12 September 1980 Military Coup Trial Is Pending

9 July 2020

Commanders-in-Chief of the General Staff staged the bloodiest coup in the history of Turkey on 12 September 1980. According to figures disclosed by then İHD Chairperson Nevzat Helvacı at a panel on 21 September 1991 in Muğla, the National Security Council which had been consisted of coup plotter generals was responsible of the following crimes committed between 12 September 1980 and 6 December 1983.

- *650 thousand persons detained, subjected to heavy torture during detention up to 90 days.*
- *1 million 683 thousand persons blacklisted for being communist, Alevi, Kurdish, religious, fundamentalist, etc.*
- *230 thousand persons stood trial in 210 thousand court cases before Martial Courts.*
- *Death penalty was asked for 7 thousand persons, 517 persons sentenced to death penalty.*
- *Death penalty for 124 persons upheld by the Military Court of Appeals.*
- *The sentences of 50 persons executed by hanging [(18 left-wing, 8 right-wing, 23 ordinary crime offenders, 1 ASALA militant].*
- *The files of 259 persons with death penalty request sent to the parliament.*
- *71,500 persons tried under the articles 141, 142 and 163 of the Turkish Penal Code.*
- *98,404 persons tried on charges of "membership in an organisation".*
- *388 thousand persons were denied passports.*
- *30 thousand persons were dismissed from public service for being "objectionable".*
- *18,525 public servants were investigated.*
- *14 thousand persons were expatriated.*
- *30 thousand persons sought asylum abroad.*
- *366 persons were killed under suspicious circumstances.*
- *299 persons died in prisons.*
- *171 persons were documented to be killed under torture.*
- *144 persons died under suspicious circumstances.*
- *14 persons died during hunger strikes.*
- *16 persons were shot to death while "attempting to escape".*
- *95 persons were killed during "armed clashes".*
- *73 persons were given "natural death" reports.*
- *43 persons committed "suicide".*
- *937 movies banned for being "objectionable".*
- *23 thousand 677 associations were closed down.*
- *Political parties and worker unions were closed, numerous politicians kept in detention and/or arrested without a reason.*

- *3 thousand 854 teachers, 120 academics and 47 judges were dismissed from public service.*
- *A total of 4 thousand years of imprisonment were asked for 400 journalists.*
- *Journalists were sentenced to a total of 3 thousand 315 years and 6 months of imprisonment.*
- *31 journalists were imprisoned.*
- *300 journalists were attacked.*
- *3 journalists were assassinated.*
- *Newspapers were not published for 300 days.*
- *303 court cases were brought against 13 leading newspapers.*
- *39 tons of newspapers and journals / magazines were confiscated and destroyed.*
- *Hundreds of thousands of publications were confiscated and destroyed. For instance, 113,607 copies of books published by Bilim ve Sosyalizm [Science and Socialism] publishing company were burnt down. The publishers detained, arrested, and tortured. Writer and publisher İlhan Erdost was killed under heavy torture.*

A significant number of these offences fall under the category of crimes against humanity.

The very first indictment against the 12 September 1980 military coup perpetrators regarding the offences of plotting a coup and their crimes against humanity was prepared by Sacit Kayasu, the Public Prosecutor in Adana province, on 28 June 2020. Unfortunately, the Supreme Board of Judges and Prosecutors [Council of Judges and Prosecutors now] dismissed Sacit Kayasu from public service and prevented the military coup perpetrators from being prosecuted. We remember late Sacit Kayasu [d. 28 November 2014] with respect for his attempt.

Several articles of the 1982 constitution -drafted following the coup- were amended at the Parliament on 7 May 2010 with the Law No 5982. Following the decision of the Constitutional Court [2010/49 E, 2010/87 K] to partially quash the amendments on 7 May 2010, a referendum was held on the 30th anniversary of the coup for the approval of the amendments excluding quashed parts of the law. These amendments included suspension of provisional article 15 of the Constitution. The article was related to the responsibilities of the coup plotters and read:

> No allegation of criminal, financial or legal responsibility shall be made, nor shall an application be filed with a court for this purpose in respect of any decisions or measures whatsoever taken by the Council of National Security formed under Act No. 2356 which will have exercised legislative and executive power on behalf of the Turkish Nation from 12 September 1980 to the date of the formation of the Bureau of the Turkish Grand National Assembly which is to convene following the first general elections; the governments formed during the term of office of the Council, or the Consultative Assembly which has exercised its functions under Act No. 2485 on the Constituent Assembly.
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> The provisions of the above paragraphs shall also apply in respect of persons who have taken decisions and adopted or implemented measures as part of the implementation of such decisions and measures by the administration or by the competent organs, authorities and officials.

Following the referendum on 12 September 2010 and the publication of the Supreme Electoral Council's decision on 24 September 2010 in the *Official Gazette*, the amendments went into force with the approval of popular vote.

The next day of the referendum, numerous persons and organisations -including human rights organisations like İHD and Mazlumder- made official complaints with the Public Prosecutor in Ankara with the demand of prosecution of coup plotters and other officers/authorities who aided them, at least of the ones who were still

alive. The official complaints not only included the military coup but also crimes against humanity committed following the coup.

The Public Prosecutor in Ankara addressed the official complaints to the Office of Specially Authorised Deputy Chief Public Prosecutor under the Article 250 of the Law on Criminal Procedures. [Investigation Date - No: 27 September 2010 - 2010/599] Specially Authorised Deputy Chief Public Prosecutor gave the decision of non-jurisdiction and ruled to send the case file to the Deputy Chief Public Prosecutor. [Decision No: 2010/115]

As a matter of fact, Deputy Chief Public Prosecutor sent the case file back to Specially Authorised Deputy Chief Public Prosecutor. Consequently, Specially Authorised Deputy Chief Public Prosecutor served the surviving leaders of the coup, Ahmet Kenan Evren and Ali Tahsin Şahinkaya, with an indictment dating 3 January 2012 with the merits no 2012/2 E. The indictment asked the defendants to be sentenced according to Article 146 of the TPC for the offences committed between 12 September 1980 and 6 December 1983.

The indictment gives a clear picture of the situation before the coup. And all the human rights violations before the coup including crimes against humanity like massacres are listed in the indictment as well. It also referred to the military memorandum dating 2 January 1980 that was handed to the State President. By referring to the course of incidents before and after the coup, the incidents happened until the constitution of the parliamentary council, the indictment wanted the defendants to be sentenced for forcibly attempting to overthrow the constitutional order, attempting to overthrow parliamentary system, and preventing the parliament from conducting its duties. But they were not indicted for crimes against humanity.

In the criminal complaint, it was stressed that provisional article 15 of the 1982 Constitution was suspended following the referendum and constitutional immunity was lifted. The UN Principles of international co-operation in the detection, arrest, extradition, and punishment of persons guilty of war crimes and crimes against humanity were referred for a specific emphasis on that there is no statute of limitations or prescriptive period for crimes against humanity. Even there is a statute of limitations regarding these crimes committed by the military coup perpetrators, following the suspension of the provisional article 15 of the 1982 Constitution the statute of limitations of 20 years started after the lifting of immunity. And lastly, according to the Article 7/2 of the European Convention on Human Rights, the statute of limitations does not apply for the crimes in question. The Public Prosecutor also accepted and followed these principles and opened a criminal case against the generals.

Though the official criminal complaint was made on 13 September 2010 and there were only 2 surviving generals on the date, the Public Prosecutor in Ankara did not complete the investigation within a reasonable period of time and accordingly committed neglect of duty. The investigation was completed in 1 year and 3.5 months upon public pressure and the indictment was finalised on 13 January 2012. Heavy Penal Court No 12 in Ankara examined the indictment and accepted it later in January 2012. Following the preparations for the trial on 18 January 2012, the court decided the first hearing of the case would be held on 4 April 2012.

The defendants Ahmet Kenan Evren and Ali Tahsin Şahinkaya, the only 2 surviving leaders of the coup, did not appear before the court on 4 April 2012, but participated the hearing remotely from hospital and testified through the SEGBİS system. Despite the objections of the lawyers, the court allowed Ahmet Kenan Evren to testify from the hospital relying on a medical report by the Forensic Medicine Institute. Though the medical report by the Forensic Medicine Institute revealed that Ali Tahsin Şahınkaya did not have a medical condition preventing him from appearing in the court room, the court also allowed him to testify remotely. With these decisions, the court maintained a nepotistic attitude and created a comfortable trial environment for both defendants.

The requests and demands for pre-trial detention and remand were rejected by the court during the investigation and trial. The decisions were based on the medical reports given by university hospitals and the Forensic Medicine Institute.

The only judicial control decision taken against the defendants was a travel ban. The attention of the general public to the trial was lost following these decisions, for not testifying with the public prosecutor at the courthouse and not appearing before the court. And the public opinion turned that there would be no fair trial. While on the one hand arresting persons for involvement in minor crimes or on the other hand not releasing prisoners with poor medical conditions, the attitude of the court led to erosion in trust to judiciary and justice.

Problem of becoming an intervening party in the case

According to the trial at the Ankara Heavy Penal Court No 12, which concluded the trial, the defendants were only prosecuted for the crimes committed between 2 January 1980 and 6 December 1983. With regard to becoming an intervening party, the court allowed and accepted the demands of legal entities operating between these dates, which had been closed by or negatively affected by the martial law. In terms of real persons, it has narrowed the scope of the intervention and only allowed real persons who had been directly affected by the coup and its consequences. For this reason, the involvement of many people was not accepted. This issue was deliberated in detail in the court, including the logical argumentations of those who wanted to be involved as intervenors demanding extending the period of prosecution between 26 November 1978, when martial law began, and 19 July 1987, when martial law ended. Unfortunately, none of the demands were taken into account by the court. In addition, since the trial was limited to the military coup, the issue of the involvement of the victims of crimes against humanity remained insignificant during the case. I will explain the outcome of the investigations opened upon criminal complaints made in different provinces and districts of Turkey, especially with the Chief Public Prosecutor's Office in Ankara.

Although the criteria for becoming an intervening party in the case were limited, the Grand National Assembly of Turkey, the Prime Ministry, the political parties of the period, and mass organizations were involved in the case but even the involvement of these institutions and organisations did not increase the general interest in the case. Only the press and media outlets showed interest. The relatives of the disappeared persons, victims of torture, human rights organizations and associations closely followed the trial. İHD was not allowed to involve in the case relying on the date of its establishment, nevertheless the court recorded Öztürk Türkdoğan as the Chairperson of the İHD into the minutes as an attempt of remedy. As can be understood from the court's decision, lawyers and legal representatives of the intervening parties continued the trial in limited numbers from beginning to end and insisted on the punishment of the perpetrators of the coup and related crimes. The fact that only Diyarbakır, Muğla and Mersin bar associations were involved in the case showed inadequacy of the Turkish legal world’s approach to and understanding of dealing with the coup law and the coup plotters.

Problem of trial within a reasonable time

Regarding the prosecution of the putschists, the investigation phase was held long between 13 September 2010 and 13 January 2012, the prosecution phase started on 10 January 2012, the first hearing was held on 4 April 2012, and the final judgment hearing was concluded with a conviction on 18 June 2014.

On 18 June 2014, Ankara Heavy Penal Court No 10 sentenced coup plotters to aggravated life imprisonment under the Article 146 of Turkish Penal Code with the decision No 2014/137 E, 2014/181 K. But the court also applied articles 30 and 31 of the Military Penal Code and discretionally reduced the sentences to life imprisonment.

During the trial, the authorised court had to be changed. The parliament passed a new law on 21 February 2014 and with the entry into force of the law a provisional article [Article 14] was added to the Anti-Terrorism Law. The provisional article 14 abolished the Specially Authorised Heavy Penal Courts and ruled that the pending trial to be continued at Heavy Penal Courts.

Since Ankara Heavy Penal Court No 12 was closed in accordance with this law, the case file was sent to the Ankara Heavy Penal Court No 10. The trial was continued at Heavy Penal Court No 10 and a conviction was handed down as stated above.

First Time at the Court of Cassation

The conviction verdict was delivered in the September 12 trial, one of the most important cases in the history of Turkey. The coup plotters were elderly and had severe chronic diseases. Under these circumstances, it was necessary to act quickly. However, as in the investigation phase, the defendants were given time and the Court of Cassation's Chief Public Prosecutor's Office prepared the communiqué on 3 September 2015 only after the coup plotters died. In the communiqué, Chief Public Prosecutor requested that the verdict to be quashed due to the statute of limitations and the case to be dismissed as the coup plotters died.

As intervening lawyers, we submitted our counter-statements to the 16th Penal Chamber of the Court of Cassation within the time limit (10 days). In summary, we demanded that the case could not be closed, the statute of limitations could not be applied, and wanted the verdict to be approved depending on continuing material benefit relations. We explained in detail how the Court of Cassation should have approved the verdict in accordance with the Article 64/1 of Turkish Penal Code, but closing the case by deciding to dismiss the execution of the sentences on the grounds that the defendants died. By referring to the Article 7/2 of European Convention on Human Rights in our petitions, we stated that for the first time in the history of Turkey there was a possibility of a new legal situation which would have resulted in which the putschists of the bloodiest coup were convicted with a final verdict. We stated that this legal situation will affect not only Turkey but also the world public opinion positively. I personally explained these thoughts to the head of the 16th Penal Chamber of the Court of Cassation.

Ahmet Kenan Evren, leader of the coup, died on 9 May 2015 and the other defendant Ali Tahsin Şahinkaya on 9 July 2015.

The 16th Penal Chamber of the Court of Cassation, with its decision numbered 2015/5829 E, 2016/4175 K and dating 21 June 2016, quashed the verdict of the Ankara Heavy Penal Court No 10. The justification for the decision stated that the view of the Ankara Heavy Penal Court No 10 that legislative immunity regulated in Article 83 of the Constitution and the provisional article 15 providing immunity to coup plotters were same in essence, and therefore the statute of limitations did not end was not correct on legal grounds. And the court ruled that the statute of limitations has expired. In our opinion, this decision constitutes a manifestation of the continuation of the impunity policy of the state before the Court of Cassation. It is not a legal opinion. To our opinion, the Court of Cassation quashed the verdict on the grounds that the defendants were dead. The real reason of the decision is this simple fact.

Second Retrial Phase following Quash of the Verdict by the Court of Cassation

Upon the decision of the Court of Cassation, a retrial was held at the Ankara Heavy Penal Court No 10 and the decision was rendered after 2 hearings in total. With the decision of the Ankara Heavy Penal Court No 10 numbered 2016/330 E, 2017/127 K and dating 4 May 2017, the court followed the decision of the Court of Cassation and the case was closed in accordance with Article 64/1 TPC and Article 223/8 of Law on Criminal Procedures due to the death of the defendants. In addition, the court also decided that there was no need for a confiscation decision in terms of properties and material interests, that there was no need to apply Articles 30 and 31 of the Military Penal Code, and that the trial expenses should be covered by the state treasury.

Before Ankara Heavy Penal Court No 10 delivered this ruling, the intervenors, the complainants and their lawyers issued a statement that the case should be continued even if the defendants died, that the decision of the Court of Cassation to quash the verdict was unlawful. They also argued that the criminal case should be continued

according to the 1st paragraph of Article 64 TPC and demanded the continuation of the proceedings in terms of properties and material benefit. In addition, it has been stated that, pursuant to Article 7/2 of the ECHR, the trial could be continued by relying on the exceptional status of the case so that a very serious crime such as a coup did not go unpunished. However, the state's policy of impunity was also encountered here, and unfortunately the Ankara Heavy Penal Court No 10 gave its decision in accordance with the decision of the Court of Cassation.

Second Time at the Court of Cassation

Intervening parties in the case, the complainants and their lawyers appealed against this decision of Ankara Heavy Penal Court No 10. At the very least, I have appealed this decision on behalf of the intervenors whom I personally represented. The decision was quashed once again by the 16th Penal Chamber of the Court of Cassation with the decision dating 1 October 2018 and numbered 2018/3024 E, 2018/2935 K. In the justification of the decision, the court ruled the quash of the verdict on the grounds that the favourable article of the old and new TPC must have been referred.

Third Retrial Phase

Following the decision of the 16th Penal Chamber of the Court of Cassation to quash the verdict on procedural basis, the trial was held for the third time at the Ankara Heavy Penal Court No 10. The lawyers or legal heirs of the deceased defendants did not participate in this trial. Lawyers of the intervening parties wanted the defendants to be sentenced during the proceedings relying on the Article 7/2 of ECHR. The lawyers also demanded ruling under the articles 30 and 31 of the Military Penal Code and asked the court to strip the defendants from their military ranks and for the confiscation of their properties and material benefits.

With the decision dating 12 April 2019 and numbered 2018/621 E, 2019/152 K, Ankara Heavy Penal Court No 10 decided to dismiss the criminal case on the grounds of the death of the defendants, that there was no legal reason for seizure of properties and material benefits, and that the articles 30 and 31 of the Military Penal Code were not applicable for this particular case.

Lawyers of the intervening parties appealed against the decision of the court.

Third Time at the Court of Cassation

In its communiqué, the Chief Public Prosecutor's Office of the Court of Cassation requested that the decision to dismiss the case due to death be upheld but the other two decisions be quashed. This time, the Chief Prosecutor's Office requested that the decision given in terms of Articles 30 and 31 of Law No. 1632 to be quashed with regard to the confiscation of properties and material interests.

The case file numbered 2020/1589 E at the 16th Penal Chamber of the Court of Cassation awaits the decision on the case.

Importance of the Case Discarded by the Judiciary

The policy and phenomenon of impunity in Turkey has led to a culture of impunity in the judiciary. With the effect of this policy and culture, the coup plotters of September 12 were not tried in a short time and were not sentenced to the punishment they deserved. I would like to emphasize that the prolongation of the trial is closely related to the policy and culture of impunity.

Problem of Permanence of Impunity in Crimes against Humanity

Human rights organizations and other individuals who filed criminal complaints included not only the coup accusation, but also crimes against humanity and openly demanded a trial for these offences. There were various ongoing investigations at the Ankara Chief Public Prosecutor's Office regarding the criminal complaints made by the court after the trial of the coup plotters began. These investigations were combined and closed with the decision of the Ankara Chief Public Prosecutor's Office of the Criminal Investigation Bureau against the Constitutional Order, with the investigation number 2011/154452, decision number 2016/55690 and dated 8 September 2016. And no criminal case was launched against the plotters and the people they ordered to commit crimes against humanity. Objections made to no avail. Crimes against humanity were listed in the petitions of the denunciation, including torture, disappearance, intentional killing, intentional injury, deprivation of personal liberty, persecution and torture, which were systematically perpetrated by the putschists in line with a plan against a part of the society with political, philosophical, racial or religious motives.

Unfortunately, the statute of limitations was applied in the court case regarding the criminal complaints made by those who were tortured during the 12 September period, and the cases were dropped and thus the torturers were left unpunished. For instance, with the decision of the Konya Heavy Penal Court No 3 numbered 2012/475 E, 2013/122 K and dating 28 February 2013, the court ruled that the case be dismissed due to the statute of limitations in terms of torturers.

The criminal complaints made by those incarcerated in Diyarbakır Military Prison No. 5, where the heaviest torture methods were systematically applied during the 12 September coup period and where assimilation of the Kurds was intended, resulted in non-prosecution due to the statute of limitations. The objections to the decision of Diyarbakır Chief Public Prosecutor's Office with investigation number 2011/6268, Decision no 2014/7701 and dating 30 May 2014 were rejected with the final decision of Diyarbakır Criminal Court of Peace No 1. Against this decision, no decision has been made yet in the applications made to the Constitutional Court via individual application. However, the decision of the Constitutional Court regarding the enforced disappearance of Nurettin Yedigöl in Istanbul in 1981 is quite unfortunate. In the decision of the Constitutional Court with the application number 2013/1566 and published in the Official Gazette on 14 January 2016, a reference was made to the general statute of limitations and it was stated that the statute of limitation had expired regarding this issue.

The fact that the perpetrators of crimes against humanity during the September 12 military coup period could not be brought to justice, and that those who were convicted were not punished due to the statute of limitations are the most important indicators of the continuation of impunity in Turkey.

Remembering the Cry of Mother Berfo

As a consequence of the crimes against humanity committed by the coup plotters, the families of those who were executed, especially the ones disappeared, the families of those whose right to life were violated, and the struggles of the torture victims have not been respected for years.

Mother Berfo, member of the Saturday Mothers and the symbol of the 12 September Case, cried to Kenan Evren in the courtroom at a hearing when she was 104 years old saying: “Kenan Evren, I will find you in the afterworld!”

12 September Case Created a Comprehensive Archive

The documents provided by governmental institutions including the General Staff, National Intelligence Service [MİT], Prime Ministry, the Parliament [TBMM], Financial Crimes Investigation Board [MASAK] to the court are of value to reveal the truth about countless incidents during the period following the coup. These documents were provided following the interlocutory rulings of the court. The testimonies, petitions, requests of the victims, their submissions to the court are also valuable. And the printed material including books and brochures submitted to the court during the trial constitute the most comprehensive "12 September Library".

The trial did not result the way we had been expecting. Nevertheless, the sum of the trial documents will serve as a reference point for memory studies to uncover the truth concerning past violations of human rights.

Conclusions from 12 September Case

This trial revealed the truth that Turkey cannot establish justice without facing its past and entering into a process towards truth in a sincere way. Following the then Prime Minister Recep Tayyip Erdoğan's half-hearted "If you want an apology, I do" statement regarding Dersim Genocide, Human Rights Association had released a public statement.[1] İHD stressed in its statement the problematic fields of possible memory work and shared it with political parties represented in the parliament.

Confronting the past is a necessity in terms of criminal justice and restorative justice. As in the case of September 12, when you attempt to face the past and try to imprison it in the courtroom, the judiciary takes a stand according to the political conjuncture and the trials result in failure. However at that time, an important trial opportunity that would go down in the history of the world arose before the Government of Turkey and its judiciary. Unfortunately, since Turkey's main problems were not resolved and kept continuing, the September 12 case was sacrificed to the political conjuncture. The case remains pending.

Last word; the quest for justice and truth by human rights defenders will never end.

Lawyer Öztürk Türkdoğan

İHD Chairperson

Note: This article has been updated several times. Following the updates in 2015 and 2018, the latest update dates 16 June 2020.

[1] http://www.ihd.org.tr/dersim-soykirimi/