



INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

" dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights "

23 December 2003

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Minister of Justice
Ministry of Justice
Adalet Bakanal - 2
06659 Ankara, Turkey

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Prof. U. Oji UMOZURIKE, Nigeria
Prof. Vilenas VADAPALAS, Lithuania
Prof. Theo VAN BOVEN, Netherlands
Dr. José ZALAQUETT, Chile

Fax: + 90 312 417 3954 or 418 5667

Re: The trial of the President of the Bar Association of Diyarbakir and three other lawyers

Dear Sir,

The International Commission of Jurists (ICJ) consists of jurists who represent all the regions and legal systems in the world working to uphold the rule of law and the legal protection of human rights. The ICJ's Centre for the Independence of Judges and Lawyers (CIJL) is dedicated to promoting the independence of judges and lawyers throughout the world.

As you may be aware, the ICJ/CIJL monitored the trial of Sezgin Tanrikulu, the President of the Diyarbakir Bar Association and three other lawyers, Sabahattin Korkmaz, Burhan Deyar and Habibe Deyar. The defendants were charged with "*professional misconduct*" pursuant to Article 240 of the Turkish Penal Code for having represented a group of villagers who sought compensation from State authorities for the destruction of their homes in the villages of Caglayan, Lice Zirayet and Ulucoka in South-East Turkey by Security Forces in 1994.

The ICJ/CIJL is deeply concerned that the charge of "*professional misconduct*," which constitutes a serious offence punishable by imprisonment, a heavy fine and dismissal from public service, was brought to punish the above lawyers for representing the evicted villagers.

In the present context, the charge constitutes an outright attack on the lawyers in violation of the *UN Basic Principles on the Role of Lawyers* which state that,

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or

improper interference; (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

We are furthermore deeply concerned at the role of the gendarmerie throughout the proceedings against the lawyers. The gendarmerie filed the original complaint against the lawyers yet was tasked by the Prosecutor's office and the Ministry of Justice to conduct the pre-trial investigation including taking statements from potential witnesses, several of whom were reportedly heavily coerced into making false statements against the defendants. The dual role of the gendarmerie as both complainant and investigator in the same case creates a conflict of interest and strengthens the perception that the prosecution was politically motivated.

The ICJ/CIJL urges that all pending prosecutions against lawyers be reviewed at the highest level of the appropriate prosecuting authority which should consider (i) the adequacy of evidence favouring conviction; (ii) the extent to which, despite a formal sufficiency of evidence, there is any real prospect of conviction; and (iii) whether the criminal proceedings could be said to violate the UN Basic Principles on the Role of Lawyers and other international human rights standards.

Rather than prosecuting lawyers in criminal proceedings in relation to alleged professional misconduct, the ICJ/CIJL believes that wherever possible, state authorities should resort to civil or administrative proceedings. Where resort to civil or administrative proceedings would not provide an adequate remedy, the criminal prosecution of lawyers in respect of their professional activities should only occur where (i) there is evidence that is both clear and credible; and (ii) the alleged wrongdoing involves some serious impediment to the administration of justice.

The ICJ/CIJL urges the Turkish Government to end its practice of persecuting lawyers and human rights defenders and respect its international obligations to abide by the provisions the above-cited UN Principles, the European Convention on Human Rights and the International Covenant on Civil and Political Rights. □

Please accept the assurances of my highest consideration.

Yours sincerely,

Ernst Lueber
Acting Secretary-General

cc: H.E. Ambassador Türkekul Kurttekin
Permanent Mission of Turkey to the United Nations
Chemin du Petit-Saconnex 28b
Case Postale 271
1211 Genève 19

022 734 08 59

cc: Mr. Abdullah Gul
Minister of Foreign Affairs
Foreign Ministry
Balgat
06520 Ankara, Turkey

+ 90 312 287 8811

cc: Mr. Ertugrul Yalcinbayir
State Minister for Human Rights
Office of the Prime Minister
Baöbakanl2K
06573 Ankara, Turkey

+ 90 312 417 04 76

cc: Mr. Mehmet Elkalimifh
President of the Parliamentary
Human Rights Commission
Insan Haklari Inceleme Komisyonu Baskani
Türkiye Büyük Millet Meclisi
Ankara, Turkey

+ 90 312 420 5394

Mr. Brlent Arinc
Head of Parliament
Turkish Grand National Assembly
Bakanlialar
06543 Ankara, Turkey

+ 90 312 420 5165