REPORT ON THE TRIAL OF HUSEYIN CANGIR

Chair of the IHD Derik, Province Of Mardin, Turkey

November 2004

Kurdish Human Rights Project
KHRP
Established 1992

Turkey: Report on the Trial of Human Rights Defender Huseyin Cangir

Executive Summary

This is the observation on the trial of Huseyin Cangir, a Human Rights Lawyer and Chair of the Mardin Branch of the IHD (Human Rights Association) in the Peace Court in Derik, province of Mardin, Southeast Turkey.

He is charged with 'hanging up posters in the Kurdish Language without permission from the Governor' on two municipal sites in the town of Derik during Human Rights Week, December 2003. He was indicted under Article 563/3 of the Turkish Penal Code (TCP) at the Peace Court, in Derik. There have been three hearings. At the final hearing on April 21st, 2003, the defendant was found guilty, and given suspended prison sentences and heavy fines. He is appealing to the higher court in Ankara.

Mrs Margaret Owen observed hearings of the trials on behalf of KHRP and later on behalf of the International Commission of Jurists (ICJ). The trial observation mission also held meetings with the applicant and members of the Bar Association in Derik and Kiziltepe. She was unable to meet with the judge on this occasion.

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I. Background

Despite recent legal and constitutional reforms in Turkey in order for it to gain eligibility to the EU accession process, there remain failures in the legislative framework or in its implementation. The official attitude of deep suspicion against the Kurdish people and Kurds' enjoyment of their culture, their language, and their rights continues. This hostility extends to the non-governmental or civil society organisations that have taken up the Kurdish issue and the human rights defenders representing Kurdish victims of human rights violations. Thus many human rights defenders find themselves the targets of harassment and intimidation by state officials and their lives restricted through a huge number of laws and regulations which continue to be used against them even though there have been legal reforms which should be take precedence and overrule them.

This indictment and court proceedings, in the view of the trial observation mission, constituted a flagrant example of the harassment and intimidation of a human rights defender, contrary to the UN Principles, and to the international standards contained in various UN treaties and declarations. The defendant was not given a fair and impartial trial, nor was his defence argument adequately considered and addressed. The new laws, providing limited relaxation of laws against the Kurdish language, now in force in Turkey since 2003, should have been used by the Judge to acquit him; the Prosecutor appeared to have ignored the recent legal reforms by initiating the case in the first place. Moreover, in December 2003, the Cassation or Constitutional Court, sitting as the Supreme Court of Appeals, struck down a ruling by a Peace Court judge, in another Southeast town, hearing a case concerning precisely the same facts. This ruling by the Superior Court, according to the Minister of Justice, Cimel Cicek, had made a significant contribution to the accession process by enforcing implementation of the reforms. Yet the judge in the Derik court refused to consider this argument when raised by the defence.

Despite considerable constitutional and legislative reforms in Turkey since 2001 in response to the EU Copenhagen Criteria and the drive to achieve the goal of EU membership, there has been very little actual implementation of new laws on the ground. Seven harmonization reform packages (the "Harmonisation Laws") have been passed, yet in Southeast Turkey particularly, prosecutors and judges continue to select measures which fill the gaps left by repeals. Articles in the Constitution, other laws, by-laws, regulations and administrative laws may be used to harass, intimidate, restrict, prohibit, and condemn human rights lawyers representing Kurdish clients, and organisations

taking up the Kurdish issue.

Activities which can be considered essential and obvious to human rights associations and human rights defenders - such as preparing and displaying posters on Human Rights Day – continue to be viewed by the state authorities (police, prosecutor and judiciary) as insulting to the State, and its *indivisible integrity* simply because of its inclusion of the Kurdish language. Yet, the use of the Kurdish language, the mother tongue of an estimated 90% of the people living in Southeast Turkey, and of over 10% of the population in the country as a whole, is now permitted under the harmonization laws.

In this case, the defendant was prosecuted because "*he had not obtained permission from the Governor*". Yet, in January 2003 a law was passed repealing the requirement that all declarations and press releases had to be submitted for inspection by the "highest local civilian authority"(generally the governor). The new law stated that materials could be seized only if they are considered "*destructive to external security*". Also, the law on Associations was amended to allow for the use of the Kurdish language.

The posters, advertising Human Rights Week, containing innocent slogans such as "*Equality is Peace. Equality and Diversity*" should not be considered, on any grounds, as being insulting to the State or endangering its security. Only those posters written in Kurdish were seized. Posters containing the same words, but in Turkish, were not removed. The defendant had obtained permission from the Mayor of Derik to hang the posters on municipal sites.

The treatment of a significant number of laws and regulations that can be applied selectively and arbitrarily, depending on the attitudes of individual persons in the justice system, with the purpose of restricting and impeding the rights of human rights defenders directly conflicts Turkey's obligations under international treaties, the judgments of the ECHR and Turkey's recent legal reforms, called Harmonization Packages.

II. The Trial

1. The charges against Human Rights Defender, Huseyin Cangir

a) The Defendant

> The defendant, **Huseyin Cangir,** is a Human Rights Lawyer, 27 years old. He heads the Mardin Branch of the Human Rights Association (IHD). He practices in Kiziltepe, in the province of Mardin..

Since he qualified as a lawyer five years ago, he has been actively representing Kurdish clients who have allegedly been victims of torture by state agents and/or have been charged with crimes against the state. Namely, he has been involved in trials centred on the right to freedom of expression, in murder cases where the implications suggest that the perpetrators were State agents, and in three major torture cases. Cangir has represented Kurdish clients in cases relating to the safe return of displaced persons to their home villages, compensation claims for the destruction of their houses, and in cases relating to the presence and affect of landmines. Particularly, in cases of rape and/or sexual torture of Kurdish women by police or gendarmerie, he has a record of being an aggressive human rights defender. He has, thus, acquired a high profile as a human rights lawyer and as the Chair of IHD. In this capacity he is an obvious target for harassment and intimidation by state officials, despite recent legal and constitutional reforms under the harmonization packages.

b) The Charge

Date of the offence: 9th December, 2003.

The defendant is charged with the "*hanging of 8 posters, written in the Kurdish language, on the 9th December, 2003"* on the basis that he *"did not request permission from the Governor"*. The charge was laid under **Article 536, paragraph 3 of the Turkish Penal Code (TCP).**

Article 536 reads as follows:

"Whoever posts printed documents, pictures or hand written documents at places other than those designated for posting of such documents or without having obtained permission of competent authority, shall be punished by a light fine of not more than 15 liras."

(This version and English translation of Article 536 is clearly very old as evidenced by the amount of the fine.)

In the top right hand corner of the posters was written "*10-17 Human Rights Week*" and underneath was printed a hand drawn circle and two children holding hands with the words "*Peace Will Win, Equality with Diversity*" displayed underneath in Kurdish and in Turkish.

c) Defence Lawyers

As a demonstration of solidarity with the defendant, and also because each and everyone of the IHD lawyers acting for the Defendant might himself or herself be restricted from performing his or her professional roles at any time, ten lawyers are acting as counsel for the defence. They are :

Aygul Demirtas, Sila Talay, Reyhan Yalcindan (Vice-President of IHD), M. Nuri Ozgun (Chairperson of Mardin Bar Association), Aydin Aslan, Murat Durgan, M.Sirin Ulutas, Nurettin Temel, Eidal Kutu, and Ismail Dogon.

d) The Judge, sitting alone in the Peace Court of Derik, is: Muhurrem Endes

e) The Public Prosecutor 39673 (not present in Court) is Ahmet Dermiyurek

f) Preliminary Documents Examined

The indictment to the Criminal Court of Peace, Derik, signed by the Public Prosecutor 39673, Ahmet Demiryurek, reads:

It has been notified that the accused Huseyin Cangir, the Chairman of the management

committee of the Mardin IHD branch, who affixed 8 posters measuring 68 x 48 centimeters carrying the IHD logo bearing the words "*Peace Will Win,, Everyone is Equal, Everybody is Different*" (in Turkish and Kurdish) on the old Tedas building and above the Cevizpinar water fountain without permission from the district governor's office, did receive permission in writing from the Derik Mayor's office.

Since it has been ascertained that it was necessary to have permission from the Derik District Governor's Office in order to affix the posters in question and he did not have that permission …..he has committed this offence.

It is therefore requested that the accused be tried and convicted in accordance with the above article of law (536/3)[1] and that …..the posters in the file are retained.

g) Prosecutions for identical Posters in Kurdish elsewhere in Turkey, under different laws

The Observer was informed that on the order of the Public Prosecutor, posters were also confiscated and charges laid against human rights lawyers chairing IHD branches in several other towns in Southeast Turkey and in Ankara. However, in many other parts of the country such posters have been displayed to advertise international Human Rights Week of December 10-17 without any protest from the authorities. Such inconsistencies in prosecution and selection of laws that have allegedly been infringed on reflect a bias and discrimination in the justice system contrary to international standards, which require equality of treatment under the law. Selective prosecution is prosecution of a target person for acts others are allowed to perform with impunity. This bias, on the evidence, appears to be directed in particular against the IHD branches and human rights defenders representing Kurdish people in the courts. Where charges have been laid in connection with Human Rights Week posters, prosecutors and judges appear to have disregarded the legal reforms which allow the use of the Kurdish language in the media, and require respect for the rights to freedom of association and freedom of expression.

For example, in the town of Van, the posters were also confiscated and the IHD chair prosecuted, but on quite other grounds than those used in this Derik case. Not because no permission had been obtained from the Governor, but because the displaying of these posters, the Judge held, was contrary to the Constitution. In the Van Peace Court the indictment stated, *"…Some of the posters contained Kurdish words, and thus displayed they would damage the indivisible integrity of the State and its country and were damaging*

to the basic qualities of the Republic as laid down in the Constitution, and that the Van Branch of IHD was in this way trying to conspire in the Turkish Republic on the basis of race, religion, sect and regional difference". This indictment totally disregarded the new laws enacted to comply with the Copenhagen Criteria and the 4th EU Harmonization Package on use of the Kurdish language. The Observer considered this indictment an example of how the authorities managed to find ways of frustrating law reforms by exploiting interpretations in other laws and in the constitution that would ensure that nothing changed in practice at the local level.

Following the decision of the Van court, similar posters were also confiscated in Hakkari, Addyaman, and Siirt and other places as well as in Mardin. The Siirt branch of IHD had been raided and searched by the police, resulting in the prosecution of Mrs. Vetha Aydin, its Chairperson. As in this case in Mardin, she was prosecuted under Article 536 for hanging the posters on billboards without the permission of the Governor.

The selectivity of the prosecutions, the use of various different laws and regulations, the total refusal to utilise the new democratic laws and the distinct profiles of those targeted gives concern as to the independence of the prosecution and the judiciary from each other, and from the executive and legislature. Also as to the equality of arms, and the equality of all citizens before the law..

The Observer ascertained that there is no express requirement under any of the laws cited that permission of the Governor is required for the hanging up of posters. Moreover, Huseyin Cangir had obtained permission from the Lady Mayor of Derik, Mrs. Ayse Karadag, as the "*competent authority*"; and he had sought this authority because the sites where the posters were to be hung were owned by the municipality under her headship.

h) Order of the Court of Cassation. Eighth Criminal Department, to the Peace Court of Van, quashing the defendant's conviction.

Prior to observing the final trial hearing on April 21st, the Observer was informed, (and provided with a translated copy of the order) that, on the 22nd December 2003 the Court of Cassation[2] in Ankara, sitting with four judges, had, on the recommendation (no.56481) of the Directorate General of Penal Affairs of the Ministry of Justice, unanimously **quashed** the decision of the Van no. 1 Criminal Court of First Instance by a written order. It did so in accordance with Article 343 of CMUK (Code of Criminal Procedure). And in compliance with the law reforms of the 4th Harmonization Package (Law 4778), adopted on January 2nd, 2002.

The Cassation Court stated that:

"The posters and banners in question did not fulfil the necessary conditions for their confiscation in accordance with supplementary article 1 of law no. 5680 which necessitated the upholding of the objection, instead of its rejection. Therefore a unanimous decision has been reached to quash the decision no. 2003/15o of 11.12.2003 of the Van No. 1 Criminal Court of First Instance in accordance with article 343 of CMUK and in line with the recommendation and to return the file to the local court for subsequent procedures. 22.1.2003.

The new law amended Article 4 of Law No. 2908 on Associations. It removed limitations on the promotion or use of non-Turkish languages and cultures. Furthermore, Article 6 of the same law allows the use of "illegal languages" in the various activities of an association including publications, conferences and *posters*. These legal reforms were undertaken in response to the 4th Harmonization Package, imposed by the EU as a condition of Turkey's accession to the negotiation table to join the EU.

The Observer was aware that the Cassation Court, as a constitutional court, does not operate in the same area of law as the local Peace Courts. However, she was concerned that neither this December 2003 decision of a higher court, composed of four judges, nor the new legislation permitting the use of the Kurdish language, appeared to bind or carry any weight in the proceedings determined by one judge of first instance, sitting alone, in the Mardin court in April 2004. Given that the facts of the case in Mardin were identical to the facts of the case in Van – the hanging up of Human Rights Day posters with words in Kurdish by the chairs of IHD branches – that the defence had referred to the striking out of the Van conviction, and that the Minister of Justice himself had publicly drawn attention to the significance of the Appeal Court's this ruling in the context of the accession process, the inference is that the judge had made up his mind to come to a guilty verdict whatever the arguments presented to him.

i) Previous Hearings

There have been three hearings of this case. The first, on **February 11th,2004**, was adjourned. This Observer attended the second hearing on **March 17th, 2004.** where the defendant was represented by six of his ten lawyers. One of them presented the following arguments:

(i) no offence had been committed, since there was no legal requirement, neither in the TCP nor in the Association regulations that required permission from the Governor for the display of posters. The defendant had permission from the Mayor.

(ii) The Court of Cassation had decreed, in the similar case in the Van Court, that no offence had been committed and had overturned the conviction.

(iii) the decision to prosecute on the hanging of posters contravened the fourth E.U. harmonization package and recent law reforms allowing the Kurdish language to be used. Therefore there was no requirement to seek special permission from the Governor.

As is usual in Turkish courts, the judge dictated a summary of the defendant's statement to the Court Stenographer. A lengthy and noisy process for the stenographer uses an old fashioned manual typewriter. The transcript, therefore, is not a verbatim record of what the defendant actually said, and small nuances of expression can be distorted or subtly changed. The judge queried the need for the defendant to instruct so many lawyers in his defence (The defendant explained to the Observer that instructing 10 lawyers as counsel is a necessary safeguard in a situation where at any time, as members of IHD, each one of them could be prevented from appearing through being charged and detained over some similar offence).

However, the Judge made no comment on the defence arguments and did not question the defence counsel for any further clarification

The defendant was then asked if he had any previous convictions. Having answered that he had none the Judge then adjourned the case until the 21st April, 2004 to check that the defendant's response was correct. The Observer considered this adjournment caused an unnecessary delay in the legal process since the defendant's clean record could have been speedily and easily verified at the first hearing.

III. The 3rd hearing April 21st

a) The Trial

The trial took place in a very small courtroom. The Prosecutor was not present. The same Judge` Muharrem Endes, presided alone, sitting alongside his opened laptop. The only other court official present was the Court Stenographer, sitting below the judge with his old fashioned and noisy typewriter.

This time the Defendant himself presented his defence to the charges.

He repeated the same arguments presented by his counsel at the previous hearing.

That:

(i) He had examined the relevant laws and found that there was no explicit requirement in the law that the Governor's permission was necessary in order to hang up posters.
(ii) He had requested and obtained permission from the Mayor to hang posters, since the sites on which the posters were intended to be affixed were owned by the municipality
(iv)That the EU Harmonization Packages had resulted in changes in the law which allowed the Kurdish language to be used.
(v) That the Court of Cassation had ruled, in the Van case, that the conviction on the handing of the posters should be quashed, in view of the legal reforms.

He requested therefore he be acquitted of the offence he was charged with and be found not guilty.

b)The Verdict

The Judge, as in the previous hearing, dictated a summary of the defendant's speech to the Court Stenographer.

Apart from declaring that since there was no express mention in the law that *"the*

permission of the Governor was not required, it should be inferred that his permission was needed" he did not address any of the defence arguments, but proceeded instantly to read out the verdict already set out on his laptop screen.

Clearly, he had decided on the verdict long before entering the courtroom. He declared that the Defendant was guilty and, reading from the laptop sentenced him as follows:

1) Under 536/2 TPC: 1-year imprisonment. Fine 86,694.000 TL
2) Under 536/3 TPC: increase to 2 years imprisonment. Fine 173.388.000 TL
3) Under 536/5 TPC: 9/10th decrease of sentence to 2 months 12 days imprisonment. Fine 17.338.000 TL
4) Under Law No. 59 1/6th decrease to 2 months imprisonment. Fine 14.448.000 TL
5) Under Law 647/4 Fine of 5,776.000 a day calculated to 346.560.000 TL
6) Under Law No. 72, all the fines were to be combined.
7) Under Law 647/515, payment of fines to be made within one month of verdict
8) **The sentences are suspended**
9) Under Law 94, the Defendant was warned against committing further offences during the suspension.
10) The defendant was permitted to appeal to the High Court

As the defendant left the court, the Judge remarked "*You see, I tried to do my best for you according to the law, and suspended the fines*".

IV. Evaluation of Fairness of Proceedings

The Defendant and his lawyers had informed the Observer, prior to the trial, that they expected a guilty verdict.

The Observer did not consider that this was a fair trial, or that the judge was impartial and independent since the Judge had clearly decided on a guilty verdict well before hearing the arguments for the defence, and had not appeared to take consider any of the defence arguments, at either the second or the final third hearing.

The right to a fair trail by an independent and impartial tribunal is enshrined in Article 6(1) of the European Convention on Human Rights and has been deemed of such importance that the UN Human Rights Committee, the monitoring body for the International Covenant on Civil and Political Rights (ICCPR), has stressed its paramount importance. Most significantly, this right is an "absolute right that may suffer no exception".

Impartiality is an essential attribute in the hearing of evidence and the delivery of justice. The opinion of the court – in this case the Judge – should be based on the evidence presented and the objective appraisal of the arguments of the defence and the prosecution.

The judge must adjudicate without favour or fear. The Observer noted, in this case, that the judge clearly had a pre-formed opinion before the Defendant presented his defence. This was evidence by the fact that he had already spelt out the sentence on his laptop before he entered the court. And that he did not respond to the arguments set out in the defence, or comment on them. It is an underlying principle of fair trials that all public authorities should refrain from pre-judging the outcome of a trial and must not, during the proceedings, amongst other things, invoke the guilt of the accused or treat the accused as if he or she is already guilty, which the judge did in this case.

Although in the Turkish legal system, case-law and use of precedent does not feature, it is significant that the Judge, even when expressly requested, by the defence, failed to take into account the Cassation Court's striking out of a similar conviction in another court. Especially in view of the fact that the Minister of Justice had publicly drawn attention

to the importance of the higher Court's decision and its significance in relation to the general issue of implementation of legal reforms as part of the process to gain accession to the EU.[3]

Furthermore, it appears that the burden of proof was reversed. The prosecutor was not present at any of the hearings and therefore was not made to prove the charges. The defendant, presumed guilty, had to prove his innocence. The standard of proof in all criminal trials must be "beyond reasonable doubt" and not "on the balance of probabilities". In this case there was, at the least, a "reasonable doubt" that the accused, in law, was obliged to seek permission of the governor, since this requirement was not expressly written into the law.

V. LEGAL FRAMEWORK

Relationship of Judge and Prosecutor

In the Turkish system, the relationship between the Judiciary and the Prosecutor appears symbiotic. In this Observer's experience judges and prosecutors work closely together, and rarely will one refuse the request of the other. This professional intimacy is reflected in the physical arrangements of the court. Where a Prosecutor is present, he sits up on the bench with the judge or judges, and is not easily distinguishable from them. When present in a courtroom, he is often to be seen in close conversation with the judge, whereas the defence lawyers have restricted opportunities to be heard. The defence lawyers are positioned huddled below the Judge and Prosecutors bench, at the level of the accused. Although the Prosecutor was not present in this case, it can be reasonable inferred that he and the judge worked in tandem behind the scenes to bring about the conviction in the Cangir case This gap in levels in the courtroom accentuates the appearance of inequality of arms.

This whole scenario conflicts with one of the principles of fair trials that the Court must not only act impartially but must be *seen* to act impartially, and the judiciary must be independent of the legislature and the executive..

Recruitment, Training and Re-training of Judges and Prosecutors

The High Council of Judges and Public Prosecutors is responsible for the appointing, promoting, transferring and disciplining Judges. On this Council sits the Minister of Justice himself and his Under-Secretary. It is a very powerful Council, politically, legally and administratively. There is ample scope for exerting influence on their appointees, through their power to dismiss, relocate, and demote appointees who have protested or rejected such influence.

Judges and the Prosecutors are individuals who have been selected for training for these posts under strict criteria: they must demonstrate total commitment to the State, the "Holy State" and believe in the ideology of the State and its territorial integrity as envisaged by the Founder of Modern Turkey, Kamal Ataturk. Following law school, law graduates may apply to select training for the judiciary or as prosecution lawyers for the State. Rigorous interviewing weeds out any applicants who do not demonstrate absolute

adherence to the ideology of the State.

This ideology enshrines very strict concepts concerning Turkish nationalism – and in particular, is adamant that the Kurds have no rights to a separate state, and are not a minority with language and cultural rights as are, for example, the Jews and the Armenians. Thus, it is inconceivable that a Kurdish law graduate could be admitted to this training, which leads to permanent posts under the Ministry of Justice. During the two-year training, those selected are subject to an intensive regime and indoctrination in which they are far removed from association with ordinary people. Judges emerge from such training shaped in a manner that ensure their reliability to the State and instructed, one presumes, to work closely with the Prosecutors at all stages of the legal process, from the beginning to the final outcome.

It is questionable how independent a judge can be considered to be, in view of the methods of recruitment and instruction, and the official attitudes to the Kurdish population that he or she will have absorbed during this period, possibly making him pliable to pressure from the executive.

Although there has been considerable retraining of judges and prosecutors in human rights law in others parts of the country (notably in the West), it would appear that few such courses have been provided for judges sitting in local courts in the Southeast. There is clearly a need for training of judges, prosecutors, and police on legal reforms so that prosecutions such as these no longer occur.

Case-law and Precedent

Judges see their role as restricted to determining whether or not the law, as written in the statute book as has been breached. There is no use of case law. Nor does the judge interpret the laws, as written, in relation to international laws or declarations, that Turkey has ratified, or to the seven harmonization packages and recent law reforms. Both he and the prosecutor are able to circumvent the new legal reforms by exploiting other laws remaining on the statute books, which plug the gaps left by the new legislation.

VI. Other applicable law, decrees of regulations

There are a huge number of laws, bye-laws and administrative regulations which can be used to harass and intimidate human rights defenders, in spite of the repeal of the infamous Article 8 of the Anti-Terrorist Law and the very many legal and constitutional reforms in Turkey that have been enacted to comply with the Copenhagen Criteria and the seven Harmonization Packages.

Public Order legislation, laws on associations and press laws are being used to restrict rights to freedom of association, assembly and of the press. The combination and utilisation of these laws and regulations can also result in the violations of other rights – to liberty, security of the person and a fair trial. State officials have considerable powers to exert unjust pressure on human rights defenders, through arbitrarily detaining them, prosecuting them on often the most trivial grounds, and prohibiting their actions and the activities of their associations.

This pattern of processes ongoing against human rights offenders, is totally in breach of the obligations to implement the recent legal reforms under various laws and regulations, and arbitrary interpretations of the latter, although often leading to the suspension of sentences or commutation is in effect a form of judicial harassment designed to intimidate them while at the same time hinder them from properly performing their professional and public work. So, for example, since the defendant, Huseyin Cingar, attend to his own defence, he was prevented from representing his clients in other cases. On the day of his trial he was unable to attend two trials in Mardin courts. He was forced to find substitute lawyers for his clients, potentially harming the success of his advocacy. If his conviction stands he will be unable to work as a lawyer. In addition, there will be pressure for the Bar Association to expel him from membership.

By stifling the activities of human rights defenders and rights-based NGOs the Turkish state weakens their ability to expose human rights violations, thus increasing the abuses, giving impunity to the perpetrators and facilitating the breach of obligations under a raft of international treaties and declarations that Turkey has agreed to. All human rights defenders must be able to carry out their legitimate activities without fear of harassment or intimidation of prosecution.

Turkish Law and International Standards

Among the relevant treaties to which Turkey is a state party are the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms. These and other treaties require Turkey to respect and protect the rights of all persons within its territory and subject to its jurisdiction, including the rights covered in the UN Declaration on Human Rights Defenders, as well as other fundamental rights such as freedom from arrest and the freedom to a fair trial. Moreover, Turkey's Constitution includes a general commitment to human rights, international treaty obligations as well as commitment to specific human rights such as the right to personal security, freedom of expression (Art 26), freedom of association (Art.33) and freedom of the press and other media (Art.28-31). However, obligations under international law and the Constitution, and the decisions of the EHCR in cases concerning Kurdish rights appear to be ignored by local judges even when referred to by the defendant or his counsel.

Rights of Human Rights Defenders and of NGOS

Cases such as this "poster" case, graphically illustrate the methods the State can employ to harass human rights lawyers and NGOs with similar interests and objectives. The problems they face in organising and holding meetings, giving press conferences, distributing newsletters, and putting up posters and information sheets are manifold. Civil Society organisations have a crucial role to play in monitoring the implementation the harmonization packages on the ground. If human rights defenders and NGOs cannot carry on their legitimate activities without fear of intimidation or prosecution, and cannot test the efficacy of the new laws – e.g. by hanging posters in the Kurdish language – the fault lies with the Ministry of Justice and the Ministry of Interior who have a duty to ensure that the new laws are upheld, and to instruct and retrain their subordinates, including judges, prosecutors and police, in the law reforms and international treaties and declarations to all those involved in delivering the justice system in the Southeast. (Judges, Prosecutors and Police)

VII. Conclusions and Recommendations

- the Ministry of Justice must ensure that the principles contained in the UN Declaration on Human Rights Defenders is fully incorporated into national law and mechanisms for the protection of lawyers and their clients and are fully implemented in practice.
- all pending prosecutions against lawyers and current appeals by them should be reviewed at the highest level of the appropriate prosecuting authority and by the Ministry of Justice and the Ministry of the Interior to ensure that the criminal prosecutions are compatible with new laws that the prosecutions do not violate the UN Basic Principles on the Role of lawyers, and other Human Rights Standards that the evidence available is actually sufficient for a prima facie case and the expectation of a conviction.
- All prosecutions against lawyers should be approved first of all not only by the Public Prosecutor but also by the Minister and Deputy Minister of Justice to ensure that the UN basic principles on the Role of Lawyers is not breached.
- No prosecutions should be politically motivated[4].
- Long delays and unnecessary adjournments in trials should be avoided. *"Justice delayed is not justice"*. There is a huge backlog of files going back years in courtrooms around the country. There are also unnecessarily long delays until appeals are heard. The Observer was told that the appeal in Huseyin Cangir's case is not likely to be heard for at least 18 months, possibly longer.
- The IHD should be invited to have representation on the Governor's Human Rights Commission.[5]
- Every effort should be made to deliver training in international standards to all those involved in the justice system – police, prosecutors and judges. The training should accommodate instruction in international European human rights law how the justice system, at all levels, should implement the legal reforms following the harmonization packages

The current trial against Human Rights Defender Huseyin Cangir must be considered against the background of similar prosecutions brought against other Chairs of IHD elsewhere in Turkey. In all of these, the defendants have been singled out for prosecution because of their activities representing Kurdish claimants and Kurdish defendants in highly important cases concerning human rights.

While many such prosecutions, intended to disrupt or stop the activities of NGOs and lawyers, end finally in acquittals, the whole long process succeeds in curbing the lawyer's professional work, causing infinite distress to the lawyer, his family and friends, and also endangering the rights of the lawyer's clients.

The Observer recommends that the Minister of Justice take steps to see that the appeal against this judge's sentence is heard as soon as possible in Ankara, in order that justice may be done and the lawyer, Huseyin Cangir, can give his full attention to his legal work and his professional commitments to his clients.

(Footnotes)

[1] Article 536 reads as follows:
"Whoever posts printed documents, pictures or hand written documents at places other than those designated for posting of such documents or without having obtained permission of competent authority, shall be punished by a light fine of not more than 15 liras."
(This version and English translation of Article 536 is clearly very old as evidenced by the amount of the fine.)
[2] Known, in the English translation as the Constitutional Court, also as the Supreme Court of Appeals
[3] In December, 2003, during Human Rights Week, the Prime Minister of Turkey was reported as saying, in the context of Turkey's progress in the Accession process that "*you see, they are now putting up posters in Kurdish*". He made this statement just when these posters were being confiscated and prosecutions were being prepared.
[4] . In this case, a *"a person or persons unknown*" alerted the police to the posters in Derik and speedily thereafter the Prosecutor initiated the indictment. Because similar prosecutions occurred in several other towns in the Southeast, but *not* in the West of Turkey, it is reasonable to infer that there was executive pressure and political motivation
[5] At present, membership of the Human Rights Commission established in the offices of the Regional Governors do not include representatives of any NGOs, but do include representatives of the police and the army.


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