

Report on the Trial of the ÇHD Lawyers

Background Information

1. In January 2013 22 lawyers, members of the Progressive Lawyers Association (“ÇHD”) were detained and charged with allegations of membership of a terrorist organisation. The proceedings began amongst an atmosphere of ever increasing repression against Turkish civil society by the state.
2. Whilst proceedings have remained ongoing, on 15 July 2016 a coup attempt appeared to be made in Turkey by followers of the Gülen movement, which had previously been allied with the ruling Justice and Development Party (“AKP”) of President Erdoğan. Since then, a state of emergency has been in existence, granting to the President sweeping powers. These powers have led to the dismissal of approximately 150,000 state employees including judges, prosecutors, academics, and soldiers, and a consolidation of state power within the hands of the President. In addition, in exercise of emergency powers, under a governmental decree dated 22 November 2016 ÇHD was banned, deregistered, and its offices were closed. Since then the persecution of its members has continued.
3. The present case against members of the ÇHD had previously been listed for trial on 12 separate occasions, with the case being adjourned part-heard on each occasion. The hearing on 23 May 2018 was the thirteenth trial listing.

The International Delegation

4. Against this background an international delegation of lawyers was organised to attend the trial of the 22 ÇHD lawyers on 23 May 2018. In attendance were members of European Lawyers for Democracy and Human Rights (“ELDH”), as well as its UK affiliate the Haldane Society of Socialist Lawyers, and the Syndicat des avocats de France. The delegation was hosted by the defence team for the ÇHD but paid for its own travel, accommodation, and subsistence. The ÇHD is a member of ELDH.
5. The names of individuals and organisations represented on the delegation were provided to the presiding judge at the trial. The members of the delegation had the opportunity to observe the whole of the trial proceedings on 23 May 2018, and were provided by their

hosts with simultaneous translation in English and in French. The members of the delegation were not able to communicate with those defendants who were detained.

Information about the Defendants

6. As noted above, the defendants were all members of the ÇHD, and include the organisation's President, Selçuk Kozağaçlı.
7. 9 defendants were initially remanded in custody. Given the length of time for which the proceedings have continued, the defendants had been released on bail, 4 on 26 December 2013, and the remaining 5 on 21 March 2014. However, many of them were arrested again on 12 September 2017 (and for Mr Kozağaçlı, on 8 November 2017) and charged in a separate set of proceedings before a different court but on the same evidence. The first hearing in that case is set for 10 September 2018. As a result, 6 of the defendants (including Mr Kozağaçlı) were held on remand in the other proceedings at the time of the trial in these proceedings on 23 May 2018.

Charges and Indictment

8. The defendants are all charged with membership of a left wing revolutionary terrorist organisation, the Revolutionary People's Liberation Party/Front ("DHKP-C"). Two of the defendants are also charged with commanding a terrorist organisation. There are also charges against a number of defendants in relation to threatening force against public officers to prevent them performing their duty, and violation of the constitution, arising out of the same facts. In the separate proceedings listed in another court, the same defendants are also charged with offences relating to membership of the DHKP-C, albeit that some of them who are treated as leaders in one case are treated as mere members in the other case.

Applicable Laws, Decrees, or Regulations

9. The laws applicable in the present case are the ordinary criminal law of Turkey: the Turkish Criminal Code (Articles 35, 43, 53, 54, 58/9, 82/1, 265, 309 and 314) and the Anti-Terror Law (Articles 5 and 7/2).

10. The case had originally commenced in 2013 and 2014 in the Special Court at Silivri Prison. However, after the special courts were abolished by law the proceedings were transferred to the ordinary criminal court system to be heard in Istanbul.

Role of the Prosecution and Defence

11. The prosecution had presented their case at previous hearings of the trial. The role of the prosecution in the present case was limited to objecting very briefly to defence applications. The prosecutor in Turkish courts sits on a raised dais along with the three judges, wearing a similar uniform, and accompanying them in the courtroom. This presents a stark visual representation of the lack of independence between the prosecution and the judiciary.
12. A large number of lawyers attended in order to provide assistance to the 22 defendants. The members of the international delegation were greatly assisted in understanding proceedings by the assistance of a number of those lawyers. Defence lawyers were entitled to raise procedural issues without restriction throughout the course of the trial.

The Nature of the Prosecution Case

13. The case against the defendants is that, through their work as lawyers and as members of ÇHD they furthered the aims of the DHKP-C terrorist organisation.
14. It is alleged that the defendants advised clients of theirs (who are alleged to have been members of the DHKP-C) not to respond to police questions when under arrest. There was no direct evidence of this. Instead, the prosecution had sought to adduce evidence that the rate at which the defendants' clients exercised their right to silence was higher than the average. They presented this as evidence that the defendants must have advised their clients to exercise their right to silence. This approach is troubling on a number of levels. Firstly, it associates the lawyer with their client, rather than respecting the lawyer's professional independence. Secondly, if the exercise of a detainee's fundamental right to silence can be held against a lawyer, this undermines the likelihood of a detainee being able to rely on such a right. Thirdly, it undermines the client's right to receive privileged legal advice. Fourthly, it cannot safely be inferred from statistical evidence of overall patterns what advice a lawyer gave in an individual case. Fifthly, even if it could safely be inferred that the defendants had advised their

clients not to answer police questions, the only conclusion that could properly be drawn is that the defendants had properly carried out their roles as defence lawyers.

15. It is further alleged by the prosecution that the defendants instructed clients on hunger strike in prison to continue their hunger strike, and thereby to advance the aims of the DHKP-C. There was no direct evidence of this. Instead, the prosecution sought to draw the inference that because individual prisoners had continued hunger strikes after being visited by the defendants, the defendants must have conveyed instructions from the DHKP-C to the prisoners to continue the hunger strikes.
16. There are 4 witnesses for the prosecution, 3 of whom are anonymous witnesses. The witness who is not an anonymous witness gave testimony at another court in the city of Çanakkale on the ground that his place of residence is in Çanakkale district. The defence lawyers participated in this special hearing and were able to question the witness. The defence also requested that this witness should be heard by the Istanbul Court conduct the trial, at a hearing where the defendants could be present, but the court did not accept this request. As such, the defendants were not themselves able to hear the testimony of the witness and ask him questions.
17. The defence have learned that one of the three anonymous witnesses died since giving evidence. Although the defence lawyers have requested that the anonymous witness evidence should be heard live by the court, the court has not made a decision on this request. Meanwhile, the defence have learned that another court removed the anonymity of one of the anonymous witnesses. As such, the witness can no longer be treated as anonymous. Nonetheless, the trial court still has not indicated it will hear their evidence live. As such the defence has been deprived of the opportunity to cross-examine prosecution witnesses.
18. The chief police officer who has prepared the police reports and evidence has been identified by the defence as a member of the Gülen movement. Since giving evidence in the case this chief police officer has been found by another court to have fabricated evidence in other trials. The prosecution nonetheless continues to rely on his evidence. The court has not excluded his evidence.
19. The prosecution also relies on a 5,000 page bundle of documentation allegedly sourced from Belgium and the Netherlands on a hard drive. The documentation is alleged to be

the archive of the DHKP-C. The prosecution allege that the documentation demonstrates that the defendants are members of the DHKP-C. Copies of the bundle of documentation have been provided to the defence. However, the defence have repeatedly requested the opportunity to examine either the original hard copy material, or the original hard drive, in order for it to be scientifically examined. The defence claim that the documents are fabricated and that scientific examination will demonstrate this. The court has previously ordered that the original documents be submitted to the court, but the police have to date failed to comply with this order. Further, the defence have sought to exclude the material on the basis that it was obtained in a manner not provided for in the relevant Turkish legislation on international co-operation. In particular, no formal request was made to the Belgian or Dutch authorities and the material was submitted by a single police officer without authorisation.

Nature of the Defence Case

20. The defence has been clear throughout these proceedings that this is a politically motivated prosecution.
21. Some of the defendants have refused to give evidence to the court until the prosecution and police have completed the disclosure exercise. The defence are of the view that they cannot put forward their defence until at a minimum the original documentation from Belgium and the Netherlands is disclosed and the anonymous witnesses are examined before the court.
22. Mr Kozağaçlı made clear to the tribunal that if it continued to act deferentially to the prosecution then it would be implicated in the political motivations of the prosecution. As noted above, since the state of emergency was announced in Turkey a large proportion of the judiciary and prosecution agency have been removed from their posts. The defence understands that in the event that the judiciary in the present case act contrary to the interests of the AKP, they stand to be punished themselves.
23. The defence made applications (i) to dismiss the charges; (ii) for the witnesses to all be available for cross-examination by the defence; (iii) for the immediate disclosure of the original 5,000 pages of documentation from Belgium and the Netherlands; and (iv) for access to the prosecution dossier in the other related trial, which is said by the defence to contain exculpatory material.

Conduct of the Presiding Judge

24. The presiding judge permitted the members of the delegation to attend and to listen to proceedings with simultaneous translation provided by their hosts.
25. During the course of the hearing the presiding judge sought to interrogate the defendants on the allegations against them. The defendants refused to give evidence until such time as the police and prosecution had complied with their disclosure obligations. The presiding judge appeared to pressure defendants to give evidence notwithstanding their and their lawyers' objections.
26. The presiding judge on multiple occasions acted aggressively towards defendants and defence lawyers. On two occasions the presiding judge began shouting at defendants and, when opposed, cleared the court room. A defence lawyer demanded an apology from the presiding judge for his conduct. No apology was forthcoming.

Judgment and Sentence

27. The trial was adjourned again to 24 October 2018 at 10:00 in Istanbul.
28. Defendants who were on bail had not been required to attend the hearing on 23 May 2018. However, the judges issued arrest warrants for all of those who had not attended. The delegation were informed by the defendants' lawyers that those defendants later attended on the day after the hearing, and on the following Monday, resulting in the warrants being discharged. The judges decided that all defendants who are in custody would attend the next hearing date by videolink.
29. The defence lawyers requested that the court obtain the prosecution dossier of another trial. That trial includes evidences of the police's fabrication of evidence about numerous defendants. The court refused to obtain a copy of that dossier from the other court.
30. The judges ignored and did not rule on all other defence applications.
31. The judges decided that this case shall be joined with the other case dealing with the near-identical allegations. This requires confirmation by the judges in the other case. Whilst this may seem an appropriate step to take in order to avoid a duplication of

proceedings, the defence are concerned that this has been done so that the judges in the present case do not feel obliged to make any contentious decisions, as the case will now be dealt with by the judges in the other, near-identical case.

Conclusion

32. The conduct of the Turkish state in the present case is concerning. The allegations against the defendants arise out of their work as defence lawyers. It can never be appropriate for lawyers to be inhibited from fearlessly defending their clients by the threat of arrest and imprisonment. The only material implicating the defendants in membership of the DHKP-C appears to come from unreliable sources. The defendants have not had the opportunity of cross-examining their accusers in court.
33. Further, the failure of the judiciary to ensure that the police and prosecution have properly disclosed material risks allowing them to abuse the process of the court.
34. Finally, in holding defendants in custody for an extended period pending trial, and launching multiple proceedings based on the same allegations, the Turkish state appears to be attempting to use these proceedings as a form of punishment in and of themselves. Whatever the result of proceedings, lawyers will have been prevented from carrying out their important work of defending their clients, instead having to spend years defending themselves against what appear to be politically motivated charges.

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