

To Istanbul 13. Assize Court Council

Defense as to the accusations

April 15, 2019

Esteemed Chair, Esteemed Members of the Court,

We were arrested at Istanbul Çağlayan Courthouse on June 20, 2016 when we came to give our deposition for the investigation filed against us. We were accused of “terrorist organization propaganda”, “praising a crime and the criminal” and “deliberate provocation to commit crime”, for our support of the symbolic solidarity campaign which Özgür Gündem daily started on May 3 World Press Freedom Day.

Upon your court’s approval of an indictment prepared in a day, my 10 day long pre-trial detention in Silivri Penitentiary had come to an end, amidst strong national and international solidarity.

Together with Şebnem Korur Fincancı and Ahmet Nesin, we experienced perhaps the shortest, “pre-trial detention” of the recent years. [I say shortest] Because in the past and at the present many of my colleagues, rights defenders, and intellectuals have spent months and years [in “pre-trial detention”] due to such arbitrary practice.

Such practices which aim to punish in advance and to bring people into line, not only undermine the main obligations of Turkey regarding the right to fair trial and freedom of speech, but are also in breach of United Nations rulings, OSCE recommendations and ECHR rulings regarding the protection of journalists and rights defenders.

Esteemed Chair, although you have addressed us as “*sen*” [the informal you] in the past hearings, I believe that you do not truly know us nor our position and work in Turkey’s civil society over the last 25-30 years.

This is also evident in the Esteemed Public Prosecutor’s consideration remarks as presented on February 27, where he charges are based on the headlines of the articles and news published on the day after we had assumed the Substitute Editorship, on content which we had no editorial access – let alone providing any concrete and positive evidence or evaluation about our actions. Such conditions force us to explain ourselves to you once more.

Who are we?

The people you put on trial today have spent a lifetime, standing against every coup regardless of their form or content, supporting the European Union reform process with the

conviction that it will have permanent contributions to Turkish democracy, and defending the fundamental human rights and universal values despite all of the risks and dangers.

With regards to who I am, if you take a look at bianet.org, you will see that I have written more than 10 thousand articles over 15 years; and have my signature under 4.882 news, research articles and op-eds. Bianet is the rights based news outlet of the Independent Communication Network (BIA), which I have laboured for since its foundation. You will also observe that with respect to the content of the news, most of them inform the public on the EU reform process and the discussions over the legal processes, on their impact on the freedom of speech and of press and the ongoing pressures against the journalists.

Esteemed Chair, Esteemed Members of the Court,

Reporters without Borders (Reporters Sans Frontières – RSF) was founded on 1985 as an international non-profit association and has its center in Paris; I have been their representative in Turkey since 1996.

When I was a young reporter, I did my first piece of research on journalist Metin Göktepe who was murdered in detention. As RSF, we became part of an immense solidarity in Turkey which lasted for four years. I believe we have helped illuminate the case of Metin Göktepe, who was murdered by assault, violence and torture under detention. Indeed, those who stood trial for his murder were convicted.

For the past 24 years, I have witnessed that based on the context, all journalists can be both the oppressor and the oppressed, based on their political views and publication policies. In 1998, while defending my colleagues, I once spent a night in detention. I gave my deposition on May 2002 at the Istanbul Directorate of Security about an exhibition organized by RSF in Paris, which protested against the unlawful interventions of military authorities in the media; I received many threatening phone calls.

RSF is a journalism association which seeks to support press freedom in Turkey objectively. Although it mainly aimed to protest against violations in Turkey, it also sought to inform our colleagues in Turkey about international developments. Again, if you look at the [bianet](http://bianet.org) news site, you come across 1491 news articles mostly written by me about RSF. These articles cover reports, statements and protests of RSF on matters of journalism rights and ethics, freedom and pluralism of media, regarding the latest developments in Turkey and around the world.

I have also been contributing to the studies of OSCE Representative on Freedom of the Media on Turkey for the last eight years as an expert in an objective manner.

Twice I have served as a Council Member of IFEX, an umbrella organization of journalism and freedom of expression associations from all across the world. I have sought to stand

against violations against media in the Middle East, the Balkans, Asia and Africa as well as in Turkey.

Esteemed Chair, Esteemed Members of the Court,

As I stated to the prosecutor and judge who conducted the investigation, I have never before been investigated against nor put on trial.

As a journalist who has undertaken similar duties for 24 years, it is obvious why I participated in the solidarity campaign for Özgür Gündem daily. When the campaign announcement is examined and if some simple research is done regarding a journalist on trial for a prison sentence of 14 years 6 months, the rightfulness of my participation is clear. I believe in pluralism and that the media should exercise the public's right to information based on facts. I joined the "solidarity campaign" as I believe that there can not be a democratic society if the media can not express itself without censorship and repression.

Although the spiral of repression against media has changed and loosened during the years 2000-2010, it has never ceased to exist; as we have continuously witnessed the pressures of the political power, trying to bring the journalists in line with arrests, threats of incarceration and prison sentences.

Esteemed Chair, Esteemed Members of the Court,

For the past 24 years, my job has been to support all of my colleagues, regardless of their political views, employer's political stance, or their place on the political-cultural spectrum; as long as the issue fell within the "rights of journalists". In time some have become friends, some have remained friends; and some, I never wanted to see the faces of. Yet, I tried to always stand by them when their rights needed to be defended.

Opinions regarding the indictment and the consideration remarks

I am being held responsible for the news articles "JÖH rebellion against Akar" ("*Akar'a JÖH isyanı*"), "JÖH-PÖH Crack in Nisebin Grows" ("*Nisebin'de Jöh-Pöh Çatlağı Büyüyor*"), "Tanks, Cannons, Howitzers can not pass through Şirnex" ("*Tank, Top, Obüs Şirnex'ten Geçemiyor*") published on Özgür Gündem daily on May 18, 2016.

On the day of solidarity, I attended an editorial meeting where people stated what kind of news they "intend" to report and I left the paper's offices after writing my solidarity text titled "We struggle for press freedom". This text was neither questioned at the Office of Prosecutor nor is it the subject of trial here today.

Today I stand trial, accused of the allegations that “I conducted organization propaganda”, “praised the crime” and “incited to commit crime”. I absolutely object to all of these allegations and accusations.

It is not possible for me to accept these charges, which are brought before me solely based on the titles of news articles, whether as referred by the Esteemed Public Prosecutor in his consideration remarks, or as referred to in the indictment dated June 21, 2016.

It is not possible; because as I stated at the beginning of this defence statement, this [the charges] is against my own principles of journalism which I upheld throughout my professional career. Because throughout my career, I have only ever written on the rights of journalists, professional ethics, media freedom and pluralism.

It is not possible, because in order for me to be responsible for the news titled “JÖH rebellion against Akar” (“*Akar’a JÖH isyanı*”), “JÖH-PÖH Crack in Nisebin Grows” (“*Nisebin’de Jöh-Pöh Çatlağı Büyüyor*”), “Tanks, Cannons, Howitzers can not pass through Şirnex” (“*Tank, Top, Obüs Şirnex’ten Geçemiyor*”), there needs to be a causal link between myself and the deed, with regards to “intention” and “volition”. However, the court has rejected our request for the determination of our responsibility based on the Press Law, let alone ascertaining whether we are “eager to make propaganda”, “fond of praising the crime” or even “inviting others to commit crime”.

Our valued lawyers have rightfully stated that based on the Press Law a natural responsibility of a newspaper executive can not be inferred from the role of a “Substitute Editorship”. Yet the court has twice rejected the aforementioned request regarding the Press Law.

My humble opinion is that, even when all is clear and discernible with regards to Press Law, in order to have a fair trial and ruling, the personality and disposition of the defendant should be taken into account. His/her affiliation with the deed in question in regard to “intention and volition” should be evaluated and a profile should be formed accordingly; especially if one observes modern law.

– Who are we?

– What is the significance of the solidarity campaign, initiated on May 3 2016, World Press Freedom Day with a clear message?

– Is our arrest equitable?

– Does our trial through 11 hearings agree with the commitments of Turkey to international measures regarding the rights defenders and journalists?

There is no evaluation of these points in this case. Unfortunately, the state of the case in this stage of verdict remains the same with that of the beginning of the investigation. As a result, we have spent 2,5 years on trial because of a text of “accusation”, an indictment prepared hastily in a day.

Let’s clarify....

I need to clarify one particular statement which Prosecutor Eşref Durmuş has quoted in the indictment dated June 21, 2016 as if they were my words, “as if it was directly relevant to the news in question”.

In the indictment it is stated “ When asked about the news articles on the acts of assault and armed insurgency against the security forces of Republic of Turkey, within and outside the borders of Republic of Turkey, articles which bear qualities that praise and sanctify these actions and incite violence; he has stated that he was informed of such content [of the article], that he finds no problem with the content of the news that are investigated, that Turkey has received sentences in European Court of Human Rights when these and similar news articles were investigated against...”

Although it is true that I indicated that Turkey has been convicted in ECHR several times due to [prosecuting] news articles such as this in the past, I did so as a complementary element to my defense statement, regarding the past cases. However, based on his own interpretations, Prosecutor Durmuş persistently tried to create the impression that I defended the news articles which I had not been a part of the editorial process. I only saw the three news articles that are the subject of the accusations, after they were published in the newspaper. Just as the prosecutor did, I read them after they were published.

Esteemed Chair, Esteemed Members of the Court,

I regard this trial as a part of an effort to intimidate journalists and rights defenders in Turkey. It is a heavy burden for anyone who yearns for democracy to be tried based on their professional activities or solidarity. We are not concerned with being pushed around or harassed by the threats of persecution like the Sword of Damocles. Our concern is for the entire society; it is our concern for the erosion of a sense of justice which holds us all together.

We witness how academics are verbally and publicly attacked by the powerholders, how rights defenders and journalists are drowning in investigations and prosecutions, while mafia leaders who call for mass armament and who threaten to kill rights defenders are given “an unlimited right to freedom of speech”.

It is no accident that regarding matters of judicial independence, freedom of speech and right to free trial, Turkey finds itself in dire straits in its relations with the European Union and other contemporary societies. It is enough to look at the cases of those who did time in prison without an indictment and without knowing what they are charged with. They have no place in prison.

Esteemed Chair, Esteemed Members of the Court,

I demand my acquittal from this trial which has taken 3 years and my right to continue my journalistic activities. I believe there is no evidence for the three accusations.

As I finish my statement; I would like to extend my gratitude to all the authorities who defended the legitimate rights of journalists on diplomatic, political and social platforms; local, national and international rights associations which supported our struggle, rights defenders who since the beginning of the trial have never left our side, our fellow journalists and lawyers who have always stood by us in every hearing and those who believe in us.

With my respect,
Erol ÖNDEROĞLU

Translated from Turkish to English by Civic Space Studies (CSS).