

INTERNATIONAL COMMISSION OF JURISTS

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R E P O R T

on

Trials before the Military Tribunals

in Diyarbakir, Turkey,

in July 1982,

submitted to the

INTERNATIONAL COMMISSION OF JURISTS

by

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Mission

At the request of the International Commission of Jurists (ICJ) I stayed in Diyarbakir, Turkey, from the 12 to 15 July 1982 to observe trials before the military tribunals. Since I do not speak Turkish, I was accompanied by Herr Helmut Oberdiek, an interpreter appointed by the ICJ. He is an experienced court interpreter in the Turkish language in the Federal Republic of Germany.

Admission as observer

The ICJ informed the Turkish government of our mission through the Turkish Diplomatic Mission to the United Nations in Geneva. However, we did not receive before our departure a written permission from the Turkish government to observe the trials.

After our arrival in Diyarbakir we called on the military authorities. We were informed that we needed the permission of the president of the police in order to attend the trials.

The president of the Bar Association of Diyarbakir, Mr. Yücel Onen, accompanied us to the president of the police, Mr. Yahya Gök. The president of the police promised us to see to it that we would be granted the permission. A few hours later the president of the police informed us that we could attend the trials as observers from the following day onwards.

Background to the trials

In Diyarbakir and other cities in Eastern Turkey a number of mass and individual trials are being held against members of the Kurdish minority. The Turkish government does not acknowledge the existence of a Kurdish minority. Officially, it is only referred to as "the inhabitants of the eastern provinces". Use and instruction of the Kurdish language are suppressed.

A number of members of various Kurdish associations were put on trial because of their alleged membership in separatist organizations. In addition, many of them were accused of having committed acts of violence.

The exact number of proceedings or inquiries in connection with Kurdish associations is not known, but they are believed to involve over 3,000 persons. In several hundreds of cases death sentences have been demanded.

Tribunals

The tribunals are composed of army officers and civilian judges. The public prosecutors are civilians.

Defence

There is no requirement that the defendants be legally represented.

Legal aid would be granted by the Bar Association if it were requested. The Bar Association informed us, however, that since the beginning of the political trials no such demand has been made.

For these reasons only very few accused are defended by counsel.

Contacts with judges and public prosecutors

Throughout our observation of the trials we were accompanied by a military officer, Yüzباشi (Captain) Ziya Gül. He informed the judges of our presence.

Despite our repeated request it was unfortunately impossible to meet the judges or public prosecutors directly. We were told that they were under pressure of time. The captain forwarded our respects to the judges who acknowledged them through him.

Contacts with defence counsel

These contacts took place mainly outside the military compound.

Within the military compound we could only contact the defence counsel with the permission of the captain.

In the (civilian) court building we called on the President of the Bar Association of Diyarbakir and were able at the same time to talk to some lawyers in the room reserved for them.

The possibilities for defence are very limited. The defence counsel are permitted to see the accused before the trial only for a very short time. The captain explained that this was due to the great number of accused. Moreover, the defence counsel can only speak to the accused in presence of prison wardens.

The lawyers doubt the effectiveness of their defence in the political trials. This may be one of the reasons why the Bar Association has never been called upon for legal aid in political trials.

Many lawyers are afraid that their contacts with foreigners might get them into trouble. One lawyer explained to us that the very fact of having talked to a foreigner might suffice to have him arrested should the authorities suspect that the topic of the conversation was political trials.

Conduct of trials

The accused who have been remanded in custody are brought to the military compound under heavy guard. An armoured car is followed by a special vehicle for the prisoners which looks like an iron container. The dimensions of this container are about 3 by 2,50 by 2 metres. It is locked from the outside and has only a small peep-hole. This is then followed by another armoured car, etc.

The prisoners are transported in these "cages" at an average summer temperature of 40-45° C in the shade.

The accused who have been remanded in custody have shaven heads and wear prison clothes. They have to sit upright during the trial, hands on their knees, looking straight at the judges. When being heard they have to stand at attention. They have to address the examining judge as "Major". The judges use the familiar form when addressing the accused.

During the trial against the PKK-group 'Mardin' about 90 accused remanded in custody were present. At each end of the judge's bench a soldier was stationed, with his machine-gun pointed at the accused at the ready. In the court room there were several other soldiers with their machine-guns at the ready. Immediately next to the accused were a row of soldiers in the centre aisle and in the outer aisles, with clubs in their hands. The windows of the court room, situated on the ground floor, were open and in front of each window was a soldier with his machine-gun at the ready pointing at the accused.

In other trials with fewer accused there were fewer soldiers.

The audience consisted of relatives of the accused.

Herr Oberdiek, myself, and the captain sat in the front press row, visible to all the accused, and taking notes.

In our presence the judges interrogated the accused in correct form.

However, the accused were not informed about their rights before the interrogation, such as their right to refuse to give evidence.

The official minutes were dictated by the presiding judge paragraph by paragraph. Requests by the accused for correction of the minutes were granted.

Statements by some of the accused that they were tortured were, however, not entered into the minutes. Statements by some of the accused that they were forced by the police to sign their interrogation minutes blindfolded were not entered into the minutes. The judges merely entered that the accused denied having made such a statement.

Observation of the trial on 14 July 1982

We informed the captain that we wanted to attend the trial against the PKK-group Urfa since we had read about that trial in the paper the previous day. A reporter of the agency "Türk Haberler Ayansı", who was also present, informed the captain that he wanted to attend the same trial as we. He then went to the trial against the PKK-group Urfa. Without being given any reasons we were, however, guided to the trial against the PKK-group 'Mardin', without informing us that this was another trial. The reason for this may have been to avoid a double check on the proceedings by a reporter and by the international observers. On the other hand, we were told later privately that various accused in the trial against the PKK-group Urfa had threatened to start a hunger-strike on this day in protest against the bad conditions of detention.

Trial against PKK-group 'Mardin'

Number of the accused: 381 (according to the captain's information) or 385 (according to the newspapers); about 90 accused who had been remanded in custody were present. No defence counsel was present.

When we entered, the hearing had already started. The accused Vehbi (Mihri) Gökçe(n) was being interrogated. He is accused of membership of the organisation 'Apocular', illegal possession of a weapon, participation in an armed assault against a car of the military staff and resistance against the police.

The accused claimed not to belong to any organisation and not to have participated in the assault on a staff-car.

Upon presentation of the statement of a witness and his own statement made in the year 1980, the accused said that this statement was not made by him, that he was forced to sign blindfolded a statement prepared by the police and that he was tortured for 68 days. This was not inscribed in the minutes.

After a witness, a second accused, Mecit Gümüş, was interrogated. He was charged with membership of a military organisation, car-theft, painting of cars for the organisation and assault on an army-car.

He denied the charges. Upon presentation of his signature on the interrogation minutes, he answered that he was constantly tortured and forced to sign the minutes blindfolded. The following was entered into the minutes: "This is not my statement".

After interrogation of this accused the trial was adjourned.

Our request to attend further trials was at first not granted by the captain, his reason being that there would be no further trials on that day and that, moreover, all trials were more or less the same anyway. After some negotiation he consented to let us attend other trials the next day.

Observation of trials on 15 July 1982

After attending the mass-trial on the previous day we asked if we could attend some trials with fewer accused.

In the first trial (against members of the organisation KUK) we heard only the statements of the personal data of the accused. One of the five accused in custody was an illiterate Syrian whose mother tongue was Arabic, which created a lot of communication problems during the interrogation. A person called in as an interpreter did not speak Syrian, only the Kurdish language. The interpreter was not sworn.

One of the accused in custody (Selim, a farmer from Siirt)

gave the impression of having been tortured. He could hardly walk or stand.

In the second trial (against a member of the organisation KAWA) the accused admitted an armed robbery on a shop.

In the third trial two witnesses were interrogated about an alleged raid of four members of the organisation 'Apocular' on a village. One of the accused mentioned that the main witness had admitted torture and pressure by the police when making his incriminating statement.

Fourth trial: the accused, Mustafa Ozal, a bank clerk from Hilvan, had been remanded on bail. He was accused of having assisted the PKK by revealing bank statements to them.

The witness against him, Izzet Bayhal, was another accused who is a member of the PKK-group Urfa. He claimed not to know the accused. When confronted with his statement concerning the handing-over of arms, the witness denied having made such a statement and said that he had to sign blindfolded. The court decided to call further witnesses.

Fifth trial: the accused are a lawyer, Mahmut Bilgili, and a teacher Gülten Ozer (both in custody), and Mehmet Güler, Yakup Karatas and Mustafa Barlas (who are on bail).

A witness, Hidir Akbalik, was heard under oath. This witness is also accused of being a member of the PKK-group Diyarbakir, and a death sentence has been demanded against him. The witness recognised Mahmut Bilgili but not Gülten Ozer.

The witness stated that Mahmut Bilgili had been a member of the organisation since at least 1979, and that the organisation rented a flat for him in Diyarbakir. He said that Mahmut Bilgili acted in general as a defence counsel for members of the PKK and established contacts between arrested members and the PKK by forwarding oral messages. He received no money for his work as

defence counsel but was fully supported by the organisation to which he also transmitted the fees he had received from other trials.

When presented with Gülten Ozer's personal data the witness said he believed he recognised her as well, but did not know whether she belonged to the organisation or not.

Mahmut Bilgili denied the witness's statement. His defence counsel Yücel Onen (president of the Bar Association of Diyarbakir) declared that the witness in question had already made a number of detailed statements in other trials, details that a normal witness could not possibly know; this witness must therefore be considered a police informer.

The public prosecutor asked the witness about Mahmut Bilgili's function in the organisation. The witness stated that Mahmut Bilgili's activities were restricted to giving legal assistance. Before Mahmut Bilgili, another lawyer, Hasan Aydin from Gaziantep, had given legal assistance; after his assassination this task was taken over by Mahmut Bilgili.

Mahmut Bilgili denied the evidence given by the witness, claiming that the witness was only hoping for better conditions of imprisonment and to escape capital punishment in this way.

The defence demanded the release of Gülten Ozer and Mahmut Bilgili from custody, since there was no evidence against Gülten Ozer, and Mahmut Bilgili only acted in his function as a defence counsel without violating the law.

Mahmut Bilgili asked the court to consider whether he, as an officer-cadet, should be transferred from the military prison for non-officers to the military prison for officers.

The public prosecutor opposed any release from detention.

The tribunal decided to release Gülten Ozer. She had been detained for 23 months. Mahmut Bilgili remained in prison.

The trial was adjourned to 17 August 1982, to call further witnesses.

Lawyers in detention in Diyarbakir

I was asked by the ICJ to enquire about some other lawyers who were reported to have been arrested.

Two lawyers, Yahya Memetogi and Hamit Kasakoc, were released some time ago and have resumed their work as lawyers.

The lawyer Hüseyin Yildirim, who was arrested in autumn 1981 in Diyarbakir, was released on bail on July 15, 1982 and is awaiting his trial.

The lawyers Rusen Aslan, Mümtaz Kotan and Serafettin Kaja were found guilty in the Rizgari-Ala Rizgari trial in Diyarbakir at the end of June 1982. Rusen Aslan was sentenced to 10 years imprisonment and Mümtaz Kotan and Serafettin Kaja were sentenced to 8 years each. When we were in Diyarbakir the sentences had not yet been drawn up in writing and were not yet legally binding.

Rusen Aslan and Mümtaz Kotan were in prison; Serafettin Kaja had escaped.

Conclusions

- 1) Numerous statements by the accused and by witnesses indicate violations of human rights by
 - a) torture;
 - b) inhuman and degrading treatment of prisoners;
 - c) forced confessions.
- 2) Requirements for fair trial are not being met:

- a) detention is unreasonably long;
- b) adequate and unimpeded preparation of defence is not granted;
- c) trials are not in public;
- d) the taking of minutes is not correct; when allegations of torture were made by the accused, the court did not enquire into the allegations in any way and ignored them as if they had not been made;
- e) excessive demonstration of military power in the courtroom obviously serves to intimidate the accused and the witnesses rather than to promote security.

Gmunden, 21 August 1982

Dr. Konrad Meingast