

TRIAL OBSERVATION REPORT

A. Background

1. On 1 February 2013, a suicide bomber attacked the United States Embassy in Ankara (Turkey), killing one security guard.¹ The responsibility for the attack was claimed by the Revolutionary People's Liberation Party-Front ("DHKP/C")² – an organization regarded by the Turkish authorities as a "terrorist organization".³ On 19 February 2013, the police arrested 167 members and leaders of the Turkish Confederation of Public Workers' Unions ("KESK") for their alleged relationship with the DHKP/C.⁴ Various charges under the Anti-Terror Law⁵ were brought against the accused. Most of the accused are public workers, including teachers, nurses and public servants. Some are journalists.

2. On 23, 24 and 27 January 2014, 56 of the 167 persons arrested on 19 February 2013 appeared for trial before a criminal court at the Istanbul Çağlayan Justice Palace. The vast majority of the accused – 27 of which were detained pending trial – were facing charges of membership with a terrorist organization⁶ and propaganda against the indivisible unity of the State.⁷ In addition to those two charges, one of the 56 accused was also charged with "leading" a terrorist organization.⁸

¹ "Bomber attacks US embassy in Ankara, Turkey", BBC News, 1 February 2013, available at: <<http://www.bbc.co.uk/news/world-europe-21293598>>.

² "Marxists Claim Bombing of U.S. Embassy in Turkey", The New York Times, 2 February 2013, available at: <http://www.nytimes.com/2013/02/03/world/europe/marxist-group-claims-attack-on-us-embassy-in-turkey.html?_r=0>

³ See Turkish National Police website: <http://www.egm.gov.tr/EN/Pages/dhkp_c.aspx>.

⁴ "Turkey cracks down on outlawed group after US embassy attack", Hurriyet Daily News, 19 February 2013, available at:

<<http://www.hurriyetdailynews.com/turkey-cracks-down-on-outlawed-group-after-us-embassy-attack.aspx?pageID=238&nID=41416&NewsCatID=341>>

⁵ *Anti-Terror Law*, Act No. 3713: *Law to Fight Terrorism*, published in the Official Gazette on 12 April 1991 ("Anti-Terror Law").

⁶ Anti-Terror Law, article 2: "Any member of an organization, founded to attain the aims defined in Article 1, who commits a crime in furtherance of these aims, individually or in concert with others, or any member of such an organization, even if he does not commit such a crime, shall be deemed to be a terrorist offender. [...]" (emphasis added). See also Anti-Terror Law, article 7: "[...] [T]hose who join [organizations as specified in Article 1] shall be punished with imprisonment of between 3 and 5 years and with a fine of between 100 million and 300 million Turkish liras. [...]"

⁷ Anti-Terror Law, article 8: "Written and oral propaganda and assemblies, meetings and demonstrations aimed at damaging the indivisible unity of the Turkish Republic with its territory and nation are forbidden, regardless of the methods, intentions and ideas behind such activities. Those conducting such activities shall be punished with a sentence of between 2 and 5 years' imprisonment and with a fine of between 50 million and 100 million Turkish liras. [...]" The number of times the accused were alleged to have performed propaganda acts varied from 2 to 14.

⁸ Anti-Terror Law, article 7: "[...] [T]hose who found organizations as specified in Article 1 under any name or who organize and lead activities in such organizations shall be punished with imprisonment of between 5 and 10 years and with a fine of between 200 million and 500 million Turkish liras; [...]"

3. Upon the request of the KESK, the International Centre for Trade Union Rights (“ICTUR”) sent an observer (“Observer”)⁹ to monitor the trial proceedings against those of the 167 persons arrested on 19 February 2013 to be tried in Istanbul. The Observer joined an international delegation composed of representatives of various trade unions-supportive organizations, including the International Trade Union Confederation. This report recounts the Observer’s observations.

B. The scope of the Turkish Anti-Terror Law

4. It is not the aim of this report to analyze in depth the Turkish Anti-Terror Law. The Observer nevertheless wishes to underline the vast scope of this law. Article 1 defines “terrorism” as follows:

Terrorism is any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat. [...]

(emphasis added)

5. This provision contrasts with the customary definition of domestic terrorism, at least with respect to the required intent. While domestic terrorism under customary international law is limited to those acts committed with the intent to intimidate a population or compel an authority,¹⁰ the Turkish Anti-Terror Law expands the scope of domestic terrorism so as to extend it to any act aimed at changing the “characteristics” of the Turkish Republic or its “political, legal, social, secular and economic system”. Given this broad definition of terrorism, it is not surprising that the Turkish Anti-Terror Law is applied to legitimate union trade activities.

C. Conduct of the Hearings

1. Security Measures and Access to the Courtroom

6. The proceedings were surrounded by heavy security measures. Security was ensured by the gendarmerie, the police and private security guards.

⁹ The Observer, William St-Michel, works as an Associate Legal Officer for the UN International Criminal Tribunal for the Former Yugoslavia. He is not employed by the ICTUR or any trade union or affiliate. He attended the hearings in his personal capacity and not as a representative of the United Nations or the Tribunal. He is extremely grateful to the interpreters for the assistance provided.

¹⁰ See the Special Tribunal for Lebanon’s Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, STL-11-01/I, 16 February 2011, para. 89.

7. In the morning of 23 January 2014, dozens of KESK supporters and family members gathered in front of the Justice Palace premises to demonstrate their solidarity with the accused. Though the demonstration was pacific, a group of about 50 special police officers was ready to intervene. Shortly before the start of the hearings, some supporters of the accused – not related to the KESK – attempted to approach the Justice Palace premises. The police forces employed teargases to disperse them.

8. Access to the courtroom was somehow chaotic. Dozens of family members, friends and supporters hoped to attend the proceedings. Only the international delegation has been granted full and unrestricted access to the courtroom. Other people had to wait in the lobby – private security guards would only allow a few people to enter the courtroom at a time. The private security guards' attitude generated a lot of frustration. On the second day of the hearings, a rotation system was put in place by the supporters, thus ensuring that anyone who wished to attend the hearings could do so, at least in part. People were strictly forbidden to take pictures – those who attempted to do so had their camera confiscated. Conversely, discrete phone calls were tolerated. The atmosphere in the courtroom was sometimes tensed, sometimes good-natured.

9. The Observer acknowledges that those strict access measures were warranted in the circumstances. The highly charged emotional climate surrounding the proceedings could indeed result in breaches of decorum. However, the Observer was informed of the existence of larger courtrooms elsewhere in the Justice Palace that could have accommodated the trial proceedings. The Observer wonders if the decision to hold the proceedings in a smaller courtroom was a deliberate attempt to restrict the publicity of the debates.

10. Those of the accused who were subjected to pre-trial detention were guarded by an impressive number of gendarmes, who were following them every time they had to go out of the courtroom. The Observer nonetheless noted a relatively relaxed security atmosphere, which contrasted with the seriousness of the charges brought against the accused.

2. The Parties

11. The proceedings were conducted before a bench of three judges, one of which was presiding over the proceedings. The judges were assisted by a few clerks.

12. The Observer understood that the Turkish Prosecution is, in principle, independent from the judiciary – although its representative wore the same robe as the judges and would exit the courtroom through the same door. However, as he did not take the floor, the Observer could not ascertain whether the Prosecution is also beholden to political authorities.

13. The Observer was informed that some of the Defense counsel initially assigned to accused were themselves detained. They were replaced by voluntary counsel.

14. In spite of many attempts in this regard, the Observer could not interview any of the parties, except for short informal chats with some Defence counsel.

3. Layout of the Courtroom

15. The proceedings took place in a vast courtroom. The 56 accused and the gendarmes guarding them were placed in the middle of the courtroom, facing the judges. There were about 80 seats to accommodate the public. While it was not clear whether the proceedings were actually video-recorded, two screens were displaying images of those speaking. In any case, the proceedings were audio-recorded.

16. The three judges were sitting at the back of the courtroom. The representative of the Prosecution was sitting at the right of the judges, at a separate desk, but placed at the judges' level, while Defense counsel were positioned on both sides of the courtroom.

4. The Proceedings

17. At the outset, the Observer wishes to raise some preliminary issues regarding his understanding of the proceedings. The Observer did his utmost to understand the procedural framework applying to the proceedings against the accused. Through the interpreters, the Observer solicited an interview with a Defense Counsel in order to have an overview of the procedural rules. Ultimately, the requested interview could not take place. The Observer is mindful that the following analysis of the proceedings might not be totally accurate.

18. The Observer recalls that the accused were arrested on 19 February 2013. Those put in jail following arrest have thus been subjected to a period of pre-trial detention of 11 months. The Observer has been informed that once every month, the detained accused appeared before a judge, but for a short procedural audience. The Observer has also been informed that many of the accused preferred to use their privilege to make external phone calls by contacting a representative of the KESK rather than calling their own relatives.

19. The prosecutorial authorities attempted to justify the long delay between the arrest and the January hearings by the time needed to collect evidence and the busy caseload. The validity of the explanation provided by the prosecutorial authorities is questioned by the Defence counsel, who argue that no new evidence has been adduced since 19 February 2013. The Observer has been made aware that in the course of the year, a bench of the Criminal Court dismissed the charges brought

against the accused on the basis of a lack of evidence. Seemingly, this decision has been reversed on appeal.

20. Hearings took place on 23, 24 and 27 January 2014.¹¹ The Observer failed to understand the nature and the aim of those hearings. As the hearings were limited to declarations of the accused and that no other evidence was adduced (be it testimonial or documentary), it was not quite clear whether it was a trial *per se* or simply a procedural hearing. The confusion is further fueled by the fact that no proper judgement has been issued at the conclusion of the hearings.

21. According to the Observer's understanding of the procedural framework, the record was composed of the documentary evidence collected by the prosecutorial authorities. In the Observer's opinion, the declarations of the accused cannot be regarded as testimonies as the accused have not been subjected to examination.

22. Over the course of the proceedings, the presiding judge was the only one to take the floor and ask questions to the accused – albeit limitedly. On a few occasions, the presiding judge requested the accused to shorten their declaration, recalling them his intention to render a decision before 6 PM, Friday 23 January 2014. The presiding judge's attitude was perceived by the accused as meant to prevent them to give their truth. Given the lengthiness of the declarations of the accused, the Observer is not convinced that the presiding judge's interventions were attempts to muzzle the accused, but rather efforts to proceed efficiently. Actually, despite his call for brief statements, the presiding judge never interrupted an accused. However, the Observer sympathizes with the accused, as the January hearings were the first opportunity in one year for them to address the Court and respond to the charges brought against them.

23. The hearings were initially scheduled to take place on 23 and 24 January 2014. As only half of the accused could speak during those two days, the presiding judge postponed the hearings to 27 January 2014. The Observer could not attend this additional hearing. He was later informed that upon the conclusion of the 27 January 2014 hearing, the Court released 23 of the 27 detained accused and fixed another set of hearings on 6 May 2014. No proper judgement has been issued.

¹¹ The Observer assumes that the three judges who presided over those proceedings were not part of the bench that dismissed the charges earlier in 2013.

D. Declarations of the Accused

1. General Remarks

24. The Observer acknowledges that it is not the aim of a trial observation mission to assess the evidence. However, as the Observer could not have access to the record, the declarations of the accused constitute the only account available of the facts underlying the charges. The Observer recalls that the declarations of the accused cannot be regarded as evidence. Accordingly, the Observer considered the content of the declarations with great care. Nevertheless, certain trends emerged from the statements. This sections aims to systematize those trends.

25. The Observer notes that several accused delivered political and virulent speeches rather than providing the Court with their own version of the facts underlying the charges. The Observer was doubtful about the efficiency of such defence strategy. However, given the politically-tainted nature of the proceedings, the Observer understood that the accused could not do otherwise.

2. The Evidence against the Accused

26. According to the oral statements, the evidence collected by the prosecutorial authorities in order to establish that the accused were members of a terrorist organization was essentially the same for all accused, *inter alia*: (1) participation in demonstrations; (2) presence of leftist oriented books in their house; (3) the fact that some KESK members spent their vacation together; (4) photos showing KESK members entering the KESK office; (5) phone conversations intercepted. The admission into evidence of a CD seized in Belgium in 2010 – which would show the relationship between the accused and the DHKP/C – was challenged by several accused. If the evidence collected by the prosecutorial authorities actually corresponds to the description made by the accused, the Observer has serious doubts about the substantiality of the case. In the Observer's view, the facts described by the accused are not sufficient to establish any connection with the DHKP/C.

27. Most of the accused rejected as illegally taken their declaration to the police authorities while in detention. They contented that they were interrogated under pressure. Nevertheless, some of the accused accepted the content of their preliminary declaration.

3. The Circumstances of the Arrests

28. Through their oral declaration to the judges, some of the accused recounted the circumstances surrounding their arrest and the following detention. Some of the accused reported that they were arrested in the early morning and that their house was searched extensively. Some

said that they were forbidden to contact their lawyer. Several female accused claimed that policemen conducted body search. Other accused stated that they have been severely beaten. Once again, the Observer has no means to assess the truthfulness of the content of the declarations. Nevertheless, the consistency of the accounts makes it clear that the arrests were conducted beyond what was necessary.

E. Conclusions

29. In light of the foregoing, despite the politically-tainted nature of the proceedings, the Observer concludes that the January hearings have been conducted in an arguably fair manner. However, the lengthiness of the proceedings is contrary to the relevant international standards, including the right to be tried without undue delay. Furthermore, the Observer is seriously concerned by the circumstances surrounding the arrests. In these circumstances, and given the apparent lack of substantial evidence supporting the charges, the Observer is convinced that the proceedings were meant to restrict fundamental rights of Turkish trade union workers by confining leaders to jail and stigmatizing them with serious charges.

F. Recommendation

30. For the benefit of future missions, the Observer wishes to make one recommendation. In the Observer's view, the inviting organization should provide to the observer the services of a lawyer who could explain the ins and out of the procedural framework.

Done this 6th day of March 2014

At The Hague, The Netherlands