



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

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REPORT ON BAR HUMAN RIGHTS COMMITTEE HEARING OBSERVATION:

TURKEY

A report on a pre-trial hearing in the case of 46 Turkish lawyers, Istanbul Heavy Penal Court, Koaeli prison, Silivri

28th March 2013

This observation report is of the fourth interim hearing in the trial of 46 lawyers who were arrested in November 2011 and accused of transmitting the orders of Abdullah Ocalan to Kurdish militants; thus they are accused of forming the leadership committee of an illegal organization. This trial is linked to a series of trials in Turkey because of which many hundreds of Kurdish activists are in pre-trial detention. Human Rights Watch estimates that several thousand Kurdish activists, who the government claim are members of the Koma Civaken Kurdistan (KCK)¹, have now been arrested and are on trial accused of terrorist related activities. The 46 lawyers all deny the charges. This report should be read in conjunction with the previous report of 3rd January 2013², which concluded that the trial was of a highly political nature and that the procedural irregularities may lead to breaches of internationally recognised fair trial standards and principles on the role of lawyers.

ACKNOWLEDGMENTS

The observation and reporting was undertaken by Melanie Gingell on behalf of the Bar Human Rights Committee of England and Wales (BHRC). The report was edited by Jodie Blackstock, Barrister at JUSTICE, and Illari Aragón, BHRC project coordinator. Responsibility for the content of this report, and the views expressed within, lies solely with the Bar Human Rights Committee.

She was assisted during her visit by the members of the Istanbul Bar Association, provided me with background material and provided translation of the main points of the hearing.

¹ Union of Communities in Kurdistan or KCK, an organization designated as illegal in Turkey.

² Available at

http://www.barhumanrights.org.uk/sites/default/files/documents/news/report_on_bhrc_hearing_observation_-_turkey.pdf

THE BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES

The Bar Human Rights Committee of England and Wales ('BHRC') is the international human rights arm of the Bar of England and Wales. It is an independent body concerned with protecting the rights of advocates, judges and human rights defenders around the world. The Committee is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial.

The remit of BHRC extends to all countries of the world, apart from its own jurisdiction of England & Wales. This reflects the Committee's need to maintain its role as an independent but legally qualified observer, critic and advisor, with internationally accepted rule of law principles at the heart of its agenda.

INTRODUCTION

Since the last hearing there have been significant changes, both positive and negative, in the political context of the hearings. The most striking of these changes is that the PKK and the Turkish government have been engaged in peace talks, which seem to be gaining momentum. Furthermore, a new law has been introduced which allows the defendants to conduct their defence in Kurdish. These matters provide great cause for optimism in that a more favourable political background seems to hold the potential to alleviate at least some of the concerns about the unfairness of the proceedings.

Despite this apparently positive atmosphere, however, as we set out in the previous report, and BHRC press release³, fifteen more lawyers were arrested in January, nine of whom had been representing defendants in the present trial. They have, like the 46 defendants, been charged with membership of an illegal organisation, though this time the DHKPC.

In the Criminal Court of Ankara on 24th January 2013 four lawyers were sentenced to imprisonment for between six and eight years for membership of terrorist organisations.

1. Peace talks

Turkey now finds itself presented with an unprecedented opportunity to reach a peaceful and mutually acceptable negotiated settlement to the Kurdish question. Peace talks, which were tentatively restarted in October last year, appear to have gained momentum when Abdullah Ocalan, the leader of the PKK⁴ issued a statement from prison on 21st March, the Kurdish New Year, calling for a cease fire between the PKK and the Turkish state. It stated: "the weapons should fall silent and politicians and ideas should speak." Some reports in the press say that an outline plan for the talks has been agreed. It is possible that part of the plan will involve the release of some of the defendants in the so-called KCK trials. A new law has been proposed in parliament that will amend articles in the penal code that criminalise free speech as incitement to terrorism. This would result in the release of approximately 300-400 of the detainees. However, it will not apply to the defendant lawyers as they are charged with membership of terrorist organisations. It has been reported however that the plight of the lawyer defendants is being discussed within the process.⁵

³ Available at http://www.barhumanrights.org.uk/sites/default/files/documents/news/bhrc_statement_on_the_arrest_of_turkish_lawyers_0.pdf

⁴ Kurdish Workers' Party.

⁵ International Crisis Group. 13th March 2013. *The Kurdish Movement and the Peace talks with Turkey*. Didem A. Collingsworth.

2. The right to speak Kurdish in court

New law number 6411 came into force on 24th February 2013⁶, which allows defendants to conduct themselves in the language they are most comfortable speaking. This enables the defendants in the current trial to defend themselves in Kurdish. This was one of their central submissions at the previous hearings. Thus international observers witnessed a momentous occasion unfold at the hearing on 28th March as the defendants addressed the court in Kurdish. One defendant said: “For a hundred years I have been waiting for this day. For the first time I can express myself in a court room in my mother tongue.”

The right to speak Kurdish is a restricted one however and the defendants have to provide and pay for their own interpreters.⁷ The demand for education in Kurdish remains a central concern for the community and forms one of the main limbs of the dialogue between the government and the PKK.

3. More lawyers arrested and sentenced

On 18th January 2013 fifteen lawyers were arrested in coordinated police operations in seven Turkish cities.

Twelve of these lawyers are members of the Progressive Lawyers Association and included the branch head and several executive members. All of them are known for their work on human rights issues. According to members of the Istanbul Bar, the arrests were violent and intimate DNA samples were taken by force. Two of them were abroad at the time of the initial arrests but returned to Turkey on hearing of the warrants. These further arrests increase concerns of the BHRC and other international organisations that a systematic, wide scale use of judicial proceedings is being utilised by the Turkish authorities to repress and intimidate lawyers involved in politically sensitive cases. This practice undermines the right to representation and constitutes a serious violation of the rule of law.

Furthermore, the President of the Istanbul Bar Association and nine board members also had a lawsuit filed against them at the end of January for refusing to appoint replacement defence lawyers when those appointed left the court in protest at not being able to making submissions, during a hearing in April 2012 in the so called “Sledgehammer” Case. The President made representations about the role of the lawyer and importance of the defence. The presiding judge allowed the submissions to be made, but immediately afterwards the prosecutor sought charges to be filed. The charges concern interfering with the fairness of the proceedings, contrary to article 288 of the Turkish Code of Criminal Procedure.⁸

THE HEARING

The hearing again took place in the Istanbul Heavy Penal Court, a court specially constituted to hear cases under terrorist legislation. The panel of three judges was the same as in the previous hearings. The court convenes at Koaeli Prison in Silivri approximately an hour and half from Istanbul.

The lawyers are charged with terrorist offences, arising out of their work as legal representatives of Abdullah Öcalan, the leader of the PKK, pursuant to sections 314/1 and 314/2 of the Turkish Code of Criminal Procedure:

(1) Persons who found or run a military (armed) organisation in order to commit the offences in parts 4 and 5 of this chapter shall receive sentences of 10 to 15 years in prison.

(2) Persons who are members of the organisations described in subsection 1 shall receive sentences of 5 to 10 years in prison.

⁶ Amending article 212(4) of the Code of Criminal Procedure

⁷ Where a person cannot speak Turkish, the state will pay for an interpreter.

⁸ See Press release, Istanbul Bar Association, 7.02.13, available at http://www.istanbulbarosu.org.tr/Detail_EN.asp?CatID=57&SubCatID=1&ID=7755

Offences under parts 4 and 5 are offences against national security, which include being members of terrorist groups.

The indictment contains not only the charges but also the evidence upon which the prosecution relies. It shows that the case against each defendant is essentially the same: they are accused of communicating information and direction” from Mr Öcalan to members of illegal organisations. The information the defendants had gathered from Mr Öcalan during legal conferences with him is said to have enabled them to progress the “strategy and management” of such organisations.

The evidence consists of information gathered through telephone intercepts, searches of office and personal accommodation, and analysis of media interviews and publications by the defendants. Their computer hard drives, amongst other items, were confiscated and examined, as were their physical case files.

The purpose of this hearing was for the defendants to address the court. It was only listed for one day and therefore it was impossible for all 46 to have this opportunity. An application to extend the hearing was rejected.

The first submission was for permission to address the court in Kurdish in line with the new law. This was granted and five interpreters then entered the court. The defendants were called to address the court. The first stated that she would only defend herself when all of her colleagues were granted bail as she had been. The hearing continued with a series of statements by twenty of the defendants focusing on the following themes:

1. They are being prosecuted for activities which come within the scope of their professional duties. They are being identified with their client, Abdullah Öcalan, and criminalised for representing him. One defendant lawyer said: *“By this case you reject our identities as lawyers and you call us terrorists. Lawyers are being arrested for having a client. You are criminalising our duty. This is a failure of democracy. You ask why are we representing Öcalan? We have a right to do that. We represent other clients as well; we work for human rights organisations. I have to visit prisons as part of my duty. İmralı is just one of those prisons.⁹ We are here for talking to Öcalan. Now the government is passing the words of Öcalan to the press.¹⁰ You cannot say they are not doing the same thing.”*
2. There were very strong and directed criticisms of the judge for his perceived lack of independence. One defendant said: *“I see no point in defending myself before you. You are part of the government machinery you are not here for justice. We are here as hostages in a political process.”*
3. There were criticisms that three of the defendants had already been acquitted of charges drawn from the same evidence as is now presented against them, against the principle of *ne bis in idem*. Several defendants said that they had represented Öcalan for many years but that it was only now that they are being prosecuted as part of this large-scale pattern of arrest. One lawyer had represented Öcalan in a European Court of Human Rights case but had never actually met him.
4. Most of the defendants began their submissions by protesting about the further arrest of the fifteen lawyers in January.
5. Numerous criticisms were made that legitimate speeches and articles written by the defendants were now being used as evidence against them in breach of their right to freedom of speech. In one case the prosecution was even relying on an article written by a defendant’s relative as evidence against him.

⁹ The island prison where Öcalan is imprisoned.

¹⁰ As part of the peace process.

The Bar Human Rights Committee notes that the procedural irregularities recorded at the previous hearings remain unaddressed. The main concerns then were and continue to be of prolonged pre-trial detention, lack of equality of arms, lack of access in the early stages to the prosecution evidence, the legality of the methods of obtaining prosecution evidence and the insufficient independence and impartiality of the tribunal. These irregularities may lead to breaches of Turkey's international obligations to ensure a fair trial for the defendants under Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 6 of the European Convention on Human Rights (ECHR).

Furthermore, the identification of the lawyers with their clients' alleged offences and the interference with their professional duties continue to risk violation of principles 16, 18 and 22 of the United Nations Basic Principles on the Role of Lawyers.¹¹

To date, the trial has been heard at a rate of approximately one day bi-monthly. The next hearing will not be until 20th June, almost three months since the last one. It is not known when or at what rate further hearings will take place. Where defendants are held in custody pending the determination of a criminal charge they are entitled to special diligence on the part of the competent authorities. In consequence, states must organise their legal systems in such a way that their courts can meet the requirement to ensure a trial within a reasonable time.¹² Twenty-four of the defendants have been in custody for seventeen months, they have been denied bail without a reasoned decision and further no timetable has been set out for the future management of the trial. In these circumstances the periods of inactivity and lack of clarity about the trial's progress suggest that the obligation to proceed with expedition, pursuant to article 9.3 and 14(2)(c) ICCPR and article 6(1) ECHR is being violated.

At one point during the hearing the Presiding Judge replied to a defendant that he would consider his points when he came to sentence him. This comment exposed the Judge's assumption that the defendants are guilty or that his hands are tied in relation to the verdict. In either case it reveals a further serious violation of the presumption of innocence and the right to a fair trial.

At the end of the hearing four further defendants were released on bail leaving 24 still in custody.

The trial resumes on 20th June 2013.

The BHRC remains deeply concerned that this process is overtly political in nature and that without significant review and commitment to an independent judicial inquiry into the charges, the trial process will result in multiple unfair convictions.

¹¹ For full details see report of 3rd January hearing. See [here](#)

¹² *Abdoella v The Netherlands* 20 EHRR 585 p 24, *X v France* (1992)14 EHRR 483p32, *Tomasi v France* 15 EHRR 1 p 84