DEFENSE

"Would you like to be tried the way you try others?"

Mehmet Altan
Silivri, 12-16 February 2016

As I begin my defense statement, I would like to explain through the ruling of the Constitutional Court a legal fact that is knowingly and willingly being twisted.

The Constitutional Court has rendered its judgment on my individual application by following the same methods that are followed by constitutional courts all over the world.

It reviewed the evidence shown in the prosecutor's final opinion on the case, and took into account the most recent version of the case file. There are no "accusations" unknown to the Court. It evaluated all claims against me, which I will be recounting here one by one. Now, this is subject to a cover-up, therefore it is important.

What did the Constitutional Court judgment, rendered with regard to the latest developments concerning the case file, say regarding its review of "rights violations"?

Its first conclusion is that I could not be "held in detention" on account of claims being offered up in the name of evidence. It held that my "right to personal liberty and security," i.e. Article 19 of the Constitution, had been violated.

Whereas I, on accusations that could not even lead to my pre-trial detention, am still standing trial, facing "life in prison."

Moreover, since two judges on the panel acted in breach of Article 153 of the Constitution, I am still forcefully being held in prison.

Secondly, the Constitutional Court held that accusing me on account of two of my articles, one of which was from eight years ago, and one television show, alleging these to be criminal evidence, violated my right to freedom of thought.

And thirdly, it held that the right to freedom of the press was also violated in this trial.

Through this judgment, it was confirmed that Articles 19, 26 and 28 of the Constitution have been violated.

Now I will be delivering my final defense statement against life sentence in a case which has become obsolete with the Constitutional Court judgment that held that the accusations against me are not sufficient grounds for pre-trial detention.

You will be witnessing my quest for justice in a place where justice does not exist.

Esteemed Court,

Last June, towards the end of my defense statement that lasted several hours during the first hearing, I had said the following:

“[…] the most powerful stance is a legitimate stance. I can be on trial at this court, but I would never be in a position so as to be deemed illegitimate. This is something my father has taught me.

For this reason, I used to believe that I would be safe as long as I conformed to the law, however, Turkey has deviated from the path of legitimacy.

I am right, I have not committed any crime. I have never done that. Therefore there could be nothing I need to be afraid of, I could have no reason to hide."

As a matter of fact, while uttering the phrase, "Turkey has deviated from the path of legitimacy," even I could not have foreseen that, in spite of a binding judgment by the Constitutional Court, which held that my "rights to liberty and security" had been violated, two of the judges of the trial court would knowingly and willingly commit a crime; that they would attempt to put another nail in the coffin of the constitutional order and the rule of law.

The Constitution asserts in its preamble that "no individual or body empowered to exercise sovereignty in the name of the nation shall deviate from the legal system" instituted according to the Constitution.

But two members on the panel of this court, despite a warning by the third member, violated Article 153 of the Constitution; instead of giving me back my liberty that I have been deprived of, they chose to insist on the violation and committing a Constitutional crime.

This is a scandal on a huge scale unprecedented in legal history. It marks the end of the rule of law.

What happens now?

I will go into the details shortly. However, what sort of situation would it be when two judges on the panel overseeing my trial on an indictment that would be seeking capital punishment but since there is no capital punishment, seek aggravated life imprisonment against me based on an opinion that includes no evidence of crime and is merely a mishmash of words, ignore the binding provisions of the Constitution and the case law of the Supreme Court of Appeals?

Can we any longer speak of the legitimacy of the court? Can we speak of a fair, impartial, objective, scrupulous trial?

How can a court act so indifferently towards a Constitutional Court ruling that holds a person's right to liberty has been violated and that person had been detained for no reason, despite a binding Constitutional provision?

It is obvious that this has nothing to do with a "passion for the law."

This is because, two members of the panel of the judges had nothing better to do at 7:30 in the morning than hasten to oppose the Constitutional Court's judgment in the pursuit of politics.

Set aside the fact that there are no rights, law, justice or conscience to speak of anymore, I suspect there is a criminal-law-of-the-enemy treatment both as a mindset and in practice, which is being pumped up by a blind hostility for reasons about which I have no idea.

Who, and for what reason, finds it this difficult to implement the binding provision of the Constitutional Court?

Could a verdict against me in which the Constitutional Court has found violations, and which would be issued by such a fanatical, hostile mindset that knowingly defames innocent people, ignores liberty, security, freedom of thought and freedom of press, be a legitimate verdict?

The judgment rendered by the Constitutional Court, which decided unanimously to review the case in its latest version, including the prosecutor's final opinion, stands before the scrutiny of the entire country and the whole world. I would like everyone to study it closely.

I would like everyone to see the torment I am being subjected to through such an insubstantial case file.
Had Turkey been a "state governed by the rule of law," the Constitutional Court ruling that has found that my rights have been violated, especially my rights to "liberty and security," would have set all the alarm

bells ringing for both the political authority and the Council of Judges and Prosecutors (HSK).

It would have become a subject of overall and fundamental consensus that brazenly supporting violations would be a matter of shame.

The task of finding and exposing the perpetrators of this violation that poses a threat to a human's life would have been assigned maximum priority.

Those who ordered and approved my arrest, who sent me to jail, who automatically accepted the indictment, who acted as though the violations during the legal process did not exist, would have been questioned. And I believe they will be, someday in the future.

But things did not happen this way.

The political authority and several officials from the Justice Ministry who are following in its footsteps were not disturbed by the "violations", on the contrary, they blamed the Constitutional Court, and committed an offense by disregarding the Constitution.

By the way I would like to also express that in all countries that are subject to the jurisdiction of the European Court of Human Rights, reviews of individual applications are conducted exactly the way it was conducted by the Constitutional Court of Turkey.

It is obvious that no decision can be rendered as to whether there has been a violation without an examination of evidence.

The demagogic political militant attitude tries to conceal the truth by speaking of "acquittal," instead of being embarrassed for itself.
I would like to remind them that the Constitutional Court examined, and unanimously rejected, an individual application lodged by its very own former judge, who had been dismissed on account of FETÖ membership, following exactly the same method.

I know they would not care, but I will still say this. If this is about raising objections, you should reject that ruling as well for the sake of consistency.

Ever since the evening of Thursday, January 11, 2018, I no longer regard myself as being "in pre-trial detention," but rather as a person who is forcefully kept in prison because two judges refuse to implement the binding provision of the Constitution; I am someone whose fundamental rights and liberties are being violated.

I also believe that when it is time, when the rule of law is restored in this country, this offense may be included in the provisions of Articles 77 and 109 of the Turkish Penal Code.

Moreover, the matter has been brought to the attention of the Council of Judges and Prosecutors.

Last April, when a high criminal court released 21 imprisoned journalists pending trial, the HSK intervened with unprecedented agility, promptly suspending the judges who issued the ruling as well as removing the presiding judge İbrahim Lorasdağı and appointing him to Konya as an ordinary judge.

Will the HSK also show this much interest in the failure to implement a Constitutional Court judgment, the violation of the Constitution, or the destruction of the rule of law?

I would like to remind the following at this point: Professor Sami Selçuk, the honorary president of the Supreme Court of Appeals, has called the latest statements of the two judges on this court's panel "twisted" and an "inexcusable failure of juridical interpretation." But what is at stake is not so much a legal controversy as willful misconduct against the constitutional order.

It seems like a plot that had been staged from the very start had been uncovered and deciphered through the Constitutional Court's application of universal norms of law, and that this disturbed some officials who have been seeking to destroy people's lives through that same plot.

Esteemed Court, like I said in the previous hearing, I am not on trial; "this is a make-believe trial in which I am made to look as though I were standing trial."

Ever since September 10, 2016, the day on which I was taken into custody, I have been kept in detention through the same rubber-stamped document.

No evidence has been shown against me. As established by the Constitutional Court, when there is no crime, naturally there will be no evidence.

But you are still forcefully keeping me in prison. In fact, this too constitutes a violation of Article 5(4) of the European Convention on Human Rights, but in a country where violations of the Constitution are an ordinary thing, this violation is not even worth mentioning.

It has now been established that those who are seemingly putting me on trial through the same rubber-stamped document have been violating my rights. It is for this reason that those who are committing this violation have been targeting the Constitutional Court in the face of the establishment of this violation.

Indeed, the Constitutional Court expresses this very strikingly while indicating the rights violations:

> "Therefore, in the present case, it has been concluded that a strong indication of guilt could not be sufficiently demonstrated, and the right to personal liberty and security has been violated."

Again, I quote from the same judgment:

> “It is clear that the applicant’s being detained on remand without relying on any concrete fact, other than writings and speeches, may also have a chilling effect on the freedoms of expression and press.”
>
> “Therefore, it has been concluded that there have been violations of the freedoms of expression and press.”

The Constitutional Court, in its judgment that was published in the Official Gazette and rendered by also reviewing the “final opinion,” has held that there is no “concrete fact” to level an accusation against me while reviewing the entire case file in order to determine whether there was a violation or not.

However, the prosecutor who was only appointed to the case in the previous hearing, and who submitted his “final opinion” in the last hearing, seeks through his claims and scenarios in which the Constitutional Court has not found a concrete fact, capital punishment, and since there is no capital punishment, he is seeking a life sentence.

According to the prosecutor, I attempted to overthrow the “constitutional order” and institute a “religious state” through the use of force and violence as a perpetrator, with only a couple of newspaper articles and one comment on a television program.

And he also claims I did this on my own, without being a member in any organization. I am not being accused of being a member of an illegal organization nor of committing a crime on behalf of such an organization without being its member.
I am only charged with staging a coup.

Now I would like to once again lay bare every single claim one by one, and to once again raise hue and cry how my fundamental rights and freedoms have been hijacked and how I have been deprived of my liberty for the past 18 months.

Perhaps reiterating these once again will be of no good, but my cry will resound in all places where the rule of law exists. I am sure of this, as proven by the reaction to the judgment of the Constitutional Court.

Esteemed Court,

Let's now move on to the allegations purported to be evidence in the final opinion by prosecutor Eray Akkavak, who seeks capital punishment against me, and since capital punishment is not in force, requests that I am sentenced to an aggravated life in prison. This is the prosecutor who joined us in the penultimate hearing of our trial, and who requested that I am "remanded in detention" despite having said that he would not be able to "submit final opinion" on grounds that he did "not have full command of the case file."

But first I must point out that there is a major difference between the trial prosecutor and the prosecutor who has filed the indictment.

The prosecutor who filed the indictment sought three aggravated life sentences on accusations that I attempted to overthrow the constitutional order, the Parliament and the government by attempting to stage a coup through a television program in order to establish a "theocratic government" both through the "use of force and violence" and by being personally involved as a perpetrator; plus an additional 15 years in prison for aiding the FETÖ organization without being its member.

The new prosecutor makes do with just one aggravated life sentence; according to this prosecutor, by way of a single sentence I had uttered on a television program I used "force and violence," staged a coup, attempted to change the constitutional order and establish a "theocratic government."

Going down from three aggravated life sentences to one is progress, so I guess I should be thankful.

This major difference between the final opinion and the indictment is based on case law by the 16th Criminal Chamber of the Supreme Court of Appeals rendered in case no. 2017/1443 judgment no. 2017/4758. This chamber of the Supreme Court of Appeals holds in its case law that since "overthrowing the constitutional order" charge encompasses the rest of the listed offenses, there is no need for three life sentences.

But there is something I cannot understand; how can a prosecutor who takes as case law the decision of the 16th Criminal Chamber of the Supreme Court of Appeals rendered in case no. 2017/1443 judgment no. 2017/4758 accuse me as per Article 309 of the Turkish Penal Code?

For the 16th Criminal Chamber of the Supreme Court of Appeals in fact holds in its relevant case law that by no means can I be accused as per Article 309 of the Penal Code.

But I know that case law, judgments, defense statements are of no value in this context and that everything depends on orders from secret offices appointed to deal with journalist trials.

Still, I am highlighting this grave contradiction for it will mean something when a time and place will become possible where the case law of the Supreme Court of Appeals will be binding and where the rule of law will be respected.

A prosecutor who references case law by the 16th Criminal Chamber of the Supreme Court of Appeals rendered in case no. 2017/1443 judgment no. 2017/4758 cannot seek my conviction on Article 309 of the Penal Code, and a panel of judges who respects judgments and case law rendered by the Supreme Court of Appeals cannot accept that.

I will be summarily putting forward the reasons as to why this cannot happen as I answer the accusations via case law.

Esteemed Court,

As one begins to read the prosecutor's allegations against me on page 13 of his final opinion, one understands that by no means has he read the case file, that he has completely ignored the defense statements and turned a blind eye to the Code of Criminal Procedure, to which he should be adhering, just like he has done with the case law of the 16th Criminal Chamber of the Supreme Court of Appeals. I will now be proving this.

It is being claimed that I had been frequently meeting with Alaaddin Kaya, who was allegedly facilitating communication between Fettullah Gülen and journalists.

The person who came up with this claim was Nurettin Veren, who was too scared to appear at the court because he was aware that his deplorable mendacity would be torn to pieces.

This lie is refuted by the very indictment itself. Had the trial prosecutor read the indictment, my defense statement and the interim rulings, had he respected the Code of Criminal Procedure, he would not have reiterated this baseless lie as though it were a piece of evidence. To be frank, I feel embarrassment for him. What's more, this is an opinion on which he seeks capital punishment.

And since the prosecutor has also not read page 212 of the indictment, I would like to call the prosecutor's attention to the fact that on that page it is written that I met Alaaddin Kaya twice, some 10 years ago.

The expert's report, ignored by both the prosecutor and the court, also proves this. Furthermore, at the time he was the owner of the Star newspaper, where I was chief columnist back then.

Why would anyone reiterate a lie in the indictment rebutted by the very same indictment? Is this in line with legal ethics and responsibility?

I am surprised at how easily the prosecutor sacrifices his own career.

The prosecutor has neither read the indictment, nor the defense statement. There is some very striking evidence as to the gravity of the situation, which I will be exhibiting here. Each constitutes a scandal on its own.

At least he could have looked through the interim rulings, but he was too lazy to even do that, or, perhaps this was an already "set" opinion, and therefore no one cared to mind the law. The prosecutor was simply handed the opinion by the "relevant authorities."

Mr. Prosecutor, you haven't read the seventh item on the minutes of the September 19, 2017 hearing.

Let me remind you: "Since the witnesses cited in the indictment, Nurettin Veren, and a secret witness by the code name Söğüt, could not be heard in this session, and taking into account the existing evidence, [it was ruled that] neither witness will be heard..."

Perhaps the prosecutor did not read the interim ruling. But then again, does he not know Article 210 of the Code of Criminal Procedure either?

A witness whose testimony is presented as "evidence" in the final opinion should testify before the court.

One who ignores the Code of Criminal Procedure would easily disregard the European Convention on Human Rights.

However, according to Article 6(3.d) of the Convention, everyone charged with a criminal offense has the right to examine or have examined the witnesses against him.

This means nothing of course, I'm aware, but legally it means something.

One of the reasons why the Supreme Court of Appeals overturned the judgment in the Ergenekon Trial was that the witnesses and secret wit-

nesses were not heard, and that the suspects were prevented from examining those witnesses. I would also like to remind that.

The final opinion sets out with this kind of insubstantiality and lack of decency. But there are far worse examples that are far more embarrassing, which I will be exhibiting later, but I doubt they will mean anything.

Lastly, I would also like to recall the way the lawful and binding judgment rendered by a great majority of the Constitutional Court's judges handled this first unlawful and ill-founded claim in the final opinion .

[The Constitutional Court judgment] talks about "abstract accounts by a witness" and adds, "the witness has not provided in his account any documents as to a concrete act committed by the applicant."

What is the reason behind this huge difference between the prosecutor and the Constitutional Court? I guess we are going through a period when the effort to uncover the truth and tormenting people by incriminating innocent people on instruction are as distinct as black and white.

Esteemed Court,

My defense statements are being ignored, knowingly and intentionally.

Why?

Because if defense statements were to be taken into consideration, it would not be possible to keep me in prison forcefully, without evidence, through rubber-stamped documents.

I would like to reiterate a remark from one of those ignored statements: "The worst part of the unjust treatment I am being subjected to is having to answer accusations that do not even constitute crime, that are baseless and meaningless; having to defend myself in the face of such allegations."

And the most terrifying part is that things that used to not constitute a crime before are now being made to look as though they were, through repression and intimidation.

One such allegation is that six 1 US dollar bills were found during the search in my home.

I could never have imagined that someday those 1 dollar bills that were part of the foreign currency I used to carry during my travels abroad, that were remainders from old times, would be used to manipulate opinion and seriously mentioned in an indictment as though they constituted reliable evidence in a case in which I am facing "aggravated life sentence."

I have once again experienced how quickly legal certainty could be shelved.

This allegation is rendered meaningless by the allegation itself, for it points out that "five 1 dollar bills were found in the drawer of my desk in my study, amongst the foreign currency I had used during my travels."

It is equally pointless to try and attach a futile meaning to another 1 dollar note that had been left over from previous travels and forgotten on the coat rack in the corridor which, as the judges in the panel have seen, was torn, with one third of it missing, and was thus demonetized.

It was not found separately, in a specially designated storage; it is obvious that it was a remainder, old and torn, just like other foreign currency bills found in my room.

Additionally, these accusations that are aimed at manipulating opinion and are part of a ruthless attempt at vilifying me, are chiefly canceled out by the indictment itself.

First of all, since I am not a member of the network, why, and with what motive would the prosecutor insist on including an F-series one dollar note [in the indictment], is beyond reason. Could it be out of despair caused by the nonexistence of criminal conduct and evidence?

Also, either out of despair caused by a lack of criminal evidence, or out of the wild desire to incriminate me by any means, the prosecutor also sent a fingerprint team to my home for the one dollar note, but he was unable to find whatever he had been looking for.

Secondly, in the aftermath of July 15, possessing a one dollar note had become more dangerous than possessing an offensive weapon. Had I been involved in a kind of sneaky business then why would I have kept those dollar bills?

I had spoken about all these at length in my first defense statement, but the main task at hand is not listening to the defense statements and ignoring them.

‚It is also pointless, when looked at the entirety of the indictment, to include the one dollar note in the indictment as though it were of any significance, because according to the indictment, one dollar notes from series F were given to students who were members of the network. This specification is more elaborate in the final opinion, which also mentions the terms “abi’s” (big brothers) and “imams.”

I explained the reasons as to why I will be filing a criminal complaint in connection with this one dollar bill matter during the hearing on September 19, 2017. I will not be delving further into that matter here.

But in the face of this insane, vindictive allegation, I will refer to the specification as to the one dollar note in the Constitutional Court ruling that found that my rights have been violated:

“[…] relied on the … one dollar banknote found during the search carried out in the applicant’s house, (see § 34). [...] However, the investiga-

tion authorities failed to demonstrate any concrete fact which would refute the applicant's defense submissions -- that may be regarded as a reasonable version of events -- about the allegations pertaining to banknote, bank account, non-inclusion in an investigation and phone conversation."

The aspect I consider to be most noteworthy in the above is the reference to my "defense submissions."

Naturally, the Constitutional Court does take into account "defense statements." But neither the court that has been forcefully keeping me in prison for the past 18 months, nor the prosecutor, who would have sought capital punishment if capital punishment were in force, take defense statements into account.

I wonder what causes this difference.

I have no doubt that this question will continue to raise even more curiosity as the country gradually returns to normal.

And then there is the Bank Asya debit card argument, introduced unlawfully and in contradiction with legal ethics to the [accusations] by the new prosecutor who just joined in the proceedings in the last hearing. Even the previous indictment found it inappropriate to include in the allegations.

The said card was among a pile of around 50 unused debit cards, which was confirmed through photographs as well.

Moreover, in light of both legal ethics and the Code of Criminal Procedure, the prosecutor fails to do what he should be doing, say what he should be saying, instead choosing to remain silent as though there was nothing unusual with the case.

It is specified in the case file that no account movements were associated to that debit card. The trial court had this investigated, but then why is this fact not admitted into the court records?

The prosecutor did not make a note of this in the indictment, although Article 170 of the Code of Criminal Procedure stipulates that issues in favor of the suspect should also be included in the indictment.

But then again, would a mentality that ignores the Constitution pay heed to the Code of Criminal Procedure?

This is a little too unlawful, but is it not way too hostile?

The Constitutional Court, which abided by the universal rules [of law], on the other hand, has taken note of what the court and the prosecutor have been ignoring.

Could this be the reason why the Constitutional Court is the subject of so much anger?

Now I'm asking you: Why do you turn a blind eye to the dictates of law?

Why don't you tell the truth about the accusations pushed into the indictment as though they were criminal conducts, why don't you say these accusations do not qualify as criminal activity?

This is the very court which conducted an inquiry into whether there was an account movement in Bank Asya, and yet this is also the very court that keeps the answer out of sight.

The rule of law is deceased.

What is the real purpose?

I have been seeing for the past 17 months, without a doubt, that the intention is not to reveal the truth. Then, unavoidably, I have to ask, "What is the real purpose?"

Now we have come to the allegation that I have not been able to understand why it was included among these weird, insane accusations in the first place.

The allegation is that "I was not subjected to an investigation despite having spoken at a conference at the AKABE Culture and Education Foundation headquarters."

Has anyone ever seen such an accusation? No one has. Because in a country governed by the rule of law, this cannot be a formal accusation.

Thanks to the meticulous efforts of my lawyers who searched the annexes of the case file line by line, word by word, I discovered that this was in fact a huge scandal wherein the prosecutor who filed the indictment was desperately striving to produce evidence.

This case file includes all the records of the horrifying enthusiasm to invent criminal allegations which no one will be able to account for in the future.

Upon seeing the scandalous documents of the attempt at inventing criminal allegations, I realized that the AKABE allegation was an unlawful attempt by the prosecutor who submitted the indictment, who ordered my arrest without any evidence against me just ahead of a 12-day holiday only to torment me.

As the prosecutor was striving to come up with "evidence" on September 10, 2016, the day I was taken into custody, they stumbled upon my name in the police records of a technical surveillance conducted by FETÖ-linked police officers into the AKABE Foundation from four years before.

The records of the said technical surveillance are included in the case file.

It includes a list of everyone who visited the foundation's headquarters from 9:30 a.m. until 10:30 p.m.

My name occurs once on that list, in one sentence, which says that I had come to the building for a conference, and left at 8:00 p.m.

The prosecutor who issued the indictment feels elated at stumbling upon my name in an ordinary technical surveillance record from four years ago during his search for evidence against me.

He immediately assigns two officers from the anti-terror police with the task of keeping a "record" of my participation in the conference, some four years after the conference, on the day that I was taken into custody.

Has anyone ever seen this kind of law?

Taking innocent people into custody ahead of a lengthy public holiday, probably on some instruction, just for the sake of tormenting them, and then striving to invent "evidence" because there is no criminal evidence against those people?

In the said police report, the two officers wrote down their views in accordance with the prosecutor's instructions.

They wrote: "FETÖist police officials were choosing whom to include and leave out in the investigation they were conducting into the foundation."

And in order to make the four-year overdue report look convincing, they included in it the fact that two more people, one of them being Abdüllatif Şener, had also been exempt from the investigation.

The prosecutor then includes this report, produced by the two officers on an instruction, some four years post the conference, in the indictment pretending this to be evidence, and the new prosecutor who submits his final opinion, takes this to be “criminal evidence” without checking its details.

Have a heart! What more can I say?

I found about this scandal recently, and my lawyers will be filing relevant complaints soon.

These are the pieces of “evidence of crime” on which the court has been keeping me in prison saying there were “concrete evidence” against me, based on rubber-stamped documents.

The views written down in a police report on the day of my arrest on a prosecutor’s instructions some four years after I participated in a conference suddenly became evidence.

Could a fair trial be possible through this kind of an approach, this kind of an attitude, this kind of a mentality?

The Constitutional Court judgment confirmed that it cannot be possible.

Still, taking the weirdness surrounding the whole AKABE matter seriously, I would like to recall some facts.

I know it will be of no use here at this court, but I will still reiterate these just so the records show when the day comes when it will actually be of use.

The AKABE allegation could only be an evidence in my favor, which proves that by no means am I linked with any network. Because, I found out from the indictment against me that the AKABE Foundation was at the time in a conflict with the Gülen movement.

Had I not been a neutral, independent academic, why would the AKABE Foundation invite me to speak in their conference?

Furthermore, two judges who oversaw a case called the Kudüs Ordusu Terör Örgütü (Jerusalem Army Terrorist Organization) case, which was based on this foundation, and who were later sentenced to 10 years in prison on the conviction of FETÖ links, were the same two judges who gave the go ahead to the illegal wiretapping I had been subjected to. I filed lawsuits against those judges, with the relevant documents also included in this case file. If only those working on this case cared to examine the case file.

One cannot be surprised enough by the kind of rationale, moral standard, and the interpretation of the law behind the weird accusations against me, which, as if these accusations were not enough, seeks a life sentence against me.

What does the Constitutional Court say about this weirdness, looking at the matter from the viewpoint of law?

It says:

> "[...] The investigating authorities failed to demonstrate any concrete fact which would refute the applicant's defense submissions -- that may be regarded as a reasonable version of events."

I ask the court and the prosecutor: Why have you never taken into consideration any of my defense statements in the past eight months, turning a blind eye to my defense almost intentionally?

To forcefully keep me in prison?

Esteemed Court,

Let's now move on to yet another allegation that has no legal merits, which I can clearly use in my favor.

The nine wiretapped recordings picked on purpose from among thousands of such conversations made throughout the nearly 10-year period between July 26, 2006 and December 16, 2015.

The indictment intentionally refrains from mentioning the exact time of these recordings in order to create suspicion, to label innocent people and manipulate opinion. Whereas that information is included in the annex to the case file.

As to the content of those conversations, there is not even a word. I wish there were, for then it would have been revealed under what conditions I am being accused, prosecuted and deprived of my liberty.

I understand that the panel is making every effort to punish me in any case -- however innocent I may be, or however pointless the far-fetched allegations offered up as evidence in the final opinion may be.

However, the evidence in the initial indictment are the same as those in the final opinion. The Constitutional Court examined every allegation in the final opinion in its review on the subject of rights violations.

And it held that I could not be remanded in custody on these allegations, let alone being convicted of those accusations.

But two judges on the panel, let alone acknowledging this fact, refused to implement the judgment, violating the Constitution and at the same time committing the offense of unlawfully depriving a person of his liberty.

And now, the insistence on prosecuting me on allegations which the Constitutional Court held that could “not even be the grounds for pre-trial detention” continues.

Truly inconceivable.

Let's now move on to the Historical Traffic Search (HTS) records. One of the nine people selected from among thousands whom I had talked to throughout those 10 years, sent me text messages in two separate occasions in 2009.

Another person called me once, in 2010, eight years ago.

With another person among them, I had three conversations in total in the years 2010 and 2012.

Yet another one called me on two separate occasions during 2009.

The fifth person among them sent me text messages every time [my] articles got published, and never contacted me either by text message or by phone after 2008.

The sixth person called me twice, once in 2008, and once in 2009.

And the rest is along the same lines. I gave a detailed account of each one of them in my defense submission way back in September, but neither the court, nor the prosecutor cared to take note of my defense statements.

Apparently, they are angered by the fact that the Constitutional Court has examined my defense submissions.

This is the age of a legal system that ignores defense statements, a court that ignores defense statements, a prosecutor that ignores defense statements.

The latest HTS record is dated January 28, 2014.

Which is two-and-a-half years before the date of July 15, 2016.

It is incomprehensible how the offense of "coup plotting" or a sense of "aggravated life imprisonment" could be derived from these allegations. I'm sure it would have been easier to pull a rabbit out of the hat.

Additionally, I will reiterate once again that each of those nine people used to work at the time as managers in various media institutions, which were legitimate institutions that were subject to the supervision of the Government of the Republic of Turkey.

Moreover, during the time of this infrequent communication, none of these people were subject to judicial proceedings; on the contrary, they were in good standing, particularly in the eye of the political authority.

The court that used the names of those nine people in its attempt to accuse me, did not even think of a fair assessement such as enquiring about the HTS records of these nine persons' communications with the members currently in political power.

I would like to ask: Are these the contents of the "concrete evidence" that serve as a tool to keep me in prison and manipulate opinion so as to create an impression as if I were guilty?

The Constitutional Court made a legal assessment that is only one paragraph long as to the allegations pertaining to the fabricated scenarios you've been calling "concrete evidence," and through which you have been keeping me in prison and prosecuting me on charges that carry a lifetime in prison. The big picture is becoming clearer and clearer, and once again, I bring this to your attention:

> "In reaching the conclusions that the applicant had acted in line with the aims of the FETÖ/PDY and that he had a link with this organization, the investigation authorities relied on the abstract expression of a witness, one dollar banknote found during the search carried out in the applicant's house, non-inclusion of the applicant in any investigation conducted by the judicial structure of the FETÖ/PDY, his phone conversations -- time and content of which

> are not specified -- with certain persons, and his account in Bank Asya."
>
> "However, the investigation authorities failed to demonstrate any concrete fact which would refute the applicant's defense submissions -- that may be regarded as a reasonable version of events -- about the allegations pertaining to banknote, bank account, non-inclusion in an investigation and phone conversation. Nor did the witness, in his statement, provide any information about a concrete action performed by the applicant." (p. 34, paragraph 146)

Now we are face to face with yet another legal scandal.

My lawyers filed a petition to the Council of Judges and Prosecutors and I wrote a letter to the Minister of Justice regarding this scandal that I will be explaining shortly.

Because, first of all, although the prosecutor who issued the indictment should have long been disengaged with this case file as per rule of law, in reality he has not.

And secondly, he distorts documents whose originals are present in the annex file, and attempts to squeeze them into the indictment as though they were sensational pieces of evidence.

But there is something I find to be very strange about this matter, and that is not like the prosecutor who submitted the final opinion.

The date on which my attorneys filed their petitions explaining the distortion the prosecutor inflicted on the said documents and that informed the trial court of the complaint filed to the Council of Judges and Prosecutors was November 10, 2017.

The date on which the trial prosecutor submitted his final opinion to the court was December 11, 2017.

Which was one month after the distortion had been clearly documented and included in the case file.

But then why does the prosecutor not include the original, undistorted version of this allegation, which he presents as “evidence” in his opinion?

Does he have no shame? How could one resort to such ways? Is this what the law or a lawyer signifies?

Now let’s look at the said distortion and the damaged document purported to offer evidence.

Two people are talking via ByLock. The original conversation is as follows:

- “Who are the planned participants?”
- “Intellectuals”
- “As usual”
- “I see”
- “The cost will be around TL 80,000. First of all, what should we do, and secondly, could we get help moneywise?
- “We contacted Murat Belge, Ergun Özbudun, Mehmet Altan, Mümtazer Türköne, Şahin Alpay. They say they are okay with it.”

This is the original conversation that took place between two people. I was not part of this conversation.

But Can Tuncay, the prosecutor who issued the indictment, who also unlawfully continued to collect evidence while criminal proceedings were already under way, distorted this conversation by way of;

Omitting the word “Intellectuals” and omitting all other names but Mehmet Altan and Mümtazer Türköne.

He concocts a scenario. Although the court was notified of the situation, and despite the existence of the unaltered original text of the conversation and although he was also aware of the situation, the trial prosecutor who submitted his final opinion chose to use the distorted and altered version of the said conversation.

Is this the way to seek the truth, to conduct a fair trial, to be an impartial court?

Furthermore, this conversation embodies all the absurdity of the attempt to incriminate me with strange and irrational accusations.

This conversation could only be a documentation of the futile efforts aimed at making someone billed as an "intellectual" seem as though they were linked or associated with a terrorist organization.

I will quote what the Constitutional Court says about the allegation that was added most recently to the case file so that everybody hears it:

"Finally, in his opinion, the public prosecutor also relied, as criminal evidence, on certain correspondences exchanged through 'Bylock.'

"These correspondences were exchanged among persons other than the applicant.

"In these correspondences, there are certain expressions with respect to the applicant.

"However, given the particular circumstances of the case and the content of the expressions used with respect to the applicant, such expressions *per se* cannot be considered as a strong indication of guilt."

Why do you insist on not taking into account the term "intellectual" which was used to define me in the conversation as highlighted by the Constitutional Court, and which was included in the original text of the

recorded conversation? Why are you trying so hard to make that word disappear?

Could it be because I am indeed an intellectual, and you are incriminating me by reason of my views, and because you want to forcefully keep me in prison?

Esteemed Court,

In rendering its judgment which held that my rights have been violated, the Constitutional Court examined every single allegation against me that is purported to be "evidence" in the prosecutor's final opinion in order to sentence me to "aggravated life imprisonment," just like any other Constitutional Court would do regarding individual applications.

And it found that keeping a person in pre-trial detention on these allegations violated the "rights to personal liberty and security," let alone convicting a person on the same charges.

Additionally, it held that my being incriminated based on two newspaper columns and one television program was a violation of both the "right to freedom of expression" and the right to "freedom of the press."

I am repeating these because one of the allegations submitted in the final opinion as "evidence" is an article headlined "Balyoz" (Sledgehammer), which I wrote some eight years ago.

According to the prosecutor, commenting and expressing opinion on the Sledgehammer trial, which was the most discussed and crucial issue of the time, in an article published in Star newspaper eight years ago amounts to an attempt to manipulate public opinion "in line with the ideology and strategy of the [terrorist] organization."

These are, in fact, nothing but a bunch of examples of mere incoherence that should be laughed off and not to be taken seriously.

But when they come from prosecutors who keep in you in prison for such a long time and are bent on having you receive harsh punishments, and when you are faced with the criminal-law-of-the-enemy treatment at the hands of a mentality that is ready to accept them as facts, you end up having to take them seriously and make defense.

Moreover, your previous defense statements are tossed aside and you end up incarcerated for months based on rubber-stamp decisions.

I am certain that the prosecutor has not read the article, titled "The Meaning of Sledgehammer," either, because if he did, he would have seen that there I emphasized the significance of "democracy and the rule of law," which we now yearn for. Moreover, this article has never been the subject of a criminal investigation.

What is more, the Sledgehammer trial is still ongoing. Had the prosecutor have a look at the indictment, he would have seen it stated there.

If, as the prosecutor claims, talking about the Sledgehammer case amounts to "manipulating the public opinion in line with the ideology and strategy of the organization," then, for the sake of consistency, the prosecutor should open a case against Prime Minister Binali Yıldırım, who said the Sledgehammer case was "real to the core," as well.

If he doesn't open a case, how and why does he charge me?

It appears that this article from eight years ago is among the "body of concrete evidence" that the court keeps failing to substantiate and yet keeps mystifyingly referring to in order to create the impression that I am guilty.

What about the conclusion that the Constitutional Court reached after assessing this article from eight years ago, which is now presented to the court as if it is a serious piece of evidence? I would like to read it again out loud:

“The article titled ‘The Meaning of Sledgehammer’ was published in the nationally circulated daily newspaper, Star. There has been no outstanding allegation that this daily is one of the media outlets of the FETÖ/PDY. Furthermore, the said article was published in 2010. There exists no allegation or finding submitted by the investigation authorities that FETÖ/PDY was a criminal organization and that this was known by the public at that time.

> “... Factual grounds, which led the investigation authorities to conclude that an article written three years prior to the beginning of the aforementioned investigations [the 17-25 December investigations of 2013, during which it was stated that the real purpose of the FETÖ/PDY came to light] and concerned an ongoing case that was high on the national agenda at the time of the writing of the article, had been written in accordance with the aims of the FETÖ/PDY, have not been demonstrated.”

Esteemed Court,

Now, I have come to the point where the allegation in the prosecutor’s final opinion that I attempted to overthrow the constitutional order and establish a theocratic state in its place by using “force and violence” and even participating in the attempt as a “perpetrator” reaches its nirvana.

First, I would like to ask the prosecutor where he got that sentence, which he presents as “the source of all evil.”

The sentence cited in the new prosecutor’s final opinion on the case does not exist in my remarks. It does not exist in the indictment either.

The correct sentence is this:

“... Inside the State of Turkey there is probably another structure that documents and monitors all of these developments more closely than the outside world. And it is not clear when it will show its face and how it will show it ...”

This is what I said.

And what is the sentence that the prosecutor, who easily, and way too easily, demands “aggravated life imprisonment” over this one sentence, put in his final opinion?

The words “than the outside world” has turned into “in the outside world.” That’s one.

I say “its face” but it has been changed into “its hand.”

I say “and it is not clear how it will show it,” while this emphasis has been removed in the prosecutor’s version: “it is not clear how it will show its hand.”

We present the sentence as the biggest evidence of crime and demand a life in jail based on it, yet we fail to properly write that very sentence down.

What is this lack of seriousness? Can there be such a trial? Do you oppress people’s lives with such carelessness?

And the rest continues on the same corrupt premise. I will prove it one by one.

The prosecutor can say that with that sentence that he is unable to properly recite, I “stated that the conditions were ripe for a military coup.”

Where and how I said it, how I phrased it is unclear. The prosecutor apparently can understand it the way he wishes, then he can confidently and easily claim that “I stated” whatever it is that he understood and put it in his final opinion. And finally, he can demand “life sentence.”

Wow!

And the rest is a real comedy. A farcical feast.

Let us go through the rest together.
Here, accusation stops being an individual matter and takes on a collective sense. The principle of individual criminal responsibility, the burden of proof, etc., evaporate once again, as is often the case.

And the claim that the defendants have all together made remarks that contained subliminal messages evocative of the coup...

Where, how - none of this is clear. Is this an Inquisition court? Are we back to the Yassıada trials?

And it continues:

“That it would not be possible for them to know about the coup attempt without being in concert with the terrorist organization in thought and in deed…”

Where does the claim that we knew about the coup attempt beforehand come from? Where is the proof? Again, no answer.

Just the fact that the prosecutor says so is sufficient. Evidence, proof, concrete facts, these are all unnecessary parts that have no role in today’s trials.

There is no evidence, as there is no crime...

What else can the prosecutor do? He is trying to keep up appearances, create certain impressions, and, if possible, ensure conviction by resorting to verbiage. In this trial, that is his job.

And there is the phrase “for them to know without being in concert with the terrorist organization in thought and in deed.” Although, again, there is no evidence.

I am not a member of the [terrorist] organization but I am in "concert in thought and in deed" with a terrorist organization that seeks to establish a "theocratic state."

How does that work?

I feel embarrassed just by having to defend myself in the face of these strange and irrational allegations.

Let me first read the paragraph where the sentence singled out by the prosecutor belongs to:

"If someone believes that they can seize the state unlawfully ...

If that state is going to continue to exist, this is recklessness and inside the State of Turkey there is probably another structure that documents and monitors all of these developments more closely than the outside world.

And it is not clear when it will show its face and how it will show it...

… Because when you want to take over the state, you want to destroy a metabolism.

And that metabolism has its own [defensive] reflex. What are the elements that will show those reflexes?

You cannot destroy these. If you do, the state and society would be destroyed in the process."

What is the state? It is the legislative, executive, the judiciary and the institutions and structures they contain.

How can a person with an average intellect infer a reference to a "coup" from this paragraph?

Am I talking about the soldiers, or coup plotters, or the Turkish Armed Forces? On the contrary, I start my sentence saying “If someone believes that they can seize the state unlawfully…”

Don’t you think you are stretching this too far?

If someone attempts to destroy the constitutional order, or makes preparations to that effect, or openly creates a de facto situation defying the constitutional order, wouldn’t the elements of the state react?

I gave examples to elucidate this sentence.

The court did not care then, it still does not.

Now, I repeat the same sentence, for which I am charged, before this court.

Because it became clear that you have been holding me in prison in violation of articles 19, 26 and 28 of the Constitution from the beginning.

Which “structure” in the judiciary that has been monitoring all these phases from the inside exposed it?

The Constitutional Court.

Speaking of the Constitutional Court, let’s also find out how the Constitutional Court is viewing the irrational allegations against me in its decision about my case.

Reading just one paragraph from the decision would suffice:

> “When the content and the context of the remarks made by the applicant and the issues raised by the applicant and the other speakers before and after these remarks are taken as a whole, it is difficult to characterize -- without a doubt -- these remarks as a call for a coup and to accept that the applicant said them knowing about the coup

> attempt that was to happen the following day and for the purpose of preparing the public for it. Otherwise, it could result in attributing such meanings to the remarks that go beyond the meanings which could be attributed by an objective observer. In fact, the speakers at the program spoke of possibilities of a government change, through election slated to take place in two years or through a group of lawmakers leaving the ruling party to establish a new political party with a certain politician." (page 33, paragraph 140)

Why does the prosecutor stubbornly disregard the remarks about the "election in two years" and the comments made around it, which are reminded by the Constitutional Court and which I have repeatedly and persistently emphasized in my defense statements? This is despite the fact that they are mentioned in pages 185 and 187 of the indictment as well.

Or, why has the court not taken up an objective stance on this matter to this day?

Is it in order to do everything possible to force an unfavorable outcome?

I would like to read this sentence from the Constitutional Court decision, too:

> "When the aforementioned issues are taken into consideration, it is seen that the investigation authorities have failed to demonstrate the factual grounds for [the claim] that the applicant has made remarks that are subject to prosecution for the purpose of setting the stage for the attempted coup."

Who says that? The Constitutional Court does.

Is there anyone willing to demonstrate the factual grounds?

Hasn't it be proven that this is not the goal?

Esteemed Court,

The last piece of "evidence" presented by the prosecutor so that I spend the rest of my life in jail is again an article.

All those things I have done with my article, titled "Turbulence" and dated July 20, 2016!

Even though I am not charged with "membership in a terrorist organization," the prosecutor got carried away in his effort to accuse me and spoke of "serving the goals of the organization that I belong to."

He spoke of a "rhetoric with goals pertaining to the [terrorist] organization."

That opinions, views and articles are being used to prop up criminal charges and presented as terrorism activities is saddening for Turkey. It also reveals the true nature of the current period.

Oppressing intellectuals and presenting these people as terrorists and putschists in order to destroy freedom of expression and freedom of thought are shameful endeavors that will benefit no one.

If the rule of law were upheld, I would not have gone through any of what I am going through. I am here because the rule of law has been destroyed.

The Constitutional Court decision clearly confirms this. And for this reason, the decision of the highest court is disregarded at the expense of committing a constitutional crime.

Lastly, let me read the conclusion of the supreme on my article, "Turbulence", as stated in its decision.

Let the frightening difference between the supreme court's decision and convictions of the prosecutor crystallize further:

> "When the aforementioned article is examined, it is seen that the applicant expresses his doubts as to whether the attempted coup was perpetrated solely by the FETÖ/PDY members and criticizes the measures taken in the aftermath of the coup attempt. It is known that views on the origins of the coup attempt and ideas that other elements might have collaborated with the FETÖ/PDY during the coup attempt have been expressed in some circles at the time of the publishing of the article in question.
>
> .
>
> Opinions which are different from the public authorities' considerations and those of the majority may be considered to constitute an offence in connection with to the aim of the person expressing them, only when this aim is demonstrated with concrete facts other than the contents of the expressions.
>
> In the present case, the investigation authorities failed to demonstrate the existence of the facts that would lead to the conclusion that the applicant had acted in line with the aims of the FETÖ/PDY while writing the article."

There have never been "concrete facts" in my trial; there have been, however, a lot of scenarios, a lot of fiction and a lot of subjective accusations.

How else would the Constitutional Court have found three constitutional violations, after the entire case file was examined and the final opinion of the prosecutor was submitted?

Lastly, let me talk about Article 309 of the Turkish Criminal Code (TCK), under which the prosecutor seeks conviction.

The Constitutional Court has established that I cannot be held in pre-trial detention, let alone convicted, based on the allegations that are presented

as “evidence” in the final opinion of the prosecutor, and, therefore, ruled that my right to personal liberty has been violated.

I am being forcefully incarcerated because of two members of the panel of judges and face a life sentence besides.

I am reminding once again; how is this a state governed by the rule of law?

As I said before, the prosecutor refers to the case law of the 16th Criminal Chamber of the Supreme Court of Appeals, embodied in the decision with register number 2017/1443 and judgment number 2017/4758.

But departing from this case law, he demands “aggravated life sentence” for me under Article 309 of the Turkish Criminal Code (TCK), at a time when the Constitutional Court says even my pre-trial detention based on the allegations presented as evidence amounted to violation of the “right to liberty.”

According to the prosecutor, I actively attempted to overthrow the constitutional order and establish a “theocratic state” through use of force and violence.

And I did it with two articles and a television program.

The 16th Criminal Chamber of the Supreme Court of Appeals underlines the following in regard to the Article 309, just as the law itself and its preamble do:

> “The use of coercion and violence constitute elements of this offence. Therefore, an attempt to change the Constitutional order must be solely through the use of coercion and violence, i.e., through corrupting free will of the individuals by means of coercion."

> “It is evident that the [element of] violence required by the law is physical/material violence." (p. 7)

Let me read further from the 16th Criminal Chamber of the Supreme Court of Appeals:

> “In order to be able to talk about participation in the offence covered by Article 309 of the Turkish Criminal Code, the will to participate must be sought not only in relation to intermediary act/offence, but also to the intended offence.” (p. 13)

The demand in this indictment for a “life sentence” is based on allegations that the prosecutor cannot substantiate -- and will never be able to substantiate since he is not telling the truth. It stems from a deep moral weakness of the prosecutor. Since he knows that he is not telling the truth, he hides his allegation in verbiage:

> “... the coup attempt that they knew about…”

As I said, there is not a shred of evidence explaining how we knew about the coup.

But the charge under Article 309 is based on this random allegation. It is not very different from trying to construct a building on a marshland.

And there is another strangeness as well. “Knowing about the coup” is not a crime either. I wish he had examined the 16th Criminal Chamber of the Supreme Court of Appeals decision that he referenced more closely. He did not. Then I wish he had taken a look at my defense statement on September 19, 2017. He did not do that either.

Then let me repeat:

> “[Having] information about the commission of the act has no bearing in terms of participation.”

This is the position maintained in the doctrine as well. Information about the perpetrator's act is not sufficient to establish that there is will to participate."

It is hard to understand how the prosecutor charges me under Article 309 while these criteria are out there for everyone to see.

The allegation of coup plotting through a television program is new, and it is a curious novelty. Does it mean that the coup attempt would not have happened had the TV program not aired?

The Constitutional Court decision clearly reveals that this case has turned into rights violation. As of the evening of January 11, I have become a prosecuted person whose liberty has been forcefully taken away from him despite a constitutional ordinance.

And you are doing this while who I am, what I did, my thoughts, my principles are clear as day.

If this is what is done with complete disregard to the law to an academic of 30 years, a professor of 25 years, and an author of nearly 40 books who saw his first byline in print 49 years ago, I leave the rest to your imagination.

I will show once again, by briefly calling the attention of the prosecutor and the court panel to my previous writings, that my stance and opinions have not changed at all.

My thoughts and my stance have not changed over time but I am in prison now. Why? Because the government has deviated from the path of legitimacy as shown by the latest development.

This is what I wrote eight years ago, on September 3, 2010:

"If in a democratic state where the law prevails, a civilian dictatorship can be established; that shows that you haven't been able to establish a

state at all. If a religious network can take over the state, that means that the state is not a state.

In democracies, there are reflexes to ensure that the system can protect itself against anti-democratic tendencies.
The state is a massive organism, which cannot be seized by anyone.

In fact, the state should be effective within the framework of universal legal norms where nobody is influential.

On July 2014, I expressed the opinions I frequently emphasize, this time in an interview:

“In no functional, well-organized society can people talk of the legislative, executive, judiciary and the community [the network led by Fethullah Gülen]. If the community is involved in unlawful practices, then you catch them.”

How do such opinions turn into crimes punishable by life imprisonment? I think you, more than me, should think about that.

Yet, I am still trying to get acquitted by making my defense.

In short, the situation makes no sense.

If, when all these facts along with the decision of the Constitutional Court are set out, a conviction including prison sentence is handed down, justice will cease entirely to be “the foundation of the state.”.

In a situation like this, everyone should ask themselves if “I would like to be tried the way I try others.”

Would you like to be tried the way you try others?

Ask your conscience and decide accordingly.