

RAPPORT D'OBSERVATION JUDICIAIRE

Procès de Avoc. Efkan BOLAC

[N° 3 de l'audience], [01.06.2023

].

TABLE DES MATIÈRES

I. CONTEXTE DE L'AUDIENCE

Criminal Court of First Instance of Istanbul, at the Caglayan Palace of Justice, set for 10 a.m. on 01.06.2023, in Courtroom 52 of the Criminal Court of First Instance of Istanbul.

In addition to Efkan Bolac's presence were his three defenders: lawyer Can Yoldas, lawyer Sinan Naipoglu and lawyer Semra Albayarak.

The hearing was held in a small courtroom, which however also allowed the presence of us observers and a small group of colleagues and friends of the defendant. The judge, acting as monocratic, was represented by a young woman who was very attentive and respectful of the court proceedings.

1. Rappel des faits

The facts of the indictment concerned the sharing, by lawyer Efkan Bolac on the social media channel Instagram, of two cartoons made by Carlos Latuff.

The first, shared by the colleague on Instagram in the year 2014, and drawn after the prime minister's advisor had kicked the relatives of the miners who died in the 2013 Soma mining accident, depicted miners kicking a man with features resembling Erdogan, then prime minister and not president of Turkey, with a caption that read: '*With the hope that these days will come too*'.

The second, shared by Bolac on Instagram in 2016, depicted Berkin Elvan, who was killed by police during the Gezi Park protests, in which the slain young protester was holding the hair of a man resembling Erdogan and a policeman with his fingertips, with a caption of the following literal tenor: '*Berkin is the resilient black-haired son of Gezi*'.

Although the dissemination and circulation of the cartoons dates back to 2014 and 2016, when Erdogan did not hold the office of President of Turkey, the indictment stated the date of the events as 2020.

2. Rappel de l'enquête

The facts covered by the indictment date back to 2014 and 2016, and the indictment was only brought in the year 2020.

The first hearing was held in 2022, thus after a good two years.

There was no investigative enquiry; it was enough for the authority to see colleague Bolac's social media.

The investigation lasted about two years and the trial originated from a public complaint.

3. Rappel de la procédure judiciaire

The hearing on 01.06.2023, before the Criminal Court of First Instance, was the third hearing in the Bolac case and came after a specious adjournment on 24.01.2023, when the case was postponed to the hearing we monitored, as the Court was waiting for the audio transcript of the first hearing held on 06.09.2022, which lasted only a few minutes.

The charge was: insulting President Erdogan.

II. DÉROULÉ DE L'AUDIENCE DU 01.06.2023

On the day of the hearing, set for 10 a.m., in courtroom 52 of the Istanbul Criminal Court of First Instance, in addition to Efkan Bolac's presence were his three defence counsels: lawyer Can Yoldas, lawyer Sinan Naipoglu and lawyer Semra Albayarak.

The hearing was held in a small courtroom, which however also allowed the presence of us observers and a small group of colleagues and friends of the defendant. The judge, acting as a single judge, was represented by a young woman who was very attentive and respectful of the court proceedings.

There was no investigative activity, the charges being based solely on the documents consisting of the cartoons shared by the defendant on his Instagram profile.

The Public Prosecutor, Cagri Bas, taking the floor first, referring to judgments of the European Court of Human Rights and the Supreme Court of Cassation, not recognising the constituent elements of the offence, immediately requested the acquittal of the defendant, considering the sharing of the cartoons as a manifestation of freedom of thought expression and as a simple right of criticism.

The defendant was then given the floor and reiterated that he was not guilty of the charges against him and, lastly, two of the defendant's defence counsel took the floor, first my colleague Mrs Semra Albayarak and then Mr Sinan Naipoglu. Lastly, two of the defendant's defence counsel took the floor, first my colleague Semra Albayarak and then Mr Sinan Naipoglu, who, after having been able to read out the exact minutes of the hearing on a monitor made available to them, highlighted the reasons why the charges were unfounded, both because, at the time of the events, Mr Erdogan was not President of Turkey, and in relation to the constitutionally guaranteed right to freely express one's thoughts.

Erdogan's defence lawyer asked for a conviction.

At the end of the discussion, the judge withdrew to the council chamber and, after about ten minutes, returned to the courtroom to read out the operative part of the verdict acquitting Efkan Bolac of the charges against him, reserving the right to file a statement of reasons within the time limit prescribed by law.

III. ANALYSE CRITIQUE DU PROCÈS ET DE L'AUDIENCE

The favourable outcome of the trial obviously pleased both the defence lawyers and the defendant, who had confided in us the day before that he feared a conviction for the offence, for which the sentence was a minimum of one year and a maximum of four years. Efkan Bolac was astonished at the outcome of the hearing, perhaps also in connection with the fact that he is facing another criminal case in which he told us that he was sentenced to 9 years imprisonment at first instance, against which an appeal has been lodged with the Court of Appeal, and a hearing has not yet been scheduled.

He is a member of the CHD (progressive lawyers' association) and his conviction relates to the trial before the Siliviri Court on 11 November 2022 against 21 Turkish colleagues, including Selcuk Kozaagacli and Ebru TimtiK, for membership of a terrorist organisation (Art. 314/2 of the Turkish Penal Code).

At the end of the hearing, Efkan Bolac together with his defenders and us Oiad observers went to the large lawyers' room inside the courthouse where he was able to celebrate the favourable outcome of the trial.

He was once again conveyed the closeness and solidarity of all OAID members and the confirmation that OAID will continue its initiatives in favour of Turkish lawyers as well as all lawyers everywhere in the world who are forced to endure restrictions on their freedom in the exercise of their defence function.

IV. RENCONTRES DANS LE CADRE DE LA MISSION

The day before the hearing, we went to the Istanbul Bar Association where we were received by the vice-president of the association, lawyer Sinan Naipoglu, to whom we explained the reasons for our presence in Istanbul as delegates from the OIAD and with whom we discussed the situation of lawyers in Istanbul and Turkey.

The situation of the Turkish bar described to us by lawyer Sinan Naipolgu is truly dramatic and in total disregard of the most basic principles of a democratic state.

In the afternoon of the same day, we were able to meet directly with the defendant, lawyer Efkan Bolac, with whom we had a fruitful conversation thanks to the simultaneous presence of a young colleague of his, lawyer Can Yoldas, who spoke fluent English and translated for us what Mr Bolac told us about his case. On the same afternoon, we were also received at the Italian Consulate in Istanbul, by the Consul, Dr Irene Pastorino.

V. CONCLUSION / RECOMMENDATIONS

In the face of Bolac's acquittal, there will be no more hearings in this case, unless Erdogan's defence counsel appeals if provided for in the Turkish Code of Criminal Procedure, when the public prosecutor, as in the present case, has asked for an acquittal.

Despite the acquittal, the situation of Turkish colleagues is very critical. In Turkey, the rule of law is trampled underfoot on a daily basis and there is a constant overlap between the charges against the defendants and the colleagues assisting them, violating the cardinal principles of the legal profession, centred on the autonomy and independence of lawyers, which does not exist in Turkey.

Continuous and careful monitoring is recommended, also for the purpose of moral support to Turkish colleagues.

It would be useful to give greater impetus and reinforcement to defence and advocacy

activities. Brescia - Turin, 15.06.2023

Avv. Adriana VignoniAtt

. Barbara Porta