

# FİKRET BAŞKAYA CASE

## **DEFENDANTS:**

**Fikret Başkaya;** author, the founder of “Turkey and Middle East Forum Foundation” and “The Free University.”

## **EVENTS:**

Ankara Province Public Prosecutor Yarcan Mutlu filed a lawsuit on September 11, 2018. According to the lawsuit, Fikret Başkaya was charged of "Propagandizing for a terrorist organization" as per the Article 7/2 of the Anti-Terror Law. The accusations were based on his Article "*The Real Terror is the State Terror*" published on ozguruniversite.org on November 7, 2016.

Evidence submitted in the file consists of his aforementioned article, his other columns and various photographs found during the search of his apartment.

The indictment cites the expression: "*...there is no doubt concerning the rights and freedom of Kurdish Citizens...*" and accuses him for trying to make propaganda of a terrorist organization by mentioning Kurdish citizens' names. Prosecutor's statement in terms of freedom of expression is as follows: "*Since thinking is a biological act, prohibiting or making it free would not have a legal validity. The matter in question here is the act of expression or spread of the thought, which is free by definition.*"

In his defense at the Prosecution Office Fikret Başkaya stated that his Article published on The Free University's website is within the scope of freedom of expression and he said that he described the State as he sees it. Also, stated that the Article was written within the framework of the institution of the State in general, it was not specifically criticizing the State of the Republic of Turkey and it is not fair to take certain parts of an article and put it into the scope of crime.

The indictment filed against Başkaya accepted by Ankara 21st High Criminal Court in February 2019 and Fikret Başkaya had his first hearing on March 21, 2019.

## **JUDGING THE JUSTICE**

### **VERDICT**

March 18, 2019

1. This indictment filed by Ankara Chief Public Prosecutor's Office against Fikret Başkaya is another example of the oppressive regime. When it comes to freedom of expression, interpretation of the State changes accordingly. In this regard; Prosecutor committed a crime of misconduct by evaluating expressions within the scope of freedom of expression as a crime and in accordance with Article 257 of Criminal Code of the Republic of Turkey.
2. With the admission of this indictment Panel of Judges of Ankara 21st High Criminal Court revealed once again that judiciary is neither independent nor unbiased and its decisions are not based on Law.

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## JUSTIFICATION

The Article titled as "*The Real Terror is the State Terror*" written by Fikret Başkaya and subject to the indictment has to be evidently violent or promoting violence and has to contain hate speech due to settled case-law to be able to determine that it contains a crime factor due to these reasons and would not be benefitted from the protection of the freedom of expression. All kinds of other interpretations of the Article, such as expressions in the indictment, means an intervention to the right and the violation of one's rights. These types of interventions are averting the protection of freedom of expression based on objective principles, restricting its scope and obscuring its definition.

The Prosecutor, that prepared the indictment, is sorting his claims without ignoring (!) the rights of Kurdish citizens, based upon his ideas of the requirement of punishment of an Article that criticizing the State, by disregarding settled case-law on freedom of expression completely. Such that; in most of the parts of the indictment it can be seen that the Prosecutor got disconnected from the Article, had recourse to expansionary interpretations, assigned meanings to the Article beyond its scope.

On the other hand; considering the *climate of fear* created in the field of freedom of expression and political conditions of Turkey, it would not take long to discover that the accusations are associated with the identity of the Author more than the text itself. As we have seen in many other similar interrogations, an author that made a great effort for the freedom of thought and coming from the opposition has been targeted in this investigation which turned into a Case.

By accepting the indictment Ankara 21st High Criminal Court took the first step for the punishment of thought and became a partner on the violation of freedom of expression; because, article written by Fikret Başkaya inarguably required to benefit from the protection within the scope of freedom of expression. Under today's conditions even a decision of acquittal of the Court would not compensate this violation.