



# 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 "*

6 February 2004

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

Dear Sir,

As you are aware, the Centre for the Independence of Judges and Lawyers of the International Commission of Jurists (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.

Although we are satisfied that the defendants were acquitted on 24 December 2004, we are very concerned, as expressed in our earlier letters and reports on this trial, that the charge was brought at all, given the lack of sufficient evidentiary basis. Please see attached the report on the last hearing.

We believe that, in reality, the charge against the lawyers was brought to punish them for representing evicted villagers. This charge thus constituted an outright attack on 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.*

Moreover, we reiterate our concern about 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 of 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

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