

**REPORT ON THE RE-TRIAL  
OF LEYLA ZANA AND THREE OTHER  
FORMER KURDISH PARLIAMENTARIANS  
AT ANKARA STATE SECURITY COURT  
ON 21 NOVEMBER 2003**

**I. Executive Summary**

The re-trial of Leyla Zana, Selim Sadak, Hatip Dicle and Orhan Dogan, all Kurdish former parliamentary deputies, continued before No.1 Ankara State Security Court on **21 November 2003**. The Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) appointed an observer, Mr. Stuart Kerr, a barrister of England and Wales, to monitor and report on the re-trial.

Leyla Zana and her co-defendants had been convicted on 8 December 1994 by the Ankara State Security Court of "*membership of an armed gang*" contrary to Article 168 of the Turkish Penal Code and were sentenced each to a term of 15 years imprisonment. However, on 17 July 2001, the European Court of Human Rights (ECtHR) ruled that the said four former parliamentarians had not received a fair trial at the Ankara State Security Court which at the time of the trial included a military judge.<sup>1</sup> The ECtHR held that the Ankara State Security Court, as composed then, was not "*an independent and impartial tribunal within the meaning of Article 6 of the Convention.*"<sup>2</sup> Following this ruling, Leyla Zana and her three co-defendants are now being re-tried and nine hearings have been held to date at No.1 Ankara State Security Court. The ICJ/CIJL appointed observers to monitor six of the eight previous hearings of the re-trial.<sup>3</sup>

On the basis of the observation of the hearing on 21 November, the ICJ/CIJL welcomes practices which indicate that certain aspects of the right to a fair trial were being respected. The ICJ/CIJL is satisfied that during the hearing, the defendants were at no stage excluded from intervening in the proceedings and were able to hear legal arguments in full. No limitations were placed on public attendance at the hearing nor on any of the lawyers making up the defence team of the defendants in the exercise of their professional duties, led by main defence lawyer, Mr. Yusuf Alatas of the Ankara Bar.

However, in addition to other numerous specific violations of article 6 of the European Convention on Human Rights (ECHR), such as the violation of the principles of the *equality of arms*, the *independence and impartiality of the tribunal*

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<sup>1</sup> *Sadak and Others v. Turkey* (no.1) (App. Nos. 29900/96, 29901/96, 29902/96 and 29903/96), para.40.

<sup>2</sup> *Ibid.*

<sup>3</sup> Please see *Report on the retrial of Leyla Zana and three other Parliamentarians at Ankara State Security Court on 23 May, 20 June, 18 July, 15 August, 15 September*, published by the International Commission of Jurists' (ICJ) Centre for the Independence of Judges and Lawyers (CIJL). This report can be found on the web-site of the International Commission of Jurists at <www.icj.org>

and the *presumption of innocence*,<sup>4</sup> the ICJ/CIJL is extremely concerned by the repeated delays encountered during the course of the re-trial and the fact that the Court will not reach a verdict within a reasonable time. The ICJ/CIJL is also very worried that the defendants continue to be detained in circumstances wherein the re-trial is proceeding at a rate of only one day per month, thus violating the Court's obligation to proceed with expedition where bail is refused. The ICJ/CIJL is therefore of the opinion that the defendants' rights to *liberty and security* have also been violated.

## II. Violation of the Right to a Fair Trial

### (1) Unreasonable delay in the proceedings

At the hearing on 21 November, the prosecution had not succeeded in securing the attendance of any of the four witnesses who were due to attend to give evidence. No satisfactory reasons were provided for the failure of the prosecution to have secured the attendance of the witnesses, especially given the fact that two of the witnesses were well-known professionals who could be easily located at their places of work. After speeches from the defendants and submissions from the lawyers for the defence, the trial was adjourned until **16 January 2004**. No reasons were given for such a lengthy adjournment.

This latest delay in the proceedings is the most recent example of a number of delays that have hindered an expeditious resolution of the trial. The trial has thus far been heard at the rate of one day per month yet no adequate justification has been provided for proceeding in such a slow manner, particularly given that the defendants continue to be held in detention.<sup>5</sup>

The protracted nature of the proceedings must be considered in conjunction with the fact that between July 2001 (when ECtHR ruled that in the defendants' initial trial Turkey had breached the right to a fair trial) and February 2003 (when President Sezer ratified the second "Harmonization Law" that granted the right to automatic re-trial for those whom the ECtHR had ruled had not received a fair trial), there was no domestic remedy available to the defendants. Therefore, there was a delay of 19 months before the re-trial could even begin.

While Turkey's ratification of the second Harmonization Law is welcomed, it is the opinion of the ICJ/CIJL that the protracted proceedings that have been encountered during this re-trial have compounded an initial unacceptable delay. As a State party to the ECHR, Turkey must organise its legal system such that its courts fully comply with the provisions the ECHR as well as other treaties to which Turkey is a State party. The ICJ/CIJL considers that hearing a trial over a

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<sup>4</sup> *Report on the retrial of Leyla Zana and three other Parliamentarians at Ankara State Security Court on 23 May, 20 June, 18 July, 15 August, 15 September*, a report published by the International Commission of Jurists' (ICJ) Centre for the Independence of Judges and Lawyers (CIJL).

<sup>5</sup> In August, as in November, the proceedings were adjourned because the prosecution had failed to secure the attendance of relevant witnesses.

period of 10 months to date (with no real prospect of a verdict before March 2004) in addition to the delay of 19 months before the re-trial commenced demonstrates the inability of Turkey's legal system to comply with the reasonable time guarantee provisions of art. 6(1) of the ECHR.<sup>6</sup>

Furthermore, it is the opinion of the ICJ/CIJL that, having regard to the legal and factual complexity of the case as well as the conduct of the accused and the judicial and prosecuting authorities, there are no factors that could justify such protracted proceedings.<sup>7</sup> There is no significant factual complexity to the case as the defendants face only one charge each. Moreover, there has been no impediment to the Court's collection of evidence as all the evidence which the prosecution needed to have compiled to present its case to the Court would have been available for the initial trial in 1994. In addition, there has been no indication that any of the defendants have employed dilatory tactics which could be said to have hindered the progress of the trial. Furthermore, given the fact that the defendants have been detained for almost ten years and that the present re-trial is to be considered as, and in actual fact is, a completely new process with the aim of remedying the defects that existed in the first trial, the ICJ/CIJL finds that the delay in the proceedings is unreasonable and that the Court has failed to act with the special diligence required of it.

The ICJ/CIJL urges the Turkish Government to organise its legal system in order that its Courts can comply with the provisions of art. 6 of the ECHR, and in particular, ensure that a verdict in the instant trial is reached with due expedition.

## **(2) Continued detention of the defendants**

The defendants have been in detention since their arrest in 1994 and subsequent trial by the State Security Court that year. Despite the current re-trial, the defendants continue to remain in detention and repeated applications by defence counsel for their release are denied. As, under domestic legislation, there is no procedural remedy available to the defendants to challenge their detention, the only avenue open to them is to appeal to the ECtHR. At the hearing on 21 November, defence counsel informed the Court that it had lodged an application with the ECtHR alleging a breach of article 5 ECHR in respect of each of the defendants.<sup>8</sup>

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<sup>6</sup> See *Bunkate v. The Netherlands Ser.A. no. 248-B, p.31, para 23*, where 15 1/2 months of inactivity and unjustified slowness violated article 6. See also *Matwiejczuk v Poland (App No 37641/97)* 2 December 2003, where 13 months without a hearing demonstrated that no "special diligence" had been displayed by the authorities.

<sup>7</sup> *Zana v Turkey (1999)* 27 EHRR 667.

<sup>8</sup> Art. 5 the ECHR provides that:

*"1. Everyone has the right to liberty and security of the person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law;*

*(a) the lawful detention of a person after conviction by a competent court; ...*

*4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."*

As has been discussed in previous reports,<sup>9</sup> the ICJ/CIJL has been extremely concerned that the continued detention of the defendants constitutes a violation of their right to liberty and security pursuant to article 5 of the ECHR.

Where a person is held in detention pending the determination of a criminal charge, that person can expect special diligence on the part of the competent authorities to reach such determination of guilt or innocence with expedition. The ICJ/CIJL considers that the periods of inactivity in the trial as discussed above are unacceptable and therefore, that the obligation to proceed expeditiously has been violated<sup>10</sup>.

Thus, the delay in reaching a conclusion to the trial, read in conjunction with the fact that: (1) the defendants have already been in prison for 10 years, (2) no rationale has been given for the continued detention of the defendants, (3) there is a presumption by the Court that the 1994 conviction was valid in spite of the decision of the ECtHR to the contrary, and (4) the Presiding Judge had allegedly earlier commented on the guilt of the defendants in a pre-trial application<sup>11</sup> are factors which do not constitute sufficiently valid legal grounds to continue the detention of the defendants.

It is the opinion of the ICJ/CIJL that as the present re-trial is a completely new trial that has been undertaken to cure the defects that existed in the first trial, extreme caution must be exercised to ensure that the rights of the defendants to a fair trial and to liberty of person are respected in conformity with Turkey's international obligations arising from the said ECHR. As such, the defendants' right to liberty and security of the person are not being respected.

The 10 year detention of the defendants with no end in sight and based on a defective trial constitutes a violation of the defendants' fundamental right to liberty and security of the person. The ICJ/CIJL exhorts the Turkish Government to ensure that its Courts comply with international standards and calls for the immediate release of the defendants from detention.

### **III. Conclusion**

It is regrettable that the State Security Court has not cured the defects identified by the ECtHR in 2001. Despite some positive rulings by the State Security Court, the ICJ/CIJL finds that, in the main, the fundamental right to a fair trial was not respected and implemented as required by the ECHR. In particular, the *violation of the principle of equality of arms* between the prosecution and the defence, the *violation of the right to liberty* because of the continued detention of the four defendants, the violation of the *presumption of innocence* due to the insufficiently

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<sup>9</sup> Report on the retrial of Leyla Zana and three other Parliamentarians at Ankara State Security Court on 23 May, 20 June, 18 July, 15 August, 15 September, a report published by the International Commission of Jurists' (ICJ) Centre for the Independence of Judges and Lawyers (CIJL).

<sup>10</sup> *Abdoella v The Netherlands*(1992)20 EHRR 585, paragraph 24.

<sup>11</sup> See, ICJ/CIJL Report of the Re-Trial of Leyla Zana and Three other Kurdish Former Parliamentarians before the No.1 Ankara State Security Court on 23 May 2003.

valid legal reasons given for such a state of affairs, and the reasonable suspicion that the *Court is not an independent or impartial tribunal* for the reasons stated above, still prevail today.

The ICJ/CIJL urges the Government to ensure that at the next hearing, which has been scheduled for **16 January 2004**, the abovementioned shortcomings are remedied in line with Turkey's international obligations.