

ELDH-Report:**Trial Observation – „KCK – Lawyers Trial”, 17th September 2013, Silivri (near Istanbul)**

On 17th September 2013 the 8th hearing in the “KCK-Lawyers-Trial” in Silivri (near Istanbul) took place. The 50 defendants, 46 lawyers, 3 employees and a journalist are accused of running a terrorist organisation (KCK as part of PKK) or of membership in the same organisation. The KCK or Union of Communities in Kurdistan is a Kurdish organization, founded by Abdullah Öcalan, which is suspected by the Turkish Government of collaboration with the PKK.

The arrested lawyers have two common characteristics, 1) their Kurdish ethnicity and 2) that they acted for Mr. Ocalan at various times since his capture in 1999. The prosecution alleges that the lawyers took specific terrorist-linked orders from Ocalan and conveyed the same to the PKK.

It has been 22 months since these lawyers were rounded up in dawn raids by Turkey's anti-terror police. Throughout this period many of the defendants have been held in pre-trial detention, without any reason being given. From time to time, some have been bailed, but 15 lawyers still remain incarcerated. The trial was opened in July 2012.

Four ELDH lawyers* formed part of the 30-strong delegation of lawyers observing this trial from different organisations and bar associations originating from Canada, Germany, France, Holland, UK, and Switzerland. Some deputies of the Kurdish Party BDP were also present, among them the ELDH member Hasip Kaplan.

As in June already the hearing took place in the new court building in Silivri in a hall which can house up to 400 defendants and their defence lawyers which are seated separately from their clients. Between the defendants and their lawyer armed policemen are posted to make any communication between them impossible.

Although the two other judges and the prosecutor had been replaced since the last hearing, this had no impact on the above mentioned defects. Once more the court failed to remedy them.

The hearing started at 10h00 and lasted until around 17h00. It gave the remaining 7 defendants the opportunities to present their statements to the indictment. All of them pleaded not guilty and rejected the accusations. Most of them pointed out that they only practised their professional duties whilst defending their client, Abdullah Öcalan. They reprimanded the investigation authority for illegal methods which only referred to the professional practice of the accused lawyers.

The next hearing will not be until 19th and 20th December 2013, but trials such as these could be prolonged so as to go on for many years.

ELDH has sent observers to this trial on several occasions since its first hearing in July 2012 and has noted the serious flaws in the procedures that breach international and European standards of justice and fairness in trials, and relating to the rights and roles of lawyers. Our concerns relate both to the circumstances of the original arrests as well as to the trial process itself.

The most important concerns of the observers are:

- Although since January 2013 Kurdish language is admitted at Turkish courts interpreters will be paid by the state only for those who do not understand and speak Turkish. If they prefer to speak Turkish because they are of Kurdish origin, they have to choose their interpreters from an official list and pay them on their own.
- The indictment fails to prove the crimes allegedly committed by the individual defendant. It is merely based on subjective assumptions of the police. The meetings of the lawyers with their client Abdullah Ocalan are taken as evidence. Up to now the defendants do not know what each of them is accused of. The defendants and their defence lawyers insisted that they had the right to have political conversations and discussions.
- To a large extent the indictment is based on evidence which was gathered under violation of the Turkish law protecting the role of lawyers, such as telephone tapping, searching of offices, confiscation of confidential and privileged information belonging to other clients and illegal intercepts of private and privileged communications between the lawyers, their clients, and their families without court permission. One defence lawyer stated that the prosecutor has abused his professional power and acted against the ethic of his profession when he intervened in the free exercise of the profession of lawyers. Several defence lawyers demanded that all evidence which has been obtained under

violation of the professional confidentiality must be eliminated from the file. The defence lawyers also notified that the right of the defendants for a fair trial and an impartial judge had been violated because the trial started before a “special court” which didn’t have the necessary independence from the Government and was not impartial. Later in 2012 this court was only renamed and the trial went on before the same court.

- All the consultations the defendants held with their client have been recorded since 1999 and a member of the Turkish Ministry of Justice has been present since 2005;
- The judge failed to conduct any meaningful cross examination of the defendants
- On one occasion the judge asked one of the defendants what he has been talking about when he visited his client Mr. Ocalan in prison. This inadmissible question was rejected by the defence lawyer.
- The prosecutor made no submissions to rebut the defences put forward
- The court has dismissed without any reasoning, the defence request that Mr. Ocalan should be called as a witness and accordingly the prosecution should exercise its duty of gathering evidence that may assist the defence
- Undue duration and incomprehensible pre-trial detention and the refusal of bail without any reasons being given. The request of the defence lawyers to release the remaining 16 defendants from prison was rejected by the court.
- Violation of the requirement of rapid action. Within almost two years only 8 hearings have taken place.
- One female defendant demanded that the court should undertake the necessary legal measures against torture in prisons. The presiding judge rejected this demand, arguing that this was the task of the prosecutor.
- At the end of the hearing, to the astonishment of the defendants, their lawyers and the international observers the presiding judge announced that at the next hearing on 19th and 20th December 2013 the prosecutor will present his final pleading without any evidence being taken. The prosecutor is given a time limit to present further evidence.
- The court ignored the demand of the lawyers to enter into the taking of evidence. The defence lawyers are convinced that this procedural mistake constitutes a violation of the Turkish constitution. The court rejected also the demand to hear Abdullah Ocalan as a witness. As well the demand to release the defendants was rejected. The reproach of torture of a defendant was taken to the record and will be forwarded to the prosecutor.

Even the President of the Turkish Constitutional Court ,Haşim Kılıç, has warned earlier this year “75 percent of all individual applications to the Constitutional Court are regarding claims of violations of the right to a fair trial,” An impartial and independent justice is essential for a contemporary rule of law, Kılıç also said, underscoring that members of the judiciary should treat all humanity equally regardless of their religion, language, race, sect or ideology.

Lawyers throughout Turkey, Turkish as well as Kurdish, now feel intimidated by these trials where there is no presumption of innocence, and where lawyers can be identified with the alleged crimes of their client.

Today, Turkey's prisons hold around 10.000 political prisoners, who include politicians, mayors, academics, journalists, trade unionists, human rights activists. These detentions and these patently unfair political trials not only discredit the AKP government internationally and regionally, but also render questionable its real intentions regarding the current peace negotiations,

Turkey should dismiss these prosecutions and release all of its political detainees without delay. This will not only be just and fair but could remove the tarnished image that stains Turkey for its apparent lack of regard for the rule of law.

It is of vital importance that international observers report on the political trials in Turkey. However the capacity of ELDH to observe political trials in Turkey may be limited. At present there are three very important trials going on in Istanbul.

- The next hearing of the KCK trial will be on 19th and 20th December 2013 again in Silivri.

- The second mass trial against lawyers – the ÇHD or DHKP-C trial will start on 24th, 25th and 26th December 2013, also in Silivri.
- And the trial against the President of the Istanbul Bar Association and 9 other board members will be continued on 7th January 2014, also in Silivri.

We will discuss at the next meeting of the ELDH Executive Committee which is the most effective way within our capacity to support our Turkish colleagues.

* ELDH Delegation: Annina Mullis (Switzerland), Rafael Studer (Switzerland), Nicolas Rochat (Switzerland, Member of the Kantonal Parliament of Vaud, and chair of the Socialist Group), Thomas Schmidt (Germany)