

Report of IHRC Observer into the legal proceedings against Huda Kaya and the Malatya 75



Huda Kaya, pictured in her cell.

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Turkey June 1999

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IHRC sent a legal observer to Malatya, Turkey in June 1999 to observe the trial of the Malatya 75 which includes , journalist Huda Kaya. IHRC became involved in this case due to the extremely harsh nature of the penalties being demanded by the prosecution – namely the death penalty, for those participants arrested at a demonstration in October 1998. The defendants all took part in the demonstration over the banning of Muslim female students from university in Turkey on the basis of their adherence to their Islamic dress code. Originally charged with a variety of offences as well as being detained without charge, most of the 75 were then re-arraigned at the end of June under section 146 of the Penal Code which charges them with attempting to overthrow the constitutional system of Turkey. The basis of these charges is solely due to their participation in the demonstration, which took place peacefully.

The observer arrived in Malatya on 22 June 1999 the date that the arraignment and trial was scheduled to begin. He attended the courtroom where there was a high presence of military police and armed security personnel. Press were allowed to attend, although certain observers from human rights groups including the Turkish human rights group Mazlumder were refused admission. The observer initially had some problems in getting into the courtroom, and at one point was excluded however he did manage to gain access.

Despite the high security presence, many of the defendants were in fact seated in the public gallery, indicating that they were not in themselves perceived to be a threat to the public. Indeed by the end of the proceedings it became clear that some forty of the 75 were on police bail. Whilst the other 35 charged were remanded in custody. During the course of the day, the charges against 5 people were dropped.

The court session began at 9.40a.m. The hearing took place before a bench of three judges. The defendants went through the process of being arraigned and their defences to the charges being noted. The defendants were called one by one and their addresses taken. The names and addresses of male defendants were taken first and at around 10.10 a.m. the women were identified. The president of the court then warned the press against exaggerating the proceedings. He added a stern warning, that should they do so he will ban the presence of the press and he will no longer leave the court open to the public. Proceedings then adjourned at 10.45 a.m.

The afternoon session began once more at 2.55 p.m. when the defendants returned to court. The investigating magistrate gave a summary of allegations against each defendant. Mehmet Kaya asked if anyone objected to the allegations. All the defendants raised their hands and said they denied the charges levelled against them. Each objector then rose and stated their objections. The observer noted the general fact that this procedure leaves the possibility open that with so many defendants the court could make a mistake and note incorrectly who is pleading guilty or not guilty to each charge. Following this the defendants were asked who accepted the police allegations against them. Those who did, in total 7, gave their names. It should be noted that of the 75, 51 face the death penalty the rest face sentences if found guilty of between five and twenty-two years in prison.

Following this the judge investigated openly without any indication of irregularity, whether any of the defendants were beaten whilst in custody. Several raised their hands. Following this, evidence was handed out to each defendant who requested it. They were then asked to

comment upon it. For example certain photographs and police statement were handed to defendants. However the observer noted that there was no primary disclosure- that is full disclosure of all documents, photographs, in short evidence to be used by the prosecution against the defendants. One of the defendants, who was later identified as Huda Kaya by the observer, was asked by the prosecutor if she wrote a newspaper article whereby, she had stated that the system must be changed. She accepted such an article was written whilst she was in custody.¹

Huda Kaya stated that what she was saying was that, the government took her basic human rights away and she had to do something about this. Her reaction was writing in the newspaper on this matter. One student was asked why he had certain newspaper articles in his house. He answered that he enjoys reading and this was the reason for their presence in his house. Other defendants were also asked by the prosecutor as to the reason why they possess certain reading material. This in itself appear to be the sole basis for the prosecution claims against the men and women charged. An example of the reading material is given below. Another defendant was asked why he had a book on the Iranian Revolution. He replied that he has over 500 books and possibly one or two of these were on this subject. These one or two books however were used in evidence against him. It is noted from a defendant that possessing such books was not illegal in Turkey. However this did not stop possession of these books being the basis of evidence against him.

One high school student who was also charged was asked why he had a book on socialism in his study, which was found by the police upon investigation after the arrest. His claim that the book belonged to his grandfather who had died three years previously. Huda Kaya was asked why she had a book by Ayatollah Khomeini. Again it appears that possession of books on Kurds, in Kurdish², about the Kurdish issue, socialism or political Islam formed the basis of evidence against Huda Kaya and those charged. It exemplified the fact that there was no value in the evidence against the defendants. Indeed it seem only to be a design to create prejudice against the defendants. Indeed if the comments of the prosecution were to be taken seriously, Turkish justice would have it that an individual is criminalised by what he or she reads.

In pursuing this line of enquiry the judge took it upon himself to question some of the defendants as to why they had books on the Kurdish issue in Kurdish. It should be noted that the city of Malatya has a mixed population of which forty to fifty percent are of Kurdish origin. Lawyers for some of the defendants pointed out that the books the accuse were found to be in possession of were legal and as evidence their relevance was spurious. There then followed the representations of some of the advocates for the defendants on behalf of the accused. A variety of representations were made and in fact individual advocates were criticised by the judge for repeating the representations of other advocates. For example some of the advocates tried to pursue the point that whatever crime the defendants were charged with and indeed if they were found guilty to have committed such 'crimes,' it did not merit the punishment of death. At one heated point one lawyer accused the judge of bias and indeed of being subject to political pressures. In response to this the judge asked everyone who was in the courtroom to identify themselves with their driving licence, subject to exclusion. He then waited to note if anyone in the courtroom who had come from outside of Malatya. It was at this point that the observer's presence there was questioned once more. He was eventually allowed to continue. The proceedings adjourned for 15 minutes at 6.40 p.m. and a decision was handed out at 7.05 p.m. It was at this stage that the case was dismissed against 5 of the defendants.

¹ Kaya's daughter, Gulan Intisaar Saatcioglu, is also convicted on the basis of her writing. The eighteen year old wrote and read out a poem entitled, 'Song of Freedom.' It is attached in Appendix I.

² Whilst some restrictions on the Kurdish language have been lifted in Turkey, discrimination persists. Indeed speaking Arabic in public is also criminalised. The observer's translator had spent one year in prison for speaking Arabic in public. He was released last year.

The trial for the others were adjourned to the following month. Upon further enquiry the observer found that this was a normal procedure whereby a trial was protracted over sometimes for many years with continued adjournments after one day sessions. Indeed the observer found out cases have lasted for as long as seven years.

The observer made several comments to the press including Turkish television. His main observation is that by asking for capital punishment the Turkish authority is in contravention with the European Convention of Human Rights, to which it is a signatory. Further they also breached several other articles with regards to freedom of expression, due process, political and educational rights. The overall impression of the proceedings was that of a macabre farce. Indeed elements of the proceedings were plainly ridiculous, and in particular evidence cited against the defendants have no basis except to create prejudice in the minds of public to whom the press would report the issue in a limited manner.

It appears that these demonstrators are in fact the first demonstrators who have been charged and detained, for whom the prosecutor is requesting capital punishment.[END]

APPENDIX I

The following was read out in front of the Governor's Building at the demonstration in Malatya in October 1998. Its author is 18 year old Gulan Intisaar Saatcioglu, a high school student at Imam Hatip School. She faces the death penalty if found guilty of attempting to forcibly overthrow the Turkish system by reading this poem out.

SONG OF FREEDOM

We are from mountain and plateau
Working the machines, studying at school
Our fight will go on
Until the tyrants drown

The ignited flame will not die
Nor our song of freedom end,
Our fists held high in defiance
Will never come down
Before the tyrants are overthrown.

Come join us sisters young and old
Our cries increase aloud
To ensure Allah's Word prevails
And infidelity fails.

Never will the burning flame die out,
Or our song of freedom end.
Our defiant fists will not
Fall before the tyrants are overthrown.

Original Turkish version of the poem:

ÖZGURLUK TURKUSU

daglardayiz biz ovalarda
makina basinda siralarda
sürdürüyoruz kavgamizi
zalimler boguluncaya

alev alan ates soner mi hic
ozgürlük türküleri biter mi hic
goge savrulan yumruklar
zalim gitmedikce iner mi hic

haydin cocuklar, gencler, kadinlar
yükseltelim feryadimizi
Allah sözünü hakim kilmak icin
tagutlari yikalim

alev alan ates soner mi hic
ozgürlük türküleri biter mi hic
goge savrulan yumruklar
zalim gitmedikce iner mi hic