

## **RESTORE JUSTICE, Saturday 14 October 2017**

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### **Introduction**

On July 4, the Advocate General Mr. Aben responded to our request to the Supreme Court to review the Baybasin criminal case. His conclusion was to reject all the arguments put forward by us. This involves more than a hundred ironclad arguments, which demonstrate that the telephone wiretaps (90 percent of the evidence) have been tampered with. The audio material appears to have been manipulated, and the translations of the Turkish, English and Kurdish conversations are full of crucial, incriminating mistakes. These manipulations were instigated by Turkey in direct cooperation with the Dutch. This cooperation is based on a secret agreement between Turkey and the Netherlands and to this day, both parties have remained silent and lied about it. Hüseyin Baybasin was seen as an enemy of the state of Turkey. He not only took part in the Kurdish cause, but also publicly disclosed the dirty role of the Turkish state in international drug trafficking at that time. Baybasin had contacts with many politicians around the world and helped establish the Kurdish parliament in exile and the Kurdish television channel MED-TV. According to the Turkish government he had to be silenced. With the help of the Netherlands they succeeded.

The Advocate General spent six years of research and 1730 pages of text to respond to our arguments. As the defense, we had to reply to this tsunami of words within a two-week period this summer. Our conclusion is that Mr. Aben has erroneously brushed off a battery of internationally recognized experts in favor of a non-expert and an anonymous interpreter who is not familiar with the various Kurmançi dialects. Aben ignored and twists arguments and incriminates important witnesses. Professor Derksen calls Aben's findings pseudo-scientific.

### **The arrests**

The revision investigation showed that Baybasin was lured on false pretenses from Brussels to the Netherlands in December 1995, where a Dutch police team waited to arrest him. Turkey had requested his extradition from the Netherlands a month earlier. After the Dutch court ruled against Baybasin's extradition to Turkey, a Dutch police team – not wanting to disappoint Turkey (according to insiders) – subsequently rigged up a Dutch criminal case against Baybasin. The evidence in this case consisted mainly of information obtained by wiretapping telephone conversations. These conversations showed all sorts of daily contacts that Baybasin had with politicians, businessmen and government officials from all over the world. Not a single conversation is about crime. However, according to the translation of one conversation, Baybasin supposedly asks an Israeli general assistance in 'killing someone' ("to make him cold, is that all"). But, when you listen to the actual

English conversation it is clear that the Israeli general was not asked 'to kill the man' (to make him cold), but "to make him call". So that was a completely false accusation.

### **Cooperation and fraud**

In April 2011, an official request for a revision of the case was submitted to the Supreme Court to review the life term verdict. It appeared that the main interpreter in the investigation, who translated — and mistranslated — almost all of the crucial telephone conversations, was a Turkish Kurd by the name of Tayyar Cetinkaya. He was the go-between for the Turkish authorities and was very close to senior Turkish government officials such as Emin Arslan, the head of the Turkish Security Service. Arslan considered Cetinkaya as invaluable in the joint Dutch-Turkish investigation against Baybasin.

During the revision interviews Cetinkaya refused to answer many questions, as he felt he would expose himself and others to 'criminal prosecution'. His lawyer explicitly mentioned 'forgery and fraud' that had taken place in cooperation with Turkey. In his final Conclusion, Aben shrugs off this statement as of little relevance.

A Turkish police officer disclosed that he was part of a technical team that mixed old with new telephone taps for the Dutch police. He had to make it look as if Baybasin spoke about crimes instead of politics and business. A second Turkish police officer spoke in detail about old conversation wiretapped in Turkey and handed over to the Dutch police. Aben shoves these statements aside with the remark that these witnesses might well be bribed actors. In a similar style, Aben rejects the Israeli General who declared under oath to the Dutch Council of State that he had never spoken to Baybasin about any criminal activity, but only discussed business and politics. But to Aben, motivated by his own unjustifiable prejudice, the Israeli general is a murder broker and therefore unreliable.

Whatever new evidence we have submitted, it will always be insufficient to prove Baybasin's innocence. Aben just denies or ignores the arguments, he misrepresents events and people, and vilifies experts.

### **The wiretap rooms and the experts: Shooting the messengers**

A large number of experts has stated that the Dutch wiretap rooms that were used during the Baybasin investigation were vulnerable to manipulation. The police were able to delete wiretapped conversations, rename new incoming conversations and change call detail records (CDRs) such as the date and location of the telephone call. This implies that conversations manipulated in Turkey could be introduced into the Dutch wiretap room. Many experts reached the conclusion that crucial conversations, used as evidence in the Baybasin case, displayed striking technical anomalies, which point to manipulation of the original audio material.

Israeli telecom and signal expert Shlomo Peller examined some of the conversations used by the court and came to the damaging conclusion that they all showed strong indications of having been tampered with. Aben ignored Peller's findings. The same fate awaited the American expert BEK TEK LLC, as well as the Dutch telecom experts Frank Fransen (TNO/ICT) and Jan Rijnders (KPN Security), where they point to mysterious and inexplicable ringing tones in the conversations. On the basis of an old-fashioned charge counter that could be heard in one of the conversations, the electronics engineer Hans Meijer reached the conclusion that the conversation was recorded with a tape recorder and was not an authentic Dutch digitally wiretapped telephone conversation. In the same conversation there are indications that it took place in the early nineties, before Baybasin's departure from Turkey. But the findings of expert Hans Meijer were also quickly put aside by Aben as merely a fable. He even suggested (which is technically rubbish) that the charge counter might have been regulated by a clock that showed a similar margin of error as a tape-recorder does.

Aben hides behind and relies heavily on industrial engineer Bas van den Heuvel. This man has no qualification in the audio field. He bases his findings on the information of the Dutch police only, clearly a biased source with its own interests. To Aben's delight, Van den Heuvel describes the wiretap room used in the Baybasin case as completely manipulation proof. Van den Heuvel makes this claim without ever having seen this telephone taproom or one similar to it in operation. Yet Aben happily and docilely embraces Van den Heuvel's guesses as the holy grail.

The other expert Van de Ven, with years of experience in the Telecommunications Interception department at the MID, was of a different opinion, based on his own experience with this particular wiretap room. His opinion was confirmed by the prestigious PricewaterhouseCoopers who, as a result of their own investigation in 2003, concluded that there were serious security gaps in Dutch wiretap rooms. However, Hans van de Ven was dismissed by the Advocate General as being a non-expert, and PricewaterhouseCoopers as an ignorant bunch of accountants who understood very little of the Kislev 2 wiretap rooms operating at the time. To Aben, this message, as well as the conclusions drawn by the other experts that the wiretaps were unreliable and that the recorded telephone conversations showed strong evidence of manipulation, were simply not welcome. These conclusions were set aside and ignored. In my official response to Aben's final Findings, I refer to this as *shooting the messengers*.

### **The linguist Kurmançi Baran Rizgar**

The same fate befell Baran Rizgar, an internationally renowned expert in the Kurdish language and dialects. In a short conversation can be heard, "*That... er... bundle, you know [bundle/refugee] (---) That got freed/reached safety, uncle [or "was finished, completed"]*". The phone tap interpreter mistook the word 'boxçe', which means refugee, as 'baxçe' which means 'garden'. It formed the basis for the court to convict Baybasin for

a murder in a tea garden in Istanbul. According to the court, the conversation was about “a garden” where something was completed. Therefore, it had to refer to the murder in the tea garden. However, after listening to a copy of the original tape (finally given to the defense in April 2015), the expert Rizgar clearly understood the word ‘boxçe’. In addition, he picked up that the conversation was conducted in the Lice dialect. In this dialect, the Kurdish word for ‘garden’ is pronounced as ‘bexçe’ and not as ‘baxçe’. Rizgar also established that the *context* of the conversation clearly showed that the speaker was referring to refugees. But Rizgar’s expert opinion and his arguments were also dismissed by Aben. Instead, Aben relied on an anonymous interpreter who had acquired her knowledge of Kurdish as a child in the city of Tatvan and did not know the special Lice dialect used, and therefore did not know that ‘garden’ in that dialect was pronounced as ‘bexçe’. However, the fact that, like Rizgar, she thought the translation ‘refugee’ was better suited to the conversation, was not mentioned by Aben in his Findings. Nonetheless Aben advised the Supreme Council to continue to use the translation ‘garden’ and, by implication, to uphold the lifelong verdict.

### **Conclusion**

The sad reality is that all the powerful arguments that undermine Baybasin's lifelong conviction, have been put aside by the Advocate General at the Supreme Court. Some have been ignored, others have been misrepresented. Obviously there are higher interests at play in this case. It should remain hidden that the Dutch wiretap system in Baybasin’s time was highly vulnerable to manipulation and that it has remained so for a long time after. Imagine the costs of all the retrials once this would be known and admitted. And it should also remain unknown, how deeply the Turkish long arm influenced the Dutch police and justice system to be able to let an innocent man, a Kurdish activist, be condemned to a lifelong sentence. This is now sanctioned by the Attorney General's Office at the Supreme Court.

Usually, the Supreme Court follows the advice of its Advocate General. If this happens, our legal system crumbles and loses its last shred of credibility. That would be the end of the rule of law in our country.