Experiencing Justice and Imagining State: Engaging the Law to Challenge the Rule of Exception in Tunceli

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During the 15-year war between the Turkish Army and the Kurdistan Workers Party, Turkish military and civilian officials relied heavily on judicial institutions and the law to control and sanction people living under emergency rule law in many parts of the southeast. Although the lifting of emergency rule law in Tunceli and Hakkari in 2002 can be seen as marking an official end to the conflict, the inauguration of this ‘post-emergency era’ did not signal a clear break with previous practices and power relations on the ground. In Tunceli/Dersim', substantial legal restrictions on political activity and expression continued, as did extra-judicial killings and state-sponsored rights abuses, although on a much more occasional basis. Courts, moreover, appeared unwilling to sanction them, at least until the late 2000s. Nonetheless, inhabitants of Tunceli have resorted to law to seek justice and redress, inviting the courts to make a judgment on diverse issues.

The fact that residents of Tunceli find law to be a useful if imperfect tool to combat official abuses suggests that state-society relations can, as O’Brien and Li write (2005: 77), be fruitfully explored by examining the dynamics of legal struggle. It surely calls for a more complicated picture of the state and its justice than a ‘them against us’ framing would provide. How do individuals or collective actors engage law in an environment in which possibilities of justice seem restricted? What resources do they have, and what tactics do they develop to face obstacles and restrictions? What does this tell us about state-society relations in this period of transition?

In an effort to explore these questions, this paper examines the ways people seeking redress actually experience and ‘learn’ justice. While paying further attention to the conditions under which lawyers succeed (or not) in publicizing a case and in using cases
for political causes, it also examines the role played by these ‘cause lawyers’ – those who put political commitment into the center of their professional lives – in the redefinition of the state-society relations.

I demonstrate that even while such lawyers and their clients tend to imagine the state as a coherent, all-encompassing and often hostile entity, they also develop a complicated knowledge of the inner working of the state that is sufficient to appeal to diverse authorities and, in some cases, to play off one part of the state against another. More, I argue that the diverse resources Tunceli lawyers draw from their multiple engagements – i.e. social and political networks and legal skills – enabled them to consolidate an alternative language of justice and set of judicial practices. This meant that even in a restrictive environment such as Tunceli, lawyers were able to create new possibilities for justice and to offer challenging definitions of the borders between legal/illegal, legitimate/illegitimate and law/exception. Although favorable decisions from domestic courts were unusual, at least through the late 2000s, what has happened out of the court – in particular, the strategic interactions between judicial and non-judicial actors – has been as important, if not more, than what happens in the court itself.

Beyond Tunceli, this case highlights the way transitions to new security and political orders can indeed take very diverse forms, in contrast to the homogenous image of ‘political transition’ often promoted by international institutions. In fact, only rarely do such transitions occur as steady evolutions towards peace and normalization. Rather, they occur in a much more complicated and partial way characteristic of a ‘not war not peace’ situation. I here consider transition as an intense period of struggle over the socio-political and ideological terms of the national project. This process of renegotiation of the state’s borders and of the ‘social contract’ can be seen more precisely through the prism of law and uses of law. Indeed, as Rachel Sieder argues in her study of postwar Guatemala, ‘one of the primary sites of engagement where such different imaginaries and political projects are contested from the top-down and the bottom-up is the law. This is because the law is central to claiming rights and enforcing obligations’. In effect, she argues, the legal system is ‘converted into a contested site of meaning’ over state accountability and citizens’ rights (Sieder 2001: 204). Law is, however, not considered here only as a discursive and technical resource in an abstract debate over legitimate values. Law is also embodied and experienced according to one’s actual position within a specific social and political configuration. Unpacking law thus means unpacking political power.

This study also contributes to recent literature on judicial struggles in authoritarian or hybrid regimes. These studies generally concentrate on the ‘realist-strategic’ reasons that bring authoritarian leaders to empower courts as well as the strategies judges develop to increase their autonomy and become (or not) agents of democratization (Moustafa 2003; Pereira 2005; Hilbink 2007). Tamir Moustafa, notably, demonstrates that courts in such regimes serve as ‘dual-use’ institutions: they consolidate the functions of the authoritarian states but also open new avenues for activists to challenge regime policy (Moustafa 2003). Concerning the Turkish case, scholars have similarly tended to analyze judicial empowerment in the light of ‘realist-strategic theories’, either to highlight the selective nature of court activism (Belge 2006), its role in the definition of the legitimate political domain (Koçaciolu 2004) or in the enforcement of the state ‘civilizing mission’ (Shambayati & Kirdiş 2009).
These studies all contribute in important ways to unveiling the way structures of power are secured through alliances between the judiciary and the military. However, most of them focus on higher courts. This paper, in contrast, draws our attention to the 'other end' of the equation: to the politics of the judiciary as viewed through the activities of lawyers, their clients, and lower courts, and, moreover, in one specific site. My work builds, then, on recent analyses such as that by Güneş Murat Tezcür, whose study on the critical Şemdinli case, dealing with a state's counterinsurgency operation in a remote southeastern town, offers a kind of critical breakthrough by conceptualizing courts as interactive institutions seeking other political actors' support and by focusing on lower courts to question the conditions under which these courts can challenge political hegemony (Tezcür 2009; see also Aslan in this issue). Following Tezcür, I acknowledge the idea that 'lower courts play a crucial role in shaping citizens’ access to substantive justice and perceptions of how the legal system functions' (Tezcür 2009: 329) and I ‘localize’ my observation of the working of justice by concentrating on the province of Tunceli. Special attention is given as well to the alliances and support networks people are able to develop within this local configuration.

This article relies on the press coverage of different trials from 2003 to 2009 in which inhabitants of Tunceli sued the state or faced state accusations. Along with providing some details of the legal proceedings involved, such coverage also demonstrates the way lawyers ‘export’ their cases out of the court and the types of discourse they mobilize. Secrecy and publicity are indeed at the core of the legal dynamics I will explore. My interest here lies in using the law as a prism to highlight the transformation of state-society relations. The cases presented here are consequently not meant to be representative but illustrative of some of the dynamics of this transformation.

The paper is organized as follows. In the first section, I discuss some of the ways the state comes to be imagined locally by observing the working of justice and, more specifically, the tactics developed to circumvent obstacles in this environment in which national security is still given precedence over legal rationality. In the second section, I turn to examining legal mobilization as a means of uncovering alternative norms that challenge the conceptual borders of the state.

I. Imagining and experiencing the state through its justice

Law and politics in Turkey: defining the legitimate political perimeter

Judges and prosecutors in Turkey claim authority over an important and growing number of social and political issues and are also actively involved in politics. Beginning with the establishment of the Republic, the judiciary has contributed in important ways to the consolidation of the Kemalist system and to securing its legitimacy. In their contribution to the national project of 'modernization' and 'westernization', judges, prosecutors and bar associations have adopted a rather conservative interpretation of Kemalism, and their decisions tend to support state positions as defined under the influence of the National Security Council. At the core of these positions and principles is the exclusion of contentious political projects based on ethnic or religious identity. Elaborating on different courts’ decisions concerning the headscarf issue or political and human rights,
Arslan concludes (2007: 223) that the judiciary is in fact one of the most conservative institutions in the country.

The Constitutional Court has played a particularly important role in politics. Following the 1980 coup and the 1982 Constitution, the court came to constitute, in the words of Shambayati and Kirdiș (2009: 3), ‘an administrative agent assisting the military in simultaneously regulating the political society and transforming the nation’. The primary purpose of the courts is to enhance the powers of the state rather than to protect citizens’ rights (Shambayati & Kirdiș 2009: 3). However, this conservative stand should not be seen as the simple result of pressures exerted on the judiciary by the military or other Kemalist forces, and, indeed, Dicle Koğacıoğlu and Ceren Belge offer us a more complicated picture of this juridico-political sphere. Both focusing on the case of the Constitutional Court, they observe that, while powerful and independent enough to frequently rule against the government, the Court has been aligning on entrenched statist nationalism and secularism in its decisions. Koğacıoğlu explains it as a ‘shared discursive framework of secular statist nationalism with the National Security Council’ but immediately warns against over-simplification: ‘There is a significant range of variation in terms of the ways in which individual members articulate elements of this framework with notions of democracy, international treaties, minority rights, and so on. Thus, instead of seeing these cases as already-made decisions under the whispers of generals, I see the Court engaging with a medley of themes and tendencies that it tries to resolve case by case’ (Koğacıoğlu 2004: 441-442). Here is thus an invitation to disaggregate this encompassing statist framework to analyze how it is concretely activated within a legal system conceived as plural and influenced by diverse principles. As for Belge, she further explains this alignment on Kemalist secularism and nationalism by analyzing what she calls ‘the Republican alliance’, an alliance empowered in 1960-1961 that included the military and civilian bureaucracy, the Republican People’s Party, the intelligentsia (university and press) and university students (Belge 2006). The Constitutional Court of Turkey was then one of several non-majoritarian institutions established by Republican groups concerned with preserving their political power, whenever necessary, against popular majorities. According to Belge, the continued allegiance of the Court to these republican values in the last four decades can be explained, at least until recently, by weak links with the international human rights community and the lack of direct access to the Court for the nongovernmental organizations. Law schools largely remained institutions of Kemalist socialization as well (Belge 2006: 658). Analyzing the rulings of the Court from 1962 to 1999, she demonstrates that the Court’s activism has not been inexistent but selective. It has been highly active in defending the autonomy of the Republican alliance (judges, prosecutors, university professors, civil servants) from governments and even from citizens, but it took a conservative stance on civil rights and liberties when mobilized by individuals or groups challenging the hegemonic status of Kemalism (socialists, communists and right-wing Democrat Party members in the 1960s and 1970s; Islamist and Kurdish activists in the 1980s and 1990s). As she writes (2004: 671): ‘The concept of the rule of law (...) was colored by a peculiarly Republican understanding of what was arbitrary and what was lawful’. However, the author goes further by showing that this Republican alliance, like the definition of Kemalism as an ideology, was not static through the decades. When groups disagreed within the alliance, in fact when the Republican’s People Party turned against the military during the 1970s (with a shift to the left of the party) and in the early 1990s
(with a brief alliance with Kurdish activist groups), important gains for civil rights were won through the Constitutional Court (Belge 2004: 676).

The war between the Army and the Kurdistan Workers Party (Partiya Karkeren Kurdistan, or PKK) and the consequent establishment of a long-lasting emergency rule conferred a new dimension to this alliance between the judiciary and the military and the underlying power configurations that underlay such relationships. During the conflict, the Turkish political establishment relied heavily on law to control and sanction people challenging their political project. Officials considered any public expression of Kurdish cultural or political identity a sign of support for the PKK. Moreover, the 1990s also saw a dramatic expansion in state-sponsored extra-judicial killings and of forced evictions (Bruinessen 1996; Bozarslan 2001; Etten et al. 2008). The state-supported units involved appeared to be acting with impunity, and law was not a reliable resource for people seeking justice and redress for abuses committed by security forces. In many ordinary people's political imaginary, the state thus became associated with the 'deep state', a network of agents operating illegally in the name of national interest and under the protection of the consolidated alliance between the Army, the National Security Council and the Constitutional Court, locally translated into collusion between the diverse security forces and the courts.

The judiciary in Turkey is thus at the core of an intricate and dynamic political machinery. The ‘Republican alliance’, by its very composition, blurs the border between what would be ‘state’ and ‘non-state’ elements. But it also appears to be very effective in producing and preserving a hegemonic representation of what the state’s sphere of action and the ‘legitimate’ political domain should be. If one has to be careful, as underlined, not to reify this alliance and disregard internal dynamics, the combination of interests proved to be quite consistent in time. In fact, Republicans rarely broke their ground with the military and, more specifically, from the 1990s onwards, the judiciary played its part in making national security and unity paramount by outlawing the Kurdish and Islamist ‘enemies’. The Constitutional Court actively contributed to defining the boundaries of the political domain through, notably, its power to dissolve political parties on constitutional grounds (Koğacığlu 2004). Most of these decisions concerned Kurdish or religiously oriented parties.

But how does the legal system operate at the local level? To what extent and around which sets of practices do local prosecutors and lower courts define the boundaries of the legitimate political scene as well as the borders of ‘the state’ and its legitimate action? Looking at the case of Tunceli, the legal system appears very much involved in regulating the local political scene and maintaining the boundary between friends and enemies. Throughout the 1990s, public prosecutors in Tunceli brought multiple cases against Kurdish activists or communist sympathizers. The lifting of emergency rule and the replacement of the State Security Courts did not put an end to this form of judicial activism. On the contrary, with the coming to power of a Kurdish DTP mayor in March 2004, public prosecutors appear even more prone to draw and monitor the demarcation between legitimate and illegitimate political statements and behavior. In the first two years of her tenure, Tunceli mayor Songül Erol Abdil, for instance, faced eight different investigations. She ended her time in office in March 2009 with seven trials underway against her. The basis of these diverse legal proceedings included a group-authored letter with other DTP mayors to the Danish prime minister that urged him not to close the Denmark-based Kurdish station Roj TV (2005), Abdil’s mention of PKK guerrilla women on
the occasion of the national day against violence on women (2007), and the publication of a municipal catalogue entitled 'Dersim municipality' (referring to the Kurdish name of the province) and the public use of the expression 'geography of Kurdistan'. Her case is far from unusual. Just to name another example, Abdullah Demirbaş, the former DTP mayor of the Sur district in Diyarbakir, faced no fewer than 23 different legal actions between 2004 and 2009. The number of these proceedings reveals a judiciary actively working for the preservation of a very strict public grammar by quite systematically controlling public rituals and statements that prosecutors and judges identify as challenging statist ideology. Judges and public prosecutors thus remain central figures in the ongoing conflict between 'the state' and these political challengers, thus restricting challengers' opportunities to redefine the rules of the political game.

As Nicole Watts has demonstrated, inclusion in formal politics 'can become an important 'middle-ground' activism for political and/or ethnic activists who straddle the lines between formal/informal and legal/illegal resistance' (Watts 2006: 126-127). It indeed provides them with 'an institutional basis for public collective gathering (...), some legal protection from prosecution, new access to domestic and international audiences, and new symbolic resources' (Watts 2006: 126). But the legal harassment of officeholders can also be relatively effective in regulating the public sphere by marking a sharper line between legitimate and illegitimate – legal and illegal – statements and behaviors. In fact, the Tunceli mayor seemed quite affected by this harassment and under pressure to censor herself: 'This means we should not even talk. The moment we open our mouth, they launch investigations and trials against us!' (Evrensel, 22/03/2009). She came to watch herself in everyday conversations or while talking on the phone, concerned that any statement, even casual, would be used against her.

Kurdish office-holders, members of far-leftist parties and associations, and ordinary citizens of Tunceli have experienced this political use of the law. Some of them came to consider it useless, if not dangerous, to seek justice and redress in court, and consider justice clearly one sided. In fact, the judicial system in Turkey is widely perceived as deeply politicized. A recent study conducted by the Turkish Economic and Social Studies Foundation, for instance, shows that the judiciary is largely conceived as identical with the state. Interviewees do not believe in the independence and impartiality of the judicial system (Sancar & Aydin 2009). They see it as dominated by an 'etatist worldview' and by favoritism and power relations.

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In Tunceli, this distrust is fed by different practices of a judicial system prone to harassing identified political 'enemies' and to offering protection for soldiers and other state agents. In this section of the paper I discuss the way practical encounters with local officials – and the stories heard about a relative or a neighbor’s experience with these officials – shape local perceptions. The cases I develop here are not meant to be representative but rather illustrative of the obstacles that plaintiffs or the prosecuted encounter in Tunceli. They shed light on the ways 'justice' and 'the state' come to exist in these margins.
Obstacles to legal action: the prevalence of Turkish national interests

Lawyers and plaintiffs in Tunceli complain about a number of tactics and devices that restrict and complicate the possibility of building a case and holding of a fair trial. Getting a case accepted when the target is the local state is difficult. First, the local governor has to give prior permission to open any investigation against representatives of the state and may, quite arbitrarily, choose not to give this permission. For example, when village heads of Hozat (a district of Tunceli province) came to complain about the military’s burning of their forests in 2004, the local governor decided that there were no grounds to open an investigation. As for public prosecutors, when they do not decide not to investigate for ‘security reasons,’ they can preempt or derail accusations against state’s (security) agents in various ways. In September 1994, seven villagers of Mirik disappeared in the middle of a military operation against the PKK. The village was burnt afterwards. The case was then brought to the Tunceli Civil Court of First Instance. Its final judgment was that ‘the concerned people have suddenly disappeared in an area where physical security was not guaranteed owing to intense terror events and the consequent military operations’ (Radikal, 12/05/2003). Nine years later, the relatives decided to sue again, accusing the military of being directly responsible for the disappearances during this time. However, instead of investigating the case against the military, the Tunceli chief prosecutor sent the file to the State Security Court of Malatya. The justification given was that the bullets found on the crime scene came from a Kalashnikov and not from G3 weapons, which, according to the prosecutor, directly pointed to the PKK and exonerated the army. This highly questionable practice not only prolongs the procedure – with cases possibly getting buried in transfers between courts declaring themselves with no jurisdiction – it also transforms an alleged crime committed by the Turkish army into a (PKK) crime against the Turkish state. In a similar case concerning the disappearance of a 61-year-old villager who had been detained by the military, the public prosecutor of Hozat declared the case beyond his jurisdiction and transferred it to a military court (Radikal, 12/05/2003). The lawyer in charge of the case was quite doubtful that the investigation and the suit would be taken seriously in these conditions.

Other mechanisms constitute serious obstacles to attempts to sue state agents. Particularly noteworthy is the fact that plaintiffs can face judicial retaliation and be turned from plaintiff into defendant. In Tunceli, the military is responsible for burning extensive acreage of forests in its war against the PKK (Etten et al. 2008). When the Bar Association in Tunceli applied to the court to request an investigation into the matter, the public prosecutor decided to bring a case against the applicants on the ground that such an allegation was an insult to the Turkish Army. Even when a prosecutor accepts a case against state agents, it can decide to keep the results of this investigation secret [gizlilik kararı], thus preventing the lawyers and plaintiffs from having access to documents and collected evidence. The conditions under which evidence is collected may also be questionable. For instance, in November 2007 in the district of Ovacık, members of the gendarmerie allegedly fired at some villagers. They claimed that it had happened in the middle of a skirmish, while villagers maintained that the gendarmerie had fired several hours for no apparent reason. As an investigation was authorized, ‘the public prosecutor chose to have the gendarme of the village in question carry out the investigation, which involved gathering statements from the villagers at whom they had allegedly shot. Not surprisingly, the gendarmes did not find any evidence against themselves.”
On the other hand, when political challengers are sued, prosecutions on the basis of illegally obtained or fabricated evidence seem to remain common practice.\textsuperscript{16} Prosecutors and courts may also choose to ignore possibly exonerating evidence. In 2005, the public prosecutor of Tunceli launched an investigation against Mayor Songül Erol Abdil for allegedly celebrating the birthday of PKK leader Abdullah Öcalan in the local DTP office. The investigation was based on a news report found on the Internet. Although the mayor demonstrated that she spent the entire day in a municipal council meeting and the investigation concluded that there was no ground for prosecution, the prosecutor nonetheless opened a trial against her. Abdil later declared: ‘I have always cooperated with investigations in a timely manner as a part of the ordinary competences of the justice. But this investigation and the trial indictment have an extra-ordinary feature’. She considered addressing the Supreme Board of Judges and Prosecutors on that matter (\textit{Sabah}, 27/04/2006). In another case, a local journalist, working for the Kurdish agency DIHA, was accused of having provided aid and assistance to members of an illegal organization on the basis of the confessions of a PKK member. The Heavy Penal Court of Malatya sentenced the defendant to 6 years of prison, disregarding not only the fact that confession is not legally admissible evidence in court but that an investigation had shown the defendant in another city on the date he was alleged to have committed the crime (\textit{Evrensel}, 03/07/2008).

In these different cases, plaintiffs have experienced a justice that clearly sides with the military and offers them impunity. Regardless of whether judges and prosecutors are afraid to challenge the security regime or simply adhere to it, their behavior suggests the judicial system is a well-oiled wheel of a mechanism with a single chain of command. One of the Tunceli lawyers put it this way: ‘In Turkey, the influence of specific institutions [the military command and governors] is very important. Judges and prosecutors come to make decisions in accordance with what [these institutions] say; their public statements (concerning a case) thus constitute a form of pressure on judicial personnel’ (\textit{Evrensel}, 08/05/2008). In the above-mentioned case, experiences of justice thus feed a quite homogeneous picture of the state in which its different parts apparently act in a concerted way (whether voluntarily or due to pressure) to implement a hegemonic doctrine and draw a clear-cut line between friends and enemies. This machinery appears sufficiently coordinated to make the line between victim and perpetrator, and judicial and extra-judicial practices, less legible. However, as the next section of the paper discusses, experiences of justice can also feed a more complex, multi-layered, and fragmented picture of the state.

\textbf{Circumventing obstacles: practical learning of a multi-layered state}

People gain a good sense of the fragmentation of the state when experiencing a justice that works differently from one area to another. For example, in 1997, several soldiers suffered minor injuries in a traffic accident between a civilian minibus and a vehicle of the gendarmerie. The public prosecutor decided to open a lawsuit against the civilian driver. The Tunceli Civil Court of First Instance found him not guilty, in accordance with the police investigation report, and exonerated him from responsibility in the accident. The defendant was thus quite surprised to learn that he was found responsible and sentenced to pay reparations for the same accident by the \textit{İskenderun} Civil Court of First Instance in a suit opened on the behalf of the public treasury. The judgment was upheld by the Court of Cassation and the case was finally brought to the European Court of
Human Rights (ECHR). In this case, two equivalent courts issued different judgments while reviewing the same evidence. This discrepancy in judicial decision-making casts serious doubt on the idea of a comprehensive justice system detached from political influence, maneuvers and local configurations. As the defendant’s lawyer put it: ‘the Court gave a decision in violation of basic rights and justice; this decision strongly damages both the idea of justice and faith in it’ (Evrensel, 30/01/2007).

However, inhabitants of Tunceli do not just passively observe this incoherence. Their practical learning of the inner working of the state and its justice also appears in the tactics they develop to circumvent obstacles. As many inhabitants and collective actors in Tunceli understand how the legal system works, they often refuse to give up when a court dismisses a case or when a verdict goes against them. They generally exhaust as many legal remedies as possible, sometimes not so much because they believe in higher courts to provide redress for grievances as to gain access to the European Court of Human Rights (ECHR). The ECHR has indeed often constituted the sole judicial institution people trust to prosecute acts by state officials and administrations. However, exhausting domestic remedies (as required by the ECHR) also increases the plaintiff’s chances of finding a judge less anchored in the logics of the local political game, less susceptible to certain kinds of political pressure, and more sensitive to other arguments and considerations. In their campaign to prevent the building of eight different dams within the Munzur Valley, a national park since 1971, campaigners from Tunceli have, for instance, played the game of administrative and legal litigation to its fullest. They first supported the General Directorate of National Parks and Wildlife when it denied the General Directorate of State Water Works the authorization to drill and conduct surveys within the valley. Since this did not work, they also called on the Prime Ministry to cancel the Council of Ministers’ decision to award the construction contract to an international consortium. This did not work either. However, in July 2005, the 10th Chamber of the Council of State, the highest administrative court in Turkey, accepted the plaintiffs’ claim and ordered the cancellation of the project. The Council ruled that the project, falling inside the boundaries of a national park, lacked legality since the General Directorate of State Water Works had not produced an environmental impact report. But the plaintiffs’ lawyer, Murat Cano, also suggested that the Council of State had validated the juridical links he had made between water, climate, forms of life and (right to) life. And indeed, the Council of State had earlier proven highly sensitive to environmental rights and the primacy of human life and nature over economic gain (Arsel 2005: 269-70) and security considerations. However, upon appeal of the government, the General Assembly of Administrative Chambers of the Council of State reversed this ruling in May 2006.

In seeking justice and redress, inhabitants of Tunceli may also look for backers among authorities outside the judiciary. During the conflict, they often learned the hard way that seeking a helping hand from higher authorities did not help them or could do more harm than good. Nonetheless, especially in the post-1999 period, with the transformation of the emergency rule following the arrest of the leader of the PKK in 1999, and its official lifting in 2002, they have continued to try and address as many centers of power as possible when faced with a judicial dead end. In 2008, for instance, 87-year-old Yusuf Kaplan was arrested for allegedly providing food to the PKK. He was jailed in Elazığ, a neighboring province. He was sentenced to three years and nine months of jail in December 2005, and the Court of Cassation upheld the decision. After three months in jail, his daughter, seriously worried about his health, asked for a reconsideration of his...
case based on health considerations. She applied to the Turkish Presidency for amnesty, to the Ministry of Justice, and the General Directorate of Prisons, asking that her father be transferred to prison in Tunceli. In addition, she planned to have local deputies bring the issue to the Parliament’s attention (Aktüel Bakış, 26/04/2008).

The parliamentary deputy is a key figure. At the height of the conflict, and however limited the latitude of maneuver at the time, the deputy – often called upon through personal connections – could be the one to intervene (informally) to end a period of detention or try and spare one’s son or daughter from torture. But the deputy is also a key figure in helping a local trial become a nationally debated case by discussing it in Parliament and, possibly, asking for parliament to send a delegation to investigate. In September 2007, soldiers operating in the district of Hozat shot two villagers collecting wood in the forest. One of them, Bülent Karataş, was killed. The other, Rıza Çiçek, was heavily wounded. The local governor and the General Staff declared that ‘two terrorists’ had been ‘neutralized after having ignored soldiers’ warnings’. Hospitalized in Elazığ, Rıza Çiçek was directly transferred to prison on the request of the Elazığ public prosecutor, to be later charged with belonging to and aiding an illegal organization. Meanwhile, however, many residents and political figures in Tunceli mobilized to support the villagers. A delegation of deputies from the opposition Republican People’s Party (CHP) also chose to investigate. They notified the national media, conveyed the results of their investigation to the CHP, and wrote a report for the Parliament that directly challenged the military and local governor’s version of events. Their findings included, among other discrepancies, the fact that the two villagers were unarmed and that Bülent Karataş had been shot on the front of his body and not in the back, as a narrative of non-compliance to the order to halt would suggest. Their report concludes in favor of Rıza Çiçek, identified not as a terrorist but as an ordinary villager, thus incriminating the soldiers.

The fact that inhabitants of Tunceli could mobilize this kind of political support is crucial in any attempt to circumvent obstacles (such as secrecy deemed necessary for security reasons) and challenge the state’s version of events. In this case, it offered an alternative version of events audible at the national level, shaking the mantle of security that affects the attribution of ‘victims’ and ‘perpetrators’ in Tunceli. This being said, the power of even high-level officials should not be overestimated; in this case, the intervention of the deputies did not prevent the Peace Court of Hozat from pressing charges and keeping Rıza Çiçek in jail for eight months awaiting trial. In the end, however, the Heavy Penal Court of Malatya released the defendant for lack of evidence (Birgün, 22/04/2008).

Finally, inhabitants of Tunceli proved to be relatively effective in drawing attention to their problems with the justice system through the media and collective action, in order to gain a national audience. Dense transnational networks of migrants are also a key resource in reaching an international public and gaining support from organizations such as Amnesty International and from the European Union, for example. In the case of the campaign against the dams, collective action preceded and followed every step of the judicial struggle. Campaigners expanded their network, their visibility, and their expertise by linking with other collective environmental actions at the national and, to some extent, the international level. In this way, the Munzur campaigners participated in March of 2009 in a ‘Water Court’ held during the Alternative Water Forum of Istanbul. The court was an initiative conceived as a response to the 5th World Water Forum that aimed to rethink the management of world water resources. The trial reenacted ‘what
should have been,’ according to the organizers, a court decision that takes into consideration the different national and international agreements Turkey is signatory to. It is difficult to evaluate to what degree such actions affect the judicial struggle, but, at least in the case of the Munzur dams, they provided resources campaigners could use to re-frame their struggle. The past legal experiences of the peasants of Bergama for example, who fought the use of cyanide in the extraction of gold in a newly opened mine, brought together these activists and certainly shaped activists’ legal approach and framing in the Munzur campaign (Le Ray 2005).

The different cases and tactics presented here provide interesting insights into the ways people experience the judiciary and in turn, develop their own sets of practices on the margins. On the one hand, many people came to consider the judicial system as an instrument of domination and regulation controlled by the military and other dominant political forces. It is then part of a view of the state-society relationship seen as a ‘them versus us’ relationship. The tendency to seek justice through the courts and through other institutions or forms of organization (international organizations, higher authorities, collective action) can be understood as a sign of distrust of the judicial system.

On the other hand, the way people are using the courts and mobilizing around them also demonstrates that they have developed a fairly complex picture of the legal system and, beyond that, of the state. I would argue that the tendency to address multiple levels of authority within and outside the judicial system reveals an understanding of the judiciary as anchored in both a local and a broad political context and as a many-layered institution with diverse, possibly conflicting agendas. In this understanding, the political resources that people are able to mobilize by using the fragmentation of the state is as important as the content of the legal procedures. The fact that people of Tunceli sometimes succeed in finding support among authorities (e.g. deputies and political parties) and in having, at a given moment, some parts of the state (in the cases discussed above, the Malatya Heavy Penal Court, the Directorate of National Parks and the Council of State) challenge others, definitely blurs the boundaries between state and society and calls for a less dichotomous perspective.

Citizens’ ability to mobilize support, to use the fragmentation and incoherence of the state against itself, creates opportunities for justice by providing specific political resources and multiplying the arenas in which contentious issues are debated. Nonetheless, the existence of such opportunities by no means guarantees success for plaintiffs. The steps that inhabitants of Tunceli took to sue the state or to defend themselves against state charges often proved unsuccessful. Moreover, these legal procedures could last for months, cost a considerable amount, sometimes require the plaintiffs or defendants and their lawyers to drive hundreds of kilometers to testify, and might entail threats and coercion. Even after the official lifting of emergency rule, law thus remained an unreliable resource for people willing to challenge a state they viewed as unjust.

Nonetheless, Tunceli has become the site of active legal mobilization. Politically disadvantaged people resort to legal measures to promote a wide range of rights and interests: not only to seek redress for offenses perpetrated by state security forces but also concerning the right to return to villages, the security management of the region, the building of dams within the Munzur Valley, and the preservation of Tunceli cultural patrimony as defined by local collective actors. This growing legal mobilization does not
owe so much to the new opportunities of a ‘post-conflict’ legal system as to the background characteristics and networks of the legal entrepreneurs involved and the status of local power relationships. Legal mobilization in Tunceli thus does not result from a ‘normalization’ of the legal and political system; it constitutes a form of political participation through which the very border between normality and exception and the boundaries of the legitimate political domain are actively renegotiated. As we shall see, inhabitants and collective actors of Tunceli resort to legal mobilization to challenge the conceptual boundaries of the state.

II. Engaging the law

Justice as a site of contention? Marking the borders of exception through legal struggle

Following the lifting of the state of emergency in 2002, the government passed a series of reforms that offered more protection for individual rights and, at least in theory, made it easier for ordinary people to use the legal system to seek justice. Provisions restricting pre-trial detention rights were amended. In May 2004, the State Security Courts were abolished. A ‘Law on the compensation of damages that occurred due to terror and the fight against terrorism’ was also approved. In June 2005, a new penal code entered into force, including provisions concerning torture and ill-treatment. The Turkish criminal code and the criminal procedure code were amended in December 2006. In Tunceli itself, jurisdictional assistance became available to people with low financial resources from December 2002 on, with first applicants in 2004. A human rights board and a mailbox for anonymous complaints for abuses were installed within the governorship. Local authorities also entered in (a limited) dialogue on the question of internally displaced people with one of the non-governmental organizations operating in Tunceli. According to the governor, about 500 houses were rebuilt in villages between 2000 and 2008, and nearly 4,000 people received financial compensation in the same period (Yeni şafak, 14/11/2008).

All these devices were meant to represent guarantees offered by a state in transition. However, the transition to a ‘postwar state’ did not correspond to a clear-cut rupture or constitute a continuous and irreversible process. In Turkey, the unilateral cease-fire of the PKK in 1999 and the official lifting of the emergency rule in July 2002 did not suddenly turn war into peace and a state of emergency rule into a binding rule of law on the whole national territory. Inhabitants of Tunceli certainly saw improvements in their political and everyday lives as soon as 1999. But these improvements and the practical implementation of legal reforms have been very dependent on the subsequent national and local security agenda. The PKK’s end to its unilateral cease-fire in June 2004, in particular, ended a relatively violence-free period, and after this time the legal and security situation in Tunceli deteriorated. The AKP, first inclined to establish an EU-oriented reformist dynamic, chose to keep a low profile when faced with ‘the interplay of rising Turkish nationalism, mounting inter-ethnic violence and a comeback of the armed forces to the sphere of politics’ (Öktem 2006). In this context, the implementation of the different reforms was mitigated. Some of the amendments seemed quite cosmetic, and some new legislation even reintroduced former restrictions. Setbacks were particularly obvious regarding the criminal courts, police laws and anti-terror laws. Anti-terror
legislation was amended in June 2006 in response to ‘an escalation of terrorism.’ In June 2007, three Kurdish provinces on the Iraqi border were declared ‘high security zones,’ which led to the implementation of extraordinary security measures, fueling worries about a practical return to the state of emergency. Transition thus constitutes a highly dynamic and contested political process. Indeed, post-conflict transition can be seen as a period during which a range of political actors compete to impose their definition of state and citizenship.

In Tunceli, legal mobilization did offer some tools and spaces to renegotiate the conceptual borders of the state. First, it enabled individuals and collective actors to ask for the redefinition of the state and its justice through the renegotiation of the separation between rule of law and rule of exception. Exception, again, cannot be considered a form of governance that simply appears when the emergency rule ends. The approach Veena Das and Deborah Poole develop in their study of the margins of the state (Das & Poole 2004) is useful here in helping us further explore the relationship between law, margins and exception. When the authors elaborate on the characteristics of the margins, they indeed resort to the idea of ‘exception’ but rule out its conception as ‘an event that can be confined to particular kinds of spaces or periods in time, or a condition that stands opposed, somehow, to ‘normal’ forms of state power’ (Das & Poole 2004: 11). Drawing on Walter Benjamin, Carl Schmitt and Giorgio Agamben, they rely on the latter’s notion of ‘bare life’, a life that can be taken without the mediation of law and without incurring the guilt of homicide, and the form of sovereignty it reveals, to look for its embodiments in the everyday life. As Das and Poole write (2004: 13-14), the focus is consequently on:

Those practices that seem to be about the continual refounding of law through forms of violence and authority that can be construed as both extrajudicial and outside, or prior to, the state. This refounding happens both through the production of killable bodies, as posited by Agamben, and through the sorts of power embodied by figures such as the policeman or local ‘boss’ (…) It is precisely because they also act as representatives of the state that (these figures) are able to move across – and thus muddy – the seemingly clear divide separating legal and extralegal forms of punishment and enforcement’.

Such figures in Turkey would include policemen, members of the Gendarmerie Intelligence and Counterterrorism Center [Jandarma İstihbarat ve Terörle Mücadele, or JİTEM], and village guards (villagers armed by the Turkish authorities in their fight against the PKK). The village guard system was put into place in 1985 by law. Such militias were under the control of the Interior Ministry but, locally, came under the direct authority of the gendarmerie for situations concerning security and information. They actually work in close collaboration with special forces like JİTEM and can be linked to diverse banditry activities and the criminal economy (Balta 2004; Dorronsoro 2006). The inclusion of these village guards as official operatives in the enforcement of national security interests did redefine the borders of ‘the state’ by transforming the way it was embodied and practically experienced at the local level. It in fact contributed to rendering the state less legible because these village guards have crossed the divide between legal and extralegal forms of enforcement and have used their acquired right to violence to settle local and community conflicts. As for JİTEM, it continued to operate illegally even after the lifting of the emergency rule, although commanders of gendarmerie and some officials have denied its existence. Believed to be involved in numbers of crimes including kidnapping, torture, extrajudicial killing, and bombing, its members have remained largely unaccountable (Ağaşe 2006). In Tunceli itself, these
hybrid figures may be involved in the disappearance and murder of the seven Mirik villagers in 1994, as well as in the assassination of Imam Boztaş in March 2004 and Hasan şahin in August 2005. \textsuperscript{21} Again, the impunity the JITEM members enjoyed let them appear an embodiment of the state’s justice and violence and made clear that ‘the frontier between the legal and extralegal runs right within the offices and institutions that embody the state’ (Das & Poole 2004: 14).

In this conception, it is hard to find a clear division between forms of violence that are in and out of law as this frontier evolves in parallel with the constant re-founding of the state. Exception itself and ‘killable bodies’ can be produced through a complex legal process or thanks to the quiet acquiescence of the judiciary. But, at the same time, when parts of the state are willing to change the way the state and justice are imagined, law can become a discursive resource, a ‘language of justice’ in the hands of activists opposed to embodied practices of law. In Tunceli, applicants this way both demanded state accountability and tried to outlaw forms of governance by exception. They tried, in short, to push back the boundaries of exception.

\textbf{Looking for accountability}

Beginning in 2008, at the national level, the Ergenekon case led to the investigation of an alleged clandestine neo-nationalist network involving military and police officers, politicians, prominent media members and businessmen. They were accused of trying to topple the elected government through a military coup. Many observers saw this case as indicating a possible end of impunity for the agents embodying the state of exception. \textsuperscript{22} In Tunceli, the Ergenekon case created hopes, or at least opportunities, to ask for investigations concerning unsolved political murders in the province (\textit{Bianet}, 13/01/2009) and the Kurdish region more generally. However, even before Ergenekon, in the mid-1990s, inhabitants and lawyers in Tunceli began applying to the judiciary to investigate the disappearance or death of their relatives. In October 1994 for example, Kasm Aydın, an inhabitant of Hozat, asked the public prosecutor to investigate his father’s disappearance and the destruction of his house. Sixteen people either disappeared or were found dead in the area at that time. In 1998, the prosecutor of the Malatya State Security Court opened an investigation after the Hozat prosecutor, the District administrative council and the prosecutor of the Gendarmerie General Command had successively declared that they had no jurisdiction. This investigation continued for years, with the plaintiffs eventually applying to the ECHR. In April 2001, the Turkish government finally offered compensation to the applicants for a friendly settlement. \textsuperscript{23} Many other victims, though, found themselves trapped in judicial dead ends or did not dare file a lawsuit. This was the situation, for instance, in the case of Nazım Gülmez, a 61-year-old villager seized by a commando team in 1994 and never returned. When his relatives visited lawyer Hüseyin Aygün to talk to him about opening a case nine years later, after the events, they explained that they had been too afraid of possible retaliation to do so before (\textit{Radikal}, 12/05/2003). Only following the official lifting of the emergency rule and the experience of several years of relative calm did such people begin to look for their missing relatives and ask for accountability.

Until the late 2000s, these trials did not prove very effective in pushing justice to seriously investigate disappearances and killings, and even less in sanctioning the perpetrators of these crimes. \textsuperscript{24} In the case of the disappeared villagers of Mirik, years of
procedure and introduction of new evidence resulted only in the payment of a ‘symbolic compensation’ to the family for what was still characterized, 15 years after, as an ‘attack by unknown assailants’ (Bianet, 13/01/2009). But the strength of these trials may be elsewhere, more specifically, outside the court, as the lawyers’ public declarations and their media coverage25 force the sensitive issue of state accountability to the agenda and contribute to activating a public debate on the redefinition of the state’s borders.

In their public statements concerning these trials, lawyers skillfully combine elements of law and more general political rhetoric. Their language of justice often refers to fundamental rights and higher law including the Turkish Constitution and different international conventions Turkey is signatory to, such as the European Convention on Human Rights or the Universal Declaration of Human Rights. The right to life is, quite logically, at the core of this struggle against practices and ‘figures of exception,’ against the production of ‘bare life’. In August 2008, in the case involving villagers Bülent Karataş and Rıza Çiçek, lawyer Hüseyin Aygün invoked the Turkish Constitution and the European Convention on Human Rights concerning the right to life and the abolition of death penalty. He declared: ‘It is not enough that governments suspended the death penalty. If members of the police and gendarmerie deliberately kill people, if they make a practice of killing people, if these murders remain unpunished by decision of courts and judges and, finally, if the perpetrators of these crimes can benefit from legal devices such as prescription, then the abolition of death penalty in this country is pointless’ (Ajansdoğu, 25/08/2008). In a somewhat different vein, when, in May 2009, lawyer Barış Yıldırım tried to challenge the creation of temporary security areas in Tunceli, he referred again, following a technical legal argument, to fundamental rights and liberties. In a statement made in cooperation with different political parties and labor unions, he indeed questioned the legality of such security zones, arguing that their creation would require the Parliament’s intervention. He further asserted that the creation of these temporary zones of security would prevent access to villages and pastures, in contradiction to the fundamental principles of liberty of circulation and property rights. He then addressed the government and military general staff in these terms: ‘In this province in which you never invested, that never received its share of the budget, do you think about how thousands of animal keepers and villagers will find enough to eat and drink?’ (Cihan, 16/05/2009). In these public declarations, lawyers attempt to confront the state and justice with discrepancies between written law and practice. Their technical knowledge of both national and international legal texts enable them to try and ‘make the system live up to what it’s supposed to be’ (Diamant 2005: 11). The ‘majestic’ vision of law they promote then supports calls for a single legal order applicable throughout the country. But these lawyers also work at exacerbating inhabitants’ sense of injustice while pointing at and building connections with larger social or political grievances or unveiling the functioning of a double-standard of justice. Today, this language of justice, articulated around fundamental human rights against the prevalence of the language of security, significantly shapes the local public sphere. It offers a challenging version of where the division between legal and extralegal practices should stand, and of what the borders of legitimate state action should be.

How did this language become audible and to what extent does it resonate within the judiciary itself? If so, what does it tell us about the state-society relations and its possible transformation? The next section of my paper discusses these questions.
An emerging normative community? Cause lawyers and the discourse of human rights

Lawyers in Tunceli have played a central role in the emergence of an alternative language of justice, notably based on an innovative legal argumentation and able to challenge parts of the statist ideology. They are the main figures through which the norms of justice were brought out of the courtroom and into public debate. Some of these lawyers indeed expanded public interpellations as well as interviews and articles within diverse media to inform the public, to question existing norms and practices of justice, and to propose alternative uses of law. They framed their declarations so as to turn ‘private’ legal disputes into calls for political change. They did so using diverse sensitive issues that had to be negotiated in this period of transition: forced disappearances and extra-legal killings, return to villages, state compensation, and conditions for public gathering and public speech. They also took part in and offered legal support for pre-existing or emerging local causes, such as the Munzur campaign against the dams, and diverse national causes such as a symbolic hunger strike organized in November 2006 to denounce conditions in Turkish prisons. A call to ‘speak the language of peace and not the language of violence’ was issued in a common statement with other bar associations in December 2006. And in February 2008, the Tunceli Bar Association, with other bar associations of the southeast, organized a press conference to question and condemn Turkish military operations in North Iraq.

Moreover, these lawyers felt entitled to educate people about their rights and to warn them about possible abuses. After the official lifting of emergency rule, they organized seminars and distributed leaflets to inform people about the new legal provisions concerning security devices and practices, such as identity controls, custody, and, more recently, uses of surveillance cameras (Evrensel, 25/12/2007). Independent of the cases they could advocate, these lawyers thus continuously struggled to expand the domain of rights against exception and reframe – through the diffusion of legal knowledge and frequent public statements – inhabitants’ sense of justice.

Lawyers in Tunceli became extensively involved in the local public sphere from the beginning of the first decade of the 21st century. They grew increasingly organized through the creation of the Tunceli Bar in 2001 (by 2010 involving 30 lawyers) and the subsequent establishment of specific commissions (on women and children, the environment, and human rights) in late 2004. This public engagement owes much to these lawyers’ biographical trajectories and to the networks they were able to build.

Hüseyin Aygün and Özgür Ulaş Kaplan are two of these publicly engaged lawyers. Born in the early 1970s, they both studied in Tunceli before entering, respectively, Ankara and Istanbul law schools. They were both politically active students. For political reasons, Aygün had to interrupt his activities and finally graduated in 1995. He chose not to pursue an academic career – his initial desire – believing he would be discriminated against because of being a Tunceli-born, leftist Alevi Kurd (Radikal, 21/02/2005). In 1998, Aygün and Kaplan both returned to Tunceli as lawyers and opened an office together. At their instigation, the Tunceli Bar Association was created in February 2001, and Aygün became its first president. In the same period, Kaplan took leadership of the newly created Association for the Protection of Wildlife in the Munzur Valley, an environmentalist association mainly devoted to preventing the building of the dams
within the valley. In 2006, he became president of the bar association. Aygün, meanwhile, became involved in the production of a local newspaper that focused on the revival of the Zaza language. In May 2009, he published a book on the forced exile of Tunceli inhabitants following the large military operations and massacres in the region in 1937-1938. In the municipal elections of March 2009, he also actively supported an independent, far left candidate.

These lawyers appear to be multi-positioned in-between the judicial, the political, and the activist spheres. Their ability to enter public space is to be understood in the learning experiences and the successful mobilization and combination of resources coming from both their professional and activist spheres. Arguably, again, the lifting of emergency rule offered a somewhat more conducive legal and political environment for these cause lawyers. But, while learning about this changing environment by trial and error, the lawyers contributed to the expansion of what constituted ‘legitimate’ boundaries on discourse and practice. These lawyers’ public engagement, well beyond the borders of the courts, is indeed quite risky. When asked about the difficulties he encountered opening an office in a zone of (post)conflict, Özgür Ulaş Kaplan stated that he ‘only’ had to suffer slight intimidation that was ‘nothing comparable’ to what Ali Demir, the only lawyer in Tunceli prior to 1998, had experienced. Demir had been taken into custody and heavily beaten. But these politically-motivated lawyers also had to face practices of exception. On February 13, 2005, Aygün organized a press conference to announce that gendarmerie regiment commander had threatened his life. According to Aygün’s report, the commander told his relatives that Aygün was a ‘traitor to the nation’, an ‘enemy of the state’, and that he was tired of ‘finding him under every stone’. He told Aygün personally that he was not well thought of by the gendarmerie and suggested he stop his activities (Bianet, 15/02/2005). Following the press conference, Aygün was put on trial for slandering the gendarmerie commander. In April 2005, the Tunceli public prosecutor asked for an investigation into Aygün and Kaplan: their names, this time, had allegedly been found in a notebook belonging to an armed militant killed in a military operation. They were therefore suspected of belonging to this Turkish leftist armed movement (Bianet, 12/12/2005). Forensic analyses later revealed that their names had been added to the document after it was originally drafted (KHRP 2008: 41). In 2006, the commander of the gendarmerie again asked the prosecutor to launch legal proceedings against the bar association on the ground that it ‘coerces individuals into making applications to the ECHR’ (KHRP 2008: 41).

In such an environment, in which security forces tend to conceive lawyers as a threat to the integrity of the state, local and international networks of support have played a critical role in protecting them. When he was threatened by the commander of the gendarmerie, Aygün decided to go public. Being a local public figure embedded in important social and political networks, he could count on the support of elected local representatives and deputys, of local political parties and trade unions, and of diverse associations such as the Human Rights Association (İHD). A campaign to support a man recognized as a human rights lawyer who had brought hundreds of cases to the ECHR was also organized abroad by organizations such as Amnesty International, at the instigation of the Tunceli migrant networks. The globalized discourse of human rights thus not only structures a challenging language of justice to oppose the hegemony of security forces, it also provides Tunceli lawyers with possibility that their activities and words will resonate and be recognized in multiple spaces. This ability to appeal to an international
community highlights the strength the Tunceli lawyers can wield. As Lisa Hajjar reminds us, the human rights business requires cultural capital (Hajjar 1997: 497). Cause lawyers, indeed, need to activate specific political and intellectual resources to connect with media and other human rights organizations at the local level but also, possibly, at the international level. It then enables these lawyers to project counter-hegemonic views by relying on the ‘inherent contradiction between supranational human rights ideals and the local politics of hegemony’ (Hajjar 1997: 497).

Human rights and rule of law in the state’s self-performance

In this period of transition, the Tunceli lawyers have not been the only ones mobilizing the discourse of human rights and rule of law in an effort to (re)define the state’s boundaries. State officials have also used human rights frames. For instance, Tunceli Chief of Police Osman Öztürk, who served from September 2004 and August 2008, declared he wanted to transform the image of the police and its relations with the population of Tunceli, and initiated a program called ‘To lend a friendly hand.’ In this program, the police are not only responsible for security but also actively involved in securing the social welfare of inhabitants. In this way, policemen and women in Tunceli sponsored orphan children, distributed clothes during cold winters, proposed basic health care for the poor and regularly volunteered in schools to build closer relations with children, in a project entitled ‘Uncle police, Aunt police’ (Bizim Anadolu, 15/07/2005). Further indicating his desire to ‘bring the population together’ and gain its trust, Öztürk said:

Tunceli is a province that experienced severe terrorism, a place in which inhabitants have sometimes suffered from terrorists’ psychological pressure. It is a province that has experienced many terrible events. It is like this if we look at the historical past as well... So, through our achievements, we have demonstrated to our citizens that we do not consider them inherently guilty or potentially culpable. But although our inhabitants here are people worthy of this country’s greatest respect, there are also those among them who commit crimes. These people will be brought to justice, in accordance with the law and with consideration for what happened during these terrible years. In so doing, we will respect and comply with human rights, fundamental rights and liberties as defined in the Constitution and laws, proving that we are doing our job well aware that our country is a state of law (Bizim Anadolu, 15/07/2005).

This chief of police had undoubtedly mastered the language of human rights and rule of law. He seemed to perfectly incarnate this ‘new bureaucratic generation’ called on to develop ‘an intrinsic respect for human rights’ (KHRP 2008: 58). A highly experienced officer, he has a training that includes participation in diverse professional seminars in the United States as well as in Europe. If Öztürk speaks the language of law and human rights, it is thus to redefine the role of the police within these ‘globalized’ norms, in an effort to promote a renewed image of the police, far from the practices of exception that used to blur, in an encompassing perception of the Tunceli inhabitants as ‘presumed guilty’, the distinction between ‘victims’ and ‘perpetrators’.

The opening ceremony of the judicial year in September 2008 also constituted an interesting moment of this public self-performance of a transforming state. Present at the ceremony were the governor of Tunceli, the vice-mayor of the city, heads of the gendarmerie and the chief of police. The public prosecutor elaborated then on a quite majestic conception of justice – as ‘a sacred value that does not tolerate the slightest
stain’ – to remind listeners of the need for an independent and impartial justice, this time for the sake of the state:

In societies where peace and tranquility have collapsed, in countries where trust in the power of justice is not acquired, it is very difficult to secure the continuity of the state (...) Members of the judiciary must operate without taking a stand, they should make their decision without regard for someone’s position within the society, his or her financial situation, skin color, philosophical beliefs, political conviction, religion or nationality, but, rather, in accordance with what law and conscience dictate (Cihan, 08/09/2008).

Does this indicate that a common language of law and justice has been emerging in Tunceli, a language that cause-lawyers, public prosecutors and police officers are coming to share? Patricia Woods, looking at the case of Israel, argues that cause lawyers there played an important role in redefining the content and norms of the ‘judicial community,’ bringing about meaningful political change. She sheds light on the ‘diffuse, informal and formal legal interaction, debate and conflict’ that animate the judiciary socio-professional community and argues that these interactions contributed to the development of new legal norms, thus enabling the Israel High Court of Justice to challenge the autonomy of religious institutions in the late 1980s (Woods 2003).

In the case of Tunceli, interactions seem to remain still limited and purely formal. When the bar association approached the newly appointed chief of police to propose a series of joint seminars on human rights issues for example, the police apparently chose not to participate (KHRP 2005: 55). In October 2007, on the other hand, the chief of police did visit lawyer Barış Yıldırım, the local representative of the Human Rights Association (İHD), to reassert ‘the deep commitment of the police organization to human rights and freedoms within the democratic, laic and social state that Turkey is’ (Zaman, 28/10/2007). This public discourse of a shared commitment to human rights does not seem, however, to be translated into a shared way of making use of the law and embodying it. Less than one month before the chief of police visited Yıldırım, for instance, the police headquarters filed a complaint against him for a public statement he made condemning what he referred to as the military forces’ repeated violations of rights and abuses against civilians. Even if all parties are familiar with the conceptual framework of human rights, then, it can be used to serve different political projects. Nonetheless, some recent court decisions may indicate some changes in these same alliances and invite us to pay more attention, beyond the given signal of conflict, to the transformations affecting political configurations.

Legal breakthrough: changing alliances?

The following cases illustrate several issues in which local courts in Tunceli produced decisions that challenged the political status quo. These adjudications not only challenged the definition of the political and public domains promoted by the security forces, they also undermined the terms of the dominant ideology, opening new avenues for the redefinition of the ‘social contract’.

On 12 February 2008, the Tunceli Civil Court of First Instance dismissed a case opened against two members of a Turkish leftist party for having distributed leaflets in 2007 inviting people to the Kurdish spring celebration of ‘Newroz’ (the Turkish authorities have reactivated this celebration as well, but under the name ‘Nevruz’, banning and harshly repressing for long the ‘Newroz’ celebration). Their lawyer, Barış Yıldırım,
successfully argued that ‘Newroz’ was a proper name, and therefore did not violate the
law on political parties’ stating that no other language than Turkish should be used
during party events and for their placards. According to Yıldırım, this decision
constituted a landmark decision (Zaman, 19/05/2008).

On 14 February 2008, the Tunceli Chief Public Prosecutor decided to drop proceedings
against Yıldırım for his September 2007 statement criticizing the military. He based his
decision on paragraph four of Article 301 of the Turkish penal code, which states that
criticism made to express one’s opinion cannot constitute a crime. This constituted a
groundbreaking decision. As one Bianet headline claimed: ‘If only everybody was
interpreting 301 like the Tunceli prosecutor!’ (Bianet, 14/02/2008). Five days later, the
Tunceli Peace Court dismissed a case against Hanefi Bekmezci, a trade-union member also
sued under Article 301 for a public statement made in September of 2005. The court first
sentenced him to five months in prison, later converted to a fine. But Yıldırım, serving as
his laywer, appealed to the Supreme Court of Appeals, citing decisions by the ECHR. On
November 2007, this court overruled the sentence, ‘arguing that the statement he had
read was ‘intended as heavy criticism’ and did not represent a crime’ (Bia news center,
20/02/2008). The Tunceli Peace Court submitted to this decision and acquitted Bekmezci.
Bianet interpreted this as an important precedent for cases prosecuted under Article 301
(see e.g.Bianet, 19/02/2008).

In March 2008, the Tunceli peace court acquitted three young members of a leftist
political party, sued on the basis of the Article 215 of the Turkish Penal Code (concerning
the ‘praise of a crime or a criminal’) for having commemorated Deniz Gezmiş, Yusuf Aslan
and Hüseyin İnan, leading figures of the Turkish revolutionary movement of the late
1960s, sentenced to death and executed in 1972. While many trials had been opened on
the basis of this article before, it was the first time such a case had been dismissed, and
not for lack of evidence but on the legal argument that dead people cannot be considered
criminals (Birgün, 15/03/2008).

Also in 2008 the 3rd Heavy Penal Court of Malatya acquitted Rıza Çiçek, wounded by the
Turkish military and accused of ‘belonging to an illegal organization’ (see above), for lack
of evidence. The defendant’s lawyer, Hüseyin Aygün, declared: ‘We believe this is a very
important breakthrough. We congratulate the judge. The fact that he made his decision
without paying much attention to the General Staff’s declaration is promising’. Aygün
added that he would bring the case to the ECHR, as no trial had yet been opened against
the military, and that he would open a case as well against the Ministry of Interior, to ask
for reparations for the eight months Çiçek spent in prison awaiting his trial (Evrensel,
08/05/2008).

Different conclusions may be drawn from these ‘judicial events’. Regarding the first three
listed cases, the courts’ decisions are important in terms of guarantees for freedom of
expression and offering activists and public actors more (potential) protection for
operating within a still-restrictive public sphere. Beyond that, two of these decisions
more precisely confer a legal public existence to contentious figures and symbols (Deniz
Gezmiş, Newroz). Of course, Newroz and Deniz Gezmiş have been celebrated for many
years in Tunceli, despite quite systematic legal harassment. Activists have thus forced
them into the public sphere, although at some risk. Of course, these judiciary decisions
do not confer legitimacy on the figures and symbols themselves, or say much directly to
the potential for celebrating or commemorating them, because the court decisions
regarding them were made based on precise technical legal points. But they nonetheless
produced tools for re-conceiving and transforming the borders of the public sphere. The fact itself that judges accepted lawyer’s technical and innovative legal argumentation (or produced this innovative argumentation themselves) invites us to further examine the possibility of underlying transformations of the public sphere.

Again, looking at these few cases, my point is not about demonstrating a steady process of ‘democratization’ and ‘normalization’ in the last couple of years. In fact, none of these decisions turned into a consolidated ‘permissive’ judicial practice. To take just one example, one year after the ‘Newroz decision’, the public prosecutor intervened to forbid the Tunceli municipality from using the word Dersim rather than Tunceli on some posters. The court stated that there was no such thing as the ‘Dersim municipality’ within Turkish borders and stated that the ‘Dersim’ appellation was ‘serving the propaganda of the (PKK) terrorist organization’. The posters were consequently removed (Gündem, 10/02/2009). In reaction, a pro-Kurdish Tunceli member of parliament said he would submit legislation to the Parliament to change ‘Tunceli’ into ‘Dersim’. The Justice Minister in turn called this ‘a move driven by a separatist mindset’ (Nethaber, 12/02/2009). In an account of this affair in the Günlük Gazetesi, the reported noted that the case was surprising given that in December of 2000, the Malatya Heavy Penal Court had dismissed a similar case. A Turkish leftist party member was then sued for having used the name ‘Dersim’ during his party convention and charged with ‘making propaganda for an illegal organization’. The decision of the Court acknowledged the idea that the term ‘Dersim’ was used in diverse historical and scientific texts, as well as newspapers and magazines, and not exclusively by the PKK. It was further stated that the term ‘Dersim’ has even been found in documents of the military command (Genelkurmay Baskanlığı) dating from 1929 and used by Mustafa Kemal Atatürk and İsmet İnönü themselves (Günlük Gazetesi, 14/02/2009).

This article highlights the fact that there has not been any systematic consolidation of new judicial practices. Dicle Koçaklı may have already provided some tools to explain these apparent setbacks or inconsistencies in courts’ decisions when she showed, looking at the Constitutional Court, that judges feel entitled to differentiate between the political and the cultural domains, so that practices considered ‘harmless when they are conceptually located as “cultural” and/or “traditional” are considered a threat when they are “unduly politicized”’ (Koçaklı 2004: 435). In Tunceli, naming Dersim as threatening and harmless may be as well linked to the personality of the judge and the way (s)he specifically articulates, in his/her arbitration, elements of the nationalist and statist framework with other principles (Koçaklı 2004: 442). The state of the balance of power between local and national politics may also be taken into account.

On the other hand, some of these new legal practices look more durable. The case concerning Deniz Gezmiş may have contributed to changing possibilities concerning how even contentious public figures are remembered and commemorated. In the summer of 2008, two leaders of migrants associations were charged with ‘praising a crime or a criminal’ for having hung a poster of Seyid Riza, the leader of the resistance opposed to the Turkish troops in 1936 and 1937. Seyid Riza was arrested and hung in November 1937. In his argumentation, the lawyer Barış Yıldırım used the same technical argument, referring notably to the civil code, to claim that people could not be legally considered criminals after their death. In May 2009, the peace court dismissed the case.

Violaine Roussel examines this sort of undetermined dimension of the judicial process, looking at the ‘micro-disruption’ of the game that innovative judicial argumentations and decisions express. For Roussel, every failure or success, every procedural coup, as well as
every stand taken by non-judicial actors, is a signal about what might now become possible to strive for. They thus constitute a frame of possibilities that were inconceivable within the judicial game until that time (Roussel 2002). In this way, the decision concerning Rıza Çiçek can be seen as an indication that the judiciary was no longer prepared to systematically align with categories of ‘friends’ and ‘enemies’ used by the security forces and the local governor. In the same way, the Tunceli pro-Kurdish deputy and the Justice Ministry’s interventions in the Dersim case, and the CHP delegation’s involvement in the Rıza Çiçek case, as well as the Ergenekon trial, are many signals that lawyers, prosecutors, and judges use to consider their moves at the local level. For the lawyers, every successful use of an innovative argument comes to enlarge the frame of possibilities, encouraging them to push even further, by trial and error, the borders of the conceivable.

Conclusion

62 Studying judicial activism in Tunceli after 1999 demonstrates that even within a restrictive environment, possibilities for legal challenges may be more open than generally believed. Lawyers and their clients indeed proved capable of exploiting the state’s inability to act and speak in a single voice and of engaging it at multiple levels. Moreover, by bringing cases out of the courts and into more general public debate, lawyers accessed new resources and support networks in their struggle to promote alternative languages of justice and sets of practices. On this basis, they could engage law in order to challenge the dominant discourse on security and to force the redefinition of the state’s legitimate conceptual borders.

63 Rather than speculating on a growing receptivity of the prosecutors and judges to the language of justice and the innovative judicial practices promoted by lawyers, I here insist, in a processual approach, on the tactical ability of these lawyers to actively push for the consolidation of these practices. More directly questioning the redefinition of power alliances through the emergence of a ‘normative community’ would, however, require more study of the personal, political and professional experiences of judicial actors and an ethnography of the local legal system to learn about common spaces of debate or socialization. Finally, and in accordance again with Tezcür’s conclusions (2009), further attention should be given to the reorganization of local political configuration around multiple, possibly competing, centers of power. In Tunceli, the alliance between the military and the judiciary appears this way to be redefined in reaction to the emergence of political Islam on the local scene. Recent corruption affairs involving the AKP in 2009 elections but also award of contracts referred to the court could provide us with new readings of the transformation in relations between state and society.
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NOTES

1. The research for this paper benefited from the financial support of the French National Research Agency (ANR) Thematic Program ‘Conflicts, War(s), Violence’, ‘Conflits-TIP’ Project. I also want to thank Elizabeth Picard, Olivier Grojean, Amonah Achi, Nicole Watts and the two anonymous readers for their stimulating comments and criticisms on previous drafts of this article.

2. Between 1936 and 1938, the Turkish government carried out extensive military operations to secure control of the region of Dersim, renamed Tunceli by a 1936 law. Dersim has for long been conceived as an unruly territory, in fact the last to resist the centralization process of the Turkish state. The ‘civilization process’ of Dersim was extremely violent and cost the lives of tens of thousands of its inhabitants. Survivors were sent afterwards to internal exile, in Turkish-Sunni dominated areas. Many did not return until the mid-1940s (See Bruinessen 1994; Watts 2000). From the 1970s on, the name 'Dersim' progressively became a symbol of political opposition while 'Tunceli' became closely associated with this violent moment of ‘colonization’. My choice of the word Tunceli here is notably to underline how the name Dersim is at the core of the process of renegotiation of state-society relations.

3. I here focus on grievances related to abuses committed by the security forces or restrictions on freedom of speech and political activity. However, inhabitants of Tunceli also resort to courts to settle more ‘ordinary’ issues – but no less likely to be formulated in political terms – such as a woman’s right to divorce or disputes over land, thus inviting the judiciary to regulate everyday life as well.


5. For an international relations approach, see, for example, the CERI project ‘Emerging from violence’, http://www.ceri-sciencespo.com/themes/projets/documents/02/sortir_violence.pdf.

6. Although most of the cases examined here took place in the 2000s, some of them were continuations of proceedings launched in the 1990s. Interpretation of the cases and further insights are based on several years of fieldwork in Turkey and, more specifically, on nine months spent in the province of Tunceli between 2003 and 2008.

7. My focus is consequently less on what happens within the court than on what is said and done about the case out of the court. This study would thus be complemented by ethnography of the courts and trials themselves and would benefit from a closer analysis of the actual trial records.

8. Founded in 1962, the National Security Council was composed of civilians (the President, the Ministers of Defense, Interior and Foreign Affairs, and following the constitutional amendment of October 2001, the Minister of Justice and Deputy Prime Minister) and members of the armed forces. It rapidly expanded its power to oversee the actions of the government and parliament. The 7th reform package passed in July 2003 aimed at limiting the role of the military in the NSC. However, despite institutional changes, the National Security Council remains highly influential, if only through more informal channels.

9. Founded in 1978 by Abdullah Öcalan, the PKK aimed to integrate Marxist-Leninism with Kurdish national aspirations. It has led a guerrilla war against the Turkish state since 1984, in which 44,000 people died, according to recent declarations of the Chief of Staff of the Turkish Army (Hürriyet, 16/09/2008). Abdullah Öcalan was arrested in 1999 but keeps ‘advising’ the PKK from prison.

10. On the complicated but possibly mutually empowering relation between law, violence and exception, see notably the March 2007 issue of the Law & Society review (vol. 34, n° 1, 2007).

11. Put into place in 1984 in eight provinces (Adana, Ankara, Diyarbakır, Erzurum, Istanbul, İzmir, Malatya, Van), these courts were abolished by the Turkish Parliament in May 2004 to be
replaced later by ‘Heavy Penal Courts’. Until 1999, these State Security Courts included military judges and prosecutors. They adjudicated in every matter identified as threats against state security. They have notably condemned many intellectuals and politicians for ‘inciting people to hatred’ on the basis of either race or religion. Interestingly enough, almost all of these judgments have been upheld by the Court of Cassation (Arslan 2007: 236).
12. Interview with Songül Erol Abdil, conducted with Nicole Watts, August 2008.
13. See, in Turkish, Sancar & Aydin (2009). 59 in-depth interviews were conducted.
15. Ibid. p. 46.
17. For an expanded account of this judicial procedure, see the online Istanbul Water Tribunal report (http://www.boell.de/downloads/ecology/2munzur_en.pdf)
18. One of the local arguments in favor of the dams was indeed that they would inhibit the circulation of the guerrillas in the mountains of Tunceli.
19. To give one example, when in 1994, at the height of the conflict, the military was burning villages and forests in the region, several villages’ headmen tried to draw the attention of national leaders. Some of them travelled to Ankara to meet the president of the Federation of Human Rights Association and their deputies. They were detained upon their return. Others visited Prime Minister Tansu Çiller, who assured them that the military could not be involved and that it consequently had to be the PKK. The Minister of the Interior even suggested that villagers did this to themselves in order to get compensation. Among these headmen who dared to protest, several were arrested and detained, threatened and some of them even disappeared, to be later found dead (Stichting Nederland–Koerdistan 1995: 24-25).
24. The Turkish penal code still does not recognize ‘forced disappearance’ as a crime.
25. Most of the newspapers cited here are known to be left-wing. Some of them (Bianet, Evrensel) are platforms actively producing and relaying information that is not generally found elsewhere, especially in mainstream media.
26. See the Tunceli Bar’s web site at http://www.tuncelibarosu.org.tr/?act=2&p=1
27. Lawyers in Turkey have always been well represented within the political elite. According to a 1973 article by Frank Tachau and Mary-Jo D. Good, lawyers represented 10 to 15 percent of the members of Parliament prior to 1950, to become the largest single grouping (27-32 percent) after 1950 (Tachau & Good 1973: 5). I do not have more recent national data but, from the late 1960s and 1970s onward, lawyers were not to be found only in the mainstream political parties but, increasingly, in the ranks of the opposition parties and radical leftist groups as well. The investment of young leftist activist lawyers in the Bar of Istanbul in the 1970s opened the way to the politicization of this bar association for example. The profession is thus in no way to be considered as politically homogeneous; bridges between the political, activist and legal professional spheres are multiple and diverse.
28. Attempts to explain cause lawyers’ activism always run the risk to be tautological. For stimulating reflections on cause lawyering, see, among others, the thematic issue of Politix directed by Brigitte Gaïti and Liora Israël (2003).

29. Personal interview with Özgür Ulaş Kaplan in his office, Tunceli, 05/05/2004.


31. The use of the discourse of human rights by local state officials is not new. Even at the height of the conflict, officials tried to present themselves as the legitimate defenders of human rights. In December 1996 for example, a statue celebrating human rights was inaugurated in the Tunceli main square, in the presence of the city mayor, the chief of police and the governor of the province. However, with the transformation of the security order following 1999 and the efforts to reconstruct the state as a guarantor of democratic rights and obligations, this discourse of human rights has taken on a whole new dimension.

32. Reassigned to Kırşehir in 2008, Öztürk put into place the same program in this province in the centre of Turkey, 140 kilometers from Ankara.


34. The AKP-led administration had prepared a bill proposing changes to the controversial article at the beginning of January 2008, which sparked off a months-long public debate. It was finally not before April 2008 that the Turkish Parliament started debates on the amendment to finally approve it.

RÉSUMÉS

This article explores the uses of law in a restrictive and changing political environment. It focuses on the specific case of Dersim/Tunceli – a theatre of the PKK/Turkish army warfare in the 1990s – following the arrest of the PKK leader in 1999 and the lifting of emergency rule in July 2002. The paper analyzes how cause-lawyers resort to law in a period in which the state’s local ruling and control devices are transforming and in which the ‘rule of law’ has to be reinstated. While acknowledging the crucial role of the courts in shaping people’s perception of ‘the state’ as all-encompassing, the article underlines how people also come to learn ‘the state’ as multi-layered and incoherent by facing obstacles to legal action and circumventing them in this changing and uncertain period. It then discusses justice as a site of contention and argues that increasing levels of legal activism is directly contributing to the redefinition of the rule of law and, beyond that, of the conceptual borders of ‘the state’ itself.

INDEX

Keywords : rule of exception, legal mobilization, cause-lawyering, state-society relations

Mots-clés : état d’exception, mobilisations du droit, ‘cause-lawyering’, relations Etat-Société

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