

JUSTICE SPRING AND THE ÇAĞLAYAN COLLEGE  
(ON SOME HEARINGS OF OCTOBER 15, 2019 BEFORE THE  
32ND COURT)

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ABSTRACT

On October 15, 2019, I attended as an observer one of the hearings in the trial against thirty Turkish students from Boğaziçi University charged with terrorist propaganda after a spontaneous counter-demonstration on their campus (March 2018), a crime punished with one to five years in prison. They are judged by the 32nd Court in Istanbul. One of their previous hearings was observed and reported on by Ulla Karhumäki<sup>†</sup>. The trial should end on January 31st, 2020.

*Si la jeunesse n'a pas toujours raison, la société  
qui la méconnaît et qui la frappe a toujours tort.*

François Mitterrand

1. *Context elements*

*Context—the observer.* Adrien DELORO, 37, an assistant professor at Sorbonne University. I am neither a Turkish citizen nor a member of any international organisation related to the case or the events. I was present as an observer on behalf of the European Mathematical Society.

I do not speak Turkish. The account of the audience is based on (non-sworn) real-time translation which was provided to me in the courtroom. Background exposition reflects my personal understanding of the situation. I also quote excerpts from the bill of indictment in legal (sworn) translation.

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<sup>†</sup>U. Karhumäki, *Turkish undergraduate students on trial*. The De Morgan Gazette 11 no. 1 (2019), 1–8. <https://bit.ly/2UmtVmu>.

*Context—March 2018 in Afrin.* This account is dated in October 2019, and events involving the presence of the Turkish Armed Forces in Syria now have a special echo.

Turkey’s Operation *Olive Branch* started on January 20, 2018 with the aim

“to neutralize the terrorists from terrorist organizations PKK/KCK/PYD/YPG and ISIS in the border of our country, in accordance with the right of self defence and anti-terrorism arising from the International Law, and with UNSC’s decisions towards anti-terrorism and right of self-defence located in Article 51 of UN Charter.”<sup>†</sup>

On March 18, 2018, the Turkish army and the Turkish-backed Free Syrian Army (Turkish acronym: ÖSO) entered the town of Afrin, Syria, which was previously held by the YPG-backed *Syrian Democratic Forces*.

*Context—The event and arrest.* The trial of the thirty (then thirty-two) students has already been observed<sup>‡</sup>. We briefly sum things up:

- Boğaziçi University (Istanbul) is one of the leading Universities in Turkey. Classes are taught in English. Strong connections with the USA.
- On March 19, 2018, “an event in the form of distributing sweet (Turkish delight) was organized with humanitarian emotions by

<sup>†</sup>Quoted from a legal translation of the indictment.

- PKK (Kurdistan Workers’ Party, in Kurdish *Partiya Karkerên Kurdistan*) is a terror organisation according to Turkey, the EU, the USA—but not to the Russian Federation.
- KCK (Kurdistan Communities Union, *Koma Cîvakên Kurdistan*) is an umbrella organisation, regarded as terrorist by Turkey, with many branches including PKK and PYD.
- PYD (Democratic Union Party, *Partiya Yekîtiya Demokrat*) is the Syrian-based branch of PKK. As of early October 2019, it used to control a part of Northern Syria, the so-called autonomous Rojava region.
- YPG (People’s Protection Units, *Yekîneyên Parastina Gel*) are one of the armed branches of PYD. Allies of the Coalition against the ISIS, at least until early October 2019. A terrorist organisation according to Turkey. The question of organic links between PKK and YPG is often asked in Turkey.
- The ISIS (whose Arabic acronym standardly transliterates into DAESH) was considered the main threat in the region by many countries, including the EU, the USA, and the Russian Federation. The observer could not find Turkey’s list of terror groups. Former links or early *de facto* common interests between the Turkish Republic and the ISIS have been alleged; see <https://docs.house.gov/meetings/FA/FA14/20170405/105842/HHRG-115-FA14-Wstate-PhillipsD-20170405-SD001.pdf>. Things clearly changed after 2015–2016.

Position of the EU is available at <https://eur-lex.europa.eu/legal-content/en/TXT/HTML/?uri=CELEX:32019D0025&from=EN>. For an example of recent Turkish communication, see <https://www.trtworld.com/middle-east/four-myths-about-the-pkk-ypg-terrorist-group-that-need-refuting-30457>, which unfortunately does not mention the role of the Russian Federation.

<sup>‡</sup>U. Karhumäki, *Turkish undergraduate students on trial*. The De Morgan Gazette 11 no. 1 (2019), 1–8. <https://bit.ly/2UmtVmu>.

Boğaziçi University Society of Islamic Studies”<sup>§</sup> on campus, in order to celebrate the end of the battle for Afrin.

A spontaneous *counter*-demonstration was launched by students protesting the first demonstration; they “shouted slogans as ‘The Palace wants war, people want peace’, unfurled a banner which [sic] ‘There is no delight of occupation, of massacre’ was written”.<sup>†</sup>

- Videos were taken (including by security cameras) and helped the Police identify participants of the rally. Some of the counter-demonstrators were arrested. (To the observer’s knowledge, none from the celebrating party.)<sup>‡</sup>
- The case gained instant fame when Turkish President Erdoğan personally voiced against the arrested students.<sup>§</sup>
- Some of the accused spent two weeks in custody, followed by six more in remands. All remaining students were released on the first hearing in June 6, 2018.<sup>¶</sup>
- Misconducts from the Police have been reported, including beating-up and sexual violence.<sup>||</sup>

*Context—the bill of indictment (excerpts).* The bill of indictment is based on articles 53/1, 58/9 and 63 of the Turkish Criminal code (law 5237)\*\*, and article 7/2 of the law on fight against terror (law 3713).<sup>††</sup> The latter rules that “Any person making propaganda for a terrorist organisation shall be punished with imprisonment from one to five years.”

The students are essentially accused of “making propaganda” for and being “organically connected” to “terrorist organizations”. Excerpts follow.

- “Suspects, in accordance with the overall behaviour and strategies of PKK/KCK/YPG Armed Terrorist organization, aim to show the

<sup>§</sup>From the indictment.

<sup>†</sup>From the indictment.

<sup>‡</sup><https://www.bbc.com/news/world-europe-43731563>

<sup>§</sup><http://www.hurriyetdailynews.com/erdogan-calls-bosporus-university-students-involved-in-afrin-protests-terrorists-129241>

<sup>¶</sup><http://www.hurriyetdailynews.com/istanbul-court-orders-release-of-bogazici-university-students-in-terror-propaganda-trial-132927>

<sup>||</sup><https://www.amnesty.org/en/documents/eur44/8565/2018/en/> and <https://gazeteyolculuk.net/tutuklanan-bogazicililere-hem-okulda-hem-vatan-emniyette-agir-iskence>

\*\*[https://www.legislationline.org/download/id/6453/file/Turkey\\_CC\\_2004\\_am2016\\_en.pdf](https://www.legislationline.org/download/id/6453/file/Turkey_CC_2004_am2016_en.pdf)

<sup>††</sup>[https://www.legislationline.org/download/id/3727/file/Turkey\\_anti\\_terr\\_1991\\_am2010\\_en.pdf](https://www.legislationline.org/download/id/3727/file/Turkey_anti_terr_1991_am2010_en.pdf)

State of the Turkish Republic and Turkish Armed Forces not as a sovereign state, that uses its right of anti-terrorism and right of self-defence established by International Law; but as an illegitimate power, that occupies the region and engages in illegitimate activities by means of violence.”

- “Even though, [sic] the mentioned incident is tried to be shown as a democratic reaction of a group of innocent students with innocent/harmless emotions in a university campus, it is true that the main goal is to create a public opinion trying to legitimize the methods of terrorist organizations, which this group of students is organically connected to. Suspects, while trying to legitimize the organizations which they are organically connected to, aim to discredit both the State of the Turkish Republic and Turkish Armed Forces. . . .”
- Some of the defendants are prosecuted under the following:
  - “As a result of examining image investigation report, it has been determined that the suspect moved with the group.”
- An interesting point, discussed below, is the following:
  - “The mentioned incident carried out in this way by the suspects, cannot be considered within freedom of speech or right to assembly and demonstration, whose boundaries are indicated in the constitution.”
- The bill concludes with:
  - “As a result of the investigation carried out by the Chief Public Prosecutor’s Office, it was concluded that the suspects made the PKK/KCK Armed Terrorist Organization propaganda as described above. . . .”

*Context—Article 7/2.* Due to use of article 7/2 of the law on fight against terror, it is hard not to draw a parallel with two however distinct recent cases.

- Ayşe Çelik, a school-teacher based in Diyarbakır, criticised the way military operations in the South-East were conducted, reported that children were dying (2016), and was charged with terrorist propaganda, a crime for which she was sentenced to 15 months of prison. On May 9, 2019, the Constitutional Court ruled that Mrs. Çelik

had spoken within the legal limits of freedom of expression, and voided her conviction.<sup>†</sup>

- The “Academics for Peace”, a number of Turkish or Turkey-based academics, signed a petition expressing similar concerns and asking for Human Rights to be respected; which triggered strong response from the Administration. The French-speaking reader is urged to <https://journals.openedition.org/revdh/7429>. An emblematic case was that of Füsün Üstel, a professor retired from Galatasaray University (Istanbul), who spent six weeks behind bars after being sentenced to 15 months. She was released on July 22, 2019.

On July 26, the Constitutional Court reached for Mrs Üstel a decision similar to that for Mrs Çelik.<sup>†</sup> The decision, which can be found at <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/17635>, has since sparked a massive number of acquittals in the “Academics for Peace” trials.

## 2. *The hearing*

The hearing was scheduled on October 15 at 11:00 before the 32nd Court of the Istanbul “Çağlayan” Justice Mall. Access to the building itself, then to the Court, was easy, and the observer did not have to provide any identification. The hearing started at 12:30 and was extremely brief.

The President, Ömer GÜNAYDIN, reportedly has Kurdish ethnical background. The two other judges were Onur SERT and Ahmet Selçuk ÖZKAN. The Prosecutor was Ikram COŞKUN. Parenthetically, the 32nd Court was the first to give sentences in the “Academics for Peace” trials.

Only two of the thirty defendants were physically present, all others being represented by their lawyers. Audience was scarce: some twenty people (in a room which could seat forty). A journalist reporting for Amnesty Turkey was attending. Presence of an international observer seemed to surprise the President, who had the appointment letter translated to him.

After the usual identification procedures, the President asked the

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<sup>†</sup><https://kararlarbilgibankasi.anayasa.gov.tr/Basvurular/tr/pdf/2017-36722.pdf>

<sup>†</sup><https://www.amnesty.org/en/latest/news/2019/07/turkey-constitutional-court-clears-academics-from-spurious-terrorism-propaganda-charges/>

Prosecutor whether the indictment needed revision; the Prosecutor declined.

Then the various lawyers asked for more time to prepare the defence. One suggested that in view of the Constitutional Court's decisions (see above), and since laws regulating the use of art. 7/2 may change in the near future, the Prosecutor *ought* to revise the indictment. The President replied that had the Prosecutor wished so, he would have declared his intention.

One of the defendants spoke briefly to report an alleged mistake in the indictment: the bill claims that some CD's were seized from him which showed images from the March 19 event, while the report on the performed search mentions no such evidence. His emotional speech was not met with hostility; and the President reminded him that the indictment merely reflects the Prosecutor's views.

Some apparently still unanalysed digital material was also briefly mentioned; it is not clear to the observer which euphemisms a Court would use if such evidence were lost by the authorities. However analysis of the mentioned electronic material was ordered; while a decision on its restitution will be reached at the next and final hearing.

For the latter, an early date in January was first suggested, which the defence found too close to the academic exam period. The trial is thus expected to come to an end on January 31st, 2020.

### *Disclaimer*

The author writes in his personal capacity. The views expressed in this article and linked documents do not represent the position of the London Mathematical Society or the European Mathematical Society.

### *About the author*

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