savcılara mı sorunam gerekiyordu?

12 Eylül 1980 öncesi işverenler bugün Sendikam Otomobil-İş'e yapmak istedikleri gibi Maden-İş Sendikasına üye olanları işten atıyor, sendikanın işyerinde yetkili olmaması için çalışma ve insan haklarını en kaba biçimde ayaklar altına alıyorlardı. İşverenlerin MADEN-İŞ Sendikasına karşı bu tutumlarını anlamak mümkün, ama ya savcılar!

Ayrıca ben yalnızca üye değil o sendikanın işyeri temsilciliğini de yapmıştım. Bunu suçlama kanıtı olarak getirmek mümkün değildir.

3- Suçlamalar devam ediyor. Maden-İş'in Pendik ve Gönen'deki eğitim seminerlerine katıldığım söyleniyor. Tam 5 DGM savcısı bir sendikacının eğitim seminerine katılmasını, kendisini geliştirmesini, temsil ettiği işçilerin hak ve çıkarlarını daha iyi nasıl koruması gerektiğini ve sendikal yasaları öğrenmesini suç olarak görüyor ve TKP üyeliğine kanıt sayıyor. İnanılması bile zor.

4- Savcılık devam ediyor: Nihat Tokmak, Mehmet Karaca, Ekrem Aydın, Halit Erdem'i tanımam TKP üyeliğine kanıt olarak getiriliyor.

Şimdi savcılığa bu kişileri ben tanıtayım.

Bir kere Nihat Tokmak diye birini tanımıyorum. Ben düzelteyim. Aslında savcılık Murat Tokmak'tan bahsediyor. Murat Tokmak T.Maden-İş Sendikasının Örgütlenme Daire Başkanıdır. Mehmet Karaca ise büyük işçi önderi Kemal Türkler öldürülmeden önce aynı Sendikanın Genel Sekreterliğini, daha sonra ise Genel Başkanlığını yapmıştır. Ekrem Aydın aynı sendikanın Hukuk Dairesi Başkanıdır. Halit Erdem ise Eğitim Dairesi Başkanıdır. Ve ben bu kişileri Sendikanın yönetiminde iken aynı sendikanın yetkili ve örgütlü bulunduğu NETAŞ işyerinde işyeri temsilciliği yapmıştım. Şimdi benim bu kişileri tanımam mı, yoksa tanımamam mı, doğaldır? Bir işyeri temsilcisi düşünün ki, sendikasının yürütme kurulu üyelerini tanımasın?

Temsilcisi bulunduğu Sendikanın Yöneticilerini tanımam suç değildir. Savcıların, İşçileri Bakanının, Adalet Bakanının, Başsavcının isimlerini bilmemesi, tanımaması yadırganacak bir olaysa, benim de yöneticilerinin isimlerini bilmemem, tanımamam ancak yadırganır. Sendika temsilcisi olarak yöneticimin ismini bilememem, tanıyamamam üstelik ayıptır, eşyanın tabiatına aykırıdır. Ama savcılık herkes suçlu doğar, suçlu yaşar ve suçlu ölür ilkesinden kalkarak her yerde suçlu görüyor. Bunun başka bir izahı olamaz.

5- İfademin 6. sayfasına bakıldığında bana bir sorunun sorulduğunu ve benim de bu soruyu yanıtladığımı göreceksiniz. Bana TKP'nin varlığını duyduunuz mu, diye soru sorulmuştu. Ben de 1976-1977 yılları arasında böyle bir partinin varlığını duyduğumu, son günlerde KUTLU ve SARGIN'ın yurda



dönüşleriyle ilgili olarak basından okuduğumu, bazen de sendikaya bu parti-  
nin yayınlarından postayla geldiğini beyan etmiştim. Ve savcılık hemen  
bu beyanlarımı TKP üyeliğine kanıt olarak saymış. Kabulü mümkün değil.

6- Behice Boran'ın cenazesine katılmam da TKP üyeliği sayılmış.

Benim bu davaya dahil edilmemin nedenlerinden biri olarak da yaşamı-  
nı ülkemiz demokrasisine, barışa, işçi sınıfının haklı mücadelesine ada-  
mış saygın ve onurlu insan Behice Boran'ın cenazesine katılmam gösterili-  
yor.

Bu iddianameye yön veren felsefe insan olmanın erdemlerine de düş-  
manca bakmaktadır. Burada bunun detaylarına girmeyeceğim. Ancak T.B.M.M  
önünde devlet töreniyle kaldırılan cenazeye benim katılmam iddianameye  
geçirilerek mahkemeye getiriliyor. Bu, çaresizlikten başka birşey değil-  
dir.

Peki savcılık aynı suçlamayı neden Başbakan ÖZAL'a, o sırada T.B.M.M  
Başkanı olan KARADUMAN'a getirmiyor? Savcılık art niyetlidir.

7- Dehşet suçlamalar devam ediyor.

Benim T.Otomobil-İş Sendikası Genel Sekreterliğine getirilmem suç  
sayılıyor. Ben Otomobil-İş Sendikası Genel Sekreterliğine getirilmedim.  
İşçi arkadaşlarım tarafından gizli oy-açık sayımla seçildim. Savcılık söz-  
lerine dikkat etmelidir. Binlerce insanın oylarına hakaret etmemelidir.

Sayın Nabi Yağcı ve Sayın Nihat Sargın'ın titizlikle üzerinde dur-  
duğu gibi iddianame sürekli olarak YAKALANMADAN söz etmektedir. Nasıl  
olurda gece yarısı bir operasyonla eşinin ve çocuklarının yanından alınan  
bir insan yakalanır. Kaldı ki, ben ne bir suçtan ya da eyleminden dolayı  
ne firar ettim, ne de yasalardan, kolluk kuvvetlerinden kaçmadım. Yakalama  
kelimesinin sıkça kullanılması dahi bizlere karşı iddianamemizi hazırla-  
yanların ya da hazırlatanların düşmanca tavrını sergilemektedir.

Sayın Yargıçlar, -

İşte ben bu iddialarla, evimden alınarak 15 gün gözaltında tutuldum.  
Sendikamdan ayrı kaldım. Hem de ne zaman gözaltına alındım? Üyelerimizin  
ekonomik çıkarlarını biraz daha yükseltebilme amacıyla EK ZAM talebimizin  
hayata geçmesi için işveren Sendikası MESS'le yapacağım toplantı öncesi!..  
Ve şimdi de tam MESS'le binlerce üyemizi ilgilendiren toplu sözleşme döne-  
mi sırasında mahkum edilmek isteniyorum. Oysa asıl mahkum edilmesi gereken  
anlayış beni buraya sanık yapan anlayıştır.

Demokrasi istemek suç değildir. Çağdaşlık görevidir.

Sömürüye karşı çıkmak suç değildir. İşçilik görevidir.

141-142 ve 163. maddelerin kaldırılmasını istemek suç değildir.

Demokratlık görevidir.



Örgütlenme özgürlüğü istemek suç değildir.

Ülkemizde komünist partisinin kurulmasını istemek suç değildir.

Çoğulcu demokrasinin gereğidir.

Sendikal hak ve özgürlüklerin önündeki engellerin kaldırılmasını istemek suç değildir. Sendikacılık görevidir.

Behice Boran'ın cenazesine katılmak suç değildir. İnsanlık görevidir.

Bu saydıklarım T.C.K'nun 1 ve 2. maddelerine göre de suç değildir. "İşlendiği zaman suç sayılmayan bir fiilden dolayı kimseye ceza verilemez", "ceza yasasında açıkca suç sayılmayan bir eylemden dolayı kimse cezalandırılmaz".

Daha önceki ifadelerimde de belirttiğim üzere TKP ile hiçbir bağım yoktur. İddianamede de bunu kanıtlayacak hiçbir delil getirilememiştir.

Saygılarımla.

CELAL ÖZDOĞAN

TÜRKİYE SOSYAL TARİHİ



A commentary by  
the Workers' Party of Turkey and the Communist Party of Turkey  
on

The Trial of Nihat Sargin and Haydar Kutlu  
General Secretaries of the WPT and the CPT

# **DEMOCRACY OR DEMAGOGY**

TÜRKİYE SOSYAL TAHHARATÇI  
TÜRKİYE ARİSTİMA VAKFI



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## Democracy Or Demagogy?

In Ankara a political trial is about to begin. The prosecutor of the state security court has already stated that "It is the trial of the century". Indeed, we have before us a unique trial, unprecedented in legal history.

The defendants are, besides Kutlu and Sargin who, between them, are facing over 1,000 years in prison, two of their defence lawyers and twelve other persons. However, the issue goes well beyond the fate of 16 people. This trial is a challenge for all those for whom the concept of "human rights" is not only an empty phrase.

The concept of "human rights" is closely linked with the implementation of democracy. The Magna Carta, the Declaration of Human and Civil Rights of the French Revolution and, finally, the Universal Declaration of Human Rights of 1948 constitute milestones on a road which leads from an absolute dictatorship to a democratic republic and to the basis of people's sovereignty. Turkey recognised this basic principle in 1923 when the Turkish state was declared a republic. The actual realisation of democracy, however, remained until today a task the fulfilment of which requires great personal sacrifices.

The Prime Minister Ozal, who came to power three years after the military coup of 12th September 1980, claims that democracy has been restored in Turkey and human rights are being respected.

In November 1987 two politicians who had been living in exile in Europe since the 1980 military coup, namely Dr. Nihat Sargin and Haydar Kutlu, the General Secretaries of the Workers' Party of Turkey and the Communist Party of Turkey, respectively, acknowledged Ozal's statements and returned to Turkey in order to claim their right to political activity in line with their political convictions which is a normal practice in all European democracies.

These two politicians were taken into custody at Ankara airport and interrogated and tortured for 19 days at the end of which they were arrested. This practice was unlawful and even in violation of the Constitution which had been imposed by the military in 1982, because Article 19 of this Constitution states that detainees must be brought before a court within maximum 15 days.

The detention of Kutlu and Sargin has prompted discussions beyond and above the framework of political parties both in Turkey and abroad. Shortly after their detention, the European Parliament passed a resolution on 19th November 1987, demanding the two leaders' immediate release and the recognition of their rights to free political activity. In Turkey, the two social democratic parties, SHP and DSP reprimanded their programmes in which they demanded free political activity for all non-violent political convictions. In Europe, a great number of prominent personalities called for their release.



Oltan Sungurlu, the Minister of Justice of the new Ozal government declared in a press statement: "Presently, there are no preparations for a general amnesty, for abolishing the death penalty or for repealing Articles 141, 142 and 163 of the Turkish Penal Code. We may or we may not take up these issues in the future!".

Reading between the lines, this declaration of the Minister indicates that if pressure can be built and sustained upon the government by the democratic public opinion, both in Turkey and abroad, it could be possible to get the government to start the preparations regarding the issues mentioned in Sungurlu's statement without delay. It all depends on the efforts of defenders of human rights.

## Are Torture Allegations Groundless?

Turkish authorities continuously deny torture. Proven and documented torture cases are dismissed as "individual incidents" and even though there are promises that they will be looked into, nothing ever comes out of it.

It has been nearly 8 years since the military coup and four years since the formation of the first Ozal government. Yet, systematic torture is still an integral part of police interrogations. This is also confirmed by prestigious international organisations such as Amnesty International and Helsinki Watch Group. Even the Reagan administration, who is among the staunchest defenders of the present government in Ankara, admitted in its most recent report on human rights (published in February 1988) that "there is systematic torture in Turkey". It is furthermore stated that the heaviest torture takes place immediately following detention and continues until the detainee is brought to court.

In order one can discuss whether or not allegations of torture are justified, it is necessary to agree on the definition of torture. The Convention on torture which was accepted by the UN General Council on 10th December 1984 defines in Article 1, Paragraph 1, what is to be understood by torture. According to this, all actions "through which physical or psychological/ mental damage is inflicted on a person in order to extract a confession or a statement from him/ her or from a third person, to punish him/ her or a third person for an actually or allegedly committed offence, to intimidate or persecute him/ her or a third person." Turkey signed this Convention at the beginning of 1988, but has not yet ratified it.

Let us now look at a recent decision of the Military Court No. 1 in Ankara and see how it fits into the wording and spirit of the above-mentioned Convention. The defendants were Ali Kaymakçı and Mustafa Özcihan, two officers of the political police, who were charged with having tortured Ayhan Sarıhan during his interrogation. The presiding judge Ali Karahan acquitted the two defendants despite witnesses' evidence, "because", he said "ordinary beatings cannot be considered torture. For any action to be called torture, the person concerned should lose his/her ability to work for at least 10 to 15 days." (Cumhuriyet, 30th December 1987).



Recently, President Evren presented his own version of the definition of torture. He told the peasants who were complaining about their living conditions which they described as a torture: "do you know what torture is? Torture is to bind you and gag you, and then apply electricity to your body!" Sometimes, despite all efforts, the authorities cannot cover up a torture case. Especially if the victim has lost his/her life under torture. But, even in such cases, the torturers can be reassured that every effort will be spent to get them released unpunished. The case of the notorious officer Mustafa Haskırış from political police will highlight this.

Numerous political prisoners have identified Mustafa Haskırış as their torturer. However, he was never punished. Finally, it was proved that this man had tortured to death Z. Abidin Ceylan, and he was sentenced to fourteen years imprisonment, this being one of the longest prison terms ever passed on a torturer. One would have thought, at last justice has been restored. But, far from it! Because the court had decided one week before the final verdict was to be reached, to release the torturer Mustafa Haskırış on bail! He was released from the prison and returned to his job as a police officer. He applied for a passport and received it without delay. And that was how this notorious torturer officially left the country only a few days before his verdict was read. Both Haydar Kutlu and Dr. Nihat Sargın have repeatedly expressed that they have been subjected to torture. The methods used were hanging by the arms, application of electric-shock and torture on their genitals. They were also injected with unknown chemical substances. Amnesty International called for "urgent action", a great many intellectuals demanded an enquiry into these allegations. However, an enquiry that had been initiated by the office of the public prosecutor was soon discontinued. Just as in all other similar cases, the authorities reject these allegations. There are, however, questions which still remain unanswered and require a satisfactory answer immediately.

1. Why were the two politicians completely isolated from the outside world for 19 days in violation of the Constitution?

2. Why were the Members of the European Parliament not allowed to talk to these two detainees in person and only allowed to see them briefly through the grille of the door?

3. Why did the Ozal government refrain from signing the European Convention for the Abolition of Torture while Kutlu and Sargın were still being interrogated?

4. How come the police were allowed to conduct the interrogation for three weeks without the detainees' access to their lawyers? Isn't this kind of practice reminiscent of the fascist interrogation methods?

5. How can the court accept these statements extracted under pressure and later rejected by the two detainees?



The very fact that the Turkish government is not in a position to satisfactorily answer these questions is self-explanatory. They cannot refute Kutlu and Sargin's allegations of torture! In the meantime, medical examination has confirmed torture. On 25th February 1988 Dr. N. Sargin was examined in Numune hospital in Ankara for his pains in the back and in his shoulders and it was shown that his shoulders had been damaged due to excessive pressure (by hanging from his arms), even though the examination was carried out three months after the actual torture.

## The Indictment is Based on Crude Anti-Communism

The indictment of the prosecutor was presented on 14th March 1988. In no way does it contain an analysis of the Draft Programme of the United Communist Party of Turkey (UCPT) or an attempt to prove its unlawfulness. The prosecutor clearly wants to avoid any arguments regarding the UCPT. As the following quotation from the indictment shows, the prosecutor has to admit that the Draft Programme of the UCPT has, from the historical point of view, further developed the ideas of the Communist Party of Turkey and the Workers' Party of Turkey: "The ideas, common to the programmes of the illegal CPT and WPT are now seen in the Programme of the UCPT which the defendants Nabi Yağcı (Haydar Kutlu) and A. Nihat Sargin were planning to form abroad". (p. 47, Turkish original text). It is, however, left at this. The prosecutor did not dare to make an assessment of the Draft Programme of the UCPT from the point of view of the current laws. Instead, he goes from his own views about communism. He postulates from the beginning that, first of all, all Communist Parties are identical. Secondly, that all Communist Parties are striving to establish the same "Marxist-Leninist regime" and, thirdly, that this regime is incompatible with a democratic order, in general, and the Turkish Constitution in particular.

The concept of Marxism, as it is presented in the Draft Programme of the UCPT, is deliberately overlooked:

"The party stresses that in the development of the Marxist theory continuity and renewal are intertwined and Marxism is open to everything positive and valuable in contemporary human thought". (UCPT Draft Programme, part 4).

In order to be able to demand the sentence as he has done, the prosecutor put his own prejudices about communism into the mouths of the defendants. In other words, the Draft Programme of UCPT has no role in the trial. It is sufficient that Kutlu and Sargin call themselves communists and follow the ideals of Marx, Engels and Lenin. The prosecution does not even bother to prove the "unlawfulness" of this actual party, nor does it attempt to point out one by one the offences of these two actual people. It is enough to present them as communists, which, after all, is not an "extraordinary trick" because Sargin and Kutlu have from the beginning presented themselves as leading communist politicians.



The primitive anti-communism which emerges is rather remarkable. Here we quote a few sentences which, according to the prosecution, should characterise communism:

"The basic principle of communism is: Death to those who are not with us. There is no middle way!"

"In their (communists') eyes, every talented, enlightened and enterprising person is a fascist and must die!"

Among the reasons for the proscription of the communist party it is stated: "It is assumed that the Turkish people will not accept this illegal party programme." One can only say: No comment!

The very fact that the prosecution is not prepared to go into the ideas and political statements of the UCPT shows the weakness of their position. They simply cannot prove the alleged anti-democratic nature of the UCPT. This is not surprising at all. How can they prove such an allegation if the draft programme of the UCPT states:

"The Programme for Peace and Democratic Renewal is a programme to immediately, i.e. within the framework of capitalism, bring the first possible internal and external economic and political solutions to the deep-rooted problems of the working people".

"The Programme for Peace and Democratic Renewal is a programme to secure a democratic regime which is based on active participation of the masses in the political life of the country and in which the democratically elected parliament will be the highest organ in the political system. It is a programme to bring a just, lasting and peaceful solution to the Kurdish national question. The achievement of democracy and solving the social problems of the working people are the internal political preconditions of economic development". (UCPT Draft Programme, part 7).

On the basis of these statements in the Draft Programme, how can anyone allege and uphold the accusation that the UCPT sets out to establish a dictatorship?

There is another "offence" which both Kutlu and Sargin are charged with in various places of the indictment, and this is "weakening the national feelings"! Kutlu and Sargin must be punished because they accept the existence of the Kurdish people and demand respect for and recognition of their rights. To protest against the oppression of the Kurdish citizens of our country, which, after all, is the duty of all democrats, is declared a criminal act requiring punishment. The UCPT's proposal for a democratic and peaceful solution to the Kurdish question can not even be discussed. As history has shown, the denial of the Kurdish question and attempts to solve it by military means can only lead to deepen the existing problems.



The indictment presents yet another proof for the fact that Kutlu and Sargin are for the peaceful realization of their political aims. Nowhere in the indictment are they accused of terrorist activities, nor are they accused of having defended and/or used violence. On the contrary: Even the prosecutor of the State Security Court has to admit in the indictment that armed actions were not among the activities of the Communist Party of Turkey. Literally, it is expressed as follows: "Depending on the time and the conditions, the Communist Party used different tactics for the implementation of its strategy. In general, these were propaganda work which excluded armed actions, mass campaigns and activities to form a united front." (From the Indictment, original text, p.62)

## Can We Expect a Flawless Legal Procedure?

The case of Kutlu and Sargin will be heard at the State Security Court in Ankara. The State Security Courts are specialized courts. They were established way back in the 1970s, but later they were declared unconstitutional by the Constitutional Court and were then closed down.

Following the military coup in 1980, the ruling generals have re-established these special courts under the new 1982 Constitution they have imposed. As is also seen in the initial negative verdict of the Constitutional Court, there are still some doubts regarding the independence of State Security Courts.

Two issues are especially pointed out: Firstly, since these courts have been set up by the military, the judges were also appointed at the discretion of the military rulers, which is not possible in an ordinary court. Secondly, there are normally three judges in a State Security Court. According to law, one of them is a military officer who has studied law and has been trained to be a judge. In his legal decisions, he is not bound by the directives of his military superiors, but there certainly are numerous ways and means to influence the decisions of this military judge. The very fact that his professional career is closely linked with the military would be a sufficient indication of this. On the other hand, there are also some military judges who would not give in to the pressures from above; but they often end up in having to resign from their posts.

Another important issue concerns the right to defence. There are already, even before the start of the trial, alarming developments regarding this, because, together with Kutlu and Sargin, charges have also been brought against two of their defence lawyers, Atilla Coskun and Rasim Oz. They were detained and then released as a result of international pressure in December last year. Atilla Coskun is accused of "being a member of the illegal Communist Party of Turkey" and Rasim Oz is charged with "praising a criminal offence" as he expressed his admiration for the two leaders' dedication to democracy. According to a new law, again prepared by the military, these two lawyers can no longer act as defence lawyers of the two General Secretaries, because they are among the defendants in the same trial.



This shows that the court can arbitrarily exclude any number of defence lawyers from the trial. The defence lawyers risk the possibility that all of a sudden they might find themselves in the dock. This is a constant threat to the defence, and a very real one, too, as shown in the case of Coskun and Oz.

### **"Everything Is Being Done According To Laws!"**

On 19th November 1987, i.e. very shortly after their detention, the European Parliament as well as the Amnesty International demanded the immediate release of Kutlu and Sargin. The standard reply from the authorities in Ankara to such demands is: "Everything is being done according to the Turkish laws!" So, the Turkish laws state that the Communists should be arrested. What kind of an argument is this?

It is clearly seen that the Turkish laws treat Communists in the same way they treat common criminals. But are such laws acceptable as the basis of justice? Ever since the humanity has experienced the horrors of fascism, the international community rejects such approaches to justice and basic rights. Was it not as a result of the fascist terror that the United Nations Organisation introduced the Universal Declaration of Human Rights on 10th December 1948 -to which Turkey is also a signatory?

Turkey also accepts, both through its signing of the European Convention of Human Rights and through the repeated statements of Ozal Government, that Turkish laws cannot be considered adequate in judging the lawfulness of any of the practices of the state. It is more appropriate to ascertain whether or not a certain law is in accordance with human rights. There are many European specialists in law who consider not only many Turkish laws but also related practices as incompatible with human rights.

The International Conference of the "Friends of Turkey", convened in Paris, on 27-29 November 1987, passed the following resolution moved by the Danish Professor of Law, Eric Siesby:

"Many Articles of the Turkish Penal Code are in violation of the principles of freedoms of conscience, religion, thought and expression, and the right to assemble and to organise as they are stated in Articles 9, 10 and 11 of the European Convention and Articles 18, 19 and 20 of the Universal Declaration of Human Rights. This goes especially for Articles 140, 141, 142, 143, 158, 159 and 163 of the Turkish Penal Code. These Articles must be changed or abolished altogether."

In contrast to numerous other communists on trial in recent years, Kutlu and Sargin do not conceal the fact that they have dedicated themselves to Marxist ideology and its propagation. They returned to Turkey in their capacities as the General Secretaries of the two banned parties and presented themselves to the authorities and to the public as such.



## The History of the Proscription of the Communist Movement

At a press conference in Houston, (USA), President Ozal asserted that Articles 141, 142 and 163 of the Turkish Penal Code had been, since the foundation of the Republic, the "main pillars of the Turkish state".

In fact, until Articles 141 and 142 were inserted into the Turkish Penal Code on 23rd June 1936, there were no laws placing communist propaganda or communist organisations under the threat of punishment. Before then measures had been taken to persecute the left, but these were through special laws, such as the Law for the Re-establishment of Peace, or through openly bending the rules.

Articles 141 and 142 were taken over by the Turkish Penal Code from that of the Italian fascist code of Mussolini of 1930. These were Articles 270 and 272 of the notorious Rocco-Law. They are based on a legal concept under which individuals can have no legal rights nor views which are at odds with the interests of the state. The provisions give the state every means with which to repress any opposition. In this way the law became an instrument of state power.

Briefly, Article 141 bans organisations which "aim to impose the rule of one social class over another or to remove one social class or to disturb the existing economic and social system of the country".

After their introduction in 1936, Articles 141 and 142 were tightened up further in Turkey in 1938, 1946, 1949, 1951 and 1983. The changes were such that they outdid even Italian fascism. In 1951 the conditions of violent subversion was so defined that even organisations which proposed non-violent change were affected by the proscription. Another, more serious, change was in the sentences which could be imposed. In Italy the strictest sentences under these Articles had been 5 to 12 years imprisonment, but in Turkey the death penalty was introduced.

Thus in Turkey, a member of the European Parliament and of NATO, the leader of an opposition group favouring non-violent changes faces the threat of execution.

There is an additional aspect of the Turkish Articles 141, a characteristic which makes it a legal curiosity. For it is a fact that this Articles creates a punishable offence which must shock any legally informed person. It makes punishable not only the formation of an organisation, not only the attempt to form an organisation, but the first steps towards the attempt to form an organisation. Indeed, the latter is punished as strictly as having already formed the organisation.

Thus, in practice, someone can be punished even when there is no proof of the attempt. It takes little imagination to understand the power the authorities have in such circumstances.



A further important characteristic of Articles 141 and 142 is their ambiguity. Concepts are used whose interpretation can change with the political climate.

What is meant by "to impose the rule of one social class over another"? Does that mean a dictatorship, or does it extend to democratic rule based on a majority vote? What is meant by "fundamental economic and social rules"? Are changes punishable even when they occur through democratic majorities?

The ambiguity is intentional. It allows legal judgements to declare punishable acts that previously were not so. This method was used after the national strike of 1980 to declare organisations like the Turkish Peace Association, the Turkish Teachers' Union or the Workers' and Peasants' Party of Turkey which had operated quite legally before the coup, subversive organisations and consequently to prosecute their leaders and members.

Such a situation has also been identified by Professor Siesby. He writes of Articles 141 and 142: "In 50 years this regulation has been used extensively to repress left-wing political activity. During the liberal period, from the Constitution of 1961 until 12th June 1980, such activities were only seen as punishable when they were violent or called for violence or used other illegal methods."

After the military coup of September 1980 these Articles were interpreted broadly. As a result of the retroactive use of this new interpretation, many organisations founded in the liberal period whose activity ended with the coup, were condemned under Articles 141 and 142, although the operation of these peaceful organisations was not punishable at the time of their formation".

## **Persecution of Ideas Without Parallel in Europe**

Articles 141 and 142 are a clear refutation of the official Turkish claims that Turkey is "a part of the Western world". For these Articles serve to suppress political convictions and organising the propagation of ideas.

Unlike Europe, even thoughts and opinions are viewed as crimes in Turkey. To think is a punishable offence. The Turkish lawyer Dr. Bulent Tanor writes: "Included under these Articles is punishment for uttering or diffusing an outlook, an ideology, a doctrine or an idea."

Is there an equivalent situation elsewhere in Europe? Bulent Tanor, who has studied this aspect of the law in the USA, Great Britain, France, West Germany, Italy, Switzerland and Belgium, says that these countries have no laws which make punishable the expression or propagation of ideas and opinions. Calls to violence or agitation which are akin to legal offences are forbidden. There are no punishable thoughts or opinions in European legal systems, not even the concept of punishable political ideas, including calls to violence or to the violent denial of democracy.



As the Turkish Penal Code forbids actions aimed at the violent overthrow of the Constitution in Articles 146, 168, 169 and 171 and forbids the glorification of such deeds in Article 172, it is irrefutable that Articles 141 and 142 aim at the persecution of ideas and the suppression of a powerless opposition.

Prof. Dr. Cetin Ozek who adopts this position in his book, "Articles 141 and 142", writes "When there is no question of violence these Articles mean that left organisations who wish to come to power by democratic means and establish an order based on their ideas, are forbidden. In this way, the ruling regime makes opposition opinions offences. Thus the organisation of divergent political ideas and even the attempt to do so using democratic means to come to power can be punished. In the West, even the seizure of power by Marxist Socialism by democratic means is allowed."

### Is There Anything Similar In The West?

It is an anachronism that Articles 141 and 142 remain in force and are used not only against communist movements but also against scientists, artists and anyone who falls foul of the regime. This is happening even though the transition to democracy is supposed to be complete.

Occasionally, the Turkish authorities, who cannot escape this anachronism, attempt to disguise their totalitarian views by citing internationally recognised and legitimate limitations of rights and freedoms. They attempt to refer to practices in some European countries.

For instance, they say that such practices still exist in the Italian Penal Code. However, they do not mention that after the fall of Mussolini the use of Articles 270 and 272 against social opposition ended and pluralism was firmly established.

The advocate of Articles 141 and 142 also point to the Federal Republic of Germany and maintain that the proscription of the Communist Party for a certain time is compatible with human rights. The example fails on two points:

Firstly, the KPD was not banned by law but by a court decision under which it is defined as contradicting the Constitution. The proscription does not apply to communist parties in general but to a particular communist party, the KPD. Thus it was possible later to remove the ban without changing the law, and to re-establish the Communist Party, the D.K.P.

Secondly, the opinion of the Federal Court clearly stated that Marxism-Leninism as a doctrine was not a matter for legal proceedings. It said: "Belief in a scientific teaching is not the basis of reproach against the KPD. These proceedings are not about declaring the theory of Marxism-Leninism as a uniform science against the



Constitution ... In so far as we are dealing with a science in the sense of Article 5, Section 3 of the Constitution, this system of knowledge is as such quite free: It can be taught, propagated, developed and even discussed and fought for. It is not the duty of these proceedings to pass a legal judgement on the scientific truth of Marxism-Leninism."

In Spain, Portugal and Greece, after the end of fascist dictatorships, changes in the Penal Code and legal practice were such that the communist parties had a constitutional right to exist.

These examples show that an essential premise for the realisation of a pluralist democracy is the granting of the right to free organisation and political activity to all political currents and opinions.

### **What Do The West European Lawyers Say About This Question?**

The Danish Professor Eric Siesby, in his account of the legal situation in Turkey in which a large number of intellectuals, authors, journalists, artists, publishers, medical doctors, lawyers, trade unionists and politicians find themselves, the Danish professor Eric Siesby writes the following: "The activities for which these persons have been convicted or indicted are not acts of violence or any other ordinary crime as understood in West European countries, but expressions of political opinions or religious beliefs or the forming of organisations working for such opinions or religious beliefs. The incrimination of these activities violates Article 19 of the International Declaration of Human Rights and Article 10 of the European Convention of Human Rights and Freedoms."

The social-democratic Swedish Member of Parliament, Hans Goren Franck, writes in relation to the Articles 141, 142 and 163 of the Turkish Penal Code: "The above mentioned articles are used under the present legislation specifically to punish non-violent opposition in Turkey. Many courts' decisions and rulings by superior courts reveal that the usage of these Articles violates the right to freedom of expression, association and religion and that their application is therefore in contravention of Articles 9, 10 and 11 of the European Convention of Human Rights to which Turkey is a signatory ".

If Turkey should become a country which pursues its international obligations and therefore gains high esteem, then these Articles which most intellectuals consider as a disgrace to Turkey, will have to be eliminated. Such a step would also be in line with the Articles 15 and 90 of the Constitution of 1982. In the last paragraph of the Articles 90 of the Constitution it states: "the legally arrived at international agreements have the power of laws."



## The criminalisation of democrats and communists: A Thousand Years of Imprisonment

When Dr. Nihat Sargin and Haydar Kutlu returned to Turkey in order to plan the legal foundation of the United Communist Party of Turkey, the well-known scholar of law Server Tanilli, sent a letter to them. Tanilli, who himself was shot and badly wounded by right-wing terrorists during the wave of terror before 1980, wrote in his letter:

"I have to say that I agree with your decision to return to Turkey. Your decision has a veritable historical message ... The treatment that you will receive will give us an opportunity to show the civilised world again what kind of an anachronistic government is ruling in Turkey. This in itself will be a great service to democracy".

Professor Tanilli was taken to court on the basis of the Articles 141/6, 142/1-6 because of his lecture entitled *The History of Civilization* which he gave at the University of Istanbul. In the indictment written on the 3rd November 1975 the public prosecutor demanded a prison sentence for the scientist, because he had characterised the famous poet Pablo Neruda as "a courageous person who had stuck by his principles".

This trial led to great public protests : 774 well known intellectuals, scientists, and leading personalities of the democratic organisations stated in a declaration which was published in the newspaper *Cumhuriyet* on March 21st 1976, "that they considered it their duty for the defence of democracy, the freedom to thought and the scientific freedoms, to underwrite Tanilli's work as their own". Later the trial was moved to a regular court and finally ended in an acquittal.

Another example is the case of the social scientist Mumtaz Soysal who was taken to court after the military takeover on 12th March 1971 because of his textbook *Introduction to the Constitution* on the basis of Article 142. Professor Soysal spent several months in prison. After the end of the military rule, the case was closed.

For many years now interpreters must bear in mind that they might be taken to court for communist propaganda. The courts punish the translation of a single book with prison sentences of up to 7.5 years. For instance the well-known translator Muzaffer Erdost received in 1974 alone a prison sentence of more than 37 years. Today there are editors who receive prison sentences of 100 to 200 years. The General Secretary of the Association of Contemporary Journalists, Ahmet Abakay, announced in December 1987 that in the prison of Canakkale alone 12 journalists have been locked up since 1980 because of Articles 141 and 142 and that the prize for 3 to 5 lines of writing begins with 5 years of prison.



After the 1980 coup, 404 trials were begun against editors, journalists and writers (altogether more than 50 people) of 4 daily newspapers and 20 magazines. Five more people were sentenced because they had published books. The prison sentences that have so far been dealt out to 32 persons amount altogether to 2,500 years. Veli Yilmaz, the editor of the magazine *Halkin Kurtulusu* received about a third of it, that is 750 years. Osman Tas received 600 years, 155 went to Mustafa Yildirimturk, both of them editors of the same magazine. It should be stressed again that these sentences were meted out on the basis of the Article 142 and that in all cases the only "crime" was the publication of newspaper articles.

After the take over of power by the military on 20th September 1980 the Articles 141 and 142 were used extensively against such parties as the Workers' Party of Turkey, the Communist Party of Turkey, the Socialist Workers' Party of Turkey and the Workers' and Peasants' Party of Turkey. Neither their programmes and statutes nor their practical activities could be accused of threatening the use of force. The leaders and members of all these parties who could not be accused of a single case of terrorism, were sentenced to up to 18 years imprisonment because of the dissemination of a different ideology and the organisation for it.

However, the use of these Articles is not limited to political parties. They are also used against all those whose opinions have not been planned by the state. The trials against the Turkish Peace Association and against the Progressive Trade Union Confederation (DISK) are known examples of this.

Ex-ambassador Mahmut Dikerdem, President of the Turkish Peace Association and Mrs. Reha Isvan (member of the executive) were each sentenced to 5 years in prison on the basis of Article 141 of the Turkish Penal Code (this sentence is not yet legal, however, in spite of that both of them, together with many leading personalities of the peace movement, had to spend 3.5 years in prison). The arguments of the public prosecutor in the military court were as follows: The accused are campaigning for peace. They are for disarmament. Communists also work for peace and demand disarmament. There the accused serve communism.

The logic of the Articles 141 and 142 would seem to demand that the expert on disarmament politics for the SPD in West-Germany, Von Bulow, should be sentenced to 12 years of prison, since he recently spoke out for the removal of all nuclear weapons from Europe. Capital punishment should be demanded for the ICFTU General Secretary, Vardelven, who recently travelled at the head of a delegation to the USA to ask the Senate to ratify the INF Treaty. Capital punishment was demanded for the DISK leadership because they worked for disarmament "also abroad".

On first sight the sentences of the Turkish courts named above may seem like running amuck. The roots of this excess must be sought in the Articles 141 and 142. When political convictions become branded as crimes, justice becomes a mere



tool in the hands of those in power. Their whims will decide which beliefs should be persecuted. Suitable interpretations can be found to brand any standpoint of opposition a crime.

These are the consequences of the prohibitions against the communist movement. In such a situation even the exercise of a basic human right such as the expression of an opinion, turns into a test of courage. A state, in which the mere confession of one's own point of view has become a test of courage hardly deserves the name "democracy".

## **Political Life in a Straight Jacket**

The authorities in Turkey often talk about "important changes" since 12th September 1980, referring to certain developments. The outward appearance, which indeed is similar to pluralistic parliamentarism, should not delude anybody.

It is usual to look upon political parties as an integral part of parliamentary democracy. Let us begin with some remarks about this situation. In addition to the proscriptions in the Constitution, which refer to political parties, there are the regulations of the Law on Political Parties, which are a real straight jacket.

For example, Articles 5 and 78 are based upon Articles 141 and 142 of the Turkish Penal Code. With Article 14 of the Law on Political Parties, party congresses are forbidden to take concrete decisions on questions affecting society. The Article 91 prohibits parties from founding women's and youth sections or educational and voluntary associations. Article 92 prohibits links between parties and any mass organisations. Especially remarkable is Article 97 which prohibits parties from criticising the military coup of 12th September 1980 and the decisions and practices of the "National Security Council".

Also, the law prohibits the foundation of party organisations in villages. But more than half the population lives in villages.

This straight jacket, which applies to all parties, is especially strict towards Communists. Article 96 prohibits the founding of parties which call themselves communist.

## **The Constitution And Basic Rights**

On 16th November 1987 when the General Secretaries of the Workers' Party and of the Communist Party of Turkey, Dr. Nihat Sargin and Haydar Kutlu returned to Turkey, State President Evren said in Mugla: "Turkey is not suitable for the foundation of the Communist Party. It is not possible to found a Communist Party, a fascist party or a religiously based party because there are the Articles 141, 142



and 163 of the Turkish Penal Code. To abolish these Articles we would have to change the Constitution. There is Article 14 in the Constitution. As long as this Article is in force, we cannot do anything. Take notice of that".

The Constitution which is in force at the moment in Turkey, was drawn up according to the orders of the five generals who led the coup d'etat on 12th September 1980. The Constitution was "accepted by plebiscite", on 7th November 1982, when voting "No" was prohibited under threat of penalty. Article 14 of this Constitution, to which General Evren refers, says: "Of the Civil Rights and Freedom of this Constitution none may be misused in order to destroy the indivisible unity of state with its territory and people, to endanger the existence of the Turkish State and the Republic, to abolish Civil Rights and Freedom, to achieve the control of the state by one person or a group or the rule of a social class over other social classes or to create differences in language, race, religion or belief or to found by any other means a state which is based on these ideas and views."

This general restriction of civil rights leads in fact to their abolition. First we have to note that the legitimate restriction, which is contained in international documents on Human Rights (Civil Rights cannot be misused for activities to abolish these rights), is supplemented in the Turkish Constitution by several additions. Extremely flexible and unclear terms are used, which are open to a variety of interpretations. For example, what does "to destroy unity of state with its territory and people" mean? What does "to create differences in language, race, religion or belief" or "to promote the rule of a social class over other social classes" mean? One has to note, that because of this phrase Articles 141 and 142 of the Penal Code come into the Constitution along with the juridical idea which marks opinions and ideas as crimes.

This Article is supplemented by Article 87, by which the parliament is prohibited from declaring an amnesty for those who have been sentenced because of Article 141 and 142.

Is it the task of the Constitution to restrict the spread of ideas and opinions? In the Constitutions of the European countries there are no comparable regulations. If a Constitution prohibits from the start certain ideas and opinions one cannot talk of a democracy any more. Thinking of the situation in Turkey, one cannot help remembering Mussolini, who declared in a speech on 24th March 1924 "Everybody has to think and to act in the framework of the state, as a subject of state authority and rule, according to the will of the state."

What is the meaning of a constitutional guarantee of freedom of thought and opinion and the right to form associations, trade unions and parties for their propagation; if this only applies to opinions, which have been approved by the authorities?



Freedom of thought essentially means that ideas and opinions, which are not stated in the Constitution, are allowed as well. If only those ideas and opinions which have been taken into account by the Constitution are allowed to be expressed, one does not need regulations on freedom of thought and opinion.

In Turkey the opinions which are persecuted and penalised mainly on the basis of Articles 141 and 142 are those disliked by the official authorities, or which are contrary to their interests, using the argument, that they are supposed to contradict the principle of the "indivisibility of unity of state with its territory and people".

What do the comparable regulations in Western countries look like? Let us take Italy as an example.

The first Article of the Italian Constitution declares: "Italy is a Democratic Republic, which is based on the principle of work." If it was prohibited in Italy to hold views, which contradicted the principle of the Constitution, economic liberalism would have to be prohibited as "anti-social". Along the same lines, in the Federal Republic of Germany anybody who speaks for a central form of state instead of the Federal form which is provided in the Constitution, would have to be prosecuted. In centrally organised France the opposite would be the case. Everybody would be thrown into jail who spoke for a federal state.

The very far reaching restrictions in Article 14 of the present Turkish Constitution are in contradiction with Articles 14 and 17 of the "European Human Rights Convention".

Therefore, for the Constitution of 1982 the following is characteristic. This document has not been devised to regulate civil rights and freedoms, but to restrict them beyond recognition.

Summarising, one notes that the Constitution of 1982 in itself plays a destabilising role. It prevents the solution of many problems because of restrictions, which under normal political developments could be solved by compromise, political decisions or changes of the law. A "guided democracy", a "second-class democracy" has been established and declared immutable.

Government spokesmen say again and again that the above regulations are not allowed to be changed and cannot be changed. It has been shown, however, in spite of these statements, even the Constitution of 1982 can be changed. For example, on 17th May 1987, the Provisional Article 4 was changed (Prohibition of political activity of leading members of political parties before the military coup).

Also the majority, which is necessary to change the Constitution in parliament decreased from two thirds to three fifths; the minimum age for the active right to vote was lowered from 21 to 19; and the number of parliamentary seats were increased from 400 to 450.



Because of the change of several Articles of the Constitution of 1982, there is no reason why Article 14 and 87 and the other regulations, which penalise the Communist movement, cannot be changed.

## A Second-Class Democracy

On what grounds are political bans in the spirit of Mussolini still maintained in Turkey today? What do the official representatives of the country say, in particular Prime Minister Turgut Ozal and President Kenan Evren, in defence of such an anachronism?

Often they are at pains to find arguments. "The geo-political situation of Turkey" is given as a reason for the need to ban communism. What they mean is that Turkey has common borders with socialist countries. But Turkey is not the only country which has socialist neighbours and the political system of which is different. If being a neighbour of a socialist country were to be a valid reason for banning the communist party, then the communist parties in Norway, Finland, Sweden, Denmark, West-Berlin, Federal Republic of Germany, Austria, Italy and Greece should have been banned as well. But there is not a single example of such a ban in democratically-ruled countries.

The advocates of such bans often refer to the low level of development in Turkey. When the Republic of Turkey was founded there was a one-party system. But the economic and social development made it necessary in 1946 to replace it with a multi-party system. However, that change was only half-hearted from the beginning. The political Left still remained banned. But today retention of this ban, refusal to give the working people the right to express their free opinions and engage in free political activity contradicts with the development in our country.

Some supporters of the anti-communist policy of banning the organisations refer to the "insufficient maturity" of our people for such a freedom. But how can people develop a political culture which allows free discussion of different opinions and points of view if the expression of opinions and the organisation for a peaceful propagation of ideas is suppressed by force? How can a civilized discussion of contradictory opinions and a free competition of ideas develop in the society as long as the bans in Articles 141 and 142 of the Turkish Penal Code and in Articles 14 and 87 of the Constitution are upheld? How can a culture of competition of ideas grow in such conditions?

There are also voices which are heard saying: "If we permit the founding of a communist party, we also have to agree to a fascist party." Yet today Alparslan Turkes, known as the leader of a racist, neo-fascist movement, is the chairman of the legal "Party of National Work". That man, who had ordered the murder of the trade union leader Kemal Turkler, said in a party statement about the return of Kutlu and Sargin: "There is no place for communists in Turkey". (*Hurriyet*, 20.3.1987)

"If a communist party is founded, then we also have to legalize an orthodox Islamic party which advocates Sheria (Islamic Fundamental Law)!" This is another demagogic argument used by the supporters of the bans. Ali Bulac, political columnist of the newspaper *Zaman*, which is published by an Islamic group, wrote the following comment: "The thesis that the legalisation of the communist party will necessarily lead to a strengthening of the Sheria movement is upheld by the Right. Islamic circles would not be irritated by the scrapping of the Articles 141 and 142 and the Article 163." (*Yeni Gundem*, 15-21/11/1987)

The developments which Evren refers to as evidence for the strengthening of the fundamentalist Sheria movement have in fact increased after the military coup of 12th September 1980, e.g. after the abolition of democratic freedoms. Strangely enough, Article 163 of the Turkish Penal Code which prohibits "the support of the Sheria" is not being evoked against those developments, but against those sections of the Islamic movement which attempt a modern interpretation of Islam and who advocate political freedom and world peace. In this connection, we should also not forget the following: in a democratic country it must be possible to hold every kind of opinion and point of view as long as this is not translated into violence. If the advocates of the ban on communism really reject the Sheria, they must learn to politically confront that movement within a democratic framework.

If one does not accept that, it would logically follow that one would also have to advocate the prohibition of Christian parties pointing to the inherent danger of restoration of the Inquisition.

Those who want to frighten the Turkish and European public with the "example of Iran" forget an important fact: could there have been a "example of Iran" if the Shah-despotism had not refused to recognise the basic rights and freedoms for decades?

Therefore, the real motives of the advocates of bans should be sought somewhere else. In a short comment which was published without any signature on 19th November 1987 in the newspaper *Hurriyet* it is said: "Why did President Evren deem it necessary to make that extremely harsh statement precisely on the day the two leaders [Kutlu and Sargin -ed.] were expected to arrive in Turkey? Did he possibly express certain fears which were relayed to him by the military?"

In the same edition of *Hurriyet* columnist Ahmet Altan writes the following: "All the citizens of Turkey are always afraid of something. We always fear the ruin of the country.. and some try to ban the danger and in the course of it make quite a bit of money. We have been afraid for long enough. We are tired of being afraid."

Melih Cevdet Anday, a prominent writer and poet, explains in his essay titled "About the United Communist Party" what the anti-communist bans have been used for over the years:



"The visible and invisible rulers of Turkey do not care if a legally constituted communist party exists or not. They have never been concerned about it. What is important for them and what they always use is the word 'Communism'. **If a legal communist party is founded, those visible and invisible rulers will not any longer be in a position to label any idea they dislike and any action they reject as 'communist' and in this way to intimidate the people.** They want the communists to remain in the underground. For if there is a legal communist party, if the word 'Communist' is legalized, then the bogeymen will lose their effect. If you have read the statements of Mr. Kutlu on behalf of the United Communist Party of Turkey, then you will have realized that the UCPT stands for democracy (if you mistrust those words, you will have to equally mistrust the other parties). It stands for the principle of coming to power through elections and going into opposition when the election results require. What will our visible and invisible rulers do, with what secret dangers will they intimidate the people when the necessary changes are made in the penal code and a legal communist party is founded? If you look at the matter from that angle, it will become clear why in countries where the communist party is illegal, freedom of thought cannot gain a foothold." (*Cumhuriyet*, 6/11/1987, emphasis is ours -ed.)

That is why the foreign affairs columnist of the newspaper *Cumhuriyet*, Ergun Balci wrote on 19th November 1987: "Today one cannot talk about a full democracy if the communist party is denied a place in the political spectrum." The same view has also been expressed by the well-known socialist and former Member of Parliament, Mehmet Ali Aybar when he gave a statement to the same newspaper: "There exists no democracy in a country where the communist party is banned."

In the Draft Programme of the United Communist Party of Turkey (UCPT) it says: "Establishment of a democratic regime, consolidation of a democratic development, its protection against interruption by military coups is the main question at the present stage." This assessment is also shared by non-Marxist forces in Turkey today as, for example, by the former Prime Minister Suleyman Demirel, who was himself twice toppled by military coups.

How can the interruption of the democratic regime, as it happened in Turkey recently but nowhere else in Europe, be prevented? How can a democratic stability be secured? Hasan Cemal, a columnist in the newspaper *Cumhuriyet*, answers this question in his article of 22nd November 1987 as follows:

"The safety of stability must be achieved through democracy. The forces aiming de-stabilization see their chance not in democracy but in political bans which degrade into a second-class democracy."

The United Communist Party of Turkey (UCPT) states on this question that transition to a genuine multi-party system and recognition of the elected parliament

as the supreme organ of power is the only way to prevent military coups. It should be pointed out that legalization of the communist movement would be an invaluable contribution to the ending of the fatal custom of coups.

The anti-communist bans have their roots in the totalitarian conception of the state. The prohibition of certain political views and ideas implies the negation of pluralism and consequently of democratic regime as well. The phsyco-political climate which is thus created facilitates the actions of putschists against elected governments. There is a close connection between the anti-communist bans and the fact that there has been no democratic stability in Turkey until today.

That is why the legalization of the communist movement would mean, on the one hand, a decisive step towards transition to a pluralist democracy, and on the other, a safeguard against its interruption by military coups.

### **The UCPT Is Persecuted Because It Stands For Democracy!**

That is the background to the trial against the two founders of the United Communist Party of Turkey (UCPT). As the lawyer Mehmet Ciplak stated in the January 1988 issue of the magazine *Gun*, this trial is interesting not only for political but also for legal reasons. How, for example, are they going to prove the "illegal activities" of the two General Secretaries? Sargin and Kutlu returned to Turkey voluntarily and with the declared aim of forming a legal party and participate in elections? Would people who want to work illegally proceed in that way?

It is stated in the Draft Programme of the United Communist Party of Turkey (UCPT) that it will oppose the policy of political suppression and patronizing, any monopoly on thought and the policy of force, and that it will campaign for the creation of an atmosphere of freedom. Can people be condemned for attempting to form a party which states the following in its Draft Programme?:

"Success in the struggle for freedom and democracy calls for a new political culture which condemns terrorism contemptible of human beings, the state terrorism and any use of terrorism as a political means."

Which Articles of the penal code will one have to dig up in order to condemn the following theses of the United Communist Party of Turkey?:

"The UCPT demands no priledges vis-a-vis the other democratic and left parties, it does not attempt to gain any prilevledges. The Communist Party makes its own contribution to the struggle for freedom, national independence, democracy and social progress, without any claim for any kind of prilevledges, but on the basis of its specific qualities."



Today it is forty years since the General Assembly of the United Nations adopted the Universal Declaration of Human Rights. In its Preamble it is stated that:

"...the recognition of dignity inherent in all members of human family and their equal and inalienable rights are the basis of freedom, justice and peace in the world."

and that:

"...member states have committed themselves, in collaboration with the United Nations, to ensuring that the general recognition and realization of human rights and basic rights is fulfilled..."

The conviction of Kutlu and Sargin and prevention of their initiative to legally found the United Communist Party of Turkey will only prove the crude violation of human rights by Ozal Government. And all this happens in a country which is a signatory to the U.N. Universal Declaration of Human Rights, the European Convention on Human Rights and the Helsinki Final Act of the Conference on Security and Co-operation in Europe, which is a member of the Council of Europe and NATO and which has applied for full membership of the European Community. The citizens of the European countries in particular ought not ignore this contradiction.

Can contempt of human rights be tolerated? The case of democracy and freedom concerns everyone!

The credibility of these ideals are at stake. Everyone has to ask oneself the question posed in the call made by Kutlu in front of Ankara State Security Court: "Democracy or demagogy?"

**TÜRKİYE SOSYAL TARİH ARAŞTIRMA VAKFI**  
**TÜSTAV**

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## **The Trial of Nihat Sargin and Haydar Kutlu**

General Secretaries of the Workers' Party of Turkey and the Communist Party of Turkey

# **THE INDICTMENT**

[Excerpts]

TÜRKİYE SOSYAL TARİH ARAŞTIRMA VAKFI

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## FOREWORD

On 11th March 1988, the Public Prosecutor for Ankara State Security Court concluded its work on the indictment against Nihat Sargin and Haydar Kutlu, General Secretaries of the Workers' Party of Turkey (WPT) and the Communist Party of Turkey (CPT) respectively, who had returned to Turkey on 16th November 1987 from their political exile abroad in order to legally set up the United Communist Party of Turkey and who had been detained immediately upon their at Ankara airport and subjected to 19 days of interrogation under torture at Ankara Public Security Department.

The file of the suit as presented to the State Security Court consists of 231-page indictment and the 5,000-page appendix, containing various documents arranged in 11 binders.

Owing to the great interest shown in this courtcase by the public opinion abroad, as well as at home, we have undertaken the task of publishing this indictment in an abridged form in English as well. While abridging the 231-page indictment we aimed to present completely the logic of its authors. For this reason, we have retained intact the sections "About The Illegal Parties", "The Case", and "Conclusion And Request". As for the other sections, we have taken only certain relevant parts or briefly summarized the content, which is printed in *italics*.

The Public Prosecutor for Ankara State Security Court, with this indictment, has included 14 other people -alongside the two General Secretaries- in the courtcase. Barristers Atilla Coskun and Rasim Oz, who are in the defence team of the two political leaders, are among these 14 people -the former being accused of "membership of CPT", and the latter, of "praising an action which constitutes an offence". The other defendants -except Celal Ozdogan, General Secretary of the metalworkers' union, Otomobil-Is- have all stood on "CPT Trials", some having been sentenced to prison terms up to 15 years and some having been acquitted. They will now be put on trial for a second time for the same "offence".

However, as the principal figures of this case are the two General Secretaries, we have left out the parts dealing with the other defendants in the course of abridging the indictment.

In presenting this document to the readers, we felt it essential to point to a decisive aspect in its content. For it glaringly proves how the current political and legal system in Turkey stands out in contrast to the generally recognized democratic principles of law and human rights.

Already in the first pages of the indictment it is explicitly stated that in Turkey mere thoughts are subject to punishment. Literally it goes as follows:

"The **thought** which has always been excluded from amnesty since 19th May 1919, and which in our every constitution has in no way been accepted for the State of the Republic of Turkey and has always been rejected ... in other words, the Marxist-Leninist **thought**, and the communist **thought** which explains this **thought**, has been penalized in the laws of the Republic of Turkey." (page 7, emphasis ours)

We repeat: the prosecutor is explicitly talking about thoughts that are punishable. It is quite significant of the spirit of the political justice in Turkey that the indictment does not even attempt to conceal its contempt for the most basic principles of democracy.

As a democrat, one would have liked to consider this statement as a slip of the tongue or else, as an overflow of the anti-democratic personal views of Mr. Nusret Demiral, who is the prosecutor in charge of this case. One does not want to believe that the legal conceptions implied in those words can be the official norm of a country.

However, regrettably, this is the case. On page 22 of this document the following statement appears:

"That **no idea or consideration can find protection** against the Turkish National interests, the foundation of the indivisibility of Turkish existence from its State and country, the history and spiritual values of the Turks [and] Atatürkist Nationalism, principles and reforms and civilizationism, and that, as required by the principle of secularism, the holy religious feelings cannot definitely be involved in the state affairs and politics" (emphasis ours).

In this instance, it is not any antiquated statement of an old prosecutor, but a quotation from the Preamble of the 1982 Constitution. It is worth considering the legal consequences of these words. Suffice it to point to one aspect only: With these words, the protective function of the basic rights is **lifted** for a rather vaguely described **group of ideas and considerations**. Persons who hold these ideas and considerations, who, for example, contradict the "history and spiritual values of the Turks" or "Atatürkist Nationalism, principles and reforms and civilizationism" are to be punished!..

How, then, are these terms defined, as they are attributed such important and key roles in the political and legal life of the country? How is one to interpret this "history and spiritual values of the Turks" or "Atatürkist Nationalism, principles and reforms and civilizationism"? Nobody knows! The ruling circles reserve the right to draw and re-draw the borderlines of such terms as it suits them. This automatically opens the door for arbitrarism. It becomes risky to have any opinion at all. Contradiction with the Article 19 of the U.N. Universal Declaration of Human Rights could not be more pronounced!

The authorities in Ankara state at every opportunity that there is democracy in Turkey. Allegations of human rights violations are dismissed as ill-intentioned propaganda. In fact, this indictment itself has turned the prosecutor who authored it into an important witness for the opposition! And a regime which endorses such an indictment disqualifies itself as a democracy!..

Apart from its content, another interesting aspect of the indictment is its "Turkish". It is a broken, mostly archaic Turkish, with an unskillful use of legal jargon and with many grammar and spelling errors. Naturally, this has further added to the already difficult task of translating a legal and official document from Turkish into English. In order to reflect this aspect of the indictment to foreign readers as well, we decided to stick to the original text as much as possible, and made certain inevitable amendments - in brackets, [...] - only to make it more readable.

**BEM**  
(Unity Press Centre)



REPUBLIC OF TURKEY  
ANKARA STATE SECURITY COURT  
PUBLIC PROSECUTOR'S OFFICE

INDICTMENT  
AND  
DECISION ON LACK OF GROUNDS FOR PROSECUTION

"ILLEGAL"  
"CPT" AND "WPT"  
NABI YAGCI AND Nihat SARGIN  
AND THEIR COLLEAGUES

AUTHORS

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Assistant Public Prosecutors for Ankara State Security Court

REPUBLIC OF TURKEY  
ANKARA  
STATE SECURITY COURT  
PUBLIC PROSECUTOR'S OFFICE

UNDER ARREST

INDICTMENT

TO THE PRESIDENCY OF  
ANKARA STATE SECURITY COURT

AND

THE DECISION  
ON LACK OF REASON FOR PROSECUTION

SECTION - I

INDICTMENT

PLAINTIFF : P[ublic] L[aw]

DEFENDANTS :

DEFENDANT (1) : NABI YAGCI (P[arty] N[ame]: HAYDAR KUTLU): Son of Musa, born of Naciye, in 1944, registered at Hocaahmet district of Niksar, Tokat, has no residence in Turkey, alleges to reside at Diesel Strasse 7/3, West Berlin, UNDER ARREST for the offences as indicated.

OFFENCES : To be the General Secretary of the illegal CPT and one of the founders of the UCPT and to aim at establishing in Turkey a State and Administration form that is connected with a Marxist-Leninist order, and thereby;

1) By way of proceeding to form an illegal party aiming at establishing domination of a social class over the other social classes or eliminating a social class or overthrowing any one of the fundamental economic or social orders established inside the country, and regulating or leading and administering the activities of this illegal party and guiding [it] along these lines,

By assuming the leadership and administration of two illegal parties,

(a) To carry on with the function of the General Secretary of the illegal CPT,

(b) To take steps towards founding of the illegal UCPT,



- 2) By means of publication[s];
- (a) To make speeches at meetings for establishing domination of a social class over the other social classes or eliminating a social class or overthrowing any one of the fundamental economic or social orders established inside the country or totally abolishing the political and legal orders of the state, and to make propaganda to this end by means of publication[s] that they have produced abroad and have imported into the country through secret [and] illegal channels,
- (b) To make propaganda by means of publication[s] that they have produced abroad and have imported into the country through secret [and] illegal channels which aim at partially or totally abolishing, with racial consideration, the civil rights recognised by the Constitution or which are [issued] for the elimination or weakening of the national feelings,
- 3) To act in a way that will do harm to the national interests by means of publication[s] that they have produced abroad and have imported into the country through secret [and] illegal channels, [ which give information] in a foreign country about the internal situation of the state that are groundless, exaggerated or are made to serve a special aim, and that might impair the state's dignity and influence abroad,
- 4) To openly praise and tell one's positive opinion about an action which is regarded an offence by law and to openly incite the people for disobeying the law and for hatred and enmity with regard to class, racial, religious, sectarian and regional differences, and to make this incitement in a way that might constitute a threat to the security of the public,
- 5) To insult the President of the R[epublic of] T[urkey] by means publications that they have produced abroad and have imported into the country through secret [and] illegal channels,
- 6) To insult the spiritual personality of the Government of the R.T. by means of publication[s] that they have produced abroad and have imported into the country through secret [and] illegal channels.

DATE OF OFFENCE : Between the dates 1.5.1984-15.11.1987

DATE OF DETENTION: 15.11.1987-5.12.1987

DATE OF ARREST : 5.12.1987

PARAGRAPHS OF LAW REQUESTED TO BE APPLIED :

T[urkish] P[enal] C[ode]. 141/1, 142/1-6, 142/3-6, 140, 312/2-3, 158/2-3, 159/1, 69, 71, 74, 31, 33 [and] 40 (in quantities as indicated) [below].

EVIDENCE : Defendant's; "frank confessions at security offices, at the office of the Public Prosecutor for Ankara State Security Court and at the office of the Candidate Member of Ankara State Security Court, the obtained Atılım, Yıl-Amac [and] Sol Birlik journals,

pamphlets [and] leaflets" References of the other defendants as explained in the indictment and the contents of the documents [in state archives].

DEFENDANT (2) : **AHMET NIHAT SARGIN**: Son of Mustafa Fahri, born of Aliye, in 1926, registered at Sehremini Eregli District of Fatih, Istanbul, [permanent] residence at Pasalimani Cad. No: 109, Kugunouk[?], Istanbul, alleges to reside at Rue Antoine Gautier 54, Brussel, Belgium, UNDER ARREST for the offences as indicated.

OFFENCES : To be the General Secretary of the WPT and one of the founders of the UCPT, to aim at establishing in Turkey a State and Administration form that is connected with the Marxist-Leninist order, and thereby;

- 1) By way of proceeding to form an illegal party aiming at establishing domination of a social class over the other social classes or eliminating a social class or overthrowing any one of the fundamental economic or social orders established inside the country, and regulating or leading and administering the activities of this illegal party and guiding [it] along these lines.

By assuming the leadership and administration of two illegal parties,

- (a) To carry on with the function of the General Secretary of the illegal WPT,

- (b) To take steps towards founding of the illegal UCPT,

- 2) By means of publication[s];

- (a) To make speeches at meetings for establishing domination of a social class over the other social classes or eliminating a social class or overthrowing any one of the fundamental economic or social orders established inside the country or totally abolishing the political and legal orders of the state, and to make propaganda to this end by means of publication[s] that they have produced abroad and have imported into the country through secret [and] illegal channels,

- (b) To make propaganda by means of publication[s] that they have produced abroad and have imported into the country through secret [and] illegal channels which aim at partially or totally abolishing, with racial consideration, the civil rights recognised by the Constitution or which are [issued] for the elimination or weakening of the national feelings,

- 3) To act in a way that will do harm to the national interests by means of publication[s] that they have produced abroad and have imported into the country through secret [and] illegal channels, [which give information] in a foreign country about the internal situation of the state that are groundless, exaggerated or are made to serve a special aim, and that might impair the state's dignity and influence abroad,



- 4) To openly praise and tell one's positive opinion about an action which is regarded an offence by law and to openly incite the people for disobeying the law and for hatred and enmity with regard to class, racial, religious, sectarian and regional differences, and to make this incitement in a way that might constitute a threat to the security of the public,
- 5) To insult the President of the R[epublic of] T[urkey] by means of publications that they have produced abroad and have imported into the country through secret [and] illegal channels,
- 6) To insult the sipiritual personality of the Government of the R.T. by means of publication[s] that they have produced abroad and have imported into the country through secret [and] illegal channels.

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EVIDENCE : Defendant's; "frank confessions at security offices, at the office of the Public Prosecutor for Ankara State Security Court and at the office of the Candidate Member of Ankara State Security Court, the obtained Atilim, Yol-Amac [and] Sol Birlik journals, pamphlets [and] leaflets" References of the other defendants as explained in the indictment and the contents of the documents [in state archives].

*[This section goes on to give similar information about the situation of the other defendants.]*

## ABOUT THE ILLEGAL PARTIES

Throughout the history the Turkish Nation has lived independently and has waged struggle for [her] independence in all forms and conditions. The Turkish Nation, who has lived independently throughout the history and who has waged war for her rights and liberties, has developed the Liberation War to finally establish the State of the Republic of Turkey following the embarkation of Mustafa Kemal ATATURK at Samsun on 19th May 1919, and consequently has again established the independent Turkish State in an order of law befitting to Turks.

By developing the 1924 Consitution, which was the first constitution of this state, multi-party election system was adopted in 1946.

In the course of time, the 1961-1982 Constitutions of the Republic of Turkey were adopted in a manner befitting to the developing conditions of life and were put into effect.

In the period that elapsed from 1946 to 12th September 1980, the Turkish Nation's independence and her struggle to this end has been attempted to be obstructed by illegal forces from within and without.

We observe that the principle of "Peace in the Country, Peace in the World", the spirit of national struggle, the sovereignty of Turkish Nation, [and] Ataturk's Reforms constitute the basis of all the three Constitutions of the Republic of Turkey.

Again, beside these, the Constitutions have been based on the indivisibility of the nation and the integrity of the state, and human rights and liberties have been given a wide space in the constitutions.

In the use of these liberties, the factor of their non-abuse has been adopted as the fundamental principle. The essence, restriction and abuse of the basic rights and liberties have been stipulated by wide-ranging rules in all of our three constitutions, and consequently their description in the democratic order and in the social structure within this order has been made very openly.

There is no room for using these liberties stipulated in the constitutions ever in order to abolish the Republic, to dismantle the indivisible integrity of the state with its land and nation, to put the existence of the State and the Republic of Turkey in jeopardy, to eliminate the basic rights and liberties, to secure the rule of the state by one individual or a group or the domination of a social class over the other social classes, or to create religious, linguistic, racial and sectarian discrimination or establish a state order based on these concepts and views in any other way. The penalties that will be applied to opposite actions have also been shown in law.

The thought which has always been excluded from amnesty since 19th May 1919 and which, in our every constitution, has in no way been accepted for the State of the Republic of Turkey and has always been rejected,

"Which recognizes the rights of one class only, [and] does not accept personal property, which aims at total abolition of property both in production and in consumption, making the goods and the wealth common, eliminating the power of capital in order to win and safeguard the power, and securing and working for the proletarian revolution in pursuit of the attainment of these",

in other words, the Marxist-Leninist thought, and the communist thought which explains this thought, has been penalized in the laws of the Republic of Turkey.

In each of our three constitutions, in the face of the rule which is described very openly as "the State of Turkey being an indivisible integrity with its land and nation", it is observed that it is adopted as a basis that the State of the Republic of Turkey should not be subjected to any change in line with the communist thought.

Then, in Marxist-Leninist and communist thought, which is its aim, and in the movement aiming at the establishment of a state in line with this thought, the victim is the State of Turkey and the Republic of Turkey.

The offences of danger in the discrimination made by a compiler are offences of this type. [??]

In this type of offences the offender is ought to be penalized whether any result is produced or not. For activities have been started to be carried out in order to abolish



the basic structure and social order of the State. It is no use to wait for the results any longer. For waiting for the result means that it will be too late.

Furthermore, the communist thought is a political thought guided by the Marxist theory. In this thought [the aim] is the organising of the class struggle and the seizure of the state in whatever way it might be on the basis of class domination. If there is a party, whether it is legal or illegal, the essence of the party programme is constituted in this manner. This is the decisive thought.

It is known that [during] the establishment of the State of the Republic of Turkey the Communist Party of Turkey tried to constitute its illegal activities within the borders of a state and in a town of this [state] near our border. It is also known by everybody that these activities have been going on since the establishment of our state within the borders of another state. It was attempted to attain the aim by the transformation of these activities into action from time to time inside the country by people with the same thoughts, but the captured accused have been tried and punished by relevant courts.

In our 1982 Constitution, under the heading "prevention of the abuse of basic rights and liberties" as described in paragraph 14, in the articles 141-142-143 of the [Turkish] [Penal] [Code], the communist system is not accepted according to the form of the state and or state order. The opposite case is penalized.

[In] paragraph 14 of our 1982 Constitution it is said exactly that:

Any one of the rights and liberties in the Constitution cannot be used for the aims of dismantling the indivisible integrity of the state with its land and nation, putting the existence of the Turkish State and the Republic in jeopardy, abolishing the basic rights and liberties, securing the rule of the state by one individual or a group or the domination of social class over the other social classes, or creating linguistic, racial, religious or sectarian discrimination, or establishing a state order based on these concepts and views in any other way.

The sanctions that will be enforced upon those who contravene these bans or who encourage or incite other to do so are regulated in laws.

None of the stipulations of the Constitution can be interpreted in a way as to grant the right to act for eliminating the rights and liberties in the constitution."

and, thus, it is observed that the communist thought in Marxist-Leninist direction and the behaviours and movements connected with it, which are very openly opposed to the constitutional order, are totally rejected.

We can list the descriptions which are thought to be within the communist system and which are explained in the course of talks as follows.

Above all, the explanations of people who have accepted this system, who have seen the state life are the following:

"The principle of communism is death to those who are not on our side, there is no middle ground."

"The recommendation made; first you will weaken them by taking the monies in a manner befitting the revolution. Secondly, you will scare [them]."

"God willing, may a wise president appear, create a miracle and save the world from this communist threat."

"For them, every talented, bold and enterprising person is fascist. He should die."

They who apply torture are creatures who are ignorant and who use the opportunities of free life but cannot be successful."

What we asked to do is to implement the dictatorship of the proletariat."

To every responsible post a communist will be appointed without regard to education and quality."

"I recommend the communists who live in capitalist countries to go to socialist countries and seek asylum [there]. They will get a friendly reception every where in order to prove the badness of capitalism, but unfortunately one does not come across with people who escape from the decaying and dying capitalism. However, there are thousands who escape from communist countries."

There is no good and bad communism. Communism is a horrifying dictatorship which exploits the worker. The people who live in communist countries, whose living standard is low and who are deprived of liberty are the best examples of this."

"Communists do not hesitate to apply every kind of torture on those who do not think as they do and who do not do what they are told to do."

"Communists are experts in presenting themselves in their propaganda as liberators in the liberation of people from their dignity, virtues and liberty."

After the eighteenth century, growth of international trade, industrial developments [and] the use of engine-powered instruments for production and productions, by bringing about changes in the conditions of work, of course, increased [the number of] the unemployed. Workers were compelled to a wide arch[?] of work at factories. As the discrepancies between supply and demand necessitated the search for a new order, an economic choice began to be made instead of some philosophical and political choice. As a result, looking at the later political [and] economic formations,

[This search] formed three separate groups [of] thought. Nevertheless, the system connected to all these three [schools of] thought is that all remain opposed to the system of [private] property.

We can arrange these three systems as follows.

"Socialism, Communism, Anarchism."

In these three systems the dominating idea is the replacement of personal property with common property. As our subject is communism, in the first instance we can say the following in [relation to] this system.

"Communism, in its broadest sense, is union in [the word *enval* used here cannot be found in any available dictionary]. Everyone works for the society and the State representing it. The State feeds, looks after everyone. There is no private property, there is common property." "Lenin, in his work [entitled *What Is To Be Done?*], explains the building of the party and its march to the result by expanding [its ranks], according to himself, by saying, 'We must go among all classes of the society as theoreticians, as propagandists, as agitators and as organisers. It is necessary to prepare the workers for their role in the liberation of the entire mankind from every kind of oppression and pressure, by educating the whole working class. Let us approach the people more. Let us approach the lower strata of the people, the masses, the civil servants, [and] the peasants. Let us approach not only those whom we have won over to our side, but also those following the revolutionary socialists, the non-party people, [and] those elements who are not yet conscious.'"

Furthermore, Communism, as known;

"Is a social, economic and political system."



It should be known that, although [we are] not including the historical development of Communism in the explanation, the evolution of Socialist thought in Plato up to German Socialist Collectivist Karl Marx bears a very great significance. In the system which manifests itself in the form of sometimes Socialism, sometimes Communism and sometimes Anarchism; the common idea always carries the aim of common property. In our times, the expressions of scientific socialism, scientific communism are also sprinkled before the eyes. Because each different way has a significance in these systems in order to seize the State. Consequently, the rule of "let the State be seized, the thought and the system can be developed later as well" is adopted.

We also deem it useful to have a brief look at how and in what way communism has been received in foreign states and how this system has been developed by the individuals of these states. Because we think we could outline the position of the defendants by going onto an explanation also in this direction in order to be able to describe the opposite end of our subject.

For example;

We can say that a hard struggle has been waged in the United States of America. It is obvious that the activities of the communist parties are not allowed in countries in the proximity of the State which has accepted Communism and which tries to spread this system to the [whole] world. But it cannot be said that the states like America, England, France [and] Italy have wholly prevented the communist activities.

In America, in about 1954, the Senate regarded the activities of the Communist Party as illegal. Furthermore, in the face of this, the Director of the Federal Bureau of Investigation and the Chief Public Prosecutor came out to object to this decision and prevented its conclusion. However, it is known by all that American people themselves take a position openly against the communists.

In England, although the Communist Party has been formed in the 1920s, until today it could not find an active medium. England is the place where the Communist Party works most freely in the world. This party is obstructed by the socialist Labour Party.

In Italy, Communism has continuously been fought against. Despite this, the Communist Party retains its quality as a strong party in Italy. It is also observed that the power in Italy has never been stable because of this party.

In France, it is felt that the communists are strong in political events. Despite this, the struggle against communists is still going on. In France, the activities of the Socialist Party has started in the years 1893.

The most insidious activities of communist are observed in the Middle East. In the countries of The Middle East communists benefit from the elements of reaction to a great extent,

We observe these activities in Pakistan, Iran, Afghanistan, Syria, Egypt and Jordan.

It is now known by all that the communist who have achieved result in their activities in Afghanistan, are trying forcibly to make the Afghans accept the Communist Regime.

With the events in Afghanistan today, everybody sees and follows precisely what a communist regime brings to a state. Is it possible not to see what proportions the anarchy acquires in countries where communism comes in?

As for the answer to the question of how Communism was born and has developed in Turkey;

We can say that in our country the open activities of the Communist Parties began to be observed in the 1920s.

It is not possible to see a stipulation about the Communist Parties and Communism in the Penal Code dated 27 Zilhicce 1274 [according to the old Arabian calendar]. This law was adapted from the French Penal Code dated 1808. We see this law as a result of the Reform activities of the Ottoman Empire. [This] falls into the year 1858.

The first Republican Penal Code which we have adopted in 1926 was adapted from Italy. The articles 141 – 142 in this law have been amended in the course of the time and clear stipulations have been tried to be brought in according to the progress of Communism.

The first Communist thought; is felt in the sect established by a person called Simavli Bedrettin. Simavli Bedrettin finding a Turk and a Jew, in this sect, which he spread together with them in Izmir Bay, Karaburun, Asia and Europe:

"Equality and collectivism in everything Except Women"

Those who belonged to this sect used to say the following...

"I stay in your house as if my house... You also stay in my house, put on my clothes, [and] use my weapons [and] carriages, only women are excepted" they told.

Celebi Sultan Mehmet later had them arrested and hanged.

In history, the incident of Simavli Bedrettin for us; constitutes a nice example of how ignorance and reaction suit communism.

Ideas of communism are very old as far as they exist since Plato. We observe its application in Russia with Lenin.

The first Communist League called the Green Army; is the league the General Secretary of which was Hakki Behic Bey in the year 1920 after the opening of the Grand National Assembly of Turkey in Ankara. This league, which lost the confidence of Mustafa Kemal, dissolved in the same year. Cerkez Ethem and his brothers, too, joined this league.

The first Communist Party to be established officially in Ankara, again with the code no.591, dated 26.10.1920 [and] signed by Hakki Behic and Mustafa Kemal in Ankara it was stated that the Communist Party was established on the date 18.10.1920. This party, which had a delegation consisting of thirty people, had also a Military Affairs section. This party was joined by the Green Army as well. There was a purpose of both protection and trial in this party. However, the nature of trial was more apparent. Whether this party had relations with the Third International is an issue of controversy for the compilers.

Is there a situation whether the need for the establishment of a communist party in Turkey is to be accepted or not. That whether the Turkish Nation will accept this party or not will be understood with the establishment of the party will of course bear significance.

The first International was held on 28.9.1864 in London, the Second International in 1889 in Paris and the Third International in 1919 in Russia.

Hilmi Bey, who was not Communist but who had Socialist ideas, is told to have established a Socialist Party in the years 1919.



There was another communist party under the leadership of Mustafa Suphi, which was established in Russia and the Headquarters of which was in Baku. This party was a party included in the Third International.

In the party called together with Mustafa Suphi there were also people like Sabri Jemil, Ethem Nejat[and] Ismail Hakki who were involved in cultural activities in Germany. They came to Kars from Baku upon a kind of permission from Ankara Government, but met hostile public demonstrations in Kars and Erzurum. In this situation, it is told that they died by being thrown off into the sea in Trabzon while going back to Russia.

People's Communist [Party] carried out activities in the years 1920 and the workers' and Farmers' Socialist Party in the years 1919. Their publications were Aydinlik Mecmuasi, Kurtulus, [and] Orak-Cekic.

The Turkish Communist Party meeting abroad was held in Vienna by people named Vedat Nedim [and] Shefik Husnu, thus we can say that the Turkish Communist Party by then has begun to continue its activities also abroad. Inside the country, too, this communist thought tried to retain its position with the poems of Nazim Hikmet.

From the year 1927 onwards Communist activities have been totally rejected in Turkey.

Apart from this, we also know that parties under different names which advocate Communist ideas and which impart involve these ideas in their actions, were established in Turkey.

The activities of the advanced Young Turks abroad [and] the activities of the clandestine Communist Party under the name of Fatherland Party are in this order.

It has been observed that,

As explained in the indictment, the CPT, the WPT and their merger, the UCPT are illegal and,

Among the defendants;

1) NABI YAGCI (HAYDAR KUTLU) is the General Secretary of the illegal CPT and a founder of the UCPT and his duty in these parties consists of the definition of "who lead and administer or guide along these lines",

2) A.NIHAT SARGIN is the General Secretary of the illegal WPT and a founder of the UCPT and his duty in these parties consists of the definition of "who lead and administer or guide along these lines",

3) The other defendants whose names are written above and mentioned in the indictment, with the exception of defendant Rasim Oz, are sympathisers of the illegal parties and registered members of the CPT,

4) Rasim Oz, the defendant whose name is mentioned in the indictment, has a personality who is a sympathiser of the above-mentioned parties and praises these parties, accepts the illegal conditions indicated in the party programme and openly makes this public.

## BIOGRAPHIES OF THE DEFENDANTS OF THE CASE

*[The biographies and past political activities of all the defendants are explained in this section.]*

## THE CASE

1) DESCRIPTION OF THE CASE: It has been observed that NABI YAGCI (P.N. HAYDAR KUTLU), General Secretary of CPT, and A.NIHAT SARGIN, General Secretary of WPT, among the illegal parties which are based abroad and which carry out activities both abroad and at home, have aimed at creating a sensational situation with their publicised speeches, trying in advance to make public through the newspapers published in Turkey on 27.10.1987 that they would aim to set up legally the UCPT in Turkey by returning to Turkey, and that reports have appeared to this end in the newspapers dated 3.10.1987 and 5,6,13, [and] 14.11.1987.

After these statements have been made public before the general election on 29 November 1987, [and] when they arrived in the country on 15.11.1987, both two persons have been immediately detained under orders from our office of Public Prosecution.

It is evident that the activities [carried out] abroad and at home by the defendants NABI YAGCI and A.NIHAT SARGIN and, with these activities, themselves and their supporters aim at establishing

"the dictatorship of the proletariat based on Marxist-Leninist foundations by overthrowing and replacing the existing Constitutional order in Turkey"

and that, in relation to this, they have chosen the same path as the parties established since 1919 under different names, inside and outside Turkey, sometimes legally, sometimes illegally.

The party founded under the name of the Communist Party of Turkey has never got a legal status since the foundation of the State of the Republic of Turkey. The reasons for this is that what the form of the State and the order of the State will be like has been clearly indicated and this thought [communism] has not been considered within this border in the Constitutions of the Republic of Turkey of 1924-1961-1982. Furthermore, it is a matter of thinking that this illegal party programme is not accepted by the Turkish People.

The activities of CPT and WPT towards getting the Turkish people to accept their own thoughts by continuing to make them public with their activities carried out through the publications printed and distributed abroad and through the radio [station] set up under the name of VOICE of CPT, are known.

Another type of activity of this party is sending people, whom it got to accept its thought and made a party member, to the Party School in Moscow from time to time.

Thus, as a result of these considerations and confirmations, the developments in our case has constituted the basic foundation and have led to opening an investigation on the defendants.

The activities of defendants NABI YAGCI and A.NIHAT SARGIN abroad have been learned from the documents in the archives and it has been observed that this situation has been confirmed by their statements [at the police].

It is known that permission approval dated 3.12.1987 was obtained from the Ministry of Justice for investigation upon our request being deemed suitable to grant permission to start the investigation

"for the moves of defendants NABI YAGCI and A.NIHAT SARGIN in their activities abroad as indicated and described in the articles 158, 159 and 140 of the TPC"

with our letter, which exists in the archives, dated 2.12.1987 [and] numbered



B-1987/983, which exists in the archives, according to the articles 160 and 173 of the TPC, and that investigation has been started on the two defendants also along these lines.

The frame of the action which is the subject of the lawsuit has been outlined by explaining the statement of reasons of the case in the context of the findings against the defendants, which have obtained before and after the investigation and which can be seen in the file, the general explanation in the introductory section and in the section on illegal party activities of the indictment.

Search for the other defendants, who have been confirmed in the statements of the defendants NABI YAGCI and A.NIHAT SARGIN [at the police] and whose activities in Turkey are atold to be continuing, has begun and, [with regard to] their whereabouts, an impression has been confirmed, from the defendants whose statements have been obtained by the Security Authorities, that some of them are now trying to carry on the illegal activities in some associations that are legal establishments.

It is observed that, as for today, the activities of the other defendants, whose names are mentioned in the indictment and who have been arrested in Turkey, are within the illegal UCPT programme.

We observe the common idea of the Programmes of illegal CPT and WPT in the programme of UCPT, which the defendants NABI YAGCI and A.NIHAT SARGIN planned to establish abroad and which is in a united situation.

## 2) THE LEGAL AND PENAL SITUATION OF THE DEFENDANTS IN THE CASE:

In our case the subject consists of three illegal parties, the founders of these parties and [their] results as well as members.

It is felt, observed and known that illegal CPT has been in action since 1919, illegal WPT since 1980 [and] UCPT, which is planned to be established, since 1986.

In respect of the fact that investigation has been carried out with regard to the offences stated in our indictment about;

Defendant NABI YAGCI, who is the General Secretary of CPT and who carries in this party the definition of "who lead and administer or guide along these lines" this party, as indicated in the 1st paragraph of the article 141 of the TPC,

Defendant A.NIHAT SARGIN, who is the General secretary of WPT and who carries in this party the definition of "who lead and administer or guide along these lines" this party, as indicated in the 1st paragraph of the article 141 of the TPC,

The defendants who are CPT members in Turkey and against whom a suit of public law has been launched with this indictment,

NABI YAGCI and A.NIHAT SARGIN, who are seen in the ranks of the founders of illegal UCPT and who are assumed to be of the opinion for the unification of illegal CPT and illegal WPT, and who carry the definition of "who take steps to establish in any condition and under any name" and "who lead and administer several of this kind of leagues", as indicated in the 1st paragraph of the article 141 of the TPC,

Among the mentioned illegal parties,

It is deemed useful to explain the situation in general once again, before stating the legal and penal situation of these persons.

It is seen in the definitions of the article of the TPC,

"Who take steps to establish or who establish or who guide along these lines, in any condition or under any name, leagues that are aimed at establishing domination of one social class over the other social classes or eliminating a social class or overthrowing any one of the basic economic or social orders established in the country",

"Who lead and administer several or all of this kind of leagues",

"Who takes steps to establish or who establish or who regulate or lead and administer the activities of or who guide along these lines, in any condition or under any name, leagues that pursue the aim to wholly abolish the political and legal orders of the state",

[These definitions] reflect for us the image of NABI YAGCI and A.NIHAT SARGIN among the defendants.

The said defendants have also committed the act indicated in the article 140 of the TPC and thus manifested also their activities inside and outside the party.

When all the articles of the TPC, which are pointed out in the indictment and which contain the request of punishment for the defendants, are put together, it is observed that their moves are not at all pleasant or useful things for the State of the Republic of Turkey.

It is not necessary to also look for publicity in praising communism.

The situation emerges where one should agree that the act of partitioning Turkey and thereby of partitionism has been committed by accepting the existence of a Kurdish People apart from the Turkish People in Turkey. For these their acts, again as can be seen in the indictment, the existence of acts in the 3rd paragraph of the article 142 and 141/4 of the TPC should be accepted.

It should be considered and accepted that the aim of these illegal parties is,

"establishing domination of a social class over the other social classes, abolishing the economic, social orders established in the country".

The activities carried out by the defendants for the realization of this aim have been very clearly pointed out in the indictment.

It is a fact that there is no possibility of looking for the formalities that are required to join a legal party for those who join and work for these illegal parties, the ideas, aims and activities of which are very openly evident, [or] confirming and examining the membership registration books and forms. Nor is it necessary.

However, the moves of the defendants take shape here in the form of "taking steps to", furthermore, "as indicated" in their statements [at the police].

The parties at issue have selected and regarded the worker and the peasant especially the worker as the fundamental class for themselves.

These parties are in the business of overthrowing the constitutional order in Turkey, establishing in its place a Marxist-Leninist order and winning supporters for this job.

It should be accepted that, as explained, none of the defendants are innocent persons.

The idea is to establish a Marxist-Leninist order. The methods of work and strategies in their programmes, too, is to influence, mostly through publications, and action.

Before relating the acts and moves, which are the subject of the indictment in general and included in the rules of punishment, to the relevant articles, we can list what might constitute the acts and moves that are wished to be protected in the state order and consequently [those] that are opposed to this protection in these articles, as the following.

In essence, the state has seen the need to protect "the basic legal, political, social or economic orders of the State", [and] has drawn its borderlines in the constitution regulated for this [purpose] and in the Turkish Penal Code connected with this.

This borderline is taking steps to establish or establishing or regulating or leading and administering the activities of or guiding along these lines, leagues, in our case parties, "aimed at establishing domination of a social class over the other social classes or eliminating a social class or overthrowing any one of the basic economic or social orders established in the country".

When speaking of social order; "the existence or survival of a society or the rules which secure [and] safeguard these, additionally the basics and procedures which regulate the relationship between the owners of capital and labour" should be understood.

Communism is a system of thought which wants to establish group domination in the society or to eliminate a [social] group. In communism, the aim is to overthrow the economic and social orders of the society and in its place to establish an economic and social order that suits it thought.

Before the law, everyone; "Regardless of language, race, colour, sex, political opinion, philosophical belief, religion, sect and other differences is equal". The mentality that bans this and that aims at establishing a state administration within the Marxist-Leninist idea in our subject is not valid.

A move against this rule of the constitution has been subjected to legal sanction with penalties which are pointed out in the relevant penal code connected with the Constitution.

Another way of struggle of the Turkish Society against the systems of thought like communism is its placing penal sanction against attempts to overthrow the established orders and in their place to establish an order alien to its structure.

Communism wants to overthrow the economic and social orders of the society. In our times the scientific thought which wants to come to power in a democratic way



has chosen this way as a means. In the end the basic idea is again to realize its own way of conduct in order to reach its aim. It is seen in the [relevant] article of the penal code that there is no element of violence for this. From this point of view, the general secretaries of the said parties that are the subject of the indictment stress this point over and over.

In the Constitution of the Republic of Turkey, the First Section has determined the form of the state in the main, the features of the Republic which is the form of the state, the main aims and duties of the state, the authority legislation, execution and jurisdiction, [and] equality before the law, and has openly indicated the binding and overriding character of the Constitution. No group or society is given superiority here. Furthermore, in the Fourth Section it has shown the political rights and duties, [and] listed here how the political parties are to be set up, admission to and withdrawal from the parties, [and] the basics to be abided by the parties.

How a political party is to be set up and which basics it is to be bound with in the State of the Republic of Turkey have been tied to rules in the Law No. 2820 on Political Parties. The 3rd article of this law has recommended that the political parties be set up according to the Constitution and the laws, that they determine their ideas in their programmes accordingly, also that they be organisations which pursue the aim of helping the country reach the level of contemporary civilization within the order of the State and society and which carry out activities throughout the country, [and] in the end, that they have this kind of a juristic person.

The 4th article of this law has determined that the political parties are indispensable elements of the political life and that they are to be loyal to the Principles and reforms of Ataturk, [and] has also ruled that the setting up of Political Parties, election of bodies, their functioning, activity and decisions be in accordance with the basics of democracy as indicated in the Constitution.

The basics of democracy the qualities of which have been stated in the Constitution, [and] the qualities of the Republic which is the form of the State [as indicated] in the second article of the Constitution have been defined as,

"The Republic of Turkey is a democratic, secular and social state of law which is in the understanding of tranquility of the society, national solidarity and justice, respectful of human rights, loyal to Ataturkist Nationalism and based on the fundamental principles stated in the preface."

This article also emphasizes the building of a state under the name of the Republic of Turkey and that this State and its government is a democratic State which rejects any type of sultanate, [and] forms of personal or group domination.

In the preface section of the Constitution,  
a concept of State has been established

"in the direction of Nationalist understanding stated by the founder of the Republic of Turkey, the immortal leader and an unequalled hero, Ataturk, and his reforms and principles"

In this conception, as known, Nationalism which is one of the Principles of Ataturk;

Is the principle of continuing and raising their existence as a nation by people who have perceived the same manners, who carry the same banner, who have the same traditions and history and who have united in the direction of the same national goal"

As we regard the extremist trends among the enemies of Turkish Nationalism, "There is distinction between communism and our national, social and economic order. Communism regards Turkish Nationalism as the greatest obstacle with regard to its own aims, i.e. its view and understanding of expansion and world domination"

Furthermore, fascism, too, just as Communism, is an enemy of Turkish Nationalism.

In order to clarify the Turkish Nationalism, the foundations of which were drawn by Ataturk, we deem it useful to remind his following words.

"Fundamentally, we see the foundations of national existence in the national consciousness and national unity"

"We are straight nationalists, Turkish nationalists. The base of the Republic is the Turkish community. The more the members of this society are full of Turkish culture, the stronger the Republic based on that community."

"I am also an enemy any nation who wants to enslave my nation until it gives up this its desire."

"When we say National Policy, we mean this; protecting our own existence by relying above all on our own power within our national frontiers, to work for genuine happiness and prosperity of the country, [and] not to cause harm to the nation, detaining it in pursuit of haphazard, extreme desires. To expect from the civilized world civilized, humane things and mutual friendship."

"In the Republic of Turkey, every citizen who accepts the Turkish ideal, whichever religion or sect he might belong to, is a Turk."

"Turkish Nation is a high and honoured body of the family of humankind. In this respect, she loves the entire humankind, [and] does not nourish or inspire enmity against other nations as long as her national interests are not harmed. Turkish Nationalism, while marching in harmony with all other contemporary nations, regards the particular character of the Turkish society and its independent identity on its own as the basic. for this reason it does not want the entry and spread of unnational trends in the country."

Furthermore, according to the principle of Populism there is no class-formation in Turkish society. Within the principle of equality, "civil servant, soldier, tradesman, worker and other vocational groups" are one, intermingled and integral in the Turkish society. The living society of the nation is the Turkish People. According to Ataturk the people is a classless and privilege-free community which constitute the human factor of the State. Everything is for the people.

Against this understanding, as the basic view of the party, which is loyal to a scientific understanding according to the Marxist-Leninist point of view in the programme [of the] party which the defendants planned to set up in Turkey and in their own opinion, is therefore communism, this system attaches importance to class consciousness and class interests. It implies conflict among the classes. According to it everything is for the working class. The aim is making the working class dominant over all the sections of society. In this respect how much the reforms and principles of Ataturk and thereby the Ataturkist understanding is opposed to communism is clearly obvious.

Communism is a social problem. The implementation of communism in our [country] is categorically unsuitable for the situation of our country, its social conditions, the strength of its religious and national traditions, [and] furthermore, the virtue of our nation.

In this respect, the party programmes, the views set forth and the actions assumed by the persons who set up this party, which are the subject of the case, have not been accepted in our Constitution and even, while being rejected, have also been put under legal sanction.

When we look into the views of Ataturk, we see that, in principle, the words "Unconditional independence", "National Unity", "Peace in the country, peace in the world" are taken up and that [these] are also accepted by our nation.

It is not possible to explain Ataturkism with any foreign political trend or ideology. In general, the principles are a statement and an image of Turkish Nation's own thoughts, [and] behaviour.

It is observed that it is not in line with the laws within the relevant articles of the existing Constitution of the Republic of Turkey and the appropriate Law on Political Parties to form and lead as a party a form of State and administration based on Marxist-Leninist order which we have tried to explain from above, [and] that this view has thus been explained and its borderlines have been drawn from the judicial point of view by the decision of the Constitutional Court dated 27.11.1980, founded 1979/31 [and] numbered 1980/59.

If the mentioned decision of the Constitutional Court and the established decisions of the Supreme Court of Appeal and Supreme Military Court of Appeal are examined, it will be seen that the views in this indictment are confirmed from the judicial point of view.

In this respect, it should be accepted that the legal positions of the defendants on account of the suit of public law launched on them can crystallized in this way.

It is necessary to study the acts and moves of the defendant NABI YAGCI, who has assumed and is still holding the function of CPT General Secretary, and the defendant A.NIHAT SARGIN, who has assumed and is still holding the function of WPT General Secretary, and who are [both] leaders of the illegal CPT and WPT and their merger UCPT, [in the context of] the articles 158, 159, 140, 141, 142 and



312 of the TPC as exists in the archives and stated in the paragraphs below, [and] as for the other defendants, their actions in relation to that they are members of CPT and UCPT and have even assumed responsible functions [should be studied in the context of] relevant paragraphs of the articles 141, 142 and 312 of the TPC.

## THE EVIDENCE

*[ This section, which is 172 pages long and thus makes up 74 per cent of the indictment, contains a brief summary of the history of the CPT and the WPT, an assessment of the constitutions, programmes and organisational structures of the two parties, the duties of Nihat Sargin and Haydar Kutlu in their respective parties, and for the most part, a great number of quotations from the publications of the two parties. Below are some excerpts which further highlight the prosecutor's understanding of the character of these parties.]*

The CPT has applied various tactics, which vary according to time and circumstances, with a view to implementing the strategy it has adopted, in order to reach its aim. These tactics in general consist of propaganda activities, mass campaigns, [and] activities to form a [united] front and realize unity of action which exclude armed action. [...]

THE COMMUNIST PARTY OF TURKEY, just as it carries out its organisational activities by means of its covert, front organisations, also continues its activities in the form of illegal organisational activities explained above. [...]

It has been understood with material evidence that the CPT has started and continued the campaigns [for] the abolition of the articles 141 [and] 142 of the Turkish Penal Code, Freedom to the CPT, No to the Neutron Bomb, Lifting of the Martial Law, No to the Constitution, in opposition to the draft prepared before the 1982 Constitutional Referendum, and at the same time, that the CPT has fulfilled an organising role on the issue which is called in the public opinion as the intellectuals' petition which was prepared under the heading observations and demands with regard to democratic order in Turkey with 1256 signatures [and] given to the President and the Speaker of the [National] Assembly. [...]

It has been understood the CPT continues its relations with the pro-Soviet communist parties in Western and Eastern countries, communist front establishments, [and] organisations and institutions which share the same view, that from these relations it drives benefit in the form of material [and] spiritual support, solidarity meetings [and] mutual visits, [and] that, alongside the Communist Party of the Soviet Union, the Communist Parties of Bulgaria, East Germany, Federal Germany, France and Denmark provide the CPT with material assistance. [...]

The CPT, as required by the strategy it has adopted, supports any kind of action and activity carried out against the present administration. Especially, it gives significant weight to sensational propaganda activities.

It is known and observed that the CPT continues its intense propaganda work against the present administration by means of protest campaigns, rallies and demonstrations that the CPT organizes both in the country and abroad on issues such as declaration of general political amnesty, ending of prosecutions, abolition of the death penalty, restoration of the rights of those who were stripped of Turkish nationality and recognition of their right to return to the country, lifting of the articles 141 and 142 of the Turkish Penal Code and the law on State Security Courts, State of Emergency and the like, ending of state control on trade unions and associations, [and] recognition of the the right to strike for all working people in Turkey.

It has been observed that the CPT uses in its own name any kind of event against the present order, for example in the protest activities about the headscarf issue by the National View Organisation in Europe which aims to establish [Islamic fundamentalist] Sharia order in Turkey; it has been observed that the CPT openly gave support to the National View Organisation in Europe by means of [its] radio [station] and press, and that the Abroad supplement of Atilim journal dated 1st March 1987, which is in the file, contains statements that FIDEF, which is a CPT establishment abroad and the [above-mentioned] NVOE made unity of action.

It has been understood with the evidence in the file that the Communist Party of Turkey passes its organisational directives and propaganda messages onto the party cadres and through these cadres onto the sections of [society] which they see fit, by means of the [radio stations] the voice of the CPT and Our Radio, [and] periodicals like Atilim, Sol Birlik, Yeni Cag, Yol ve Amac, Isci'nin Alinteri, Cagdas and Gorus. [...]

As will be seen from all the statements above, the Communist Party of Turkey, that it is a revolutionist communist party that aims to establish the dictatorship of the Working class based on Marxist-Leninist foundation, is observed. [...]

It has been confirmed that suits of public law were launched against the leaders of the WPT at Istanbul Martial Law Court for their offence of transforming a legally constituted party into a Marxist-Leninist and partitionist, illegal league [and thus] for opposing the article 141 and 142 of the TPC and, according to the decision of the Istanbul Martial Law Command Military Court Number 2, dated 26th November 1984 and founded 1982/33, decision no.1984/14, which has also been passed and finalized by the Supreme Military Court of Appeal and which is in the file; that it has been registered that the Workers' Party of Turkey acted as a Marxist-Leninist and partitionist league between the dates 30th April 1975 and 12th April 1980 when it continued its activity legally. [...]

It has been observed with the vidence in the file that [the WPT] is a league inclined to establish the domination of the working class over the other classes in Turkey and that the sentences passed according to the articles 141 and 142 of the TPC on about 42 people among the party leaders who transformed the party into an illegal league, have been finalized upon ratification by the Supreme Military Court of Appeal and that the Workers' Party of Turkey is a communist organisation. [...]

## CONCLUSION AND REQUEST

### STATEMENT OF THE OFFENCES AND THE ARTICLES OF THE LAW RELATED TO THESE OFFENCES ON EACH DEFENDANT

As examined and written in the indictment in general,

It is observed and understood that,

THE AIM AND ACTIVITIES OF ILLEGAL CPT AND WPT;

Is to get the Constitutional order of the State of the Republic of Turkey, which is;

"The absolute superiority of the will of the nation, that the sovereignty is vested unconditionally in the Turkish Nation and no person or institution authorized to exercise this in the name of the Nation is to surpass the free democracy indicated in our Constitution and the order of law determined by the requirements of this",

"That no idea or consideration can find protection against the Turkish National interests, the foundation of the indivisibility of Turkish existence from its State and country, the history and spiritual values of the Turks [and] Atatürkist Nationalism, principles and reforms and civilizationism and that, as required by the principle of secularism, the holy religious feelings cannot be definitely involved in the state affairs and politics",

"That National culture, civilization and law order cannot be changed by using, according to the requirements of equality and social justice, the fundamental rights and liberties in the Constitution",

"to transform at any rate to a form of proletarian administration based on the working class and, as a result, to establish the domination of a social class over the other social classes and to eliminate the other social classes in Turkey and thereby, totally overthrowing the economic and fundamental orders established in the country, to replace it with a Marxist-Leninist"

based communist order.

It has been confirmed that,

The defendants NABI Yagci (Haydar KUTLU) and A. Nihat SARGIN have developed their activities within these two illegal party programmes and,

"Have circulated in foreign countries news, reports about the internal situation of the State, which are unfounded and exaggerated and suiting and based on their own purposes, in a way that will impair the prestige and influence of the State of the Republic of Turkey and consequently have committed acts that might harm the national interests"

Mostly in their journals Atilim and Cark-Basak [and] in their pamphlets and leaflets, which they published abroad and secured their importation to and circulation in the country as well,

Just as it is observed in the mentioned publications that the defendant Nabi YAGCI and A. Nihat SARGIN are leaders of these illegal parties, it is understood



that they have confirmed this situation also in their statements which are in the archives.

Furthermore, defendant Nabi YAGCI and defendant A. Nihat SARGIN, with the mentioned journals, leaflets and pamphlets, separately, at all times and forms.

"These matters have been individually emphasized and indicated while stating the offences of the accused."

It has been observed and witnessed that,

They have made and published speeches which always insulted the State of the Republic of Turkey in the action the borderline of which is drawn in article 140 of the TPC, [and] the Government of the Republic of Turkey in the persons of Esteemed President of the Republic of Turkey and the Esteemed Prime Minister [as referred to] in articles 158 [and] 159 of the TPC,

Defendant Nabi YAGCI and defendant A. Nihat SARGIN, in their mentioned journals, leaflets and pamphlets and also in their published speeches, have committed the action outlined in paragraphs 1 and 3 of article 142 of TPC, [and] likewise have realized the act in paragraphs 2 and 3 of article 312 of TPC.

The accused Nabi YAGCI and the accused A. Nihat SARGIN may say in their defence [statement];

"We carried out these actions for the realization of our own political thought and we tried to take these actions in the medium of an illegal party the name of which is UCPT and uniting both two illegal parties, in the world today when one speaks of democracy the basic there is regarding also these systems inside the state order and accepting its carrying out activity as a legal party.

It should also be accepted that an opinion other than this will be in contemporary."

It is evident that to let exist or to accept the existence of the dictatorship of the proletariat based on Marxist-Leninist order, which is assumed to be realized in such a defence [statement], to consider [it] inside the Constitution of the State of the Republic of Turkey and the law order based on this, is impossible and unacceptable.

The State of the Republic of Turkey, as determined in the Constitution, is a democratic, secular and social state of law. For this reason, then, an order which contains the view of the defendant runs at any rate counter to our state order outlined in our Constitution. It is out of place to consider inside the democratic state order the state order advocated by the defendant Nabi YAGCI and the defendant A. Nihat SARGIN.

For the democratic state order and the state order based on Marxist-Leninist thought are two different systems, they consist in thoughts that are opposed to each other. Communist state order based on Marxist-Leninist thought has no place in our Constitution.

Furthermore, in other words; just as there is no place for the democratic state order within the communist state order based on Marxist-Leninist thought, there is no place for the communist state order based on Marxist-Leninist thought within the democratic state order.

In the content of these findings and considerations, the moves of defendant Nabi YAGCI and defendant A. Nihat SARGIN require punishment as emphasized individually in the indictment.

It is required, apart from the two defendants, the other defendants whose names are mentioned in the indictment, with the exception of Rasim Oz among the defendants, are members of the illegal CPT and the defendant Rasim Oz, on account of his action indicated in the indictment, be punished according to the relevant article in the Turkish Penal Code.

In this respect, for the adoption of the decision on the punishment of the defendants;

1 ) Nabi YAGCI (Haydar Kutlu) according to articles 140 (17 times), 141/1, 142/1-6 (6 times), 142/3-6 (15 times), 158/2-3 (5 times), 159/1 (6 times), 312/2-3 (4 times), 69, 71, 74, 31, 33, [and] 40 of TPC, which are relevant to his action,

2 ) A. Nihat SARGIN, according to the articles 140 (19 times), 141/1, 142/1-6 (7 times), 142/3-6 (13 times), 158/2-3 (5 times), 159/1 (8 times), 312/2-3 (4 times), 69, 71, 74, 31, 33, [and] 40 of TPC, which are relevant to his action,

3 ) Defendant IBRAHIM CIHAN SENOGUZ,

4 ) Defendant NACI GURSUN,

5 ) Defendant ALI DEMIRCI,

6 ) Defendant MUSTAFA ERDOGAN,

7 ) Defendant CELAL OZDOGAN,

8 ) Defendant MEHMET SALMANOGLU,

9 ) Defendant MUSA KASA,

10) Defendant EKREM KANDEMIR,

11 ) Defendant MEHMET ATILLA COSKUN,

12 ) Defendant MEHMET ALCINKAYA,

13 ) Defendant ALI OSMAN SEN,

14 ) Defendant AHMET CEVDET ULUDAG,

15 ) Defendant SEFIKA ULUDAG (Ozkesici)

Individually according to the articles 141/5, 31, [and] 33 of TPC, which are relevant to their actions.

Also, MUSTAFA ERDOGAN, CELAL OZDOGAN, MUSA KASA, [AND] EKREM KANDEMIR among the defendants, according to the article 40 of the TPC,

16 ) Defendant RASIM OZ, according to article 312/2, relevant to his action,

The documents compiled with a request and claim for their hearings to be held at Ankara State Security Court according to the articles 9 and 20 of the LAW no. 2854 ON THE FOUNDING AND JUDICIAL PROCEDURES OF THE STATE SECURITY COURTS, and

[ The indictment ends here and is followed by a one-page Section II under the heading "Decision on lack of grounds for prosecution", whereby a person named Sami Atac is decided to be excluded from this court case. ]

## APPENDIX: ARTICLES 141 AND 142 OF THE TURKISH PENAL CODE

### ARTICLE 141:

1. Whoever attempts to establish or establishes, or arranges or conducts and administers the activities of, associations, in any way and under any name, or furnishes guidance in these respects, for the purpose of establishing domination of one social class over another social class or exterminating a certain social class or overthrowing any of the established basic economic or social orders of the country, shall be punished by heavy imprisonment for eight to fifteen years.

Whoever conducts and administers some or all of such associations shall be punished by death;

2. whoever attempts to establish or establishes or arranges or conducts and administers the activities of, associations, in any way and under any name, or furnishes guidance in these respects, for the purpose of totally exterminating the political and legal orders of the State, shall be punished by heavy imprisonment for eight to fifteen years;

3. whoever attempts to establish or establishes or arranges or conducts and administers the activities of, associations, or furnishes guidance in these respects, for the purpose, contrary to republicanism and the principles of democracy, of governing the State by one person or by a group of persons, shall be punished by heavy imprisonment for eight to fifteen years;

4. whoever attempts to establish or establishes or arranges or conducts and administers the activities of, associations, or furnishes guidance in these respects, for the purpose of abolishing partially or entirely because of race, the public rights provided by the constitution, or to exterminate or weaken nationalist feelings, shall be punished by heavy imprisonment for eight to fifteen years (formerly one to three years);

5. whoever joins any association indicated above shall be punished by heavy imprisonment for five to twelve years;

6. the punishment to be imposed on persons who commit the foregoing acts within government offices, municipalities, or within economic enterprises with its capital belonging partially or entirely to the State, trade unions, workers' enterprises, schools or institutions of higher education as civil servants or employees, shall be increased by one third;

7. if any of the perpetrators of the crimes described in this Article informs the respective authorities of the crime and identity of other perpetrators prior to the initiation of the final investigation and if his information is true, heavy imprisonment for not less than ten years instead of death shall be adjudged; and heavy imprisonment and prison sentences shall be reduced by one fourth, depending upon situation, conditions and the event;

8. the associations mentioned in this Article are defined as two or more persons uniting for the same purpose.



ARTICLE 142:

1. Whoever makes propaganda for the purpose of establishing the domination of one social class over other social classes, exterminating any of the social classes, overthrowing any of the established basic economic or social orders of the country, or totally exterminating the political or legal order of the State, shall be punished by heavy imprisonment for five to ten years;
2. whoever makes propaganda in any manner for the governing of the State, contrary to republicanism or to the principles of democracy, by one person or by a group of persons, shall be punished by the same punishment;
3. whoever makes propaganda in order to abolish partially or entirely public rights, because of race, or to exterminate or weaken nationalist feelings, shall be punished by heavy imprisonment for five to ten years (formerly one to three years);
4. whoever speaks favourably of the acts indicated in the foregoing paragraphs shall be punished by heavy imprisonment for two to five years;
5. the punishment for persons committing the acts described in the foregoing paragraphs, in those organizations or among persons specified in paragraph 6 of Article 141, shall be increased by one third;
6. where the acts in the foregoing paragraphs are committed by means of publication, the punishment to be imposed shall be increased by one half;
7. if any of the participants of the crimes described in this Article informs the respective authorities of the crime and identity of other perpetrators prior to the initiation of the final investigation and if his information is true, heavy imprisonment and imprisonment periods shall be reduced by not more than one fourth, depending on situation, conditions and the event.

**TÜRKİYE SOSYAL TARİH ARAŞTIRMA VAKFI**  
**TÜSTAV**

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