Teachers on Trial

Daniel Blackburn attended the trial of 31 members of the KESK trade union confederation

DANIEL BLACKBURN is Director of ICTUR and is a non-practising barrister

On 28 May 2009, KESK's headquarters in Ankara, its branch offices in İzmir and Van, and the houses and workplaces of some of its members were raided and searched by the Jandarma, Turkey's military police force. More than 30 members of KESK, and in particular members of the KESK affiliated teaching union Eğitim-Sen, were arrested. Although a number of those arrested were released, most were kept in detention. Quite what the trade unionists were accused of was for some time left unclear, although it was eventually revealed that the charges included, variously, membership of an illegal armed group, creating an unlawful network within KESK, and participating in unauthorised meetings. 22 of the trade unionists remained in detention, in reportedly deplorable conditions in one of Turkey's infamous 'F-Type' prisons, until the trial. At least one of those detained was seriously ill, suffering from cancer, a condition which had apparently deteriorated during the detention.

This was by no means the first or last incident of repression against KESK and Eğitim-Sen. In all but one of the past ten editions of the *Annual Survey of Violations of Trade Union Rights* published by the ITUC and its precursor the ICFTU incidents of repression against KESK and Eğitim-Sen have been reported. The authorities have repeatedly attempted to justify these incidents with reference to the position adopted by Eğitim-Sen in respect of the right to mother tongue education, of union members' alleged participation in unlawful meetings and rallies, and of the books found on union members' book shelves during raids of their homes. Other attempted justifications for harassment cited KESK's commitment to 'collective bargaining' rather than 'collective consultation'. On 5 June, just a few days after the May arrests, a march organised by Eğitim-Sen was violently disrupted by the police.

Before the hearing

On the first morning of the hearing KESK had assembled a demonstration of perhaps a thousand activists who marched around the perimeter of the court building carrying union banners and chanting. Entering the court building was chaotic, with hundreds of people surging towards the door of the court. Our team of international observers were invited to enter the court before the general public. This was a fortunate development, as the court then rapidly filled to capacity, with people standing three-deep up the steps to either side of the public gallery. Outside the court dozens more awaited their turn to enter. I thought it was difficult to take seriously the suggestion that those about to be tried were really suspected of involvement with Turkey's illegal armed groups while the court security staff seemed unconcerned by the huge numbers of people packing into the court room. 'This is a political trial', one of my fellow observers whispered.

More than 20 members of the Turkish military police ('Jandarma') entered the court room, dressed in green combat fatigues adorned with military insignia, armed, and wearing military-style berets. These men (and one woman) were clearly a military presence. The Jandarma were not only guarding the accused, but were also responsible for initiating the prosecution. As the first group of accused were led into the court it was difficult to believe that these women, smiling and waving to the friends and family in court they had not seen for six months, were supposed to be 'terrorists'. The women were mostly teachers, alhough at least one women identified herself as a midwife from another of KESK's public sector affiliates. It was sobering to think that they faced sentences of up to 10 years if convicted.

The prosecution

I waited with interest for the prosecutor (sat high-up on the bench, level with the judge and court members) to argue his case, but no such statement was made. Even as the last defence lawyers (squashed together on benches at the front of the court, level with the accused) gave their final submissions towards the close of the second day I held out the hope that the prosecutor would present some kind of speech to the court in which he would outline in detail the case against the accused and describe in detail the evidence that was relied on in respect of each individual. But he did not. This aspect of the procedure seemed truly extraordinary to my eyes. I discussed the matter with lawyers from Germany, Portugal and Sweden, each of whom agreed that the lack of any serious attempt by the prosecution to seek to prove the facts of their case in argument in open court was unusual and went against our expectations of criminal procedure. This lack of argument by the prosecution also meant that the legal observers and members of the public sitting in the gallery had only a vague idea of precisely what each defendant was accused of, and what evidence (if any) existed against them.

The trial opened in a faltering bureaucratic manner, firstly with the lengthy process of recording who represented whom in respect of the advocates and the accused, whereby each of the 30 or more defence lawyers present introduced themselves and explained which of the accused they represented. The process was painfully slow, bordering on the farcical, especially when seen in the context of the seriousness of the charges, the number of accused, and the ridiculously short scheduling period of just two

days that had been assigned for the trial. When one of the defence lawyers questioned the pace of proceedings the judge, looking directly at the team of international observers, announced that each defendant's case would be heard and each advocate would be given time to make their submissions, 'even if we have to sit until 2am'. There followed a number of submissions by defence lawyers, essentially arguing that the prosecutor's bundle was insubstantial and that there was no case made out such as would require an answer. Advocates also raised concerns that evidence gathered by phone tapping should not be accepted by the court, pointing out that it had been obtained without a warrant, and argued that a variety of activities, all of them legitimate trade union activities, had been 'transformed' into a framework of terrorist activity by the prosecutor, who did not understand trade union structures. The judge heard, considered, and rejected these submissions.

At this stage each of the accused was summoned before the judge who summarised (in perhaps just three or four sentences) the charges against them. Upon talking with defence lawyers later in the day we confirmed that they were in possession of the detailed prosecution case in the form of a bundle of documents. Such extracts from this bundle as came to light during the hearing (mostly in the context of comments made by the accused and their lawyers) seemed to rest heavily on correspondence copied from anonymous email accounts, which the accused denied belonged to them. No attempt was made to prove (for example, through evidence from expert witnesses) that the email accounts belonged to or had even been used by the accused. In one case the only tangible connection between the evidence and the accused seemed to be a reference in an anonymous email to a person who shared the first name of one of the accused having done 'a good job'. Another piece of evidence appeared to be a written statement (it was not clear by whom this had been prepared) summarising statements that had allegedly been made on a television programme, though no-one seemed to have a recording of the broadcast, a point subsequently challenged by defence counsel, who mentioned Kafka in assessing the process.

The defence

Absent any serious attempt at presentation of the prosecution case the majority of what was said came from the accused and their lawyers. The first part of this consisted of the accused being called upon to present statements to the court in their own defence. Our team of legal observers were troubled by the fact that the defendants' statements were not in themselves being entered into the court record, but rather in each case the judge summarised what each defendant had said, after they had delivered their evidence, and it was this summary that was then entered into the court record by the stenographer. This raised concerns as to whether nuances and subtleties of the defence were being fully recorded, and indeed defence counsel and the accused themselves on several occasions pointing to inconsistencies between what was being said in summary and what they had said in their statement.

When defence counsel finally came to make their formal statements at the end of the second day several key blows were struck at the conceptual heart of the prosecution case. One such point focussed on the role of the Jandarma who had instigated the case, gathered evidence, tapped phones (apparently without a warrant), and orchestrated the prosecution. This was firstly an abuse of process, argued defence counsel, because the Jandarma should not have had jurisdiction to investigate the case, and furthermore it was the military background of the Jandarma that had led them to misconstrue the innocent activities of a trade union as being subversive or illegal. Defence counsel argued that this was precisely because of the military's rigid hierarchical view of organisational structures that military investigators were ill-equipped to understand the informal networks that typically exist within and across trade union structures (such as networks of women's rights activists). This seemed to explain quite a lot. From what little evidence was presented to the court it was only clear that the Jandarma had discovered that several of the KESK members on trial from different sections of the union spoke to each other regularly, but there seemed to be little else to implicate them in anything substantial other than this sort of informal communication. To the military, however, as defence counsel argued, such relationships as had been 'discovered' cutting across the union (as opposed to rigid formal lines of command) appeared to be very suspicious. Indeed such networks would be suspicious were they to be discovered within a military structure. But to the trade unionists present at the trial, local and international, such informal structures and lines of communication appeared quite normal and unremarkable.

Released, but not acquitted

Following the defence, in which 31 defendants and almost as many defence lawyers had each delivered a speech in the space of about 10 minutes each, hurried on by the judge, a brief recess was called to consider the verdict. When the judge and his two colleagues returned to the court, at just after 1am, the judge ordered the release of the prisoners. At once KESK members sitting in the public gallery jumped to their feet and started to cheer, before being roundly silenced by KESK leaders who had rightly understood that a simple release from detention did not equal an acquittal. In fact, the judge continued, the charges against all of the accused would remain live, and would be further investigated by the Jandarma. Any or all of the accused might expect to be summoned back to trial at any point in the future to face a further hearing. While we may have achieved some sort of victory for the moment the international trade union movement must ensure that its officers and lawyers continue to stand with KESK and be ready to ensure that international observers attend any future hearing in force. Wherever and whenever these half-baked charges re-surface the international community must be ready to show its profound concern for the fate of freedom of association in Turkey.

This was by no means the first incident of repression against KESK and Eğitim-Sen