

FINAL REPORT ON

**The Trial of the
President of the Bar Association
and Three Other Lawyers**

Diyarbakir, Turkey

Diyarbakir Heavy Penal Court No. 1

24 December 2003

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I. Executive Summary

This is the final report of the trial of Sezgin Tanrikulu, the President of the Diyarbakir Bar Association and three other lawyers, Sabahattin Korkmaz, Burhan Deyar and Habibe Deyar, which was concluded on 24 December 2003. The defendants previously appeared before the Diyarbakir Heavy Penal Court No 1 on 17 October and 5 December 2003, charged with “*professional misconduct*” pursuant to Article 240 of the Turkish Penal Code.¹ The defendants had represented villagers seeking compensation from State authorities for destruction of their homes in South-East Turkey by Security Forces in 1994 during the conflict between the Kurdish Workers’ Party and the Turkish Government forces.

The Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) appointed trial observers on 17 October and 5 December to monitor proceedings. This report should therefore be read in conjunction with the ICJ/CIJL report of the hearings on 17 October and 5 December (the Previous Report).² This report will not repeat details regarding charges, prosecution and defence cases, concerns relating to the first two hearings and background, which have been dealt with by the Previous Report.

The Observer, Ms Nusrat Chagtai, solicitor of England and Wales monitored the hearing on 5 December and was appointed again to monitor and report on the final hearing on 24 December. The Observer attended the hearing, had a brief meeting with the Prosecutor and also the opportunity to speak again with the defendants and defence counsel.

The ICJ/CIJL is satisfied that the defendants were acquitted on 24 December and welcomes some developments in the way proceedings were conducted to meet international fair trial standards. In particular, no whispering conversations took place between the Prosecutor and the judge sitting beside him during the hearing, as had occurred previously on 5 December, which undermined the appearance of impartiality of the Court and the independence of the judges from the prosecution. In addition, the ICJ/CIJL is satisfied that during the hearing on 24 December, as in previous hearings, the defence were able to hear legal arguments and testimonies of witnesses in full, to participate in the proceedings and both defence counsel and defendants were given the opportunity to make or read out statements. A copy of one of the defence counsel’s written arguments was handed to the Court for submission in the record. No limitations were placed on public attendance at the hearing, nor on the number of defence counsel.

However, although it was observed that the hearing was conducted largely in accordance with international fair trial standards, an analysis of the fairness of proceedings must extend beyond the courtroom to the context within which the criminal charges arose. The ICJ/CIJL remains concerned that the charge against the four lawyers, which lacked sufficient evidential basis, was brought at all and had been pending for almost ten months, since the court file was opened on 7 March 2003. The ICJ/CIJL considers that the charge amounted to harassment and

¹ A serious offence punishable by imprisonment, a heavy fine and dismissal from public service. The Bar Association has no jurisdiction over this charge.

² ICJ/CIJL Report on the Trial of the President of the Bar Association and three other lawyers, Diyarbakir, Turkey, December 2003.

intimidation of Turkish lawyers performing their functions in representing Kurdish villagers seeking compensation for destruction of their homes.

The ICJ/CIJL is also concerned that the criminal proceedings against the defendants appear to have been brought for political purposes. Firstly, they were brought without any investigation into the claim for compensation, which the defendants made on behalf of their clients for destruction of their homes, notwithstanding the background of village destructions by Turkish security forces in South-East Turkey which has displaced approximately 400,000 villagers since 1984.³ This pattern of violation has been corroborated by judgments of the European Court of Human Rights (ECtHR) in numerous cases involving the destruction of villages.⁴ Despite this background, criminal proceedings were launched against the defendants without any investigation into the petitions they presented to obtain compensation for victims of human rights abuses. Secondly and with this context in mind, proceedings were launched based on insufficient evidence which came out during proceedings as early as the first hearing and led to the prosecution requesting an acquittal on 24 December. These factors combined suggest politically motivated charges.

Furthermore, in addition to concerns raised in the Previous Report regarding the right to be tried by an independent and impartial tribunal and the right to be presumed innocent, further concerns are raised here. In particular, the right given to the Prosecution to have submissions recorded directly by the Court whereas a summary of Defence submissions by the Presiding Judge is entered into the Court record, undermines the principle of "equality of arms." Moreover, as had been predicted during the hearing on 5 December, the Gendarme Commander did not attend court on 24 December as invited to do so by the Presiding Judge on the 5th. The Gendarme Commander is both the complainant and the investigator in this case. The invitation therefore simply prolonged proceedings, as set out in the Previous Report.⁵ The final hearing reinforces the ICJ/CIJL's concern that proceedings which should never have been brought were unnecessarily prolonged and served to hinder the defendant lawyers from performing their functions.

The ICJ/CIJL further remains extremely concerned about the defendants' right to be presumed innocent which has been undermined in this trial. The previous hearings made it apparent that there was a lack of prosecution evidence and yet proceedings continued, shifting the burden of proof to the defendants.

The ICJ/CIJL reminds the Turkish Government of its international obligations to allow lawyers to perform their professional functions without intimidation,

³ Turkey, Human Rights and the European Union, Accession Partnership, September 2000, Vol. 12, No. 10 (D), Human Rights Watch.

⁴ ECtHR: *Akdivar v Turkey* (Application No 00021893/93) 16 September 1996, *Mentes v Turkey* (Application No 00023186/94) 28 November 1997, *Selcuk v Turkey* (Application No 00023184/94) 24 April 1998, *Asker v Turkey* (Application 00023185) 24 April 1998, *Bilgin v Turkey* (Application No 00023819/94) 16 November 2000, *Dulas v Turkey* (Application No 00025801/94) 30 January 2001, *Orhan v Turkey* (Application No 00025656/94) 18 June 2002, *Akdeniz v Turkey* (Application No 0002395/94) 31 May 2001, *Kurt v Turkey* (Application No 00024276/94) 25 May 1998.

⁵ Page 9 of the Previous Report.

hindrance, harassment or prosecution, not to identify lawyers with their clients' causes⁶ and to respect and ensure the rights of defendants before and during trials.

II. The Trial

Details of the charges against the defendants, applicable laws, and the nature of the prosecution and defence cases have been dealt with in the Previous Report. The role of prosecution and defence counsel was also analysed. However, on 24 December, the Observer met with the Prosecutor, and additional information is therefore available on the role of the Prosecution.

1. The Role of the prosecution and defence counsels

The Previous Report addressed some of the problems faced by prosecutors in Turkey, in particular, the lack of supervision exercised over investigations conducted by the gendarmerie due to heavy caseloads and limited resources.⁷ This concern is confirmed by the Observer's meeting with the Prosecutor. The Prosecutor informed the Observer that authority for investigations must be obtained from the Ministry of Justice.⁸ Once this authority is obtained, the initial investigation is conducted by the gendarmerie and the dossier is then handed over to the prosecution who may then continue with further investigations but often fail to do so due to the heavy volume of their work. Investigations therefore continue *indirectly* through the gendarmerie under supervision of the Prosecutor. The Prosecutor informed the Observer that annually, he has approximately 3000 dossiers to deal with, which he explained as one of the reasons for the inefficiency of direct investigations by prosecutors. Once investigations are completed, further authorisation to continue with proceedings is required from the Ministry of Justice and the prosecution is responsible for presenting the information upon which authorisation is to be based. However, due to the heavy caseload facing prosecutors, reliance at this stage is still placed upon the gendarmerie.

The reliance by prosecutors on the gendarmerie is of great concern in relation to the pre-trial period. It undermines independent investigations and leaves the gendarmerie to investigate matters, which often may even relate to complaints against themselves. The practical constraints faced by prosecutors, further undermines independent prosecutorial supervision. It therefore appears that in practice, there is no efficient impartial and independent means of filtering out false or contradictory evidence that may be used as the basis for criminal proceedings. For example, in these proceedings, one prosecution witness required psychiatric treatment due to depression following signs of coercion in giving a pre-trial statement and prosecution witnesses contradicted their statements, ultimately testifying in line with defence witnesses.⁹ When this was put to the Prosecutor on 24 December, he stated that unfortunately there was no independent judicial

⁶Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana in 1990, and welcomed by the General Assembly in Resolution 45/121 of Dec. 14, 1990. G.A. Res. 45/121, 45th Sess.

⁷ pages 7-8 of the Previous Report.

⁸ Please see details of obtaining authority for investigations and proceedings from the Ministry of Justice set out at pages 4 -5 of the Previous Report.

⁹ page 5 of Previous Report, where concerns are raised regarding a politically motivated prosecution rather than one that is based on evidence. Prosecution witnesses were heard on 17 October 2003.

investigation mechanism to replace the gendarmerie and direct investigations by prosecution were mostly impossible due to lack of resources and heavy caseloads. In cases, particularly such as the present, where the gendarmerie is complainant and investigator, lack of proper independent supervision of investigations or direct independent prosecutorial investigations, is of great concern as this deficiency leaves room for biased investigations and the possibility of political influence.¹⁰

In addition, when asked by the Observer why proceedings were brought despite the lack of evidence which ultimately led to the Prosecutor requesting an acquittal, the Prosecutor replied that the Ministry of Justice had authorised the investigations and proceedings and that if there was any contradictory evidence, this would come out. During the course of the trial. The ICJ/CIJL understands that prosecutors in Turkey lack resources and may be overworked but is concerned that the Prosecutor did not at least respect the role of the prosecution in ensuring that contradictory or false evidence is not used as a basis for criminal charges. The ICJ/CIJL draws the authorities' attention to the UN Guidelines on the Role of Prosecutors, in particular, paragraphs 11 and 14.¹¹

11. *Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.*
14. *Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.*

Furthermore, the Prosecutor advised the Observer that normally in proceedings, the complainant can withdraw their complaint at any stage of the investigations but that this procedure does not apply to the offence of "professional misconduct" under Article 240 because this is a public offence. The ICJ/CIJL therefore stresses that the need for effective independent supervision of investigations in such cases is even more important because once made, the complaint cannot be withdrawn.

Regarding the defence, on 24 December, the defendants were represented by almost 40 defence counsel in Court. The lead defence counsel stated to the Observer that they had been given full access to the court file. There was no complaint that defence counsel had been denied full access to appropriate information, files and necessary documents.

2. Violation of the Principle of "Equality of Arms"

The Observer is concerned that the principle of "equality of arms" was not fully respected during proceedings in so far as the prosecutor's submissions on 24

¹⁰ Ibid.

¹¹ Guidelines on the Role of Prosecutors, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 189 (1990).

December were entered directly into the court record in his own words, whilst a summary of defence lawyers' and defendants' submissions by the Presiding Judge was recorded. The Observer considers that this procedure, which is common to all criminal trials in Turkey, fails to comply with the principle of "equality of arms" in so far as it places the defence at a disadvantage.

The Observer is concerned that the procedure for recording defence submissions in Turkey potentially fails defendants in three key respects. Firstly, during the course of the trial, it risks creating the impression that defence submissions are not as important as those made by the prosecutor. Secondly, it may prevent defendants from arguing on appeal matters advanced on their behalf during the course of their trial. Third, the procedure as presently followed could be said to deprive appellate courts, whose role is to scrutinise the fairness of trial proceedings, of a completely accurate record of the proceedings in the lower court. In the opinion of the Observer, these matters serve to place the defence at a disadvantage vis-à-vis the prosecution during the course of criminal proceedings in Turkey.

However, in the hearing observed, defence counsel did not seek to challenge the judge's summaries and when challenges were made, the Presiding Judge corrected his summary.

3. Description of the Proceedings

As in previous hearings in this trial, many members of the bar from most regions of the country attended the hearing in their capacity as defence counsel and also as an act of solidarity toward their colleagues. There was no restriction to public access to the hearing and a full public oral hearing took place.

After formalities, the Presiding Judge stated that the invitation to the Gendarme Commander, as complainant, had been sent out after the hearing on 5 December. However, no one from the Gendarme Commander's office, nor the Commander himself, attended court and nothing further was mentioned about this.

The Court continued to hear seven defence witnesses. When necessary, the Court clerk served as a Turkish-Kurdish interpreter for the witnesses as in previous hearings. Six of the witnesses were from the same family and all seven were from Hadek village in South-East Turkey. The Presiding Judge asked all witnesses to state their name and address, whether they had freely instructed one of the defendants, Mrs Deyar, why they had instructed her and how they were related to the other witnesses.

All witnesses confirmed that they had freely instructed Mrs Deyar because soldiers had burnt their homes on 24 September 1994 and the witnesses needed representation. Each witness also explained how he/she was related to the others.

During proceedings, defence counsel requested that an intern working for the Diyarbakir Bar Association could act as interpreter on the basis that the court clerk, was not interpreting the witnesses' testimonies fully. The Presiding Judge however decided to continue to use the existing interpreter but said that if defence felt at any point that the testimonies were not translated fully, they could object at that point and the matter would be considered. However, no further objections were made regarding translation.

The Presiding Judge recorded all the evidence accurately for the Court record and gave both defence and prosecution an opportunity to correct the record or examine further witnesses.

The Prosecutor invited the Court to acquit the defendants on the basis that there was no evidence of professional misconduct. At least five defence counsel including a representative of the Turkish Union of Bar Associations made final submissions for the defendants. Defence counsel submitted that the defendants should be acquitted not on the basis that there was no evidence but on the basis that there were no grounds to open the case in the first place. They further contended that the main investigation should have been of the village destructions and the case against the defendants would never have been opened if investigations had been conducted. One defence counsel suggested the political motivation behind the criminal proceedings due to the large number of applications that have been made to the ECtHR against Turkey, which have largely been concluded against the State. He therefore contended that the State was searching for a way to stop these applications by allowing a false indictment in the hope of obtaining a favourable judgment from a Turkish Court to use in cases before the ECtHR.

Defence counsel further argued that they wished to make an official complaint against the prosecution under Article 312¹² of the Turkish Penal Code for insulting a group of people (e.g. the defendants) and under Article 240 for “professional misconduct.”

The defendants were given the opportunity to make final submissions. They agreed with their defence counsel. Burhan and Habibe Deyar added that they wished to make an official complaint and would be applying for compensation for moral damages.

4. Judgment

On 24 December, the judges unanimously ruled that the defendants had acted in direction of the statements and demands of their clients by providing petitions to the Governor’s Office and Ministry of Interior. They found, therefore, no grounds for a criminal offence and acquitted the defendants. The judges further held that although some of the defendants and defence lawyers had demanded that an official complaint be made on grounds of Articles 240 and 312, it was not appropriate to accept such a complaint as a separate petition would need to be filed.

The judges decided that the costs of the trial should be borne by the State and the demands of some of the defendants for compensation for moral damages would have to go before another court.

III. Legal Framework

In relation to treaty standards, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is the primary binding regional

¹² Art. 312 includes “incitement to hatred on the basis of class, religion or race” if such incitement endangers the “public order” or “insulting a segment of the population or people’s honor.” The defendant lawyers base their complaint against the prosecution upon the fact that the prosecution and investigations insulted their honour as well as that of the villagers, as a segment of the population.

instrument to have been ratified by Turkey.¹³ Turkey also recently ratified the International Covenant on Civil and Political Rights (ICCPR) but not the First Optional Protocol, which allows for individual petition.¹⁴ Article 90 of the Turkish constitution establishes that international treaties ratified by Government and approved by the Grand National Assembly, have the force of law.

In addition, relevant persuasive non-treaty standards include the Universal Declaration of Human Rights of 1948 (UDHR), UN Basic Principles on the Independence of the Judiciary of 1985¹⁵, the UN Basic Principles on the Role of Lawyers of 1990,¹⁶ and the UN Guidelines on the Role of Prosecutors.¹⁷

In particular, the following Principles of the UN Basic Principles on the Role of Lawyers 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.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a Court, tribunal or other legal or administrative authority.

¹³ Turkey has been a State Party since 1954.

¹⁴ Turkey ratified the ICCPR in June 2003. Turkey also made a reservation to Article 27 relating to minority rights.

¹⁵ Basic Principles on the Independence of the Judiciary, adopted by Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan 1985, endorsed by General Assembly Resolution 40/32 of 29 November 1985 and Resolution 40/146 of 13 December 1985. See G.A. Res. 40/32, UN GAOR, 40th Sess., Supp. No. 53, at 204, UN Doc. A/40/53 (1985); Res. 40/146, UN GAOR, 40th Sess., Supp. No. 53, at 254, UN Doc. A/40/53 (1985).

¹⁶ Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana in 1990, and welcomed by the General Assembly in Resolution 45/121 of Dec. 14, 1990. G.A. Res. 45/121, 45th Sess.

¹⁷ Ibid n 11

IV. Evaluation of Fairness of Proceedings

1. Concerns Relating to Compliance with international fair trial standards

a. The Right to be Tried by an Independent and Impartial Tribunal

The right to a fair trial by an independent and impartial tribunal is so basic that the UN Human Rights Committee, the expert body charged with monitoring the implementation of the ICCPR, has stated that, “*it is an absolute right that may suffer no exception.*”¹⁸ Article 6 (1) of the European Convention on Human Rights guarantees the right to a fair and public hearing by an independent and impartial tribunal established by law. Furthermore, the right to a fair trial before an independent and impartial tribunal requires that “*justice must not only be done, it must also be seen to be done.*”¹⁹ Moreover, the principle of impartiality, which includes actual impartiality and the appearance of impartiality, is fundamental for maintaining respect for the administration of justice.

b. Conduct of the Presiding Judge

The Observer found that in many respects, the Presiding Judge conducted the trial in a professional and objective manner. All parties were given a fair chance to present their views, and to ask questions. As with previous hearings in this trial, the Presiding Judge made detailed summaries of the statements by the defendants, which were then typed by a Court stenographer into the record. The Judge’s summaries were dictated in a loud and clear voice for all persons in the Courtroom to hear and objections were fairly considered.

The concerns raised in the Previous Report will not be repeated, however, some of those concerns are adopted here, in particular, regarding the invitation to the Gendarme commander. As predicted by the defence during the hearing on 5 December, no one from the Gendarme Commander’s office appeared in Court despite the importance placed upon the invitation by the Presiding Judge on 5 December. The ICJ/CIJL reiterates its concerns that that the invitation had been unnecessary and irrelevant, as the Gendarme Commander was not party to the proceedings, and was not affected by the charges brought against the defendants. Such an invitation simply prolonged proceedings.²⁰ The Gendarme Commander’s failure to attend on 24 December and the fact that the Presiding Judge did not mention anything further in this regard, supports the concern that the Presiding Judge had previously placed an unnecessary emphasis on the invitation.

An additional concern is that on 24 December, the Presiding Judge questioned how the witnesses were related to each other. The Observer considers that such questioning was irrelevant to the issue of whether the defendants had misconducted their profession. By asking each of the witnesses how they were related and whether they had all instructed Mrs Deyar together, the Presiding Judge gave the appearance of doubting their credibility. This line of questioning further undermines

¹⁸ *Gonzalez del Rio v. Peru* /263/1987), 28 October 1992, Report of the HRC, vol. II, (A/48/40), 1993, 20.

¹⁹ ECtHR, *DelCourt v. Belgium*, 17 January 1970, 11 Ser.A 17, para. 31.

²⁰ Page 16 of the Previous Report.

the appearance of the judge's impartiality. The ICJ/CIJL reminds the authorities that the principle of impartiality includes the *appearance* of impartiality.

Most importantly, the ICJ/CIJL is concerned about the duration of the trial in general due to the lack of sufficient evidence. There had been six prosecution witnesses, one of whom had been withdrawn due to his traumatised state. Other prosecution witnesses had given evidence which was different from their earlier statements. The most recent statements were in line with the testimonies of defence witness. Therefore, on 17 October, the first hearing in this trial, no evidence had come before the Court of professional misconduct by the defendants. On 24 December, the Prosecutor advised the Observer that once a trial has commenced, only the Court could stop proceedings. The ICJ/CIJL therefore considers that the Presiding Judge should have directed the proceedings to be brought to end due to the lack of prosecution evidence and in light of the presumption of innocence. Instead, the Presiding Judge's decision to prolong the proceedings despite insufficient evidence placed an unnecessary burden on the defence (considered further below). Such conduct further undermines the appearance of impartiality as well as the defendants' right to be presumed innocent.

c. Presumption of innocence

Everyone has the right to be presumed innocent, and treated as innocent, until and unless they are convicted according to law after a fair trial.²¹ In accordance with the presumption of innocence, the rules of evidence and conduct during a trial must ensure that the prosecution bears the burden of proof throughout the proceedings. The ICJ/CIJL reiterates concerns raised in the previous Report.²²

In addition, the ICJ/CIJL is concerned that when asked why the proceedings were initiated despite: 1) the lack of any evidence, and 2) the Prosecutor's request for an acquittal after hearing all defence evidence, the Prosecutor informed the Observer that the burden of proof is not entirely on the prosecution.²³ This is extremely worrying. The ICJ/CIJL considers that the manner in which the proceedings were conducted indicates that *the burden of proof shifted to the defence* during the trial as, despite insufficient prosecution evidence, the defendants were required to proceed to prove their innocence.

V. Conclusions and Recommendations

Any analysis of whether the trial of the defendant lawyers in this case accorded with international fair trial standards must extend beyond examining the fairness of the proceedings in the courtroom to include the context within which the criminal charges arose. Using this approach, the Observer found that the criminal charge against the defendants was motivated by political purposes and should never have arisen. It effectively amounted to a form of harassment of lawyers who had sought to fulfil their roles through representing victims of human rights abuses. This is supported firstly by the record of village destructions in South-East Turkey by the security forces and secondly, by the record of criminal proceedings brought against

²¹ Article 6(2) of the European Convention on Human Rights.

²² Pages 20 – 21 of the Previous Report.

²³ The prosecutor did not explain further and did not cite any law stating at what point the burden shifts from the prosecution to the defense.

lawyers and human rights activists in Turkey, particularly under Article 240 of the Turkish Penal Code.²⁴ Thirdly, it is in this context that the gendarmerie and prosecution failed to investigate the actual petitions presented by the defendants on behalf of Kurdish villagers. Instead, the defendants were charged under Article 240 based on non-independent and partial investigations, which lacked proper independent prosecutorial supervision and were conducted by the gendarmerie who had been both complainant and investigator. Fourthly, it is worrying that the Ministry of Justice authorised the investigations and proceedings to continue and that the Presiding Judge allowed for the proceedings to last for as long as they did considering insufficient prosecution evidence at trial. All these factors raise questions as to the possibility of politically motivated proceedings.

Furthermore, the ICJ/CIJL is concerned that the presumption of innocence was greatly undermined in the current proceedings as the burden of proof shifted to the defence during the trial. Failure by the Presiding Judge to draw proceedings to an end when it was clear that there was insufficient prosecution evidence and allowing the burden of proof to shift to the defence not only undermines the presumption of innocence, but also raises questions regarding the impartiality of the Presiding Judge. The ICJ/CIJL stresses the important role of judges in safeguarding the presumption of innocence.

In addition to the concerns and recommendations raised in the Previous Report, the ICJ/CIJL recommends that Turkey allocate resources to prosecutors in order to allow adequate independent supervision of investigations in accordance with paragraph 11 of the UN Guidelines on the Role of Prosecutors. Alternatively or in addition, as previously expressed by the Government of Turkey, the ICJ/CIJL encourages the establishment of a juridical police force under the direct control of public prosecutors to ensure impartial investigations.²⁵ The ICJ/CIJL reminds the authorities of the important role of prosecutors as *“essential agents of the administration of justice.”*²⁶

The ICJ/CIJL further recommends that equal treatment of both prosecution and defence is guaranteed in the courtroom and practises such as those currently in place which favour the prosecution by allowing for different methods of recording defence and prosecution submissions in court, be abolished. There is no justification for prosecution and defence to be treated differently in this respect.

Moreover, the ICJ/CIJL reiterates the concerns raised in the Previous Report regarding criminal prosecution of lawyers for professional misconduct. The authorities are reminded that lawyers must be able to perform their professional functions without any form of intimidation, hindrance, harassment or improper interference.²⁷

The ICJ/CIJL is extremely concerned that the current proceedings were brought without credible evidence and were allowed to continue for so long. The court file was opened on 7 March 2003 and proceedings were concluded almost 10 months later in a case, which, as the Prosecutor himself stated on 24 December, lacked

²⁴ Pages 24 – 27 (Background) of Previous Report.

²⁵ Page 108, The Independence of Judges and Lawyers in the Republic of Turkey. Report of a Mission, 14 – 12 November 1999, Centre for the Independence of Judges and Lawyers.

²⁶ Paragraph 3, UN Guidelines on the Role of Prosecutors.

²⁷ Principle 16, UN Basic Principles on the Role of Lawyers.

sufficient evidence. Although, therefore, the defendants were acquitted, the proceedings can be seen as nothing more than a form of harassment and intimidation of lawyers who were challenging State practises that had left Kurdish villagers in South-East Turkey without homes. The ICJ/CIJL is appalled that almost 70 defence witnesses were heard during the trial, all of whom were clients of the defendants and confirmed that their homes had been destroyed by the gendarmerie, when proceedings should in fact have been discontinued after prosecution witnesses had been heard which is when it became clear that there had been no case for the defence to answer. The criminal charges and proceedings were therefore harassment of lawyers and ultimately a means of denying justice to victims of serious human rights abuses.

Annex A

1. Appointment of the Observer

The Trial Observer, Ms Nusrat Chagtai, Solicitor of England and Wales, was appointed by the ICJ/CIJL and was charged with reporting directly to the ICJ/CIJL. Ms Chagtai observed the hearing on 24 December 2003. The Observer had also previously attended the last hearing on 5 December 2003 and reported on these proceedings.

The Observer was briefed by the ICJ/CIJL in the way made apparent in this report. This report has been prepared in general reliance upon the Trial Observation Manual prepared by the ICJ/CIJL, which formed part of that briefing. The Observer also had the opportunity to read the Amnesty International Fair Trial Manual.

2. Methodology

The Observer attended the hearing at No. 1 Diyarbakir Heavy Penal Court on 24 December 2003. She was accompanied by an excellent interpreter capable of simultaneous translation.

During this mission to Turkey, the Observer had the opportunity to speak again with the defendants, defence counsel and arranged a meeting with the Prosecutor. The Observer had access to the complete prosecution file and obtained copies of the official court minutes of the hearing as well as copies of other documents in the court file.

This report also includes information from a number of written sources. Among these are various documents, reports, books, etc. from U.N. agencies, news sources, humanitarian NGO's and researchers on Turkey. These sources, where used, are appropriately attributed.

The Observer and the ICJ/CIJL would like to express their gratitude towards all those agencies, organisations and individuals that have contributed to the information presented in this report.