

COUP ATTEMPT MEDIA CASE

PERSONS:

Mehmet Altan, journalist, author and academic.

Ahmet Altan, journalist and author.

Nazlı Ilıcak, journalist and author.

Fevzi Yazıcı, visual editor of the now-defunct Newspaper Zaman.

Yakup Şimşek, brand manager of the now-defunct Newspaper Zaman

Şükrü Tuğrul Özşengül, academic at the Police Academy

Tibet Murat Sanlıman, owner of the advertising agency, which made a commercial for the Newspaper Zaman that has been alleged to have covertly called for a military coup.

CASE:

Following the July 15 military coup attempt, Mehmet Altan and his brother Ahmet Altan were taken into custody on 10 September 2016, following the detention of Zaman newspaper executives and writers in July 2016.

Mehmet Altan, his brother Ahmet Altan and journalist and writer Nazlı Ilıcak were accused of, making discourses containing subliminal messages with the connotation of the coup because of the words they made in the television program Özgür Düşünce, which was broadcasted on July 14, 2016, on Can Erzincan TV.

INVESTIGATION:

A 247 page indictment was issued against them on April 11th 2017. The prosecutor requested the journalists be sentenced to **triple aggravated life imprisonment** for "*attempting to subvert the Grand National Assembly of Turkey or to preventing it from performing its duties*" and "*attempting to subvert the Government of Republic of Turkey or to preventing it from performing its duties*", pursuant, respectively, to the Articles 311/1 and 312/1 of Turkish Penal Code. It was also requested each defendant be imprisonment spanning **from 7.5 years to 15 years** for "*committing a crime on behalf of a terrorist organization without being its member*", pursuant to the Article 314/2 of Turkish Penal Code.

Their indictment was accepted by the Istanbul 26th Assize Court seven months after they had been arrested.

JUDICIAL PROCESS:

The trial began on June 19th 2017. Mehmet Altan described the indictment as "*a disgraceful document based on ill-founded presumptions*".

Altan brothers' lawyers, Ergin Cinmen, Figen Calikusu and Melike Polat, were forcibly removed from the courtroom successively during the hearing held on November 13th 2017 for having made statements without being permitted by the judge.

The prosecutor requested in the hearing held on December 11th 2017 that the detainee

defendants be sentenced to **aggravated life imprisonment** for "*attempting to subverting the constitutional order or to replace it or to preventing it from being executed*", pursuant to the Article 309/1 of Turkish Penal Code. It was also requested that non-detainee defendant Sanliman be sentenced to imprisonment for "*knowingly and willfully aiding a terrorist organization without being its member*".

The Constitutional Court (CC) ruled on January 11th 2018 that Mehmet Altan's "right to personal freedom and safety" and "right to freedom of expression" have been violated. An appeal was filed based on the CC's ruling for him to be released. But, the appeal was rejected by the Istanbul 26th Assize Court. The Court stated in its reasoned judgment that the CC's ruling was still to be published in the Official Gazette and that they have not received the CC's ruling yet.

Another request made to the Istanbul 27th Assize Court was also rejected on January 15th 2018.

The Istanbul 26th Assize Court sentenced Ahmet Altan, Mehmet Altan, Nazli Ilicak, Fevzi Yazici, Faruk Simsek and Sukru Tugrul Ozsengul to **aggravated life imprisonment** on February 16th 2018 for "*attempting to subvert the constitutional order*". Non-detainee defendant Murat Tibet Sanliman was acquitted.

European Court of Human Rights ruled on March 20th 2018 that Mehmet Altan's "*right to personal freedom and safety*" and "*right to freedom of expression*" have been violated.

Second Chamber of the Istanbul Regional Court reviewed the sentences given to the six defendants on June 18th 2018. It ordered based on the CC's ruling that Mehmet Altan be released, with the rest being kept in prison.

At the appeal hearing of October 2nd 2018, the court rejected the appeal of the defendants, stating that the decision given by the domestic court was in accordance with the law.

The case is under review at the Court of Cassation...

JUDGING the JUDICIARY

SUMMARY of the JUDGMENT

8th January 2019

1. In the course of the trial, decisions of arrest and conviction were made without any objectively discussed evidence in the investigation and prosecution processes. Prosecutors and judges who have made unlawful decisions have committed crime of "*misconduct*" under TCK 257.
2. The fact that the decisions of the Constitutional Court were not applied by the courts of first instance -turning the judicial pyramid upside down- meant that the

judges of these courts had committed the crime of “misconduct” under TCK 257, and consequently the courts themselves destroyed their areas of legitimacy.

3. Many assurances of jurisdiction, such as the right to counsel during trial, were ignored, so the proceedings were not fair.

REASONED JUDGMENT

Investigations and prosecutions were politically-motivated attempts to socially isolate the suspects. Similar judicial practices have been carried out in some other cases such as the cases of Cumhuriyet, Atilla Tas, Büyükada and Osman Kavala....

Another thing that is common in all those cases is that investigations being carried out confidentially have been manipulated especially by the Newspaper Sabah. Criminal complaints filed against those manipulations were rejected on the grounds that there was no need for prosecution.

Those practices caused great damage to the judiciary. It will take long to undo.

Altan brothers have been accused of *"subliminally called for a military coup to subvert the constitutional order, government and parliament"*, which has no legal ground. Mehmet Altan was released, but the rest of the defendants are still in prison. The Article 100 of the Code of Criminal Procedure states that there should be "substantial evidence and tangible reasons convincingly indicating that the person might have committed the crime" if a person is to be detained. Additionally, there should be "tangible facts" indicating that the person may flee, or tamper with evidence. Both Constitutional Court and European Court of Human Rights ruled that these conditions have not been present.

Altan brothers' lawyers, Ergin Cinmen, Figen Calikusu and Melike Polat, were forcibly removed from the courtroom successively during the hearing held on November 13th 2017 for having made statements without being permitted by the judge. Mehmet Altan had to deliver his defense statement without his lawyer being present. That is a violation both of the right to fair trial and of the principle of equality of arms.

Mehmet Altan's lawyers filed an individual application to the CC. Afterwards the Chairman of Constitutional Court said that "We are busy and our judges are not superman", the lawyers filed an application to the ECHR. About ten international law institutions participated in these applications as interveners, which the ECHR decided to examine primarily because of "the importance of fundamental rights and freedoms violated".

As in many other files, after holding the application for a year, the President of the CC made a statement on television, saying that "delay is inevitable, so they will identify and decide on 3 pilot files; and that the legal status of the detainees should be decided in this way, especially because of they are being judged for their opinions" and sent the precedent three applications to the General Assembly of the CC.

The General Assembly stated that "evidences were not enough for him even to be detained" and that Mehmet Altan's personal rights and freedoms have been violated. 26th and 27th Assize Courts rejected Mehmet Altan's request for release on the grounds **that the decision of the CC General Assembly did not bind them**. The judges of the Assize Courts, which did not enforce the judgment of the Constitutional Court, confirmed the suspicions about their decisions not being in the framework of the law but in the direction of the accusations and instructions of the highest levels of the executive – made mostly from TV channels.

The case is still under review at the Court of Cassation. However, considering the process described above, it hardly seems possible that the outcome would be in favor of the suspects.