

# Human Rights Advocacy and Pressures on İHD



13 April 2020

Human Rights Association / İnsan Hakları Derneđi

posta@ihd.org.tr | ihd@ihd.org.tr

# Table of Contents

<b>FOREWORD</b>	<b>1</b>
<b>INTRODUCTION</b>	<b>0</b>
REPRESSION AND MEANS OF COERCION	3
INVESTIGATION INTO MEMBERS OF THE CENTRAL EXECUTIVE COMMITTEE AND THOSE WHO TABLED A MOTION AT THE GENERAL ASSEMBLY:	7
INVESTIGATION INTO İHD CHAIRPERSON ÖZTÜRK TÜRKDOĞAN:	7
INVESTIGATION FOR VIOLATING THE LAW OF ASSOCIATIONS:	8
LAWSUIT FOR THE ANNULMENT OF GENERAL ASSEMBLY DECISIONS:	8
<b>AN ASSESSMENT OF THE CURRENT STATE OF AFFAIRS IN TURKEY</b>	<b>10</b>
REVIEW OF RULE OF LAW	10
THE JUDICIARY AND CIVIL SOCIETY	15
<b>İHD AS AN EXAMPLE</b>	<b>18</b>
1988 - ANKARA BRANCH FOUNDING STATEMENT	22
1988 – SIGNATURE CAMPAIGN FOR AMNESTY AND AGAINST CAPITAL PUNISHMENT	22
1990 - VEDAT AYDIN & KURDISH ADDRESS	22
1993 – <i>HUMAN RIGHTS BULLETIN</i> / HÜSNÜ ÖNDÜL & İSMAIL BEŞİKÇİ	23
1994 – <i>A SECTION OF BURNT DOWN VILLAGES</i>	23
1995 - AKIN BIRDAL & POSTING UNAUTHORIZED BILLS	24
2018 – SATURDAY MOTHERS	24
2018 – ARMENIAN GENOCIDE BANNER	26
EXAMPLES FROM RECENT LAWSUITS AGAINST İHD’S EXECUTIVES	27
İHD EXECUTIVES AND MEMBERS & RECENT PHYSICAL ASSAULT CASES	31
FORCED REFUGEES: İHD MEMBERS WHO HAD TO GO ABROAD	32
INVESTIGATIONS INTO İHD’S CENTRAL OFFICE AND ITS CENTRAL EXECUTIVE BOARD	34
JUDICIAL PROCESSES BASED ON THE AUDIT REPORT	39
<b>İHD’S DEMANDS</b>	<b>42</b>

## FOREWORD

Human rights defenders are where the ember falls. They show the fire.

Human rights defenders seek justice; they believe that justice heals human beings.

Human rights defenders stand with victims but do not identify with them.

Human rights defenders see the empty half of the glass and speak out.

These statements can be multiplied.

İHD's 34-year-old fight for human rights in Turkey perseveres. The fifteen principles in İHD's charter were formulated within this struggle and we see them as the most significant values that should be defended.

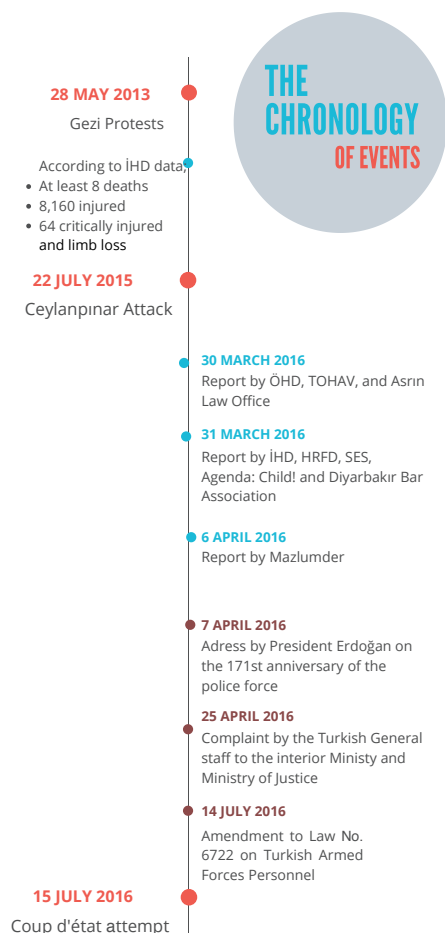
I would, therefore, like to extend my love, respect and gratitude to all human rights defenders who lost their lives, attacked, deprived of their liberty, were forced into exile and paid the price for defending human rights. We will never forget Tahir Elçi, the envoy of peace. Their perseverance leads the way for us and keeps us on our feet.

13 April 2020

Öztürk Türkdoğan

İHD Co-Chairperson

# INTRODUCTION



One can identify three breaking points in the last decade in Turkey during which the violence of an even more repressive environment with numerous restrictions on rights and freedoms has deteriorated and imposed itself on all social groups. The **first breaking point** was the Gezi Resistance that started on 28 May 2013. Gezi protests were a sum of spontaneous protests that were not organized by a specific political party or structure; a repercussion in the streets of the sum of all past victimizations of all groups who were ignored, whose freedoms were restricted, whose right to life was violated, who were sensitive about their cities and environmental problems. Social responses were a product of a common reaction against the state's and the political power's persistent attacks against human dignity.

Acts of torture and ill-treatment, police brutality committed during the protests that went on for about three months were reported in detail by human rights organizations.<sup>1</sup> The government imposed restrictions on many rights, notably the right to freedom of peaceful assembly and protest, following the Gezi Resistance. The government criminalized the protests labeling them as a "coup attempt" and tried to burden the protesters themselves with all responsibility, which subsequently gave way to the "Gezi Trials," as known by the public, which had no legal grounds whatsoever. Just as was the case with all other trials regarding the Gezi Resistance, this trial too directly or indirectly targeted many CSOs including human rights organizations.

If police brutality against social protests kills and injures people, if people are taken under police custody collectively, and, to top it all, if the treatment of the injured is prevented; if doctors who want to treat the injured and lawyers who want to extent legal assistance to those under police custody; if human rights defenders who want to document violations are attacked; if lawyers' requests to extend legal aid to the victims are arbitrarily prevented by the law enforcement, specifically

by the anti-terror police; if power cuts are considered for bar associations that provide helpline desks; then the sole definition of all these is nothing but "state terror."

The ruling coalition in Turkey sustained a significant setback in the 7 June 2015 general elections due to the changes in social dynamics following the Gezi Resistance but another process was initiated which would result in the re-run of elections. Thus people in Turkey had to face the fact that those in power could indeed ignore election results while the path to the second breaking point in political and democratic life in Turkey was being paved for.

<sup>1</sup> In addition to reports by other organizations, İHD had also published a comprehensive report on the Gezi Resistance supported by visual evidence. Yet, pieces of evidence used in the report, which were posted on video sharing web sites, are not accessible today. Such posts were removed through the use of different coercive tools or they were denied access. Although İHD has the copies of each visual evidence, this state of affairs itself is important in that it reveals the scope of repressive mechanisms.

The government first set off by adopting the “Law on Amendments to the Law of Police Powers, Law on the Gendarmerie Organization, Its Duties and Powers, and Some Laws” at the Grand National Assembly of Turkey (GNAT) on 27 March 2015. This amendment, which went into force on 4 April 2015 having been published in the *Official Gazette*, extended even more power to the police force and the gendarmerie and local authorities while restricting numerous rights and freedoms. The fall of Dolmabahçe Agreement on 28 February 2015 was an indicator of the looming of such a breaking point.

While the results of the 7 June 2015 general elections imposed cooperation between AKP and HDP based on peace and democracy, the failure to build one led to the establishment of other de facto alliances in Turkey and thus various foci within AKP-MHP and the state initiated an alliance process.

When the armed conflict reignited on 24 July 2015, the Peace and Resolution Process ended. Reignition of armed conflict was the **second breaking point**. The consequences of the fall of the peace process have been devastating. Gross human rights violations were committed particularly during the curfews that were documented by different organizations.

Among these reports, the ones drawn up following the incidents in Şırnak’s Cizre province are particularly important:

Report by	Report Title	Date of Publication
Joint report by ÖHD, MHD, TOHAV, Asrın Law Office	Preliminary report by Lawyers following their visit to Cizre	30 March 2016
Joint report by İHD, HRFT, Agenda: Child!, Diyarbakır Bar Association, SES	14/12/2015 - 02/03/2016 79-Day Long Curfew Cizre Observation Report	31 March 2016
Mazlumder Conflict Monitoring and Resolution Group	Inquiry and Observation Report following Curfews between 4.12.2015 and 02.03.2016	6 April 2016

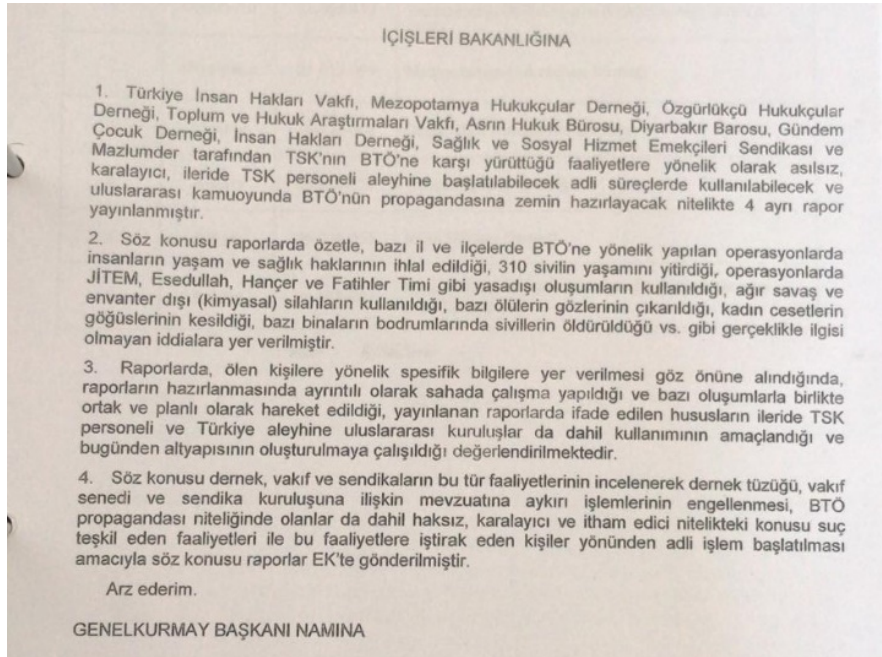
Yet while this process was ongoing, Turkey witnessed the **third breaking point**: the coup d’état attempt on 15 July 2016. Although the coup failed, it also had devastating consequences as per the impact of subsequent measures taken. The state of emergency declared right after the failed coup attempt became a rather handy tool against CSOs in the hands of the political power. The country transitioned to an authoritarian single-man regime with the de facto introduction of a new governance order following the constitutional referendum of 16 April 2017 that was held while the state of emergency was still in effect. The principle of the separation of powers was suspended; checks and balances mechanisms were rendered dysfunctional.

During the state of emergency, the Parliamentary Assembly of the Council of Europe (PACE) re-initiated the political monitoring procedure against Turkey on 25 April 2017. The main ground for this resolution was indicated to be the ongoing the state of emergency and the decree laws issued. Turkey had gone out of the political monitoring procedure in 2004 but 13 years later it went right back into it. Turkey, therefore,

became the first country against which the political monitoring procedure was re-initiated following membership negotiations.

The state of emergency that has been in effect in Turkey since July 21 was not extended and lifted on July 18, 2018. Nevertheless, the political power adopted “Law No. 7145 on the Amendment to Some Laws and Emergency Decrees” that would render the state of emergency permanent on 25 July 2018 at the GNAT. This law has gone into effect on July 31, 2018 following president’s ratification. 32 emergency decree laws have been issued during the SoE. Thousands of amendments were introduced to hundreds of law articles through these decrees. All these amendments are virtually permanent ones. In other words, these are changes that continue to be in effect even after the lifting of the state of emergency. The government would not be able to engage in a practice regarding only the period of custody, powers of governors, and dismissals from public office when the state of emergency was lifted. Therefore, the state of emergency has been rendered permanent in Turkey by way of Law No. 7145 that regulates this state of affairs along with others that the authorities considered a loophole.<sup>2</sup>

On 25 April 2016, following the publication of three separate reports on Cizre by 10 organizations, a complaint letter signed by Judge T. H. K. “on behalf of the Commander in Chief” was lodged before the Ministry of Justice and Ministry of Interior asking them to launch investigations into the said organizations. The complaint letter, presented below, stated in brief that the allegations in the reports were “unfounded, defamatory and could be used against the Turkish Armed Forces personnel at judicial processes in the future and laid the ground for the propaganda of a terrorist organization before the international community.” As a matter of fact, such concern gave way to an amendment to Law No. 6722 on “Amendments to the Law on Turkish Armed Forces Personnel and Some Laws” that provided the security forces with a shield of immunity having been adopted at the GNAT on 23 June 2016 and went into force on 14 July 2016 having been published in the *Official Gazette*.



*Complaint Letter on Behalf of the Commander in Chief*

*The complaint letter of the General Staff is reminiscent of its 1998 Memorandum as per its character. A memorandum was drawn up in 1998 implementing the “strong action plan.”*

<sup>2</sup> For a comprehensive analysis of the issue see: <https://ihd.org.tr/en/regarding-law-no-7145-regulating-permanent-state-of-emergency/>

*The then Second Commander in Chief, General Çevik Bir, approved the document while Internal Intelligence Branch Director Staff Colonel Bülent Dalsalı and Acting Director Major General F. Türkeri drafted it. The document incorporated detailed information on the ways in which İHD, HADEP, Fazilet Party, mayors, businesspeople, journalists could be defamed and discredited before the public.*

*On 12 May 1998, immediately after these publications, İHD's central office in Ankara was targeted by armed gunmen in an attempt to assassinate İHD Chairperson Akin Birdal. Mr. Birdal miraculously survived the assassination attempt.*

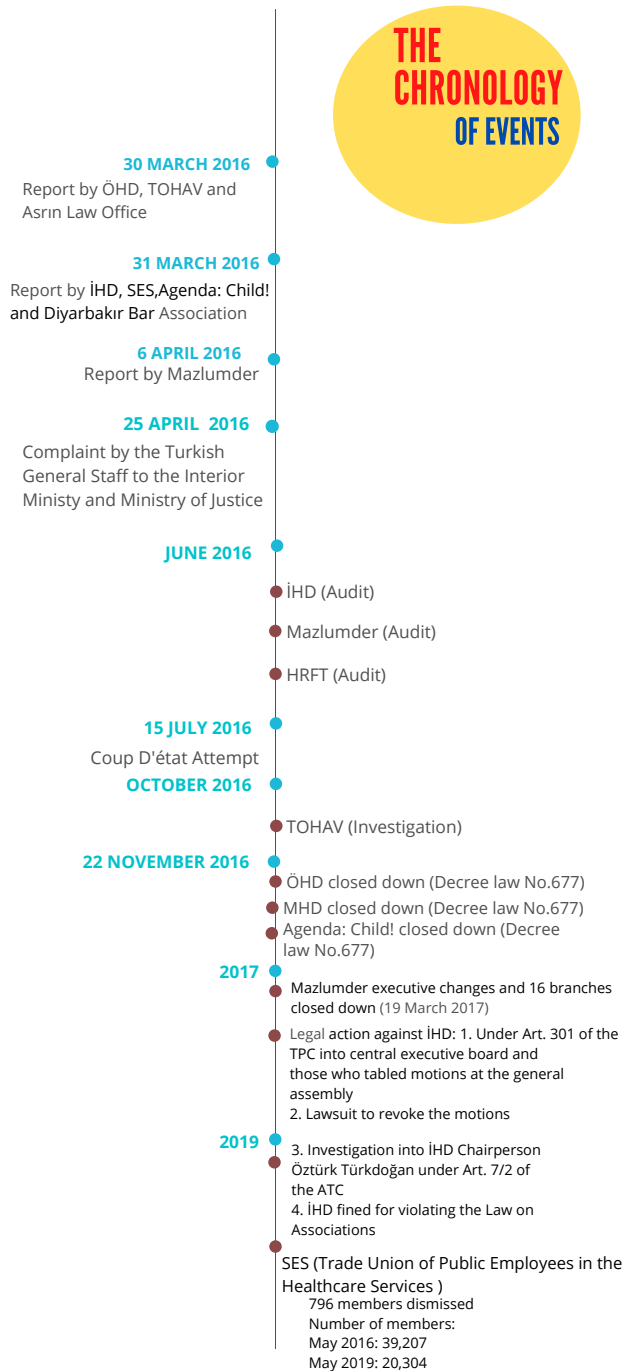
*Mr. Birdal filed criminal charges about certain publications in written and visual media before the Ankara Chief Public Prosecutor's Office. But the issue was covered up through non-prosecution decisions of the Ankara Chief Public Prosecutor's Office (Press Prep No. 1998/763, Press Dec. No. 1998/572, dated 1 July 1998).*

*Although the General Staff verified the Memorandum document in its statement of 3 November 2000, no investigations were initiated into those who drafted and implemented the document. Criminal charges filed before the military prosecutor's office did not yield any results.*

*Following an amendment enabling military personnel face charges before civilian courts in 2009, criminal charges were also filed on the issue but they did not yield any results either. Civilian prosecutors' offices handed down non-prosecution decisions while motions against these decisions were overruled. There are pending applications before the European Court of Human Rights by İHD and Akin Birdal.*

The Ministry of Justice and the Ministry of Interior separately initiated processes into these 10 organizations upon the above-mentioned complaint, while other means of coercion were also activated. Nevertheless one should underline that what happened during this process was not limited to legal action against these organizations. Within this context, numerous lawsuits have been brought against a wide range of persons ranging from the central council members of the Turkish Medical Association to those acting as editors-in-chief of the daily *Özgür Gündem* in solidarity, from rights defenders facing charges at the Büyükada Trial, to those at the Gezi Trial among others.

# Repression and Means of Coercion



Audits and investigations into İHD will also be presented in detail in the following parts. We, hereby, present an overall assessment of the ways in which these 10 organizations were forced to maintain their activities or to drop them all together under a repressive and intimidating environment.

As a result of the report sent by the General Staff to Ministries of Justice and Interior on 25 April 2016; İHD, Human Rights Foundation of Turkey (HRFT), Mesopotamia Lawyers Association (Mezopotamya Hukukçular Derneği-MHD), Lawyers for Freedom Association (Özgürlükçü Hukukçular Derneği-ÖHD), Foundation for Society and Legal Studies (Toplum ve Hukuk Araştırmaları Vakfı-TOHAV), Asrın Law Office, Diyarbakır Bar Association, Agenda: Child! Association, Trade Union of Public Employees in the Healthcare and Social Services (SES) and Association for Solidarity with the Oppressed (Mazlumlarla Dayanışma Derneği-Mazlumder) were subjected to various repressive measures.

The complaint lodged before the Ministry of Justice led to Ankara Chief Public Prosecutor's Office to initiate investigations into the chairpersons of CSOs, notably İHD and HRFT, under Article 301 of the Turkish Penal Code (TPC) which prescribes "Degrading the Turkish Nation, the State of the Turkish Republic its Organs and Institutions" on the grounds of reports on rights violations committed during the curfews in 2016. The result of the application for authorization by the prosecutor's office to the Ministry of Justice is still pending as of March 2020 since investigations under this article are subjected to authorization of the ministry.

The Ministry of Interior issued orders to conduct audits into these organizations. Audits were initiated into İHD, HRFT and Mazlumder in June 2016 by the General Directorate of Associations of the Ministry of Interior. HRFT's works on torture and its financial resources were also audited within this scope. No new action was taken after its response to the audit report.

The process was more complicated for Mazlumder and we believe that this process ended in a setback

in Turkey's struggle for human rights. Mazlumder branches in Western Turkey collected signatures for an extraordinary general assembly. It was argued that signatures should have been collected from members,



not from delegates according to the charter of the association. Dispute among the branches led to a lawsuit. The expert witness drafted a report saying that a congress could be held based on the number of delegates. The court, then, ruled for a congress and a state trustee was appointed to Mazlumder. As a result of the general assembly, in which the then current executives were not present, association's İstanbul Branch Chairperson Ramazan Beyhan was elected to replace the then current Chairperson Ahmet Faruk Ünsal. The central office of the association was moved to İstanbul. A motion tabled at the general assembly led to the closure of 16 branches out of 24. 12 out of 16 branches that were closed down were located in Eastern and Southeastern cities in Turkey including Diyarbakır, İzmir, Urfa, Antep, Kocaeli, Batman, Mersin, Van, Şırnak, and Sakarya. The branches that were closed down used to draft regular reports on rights violations in their regions and shared them with the public.

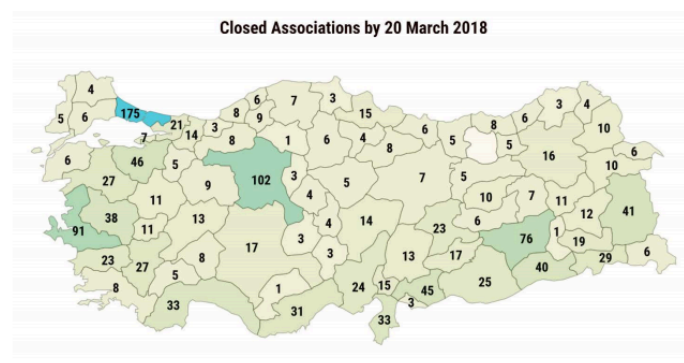
TOHAV was inspected upon the complaint of the General Staff as well. The investigation initiated after the audit is still pending.

The Ministry of Interior suspended the activities of 370 associations in 39 cities for three months on 11 November 2016 under Article 11 of the Law on State of Emergency that designates "measures against violent movements." The ministry issued a statement saying that "the activities of a total of 370 associations have been suspended by our governors' offices including 153 associations connected with FETÖ, 190 with PKK/KCK, 19 with DHKP-C and 8 with DAESH [ISIS]." Yet ÖHD, MHD and Agenda: Child! Association were included among these associations.

*İHD communicated its observation reports on alleged rights violations committed by military and police officers in Eastern and Southeastern Turkey to the authorities and requested that those responsible should be investigated. İHD follows the same procedure in all its special reports.*

*Yet, the initiation of investigations into İHD and other CSOs upon the complaint by the General Staff with regards to reports on curfews rather than into military and police officers who allegedly committed rights violations lays bare Turkey's policy of impunity.*

Mesopotamia Lawyers Association (Mezopotamya Hukukçular Derneği-MHD), Lawyers for Freedom Association (Özgürlükçü Hukukçular Derneği-ÖHD), and Agenda: Child! Association (Gündem Çocuk Derneği) were closed down on 22 November 2016 through Decree Law No. 677 on the grounds that they had "involvement, junction or contact with terrorist organizations, structures, formations or groups decided by the National Security Council to be engaged in activities against the national security of the state." The decree law also prescribed that "the organizations' movables and all kinds of assets, receivables and equities, documents and records have been transferred to the Treasury free of charge."



HRJP. "Updated Situation Report." p. 51.

One can follow the impact of the state of emergency on the right to association in the “Updated Situation Report- State of Emergency in Turkey: 21 July 2016-20 March 2018” drafted by the Human Rights Joint Platform (HRJP).<sup>3</sup>

*The number of associations closed down by decree laws no. 667, 677, 679, 689, 693, and 695 amounted to **1,607** as of 20 March 2018, while closure decisions were rescinded for 188 associations upon objections. The number of closed associations was **1,419** as of 20 March 2018.*

*Among the closed associations there were tens of local ones working for human rights, women’s rights, rights of the child along with those working on cultural heritage, law, and combatting poverty.*

*Closure decisions were delivered for foundations through the state of emergency decree laws and a commission formed under the General Directorate of Foundations. **168** foundations were closed down through decree laws no. 667, 689 and 695 and the commission. Closure decisions were rescinded for 23 foundations. The number of closed foundations was **145** as of 20 March 2018.*

Trade Union of Public Employees in the Healthcare and Social Services (SES) also faced repression against trade unions affiliated with the Confederation of Public Employees’ Trade Unions (KESK). A large number of members of trade unions affiliated with the KESK were dismissed from their posts during the state of emergency. Such dismissals resulted in the resignation of members from their respective trade unions. 796 SES members were dismissed from their posts during this period. While 162 SES members were reinstated to their posts, objections raised by 92 were rejected as of February 2020. The inquiry process is still pending for the rest. It should be noted that SES lost blood in terms of membership numbers. While the total number of SES members was 39,207 as of May 2016, this figure went down to 20,304 as of May 2019.

Not only did Diyarbakır Bar Association face a special kind of repression during this process. However when one takes into account the fact that investigations launched into İHD involved statements about the Armenian Genocide and general assembly decisions, criminal charges brought against the executives of the bar association in 2019 based on a public statement they issued in 2018 can be evaluated to be an extension of this process. On 3 December 2019 a lawsuit was brought against the executives of the bar association on the grounds of their public statement issued on 24 April 2018 on the occasion of the Armenian Genocide under Article 301 of the TPC on charges of “explicitly inciting the public to hatred and enmity and insulting the GNAT.”<sup>4</sup>

Following the audit of the İHD, the following charges were brought in the Ministry of the Interior’s report of 20 June 2017 (No. N.Ç.45/16):

“There was a declaration of intent for the recognition of the Armenian Genocide as revealed by the inquiry into İHD’s minutes book in the executive board decision number 97 of 23.03.2015 along with the motion and decision in the Ordinary General Assembly held on 1-2 November 2014; statements on the same issue were seen in some of its press releases which were against Article 301 of the TPC...”

<sup>3</sup> HRJP. “Updated Situation Report- State of Emergency in Turkey: 21 July 2016-20 March 2018.” 17 April 2018. <<https://ihop.org.tr/updated-situation-report-state-of-emergency-in-turkey-21-july-2016-20-march-2018/>>

<sup>4</sup> <https://www.diyarbakirbarosu.org.tr/haberler/korkmuyoruz-ve-susmayacagiz>

The fact however is that declaration of intent for the “recognition of the Armenian Genocide” falls under freedom of expression by force of Article 10 of the ECHR, Article 10 of the Constitution, and the ECtHR’s ruling in the case of *Altuğ Taner Akçam v. Turkey*.

“Article 2 in the decision numbered 44 of İHD’s Central Executive Board dated 29.04.2013 [stated that] Chairperson Öztürk Türkdoğan, who served on the Wise People Committee formed upon the call of the Office of the Prime Minister during the Democratic Resolution of the Kurdish Issue, the necessary works should be maintained for the active involvement of İHD’s Central Executive Board, its branches and representative offices within the scope of initiatives for peace along with the active involvement of all members in peace initiatives paying regard to the institutional representation in serving on the Committee,”

Article 3 of the same decision stated “[it was decided that] a Central Monitoring Commission be established to monitor the withdrawal of PKK militants out of Turkey beginning with 3 May 2013; the commission be formed of the chairperson and vice chairpersons, secretary general and their assistants, general accountant, representative for the Eastern and Southeastern Anatolia Regions, members of the central executive board and branch chairpersons residing in Eastern and Southeastern Anatolia Regions; the modus operandi and scope for the commission be determined within the commission...”

Moreover in Article 4 “[it was stated that] a Workshop on the Role of the Human Rights Movement in the recognition of peoples’ rights within the scope of the Process for the Democratic Resolution of the Kurdish Issue...”

And in decision number 92 of 03.02.2015 Article 4 “[it was decided that] a delegation be formed under the auspices of the chairperson and a report be issued following a visit to inquire on site the situation of refugees who had to seek asylum in Turkey following the attack of the mob structure called ISIS against Syria, Rojava, Kobane canton; to visit the camps, to see the Kobane Resistance that forced back attacks by ISIS on site, and to meet with officials,”

An in decision number 5 “[it was decided that] the ‘Commission for the Monitoring of the Peace and Resolution Process,’ which has been active since May 2013 under the auspices of İHD’s central office, visit the Iraqi Kurdistan region led by İHD’s chairperson and obtain information about ISIS attacks from the Kurdistan Parliament; visit various camps, notably the Makhmur Camp, and organize a visit to meet with KCK’s co-chairpersons about the peace process and these meetings be shared with the public by a report...”

*These allegations cannot be handled independent of the “Peace and Resolution Process” that was brought on the agenda between 2013 and 2015 by the will of the government.*

*All İHD branches and representative offices were asked to work on the issue enabling the Commission for the Monitoring of the Withdrawal to function based on the above-mentioned decisions and İHD members communicated their observations to the central office within this scope.*

*Reports by İHD’s Commission for the Monitoring of the Withdrawal were issued on 22 July 2013,<sup>5</sup> 16 September 2013<sup>6</sup> and 9 June 2014.<sup>7</sup> Iraq Federal Kurdistan Region was also visited within this scope. During the visit a meeting was also held with organization executives and this report was shared with the public. Moreover, Chairperson Öztürk Türkdoğan communicated his observations to the security bureaucracy. Therefore, these initiatives were*

<sup>5</sup> <https://www.ihd.org.tr/ger-cekilme-suerecn-zleme-komsyonu-boelge-genel-asker-hareketllk-ve-sinir-hatti/>

<sup>6</sup> <https://www.ihd.org.tr/insan-haklari-dernegi-baris-surecinde-cekilmeyi-izleme-komisyonu-raporu/>

<sup>7</sup> <https://www.ihd.org.tr/yeni-karakol-kalekol-ve-us-bolgeleri-yapimlarina-iliskin-ihd-komisyon-raporu/>

*not clandestine and they were taken within the scope of the peace and resolution process.*

*İHD also presented its views to the “Sub-committee for Violations of the Right to Life within the scope of Terrorism and Violence Incidents,” to inquire rights violations under armed conflict that was formed under the GNAT’s Human Rights Inquiry Commission, and to the GNAT “Inquiry Commission for the Search for Paths to Social Peace and the Evaluation of the Peace Process.” İHD’s views were referred to in reports by both commissions. İHD Chairperson Öztürk Türkdoğan was also a member of the Wise People Committee formed by the government in 2013 within the scope of the resolution process for the Kurdish issue.*

*İHD organized numerous events in 2013 in order to be prepared for the new process. The most important of these was the workshop entitled “The Role of the Human Rights Movement for the Recognition of Peoples’ Rights in the Democratic Resolution Process for the Kurdish Issue” that was held in Ankara, Kızılcahamam on 27-28 April 2013. Constitutional and legislative amendments, urgent administrative measures, quest for justice and truth, conflict resolution and the role of NGOs, instruments for the building of a culture of peace and social peace were debated at the workshop within the context of the resolution of the Kurdish issue and democratization, while a report on the workshop was shared with the public. This report<sup>8</sup> was also presented to the government in an appendix to the Report by the Wise People Committee.*

*Law No. 6551 on the Termination of Terror and Strengthening of Societal Cohesion<sup>9</sup> that went into force on 16 July 2014 after having been published in the Official Gazette, is an important one that provides legal guarantees for works undertaken during the peace and resolution process. İHD central office was invited for the deliberations of this law, while Chairperson Öztürk Türkdoğan attended the deliberations at the GNAT Interior Affairs Commission and presented his written observations.*

Ankara Governor’s Office pressed charges against the İHD before the Ankara Public Prosecutor’s Office on 1 December 2017 following the report by auditors from the Ministry of Interior. Ankara Public Prosecutor’s Office, in turn, initiated **three separate investigations** and took legal action in a **civil lawsuit** against İHD.

### Investigation into Members of the Central Executive Committee and Those Who Tabled a Motion at the General Assembly:

An investigation was launched into a total of 46 individuals, including the members of the central executive board and those who tabled a motion, claiming that the association’s executive board decisions, motions tabled and the decisions taken at the Ordinary General Assembly of 1-2 November 2014, press conferences or releases by the central office or branches along with their observation reports were against Article 301 of the TPC. This investigation was not pursued further as the Ministry of Justice did not authorize an investigation under Article 301.

### Investigation into İHD Chairperson Öztürk Türkdoğan:

A separate investigation was initiated into İHD Chairperson Öztürk Türkdoğan on the charges of “disseminating propaganda for a terrorist organization” under Article 7/2 of the Anti-Terror Code (ATC) following the separation of the investigation from the one mentioned above. Öztürk Türkdoğan gave his statement on 1 October 2019 within the scope of this file requesting a non-prosecution decision stating

<sup>8</sup> <https://www.ihd.org.tr/bari-suerecnde-hdnn-kurduu-zleme-komsyonu-ve-halklarin-haklari-calitayi-sonuclari/>

<sup>9</sup> <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6551.pdf>

that association's activities were completely lawful. This investigation was also finalized with a decision of non-prosecution as it lacked grounds for legal action.

#### Investigation for Violating the Law of Associations:

Ankara Chief Public Prosecutor's Office also launched another investigation into İHD Chairperson Öztürk Türkdoğan on the grounds of shortcomings in financial records regarding failing to record bank account summaries to the association's financial books and failing to submit information about international financial support received to local authorities as was determined by the audit report on charges of violating the Law of Associations.

The authorities proposed on 28 August 2019 that should the association made a pre-payment; a non-prosecution decision would be delivered. As İHD made a prepayment of 614 TRY, a non-prosecution decision was handed down.

#### Lawsuit for the Annulment of General Assembly Decisions:

A lawsuit was brought before the Ankara 5<sup>th</sup> Civil Court of First Instance under Article 79 of the Turkish Civil Code (TCC) on the grounds that the motions tabled at the general assembly were adopted without quorum because one tenth of the signatures of the members present at the assembly were not collected.

The lawsuit, however, was rejected under Article 83 of the ATC as it was seen that the annulment lawsuit was not brought by the governor's office and its members within the three-month period although the decisions had been communicated to the governor's office by the association. The Ministry of the Interior filed a motion against this ruling requesting appeal and the file is pending before the relevant civil chamber of the Ankara Regional Court of Appeals for review. Detailed information about these proceedings is presented at the end of our report.

Setting shortcomings in financial records aside, it is seen that these allegations were all based on human rights advocacy activities. The charter of İHD, which is the oldest and largest human rights organization in Turkey, was reviewed and approved by the Ankara Governor's Office in line with the laws. The entirety of İHD's activities is undertaken in line with its charter. In spite of all these the fact that the auditor of the Ministry of the Interior presented such allegations boils down to an administrative repercussion of the state of emergency in Turkey. As is seen, state of emergency can thoroughly alter public administrators' conduct.

The auditors of the Ministry of Interior also alleged in their audit report that İHD's principles listed under the "Principles of the Association"<sup>10</sup> within its charter which put forth that İHD "upholds right of peoples and nations to self-determination," "defends everyone's right to education in their mother tongues and the right to access and provision of public services in their mother tongues, "recognizes and defends the right to conscientious objection" were against the constitution, TPC, and other related laws. Thus the auditors filed a dissolution request against İHD under Article 89 of the Turkish Civil Code No. 4721. Ankara Governor's Office, however, did not take any steps towards dissolution and the issue was not handled in the criminal file either. The auditor's request for dissolution, which was brought up despite the fact that the universal principles listed in the charter that had been approved by the Ankara Governor's Office itself, merely reveals the auditor's own bias.

Additionally, the same letter by the Chief of Staff also reported the joint report of 31 March 2016 entitled "79 Days of Curfew: Cizre Observation Report"<sup>11</sup> drafted by İHD, HRFT, Diyarbakır Bar Association, Agenda Child Association, and SES. Following the report Ankara Chief Public Prosecutor's Office Press Bureau

---

<sup>10</sup> İHD Charter. < [https://ihd.org.tr/en/wp-content/uploads/2016/08/CONSTITUTION-OF-HUMAN-RIGHTS-ASSOCIATION-\\_İHD.pdf](https://ihd.org.tr/en/wp-content/uploads/2016/08/CONSTITUTION-OF-HUMAN-RIGHTS-ASSOCIATION-_İHD.pdf)>

<sup>11</sup> İHD et al. "79 Days of Curfew: Cizre Report." 31 March 2016. <<https://ihd.org.tr/en/cizre-report/>>

initiated an investigation (No. 2016/15529) and asked for the Ministry of Justice's authorization to take action under Article 301 of the TPC but the investigation is on hold because the ministry has not granted permission yet.

Although all the lawsuits and investigations into İHD in relation to audits of the association that have been initiated since 2016 and lasted for about four years ended in İHD's favor, this outcome does not eliminate the unlawfulness and impact of the judicial pressure and harassment against the association. The audit in question and the investigations and lawsuits that followed were unlawful under domestic and international law. Although such unlawfulness was known at the very onset, it was intentionally instrumentalized to disrupt the activities of the association.

### **Authorities Keen on Maintaining Pressure through Audit!**

Immediately after the notification of the fact that all lawsuits and investigations into İHD were finalized in the association's favor within this four-year process, İHD faced a new audit. The audit that lasted for three weeks was initiated on 19 February 2020 by the Ministry of Interior's General Directorate for Relations with Civil Society's official letter of 18 February 2020 (no. 1297) following the approval of the ministry on 27 January 2020. Mostly İHD's international relations, its reports and financial resources were audited. It remains to be known what kind of consequences this audit report will bear.

# An Assessment of the Current State of Affairs in Turkey

Human rights defenders inform the society they are living in about the concept of human rights and contribute to the building of a human rights culture. They promote human rights for everyone everywhere. They engage in peaceful acts and fight against the culture of impunity. They collect information on human rights violations, document and report these violations and disseminate such reports. They stand in solidarity with the victims; offer medical, psychological and legal support. They work for the implementation of international declarations, covenants and conventions on human rights. They are involved in human rights education. They also hold press conferences, petition, and stage peaceful protests.

One can briefly summarize the work of human rights defenders under four headings:

- I. Documentation/reporting
- II. Supporting victims
- III. Fight against impunity
- IV. Introduce the concept of human rights and contribute to the building of a human rights culture.

The UN “Declaration on Human Rights Defenders” was adopted at the UN General Assembly on 9 December 1998. The preamble to the declaration underlines the primary duty and responsibility of states by putting forth “*Stressing* that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State.”<sup>12</sup>

According to Article 2 of the *Guidelines on the Protection of Human Rights Defenders*<sup>13</sup> drafted by the Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), human rights defenders “recognize the universality of human rights for all without distinction of any kind, and they defend human rights by peaceful means.”

Further, Article 1 of Protocol No. 15 Amending the Convention on the Protection of Human Rights and Fundamental Freedoms<sup>14</sup> sets forth that the primary responsibility for the protection of human rights lies with the states. The protocol has not yet gone into effect as of November 2019. 45 out of 47 Council of Europe member states, including Turkey, have ratified the protocol.

As both international documents set forth, it is the states that are responsible for the protection of human rights. States draft and ratify declarations, conventions, covenants and protocols. They declare these rules that bind them firstly to their own citizens and all peoples of the world in this way. As per the *pacta sunt servanda* principle,<sup>15</sup> it is assumed that the states will keep their promises.

## Review of Rule of Law

The Republic of Turkey has a nation-state constitution and structure with an official ideology that are not based on human rights. The Turkish state introduced various legal regulations between 1999 and 2004 under the heading “democratization” guided by the Copenhagen political criteria in the process of full

---

<sup>12</sup> <https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>

<sup>13</sup> <https://www.osce.org/files/f/documents/c/1/119633.pdf>

<sup>14</sup> [https://www.echr.coe.int/Documents/Protocol\\_15\\_ENG.pdf](https://www.echr.coe.int/Documents/Protocol_15_ENG.pdf)

<sup>15</sup> Lt. Agreements will be kept.

membership to the European Union (EU). The reform process came to a halt in 2005 as Turkey failed to resolve the Kurdish issue through democratic means and to provide a peaceful climate while the process followed a stagnant track until 2013. The “peace and resolution process,” which was initiated in 2013 claiming that the Kurdish issue would be resolved through peaceful means, only lasted until 2015. “Democratization” claims or statements regained momentum during this interim period but the reform process came to a definitive end following the restart of armed conflict in July 2015. Turkey during this period witnessed some tragic developments like intensive armed conflict, military offensive into Syria, and the failed coup d’état attempt of 15 July 2016.

*The European Council concluded at the Copenhagen Summit on 22 June 1993 that the EU expansion would cover countries in Central and Eastern Europe and set forth certain accession criteria that the applicant countries to the EU had to meet as a prerequisite for becoming members of the union. These criteria were classified into three categories as “political,” “economic,” and the “adoption of community legislation.”*

*Political criteria:*

*Presence of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.*

*Candidate countries to the EU would be evaluated in terms of the following four major criteria:*

*\* Stable and institutionalized democracy,*

*\* Rule of law,*

*\* Respect for human rights,*

*\* Protection of minorities.*

*Overall, the following are taken into consideration: governance by a multi-party democratic system, respect for rule of law, absence of capital punishment, non-discrimination against minorities, absence of racism, ban on all kinds of discrimination against women, adoption of all the articles in the CoE Convention on Human Rights without any reservations, adoption of the CoE Convention on the Rights of the Child.*

*Yet, the presence of these principles in writing does not suffice on its own, they should at the same time be implemented without fault.*

The state of emergency that was declared on 21 July 2016 to be effective all over Turkey was lifted on 18 July 2018. Turkey was ruled by decree laws during the SoE and it has been/is being ruled through presidential decrees ever since.<sup>16</sup>

More than 100,000 public employees were dismissed from their posts while hundreds of associations including the Human Rights Studies Association, Agenda: Child! Association, and Progressive Lawyers Association and numerous media outlets were closed down through SoE decree laws. Extensive and gross human rights violations were committed during this period. The Turkish Constitution was amended on 16 April 2017 while the SoE was still in effect and the country transitioned to an authoritarian system based on

---

16 See HRJP’s “Updated Situation Report on the State of Emergency in Turkey.” [https://ihop.org.tr/wp-content/uploads/2018/04/SoE\\_17042018.pdf](https://ihop.org.tr/wp-content/uploads/2018/04/SoE_17042018.pdf)



a single-person governance. Turkey adopted an even more anti-democratic character through the referendum held under the SoE conditions with its constitution based on parliamentary democracy produced by a coup d'état far from intentions of democratization.

Human rights defenders paid heavy prices in their efforts to democratize the republic. Turkey has long topped the list of countries where repression of and attacks against human rights defenders were the most intense. Numerous people involved in the human rights movement stood trial, convicted, attacked, and lost their lives. Associations working in this field were raided, closed down, wire-tapped, and they were prevented from undertaking their activities. Numerous rights and law organizations were closed down during the SoE, while those remained active had to face close scrutiny and judicial harassment against their members and executives was maintained.

The Constitution of the Republic of Turkey, drafted in the aftermath of the 12 September 1980 coup d'état, adopts a policy of impunity as a whole. Accession efforts to the EU and democratization attempts during the peace process failed to terminate this policy of impunity. The policy of impunity that has become a "culture" in public administration has been granted an overt legal protection through SoE decree laws. As a matter of fact, Decree Law No. 696 granted impunity even to civilians. The most important problem that human rights defenders have to deal with in Turkey proves to be the policy of impunity implemented by the state. Therefore, rights defenders' quest for justice fails because of such a policy of impunity.

*Article 121 of Decree Law No. 696 that was published in the Official Gazette on 24 December 2017 states the following:*

*ARTICLE 121- The following clause was added to Article 37 of the Law Amending Law No. 6755 on Measures to be Taken within the Scope of State of Emergency and the Decree Law on Regulations for Some Institutions.*

*"(2) The provisions of the first clause shall also be valid for persons acting within the scope of the quenching of the coup d'état attempt of 15/7/2016 and terrorist acts along with acts that qualify as the continuation of these regardless of the fact that these persons do not bear any official title or undertake any official task."*

Further, the militarist state policy has always perceived İHD, due to its holistic approach to human rights and its work against human rights violations, along with other human rights organizations and defenders as dangerous internal enemies. It was assumed that this perception started to change with the EU accession process but the approach to see human rights defenders as "factors threatening security" was maintained as human rights is regarded from the perspective of "security," not democracy in Turkey (as is the case worldwide). For instance, the "Memorandum Document" and the "Strong Action Plan" revealed to have been drafted by the Chief of Staff in 1998 referred to "İHD as an internal enemy factor" that needs to be closed down. İHD pressed charges against the generals that signed the document, which was officially verified by the Chief of Staff in 2000, but neither effective investigations nor lawsuits were initiated against them. The generals only stood trial for "attempting to stage a coup" within the scope of the lawsuit initiated in relation to the coup attempt of 28 February 1997. The "Memorandum" and "Strong Action Plans" against institutions like İHD were not brought up in the trial. As is seen, the policy of impunity was once more maintained in spite of the existence of explicit criminal evidence.

In addition to the policy of impunity, one should also assess the government's human rights policy. Turkey communicated the UN Declaration on Human Rights Defenders, which it adopted in 2004, to all provincial police departments by a Ministry of Interior circular letter (No. 2004/139). We have, however, not

witnessed that the provisions of the declaration was implemented so far. *The government recognizes, adopts, ratifies international documents but does not implement them in practice.*

The military and civilian bureaucracy that still maintain their power in state administration are insistent on defending the official state ideology while resisting policies of change by governments from time to time. Since there is no “judicial law enforcement” in Turkey, this task is undertaken by the police. Investigations prepared by the police are communicated to public prosecutors’ offices with a police investigation report and the prosecutors bring lawsuits against persons based on these reports. Lawsuits that restricted or prohibited the freedom of expression of numerous human rights defenders have been brought in this manner.

Moreover, the National Intelligence Agency was granted the power to conduct official investigations under terrorism and espionage charges through an amendment in the Law on the Organization of the National Intelligence Agency in 2014. In other words, the agency was granted the task of judicial law enforcement.

Therefore, the fact that public prosecutors conduct investigations and bring lawsuits over files prepared by the police, gendarmerie and the National Intelligence Agency remains a major problem.

A great majority of the investigations and lawsuits against human rights defenders have been initiated by public prosecutors’ offices with special powers and they are heard before heavy penal courts with special powers. Civilian judiciary in Turkey has been divided into two because of these heavy penal courts and prosecutors’ offices with special powers. Such special adjudicational systems have often been resorted to in order to repress civil society. Although the state security courts, which had been established as the continuation of courts martial in Turkey, were closed down, they were replaced by heavy penal courts and public prosecutors’ offices “with special powers” through Article 251 of the Code of Criminal Procedure (CCP). Article 251 of the CCP was repealed through an amendment introduced in 2013 but these courts and public prosecutors’ offices continued to work as per Article 10 of the ATC. Such courts were closed down through Law No. 6526, which went into effect on 6 March 2014, pursuant to reform efforts during the peace and resolution process. The political power, however, argued for the need for such courts and public prosecutors’ offices and re-opened them through the 17 February 2015 decision of the Supreme Board of Judges and Prosecutors (SBJP) by virtue of the stalemate in and the chances of failure of the peace and resolution process.

As is seen, these heavy penal courts and public prosecutors’ offices with special powers that are still functional do not have a legal basis. This situation clearly reveals the degree to which the judiciary, which should have been the guarantee for fundamental rights and freedoms, has been controlled by the political power.

The report of 10 January 2012 entitled “Administration of Justice and Protection of Human Rights in Turkey,” drafted by the Commissioner for Human Rights of the Council of Europe following his visit to Turkey from 10 to 14 October 2011, clearly stated that there was no need for these courts and prosecutors’ offices with special powers and they should be closed down.<sup>17</sup> Turkey complied with this recommendation in 2014 but went back to the former system in 2015.

The Council of Europe’s European Commission for Democracy through Law’s (Venice Commission) opinion (No. 852/2016) dated 13 March 2017 regarding the duties, competences and functioning of the criminal peace judgeships in Turkey proves to be highly significant.<sup>18</sup> This opinion unmistakably reveals the fact that the criminal peace judgeships, which have an even more special place within the system of heavy penal courts and prosecutors’ offices with special powers, have been instrumentalized as the most important

---

<sup>17</sup> <https://rm.coe.int/16806db70f>

<sup>18</sup> <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282017%29004-e>

tools of the policy of judicial harassment. Further, the International Commission of Jurists and the HRJP have also drafted a comprehensive report on these criminal peace judgeships.<sup>19</sup>

The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović, called on Turkey following a five-day visit to the country in July 2019 to put an end to arbitrary conduct within the judicial system and necessary steps be taken for the protection of human rights defenders. The report of this visit was published on 19 February 2020.<sup>20</sup> The report was composed of two main parts entitled “The Administration of Justice and the Protection of Human Rights in the Justice System” and “Human Rights Defenders and Civil Society” which also included the Commissioner’s meetings in Silivri Prison with businessperson Osman Kavala, journalist and author Ahmet Altan, and the chairperson of Progressive Lawyers Association Selçuk Kozağaçlı. “Conclusions and recommendations” of the report significantly stated the following:

*178. The Commissioner once again stresses the essential role civil society and human rights defenders play in a democratic society in preventing human rights violations, drawing the public’s attention to them when they occur, obtaining remedies and redress for victims and promoting human rights in general. They are also natural partners of the Commissioner’s Office, a healthy civil society allowing her to fulfill her mandate more effectively.*

*179. The Commissioner is seriously concerned by the increasingly challenging and hostile atmosphere in which human rights defenders and NGOs have to operate in Turkey. Rather than seeing them as allies in addressing and rectifying human rights challenges facing the country, the prevailing attitude among the authorities is a predominantly negative one, ranging from seeing them as trouble-makers, to targeting and prosecuting them as criminals and terrorists. The Commissioner emphasizes that it is the job of human rights defenders to be vocal and critical of official policy or actions: their criticism is a symptom of underlying human rights issues. Rather than attempting to silence human rights defenders, which is a human rights violation in itself, the Turkish authorities must respect them and pay attention to the underlying causes they point to.*

*182. The Commissioner is deeply worried about an escalating negative political discourse targeting human rights defenders, as well as smear campaigns in pro-government media that frequently amount to defamation and hate speech against them. Noting that the Turkish administrative authorities, and increasingly also the judiciary, are heavily influenced by such discourse and act with a negative bias against human rights defenders, the Commissioner urges Turkish officials at all levels to strictly refrain from publicly targeting human rights defenders and labeling them as criminals and terrorists.*

*183. The Commissioner considers that criminal proceedings targeting human rights defenders are currently the most acute symptom of the mounting pressure they are facing in Turkey. Criminal investigations, proceedings, detentions, and sentences faced by Turkish human rights defenders are too numerous and systematic to be considered individual occurrences and point to a widespread pattern of misusing the judicial process to silence human rights defenders and discourage civil society activism, as recognized explicitly by the European Court of Human Rights in a recent case. It is clear for the Commissioner that prosecutors and judges ignore or deliberately disregard international standards in this context, notably by re-interpreting legitimate and lawful activities human rights defenders ordinarily undertake in a democratic society as evidence of criminal activity, often with the encouragement of public officials at the highest level to that effect.*

<sup>19</sup> HRJP & ICJ. “The Turkish Criminal Peace Judgeships and International Law.” 2018. < <https://www.icj.org/wp-content/uploads/2019/02/Turkey-Judgeship-Advocacy-Analysis-brief-2018-ENG.pdf>

<sup>20</sup> <https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e>

Although Article 90 of the Constitution sets forth that in the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due differences in provisions on the same matter, the provisions of international agreements should prevail; this rule is implemented neither by prosecutors nor courts. Article 138 of the Constitution, on the other hand, prescribes that the courts should rule in accordance with the law. Not only has there been an absence of judicial structure acting in compliance with the principle of the rule of law in Turkey, but also the judiciary has failed to be impartial and independent. About 4,279 judges and prosecutors, who were charged with serving within the judicial structure of the Fethullah Gülen organization, were dismissed from their posts by SBJP decisions during the SoE declared after the failed coup attempt of 15 July 2016. Those judges and prosecutors holding offices work being vulnerable to all kinds of directions by the political power as they have no guarantees whatsoever.

## The Judiciary and Civil Society

It turned out, after the coup attempt, that numerous investigations and lawsuits had been initiated (some of which are pending) against those exercising their rights to freedom of expression and association, prominently HRDs and dissidents, by judges and prosecutors who were involved with the Fethullah Gülen Organization. Particularly the lawsuits drawn up and launched by judges and prosecutors, who had been dismissed from their posts within the scope of their activities in the Fethullah Gülen Organization and most of whom are jailed, should be reviewed and closely scrutinized. For instance, the motion for retrial filed by İHD's former secretary-general Atty. Hasan Anlar and three other attorneys who also were İHD executives and members was overruled in spite of the fact that the incidents that led to their conviction were proven to be a plot. This overruling is a sign of the fact that the political power maintains its policy of judicial harassment against dissidents.

İHD's former Vice-Secretary General Atty. Hasan Anlar, İHD's Central Executive Board Member Atty. Filiz Kalaycı, İHD's former Central Executive Board Member Atty. Halil İbrahim Vargün, and human rights defender Atty. Murat Vargün's residences and offices were raided by the anti-terror police on 12 May 2009. It was stated that the four attorneys were taken under custody with allegations of "aiding an illegal organization." Atty. Filiz Kalaycı was then released but subsequently detained on 27 May 2009 following the objection of the prosecutor on the grounds of "prevention of crime for the sake of public order."

The indictment about the attorneys and former chairperson of Association for Solidarity with Prisoners' Families (THAY-DER) Nedim Taş drawn up by the Ankara Public Prosecutor's Office indicated that the investigation was launched following a report by an attorney called "A. Türk Yurtbey" on 29 March 2007 to the Ankara Police Department by email. Yet, it was revealed that no attorney with this name was registered to the bar association.

The indictment claimed that the press conferences, Newroz celebrations, phone calls, written communications, and documents about civil society organizations that the attorneys had were a part of "organizational activity" of the attorneys who were charged with "membership in PKK/Kongra-Gel."

The trial began on 9 November 2009 at Ankara 11<sup>th</sup> Heavy Penal Court. 150 of the 300 joint attorneys could be present at the hearing. The defense highlighted the conflicting practices of the public prosecutor's office and the Ankara Police Department. Atty. Ercan Kanar, who first took the floor and criticized the method of the trial, stated that the case was highly problematic and was a black mark in legal history. Atty. Kanar indicated that the case was one that qualified as an attack on the inviolability and independence of defense and requested that such pieces of evidence as the false e-mail notification and inculpatory statements that

were rescinded afterwards be removed from the indictment in order to render the hearing be in line with fair trial principles.

Atty. Filiz Kalaycı was released at the hearing held at 28 January 2010.

Aytaç Ayhan, who had previously given an incriminating statement, stated at the hearing held on 10 June 2010 that he was coerced by police officers while under custody to give false statements against the defendants.

İHD Co-Chairperson Atty. Öztürk Türkdoğan stated at this trial that courts with special powers and prosecution procedures were unconstitutional and warned the judges that they too would need justice in the future.

The trial was finalized at the Ankara 11<sup>th</sup> Heavy Penal Court on 24 January 2013. The court convicted the defendants on charges of “membership in an illegal organization” and sentenced Nedim Taş to 10 years and 6 months, Filiz Kalaycı to 7 years and 6 months; Hasan Anlar, Halil İbrahim Vargün and Murat Vargün to 6 years and 3 months imprisonment. İHD released a statement on the ruling underlining the fact that the attorneys were convicted because of their professional legal activities and human rights advocacy stating:

*This ruling reveals that human rights defenders, notably lawyers, therefore, no one has legal certainty in a police state. This special adjudication system continued working in line with the demands of the political power. We condemn such policy of judicial harassment against İHD and its executives. We do protest the ruling of the court.*

*24 January marks the Day of the Endangered Lawyer led by European Democratic Lawyers because on this day in 1977 four Basque workers' union lawyers and a coworker were murdered in Madrid. An initiative was started for the first time in 2010 for lawyers in Iran. The previous year was dedicated to lawyers in Turkey who were jailed on political grounds because they exercised their duties as lawyers. Sentencing İHD lawyers on such a day is a blatant challenge against the world human rights system. It is being ignorant of the world. Arbitrariness in the judiciary knows no boundaries. This unfair and unlawful ruling will not be able to prevent human rights defenders from seeking justice and lawyers from undertaking legal advocacy activities. Human rights defenders and lawyers will go on standing with those seeking justice; oppressed individuals, classes, genders and peoples, and those otherized by the political power.*

It would be appropriate to underline the fact that the political power's stand in Ergenekon trials and the KCK trials was polar opposites.

Further, the penal legislation does not discriminate between those who resort to violence and those who do not. Articles 134, 214, 215, 216, 217, 218, 220 § 6-7-8, 222, 226, 277, 285, 288, 300, 301, 305, 314 § 3, 318 and 341 of the Turkish Penal Code (TPC), the Anti-Terror Code (ATC), the Misdemeanor Law, Law No. 2911 on Assemblies and Rallies, the Law on Political Parties, the Law on Trade Unions, the Law on Associations and the Law on the Protection of Atatürk incorporate very significant prohibitive and punitive provisions. Articles 220 § 6-7 and 314 § 2-3 of the new TPC that went into effect in 2005 and Article 2 of the ATC that was amended in 2006 both introduced provisions that set forth that “those who act in line with the goal of an illegal organization despite not being members of that organization should be sentenced as if they were members of that illegal organization.” Under such offenses resorting to violence or not does not emerge as a criterion and this is a major problem in terms of law.

The penal legislation contains provisions that infringe upon the right to liberty of the person as well. Article 100 of the CCP sets forth provisions that provide for pre-trial detention of persons easily. In consequence HRDs can effortlessly be detained. There are statements based on concrete evidence as to the necessity to

amend Article 200 of the CCP in the above-mentioned report of the Commissioner for Human Rights of the Council of Europe. Pre-trial detention/trial on remand is a typical example of judicial harassment of HRDs. *Turkey has never complied with these recommendations.* It has been observed that persons were sentenced to imprisonment even for charges that did not necessitate resorting to the detention measure as per Article 100 of the CCP, especially after the declaration of SoE. For instance, persons have often been sentenced to imprisonment under Article 7 § 2 of the ATC and Article 216 of the TPC in spite of the fact that these two articles do not require detention.

Freedom of expression is restricted in Turkey for the reasons explained above. Accordingly, HRDs face multifarious lawsuits based on such grounds as expression of opinion, expression of different thoughts by the deed, supporting others to express their thoughts. Many HRDs -against whom lawsuits have often been launched, imprisoned and convicted- had to take refuge in other countries.

The policy of judicial harassment of HRDs in general, along with İHD executives and members, has escalated after the declaration of the SoE and attempts were made to narrow down the human rights field in its entirety through repression.

Particularly the impediment of and restrictions before the rights to freedom of speech and association, the absence of guarantees for the right to liberty of the person lead to intensive repression of human rights defenders. Moreover, the dialogue between civil society organizations and the public administration is not effective enough to protect human rights defenders. Governments and bureaucrats from past to present have long been disregarding human rights organizations, often ignoring them. Human rights organizations that have no trouble in meeting with EU executives have a hard time in meeting with ministers. Following the declaration of the SoE the dialogue between human rights defenders and the public administration has been minimized.

There are also great challenges in the follow-up of investigations and lawsuits that skyrocketed in the aftermath of the SoE. Further, increasing repression, investigations and lawsuits occupy quite a large space. One can list the prominent ones among such lawsuits as such:

- Investigations into White Flag protests in Ankara
- Police custody and trials against Academics for Peace<sup>21</sup>
- The Büyükada Trial
- Trials against the Progressive Lawyers Association
- Trials against journalists and the *Cumhuriyet* daily trial
- Trials against İHD's Co-Chairperson Emire Eren Keskin
- Harassment of executives and members of KESK and its affiliated trade unions
- Judicial harassment of Kurdish politicians
- Harassment of LGBTI organizations
- Trial(s) against M. Raci Bilici – Democratic Society Congress
- Trials against Murat Çelikkan and editors-in-chief on duty for daily *Özgür Gündem*
- Osman Kavala and Gezi Park trial
- Harassment and trials against deputy Ömer Faruk Gergerlioğlu
- Trials against HRFT President Şebnem Korur Fincancı
- Turkish Medical Association Central Committee trial

Human rights organizations can only follow-up investigations and lawsuits brought against human rights defenders on a voluntary basis and support HRDs. Therefore, human rights organizations in Turkey need capacity building.

---

<sup>21</sup> <https://barisicinakademisyenler.net/English>

## İHD as an Example

Report of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani (January 2005)<sup>22</sup> drafted following Jilani's visit to Turkey in October 2004 stated the following based on information provided by the then Chairperson of İHD, Hüsnü Öndül:

*The Human Rights Association reported that while 300 cases had been opened against the organization and its staff in the first 14 years of its existence, in the last 3 years there had been over 450 cases (para. 79).*

When one compares past and current data, it is seen that the number of cases brought against İHD's executives and members was **36** within the first four years of its existence between 17 July 1986 and 1990, while the figure goes back down to **28** between 1991 and 1994. The total number of cases brought against İHD within its first 8 years was **64**.<sup>23</sup> İHD's latest report presents the following data:

*İHD faced 64 cases in its first 8 years, while facing 223 investigations and cases in the last 8 years (2011-2019). These cases were brought against İHD's chairpersons, central executives, executives and members of its 30 branches (in (Ankara, İstanbul, İzmir, Diyarbakır, Adana, Van, Tarsus, Rize, Sakarya, Erzurum, Gaziantep, Elazığ, Tunceli, Ağrı, Doğubayazıt, Balıkesir, Siirt, Bitlis, İskenderun, Hatay, Malatya, Batman, Şanlıurfa, Adıyaman, Hakkâri, Şırnak, Cizre, Mersin, Bingöl, Çanakkale).*

Although numerous amendments were introduced to legislation on the rights to freedom of expression, association, assembly, and press during the EU accession process, it is observed that no improvements were seen in the implementation of rights and freedoms and that public authorities did not act in accordance with domestic and international standards.

Turkey often resorts to the method of amending or repealing articles on freedom of expression in legislation that become notorious. In spite of these amendments though, investigation and prosecution authorities either do not take these into consideration or implement other articles that would bear the same consequences in place of repealed/amended articles. For instance, they have been implementing Articles 6, 7 and 8 of the ATC since 1991 instead of Articles 141, 142 and 163 of the former TPC No. 765. Or they have been implementing the article in the former TPC on "inciting the public to hatred and enmity" as if no changes were introduced to the article, and even implementing Article 163 in place of the repealed 312.

For example, the press had reported that Vural Savaş, who was the then Chief Public Prosecutor at the Court of Cassation (post-April 1991), had stated that they were implementing Article 312 for "reactionary activities" because Article 163 had been repealed.

Article 7 of the ATC, criticized by Hina Jilani in the report in question, was amended four times since its inception in 1991 (29 June 2006, 11 April 2013, 27 March 2015, 17 October 2019).

<sup>22</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>

<sup>23</sup> This article written by the then Secretary General of İHD, Hüsnü Öndül, was presented at the panel "Freedom of Opinion and Migration" organized by İHD and HRFT on the occasion of the Human Rights Week on 10-17 December 1994 and was published in the book with the same title (HRFT publications, September 1995).

<https://www.ihd.org.tr/turkiyenin-insan-haklari-orgutlerine-iliskin-politikasi/>

<p>ATC No. 3713 12 April 1991</p>	<p>Terrorist organizations</p> <p><b>Article 7</b>-Under reservation of provisions in Articles 3 and 4 and Articles 168, 169, 171, 313, 314 and 315 of the Turkish Penal Code those who found organizations as specified in Article 1 under any name or who organize and lead activities in such organizations shall be punished with imprisonment of between 5 and 10 years and with a fine of between 200 million and 500 million Turkish liras; those who join these organizations shall be punished with imprisonment of between 3 and 5 years and with a fine of between 100 million and 300 million Turkish liras. Those who assist members of organizations constituted in the manner described above or make propaganda in connection with such organizations shall be punished with imprisonment of between 1 and 5 years and with a fine of between 50 million and 100 million Turkish liras, even if their offence constitutes a separate crime. Where assistance is provided to such organizations in the form of buildings, premises, offices or extensions of associations, foundations, political parties, professional or workers' institutions or their affiliates, or in educational institutions or students' dormitories or their extensions the punishments mentioned in paragraph 2 shall be doubled. In addition, activities of associations, foundations, trade unions and similar institutions found to have supported terrorism shall be banned and the institutions may be closed down by a court's decision. Assets of these institutions will be confiscated if the offence of propaganda in connection with an organization as mentioned in paragraph 2 is committed by a periodical as defined in Article 3 of the Press Law No. 5680, its publishers shall be punished additionally with the following amounts of fine: for periodicals issued at less than monthly intervals the fine shall be 90 per cent of the average real sales for the previous month; for printed works that are not periodicals or periodicals that have just entered the market the fine shall be 90 per cent of the monthly sales of the best selling daily periodical. In any case the fine shall not be less than 100 million Turkish liras. Editors in charge of such periodicals shall be punished with half the sentences awarded to publishers and a sentence of between six months and two years' imprisonment.</p>
<p>Law No. 5532 29 June 2006</p>	<p><b>Article 6</b>- Article 7 of Law No. 3713 was amended in the following manner.</p> <p><b>“Article 7</b> – Those who found, lead and are members of organizations as specified in Article 1 to commit offences by using force and violence and by pressure, intimidation, oppression or threat shall be punished in accordance with the provisions in Article 314 of the Turkish Penal Code. Those who organize activities of an organization shall be punished as an executive of the organization.</p> <p>Those who disseminate propaganda for a terrorist organization shall be sentenced to one to five years of imprisonment. Should offence is committed via press and publication, sentence shall be increased by half. Moreover those in charge of the publication of press and publication organs, who do not participate in committing an offence, shall be punished by imposition of fines from one thousand days to ten thousand days. However maximum period for editors in charge is five thousand days. The following actions and behavior shall be punished in accordance with the provisions of the paragraph:</p> <p>a) Complete or partial covering of the face in meetings and demonstrations that become propaganda of a terrorist organization.</p>



	<p>b) Carrying emblems and signs, shouting slogans or broadcasting via sound equipment or wearing uniforms designed with emblems or signs of a terrorist organization in a manner that indicates being member or supporter of terrorist organization.</p> <p>If the offences defined in the second paragraph are committed in the buildings of an association, foundation, political party, labor or professional organization or in additional buildings that belong to these organizations or in educational institutions or dormitories or additional buildings that belong to these institutions; the sentence will be raised by double.</p>
<p>Law No. 6459 11 April 2013</p>	<p><b>Article 8</b> – Article 7 § 2 of Law No. 3713 has been amended in the following way and the following paragraph was added to the article.</p> <p>“Those who disseminate propaganda for a terrorist organization so as to legitimize or praise the methods of that organization involving violence or threat or encourage others to resort to these methods shall be sentenced to one to five years of imprisonment. Should offence is committed via press and publication, the sentence shall be increased by half. Moreover those in charge of the publication of press and publication organs, who do not participate in committing an offence, shall be punished by imposition of fines from one thousand days to ten thousand days. The following acts and behavior shall be punished in accordance with the provisions of this paragraph:</p> <p>a) Complete or partial covering of the face in meetings and demonstrations that become propaganda of a terrorist organization</p> <p>b) In a way to indicate membership in or being a supporter of a terrorist organization even if the following did not happen during an assembly or rally</p> <ol style="list-style-type: none"> <li>1. Posting or carrying emblems, pictures or signs,</li> <li>2. Shouting slogans,</li> <li>3. Broadcasting via sound equipment,</li> <li>4. Wearing uniforms with emblems, pictures or signs belonging to a terrorist organization.” <p>“Acting in the name of a terrorist organization as a non-member;</p> <p>Those who committed the following offenses cannot be separately punished under the offense defined by Article 2206 of Law No. 5237</p> <p>a) The offense defined in the second paragraph,</p> <p>b) The offense defined in the second paragraph of Article 6,</p> <p>c) The offense of participating in unlawful assemblies and rallies defined in Article 28 § 1 of Law No. 2911 on Assemblies and Rallies dated 6/10/1983.”</p> </li></ol>
<p>Law No. 6638 27 March 2015</p>	<p><b>Article 10-</b> Article 7 § 2a of Anti-Terrorism Code No. 3713 dated 12/4/1991 was repealed and the following paragraph is added to follow this paragraph of the same article.</p> <p>“Those who completely or partially cover their faces in order to hide their identities in assemblies and rallies that become propaganda for a terrorist organization shall be sentenced to three to five years imprisonment. In cases where the offenders resort to force and violence or have or use all kinds of arms,</p>

	molotovs and similar explosive, incendiary or injurious material the minimum limit of the sentence cannot be less than four years.”
Law No. 7188 <b>17 October 2019</b>	<b>Article 13</b> – The following sentence is added to follow Article 7 § 2’s third sentence of Anti-Terrorism Code No. 3713 dated 12/4/1991. “Expressions of ideas that do not transgress the limits of communication of news or for purposes of criticism do not constitute an offense.”

No positive practice has been observed within the judiciary particularly with regard to Article 90 of the Constitution as well.

### ***The Constitution of the Republic of Turkey***

#### ***Article 90***

##### ***D. Ratification of International Treaties***

*The ratification of treaties concluded with foreign states and international organizations on behalf of the Republic of Turkey shall be subject to adoption by the Grand National Assembly of Turkey by a law approving the ratification.*

*Agreements regulating economic, commercial or technical relations, and covering a period of no more than one year, may be put into effect through promulgation, provided they do not entail any financial commitment by the State, and provided they do not interfere with the status of individuals or with the property rights of Turks abroad. In such cases, these agreements shall be brought to the knowledge of the Grand National Assembly of Turkey within two months of their promulgation.*

*Implementation agreements based on an international treaty, and economic, commercial, technical, or administrative agreements, which are concluded depending on the authorization as stated in the law, shall not require approval of the Grand National Assembly of Turkey. However, economic, commercial agreements or agreements relating to the rights of individuals concluded under the provision of this paragraph shall not be put into effect unless promulgated.*

*Agreements resulting in amendments to Turkish laws shall be subject to the provisions of the first paragraph. **International agreements duly put into effect have the force of law.** No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. (Sentence added on May 7, 2004; Act No. 5170) **In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.***

Some instances of violations of freedoms of expression, assembly and association that İHD faced in a 30-year period between 1988 and 2018:

## 1988 - Ankara Branch Founding Statement

İHD's Ankara Branch executive board members were sentenced to three years in prison which was later turned into fines and delayed for violation Article 44 of the then in effect Law No. 2908 on Associations because of the founding statement issued to announce the establishment of the branch.

### *Article 44 of the former Law No. 2908 on Associations*

*Article 44 –Associations may not prepare or distribute leaflets, declarations or similar publications without a decision from their executive boards. Decisions to publish any leaflets, declarations or similar publications must bear the first names, last names and signatures of the chairpersons and members of the board that delivered the decision to publish the said items.*

*A copy of the decision to publish a leaflet, declaration or similar publications together with a copy of the text in preparation must be submitted, as notification of publication, to the most senior local representative of the government and the public prosecutor, in exchange for a receipt showing the day and hour upon which it was delivered. The leaflet, declaration or similar publications may not be distributed or communicated to the press for 24 hours after submission to the most senior local representative of government.*

*If the leaflet, declaration or similar documents are written in any language or script forbidden by law, or threatens the internal or external security of the nation, or its indivisible unity, or if its of a nature which would incite other to commit a crime, or riot or revolt, or if it discloses classified documents of the state, or infringes others' reputation or rights, or their private and family lives, and only if delay would present a risk, the publication in question may be postponed or blocked or, if it has been distributed, confiscated on the orders of the most senior local representative of government. The most senior local representative of government must inform the criminal judgship of first instance of this decision within 24 hours. The judge will examine the decision of the senior local representative of government within 48 hours at most and deliver a decision. If a decision is not delivered within this period, the decision of the senior civil servant shall be deemed void.*

Article 44 overtly functioned as "censorship." Law No. 2908 was repealed in 2004 and replaced by Law No. 5253 on Associations adopted on 4 November 2004.<sup>24</sup>

## 1988 – Signature Campaign for Amnesty and against Capital Punishment

İHD central office executives stood trial under Articles 76 § 1 and 77 § 3 of the former Law on Associations (activity out of the scope of the stated purposes) at Ankara 10<sup>th</sup> Criminal Court of First Instance because of the signature campaign for amnesty and against capital punishment. The executives were acquitted.

## 1990 - Vedat Aydın & Kurdish Address

Diyarbakır delegate Vedat Aydın addressed İHD's 3<sup>rd</sup> ordinary general assembly with a speech in Kurdish. The address was designated as an offense under Articles 6 and 77 § 1 of the former Law on Associations and Articles 2 and 3 of Law No. 2932 on Publications in Languages other than Turkish.<sup>25</sup> Vedat Aydın was

<sup>24</sup> Law No. 2908: <https://teftis.ktb.gov.tr/TR-14875/2908-sayili-eski-dernekler-kanunu.html>; Law No. 5253: <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.5253.pdf>

<sup>25</sup> <https://bit.ly/2GxEwXb>

taken under police custody and detained by a State Security Court. Vedat Aydın was assassinated in July 1991 by “unknown assailants.” Law No. 2932 was in force until 1991.

## 1993 – Human Rights Bulletin / Hüsni Öndül & İsmail Beşikçi

Prominent author İsmail Beşikçi and İHD Secretary General Hüsni Öndül stood trial before the Ankara State Security Court because of Beşikçi’s article entitled “Humanitarian and Moral Values” published in the June-July 1993 issue of the *Human Rights Bulletin* published by İHD. Beşikçi was sentenced to three years in prison under Article 8 § 1 of the ATC and Article 312 § 2 of the TPC and fined 250 million 200 thousand TRY while Öndül was sentenced to 6 months in prison and to 53 million 850 thousand TRY in fines under 8 § 2 of the ATC and Article 312 § 2,3 of the TPC.



Dr. İsmail Beşikçi, “Humanitarian-Moral Values.”

## 1994 – A Section of Burnt Down Villages

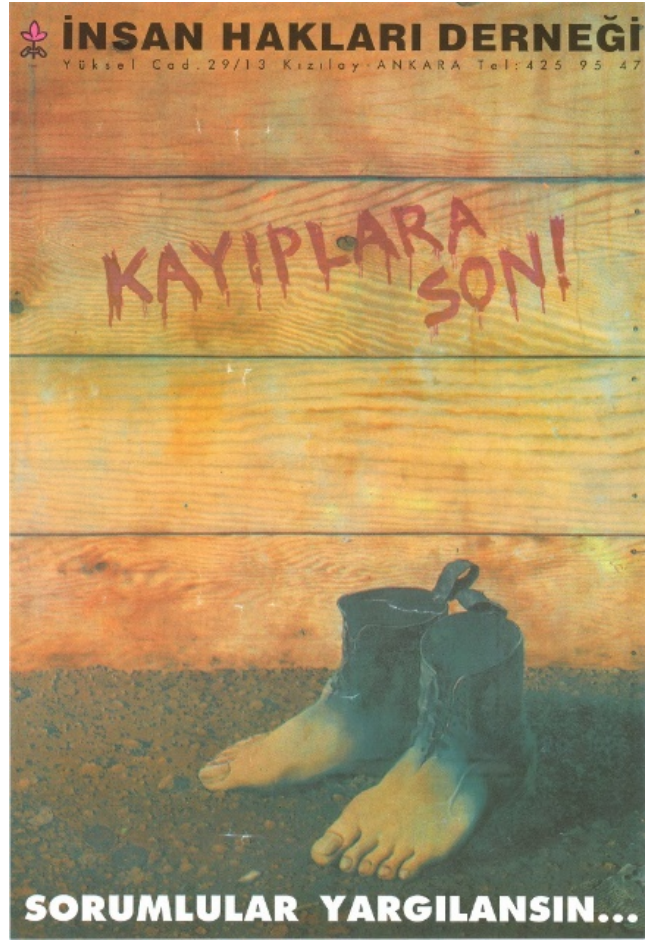
The book entitled *A Section of Burnt Down Villages (Yakılan Köylerden Bir Kesit)* published in April 1994 by İHD’s central office was pulled off the shelves by the Ankara State Security Court. İHD’s then Chairperson Akın Birdal and executive board members stood trial under Articles 8 and 312 of the ATC. The case was finalized with acquittal on 11 January 1995.

The GNAT Inquiry Committee found results that confirmed İHD’s findings for 1993-1994 in its report published in the *Official Gazette* in 1997. It was ascertained that a total of 3,428 villages and hamlets were subjected to forced evacuation.





*A Section of Burnt Down Villages, İHD Publications.*



*End Enforced Disappearances, Prosecute Those Responsible*

### **1995 - Akın Birdal & Posting Unauthorized Bills**

Akın Birdal gave a speech before a bill showing two empty feet-shaped figures calling for the prosecution of those responsible for enforced disappearances published within the scope of the "Campaign for the Disappeared." A lawsuit was brought under Article 44 of the Law No. 2908 on Associations because the bill was shown without notifying the public prosecutor's office and the governor's office. Akın Birdal was then sentenced to 3 months imprisonment.

### **2018 – Saturday Mothers**

Peaceful vigils, sit-ins staged by the Saturday Mothers since 27 May 1995 was intervened into by the police that used excessive force on 24 August 2018 on its 700<sup>th</sup> week and the authorities prohibited the sit-ins from being held in Galatasaray Square in İstanbul. The sit-ins are now held before İHD's İstanbul Branch building.

Emine Ocak, in the below photograph, was going to ask for the faiths and whereabouts of those who had been subjected to enforced disappearance with other mothers, fathers, spouses and children by joining a peaceful sit-in in İstanbul's Galatasaray Square at noon for the 700<sup>th</sup> time as it has always been the case on Saturdays.



*Emine Ocak, Saturday Mothers*

*Emine Ocak's son, Hasan Ocak, was taken under police custody in İstanbul 23 years ago. The authorities denied his being in custody in spite of all petitions filed. His tortured body was found in the woods in Beykoz, İstanbul and was buried in a cemetery of the nameless. Emine Ocak found his son's body at Altınşehir Cemetery of the Nameless on 17 May 1995. Upon this development, the then chairperson of İHD, Akın Birdal and the President of the HRFT, Yavuz Önen, issued a joint call and those who lost their loved ones had been gathering in Galatasaray Square on Saturdays since 27 May 1995. These sit-ins have been maintained for 200 weeks under immense pressure, and then suspended. Sit-ins have restarted in February 2009 in cities where İHD had branches notably in İstanbul, Galatasaray, and Diyarbakır, Şanlıurfa, Batman, Mardin, Şırnak/Cizre, Hakkari/Yüksekova, Van, Ankara, İzmir, Adana and Mersin following a decision delivered by İHD's central office within the scope of a campaign initiated to find those who disappeared under custody and prosecute the perpetrators during the Ergenekon investigations.*

Saturday Mothers, families of the disappeared and human rights defenders wanted to maintain the longest-running protest of Turkey carrying the photographs of hundreds of victims of enforced disappearance on the 700<sup>th</sup> week of the sit-ins on 25 August 2018. But the Beyoğlu District Governor's Office issued a ban following an order from the Ministry of the Interior and the police using excessive force intervened into the peaceful sit-in. The police used physical violence, pepper spray against the mothers, notably Hasan Ocak's mother Emine Ocak, families of the disappeared, human rights defenders, members of the parliament, activists and journalists dragging the mothers on the street and insulting them. We will never forget such inhuman conduct of the political power.

The lawsuit filed by İHD's central office to lift the ban was overruled and is now pending at the appeals stage before the İstanbul Regional Administrative Court.

The absence of legal institutions that will limit the powers of the state and protect the rights and freedoms of the citizens lead to the dismissal of our demands and the violation of our rights to truth and access justice.

As Saturday Mothers, Peace Mothers and İHD, our demands about the enforced disappearances are clear:

- Fates of victims of enforced disappearances should be revealed,
- Perpetrators and those responsible should be called to account before the courts,

- The state should recognize its own responsibility in the offense of enforced disappearance under custody,
- Impunity that protects the perpetrators of and those responsible for the offense of enforced disappearance under custody should be ended; justice should be served,
- Legislation that prescribes the act of enforced disappearance under custody as a criminal offense, prevents and punishes such offense should be introduced so that no one will ever be subjected to enforced disappearance ever again,
- Turkey should sign, ratify and implement the UN International Convention for the Protection of All Persons from Enforced Disappearance,
- Turkey should become a party to the Rome Statute establishing the International Criminal Court.

## 2018 – Armenian Genocide Banner

İHD İstanbul Branch’s Commission against Racism and Discrimination held a banner on 24 April 2018 in Sultanahmet Square in İstanbul. The banner read: “Armenian Genocide: Recognize, Apologize, Compensate.” When the police stated that press conferences were banned through a decision by the governor’s office, the 30-strong group dispersed without holding/being able to hold a press conference. Three people gave their statements at the police department. İstanbul Public Prosecutor’s Office initiated an investigation into three members of the commission, namely Gamze Özdemir, Jiyan Tosun and Leman Yurtsever; then issued a decision of “non-prosecution” on 4 May 2018 stating:

*Non-prosecution decision was delivered since the ECtHR held that freedom of expression not only applies to information or ideas deemed favorable or inoffensive but also to offensive, shocking or disturbing information and ideas deemed as such by the state or a part of the population; although the statements on the banner qualified as one that cannot be accepted and are disturbing, different interpretations of issues that essentially fall under the expertise of historians do not generally and entirely constitute the offense prescribed under Article 301 of the TPC...*



Armenian Genocide Banner

Along with the above-mentioned past lawsuits, there are also numerous recently finalized or pending investigations and lawsuits against İHD’s central office and branch executives. A comprehensive list of these



investigations and lawsuits can be found in İHD's special report entitled "Pressures against Human Rights Defenders, İHD and Its Executives."<sup>26</sup> A couple of examples can be offered for the purposes of this report.

### **Examples from Recent Lawsuits against İHD's Executives**

There are around 250 recently finalized or pending court cases and investigations against İHD members and executives according to our data. In addition, this figure does not include about 150 court cases brought against İHD's Co-Chairperson Atty. Eren Keskin alone on the grounds that she served in solidarity as the editor-in-chief of the daily *Özgür Gündem* between 2014 and 2015. Numerous İHD executives were convicted at these trials. Among them, İHD's former Ankara Branch Chairperson Halil İbrahim Vargün, former Bitlis representative Hasan Ceylan, and Dersim Branch executive Özgür Ateş are still in prison.

İHD's Mersin Branch Chairperson Ali Tanrıverdi was taken under police custody on 12 December 2016 due to his human rights advocacy activities and was then detained on 19 December 2016 after 8 days of custody. Mersin 7<sup>th</sup> Heavy Penal Court released Ali Tanrıverdi on the first hearing of the trial held on 18 May 2017. There are also other pending court cases against Ali Tanrıverdi because of his human rights advocacy.

İHD's Malatya Branch Chairperson Gönül Öztürkoğlu was detained on 30 November 2018 within the scope of the investigation (No. 2018/8613) initiated by Malatya Public Prosecutor's Office on the grounds that she had participated in İHD's press conferences. She was released by Malatya 5<sup>th</sup> Heavy Penal Court at the hearing held on 26 January 2019 but then was sentenced to 6 years and 3 months imprisonment under Article 314 § 2 of the TPC at the final hearing on 18 December 2019. Ms. Öztürkoğlu's file is pending before the appeals court.

Similarly, İHD's Bitlis Representative Office former Chairperson Hasan Ceylan was also charged with illegality within the scope of the association's activities. Bitlis 2<sup>nd</sup> Heavy Penal Court sentenced Mr. Ceylan to 9 years imprisonment (No. 2017/382E) and his file is pending before the regional court of justice. Hasan Ceylan is incarcerated as a prisoner on remand (hükmen tutuklu) at Rize Kalkandere Prison.

İHD's Dersim Branch executive Özgür Ateş was sentenced to 6 years and 3 months imprisonment by Tunceli 2<sup>nd</sup> Heavy Penal Court (No. 2017/270E) with a decision for the continuation of his detention on 13 November 2018. His file is pending before Erzurum Regional Court of Justice for appeals review.

İHD's Ağrı Branch executive Olcay Öztürk was detained on 2 March 2018 within the scope of an investigation by Ağrı Chief Public Prosecutor's Office (No. 2018/1686). Ağrı 2<sup>nd</sup> Heavy Penal Court released him on 22 June 2018 at the second hearing of the case (No. 2018/279E). At the hearing held on 2 May 2019, though, Mr. Öztürk was sentenced to 2 years 15 days imprisonment under Article 220 § 7 of the TPC and his file is pending before the regional court of justice.

İHD Central Executive Board member M. Raci Bilici stood trial at Diyarbakır 5<sup>th</sup> Heavy Penal Court (2017/453 E) following and investigation on the grounds of his activities as İHD's Diyarbakır Branch chairperson and İHD vice co-chairperson. In spite of acquittal rulings for those standing trial within the scope of similar files with similar charges, the prosecutor's office asked for the conviction of Mr. Bilici who was then sentenced to 6 years and 3 months imprisonment for "membership in an illegal organization" at the final hearing on 12 March 2020.

The investigations that later led to trials against Mr. Bilici had been initiated in 2012. He was unfairly taken under custody in 2017 and released under judicial control. The authorities should have dropped these investigations initiated for political purposes as we also stated before the courts during the prosecution process. Courts should not convict human rights defenders at trials brought up based on investigation files

---

<sup>26</sup> <https://ihd.org.tr/en/special-report-increased-pressure-on-hrds-ihd-and-its-executives/>



with trumped up charges criminalizing human rights advocacy activities attempting to pass them as illegal ones.

We would also like to state that different civil society organization representatives charged within the scope of the same investigation received acquittal rulings. Therefore, such political prosecution should be put to an end. İHD is an organization that particularly works hard for peace building. İHD's branch chairpersons are always victimized by judicial harassment. We will, this time, not let Raci Bilici be victimized. We still hope that this ruling will be reversed at the court of appeals or the Court of Cassation.

İHD's press statement "War Kills, No to War, We Want Peace"<sup>27</sup> on the Afrin operation released on 21 January 2018 was shared as a press statement or through social media by İHD's branches and members. Extensive operations were conducted all over Turkey on the grounds of this and similar posts critical of the Afrin operation.

İHD's Central Executive Board member Nuray Çevirmen was taken under police custody on 22 January 2018, then released under judicial control on 26 January 2018 following 4 days of custody. Ms. Çevirmen's trial is pending before Ankara 15<sup>th</sup> Heavy Penal Court (Case No. 2018/165).

İHD's Central Executive Board member Hayrettin Pişkin was taken under police custody on 23 January 2018 in Çanakkale and was detained a day later on 24 January 2018. Mr. Pişkin was then released at the first hearing of the trial on 21 March 2018. Mr. Pişkin was sentenced to 2 years and 6 months imprisonment under Article 7 § 2 of the ATC prescribing disseminating propaganda for an illegal organization by Çanakkale 2<sup>nd</sup> Heavy Penal Court's ruling of 7 May 2018 (No. 2018/82 E) because he posted a text on Facebook written by someone else. Mr. Pişkin's sentence was not postponed or turned into a fine. An appeals motion was filed before the Bursa Regional Court of Justice against the ruling and he was acquitted at the appeals stage.

İHD's Kars Branch Chairperson Ahmet Adıgüzel was also taken under police custody on 23 January 2018 in Ardahan because of his social media posts critical of the Afrin operation. Mr. Adıgüzel was detained on 25 January 2018 and was then released on the first hearing of the trial heard by Ardahan Heavy Penal Court (No. 2018/30 E.) on 15 March 2018 having been sentenced to 1 year and 6 months imprisonment under Article 7 § 2 of the ATC that prescribes disseminating propaganda for an illegal organization.

İHD's Hatay Branch Chairperson Mithat Can was, too, taken under police custody on 13 February 2018 in Hatay because of his social media posts critical of the Afrin operation and then he was released under judicial control on 16 February 2018 after spending three days in custody.

İHD's Kars Branch Chairperson, human rights defender Güldane Kılıç was taken under police custody on 23 July 2019 following a raid into her residence early in the morning. A total of 12 persons were taken under custody within the same police operation including 7 HDP provincial executives. Ms. Kılıç's participation in press conferences and her social media posts, her various legal party works when she was not an executive of İHD were presented as evidence during the prosecution, while she was released on 19 December 2019 after having been convicted.

İHD Co-Chairperson Öztürk Türkdoğan and the association's executive board members were forcibly taken under custody for a couple of hours by the police on 9 November 2017 in Ankara's Yüksel Street where they were present in order to share with the public a report<sup>28</sup> on rights violations faced by educators Nuriye Gülmen and Semih Özakça along with sociologist Veli Saçılık and friends, who had been exercising their right to peaceful protest since 9 November 2016 demanding their jobs back, and to protest such violations.

---

<sup>27</sup> <https://ihd.org.tr/en/war-kills-no-to-war-we-want-peace/>

<sup>28</sup> İnsan Haklarına, Yüksel Caddesi'ne ve Yüksel Eylemcilerine Özgürlük!

<https://www.ihd.org.tr/insan-haklarina-yuksel-caddesine-ve-yuksel-eylemcilerine-ozgurluk/>

İHD executives and members who were taken under custody were later fined under Law of Misdemeanors.<sup>29</sup>

İHD's Vice Chairperson Gülseren Yoleri and members of its İstanbul branch were taken under custody on 5 August 2017 for taking part in a public statement concerning dismissals from public posts through governmental decrees. After 3 days of custody, they were released under judicial control. An investigation was also started on charges of violating Law No. 2911 on Meetings and Demonstrations.

### İHD Executives Dismissed from Public Posts through SoE Decree Laws

About 135,000 public employees were dismissed from their posts through the SoE decree laws issued following the declaration of the SoE in Turkey. Among the dismissed public employees, there were İHD executives and members as well. The most important point to be made about these SoE decree laws is that the way these decree laws were issued and their purpose are against the constitution. Dismissals through decree laws do not only violate the ECHR but also lustration principles that became case law in the ECtHR's judgments on Poland. Dismissals through decree laws violate, at the same time, ILO Conventions No. 111 and No. 158. They, further, overtly infringe upon provisions set forth in the European Social Charter, the UN International Covenant on Civil and Political Rights, the UN International Covenant on Economic, Social and Cultural Rights.

The Venice Commission stated in its Opinion of 12 December 2016 (No. 2016/865)<sup>30</sup> on the SoE practices in Turkey that effective domestic remedies should be offered for those dismissed through decree laws. Yet the government established the Inquiry Commission on the State of Emergency Measures<sup>31</sup> by Decree Law No. 685 in order to provide for the pro forma implementation of this recommendation. This commission is neither independent nor impartial nor effective. Therefore, human rights defenders have been facing all kinds of repression by the political power that also negatively affected public employees who were human rights defenders.

The following table presents dismissed İHD executives. Further, more than 200 İHD members were also dismissed from their public posts. All these members were members of trade unions affiliated with KESK.

Osman İşçi	Secretary General	Ankara	Decree Law No. 689
Adnan Vural	Central Executive Board Member	Ankara	Decree Law No. 682
Mine Çetinkaya	Branch Executive Board Member	İzmir	Decree Law No. 686
Caner Canlı	Branch Executive Board Member	İzmir	Decree Law No. 686
Eylem Temiz	Branch Executive Board Member	İzmir	Decree Law No. 686
Gülbüz Solmaz	Branch Chairperson	Dersim	Decree Law No. 679
Selçuk Delibaş	Branch Chairperson	Maraş	Decree Law No. 675

<sup>29</sup> <https://www.ihd.org.tr/ihd-yonetici-ve-calisanlarina-yuksel-caddesinde-gozalti/>

<sup>30</sup> Venice Commission. "Turkey: Opinion on Emergency Decree Laws." 12 December 2016. <  
[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e)>

<sup>31</sup> <https://soe.tccb.gov.tr/>

Kamber Göçer	Branch Executive Board Member	Sakarya	Decree Law No. 675
Behzat Hazır	Branch Chairperson	Elazığ	Decree Law No. 675
Coşkun Selçuk	Branch Chairperson	İskenderun	Decree Law No. 672

# İHD Executives and Members & Recent Physical Assault Cases

Tahir Elçi



Tahir Elçi

Diyarbakır Bar Association Chairperson and renowned human rights defender Tahir Elçi was murdered on 28 November 2015 in the city's Sur District before the Four-Legged Minaret. He was there with a group of friends to share with the public the destruction sustained by the Four-Legged Minaret due to artillery fire and bullets and to protect cultural heritage. Tahir Elçi, as a human rights defender, wanted to lay bare the destruction that war and conflict brought not only upon people but also upon the natural environment and cultural heritage. He wanted permanent non-conflict, he wanted peace.

Tahir Elçi was one of the most prominent figures who fought against impunity in Turkey. He persistently worked to bring cases of murders by unknown assailants and enforced disappearances to light and to find the perpetrators since the very first day in his profession as a lawyer. He made it possible for numerous cases to be brought against perpetrators and clarified many cases as well.

Diyarbakır Bar Association established a commission, including a representative from İHD, to clarify the murder of Tahir Elçi and their relentless endeavor together with the bar association's non-stop protests and events yielded results. University of London's Forensic Architecture Department drafted a report<sup>32</sup> commissioned by Diyarbakır Bar Association that identified three police officers one of whom very likely fired the shot that killed Mr. Elçi.

Diyarbakır Chief Public Prosecutor's Office drafted an indictment on 20 March 2020 (No. 2020/833) and charged a member of an illegal organization on the scene with voluntary manslaughter and these three police officers with involuntary manslaughter under Article 85 § 1 of the TPC. The indictment is a testimony to the degree to which the authorities are keen on maintaining impunity. Diyarbakır 10<sup>th</sup> Heavy Penal Court admitted the indictment and the first hearing will be held on 21 October 2020.

<sup>32</sup> <https://forensic-architecture.org/investigation/the-killing-of-tahir-elci>

## Gençağa Karafazlı

İHD's Central Executive Board member, Progressive Journalists Association's Rize Branch chairperson and Rize reporter for the daily *Evrensel*, Gençağa Karafazlı, was shot and injured on 17 September 2019 in Rize at a facility owned by his family.<sup>33</sup>

Mr. Karafazlı has been a journalist for 33 years who is known for his dissident news reports and is a human rights defender who is a four-time recipient of Metin Göktepe Journalism Award.

He has often been targeted due to his activities in Rize as a human rights defender and a journalist. He has often been subjected to hate crimes particularly because of his activities that entirely fall under advocacy and journalistic activities like his news reports critical of the political power, his reports on girls and women subjected to sexual abuse and rape while helping the victims in their quest for justice as a human rights defender, helping out families visiting their relatives incarcerated in Rize Kalkandere Prison. He filed criminal complaints about such attacks but no effective investigation or prosecution has been conducted about those responsible yet.

Following the attack, İHD Co-Chairperson Öztürk Türkdoğan, İHD's Central Executive Board member and Erzurum Branch Chairperson Medeni Aygöl along with Erzurum Branch executives visited Mr. Karafazlı in Rize and were received by the Rize Governor asking for the apprehension of the perpetrator and clarification of the case. The perpetrator was apprehended and detained; yet, he was convicted of simple injury. The appeals stage of the case is still pending.

## Forced Refugees: İHD Members Who Had to Go Abroad

İHD, established in 1986; has been singled out due to its holistic approach to human rights that sees human rights as a whole and its fight to put an end to rights violations. The repressive policies of the state has always perceived human rights organizations like İHD and human rights defenders as dangerous internal enemies. Such perception had started to change with the EU accession process but some institutions maintained their perception of HRDs as security risks as human rights are interpreted within the scope of a perspective characterized by security in Turkey as is the case in the world.

Particularly the impediment of and restrictions before the rights to freedom of speech and association, the absence of guarantees for the right to liberty of the person lead to intensive repression of human rights defenders. Moreover, the dialogue between civil society organizations and the public administration is not effective enough to protect human rights defenders. Government officials cannot hold regular and comprehensive meetings with human rights organizations. Human rights organizations that have no trouble in meeting with EU executives have a hard time in meeting with ministers. Following the declaration of the SoE the dialogue between human rights defenders and the public administration has been minimized.

Numerous lawsuits were brought against İHD's central office and branch executives and members during this process. As a result, many members of İHD had to become forced refugees.

İHD former Secretary General lawyer Hasan Anlar, Chair of Ankara branch lawyer, Central Executive Committee member lawyer Filiz Kalaycı were sentenced to 6 years and 3 months imprisonment under the Article 314 of the TPC on the allegations of "committing an offense on behalf of an illegal organization as a non-member." They were targeted by security forces for their human rights related activities and informing their clients in police custody about their right to remain silent. It was revealed during the trial that the investigation was conducted and the indictment was drafted by officers and judges who were members of the Fethullah Gülen organization. The Court of Cassation's 16<sup>th</sup> Criminal Chamber approved the verdict on 7

<sup>33</sup> <https://www.ihd.org.tr/gencaga-karafazliya-yapilan-silahli-saldiriya-kiniyor-olayin-tum-yonleri-ile-aydinlatilmasini-istiyoruz/>

December 2016. The court also rejected the request for revision of the ruling. The appeal lodged before the Constitutional Court is still under examination. The procedures concerning the appeal for the sake of law at the Ministry of Justice have not been finalized either. Meanwhile Hasan Anlar and Filiz Kalaycı had to leave Turkey, Halil İbrahim Vargün is serving his sentence in Kırıkkale F-Type High Security Prison.

An investigation was initiated into İHD's Honorary Board member Ragıp Zarakolu claiming that he taught a course with an "organizational" content at the politics academy of the Peace and Democracy Party and was charged with "aiding and abetting an illegal organization" under Article 314 of the TPC and Article 7 § 1 of the ATC. Mr. Zarakolu was released pending trial on 10 April 2012 and had to leave Turkey.

İHD's Van Branch executive attorney Cüneyt Caniş was sentenced to 15 years imprisonment at a trial brought up with charges of "membership in an armed organization" under Article 314 of the TPC and Article 7 § 1 of the ATC due to his participation in press conferences held on days like World Peace Day, Human Rights Week along with assemblies and rallies held after some social events. Cüneyt Caniş, too, had to leave Turkey.

İHD's Ankara Branch executive Mustafa Sarısülük had to go abroad because of numerous investigations and lawsuits brought against him for violating Law No. 2911 due to his press statements before courthouses where a police officer that killed his brother Ethem Sarısülük during the Gezi Park Protests stood trial.

İHD's Bingöl Branch executive and reporter Edip Kaynar stood trial for "disseminating propaganda for an illegal organization" under Article 7 § 2 of the ATC because of his social media post that said "A period of repression is looming in, I would be surprised if I wasn't taken under police custody," photographs he shared about the Kobane Resistance, and his statement "We salute the resistance, they will be the victors." He went abroad during the trial.

A lawsuit was brought against İHD's former Hakkari Branch chairperson İsmail Akbulut for "disseminating propaganda for an illegal organization" under Article 7 § 2 of the ATC because of his participation in press conferences held to protest military fortresses called *kalekol* built in Hakkari. Further, another lawsuit was launched for "membership in an illegal organization" about the same matter and the two lawsuits were then merged. Mr. Akbulut was convicted of the latter charge. He had to leave Turkey during this process.

İHD's former Adana Branch chairperson Ethem Açıkalın read a statement at a press conference held by Adana Rights and Freedoms Front Representative Office on 17 December 2007. The statement was about Kevser Mızrak who was killed at a house in Ankara on 10 December 2007. Mr. Açıkalın was later detained on 23 January 2008 and was released pending trial after 5 months of detention. A lawsuit was brought against Mr. Açıkalın for "membership in an illegal organization." He was sentenced to 3 years imprisonment by Adana 1<sup>st</sup> Penal Court of First Instance for "inciting the public to hate and enmity" on 27 October 2009 within the scope of another lawsuit brought against him because of his statements aired on Roj TV. Ethem Açıkalın had to go abroad following these developments.

The persons listed above are not the only İHD executives and members who had to become forced refugees. Only specific examples were selected to reveal the severity of the situation.

# Investigations into İHD's Central Office and Its Central Executive Board

The Human Rights Association was established on 17 July 1986 by 98 human rights defenders including families of prisoners, authors, journalists, lawyers, architects, engineers, and academics.

The Chief of Staff notified the Ministry of the Interior on 25 April 2016 claiming that the "4 reports drafted by the Human Rights Association, Human Rights Foundation of Turkey, Mesopotamia Lawyers Association, Lawyers for Freedom Association, Foundation for Society and Legal Studies (Toplum ve Hukuk Araştırmaları Vakfı-TOHAV), Asrın Law Office, Diyarbakır Bar Association, Agenda: Child! Association, Trade Union of Public Employees in the Healthcare and Social Services (SES) and Association for Solidarity with the Oppressed (Mazlumlarla Dayanışma Derneği-Mazlumder) incorporated baseless and defamatory statements about the activities of the Turkish Armed Forces (TAF) which could be used in the future in judicial processes against the TAF personnel, which qualified as grounds for propaganda of the separatist terrorist organization in the international arena, which included trumped up allegations and the activities of the organizations in question should be inquired to prevent acts against legislation and to initiate judicial processes into unjust, defamatory and accusatory criminal acts, including those that qualified as propaganda for the separatist terrorist organization, and those who participated in such acts" and sent the observation reports to the Ministry of the Interior and Ministry of Justice.

General Directorate of Associations of the Ministry of Interior issued a letter on 23 June 2016 (No. 43669208-6622017) citing Article 19 of Law No. 5253 on Associations with the following provision "In cases deemed necessary, the Interior Minister or local administrative authority may audit whether the associations conduct their activities in parallel with the objectives stated in their statutes and whether records and books of associations are kept in pursuant of the legislation" and an associations auditor was assigned on 23 June 2016 by the general directorate following the consent of the Ministry of Interior dated 16 June 2016. The assignment stated that the audit would begin at the Human Rights Association and the points referred to in the Chief of Staff's notification letter would be inquired into.

The audit started at the İHD central Office on 27 June 2016 and lasted for about three months. At the end of the audit, the auditor wrote a letter to the İHD asking for information and documents pertaining to the aftermath of 1 November 2014. İHD sent the asked information and documents on 30 June 2016.

The auditor drafted an audit report on 20 June 2017 based on their on-site audit at the İHD central office and the audit of information and documents sent by İHD.

The audit report, covering activities between 1 November 2014 and 21 September 2016, put forth the following allegations:

- Bank account summaries pertaining to the years 2014 and 2015 were not recorded in the financial books and the local authorities were not notified of the international funds obtained,
- **The association's executive board delivered a decision deemed to infringe upon Article 301 of the TPC;** the statement "[It was decided that] İHD Central Committee against Racism and Discrimination to hold rallies and events and issue a public statement that will raise consciousness about the commemoration, recognition and compensation for the victims of genocide on the occasion of the Centenary of the Armenian-Syriac Genocide; to campaign for the recognition of genocide by issuing a joint declaration by İHD and HRFT together with FIDH and a civil society organization in Armenia [...]" constituted an offense under Article 301 of the TPC which prescribes the provision that "A person who publicly degrades the Turkish Nation, State of the Turkish Republic, Turkish Grand National Assembly, the Government of the Republic of Turkey and the judicial bodies of the State shall be sentenced to six months to two years imprisonment;" members of the executive board who signed the above decision should be reported to the Ankara Chief Public Prosecutor's Office,

- **A motion that was evaluated to have violated Article 301 of the TPC was tabled and adopted at the ordinary general assembly of the association held on 1-2 November 2014.** The following motion was put on the agenda by the council and adopted by the general assembly; it is an offense under Article 301 of the TPC, therefore, Ankara Chief Public Prosecutor's Office should be notified about the executive board members who signed the motion in order to prosecute them: "2015 marks the centenary of the Armenian Genocide. The Armenian Genocide was the main genocide committed in the Middle East in the 20<sup>th</sup> century. Genocides against Nestorians, Syriacs, Chaldeans, Pontus and Aegean Greeks, Yazidis were extended to the Kurds and other Anatolian-Mesopotamian peoples. The mentality that had said back in 1915 that 'those who kill five Armenians shall go to heaven,' has risen again today by the hand of 'Salafi Islam'... While the grandchildren of the Armenian survivors of the 1915 genocide demand on the centenary of the genocide 'recognition, apology, facing facts along with return to their ancestor's land, to their ancient homeland,' the state of Turkey has been making large-budgeted plans for disinformation; racist institutions have been into such nauseating preparations like organizing a 'Photography Contest on Armenian Atrocities' on the anniversary of Hrant Dink's death. We, the undersigned delegates, propose that İHD's central office and its branches undertake activities like workshops, conferences, symposiums, panels, forums, social and cultural events and the like for the recognition of, apology for, facing facts, pecuniary and non-pecuniary compensation for the Armenian Genocide; take part in and support such works conducted to this end and fight against the genocidal mentality that has risen again through this historical perspective."
- **The association delivered a decision evaluated to be in violation of the TPC.** The following statements violated the TPC, therefore, Ankara Chief Public Prosecutor's Office should be notified about the executive board members who signed the decision: "[It was decided that] 4- A delegation be formed, chaired by the İHD chairperson, in order to observe on site the situation of asylum-seekers who had to take refuge in Turkey after attacks against Syria, Rojava, Kobane canton by a mob structure called ISIS, to visit camps, to see on site the 'Kobane Resistance' that forced back ISIS attacks and meet with authorities; and to issue a report following the visit; 5) A visit to the Iraq-Kurdistan Region be organized by the İHD central office and the 'Monitoring Commission for the Peace and Resolution Process,' which has been active since May 2013, headed by the İHD chairperson, in order to obtain information about ISIS attacks from the Kurdistan Parliament, to visit various camps notably the Mahmur Camp, and to meet with KCK co-chairpersons about the peace process; and information about the meetings be shared with the public by a report."
- **The association's charter incorporated unconstitutional and unlawful provisions.** It was evaluated that the statement "Upholds the right of peoples and nations to self-determination," set forth in Paragraph B/13 entitled the Principles of the Association, was against Paragraph 5 of the Preamble and Articles 3, 5 and 14 of the Constitution. Further the statement "Defends the right to education in one's own language and the right to access to and provision of public services in one's own language," set forth in Paragraph B/15 was found to be against Articles 3 and 42 of the Constitution. The statement "Regards freedom of expression and faith as inviolable rights. Defends them unconditionally and without limitation. Recognizes and defends the right to conscientious objection," set forth in Paragraph B/10 entitled the Principles of the Association, was found to be in violation of Article 72 of the Constitution, Article 1 of Military Service Law, and Article 318 of the TPC. Therefore, it was deemed necessary to notify Ankara Chief Public Prosecutor's Office to ask for the dissolution of the association under Articles 30 § b and 32 § p of Law No. 5253 on Associations and Article 89 of the Civil Law.
- **Press releases issued by the association incorporated statements deemed to be in violation of Article 301 of the TPC.** The following constitute offenses under Article 301 of the TPC, which prescribes "A person who publicly degrades the Turkish Nation, State of the Turkish Republic,



Turkish Grand National Assembly, the Government of the Republic of Turkey and the judicial bodies of the State shall be sentenced to six months to two years imprisonment,” thus, those executive board members who signed this decision should be notified to the Ankara Chief Public Prosecutor’s Office for prosecution:

- Press release by İHD entitled “We Sent a Letter to the Swiss Ministry of Justice in the name of All Anti-Racists in Turkey” dated 24 February 2014,
  - Statement by İHD entitled “Newroz Piroz Be...” dated 20 March 2015,
  - Manifesto by İHD entitled “Memory and Justice on the Centenary of the Armenian Genocide” dated 24 April 2015,
  - Statement by İHD entitled “We Commemorate Hrant Once Again with Love” dated 19 January 2015,
  - “January-June 2015 Activity Report” by İHD’s Adana Branch,
  - Press release by İHD’s Çanakkale Branch entitled “It Will Not Happen If You Do not Face Facts” dated 18 January 2015,
  - Announcement of the “Centenary of the Armenian Genocide Commemoration Program” organized by İHD’s Diyarbakır Branch,
  - 2015-2016 activity reports by İHD’s Adana Branch,
  - Joint statement by İHD and Truth, Justice and Memory Center on 16 October 2015,
  - Press release by İHD’s Çanakkale Branch on 24 April 2016,
  - Press release entitled “İHD Receives ‘Medal of Courage’ Presented by the Coordination Council of Armenian Organizations of France” by İHD dated 2 February 2016,
- **Certain statements used in press releases and observation reports issued by the association was in violation of the TPC:**
- Press release by İHD “Police Brutality Keeps on Claiming Lives; Murderer of Uğur Kurt Should be Found” dated 23 May 2014,
  - İHD’s 30 December 2014 report on the incidents of 27 December 2014 in Şırnak’s Cizre District,
  - İHD’s “Inquiry and Assessment Report on the Student Incidents at Erzurum Atatürk University” issued on 13 February 2014,
  - İHD’s Hatay Branch report of 9 April 2014 on “Kesab -Observation Report on Armenian Refugees,”
  - İHD Ağrı Representative Office report entitled “Ağrı-Diyadin-Tendürek,”
  - Joint statement of 26 May 2015 by İHD and HRFT entitled “Today is 26 June: The Day to Combat Torture and International Day in Support of Victims of Torture,”
  - İHD statement of 28 October 2015 entitled “A Positive Response Should Be Given to the Inaction Decision, Election Security Should Be Provided,”
  - İHD statement of 20 March 2015 entitled Statement by İHD entitled “Newroz Piroz Be...”
  - İHD statement of 10 July 2015 entitled “We Condemn the Intervention into Gay Pride,”
  - İHD press release of 5 March 2015 entitled “Women in Turkey and the World,”
  - İHD statement of 23 May 2015 entitled “Let the Lost Be Found, the Perpetrators Prosecuted,”
  - İHD statement of 5 October 2015 entitled “This Dirty War Should Immediately Be Stopped,”
  - İHD statement of 15 December 2015 entitled “Lift the Blockade on Kurdish Cities,”
  - İHD statement of 6 June 2015 entitled “We Condemn the Bombed and Armed Attack against HDP, and Those Responsible,”
  - İHD statement of 5 February 2015 entitled “Withdraw the Bill on Internal Security,”
  - İHD press release of 16 July 2015 entitled “Human Rights in Turkey on the 29<sup>th</sup> Anniversary of İHD,”

- İHD press release of 9 December 2015 entitled “Human Rights Are an Inviolable, Inalienable, Nondeferrable Whole and Are Universal! Peace is a Human Right, We Want Peace!”
- Joint press release by İHD and Truth, Justice and Memory Center on 16 October 2015,
- İHD statement of 14 November 2015 entitled “What Would Those Who Attacked HDP Deputies in Silvan and Hakkari Do to Civilian People!”
- İHD press release of 24 December 2015 entitled “New Massacres Can Be Prevented by Facing the Past: 37<sup>th</sup> Anniversary of Maraş Massacre,”
- İHD press release of 20 January 2015,
- İHD press release of 21 July 2015,
- İHD press release of 19 December 2015 entitled “19 December Is a Day Remembered as a Disgrace in the History of Prisons,”
- İHD press release of 9 October 2015 entitled “Violations of the Right to Life against Civilians Are War Crimes, Stop Civilian Deaths,”
- İHD press release of 30 November 2015 entitled “Peace Envoy Tahir Elçi Murdered, Our Struggle for Peace Will Continue,”
- İHD Ankara Branch press release of 23 January 2015,
- İHD press release of 15 September 2015 entitled “Peace Watch,”
- İHD press release of 28 July 2015 entitled “Peace and Resolution Process is Vital, It Cannot Be Ended,”
- İHD press release of 15 January 2015 entitled “Prisons Sicken, They Kill...”
- İHD press release of 8 September 2015 entitled “Curfew in Cizre Should Immediately Be Lifted and Delegations Should Be Allowed to Enter the City,”
- İHD press release of 22 December 2015 entitled “Cizre, Silopi, Sur, Nusaybin and Dargeçit Risk Mass Murder. Do You Hear Our Voice?”
- İHD Adana Branch press release of 25 July 2015,
- Press release by İHD’s Çanakkale Branch entitled “It Will Not Happen If You Do not Face Facts” dated 18 January 2015,
- İHD Adana Branch press release entitled “Open Letter to the Republican People’s Party,”
- Joint statement by İHD and other organizations entitled “Peace Right Now for Children,”
- İHD press release of 11 October 2015 entitled “Humanity is under Blockade in Silvan,”
- İHD Adana Branch press release of 9 October 2015,
- İHD Adana Branch press release of 15 August 2015,
- İHD Batman Branch’s press release sent to the press by email on 17 January 2015 at 13:04,
- İHD report entitled “Violations between 21 July-28 July,”
- İHD report of 3 June 2015 entitled “Violations between 23 March-3 June 2015 against Political Parties due to 7 June 2015 Parliamentary Elections,”
- İHD’s “Observation Report on the Suicide Attack in Süruç on 20 July 2015 against SGDF-ESP-BEKSAV Groups,”
- İHD Diyarbakır Branch report on “Children Killed During the Conflict between 1988 and 2014,”
- İHD report of 12 August 2015 entitled “Inquiry Report on Mortality and Casualties during the Incidents in Şırnak’s Silopi District,”
- İHD report of 20 January 2015 entitled “Inquiry and Fact-Finding Report on the Incidents in Şırnak’s Cizre District and the Killing of Six Citizens during These Incidents,”
- İHD report of 19 August 2015 entitled “Allegations of Summary Execution against Civilians in Ağrı’s Diyadin District,”
- İHD’s Ardahan report,
- İHD report of 15 September 2015 entitled “Cizre (Curfew) Incidents,”
- İHD report of 19 February 2015 entitled “Erbil-Maxmur-Kandil Visit Report,”

- İHD report of 17 August 2015 entitled “İHD Doğubeyazıt Representative Office’s Report on Executions in Diyarin,”
- İHD annual activity report for 2015,
- İHD Adana Branch’s annual activity reports for 2014 and 2015,
- İHD Siirt Branch’s monitoring report on peace and resolution process,
- İHD Siirt Branch’s press release entitled “We Condemn Cizre Massacre and Demand Independent Investigation”
- İHD’s press release of 1 February 2016 entitled “Humanity is Dying in Cizre!”
- İHD’s press release of 13 May 2016 entitled “Stop Judicial Harassment against DBP Co-Chairperson Kamuran Yüksek and Elected Kurdish Politicians, Release the Detained,”
- İHD’s press release of 18 March 2016 entitled “Refugees’ Rights and Statuses Cannot be Negotiated,”
- İHD’s press release of 15 January 2016 entitled “Attacks against Civilians’ Right to Life on the Rise: A Warning to the Parties to Refrain from Humanitarian Law Violations,”
- İHD’s press release of 22 June 2016 entitled “Free Şebnem Korur Fincancı, Ahmet Nesin and Erol Önderoğlu,”
- İHD’s press release of 17 February 2016 entitled “We Oppose War in Turkey and Syria, No to War, We Want Peace, We Will Win Peace,”
- İHD’s press release of 21 March 2016 entitled “What Is Happening in Yüksekova? An Open Call to the Governor of Hakkari and District Governor of Yüksekova,”
- İHD’s 2015 Rights Violations in Turkey Report of 9 March 2016,
- İHD’s press release of 18 February 2016 entitled “We Condemn the Massacre in Ankara’s Merasim Street,”
- Joint press release by İHD, HRFT and SES of 8 February 2016 entitled “We Demand Independent Investigation into Cizre Massacre,”
- İHD’s report of 8 January 2016 entitled “Rights Violations Report on the Curfew in Mardin’s Nusaybin District,”
- İHD’s report of 31 March 2016 entitled “79-Day Curfew in Cizre Observation Report”

The auditor concluded that due to the above-mentioned points, which were claimed to have been in violation of Articles 301 and 302 of the TPC along with Article 7 of the ATC, Ankara Chief Public Prosecutor’s Office should be notified for an inquiry into the association within the scope of general provisions.

At the end of the audit, Ankara Governor’s Office’s Directorate of Associations sent the audit report and its appendices to Ankara Chief Public Prosecutor’s Office on 14 November 2017 with a cover letter informing the office about the necessary judicial processes to be taken against İHD Co-Chairperson Öztürk Türkdoğan and executive board members along with members who had tabled the motions in question, namely Sevim Salihoğlu, Hasan Anlar, İsmail Boyraz, Osman İşçi, Hüseyin Küçükbalaban, Osman Süzen, Adbüsselam İncegören, Necla Şengül, M. Raci Bilici, Vetha Aydın, Serbey Köklü, Hüsnü Öndül, Medeni Aygöl, Volkan Görendağ, Meral Çildir, Hatice Can, Fatma Geyik, Mahmut Konuk, M. Ali Tosun, Avni Kalkan, Adnan Vural, Mustafa Yaşar, B. Hayrettin Yılmaz, Hüsamettin Özdem, Tayfun İşçi, Selma Güngör, Cengiz Mendillioğlu, H. İbrahim Özdemir, Zana Aksu, Serdar Batur, Gülay Koca Öztürkoğlu, Mihdi Perinçek, Veysel Ocak, Cihan Halıcı, Ali Gök, Adile Erkan, Cuma Gürsoy, Selman Günbay, Cüneyt Durnaoglu, Akın Birdal, Rıza Dalkılıç, Necla Şengül, Ömer Ayaz, Songül Erol Abdil, and Fatma Geyik.

## Judicial Processes Based on the Audit Report

- I. Ankara Chief Public Prosecutor's Office launched an investigation (No. 2017/8007) into İHD on suspicion of violating Article 301 of the TPC while the above-mentioned persons were called in and through a law enforcement officer who served them in person to give their statements. Sevim Salihoğlu, İsmail Boyraz, Osman İşçi, Hüseyin Küçükbalaban, Hüsnü Öndül, Hatice Can, Fatma Geyik, Mahmut Konuk, M. Ali Tosun, Avni Kalkan, Adnan Vural, B. Hayrettin Yılmaz, Tayfun İşçi, Selma Güngör, Adile Erkan and Cuma Gürsoy, who were among the persons mentioned in the investigation file as suspects, gave their statements on 8 May 2018 at Ankara Police Department's Directorate of Security, Bureau of Public Security. İHD Co-Chairperson Öztürk Türkdoğan submitted his written statement to Ankara Chief Public Prosecutor's Office. Mr. Türkdoğan argued the following in his statement in brief:

It was understood that the Chief of Staff had undertaken an activity defined as "memorandum" about numerous institutions, including the İHD; İHD lodged a complaint within the scope of the trial numbered 2014/144 E at Ankara 5<sup>th</sup> Heavy Penal Court about this matter; the association had long been struggling with such complaints lodged by the Chief of Staff; further Ankara Chief Public Prosecutor's Office's Press Bureau was conducting an investigation (No. 2016/15529) into the chairpersons and executive board members of numerous institutions, including the association, upon a complaint by the Chief of Staff; the reports cited by the Chief of Staff were ones taken seriously and referred to by notably the Council of Europe Human Rights Commissioner, the Venice Commission, the UN Office of the High Commissioner for Human Rights, and the EU Commission; moreover these reports were sent to judicial and administrative authorities with necessary requests; observation reports were documents that put forth various allegations asking them to be investigated; there were certain shortcomings in financial documents due to basic mistakes yet these were minor procedural shortcomings and the auditor indicated some points within the audit process, in turn, the association would pay utmost care not to repeat the same mistakes as there was no intentional financial irregularity;

The executive board decision of 23 March 2015 (No. 97) along with the motion tabled and the related decision delivered at the ordinary general assembly held on 1-2 November 2014 were declarations of intent for the recognition of the Armenian Genocide; some press releases also incorporated statements to this end and it was alleged that such statements were in violation of Article 301 of the TPC on the grounds that they denigrated the historical and moral values of the Turkish Nation but neither the said article was in compliance with the ECHR standards nor the decision and the statements in question constituted an offense under the current law; yet if an investigation would be conducted under Article 301 of the TPC, the Ministry of Justice needed to grant authorization;

İHD Chairperson Öztürk Türkdoğan was also among the "wise people," formed by the government in 2013 within the scope of the resolution process for the Kurdish issue; İHD conducted numerous activities and events to this end; the association had always been conducting works for the democratic and peaceful resolution of the Kurdish issue and for the promotion of the right to peace; he, as the chairperson of the association, travelled time and again in 2013, 2014 and 2015 to the city of Kobane for inquiries upon the permission of local authorities on the border with the information and consent of the government itself; the offense of dissemination propaganda for a terrorist organization would have been constituted by statements "that legitimize or praise a terrorist organization's methods involving force, violence or threat or encourage others to resort to

*such methods*” according to Anti-Terrorism Law No. 3713, yet the activities and decisions in question neither disseminated terrorist propaganda nor praised such organization members nor intended to incite the public to hatred and enmity; the goal was to contribute to the resolution process and to observe as the chairperson was serving on the Wise People Committee during the peace and resolution process;

The charter of the association had been approved by Ankara Governor’s Office, the principles set forth in the charter were general and universal, thus, their presence in the charter did in no way constituted an offense;

Consequently, the points made in the audit report incorporated no offense, therefore, the investigation should be ended with a non-prosecution decision.

- II. **In 2019, within the scope of Ankara Chief Public Prosecutor’s Office’s investigation (No. 2017/8007) into the association a separate file was opened up only about İHD’s Co-Chairperson Öztürk Türkdoğan under Article 7 § 2 of the ATC for disseminating propaganda for a terrorist organization (No. 2019/106816).** Mr. Türkdoğan gave his statement within the scope of this new file and requested that a non-prosecution decision should be delivered, as the association’s activities were not unlawful.
- III. **Further, Ankara Chief Public Prosecutor’s Office initiated another investigation (No. 2019/105247) into Mr. Türkdoğan for violating the Law on Associations regarding the financial shortcomings cited in the audit report.** The Office proposed on 28 August 2019 that they would deliver a non-prosecution decision if the pre-payment were transferred.
- IV. **Along with the above-mentioned criminal investigations into the association, the Ministry of the Interior brought a civil lawsuit against İHD on 30 November 2017 at Ankara 5<sup>th</sup> Civil Court of First Instance (No. 2017/598) for the annulment of decisions delivered at the 17<sup>th</sup> ordinary general assembly of the association.** The grounds for the lawsuit were stated to be the audit report of 20 June 2017 (No. N.Ç 45/17) drafted by the auditor for associations at the end of their audit. The report had underlined that the motions in question tabled at the 17<sup>th</sup> ordinary general assembly of İHD held on 1 November 2014 were signed by less than one tenth of members who were present at the assembly, thus, they should be annulled.

#### **Among the investigations and lawsuits against İHD’s legal personality, its executives and members;**

- I. **Within the scope of Ankara Chief Public Prosecutor’s Office’s Press Bureau’s investigation (No. 2017/8007),** the Ministry of Justice was asked to grant authorization for investigation under Article 301 of the TPC for İHD Co-Chairperson Öztürk Türkdoğan and members of the executive board along with members who tabled the motions in question, namely, Sevim Salihoğlu, Hasan Anlar, İsmail Boyraz, Osman İşçi, Hüseyin Küçükbalaban, Osman Süzen, Adbüsselam İncegören, Necla Şengül, M. Raci Bilici, Vetha Aydın, Serbay Köklü, Hüsnü Öndül, Medeni Aygül, Volkan Görendağ, Meral Çıldır, Hatice Can, Fatma Geyik, Mahmut Konuk, M. Ali Tosun, Avni Kalkan, Adnan Vural, Mustafa Yaşar, B. Hayrettin Yılmaz, Hüsamettin Özdem, Tayfun İşçi, Selma Güngör, Cengiz Mendillioğlu, H. İbrahim Özdemir, Zana Aksu, Serdar Batur, Gülay Koca Öztürkoğlu, Mihdi Perinçek, Veysel Ocak, Cihan Halıcı, Ali Gök, Adile Erkan, Cuma Gürsoy, Selman Günbay, Cüneyt Durnaoğlu, Akın Birdal, Rıza Dalkılıç, Necla Şengül, Ömer Ayaz, Songül Erol Abdil, and Fatma Geyik; but a non-prosecution decision had to be delivered by the Ankara Chief Public Prosecutor’s Office’s Press Bureau on 27 January 2020 (Investigation No. 2020/1447; Decision No. 2020/11239) because the Ministry of Justice’s General Directorate of Criminal Affairs did not authorize an investigation on 15 November 2019.
- II. **Within the scope of Ankara Chief Public Prosecutor’s Office’s Terrorist Offenses Inquiry Bureau’s investigation (No. 2019/106816) only into İHD Co-Chairperson Öztürk Türkdoğan under Article 7 §**

- 2 of the ATC for disseminating terrorist propaganda** was also concluded with a non-prosecution decision on 6 December 2019 because the material elements of the offense had not been formed.
- III. **Ankara Chief Public Prosecutor's Office's investigation into the association (No. 2019/105247) for violating the Law on Associations** was also finalized with a non-prosecution decision on 30 September 2019 as the proposed sum was paid.
- IV. **The lawsuit brought against İHD by the Ministry of Interior at Ankara 5<sup>th</sup> Civil Court of First Instance (Merits No. 2017/598) for the annulment of decisions delivered at the association's 17<sup>th</sup> ordinary general assembly**, was dismissed under Article 83 of the Turkish Civil Code as the annulment case had not been brought within a period of three months by the governor's office and members although they were notified of the results of the 17<sup>th</sup> ordinary general assembly within a month. The Ministry of Interior appealed the case and the file is now pending for review at the related chamber of the Ankara Regional Court of Justice.

## IHD's Demands

- Introduction of necessary legislation that will provide for the implementation of the United Nations Declaration on Human Rights Defenders, adopted by the UN General Assembly on 9 December 1998 (No. 53/144), into domestic law;
- Harmonization of the constitutional and legal system with the standards set forth in supranational human rights documents based on respect for human rights, democracy, rule of law, minority rights; thus, drafting a new and democratic constitution;
- Based on the fact that the prime responsibility and duty for the protection of human rights lies with the states, all public officials, notably those in the judiciary, should act respectful of human rights in practice;
- The following bodies within Turkey's administrative structure should be reconstructed with a holistic perspective to human rights; in doing so dialogue with human rights organizations should be established and the related UN Paris Principles<sup>34</sup> should be taken as basis,
  - The GNAT Human Rights Inquiry Commission,
  - The Ombudsman Institution,
  - Human Rights and Equality Institution of Turkey,
  - Personal Data Protection Board,
  - Commission for the Supervision of Law Enforcement,
  - Provincial and district human rights boards,
  - Board for the 10<sup>th</sup> Year of Human Rights Education,
  - Monitoring boards for prisons,
  - Commission for the Determination of Terror-Related Damages
  - The GNAT Petitions Commission,
  - The Board of Review of Access to Information,
  - Patients' rights boards.
- For us, it is quite clear that the problems Turkey is facing are rooted in the failure to comprehend the concepts of "human rights" and "democracy" and the ensuing failure to implement them. Further, the failure to resolve the Kurdish issue and put an end to conflict constitute the primary block before the establishment of "respect for human rights" and "democratic institutions and rules." Therefore, steps should be taken to resolve all problems through peaceful methods based on respect for the right to peace and a genuine conflict resolution process should be initiated;
- First and foremost, all human rights defenders facing investigations and prosecution, those standing trial on remand because of their human rights advocacy in Turkey should be released;
- Actors, who elicit the prosecution of human rights defenders or those who attempt to intimidate them through threats and repression, should be identified by effective investigation methods; they should be effectively prosecuted, and the policy of impunity should be ended;
- Investigations and prosecutions against human rights defenders should be rendered visible through the monitoring of the international community;
- Human rights organizations' capacity-building efforts should be strengthened;
- A judiciary structure in line with the principle of rule of law should be provided; trust in justice should be re-established; heavy penal courts and prosecutors' offices with special powers that had been formed by Board of Judges and Prosecutors should be closed down;

---

<sup>34</sup> <https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>

- One of Turkey's most important problems is the subjective definition of terror. Turkey should re-define terrorist offenses in line with the UN Security Council's decisions and drop qualifying offenses other than these as terrorist offenses. Turkey should differentiate between those who resort to violence and who do not, and the criminal legislation should be amended to this end. The Anti-Terror Code should be repealed.
- Everyone's rights to freedom of expression, peaceful assembly and protest, association should be granted the guarantees enshrined in international conventions;
- The authorities should in no time provide for the visit of the UN Special Rapporteur on the Situation of Human Rights Defenders, Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and the Independent Expert on Minority Issues to Turkey and the necessary regulations should be introduced on the points these special procedures might make in their reports;
- The repression of freedom of expression through legal and administrative ways bring along major aggrievement for people. Offenses committed through the media and the related convictions should be delayed/revoked until fundamental regulations on the issue are put into effect; legal regulations on freedom of expression should be introduced immediately;
- The UN Declaration on Human Rights Defenders should be made a convention/covenant, while Turkey should take immediate measures for the implementation of the declaration.