

## SUMMARY OF THE INDICTMENT

Note: Although the penal case against the Academics for Peace petition<sup>1</sup> has been filed **on an individual basis** regarding the signatories, each case shares a uniform Bill of Indictment<sup>2</sup>. Several High Criminal Courts in Istanbul have been appointed as the court-on-duty for the case—each of them using this uniform Bill of Indictment as the basis of the criminal process.<sup>3</sup>

The following text consists of a summary of the body of the Bill of Indictment with relevant commentaries in the footnotes.

**The Accusation:** The actual accusation is “**Making Propaganda for a Terrorist Organisation**”, based on the Article 7/2 of the Turkish Anti-Terror Act<sup>4</sup> and Article 53 of the Turkish Penal Code.

According to the indictment, the evidences regarding the alleged crime are;

- The investigation report that concerns the statement of Bese Hozat--the co-president of the PKK/KCK terrorist organization’s executive committee--that is dated December 27, 2015.-;
- The investigation reports on the academics who signed the petition (suspects) concerning the press declarations on January 11, 2016 (first declaration) and March 10, 2016 (second declaration) that are allegedly of a supportive nature in favour of PKK/KCK terrorist organization<sup>5</sup>;
- Records of statement and interrogation reports of the suspects and the arrest warrants issued for them;

### **The Examination of the Investigation Documents:**

**The Two Declarations:** The indictment begins with the citation of the full text of the Academics for Peace Declaration. And following the citation, the academics’ statement is immediately labelled--with extreme prejudice--as a **declaration that supports the terrorist organization PKK/KCK**. The persecutor argues that: “**As can be clearly understood from**

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<sup>1</sup> For further information see i.e. <https://barisicinakademisyenler.net/English>

<sup>2</sup> The content of the indictment is exactly the same for each case, word by word, except the details regarding the identity of each accused and his / her official statement taken by the police.

<sup>3</sup> According to the Turkish Criminal Procedure Code, the alleged crime against Academics for Peace Petition signatories is a “collective offense” which is a crime “committed by three or more people with or without the intent of participation”. Due to the collective offense characteristic of the crime, the action should have been filed in the same court, but the prosecutor, by atomizing the signatories, filled the criminal case for each signatory with the same incitement, pending in different criminal courts.

<sup>4</sup> Although the indictment does not recite the actual content of the relevant Article, here it is important to mention them. Article 7/2 of the Turkish Anti-Terror Act reads as follows:

*A person who makes propaganda for a terrorist organization in a way that legitimizes or promotes the methods of coercion, violence or threat used by the organization or encourages to resort to such methods, shall be punished by imprisonment from one year to five years. If this crime is committed through means of mass media, the penalty shall be aggravated by one half. In addition, editors-in-chief (...) 2 ... who have not participated in the perpetration of the crime shall be punished with a judicial fine from one thousand to five thousand days’ rates. However, the upper limit of this sentence for editors-in-chief is five thousand days’ rates.*

<sup>5</sup> The indictment builds the connection between the statements signed by the Academics and PKK/KCK before-headedly.

**the content of the published statement, the ‘so-called’ peace declaration contains explicit propaganda for the terrorist organization PKK/KCK.”**

Therefore, the reason for initiating the investigation has been explained within the indictment by stating that: **“It is ‘understood’ that the real intention of the declaration is to forge public opinion to put an end to the operations that have been initiated by the security forces in the regions where the so-called declarations of “self-governance” were made. According to the indictment, the purpose of the operations was to cleanse these regions of the terrorists and to ensure peace and prosperity for the residents of the region.”<sup>6</sup>**

After building the connection between the text undersigned by the accused, “PKK/KCK terrorist organization” and the declarations of “self-governance”, the indictment cites the second press declaration of Academics for Peace dated March 10, 2016. The statement was issued as a reaction to the investigations and attacks started against some of the signatories of the first peace declaration. After qualifying this second declaration as an indicator for “insistent propaganda for the terrorist organisation of PKK”, the indictment proceeds by laying down the minutes of the police interrogation. General Evaluation regarding the two declarations made by the Academics for Peace follows.

***The General Evaluation Regarding the Declarations Dated January 11, 2016 and March 10, 2016:***

The prosecutor argues that, the Academics for Peace’s declarations have been publicized simultaneously with the calls of PKK/KCK to continue the resistance against the state in the mentioned regions and to protect the self-governances. According to the indictment, **“...By organizing defamation campaigns against the Republic of Turkey, its government, judiciary, army and security forces using press and media, they have carried out propaganda for the armed terrorist organization PKK/KCK in a way that legitimizes or promotes its methods including coercion, violence and threats”<sup>7</sup>.**

Apart from this “alleged” connection, the indictment argues that the depiction of the situation in the concerned regions of Turkey in the peace statements is delusional and lacking of a solid foundation. The prosecutor accuses the academics for their misrepresentation of the measures taken by the government and for distorting information that is important to sustain the public order and maintaining the integrity of the territory of the country.

The indictment further argues that: **“...By influencing its audiences on domestic and international platforms through several media organs, the declaration intended to manipulate the instances occurring in Eastern and South-eastern Turkey, to spread false, baseless and malicious news through disinformation and information pollution, to target the Republic of Turkey, its government, its army and security forces.”**

The indictment also claims that: **“The mentioned academics have intentionally published manipulated and distorted information via several media organs by misrepresenting the measures taken by the government, army and the security forces aimed at safeguarding**

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<sup>6</sup> Reference to one’s “understanding” as an evidence for this kind of an highly serious claim gives clues about the subjectivity and self-evidentness of the arguments.

<sup>7</sup> Therefore, it can be seen that the backbone of the claim for this interconnectivity is mainly the mere fact that texts and incidents coincide. However, this simple coincidence is called “simultaneousness” in the indictment and is deemed sufficient for any connection between the action of Academics for Peace and PKK/KCK. Thus, it is obviously considered unnecessary to introduce any factual evidence for proving this connection.

**the territorial integrity of the country and preventing crime by blaming Turkey for the acts indicated in the Academics for Peace Declaration such as ‘... practically condemning people to hunger and thirst under the name of curfew’, ‘...attacking these settlements with heavy weapons and equipment that would only be mobilized in wartime’, ‘... violating particularly the right to life, liberty, and security, and in particular the prohibition of torture and ill-treatment that have been protected by the constitution and international conventions that Turkey has undersigned’, ‘... this deliberate and planned massacre is in serious violation of Turkey’s own laws and international treaties to which Turkey is a party, the international customary law and the binding norms of international law’”.**

The indictment accuses the academics with the crime of terrorist propaganda because they demand the state **“to lift the curfew, punish those who are responsible for human rights violations, and compensate those citizens who have experienced material and psychological damage”**. According to the indictment, the academics who signed the petition made propaganda for the terrorist organisation by preparing a declaration **that allegedly “manipulates and distorts the factual truths and they have therefore committed a crime”** for misinforming **“Especially foreign people who are ignorant or indifferent to the realities of the region or who carry out activities against Turkey despite their knowledge of the issue”**.<sup>8</sup>

The indictment mentions the prestigious role of academics in the society and argues that this role has been used as a tool for propaganda to affect the public opinion. This alleged manipulation has been formulated within the indictment as follows: **“...To target the Republic of Turkey, its government, its army and security forces by depicting the state not as a sovereign entity but rather as an ‘illegitimate, destructive power’ through counter-propaganda, and to legitimize the methods of force, violence and threat of the armed terrorist organization PKK/KCK and consequently, to carry out propaganda in favour of actions that adopt these methods.”**

A special emphasize is given to the international aspects and echoes of the peace declaration. Before evaluating these dimensions, the indictment examines the English version of the peace declaration as has been published by the Academics for Peace. After presenting this English text and its Turkish translation, the indictment focuses on several phrases used in this English version.<sup>9</sup> According to the indictment, the academics, by referring to the word “Kurdistan”

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<sup>8</sup> Regardless of the “oddness” of the accusations in this regard and the fact that the alleged commission of the act mentioned here does not fit in the definition of any actual crime within the Turkish legal framework, we consider it important to underline that the description of the events occurring in the concerned region of Turkey at the time of the release of the statements and their legal qualification in the Academics for Peace’s petition are completely consistent with the observations and remarks by the international human rights authorities.

See i.e. The Council of Europe Commissioner for Human Rights’ conclusions in his third party intervention concerning a group of 34 cases related to events that have occurred since. August 2015 in the context of operations and curfews in South-Eastern Turkey (CommDH(2017), 25 April 2017) and the observations of the Committee on the Elimination of Discrimination against Women (CEDAW) on the seventh periodic report of Turkey are consistent with the conclusions of the Human Rights Commissioner. (CEDAW/C/TUR/CO/7, Distr. General 25 July 2016)

<sup>9</sup> The important point here is that, while translating the English text into Turkish, the indictment takes the phrase “Kurdish provinces” that exists in the English version and wrongly translates it into Turkish as “Kurdistan”, and

want to imply the existence of a political entity that in fact does not exist. Also, the reference to the “Kurdish political movement” in the text is seen as the legitimisation of the terrorist organisation. This, in the eyes of the indictment, builds the claim of terrorist propaganda in the cloak of academic existence.

The solidarity efforts of foreign academics during the legal process against the arrest of the four academics who read the second declaration before the press are qualified as acts of propaganda. The prosecutor argues that Chris Stephenson, a lecturer at Istanbul Bilgi University and himself a signatory of the petition: “...**In solidarity with his so-called colleagues under custody, arrived at the Court House of Istanbul carrying material in his bag deliberately to be used for propaganda for the terrorist organisation and wanted to support the defamation campaign in the international community against Turkey**”<sup>10</sup>.

Then, the indictment proceeds by mentioning the international echoes of the peace declaration and the request in the first declaration for inviting international observers counts for the defamation of Turkey on international platforms and takes this evaluation as a basis for strengthening its claims for terrorist propaganda.

It can be observed that the outcomes of the first peace declaration and the relevant reactions are the topics on which there has been a specific concentration in the indictment. The repercussions originated from international communities, the reactions regarding the investigations following the declaration, cancelling of several academic events in Turkey, press conferences held in Turkey and abroad have all been taken as supportive evidences of defamation campaign against Turkey and legitimization of terror. In this regard, the second declaration dated March 10, 2016 has taken special attention. The indictment reads: “**The signatories of the second declaration sought to cast a shadow on the investigations and targeted the higher education institutions, security and judiciary organs. With expressions like ‘human bones and burned out human bodies have been found in the provinces and historical artefacts have been damaged’, they went further and tried to make the Republic of Turkey and its Government pay for activities that are actually carried out by the PKK**”.

Another special attention has been given to the “Solidarity Academies”<sup>11</sup>, where the dismissed signatories teach. The indictment regards the initiative of these academies as an act of “...**Provoking the public and the students of the universities they were affiliated to against the Republic of Turkey and its Government**”.

Later, giving the examples from foreign countries, the indictment claims that such kind of an action would never be deemed as a democratic expression of opinion in any country that

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builds its allegations on this word of “Kurdistan” that does not exist in the original English version of the Academics for Peace’s statement.

<sup>10</sup> The material mentioned here are the leaflets prepared by HDP (Peoples’ Democratic Party – A party represented in Turkish Great National Assembly with actively working PM’s). The mentioned leaflets were actually invitation to Newroz celebrations. A lawsuit was filed against Stephenson for “terrorist propaganda” and he was acquitted in the first hearing of his trial on June 23, 2016 as the charges cited in the bill of indictment did not constitute a crime according to the law. It is noteworthy that Chris Stephenson’s case is mentioned in the indictment despite his being acquitted.

<sup>11</sup> For further information about Solidarity Academies see i.e. <https://www.dayanismaakademileri.org/>

struggles against terrorism.<sup>12</sup> Likewise, the indictment refers to a decision given by ECHR to claim that the margin of appreciation in such cases are high due to their public importance, but the indictment refrains from showing the date and case number of the referred decision.

**Conclusion:** The conclusion part of the indictment generally repeats the claims and allegations that had been referred in the body of the text. The main allegations are: propagandising for terror, legitimizing the terrorist organisation of PKK/KCK, defaming Turkish Republic in domestic and international platforms, provoking the public, aiming to distort the peace and integrity within the country and calling international actors to intervene in the internal affairs of Turkey. Then, finally, the suspects are requested to be punished in accordance with the provisions stated above.<sup>13</sup>

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<sup>12</sup> Here, the employment of the phrases like “it is impossible even in the third world countries” or “the legal systems of these countries would never let his happen” and references to the term “betrayal” give an impression about the tone of the indictment. While trying to refer to the foreign countries and legal mechanisms in order to justify its accusations, the indictment clearly stands away from referring to any certain foreign penal code or any actual case.

<sup>13</sup> Generally, the techniques of legal argumentation and interpretation have one particular goal: Establishing a link between a static legal provision and a dynamic incident in real life. A judge or a prosecutor should follow the criteria for the existence of objective causal connection – causation – while applying a legal norm to real life, which is expected to introduce a solid narration that rests on factual evidences or rationally acceptable argumentations that convince all the legal actors to the fact that the act and the norm are falling into each other’s area. But here in this indictment, it is impossible to see how and to what extent the real-life incidents are rationally evaluated to fit into the scope of the norm.