

ÇHD - Trial II

Hearings from 10 to 14 September 2018

Trial observation report

On 10 September the trial of 20 lawyers started at the Istanbul Heavy Penalty Court. All of them are members of ÇHD (Progressive Lawyers Association, Çağdaş Hukukçular Derneği, <http://cagdashukukcular.org/>) among them the ÇHD President Selçuk KOZAGAÇLI. 17 of them have been in pre-trial detention for almost 12 months, Selçuk for 10 months. One woman lawyer was released, because she has a young child. 2 suspects have not been found. Only Selçuk and Yaprak Türkmen have been detained in Silivri, about 60 km away from Istanbul. The others are detained in 6 different prisons in Turkey without any reason, some of them 6 hours away from Istanbul. Selçuk and another lawyer have been held kept in solitary confinement. Their request to have occasional contact with other prisoners was rejected.

They are all charged with membership in a terrorist organisation (DHKP-C, Revolutionary People's Liberation Party-Front, *Devrimci Halk Kurtuluş Partisi-Cephesi*). Two of them are accused of directing this organisation.

The evidence appears to ELDH to be very weak: The prosecutor argues that all of them are working for the Peoples Law Office HHB (Halkın Hukuk Bürosu), “revolutionary lawyers”, that this law office mainly represents clients who are accused of membership of DHKP-C, therefore this law office is part of the structure of DHKP-C. Other cases in which HHB provided representation, such as the Soma miners’ massacre case, says the prosecutor, are only taken to conceal their connection to DHKP-C.

The evidence is partly based on documents which are claimed to be the copies of the print outs of digital data seized from Belgium and Holland. There is no information that they were copied by Belgium authorities. But the police who submitted them alleged that the copies were taken from Belgium and Holland. It is not specified how the data were acquired and how they were preserved, a violation of Art. 134 of the Turkish Code of Criminal Procedure. The prosecutor claims that other electronic data was acquired in a police raid of a cultural centre, allegedly related to DHKP-C.

Many of the documents were used as evidence in the first ÇHD lawyers’ case.

The prosecutor also argues that the lawyers have advised their clients to make use of the right to remain silent, and that they enabled their detained clients to communicate with the outside world (with DHKP-C, acting as couriers).

There are also secret witnesses and two open witnesses. The open witness, or “confessor”, is a witness, who was also accused of membership in DHKP-C, and whose sentence was reduced substantially in return for his testimony against the accused lawyers. The prosecutor also added copies of testimonies of 4 other witnesses which were taken within other prosecutions prior to this prosecution.

The actions, which are the subject matter of the prosecutor’s allegations are nothing but legitimate professional practice of attorneys. It belongs to the duties of a lawyer to inform the clients about their rights, and to provide the best possible defence, ensuring that the court never forgets that it is the state which has to prove its case. .

The trial was observed by lawyers from Austria, Belgium, England, France, Germany, Greece, Italy, Japan, The Netherlands, U.S.A., about 30 altogether.

ELDH was represented by Michela Arricale, Bill Bowring, Nicola Giudici, Clemens Lahner, Fabio Marcelli, Dimitra Stavromitrou, Maria Tzortzi. Other organisations represented were IADL, AED-EDL, Avocats sans Frontières, Legal Team Italy, Lawyers for Lawyers, Fair Trial Watch, Berlin Bar Association.

Before the trial started a Turkish lawyer gave a short briefing for the foreign observers.

The trial opened in an enormous court-room, which is normally a conference room. There was no dock or enclosed space for the accused, as there would have been in the UK, nor could they sit with their defence lawyers, as in the USA. The accused sat in an open space near the judges, surrounded by several rows of police. There were two large video screens, showing judges and accused.

The foreign legal observers were told that the presiding judge was relatively young, and had not presided in such a case before. They noticed that he listened to the defence submissions, and did not interrupt, in particular the very long, 90 minutes, statement by Selçuk. It is also likely that knowing that the trial was being observed by such a large group of foreign lawyers, many in their robes, he was anxious to give an impression of judicial normality.

A large group of other observers, more than 150, mainly from Turkey, was also present, among them 30 people from Soma, the town where an explosion in the mine killed 301 workers. About 50 of them had to stand due to lack of seats, even in such a large room. The defendants were sitting in front of the court. They were surrounded by the ordinary prison guards and also by special security forces, together more than 40. Approximately 50 defence lawyers were sitting, some of them standing, to the left and to the right. They had no possibility to communicate with their clients.

There were also numerous anti-terror policemen standing at the door outside of the court room and observing the trial from there and 2 anti-terror policemen were inside the court room standing next to the defence lawyers.

The Heavy Penalty Court consists of 3 judges. The prosecutor sits on the left side, next to the judges.

The hearing started on Monday, 10 September, at 11h30 after a delay, because defendants detained in prisons further away arrived late. The next hearings took place the following days until Friday. Most of the observers only participated the first day.

At the beginning of the trial the defence lawyers requested that these anti-terror police should be removed from inside the court room. The court neither rejected nor accepted this request. But while this discussion was pending the 2 anti-terror police left the room themselves. They threatened the defence lawyers by showing that they have their guns on and by saying "We will meet again", while they were getting out of the court room.

One defence lawyer argued that the Ministry of Justice had not given permission for a prosecution of advocates, as required by Turkish law. She argued that the indictment should not be read, but should first be sent to the Ministry of Justice for permission. The observers noted that the submissions were listened by the court without interruption. The prosecutor did not respond, but the judges left the court for about half an hour to consider the application. The application was rejected by the court.

The judge explained that 8 of the current defendants had also been in the first ÇHD trial. According to the judge, they are only charged with crimes committed after the first indictment, and with new evidence. However, the judge said that the file of the first case will be consulted.

All defendants were then invited to present their first statement. 17 detained lawyers presented their statements to the court until Friday, 14 September 2018. One lawyer who is not detained will give her statement in an other hearing.

The first was Selçuk KOZAGAÇLI who addressed the court for about one hour and a half. He mentioned that he had already been detained for almost 1 year. He had no confidence in the judicial system, which will not protect the accused. He criticized the low quality of the indictment which contains many gaps, and that this would also be explained by the other defendants. He also pointed out that the Turkish penal courts don't have the power to protect the people. There is much injustice and corruption in the legal institutions. The lawyers are considered by the courts and prosecutors as obstacles because they prevent them from beating the truth out of a "criminal". They want the lawyers to keep silent and not to sign statements etc.. Selçuk said he has done this many, maybe 500 times.

He mentioned the people who organised the bombing in Ankara. They were pursued by the state for one year. Did the judge ever hear their lawyers names? They do the same as the HHB lawyers. The organisers of this crime were never apprehended. They are protected by the state.

When the mine exploded in Soma he went there to talk with the families of those who had died. The prosecutor said, he did this just for show. He should be ashamed. He suggested that the judge should ask the foreign observers, if in their countries lawyers are taken into custody or beaten because they informed their clients about the right to keep silent. If a client asks him if he should confess, he tells him if you do you will get 10 years prison. So he didn't. Now Selçuk is accused.

In Turkey a judge who doesn't recognize the ruling of the constitutional court moves up and becomes judge at the high court. He explained that among his clients there are leaders of organisations who believe in using violence to change the system. He is not the lawyer only of innocent people. If you want to represent a client you have to meet the client. He would not have power of attorney without meeting the client? He asked the judge if he as a defence lawyer is obliged to tell the prosecutor that his client has a weapon; does he want the lawyer to spy his client? Lawyers work in conditions where state violence and revolutionary violence occur. He concluded that his fight is against torture, against planting evidence. He is a Socialist. He wants the poor and the workers to win and the system to change.

Selçuk told the judge, that he cannot convict the defendants on the basis of law. There is no legal basis.

After the break, at around 16h30, one of the defendants and his lawyer tried to communicate. The lawyer was violently pushed back by the police. A fight started between some defendants and the police. From the distance it was not possible to see what had happened. People were shouting, screaming and trampling. It seems that Selçuk KOZAGAÇLI and Aytaç ÜNSAL were involved. In the end Selçuk was handcuffed for a while. The situation calmed down. It seems that nobody was severely injured. During the fight the lawyers and the audience who had not yet returned were not allowed to enter the room. After 30 minutes the judge came in and continued the hearing. The lawyers and the observers were allowed to enter. It seems there is no law which says that the defence lawyers cannot communicate with their clients in the court room. But when it happens usually the police intervenes.

The next statements that day were given by Aytaç ÜNSAL, and Ahmet MANDACI:

During the following days the remaining 15 detained lawyers presented their statements to the court. One lawyer who is not detained will give her statement in another hearing.

At the end of the fifth day of the trial, the court decided to release all 17 lawyers from pre-trial detention. The release took place early on Saturday morning. However 24 hours later on request of the prosecutor, the court decided without any new reasons to arrest 12 of them again, among them the ÇHD President Selçuk KOZAGAÇLI. Another court will decide about the remaining 5 cases in which the court rejected the request of the prosecutor. Some of the released lawyers were re-arrested a few hours later. The re-arrested lawyers will object against the new court decision.

Selçuk went to the courthouse on his own free will, but he wants us to know that he did not go there to give himself up to the court. He persistently stressed that this scandal that is now being staged in Turkey has nothing to do with law and the code. Under this dark period of fascism, on the face of this monstrosity and scandal, nobody in her right mind could and should be expected to recognize the legitimacy of the courts nor their null verdicts and give herself up to the courts. The discussions about law and respecting the law do not make sense where the courts act as the puppets of political power. To put it most clearly, those court decisions are nothing but garbage.

The next hearing will be on 19 and 20 February 2018, Istanbul