REPORT OF

THE RE-TRIAL OF LEYLA ZANA AND THREE OTHER KURDISH FORMER PARLIAMENTARIANS

Before

No. 1 ANKARA STATE SECURITY COURT

on

23 MAY 2003

**A report published by the Centre for the Independence of Judges and Lawyers (CIJL)
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I. Executive Summary

The re-trial of Leyla Zana, and three other Kurdish former parliamentary deputies[1] took place before No.1 Ankara State Security Court on 23 May 2003. The Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) appointed an observer, Mr. Paul Richmond, Barrister of England and Wales, to observe and report on the 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. They were sentenced to a term of 15 years imprisonment. However, on 17 July 2001, the European Court of Human Rights ruled that the former parliamentarians had not received a fair trial at the State Security Court, which at the time of the trial included a military judge[2]. Pursuant to the ruling by the European Court of Human Rights, Leyla Zana and her co-defendants were retried at Ankara State Security Court on 21 February 2003, 28 March 2003, 25 April 2003, and 23 May 2003.

On the basis of the observation of the hearing on 23 May 2003, the ICJ/CIJL finds that whilst certain aspects of the right to a fair trial were respected during the course of the criminal proceedings against Leyla Zana and her co-defendants, there are profound concerns that the principle of equality of arms between the defence and prosecution was not observed and that the tribunal was neither independent nor impartial.

This finding is supported by the many incongruities during the course of the trial, such as the fact that: 1) the prosecution was allowed to present 26 witnesses while the defence was not allowed to call even one witness; 2) the defence was prevented from asking relevant questions of witnesses for the prosecution; 3) the defence was not allowed to present crucial evidence; 4) the prosecution failed to disclose material evidence prior to the trial; 5) while the prosecutor's questions and submissions were entered directly into the court record, the defence was not allowed the same privilege and had to rely upon the judge to summarise questions and answers; and 6) while the prosecutor was provided with a computer which showed him the record of the proceedings as it was being entered by the court stenographer, the defence had no such facility. Instead, it had to rely on hand-written notes to record the proceedings.

The ICJ/CIJL urges the Turkish Government to recognize that equality of arms between the parties before the court is fundamental to the notion of a fair trial under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

[1] Selim Sadak, Hatip Dicle and Orhan Dogan.
[2] *Sadak and Others v. Turkey* (no. 1) (App. Nos. 29900/96, 29901/96, 29902/96 and 29903/96).

II. Introduction

The charge of "*membership of an armed gang*" against Leyla Zana and her co-defendants is pursuant to Article 168 of the Turkish Penal Code. Article 168 provides as follows:

> "Any person who, with the intention of committing the offences defined in Article 125[3] … forms an armed gang or organisation or takes leadership … or command of such a gang or organisation or assumes some special responsibility within it shall be sentenced to not less than fifteen years' imprisonment.
>
> The other members of the gang or organisation shall be sentenced to not less than five and not more than fifteen years' imprisonment."

The prosecution case is based firstly, on the activities that Leyla Zana and her co-defendants are alleged to have engaged in on behalf of the Workers Party of Kurdistan (PKK) (harbouring militants, negotiating with local leaders and threatening them as a way of forcing them to help the PKK establish itself in their regions). Secondly, the prosecution bases its case on the content of oral and written statements made by the defendants in defence of Kurdish rights in which they allegedly express support for PKK activities.

The defence case is that Leyla Zana and her co-defendants have never advocated the formation of a separate Kurdish state through armed action. Rather, through their speeches and writings they have sought to forge a peaceful, democratic resolution to the conflict between the Turkish government and its minority Kurdish population, a resolution in which the basic rights and distinct cultural identity of Turkey's Kurds are recognised by the Turkish state authorities. The defence maintain that the political leaders associated with the Kurdish issue are being prosecuted solely in order to silence persons who have sought to criticise the Turkish government.

In previous hearings which took place on 21 February 2003, 28 March 2003 and 25 April 2003 the court heard a total of 21 witnesses on behalf of the prosecution. However, various human rights groups have expressed concern that the trial may not be conducted in accordance with international fair trial guarantees. According to the London-based Kurdish Human Rights Project, at the hearing on 28 March 2003, "The court denied requests from defence lawyers that the jailed parliamentarians be released pending the conclusion of the retrial; and that a member of the judiciary be removed due to his previous involvement in the case, raising concerns about impartiality."[4] The International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), after observing the hearing on 25 April 2003 commented that they were, "alarmed to witness repeated delays in this trial, as well as obvious violations of the rights of defence, which give evidence of continuing

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[3] Article 125 of the Turkish Penal Code provides:

> "It shall be an offence punishable by death to commit any act aimed at subjecting the State or part of the State to domination by a foreign State, diminishing the State's independence, breaking its unity or removing part of the national territory from the State's control."

[4] 'European Court Orders Turkey to Grant Retrial for Leyla Zana and Others', Newsline Issue 21 Spring 2002 p.10.

malfunctioning of the judicial system in Turkey despite recent legal reforms adopted by Turkey in the framework of EU accession. The observer indeed noticed restrictions placed upon the lawyers' ability to question the witnesses during the hearing."[5]

On 23 May 2003, the prosecution called a further 5 witnesses before bringing its case to a close. The witnesses included two former village guards,[6] a Muhktar,[7] a police officer and a tribal leader who had refused to allow the PKK to operate in his region.

The ICJ/CIJL welcomes the fact that at no stage of the proceedings were Leyla Zana or her co-defendants excluded from observing the proceedings against them. They were able to hear the prosecution case in full and in the hearing observed, were able to make lengthy speeches in support of their defence. No restrictions were placed upon the possibility of public attendance at the hearings. No restrictions have been placed upon the defendant's choice of legal representatives or their ability to communicate with them in confidence. The ICJ/CIJL observer did not receive any reports of the defence lawyers having been subjected to harassment or intimidation on account of the exercise of their professional duties.

III. Violation of the Principle of Equality of Arms

Several irregularities noted during the course of the hearing evidence the fact that the parties were not treated in a manner that ensured their procedurally equal position during the course of the trial:

(1) The prosecution was allowed to call 26 witnesses to support its case while the defence was not allowed to call any witnesses

At the conclusion of the prosecution case, the defence lawyers applied to the court to call witnesses on behalf of the defence.[8] The prosecutor resisted the application on the grounds that a long period of time had elapsed since the facts which gave rise to the alleged offence took place and the witnesses would not therefore be able to assist the court in disclosing any relevant evidence. The judges refused the defence application to call and examine witnesses in support of Leyla Zana and her co-defendant's defence, citing in support of their decision the reasons advanced by the prosecutor.

Whilst it is recognised that equality of treatment between the prosecution and the defence does not necessarily require the attendance and examination of every witness

[5] Joint FIDH and OMCT Press Release: "Turkey: Release jailed Kurdish deputies" 29 April 2003.

[6] When the state of emergency was declared in the mid-1980s a system of village guards was also established in the southeast whereby villages supplied ethnic Kurdish adult men to guard the villages and provide general assistance and information in return for payment by the State. Village guards were thus supposed to work together with the army and Jandarma in their fight against the PKK.

[7] Every village or neighbourhood has its own head, often known by the name "muhktar". The muhktar acts as an intermediary between the population and the authorities, being the sole keeper of address records.

[8] Yusuf Alatas, the lead defence lawyer, informed the observer that the defence witnesses would include new witnesses whose testimony had not been heard at the first trial.

the defence wishes to call,[9] in the opinion of the ICJ/CIJL observer, it must be questionable whether the decision of the State Security Court was compatible with Article 6 of the ECHR given that the decision applied to *all* potential defence witnesses without exception, the defendants face a sentence of 15 years imprisonment for a serious offence and the testimony of the witnesses will provide the defence with their only means of proving various disputed points. Moreover, in the opinion of the observer, the reasons relied on by the court for denying the defence the opportunity of calling and examining witnesses in support of the defence case may potentially violate Article 6. It would appear that the reasons advanced for not permitting the attendance and examination of the defence witnesses (i.e. that a long period of time has elapsed since the facts which gave rise to the alleged offence took place and the witnesses would not therefore be able to assist the court in disclosing any relevant evidence) apply equally to the prosecution witnesses as to the proposed defence witnesses. Yet, the court was prepared to hear oral testimony from no less than 26 prosecution witnesses. The decision of the State Security Court not to permit the defence to call and examine witnesses in support of its case subjects the defence to a procedurally inferior position vis-à-vis the prosecution in contravention of the principle of the equality of arms.

(2) The defence was prevented from asking relevant questions of witnesses for the prosecution

The defence sought to question a Kurdish-speaking prosecution witness as to the identity of the interpreter who had translated his oral testimony into Turkish for the purposes of his witness statement. The prosecution objected to this question and the presiding judge ruled that the witness need not answer the question because it was not relevant. In the opinion of the observer, the defence line of questioning was highly relevant in so far as the defence sought to adduce evidence to the effect that the interpreter was in fact a gendarme officer and therefore not impartial.

The defence also sought to question another prosecution witness as to his political allegiance. The prosecution objected to this question and the presiding judge again ruled that the witness need not answer the question because it was not relevant. In the opinion of the observer, the question was relevant in so far as the defence sought to adduce evidence to the effect that the witness is actively involved with the Nationalist Action Party (MHP), an ultra-nationalist party whose primary concern is to fight Kurdish separatism and Kurdish political aspirations in Turkey, and therefore not impartial. The defence question was therefore highly relevant to the issue of the credibility of the prosecution witness.

On the issue of examination of a witnesses, the European Court of Human Rights held in the instant case that:

> "As a general rule, paragraphs 1 and 3 (d) of Article 6 require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him…"[10]

[9] *Engel and Others v. Netherlands* (1979-80) 1 EHRR 647 at para 91; *Bricmont v Belgium* (1990) 12 EHRR 217 at para 89

[10] *Sadak and Others v. Turkey* (no. 1) (App. Nos. 29900/96, 29901/96, 29902/96 and 29903/96), p. 15.

The Court added,

> "…where a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or to have examined, whether during the investigation or at the trial, the rights of the defence are restricted to an extent that is incompatible with the guarantees provided by Article 6."[11]

The fact that, in the present case, the defence was prevented from effectively challenging the evidence of the witnesses brought by the prosecution reveals that the defence was not given "an adequate and proper opportunity to challenge and question a witness".

(3) The defence was denied the possibility of directly asking questions of the witnesses for the prosecution

It was most apparent during the course of the hearing observed that there was an absence of parity of conditions for the examination of witnesses between the prosecution and defence. Whereas the prosecutor was able to ask questions directly of the witnesses called in support of the prosecution case, when the defence sought to cross-examine a prosecution witness, the defence was first required to put their question or series of questions to the judge. This procedure took place within the hearing of the prosecution witness. The defence questions were repeatedly met with objections from the prosecution but whether this was the case or not, the judge would proceed to decide whether or not to put the question or series of questions to the witness. If the judge decided to ask a question, he would rephrase it and put it in terms which he deemed appropriate.

In the opinion of the observer, this procedure for cross-examination of prosecution witnesses by the defence, which is common to all criminal trials in Turkey, prevents the defence from effectively challenging the witnesses brought by the prosecution. The requirement of having to ask questions through a judge puts a potentially unreliable witness on notice of the challenges to their evidence and provides them with the opportunity to manufacture a suitable but incorrect answer. Furthermore, defence counsel is prevented from examining witnesses in terms which accord with his/her own trial strategy. Moreover, in the opinion of the observer, there can be no legitimate justification for applying different procedural rules for the examination of witnesses to the prosecution and defence respectively. Such disparity is inconsistent with the principle of equality of arms.

(4) The defence was not allowed to present probative evidence that could serve to undermine the credibility of witnesses for the prosecution

Both in the hearing observed and at previous hearings, several prosecution witnesses gave evidence as to the distance between a coffee shop where the defendants were alleged to have held a meeting in support of the PKK and a gendarme station. The evidence of the prosecution witnesses ranged from 60 metres to 700 metres. In the hearing observed, counsel for the defence applied to the court to have an independent

[11] Ibid.

examiner appointed in order to undertake an official measurement of the distance between the coffee house and the gendarme station. The prosecution objected to the application and the court refused to grant the defence request.

In the opinion of the observer, the decision of the court to refuse to grant the defence application provides a further instance of the defence having been substantially disadvantaged vis-à-vis the prosecution. The measurement evidence, which according to Turkish law could only have been obtained by an independent court appointed examiner, would have been highly probative of the credibility or otherwise of the prosecution witnesses. The failure of the court to request that such evidence be obtained denies the defence an effective opportunity to challenge the prosecution case and effectively advance its own case and casts doubt upon the willingness of the court to subject the evidence of the prosecution witnesses to any detailed scrutiny. The observer recalls that the equality of arms principle requires that there be parity of conditions for the examination of witnesses and this requirement imposes on prosecuting and investigating authorities an obligation to disclose any material in their possession, or to which they could gain access, which may assist the accused in exonerating himself.

(5) The prosecution failed to disclose material evidence against the accused

During the course of the hearing observed on 23 May 2003, a prosecution witness produced an audio-cassette which he alleged contained a recording of a conversation he had had with the defendants in which they expressed support for the PKK. This cassette was not disclosed to the defence prior to the trial and therefore the defence were denied the opportunity of having knowledge of and commenting on material evidence filed by the prosecution.

It transpired that the original audio-cassette contained a recording of a conversation held in Kurdish, but that this had subsequently been translated into Turkish and the cassette produced by the prosecution witness in fact contained the Turkish translation. Upon a request from the defence, the prosecution agreed to disclose the Turkish version of the recording but not the original Kurdish version. A defence application for the original Kurdish recording to be disclosed was refused by the presiding judge.

In the opinion of the observer, the failure of the prosecution to disclose either the Turkish or Kurdish version of the audio-cassette prior to trial must have inevitably affected the conditions under which the defence cross-examination took place. The defence were denied the opportunity of familiarising themselves with the evidence before the court and commenting on its existence, contents and authenticity. Perhaps even more concerning, however, is the decision of the judge not to order disclosure of the cassette alleged to contain a recording of the original conversation in Kurdish. Without a copy of the original Kurdish conversation, the defence is fundamentally prejudiced in two key respects. First, it has no means of testing the prosecution witness's claim that the voices on the cassette are in fact those of the defendants; and second, no means of testing whether the translation of the Kurdish conversation into Turkish that has been admitted into evidence is in fact an accurate translation.

(6) A witness for the prosecution, whose first language was Kurdish rather than Turkish, was not provided with an interpreter in the courtroom

In advance of the first trial, the Kurdish speaking prosecution witness had, with the assistance of an interpreter, prepared a statement written in Turkish. At the hearing on 23 May 2003 he adopted this statement as his evidence-in-chief at the re-trial. The witness was then tendered for examination by counsel for the defence, however, no interpreter was provided. Due to the witness's extremely limited understanding of the Turkish language (the language in which all court proceedings are conducted in Turkey), he was unable to fully understand many of the questions put to him by the defence, remarking on several occasions, "I speak very little Turkish", "My Turkish is not very good", "I don't understand".

The observer is deeply concerned at an apparent inequality of arms in so far as the prosecution was able to benefit from the witness giving his evidence-in-chief in his first language, Kurdish, but the defence were required to cross-examine the witness in Turkish, a language of which he had only an extremely limited understanding. In the opinion of the observer, in order for the prosecution and defence to be afforded a procedurally equal position, a Kurdish-Turkish interpreter ought properly to have been provided for the cross-examination of the witness. In the absence of an interpreter, the court ought properly to have adjourned the testimony of the witness until a later date with a direction that an interpreter attend on that occasion

(7) The defence was denied the possibility of having its questions of witnesses and submissions to the court entered directly into the court record.

The Observer is concerned that the principle of equality of arms was not fully respected in so far as the prosecutor's questions of witnesses and submissions to the court were entered directly into the court record in his own words, whilst the defence lawyers and defendant were barred from dictating their own witness questions and defence submissions directly into the record. Instead, the defence had to rely upon the judge to summarise (rather than repeat verbatim) the defence questions and submissions before they were entered into the court record. 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 substantial disadvantage vis-à-vis the prosecution.

The Observer is concerned that the procedure for recording defence submissions in Turkey potentially fails defendants in three key respects. First, during the course of the trial it risks creating the impression that defence submissions are not as important as those made by the prosecutor. Second, 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 any accurate record of the proceedings in the lower court. In the opinion of the Observer, these matters serve to place the defence at a substantial disadvantage vis-à-vis the prosecution during the course of criminal proceedings in Turkey.

The Observer understands that although during the hearing the defence can object to the judge's summary, acceptance of this objection is within the judge's discretion. After the hearing is over, the defence lawyer has no right to object to how his/her argument is summarised in the record. In the hearing observed, the defence counsel

did seek to challenge the judge's summary on at least two occasions. On both occasions the judge amended his summary.

(8) The physical appearance of the prosecutor in the courtroom and his access to technological facilities undermined the appearance of an equality of arms

At the start of the hearing and after every adjournment the prosecutor entered the courtroom from the same door as the three judges whilst defence counsel entered from a side door along with members of the public. When the judges rose to consider a defence application that had been resisted by the prosecutor, the prosecutor retired with the judges, again through the same door. During the course of the hearing, the prosecutor sat on a platform that was elevated some 3 metres above the ground, whilst the defence lawyers were required to sit at an ordinary table. The prosecutor sat on the same platform as the judges, directly adjacent to them, whilst the defence lawyers were relegated to a position on the far side of the courtroom next to the defendants. The prosecutor was provided with a computer terminal and monitor which showed him the record of proceedings as it was being entered by the court stenographer. The defence lawyers meanwhile had no access to any similar technology. They were required to listen and taken handwritten notes if they wished to have a record of proceedings.

IV. Trial by an independent and impartial tribunal

The ICJ/CIJL is deeply troubled at allegations that the presiding judge in the case of Leyla Zana and her co-defendants may not be impartial. According to Mr. Yusuf Alatas, a highly respected defence lawyer who represents Leyla Zana, on 28 March 2003, in accordance with domestic law, the defence had to make a formal request to the court for a re-trial. On this occasion, the two wing members of the bench agreed to grant a re-trial, however, the president of the court refused. According to Mr. Alatas, in refusing the application for a re-trial the president of the court commented in open court to the effect that, "the deficiencies and mistakes identified by the European Court of Human Rights will not change the guilt of the accused." In the opinion of the observer, this alleged public pre-trial comment must cast serious doubt upon the impartiality of the presiding judge. If true, it demonstrates that prior to the commencement of the trial, the presiding judge held a pre-formed opinion as to the guilt of the accused and that that opinion is likely to weigh on his ultimate decision regardless of the evidence that is placed before him. The observer understands that in light of the prejudicial comment, the defence did apply for the presiding judge to be replaced, however, that application has been refused.

The ICJ/CIJL also has misgivings relating to the extent of the independence of the judiciary. Although the Turkish Constitution prohibits state authorities from issuing orders or recommendations concerning the exercise of judicial power, it is widely reported that in practice, the Government and the National Security Council (NSC), a powerful advisory body to the Government composed of civilian government leaders and senior military officers, periodically issues announcements or directives about threats to the State, which can be interpreted as instructions to the judiciary. Furthermore, the ruling body of the judiciary, the High Council of Judges and Prosecutors has the potential to exert undue pressure on members of the judiciary.

Established by Article 159 of the Constitution, the High Council is responsible for appointing, transferring, promoting, disciplining and dismissing judges. The High Council is chaired by the Minister of Justice, a Minster of Justice Under-Secretary and five judges selected by the President. The Minister of Justice and the Under-Secretary of the Minister of Justice each retain voting rights in the High Council and therefore **there is direct Executive influence in the process of judicial appointment, promotion, transfer and discipline**. Furthermore, decisions of the Council are not open to judicial review.[12] The ICJ/CIJL is concerned that the NSC, an omnipotent group within the Government, can be likely to influence the High Council which, in turn, can exert pressure on the judges of the State Security Court in the instant highly politicised case.

V. Legal Framework

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is the primary binding regional instrument to have actually been ratified by Turkey. In addition, relevant persuasive non-treaty standards include the Universal Declaration of Human Rights of 1948 (UDHR), the UN Basic Principles on the Independence of the Judiciary of 1985[13] and the UN Basic Principles on the Role of Lawyers of 1990.[14]

These instruments are not foreign charters, inappropriate to the Turkish situation, but instruments which were shaped with the participation and approval of Turkish governments, and those which are in the form of treaties were freely ratified by the Turkish parliament. Indeed, under the terms of Article 90 of the Turkish Constitution, the above instruments actually form an integral part of Turkish domestic law.

Article 6 of the ECHR guarantees the right to a fair trial in criminal proceedings. The object and purpose of the provision is "to enshrine the fundamental principle of the rule of law"[15] The principle that there should be **equality of arms** between the parties before the court is fundamental to the notion of a fair trial under Article 6, ECHR:

> "… [The Commission] recalls that it has repeatedly held that the right to a fair hearing, in both civil and criminal proceedings, entails that everyone who is a party to such proceedings shall have a reasonable opportunity of presenting his case to the court under conditions which do not place him at substantial disadvantage vis-à-vis his opponent …."[16]

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[12] For a detailed discussion see Chapter VII of *The Independence of Judges and Lawyers in the Republic of Turkey: Report of a Mission, 1999*, published by the Centre for the Independence of Judges and Lawyers, Geneva, Switzerland.

[13] 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).

[14] 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.

[15] *Salabiaku v. France* (1991) 13 EHRR 379

[16] *Kaufman v. Belgium* (1986) 50 DR 98, ECmHR 15

In particular, each party must know the case being made against him or her, have an effective opportunity to challenge it and an effective opportunity to advance his or her own case. The equality of arms principle requires that there be parity of conditions for the examination of witnesses and this requirement imposes on prosecuting and investigating authorities an obligation to disclose any material in their possession, or to which they could gain access, which may assist the accused in exonerating himself or herself or in obtaining a reduction in sentence which might undermine the credibility of a prosecution witness.[17] Early disclosure is important. Disclosure at trial is insufficient: "A party to the proceedings must have the possibility to familiarise itself with the evidence before the court, as well as the possibility to comment on its existence, contents and authenticity in an appropriate form and within an appropriate time, if need be, in a written form and in advance."[18] Article 6 also specifically provides that in the determination of any criminal charge, everyone is entitled to a fair and public hearing "by an independent and impartial tribunal established by law".

VI. Background Information

Leyla Zana, Hatip Dicle, Orhan Dogan and Selim Sadak were former members of the Turkish National Assembly and the Democracy Party (DEP).[19] On the basis of repeated applications over the course of nearly three years by the public prosecutor to the Ankara State Security Court, on 2 March 1994, the National Assembly lifted the applicants' parliamentary immunity. Shortly thereafter, the defendants were taken into police custody. On 16 June 1994, the Constitutional Court dissolved the DEP and ordered the party's MPs to vacate their parliamentary seats.

The defendants were initially charged with "*treason against the integrity of the state*" a capital offence under Article 125 of the Penal Code. That charge was later changed to "*membership in an armed gang*" within the meaning of Article 168 of the Penal Code.

In its judgement of 8 December 1994, the Ankara State Security Court sentenced the defendants to 15 years imprisonment within the meaning of Article 168. The Court rejected the charge under Art. 125. It found, in sum, that defendants had engaged in intensive "separatist" activity under instructions from the PKK – a separatist armed group seeking to fund a Turkish state in south-eastern and eastern Turkey.

On 17 January 1996, the former parliamentarians lodged an application with the then European Commission on Human Rights alleging, by reference to Articles 6 and 10 of the ECHR that they had not been afforded a fair hearing by an independent and impartial tribunal and that their freedom of expression had been infringed.

On 17 July 2001, the European Court of Human Rights ruled that the former members of the Turkish Parliament had not received a fair trial. The Court ruled that there had been a violation of Article 6 because the Ankara State Security Court, which at the time of the trial included a military judge, was not "an independent and impartial

[17] *Jespers v. Belgium* (1981) 27 DR 61, ECmHR paras 55-58
[18] *Krcmar v. Czech Republic* 3 March 2000, ECtHR para 42
[19] For all factual information cited, refer to *Sadak and Others v. Turkey* (no. 1) (App. Nos. 29900/96, 29901/96, 29902/96 and 29903/96).

tribunal". The Court further unanimously held that the applicant's rights under Article 6(3)(a) and (b) had been violated in so far as there had been a change in the characterisation of the offence during the last hearing of the trial and the applicant's had not been allowed additional time to prepare their defence against the new charge and furthermore, the applicant's had been denied an opportunity to examine or have examined key witnesses for the prosecution.[20]

On 3 February 2003, Turkey's President, Ahmet Necdet Sezer, ratified the most recent 'Harmonisation Law' aimed at bringing the country closer to meeting European Union membership requirements pertaining to human rights. According to the new law, when the European Court has ruled that a person has been denied a fair hearing in accordance with Article 6, that person shall have the right to a re-trial. On 4 February 2003, the ex-parliamentarians officially lodged an application for a re-trial pursuant to the new law adopted by the Turkish Parliament.

Hearings in the case have now been held on 21 February 2003, 28 March 2003, 25 April 2003 and 23 May 2003. The next hearing in the trial will take place before No.1 Ankara State Security Court on **20 June 2003**.

VII. Conclusion

Despite the fact that the present case was a re-trial which should have remedied the defects that occurred in the first trial 9 years ago for which the defendants have been serving a term of 15 years imprisonment, it is regrettable that the defects have not been effectively addressed. The ICJ/CIJL finds that throughout the trial, the principle of equality of arms between the defence and prosecution was not observed. Furthermore, prejudicial comments that the presiding judge of the State Security Court allegedly made prior to the trial, coupled with the fact that the National Security Council, through the High Council, is in a position to exert pressure on the judges indicate that No. 1 Ankara State Security Court was neither independent nor impartial when hearing the case of Leyla Zana and three other Kurdish former parliamentary deputies.

[20] Ibid.