

*Trial of leaders and representatives
of the Turkish trade union organisation
Disk at Istanbul, Turkey.*

REPORT

to the European Trade Union Confederation (ETUC)

and

*the International Confederation of Free
Trade Unions (ICFTU)*

by

*M.G. Rood, professor of labour law and
industrial relations,
Faculty of Law, Leyden University,
the Netherlands.*

—x—x—x—

—x—

I. Introduction.

1. At the request of the aforementioned international trade union organisations and the dutch trade union congress, FNV, I have gone to Istanbul, Turkey, from Tuesday April 13th 1982 through Saturday April 17th 1982. The purpose of my visit was to observe in the name of said organisations the aforementioned trial, which is being held at Istanbul Military Court No. 2, some 25 km outside Istanbul City and to collect relevant information as to the conditions pertaining to

 - the freedom of trade union organisation,
 - the defense of the defendants,
 - the prison conditions.
2. Before starting my mission I had received and studied lengthy reports of earlier missions with the same purpose, files of correspondence of ICFTU and/or ETUC with governments of different countries and others. From the reports those of an ICFTU Mission to Turkey (6-10 April 1981), of Karl Nandrup Dahl's mission (2-6 November 1981), and of Thomas Rothpfeffer's mission (3-8 January 1982) must expressly be mentioned. They contain interesting and most useful information which helped me a great deal in trying to understand conditions in Istanbul at the present time.
3. My mission started with a further briefing at the ETUC office in Brussels, Belgium, where I was informed by Mssrs. Nalsund and Hinterscheid (ETUC), De Jonge and Jonckheere (ICFTU) and Top (european spokesman of Disk).

They indicated that the primary concern of both the international trade union organisations was the question whether freedom of such organisation did or did not exist in Turkey at the present time. They further asked to be informed of the course the trial would follow in the coming weeks and months.

At this briefing I indicated that I planned to get information also from the military authorities and the prosecuting attorney and we discussed names of authorities and possibilities to get in touch with them.

II. Interlude.

4. It seems useful to mention that I had previous contacts with the bar-association of Istanbul in the past.

Having been a practising lawyer and a member (and president) of the board of the dutch bar-association, I had at least at three different occasions contacts before the mission to the trial now in progress.

5. At the first occasion, a steering committee of the governments of the Member-States of the Council of Europe organised a meeting with representatives of the bar-associations of these countries in Strasbourg, France. That meeting, which took place in 1977, was attended also by representatives of the Directorate for Human Rights of said Council, of the European Commission on Human Rights and of the European Court of Human Rights. Purpose of the meeting was to get information from the bar-associations as to possible changes of the Treaty.

The Turkish Bar-representatives at that time called the attention of everyone present to the working conditions of Turkish practising lawyers, which - according to them - did not comply with the provisions of the Treaty. (At that time the party of mr Demirel was in power). They called upon the representatives of the other european bars to come to the festivities on the occasion of 100 years Istanbul Bar Association in April 1978, as a demonstration of international bar support for them.

6. The second occasion, the so called "Praesidenten Konferenz" at Vienna (Austria) in February 1978, also gave attention to those coming festivities. The Praesidenten Konferenz is a meeting of the presidents of the european bar-associations, which takes place once a year under the auspices of the Austrian Bar. At that time some of the european representatives present expressed privately some doubt as to attend the coming festivities, based on their impression that the Istanbul Bar was a leftist (according to some: a communist) infiltrated organisation.
7. The third occasion were the festivities in Istanbul (4-9 April 1978), which - although earlier doubts had existed in some countries - were attended by representatives of most european bar-associations. At that time mr Ecevit was prime-minister. He spoke at the opening session and held a reception for the official representatives. A demonstration of international bar-solidarity seemed not necessary, according to our Turkish hosts. Street conditions at that time were tending to those in Northern Ireland and indeed one of the dinners was called off soon after its beginning because a member of the Istanbul Bar had been shot when on his way to that same dinner.

At these different occasions I met with mr Sav, the president of the Turkish Bar and with mr Apaydin, the president of the Istanbul Bar of which the last one unfortunately only spoke Turkish, which language I do not understand.

III. Istanbul April 1982.

8. Upon arriving at Istanbul airport (no control of my luggage) the attaché for social affairs of the Embassy of the Netherlands in Ankara, came to welcome me. It turned out that he and an interpreter (who is in the service of the same attaché and therefore very well known to him and, according to him, completely reliable) had been sent to Istanbul to be of assistance to me in every aspect desired. That assistance has been priceless and I indeed expressed my gratitude to our foreign Minister after my return to this country. At every occasion wanted, I had the good services of the mentioned (german) interpreter, the information of the said attaché and other officials of the Dutch foreign service (f.i. the consul-general at Istanbul), transport facilities and assistance as to the arranging of appointments with persons I wanted to meet. I shall be referring to those two persons in this report as "my company".

9. As I informed mr De Jonge by telex from Istanbul, the Court is in session only at Wednesdays and Fridays. As the plane from Frankfort to Istanbul was considerably delayed, I could only attend the session on Friday

April 16th 1982. As however the Wednesday session had been used to add another defendant (the former mayor of Istanbul) to the 52 defendants, it turned out that the trial had not really proceeded that day. Before attending the Court's session, I had lengthy conferences with the defense counsels on Wednesday and Thursday nights, i.e. with Mssrs. Tahiroğlu, Günes, and Katancı.

Furthermore I had two different talks with the prosecuting attorney mr Takkeci and his deputy, Attaman, with other high military authorities, with the already mentioned people of the Dutch foreign service, with the attaché, mr Van Renselaar and the interpreter.

10. Compared with my previous stay in Istanbul in April 1978, I now saw at different times and places patrols (some five men) of helmeted and armed (shotguns) military police. My discussions with the defence counsels took place at their request, at mr Tahiroğlu's office. He mistrusted the reception personel of the hotel and other people in the lobby, although I offered to confer in my room. When we left his office on Thursday night, my company indicated a car parked in front of the office in which about four people (it was dark) seemed to be sitting, and explained that that special type of car normally was in use by the police. According to that company, we were followed to the hotel, where the follower turned into a telephone booth in the lobby.

TÜRKİYE SOSYALİSTİK İŞLERİ VE KİŞİLERİ KORUMA VAKFI

IV. Legal observations.

11. The Disk-trial rests on the allegation that Disk was trying to install communism by force in Turkey.

In that respect it must be kept in mind that the communist party is not allowed as a political party under the Turkish Constitution, which is still in force. The party has therefore not been banned by the military authorities now in power. Under Turkish law prior to that of the present military regime activities of other organisations than political parties, with the same aims as a communist party would have, were not allowed. Therefore, it seems to me, are organisations which in the West are usually called fellow travellers, looked upon as potentially incompatible with the Constitution.

12. According to my sources, which I found no reason to disbelieve, at least some member unions of Disk were being led by people who have (strong) ties with the Soviet Union and/or the World Federation of Trade Unions. The same sources stress the point that the leaders of Disk itself do not belong to those circles. Mr Basturk, Disk's president - as is well known - was a member of parliament for Ecevit's Party and I take it that the allegations against Disk are unjustified. But on the other hand it cannot be denied that some activities apparently carried out in the name of Disk, can make the impression of favouring a communist regime, especially in the eyes of a hostile government. I take it that mr Basturk is quite aware of the same and therefore has expressly indicated that only mr Top in Western Europe and mr Tahiroğlu in Turkey are allowed to speak in the name of Disk.

In this respect I consider it as unfortunate that other so called representatives of Disk have been given the opportunity to appear at trade union meetings in Western Europe and speak about the Turkish situation, when they apparently belong to the "communist-wing" in Disk. Some sources indicated to me that a certain mr Denizmen is one of these persons. When people like he are being considered as spokesmen for Disk, the allegations against this organisation in Turkey are unfortunately only strengthened.

13. The trial against Disk leaders is being held in a military Court. The legal basis for this strange competence is the state of martial law, provided in the Constitution. That state had been declared already by the Ecevit-government for certain provinces of the country and extended by the last Demirel-government. That a trial as the one against Disk is being held in a military Court therefore has a legal basis which has not been created by the present military regime.

On the other hand, it must be kept in mind that Law 1402 (the Martial Law Act of June 1st, 1980) has been amended different times by the said regime since it took power at September 12th, 1980. Especially the extending of the jurisdiction of martial law courts and the putting of civilian prosecutors and judges under military jurisdiction are very serious re the judicial independence. I refrain from giving a survey of changes in Law 1402 and other laws of interest in this respect, as former reports (see Introduction) have elaborated on this theme and furthermore because I sent prior to this report (my letter to ETUC dated April 19th, 1982) a discussion paper for a conference on Turkey in Berlin (18-20 December 1981), which contains a complete survey of changes in relevant laws between September 12th, 1980 and June 1st, 1981.

V. The trial.

14. As is well known, 52 leaders and elected representatives are the defendants in the trial. As indicated before the former mayor of Istanbul, Ahmed Isvan, has been accused in the meantime of supporting Disk and is the 53rd defendant. Besides of these 53 people who are being held in preventive detention, I have been informed that 118 other elected representatives of Disk are also being held in custody and will have to stand trial at a later date. They appear to be held without charges having been brought against them so far. Yet another 2.000 Disk people have been pointed out to hold themselves, although not in custody, at the disposition of the authorities. Further my sources mentioned that 138 members of Ecevit's party have been informed that their ties to Disk are under investigation.

15. Turkish criminal proceedings, it appears, know the provision that every written document has to be read out in Court. The extremely lengthy indictment, which according to me in reality contains the complete file of documents so far, therefore took months to be read. Every petition by defense counsel has to be put on paper and read consequently. The interrogation of the defendants by the Court's president, is being dictated after every question and answer, to a Court's typist which lengthens this interrogation considerably.

On the other hand that system provides for minutes of the Courts sessions (no stenographed version, but the dictation by the Court's president), being available the day after the session. With my aforementioned letter I let

you already have those minutes of the Wednesday session. About those minutes a discussion took place at the opening of the Friday session between mr Basturk and the president. The first objected to certain words used in those minutes, which intervention and discussion was then dictated and has been incorporated in the minutes of the Friday session.

16. Before going to that session, I had been informed by defense counsel that according to Turkish criminal law proceedings, the defendant is entitled to give his opinion on the indictment after the reading of same has been completed. Upon my question whether such right is also provided in military criminal proceedings, the answer was: yes, but later it seemed to me to be more a use than a right.

I point this out for two reasons. Primarily, to indicate that language difficulties although a good german interpreter was present, can cause misunderstandings. Secondly, because such right f.i. does not exist in criminal proceedings in my country, be they military or not. The defendant here gives his opinion at the end of the trial and defense counsels in Istanbul assured me that such right also exists there. Nevertheless they stressed the point that already at this stage of the trial, the defendants had to be given the mentioned opportunity. They had been informed that mr Basturk had prepared a statement of about 450 written pages. I stress "had been informed", as defendants and their counsels cannot communicate in writing. They therefore had not read that statement, which - it seems to me - makes the work of defense counsel practically impossible.

The military sources I spoke to, underline that such is the law in military criminal proceedings and therefore not specifically in this trial. Be this true or not, I find that such regulations are contrary to internationally accepted rules for criminal defense.

17. The Court sits in a kind of gymnasium of what seems to be or has been a student building of a school or university complex of buildings. The building is crowded by military policemen, who stand guard around the defendants and on the gallery where - I take it - relatives watch the trial and we were sitting at a kind of reserved part of same. Defendants and their lawyers are in different places in the gymnasium and apparently are not supposed to be in touch during the proceedings.

Together with us (my company and I) there were two other observers: mr Francois van Drooghenbroeck, a lawyer from Gilly (Belgium) on behalf of the World Confederation of Labour. He was accompanied by an official of the Belgian consulate-general in Istanbul. Furthermore, mr Daniel Retureau, secretary-general of the FISE, a member organisation of the World Federation of Trade Unions. Mr Retureau, a frenchman, lives and has office in East Berlin.

18. The Court consists of three military judges, two of whom are lawyers and wear robes. Mr Takkeci, the prosecutor, to whom I talked during an hour before the session opened and during another hour when the Court adjourned for lunch, also wears robes. His deputy, Attaman, is a civilian and wears robes but no uniform.

The session opened with a roll call. Subsequently mr Tahiroglu presented his request that the defendants

be allowed to give their opinion on the indictment. After opposition of the prosecutor, who pointed out that according to law the stage of the proceedings did not provide for such statements but for interrogation of the defendants, the Court ruled that "in this stage of the proceedings" the petition could not be granted. Then the Court proceeded with the interrogation of mr Basturk, after the interlude about the minutes of the last session (see at point 15). The defendants, especially mr Basturk, did not impress me as having been intimidated. As far as I could see they were in good health, although rather pale as people who have to stay inside for a long time, usually are. During the part of the interrogation, I watched and heard (being translated by the interpreter), the Court asked such questions that mr Basturk could answer rather lengthily. F.i. he was asked to state what were the basic principles of Disk. After some time, the Court interrupted, saying that it did not get an answer to its question; thereupon mr Basturk again started for a rather lengthy answer. The atmosphere of the interrogation was, although not friendly, not a barking one.

Mr Basturk, who walked to a kind of pulpit with microphone, clearly quoted from papers he was able to have with him and take to and fro his place. The arguing between him and the Court had the atmosphere of proceedings, in which a defendant is not afraid to say what he intends to say.

19. During the lunch break when the Court and the prosecutor left, the defendants who stayed in the gymnasium, were allowed to see, speak and hold their relatives. I was informed that in prison especially touching is impossible,

because the defendants only can speak with their relatives through a glass partition. Again, military authorities indicated to me that such arrangement is regular in military criminal proceedings.

Some sources stressed that the attitude of the Court during the session and the possibility for the defendants to hold their wives, parents, children for some time were inspired by the presence of the observers. It is clearly beyond my possibilities to decide whether this is true or not. But if it is true, it might be a stimulus to send observers with a certain regularity.

VI. Prospects of the trial.

20. During the different conferences with defense counsels, we tried to look forward as to the further developments of the trial. They expected the stage of the interrogation to last for another three months. After that stage, both the prosecution and the defense will be entitled to procure new written evidence, which as a matter of fact, will have to be read again in Court. Witnesses will not be heard. Whether the prosecution will file more written alleged evidence, remains to be seen. There are rumours that at that stage of the proceedings (probably this autumn) another indictment will be added and new defendants will be called in, other Disk-people or the Republican people's Party and its officials.

Against a verdict of the Court, which - it seems to me - cannot be expected before 1983, appeal proceedings can be instituted in the Military High Court. Defense counsel expressed its confidence in that Court, much more than

in Court no. 2, but doubted whether the pressure of the authorities would not be too strong even for that High Court. Needless to say that my military sources stress the independence of the judiciary.

21. Quite a few of the objections defense counsel has against the pending proceedings, are of a basic nature. F.i. they claim that the indictment also covers offences which have already been judged by other Courts. The rule of "nemo debet bis vexari" in that case is violated. My own impression is rather that the events of those cases are indicated as proof of a new charge, namely contravention of § 146 of the Criminal Code. But again, language difficulties can have caused misunderstandings at my side. Furthermore, the defense counsel's contention is that certain facts mentioned in the indictment, have extinguished by limitation and other facts were covered by a general pardon prior to this trial. I am not in a position to judge this information, but used it to discuss the possibilities of ultimate proceedings before the European Court of Human Rights on account of contraventions against the European Treaty on Human Rights and Fundamental Freedoms. In that discussion, defense counsel clearly stated that they would deplore a banning of Turkey from the Council of Europe, as the military regime would then feel completely free from the standards of the Treaty.
22. I also discussed with the prosecution and the defense as well the regulations about the number of lawyers acting in this trial. As has already been pointed out in previous reports, the Court has ruled that every defendant is entitled to one defense counsel, t.w. 52 in total, but that changings

during the trial are permitted within the limit of that total number. It appears that some defendants at the opening of the trial, insisted on having 8 to 10 counsels for themselves.

I am not familiar with the legal basis for such rule, the defense denying that it exists and the prosecutor pretending that it does under martial law. Still, I would hesitate to call a limitation to 52 defense counsels a violation of the defense's rights.

VII. The principal questions:

A. Freedom of trade union organisation.

23. As has been noted in the Introduction the primary concern of the two international trade union organisations, on behalf of which I went to Istanbul, is: did the freedom of trade union organisation in Turkey cease? Now, it seems only fair to make a distinction in this respect, roughly along the lines of ILO Treaties no. 87 and 98. The first one protects, as is well known, the freedom of association and the right to organise. The second one protects the right to organise and collective bargaining.

It may be noted from the previous reports that the military authorities have banned the rights of strike and lock-out and instituted compulsory arbitration proceedings to decide wage demands. There seems to be little doubt possible as to the contravention of these regulations with the freedom of collective bargaining. On the other hand, some other countries (f.i. the Netherlands) know a wage system, where the government by law can annul collective labour agreements and decide the wage demands, which also infringe on the freedom of collective bargaining. Still, the banning of strikes by law - as history shows - clearly is a sign of a dictatorial system, be it leftist or rightist.

24. Whether the present situation in Turkey also means that the freedom to organise does not exist anymore, is - it seems to me - more difficult to answer. It cannot be overlooked in this respect that all activities of Disk have been suspended and its assets put under administration by administrators appointed by the martial law commander. The military authorities I spoke to, contend that no confiscation took place although it seems clear that the administrators feel free f.i. to put immovable properties of Disk at the disposal of others. I have not succeeded to ascertain whether in those cases rent is being paid and administered in the name of Disk. According to me, there exists a grave suspicion that although the properties officially are only being administered, they materially have been confiscated.

Furthermore, there is no question possible as to the suspension of all Disk activities. But then, the contention of the prosecution is that Disk was acting as a fellow traveller organisation and planned to institute a communist regime by force. The viewpoint vis-a-vis Disk is that if it had stuck to trade union activities, instead of political activities, it would still function. As a matter of fact, I have paid a lot of attention to this pretended difference of activities in my talk with mr Takkeci, asking if he was able to clearly indicate where trade union activity ends and political activity commences. I do not think that these talks were conclusive in that respect, but it must be kept in mind that at least some member organisations of Disk have used language in the past which can easily be understood as to be over the supposed border between the said

activities. And again, it must not be forgotten that - differently from most Western countries - the communist party has been outlawed for cens of years already.

25. Coming to a preliminary conclusion as to A, the regime at least gives rise to the strong suspicion that trade union activities are possible if the union is compatible with the views of the military authorities, which situation could therefore not be called one of freedom of association and a right to organize.

B. Rights of the defense.

26. As has been mentioned before (see point 16) I do hold that the conditions for defense counsel are very difficult, if workable at all. They have no access to documents the prosecution alleges to have as proof, but from the moment such documents have been read in Court. They have no free access to the defendants, but can talk with them only supervised by military police. They cannot communicate in writing with the defendants and are therefore only able to note written statements by the defendants when the same can be filed in Court and have been read in an open Court session.

C. Prison conditions.

27. I have not been able to visit any prison. The regime under Law no. 353 and others clearly provides only for contacts between the defendants and their counsel and relatives. Therefore, I am not able to add anything in this respect to previous reports. But my sources

indicate that life in prison is hard, that food is enough but not varied and that medical attention is poor.

Whether or not torture still is being practised, I do not know. But then, it follows from the file of correspondence (specifically a letter of the Embassy of Turkey in Brussels to the ETUC dated November 9, 1981) that torture at least in one case has been recognised.

TÜRKİYE SOSYAL TARİH ARAŞTIRMA VAKFI
TÜSTAV