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Information Note on Criminal Proceedings Brought against Human Rights Association Chairperson Öztürk Türkdoğan due to His Activities in His Capacity as Chairperson

1- “Membership in an armed organization” charges:

Ankara 19th Heavy Penal Court (2021/280 Merits): On 15 February 2021, İHD issued a press statement on the death of 13 civilians in a military operation launched in the Gare region of northern Iraq and, a day later, on 16 February 2021 the Interior Minister, Süleyman Soylu, addressed the members of the parliament at the Grand National Assembly of Turkey informing them about the incident attacking İHD and its executives and used the phrase “*canı çıkacısı*” [a curse commonly used wishing great evil, misery and death befall on someone] about the association. In the aftermath of this address, İHD Chair attorney Öztürk Türkdoğan was taken into custody early in the morning around 6.30 on 19 March 2021 following a police raid to his residence. The public prosecutor’s office questioned Mr. Türkdoğan the same day and he was released under judicial control (handing in his signature every fortnight at a police station) and rendered an international travel ban.

The content of the investigation merely consisted of statements by Mr. Türkdoğan, in his capacity as İHD’s chairperson, about Abdullah Öcalan’s prison conditions who is incarcerated in İmralı Prison and the fact that these statements were reported on a news site called the ANF. Mr. Türkdoğan, in his capacity as İHD’s chairperson, has repeatedly talked to the European Committee for the Prevention of Torture (CPT), which visited Turkey in order to observe the conditions in İmralı Prison upon applications lodged by Abdullah Öcalan’s lawyers before İHD on different dates, as well as the Minister of Justice Abdulhamit Gül and other officials from the ministry conveying his statements reported by the press to the authorities as well.

Further, prisons and rights violations in prisons constitute one of the primary fields of work for İHD. Yet, Mr. Türkdoğan’s statements in his capacity as İHD’s chairperson were evaluated to fall under “membership in an armed organization” regulated under Article 314/2 of the Turkish Penal Code (TPC), Ankara Chief Public Prosecutor’s Office drafted an indictment to this end, and Ankara 19th Heavy Penal Court admitted this indictment. The first hearing of this case will be held on 22 February 2022 at 09.15.

The Constitutional Court established in its judgment in the case of *Zübeyde Füsün Üstel and*

Human Rights Association (İnsan Hakları Derneği-İHD) is a non-governmental, independent, and voluntary body. The association, which was founded in 1986 by 98 human rights defenders, today has 27 branches, 6 representative offices, and ~8,000 members. İHD is the oldest and largest human rights organization in Turkey and its “sole and specific goal is to promote ‘human rights and freedoms.’”

Others (2018/17635)¹ that domestic instance courts' rulings holding that individuals acted in line with instructions of an organization without providing evidence that went beyond assumption that they "acted in line with directions given by organization leaders" were unlawful. Similarly, ECtHR Grand Chamber held in its judgment in the case of *Selahattin Demirtaş v. Turkey* (No.2) (14305/17)² that terrorism-related offences under Article 314 of the TPC were not "foreseeable" within the scope of the European Convention on Human Rights (ECHR). This judgement often cites Venice Commission's opinion report on Turkey.³

Nevertheless, the public prosecutor's office drafted an indictment about Mr. Türkdoğan charging him with "membership in an armed organization" (Art. 314/2 of the TPC) on the grounds of his statements that necessarily fell under human rights advocacy and the reporting of these statements by some news sites, and the local court admitted this indictment.

2- Court Cases following İHD's Audit

Office of the Civil Inspector audited İHD's central office in February 2020 with respect to the association's administrative and financial works and activities with the Interior Ministry's approval of 23 January 2020 (No. 608) and the Civil Inspection Board's task order of 13 February 2020 (No. 873) along with the Directorate General for Relations with Civil Society's task order of 18 February 2020 (No. 1291). Upon the completion of the audit, criminal charges were filed against the association before Ankara Chief Public Prosecutor's Office in accordance with the Civil Inspection Board's audit report of 7 July 2020 (No. 175/8) covering the period between 21 September 2016 and 6 March 2020 during the auditing of works and procedures, book records and documents of the Human Rights Association (registry number 06-030-055) under the following charges:

- 1- İHD's statements on the recognition of the Armenian Genocide released on 24 April 2017⁴ and 24 April 2018⁵ were against Article 301 of the TPC,
- 2- İHD's statement published on the association's website on 29 June 2018⁶ incorporated incriminating statements about the Interior Minister Süleyman Soylu.

The Press Bureau at the Ankara Chief Public Prosecutor's Office, then, launched an investigation (No. 2020/115570) following the filing of criminal charges. Two separate cases were brought against Mr. Türkdoğan as a result of this investigation. These court cases are:

Ankara 24th Criminal Court of First Instance (2022/24 Merits): An indictment was drafted about Mr. Türkdoğan on the grounds that the statement entitled "Stop Denying the Armenian Genocide for Justice and Truth"⁷ published on İHD's website on 24 April 2017 was against Article 301 of the TPC that proscribes "degrading the Turkish nation, state of the Turkish Republic and institutions and organs of the state" while the indictment was admitted by

¹ <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/17635>

² <https://hudoc.echr.coe.int/tur?i=001-207173>

³ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)002-e)

⁴ <https://www.ihd.org.tr/adalet-ve-hakikat-icin-ermeni-soykiriminin-inkarina-son/>

⁵ <https://www.ihd.org.tr/hakikat-ve-adalet-icin-ermeni-soykirimi-ile-yuzlesme/>

⁶ <https://ihd.org.tr/en/press-statement-for-immediate-release-interior-minister-suleyman-soylus-public-statements/>

⁷ <https://www.ihd.org.tr/adalet-ve-hakikat-icin-ermeni-soykiriminin-inkarina-son/>

Ankara 24th Criminal Court of First Instance.⁸

However, the Bureau for the Investigation of Offences Committed via the Press at the Ankara Chief Public Prosecutor's Office had rendered a non-prosecution decision (investigation no. 2020/14647, decision no. 2020/11239) about İHD's Central Executive Board members within the scope of an investigation initiated into them when the Ministry of Justice did not grant an investigation permission on the grounds that "legal elements of an offense" were not present. On 23 March 2015, İHD's Central Executive Board had rendered a decision to demand the recognition of Armenian Genocide by issuing a joint declaration⁹ with other civil society organizations in order to hold awareness-raising events and issue such statements on such issues as the commemoration of genocide, recognition of genocide, reparation for the victims on the occasion of the centenary of the Armenian Genocide. Similarly, ECtHR's judgement about the Armenian Genocide in the case of *Altuğ Taner Akçam v. Turkey* (27520/07),¹⁰ within the scope of which the European court found Turkey in violation of the ECHR and rendered just satisfaction, is pending under supervision before the Committee of Ministers and the government is still submitting action plans about this case.

The reason why the Ministry of Justice has now granted investigation permission about the very same statement in question in spite of the supervision before the Committee of Ministers and the previous non-prosecution decision rendered for İHD executives can only be explained by the current political conjuncture. Such state of affairs reveals the fact that crime and punishment in Turkey may very well change according to the political circumstances.

Ankara 60th Criminal Court of First Instance (2022/23 Merits): An indictment was drafted about Mr. Türkdoğan requesting that he be convicted of the offense of insult regulated under Article 125/3 of the TPC on the grounds of statements implying a public officer under Article 6 of the TPC in the association's statement on the Interior Minister Süleyman Soylu's public statements, which were published on İHD's website on 29 June 2018.¹¹ It was alleged in the indictment that the association's statements about the minister were of defamatory intent to harm his honor, reputation or dignity while this indictment was also admitted by Ankara 60th Criminal Court of First Instance. The first hearing of the case will be held on 18 February 2022 at 11.45.

In the statement, Interior Minister Süleyman Soylu's public statements before and after the 24 June 2018 elections with threatening and insulting content targeting individuals or politicians, whose trials were still pending, were criticized. While the public prosecutors' offices should have initiated investigations into the minister who targeted citizens, civil society organizations and politicians with threats and insults in his statements, the fact that a lawsuit has been brought against İHD's chair following a criminal investigation on the grounds of this statement by İHD, which indeed was exercising its right to criticism, is utterly incomprehensible in a state governed by rule of law. The fact that criticism directed at the Interior Minister was regarded to be an insult while bringing a lawsuit against Mr. Türkdoğan reveals how fragile is

⁸ No hearing date has been set yet as the trial will be conducted as per the simplified trial procedure under Article 251 of the Code of Criminal Procedure (CCP).

⁹ <https://ihd.org.tr/en/100-years-after-the-armenian-genocide-a-manifesto-for-memory-and-justice/>

¹⁰ <https://hudoc.echr.coe.int/tur?i=001-107206>

¹¹ <https://ihd.org.tr/en/press-statement-for-immediate-release-interior-minister-suleyman-soylus-public-statements/>

the will for reform at the Ministry of Justice. Moreover, the ECtHR in its recent judgment in the case of *Ömür Çağdaş Ersoy v. Turkey* (19165/19)¹² held that an increased protection via special laws on insult under Article 125/3 of the TPC (insulting a public officer) was in principle against the spirit of the ECHR. The ECtHR even asked Turkey to amend Article 299 of the TPC that regulated the offense of insulting the president in its judgment in the case of *Vedat Şorli v. Turkey* (42048/19)¹³

¹² <https://hudoc.echr.coe.int/tur?i=001-210416>

¹³ <https://hudoc.echr.coe.int/tur?i=001-212394>