

E-2750/04EN

Answer given by Mr Rehn
on behalf of the Commission
(22.12.2004)

1. Leyla Zana, Hatip Dicle, Orhan Dogan and Selim Sadak were members of the Turkish National Assembly and the Democracy Party (DEP). On the basis of repeated applications over the course of nearly three years by the public prosecutor to the Ankara State Security Court (SSC), on 2 March 1994 the National Assembly lifted the applicants' parliamentary immunity. Shortly thereafter, the defendants were taken into police custody. On 16 June 1994, the Constitutional Court dissolved the DEP and ordered the party's Members of Parliament (MPs) to vacate their parliamentary seats. The defendants were initially charged with "treason against the integrity of the state", a capital offence under Article 125 of the Penal Code. That charge was later changed to "membership in an armed gang" within the meaning of Article 168 of the Penal Code, which provides as follows: "Any person who, with the intention of committing the offences defined in Article 125 ... forms an armed gang or organisation or takes leadership ... or command of such a gang or organisation or assumes some special responsibility within it shall be sentenced to not less than fifteen years imprisonment. The other members of the gang or organisation shall be sentenced to not less than five and not more than fifteen years imprisonment."

The prosecution case was based firstly, on the activities that Leyla Zana and her co-defendants are alleged to have engaged in on behalf of the Kurdistan Worker's Party (PKK) - harbouring militants, negotiating with local leaders and threatening them as a way of forcing them to help the PKK establish itself in their regions. Secondly, the prosecution based its case on the content of oral and written statements made by the defendants in defence of Kurdish rights in which they allegedly express support for PKK activities.

In its judgement of 8 December 1994, the Ankara SSC sentenced the defendants to 15 years imprisonment on the basis of Article 168. The Court rejected the charge under Article 125. It found that the defendants had engaged in intensive "separatist" activity under instructions from the PKK. On 17 January 1996, the former parliamentarians lodged an application with the then European Commission on Human Rights alleging, by reference to Articles 6 and 10 of the European Convention on Human Rights, that they had not been afforded a fair hearing by an independent and impartial tribunal and that their freedom of expression had been infringed.

On 17 July 2001, the European Court of Human Rights ruled that the co-defendants had not received a fair trial. The Court ruled that there had been a violation of Article 6 because the Ankara SSC, which at the time of the trial included a military judge, was not "an independent and impartial tribunal". The Court further unanimously held that the applicant's rights under Article 6(3)(a) and (b) had been violated in so far as there had been a change in the characterisation of the offence during the last hearing of the trial and the applicants had not been allowed additional time to prepare their defence against the new charge. Furthermore, the Court ruled that the applicants had been denied an opportunity to examine or have examined key witnesses for the prosecution.

According to a new law adopted by the Turkish Parliament in February 2003, when the European Court of Human Rights has ruled that a person has been denied a fair hearing in accordance with Article 6, that person has the right to a re-trial. On 4 February 2003, the ex-parliamentarians officially lodged an application for a re-trial in accordance with the new law. The retrial, which was heard before the No.1 SSC in Ankara between February 2003 and April 2004 and which confirmed the original conviction, fell well below international fair trial standards. In particular, the principle of

equality of arms, the presumption of innocence, the right to a public hearing, the independence and impartiality of the tribunal, and the right to be tried within a reasonable time were all violated during the course of the trial. There were also criticisms of the continued detention of the defendants during the trial, especially given the protracted nature of the proceedings. Moreover the Court and Prosecutor failed to instigate a thorough and independent investigation into allegations of mistreatment of two of the defendants.

The 9th Chamber of the Court of Cassation quashed the judgment of the Ankara No. 1 SSC in the second hearing, which was held on 14 July 2004. The Court of Cassation reasoned that the lower court (the Ankara SSC No. 1, abolished with the recent reform law on the SSCs) had not conducted a fair trial. During the first hearing, the Court of Cassation had already ruled for the release of Leyla Zana and her three colleagues who had been released on 9 June 2004.

The 9th Chamber of the Court of Cassation made reference to the recent amendment to Article 90 of the Constitution entitled "Ratification of international treaties" which states that "In case of controversy between international agreements on fundamental rights and freedoms duly put into effect and the laws due to conflicting provisions on the same matter, provisions of international agreements shall prevail." It also made reference to Article 6 of the European Convention on Human Rights which regulates fair trial.

2. In line with the judgment of the Court of Cassation the ex-DEP deputies Leyla Zana, Hatip Dicle, Orhan Doğan and Selim Sadak, are being tried for a third time, this time by the new Ankara 11th Heavy Penal Court (the SSC's have been abolished).

The re-trial of the former DEP MPs started on 22 October 2004. The Prosecutor announced that the Court should adopt the Court of Cassation Decision. In agreeing with the verdict of the Court of Cassation, the Court has undertaken to reach a different judgment than that which was reached by the SSC. The Court will convene on 17 December 2004 to continue the re-trial.

The Commission finds it regrettable that the retrial before the SSC failed to remedy the defects identified by the European Court of Human Rights in 2001. There are clearly some deficiencies in the appeal system, in particular regarding the principle of equality of arms, which may impact on the fairness of the proceedings. However, the ruling of the Court of Cassation indicates that many of the initial retrial's defects have been identified by both the Public Prosecutor and the Court of Cassation Judges. The fact that such a remedy has been available to the accused within the ambit of domestic procedures reflects well on the interpretation of fair trial standards by the Turkish courts.

3. Mrs Zana and the other DEP MPs have encountered no problems that we are aware of concerning the enjoyment of their citizenship rights. According to official sources, Mrs Zana and the other DEP MPs will not be rearrested on return from a foreign trip.

4. Yes

5. As noted in reply to question two, the further retrial of Mrs Zana and her former colleagues is ongoing. If the original guilty verdict is overturned, the parties will reportedly be able to seek compensation for the ten years that they were jailed.

6. Turkey is currently a country of origin of applicants for asylum within the European Union. In its paper on issues arising from Turkey's membership perspective, published on the same date as the Regular Report, the Commission mentioned with respect to Turkey that:

"In 2003, 21,890 Turkish citizens submitted claims for asylum in the EU 25, while 2,127 were accepted. (By way of comparison, in 2003 3,041 Romanian citizens submitted claims for asylum and 61 were accepted, while 2,427 Bulgarian citizens submitted claims for asylum in the EU 25 and 8

were accepted). So far as successful asylum applications are concerned, the ongoing implementation of political reforms, especially in the south-east of Turkey where the population is predominantly Kurdish, is likely to reduce significantly the number of applications for asylum. It can be inferred that the applications which were not accepted were in general submitted by persons leaving Turkey for economic reasons. As noted elsewhere, the opening of accession negotiations is likely to stimulate economic development and to reduce poverty, thereby reducing the numbers of applications of this kind.”

The implementation of political reforms in Turkey has already reduced both asylum applications in general and the number of successful applications. The number of asylum applications from Turkish citizens decreased between 2002 and 2003 by approximately 4,000, from approximately 25,800 to approximately 21,800.