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*Re: Re-trial of Leyla Zana and three other Kurdish former
Parliamentarians at Ankara State Security Court*

Dear Sir,

As you are aware from our past correspondence, the Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) is closely monitoring the re-trial of Leyla Zana and three other Kurdish former Parliamentarians before the Ankara State Security Court. The ICJ/CIJL observed the hearings that took place on 23 May, 20 June, 18 July, 15 August, and 15 September and sent you its reports of these hearings.

We also observed the latest hearing which took place on 17 October. Accordingly, we would like to draw your attention to several serious shortcomings relating to the unequal treatment of the prosecution and the defense, the lack of independence of the tribunal, and serious allegations that appear to link the release of the defendants to the identification of KADEK as a terrorist organization by the European Union. Our specific concerns are as follows:

1) Examination of Witnesses

We found that the judge's decision to refuse to allow Ahmet Turk to testify as a witness violated the defendants' rights to a fair trial in that the defense was prevented from securing the attendance and examination of an important witness under the same conditions as witnesses against them. It was said that it would be wrong for Mr. Turk to give evidence since he had originally been a defendant in the initial trial in 1994, however, there is no provision in national legislation which support's the judge's ruling.

Moreover, the reason given for disallowing the testimony of Mr. Turk appears to be deficient, given that several witnesses on whom the prosecution relied are convicted felons who are serving terms of imprisonment. We therefore believe that the Court has again placed the defense in a procedurally inferior position vis-à-vis the prosecution.

2) Cross-examination of Prosecution Witness

We are gravely concerned that the defense was denied a chance to cross-examine a prosecution witness, Edjer Pagal, who through written testimony alleged that he had seen Leyla Zana conversing with Abdullah Ocalan at a PKK camp. This witness's written testimony also indicated that it was not possible for him to be recognized as he had undergone plastic surgery to alter his appearance. Given the seriousness of these allegations and concerns related to the reliability of this witness, it was incumbent upon the Court to produce the witness for cross-examination. However, the Court did not take any steps to ensure that the defense was afforded an opportunity for cross-examination. As such, the witness remains anonymous and his written statement regarding serious allegations remains unchallenged. Thus, deep concerns about the handling of this evidence remain and significantly detract from the actual and perceived fairness of the proceedings.

3) Trial by an Independent and Impartial Tribunal

We are worried by reports that the independence of the judges may have been compromised by external executive pressure. In between the hearings of the re-trial in October and November, it was widely reported in Turkish newspapers such as Hurriyet and Radika, that a Turkish government official had allegedly stated that if the European Union were to proscribe KADEK as a terrorist organisation, then the "DEP trial (i.e., the present trial) may take a different course." Although the source of this remark remains unidentified, the ICJ/CIJL is deeply concerned that the current re-trial may be susceptible to executive influence which is motivated, in turn, by political considerations unconnected with the issues of this trial.

4) Defendants' right to Liberty and Security

We remain deeply concerned regarding the continued detention of the defendants in violation of their rights to liberty and security. The fact that the present re-trial is to remedy the defects identified by the European Court of Human Rights in the 1994 trial, the lack of a rationale for refusing to release the defendants, as well as the fact that the defendants have been in detention for 9 years, indicate that the defendants' rights to liberty and security have not been respected.

We thus strongly urge your Government to ensure that these defects are remedied and that the defendants' rights to a fair trial and to liberty and security are protected, pursuant to Turkey's international obligations.

Please accept the assurances of my highest consideration.

Yours sincerely,

Ernst Lueber
Acting Secretary-General

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