



## Report of the KCK Trial, Diyarbakir, Turkey

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SUMMARY	P. 1
<b>Background to the KCK trial</b>	P. 2
<b>Observation of the trial</b>	P. 3
<b>Concerns raised by the KCK trial</b>	P. 4
<b>The Third Stage of the Trial Hearings</b>	P.5
<b>KHRP Recommendations</b>	P. 6

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### SUMMARY

In what has become known as “the KCK trial”, 151 Kurds are currently facing a possible 15 years-to-life in prison on the charges of being members of an illegal organization. The organization in question, the KCK, stands for Koma Civaken Kurdistan (Democratic Society Congress) and is accused of being a front for the outlawed PKK (Workers Party of Kurdistan). This particular case is especially alarming due to numerous human rights violations committed by Turkish authorities, as well as indications that the trial may be politically motivated. Specific issues include, but are not limited to, lengthy detention while denying bail before the trial, refusal of mother tongue (Kurdish)

testimony, and the absence of fair trial safeguards. These actions, among others, violate the European Convention on Human Rights (ECHR) as well as the Turkish Constitution. KHRP recommends that these individuals be tried in a just manner and within a reasonable amount of time, especially in light of the fact that many of the defendants have been in prison without bail since 2009. In addition to this, KHRP would like to see the trial continue to be monitored by domestic and foreign observers to ensure that Turkey complies with its human rights obligations.

## **Background to the KCK trial**

In a series of police operations beginning on 14 April 2009 and referred to in the press as the 'KCK operations', 151 people were detained on the basis of alleged links to illegal organisations. These people included lawyers, mayors, politicians, trade unionists, and human rights activists, and were recently brought to trial together in Diyarbakir, Turkey.

KCK is the acronym for Koma Civaken Kurdistan (known as the Democratic Society Congress). Turkey has accused the KCK of representing the interests of the outlawed PKK organisation (Workers Party of Kurdistan). In other words, the KCK is alleged to be the civil/political wing of the outlawed group and is, therefore, also an illegal organisation. Members of the pro-Kurdish Peace & Democracy Party (BDP)<sup>1</sup> have been accused of being members of these illegal organisations. Only 15 days after the party's significant gain in the March 2009 local elections, where it won a further 45 municipalities, mass raids were carried out at the homes, businesses and offices of mayors, party activists, human rights advisors, lawyers and many others, pursuant to the KCK operations.

The subsequent trial relating to the KCK operations began on 18 October 2010 at the Special State Penal Court. By the time the

<sup>1</sup> The pro-Kurdish BDP was opened on 15 January 2010 after the closure of its predecessor the DTP by the Turkish Constitutional Court in December 2009.

trial began many of the defendants had been in custody for a period of 18 months. The trial was an unusual case primarily due to its size: there were 151 defendants represented by 250 lawyers, with an indictment against them of 7,500 pages and further supporting evidence of 130,000 pages. Much of the evidence had apparently been gathered from wiretapping and phone bugging, and there was a lack of clarity regarding the exact charges, and the basis for such charges, against each defendant.

The trial is significant for the individual defendants, with each facing possible jail sentences of 15 years-to-life if found guilty. Further, the timing of the arrests has led many observers to question the state of democracy in Turkey. The number of defendants, their prolonged detention, the questionable means of collecting evidence, as well as the Court's attitude towards the use of the Kurdish language in the trial, has fanned fears that the accusations are politically motivated rather than based on violations of the law. Therefore, the trial is of a wider significance in terms of the implications it raises regarding democracy in Turkey and the state's attitude towards a political resolution of the Kurdish question.

## **Observation of the trial**

KHRP Legal Associate and PhD candidate at Kings College, Saniye Karakas, attended the second stage of the trials hearing in late January 2011 as an international observer.

She reported that the large number of defendants and lawyers alone made the trial unmanageable. Over the four days Ms Karakas attended, very little progress was made in ensuring the defendants' right to a speedy trial. The main points covered during this time were:

they had provided their pre-hearing statements in Turkish), the Court would only hear their statements in Turkish.

- (1) **Bail for the defendants:** This was denied on the basis that all 151 defendants were flight risks, would hide evidence, or pressure others to influence the outcome of the case; however, according to the defence no specific evidence was demonstrated to substantiate this claim.
- (2) **Where the defendants were held during breaks in the hearing:** The defendants were allowed to stay in the Courtroom instead of being moved into the colder room where they were originally held and the judge agreed to investigate their conditions of detention during the course of the hearing.
- (3) **The Defendants' opening statements to the Court:** The defendants were told that since they all had strong command of the Turkish language (on the basis that

Throughout the second stage of the trial hearings, the defendants individually began their testimony in Kurdish, only to have their microphones cut mid-sentence. The judge would then state that their testimony could not be heard because it was being given in 'a language thought to be Kurdish.' The hearing was held in a court that is located in Diyarbakir, a municipality that is 90 per cent Kurdish, and as such the defence stated that it was 'humiliating to the Kurdish language' that the judge would not directly acknowledge that the language the defendants spoke was Kurdish. The judge responded that since he 'did not know Kurdish' he could not state for certain that the language spoken was indeed Kurdish. This scene played out countless times over the course of the hearing.

In addition, the Court applied extraordinary security measures both inside and outside of the Courtroom contrary to common practice - these included an increased number of security officers inside and outside the Courtroom and a number of police officers stationed in front of, and sitting next to, the judges. The Mayor of Batman, Necdet Atalay, a defendant, made a speech denouncing the need for such security measures because the defendants

were well known and respected members of society, who could express themselves using peaceful methods. At the end of his speech, the defendants and observers of the trial applauded for around two minutes, following which the Court decided to take a break; in the afternoon session the Court decided to try the defendants in absentia on the grounds that they had disrupted the discipline of the Courtroom by clapping in this way. The defence lawyers decided that they did not want to make any statements without the presence of their clients and declared that they wanted to leave the Courtroom. The families of the defendants applauded this decision and they were subsequently asked to leave. The hearings were then postponed until 1 February 2011.

### **The Third Stage of the Trial Hearings**

At the hearing on 1 February 2011, the defence lawyers asked the judges to withdraw themselves from the case and also claimed a rejection of the judges on the ground that the judges were not impartial. However, the judges refused to withdraw from the case and sent the case to the 4<sup>th</sup> High Criminal Court for a decision concerning the rejection of the case.

During the hearing, the judges also decided not to bring all defendants to the Courtroom at the same time in future hearings, but rather deal with five to six defendants at one time.

### **Concerns raised by the KCK trial**

The KCK operations and subsequent trial have given rise to a number of serious concerns in relation to Turkey's compliance with its international and domestic human rights obligations, as well as in relation to the state's attitude towards the Kurdish question. KHRP's primary concerns in this regard are as follows:

#### **(1) The lack of fair trial safeguards**

**generally:** Article 6(1) of the European Convention on Human Rights (ECHR) guarantees the right to a fair trial, and this right is also guaranteed under Article 36(1) of the Turkish Constitution. To satisfy this right, the proceedings as a whole must be fair, which will generally require, among other things: a hearing within a reasonable time; the fair collection and use of evidence; equality of arms between parties (with a reasonable opportunity for each to present her or his case under conditions that do not place that party at a substantial disadvantage in comparison to another party); a right to a public hearing; the prompt provision of detailed information to the defendant concerning the charges against her or him; and adequate time, facilities and legal representation.

KHRP is concerned about the overall fairness of the KCK trials, and notes in

particular the length of time that has passed in pursuing this case (all the while holding reputable human rights defenders in detention) and the constraints imposed on the defendants which are preventing them from a reasonable opportunity to present their arguments and obtain a fair trial in all the circumstances.

- (2) **The refusal to allow testimony in mother tongue language:** KHRP is also concerned about the Court's lack of recognition, and refusal to allow the use, of the Kurdish language. This approach represents a wider denial of the cultural and linguistic rights of the Kurdish people within Turkey, and is arguably in violation of various international instruments created under the auspices of the United Nations and to which Turkey is a State Party, which create binding legal obligations with regard to the linguistic and cultural rights of its Kurdish populations.<sup>2</sup> The Kurds in Turkey also benefit from a number of the obligations established within binding multilateral agreements adopted at a regional level including the Treaty of Lausanne (1923) and the ECHR. Turkey's approach to the use of Kurdish, by way of the Court's refusal

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<sup>2</sup> These include the Universal Declaration of Human Rights (1948), the International Covenant of Civil and Political Rights (1966), the International Covenant of Economic, Social and Cultural Rights (1966), the International Convention on the Elimination of All Forms of Racial Discrimination (1969) and the Convention on the Rights of the Child (1989).

to allow defendants to speak in their mother tongue, must be understood as a wider issue concerning control over the Kurdish community as an ethnic minority in Turkey.

- (3) **The apparent political motivation behind the trial:** Finally, a fair trial requires both an independent and impartial tribunal established by law and a presumption of innocence, and KHRP notes that the defendants' lawyers have raised serious concerns in this regard. In addition to the points raised above, we understand that the public prosecutor sat in close proximity to the judges (and separate from the defence lawyers), giving rise to concerns about the connection between their views. This was exacerbated by the fact that the judges appeared to give little attention to the defence arguments.

### **KHRP's Recommendations**

In light of the above, KHRP urges Turkey to take immediate steps to ensure that the KCK trial (and other trials generally) are conducted in accordance with the standards outlined above and to reassure its public, especially those in the Kurdish regions, that the trial is not politically motivated and is not an attack on political achievement by pro-Kurdish groups and/or those

advocating for human rights in Turkey. In particular, KHRP recommends that:

- (1) Clear, substantive and prompt consideration that bail requests be given for each of the individual defendants involved.
- (2) The trial be concluded within a reasonable time, and in a manner which facilitates a fair opportunity for the defendants, in small groups rather than en masse, to put their cases.
- (3) Representatives of the EU and other international organisations, as well as domestic organisations, continue to monitor the KCK trial and issue reports concerning their assessment of Turkey's compliance with its human rights obligations.