

POLITICAL MANIPULATION OF THE LAW

THE PKK CASE IN BELGIUM AND ITS CONSEQUENCES

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SETA | PERSPECTIVE

FEBRUARY 2020 · NUMBER 57

- When and why was the Ariadna (PKK) investigation launched in Belgium?
 - What is the PKK's history in Belgium?
 - How was Belgium's attitude towards the PKK formed?
 - How did the Ariadna investigation proceed and conclude?
 - What are the consequences of the final judgment?

INTRODUCTION

An investigation was launched in Belgium against 36 PKK suspects in 2010 as a result of technical and audio surveillance that had started in 2006. The Federal Prosecutor's Office in Belgium demanded the prosecution on the PKK-linked individuals for various charges such as kidnapping children from their families in Belgium and many other European countries, and sending them to Greece and Iraq for training. The suspects were also accused of forcibly collecting money from local shopkeepers and using local media outlets for PKK propaganda.¹

With a search warrant issued in 2010, police launched operations against the PKK in 18 cities across Belgium. Police operations were mainly held in the premises of ROJ TV, the PKK-owned television channel based in Dendermonde, and the so-called National Congress of Kurdistan in Brussels, considered by the PKK as the Kurdish parliament in exile. Senior PKK members in Europe, such as Remzi Kartal and Zübeyr Aydar,

were arrested for a short period of time. Although Kartal and Aydar remained in custody for a short while, some far left Members of the European Parliament (MEPs) reacted against their arrest. For instance, MEP Eva-Britt Svensson of Sweden called the European Commission for duty against this "violation of human rights" in Belgium despite the release of the two suspects.²

Kartal and Aydar, both high-ranking PKK members in Europe, were among the eight individuals for whom arrest warrants were issued in 2010. The Turkish Ministry of Interior included them in the "most wanted terrorists" list and a red notice was issued on them for their involvement in many activities in Europe.

The two were elected as members of the Turkish Parliament from the Social Democratic People's Party (SHP) in 1991 but joined the Democracy Party (DEP) in the same year. When the DEP was banned in 1994, Aydar and Kartal fled to Belgium since most party

1. Jacques Laruelle, "PKK: Dix ans D'enquete Pour Rien", *La Libre*, November 4, 2016.

2. "Parliamentary Questions: Subject: Belgium's Treatment of Zübeyir Aydar and RemziKartal", Avrupa Parlamentosu, April 23, 2010, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2010-2819+0+DOC+XML+V0//EN>, (Access date: January 29, 2020).

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After completing her primary and secondary education in Turkey, Zeliha Eliaçık commenced her higher education in Germany. She graduated valedictorian of her class at Studienkolleg. Eliaçık earned her BA from the Department of Oriental and Political Science at Ruhr Bochum University. She received an MA from the same university with the study "İsrail Devletinin Kuruluşundan Günümüze Yemen Yahudilerinin Sosyal ve Hukuki Statüleri" (From the Establishment of the State of Israel to the Present, The Social and Legal Status of Yemeni Jews). With the incentives and scholarship granted by the German Academic Exchange Service (DAAD), she conducted field research in Syria, Yemen, and Jordan for five years, and worked as an academic. Eliaçık worked as a faculty member in charge of cultural activities at the German-Jordanian Institute. Her main areas of interest are Orientalism, minorities in Muslim and European communities, racism, and Germany's policy towards Islam. Currently, she is a researcher at SETA Foundation's Department of European Studies. Eliaçık is fluent in German, English, and Turkish.

members - including their fellow political representative Leyla Zana - were arrested by the Turkish authorities. Kartal gradually rose to the leadership of the PKK's top European wing, the Union of Communities of Kurdistan (KCK)/*Kongra Gelê Kurdistan* – Kurdistan People's Congress known as the KCK/KONGRA-GEL. Aydar was assigned to the executive committee of this body.

The U.S. Department of Treasury designated Aydar and other senior PKK members as “significant foreign narcotics traffickers.”³

THE PKK'S HISTORY IN BELGIUM

A labor agreement signed between Belgium and Turkey on July 17, 1964 led to the migration of many laborers and the departure of various Kurdish groups from Turkey to Belgium within the scope of the agreement.

According to the information given in the book *Avrupa'da PKK Yapılanması* (The PKK's Structuring in Europe), published by SETA in 2019, individuals who had close ties to the PKK, in addition to many leftists, sought political asylum in Belgium, or directly fled to the country, in the aftermath of the March 12, 1971 so-called postmodern military coup and the September 12, 1980 military coup in Turkey.

With the entry into the country of the PKK members who desired to have the status of political refugees in the 1990s, the PKK had the opportunity of not being designated as a terrorist organization by the then Belgian government and rapidly developed its organizational structure in the country. Hence, in this period, the PKK stood out as an “illegal organism getting most comfortably organized” in Belgium.

Since Brussels is the capital of the European Union (EU), the PKK has determined Brussels as the base of its activities in Europe. For this reason, many terrorist formations, including the PKK's umbrella NGO organization in Europe, the European Kurdish Democratic Societies Congress (KON-KURD/

KCDK-E) and Kurdistan National Congress (KNK) have been established in Brussels.

In addition, another point worth mentioning is that Belgium has hosted - and is still hosting - many printed and visual media outlets that have functioned as propaganda apparatuses of the PKK throughout history. The PKK's presence in Belgium is not limited to these. As is known, financing terrorism is one of the most important pillars of the PKK's activities in Europe. The organization exploits the facilitating environment in this country for illegal economic activities which are vital to financing terrorism.

On top of its innumerable illegal activities, the money the PKK collects solely by seemingly legal means amounts to 1.25 million euros in Belgium. A significant part of this money consists of so-called donations that are yearly extortions forcibly collected from the Kurdish-origin immigrants. The “Economic Finance Bureau” through which the PKK manages financial activities in Europe is located in Belgium.⁴

BELGIUM'S ATTITUDE TOWARDS THE PKK

Belgium-based Med TV was established in 1994 for spreading PKK propaganda. As a result of Turkey's intensified diplomatic pressure, the Belgian police launched an inspection and raided the channel in 1996. While answering a question asked by the Belgian Parliament about this organization in the same year, the then Belgian Deputy Prime Minister and Minister of Foreign Affairs Willy Claes described the PKK as an extremist terrorist organization. In 2000, the Belgian Gendarmerie's Terror Desk characterized the PKK as one of the terrorist organizations that present a danger to Belgium.

Unfortunately, these are the only instances when the state of Belgium adopted a relatively stern position against the PKK. In fact, Belgium is known for remaining silent and ineffective with regard to the PKK and its various subsidiary bodies.

According to the information in SETA's book on the PKK, Belgium's silence helped TÊKOSER, one

3. “Treasury Designates Three Leaders of the Kongra-Gel as Significant Foreign Narcotics Traffickers”, U.S. Department of Treasury, October, 2009, <https://www.treasury.gov/press-center/press-releases/Pages/tg318.aspx>, (Access date: January 29, 2020).

4. Ümit Tetik, “Belçika”, *Avrupa'da PKK Yapılanması*, ed. Enes Bayraklı, Hasan Basri Yalçın and Murat Yeşiltaş, (SETA, İstanbul: 2019), pp. 185-7.

of the early PKK formations, organize the Kurds who moved to Belgium during the early years of the workers' migration from Turkey around the premise of "Kurdish nationalism." After expanding its areas of activities, TÊKOSER was renamed the "Kurdish Institute of Brussels" in 1989. The institute has been active since then.

After 1990, the Kurdish Institute of Brussels was subsidized with scores of projects by the Flemish Ministry of Culture. When the PKK was listed as a terrorist organization by the EU in 2002, it was automatically included. Despite this development, almost all cases opened against the PKK by Belgium were concluded either in favor of the group or were time barred. For instance, following the media operations in 1996, the Med TV case was opened on 2001 but was prescribed in 2007.

In 2003, the Belgian government granted permission to PKK sympathizers to set up tents in front of the European Council during a Turkey-EU summit in Brussels. The then Turkish Prime Minister Recep Tayyip Erdoğan was attending this meeting. The Belgian government also permitted Kartal to hold a meeting outside the summit.

In addition, it should be underlined that the PYD (Democratic Union Party) co-chair Salih Müslüm participates in numerous activities as a speaker in Belgium although Interpol has issued a Red Notice for his arrest.

According to *Avrupa'da PKK Yapılanması*, the PKK clearly is not only a terrorist organization that freely operates in the political, social, and economic spheres in Brussels but also it acts like it enjoys "judicial exemption." Sadly, Belgium avoids exhibiting towards the PKK the attitude it shows towards other terrorist organizations such as DAESH.

THE ARIADNA INVESTIGATION AND ITS FINAL DECISION

The one-judge Chamber of Indictments in the Belgian Court of First Instance examined the appeal of the PKK's lawyers to the Ariadna investigation. After a decade-long delay, the chamber reached the verdict of non-prosecution on November 3, 2016.

The court stated that the PKK cannot be considered a terrorist organization but a party in an ongoing "armed conflict" with Turkey, and, as such, counterterrorism laws in the Belgian Criminal Code do not apply to the parties of an armed conflict during the time of the said armed conflict. As a result, the court ruled that there was no need for the prosecution of the PKK in the Belgian criminal courts.

In a statement posted on the PKK's news portal following the chamber's decision, the lead defense lawyer of the PKK, Jan Fermon, claimed that the organization does not carry out any acts of violence on European soil. The Court of Appeal ruled in 2017 for retrial due to misleading by the Chamber of Indictments. The chamber reached the same verdict in retrial and ruled in favor of the non-prosecution of 37 high-ranking PKK members in March 2019.

Upon Turkey's reaction, Belgian Minister of Foreign Affairs Philippe Goffin stated that the PKK would remain on the EU terror list and continue to be recognized as a terrorist organization in Belgium as well. This decision, however, encouraged PKK members in terms of a possible removal of the organization from the EU's list of terrorist groups. In fact, during a press briefing at Press Club Europe there were indications of the latter. The PKK's defense lawyers described the PKK's inclusion on the list as a political move. The lawyers voiced their confidence that the organization would be removed from the list in the future.

The Turkish Ministry of Foreign Affairs summoned Belgian Ambassador Michel Malherbe over the court's ruling and conveyed Turkey's unease about the decision.⁵ In the meeting, Malherbe stressed that Belgium's view that the "PKK is a terrorist organization" had not changed, and that the Belgian judiciary and the Belgian government were independent of each other. The Minister underlined that the Federal Prosecutor's Office was examining the decision and would appeal if necessary.

As a matter of fact, the Federal Prosecutor's Office took the issue to the Court of Appeal in

5. Ümit Tetik, "Belçika'nın imtiyazlı terör örgütü: PKK", Anadolu Ajansı, March 15, 2019.

2019. The high court reached the verdict in January 2020. The Belgian judiciary insisted on the validity of the ruling that prevents any prosecution process against the PKK.⁶

WHAT ARE THE CONSEQUENCES OF THE FINAL JUDGEMENT?

With this ruling, the Belgian judiciary excludes actions and activities of the PKK and of its members from the scope of counterterrorism. That means a broader space of maneuvering and area of operation have been cleared for the terrorist organization in Belgium. Furthermore, the ruling will set a precedent and therefore, will encourage other EU countries to take similar steps. In fact, the PKK's defense lawyers announced at a press briefing that they would support other lawyers of the organization in Europe during trial processes.

Following the Belgian Court of Appeal's ruling in favor of the PKK in 2019, Aydar speaking to the organization's ANF news website, linked the decision to the political conjuncture. He said that the elimination of DAESH by the hands of the Kurds today, Erdoğan's true colors, Turkey following a different political path, the contrasting interests of Turkey and Western powers, and its relations with Russia impressed the courts and governments. By clearly relating the verdict to the present political conjuncture, Aydar claimed that the latter had caused a decision in favor of the PKK. He added that the situation provided "something more" than what the verdict without going into details.

Similarly, Fermon, the head of the PKK defense, explicated in an interview to the Kurdish Report that the PKK investigations in Belgium conclude in favor of the organization because of the political climate. He said that they convinced the judges in Belgium by stressing the role of the PKK in the war in Syria. Fermon stated that terror was a primary concern for European countries and if Turkey was at issue, judges acted more carefully. He overtly confessed the role

of the anti-Turkish propaganda in the political background of the court decisions.⁷

In light of the case lawyer Fermon's remark that "judges are people," it could be considered that members and lawyers of the terrorist organization kept a firm grip on the judges and manipulated the decision-makers. That casts a shadow on the Belgian Embassy's claim that "the judiciary in Belgium is independent."

The success of the PKK in manipulating and impressing judges and the "political climate" emphasized by its lawyer clearly reveal that the law in Belgium is open to subjective interpretation and can be manipulated.

The Belgian Ministry of Foreign Affairs issued a press release following the announcement of the verdict, reminding that, for the state of Belgium, the PKK is a terrorist organization and that the organization and its associates can be arrested at any time for crimes and other offenses of which they are guilty under the Belgian Criminal Code. Still, the extortion of local shopkeepers, the kidnapping of children from their families and sending them to the PKK training camps in Greece and Iraq, and using local media outlets for PKK propaganda remain unpunished.

The PKK is known for killing dissident voices within the organization in Europe, collecting money from the Kurdish immigrants by pressuring or threatening them, and encouraging them to commit crimes. Nonetheless, the crimes committed by the PKK members will be subject to criminal procedure only as petty offenses. That will broaden the organization's maneuverability. As a result of this decision, collecting money from local shopkeepers, the recruitment and radicalization of the youth by the so-called NGOs of the PKK, and using local media outlets for the benefit of the PKK will not be considered crimes. The verdict prevents the trial of a person for being a member of the PKK.

Despite the tremendous efforts of the Turkish Ministry of Foreign Affairs and the piles of evidence

6. "Dışişlerinden Belçika'nın Kararına Tepki", CNN, January 29, 2020.

7. Maxime Azadi, "Wie kam es zu den Urteilen Zugunsten der PKK und Wie Funktioniert die »Terror«-Liste?", Kurdistan Report, (May-June 2019), <http://www.kurdistan-report.de/index.php/archiv/2019/68-kr-204juli-august-2019/835-wie-kam-es-zu-den-urteilen-zugunsten-der-pkk-undwie-funktioniert-die-terror-liste>, (Access date: January 29, 2020).

provided, the Belgian judiciary described the Republic of Turkey and the PKK as two equal parties of an “armed conflict” and did not acknowledge the PKK as a terrorist organization although it is on the EU’s terror list. This is unacceptable for Turkey. This is a development that makes the functionality and reliability of the EU’s list of terrorist groups questionable.

In fact, the PKK’s case lawyer in Belgium, Fermon, in his abovementioned interview stated that the inclusion of the PKK in the European terror list means only limited sanctions such as freezing property or possession of the organization’s members and travel bans. He added that it does not have any power of sanction in criminal courts. According to Fermon, collecting money and recruiting people for the PKK are not criminal offenses in Belgium. However, recruiting people to wage a war which is proven to be the case in Syria, Iraq, and Turkey, is included in the intelligence reports.

Fermon played a critical role in the court’s ruling. In order to convince the judges of the case to designate this terrorist organization as a party to an internal struggle, Fermon presented the argument that the so-called PKK army is “disciplined”, “hierarchical”, and “organized.” This line of argument equates a terrorist organization to the military of the state of Turkey which is a NATO member, an EU candidate, and an ally.

Hence, the ruling described Turkey’s fight against a terrorist organization that commits acts of terror in Turkey, the Middle East, and Europe as an internal conflict, and equated Turkey with a terrorist organization by stating that they are the parties of this internal conflict. This is scandalous. In fact, the Republic of Turkey Ministry of Foreign Affairs issued a press release following the decision. “This ruling, which exonerates a terrorist organization with ideological motives, is exemplary as it comes from a country that presumes to lecture Turkey on the rule of law,” the Ministry stated. The Belgian judiciary’s ruling means clear support to

the PKK, it was added. The Ministry underlined that not only the PKK but also other terrorist organizations such as DAESH will exploit this irresponsible ruling.

As was pointed out by the Turkish Ministry of Foreign Affairs, the ruling of the Belgian court will encourage the terrorist organization DAESH. Considering the reasoning of the PKK’s lawyer, DAESH, too, may position itself as a party in a civil war and claim to have a “disciplined”, “hierarchical”, “powerful and organized army” and therefore, claim that it is not a terrorist organization.

The ruling is like an incentive for the PKK to organize terrorist acts outside Belgian soil. On the other hand, it is proven and stated in the court records that the PKK members committed various crimes such as countless acts of violence, killing, money laundering, drug trafficking, kidnapping, and extortion.

The PKK has been fighting for years to scrap its name from the EU’s terror list. However, the United Kingdom stood in the PKK’s way in 2018. It is very likely that the Belgian judiciary has ignited the fuse for a new attempt, after Brexit, to remove the PKK from the European list of terrorist organizations.

This should be prevented. The EU should also fight against the PKK, which has killed tens of thousands of innocent women and children, the way it fights against al Qaeda and DAESH.

The European countries should carry into practice their responsibilities stemming from the inclusion of the PKK on the EU terror list, and take measures to inhibit the influence of the PKK and the anti-Turkey lobby on judicial decisions in Europe.

The Belgian courts ignored myriad of pieces of evidence Turkey presented to Belgium and ruled under the influence of, as the PKK’s lawyer stated, the anti-Turkey political climate and propaganda. The ruling clearly indicates that the Belgian judiciary is not independent and that it is manipulable by the supporters of the terrorist organization and other anti-Turkey lobbies.