

İHD Co-Chairperson Öztürk Türkdoğan's Defense
Presented before the Ankara 19th Heavy Penal Court
on 22 February 2022

TO THE ANKARA 19TH HEAVY PENAL COURT,

a) Summary of the Indictment

The indictment charges me with “membership in an illegal armed terrorist organization” under Article 314/2 of the Turkish Penal Code (TPC).

The indictment talks about the initiation of the investigation [into me] between pages 20 and 25. Accordingly, it mentions calls by the illegal armed organization before the military operation known as “Operation Peace Spring” launched by Turkish Armed Forces (TAF) in October 2019 into Northeastern Syria stating that various protests and events would be held in line with these calls, thus, an investigation was initiated into 12 suspects within the scope of the file. As is understood from the investigation documents, I was included in the investigation as the 12th person of interest.

As is understood from all the documents and information covered by the case file, an indictment, which is totally irrelevant to the event put forth as grounds for the initiation process of the investigation, was drafted. There is not even a speck of suggestion about me as one of the suspects concerning the organization of protests and events against the TAF's Operation Peace Spring. The authorities, however, tried to bring together evidence within the scope of the investigation in violation of the Code of Criminal Procedure (CCP).

As is understood from the investigation file, my phone was tapped between 5 November 2019 and 15 April 2020 under CCP Article 135 upon the request of the prosecutor's office and the ruling of the Criminal Peace Judgeship although there was no strong suspicion of commission of a crime whatsoever.

When [the authorities] failed to find anything that would provide grounds for the charge against me at the subsequent stages of the investigation, open sources were inquired and among the hundreds of press statements I have been making over the years they singled out only the ones about prisons, particularly those about hunger strikes by prisoners and isolation in prisons, while they attempted to come up with some trumped-up fiction that I had a link with the illegal armed organization by quoting my statements published by a news site called ANF. Yet, as is also understood from the investigation documents, my statements were those of the association while news sites and agencies quoted parts of my statements.

I was not allowed to exercise my legal rights based on my profession as a lawyer during the search of my residence within the scope of the investigation although I had stated that I was a lawyer, my cell phone and laptop that I was using for my professional activities as a lawyer were seized. The legal process about this is pending.

Only 3 of my photographs taken within the scope of my activities for the association found in my laptop, which was illegally seized without having its image obtained, were kept apart and an official report was drafted with comments. Yet, as can also be seen in these photos, these were from press conferences I took part in or I held in my capacity as the chairperson of the Human Rights Association (İHD) with the logo and banner of the association.

As is understood from the investigation file, the authorities yet again failed to present material evidence that could charge me although the Financial Crimes Investigation Board (MASAK) had launched an inquiry into my finances. I presented the necessary explanation about my economic status during the interview at the prosecutor's office, while no other claim could be put forth other than my severance payment from the trade union I was working for, bank statements about a house sale and money transfers from my clients for file costs as I am a practicing lawyer.

My tapped telephone conversations contained those about legal aid requests about persons taken into custody and my various press statements in my capacity as the chairperson of İHD and as a lawyer.

I have tried to briefly present my assessment of the points incorporated in the indictment above. I would like to note that it is not possible to charge and try anyone with these allegations under Article 314/2 of the TPC nor any other article in the TPC.

b) A Brief Note on the Human Rights Association and Human Rights Advocacy

The indictment should have been dismissed by your court as it is in violation of the provisions of the CCP. I would particularly like to state that the allegations in this indictment are not sufficient to convict me as a real person while they in fact attempt to present the activities of the Human Rights Association as if they were dangerous and to incriminate human rights defenders by using the Anti-Terrorism Code (ATC) with an eye to take refuge in the ambiguity of definition of terrorism and the unforeseeability of Article 314 of the TPC while employing this method. My attorneys will present the necessary legal arguments on this matter in the light of the opinions of the Venice Commission and the judgments of the European Court of Human Rights (ECtHR).

The Human Rights Association was founded on 17 July 1986 and is still the largest and most well-known human rights organization in Turkey. İHD has 27 branches and 5 representative offices. Although the figures change, it has more than 7,000 volunteer members.

Following its establishment, İHD also founded with a group of physicians the Human Rights Foundation of Turkey (HRFT). The HRFT has treated more than 20,000 individuals, who stated that they were subjected to torture, at 6 treatment and rehabilitation centers against torture. I have always stated that I was a proud member of the founders' board of the HRFT.

İHD has been a member of the Paris-based International Federation of Human Rights (FIDH), the largest human rights organization in the world, since 1993. İHD is currently being represented at the executive board of the federation at the vice-president level. I was present in person as the chairperson of İHD at the 37th General Assembly of FIDH in Yerevan in 2010, at its 38th general assembly in İstanbul in 2013, at its 39th general assembly in Johannesburg in 2016, and at its 40th general assembly in Taiwan in 2019. I would also like to particularly state that the government offered significant support and contribution to FIDH's 38th general assembly in İstanbul.

İHD has been a member of the Euro-Mediterranean Human Rights Network (EuroMed Rights) since 1997 as well. The association works in collaboration with the EuroMed in working groups and projects. I also attended the EuroMed Rights general assembly in person held in Paris in 2014.

İHD has also been a member of the Geneva-based World Organization against Torture (OMCT) since 2019. The association undertakes various projects with this organization as well.

İHD is a member of the Euro-Mediterranean Federation against Enforced Disappearances (FEMED) that is an international network working to stop enforced disappearances.

İHD is involved in dialogue with an ample number of bodies in the international field, most notably with Amnesty International, Human Rights Watch, Front Line Defenders, and International Commission of Jurists.

İHD is central to the human rights movement in Turkey.

İHD is working in collaboration with the Human Rights Joint Platform (HRJP) of which it was one of the founders in 2006. Along with İHD; Amnesty International Turkey, Citizens' Assembly -formerly known as Helsinki Citizens' Assembly, Human Rights Agenda Association, Rights Initiative, and the Association for Monitoring Equal Rights make up the HRJP. The platform is also affiliated with several thematic human rights networks. I serve on the executive board of HRJP on behalf of İHD.

İHD has been undertaking activities within the Turkey Coalition for the International Criminal Court, of which it was one of the founders, since 2006. Many rights-based and legal civil organizations are involved in this coalition. I serve as the speaker of this coalition. Our coalition is a member of the international coalition working worldwide.

İHD also works in the refugee rights field and is a member of the Coalition for Refugee Rights.

İHD is a member of the Human Rights Defenders Network, the Network for the Prevention of Violence against Children, and the Checks and Balances Network.

İHD is a member of the Network against Impunity.

İHD is affiliated with a number of initiatives seeking justice.

İHD is a democratic mass organization committed to the struggle for democracy in Turkey as well as collaborating with national and international human rights organizations. The association also cooperates with various democratic platforms established at times within this context.

İHD has been drafting and publishing annual human rights violations reports in Turkey since its foundation and sends these reports to the related public institutions and international bodies that Turkey is a member of. İHD, in addition to its annual and special reports, also undertakes processes to seek justice and uses public complaint mechanisms effectively. Further, the association holds events to raise consciousness in order to prevent and remedy rights violations. İHD is a human rights organization that has significant contributions to the formation of a consciousness and culture of human rights in Turkey.

One should indeed stress that this case aims to intimidate all human rights defenders in the person of İHD's chairperson and the association's struggle for human rights and democracy. This case brought against me is nothing new, as countless cases have been brought against many İHD members. There are many pending investigations into and cases against numerous İHD executives and members.

One should also note this about İHD: the public administration and the judiciary determine an approach in accordance with the security policies implemented by the government. On one hand, we are a civil society organization that helped the FIDH to hold its general assembly in İstanbul in 2013 with the support of the government, on the other hand, we are an association that has constantly been subjected to audits and investigations after 2015 because of the reports we have been publishing about civilians who lost their lives in armed conflict. I will talk about this process a bit more in detail below.

I, as the chairperson of İHD, would like to indicate that all my activities and statements have been undertaken within the scope of Article 2 setting forth the “Principles of the Association” and Article 3 “Field of Work” in İHD’s Charter.

As a human rights defender, I would like to mention some points about my work at İHD.

I became a member of the association in 1996 and have been serving at its central executive board since 2002. I have also been serving as İHD’s chairperson non-stop since 2008. When the proposed change to our charter to maintain gender equality was rejected in 2006 [by the authorities], we have introduced a de facto co-chairpersonship by establishing a chairperson and acting chairperson system.

As the 14-year-long chairperson of İHD I have always stood for peace for the democratic and peaceful resolution of the Kurdish issue, which is the most important problem in Turkey, and I have worked for it. I have always defended the right to peace, and I will keep on doing so.

I witnessed the developments in 2009, commonly known as the “Khabur Process.”

In 2012, we formed a coalition with other human rights, legal and healthcare organizations to end indefinite and non-alternate hunger strikes in prisons in Turkey and put our efforts to prevent violations of prisoners’ right to life and health by constantly meeting with the Ministry of Justice. We had formed a regular consultation mechanism with the Ministry of Justice in 2012. Such state of affairs held true in 2019 and 2021 hunger strikes as well.

I was a part of the release process for 8 soldiers, police officers and public officials held captive by the PKK in 2013 before the start of the peace and resolution process and we as a delegation succeeded in delivering these people safe and sound to Turkey.

I was actively involved in the peace and resolution process that started in March 2013. I served on the “Wise People Committee” as the chairperson of İHD that was formed by the government and announced to the public in April 2013. The Wise People Committee has worked for 3 months to present its findings to Prime Minister Recep Tayyip Erdoğan in June 2013. The committee’s reports significantly contributed to the socialization of peace in all cities in Turkey for the very first time. Recommendations of the committee put forth in its reports are still valid. The committee was also received by the then Prime Minister Ahmet Davutoğlu in October 2014 and a lengthy meeting was held.

About 20 people serving on the Wise People Committee are still undertaking various activities for peace. We especially studied conflict resolution processes in many parts of the world with the Democratic Progress Institute (DPI) and we still resume these works. Should your court lift my international travel ban, I will be able to attend the DPI meeting that will be held in the Albanian capital Tirana on 11-12 March 2022.

The year 2015 proved to be one that will always be remembered. The peace and resolution process came to an official end upon the restart of armed conflict on 24 July 2015. During this process illegal armed organization PKK started once again to abduct civilians, soldiers and police officers and took them hostage. We undertook a series of initiatives with other rights, legal and mass organizations in order to save these people. The efforts of the committee, which we formed to save 20 customs officers who had been taken hostage in July and August 2015, turned out to be successful and these people were delivered to the authorities at the Khabur Border Gate on 8 September 2015. However, efforts to save abducted soldiers and police officers failed.

An important difference with the year 2015 was the fact that the General Staff was disturbed by our reports about rights violations against civilians during the long-term curfews declared in Muş’s Varto (district) on 16 August 2015, on the grounds of removing the ditches and barricades erected by the members of the illegal armed

organization in various neighborhoods in urban and provincial centers after the restart of the armed conflict.

Upon a letter by the General Staff to the Interior Ministry in April 2016, our association was audited by Chief Civil Inspectors in June 2016 through a writ by the Interior Ministry. The audit was completed in 2017. The audit report was unbelievable. We, as İHD, were accused of undertaking activities against the constitutional order. It is quite interesting that when this report was sent to the Ankara Governor's Office via the Interior Ministry, then to the Ankara Chief Public Prosecutor's Office, Turkey was being governed under the state of emergency and many associations were being closed down at the time. We, however, resumed our work and still doing so because the then security bureaucracy of the state assessed that İHD was a thoroughly independent human rights organization and had, therefore, no conjunction or contact with any illegal organization or formation.

Investigations were initiated into many İHD executives upon the 2017 audit report. Nonetheless, the Ankara Chief Public Prosecutor's Office delivered a non-prosecution decision about us particularly under Article 301 of the TPC as a result of these investigations.

Further, Ankara Chief Public Prosecutor's Office dismissed the allegation against us about undertaking activities against the constitutional order and only permitted launching an investigation into me for making propaganda for an illegal armed organization. Following the completion of the investigation, Ankara Chief Public Prosecutor's Office's Bureau for the Investigation of Terrorist Offenses delivered a non-prosecution decision.

My lawyers tendered the investigation report and the non-prosecution decisions in the case file.

When we were acquitted of the pending investigations against us in 2019, it seemed that some people were not happy and decided that this investigation be initiated into me.

In January 2020, our association was once again audited by the Chief Civil Inspector's Office this time upon an order by the Interior Ministry. The audit report of February 2020 only found some procedural shortcomings and asked for bringing lawsuits against our association because of our association's public statements about the Armenian Genocide and the one about Interior Minister Süleyman Soylu in 2018. This report does not even have an iota of suggestion about our activities against the constitutional order nor about our conjunction or contact with any illegal organization or structure.

Audits by Interior Ministry's Chief Civil Inspectors of İHD between 2012 and 2020 reveal that no allegation of contact or junction with any illegal organization or formation whatsoever can be made against İHD. It seems that various circles, who came to understand that they cannot turn to the association, want to sabotage human rights work by targeting the executives of the association and undertake this process in a different way by criminalizing human rights defenders.

2021 witnessed quite important developments. İHD's and my efforts as its chairperson to retrieve the captive soldiers and police officers failed. It was reported that 13 civilians were found dead in a cave as a result of the military operation launched by the Turkish Armed Forces into the region called Gare in northern Iraq. Upon the release of statements by the Ministry of National Defense and the General Staff, it was disclosed that 12 of these persons were indeed those who had been abducted. After learning about this I held a press conference on 15 February 2021, talked about my activities between 2015 and 2021 and shared my sadness about the failure to save these persons while emphasizing the fact that Ankara Chief Public Prosecutor's Office should investigate the matter. The Interior Minister and the Minister of National Defense visited

and tried to make CHP and İYİ Party, which had groups at the Grand National Assembly of Turkey (GNAT), believe in their own statements about this incident. Neither party, though, believed in the ministers' statements. Then the Interior Minister attempted to make İHD pick up the cost of a failed military operation. He targeted İHD calling it the "cursed association" while addressing the GNAT on 16 February 2021 and accused all opposition parties of following İHD's lead. He then continued with his misstatements on television programs. We responded to all allegations in detail after the minister's statements in a press release on 18 February 2021. We had already been critical of this person's conduct. Subsequent disclosures by a person named Sedat Peker revealed the seriousness of the situation we were facing.

I believe that the Interior Minister is personally involved in this lawsuit brought against me. This investigation and lawsuit against me show this: There is a very important judicial law enforcement problem in Turkey. We regrettably saw that the roles of security units [police], which should have been working under the public prosecutors, have been turned upside down; all requests by the police have been met by prosecutors in this trial as well. Your court should immediately put an end to this thoroughly unlawful process.

My communication with the government and public administration as well as my activities as the chairperson of İHD resumed during term of the investigation initiated into me.

I have attended all Republic Day Receptions as the guest of the president from the day I became the chairperson of İHD until 29 October 2016.

İHD was also invited to many deliberations about proposed bills and I want to talk about two that I particularly see as important.

I was present in person for the deliberations at the GNAT's Committee on Internal Affairs on Law No. 6551 on the Elimination of Terrorism and Enhancing Social Integration, commonly known as the law on the resolution process.

I took part in the deliberations for Law No. 7601 on Human Rights and Equality Institution of Turkey. Ironically, I still am a member of the Commission against Discrimination of this institution.

After the launching of this investigation into me, I and a delegation we formed during the hunger strikes went on by artists İbrahim Gökçek and Helin Bölek, known by the public as members of *Grup Yorum* demanding their right to a fair trial, met with the Deputy Interior Minister in March 2020 within the knowledge of the Interior Minister himself. There have been other hunger strikes during this period as well. Ebru Timtik and Aytaç Ünsal, too, went on an indefinite and non-alternate hunger strike. Thus, my meetings with both the Interior Ministry and the Ministry of Justice resumed. The İHD chairperson has done the same during this hunger strike process as they have always done. I did my due diligence to form a public opinion to make the government hear the completely legal and legitimate demands of the hunger strikers, to prevent any harm to their right to life and provide for their recovery. I will never forget the hunger strikers who lost their lives during this process, particularly our colleague and lawyer Ebru Timtik.

A similar process took place in 2018-2019 as well and I am a person who repeatedly met with both the Minister of Justice and the ministry bureaucracy. Indeed, the hunger strike initiated by Leyla Güven in 2018 ended in 2019 and the most important demand of the hunger strikers, asking [the authorities to let] Abdullah Öcalan to confer with his lawyers, was met through the statements of the Minister of Justice. However, 8 hunger strikers ended their own lives during this process despite all our efforts.

I attended the kick-off meeting of the project conducted in cooperation with the Constitutional Court and the Council of Europe in September 2021 in Ankara.

I met with the Minister of Justice twice between 2019 and 2021, while I had talked to the ministry bureaucracy on a number of occasions.

While covert investigations were conducted into me based on some groundless allegations, I resumed my activities as a human rights defender with the government and the public administration. The reason why I wish to indicate such state of affairs is that no one could ever think that I was capable of undertaking activities in the name of any illegal armed organization while I was conducting these activities as a person who was known by the government. The charge against me, hence, proves to be really absurd.

I would like to state that my statements as a human rights defender about prisons and isolation that İHD has always closely followed rights violations in prisons in Turkey since the day it was founded and has continuously drafted reports, released statements, and undertaken mediation initiatives on this matter.

One of the civil organizations that the European Committee for the Prevention of Torture (CPT) regularly meets with during its missions to Turkey is the Human Rights Association. I attended all these meetings in my capacity as the chairperson of the association. The situation of Abdullah Öcalan and other prisoners incarcerated in İmralı F-Type Maximum Security Prison has always come up on the agenda in these meetings. Similarly, the İmralı Prison has always been talked about during the meetings held with the Minister of Justice and the ministry officials. Whatever I talked about during these meetings with officials, I repeated the same in my public statements as well. We, as İHD, have always said that such a prison model was not possible since the day İmralı Prison was opened. We have always referred to CPT's reports on this matter. Therefore, what we have been saying about İmralı Prison, which was opened in February 1999 and the status of which was not known for 10 years, have always been the same. We stated that Turkey should act in line with the provisions of the Enforcement Law No. 5275 and respect the constitutional and legal rights of prisoners incarcerated there. Coming up with a link to an illegal organization based on these statements can merely be a figment of imagination.

c) International Documents on the Protection of Human Rights Defenders

This case has revealed that Turkey does not comply with the guidelines on the protection of human rights defenders. The Guidelines on the Protection of Human Rights Defenders drafted and published by the OSCE Office for Democratic Institutions and Human Rights have unfortunately been disregarded in Turkey. The UN Declaration on Human Rights Defenders, adopted by the UN General Assembly on 9 December 1998, was sent to governors' offices through a circular letter by the Office of the Private Secretary to the Interior Minister in 2004 in Turkey but it did not have much impact in practice. Even this case clearly reveals such state of affairs. The Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, adopted by the Committee of Ministers on 6 February 2008, has not been implemented either. Other than these, there is also Resolution No. 1891 adopted by the Parliamentary Assembly of the Council of Europe on 27 June 2012 as well as the OSCE Parliamentary Assembly Resolution on Strengthening OSCE Engagement with Human Rights Defenders and National Human Rights Institutions adopted by OSCE at its 16th annual session on 5-9 July 2007. The European Union also adopted a resolution on the EU Guidelines for Human Rights Defenders in 2008.

I would like to note that we have regular contacts particularly on the international arena with the UN and Council of Europe human rights mechanisms in line with international documents and publish reports in related fields. Further, our consultations with the EU Delegation and EU Commission's human rights mechanisms are also maintained.

There is an ample number of reports drafted on the enforcement of the ATC on human rights defenders, as is the case with this trial. İHD has laid bare this problem and offered recommendations for its solution by producing various reports recently in its dialogue with the government. İHD shared with the public and sent its special reports to the Ministry of Justice including the 2018 report on the Elimination of Injustice in Penal Legislation, the 2019 report on the new human rights action plan and the report on judicial reform strategy document. İHD also presented its views in a report on the new human rights action plan, the preparatory works of which it contributed to, to the Ministry of Justice at the beginning of 2020 as well. Meetings with the Minister of Justice and delegations from the ministry on these issues were also held.

The Council of Europe Commissioner for Human Rights offered a comprehensive assessment and recommendations on especially the protection of human rights within the justice system and the judiciary as well as the situation of human rights defenders and civil society in their Turkey report published on 19 February 2020 following their visit to Turkey between 1 and 5 July 2019. The commissioner criticized the investigations and trials faced by human rights defenders and recommended Turkey to act in line with the principle of rule of law and introduce legislative amendments to this end.

d) Defending Peace Is a Human Right

We, as human rights defenders, have always been saying that Turkey needs peace. To us, peace is a human right, and we defend the right to peace. One should mention the declaration and resolutions on this issue adopted by the United Nations.

Article 3 of the UN Human Rights Council's Resolution No. 35/4 on the Promotion of the Right to Peace adopted on 22 June 2017 defines peace as such:

[P]eace is not only the absence of conflict but also requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation, and socioeconomic development is ensured.

The UN General Assembly adopted Resolution No. 39/11 on 12 November 1984 on the Declaration on the Right of Peoples to Peace.

The UN General Assembly adopted Resolution No. 71/189 on 19 December 2016 the Declaration on the Right to Peace. This declaration is quite comprehensive, and one should mention the other UN documents that it refers to on the right to peace. The preamble of the declaration cites a series of documents like the purposes and principles of the Charter of the United Nations recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Vienna Declaration and Programme of Action, the Declaration on the Right to Development, the UN Millennium Declaration, the 2030 Agenda for Sustainable Development, including the Sustainable Development Goals and the 2005 World Summit Outcome, the Declaration on the Preparation of Societies for Life in Peace, the Declaration on the Right of Peoples to Peace, Declaration and Programme of Action on a Culture of Peace, other international instruments relevant to the subject of the 2016 declaration, Declaration on the Granting of Independence to Colonial Countries and Peoples, the Declaration on Principles of International Law

concerning Friendly Relations and Cooperation among States in accordance with the Charter of the UN.

Further, the UN Human Rights Council adopted a resolution on 22 June 2017 for the Promotion of the Right to Peace.

As a human rights defender, I believe that I am among the activists and one of the closest witnesses to the last 14 years on initiatives for peace.

I, as a human rights defender, would like to note that I do not accept any of the claims against me, that such a trial proves to be important as it shows the dimensions to which judicial harassment faced by human rights defenders in Turkey have reached, that involvement in the human rights movement in Turkey has become perilous, that it would have a negative effect on the development of a consciousness and culture of human rights for which we have long been struggling for; and yet the human rights movement maintains its struggle through solidarity and friendship under such circumstances.

Our struggle for human rights will persevere based on the inherent dignity of the human person until freedom, equality, justice and peace are achieved for everyone. I do believe that such struggle by human rights defenders will be instrumental for the achievement of much-needed peace in Turkey and will render the path to democracy with peace wide open.

CONCLUDING REQUEST: I declare that I do not accept the charges and respectfully request the court to lift my international travel ban and deliver an acquittal judgment.