

**TO THE CHIEF JUSTICE OF (14<sup>TH</sup>) HIGH CRIMINAL COURT OF ISTANBUL**

**File No: 2007/428**

**ATTENDEES :**

- 1) Rahil Dink- Domicile address is included in the file
- 2) Hasrof Dink- Domicile address is included in the file
- 3) Delal Dink- Domicile address is included in the file
- 4) Arat Dink- Domicile address is included in the file
- 5) Sera Dink- Domicile address is included in the file

**ATTORNEYS :**

The names, surnames and signatures of attorneys are given below

**DEFENDANTS :**

- 1) ERHAN TUNCEL – Under arrest
- 2) YASİN HAYAL – Under arrest
- 3) OGÜN SAMAST – Under arrest (pending trial at the 2<sup>nd</sup> Juvenile High Criminal Court of Istanbul)
- 4) ZEYNEL ABİDİN YAVUZ
- 5) ERSİN YOLCU
- 6) AHMET İSKENDER
- 7) TUNCAY UZUNDAL
- 8) SALİH HACISALİHOĞLU
- 9) VEYSEL TOPRAK
- 10) OSMAN ALPAY
- 11) İRFAN ÖZKAN
- 12) MUSTAFA ÖZTÜRK
- 13) ŞENOL AKDUMAN
- 14) NUMAN ŞİŞMAN
- 15) ALPER ESİRGEMEZ
- 16) ERBİL SUSAMAN
- 17) YAŞAR CİHAN
- 18) HALİS EGEMEN
- 19) OSMAN HAYAL
- 20) COŞKUN İÇCI

**PLACE AND DATE OF THE CRIME :**

**Istanbul and Trabzon, 19.01.2007 and the period**

**before**

## OUR OPINION ON THE MERITS OF THE CASE

- I -

### INTRODUCTION

The trial process ongoing for more than four years as well as the various sections of the opinion submitted by the prosecution have undeniably confirmed that our allegation - “the defendants of this case are only the Trabzon leg of the large and professional organization that committed the murder of Hrant Dink” - is not merely an intangible assumption but it points out to the truth.

The process has clearly revealed the roles and responsibilities of all governmental/political actors, from the General Staff to the judicial authorities, from government spokespersons to law enforcement authorities and from the media to paramilitary forces, in the murder of Hrant Dink, in the failure to prevent the murder, and in the failure to identify the actual perpetrators.

The striking harmony between the abovementioned agencies and mechanisms in the preparation and commission of the murder of Dink, in concealing and tampering with the evidence, in covering up the truth, and in drawing the limits and framework of the judicial procedures have all revealed the fact that the process was managed from a single focal point and that there exists a powerful apparatus and mentality which legitimizes the murder and normalizes impunity

However, these undeniable findings, revealed throughout the process, have not been made the subject of an investigation despite the corresponding judgment of the ECHR, the various inquiries conducted by different agencies of the state including the Prime Ministry Inspection Board and the TGNA Parliamentary Committee on Human Rights, and despite all the efforts made by the intervening party and the public pressure.

Our opinion on the case was prepared with the purpose of exposing the characteristics of the apparatus mentioned above and how it works, how it is reproduced in similar cases as in this one as well as exposing the roles, functions and responsibilities of the defendants of this case in the murder.

The text presented here consists of the following chapters: Introduction, Who Was Hrant Dink and Why Was He Killed, the Preliminary Phase Leading to the Murder, the Role and Function of the Media in the Process Leading to the Murder, the Role and Function of the Judiciary in the Process Leading to the Murder, Other Developments in the Process Leading to the Murder, The Investigation Phase, The Prosecution Phase, Law no 4483 on ‘Immunity’, the Judgment of the European Court of Human Rights, Issues Related to the Judiciary and the Trial, and Conclusion. Our assessments, especially those presented in the Conclusion section, did benefit from the annexed articles of Prof. Dr. Selim Deringil, Prof. Dr. Cemil Koçak, Prof. Dr. Yasemin İnceoğlu, Dr. Ceren Sözeri and Dr. Ayşe Hür’, and the articles and books of Prof. Dr. Baskın Oran, Prof. Dr. Taner Akçam and Sait Çetinoğlu.

## WHO WAS HRANT DINK AND WHY WAS HE KILLED

Hrant Dink was born in Malatya on September 15, 1954. He moved to Istanbul with his family when he was five years old. After his mother and father were separated, Hrant Dink and his two brothers went to live at the Gedikpasa Armenian Protestant Church Nursery School. The three brothers all attended Incirdibi Primary school, which was run by the same church, in winter time and lived at the Tuzla Armenian Children's Camp of the school during their summers. Hrant Dink graduated from Bezciyan junior high school and studied at the Surp Hac Tibrevank boarding school.

While studying zoology at Istanbul University's Faculty of Science, he met and later on married Rakel Yagbasan, originally from the Armenian Varto tribe from Silopi in the Southeast of Turkey. In the same days, he started working for Şinork Kalustyan, the Patriarch of Armenians in Turkey. Having received his graduate degree from the zoology department, Dink started studying philosophy at Istanbul University.

Concurrently, he was influenced by the left movement unfolding in these days in Turkey. He started to do politics in the lines of Turkey Communist Party/Marxist-Leninist. He was worried that his political engagement could be linked to his Armenian identity and harm the Armenian community living in Turkey, so he changed his name to the Turkish name "Firat" through a court verdict.

Within this period Hrant Dink and his wife Rakel took over the administration of the Tuzla Childrens Camp. When the Tuzla Camp was confiscated by the state, they struggled against this injustice together. In this period, Dink was taken into custody and arrested three times due to his political views and on various grounds.

In 1980-1990 Dink ran a bookstore with his brothers. In 1990s, he also started writing for the Armenian daily newspaper, "Marmara" under the pseudonym "Çutak" [violin in Armenian] where he wrote reviews of books about Armenian history printed in Turkey which means. In this period he made himself known thanks to the corrections he was sending to newspapers about the false news. He told the Armenian Patriarchate that *"the Armenian community is living so introvert, if we better explain ourselves then prejudices will disappear"* and took the lead in the foundation of a newspaper in Turkish-Armenian languages.

He assumed the roles of the founder, editor-in-chief and chief columnist for Agos Newspaper which had its first issue circulated on April 5th 1996.

Apart from Agos, he also wrote columns for Yeni Yüzyıl, Zaman and Birgün daily newspapers. In his articles, he always highlighted that all ethnic communities in Turkey should peacefully live together and advocated that the Armenian community should have a central civic institution apart from the patriarchate. As regards the events of 1915, he called the Armenian Diaspora to take up a softer stance in their struggle which does not include the word genocide. Having attended many conferences in America, Australia, Europe and Armenia, Hrant Dink became known with the new discourse he devised while debating and questioning process on "Armenian Identity and Armenian History".

Hrant and Rakel Dink had three children.

Dink was the editor-in-chief and the columnist of the AGOS Newspaper.

He was making lots of efforts to turn this newspapers into one of the democratic and dissident voices of Turkey and in particular to share the injustice faced by the Armenian community with the public at large.

One of the main objectives of the newspaper has been to contribute to the creation of a dialogue climate between Turks and Armenians, between Turkey and Armenia.

Dink was also a participant and a member to various democratic platforms and civil society organisations.

If we are to seek an answer to the question “Who was Hrant Dink?” from his own articles, then we can make a small compilation of his following articles:

**In his article “This is how I feel” (“Ruh Halimdir”) of 5 June 1998, Hrant Dink wrote as follows;**

### **This is how I feel**

*I am a citizen of Turkey... I am an Armenian... And I am an Anatolian right down to my bones. Not for a single day have I contemplated abandoning my country and building my future in the ‘readymade heaven of freedoms’ known as the West, or latching on like a leech to democracies other people have created by paying heavy dues.*

*My main concern has always been to transform my own country into such a heaven of freedoms. When my country cried for Sivas massacres, I cried too. When my people fought against criminal gangs, I fought alongside them. I paired my own fate to my country’s quest for its freedom.*

*As for the rights I can or can’t enjoy, they didn’t come free, I have paid for them, and I continue to do so. But now...*

*I have had enough both of the bogus flattery that always speaks of “Our Armenians”, and the kind of provocation that constantly repeats the phrase “The Traitors Amongst Us”. I am sick and fed up of both the exclusion that forces me to forget that I am a normal or regular citizen, and the embrace that almost suffocates me.*

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*I neither had the chance to take to the streets for April 24 demonstrations, nor could I light a candle in memory of my ancestors. But I neither abandoned them in those days gone by, nor did I allow them to be petrified in the present.*

*I shouldered the mission of “making them a living part of my own life”... To the utmost limits of my powers, I carried them high and kept their memory alive. I struggled relentlessly against those who attempted to prevent me from doing so.*

*It goes without saying that I know the fate my ancestors suffered. Some call it a ‘Massacre’, some ‘Genocide’; some call it ‘Forced Migration’ and others, ‘A Tragedy’.*

*My ancestors, using the Anatolian phrase for it, called it ‘Slaughter’. I choose to call it ‘Devastation’. And I know well that if it wasn’t for these devastations, today my country would be much more habitable and enviable place.*

*This is the reason behind my curse upon those who caused the destruction, and those who acted as pawns*

*of the perpetrators.*

*Yet my curse is aimed at the past.*

*I naturally want to find out about everything that went on in history, but that hate, that despicable, disgraceful thing called hatred... I abandon it in its dark cave in history, and add, "May it stay wherever it is, I do not wish to make its acquaintance."*

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*I feel offended when my past, or my present problems are capitalised on in Europe or America. I sense abuse and rape lurking behind all this kissing. I no longer accept the contemptible arbitration of imperialism that strives to drown my future in my past.*

*Those arbitrators are precisely the dictators who in past centuries pitted slave gladiators against each other in arenas, watched on with great relish as they fought, and eventually gave the thumbs down for the victor to finish off the injured loser.*

*And therefore I do not accept, in this day and age, for neither a parliament nor a state to assume the position of a judge in this matter.*

*The real judge is the people and their conscience. And in my conscience, the conscience of no state authority could ever match the conscience of a people.*

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*My only wish is to talk freely about our shared past with my beloved friends here in Turkey –in the most comprehensive manner, and without extracting animosity from that past.*

*I also sincerely believe that the day will come when all Turks and Armenians will find the way to talk about this shared past amongst themselves. And I am counting the days until the time when there won't be a single topic that Turkey and Armenia can't comfortably discuss, and no difference they cannot put right; that's when I will turn to third parties and say, "Well, all that remains for you is... silence."*

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*The Armenians of the world are preparing to commemorate the 90<sup>th</sup> anniversary of 1915.*

*And so they should... It is their right. And the lines above represent how I feel... For your kind attention.*

**In his article "Shall we have a little talk?" ("Biraz Dertleşsek mi?") of 24 February 2005, he wrote as follows:**

### **Shall we have a little talk?**

*I am one of the Armenians of Turkey; once a prolific people with a four thousand-year history, now reduced to a community of 50-60 thousand.*

*Despite my shortcomings, and even venturing beyond my limits a little, with my articles I attempt to leave behind my tiny 'community pond', and swim the vast 'sea of citizenship of Turkey', and further, into the expanse of the 'ocean of universality'.*

*But I know that in the eyes of many of you I don't exactly succeed in doing that, and appear more to be desperately splashing about within the periphery of my own pond.*

*And again according to many of you, my articles smack too much of being a member of a 'Minority', they are too 'Armenian'.*

*There are probably also some among you who see me as an Armenian nationalist.*

*But I entreat you to try and understand my circumstances.*

*And if you are unable to, allow me to put it to you in a nutshell:*

*You might be accurate in your observation, but you should also accept that it was you, the multitude, that forced us toward and confined us within this pond.*

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*The following maxim has always been imposed upon us:*

*"You are different, but you are the kind of different that is wrong from birth."*

*The mindset that hoped to benefit from deliberately delaying the development of democracy in Turkey has consistently failed to comprehend the wealth that diversity brings. It persisted in seeing it as 'a burden'.*

*"A minority in Turkey today is neither the minority defined by the Treaty of Lausanne, nor the citizen defined by the Constitution of the Republic of Turkey."*

*You may not admire the articles on minorities in the Treaty of Lausanne, and may not want to see any differences of that sort.*

*These may be considered the most fundamental requirements of a democratic society.*

*But when you are trying to release a member of a minority from the limits determined by the Treaty of Lausanne, isn't it necessary to then open up a space for them in your melting pot of 'citizens of equal status'?*

*The sad truth is, neither the Treaty of Lausanne, nor any comparable citizenship rights apply in Turkey.*

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*In democratic countries, living amidst the majority might be quite enjoyable for a member of a minority.*

*Yet in the garden of a country where democracy has failed to take root, to live as a member of a minority is like being a thorn amongst flowers of a single colour, or a weed that must be pulled out and cast over the garden wall.*

*I count myself among those who believe that the experience of living as a member of a minority has its own, unique flavour. If you were to ask us, "What kind of a taste is that?", my answer is as follows:*

*"If you are free and feel secure –a state of existence that we have never tasted- it must be very sweet. But if you are not, it is awfully bitter. And if you are sometimes free and sometimes not, then it is desperately sour –and that is what we most often experience."*

*The taste of being a member of a minority is directly related to the ability of the majority to contribute flavour, rather than people's capacity to appreciate taste.*

*In truth, the problem lies not with the minorities, but with the multitude.*

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*That is why the struggle of those in my position is a struggle that carries on in spite of you, the majority. This is not only the case for me, but also for a Kurd, and for others whose identity has been forced into a corner.*

*And of course, our task under such pressure is not easy.*

*We must both defend our identity, and simultaneously resist becoming prisoners of that identity.*

*It is difficult, but we have no other option, and we will succeed.*

*Yet, if we carried out this struggle not in spite of you, but with your support, with you alongside us, wouldn't it become much easier?*

*If only you would give it some thought, just once! If only you would give it a little thought.*

**In his article “We shall not remain frozen” (“Az Buz Değiliz Biz”) of 22 June 2001, he wrote as follows:**

### **We shall not remain frozen**

*I believe it is quite well-known how much importance we attach to the dialogue between Turkey and Armenia. In fact, it may have reached the extent that some may have grown weary of the issue. But there will be no weariness from our side, because this dialogue promises endless benefits, and I would like to dedicate this column to another of them. But firstly, allow me to briefly reiterate two advantages that we have referred to time and again.*

*The first is the contribution to the democratization process of both countries that this dialogue will make. ‘History’ and ‘the present day’ continue to create constantly multiplying problems that hinder the democratization of both countries. It is imperative that they are overcome, and the resources to do this exist on both sides. One should not imagine that Turkey and Armenia will be able to complete the familiar routine process of democratization without first overcoming their historical and current problems related to each other.*

*The second important benefit is that Turkey serves as Armenia’s window to the West, and Armenia serves as Turkey’s window to the East. If it wants to open up to the West, Armenia has no other option than to open itself up to Turkey; and in the same manner, if it wants to open up to the East, Turkey has no other option than to open itself up to Armenia. Proposed alternatives are merely forced possibilities, and in a way, all amount to wasting a lot of time on long-winded efforts.*

*Let us now go on to a further benefit of dialogue between Turkey and Armenia that we do not often speak about and ask:*

*“What tangible benefit do we stand to gain as the Armenian community of Turkey from the improvement of relationships between the two countries?”*

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*I often liken our situation as a minority in Turkey to a lump of ice that would fit in the palm of my hand, floating in the midst of a vast sea. Indeed, it would seem this is how those who organized the Lausanne*

*Conference must have assessed us; they kept us apart from the water, and set us adrift as a block of ice, abandoning us to our fate.*

*From that point onwards, it seems both those who released us into the waters in that frozen state, and those who accepted us in the waters as such, kept patting us on the back.*

*“You’re alright,” they all said, “You have the right not to melt. Enjoy every bit of your freedom and keep living in this water.”*

*You can also understand this icy state of ours as a closed circuit life-style. Amusingly, we have adopted this way of life, since we have never sought an alternative to living like a block of ice. For us, abandoning our icy condition was always tantamount to melting, being assimilated and perishing. Yet this did not stop us melting...*

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*So, if a dialogue was established between Turkey and Armenia, would we be redeemed from our frozen state?*

*Yes, and how...*

*First of all, we would shake off our fear of melting, and dare to set sail across all the waters of this country, propelled by our own, independent will. The end would then come of those who fooled us thus far into believing that melting would mean disappearance and destruction. The concept of a closed community would be abolished, and in every field, the concept of living in an open society with one’s own identity and colours would develop.*

*And once those channels connecting to the sea that is Armenia are opened, in the thunderous flow of waters released into Turkey, we too will multiply freely.*

*It will truly be a sight to behold, when those channels are opened. You will see how each of the cultural, social, commercial and various other agreements between the two countries will enrich the life of the community, and afford it a new lease of life...*

*And then will be exposed the deceit of our community’s skew-eyed men, who had built a kingdom amongst the blind.*

*In brief, no longer will the community remain frozen; it will multiply in its own waters.*

**In his article “If being a democrat is a form of worship” (“İbadetse eğer demokratlık”) of 21 April 2006, he wrote as follows:**

### **If being a democrat is a form of worship**

*For years I have been writing and talking on the lack of relationship between Turks and Armenians. In every instance I remained an Armenian from Turkey.*

*Whenever I have had occasion to address one of various parties, I have shown particular care to two points.*

*The first is to retain my critical stance towards the party I addressed; and the second, not to confuse one party with another.*

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*Unfortunately, however, the parties I addressed often failed to show the same care towards me. I criticized the Europeans when speaking to Europeans, but Armenians or Turks used my criticism to serve their own interests, and avoided their own responsibilities. I criticized the Turks when speaking to Turks, but then Europeans or Armenians used my criticism to serve their own interests, and tried to cover up their own mistakes. And of course, I criticized the Armenians when speaking to Armenians, but then the Turks in particular made a point of using my criticism to serve their own interests, and rendered it a source of consolation for themselves.*

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*So in brief, I have been vilified a lot, and praised a lot. It was often the same circles that both vilified and praised me. And they did this so much, that they ended up in a daze. So much so that, they began not to know when to praise me, and when to vilify me. I think this has been, and will remain an inevitable handicap for someone in my position. Under the circumstances, however, there is no precaution I can take, apart from being sincere. Even if these position fail to address their criticism to the correct recipient, I will avoid making that mistake... That's about it. But what I really want to write about is April 24. Here we are again in the week of its commemoration.*

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*Once again the Armenian people are confronted with their historical sorrow. Once again they are doing everything in their power to seek and find those who will share their sorrow. There is a good reason for Armenians who live outside Turkey to ask each time we encounter, "What's happening in Turkey, is it true that Turkey will accept the genocide?" and to expect a response full of hope.*

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*Let them hear of the existence of a single Turk who has accepted the truth; even if he is in the farthest corner of the world, they will want to call him over to hear him speak, and they will listen to him with tears rolling from their eyes. The word search fails to describe it adequately; this is almost a religious rite... When they see the existence of a Turk who has shared in their sorrow, you would think that they consider him to be Jesus Christ himself... The Great Redeemer, returned. To cast their eyes on him, to touch him, to pinch him. And to say a prayer. "Tell me dear Lord, is this real, is this Turk that accepts the truth, really a Turk?"*

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*When will the Turkish nation understand this state of mind of the Armenians? When will they feel it? The times we are in unfortunately inform us that as yet, circumstances are such that we cannot respond by saying "soon". But the same question certainly does not deserve the response "never" either. Yes, there is no longer any doubt that we are now living in different times, which we are experiencing*

*through their own unique resistances.*

*On the one hand, there is the new resistance that wants, after long last, to come to terms with history, to face up to the truth and to become democratized; and on the other hand we have the old resistance that harbours an immense fear of this coming to terms and facing up.*

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*However, this much is certain. This worn-out, old resistance will not continue to have luck on its side forever.*

*Today it appears as though they have the mental reflex of society in manacles; but there can be no doubt that the day will come when these chains too will be broken.*

*As Turkey becomes a more democratic country, the more it will see the truth; and the more it sees the truth, the more democratic it will become.*

*And if this wait is a form of worship... which in my consideration, it is; then it does not differentiate between Turk and Armenian.*

*A day will also come when, with our common language we will cry out... a democratic "Amen".*

**In his article "Here, you have my signature..." ("Verdim gitti be") of 11 October 1996, he wrote as follows:**

**Here, you have my signature...**

*When I hear someone mention peace, without a moment of hesitation I'll rush forward, and unreservedly proclaim, "I'm in." But even as I eagerly venture forth, people gather to block my path. Mind your own business, they say. Haven't you noticed, they'll ask, that in the end, they always find a suitable way to sort out people who go around proclaiming, "peace, peace". Remember for instance the Peace Association Trial and the Petition of Intellectuals in the aftermath of the September 12 coup. Don't you think you would be better off just walking away?*

*One hesitates for a second, and that momentary indecision is in fact the greatest weapon of warmongers...*

*And the most serious obstacle in the path of Peace...*

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*Another obstacle is the fact that virtuous concepts have become "dog-eared concepts."*

*This thing they call "tolerance", for instance... We hear it being mentioned so frequently.*

*And the same goes for "peace"... Another concept spent as if it was merely small change.*

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*There are many more such concepts... But do you mind just pausing for a second.*

*There are some people just over there asking for a signature for peace. I can't hold back now. Let me first put my signature down... Don't worry, you can always warn me afterwards.*

*It's not that I do not ask myself, "How can I bring peace with just one signature when there are so many weapons around?" But the old habit doesn't die down easily.  
When wasn't I ready to be a fool for peace, after all?*

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*"We want peace!"*

*Those who want war all speak the same language. Those who want war are powerful. War rises above the despair of those who want peace.*

*The decision to enter this war does not belong to us. But we can decide on Peace.*

*We know war very well: Displaced people, hunger, despair, death.*

*We can dream of the Peace we have forgotten. To dream, that is our greatest strength. The more we dream of it, the more Peace will come to life and begin to breathe. First, the weapons must fall silent. Death must fall silent. Life must begin to speak.*

*We, the ones who still believe in the miracle of life, let us not allow war to come between ourselves and life. Whoever we may be, whatever our beliefs and views may be, we can undersign, together, the same plain, clear demand. As we, the ones who want Peace, stand apart, Peace eludes us. Let us, for once, come together in our millions. May this Peace be our Peace.*

*Those who want Peace, come, let us make peace in the name of Peace. Let us collect a million signatures for Peace. Let us each give a signature for Peace.*

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*Here, you have my signature, then...*

*May the death of war come from my signature, and mine from Peace!*

In another article, Hrant Dink was expressing his thoughts and ideals as follows:

*"Up until today, I have written in line with these overarching principles, principles that I believe to be true. While shouldering my past, I struggled for a democratic country hand in hand with the society of Turkey. I took the ownership, blatantly, of the great pain suffered by people in 1915 beyond any concept, propoganda, thesis. Because in my opinion, looking into history is not something limited with laws and documents, but it is essentially a matter of conscience."*

Hrant Dink, who described himself with these sentences and who strived for peace, democracy, intersocietal dialogue and a world freed from war, violence and racism, was killed on 19 January 2007 with bullets fired to his neck in front of the AGOS Newspaper, as the founder and the Editor-in-Chief of the newspaper. When Hrant Dink was killed, two prosecutors with special powers were appointed to investigate the murder, and a decision of non-disclosure was taken for the entire file in accordance with Article 153 of the Code of Criminal Procedure (CCP).

Pursuant to Articles 160/2 and 161/1 of the Code of Criminal Procedure no.5271, the prosecutors started to investigate the murder through the law enforcement units working under them. Television channels on the day of the murder, and virtually all newspapers on the day after, covered the two

articles written by Hrant Dink a short time before his death. In the articles **'Why was I chosen as a target?' (Neden Hedef Seçildim?)** and **'My Heart's Dovish Disquiet' ('Ruh Halimin Güvercin Tedirginliği')**, Hrant Dink was pointing at the people and agencies who had turned him into a target, how he was being threatened by whom, his concerns and his mood, writing so openly that it was as if he was pointing where one should look for the killer. In these articles, Hrant Dink was saying:

### **Why was I chosen as a target?**

*A foreword before I begin: I have been sentenced to 6 months imprisonment for "insulting Turkishness," a crime I haven't committed. I am now applying to the European Court of Human Rights (ECHR) as a last resort. My lawyers will submit the petition by January 17 and they wanted me to write an account of this period. I decided to share this article, which will be included in the case file, with the public. I do this because the conscience of the people of Turkey is as important to me as the decision of the ECHR, if not more. I probably would have preferred to keep some of the information disclosed in this article, as well as my state of mind, to myself. But since things have come to this point, I guess that sharing everything will be for the best.*

*It is not just me, nor just Armenians, but an entire public that wants to know the answer to this question: "For almost everyone against whom an investigation or legal action was initiated on charges of insulting Turkishness, a technical or a juridical solution was decided on and the cases were dismissed in the first hearings without a conviction. Why then was Hrant Dink convicted and sentenced to 6 months?"*

### **Getting away with it**

*This is neither an incorrect assessment nor an unnecessary question. If you recall, they worked hard to find a way to dismiss the case of Orhan Pamuk before hearings began. Some said that the Minister of Justice had to give permission for the trial, so the Minister was asked about it. The Justice Minister, cornered, railed at Orhan Pamuk on the one hand, and on the other called upon him to say that he hadn't said such a thing. Eventually the first hearing of the "Pamuk case" was held. The vandalism staged during this first hearing disgraced Turkey in the eyes of the world so badly that the case was dismissed before a second hearing was held. Pamuk's article 301 adventure ended with a technical solution. An even lighter solution was found in the Elif Şafak case. Although there was a lot of noise before the case started, it was dismissed in the first hearing, without Elif Şafak having to come to court. Everybody was quite happy with these technical solutions. Even the Prime Minister called Şafak personally to convey his good wishes regarding the dismissal of her case. Similarly, writers and academics who had faced prosecution for the crime of "insulting Turkishness" for writing articles after the Armenian Conference also "got away with it," receiving similar "slaps on the wrists" only.*

### **Unanswered questions**

*Don't think that I am jealous that these cases were resolved so easily. On the contrary, the mere fact that these trials or investigations took place is a very heavy price to pay for the people involved. I am one of those who know and understand best what these friends of mine experienced. My point is to try and find some answers to the question of why similar concern and alarm were not shown in the Hrant Dink case. We saw that these mere "slaps on the wrists" gave the government an opportunity to point to them as examples of Turkish good faith in the eyes of the EU, which is pressing for the repeal of article 301. But the conviction of Hrant Dink was the only case in which the government had no answers for the European Union. There was total silence when this issue was raised. Truly, "Why is*

*it that for almost everyone who was investigated or prosecuted on charges of insulting Turkishness, a legal or technical solution was found so that the cases were closed without any convictions, but not for Hrant Dink? He was sentenced to 6 months for an article in which there was no crime committed.”*

### **The role of my being an Armenian**

*Yes, we all need an answer to this question, especially me. At the end of the day, I am a citizen of this country and I insist on being treated equally with everyone else. I have, of course, faced a lot of negative discrimination for being an Armenian. For instance, when I was doing my short-term military service (8 months) in the Denizli 12th Infantry Regiment, all of my friends were promoted except me. I was a man with two children and normally I shouldn't have cared. What's more, I would be more comfortable than the others, as I would not be assigned night watches or tough duties. But the truth of the matter is, I was deeply affected by this discrimination. I will never ever forget how I hid behind the tin hut and cried for two hours, alone, while everyone else joyously celebrated their promotions with their families following. But the moment which remains a deep a wound in my memory occurred when the field officer called me to his office and tried to comfort me by saying, "Don't worry, if you happen to have any problems, come to me." Obviously being prosecuted under 301 - and getting convicted or acquitted - is not the same as a promotion. Hence, I am not, of course, saying anything like, "If they were not convicted, I shouldn't have been either," or above all, "If I am convicted, then they should have been also." But I have to admit that as someone who has matured by experiencing numerous instances of discrimination, my mind can't stop asking this question: "Has my being an Armenian played a role in this outcome?"*

### **Things I know and things I sense**

*Of course when I put the things I know and the things I sense together, I do have an answer to this question. This is how it can be summed up: certain people decided and said, "This Hrant Dink man has gone too far. He needs to learn a lesson," and pushed the button. I know this is a claim which puts myself and my Armenian identity at centre stage. You may argue that I exaggerate. But nevertheless, this is my perception of it. The facts I have and my life experiences leave me no other explanation. My task now is to tell you everything I have lived and sensed. Then, you can decide for yourself.*

### **Showing the stick**

*First, let me clarify what "Hrant Dink is becoming too much" means. Dink was in the spotlight for a long time and disturbed many people. He had been occasionally overstepping the line since 1996, the year he started publishing AGOS, by voicing the problems of, and demanding rights for, the Armenian community and expressing his own views about history, which ran counter to the official Turkish state doctrine. But the last straw was the article on Sabiha Gökçen, published in February 2004, in AGOS. In an article titled "The Secret of Sabiha Hatun", written by Hrant Dink, the Armenian relatives of Sabiha Gökçen, who was the adopted daughter of Atatürk, claimed that she was in fact an orphan taken from an Armenian orphanage. Turkey was shaken when Hürriyet, the best selling newspaper of Turkey, quoted the article in a headline in its 21 February 2004 issue. Columnists wrote both negative and positive comments about it, and statements were issued by different public groups. The most important statement was the written statement of the General Staff. The General Staff reacted to this news by saying that "Regardless of its aim, opening a national symbol like this up to discussion is a crime against national integrity and social peace." They believed that the authors of this article were evil-minded and trying to destroy the image of a person who had become a myth and a symbol of the Turkish woman by stripping her of her Turkish identity. Who were these tactless people, who was this Hrant Dink? Someone needs to put him in his place!*

## **Invitation to an official chat**

*The declaration of the Chief of Staff was published on February 22. I listened to this long declaration on TV at home. I felt uneasy. I felt that something would happen the next day, for sure. As it turned out, my intuition was right. My phone rang early the next morning. It was one of the deputy governors of Istanbul. He said, in a cold voice, that he was waiting to see me in his office, and that I should bring with me all the documents I had related to the news item. When I asked the purpose of this invitation, he answered that he wanted to have a chat and to see the documents I have. I called my experienced journalist friends and asked them how I should interpret this invitation. They said that this was unusual, but not a legal proceeding, and advised me to go.*

## **I had to be careful**

*I took my friends' advice and went to the deputy governor with the documents I had. He was very polite. When he invited me in, I noticed that two other people - a man and a woman - were in the room as well. He told me that they were his close acquaintances and asked if it was okay with me if they stayed during our meeting. I had already realized how delicate the situation was and so said that that I had no objection and took a seat. The deputy governor immediately came to the point. "Mr. Hrant," he said, "you are a highly experienced journalist. Wouldn't it be better if you wrote your stories more carefully? And also, what use are these kinds of stories anyway? You see what a commotion it has caused. We know who you are, but the ordinary people on the street don't. They may think that you have other intentions in writing this kind of news. You see this document? The Armenian Patriarch received a petition complaining about some internet sites. There are some inconsiderate people who were trying to initiate what could be called terrorist acts against some institutions of the Armenian community. We searched for these people, found them in Bursa and handed them over to the authorities. But, the streets are full of people like these. Shouldn't we be more careful about writing this kind of news?" The male guest took over the discussion completely; no one else could get a word in edgewise. He reiterated the things that the Deputy Governor had said in a clearer tone. He said that I had to be careful, that I should avoid doing anything that would create tension in the country and among people. He was repeatedly warning me by saying, "Even though we do not agree with the tone of your writing, it is clear to us from much of what you have written that you do not have bad intentions. However, this might not be the case for everyone, and so the consequences for you could be negative." For my part, I told them why I wrote that story. First of all, I was a journalist and it was a story that would excite any journalist. Secondly, I wanted to try to talk about the Armenian question via the survivors, instead of the dead. But they made me understand that it was even harder to talk about the survivors. As I was about to leave, I realised that they hadn't asked about the documents I brought with me. I reminded them that they had asked for the documents, and handed them over. The reason for the invitation was clear from what they said anyway. I had to know my boundaries... I had to be careful... Or else—it could turn out badly for me!*

## **Now I was the target**

*Indeed what followed was not good. The day after I was summoned to the governor's office, many columnists in different newspapers had zoomed in on one sentence from my series of essays on Armenian identity and started to suggest that I was running an anti-Turkish campaign. They focused on, "The clean blood to replace the poisoned blood that will come out of the Turk is present in the noble vein that the Armenians will create with Armenia." Following these articles, on February 26, a group of ultra-nationalists led by Levent Temiz, head of an ultra-nationalist youth group, gathered in front of the AGOS building and chanted slogans against me, threatening me. The police had already*

*been informed that this demonstration was going to happen. The necessary measures to ensure our safety were taken, both inside AGOS and at the entrance of the building. All of the TV channels and journalists had been informed beforehand, and they were also all in front of AGOS. The slogans of the group were very clear: "Love it or leave it," "God damn ASALA," "We could show up any night unexpectedly." Levent Temiz made a speech in which his target was also very clear: "Hrant Dink is the target of all our fury and hatred." After the demonstration, the group dispersed. However, for some reason, none of the TV channels (except the religious Channel 7) or newspapers (except the leftist and pro-Kurdish Özgür Gündem – Free Agenda) broadcast what had happened. It was clear that the powers that had led the ultra-nationalists to AGOS also succeeded in keeping the media from broadcasting those negative images and slogans.*

### **On the edge of danger**

*A couple of days later a similar demonstration was held in front of AGOS by a group of people who called themselves the "Federation to Fight Against Baseless Armenian Claims." Then suddenly a group called the "Grand Lawyers Association" headed by lawyer Kemal Keriñsiz, who wasn't known until then, became a party to this process. Keriñsiz and his friends filed a complaint against me with the Şişli Prosecutor's Office. This complaint effectively sped up cases initiated under the infamous article 301, which has ruined Turkey's reputation. As for me, it was the start of a dangerous process. In fact I have walked on the edge of danger throughout my life. Either danger loved me or I loved it; and here I was, on the edge of the same cliff once again. There were people after me again. I could sense them. And I knew very well that they were not limited to Keriñsiz's group, that they were not that visible, not that ordinary.*

### **My Heart's Dovish Disquiet**

*In the beginning, I wasn't apprehensive about the inquest initiated by the Şişli public prosecutor against me on the grounds that I had "insulted Turkishness."*

*It wasn't the first time, as I had been through a similar investigation in Urfa. For three years I was tried for the crime of "insulting Turkishness" because I had stated at a conference held in Urfa in 2002 that I was not a Turk, but rather that I was an Armenian Turkish citizen. However, I didn't even know how the trial was proceeding. I wasn't interested; some lawyer friends of mine from Urfa were representing me at the hearings.*

*So I was fairly unconcerned when I gave my deposition to the public prosecutor of Şişli. I ultimately believed in what I had written and in my intentions. The prosecutor, by not only looking at that one sentence which meant nothing out of context but rather by considering the entire text, would easily realize that I had no intention of "insulting Turkishness" whatsoever. Soon enough this comedy would be over.*

*I felt certain that at the conclusion of the inquiry, a case would not be brought against me.*

### **I was sure of myself**

*But to my shock and surprise, the trial began. Nonetheless, my optimism wasn't shaken.*

*I was so sure of myself that, during a live telephone call broadcast on a television program, I told Keriñsiz, the lawyer pressing charges against me, that he shouldn't be overly hopeful about the results and that I wouldn't be charged with anything. I even added that if I were sentenced, I would*

*leave the country. I was confident that no traces of an intention or desire to “insult Turkishness” could be found in my article, and anyone who read all of my articles would clearly understand this.*

*Indeed a three-person panel of experts comprised of Istanbul University professors submitted a report to the court stating that this was truly the case. I had no reason for concern; the trial, in this stage or in another, would be steered towards the right path.*

### **Staying patient**

*But it wasn't.*

*Despite the experts' report, the prosecutor wanted to press charges, and the judge decided on a sentence of imprisonment for six months. On hearing the sentence, the hopes I had nourished during the course of the trial turned into a bitter weight. I was bewildered; my hurt and rebellion were boundless. For days, for months, I held out by telling myself, “Look, let the verdict be handed down, you'll see that it's an acquittal, and then you will regret all you have spoken and written about.”*

*In every hearing it was argued that I had said, “The blood of the Turks is poisonous,” which was then published in newspapers, editorial columns and television programs. With each pronouncement I was becoming a little more well-known as an “enemy of the Turks.” In the hallways of the courthouse, fascists rained racist curses on me. They insulted me with placards and banners, and day-by-day the flood of threatening telephone calls, e-mails and letters was on the rise.*

*Telling myself to keep patient, I held out, waiting for acquittal. With the announcement of acquittal, the truth would come out one way or another, and those people would be ashamed of what they had done.*

### **My only weapon is my sincerity**

*But a guilty verdict was passed, and all of my hopes were dashed.*

*I was in the most dismal state imaginable. The judge made a ruling in the name of the “Turkish people” and it was legally registered that I had “insulted Turkishness.” I could have withstood everything, but not this.*

*In my opinion, denigration of a person based on any kind of ethnic or religious difference is racism and as such, unpardonable. With this in mind, I told those friends in the press and media who were waiting at my door to see whether or not I would hold to my word that I would “leave the country” if convicted: “I am going to consult my lawyer. I am going to apply to the court of appeals and, if necessary, I will go to the European Court of Human Rights. After all of this, if not acquitted, I will leave my country; someone charged with such a crime, in my opinion, does not have the right to live among citizens he has insulted.”*

*As I said these words, I was, as always, emotional. My only weapon was my sincerity.*

### **Black Humour**

*But the hidden powers that had worked to isolate me in the eyes of the Turkish public and make me a target found a foothold in my statement to take me to court again, this time accusing me of trying to*

*influence the juridical process. But it didn't stop there; even though my pronouncement had been published by all of the press agencies and media corporations, AGOS was singled out. The directors at AGOS and I were put on trial, this time for attempting to obstruct the course of justice.*

*This had to be some kind of sick joke. I was a defendant; who else could possibly have the right to try to pull the process of justice towards their own defence? The comic irony here was that the defendant trying to influence his case was then being tried again.*

### **In the name of the Turkish state**

*I have to admit that my faith in the judicial system and the concept of law was quite battered. How couldn't it be? Hadn't these attorneys, these judges, studied at universities and graduated from schools of law? Isn't it necessary for them to be able to comprehend what they study?*

*It is clear, however, that this country's judicial system is not as independent as state officers and politicians boast.*

*The judiciary doesn't defend the rights of the citizenry, it defends the state.*

*The judiciary isn't on the side of the people, it is in the pocket of the state.*

*I was utterly sure of these facts; no matter how the ruling was presented as clearly being "in the name of the people," it was in truth "in the name of the state." In this way, although my lawyers were going to apply to the court of appeals, what guarantee was there that the powers that be would not play a role there as well in determining my fate?*

*In any case, were the judgments handed down by the court of appeals just? Wasn't this the same court that signed off on unfair laws which confiscated property from the Minority Foundations?*

### **In spite of the Attorney General's efforts**

*We applied to the court of appeals, but what came of it?*

*The Attorney General, just as the panel of experts reported in the first trial, stated that there was no incriminating evidence and asked for my acquittal, but the High Court once again found me guilty. The Attorney General, just as sure as I about the contents of my writing, objected to the ruling and transferred the case to the General Assembly.*

*Nevertheless, that immense power which was taking the lead in deciding my destiny and which, with methods I will never comprehend, made its presence felt in all of the stages of my trial, was once again pulling the strings. In the end, with a majority vote, it was announced that once again I had been found guilty of "insulting Turkishness."*

### **Like a dove**

*It is quite clear that those who wished to alienate, weaken and render me defenceless had succeeded. By means of mud-slinging and misleading information served up to the public, they have managed to create an image of Hrant Dink as one who "insults Turkishness," and in the process their numbers*

*have increased significantly. My computer's memory drives are full of angry and threatening messages sent by fellow citizens supporting this group's cause.*

*(I should note here that one of these letters, posted from Bursa, gravely concerned me and seemed to be an imminent threat; even though I took the letter to the Şişli District Attorney, to date absolutely no action has been taken).*

*How real are these threats, are they just phantoms? Of course it is not possible for me to know. The most fundamental threat for me, and the most unbearable, is the psychological torture that I have experienced as a result of my own thoughts. The question, "What do these people think of me?" gnaws at me. It is unfortunate that I am so much more well-known than I was in the past, and I am acutely sensitive to the glances thrown my way which say, "Oh look, isn't he that Armenian?" And, as a reflex, the self-torture begins.*

*One aspect of that torture is curiosity; another, edginess.*

*Another aspect is caution; and another, fear.*

*I am just like a dove. Like a dove's, my gaze flits right, left, forward, back. My head is just as fidgety, and quick to turn.*

### **This is the price you pay**

*What was the Foreign Minister Abdullah Gül saying? What about the Minister of Justice Cemil Çiçek? "Now look, article 301 doesn't contain anything worth blowing out of proportion. Has anyone been sent to prison on account of it?" As if paying the price only meant going to prison.*

*This is the price for you, this is the price you pay.*

*Ministers, do you know what it means to sentence someone to live a dove's life of constant fear? Do you? Don't you ever watch doves?*

### **"Life or death"**

*The things I have lived through have not been easy, neither for my family nor me.*

*There were moments when I very seriously considered leaving the country, especially when people close to me started receiving threats. At that point I was at my wit's end. I thought, this must be what they call a "life or death situation." I could have held out on my own, but I had no right to put the lives of others in danger. I could have been my own hero, but in the name of valour I couldn't assume the right to put those dear to me, or anyone for that matter, in peril.*

*It was in hopeless times like these that I gathered my family and children together, and found shelter with them. They believed in me. Wherever I was, they would be there with me. If I said, "Let's go," they would come. If I said, "Let's stay," they would stay.*

### **To stay and to resist**

*Ok but, if we left, where would we go?*

*To Armenia? Fine, but for someone like me who could not stand injustice, how would I put up with the injustices there? Wouldn't I find myself in even more trouble?*

*As for Europe, well, it just wasn't my cup of tea.*

*I'm the kind of person who after just a couple of days in some Western land finds himself desperately longing to have it all over with and go back home—"Ok, that's enough, let's go home." Now what would a person like that, like me, do in the West? The comfort would drive me crazy. To escape from the "fiery depths of hell" to a "pre-fabricated heaven" would go against everything I am.*

*We are the kind of people who aspire to turn the hell we inhabit into a heaven.*

*Our respect for those who struggle for democracy in Turkey, for those who support us, and for the thousands of friends we know and those we don't know personally demanded that we stay and live in Turkey. Not only that, but it was our own personal desire to stay and live in Turkey.*

*We would stay, and we would resist.*

*But what if one day we had to leave? Just like in 1915, we would go; just like our ancestors, not knowing where we were going, on the same roads they travelled, enduring pain, suffering anguish. With apprehension, we would leave our homeland. And we would go where our feet took us, not where our hearts led us - wherever that would be.*

### **Afraid and free**

*I hope that we will never have to make such a departure. We have more than enough hope, and more than enough reasons, to avoid such a situation.*

*I am applying to the European Court of Human Rights. The trial will last at least a few years. The knowledge that, at the very least, I will be able to live in Turkey until the end of the trial comforts me. When a verdict is handed down in my favour, I will be even more pleased, and it will also mean that I will never have to leave my country.*

*Very likely 2007 will be an even more difficult year for me.*

*The accusations will continue, and new ones will come forth. Who knows how many injustices I will have to endure. But as these things happen, I will find reassurance in the fact that, while I may view my current state of mind, my current state of soul, as being marked by the disquiet characteristic of doves, I know that in this country, nobody ever hurts doves.*

*Doves live their lives in the hearts of cities, amid the crowds and human bustle.*

*Yes, they live a little uneasily, a little apprehensively—but they live freely, too.*

The articles were dated 12 January 2007 and 19 January 2007, respectively; in other words, they were written a week before the murder, and another article that was the continuation of the previous ones was published in Agos Newspaper on the day of the murder.

In an ordinary case of murder, if the victim has left a letter or any other note indicating that he was receiving death threats or being shown as target, the prosecutor conducting the investigation must take this letter or note into consideration and initiate inquiry into the names mentioned in such a letter or note. As such, as per Articles 160 and 161 of the Code of Criminal Procedure,

*“As soon as the public prosecutor is informed of a fact which gives an impression that a crime has been committed, he shall immediately investigate the material fact, in order to make a decision on whether to file public lawsuit or not. In order to investigate the material fact and to secure a fair trial, the public prosecutor is obliged, through the law enforcement officers under his command, to conduct all kinds of inquiries and investigations; with a view to achieve the outcomes mentioned in the above article, he may demand all kinds of information from all public servants. Accordingly, public servants are obliged to provide all types of information and documents required for the investigation to the public prosecutor without any delay.”*

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

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

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

Besides, the existing evidence in the tangible case gave prosecutors ample opportunity to initiate a public lawsuit. Provisions of Article 170/2 of the CCP, reading “If the evidence collected at the end of the investigation phase creates reasonable doubt that a crime has been committed; then the public prosecutor shall prepare an indictment.” was not used although almost five years has passed since the murder. The public prosecutors did not act to initiate an investigation against the individuals and organisations taking part in the process.

In the current phase of the case, the prosecution has submitted its legal opinion, and on page 71 of the prosecution's opinion there is a finding mentioned under the section titled “Acts and Activities of Persons Tried During the Investigation into the Ergenekon Terrorist Organization”; although it may look like this finding is in alignment with our findings, our above-mentioned opinion remains unchanged as these findings by the prosecution have not been translated into any investigation. The esteemed prosecution says, in the relevant section of its opinion, that

*“In his Articles titled “My Heart’s Dovish Disquiet”, published in AGOS Newspaper on 10.01.2007, and “Why as I chosen as a target?” published in the same newspaper on 12.01.2007, HRANT DİNK mentions some of the things that have happened to him and says that he has been made into a target and that no measures have been taken in the way of protection with regard to these events.*

*In the information and documents obtained in the search conducted on 12.06.2007 and within the scope of the ensuing Ergenekon investigations, various sources of information confirming the descriptions made by Hrant DİNK were found. When the information obtained by the Security Division and within the scope of the Ergenekon investigations;...”*

thus describing the process already explained in Hrant Dink’s articles, and the acts and activities of the persons taking part in the said process.

According to a very important finding by the prosecution; the incidents mentioned in the above cited article by **Hrant Dink have been confirmed with information and comments obtained by the Security Division (Güvenlik Şube Müdürlüğü) and in the course of the Ergenekon investigations.** In this case, the duty of the prosecution as per Articles 160 and 161 of the Code of Criminal Procedure is to do what is required with respect to this finding, or in other words, to investigate the persons and actors playing a part in the process. Investigation is the prosecutor’s job, and the CCP Article 160/1 gives prosecutors the duty to “take **immediate** action to confirm the doubted impression”. Then, the prosecution should, instead of writing its predictions and guesses in the essay form, do its job and immediately initiate an investigation into these persons.

## **THE PREPARATORY PHASE OF THE MURDER**

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

- As explained in greater detail in the abovementioned article of Hrant Dink, upon the coverage of news articles in Agos on 6 February 2004 and later on in Hürriyet Daily which noted that “Atatürk’s adopted daughter Sabiha Gökçen was an Armenian girl from an orphanage”, the General Staff issued an extremely harsh statement against these articles while making it very clear where the boundaries of the freedom of the press ends and where the duties of Turkish citizens and organisations begin. The individuals and organisations who received this message started acting from the next day onwards.
- Right after this statement Hrant Dink was summoned to İstanbul Governorate. The meeting was held in the office of Ergun Güngör, the Deputy Governor responsible for carrying out procedures related to minority issues, and was attended by two intelligence officers; the meeting was described by Hrant Dink as the beginning of an operation that aimed to teach him a lesson and in his article he wrote ‘**Now I was the target**’. As Özer Yılmaz, one of the intelligence officers present at that meeting, became a defendant in the Ergenekon case it turned out that those who were present at the meeting were indeed high-ranking intelligence officers. In its correspondence sent to the Court on July 19<sup>th</sup>, 2010, literally three years after the murder, the Undersecretariat of the National

Intelligence Organisation (MIT) acknowledged the meeting and confirmed the meeting attendants being MIT members. As the Prime Minister authorized investigation about these two MIT members, we learned that the other MIT official was named Handan Selçuk.

- Two days after this meeting, during a demonstration staged in front of the Agos Newspaper, Levent Temiz - the Head of İstanbul Provincial Branch of Ülkü Ocakları (Turk-Islam Idealists) made the following statement on behalf of the demonstrating group, **“From now on, Hrant Dink will be the object of our rage and hatred, he is our target”**.
- A similar demonstration took place a few days later, again in front of Agos, held by the **“Federation of Fight against Unfounded Armenian Allegations”**.
- Immediately after these incidents a new smear campaign was launched which picked just a single sentence from Hrant Dink’s article series entitled **“On Armenian Identity”** and used it as a pretext. Some individuals and organisation filed complaints against Hrant Dink by identical petition.
- The systematic attacks which seemed to be orchestrated from one single focal point continued in several internet sites and newspapers, and Hrant Dink was constantly fingerpointed as a target.
- The media paved the way for the murder by intensive use of hate speech as well as a racist and nationalistic discourse fuelling enmity, and in this way encouraged those prone to commit a crime.

## THE ROLE AND FUNCTION OF THE MEDIA IN THE PROCESS LEADING TO THE MURDER

“One day after appearance of the the news that Sabiha Gökçen was of Armenian descent in the Hürriyet newspaper, Deniz Som from *Cumhuriyet* newspaper penned an article titled *“Damardan”*<sup>1</sup> (“Right from the Vein”), and felt it necessary to remind the readers about Hrant Dink’s article titled *Ermeni kimliği üzerine* (“On the Armenian Identity”) and dated 13 February 2004, which had not yet been on the agenda at that time, as well as the sentence that Hrant Dink had used in this article to describe the state of mind of the Armenian diaspora which would later cause him to be put on trial for violation of Article 301. On the very same day, in *Milliyet* newspaper, Hasan Pulur, in his article *“Sabiha Gökçen’in Ermeniliği nereden mi çıktı?”*<sup>2</sup> (“Where did Sabiha Gökçen’s Armenian Origin Come From?”), described the claims about Gökçen as “nonsense rumbings”, criticized Hrant Dink’s views on multiculturalism in a sarcastic manner, and then asked *“Has Hrant Dink, who apparently knows Turkish very well, ever heard of the idiom ‘Using an iron fist in a velvet glove?’”*, implying with this question that Dink was actually a stranger to these lands, this language and this culture. While alienating Dink, Pulur also positioned him as a threat that “uses an iron fist in a velvet glove”. These quarrels, spreading in the public through the mainstream media, found more coverage in those days

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<sup>1</sup> Deniz Som, Vaziyet, “Damardan”, 21.02.2004

<sup>2</sup> Hasan Pulur, Olaylar ve İnsanlar, “Sabiha Gökçen’in Ermeniliği nereden mi çıktı?”, 25.02.2004

in newspapers that had relatively small circulation numbers but that adopted a nationalistic and conservative approach; after that, Dink's name started to be used with adjectives such as "separatist, devastator, enemy etc" in news and columns.

In the news story covered by the newspaper *Önce Vatan* on 26 February 2004 under the subheading "*Bir rezalet örneği*" (*A Real Shame*)<sup>3</sup> on its front page and in the following pages, it was claimed that Hrant Dink was not really an Armenian, and Dink was blamed for "*provoking the Armenian citizens in Turkey against the State*". Also informing its readers that the *Agos* newspaper had covered the announcement of the publication of a book about "*Antranik, red anarchist and the greatest enemy of Turks in the history*", the newspaper asked the government to put an end to such publications. Again on the same day, the chief columnist of the newspaper, Orhan Kiverlioğlu, penned an article titled "HRANT'S SNARL" (*"HRANT'IN HIRLAYIŞI"*)<sup>4</sup>, which was –from the beginning to the end– full of insults that likened *Agos* to a "burst sewage" and described Hrant Dink with the following words "Hrant Dink, who disgusts even the orangutans with his face reflecting his soul that carries monkey genes, is the one and only creature that justifies Darwin"; revealing that the newspaper's columnist knew no boundaries when it came to insults.

Hrant Dink's article published on 2 October 2004 in *Birgün* newspaper with the title "Farewell" ("*Hoş Gidişler Ola...*")<sup>5</sup> sparked a new series of debate. The article's theme was Turkey's accession into the European Union and the democratization process that was expected to take place in parallel; the writer had expressed his optimistic and exuberant opinion that he was pleased about the process. However, the *Yeniçağ* newspaper of 9 October thought Dink was defaming Atatürk; plus, as constantly underlined, he [Hrant Dink] was an Armenian. The actual article appeared in the newspaper under the headline "LOOK AT THAT ARMENIAN" ("*ERMENİYE BAK*") was covering the reactions to Dink's article by some persons, whose identities are not disclosed and who are described simply as "citizens" rather than readers. The newspaper expressed this reaction with the following wording:

*"CITIZENS reacted, saying, 'He [Hrant Dink] thinks he ridicules Mustafa Kemal Atatürk!' He tries to take revenge for the painful kick in the asses of the Armenian gangs who joined forces with Russians and stabbed the Turks behind their back with their bayonets: Hrant does this at every opportunity"*<sup>6</sup>

Although a section from the article featured in the news story was published on page 8 in a box, there was no discussion about its content. What created this reaction was simply the fact that an Armenian had dared to use, even in a good meaning, a variation of the name of the song "*Hoş Gelişler Ola*" (Welcome) which was dedicated to Mustafa Kemal Atatürk. At the very centre of the news story that appeared under the headline, there was a rather large photograph of the İğdır Genocide Monument, on the left was the lyrics of the song "*Hoş Gelişler Ola*" in the same size as the photograph, and on the right was Hrant Dink's photograph accompanying the sentence "Pseudo journalist who applauds the massacre!". In the news story continuing on page 8, the lyrics of the song were given again. Referring to [Hrant Dink's] use of this wordplay as "arrogance", the newspaper responded by narrating the time when the song had allegedly been made, in a grave hate speech that fuelled enmity:

<sup>3</sup> *Önce Vatan*, "Bir rezalet örneği, Türkiye'de yayınlanan *Agos* Gazetesi Türklüğe hakaret ediyor", s.1, 5, 26.02.2004

<sup>4</sup> Orhan Kiverlioğlu, Bugünlük, "HRANT'IN HIRLAYIŞI", *Önce Vatan*, 26.02.2004

<sup>5</sup> Hrant Dink, "Hoş Gidişler Ola...", *Birgün*, 07.10.2004

<sup>6</sup> "Ermeniye Bak", *Yeniçağ*, 09.10.2004

*“...For, until a day ago, their little children were being burned in pit furnaces by Armenian gangs, pregnant women were being stabbed with bayonets, and the elderly were being brutally murdered with axes with their heads and bodies dismembered. While the villages were turned into bloodsheds, the rabid Armenian gangs were laughing with delight and drinking wine ...They were raping the women whom had been their neighbours for long years and with whom they had shared bread many times, after tying their hands and feet on stakes ...”<sup>7</sup>*

Informing its readers on 14 December 2004 that “a civil engineer named Mehmet Soykan was taking legal action” against Dink and Karin Karakaşlı due an article penned by Dink on 13 February 2004, the *Yeniçağ* newspaper again used Dink’s photograph under the headline “Hrant Dink pelted the Turkish nation with insults in his articles”<sup>8</sup>; and throughout the hearings, it took every opportunity to highlight that the justice was “Turkish” while Dink was “Armenian”. Even the lawyers representing Dink and Karakaşlı got their share from the threats made by “citizens”, whose reactions were covered by the newspaper:

*“Either do justice to your lawyer’s gown, or take it off and leave this country”<sup>9</sup>*

*Supporting Yeniçağ, the Ortadoğu newspaper announced the verdict in such a way “as if it a verdict ruled by the court” or as if they were sure what verdict would be coming out of the courtroom:*

*“Agos will be silenced!”<sup>10</sup>*

Dink’s words, uttered in the same days at a conference he participated in Diyarbakır, were covered by *Yeniçağ* with the headline “Hrant is scratching”<sup>11</sup> and again accompanied by his photograph showing him as a target. Although the news story mentions that in the conference Dink said that Kurds and Turks should live together, the selected heading and spot created the impression as if an enmity was being fuelled.

In 2006, Hrant Dink was also being tried for influencing a fair trial, and during the court hearings he was being attacked by nationalist groups who were dubbed the “protestors” even in the mainstream media<sup>12</sup>. And the nationalistic media was carrying to its pages all the unfairness done to Attorney Kemal Kerinçsiz, who was taking the lead in these attacks<sup>13</sup>. Once the decision given by the local court was upheld by the 9th Criminal Chamber of the Court of Cassation (Yargıtay), Dink announced that he would refer the case to the European Court of Human Rights, while at the same time there was a complete atmosphere of victory in the media which had turned him into a target: “Hrant Dink, pack your bags and leave”<sup>14</sup> (*Annex:1 Prof. Dr. Yasemin İnceoğlu-Dr.Ceren Sözeri, Nefret Suçlarında Medyanın Sorumluluğu : “Ya sev ya terk et ya da...”*)

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<sup>7</sup> “Tayyip’ten cesaret alıyorlar”, *Yeniçağ*, 09.10.2004

<sup>8</sup> Yüksel Mutlu, “Türk adalete hesap verecekler”, 14.12.2004

<sup>9</sup> Yüksel Mutlu, “Hrant’ın avukatı ortalığı karıştırdı”, 15.12.2004

<sup>10</sup> Osman Altuntaş, “Agos’un sesi kısılacak!”, 15.12.2004

<sup>11</sup> “Hrant Kaşıyor”, *Yeniçağ*, s. 1, 10, 20.02.2006

<sup>12</sup> Mutlu Koser, “Protestocuların polis kurtardı”, *Hürriyet*, 17.05.2006, Ali Oktay, “Hrant Dink Davası yine olaylı başladı”, *Sabah* 05.07.2006

<sup>13</sup> Arslan Tekin, “Halk muhaliflerinin uykusunu kaçıran Av.Kemal Kerinçsiz’in mektubu”, 24.07.2006

<sup>14</sup> “Hrant Dink toplu bavulunu git”, *Yeniçağ*, 13.07.2006

## THE ROLE AND FUNCTION OF THE JUDICIARY IN THE PROCESS LEADING TO THE MURDER

Hrant Dink had published in Agos an article series titled “**On the Armenian Identity**” (*‘Ermeni Kimliği Üzerine’*), made up of eight articles to “inform the the Armenians of Turkey on the *identity* debate held by the Diaspora Armenians”. All the articles in the series were interconnected, and each article started by reiterating the ideas expressed in the previous one .

The articles were not only an intellectual series on the historical events related to Armenians, but also suggested, with their content and terminology, some solutions to the members of the diaspora with regard to redefining their identities.

Identifying the elements that make up the Armenian identity and addressing their negative and positive effects on the formation of the Armenian identity, Dink, in his seventh article titled “Getting Rid of the Turk » (Türk’ten Kurtulmak”), held that the ‘obsessive’ effort to have the events of 1915 recognized as a genocide by Turks was poisoning the lives of Armenians and was preventing a healthy formation of the Armenian identity. By stressing that acknowledging or denying the genocide was a matter of conscience and humanity, Hrant Dink was saying that Armenians should work for the welfare of Armenia instead of pressuring the Turks for the recognition of the genocide.

The eighth article, titled “Meeting Armenia”, was following on the same train of thought of the previous article and thus started with the sentence: **“The clean blood to replace the poisoned blood that will come out of the Turk is present in the noble vein that the Armenians will create with Armenia »**

By singling out this sentence from the eight-article series, an extremely hostile and aggressive campaign was launched against Hrant Dink. There were several people, who rushed to the prosecutor’s offices to complain that Hrant Dink had insulted the Turks yet they all had applied with the copies of the same petition. The leaders of the campaign waged in the media were Cumhuriyet’s Deniz Som and Hürriyet’s Emin Çölaşan.

Yet, when read in its entirety, the series clearly revealed that what Dink described as « poison » was the Armenian « perception of Turks » and the « obsessive » nature of the efforts of the Diaspora Armenians to make the events of 1915 recognized as genocide by Turks.

However, this sentence in itself - being detached from the entirety and context of the series - was made the subject of a court case; and upon the authorization by the Ministry of Justice, a court case was launched against Hrant Dink and Agos Executive Editor Karin Karakaşlı on 16.04.2004 pursuant to Article 159 of the former Turkish Penal Code which regulated the offence of “insulting and denigrating Turkishness through publication”.

The individuals who earlier gave identical petitions as complainants were also present in the court hearings in a truly organized manner; they petitioned to be accepted as intervening parties and the court granted their request despite the objections raised by the legal representatives of Dink and Karakaşlı.

During the trial, upon the persistent demands of the legal representatives of Dink and Karakaşlı, a report was prepared by a committee of experts - made up of three academics from the Istanbul University as selected by the court itself; the report concluded that when read in its entirety there

was no special premeditation in terms of the occurrence of the crime. When the report was submitted to the court, the complainants this time filed a complaint against the expert witnesses, and started to attend the court hearings in a more organized way and with bigger crowds, by spreading rumours on the internet that “the court will acquit Hrant Dink”. The case resulted in conviction of Hrant Dink on 07.10.2005 for violation of the former Turkish Penal Code Article 159/1.

The legal representatives of Dink and Karakaşlı appealed the court’s decision. According to the notice issued by the Chief Public Prosecutor’s Office of the Court of Cassation (CoC), the opinions of the expert witnesses were correct and the decision had to be reversed. However 9<sup>th</sup> Chamber of the CoC unanimously upheld the decision on the merits of the case on 01.05.2006. The Office of Chief Public Prosecutor of the CoC appealed this decision as well, yet the Penal Board of the CoC , the ultimate appeal authority, rejected the appeal by majority

Throughout this entire process as the court decisions were covered in the press, those circles which fingerpointed Hrant Dink as a target continued their attacks against Dink defining him as “certified enemy of Turks” based on the Court decision.

Hrant Dink spoke to the media on the day he was convicted. “In my perception, this crime is racism, and I have not committed such a crime. This is a black stain that they want to lay upon me; if the judiciary does not correct this, I will leave my country and go away,” he said. This statement was covered by all print-broadcast media agencies including the Agos newspaper. Upon the coverage of this statement, the complainants of the court case where Hrant Dink was convicted, Kemal Kerinçsiz and the Great Union of Jurists in particular, filed yet another complaint against Hrant Dink this time on the ground of “**influencing a fair trial**” through uniform petitions. Thus another court case was launched upon this complaint.

Upon this complaint, another lawsuit was filed on 4.10.2005.

Here we need to underline that Hrant Dink’s statement is a natural and legal right of a person facing charges and does not correspond to any type of offence defined by law. Despite that, it was used as a good pretext for those in charge of paving the way to Hrant Dink’s killing. These persons had already fulfilled their task to turn Hrant Dink into a target. Yet, the prosecutor initiated the case although he knew that there were no elements of crime in those words and the judge dragged the case in each hearing accompanied by lynching attempts although he could have simply returned the indictment or could have immediately absolved due to the absence of criminal element. Such a conduct by judicial authorities raised great suspicions concerning the role and position of the judiciary within this process. Furthermore, this was not the one and only case initiated against words which did not constitute a crime. Hrant Dink had to frequently visit the courthouse in order to testify for a number of court cases and investigations, all initiated against him as a result of the complaints filed by these individuals.

In addition to a number of other complaints, another case initiated against Hrant Dink was on allegations of “influencing a fair trial”. The Great Union of Jurists, its members and some other groups were present in front of the courthouse during the hearings. These persons also demanded through identical petitions to become intervening parties to the case. Oktay Yıldırım, Veli Küçük, Sevgi Erenerol and Kemal Kerinçsiz who are currently being tried at the Ergenekon case were among them as well. The fact that one group opened a banner in front of the court house which read as “**Hrant, the son of a missionary, do not disturb the peace of Turkish Armenians, Hrant do not betray the bread you ate**”, and the stress put on the word **missionary** was giving us an important hint about the orchestrated plan as well as its focal point.

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

## **OTHER DEVELOPMENTS IN THE PROCESS LEADING TO THE MURDER**

**As Hrant Dink's trials were under way, there were some other interesting developments taking place in the country.**

- At the press conference on 01.11.2004, during which the final version of the "Minority Report" prepared by the Prime Ministry Human Rights Advisory Board (İHDK) -Working Group for Minority Rights and Cultural Rights, the Head of the Board, Prof. İbrahim Kaboğlu, was subjected to physical and verbal violence. The press conference, where İHDK Chairman Prof. Dr. İbrahim Kaboğlu was to release the final version of the report, was sabotaged by a group including a representative of the Kamu-Sen trade union.

Kamu-Sen Secretary-General and Büro-Sen President Fahrettin Yokuş interrupted Kaboğlu, and announced loudly that the report could not be distributed. Asserting that they could not accept the Treaty of Lausanne being put under a new debate by the report, he claimed that the report had been approved without due procedure. Yokuş also said "Human rights are not included anywhere in this report. This report is a provocation"; and then he took the summary report that was in front of Kaboğlu and threw it on the floor after tearing it into pieces.

Because of this study, Professor İbrahim Kaboğlu and Professor Baskın Oran were tried on charges of "provoking the public into hatred and enmity, and openly denigrating the judicial organs of the state". The court ruled for the acquittal of İbrahim Kaboğlu and Baskın Oran, yet the file was sent to the Court of Cassation upon the objections of the prosecution. The 8th Criminal Chamber of the Court of Cassation reversed the acquittal decision, with majority vote, on the grounds that the opinions expressed in the report constituted a crime. Upon the objections of the Chief Public Prosecutor's Office of the Court of Cassation, the file was sent to the General Assembly of Criminal Chambers, where the decision to acquit, given by the local court, was approved. Hence, the opinions expressed in a scientific report were saved from being criminalized.

- Using as a pretext the meeting planned between the Holy Synod of the Ecumenical Patriarchate of Constantinople and the Archbishopric Synod of the Cypriot Autocephalia Church on 10 November 2005 at the Ecumenical Patriarchate, nationalist groups protested in front of the Patriarchate and started a signature campaign to move the Patriarchate to Greece. Concurrently, the media also serviced the news that the same group had petitioned the Governor's Office of Istanbul, asking the Governorate to prevent the meeting. Upon this petition, the Governorate initiated a probe into the matter. Those who started these initiatives were again Sevgi Erenerol, Kemal Kerinçsiz and his team.
- There were plans to hold a conference on "Ottoman Armenians during the Collapse of the Empire", on 25-27 May 2005, hosted by the Boğaziçi University with an organization

committee including many academics and scientists, and with a large number of participants including researchers, journalists and writers.

As the press covered the news of the upcoming conference, the matter was brought to the public attention, again with the efforts of Keriñsiz and his team. The conference and its organizers were subjected to severe racist attacks, threats and insults. The Minister of Justice of the time, Cemil Çiçek, made a statement about the conference, saying **“This means backstabbing the Turkish nation”**.

Then, with the application filed by a group of lawyers from the racist circles organized under the Great Jurists’ Union (Büyük Hukukçular Birliđi), which had been founded by Kemal Keriñsiz and his team, the conference to take place at the Bođaziçi University was referred to the administrative court, and the 4th Administrative Court of Istanbul decided to stay the execution of the conference. This complaint and the ensuing court ruling were in fact practices that had no justification in the legal system.

Upon this ruling, the conference was held at the Istanbul Bilgi University under huge security measures. Again, there were racist protests both inside and outside the conference hall.

- Racist groups launched an attack at the inauguration of the Exhibition on September 6-7 Events, organized by the History Foundation (Tarih Vakfı), Karşı Artworks (Karşı Sanat Çalışmaları), the Human Settlements Association (İnsan Yerleşimleri Derneđi) and the Helsinki Citizens’ Assembly (Helsinki Yurttaşlar Demeđi) on the occasion of the 50th anniversary of the events taken place on 6-7 September 1955. Right after the opening ceremony of the Exhibition on 6 September, a group of aggressors came to Karşı Art Gallery, where they tore down and shredded the photographs, threw eggs and caused damage to some photographs.

Among those attacking the exhibition were Ramazan Kırkık and Ramazan Bakkal from the “Association of Civil Society Organizations of Turkey (TSTKB) which had previously attacked the Conference on Ottoman Armenians at the Bođaziçi University as well as Levent Temiz, one of the former chairmen of the Istanbul Ülkü Ocakları; Kırkık and Temiz read manifestos. We should also add that these three names were also among those who followed Hrant Dink’s hearings, who took an active part in preparing the lynching climate, and who petitioned to be accepted as intervening parties in the case.

- On 5 February 2006, Andrea Santoro, priest of the Italian Catholic Church in Trabzon, was killed by 16 year old O.A. while praying.
- In its news titled “We were going to kill Armenians” appearing on 26 May 2006, Yeni Şafak newspaper covered the statement by Erhan Timorođlu, one of the suspects in the armed attack on the 2nd Chamber of the Council of State, in which he said “After the attack on the Council of State, we were going to kill Armenians in Istanbul”. Upon this news story, Hrant Dink penned an article titled ‘Do Not Remain Indifferent’ (‘Kayıtsız Kalmayın’), where he said, with his unique foresight, that “these men may have been caught, yet they are not limited only to just these men,” inviting the Justice Minister, the Interior Minister, the Governor and the Police Chief to fulfil the requirements of their responsibilities.
- At a time when a draft bill criminalizing the denial of the Armenian Genocide was debated at the French Parliament, the tensions in Turkey were escalating. Concerned about the dimensions these tensions could reach, Mesrob Mutafyan, Patriarch of Turkey’s Armenians, petitioned the Governor’s Office of Istanbul on 11.10.2006, demanding “measures to ensure

the security of the institutions and organizations belonging to Turkey's Armenian community, in consideration of the political and social climate, which is rather tense".

- The Intelligence Department should have taken this petition by Mutafyan seriously, because the following day, on 12.10.2006, a letter was sent to the Intelligence Divisions of all provinces, warning the officials that there could be provocative acts or reactive actions against Armenian citizens due to the draft bill debated in the French senate.
- Meanwhile, there was yet another incident, which reflected the perceptions on the Hrant Dink murder and the Armenian Question. Sevgi Erenerol, who is today a defendant in the "Ergenekon" case, was giving seminars on missionary activities and minorities to the General Staff and the Air Force Command in the October and November of 2006. According to Sevgi Erenerol's own account, the "threats" against Turkey were being discussed in these seminars, which were repeated in many other cities around Turkey. It was also revealed during the process that Trabzon was one of the cities where Sevgi Erenerol had delivered a seminar.
- In addition to all these, the deputies of the country from different political parties as well as the quarrelling institutions of the state who would never ever to be seen together or acting in unison, were collectively carrying everywhere the paranoia that an "army of missionaries" had laid siege to the country. Police and the military were out on a missionary hunt, and the media was full of war cries. And it was among the information covered in the media that the National Security Council (MGK) had included missionary activities on the agenda of its meeting of December 2001.

#### **While all these things were taking place across Turkey, there was some other activity in Trabzon.**

Defendants on trial for the murder of Hrant Dink were residing in the Pelitli district of Trabzon, and this area was under the jurisdiction of the gendarmerie.

Yasin Hayal, on trial for instigating the murder of Hrant Dink, was also residing in the Pelitli district of Trabzon, like some of the other defendants. In March 2002, when on leave from his military duty, he met Erhan Tuncel in Trabzon; meanwhile, Yasin Hayal, who had beaten the priest of the Santa Maria Church so severely to the extent of leaving the priest in coma, said he had done it because Erhan had told him that "Missionary activities have increased a lot in Trabzon". It is striking that Yasin Hayal also stressed missionary activities in the course of these events.

Yasin's relationship with Erhan Tuncel continued after he returned from the military.

In August 2004, he falsely reported that there was a bomb in the plane that was carrying the prime minister. Yasin Hayal declared that he had committed this act to **"test the reflexes of the police"**.

Yasin Hayal went to Chechnya while he was wanted by the gendarmerie for the false bomb notice. He returned to the country when his initiatives proved fruitless. He explained that the reason he went to Chechnya was to fight on the Chechen side.

In October 2004, he committed the McDonalds attack, which he had planned with Erhan. He ran away to Istanbul, where he was caught and put in jail.

In this incident, the person preparing the bomb and serving as a watchman when Yasin was placing the bombs was no one other than Erhan Tuncel, whose responsibility in the incident was kept hidden and who was employed as YiE (assistant intelligence officer).

Yasin Hayal was released from the prison in September 2005; he was saying that he had made friends with iBDA-C members and had been influenced from them. Trabzon Police Department thought that the contacts made by Yasin Hayal in prison were important, and they started to tap Yasin Hayal's telephones.

According to the statements given by Erhan Tuncel, after getting out of the prison, Yasin Hayal was full of hatred towards Armenians and was planning an act in Istanbul.

Working as an assistant intelligence officer at the Intelligence Division of Trabzon PD, Erhan Tuncel was given the task of collecting intelligence on Yasin Hayal. From the statements given during the investigation and prosecution phases by Muhittin Zenit, who was working at the Intelligence Division of the Trabzon PD, we learn that Yasin Hayal was also under physical surveillance; this physical and technical surveillance continued until the "**last moment**" according to the testimony given during the hearing by Mehmet Ayhan, who was working at the Intelligence Division of the Trabzon PD.

Roughly after January 2006, Yasin Hayal started to say he would kill Hrant Dink, and began sharing these plans with the people around him and also with Erhan Tuncel. When Erhan Tuncel notified the situation to the officials of the Intelligence Division of the Trabzon PD, a letter dated 17.02.2006 was sent to the Intelligence Unit of Ankara PD and the Intelligence Division of the Istanbul PD. The letter said the following:

*"From the information received from the assistant intelligence officer, it has been understood that 'the person in question had told the people around him that he nurtured a big hatred towards Armenians and that he was planning to undertake a resounding act in the province of Istanbul in the coming days, and that he had selected as his **target the person named Firat (Hrant) Dink, editor-in-chief of the AGOS newspaper** on the grounds that the said person was engaged in activities that defamed Turks and the Republic of Turkey; that he would be going to the province of Istanbul to commit the said act if necessary material and moral support was given, and that he would be staying with his brother, Osman Hayal, who is known to be working in a bakery in the district of Sarigazi'. In addition, considering that the same person had made similar speeches before the act he committed against the workplace named McDonald's, it is considered that the person in question is capable of carrying out the said act; our activities are continuing regarding the person who uses the telephone no. 0538 7193181."*

A phone call between Erhan Tuncel and Muhittin Zenit right after the murder showed that the Trabzon Police Department was already informed about all the details about where and how Hrant Dink was to be murdered and whether the perpetrator would be running away after the shooting.

The officials of the Trabzon PD, knowing that the murder was first to be committed by Yasin Hayal but afterwards, with a change of plan, by Zeynel Abidin, also knew of Ogün Samast. Erhan Tuncel openly expressed this fact during the hearings.

Yasin Hayal started to ask around for bullets in early January 2007. A phone message he sent for the purpose of finding bullets was detected during the technical surveillance, yet this message was also one of the evidence falsified and hidden from the prosecutors by the officers of the Trabzon PD.

The district of Pelitli, where most of the defendants were residing, was under the jurisdiction of the gendarmerie.

Yasin Hayal was a frequent visitor of the Trabzon Gendarmerie Intelligence Division.

The Gendarmerie Intelligence Division Director of the time was describing Yasin Hayal as **“a reliable boy, a clean boy; he will do good deeds in the future”**.

The gendarmerie informant named Veysel Şahin, first in his statement to the prosecution during the Ergenekon investigation and then in his testimony to your court as a witness, said that he had gone to Trabzon in 2003-2005 upon the invitation of the Gendarmerie Intelligence; **“There was a Captain Feridun, director of the intelligence division; I had only seen YASİN, and when I asked who he was, Feridun said ‘he is a reliable boy, a clean boy, a boy we keep in touch with’”**; afterwards, Veysel Şahin identified Yasin Hayal in the hearing.

Coşkun İğci, brother-in-law of Yasin Hayal working as a security guard at the State Supply Office (DMO), was also working on the side as an unofficial informant to the Trabzon Gendarmerie Command. Furthermore, in the case being heard at the 2nd Criminal Court of Peace of Trabzon, it was revealed that the Gendarmerie employed three registered informants in the Pelitli district.

Around July 2006, Coşkun İğci, who was aware of Yasin Hayal’s plans to murder Hrant Dink, notified this situation to his gendarmerie contacts, Okan Şimşek and Veysel Şahin.

Coşkun İğci also told the gendarmerie officers that Yasin Hayal had asked him to find him a weapon, and that he had seen in Yasin’s hands some sketches of the home and workplace of Hrant Dink.

Okan Şimşek and Veysel Şahin communicated this to their superior, gendarmerie captain Metin Yıldız.

In one of the routine security meetings in July, Metin Yıldız conveyed this intelligence to Ali Öz, commander of the provincial regiment. Ali Öz dismissed the matter, saying **“we will talk about it later”**.

Waiting for instructions regarding the matter, Okan Şimşek and Veysel Şahin reminded Metin Yıldız about the intelligence, but Metin Yıldız sent them away, saying **“this is a very complicated business”**.

This course of events was confirmed with the information revealed during the trial administered at the 2nd Criminal Court of Peace of Trabzon.

Despite being in possession of all these information, the Trabzon Police Department and the Trabzon Gendarmerie Command did nothing to prevent the murder.

However, a document included in the case file of a lawsuit initiated later on, known as ‘Sledgehammer’ (Balyoz) in the public, was important in terms of explaining the actions and inactions in Trabzon. The section titled ‘Black Sea Action Plan’ included the following sentences:

**“The people of the Black Sea Region are, due to their characteristics, easy to manipulate and open to exploitation.**

Hence, it is considered that young people from the Black Sea region could be effectively used in projects that will be carried out to ensure a national consensus....”

Similarly, the ‘Sickle Plan’ (*Orak Planı* in Turkish), also included in the said case file, contained information showing that special importance was attached to the Black Sea region during the coup process, which comes as a striking piece of information.

**The Istanbul Police Department also knew that Hrant Dink was going to be killed.**

The letter dated 17.02.2006 was sent by the Trabzon Intelligence Division to the Istanbul Police Department with the notice that Hrant Dink was going to be killed by Yasin Hayal. Trabzon Intelligence Division Director Engin Dinç said in his testimony that, immediately after this letter, he had called Ahmet İlhan Güler, Director of the Istanbul Intelligence Division, on phone and talked to him personally, informing him about the seriousness of the situation.

Long before that letter, the Istanbul PD was aware of all the developments taking place since 2004. The Police Department knew that Hrant Dink had been summoned to the Governor’s Office after the publication of his article on Sabiha Gökçen, that racist demonstrations had been organised by various groups in front of the AGOS newspaper in relation to this news article, that Hrant Dink had been subjected to lynching attempts during his court hearings, and that the same crowd was also on the scene in the lawsuits initiated against writers such as Orhan Pamuk and Elif Şafak and also during the Armenian Conference. This fact was stated by Şammaz Demirtaş, then the deputy director for intelligence at the Istanbul PD, in his statement to the inspectors of the Prime Ministry, as follows: **“Due to the coverage of Hrant Dink’s activities in the media and due to the lingering atmosphere in those days, I can say that Hrant Dink was a person of interest for our intelligence division in Istanbul, not as a target, but rather because of potential sensational situations that could have arisen”.**

Yet, despite all these information, the Istanbul PD did not do anything to prevent the murder.

**The letter dated 17.02.2006 was also sent to the Intelligence Department, where all intelligence is pooled.**

According to the regulation setting forth the powers, duties and responsibilities of the Intelligence Department of the General Directorate of Security, the Intelligence Department is responsible for recording and classifying all intelligence gathered by all Central and Local units; for monitoring the information and operations related to intelligence; for following up and assessing the information, documents and speculations incoming from the provinces and other institutions; and for ensuring the necessary coordination with local units in this regard. Despite this job description, this unit did not do what was required with regard to the information and documents concerning Hrant Dink, and did not take any measures.

At the time of the murder, the head of the Intelligence Department was Ramazan Akyürek.

Before his appointment to this position, Ramazan Akyürek was the Chief of the Trabzon Police Department and was at the head of the institution that had employed Erhan Tuncel as assistant intelligence agent. In May 2006, he was appointed as the Head of the Intelligence Department of the Directorate General of Security.

Being in full knowledge of all the developments related to the murder right from the beginning, Ramazan Akyürek was aware of the tensions rising in the process, and in October 2006 sent a letter to the intelligence divisions of all 81 provinces, advising caution concerning the security of Armenians and Armenian institutions.

In his statement to the Parliamentary Human Rights Commission of the TGNA, Ramazan Akyürek said that information of this nature reached them from various provinces in those days; and the question of why Ramazan Akyürek did not assess these information and do the requirements of his job remained unanswered.

The inspectors of the Prime Ministry were also of the opinion that the Intelligence Department had committed negligence of duty by not taking the necessary actions to take the process under control, not making the relevant situation assessment and not initiating an operation and/or taking security measures to protect Hrant Dink.

**What strikes the attention in the things so far explained was that all persons and agencies involved in the process, from the state agencies to ülkü-alperen organizations, the intelligence organization and the judicial authorities, had all been acting in concert in line with the same objective. And this suggested that the process had been managed from a single focal point and within the limits of a set plan.**

The second thing that strikes the eye in this process is the way that those actively involved in the process had attacked Hrant Dink by likening him to a 'missionary'. As stated above, missionary activities were acknowledged as an "domestic threat" at the National Security Council of December 2001; hence , in addition to the 'minority activities' which had been considered a threat against national security until that time, 'missionary activities' were also included as a threat in the National Security Policy Document.

The National Security Council and the General Secretariat of the National Security Council, devised as the sole and highest power of the system with the Law no. 2945, have created a domain of power away from judicial review, thanks to secret regulations and cadres.

There is a broad and extensive definition of national security in Article 2(a) of the Law no. 2945 on the National Security Council and the General Secretariat of the National Security Council. According to this definition, virtually all areas of life are considered within the scope of 'security', and thus falls under the jurisdiction of the MGK. This broad and extensive definition also clearly reveals the executive's obligation to comply with this document, when read in conjunction with the provision included in paragraph (b) following paragraph a of Article 2, which reads as follows:

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

In other words, the National Security Council and its General Secretariat, placed at the top of the state's power chart, carries out its activities as the highest authority and final decision-maker in almost all areas of life and free of any supervision, thanks to that comprehensive definition included in the law.

MGK does not only have the authority to set targets and (internal-external) threats, but is also equipped with the power to take any action, inside and outside the country, against the targets and threats identified by the Council itself.

The decisions of the General Secretariat of the National Security Council are transformed into government decisions as per the law; yet the Council also has the power to convey these decisions to the relevant institutions and follow them up. Moreover, the General Secretariat has other powers and duties, such as preparing and implementing any kind of psychological action plans in line with the combat against identified 'threats' to achieve the set goals, as well as constantly monitoring the identified threats, preparing the National Security Policy Document and undertaking its control and follow-up.

As a result of these vast powers vested in this institution and because of its designation as an executive and administrative authority for all purposes, MGK is called the 'Shadow Government', and the National Security Policy Document prepared by the MGK is called the 'Secret Constitution' or the Red Book.

The Department of Community Relations, which receives the highest criticism due to the psychological actions carried out by the MGK, was removed from the MGK with a legal amendment made within the framework of the EU harmonization packages in 2003 and 2004; however, the department was not dissolved. It was merely shifted to exist under the General Staff. (*İsmet Berkan, Toplumla İlişkiler Başkanlığı, Radikal 23.06.2008*)

Although the other elements of domestic threat kept changing within the process, the minorities have always been perceived as a threat by the MGK and were invariably included in the National Security Council Policy Document; this time however, 'missionary activities' emerged as a new category in threat determination.

Although there are actually very few missionaries in the country, by identifying this group as a threat, it was aimed to associate missionary activities with 'external forces', and thereby to escalate fear and nationalism.

Accordingly, from this date on, the activities undertaken against persons and groups presented as missionaries were also being considered as 'defensive line of action', in addition to the persons or groups assumed to be carrying out minority activities. As a requirement of the National Security Policy Document, which defined the domestic threat based on a projection of difference and foreignness, the combat to be waged against the 'missionaries' and those accepted to be executing 'minority activities' was becoming an element of the policy of defending the state (self-defence) against the "enemy". 'And it was possible to go beyond the legal boundaries and commit a crime in this self-defence policy.'

Following the adoption of the National Security Policy Document, in which the 'minority activities' despite not having any specified definition, limits or scope remained in the list of threats in all governmental periods- were pointed out as domestic threats along with 'missionary activities', and following the numerous amendments made in laws especially in 2003-2004 in the Law on the National Security Council and the Law no 3194 on Provinces in parallel with the EU harmonization packages, the country embarked upon a new period in which attacks against the minorities increased in all areas, in which the media made programmes that targeted the minorities and Christians, in which textbooks were added sections including hate and enmity against the minorities in line with the identified threat, in which teachers were forced to take seminars, and in which governmental blacklisting of people became almost routine.

“It was claimed that the country had been besieged by an ‘army of missionaries’ while there were only 100s of people who had converted to Christianity in the last 11 years. At the Turkish Grand National Assembly (TGNA), right-wing MPs were filling the rostrum with this paranoia, and the pseudo-secular generals [pashas] of the National Security Council were taking a military stance against this imagined ‘army of missionaries’; the police was conducting operations into churches, and the media was beating the war drums. Some defendants on trial in the Ergenekon case were assuming a legionnaire duty.” (İsmail Saymaz, Nefret Malatya: Bir Milli Mutakabat Cinayeti)

The Agos newspaper and its writers were blacklisted in the annexure of the document dated 23 January 2002 and signed by Artillery Colonel İsmet Kaytaç, entitled ‘Analysis of Publications and Broadcasts’ (*‘Yayın Analizi’*), which was prepared by the General Staff, Physiological Warfare Battalion Command and presented to the General Staff, Psychological Operations Department. (*Yeni Şafak Gazetesi*)

During the Ergenekon investigations, it was revealed that Sevgi Erençerol, who had played an active role in the process paving the way to the murder of Dink, had delivered seminars at the General Staff, the force commands and universities, and also a seminar on ‘missionary activities’ in Trabzon, and that these seminars were propagating the view that the minorities were carrying out missionary activities in the country, and that the threats against the country constituted a pyramid with minorities on top.

After the abovementioned publications and seminars, attacks against non-Muslims and members of the non-Muslim clergy suddenly increased. There was a new process unfolding, in which Father Santoro and Hrant Dink were killed; Tilman Geske, Necati Aydın and Uğur Yüksel were brutally murdered in Malatya for being missionaries; Father Edip Daniel Savcı of the Syrian Church of Mor Jacob was kidnapped by three unidentified persons and set free after three days; and Father Adriano Franchini of the Church of Saint Anthony in İzmir was stabbed with a knife.

When Yasin Hayal, one of the defendants in the case of the murder of Hrant Dink, came home on leave from his military service in March 2002 and severely battered Father Pierre Brunissen (predecessor of Father Santoro) of the Catholic Church of Saint Mary of Trabzon, he mentioned “missionary activities” as the reason for his act, which should also be considered in this respect. Moreover, though it may be interesting, it is certainly not accidental that classified and secret documents about the state’s national security policy and the state’s policy, which are inaccessible even for the ministers, have been found on many defendants apprehended as members of a ‘gang’ or ‘mafia’ in the recent operations.

We would also like to express that, in this context, we find the assessment included under Section 2 of the [Prosecutor’s] Opinion extremely interesting and striking. The parallelism between the state policy defined in the National Security Policy Document above and the definition of the charges laid on some of the Ergenekon defendants, as cited directly from the Ergenekon indictment by the Prosecution, is also striking.

In the relevant section, the prosecution says: “In the indictment prepared within the framework of the investigation no 2007/1536 (Indictment #1 prepared in connection with the Ergenekon Terrorist Organization), it is seen that some of the persons, against whom action was taken within the scope of the investigation into the Ergenekon terrorist organization, used the **missionary theme heavily and were carrying out activities that were of a nature that could incite the public into hatred and hostility in connection with missionaries and minorities.**”

After establishing this, the prosecution gives a long list of incidents, including the murder of Father Santoro, Hrant Dink and the Malatya Zirve Publishing House massacre.

As is seen and as will be explained below with examples, these acts, based on which some of the Ergenekon defendants are being tried today, were once implemented by all institutions of the state, as part of the state policy, over a certain period of time.

The letter dated 12 March 2003 and numbered 7010-2003, sent by Secretary-General of the National Security Council, General Tuncer Kılınç to the Prime Ministry, regarding the 'Missionary Activities', comes as one of the most important examples proving that this was indeed a state policy.

The following letter, addressing the Prime Ministry and bearing the signature of General Tuncer KILINÇ, Secretary-General of the National Security Council, reads as follows:

*"To the Prime Ministry,*

*1) The measures that will be taken against missionary activities, designed as a result of the studies carried out to determine the principles of the combat to be waged against missionary activities which are gradually spreading across the country, with the participation of representatives from the Ministry of Foreign Affairs, the Undersecretariat of the National Intelligence Organization (MİT) and the Directorate General of Security (EGM) at the meeting held on 07 March 2002 at the General Staff, are presented in the Annex hereto.*

*2) It is believed that the implementation of the specified measures by the relevant Ministries and public agencies and organizations is necessary.*

*Annex: Legal and administrative measures"*

*"A notice similar to the one sent to the Prime Ministry was reproduced by the National Security Council on 17 October 2003 with the signature of General Şükrü Sarıışık, as a result of which the National Security Council sent a 40-page indoctrination document to the Army, Air Force, Navy and Gendarmerie Commands, the Ministry of Interior, the General Staff and the Secretariat General of the Presidency ... The document listed the areas in which the missionaries were active, claiming that 'active Catholic churches have always been present in the Black Sea Region', and that the Eastern Black Sea Region was a particular area for such activities ... In the assessment section of the 40-page document, the following attention-grabbing lines were used: "Missionary activities, which are observed to have reached the extent of threatening our national interests in the recent years, are being carried out in the shade of the constitution, legislation in force and international treaties related to human rights."*

*And the following sentences were used in the conclusion section of the same document: "Of course our state cannot be expected to remain a mere spectator to such an activity that will seriously threaten the country's security in the long run." (Adem Yavuz Arslan, 'Bi Ermeni Var...' Hrant Dink Operasyonunun Şifreleri)[Adem Yavuz Arslan, 'There is this Armenian...' The Codes of The Operation Hrant Dink]*

As can be clearly understood from these notes, the measures to be taken against missionary activities were part of a state policy that had to be implemented primarily by the Prime Ministry and by the relevant ministries as well as various public agencies and organizations; and there was a special importance attributed to the Black Sea Region within the scope of this policy. The human rights conventions, the constitution, the legislation in force and the international treaties would be

put aside for the sake of the combat and for the sake of taking measures against minorities and missionary activities.

Another salient point is that some of the persons and institutions who had played an active role in the process leading to Hrant Dink's murder but who had remained immune from any legal action were no longer treated with immunity during the investigations called 'Ergenekon'.

Within the scope of the said case, these persons, including Veli Küçük, Kemal Kerinçsiz, Sevgi Erenerol, Özel Yılmaz and Levent Temiz, were charged with many crimes requiring aggravated sentence, including the crimes of setting up, managing and being a member of a terrorist organization; yet, it has not been possible, so far, to ask any questions to these persons about the Hrant Dink murder. **This situation has shown that both immunity and non-immunity is possible within the frame of and in association with the matters determined by the state, and that the murder of Hrant Dink is outside this non-immunity frame.**

## THE INVESTIGATION PHASE

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

- A significant portion of the ATM camera recordings of the murder day confiscated by the law enforcement officers from Akbank Osmanbey Branch were destroyed at the Police units and no one has been able to reach these recordings to date despite all efforts. The suspicion that the person or persons who were recorded and who could very possibly reveal the motive and organisation behind the murder have thus been secreted could not be addressed to date, and no steps have been taken to eliminate these suspicions.
- Though a very important piece of evidence, the complexity and contradiction between the statements regarding Ogün Samast's cell phone and sim card have not been solved; the truth of the matter has not been researched and this matter was left to remain a puzzle much like the others. Yet, according to witness statements, after the murder Ogün Samast had used his cell phone frequently. These witnesses could not be located and it has not been possible to hear them in any of the hearings to date.
- Right before the murder, Ogün Samast spent more than an hour at the Internet Cafe on Şafak Sokak (Street) next to the Sebat Apartment Building where Agos is located, and chatted with someone. Although the place visited by the murder suspect right before the murder, the testimonies of the eye witnesses who were also at the same place and of the owners of the place, and the log records from the computer used by the suspect are very important; the police did not inquire into any of them. The statement of Cavit Kılıç, the

police officer operating the cafe, was taken only upon our request and two months after the murder date. And computer records remain as yet un-accessed.

- However, the internet cafe which Samast used to chat with unknown persons right before the murder was on the second floor of a building and its sign said “Kritik Güvenlik Sistemleri, Temizlik Hizmetleri ve Danışmanlık Şirketi” (Kritik Security Systems, Cleaning Services and Consultancy Company); in other words, it was impossible to understand, looking from outside, that this place was an internet cafe. Cavit Kılıç, son of the company’s owner and employed as a police officer at the Feriköy Police Station was at the bureau on the day of the murder. In his statement, taken two months after the murder, he said he had not seen Ogün Samast. Yet at a later date, Cavit Kılıç, in his statement at the court, described some very important details about the murder day and Ogün Samast; when asked, he told he had also imparted the same information to the anti-terror teams on the day of the murder.
- Following the murder, when running in the Şafak Sokak (Street), Ogün Samast was caught by the security cameras of Saray Kumaşçılık Textile Company. No inquiry was made into the two people following right after Samast and disappearing inside a building under construction at the corner of the street after seeing Samast getting away. Yet the descriptions of these two persons arousing suspicion with their behaviours were consistent with the evidence given by some witnesses who had said Samast was not alone.
- The identity of the person caught on the security cameras of Akbank ATM and Saray Kumaşçılık Textile Company while making phone calls at various locations on the day of the murder and looking highly suspicious was never made a subject of investigation. Our demands to this effect have not been met to date and this person remained a mystery.
- Although it was clearly seen in the recordings of the security cameras of Akbank that the suspect, who was identified on the day of the murder and whose image was captured by the camera recordings which were included in the case file, had exchanged signals with some other persons right before the time of the murder, and that these individuals had started to move at the time Hrant Dink was leaving Akbank; so far it has not been possible to identify these persons.
- In terms of identifying these persons, although it is clearly seen that the individual wearing a black jacket and talking on the phone had used his cell phone in two different occasions, once **in front of Akbank at 14.53** and once **in front of Saray Kumaşçılık at 11.16**, the court has been unable to access the details of said person’s phone records.
- Although it was known that the defendants had contacted each other and third persons on the internet, and although it was later on found out that the police were already in possession of these information; the persons they had contacted and their contact information have not been investigated either in the investigation or the prosecution phases.
- Although it was found that the security camera of Yapı Kredi Bankası, located at the crime scene, was out of order a day before the murder (18 January 2007) and on the

murder day (19 January 2007), the court did not investigate whether such failure had any particular reason or whether it was only a coincidence.

- In the letter dated 25.01.2007 sent by investigating prosecutors to the Istanbul Anti-Terror Division, the prosecutors requested that ‘according to information received from a reliable source, it is considered that the person who is the Editor-in-Chief of the Yeni Hayat Newspaper may be involved in this incident and may have contacts with the suspects, the cell phone and landline telephone numbers of the said person be identified and the details of his call records, retrospectively, be obtained and examined’; yet, the cell and home phones of the said person were never identified or investigated.
- In the conversation taking place between Erhan TUNCEL and Yasemin KIRICI, who was using the phone number 05554947342, on 31.07.2006 at 22.50, it was detected that Erhan Tuncel said he was ‘personally interviewing the perpetrators’ for the novel he was going to write on the murder of Father Santaro; yet there was no special mention of this issue, and the matter was never investigated.
- It was seen that the page of 19 January had been completely torn off the datebook found in the search carried out in the home of Tuncay Uzundal, who is one of the defendants. However, no emphasis was put on why the page dated 19 January could have been coincidentally torn off the datebook, and what could possibly have been on the said page.

Here, it should be emphasized that the points mentioned above are defined as a crime in the law, and therefore these actions of the judicial law enforcement units constitute a crime. According to Article 161/5 of the Code of Criminal Procedure:

*“Public employees who abuse or neglect their duties as defined in the statute, or duties required of them according to provisions in the statute, as well as superiors and officers of the security forces who abuse or neglect to execute the oral or written demands or orders of the public prosecutors, shall be directly prosecuted by the public prosecutors.”*

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

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

However, although the initial establishment of identities and charges were due and appropriate, the decision of non-jurisdiction was equally inappropriate and off the mark and this decision, in one aspect, determined the course and fate of the trial. The offences listed under eleven headings by the prosecutors were within the scope of crimes related to the murder case on the basis of CCP 8/2 and should have been prosecuted together with the main case. However, the prosecutors decided for

non-jurisdiction on the ground that these actions were outside of their sphere of jurisdiction, and sent the file to the Chief Public Prosecutor's Office of Trabzon for execution of the investigation. The Trabzon prosecutor did not make any inquiry, and did not allow a hole in the immunity shield surrounding the officers in question by giving a decision of nolle prosequi despite the evidences included in the file.

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

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

In conclusion, it revealed as the most marked and systematic phenomenon of this investigation phase that the security and intelligence units concealed, falsified or destroyed information and documents that were of the nature to unearth the factual truth, that they attempted to mislead the investigating authorities by giving false statements, and that they tampered with the evidence. Although each and every one of these acts are crimes requiring severe penalties, no investigations were initiated against the security and intelligence officers regarding these crimes, or any attempts to launch an investigation by investigating prosecutors were left inconclusive by other authorities.

In its Legal Opinion on the merits of the case, the prosecution – by using the following formulation - determines that the act of destruction of the evidence as the the act of eliminating the evidences that are of significance in terms of exposing the organization; but the prosecution limits itself only with determining that fact, and does not take any action against such a serious crime in which very important criminal evidence was destroyed, and does not initiate any investigations into those perpetrating the destruction of the evidence:

*“The communication records of the GSM phones of Erhan TUNCEL, Yasin HAYAL and Mustafa ÖZTÜRK, who were under technical surveillance and whose phone calls were being tapped in accordance with court decisions, were destroyed with protocols dated 01.11.2006 and 04.04.2007, preventing clear exposure of the hierarchical connection between the defendants, who constitute the Trabzon cell organization, and of the higher structure to which the organization is subordinated.”*

We would like to make another assessment regarding the investigation phase, which is about the decision of non-disclosure taken in the investigation phase. The decision for non-disclosure taken as per CCP 153/2 was used to conceal, destroy and sort through the evidence, within pre-drawn limits, with an implementation that was completely opposite to the purpose stated in the law. In the law, the grounds for a decision of non-disclosure are described as follows;

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

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

## THE PROSECUTION PHASE

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

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

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

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

- Hrant Dink, in his article "Neden Hedef Seçildim" (Why was I chosen as a target?) published in Agos newspaper on 12 January 2007, was describing the process of his being selected as a target and was pointing out to the meeting he was summoned to at the Istanbul Governor's Building as the beginning of this process. In the section where Hrant Dink describes that meeting in the office of Ergün Güngör, Deputy Governor of Istanbul, accompanied by two other State officials, Hrant Dink ends the section with the following words. "I had to know my boundaries ... I had to be careful ... Or else-it could turn out badly for me!..." And right after that, Dink says "Now I was the target" and adds: "Indeed what followed was not good."

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

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

Although the question was extremely clear, in its response letter the Istanbul Governorate did not answer any of the questions requested to be answered in the interim decision. The requirements of the interim decision were not fulfilled. Since concrete questions were left unanswered, we demanded a new letter be written to ask

again for the identities, positions and titles of the security officers present at the meeting with Hrant Dink, yet the Court refused it on the grounds that the request had already been fulfilled. Yet, as described above, this request was not fulfilled; despite the legal obligation, the Governorate's officials failed to fulfil the requirements of the Court's interim decision. The questions posed by the Court were not answered. Despite our numerous requests regarding the issue, it has not been possible to persuade the Court to write another letter to the Istanbul Governorate. The Court acted as if the requirements of said interim decision were already fulfilled.

- So as to reveal the organized structure behind the murder, all evidence representing the incident should have been collected, all pieces that had the possibility of representing the whole should have been put together, and all leads that could have exposed the organisation should have been evaluated. Therefore, it was important in terms of reaching the material fact to carry out the entire case and investigations related to the murder from a single hand. Yet the requests to consolidate the legal actions were refused every time.
- Similarly, due to the reasons stated above, our demand to hear as witnesses at court Celalettin Cerrah, the Istanbul Police Director of the time; Ahmet İlhan Güler, Istanbul Intelligence Division Director of the time; Ramazan Akyürek, Head of Intelligence Department of the General Directorate of Security (TNP); Reşat Altay, Director of the Trabzon Police Department at the time; and Colonel Ali Öz, Commander of the Trabzon Gendarmerie Regiment, so as to ensure that whether the state officials in question had any role in the murder be investigated through the Court were also refused. Hence, it could not be possible to hear as witnesses these persons who were protected with immunity.

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

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

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

sent the Court the information and statements belonging to the time after the murder, which were already present in the file.

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

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

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

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

Finally, he objected to the Court's decision. The objection was denied, and the file was sent to the 9th High Criminal Court for review by a higher court. In the end, it was decided that TIB must comply with the interim decision of the Court; however, it has not yet been clarified whether the said interim decision meets our demand or not.

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

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

Gendarmerie, and that they had no information relayed to them regarding any actions related to this murder by the accused or by any illegal or legal or even political organisation.

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

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

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

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

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

### **In conclusion,**

- The most important element affecting the course of the case was that it was not permitted to cross the boundaries drawn by the indictment. When the unwillingness of the judicial authority was combined with the resistance shown by state institutions and bureaucracy, a pseudo judicial activity was carried out which was far from being effective and extensive. In this process, every institution appeared to be performing the role given to it in a play designed by a strong will.
- Those with definitive duties in preventing the murder and responsible for the commission of the murder remained untouched and immune. It was striking that those held immune were all state officials serving at critical positions.

- It was mentioned above that in the National Security Policy Paper, minorities and missionaries are determined as domestic threat (domestic enemy). According to the MIT Law no. 2937, MIT's foremost duty is to work towards realising the National Security Policy Paper. All other intelligence institutions of the state are also held responsible for working in this line. Even the state institutions with no intelligence-related duties have the responsibility to take duty in bringing this document to life. All these, and the resistance and harmony of the bureaucracy after the murder should be noted as another striking point.

## **LAW NO 4483 ON 'IMMUNITY'**

It was revealed during the investigations and inquiries that all the forces responsible for protecting the safety of life and property of the State took no precautions despite being informed, to the smallest detail, about the murder plans against Hrant Dink. Upon these findings and information, an investigation was launched against those taking no precautions despite being informed about the possible murder of Hrant Dink, pursuant to Law no. 4483 on Trial of Civil Servants and Other Public Employees. In these investigations against officers of the Trabzon Police Department, officers of the Trabzon Provincial Gendarmerie Command, officers of the Istanbul Police Department and officers of the Samsun Police Department and Gendarmerie Command, it was revealed that the security forces and intelligence officials had tracked and followed Hrant Dink and his murderers, had failed to act despite being in full knowledge that Hrant Dink's life was in immediate and serious danger, and had failed to take any preventive measures against the murder. However, despite the concrete proofs and infinite documents to this effect, the investigations and inquiries carried out as per law no. 4483 left unanswered the question why Hrant Dink was not protected, and no sanctions were administered against the criminal actions of those failing to provide such protection.

Here are some examples:

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

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

- However, it was exposed thanks to the surveillance form and other evidence that, upon the letter dated 17.02.2006 which was later on sent from the Trabzon Police Department, two officers, claiming to have gone to Ümraniye and conducted a search there, were actually carrying out surveillance in a different place for another mission on the same day, between 09.00 a.m. and 01.00 a.m.; in the new and latest probe initiated against the officers of the Istanbul Police Department, authorization was requested to launch an investigation into nine officers, including the Chief of Istanbul Police Celalettin Cerrah; however, it was again impossible to take action against the public officials due to their immunity, as the Istanbul Regional Administrative Court decided for cancellation of all investigation authorizations despite the judgment of the European Court of Human Rights and despite the developments in the case.
- In the investigation against the gendarmerie officers in Trabzon, it was established that false documents were forged after the murder and some documents were destroyed; yet no action was brought against any of these crimes. In the ongoing lawsuit, it became clear that it would be impossible to get any results in terms of accountability and sanction. It was understood that this lawsuit would result in no sanctions and hence would not be able to be an exception to the rule of immunity and impunity as a result of a decision to put off the sentence or statute of limitations since the crime charged against the accused was a simple crime of neglect of duty.
- The investigation and inquiry launched when it was revealed that Ogün Samast, apprehended in Samsun, was treated as a hero by police and gendarmerie officers and when the photos and camera recordings proving this were leaked into the media also failed to reach any conclusion.
- Another investigation process was the preliminary inquiry against officers of the Trabzon Police Department. Officers of the Trabzon Police Department, accused of being in possession of the information that Hrant Dink was to be murdered, with all the pertinent details, and taking no measures to prevent such, and of concealing and destroying etc the evidences after the murder, came out of all investigation and inquiry processes clear, with not even the smallest default attributed to them.

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

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

Yet, in order for an investigation carried out against public employees due to their responsibilities in preventing a murder to be accepted as an effective investigation, as a general rule, the persons

responsible for the investigation and carrying out the inquiries must be independent from the persons involved in the acts that are under investigation.

However,

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

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

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

## **JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS**

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

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

ECHR concluded that the Trabzon Police Department and Trabzon Gendarmerie Command were the responsible authorities in the place where the murder was planned and prepared, and that the Istanbul Police Department was the responsible authority in the place where the murder was done

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

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

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

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

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

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

## **ISSUES RELATED TO THE JUDICIARY AND THE TRIAL**

Immunity and impunity came to the fore as the main problem in the investigation and trial process of Hrant Dink’s murder. Officers of the state remained immune despite all investigations, inquiries, trials, legal initiatives and public pressure. This resulted in crimes remaining unpunished, and, combined with previous experiences, created a domain of power for security and intelligence officers, reinforcing the perception that they are untouchable and immune and they cannot be held accountable.

All the legal and non-legal processes related to Hrant Dink’s murder proved that practices of immunity and impunity are systematic and have become the rule. It also became clear that the

judicial processes and authorities were also designed as a mechanism to implement this rule without allowing any leaks, that any possible attempts to break the rule were prevented by yet another mechanism, and any accidental cracks were repaired by another authority.

In addition to the domain of arbitrariness created by immunity and impunity, it was once again understood that the lack of a political will also increased the resistance and daring of the civil servants and that unless there is a political will, it will not be possible to break the resistance of state institutions.

The Hrant Dink murder, investigation, review and trials showed that judicial authorities address some crimes committed by civil servants with an approach differing from other trials, that instead of deepening the trial processes, they display a common behaviour of conducting a pseudo trial and investigation within pre-drawn boundaries and with only what is handed to them.

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

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

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

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

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

It is also really difficult to say that your Court displays an attitude which is free from the entrenched judicial understanding of the Tutelary State, which places the state in the centre, and to say that your Court possesses the will for an impartial and objective trial.

The state-centred, the protectionist and the partial approach prevailing in the Turkish Judiciary was also adopted in the current court case concerning the murder of Hrant Dink; and this has raised

various understandable concerns about the existence of the will for a fair and impartial trial, not only in us but also in the public conscience. We would like to emphasize that it is not compatible with a modern and civilized judicial approach that the existing methods, which show no compliance with the concept of a state governed by the rule of law and which is a reflection of a tutelary state on the judiciary, were adopted and implemented in full force during this case. It is in no way understandable why your Court insists on looking at this case only on the basis of the existing list of defendants rather than taking steps to launch a more in-depth and comprehensive investigation and illuminate the suspicious areas despite all our efforts, warnings and demands for broadening and deepening the investigation and prosecution phases and even when the existence of outside connections with regard to this inauspicious murder was also pointed out in the legal opinion submitted by the Esteemed Prosecution; all because such a protectionist judicial approach was adopted.

We would like to express that we cannot associate the course taken by your Court with a modern and civilized trial activity. In fact, this attitude is not something that is unique to your Court or that has emerged only with your Court. This practice, which has long become Turkey's lot, is a particular element of an authoritarian state organization that the Turkish Judiciary has adopted with a missionary's devotion and made it become more deeply entrenched. This situation is a reflection of the ideologically partial mission assumed by the Turkish Judiciary, which is one of the most powerful strongholds in terms of the survival and protection of the existing structure and organization of the state. As a tutelary authority, the aim is to ensure that the authority and ideology of the state is heavily felt by the political institutions and by the citizens. The discretion used while executing this mission has, perforce, led to the abandonment of the principle of impartiality and objectivity, which are the most fundamental characters of the judiciary, in some court cases where ideological partiality comes to the surface.

It is a reality that, in the Turkish Judiciary, the entrenched practices favouring the state and its agents originate from an authoritarian state system, and that this judicial mode of operation has so far remained unchanged.

The tutelary and etatist mission that the Turkish Judiciary has been furnished with during the process starting from 1930s and extending to our current times was further reinforced by carrying it to the constitutional plane via the coups of 1960 and 1980. Based on this factual reality, we consider that it might prove beneficial, for the sake of this case, to briefly mention this mentality perception that has permeated deep into the capillaries of the Turkish Judiciary, which never abandons its partiality towards the state and its agents, and which has the tendency to still continue this bias.

In this context, it is necessary to take a brief look at the outcomes of the research on "Perceptions and Mentality Structures on the Judiciary", conducted by the Turkish Economic and Social Studies Foundation (TESEV) through field studies and one-on-one interviews with judges and prosecutors. In the study, the most striking result with regard to independence and impartiality is that the judges and prosecutors have adopted an attitude and behaviour that will protect the **interests of the state** in cases where such interests arise.

In the same study, it was underlined that a significant majority of the judges and prosecutors had doubts about the legal reforms made as a requirement of the EU harmonization process, and thought that the said process was harming Turkey, and that they did not find it appropriate and were not willing to implement the new amendment to Article 90 of the Constitution, done in 2004; the study also stressed that they had not witnessed the implementation of the said amendment.

This understanding, adopted and internalized by judges and prosecutors, comes as a reflection of an education devised and implemented by a state-centred system in line with the official ideology. As if it is not enough that judicial cadres are unwilling/unable to act independent from these rigid etatist and nationalist mentalities, and in some cases, act impartial, there is also the pressure from institutions such as the High Justice and the High Council of Judges and Prosecutors, which are at the top of this community; with the addition of these pressures, it has become virtually impossible for the Turkish Judiciary to act with a different mentality in court cases that focus on the state.

“The perception and mentality of protecting the state from the citizen”, which glorifies and prescribes the protection of ‘those who fire or take bullets for the state’, can be traced back to the Martial Law of 1887 issued during the Ottoman times, followed with the Law on Treason and Independence Courts dated 1920, the Eastern Reformation Plan of 1925, the Tunceli Law of 1938, and the State Security Courts and Court Martials, which were introduced into the judicial system through military coups, and finally with today’s High Criminal Courts with Special Powers.

Looking at the existing practices to date, it is clearly seen that there has been no change in the general attitude of the Turkish Judiciary, including your Esteemed Court; that courts remain unable to distance themselves from the protectionist mentality that has become static and clichéd in court cases involving the state or its employees; and that the Judiciary still acts with an introverted resistance in this matter.

This protectionist attitude of the judiciary, which practically grants immunity, has prepared a fertile ground that enabled some high-ranking public employees in various echelons of the state to easily go beyond the limits of their mandates/duties and get involved in illegally formed structures.

In this particular case which is being administered here, there is a point that comes as an indisputable reality regardless of what others may say: The State and Hrant Dink and his Family have come face to face in this case. Because, it is clear that some agents and actors of the state, the gendamerie and police forces and many other dark characters have played a part in the planning and commission of the murder of Hrant Dink, by relying on the usual protectionist attitude of the state and its judiciary. We would like it to be known that we insist on our expectation and demand for the employment of the necessary sensitivity to ensure that this fact is accepted as an indisputable material fact and that these dark connections are exposed.

In the UN Resolution on the ‘Responsibility to Protect’, which was incorporated into the case-law after its adoption at the summit meeting of 2005, it is stated that the state is responsible for protecting its citizens against preventable disasters. The state’s responsibility to protect is of a comprehensive nature that includes mass murders, genocide, crimes against humanity, rapes and mass starvation, as well as the right to life of the individuals living in the society. The most important issue in fulfilling this responsibility is the timing of the intervention made for protection purposes, and its effectiveness in terms of yielding results. Considering the events preceding the murder of Hrant Dink, it is clear, with no room for argument, that Hrant Dink’s right to life was not protected by the State within the frame of the responsibility envisaged in the aforementioned UN decision. Under these circumstances, it should be investigated and examined to its finest detail by the Esteemed Court why those who, as public employees, were charged with the duty to protect, from the highest to the lowest-ranking personnel of the organizations of the State, did not duly fulfil this duty; the reason for the passive and unwilling stance they demonstrated in terms of fulfilling this obligation; and whether this is the product of a deliberate and calculated attitude.

Indeed, it is what ought to happen, and in fact it is an integral part of the *raison d’être* of your Esteemed Court.

Further to that, currently, there is a finalized judgment given by an international court, the jurisdiction of which is accepted by Turkey, with regard to the murder of Hrant Dink and the failure to protect his right to life. In the application filed to the said Court, since the public employees whose roles in the murder were established by the inspectors appointed by the State itself could not be brought before justice despite all efforts, the European Court of Human Rights convicted Turkey, and decided that the right to life of Hrant Dink had been violated. It is not possible to explain, with a mere excuse of “lack of satisfactory evidence”, the reason why your Court chooses to ignore this judgment too and why it refrains from taking the necessary steps to illuminate the murder.

Indeed, the Dink case has provided this opportunity to all of us – to you, to us to and everyone else – and in particular to the Turkish Judiciary. It should be, and it must be indispensable for all of us to not waste this unique opportunity and to use it in the best way possible .

In terms of determining in the most accurate and most realistic way the preliminary phase of the murder committed against Hrant Dink, it is not possible for us, and undoubtedly for your Esteemed Court, to turn a blind eye to the cases filed before the murder, to the dramatic events taking place during these trials, to the persons who made all these events happen and to the deep structures in which they were involved. Limiting the background of this murder to the defendants on trial in this Court and to their acts prior to and during the murder, and persistent attempt to fit it into that specific framework is, in its entirety, far from responding to the expectation of justice from an impartial judiciary, an expectation that is felt by the Dink Family, by the intervening attorneys and the public in Turkey and all around the world.

It can in no way be denied that the artificial cases filed against Hrant Dink based on indictments that were far from satisfying a large segment of the society in terms of the authenticity and justification of the charges they contained and that are still being carried out despite all that has happened; the events staged during these trial cases with the organized participation of a touting, aggressive and rampant group who is today accused of having assaulted the country’s government with its deep and illegal connections; and the court decisions made as a result of these trials, played an important and effective role in the preliminary stages of this murder. As such, the European Court of Human Rights has also highlighted, in its judgment that convicted Turkey, the role played by the judicial authorities in the process of turning Hrant Dink into a target.

The preliminary phase preceding the murder and the things occurring after the murder should be evaluated together. One day after the murder, the Chief of Istanbul PD, Celalettin Cerrah, gave a statement in which he said, by implying the defendants who are currently on trial, that this murder had been committed by “a nationalist youth” who had been affected from the articles written by Hrant Dink; this statement alone shows that, right from the very beginning, there was an effort to limit the number of defendants in the case, keeping the scope limited to the visible framework, and preventing any broadening in that framework. In addition, it is evident that, by expressing that the murder was in the nature of an act resulting from provocation, an intervention was made to the course of the court case right from the beginning, and that the aim was to steer the case to the desired direction.

For the sake of putting an annotation on the pages of history, we would like to note that this behaviour of the Chief of the Istanbul Police Department corresponds to an effort, with which we are not unfamiliar, to exclude from this court case first himself and then some agents of the State as well as possible responsible persons; and it is very much in line with the approach that recalls and reflects the customary behaviour patterns. It is impossible to see it or interpret it in any other way. Indeed,

one cannot help but feel doubts and concerns that the judicial process is progressing step by step according to a pre-set scenario, when there are so many suspicious incidents that are clearly visible. What is more serious is that those who planned the murder must also have planned, or at least “foreseen”, that the trial process would be run in this way. And, of course, this foresight comes from the unchangeable nature of the behaviour patterns demonstrated by the judiciary and its judges and prosecutors to this date in similar cases.

We are forced to go through a cycle in which the State declares a person as enemy; some public employees and civil forces, taking it upon themselves, murder the person who is declared an enemy; and the judiciary grants impunity to the perpetrators by not taking any steps to unearth the truth and thus clears the way for new murders.

Now, as specified by the Esteemed Prosecutor in his Legal Opinion and as has been constantly emphasized by us, there are circumstances that are suspicious, and there are persons and public employees who may be suspects. Their connections to this case are constantly being shadowed, or attempted to be shadowed, by some other cadres within the State. This points at the existence of a situation that is known, that is visible, and that adds to the suspicions. The only way to eliminate the suspicions and reach the material facts to broaden and deepen the prosecution process, and to enlighten the darkness behind what is visible. Otherwise, if this case is finalized in its current state despite these investigative shortcomings, the outcome will not satisfy anyone. Yet, there will be many who will walk with a smirk because of such an outcome. As it is evident that these are dark figures who create murderers out of babies; and there is no doubt that, should there be a failure to expose these dark characters, they will never hesitate to fearlessly and carelessly engage in any and all kinds of illegal relations and acts that prejudice peace and order, thanks to the shield of immunity they have been granted. The purpose of this court case should not be only to convict the persons who have committed the visible crime, but also to shed light on the dark side of the picture. Otherwise, the trial process will have no meaning for us other than a “play staged for the sake of appearances”.

## **IN CONCLUSION**

- The facts described under separate headings above, the ideological partnership and harmony between the indicated institutions and mechanisms in the preparation and perpetration of the Dink murder, in concealing and tampering with the evidence following the murder, in burying the truth, in the pre-drawn boundaries and frames of judicial processes and in ensuring that these boundaries are not crossed are all striking. In fact, this harmony and partnership corresponds to the existence of a powerful apparatus and mentality that not only legitimizes murder but also ensures its impunity. We are talking about an extensive structure that is in contact with very different segments, and that has immunity with no accountability. This apparatus can be explained with an illegal structure that has infiltrated the state itself.

This powerful apparatus is the established system, or in other words, the State itself, with its National Security Council, National Intelligence Organization and Armed Forces. The targeting of Hrant Dink, the trial procedures resulting in his conviction and his murder, the manner in which the murder trials were blocked, or in other words, all the facts in the process point at the ideology and policy of the State.

- It once again became clear that although the persons and groups covered by the state that has the obligation to protect the lives of its citizens may change in time, the state has

decided that a portion of its citizens are in fact its (domestic) enemies and that the state has designed a giant apparatus in which, when it comes to fighting this enemy, acts -including murder- defined as crime in the laws are not tried and therefore criminals are left unpunished and officers going out of the boundaries of law are held immune for these acts.

- This design, shaped around the political culture and mentality of holy state, made it possible for the state to maintain a system that legitimized and even encouraged illegality and murder and that made heroes out of murderers.
- It was found that the definition of domestic enemy is based on the prediction of differences that disturbs the state's ideology and the society's homogeneity, and that all actors taking part in the process of Hrant Dink's murder either with their actions or inactions were united under this definition.

In addition to all these establishments;

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

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

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

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

### **Two Traditions of the State**

The murder of Hrant Dink stands at the junction of two "Traditions of the State": Political murders and Armeniaphobia.

As stated above, coming to terms with these two traditions of the State is a must for a trial that will deliver justice and hence reveal the truth. For it is the only way to understand the reason and course of the murder. Without coming to terms with the ever-present Armeniaphobia, it will not be possible to understand the methods of the “criminal organization” and the manner in which the act was organized without first facing the political murder tradition of the State. It will also not be possible to understand the most important reason leading to the commission of this act by the “criminal organization” in such a blatant and conspicuous manner.

### **Political Murders**

Political murders, aka assassinations, have been used as a method, usually by the State itself, in order to get rid of a certain political figure on the one hand, and to issue a warning to the rest of the society and to intimidate the opposition on the other hand. From another aspect, political murders have served in designing the society in line with the motives of those organizing the murder. For example, political murders were used frequently as a method in line with the goal of “leading the society into chaos” before all military coups, without exception.

In order to achieve these goals, it is seen that the persons to be murdered are first turned into targets in the public eye in the preliminary phase; then, efforts are made to prevent the exposure of all perpetrators; afterwards, those somehow exposed are protected, kept safe and left without punishment by means of statute of limitation, amnesty/pardon or various other methods, including snatching the perpetrators from the jail in the ensuing process; in short, the entire process, including the preliminary and post-murder phases, is designed as a whole.

It should be sadly noted that, the land we are living upon has been a land of secret organizations and assassinations throughout the history. Furthermore, it is said that it was this land – specifically, the Hashashins and the Seljuk- that gifted the world with the concept -and term- of assassination and clandestine state organizations. Unfortunately, murder was commonly used as an administrative tool in the Ottoman period. We will explain in due course the “Hamidiye Corps” of the Abdülhamit period. Considering that the Committee of Union and Progress (CUP-*İttihat Terakki*), coming to power in a harsh response to Abdülhamit, also used the same method but more frequently and in a broader and more systematic manner, and considering that the Republic, emerging at first as a criticism of the past, would continue to use the same method, it is easy to understand how the term “tradition” is right on the mark as an apt description of the practice. Regardless of how many times the governing cadre may change, the method has remained the same with no change at all.

The method employed by the “crime organization” that constitutes the subject of this court case is none other than this: political murder. Therefore, there is great benefit in briefly explaining this “tradition”, starting from the CUP, in the name of coming to terms with and gaining a real understanding of the truth:

*“The Committee of Union and Progress was (since its founding) a clandestine organization; and it did not really want to change this position after the constitutionalist revolution. Even after it evolved into a political party, the original committee tried to control the party; there emerged a tendency to view the party’s parliamentary group as a political tool which the committee could use for its political ambitions, and this tendency persisted. Moreover, the fedai, or musketeers (Teşkilatı Mahsusa), who were also clandestine organizations directly connected to the committee, were similarly mobilized in line with the political and military purposes of the committee. The committee was calling itself the Sacred Committee (cemiyeti mukaddes). (...) All dissidents opposing the committee started to be regarded as opposing the State which the committee was trying to save. (...) The entire opposition was stigmatized, without distinction, as a trend opposing the sacred cause and trying to*

*obstruct it. (...) They were traitors to their countries. They were the people who were cooperating with the enemy. (...) They were betrayers and enemies.“*

*“Hence, a pro-CUP political norm shortly started to poison politics, sucking in many people; in their opinion, the traitors ‘who are not of us’ had to be punished. If the usual mechanism of justice somehow did not or could not yield this result, then the armed branch of the committee could serve this purpose. The slogan “traitor” was thus created and rendered applicable for all who opposed the government. The killing of dissident journalists in broad daylight before the very eyes of the public did not only mean the punishment of dissident writers, but was also an important warning to the remaining dissidents. Thereby, it was aimed to turn down the voice of the opposition, or totally silence it, through these murders. And after some time, a new process started: a process of cleaning out the traitors, by hanging some, exiling some, jailing some and killing some.”*

*“Even after CUP was dissolved on paper, the pro-CUP political culture endured and even got stronger in the period before and after the Republic. Assimilation methods remained intact against all who opposed the government; before the proclamation of the Republic, on the last days of the first parliament, Ali Şükrü bey, one of the opposition leaders, was assassinated; the fact that the murder was not an ordinary incident but was perpetrated for political reasons, and the fact that the murderer(s) were employed in the government were all reminiscent of the methods employed during the CUP era. They were all unfortunate developments: the way it was found out later that an opposition deputy, and in fact one of the leading names of the opposition, had been ambushed and killed by the commander of the parliamentary guard regiment and his collaborators; the efforts made to keep the murder a secret; the accidental discovery of the body buried in a remote place; the armed conflict arising between the government forces and the guard regiment’s commander and collaborators after the government tracked down the killers and was about to take them into custody, finally ending with the capture of the killers dead.” (Annex:2 Prof. Dr. Cemil Koçak, Tarihsel Bir Bakış Açısıyla Hrant Dink Cinayeti Üzerine Düşüncelerim)*

Leaving aside the role played by *Teşkilatı Mahsusa* in the Armenian Genocide, as explained in detail in the following lines, and in particular the acts perpetrated against the Armenian intelligentsia, it was also in this period that many dissidents were killed, such as journalist Hasan Fehmi and Ahmet Samim. The assassination of Mustafa Suphi and his 14 friends in 1921 in the Black Sea Region is another example in which the dissidents were targeted in the process leading to the Republic.

Interestingly, political murders suddenly ended as the opposition was silenced and the Republic was proclaimed. With the end of the single-party era, in which an opposition that could threaten sovereignty could not find a niche, we see that this old tradition of the State once again started to be used.

*“...Promptly after the transition to multi-party system, political terror (once again) came on the agenda. The raiding and arson of Tan newspaper and its printing facilities on 4 December 1945, then the destruction of many dissident publishing houses during the all-day-long protests, and the fact that all these events took place under the martial law, along with efforts to ensure that dissident names were found and assaulted if possible, were all processes that could hardly be realized without significant support and organization. As such, today we know that these events were indeed organized by the government of the time.”*

*“It should be observed with astonishment that, since that day, whenever a social incident involving political conflict took place, those involved in these incidents and, more importantly, those who directed them were never ordinary people, but were individuals who were either in the employ of the State or in contact with some organizations existing within the State.*

*The role of the press in all these developments cannot be overlooked. The press had become a tool to prepare the public opinion and legitimize the events/actions before they took place. It is not possible to understand the nature of the organization without taking into consideration how the press was being manipulated from the outside and how the media organs virtually prepared the public. It is possible to see all the individual aspects of the attack on the Tan newspaper when the articles and news appearing in the press are reviewed; the press ensured that the public was psychologically prepared for the attack, then played a role in painting as criminals the victims of the attacks.”*

*“The investigation initiated into the murder of Sabahattin Ali in 1948 and again the accidental discovery of his body (in a rural area), revealed that the murderer was once again someone with close ties to the intelligence organization of the State. However, unfortunately, the investigation of the murder did not extend to these aspects of the case. (...) Another point that should not be forgotten is that the murderer was released from the prison after a short while via a general amnesty granted by the law, hence drawing a picture in which the murderers were being protected.”*

*“Whenever a political conflict large enough and important enough to influence the public happens to fuel social conflict in Turkey, the possibility that persons and organizations related to the clandestine organizations within the state must have been involved in these developments should never be overlooked, as the existence of this possibility has demonstrated itself. For example, the events of 1 May 1977 have long taken their place in the history as an example that was never investigated from that aspect.” (Annex:2, Cemil Koçak)*

Today, it has been revealed with all pertinent evidence that the State itself has organized many terrorist acts for the purpose of “leading the society into chaos”, as explained above, before all the military coups that have put their mark on our recent history.

*“Similar developments were also seen before 12 September; the organizations behind huge social conflicts were ignored, and capturing the perpetrators was deemed enough. Today, the events of 12 September occasionally come on the agenda, with information on how the past political bloodsheds were fuelled and how any intervention to stop them was avoided.” (Annex:2, Cemil Koçak)*

The state-centred organizations arranging these bloody acts show great similarities in terms of the methods they have employed, while they continued the tradition under various different names depending on the political balances of the period. Within the scope of this tradition, the same organization has taken its place on the historical stage, but always under a different guise, ranging from the Hamidiye Corps to Teşkilatı Mahsusa, the Mobilization Monitoring Committees, the “Kontrgerilla”, the Special War Departments and finally to JİTEM, Hizbul Kontr and Ergenekon.

Kontrgerilla and similar organizations were groups attempted to be set up by the USA within the framework of the Truman Doctrine and a common concept under different names after the WWII,

which basically pursued combating communism and which were employed by the CIA in NATO countries.

On 13 November 1990, the Prime Minister of Luxembourg, Jacques Santes, gave a statement in which he listed all the exposed counter-guerrilla units with their names and countries; according to his statement, the secret organization in Turkey was named "Kontrgerilla". This confrontation, which was possible in European countries after the end of the cold war, has unfortunately not yet taken place in our country.

As in all around the world, the Kontrgerilla committed many murders, massacres and provocations against the dissidents in 1960s and 1970s, times when social opposition and the left wing were on the rise. The murder of Vedat Demicioğlu in 1968 by defenestration at the dormitory of the Istanbul Technical University, and the attacks on the groups marching to protest the murder can be counted among these acts. It should be noted as another characteristics that a quasi-civilian organization that was managed by the State, much like the Anti-Communism Associations, was behind this incident, which was called the "Red Sunday" in the pages of history.

In the events taking place after the second half of the 1970s, it is seen that the perpetrators were trained professionals connected to the State and with ties to right-wing groups such as the Nationalist Action Party (MHP), and the Ülkü Ocakları (Forges of Ideal). Persons such as Abdullah Çatlı, Mehmet Ali Ağca, Oral Çelik, Haluk Kırcı, whose names were mentioned in connection with many murders, were given motor vehicles, arms, passports, intelligence and other supports and were protected, which is another reality that has long been exposed.

Probing into the connection of nationalistic groups with acts of murder, Savcı Doğan Öz had deepened his investigation enough to expose the relationship between *ülkücü* (members of the Forges of Ideal) groups and the "Kontrgerilla", and their operation system; he had submitted his report on the investigation to the prime minister and officials of the period, but was killed immediately after that in an armed attack in front of his house on 24 May 1978, having not yet closed the investigation.

The killing of 7 young people from the Turkish Labour Party (TİP) in 1978 in the Bahçelievler District of Ankara was also an act committed in collaboration by the Kontrgerilla and civilian paramilitary forces. The vehicle found at the crime scene belonged to Mustafa Mit, Head of the Youth Branch of MHP. In his testimony, Haluk Kırcı, one of the perpetrators, said he had received the order from Abdullah Çatlı, yet no investigation was started against Abdullah Çatlı, who was the Vice-President of the Ülkü Ocakları Association at the time. In the same period, the President of the same Association was Muhsin Yazıcıoğlu, a name which was frequently mentioned by Yasin Hayal in this courtroom.

The assassination of Abdi İpekçi, Executive Editor of the Milliyet newspaper, in 1979 by Mehmet Ali Ağca was also a typical act of the Kontrgerilla. The murder suspect Mehmet Ali Ağca, who was apprehended months later, was snatched away from the Maltepe Military Prison in the same year, and then attempted to assassinate the Pope in Rome. It was claimed that the fake passport used by Mehmet Ali Ağca when travelling in Europe had been supplied by İbrahim Şahin, Head of the Special Operations Department. At this point, it should be reminded that it was revealed in the Ergenekon case that İbrahim Şahin, caught with a list of the intellectuals giving their signatures in the "İ Apologize" campaign and was making preparations for assassinating various persons including non-Muslims.

It has been frequently voiced that Abdullah Çatlı and his friends, whose names are mentioned in connection with these acts and many similar crimes, had been used by the State for official missions

against ASALA. It should also be noted that there are even attempts to somewhat legitimize these names by mentioning their acts against some Armenians.

The massacre of 1 May 1977 in which 34 people were killed, the Maraş Massacre of 1978 and the Çorum Massacre of 1980 were also recorded in the pages of history as State-led acts of terrorism.

In 1993, six months after Uğur Mumcu was assassinated, Mehmet Ağar, then Director General of Security, said to Güldal Mumcu, who asked that the real perpetrators of the murder be found, **“I cannot do that; if I pull one brick, the whole wall will collapse, leaving us under it,” which is especially striking in terms of describing the forces behind the assassination.**

In this period, which Mehmet Ağar mentions by boasting that they had done “1000 operations”, we see another organization, JİTEM, appearing on the scene as an organization working in collaboration with Special Teams and confessors. While Kurds were particularly targeted in 1990s, forced disappearance, kidnapping and killing by torture came to fore as the main methods in the unsolved murders of the time. Vedat Aydın, Musa Anter, Metin Can, and after the Prime Minister of the time Tansu Çiller said she had ‘a list of those helping the PKK’, Behçet Cantürk, Savaş Buldan, Hacı Karay, Adnan Yıldırım, Yusuf Ekinci, Medet Serhat and Faik Candan were among the names exterminated in that dark period, during which it is said that 17,000 people were killed by unknown perpetrators.

We should also recall that during the same period, Alevism, which is another traditional identity of “other” in the eyes of the State, was re-picked as a target with acts such as the Sivas Massacre of 93 and the Gazi Massacre of 95.

*“...It was revealed, leaving no room for doubt, in the court case that the perpetrators of the murder are in no way ordinary people; on the contrary, they are individuals who have ties to the security and intelligence organizations of the State. That all these cannot be a simple coincidence is established with historic developments and examples. The media coverage against Dink in a way that would manipulate the public opinion before the murder; the way the lawsuits opened against him were used as propaganda at this stage; the fact that the organization within the State has stepped in at this critical stage; the way that the murderer or murderers were acting in concert with their guides; all these are clear enough in the light of past experiences, so clear that they cannot be simple coincidence. Moreover, the Dink murder is a new political murder arranged in accordance with the similar examples in the light of past experiences.”*

*“As in all political murders, the purpose is not merely the execution; on the contrary, it should be seen as a ring in a broad planning chain that will ensure that the political process will develop in the manner previously planned: from this angle, without recalling the publications against Christian missionary activities, which had peaked at the time of Dink’s murder; the murders of priests and missionaries; the propagandas against the Armenian genocide; and the campaigns oriented to classify as traitor and apostate anyone who opposed the official ideology, it is evident, from the continuation of the propaganda activities against Dink after the murder, that Dink’s murder had been organized as an important step of a very broad political plan. Just like all the similar examples of the past.”*  
(Annex:2, Cemil Koçak)

This is the picture in which the things we have imparted in the section **discussing the role of the judiciary** in the process of transformation of political murders into a tradition become concrete. Abdullah Çatlı, Haluk Kırıcı, Muhsin Yazıcıoğlu, Mehmet Ali Ağca, names we know from their pre-1980

activities, are individuals who are taken as an example, admired and saluted by the defendants on trial here today.

Furthermore, some of these names are included in the case file also for reasons other than the sentimental bonds expressed by these defendants due to their sharing the same ideology. It should be seen that every murder, the perpetrators of which are not exposed and punished, prepares the ground for the next murder. Your Court will take its place in history in any case, either by giving this tradition the opportunity to continue, or by bringing an end to this cycle.

This murder, which must be evaluated as the continuation of the State-centred traditions of political murder in Turkey, is placed in a special context by virtue of its intersection with yet another State tradition, which can be seen in some of the examples given above.

This tradition points at a mentality that can be called “otherphobia” in general, and “Armeniaphobia” in particular, as a tradition deeply entrenched in the State.

### **Armeniaphobia**

The determining and distinguishing element of the historical process we have attempted to outline very briefly within the scope of political murders is, in essence, the “otherphobia”. Those left outside of the framework drawn by the rulers in line with the needs of that period were enemized and attempted to be eliminated. As such, even the Muslims, who are claimed to constitute the 99% majority of today’s society, have become the target of the rulers in various periods since the founding years of the Republic.

Although this definition of enemy may have changed from time to time depending on who held the ropes of the State mechanism, and even if, depending on this change, the State can be seen as having built temporary alliances with some elements identified as the other by the State, it is another striking fact that the non-Muslims have never been allowed/taken out of the definition of “domestic enemy”.

Of course it is an unacceptable approach for us to distinguish between or hierarchise the pains that have been suffered; however, as a requirement arising from the need to address the subject from the perspective of the existing case, it becomes necessary to point out the special significance of Armeniaphobia among otherphobia.

This necessity will be addressed from its many aspects below; however, we would like to first present you with a striking point. It is impossible to ignore the cause of the perception and emotion behind: Hrant Dink’s assessment that his being an Armenian played an important part in the process of his portrayal as a target, which he voiced in the last two articles he penned before his death; the comments of Yasin Hayal, one of the planners of Hrant Dink’s murder, on the murder of Talat Pasha, as imparted by his father; the fact that Ogün Samast yelled “I killed the Armenian/Die Armenian”; and finally the way the public expressed its reaction with the phrase “1,500,000+1” in the evening of the day Hrant Dink was murdered.”

As such, in terms of its impact on the founding of the State, Armeniaphobia is in a position that requires a special confrontation. Again when we look at the case file, the manner in which many power centres that are seemingly in conflict on many different subjects acted in concert both during the preliminary phase of the murder and in the process following the murder, can only be understood by analyzing this mentality.

Although the perception of Armenians as a “problem” goes a long way back, the Berlin Treaty of 1878 is an important milestone for many historians.

*“Following the Russo-Turkish War of 1877-78, the Balkans (The Ottoman/Eastern Rumelia), which were the most vital parts of the Ottoman geography, were mostly lost. The demands of the Armenian Ottoman citizens, who had started to create a national consciousness similar to that of the nations in the Eastern Rumelia, were first voiced in Article 61 of the Treaty of Berlin signed after the Berlin Conference of 1878. This article provided for radical reforms in the provinces with large Armenian populations (Sivas, Harput, Van, Erzurum, Diyarbakir and Bitlis) ... Although this promise for reform did not meet the expectations of the Armenian delegation who had gone to Berlin, it was an important start in terms of guaranteeing the rights of the Armenian subjects.” (Annex:3 Prof.Dr. Selim Deringil, Tarihe Ermeni meselesi Olarak Geçmiş Olayların Kısa Tarihi)*

The outcomes against Ottomans arising in the aftermath of the 1877-78 Russo-Turkish War acted as a trigger for the “Armenian Problem” in many aspects. The issue of the settlement in Anatolia of the Muslim people driven out of the lost lands, the local problems created due to these new settlers, the similarities between the growing political consciousness among the Armenians and the consciousness that had been raised among the peoples living Eastern Rumelia, and the escalating fear of separation/division can be counted among them. Of course, with the emergence of the Armenian Question in the international arena, Western states took on the position of the protectors of the Armenians, who were Ottoman subjects, which also played an important role in the perception of Armenians as the “domestic enemy” becoming deeply ingrained.

On the other hand, the failure to solve the political and economic problems and meet the Armenian demands resulted in the Armenian people showing increasingly more favour to armed Armenian committees. With the “opportunity” offered by the tensions escalating between the Armenian and Muslim people in Anatolia, the government of Abdulhamit II chose to “solve” the “problem” by use of violence.

*“The **Hamidiye Corps** were one of the main striking powers created for this purpose. The Hamidiye Corps were the idea of Zeki Pasha, Abdülhamid’s brother-in-law. Under this Project, which was put into practice starting from 1894, some of the Kurdish clans (asiret) would be armed by the State, given sanjaks, and their chieftains would be awarded ranks; in return, they would be used to quell the elements officially called the “Armenian Committee Members”. These cavalry units, formed as a result of an arrangement that is very similar to today’s Village Guard (Korucu) system, played the lead role in the Armenian massacres of 1890s.*

...

*However, when the Abdülhamit regime started to implement the bloody massacre policy that would be called the “Hamidian Massacres” in the history after 1895, none of the outside powers came to the rescue of the Ottoman Armenians. As a result of these massacres, an Armenian population of 150,000 to 300,000 were killed in Anatolia. Many (20,000 according to some estimates) Armenian girls and women were kidnapped or forced to convert to Islam.” (Annex:3, Selim Deringil)*

Throughout the Abdülhamit regime, the Armenian political movement acted, to a large extent, in concert with the Young Turks. The revolution of 1908 was welcomed with joy by the Armenians, as

by the whole nation. However, this light of hope for co-existence was to be short-lived. The Committee of Union and Progress, upon coming to power, did not take any steps to solve the “Armenian Question” except for making speeches oriented to save the day, virtually pursuing a stalling tactic. The Adana Massacre of 1909 gave the first important hints about how CUP viewed the Armenian issue.

*“Throughout the Abdülhamit regime, Young Turks and Dashnaks were in alliance; yet the Hinchak organization always kept a distance with the Young Turks. The declaration of the second constitution in 1908 and the dethroning of Abdülhamid caused excitement and hope among the Armenian intelligentsia. That the Armenians would be sending deputies to the parliament created hope among the Armenians that their grievances would now find an interlocutor. One of their major grievances was related to the Armenian properties seized during the massacres of the 1890s. CUP had no wish to deal with this problem, as most of the properties in question had been transferred to Kurdish Clan Chiefs and other Kurdish agents who were supporters of the CUP. Another problem involved the return of around 20,000 Armenians who had escaped to Russia during the massacres and who now demanded to re-settle on their seized lands. The Adana Massacres erupted amidst such an atmosphere. There were many suspicions about the 31 March events and Abdülhamid’s involvement in them. In such an atmosphere, tension was escalating in Adana. Dashnaks had significant influence in the Adana/Tarsus (Cilicia) region where the second largest Armenian community, after Van, lived in Anatolia; yet the leading figures of the Dashnaks were still hopeful that good relations could be maintained with Young Turks. Adana Massacres resulted in the killing of around 20,000 Armenians and the destruction of almost all Armenian neighbourhoods in Adana. After these events, the Hinchak committee severed all ties with the CUP.” (Annex:3, Selim Deringil)*

The CUP-Armenian relations, severely weakened after the Adana Massacre, came to an irrevocable end after the shady elections of 1912. It is frequently expressed that radical methods started to be considered for the solution of the “Armenian problem” when CUP decided to cast its lot with Germany in the process leading to the First World War. The war erupting on 2 November 1914 gave the CUP government the opportunity it was waiting for in order to get rid of the “Armenian problem”, or more accurately, the Armenians, permanently.

*“In February 1915, Armenian soldiers were disarmed and sent to labour battalions. Those sent to labour battalions were exterminated by working them till death. The most significant event for Armenians took place on 24 April 1915, when 235 leading Armenian intellectuals were arrested and exiled to Anatolia; most of these intellectuals were killed afterwards. A short time after, on 27 May 1915, the “Law on the Relocation and Settlement of Armenians” was passed. This law created the legal background for the Armenian massacre. However, parallel to the legal state of affairs, the CUP also had an unofficial policy, which involved the gangs set up under the name **Teşkilatı Mahsusa**. These gangs, mostly formed of convicts released from prisons, were to play the most critical part in the slaughter of Armenians.” (Annex:3, Selim Deringil)*

It must be understood how the process reached an extermination of this extent. And this understanding cannot be achieved without addressing the economic basis of the matter. When we look at the Ottoman society in the 19<sup>th</sup> and early 20<sup>th</sup> century, we see that a very large part of the industry was controlled by Rums (Ottoman Greeks) and Armenians, and that the Muslims had no presence in capital accumulation.

While the Armenian capital was concentrated in Çukurova, Antep, Maraş, Urfa, Sivas, Erzurum and Kars, the Rum capital had flourished in Istanbul and in the Aegean and Black Sea Regions. This

situation was at the heart of the CUP policies described as the “nationalization of the economy”. We think that it will be appropriate to give the following example to show how this policy found practice at the local level ...

*When talking about the ethnic cleansing in Eastern Black Sea Region and about Topal Osman, who had done this “cleansing”, Dr. Rıza Nur says in his memoirs: “Finance Minister Ferid scolded Osman Ağa for robbing the people. Osman Ağa answered: ‘Sir, yes, I collect money, but I have not taken even a dime from a Muslim. What I take is always the property of the infidels. I have thousands of pests around me. They are bloodthirsty murderers, bandits. Instead of leaving them to roam the mountains and hurt the people, I gather them and fight the enemy. They want food, clothes and pocket money... Considering what these Rums do to us, it is halal to take their money and lives... I am a Turk, I am a Muslim. Yes, I am Turkish and I work to save the religion from infidels.’*

*Excellent. Then he fights with great courage. I called him to my side and told him to sit. I said to him:: ‘Ağa! Do not listen to Ferid Bey or others! What you do is not wrong. It is completely right. You are right; you have rendered great services for the country. Continue to walk the path you know’...I said, ‘Ağa, clean the Pontus well’; ‘I am cleaning it,’ he said. ‘Do not leave a stone standing in the Rum villages,’ I said; ‘That is what I do, but I save the churches and the good buildings lest they may be needed in the future,’ he said. ‘Raze them too, even send their stones and bricks to faraway lands, so that they can never claim there was once a church there,’ I said. ‘Right, we should do so. I had not thought of it,’ he said.” (Sait Çetinoğlu, Sermayenin Türkleştirilmesi)*

CUP’s policy of “nationalization of the economy” should be read as the “Turkification of the economy”: In other words, giving to Turkish Muslim gentry the wealth possessed by the Rum and Armenians, especially the immovable properties like land, workshops, factories, dairies, olive groves etc, by having them abandoned-sold -confiscated, and thereby creating a national capital. In order to achieve success with this policy, the Armenian-Kurdish and Christian-Muslim conflict was also fuelled. As a result of these “nationalization” policies, the share of Turkish capital in corporations, which was around 3% in 1908, had risen to 38% by the end of the war.

When the non-Muslim population is taken out of the picture, the properties and positions they once held become resources of the State-which it can then distribute to its people. This distribution not only accelerates the creation of a local bourgeoisie, but also makes it easier to make this class dependent on the State; yet, all these would later fail to prevent the continued existence of some significant non-Muslim capital and workforce. Therefore, as will be seen in the subsequent pages, the policy of “nationalization of the economy” would become another practice inherited from the CUP by the Republic.

We must sadly note that the way ruling cadres have regarded Armenians also spread among the society, in time. There is no doubt that the local tensions also played a role in this. Moreover, one cannot overlook the fact that the worry about the possibility of losing the relatively advantageous status arising due to the possession of the properties left behind by the exterminated or relocated non-Muslims had greatly increased the hostility towards non-Muslims. As such, it is expressed by many historians that the real concern that mobilized the masses during the “War of Independence” was the fear that Rums and Armenians would return rather than a fear of invasion by Western states.

When examined from the framework of this historical cross-section, it is possible to talk about a “pro-Turkish” psychology and perception of motherland (‘vatan’), developing in parallelism with the

Armenian and Greek threat perception. Particularly after the Sivas Congress and the national pact (*Misak-ı Milli*), the Muslim Turkish majority emerged as the hegemonic cultural identity.

In this new social consciousness, the non-Muslim citizens, who were formerly Ottoman subjects, are defined not as people sharing the same country and land, but as “outsiders”. As a result of this understanding, non-Muslim groups (Rum-Armenian) were completely left out of the scope of the concept of nation, as seen in the Settlement Law and practices related to changing geographical names.

By the Lausanne talks following this historical process, the determining policy had become distanced from Muslim roots, with an approach defining the “nation-state” on the basis of the Turkish race and the Turkish language; and it would not be wrong to conclude that this policy has put its mark on the subsequent Republican period.

When the Republic of Turkey was founded in 1923 in Ankara, there was not yet a perception of the “Turkish nation”, which was needed to build the nation-state. Instead, there was a people that stood at a distance from the concept of “Turkishness” and that essentially defined itself as Muslim. As attempted to be explained above in detail and within the context of its historical development, a series of “Turkification policies” started to be used for the purpose of creating a “Turkish nation” from “this people”.

At this point, in terms of the perception of westernization and understanding of civilization, the widely accepted nationalism had a mentality that saw the modernization of the society as something that was connected to the State, and that advocated that any and all development could be realized by the hand and guidance of the State alone.

When we look at how the triangle of state-motherland-nation was drawn, we can say it was accepted that the State was an actor that guaranteed the integrity of the motherland; motherland was an area of sovereignty protected against internal and external enemies; and nation was a collectivity consisting of “decent citizens” and belonging to the primary ethnic element.

As was embodied in the 1924 Constitution, “citizenship” was not the real determining element in the nation perception of the newly established Republic. Hence, the non-Muslim citizens of the Republic of Turkey, who were legally recognized as Turkish citizens but not regarded as a part of the national community by the central authority, had their political, social and economic rights, arising from this citizenship, either limited or hindered as “citizens on paper”.

The legal limitations introduced, on de facto basis, on the employment of non-Muslims in the public and private sector in the initial years of the Republic can be given as an example to these hindrances; and many more examples can be given to practices of this nature, which aimed to create de facto situations and prevent the non-Muslims from fully exercising their civic rights.

The situation after 1930s can be explained most succinctly by the following words of Prime Minister İsmet İnönü: *“We are openly nationalists ... and nationalism is our one and only uniting element. Any element other than Turkish has no influence. Our duty is to make Turks out of all the non-Turks within the Turkish country, no matter what. We will cut out and throw away any element that will oppose Turks and Turkishness. Being Turkish is what we seek, above all, in those who will serve the country...”*

The Republic of Turkey is a State that is somewhat in search of its nation with a top-to-bottom concept of nationalism. Turkish nationalism was mobilized through a nation consciousness that was evoked by the will of the State, from top-to-bottom; hence, an official Turkish History Thesis (TTT) was produced as an essential element in building the historical-geographical identity.

The Turkish History Thesis, produced in 1930s under the auspices of the History Society, created for Republican generations a “Turkish” image that had pioneered the world and founded deep-rooted states. The purpose of the Turkish History Thesis was to find a narrative formula that would address both the experts and adults, and children and youth, in a very short time. This formula was speedily produced, and the qualities of the Turkish nation were attempted to be defined on scientific grounds. The goal was to shape the whole society in the same mould and unite them under a narrative of common roots. What the state wanted with the Turkish History Thesis was, in truth, a common amnesia. The Turkish History Thesis skipped the multi-colour social structure of the Ottomans, created for itself a more backward, race-based foundation, and hence excluded as secondary elements the non-Turkish peoples of Anatolia. The existing history and geography was forgotten, and the past and the future were re-designed on the axis of Middle East-Anatolian-Western civilizations.

This belief and mentality became so determining in time that things that were deemed necessary in Turkey’s process of building a nation were structured in a way that would feed the narratives in the Turkish History Thesis with the policies of settlement and changing the names of geographical locations. In the 1<sup>st</sup> Geography Congress of 1941, geographical names that did not fit the Turkish reality were all sorted out, as a result of which the names of around 12,000 villages were converted into Turkish names; such practices have been employed frequently throughout the Republican history.

The same policy was also reflected in the names and surnames of the Republican period. In conjunction with the Surname Law no. 2525 and dated 21.6.1934, a Regulation on Surnames was also issued by the Council of Ministers. According to this Regulation, surnames indicating other nations, such as “Albanians, Circassians, Kurds” could not be taken. The prefixes/suffixes of “yan, of, ef, viç, iç, is, dil, pulos, aki, zade, mahdumu, veled and bin” could not be used in the surnames. All surnames had to be Turkish.

It is necessary to specifically address some very important examples of this discrimination, which had profound impacts in our political and social life.

***Elimination of Non-Muslims from the Working Life:*** “With article 4 of the Law on Civil Servants no. 788 and dated 18 March 1926, ‘...Opportunities to work in the public sector were given only to ‘Turks and Muslim agents suitable for Turkification’, and the door to civil servant positions was closed to minorities for a long time. After practices that challenged the employment statuses of people working in some sectors, such as refusal to grant an extension to work permits, refusal to approve licences, and cancellation of the professional licenses of minority lawyers, non-Muslims were completely excluded from the working life with the “Law on Arts and Services Allocated to Turkish Citizens in Turkey” dated 4 June 1932.

*Left jobless with this law, the Rum citizens of Istanbul, and the Greek citizens, who had residency permits (établis) in Istanbul pursuant to the provisions of the Treaty of Lausanne, were forced to immigrate to Greece. (Sait Çetinoğlu, Sermayenin Türkleştirilmesi)*

***In June 1923, Jewish, Rum and Armenian civil servants started to be laid off and replaced with Muslims. Free movement of non-Muslim minorities in Anatolia was restricted. The decision was so sudden that many people were unable to return to their hometowns due to the restrictions and were left stranded where they were. As if all these were not enough, obstacles were introduced to migration of Jews to Palestine.***

**In September 1923**, a decree was issued, banning the return of Armenians who had emigrated during the war from Cilicia (Adana and its surroundings) and Eastern Anatolia.

**In December 1923**, the Jewish community of a few hundred living in Çorlu were ordered to leave the city in 48 hours. The decision was postponed upon the application filed by the Chief Rabbi, but a similar decision was issued, this time for Çatalca, and was promptly implemented.

**On 3 April 1924**, an amendment was made in Article 2 of the Law on Public Appropriations, effectively ensuring that no payment was made to non-Muslims for their properties which were confiscated for the First World War.

**On 1 August 1926**, it was declared that the State had the right to seize all properties acquired by non-Muslims before August 1924, the date on which the Treaty of Lausanne came into effect. Becoming exasperated with accusations levelled at Jews, such as “disloyalty”, “ungratefulness” etc, the community leaders sent to the Prime Ministry a protocol stating their waiver of Article 42 of the Treaty of Lausanne.

**In 1928-1929**, the Armenians in Diyarbakır and Harput were advised by local governors that it would be in their best interests to leave Turkey.

**In the 18 months between 1929-1930**, 6,373 Turkish Armenians were forced to emigrate to Syria.

**On 11 June 1932**, the Law on Arts and Services Allocated to Turkish Citizens was introduced, which banned foreigners from working in some jobs. This covered in particular the Greek self-employed and small tradesmen and street vendors.

**In November 1932**, all Jews in Izmir were forced to sign a pledge promising to adopt the Turkish culture and speak the Turkish language. The Jews of Izmir were followed by the Jews of Bursa, Kırklareli, Edirne, Adana, Diyarbakır, and Ankara. The newspapers covered news of Jewish (and Armenian) girls converting in groups.

**On 14 June 1934**, the Settlement Law was promulgated, which divided the country into three groups: “Those of Turkish culture and speaking Turkish (original Turks)”, “Those of Turkish Culture and not speaking Turkish” (Kurds) and “Those not of Turkish culture and not speaking Turkish” (non-Muslims and others); after that, Rum and Armenians in various places of Anatolia were exiled to areas which were deemed appropriate for them.

**On 24 July 1937**, an announcement appeared in Cumhuriyet newspaper, which said that one of the qualities sought in students who would be admitted for enrolment in the Ankara Military Veterinarian School was “to be of the Turkish race’.

**On 6 September 1938**, an announcement appeared in the Cumhuriyet newspaper about the flight teachers who would be hired by the Türk Kuşu Directorate, in which the requirement sought had been refined to being “of Turkish descent”.

**On 11 November 1942**, the Wealth Tax was introduced to overcome the financial problems arising during the war. 87% of the taxpayers for that particular tax were non-Muslims. Armenian tradesmen were taxed for 232% of their capital power, Jewish tradesmen for 179% of their capital power, Rum tradesmen for 156% of their capital power, and Muslim-

Turkish tradesmen only for 4.94% of their capital power. Those unable to pay their taxes were sent to the labour camps in Aşkale, Sivrihisar, Karanlıkdere. Some lost their assets, some their loves, some their dignity, and some their belief in Turkey.

**On 6-7 September 1955**, a great plunder mainly targeting the Rum was organized in Istanbul to 'strengthen Turkey's hand' at the trilateral conference that was to convene in London with regard to Cyprus. The death toll was shortly released. According to the Turkish press, 11 people had died, yet the names of only 3 were given. According to some Greek sources, there were 15 deaths, however it was later found out that some of the individuals alleged as dead were in fact living in Greece. 30 people had been injured according to official numbers, but 300 according to unofficial numbers. Only in the Balıklı Hospital, 60 women received treatment for rape. It is thought that more than 200 women were raped. During the incidents, more than 5,300 buildings according to official sources, and close to 7 thousand buildings according to unofficial sources, were attacked. The lowest estimate of the financial damage was 150 million liras according in the monetary values of the time, while the highest estimate was 1 billion liras.

**The Name Change Commission, set up in 1956**, was composed of the representatives of the General Staff, the ministries of Interior, Health and National Education, the Faculty of Languages, History and Geography of Ankara University, and the Turkish Language Association. The studies of the commission were put into practice with an amendment made in Article 2 of the Law on Provincial Administration in 1959. The article said: "Village names that are not Turkish and that cause misunderstandings shall be changed by the Ministry of Interior as soon as possible after receiving the opinion of the relevant Provincial Standing Committee". The Commission examined around 75 thousand settlement names until 1978, and around 28 thousand of these names were changed later on. There were also name-change attempts of a small scale after 1983.

**In 1974**, as a result of a court case between the Trustee Board of the Foundation of the Balıklı Rum Hospital in Istanbul and the Treasury, the provision that foundations could not acquire properties as per the 1936 Declaration started to be implemented. With a provisional law adopted in 1912, the foundations were given legal personality and classified as 'annexed foundations'. In accordance with Provisional Article I/A of the Foundations Law of 13 June 1935 no. 2762, foundations were obligated to declare the immovable properties in their possession. The lists submitted to the Directorate General of Foundations were called the '1936 Declaration'. In its decision, the General Assembly of Civil Chambers of the Court of Cassation had accepted the minorities in Turkey as non-Turkish.

According to the UNESCO Report of **1974**, the Armenian community had 2,538 churches and 451 monasteries in the beginning of the century, with only 913 churches and monasteries remaining. The first business of the Muslim people settling in the Armenian villages and cities after the Relocation (Tehcir) had been to convert the centrally located beautiful churches into mosques. The rest were used as storages, warehouses etc. Of the remaining 913 churches and monasteries, 464 were completely demolished. 252 were left to ruin, and 197 were in need of serious restoration. (Annex:4, Dr.Ayşe Hür, Azınlıklar Nasıl Azınlık Oldu)

This list of legislative arrangements can be longer. These facts, which we have conveyed as if we are talking about a very distant past, today stand before us as the mentality that gives life to practices that, unfortunately, still continue today. Although there is no legal restriction, Armenians can still not be civil servants, are not promoted to hierarchical ranks in the army, and are not represented in the parliament. They are still made the subjects of sentences about “treason and backstabbing”. This mentality, which is fed from this hostility at the State level, inflicts irreversible pains on the society, as in the event that is the subject of this court case, in collaboration with media organizations, State-driven non-governmental organizations and paramilitary forces. It causes Armenians and other minority groups to further withdraw from the social life both in terms of population and with their educational institutions, monasteries, churches, languages and cultures, all of which have played a major part in the cultural and economic enrichment of these lands.

Distinguished President,

What we are trying to explain is that,

The murder of Hrant Dink is not the result of the agitation of a few young people, but a murder rooted in a systematic hostility that has been fed and fuelled for more than a century.

This murder constitutes one of the latest examples of the tradition of political murders, used as a method by the State to dispose of its enemies, intimidate its dissidents and discipline its society.

This murder was facilitated and committed as a result of a consensus between some institutions of the State which appear to be in conflict on some matters, by planning the preliminary and subsequent phases of the murder; and the real perpetrators of this murder are being hidden and excluded from the trial, again on the basis of the same consensus.

The decision-making processes, preparations and trial methods of this court case do not make it any different from similar cases. However, this court case has the potential to bring back to the judicial domain all similar assassinations and unsolved murders, and enable a reckoning with the traditional view of the State and the judiciary.

Your Court will either see this already enlightened historicity which *creates murderers out of babies*, and take a step to prevent the emergence of new murders, new murderers and new victims, ensure societal peace, restore the sense of justice that has been overly prejudiced nowadays, and re-establish confidence in law and the judiciary, which are increasingly losing the confidence of the society; or your Court will, within the limits of the role that is intended for it, will make a decision that is incomplete, wrongful, incompatible with the material fact and far from satisfying anyone, and thus will add to this darkness which *creates murderers out of babies*.

We leave it to the discretion of your Court.

05.12.2011