**Information file on the KCK trial of Kurdish lawyers in Istanbul, November 2012**

**Delegates**

Margaret Owen OBE

Ali Has, solicitor

Tony Fisher, Human Rights Committee of the Law Society

Bronwen Jones, Tooks Chambers

Melanie Gingell, Tooks Chambers

*Delegation facilitated by* Peace in Kurdistan campaign *in response to an appeal for international support from the Peace and Democracy Party (BDP)*

**Contents**

1. Joint statement by international trial observers

2. Press release, Peace in Kurdistan campaign, 5 November 2012

3. Trial of Kurdish Lawyers in Turkey: Monitoring by Margaret Owen

4. Follow up report by Tony Fisher

5. Follow-up report by Melanie Gingell

6. Follow-up report by Bronwen Jones

**1. Joint Statement by international observers of the Lawyer’s trial**

We, as international lawyers representing the undersigned organisations, were in Silivri (Turkey) to observe the continuation of the trial of our colleagues*: 46 Kurdish lawyers and 3 members of their staff.*

We summarise our concerns around the following issues;

The first hearing for this trial, which started in July 2012 in Istanbul, was monitored by these international lawyers also.

On the 6th November 2012 we observed the second hearing in Silivri/Istanbul.

The dominant issue for the court, the right to use the Kurdish language in defending the indictment charges was yet again denied. This was despite submissions advanced by the defence lawyers and the proposed new changes in the law by the ministry of justice relating to the use of the mother tongue in the law courts.

The right to use the mother tongue has been a central issue in this trial (as in other KCK trials). Its prohibition has recently led to hundreds of Kurdish prisoners joining unlimited hunger strikes in protest. Several of the hunger strikers have now reached their 58th day and are nearing death. On the 6th November we learnt that the lawyers on trial have also now joined the hunger strikes, as have another one thousand political prisoners. The defence lawyers advanced arguments for the use of the Kurdish language as a means of ending the continuing hunger strikes and saving lives. They requested the release of the prisoners, in view of the new law on mother tongue use proposed by the Minister of Justice.

All these arguments were rebutted.

However, the continued denial of the Court to recognise this right led to the defence lawyers walking out of the court room as a protest against the decision, and the trial halted. The Judge continued the trial without the presence of the defence lawyers, which is against Turkish law.

Other aspects in the management of the hearings that we observed are not consistent with the principles which govern the right to a fair trial:

* The lawyers were not able to see their clients, let alone speak with them, because of the ranked lines of guards standing between them to block their way.
* The families of the detained lawyers were unable to attend the proceedings, because the court was too small, even though the hearing was removed to a the court room in Silivri.
* The trial lasted less than 2 hours;
* When detained lawyers attempted to speak in Kurdish, the microphone was turned off.

We, the international observers, express our grave concern that the Court has adjourned the trial to the 3rd January 2013. We would remind the Turkish authorities that the European Convention on Human Rights requires Turkey to come to decisions within a reasonable time frame – especially when the defendants are in detention – in order not to unnecessarily extend their custody, which, in this present case, is an extremely urgent issue since the lawyers are now on hunger strike.

Our organisations express, at the close of this hearing, their deepest concern about the way the trial is proceeding, and about the total lack of respect of the fundamental guarantees of the rights of the defence. They call upon the Turkish authorities to take prompt action in order to remedy these irregularities, as well as to ensure that the internationally recognized principles of a fair trial are complied with.

-European Democratic Lawyers (EDL / AED)

-European Association of Lawyers for Democracy and World Human Rights (ELDH)

-International Association of People's Lawyers -Solicitors International Human Rights Group (UK)

-Lawyers for Lawyers (Netherlands)

-Bar Association of Amsterdam

-Lawyer's Rights Watch Canada (LRWC)

-Alternative Intervention of Lawyers - Athens, Greece

-Fair Trial Watch (Netherlands)

-Progress Lawyers Network (Belgium)

-Lawyers Without Borders (Sweden)

-Deutscher Anwalt Verein (DAV)/Germany

-Peace in Kurdistan UK

-Human Rights Committee of the Law Society of England and Wales

-Vereinigung Demokratischer Juristinnen und Juristen, VDJ

-Demokratische Juristinnen und Juristen der Schweiz, DJS

-Republikanischer Anwältinnen- und Anwälteverein, RAV

**2. Press release**

*Peace in Kurdistan Campaign*

PRESS RELEASE 5 November 2012

For immediate release

**Leading UK lawyers to observe anti-terror trial in Istanbul**

A delegation of several prominent lawyers from the UK has arrived today in Turkey to observe a major anti-terror trial in Istanbul.

The delegation, which includes international human rights lawyers Margaret Owen OBE, Melanie Gingell, Bronwen Jones, and Ali Has as well as Tony Fisher, member of the Law Society’s Human Rights Committee, will spend three days observing the lawyers’ trial on 6 November and meeting with members of the defendants’ legal team.

On trial in this landmark case are 36 lawyers who have been charged with terrorism-related offences. The Kurdistan Communities Union (KCK), which the lawyers are accused of being members of, is considered to the ‘urban wing’ of the prohibited PKK.

Dozens of international lawyers and members of bar associations who observed the first hearings of this case in July, have expressed grave concern over the legality of the trial.

As Tony Fisher states, "It is incredibly important that the international legal community shows it support for the Kurdish lawyers to ensure that proper respect is given to their right to a fair trial and to their right to practice their profession without interference by the state. I am delighted to be representing the Human Rights Committee of the Law Society of England and Wales on this mission."

As all of the lawyers were members of the imprisoned PKK leader Abdullah Ocalan’s legal defence team, the lawyers stand accused of ‘membership’ or ‘support’ of terrorism, for defending their client’s rights in what is a highly politically sensitive case.

This trial is one of several on-going mass political trials in Turkey in relation to the KCK investigations. Turkey’s widely criticised and dangerously broad anti-terror legislation has led to around 10,000 Kurds being arrested since April 2009 and charged with membership of the KCK, including elected Kurdish deputies, local mayors and councillors, journalists, trade unionists, students and prominent academics.

In one of the major KCK trials, 205 people are being tried, while in September, 44 journalists from a variety of Turkish and Kurdish media also stood trial for association with the KCK.

Several hundred of those still detained are on hunger strike to protest their criminalisation and the refusal of the Turkish government to engage in peace talks with Ocalan.

Margaret Owen, who observed the first hearings in July, says, "This is a "political" not a legal trial. While there are many KCK (alleged urban arm of the PKK) trials going on at the present time in Turkey, involving politicians, academics, journalists, trade unionists and civil society activists, this trial has grave implications for Turkey's democratic credentials and her reputation as a suitable applicant to the EU because it is a trial of lawyers.”

She continues: “We hope to galvanise the international community to protest against the manipulation of the justice system by the Turkish authorities for political ends. We also are deeply concerned by the plight of the hundreds of hunger strikers among the political prisoners, many of whom are now facing death."

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*Patrons: Lord Avebury, Lord Rea, Lord Dholakia, Baroness Sarah Ludford MEP, Jill Evans MEP, Jean Lambert MEP, Jeremy Corbyn MP, Hywel Williams MP, Elfyn Llwyd MP, John Austin, Bruce Kent, Gareth Peirce, Julie Christie, Noam Chomsky, John Berger, Edward Albee, Margaret Owen OBE, Prof Mary Davis, Mark Thomas*

**3. Trial of Kurdish Lawyers in Turkey: Monitoring by Margaret Owen.**

**Day 1: 4 November 2012: The Trials**

<http://www.internationallawbureau.com/index.php/trial-of-kurdish-lawyers-in-turkey-monitoring-by-margaret-owen-day-1-november-4-2012/>

I am Margaret Owen, a new door tenant at 9 Bedford Row. I am setting the scene for those who wish to know more about how Turkey is manipulating anti-terror legislation to crack down on its Kurdish population. I will be blogging this week whilst in Turkey.

I have just arrived in Istanbul, one of six UK lawyers, to observe the trial of 35 Kurdish lawyers who have been detained in prison since November, 2011. They are the lawyers for the Kurdish leader Abdullah Ocalan, who has been incarcerated on the isle of Imrani for the last 12 years. Two of us were here in July to observe the first hearing, but on Tuesday 6 November 6,2012 we expect that long prison sentences will be given. The July hearing lacked all the components of a “fair trial” and we fear that this week’s process will expose similar defects.

These lawyers have committed no crime; it is simply that they speak for Ocalan. The trial we are about to observe, starting on 6November, is just one of the many KCK trials that have been going on since 2009. The trials have seen thousands of Kurdish politicians, academics, journalists, trade unionists and civil society activists summarily arrested, detained, and prosecuted under the anti-terrorism legislation. Their crime is that they seek justice for the Kurdish people; but since the Turkish justice system is so skewed in favour of the State, the AKP party, we fear the lawyers will receive heavy prison sentences.

**The Hunger Strikers**

To add complexity and urgency to the explosive political situation, with the conflict in Syria escalating, 66 Kurdish political prisoner hunger strikers reached last Sunday the 55th day of their hunger strike; it is said that many are near death. Since September, a further 654 political prisoners have joined the hunger strike from 66 prisons. How will Erdogan, Turkey’s Prime Minister, react when news of the death reaches him? No one can tell. We might find out this week.

The UK delegation will tomorrow meet with the Kurdish political party (BDP), its lawyers and the other international delegations to consider what it can call do to bring pressure on Turkey to respond positively to the demands of the strikers, and avoid unnecessary deaths and the consequent violence that is bound to follow should the Kurds’ demands not be met.

The BDP’s demands are as follows

-       To release from detention Abdullah Ocalan so that he can lead negotiations to end the conflict and bring peace.

-       To grant the Kurds freedom to use their mother tongue in education, and to defend themselves in their Kurdish language in the courts

-       To have freedom of expression, association, access to justice, and for Kurdish elected representatives to be allowed to fully play their political roles as Members of Parliament and as Mayors

The trial begins on Tuesday.

**Day 2: 5 November 2012:** **The Eve of the Trial**

**http://www.internationallawbureau.com/index.php/trial-of-kurdish-lawyers-in-turkey-monitoring-by-margaret-owen-day-2-november-5-2012/**

International delegations from several European countries met with the Istanbul Bar and with lawyers defending the lawyers. In between the two meetings, we joined a protest march of more than 600 people, mostly lawyers wearing their taffeta black and red robes, who chanted “No to Death. Yes to Resolution.” “No” to the now expected deaths of many of the hunger strikers who are into their 56th day, and “Yes” to a resolution of the conflict through peaceful means i.e. the release of the Kurdish leader from solitary confinement so that he can lead peace negotiations.

Unlike the violent reaction of the police to the protests of yesterday, this time the police were nowhere to be seen. Members of the Bar made their speeches. People cheered and quietly dispersed. It was almost a disappointment to discover that the authorities were not listening.

The Istanbul Bar Chair deplored the illegality of the proceedings that have resulted in the detention of 35 lawyers since last November. He described the 100,000-page indictment against them as “pure fantasy, invention, and imagination”. The Chair condemned the court as being incompetent. He also criticised as unlawful the raids on the private homes and offices of the prisoners, as well as the seizing of computers, files, and private and confidential documents. This is a political trial and we should continue to demand the release of the prisoners.

Each speaker stressed that the hunger strike must be seen in the context of the spate of KCK trials and particularly the trial of the lawyers. Thousands of Kurdish prisoners now feel that they have no other way of defending their rights or protesting their treatment. We are told that deaths are imminent. One lawyer, Mr. Selcuk, an impassioned and brave orator and defender of human rights who has visited hunger strikers in 66 Turkish prisons, told us “this hunger strike is the worst I have ever seen, and I have seen many including the one ten years ago in which over 100 prisoners died.”

If indeed deaths do occur, such tragedies could topple Turkey into a renewed conflict.

Tomorrow the trial will open and we are told it is likely to go on for “years and years” just like the many other KCK trials, with prisoners on remand for much of their adult lives.

Tomorrow the international delegations will discuss whether some of us will publicly begin a token hunger strike to show international support. I have put my name forward to be one of them. However, its time now for European governments to put real pressure on Turkey to solve the Kurdish question through dialogue, and stop the violence.

**Day 3: 6 November 2012: The Day of the Trial**

<http://www.internationallawbureau.com/index.php/trial-of-kurdish-lawyers-in-turkey-monitoring-by-margaret-owen-day-3-november-6-2012/>

What a day of disappointment! A black day for the Kurds, for Turkey, for peace, for the region and for the world.

This morning at the crack of dawn, in a rainy, grey Istanbul, we were forty European lawyers from six different countries (UK, France, Germany, Netherlands, Switzerland and Greece) who boarded buses to take us on the bleak long drive out of Istanbul to the Srivili courtroom, adjacent to one of Turkey’s many prisons.

We were greeted by rows of armed police, as well as crowds of Kurdish supporters and relatives of the imprisoned lawyers. Wearing our particular lawyers’ robes which protected us from body searches, our mobile phones and cameras removed, we were ushered into the court to observe the trial.

We expected a three-day trial, but we got less than a day. No bail, no releases, no language rights. All was over by lunchtime. The lawyers’ trial is now adjourned until January 3rd. With tears and embraces, the relatives of the prisoners who had had such hopes of a release – old women, young wives, small children – were permitted brief farewells to their loved ones before the defendants were returned to prison. A small girl was carried across the cordon separating the prisoners from the rest of the courtroom to kiss her father. Many of the women were crying.

The judge refused to allow the defendants to use their mother tongue. Each time a defendant started to speak in Kurdish, the microphone was turned off. The lawyers argued eloquently for the liberty of their clients to use their own language in their defence. One wonders how long it will take for these professional men and women to be free of arrest and detention, as they represent such defendants and vehemently attack the court and the Turkish authorities for denying Kurds their basic rights. Will they too soon be accused of supporting terrorism? Will there be any decent lawyers left to practice?

We had hoped for some tiny crumbs of justice, especially since the hunger strike is so crucially linked to this hearing, and all the other KCK trials. We were all aware that the judge’s decisions on these pleas would have huge implications for the lives of hundreds of hunger strikers among the political prisoners. Last week one imprisoned lawyer had joined the hunger strike, but today all the remaining lawyer-prisoners have joined it along with a further 1,000 political prisoners. This means that there are nearly 2,000 Kurdish prisoners, men and women, prepared to face death. And at least 120 men and women are tragically nearing their end. One of the lawyers described burying a hunger striker a decade ago when over 100 prisoners died. He weighed less than 15 kilos.

Central to all the impassioned speeches of the lawyers allowed to speak in the short hearing is the matter of the isolation, in solitary confinement, of the Kurdish leader, Abdullah Ocalan, who for over a year has been denied visits by his lawyers or his family, and whose health is rapidly deteriorating. Yet he is the man who is seeking peace through dialogue and negotiation; and it is precisely because the lawyers represent him that they now find themselves in detention. This attack on lawyers, and the assault on the confidentiality of consultations with their clients, breaches international fair trail standards.

When the Judge declared he would not allow the use of the Kurdish language in the courtroom, the lawyers walked out.

So this is where we are. Two thousand people prepared to die in agony through hunger strikes for their mother tongue; for the release of their leader so that he can be party to negotiations for a lasting peace. If Prime Minister Erdogan does not respond – and time is running out – Turkey could find itself in a renewed conflict capable of engulfing the whole region.

Tomorrow we international delegations are reading a statement outside the offices of the IHD (Turkish Human Rights Committee). We pray that the Turkish government is listening. Surely it is time now for the UK and other European governments to use all available means to persuade Turkey that the game is up. The hour has come to sit down, make the peace, reform the constitution and grant the Turkish Kurds their rights.

**4. Follow up report by Tony Fisher**

**KCK TRIAL OF KURDISH LAWYERS – ISTANBUL 6TH NOVEMBER 2012**

**Background**

In November 2011 mass arrests of some 46 Kurdish and Turkish lawyers took place in raids carried out simultaneously in many Turkish cities and provinces.

The arrest of these lawyers is linked with many thousands of other arrests which have taken place, mainly of Kurdish Turkish nationals, since 2009. Most of those arrested have had some connection with a Kurdish organisation established by Abdullah Ocalan, namely the Union of Communities in Kurdistan (otherwise known as the KCK). The trials of these individuals, including the lawyers trials, have become known as the KCK trials. In all some 8,000 defendants have been charged with terrorist offences. They include politicians, journalists, academics and other human rights defenders as well as the lawyers.

Mr Ocalan is a Kurdish politician who is seen by many as the natural leader of the Kurdish community in Turkey. He is currently held in isolation on an island without access to legal counsel having been convicted on terrorist charges in Turkey.

The lawyers are charged under anti-terror legislation in Turkey with being members of an illegal organisation. All of the defendants have at some time or other acted in a representative fashion for Mr Ocalan and are accused of passing on his orders as well as forming part of an illegal leadership committee linked with the PKK.

Information obtained from the European Association of Lawyers for Democracy and World Human Rights (ELDH) suggests that the charges are based on evidence collated by the Turkish authorities as a result of their practice since 2005 of routinely recording all meetings between Mr Ocalan and his legal advisers. Recordings have been made in both video and audio format. Information received from those acting for the accused at the hearing on 6th November 2012 also suggests that additional evidence has been obtained as a result of covert recording of telephone conversations and covert ”bugging” of the offices and homes of the defendants. All of the charges are denied by the Defendants, most of whom were arrested and charged many years after they had ceased to have contact with Mr Ocalan.

A hearing took place in the Special Istanbul Criminal Court in July 2012 which was adjourned for further hearing on 6th November 2012. Some of the defendants were granted bail but the majority were remanded in custody in Koaeli prison. This is a very large prison approximately 90 minutes drive from the centre of Istanbul. It incorporates a court (Silivri Court) where the hearing on 6th November took place.

**The wider political background.**

The prosecution of the lawyers cannot be understood without some information concerning the wider political context in which the charges have been laid.

The Kurdish community within Turkey consists of some 20 million people. They form part of a wider community of Kurds who have traditionally been concentrated in south east Turkey, Northern Iraq, and Syria, an area referred to generically by the Kurdish people as Kurdistan. The PKK are a terrorist organisation whose stated aim is to establish an independent Kurdistan. Kurdish political parties within Turkey have also continuously campaigned for respect for the Kurdish culture and language over many decades. The ”war” between the state authorities in Turkey and the PKK has raged with varying intensity since the 1980's and has seen many thousands of casualties on both sides. During the 1990's the state was guilty of many atrocities in south east Turkey including the destruction of over 3,000 villages and the resultant internal migration of many millions of Kurds to other parts of Turkey. These atrocities led to a substantial number of applications to the European Court of Human Rights during the 1990's and many judgements against Turkey involving the payment of substantial damages to victims of torture, arbitrary killing, unlawful detention and destruction of property. Many millions of Kurds have been ”caught between two fires” between the state security forces and the PKK. The tensions between the demands of the Kurdish communities for respect for the Kurdish culture and language, and the Turkish state's determination to secure the indivisibility of the state have not been resolved. The Kurdish problem remains one of the greatest challenges faced by Turkey in its efforts to become an effective modern democracy with appropriate respect for human rights, due process, and the rule of law.

Some progress has been made in terms of legislative protection for those in custody (although poorly implemented). Much of the effort made has been driven by Turkey’s desire to join the EU. However, efforts to broker a lasting resolution of the Kurdish issues have failed. Most recently when the Turkish authorities withdrew from discussions with the PKK in Oslo in 2010. By then Mr Ocalan had been completely isolated and the current spate of prosecutions had begun.

In September 2012 many of those detained as a result of the arrests leading to the KCK trials (including journalists, academics and other human rights defenders, but excluding the lawyers in this case) went on hunger strike in pursuance of demands that greater respect be given to the Kurdish language in the education system, that all defendants in all trials be given the right to present their cases in Kurdish, and for the release of Mr Ocalan to resume attempts to broker a peace process. The hunger strike started on the same date that a military coup took place in Turkey in 1980. At the time of the hearing some of those on hunger strike were alleged to be close to death.

**Legal issues in the trial of the lawyers**

Many concerns have been expressed in relation to the fairness of the trial against the lawyers which has almost universally been perceived as politically motivated. A summary of these concerns is set out below

1. Whatever the merits of the charges or the culpability of individual lawyers, the methods used to collate evidence are clearly in breach of fundamental elements of legal professional privilege. Routine recording of privileged interviews is perhaps the most fundamental breach of the lawyer/client relationship.
2. Although no English translation of the indictment has been obtained it is understood that it runs to some 1,000 pages and complaints have been made that insufficient access has been provided to those lawyers who are acting for the defendants to the evidence on the basis of which the indictment has been brought.
3. Indication has been given that before a prosecution against a lawyer is taken in Turkey there is a requirement under domestic legislation (the Turkish Lawyers Act 1927) that the consent of the Ministry of Justice be obtained. It is understood that no such consent has been given which raises the question as to whether the proceedings themselves should be regarded as being null and void.
4. Certain defendants have been granted bail subject to reporting conditions yet the majority (whose situation appears comparable to those on bail) have had their applications for bail consistently refused. There appears to be no objective justification for this.

Without further access to the evidence itself and more detailed interviews with the defendants and their lawyers it is difficult to be more precise with regard to any further specific matters of concern with the trial process. The fact that all of the defendants were arrested at the same time, some many years after all of the evidence on the basis of which they were charged had been finalised obviously raises suspicions that the prosecutions are politically motivated however.

**The hearing on 6th November 2012**

The hearing at the Silivri court outside Istanbul took place during the morning and afternoon of 6th November. A delegation of some 60 lawyers, in addition to those Turkish lawyers representing the defendants, attended. There were representatives from the Bar Associations of Paris and many other parts of France, Dusseldorf, the Netherlands, Sweden and Greece as well as a delegation from the UK which consisted of a Kurdish solicitor practising in London and three barristers from Tooks Court. Another barrister from Doughty Street chambers was present to represent the International Bar Association. I went as representative of the Law Society of England and Wales. Many relatives of the accused were also present. Some lawyers also represented individual NGO’s

The hearing took place under conditions of heavy security. As well as Gendarmes some 50 or so riot police in full body armour accompanied by a water cannon were stationed outside the court. Many of these also entered the court building when the hearing took place. There was insufficient room within the courtroom itself to house all of the representing lawyers, the observers, and the family members. An anteroom had been prepared with a video link to the court room and all of the relatives of the accused were kept within this room during the morning session.

After the hearing commenced a series of speeches were made by defence lawyers all with the same or a similar theme, namely that the defendants should be granted permission to conduct their defence in Kurdish. Variations on this theme included allegations that unless the judge consented to these applications the court would be responsible for the death of the hunger strikers. It was indicated that the defendants would commence a hunger strike on the day of the hearing in support of their demands. The judge attempted to adjourn that debate and encouraged the advocates to proceed with the defence of the charges. Further speeches followed on the same theme, with one advocate claiming that the arrest of the lawyers immediately followed “on the orders of the prime minister” after the Oslo peace talks failed. The judge was encouraged to “be brave and change the course of history.”

After hearing these arguments the trial was adjourned for lunch. On its resumption further speeches again returned to the issue of the use of the Kurdish language before the judge pronounced that the application was rejected on the basis that all of the defendants spoke Turkish (and had made their initial statements to the authorities in Turkish) and did not therefore require or need to address the court in Kurdish. At this point all of the defending lawyers left the court indicating that they would take no further part in the proceedings. Loud cheers were heard from family members in the anteroom as the lawyers left the court and the proceedings were adjourned. During the adjournment family members were allowed into the court for emotional reunions with the accused before the court resumed.

Each defendant was then asked to come forward to identify themselves, confirm the date of their arrest and confirm their statements. Each in turn requested permission to address the court in Kurdish (which was refused and indeed the microphone was switched off).

At the end of this process (after a further short adjournment) the case was adjourned until 3rd January 2013 and all those who were in custody were remanded in custody again. Those on bail had their reporting restrictions relaxed so that they will be required to report monthly rather than weekly.

**Commentary**

Unknown to the international delegation at the time of the hearing the Turkish government had made an announcement on the day prior to the hearing that it would introduce further legislation addressing the issue of the use of languages other than Turkish in court proceedings. The detail of that legislation is not yet known.

What is clear however is that the trial of the lawyers is becoming ever more deeply politicised and the defendants and their lawyers are part of this process. There remains an important monitoring role for the international legal community, especially now that the lawyers in custody are on hunger strike.

The trial will resume on 3rd January 2013

**Tony Fisher**

**8th November 2012**

**5. Follow-up report by Melanie Gingell**

KCK TRIALS ISTANBUL 6TH NOVEMBER 2012

In response to an invitation from a Kurdish solidarity campaign PIK, I attended the trial of 47 lawyers in Istanbul on 6th Nov 2012.

I was part of a 5 person delegation comprising 3 barristers and 2 solicitors from the UK. Legal delegations from France, Switzerland, Germany, Canada also attended the trial.

BACKGROUND.

On the 5th November 2012 we attended a briefing meeting conducted by Istanbul Lawyers. They provided the following background to the case.

In November 2011, 47 Turkish and Kurdish lawyers were arrested and charged under anti-terrorist legislation with membership of a proscribed organization and of other related charges involving the communication of orders from jailed leaders. Thirty- eight of them have been held in custody awaiting trial. Nine have been granted bail with strict reporting conditions. They all deny the charges.

The common factor linking these lawyers is that each of them had at some time had dealings with cases involving Kurdish issues. Some of them had represented Ocalan the jailed leader of the PKK. Some of them had conducted cases before the ECHR. Others had been involved in asylum-based cases. There was a coordinated wave of arrests of these lawyers.

The prosecution evidence consists of the covert recordings of conferences between the lawyers and their clients. The lawyers’ houses and offices were subsequently searched and computers confiscated.

The prosecution of lawyers in Turkey requires the permission of the Ministry of Justice, which has not been obtained in this case.

This trial is linked to a series of trials being held in relation to other groups including academics, politicians, journalists and other human rights defenders who are involved in political activity with the legal Peace and Democracy Party which campaigns on Kurdish issues. They are all accused of being members of the illegal Union of Communities in Kurdistan (the KCK) hence the trials being popularly referred to overall as The KCK trials.

THE TRIAL

The adjourned hearing on 6th November took place in a large court room attached to a prison in Silivri situated approximately an hours drive from Istanbul. There was a heavy military presence at the court with soldiers in full riot gear with batons and shields.

The international legal delegations were allowed access to the court without any problems.

The courtroom was big enough to hold the defendants, their representatives, the international observers and a large contingent of observing lawyers from Istanbul. Two Kurdish members of parliament were also observing the proceedings.

There was not sufficient room to accommodate the defendants’ relatives who were allowed into an anteroom with a video screen to view the proceedings.

As we waited for the trial to begin we heard a fight break out in the anteroom, which was quickly dealt with.

The judge and prosecutor entered court and both sat at the bench. The defending lawyers sat in the well of the court, which is the normal arrangement in Turkey. The defendants entered court at the front and greeted their colleagues who are now representing them.

There were submissions on behalf of the defendants about the difficult prison conditions, about the hunger strikes underway in the connected groups of trials and, at most length, requesting permission to make submissions in Kurdish. There were also calls for the end of the solitary confinement of Ocalan, the Kurdish political leader, to enable peace talks to resume.

It was then announced that the lawyer defendants were joining the hunger strike.

There was a request for the relatives to be allowed into the court.

Each defendant then stood and requested permission to speak in Kurdish.

After the lunch adjournment the judge rejected the submissions in relation to the Kurdish language. This resulted in the representing lawyers walking out of court in protest to be greeted by the cheering relatives.

The trial resumed in the absence of the representatives. The defendants were again called individually and replied in Kurdish. The microphone was turned off in each case. During a short adjournment the relatives were allowed into the court. They talked to the defendants and children were handed over to them to hold.

The case was finally adjourned until 3rd January 2013 with very little progress having been made over the course of the day. No further bail applications had been acceded to although there was some relaxation of the reporting conditions of those already on bail.

CONCERNS

The conduct of the trial appears to be in breach of a number of the rights that are supposedly guaranteed by the European Convention on Human Rights. In particular I would identify the following as potentially amounting to violations:

**Detention**: The article 5(3) right to “trial within a reasonable time or to release pending trial” can hardly be met by the current situation of delay and uncertainty as these accused lawyers remain in custody.

**Delay**: Whilst neither the Convention itself or the jurisprudence of the European Court defines any specific period as amounting to a breach of the article 6(1) right to “trial within a reasonable time”, it seems to me that the arrest and detention in November 2011 and the lack of progress since must be outside any sensible understanding of a “reasonable time”.

**Right to privacy and family life**: The investigation process in this case involved a series of searches and phone-taps into the homes and the private and professional communications of these lawyers. It is hard to see the justification for those intrusions.

In addition, there is the obvious and general concern to ensure that these defendants and their relatives are treated humanely whilst the hunger strike continues.

CONCLUSION

The backdrop to this trial appears highly politicized with the arrests taking place after the peace talks between the PKK and the Turkish government are said to have collapsed in Oslo. The defense also appears very political with the submissions concentrating on issues of Kurdish identity and community rights. The hunger strike has spread with many hundreds of Kurdish defendants now taking part.

There is a feeling that political uncertainty is increasing in Turkey in relation to the Kurdish question. There has been a retreat from the move towards European integration and the human rights strategy that has been connected with that. The impact of the conflict in Syria is also being felt. These factors make it particularly important to maintain an international presence at the trials to try to ensure that fundamental freedoms are not a casualty of this uncertainty.

by Melanie Gingell, Tooks Chambers

**6. Follow-up report by Bronwen Jones**

**Delegation**

The members of the delegation sent by Peace in Kurdistan were Margaret Anne Owen, a barrister and member of the Bar Council’s Human Rights Committee; Ali Has, a solicitor-advocate and member of the Law Society’s International Human Rights Action Team; Melanie Gingell, a barrister and member of the Bar Council’s Human Rights Committee; Tony Fisher, a solicitor and attending on behalf of the Law Society of England and Wales; and myself. Piers Marquis, a barrister with Doughty Street Chambers, attended on behalf of the International Bar Association. International delegates were also in attendance from a number of European countries.

A briefing meeting was held prior to the delegation at Tooks Chambers. At this meeting we were given a background to the KCK trials and the current lawyer’s trial. We also learned that the hearing of 6 November had been moved from a court in Bakırköy, a suburb of Istanbul, to one in a military compound in Silivri, a small seaside town some two hours outside of Istanbul.

In Istanbul, we attended a briefing meeting on 5 November 2012 and the hearing of 6 November 2012. This hearing within the on-going criminal proceedings was intended to last three days, from 6-9 November 2012 but in the event it was adjourned until 3 January 2013 part-way through the day on 6 November.

**Background**

The Kurds

(Some information from

<http://www.bbc.co.uk/news/world-europe-19904781> and <http://countrystudies.us/turkey/26.htm>)

Kurdish people make up 10-15% of Turkey’s population. Kurds also live in Iraq, Iran, and Syria and number around 25-30 million in total in the Middle East. They are often referred to as the world’s largest stateless nation.

Historically in Turkey, the existence of Kurds as a separate people has been denied. The government has officially referred to Kurds as “mountain Turks” and “eastern Turks” up until the 1980s. The 1982 constitution prohibits the use of Kurdish in any official capacity in Turkey.

The leader of the Kurdish Workers’ Party (PKK), Abdullah Öcalan, has been imprisoned since 1999. The PKK is recognised as a terrorist organisation by the UK.

A number of Kurdish political parties have been banned. Currently the Kurdish Peace and Democracy Party (BDP) has seats in Parliament.

The current ruling party in Turkey, the AKP, has previously held peace talks with Öcalan and the PKK and has offered investment, but not self-rule, to the Kurdish areas of southeast Turkey. The peace talks, held in Oslo, collapsed in April 2011.

KCK Trials

At the Tooks briefing meeting we were told that, after local elections in April 2009, four waves of police operations targeted different groups for their support of or involvement with the Kurdistan Communities Union, abbreviated in Turkish as KCK. Various trials which have arisen from these operations are therefore known as the “KCK trials.”

Targeted groups include elected politicians, academics, journalists and trade unionists.

The trial which this delegation observed was of lawyers involved in defending Abdullah Öcalan

Prison conditions

The Turkish prison population is currently over capacity by approximately 12,000. The total population is 121,804, 54,000 of whom are on remand. KCK detainees account for between 8,000 and 10,000 prisoners. It is understood that methods of torture including sleep deprivation are being used and that the prisons lack adequate resources.

Hunger strikes

In response to the KCK trials, hunger strikes began in various prisons around Turkey on 12 September, the anniversary of the military coup of 1980. They seem to have begun with 9 people taking part. At the end of our time in Istanbul it was estimated that up to 2,000 people were taking part.

The demands of the hunger strikers are firstly, for the right to defence and education in Kurdish; and secondly, for an end to the isolation of Abdullah Öcalan and the creation of conditions for dialogue and negotiation. Öcalan has been held in a single cell in prison on the island of Imralı, subject to strict isolation, for the last 14 months.

The hunger strikes ended on 18 November 2012.

**Observations of events in Istanbul**

Briefing meeting on 5 November 2012

A briefing meeting took place on 5 November 2012 in a conference room attached to the Istanbul Bar Association on Istiklal Caddesi, one of the most famous avenues in Istanbul. In attendance were lawyers from many different bar associations in Turkey and members of the international delegation. The background to the case was given as follows.

In November 2011, 47 lawyers from 16 different bar associations were arrested. All had been working in cases to do with the Kurdish question or representing Abdullah Öcalan. The arrests followed and, in the view of at least some at the Istanbul briefing meeting, were prompted by, the failure of the Oslo peace negotiations with the PKK.

The charges are “forming a leadership committee” within the PKK and “membership of an illegal organisation.” The specific allegations are that the lawyers relayed instructions from Abdullah Öcalan to the PKK, resulting in deaths which prosecutors says can be linked to specific coded instructions.

Conferences between Öcalan and his lawyers have been monitored since 1999 and since 2005 they have been openly audio and video recorded. Evidence from these recordings makes up the bulk of the prosecution case. Paper and electronic files from the defendants’ homes and offices were confiscated following their arrests, allegedly without lawful basis.

At the beginning of the investigation 46 of the lawyers were detained. 10 were subsequently released on bail, leaving 36 imprisoned. The indictment calls for 7-22 years’ imprisonment for each defendant.

I had learned from the briefing meeting at Tooks Chambers that the trial is taking place in a Court of Special Authority. This was established in 2006 for terrorism trials. Just before the first hearing in July judicial reforms abolished this court for all new cases; however the intention was for existing cases to finish in the court. I am unclear as to whether this calls into question the jurisdiction of the court. It was also asserted at the Tooks briefing meeting that the defendants have been charged with “talking to Öcalan,” which is not a crime in Turkish law. This assertion was not made at the briefing meeting on 5 November 2012, to my knowledge.

At the first hearing in July, the lawyers whose mother tongue is Kurdish asked to defend themselves in their own language. They were prevented from doing so and therefore were unable to offer a defence.

We were told that the following submissions had been made, and rejected, at the July hearing: the defendants requested the prosecution to seek authorisation from the Ministry of Justice for the prosecution of the lawyers; the defendants requested permission to represent themselves in Kurdish; the defendants requested that evidence which had allegedly been obtained illegally to be disallowed; the defendants submitted that the proceedings were unconstitutional (on what basis, I did not glean; perhaps because of the special court).

The representing lawyers further requested for Abdullah Öcalan to be called as a witness for the defence. The court reserved its decision on this issue.

After the July 2012 hearing 9 lawyers were released with conditions prohibiting them from travelling abroad and requiring them to sign in weekly with the police.

28 of the defendant lawyers were due to appear before the court on 6 November. The intention was to repeat their request for permission to defend themselves in Kurdish and to repeat submissions in respect of the lawfulness of the proceedings.

We were informed that 700 prisoners had joined the hunger strike as of 5 November, its 56th day. We were further told that one of the defendant lawyers, Cengiz Çiçek, would join the hunger strike the following day.

The briefing meeting adjourned to a demonstration on Istiklal Caddesi. The Turkish lawyers put on their legal robes and chanted slogans in support of Abdullah Öcalan and a continuation of the peace process. Police did not attend. A press statement was made.

Following the protest, a legal meeting was held to discuss trial strategy. The consensus seemed to be that individual submissions would not be made on behalf of each defendant as, being that this was a political trial, the defence did not want the court (or the government) to differentiate between the defendants. The lawyers further seemed united in the view that the primary issue for the following day would be the request for their defendants to be able to represent themselves in Kurdish. An intention was expressed to make further representations in respect of the exclusion of evidence that had, allegedly, been illegally obtained.

The speakers at this meeting tied the lawyers’ trial explicitly to the hunger strikes on two bases. Firstly, both the hunger strikers and the lawyers are demanding the right for legal representation in Kurdish. Secondly, the hunger strikers are also demanding an end to Öcalan’s legal isolation so that he can be included in further peace negotiations; the defendant lawyers are tried on charges arising from their defence of Öcalan in the course of their professional duties. It was also pointed out that the entire proceedings were a threat to the legal right to a defence.

One of the defence lawyers said that he has never seen a hunger strike so extensive, and this is in a country where they are well-known and where he has been working with hunger strikers since 1984.

I observed the meeting to be lively and collegiate. Judging from pictures and memorabilia in the building, the Istanbul Bar Association’s history extends to the turn of the 20th century. We were told at the Tooks briefing meeting that the Istanbul, Ankara and Izmir Bar Associations have all taken official stands against the lawyers’ trial.

Trial

The delegation travelled in coaches from Taksim Square to the court in Silivri. Driving against rush hour traffic in the morning, it took in excess of 90 minutes. The return journey, however, took two and a half hours.

The court was in a military compound and the bus drove past numerous members of the gendarmerie (Jandarma) on the way in. We awaited the opening of the court in a cafeteria in a separate building, where relatives of the defendants were already waiting. Tea and toasted sandwiches were on offer.

When the court opened, it was clear that it was going to be very full inside. The relatives were all searched and had to go through metal detectors and put their belongings through an X-ray machine. The international and Turkish lawyers, however, were allowed to enter without being searched. We were not required to show any identification although I saw some Turkish lawyers holding out their bar association cards. For the international delegation, wearing our legal gowns seemed to be sufficient credentials. We were required to surrender our mobile phones and given tags indicating that we were legal observers. We were treated with courtesy.

The representing and observing lawyers were all permitted into the courtroom. The defendants were brought into court at around 10.30 and the observers were asked to take our seats. I could hear an outburst outside court at this time. There was quite a bit of shouting and the some of the representatives went to the door of the court to see what was happening.

It was at this stage that it became clear to me that the relatives were going to be kept outside. There was an anteroom immediately outside the courtroom, with seating facing the door of the court. Above the door of the court was a widescreen television and so I presume that the proceedings were broadcast to those outside the court.

The trial opened with submissions on behalf of all the prisoners in respect of the chaotic conditions in the courtroom. It was said that prison conditions were preferable. The defendants and their lawyers did seem to be crammed in without much order, with very little room, and interspersed with Jandarma.

The first representative to speak made submissions in respect of the hunger strike. It was made explicit that one link between the trial and the hunger strike was Abdullah Öcalan. The judge at one stage intervened, requesting that there not be political speeches. However, the submissions continued.

The next lawyer to speak stated that if the trial was to be adjourned again for a number of months without progress being made on the defendants’ request to represent themselves in Kurdish, people could die in the meantime. It was further submitted that the right to a defence in Kurdish had never been denied until 3 years previously and that its prohibition arose as a result of political demands by the government.

The third lawyer to make submissions objected to the exclusion of the defendants’ relatives and stated that certain recordings on which the prosecution was relying had not been given to the defence until very recently. It was noted that in transcriptions of the previous hearing, whenever the defendants spoke in Kurdish the transcript marked their speech as “inaudible.” The lawyer requested that the hearing be interpreted and transcribed in full.

The judge at this point stated that if there was anyone amongst the defendants who could not speak Turkish, it would be unlawful to require the defence to be carried out in Turkish. He said he would make a decision on the issue and then the case would continue, whether in Kurdish or in Turkish, in accordance with his decision.

Further submissions in support of the use of Kurdish followed. The judge tried to adjourn the issue but the defence lawyers continued with their submissions. These were primarily political. Attempts were made to distinguish ECtHR decisions on the grounds of subsidiarity. One of the lawyers made an interesting submission that I did not fully understand to do with whether Kurdish people are to be considered a “minority” group in light of the fact that the Treaty of Lausanne identified them as a “founding” group of modern Turkey.

It was made explicit that the lawyers considered the trial to be entirely political and based on no real evidence of the “fantastical” charges levelled against the defendants. One of the representatives submitted that the trials were motivated by the failure of the Oslo peace talks and urged the judge to “be brave and make a decision that could change the course of this case and many other things in Turkey. Turn a new leaf. We would like you to change the political atmosphere by being courageous.” The lawyer made reference to the recording of conferences with Öcalan since 2005 and said that any charges must be based on physical evidence, not assumptions. It was said that all the defendants had done was to meet with their clients and take notes, and that they could not be charged on the basis of those notes.

The court here adjourned for lunch. It was approximately 12.30 and court was not in session again until approximately 2pm.

After the adjournment, submissions on the issue of using Kurdish in the courtroom continued. The judge rejected the submissions and ordered that the defence case continue. The translation we were given of his reasons was “Because there is no conformity in the political consensus, we are also rejecting the request for interpretation.” One of the defendants here spoke directly to the court in Kurdish and had his microphone cut off immediately.

The defence lawyers walked out of the court in protest. The relatives waiting outside greeted them with applause and cheers. There was some indecision over whether the observers should follow. In the end the Turkish legal observers followed but most, if not all, of the international delegates remained in court. There followed a period of confusion as the court was half empty. In the end, the spaces in the front section of the court room vacated by the defence lawyers were filled by Jandarma. Subsequently, after the defence case had already begun, the spaces in the back of the courtroom where the Turkish observers had sat were filled by the relatives of the defendants. A wooden barrier divided the two halves of the courtroom.

We were told that this part of the case was to be conducted, in an inquisitorial fashion, by the judge questioning each defendant in turn on whether they accept certain facts such as whether they were arrested on X date and whether they accept the contents of a statement made to the police.

In the half hour that followed, almost every defendant in turn began to speak in Kurdish, his or her microphone was switched off, and the judge indicated that the next one must come. One non-Kurdish defendant answered all of the judge’s questions as she was doing so in Turkish.

I was subsequently told that during one defendant’s defence case, he explicitly said in Kurdish that he did not accept the contents of his police statement, but that the judge recorded him as saying that he did. This, I was told, is a development from the situation that pertained in July 2012, where, when speaking Kurdish, the defendants were simply noted to be inaudible or incomprehensible. Here it seemed that when speaking Kurdish they were opening themselves to accepting facts that they did not necessarily accept.

During a five minute adjournment the relatives rushed for the wooden barrier to see their loved ones but the Jandarma intervened to prevent them. Defendants were then allowed to come forward one or two at a time to greet their relatives.

On return from the adjournment a final defendant rose to say in Kurdish “I am Kurdish and I am speaking in Kurdish. You can bring an interpreter or not, I will speak my language.” The prosecutor then requested that all the defendants be detained again without bail. The judge rose to consider.

After a long adjournment, at approximately 4pm, the judge announced that he was adjourning until 3 January 2012 and all the currently detained defendants were denied bail. The court had sat for not more than three hours during the course of the day.

At the end of the day I was informed by a colleague in the delegation that on the previous day, 5 November, a statement had been made by the Turkish Prime Minister Abdullah Gül to the effect that a bill was to be presented before Parliament to permit the use of Kurdish in legal defence.

Aftermath

On 7 November 2012 the international delegation met again at the offices of the Human Rights Committee (IHD) to read an agreed press statement. Close to 30 human rights organisations, bar associations, NGOs and other legal associations had signed, representing lawyers from France, Germany, Switzerland, Belgium, Sweden, the Netherlands, Canada, Greece and the UK. The French delegation had also prepared a separate statement.

Ayşe Bingol, a lawyer acting for the defendants and assisting our delegation, informed me that the KCK had asked that the hunger strikes end if the government made concrete steps towards meeting each of the hunger strikers’ demands – for defence and education in Kurdish, and for an end to Öcalan’s isolation. The KCK wished it to be clear that they had not requested the hunger strikes, but that they felt it best that they end to avoid loss of life should the Turkish government make any concessions, even if these concessions did not completely fulfil their demands.

As of 18 November 2012 the strike was at an end following a personal plea from Öcalan, delivered through his brother. The AKP is due to present a bill before Parliament next week to allow the use of Kurdish in courtrooms. The government has given no indication that the conditions of Mr Öcalan’s detention will change. (From: http://www.bbc.co.uk/news/world-europe-20386073)

**Legal issues**

Turkish legal issues

In respect of Turkish legal issues I am entirely reliant on second-hand information as I am neither fluent in Turkish nor familiar with the Turkish legal system. I am told that the following legal and procedural irregularities are present in the trial.

The Turkish Lawyer’s Act 1926 says courts cannot pursue prosecutions of lawyers without authorisation from the Ministry of Justice. This authorisation has not been given or, indeed, requested. If my information is correct, there is no procedural basis for the trial without this authorisation.

The trial is taking place in a Special Administrative Court which was effectively abolished before the trial began. I have heard suggestions that the court may not have jurisdiction under Turkish law.

The defence asserts that some of the evidence used by the prosecution was obtained illegally and should be excluded.

It is said that one of the charges is “talking to Öcalan” which is not a crime in Turkish law.

Article 6 issues

Disclosure to the defence was apparently delayed. Some recordings were not received by the defence for 5 months. One of the defence submissions on 6 November was that only recently had some of the audio and video evidence been received – presumably not in sufficient time to include it effectively in case preparation.

It seems consistent with a fair trial for the defence to be permitted to call Abdullah Öcalan as a witness of fact to whether or not coded messages were passed to the PKK in the course of his conferences with his lawyers.

I understand that the judge who ordered the warrant for the arrest of the defendants is hearing the trial, raising questions about judicial independence.

The conditions of the hearing were chaotic. The one judgment that was given did not come with particularly thorough reasons. I do not know if it was a standard judgment in the Turkish system. I am not aware if the representative lawyers were permitted conferences with their clients outside of the courtroom. Inside of the courtroom it would have been extremely difficult to take instructions in confidence.

I am told that for at least one of the defendants, his speaking in Kurdish was taken as acquiescence to the judge’s questioning, despite the fact that what he was saying in Kurdish was that he did not agree to the facts being put to him.

Very few of the defendants have been granted bail. My understanding is that all are lifelong residents of Turkey with family and businesses in Turkey. The ones who have been granted bail have not absconded, re-offended, or suborned witnesses and to the best of my knowledge have complied with their bail conditions. The remaining defendants have been detained since April 2012. It is questionable whether this delay is itself compatible with the right to speedy and effective justice.

**Political issues**

The trial was moved at late notice from a court in a suburb of Istanbul to one in a military compound outside the city. I understand a given reason for this was for it to be in a courtroom large enough to hold all of the *dramtis personae* in the trial as well as the international delegation. This is reasonable. However, it cannot be ignored that the move made the hearing much less accessible to relatives, observers, and the press. I question whether there was no courtroom within Istanbul big enough for the hearing.

The prosecution’s case in this trial is based largely if not entirely on discussions between Abdullah Öcalan and his lawyers which ought to have been confidential. I agree with the view of the Istanbul Bar Association that this is an attack on the independence of the legal profession and the fundamental right to a criminal defence within the Turkish legal system. The defendant lawyers are on trial as a result of practising their profession.

The defence case is that the trial is entirely political and that the charges are fabricated. On this basis their view is that the trial can be used as a political platform to push for the right to a defence in Kurdish. The right to use one’s mother tongue is not an Article 6 issue provided that the defendant is able to understand and participate in proceedings. However, it is noteworthy that until 3 years ago the use of Kurdish in trials was routine and not prohibited. The latest news is that the government will be placing a bill before Parliament to allow for the use of Kurdish in legal proceedings. In my personal (not legal) view, this is a positive development.