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## CPT-IK Report on Guhdar Zebari's Trial on October 1st, 2023

On October 1st, 2023, CPT-IK observed the court trial of Guhdar Zebari. CPT-IK has attended all 26 trials and hearings for Badinan prisoners since early 2021. Guhdar Zebari was one of a group of journalists and activists arrested by Duhok security forces in late 2020 in connection with protests against government corruption. In February 2021, he and four others were put on trial for "endangering the national security of the Kurdistan Region." They were found guilty and sentenced to six years in jail.

Zebari is a civil rights activist and independent journalist. His work has included exposing corruption, reporting on Turkish military operations, and advocating for human rights. Zebari has been routinely targeted for his journalism and activism work. Before his imprisonment, Zebari faced abductions and threats intended to silence his journalism.

On October 1st, 2023 Guhdar Zebari was tried and convicted in Erbil Misdemeanor Court Number Two for possession of an unregistered weapon and sentenced to six months in prison with no fine. The firearm and military equipment in question were a hunting gun, one pair of Crown brand binoculars, one pair of Star brand binoculars, eight buckshot rounds, and 150 7.62mm bullets for a Kalashnikov rifle that were allegedly confiscated from inside Guhdar's car during his arrest.

Guhdar Zebari was convicted under Iraqi Kurdistan Law of Weapons Article 15, Law Number 2, Clause 1, issued in 2022 in the Iraqi Kurdistan Parliament. The law states that:-

*"If anyone holds a firearm, military equipment sells, fixes, or exchanges without permission then that person will be sentenced to at least 1 year and not exceeding three years and also would be fined at least 2,000,000 dinars maximum 5,000,000 dinars."*

The timing of Guhdar Zebari's additional trials is concerning. When Guhdar was originally sentenced on February 16th, 2021 for six years the presiding judge decided to open two more cases against him. On March 15th, 2023, the day before his release, Guhdar was sentenced to seven months but the decision was appealed and commuted to five months. Guhdar was convicted under Iraqi Penal Code Article 279 Law Number 111 Issued in 1969. The law states:-

*"Anyone who counterfeits or forges metal plates or other signs issued in implementation of the laws, regulations, and instructions pertaining to transportation, traffic, or crafts shall be punished by imprisonment for a period not exceeding one year or a fine not exceeding one hundred dinars."*

He was convicted of changing the logo of his car from Dio to Toyota. Furthermore, on August 15th, 2023 the last day of his imprisonment in Erbil Adult Prison he was transferred to Erbil General Security Prison. Despite his sentence being finished he was kept there until October 1st. Under Iraqi Penal Code Chapter 3 "*Detention and Release of the Accused*" Article 109, it is illegal to detain someone for more than 15 days if being accused of a felony with certain exemptions based on safety and security. Guhdar was charged with a misdemeanor but was detained for over one month.

### **Observations and Violations**

The right to a fair trial is a recognized human right. CPT-IK is highly concerned with a multitude of violations of the right to a fair and impartial trial and due process. CPT-IK is concerned with the court's unjust procedure of providing restricted access to the case's legal documents to the defense before the trial.

Furthermore, the defense had no opportunity to examine and question the evidence during the investigation period. This puts the defendant at a disadvantage as the court is skewed in favor of the prosecution. This practice could infringe upon impartiality and a fair trial. Additionally, there is no ability to cross-examine or question the validity and independence of the investigation department's evidence.

When Guhdar Zebari directly questioned the validity of the evidence and its use as evidence in the judicial court the presiding judge replied, "It is not my business. I'm not the investigating judge, it is the duty of the investigation to provide these things." CPT-IK is highly concerned about the judicial process of collecting evidence, presenting it in court, and the lack of proper judicial evidence to convict Guhdar Zebari.

Guhdar Zebari was convicted and sentenced for owning a firearm without permission. Very little evidence was provided to definitively suggest or remotely suggest that the firearm and military equipment belonged to Zebari. The judge claimed that according to the police report the firearm and military equipment were recovered from Guhdar's impounded car. This came from the statement of three police witnesses who were part of the police squad that arrested Guhdar.

None of those individuals came to court to testify or verify the legitimacy of the prosecution's claims or verify how the firearm and military equipment were confiscated yet the evidence was used nonetheless. Additionally, there was no evidence provided that showed that the firearm and military equipment were confiscated in Zebari's vehicle or that it definitively belonged to him. Guhdar stated in court that the guns did not belong to him and that he was arrested in his uncle's house. He asked for CCTV camera footage to be presented in court to definitively display that the firearm and military equipment were found inside his house or car. The presiding judge replied, "It is not my business. I'm not the investigating judge, it is the duty of the investigation to provide these things."

Additionally, as a point of defense, Guhdar stated that he was from Hishtka Village in Dinarta Sub-district but was arrested in Akre. He questioned how he could pass three restrictive checkpoints between his village and Akre with a firearm and military equipment. There was no response for this

defense from the prosecution. When questioning the validity of having no witnesses present to confirm where the firearm was confiscated, the judge replied, "Do you think that there is someone who has a personal conflict with you so that they put that [firearm and military equipment] in the car? If it's a trap from Asayish they could do far worse like putting two kgs of drugs in your car and putting you in prison forever" Guhdar replied, "What's worse than what's already happened? I've already been sentenced once for six years and seven months as well. I don't trust Asayish." It is a telling admission of the ease with which Asayish could potentially implant evidence and that there is no need for a judicial procedure to confirm or deny any evidence collected for court.

The public prosecutor told the judge that there was enough evidence to condemn Guhdar and punish him but the judge should consider Guhdar's age to provide a lighter sentence. When convicted, Guhdar stated, "You are oppressing me." The judge replied, "According to law I should sentence you for at least one year, however, I have shown you empathy and leniency by only giving six months."

CPT-IK is concerned that one of the lawyers was prevented from entering the courtroom for the first thirteen minutes of the court hearing. The reason given was that the room was small, and there was not enough space for him to attend. CPT-IK is highly concerned that the court is being used to unjustly punish journalists and activists, as was the case for all Badinan Prisoners.

### **Analysis**

There is likely political interference by the KRG in the judicial system. CPT-IK is highly concerned that this political interference has the potential to significantly undermine the values of justice, fairness, and independence in the Kurdish legal system. As evidenced by other Badinan prisoner cases, the judiciary is being used to overly punish activists and journalists who speak out on topics deemed sensitive to the KRG and Kurdish ruling political parties, such as corruption, nepotism, secret prisons, and human rights injustices. Additionally, judicial proceedings are highly incompetent in providing fair trials to defendants and due to a lack of sufficient due process can be easily manipulated for conviction.

Although hard to measure, there is a high likelihood that lighter sentencing was given because of the attendance of prominent consulates and international organizations and figures. The judge stated that according to this law, "I should sentence you for at least one year and fine you at least two million dinars. However, to show empathy I am giving you six months and you will not receive a fine."

Iraqi Kurdistan is increasingly an unsafe place for journalists and activists. At least nine journalists have left Iraqi Kurdistan in the past ten months due to active threats on themselves and their families. Journalists and activists face constant fear for their lives for their work. Additionally, journalists and activists have been tortured and ill-treated while in prison or detained. Journalists can be actively targeted when speaking about any issues deemed sensitive by the government and face threats after being released from prison.