

## **THE BAYBAŞIN CASE** an overview



Hüseyin Baybaşin was born in Lice (Turkey) on June 25, 1956. He was a businessman and politically active. Until his arrest on 24 December 1995 in The Netherlands he was living with his family in the UK under the protection of the British government. In the past Baybaşin worked for the Turkish Government and was involved in all kind of governmental activities. In this period Baybaşin was informed about drugs trafficking between Turkey and Western Europe and about the involvement of Turkish officials. He therefore became a threat to those officials and was therefore falsely accused himself for trafficking and heavily tortured. After he escaped from Turkey he finally came to live in London. He was also deeply involved in the Kurdish movement trying to find peaceful solutions for the Kurdish political interest. He was for example one of the founders and a main sponsor of the Kurdish Parliament in exile, which was founded on April 12, 1995 in The Hague. The Turkish Government was furious about this at the time and accused the Dutch Government of negligence. Shortly after this event meetings started to take place between officials of the Turkish and the Dutch State.

### **The extradition case**

On November 17, 1995, the Dutch received a bilateral request from Ankara to arrest Baybasin for extradition to Turkey. No international Interpol warrant existed because till the end of December 1995 Baybaşin could still travel unimpeded for regular meetings from the United Kingdom to France and Belgium. On December 24, 1995 Baybaşin was asked to travel to The Netherlands for a meeting with, as it turned out later, a person instructed by the Turkish government. At the border a Dutch police team awaited him with the Turkish arrest warrant of November 17, 1995. On the base of the Turkish extradition request Baybaşin was detained in The Netherlands till December 1996. In October 1997 the Dutch court prohibited his extradition to Turkey because of the real risk that he would be tortured or worse over there. An important memo of the Ministry of Justice of July 1997 shows the direct involvement of a high Dutch official in this case: the Director

General of the department of International Affairs of the Dutch Ministry of Justice, Joris Demmink. The memo states:

***“The case Baybaşın is being used as pressure in another case in order to get the Turks to do something. At this time, discussion is being carried out by Ministry of Foreign Affairs. As Demmink is going on holiday Thursday, an attempt will be made to get a decision by Thursday morning at the latest.”***

Baybaşın was released at the end of December 1996, but forced to stay in The Netherlands during the still pending extradition procedure. According to a high ranking Dutch prosecutor, Jan Koers, at the time the official go-between of the Dutch and Turkish judicial authorities, the Dutch then did not want to disappoint the Turkish counterpart and started to prosecute Baybaşın in The Netherlands in January 1997 for not yet committed crimes.

### **The arrest in March 1998**

Subsequently Baybaşın was arrested in The Netherlands on March 27, 1998, accused of ordering by telephone murder, a drug deal and hostage, all outside The Netherlands. He was sentenced to 20 years imprisonment in January 2001 by the District Court of Breda and to life imprisonment by the High Court of Den Bosch on July 30, 2002. The sole and decisive evidence consisted of telephone recordings, tapped between September 1997 and March 1998, translated and summarized into Dutch by anonymous translators. According to the court itself 90 % of the evidence consisted of these summarized and translated telephone recordings. Some additional evidence was received from Turkey like two witness statements, received under heavy torture by the Turkish police as the witnesses themselves explained later to the judicial authorities and s involved Turkish policemen later admitted.

Baybaşın has always denied the accusations and claimed from the start that part of the telephone taps were manipulated and part of them were misinterpreted or translated wrongly. The translations from the Kurdish, Turkish and English language into Dutch were in a crucial way defective. In fact we are speaking about fake crimes which were never committed. A question on the telephone like ‘make him call’ was interpreted as ‘make him cold’, which is a typical Dutch expression for ‘to kill him’ that Baybasin, who does not speak Dutch, could not even have been aware of.

### **The revision case**

In April 2011, an official request for a revision of the case was submitted to the Supreme Court to review the life term verdict. The Advocate General, Mr Aben, spent six years of research and 1730 pages of text to respond to the arguments of the defense. On July 4, 2017 he finally responded to the request to review the case. His conclusion was to reject all the arguments put forward by the defense. And for that purpose he brushed off a battery of internationally recognized experts in favor of a non-expert and an anonymous interpreter who was not familiar with the Kurmançi dialect used by Baybaşın. According to Professor Ton Derksen, a well-known Dutch scientist, who has by now written three books on the case, the Advocate General ignored and twisted arguments and incriminated important witnesses. Derksen calls his findings pseudo-scientific.<sup>1</sup>

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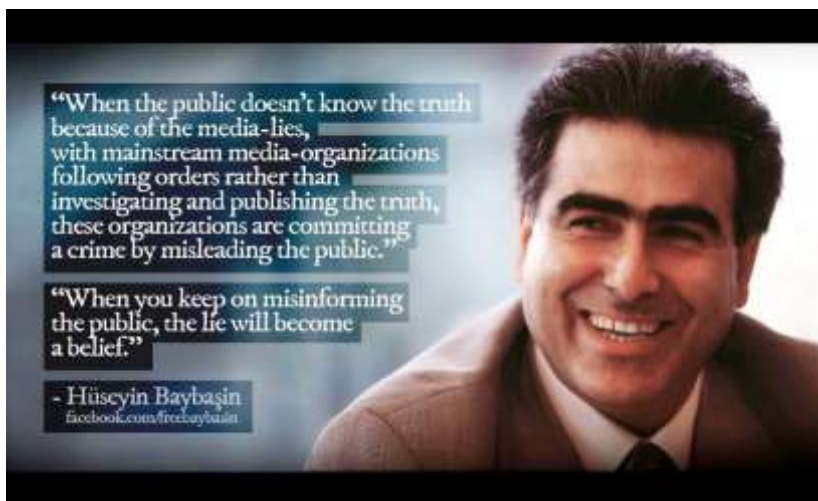
<sup>1</sup> Ton Derksen, De zaak Baybasin, Verknijpt Bewijs (2014), De Baybasin taps. Een politiek gevangene in Nederland (2016), Rammelende argumenten voor de Hoge Raad (2017).

## **The anonymous translators**

In the revision procedure it was made clear that the main interpreter in the original investigation, who translated the majority of the crucial telephone conversations, was a Turkish Kurd by the name of Tayyar Cetinkaya. He turned out to have been the go-between for the Turkish authorities during the Dutch investigation and to have been very close to senior Turkish government officials such as Emin Arslan, the head of the Turkish Security Service. Arslan said in an interview to consider Cetinkaya as invaluable in the joint Dutch-Turkish investigation against Baybasin.

During the revision interviews Cetinkaya refused to answer many questions of the judge of instruction, as he felt that by doing so, he would expose himself and the others of the investigation team to 'criminal prosecution'. His lawyer explicitly mentioned "forgery and fraud" that had taken place in cooperation with Turkey.

In the revision procedure 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 was ordered 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. The Advocate General, however, shoved these statements aside with the remark that these witnesses might well be bribed actors. The statements by Cetinkaya about committed forgery and fraud, he simply ignored. In a similar style, Mr Aben rejected the Israeli General, who according to the conviction was asked by Baybaşin to commit a murder in Kentucky, but 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 Mr Aben concluded not to be convinced because he could not exclude that this Israeli general was a murder broker himself and therefore unreliable.



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

In the revision procedure a large number of experts have stated that the Dutch wiretap rooms that were used during the Baybasin investigation were vulnerable to manipulation. The Dutch

police were able to delete wiretapped conversations, rename new incoming conversations and change call detail records (CDRs) such as the dates 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 towards manipulation of the original audio material (look at the video with the sound wave analysis on this website).

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. Mr 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.

All these expert findings however were put aside by the Advocate General in his final conclusion. Doing so, he had to rely heavily on one of his experts, the industrial engineer Bas van den Heuvel, who in fact had no qualification in the audio field.<sup>2</sup> Van den Heuvel based his findings on the information of the Dutch police only, clearly a biased source with its own interests. Van den Heuvel described the wiretap room used in the Baybasin case as manipulation proof. Van den Heuvel made this claim without ever having seen this telephone taproom or one similar to it in operation.

The other expert of the Advocate General, Hans Van de Ven – an expert with years of experience in the Telecommunications Interception department of the Dutch Military Intelligence Service (the MID) - was of a different opinion, though. Unlike Van den Heuvel he could base himself on former experience with the particular wiretap room used in the Baybaşın investigation. Van de Ven's conclusions were confirmed by the prestigious consulting firm PricewaterhouseCoopers who, as a result of an own investigation in 2003 for the Dutch ministries of Justice and Internal Affairs, concluded that there were serious security gaps in the Dutch wiretap rooms at the time. Mr Aben however dismissed Hans van de Ven as being a non-expert, and PricewaterhouseCoopers as an ignorant bunch of accountants. Their messages, 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. All their conclusions were simply set aside: 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 high court to convict Baybasin for a murder on a person called Öge in a tea garden in Istanbul. According to the court, the conversation was about "a garden" where something was completed. Therefore, in the court's interpretation, it had to refer

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<sup>2</sup> Van den Heuvel's scientific qualifications and integrity were questioned seriously in earlier cases by other prestigious Dutch forensic institutes

to the murder on Öge in a tea garden in Istanbul. 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 the Advocate General. Instead, Mr 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 final Findings. Nonetheless Mr Aben advised the Supreme Court to continue to use the translation 'garden' and, by implication, to uphold the lifelong verdict for the murder on Öge in a teagarden in Istanbul.



### **The Supreme Court**

The Supreme Court finally dismissed the revision request of April 18, 2011 on April 17, 2018 with a global motivation that new expert findings could not lead to a revision of the case when their findings were contradicted by any other expert, in this case the non-qualified Bas van den Heuvel and simple translators of Kurdish who had no knowledge of the specific dialects used.

Moreover, in its final decision the Supreme Court completely ignored the important new fact that a Turkish court in 2004 acquitted one of the two persons who according to the original conviction, were ordered by Baybaşın to arrange and carry out the murder of a person called Öge, in a teagarden in Istanbul. The second person who was allegedly ordered to do so by Baybaşın, was even never accused of being involved, although the Turkish prosecutor who

investigated the case in Istanbul received all the telephone recordings used in the Dutch case to convict Baybaşın. The imposed life sentence is based solely on this accusation of an supposed order by telephone to these two persons to (let) kill Öge. Last week Baybaşın lodged an application at the ECHR for an alleged violation of article 6 of the European Convention of Human Rights. Referring to the Decisions of the Court in *Moreira Ferreira v. Portugal* (2017) and *Bochan v. Ukraine* (2015) article 6 paragraph 1 of the convention should be applicable to the Dutch revision procedure. **If so, then he Supreme Court at least should have given ‘a reasoned decision’ why the important ‘new fact’ of the Turkish acquittals of the persons through which the murder allegedly was carried out in Istanbul, could not lead to a revision of Baybaşın’s conviction to life sentence.**

Furthermore we are preparing a new revision request on the basis of recently received new facts.

### **Conclusion**

The sad reality is that all the powerful arguments that undermine Baybasin's lifelong conviction, have been put aside or ignored by the Advocate General and the Supreme Court. 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 remained so for a long time after. 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. The sad reality is that Baybaşın is in prison now for more than 20 years for non-existing and never committed crimes: a scandal for the Dutch State of Law.