DHRD Report

Analytic Legal Report

on Bahdinan Detainees Lawsuits

Democracy and Human Right Development Center

سەنتەری پەرەپێدانی دیموکراسی و مافی مرۆڤ

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- **General Background**

The Criminal Court of Erbil- 2 – delivered its judgement on the case (No. 47, G2, 2021) on February 16, 2021. It sentenced the five accused to six years imprisonment. This analytical report aims to analyse the substantive and procedural aspects of the case during both investigation and trial stages. It is important to mention two points at the beginning. First, the report is a legal analysis only focusing on the legal and judicial aspects of the case, regardless of the political reactions and interpretations made to the case following the court's decision. Second, not all the details of the case were available for evaluation due to some legal and technical reasons and the barriers created by the security forces to the lawyers. It has been very difficult for the lawyers to have access to the case files. They were not given access to the information and evidences put in the accused files. Therefore, the inferences and conclusions drawn in the analysis should be understood within the limited information and evidences available for the analysis.

- **Methodology**

This report is a legal analysis for a court decision. No preconceived notions, assumptions or conclusions are used in such reports. In general, four questions are answered in such reports. First: What is the fact of the case? This includes presenting the main questions related to the facts and the charges? Second: What is the legal basis of the charge or accusation? Third: To what extent have the rules and standards relating to the investigation and prosecution been taken into account and followed by the investigators and the court? Fourth: On what basis and method of ruling did the court decide on the case, especially in its understanding of the facts and the interpretation of the legal provisions relating to the case? Apparently, the report concentrates more on first three questions, as the court's decision did not provide the details that could be relied upon to answer the fourth question.

The main sources of information and evidences for this analytical report include:

- The decision of the Criminal Court- 2- of Erbil
- The constitutional and legal provisions related to substantive and procedure rules of criminal investigation and trial
- International conventions
- Monitoring or observing the proceedings inside the courtroom on 15-16, February, 2021
- Negotiations with the defendants' lawyers
- The lawyers’ appellate brief
- Opinions of Legal scholars and interpretations on the case after the court's decision

- **Parties to the Case**

The party initiating the prosecution is:

- Security Council of the Kurdistan Region.

The accused persons who have been sentenced in the court judgement are five citizens of Kurdistan:

- Sherwan Sherwani
- Gwhdar Zebari
- Ayaz Karam
- Shavan Saeed
- Hariwan Hisa

All the accused persons are residents of Duhok province in Kurdistan. Among them are teachers, civil activists and journalists. As mentioned in some media reports, they got together because of their mutual interest in civil society, journalism and organizational work in the community. [1]

- **Legal Basis of the Indictment:**

The charges against the defendants, as formulated by the Security Council of Kurdistan Region, included "gathering sensitive information and documents on important persons, officials, and institutions in the Kurdistan Region; and providing the gathered information and documents to external parties, entities or forces in order to destabilize Kurdistan Region and create unrest and cause harm to Kurdistan."

The legal basis for the accusation is Article 1 of Law No. 21, 2003. It states, "whoever is intentionally involved in any act for the purpose of harming the security, stability or sovereignty of the institutions of Kurdistan Region, and the harm is caused, is punished with life or temporary imprisonment."[2]

- **Preliminary procedures and arresting the defendants:**

According to the information found in the casefile and the statements of the defendants' lawyers, the Security Council of Kurdistan initiated the case on 07 October, 2020, which was recorded as the date of arresting Sherwan Shirwani. The other four suspects, then, arrested in Duhok on 22 October, 2020. Defendants' lawyers point out that the arrests and similar restrictive measures were part of a wider campaign against civil society activists in Duhok province, in which several activists were arrested. It is important to note that part of the media and organizations emphasize that the arrests were related to the demonstrations, activities and civil unrest that took place as protests in the Duhok areas. The arrests also came after protests in Duhok and Bahdinan districts. The security forces reject any connection between the arrests and demonstrations in Bahdinan. Below is a list all the detainees since the demonstrations:

Names of the detainees	Names in Arabic	Date of Arrest
1) Badal Barwari	بەدەل بەرواری	18 Aug. 2021
2) Umed Barwshki	ئومێد بەروشکی	18 Aug. 2021
3) Salih Abduljabar- Shiladze	سالّح عەبدالجبار- شیلادزێ	20 Aug. 2021
4) Masoud Shangali	مەسعود شنگالی	30 Aug. 2021
5) Jmal Khalil Sndi- Zaxo	جمال خلیل سندی- زاخۆ	4 Sep. 2020
6) Bandawar Ayoub Rashid	بەندەوار ئەیوب ڕەشید	4 Sep. 2020
7) Pahlawan Adil Bnavi	پەهلەوان عادل بناڤی	4 Sep. 2020
8) Karkar Abas Ali	کارکەر عباس علی	4 Sep. 2020
9) Sleman Kamal Hariki- Akre	سلێمان کەمال هاریکی- ئاکرێ	6 Sep. 2020
10) Sleman Moosa Zebari	سلێمان موسا زێباری	6 Sep. 2020
11) Walat Gawda- Zaxo	وەلّات گەودا- زاخۆ	9 Sep. 2020
12) Sherwan Smeli	شێروان سێمێلّی	9 Sep. 2020
13) Dktor Aimr	دکتۆر عامر	9 Sep. 2020
14) Sherwan Sherwani	شێروان شێروانی	7 Oct. 2020

[1] https://www.voanews.com/press-freedom/iraqi-kurdistan-court-convicts-journalists-spying
In Iraqi Kurdistan, Court Convicts Journalists of Spying, Rebaz Majeed

[2] The Law No. 21, 2003 is the annex I of the report.

15) Gwhdar Zebari	گوهدار زێباری	22 Oct. 2020
16) Ayaz Karam	ئەیاز کەرەم	22 Oct. 2020
17) Shvan Saeed	شڤان سەعید	22 Oct. 2020
18) Hariwan Eesa	هاریوان عیسا	22 Oct. 2020
19) Mahmood Naji Ahmad- Shiladze	محمود ناجی ئەحمەد- شیلادزێ	13 Dec. 2020
20) Koovan Tariq Jubrael- Shiladze	کوڤان تارق جبرائیل- شیلادزێ	13 Dec. 2020
21) Yousif Sharif Ibrahim- Shiladze	یوسف شریف ئیبراهیم- سیلادزێ	13 Dec. 2020
22) Amjad Rekani- Shiladze	ئەمجەد ڕێکانی- شیلادزێ	14 Dec. 2020
23) Nechirvan Badeeh- Shiladze	نێچیرڤان بەدیع- شیلادزێ	14 Dec. 2020
24) Aeman Saadulla Ahmad- Shiladze	ئەیمەن سعدالله ئەحمەد- شیلادزێ	15 Dec. 2020
25) Amin Saadullah Ahmad- Shiladze	ئەمین سعدالله ئەحمەد- شیلادزێ	15 Dec. 2020
26) Mhamad Nerwaee- Shiladze	محمد نێروەیی- شیلادزێ	21 Jan. 2021
27) Qaraman Shukri- Shiladze	قارەمان شوکری- شیلادزێ	27 Jan. 2021

- **Evidences**

Evidences presented in the court include:
First: The content of a Messenger group where all five defendants exchanged opinions and information. In the chat group, there were photos, exchange of information and documents. Some information and photos from the chat group were presented by the Security Council of Kurdistan in the courtroom.
Second: Recorded voices of two defendants: Sherwan Sherwani and Guhdar Zebari
Third: Confessions that were taken from the defendants after the arrests
Fourth: Information received from the Secret Intelligence Agency
Fifth: Remarks or statements from a witness (Shaaban Hussein)
Sixth: A gun, some bullets and two binoculars presented in the courtroom.
Seventh: The activities and social media posts of the defendants' personal accounts.

- **Court Decision**

The judgement of conviction was delivered by the court and it states that the evidences in the dossier prove that the defendants (1) have collected sensitive security and intelligence information about prominent figures and important places and institutions in Kurdistan Region, (2) gathered those sensitive information in a secret and unauthorized way, (3) provided the information and documents to foreign agencies, and (4) their intention and purpose was to harm Kurdistan region by causing unrest and destroying peace, stability and reputation of Kurdistan. Therefore, the court convicted them in accordance with article first of the Law No. 21, 2003. According to the decision:
- Defendants were sentenced to six years imprisonment.
- After completing their imprisonment, they will be placed under police surveillance for another five years.
- Mobile phones, computers and cameras are seized.
- The Security Council of Kurdistan can pursue civil damages or compensation. There are also a few other details of the decision which are not essential to be mentioned here.

- **General Notes:**

Procedural Notes:

1. The defendants were tortured, threatened and coerced during the investigation. The lawyers mentioned in the trial that their clients faced threats and went through serious ordeal because of torture. Also, during the courtroom proceedings, the accused persons stated that they were tortured and threated both mentally and physically. And tortured physically also they were threatened with their family. They also mentioned that their confession was extracted from them under torture. They claimed that the investigators threatened them with causing serious harms to their honour, dignity and their family if they don't confess or accept the charges put against them. This is a serious breach of Iraqi constitution, several legal provisions and international standards of human rights. Torture is a serious violation of a constitutional right.

   Article 35/c of the Iraqi Constitution (2005) states, "All forms of torture, mental or physical, and inhuman treatment are forbidden. There is no recognition of any confession extracted by force or threats or torture, and the injured party may seek compensation for any physical or mental injury that is inflicted."[3] Accordingly, the statements don't seem to have any legal weight or value to be used against the defendants because of torture and inhumane treatments and threats. Also, article 218 of the Criminal Procedures Law stipulates, "…an admission [confession] must not have been extracted by coercion." Similarly, article 127 states, "the use of any illegal method to influence the accused and extract an admission38 is not permitted. Mistreatment, threats, injury, enticement, promises, psychological influence or use of drugs or intoxicants are considered illegal methods."[4] Torture is universally considered as a sever attack on human dignity. Article of the Universal Declaration of Human Rights says, "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."[5] It is also a breach of article 15 of the Convention against Torture, and article 7 of the International Covenant on Civil and Political Rights."[6]

   The lawyers of the defendants claim that the security forces started violating their clients' rights and breaching the law from the initial step of arresting their clients, throughout the investigation stages and until the trial day. They say the defendants were not allowed to see their family, relatives and lawyers. Isolating them, the lawyers claim, is undoubtedly an evidence of torture and all the humane treatments their clients mentioned during the proceedings in the courtroom.

2. The statements of the defendants were received without the presence of their lawyers. They were not allowed to be there during the investigations. The lawyers indicated that despite a number of requests submitted to the security agency, they were not allowed to see their clients, the casefiles, and to be there during most of the investigation process. This is a clear violation of all the relevant Iraqi laws and the international law of human rights. Having a lawyer while accused of a crime is basic constitutional right for all Iraqi citizens. This is clearly stated in the clauses 4 and 11 of article 19 in the Constitution. According to article 3/c, of the

[3] Iraqi Constitution (2005), Article 35/c.
[4] Criminal Procedures Law (N0. 23 / 1971), Articles 218 and 127
[5] Universal Declaration of Human Rights (1948)
[6] International Covenant on Civil and Political Rights (1966)

Law No. 22 (2003) in Kurdistan Region which amends the Law No. 23 (1971) of the Criminal Procedures, it is mandatory to provide lawyers to the defendants before making any statements to the investigators about their charges.[7] It is also against article 14/3 The International Covenant on Civil and Political Rights.[8]

3. Taking statements from the defendant without the presence of their lawyer is a serious violation of the procedural rules of criminal investigation which can be a basis for disregarding whatever evidence or statement produced from such flawed procedural step. Article 249/A of the Criminal Procedures Law (No. 23 / 1971) clearly considers a serious breach of the rules of procedures as a basis of reconsidering the judgement about the given case.[9] Additionally, the accused has the right to choose his or her lawyer. This is an essential aspect of the right to self-defense in criminal cases. Only if the accused is financially or for other reasons not able to choose his or her lawyer, then a lawyer would be assigned to defend the accused according to the standard process of assigning lawyers by the judicial institutions.

4. Getting statements from the accused persons was not within the legal timeframe set for the defendants' statements. Article 123 of the Criminal Procedures Law states, "the investigative judge or judicial investigator must question the accused within 24 hours of his presentation, after proving his identity and informing him of the offence of which he is accused."[10] The lawyers of the defendants confirm that there is a gap between the date of their arrests and the actual date their clients' statements were taken. Both the lawyers and the defendants mentioned this during the trial.

5. The court did not consider the claims of the accused and their lawyers about torture, and forced confessions. The court should have taken these claims seriously and initiated further investigation based on article 333 of the Penal Code (No. 111 / 1969). The article states, "Any public official or agent who tortures or orders the torture of an accused, witness or informant in order to compel him to confess to the commission of an offence or to make a statement or provide information about such offence or to withhold information or to give a particular

[7] The Law No. 22 (2003) Kurdistan Parliament, Article 3/c.

[8] The International Covenant on Civil and Political Rights (1966), Article 14/3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:…(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it. https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

[9] Criminal Procedures Law (No. 23 / 1971), Article 249/A: "The Public Prosecution, the accused, the complainant, the civil plaintiff and the person who is liable under civil law have the right to appeal to the Court of Cassation against the provisions, decisions and judgments issued by the Court of Misdemeanours or Court of Felonies on a misdemeanour or felony, if it was based on a breach of the law or a mistake in the application of the law or in its interpretation, or if there was a fundamental error in the standard procedures or in the assessment of the evidence or of the penalty, and this error influenced the judgment."

[10] Criminal Procedures Law (No. 23 / 1971), Article 123.

opinion in respect of it is punishable by imprisonment or by detention. Torture shall include the use of force or menaces."[11] Not taking torture allegations seriously by the court is also inconsistent with article 12 of the Convention against Torture.[12] It is also surprising that these claims were not even written in the casefile even though they were firmly raised by the defendants and their lawyers during the proceedings in the courtroom.

6. The defendants' lawyers were not allowed to have access to the casefiles throughout the investigation process. documents. This is a breach of article 57/A in the criminal procedures law which states, "An accused person, a plaintiff, a civil plaintiff, a person responsible in civil law for the actions of the accused and their representatives may attend the investigation while it is in progress. The judge or the [judicial] investigator may prohibit their attending if the matter in hand so requires, for reasons that he shall enter in the record, with the proviso that they shall be granted access to the investigation as soon as the need to prohibit their attendance ceases…"[13] Even if an investigation takes place without the lawyer's attendance for a specific reason, the lawyers should be allowed to see the documents afterwards. In a conversation with one of the lawyers, he mentioned that he was allowed to read the document only half an hour before the trial. This has had a significant impact on the whole process, on the right to defend for the defendants and on the outcome of the case in the court. Additionally, denying a defendant's lawyers from accessing the casefiles is a serious violation of article 20 Law of Lawyering (No. 17/1999) in Kurdistan Region. It states, "It is mandatory for the courts, councils, commissions, and all other authorities to allow the lawyer to have access to- read- the casefiles, litigation documents, and any other papers…"[14] This is a violation of most right of lawyers, a justice trial and the right of the convict to defend himself. Obviously, denying the lawyers from doing their work in any case undermines justice, right to defend and the whole judicial system.

7. The families of the defendants were not allowed to visit and see the defendants throughout the investigation and until the writing of this report. The families have indicated several times that they are not allowed to visit the detainees, they have no news about the fate, place and circumstances of their family members who have been detained. The security agencies do not allow them to visit the detainees, they don't inform them about anything and they don't even confirm whether they are held in any security facilities. It is inconsistent with many human rights standards. Rule number 92 of The United Nations Standard Minimum Rules for the Treatment of Prisoners- the Nelson Mandela Rules- states, "An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them…"[15] A judge from Kurdistan says, "this should be unacceptable to deprive the detainees from seeing their family members for more than four months. Where is justice? Why does the

[11] Iraqi Penal Code (No. 111 / 1969).

[12] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), Article 12, "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

[13] Criminal Procedures Law (No. 23 / 1971), Article 57/A

[14] Law of Lawyering (No. 17 / 1999), Article 20.

[15] This general rule may be "subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution."

judicial system allow this to happen and continue violating basic human rights of the detainees regardless of the charges and circumstances of any case?"

8. The place of the trial was in Erbil while the facts, incidences and events mentioned in the case were all in Duhok area. As a matter of jurisdiction, the relevant court for the proceedings and taking the casefile should have been Duhok court. As stated in Article 53 of the Criminal Procedures Law, "The legal jurisdiction of the investigation shall be determined by the place where the whole of the offence or part of it or an act supplementary to it was committed, or where any result consequent upon it occurred, or where an act that forms part of a composite, ongoing serial, or customary, offence was committed…"[16] One of the explanations about the transfer of the case to Erbil is that in an earlier, yet similar case, No.158/T/2020, the Duhok court rejected to put and consider civil activities by journalists and demonstrates under Law (No. 21 /2003). Duhok court delivered its judgement on that case on Oct. 4, 2020 and ruled that civil activities and demonstrations are part of right to free expression and must not be regarded as crimes against peace, stability and security of Kurdistan Region. Some believe that this is the reason why the security agencies pushed successfully for transferring this case to Erbil to avoid freeing the defendants from the charges.

9. The speedy trial has been questioned by many legal observers. The court, some claim, concluded the proceedings without thoroughly examining the evidences, different aspect of the case, the questions and requests raised during the trial, and all rights of the defendants. The case was transferred to the court on January 18, 2021. Then, the court set February 15, 2021 as the first day of the trial. After one day, on February 16, the criminal court made its decision about the case. The lawyers reacted to the speedy trial and criticized the court for making the decision in two days without allowing further deliberations on various aspects of the cases and evidences.

   A retired judge comments on the trial and writes, "The trial was accelerated, the court delivered its judgement only after two consecutive days of the proceedings. There was not sufficient time for deliberations and examinations in the courtroom. The court needed more time to address the questions and requests submitted by the defendants, should have re-examined some of the evidences, and reconsidered the confessions and admissions taken from the defendants during the investigation, especially after the lawyers stressed on torture issue. The court should not have been satisfied with what was gathered and presented by the investigators. Additionally, the court did not call on the witnesses, it merely read one of the witness's statements apparently made during the investigation in front of Aseash investigative judge. Obviously, it was easy for the court to call on the witnesses because two of the witnesses whose names were appeared in the dossier detained by the Asaesh agency. Similarly, the court did not send the audio evidences to technical- forensic examination even though the defendants denied that these voices were theirs. The lawyers asked the court to send the audio evidences to technical experts in order to prove whether the voices are their clients' voices or not, but the court disregarded that request."

   It is worth highlighting that reading the words of the witness in the circumstances of this case was inconsistent with the procedural rules. Generally, the witnesses should be in the

[16] Criminal Procedure Law (No. 23 / 1971), Article 53.

courtroom for cross examinations. There are exceptions outlined in article 172 of the criminal procedures law (No. 23/1971). The article states, "If the witness….., is unable to speak or is no longer qualified to testify or because his whereabouts are unknown or if his appearance before the court would cause delay or exorbitant expense, the court may decide to hear testimony previously given in the written record of the collection of evidence or during the initial investigation, or in front of another criminal court in the same case…"[17] These exceptions don't seem to apply on this case; therefore, the court should have called on the witnesses. The ways the criminal court dealt with the witnesses and evidences are considered inconsistent with what is required by article 212 of the criminal procedures law which stipulates "The court is not permitted, in its ruling, to rely upon a piece of evidence which has not been brought up for discussion or referred to during the hearing, nor is it permitted to rely on a piece of paper given to it by a litigant without the rest of the litigants seeing it. ….."[18]

Substantive Notes:

10. The Law (No.21 / 2003) does not apply to the facts and elements of the case with which Bahdinan detainees are charged because the nature and purpose of the defendants' acts are quite different to the nature, basis, structure, and the purpose of the first article of the Law No. 21/2003. The lawyers emphasize that their clients are journalists and activists who collected and published information and documents as part of their regular activities which should be treated as freedom of expression and free press.

11. According to article 1st of the Law No.21/2003, the criminal act must be intentional and result in causing harm to security, stability and sovereignty of Kurdistan institutions. Nevertheless, the court has not sufficiently taken into account the intention and purpose of the defendants, nor has it mentioned any harm as a consequence of the defendants' acts. The lawyers emphasize that there was barely any discussions in the proceedings about the intention and purpose as the principal elements of the described crime in article 1st of the Law No.21/2003. Similarly, no evidence has been presented to the court to prove that the actions of the accused have caused any harm to the security and stability of the region. The lawyers asserted their activities have not caused any security harm or damage to the Kurdistan region; therefore, the applied law is not applicable to this case.

12. The court did not bring the main witness (Shahban Hussein) to the courtroom so that the defendants have an opportunity to cross-examine the witness and question his testimony and statements. Even though the lawyers had requested the judge to call on the witness, but the court rejected it. It is a violation of the section of article 63/B of the criminal procedures which states, "The accused and the other parties may make observations on evidence given and may ask for a witness to be questioned again, or for other witnesses to be questioned about other facts to which they refer, unless the investigative judge considers that a response to the request would be impossible or impracticable or would delay the investigation unjustifiably or would pervert the course of justice." The court should have called on the witness based on article 175 of the criminal procedures law. It states, "The court may, either on its own or at

[17] Ibid, Article 172.
[18] Ibid, Article 212.

the request of the parties, request discussion of a testimony or return to its discussion and seek clarification of what the witness has said in order to establish the facts."[19] No explanation has been given by the court regarding its rejection for not bringing the witness to the proceedings.

13. The court, in its judgement, has not mentioned the lawyers to call on the witness and examine his testimony in the courtroom. The standard procedure is that whatever is said, raised, questioned, presented and discussed in the proceedings should be recorder and written down in the casefiles and mentioned in the final judgement as part of the deliberations. However, this standard protocol has not reflected in the court's decision as there is no mention of some of the most significant deliberations and requests including that related to the witness.
14. The recorded audio of the accused Sherwan Sherwani was an important evidence presented by the security agency against the defendants. The accused denied the authenticity of the audio evidence and rejected that it is his voice in the audio. He asked the judge to send the audio evidence to forensics and technical examiners to prove his claim. Nevertheless, the court rejected his request. Surprisingly, neither the accused's request, nor the court's rejection was refereed- recorded- in the decision.
15. According to the content of the decision, the court did not address all the necessary legal aspects of applying the law No.21/ 2003 on the facts and charges of the case. The court did respond to many relevant legal and judicial questions. The followings are some of those unanswered questions.
    - Judicial justification has not been provided regarding the applicability of the Law No. 21/2003 to the charges against the defendants. The court has failed to justify why should collection, exchange, share and publication of information and documents by well-known journalists and activists about matters of public concern be treated as illegal activities against peace, security and stability, instead of an exercise of freedom of speech and the press? Why are the given facts of the case considered spying and destructive acts of espionage against Kurdistan region?
    - To what extent were the types of information and documents decisive in committing the criminal act and satisfying the elements of the crime in question? What had led the court to believe that collecting, sharing and publishing violations of human rights and matters of public concern is a crime, not a right, in this case?
    - Why did the court not consider the defendants' occupation, identity and special characteristics as being journalists and activists while applying the controversial law on the facts of the case? Why did the court not use these criteria at least to understand the defendants' intention or purpose in collecting, sharing and publishing information and documents?
    - What had led the court to the belief that collection, publication, and exchange of information about human right violations in Kurdistan, corruption, conditions in the prisons and other matters of public concern by some journalists and activists causes harm to stability, peace and reputation in Kurdistan and should be a crime under law No. 21/2003?

[19] Ibid, articles 175 and 63/B

- The court has not explained when would collecting and sharing information become crime in the context of the first article of the law No.21/2003 and when would such acts need to be treated under freedom of expression or free press?
- Why did the court directly make the assumption that 17th Shwbat online page is an external actor or entity and publishing human rights-related information on that page is harming security and peace in Kurdistan? Did publishing the human rights reports on 17th Shwbat page cause any damage to Kurdistan national security or stability? The detainees' lawyers indicate that 17th Shwbat is only a page, managed by some members of the Kurdish community in Europe and they are running the page in a legal way. Their main mission is monitoring human rights and governance in Kurdistan through preparing and publishing reports, news and information.
- Another unanswered question by the court is related to giving information on human rights situation to the international NGOs or professional syndicates of other countries interesting in human rights. Why and how this can be a crime is not clarified by the court? How can exchanging information with international NGOs be treated as espionage while the NGOs are legally working in Kurdistan and most government institutions, the media and various groups deal with them and share information with them for preparing reports and conducting their activities in Kurdistan? these be accounted as spying? When are these acts of spying and when can they be works of journalism, civil and organizational acts? When does relationship with those international NGOs and other international groups become a crime of espionage and when it doesn't?
- How did the court depend on Sherwan Sherwani's confession or admission while he strongly pleaded not guilty in the courtroom and stated that he was forced to admit the charge during the investigation? His lawyers also rejected the charges and point out that "even the forced confession does not constitute a crime because Sherwan Sherwani is a journalist and all what he has done was part of his regular work." They argue there is no evidence. All what the court had was a forced confession backed by no further compelling evidence.
- On what evidence did the court decide on criminal participation among the five defendants? As the lawyers indicated there is no evidence on any agreement among the defendants for committing any crime, they have not planned any particular criminal activity, and there is no participation or contribution from the other four detainees to the charge against Sherwan Sherwani. The court should have been more careful about the participation or contribution component of the case.
- Finally, why was taking pictures of certain public places considered crime in the context of this case? How this can be justified under article one of the Law No.21/2003? Generally, taking pictures of anywhere is not illegal if there is no sign stating taking pictures is prohibited. Even if a photo is taken of those places, it is not treated as a serious crime under Law No.21/2003, but rather, it is a simple violation of a specific rule, regulation or order issued by local authorities, city councils or specific agencies. Violating such orders or regulations is generally dealt with according to article 240 of the penal code, stating "Any person who contravenes an order issued by a public official or agent, municipal council or official or semiofficial body in accordance with their legal authority or who disobeys an

order issued by those entities in accordance with their legal authorities is punishable by a period of detention not exceeding 6 months or by a fine…"[20]

16. Taking statements from the Security Council of Kurdistan as a claimant in the case is setting an unprecedented judicial practice that would undermine justice. The security agencies and the police are supposed to play a neutral investigative role in criminal cases, not taking sides and becoming complainant against the defendants. In general, Public prosecution agency should represent the public interests and rights in the criminal cases, not investigative agencies such as Asaeesh or the police. It is a dangerous change in the judicial system. As a matter of principle and to avoid conflicts of interests, the investigative agencies should not also be an adversary in the criminal cases.
17. Similarly, the court has given the Security council a right to pursue civil dagames and compensations from the defendants. This is again another diversion of the way these investigative agencies are typically perceived in the judicial system.
18. Some of the information and documents used against the defendants were extracted from their mobile phones, cameras and computers which are part of their private personal belongings. The court should have asked how the Security Council of Kurdistan was able to obtain the passwords of those devices. If they were forced to open the devices, how can investigative agencies force defendants to provide passwords and information protected in their minds? What are the limits of such coercion? Why didn't the court examine how the information and documents were extracted from the defendants? Unfortunately, the court has not been successful in addressed those significant questions in the courtroom.

- **Conclusion**

After analyzing both procedural and substantive aspects of the judgement, assessing the available information and evidences, and observing how the proceedings of the trial took place during the trial and how the decision was made based on the law No. 21/2003, it can be concluded that the initial charge lacks clear legal basis; investigative procedures were seriously flawed and consistent with the standard rules; the proceedings and deliberations in the courtroom were far from the standards required for criminal cases. It was quick, the witnesses were not called for cross-examination, the evidences were not authenticated by relevant technical examiners, the requests of the defendants were all disregarded, claims of torture and forced confessions were also not taken seriously by the court, and some important rights of the defendants were violated throughout the process. We hereby request that the notes outlined in this report be taken into account in the review of the case by the Court of Cassation.

- **List of violations against the defendants**

Not taking statements from the defendants within 24 hours of their arrest
Taking statements, confessions and admissions from the defendants without presence of their lawyers
Not having access to legal assistance from the beginning
Not allowing necessary and regular communication with lawyers throughout investigation process
Not allowing the lawyers to have access to and examine the dossier of the case
Getting forced admission and confession from defendants under threat and coercion

[20] Penal Code No.111 / 1969, Article 240.

Torture, inhumane treatment and threat to inflict harm on them and their families
Depriving the defendants from seeing their families throughout the investigation stage which lasted many months
Not providing the defendants with the right to self-defence as most requests and concerns of the defendants were disregarded
Not examining all the evidences, information and documents thoroughly to find truth
Not recording significant parts of the deliberation of the proceedings in the casefile, especially those related to witnesses, defendants' claims, confession rejections, torture allegations, referring the evidences to technical examiners.
Not calling the witnesses for cross-examination and further deliberations
Not allowing sufficient time to a comprehensive examination of the evidences, authenticity of the documents, and adversarial deliberations
Video recording part of the investigation and forced confessions of the defendants and broadcasting-publishing- it on major tv and online.