

Aslı Erdoğan's case documents had been individually reviewed by 18 criminal lawyers (judge, lawyer, academician) with different political views, well-known in Turkey. These 18 legal persons who have political stances totally different from one another, have agreed that there is no element of a crime in these articles in accordance with the current Turkish legal system. This is the same for Mrs. Alpay's case as well.

(Only five of these 18 legal reviews, which are relatively shorter, could have been translated. This file will be updated)

EREN KESKIN

“Charging Asli Erdogan for contravening Article 302 is unreasonable and unlawful”

1-Aslı Erdoğan, arrested as part of a police operation on the Ozgur Gundem newspaper, has been charged under Article 302 of the Turkish Penal Code and detained.

According to Article 302, any person who causes partition of the country by allowing another country to rule part or whole of Territorial land, or breaches National Unity, or shows consent to separation of certain portion of the territory under the sovereignty and administration of the State and executes acts aimed to weaken the independence of the State, is punished with heavy life imprisonment.

This article is usually applied to the heads of organizations and the members of armed organizations. Charging Asli Erdoğan with this article is unreasonable.

According to the European Court of Human Rights precedents, charging someone with the article in question needs more than reasonable suspicion; it requires concrete evidence. Leaving aside the issue of concrete evidence, there is not even reasonable suspicion for charging Asli Erdoğan under Article 302.

The legal process depends on the existence of tangible evidence. When Asli Erdoğan's life and works are considered, it is obvious that she could not be part of any organization with a strict hierarchical structure. In the current situation, there is not even any suspicion of involvement, let alone any concrete proof. Therefore, charging Asli Erdoğan for contravening Article 302 is unreasonable and unlawful.

2-) Turkish Criminal Procedure Code Article 100 defined detention conditions as below:

a- If there are facts that tend to show the existence of a strong suspicion of a crime and an existing “ground for arrest”, an arrest warrant against the suspect or accused may be rendered. There shall be no arrest warrant rendered if arrest is not proportionate to the importance of the case, expected punishment or security measure.

b- (2) At the below mentioned instances, a “ground for arrest” may be deemed as existing:

a) If the suspect or accused had fled, eluded or if there are specific facts which justify the suspicion that he is going to flee.

b) If the conduct of the suspect or the accused tend to show the existence of a strong suspicion that he is going to attempt; 1. To destroy, hide or change the evidence, 2. To put an unlawful pressure on witnesses, the victims or other individuals.

First of all, Asli Erdoğan has no legal responsibility over the newspaper. There is nothing to justify the suspicion that she is going to flee, and she has no power to hide or change the evidence.

Lighter measures could have been applied in her case. The decision to issue an arrest warrant cannot be legally justified in any way.

For example, previous editor in chief of the newspaper Eren Keskin is also being prosecuted under the same article as Asli Erdoğan in the same case. He has been banned from travelling abroad and has to abide by other judicial conditions. While this is also an infringement of his

rights, it is hoped that, at the very least, Asli Erdoğan might also be released under similar conditions.

3-Asli's writings and the books found in her house cannot be considered as proof of a crime in any way, especially when one considers that an article of hers, published in another magazine and which was not subject of any investigation at the time, is unlawfully being brought forward as evidence.

The Turkish Republic is a signatory of European Convention on Human Rights. Article 10 of this Convention protects the right to freedom of expression.

AYSE BATUMLU

“The unlawful decision to detain Asli Erdogan, without legal grounding, is being used as a tool to punish her for having opposing views.”

1-In my opinion, it is absolutely clear, even to a layman with no legal training, that there is no legal grounding for detaining Asli Erdogan.

The crime she is being charged with pertains to the section of Article 302 of Turkish Penal Code 5237, in particular “breaching national unity and causing partition of the country”. It could be debated whether this law is right or wrong, or whether it is necessary, especially considering its implications for freedom of speech, but that is different matter entirely.

If, however, we accept that the law in its current form is necessary, we are still faced with the question: “What legal values does Article 302 uphold?” In my opinion the intention of this Article is to protect the rights of individuals to live and participate in a democratic society. Unfortunately, in practice, this value has been turned on its head, and the right of individuals to participate in democracy is being threatened in Turkey. This Article is now being used as an excuse to intimidate the Turkish people.

This is exactly what has happened to world-famous writer and thinker Asli Erdogan. There is no possibility that Asli Erdogan has committed this crime. The crime of breaching national unity and causing partition of the country is a matter of present danger, and for this reason it is a consequential crime. It can only be committed through violent actions, so it can only be committed exactly how it is defined by law. One cannot commit this crime by an action of neglect, this is impossible. The crime in question is related to the territory of the state, the independence of the state and the unity of the state. This crime cannot be committed through threats, only through violence itself. The moral aspect of the crime occurs in case the perpetrator acts with intent, as defined by the article.

Therefore, it is impossible to commit this crime by writing, and one must have bad intentions to claim that Asli Erdogan had such a premeditation.

For the accusation of being a “member of a terrorist organisation”, first of all, I would like to highlight that I do not agree with the lawmaker on the term of “terror”. I also would like to stress that the human rights activists do not use this term.

If, however, I answer your question according to the Turkish Criminal Law (TCK), Anti- terrorism Law (TMK) and Supreme Court decisions, i.e. according to the current code of law, my answer would be;

To commit this crime as defined by TMK and TCK, there must be continuity, a regular and planned partnership, management and a hierarchical structure and facts showing that the accused is a member in this structure. Circumstances such as activities, planning, division of tasks and coming together for an undetermined amount of criminal activities, solidarity between members and discipline must also be established. Most importantly, the member of this organization who commits organised crime must know and must be willing to commit this crime. This is the moral aspect of the crime!

But obviously, none of this has happened. We are facing the reality of a writer being punished just because she is expressing views that the government and some other groups “don't like” and just because she is protesting and feeling disturbed by the bloodshed and climate of hate the country is in!

Unfortunately, anybody who does not agree with the political structure in power and the official ideology, and who behaves responsibly by bravely speaking up is facing this accusation.

Briefly, Asli Erdogan is facing unlawful accusations because of her opposing views and the unlawful decision to detain her without legal grounding, is being used as a tool to punish her for having these views.

2-Pre-trial detention is a very strong protective measure. It should only be applied if there is no alternative for protecting individual or public interests. There have been two appeals for Asli Erdogan but both were rejected. How lawful is this?

As you expressed, detention is a protective measure. The usual procedure is trial without detention. Pre-trial detention should be applied in exceptional circumstances, as it is very restrictive. It restricts individual's freedom directly and all aspects of his/her life indirectly. However, this measure which requires strong reasons to be applicable, is being used by the political establishment to punish the opposition for the reasons I mentioned above. The government apparatus, i.e. judicial authorities, have become instruments for this punishment. According to Article 90 of the Turkish Constitution, ECHR rules are equivalent and even take precedence over Turkish law in case of contradictions. Not only do the ECHR rules have very strict criteria for detention as a protective measure, but our own Constitution, even with its inadequacies, and our Criminal Procedure Rules, also have similarly strict criteria. This is a result of the efforts of some respected legal professionals and opposition groups who fought a long battle by carrying their cases to European Human Rights Courts. (Here, I have to mention his name and pay tribute to Tahir Elci who expended great effort on this matter.)

But unfortunately, long lasting problem of government interference in the institutions in Turkey, shows that relatively liberal legal arrangements are not enough to establish a free and democratic legal system.

Legally, only the existence of facts that show strong suspicion of a crime having been committed, and a good reason for detention, can result in the decision to detain the accused. If the importance of the crime is not proportionate to the expected sentence or safety concerns, then the decision to detain is not made.

In Asli Erdogan case though, she is accused of a very serious crime but we cannot see any "strong" proof showing this crime has been committed. What is the proof that she is a member of an organization and she is in an activity which satisfies the criteria I mentioned above? Is being a dissident enough for these accusations? Of course not. Again, there is not any evidence either that she committed the crime of spreading propaganda for such an organization. Moreover, with legal changes brought by the infamous 4th Judicial Package, propaganda is considered crime if it includes force and violence!

Article 7 of Anti-Terrorism Law (TMK) very clearly defines a person as having committed a propaganda crime if he/she legitimates elements of force, violence and threat or encourages people to apply these methods. Considering that the minimum sentencing for a propaganda crime is 1 year, in fact, let's put aside that a decision of detention cannot be made with this accusation, there isn't even any evidence that Asli Erdogan committed this crime! Contents of her writings are by no means in this scope.

In summary, I have to repeat what I said at the beginning. Asli Erdogan is being punished without trial because of her opposing views to the powers that be, and for stressing the contributions of the State to the escalation of violence and internal conflict in our country. On top of this, every section of society that might react negatively to the actions of the government are to be intimidated.

3-All of these writings are also within the bounds of criticism and within the scope of freedom of thought. Even in the existing, and in our opinion undemocratic laws of the State of Turkey, these writings are not considered as crimes but on the contrary writing and spreading them is protected. Besides, all these writings, always against violence, disturbed by the heavy violence experienced and written with a yearning of a peaceful society, are about the great agony Kurdish people have been experiencing. And the state does not want them to be written. Even state or individuals are against the idea expressed by these writings, even they are disturbed and shocking by them, her right to express her ideas must be protected especially by the state! I would like to say that, I share

all her opinions she expressed in her writings. Being a loyal reader of her writings, I adore her way of expressing her ideas. But even if this were not the case, if we wish for an egalitarian and democratic legal system with the rule of law to be established, and not a system only for some people and some ideas, we must of course defend her right of expressing them. Actually, we face another problem at this point: the threat of unequal treatment for anybody who thinks like Asli Erdogan, who reads her writings, shares her values, expecting to read more from her! A State cannot divide its citizens in such a way. States have both active and passive duties, and a responsibility to protect their citizens' rights, and to clear any obstacles in the way of people exercising their rights.

4-Can the books and magazines found and confiscated during the police search of Ozgur Gundem, a newspaper whose offices Asli Erdogan only occasionally visited, be used as crime evidence against her?

First of all, this raid to a media institution is unlawful and oppressive. There is no legal ground for this raid and it aims to shut the voices of opponents. Ozgur Gundem is one of the first and oldest victims of the government's operations to shut down voices of dissent. That operation is actually against the right of people to freedom of information. Furthermore, I have always been horrified by the term "confiscated" which stress that books and newspapers might be evidence for a crime. This shows the distorted opinion of the state about activities related to thinking. Books, magazines and in reality, thoughts are perceived as weapons. Actually, not thinking like them is considered a crime to the State and the government! This is certainly a feature of an oppressive and despotic state mechanism.

As for your question, let's suppose "confiscated" books and magazines are "evidence of crime". Of course, people who write, occasionally visit or support the newspaper are not and cannot be treated as responsible for them. First of all, crimes and punishments are for individuals. But I want to emphasize that books and magazines are never evidence of a crime in real democracies. Asli Erdogan is bravely writing about issues that burn whoever dares touch them, issues about the Kurdish question that the government banned discourse about outside of the scope it created, issues of murdered civilians, issues of the murderers who are not held accountable by the state. She is dealing with realities, her feelings, her observations like a genuine writer and not limited with established red lines. She is a truth seeker who the government does not like.

All these must make Gods angry! As she also put it very correctly, "what is on trial is exactly the literature itself!" Even what is being punished...

But after many years the name will be remembered with great respect and admiration will be Asli Erdoğan's.

CANAN ARI

"What is happening cannot be explained by the "law". What is happening is the destruction of Asli Erdogan's life for the purpose of intimidating people around her, and people like her."

1- The alleged crime of "Breaching State Sovereignty and State Unity" is regulated under Article 302, No 5237 of the Turkish Criminal Code. Activities listed under this article constitute of: "putting the entirety, or a section of the state's territory under the sovereignty of a foreign state, breaching the unity of the state, removing a part of the state's territory from state rule, performing activities aimed at weakening the independence of the state". Asli Erdogan, or no other person, could carry out these activities by simply publishing an article.

2 - I answered this question above. What is happening cannot be explained by the "law". What is happening is the destruction of Asli Erdogan's life for the purpose of intimidating people around her, and people like her.

3- Referencing other articles does not, of course, constitute a crime. The acquittal of Fazil Say on the charges for referencing lines from the verses of Omer Hayyam is a prior example of court decisions on such manners. That is, assuming the concept of "law" exists!

4- It should not be possible. There has been no proof that the book and magazines in question belonged to Asli Erdogan. Asli sends her articles remotely and does not stop by the place mentioned. There is proof required that the “objects of crime” have a direct relation to Asli Erdogan.

MAHIR ORAK

“The articles and activities of Asli Erdogan do not contain any words or statements that could constitute criminal charges for being a member of a terrorist organisation. Her actions are merely practising journalism, and her right to freedom of speech.”

1- I do not have access to the contents of the case against Asli Erdogan, therefore I don't know the full extent of the crimes she is charged with. If we assume the information given by the press is correct, there are no activities that constitute a crime here. The articles and activities of Asli Erdogan do not contain any words or statements that could constitute criminal charges for being a member of a terrorist organisation. Her actions are merely practising journalism, and her right to freedom of speech. In regard to the first accusation, she has no activities towards that at all.

2- It would be necessary to know the contents of the case in order to answer more accurately. Going once again on the assumption that what was reflected to the media is correct, the order for her arrest is heavy handed and illegitimate. Under article 100 and subsequent articles of the Criminal

Proceedings Procedure Law, such an arrest would only be appropriate in cases where there is legitimate doubt the accused may abscond, or may tamper with the evidence. The actions against Erdogan are contrary to a law system that accepts freedom is the substance of the law.

3- In my opinion, the articles in question, though they may contain heavy criticism and expressions that may cause discomfort, do not contain anything that may be considered criminal.

4- It is not possible to assign personal ownership of a book and publications that were seized at the press organisation she works at. These documents, which may be considered criminal, cannot be used to accuse Asli Erdogan without first establishing who they belong to.