İFADE ÖZGÜRLÜĞÜ DERNEĞİ

TRIAL MONITORING REPORT

Rasime Şebnem Korur

Anti-Terrorism Law art. 7/2

I. Introduction and Background

A. Prof. Şebnem Korur

1. Prof. Dr. Rasime Şebnem Korur graduated from Istanbul University Cerrahpaşa Faculty of Medicine in 1983 and received her specialisation in forensic medicine. She became a professor in 1996 and established the Forensic Medicine Polyclinic at Istanbul University Faculty of Medicine in 1999. Over the years, she has concentrated mainly on the subject of torture. In 1997, she became the Head of the Department of Forensic Medicine at Istanbul University Faculty of Medicine. She was dismissed from the University in 2004 but was reinstated in 2005 with the decision of the Administrative Court and the Council of Higher Education (YÖK). Korur has also participated in various international studies over the years. For example, in 1996, on behalf of the United Nations International Criminal Tribunal for the former Yugoslavia ("the ICTY"), she participated in the autopsy of bodies exhumed from mass graves in the Kalesija region of Bosnia. In the Philippines, as a member of the International Group of Forensic Experts established by the International Rehabilitation Council for Victims of Torture (IRCT), she conducted medical examination about torture carried out in prisons. In 2012, she travelled to Bahrain on behalf of the IRCT, posing as a tourist, to take tissue samples from the body of a young man whose body was found in the sea and who, according to the police, had drowned. She brought the samples back to Türkiye and concluded from the autopsy that the young man had been tortured to death in detention, as claimed by his family. Korur participated in the drafting process of the United Nations Guidelines on the Effective Investigation and Documentation of Torture ("the Istanbul Protocol") and played an important role in the recent update of the Protocol. She has taken part in trainings on the investigation and documentation of torture, which were attended by health professionals, lawyers and human rights activists in many countries as a trainer of the Istanbul Protocol and medical training coordinator.

2. In 2016, she was arrested and imprisoned for 10 days within the scope of an investigation on charges of "terrorist propaganda" for taking part in the Özgür Gündem newspaper's "Editor-in-Chief on Watch" campaign. In 2016, she signed the declaration of the Academics for Peace Initiative titled "We will not be a party to this crime". As a result of the investigation opened against her due to her signature, she was sentenced to imprisonment in 2018. Therefore, she was forced to retire in 2019. Following a retrial, she was acquitted of this case in 2020. Korur also worked as a manager in various professional and non-governmental organisations. Korur was the president of the Association of Forensic Medicine Specialists between 1993 and 1998, Secretary General of the Istanbul Chamber of Medicine between 2002 and 2006, and a member of the Honorary Board of the Turkish Medical Association ("TMA") between 2006 and 2008. During her term as a member of the Honorary Board, she also served as a member of the Prime Ministry Human Rights Advisory Board as a representative of the TMA in 2003. Between 2009 and 2020, she was the president of the Human Rights Foundation of Türkiye ("TİHV"). In 2020, she was elected as the President of the Council of the TMA.

B. Events Leading to the Arrest of Prof. Korur

3. On 19 October 2022, while in Germany for a conference organised by the Rosa Luxemburg Foundation, Prof. Korur participated in a programme broadcast on the Brussels-based YouTube channel Medya Haber TV. The host of the programme asked Prof. Korur a question about the alleged use of chemical weapons by the Turkish Armed Forces during cross-border operations in northern

Iraq. Prof. Korur stated in the programme, which she participated in via Skype, that in cases where there are allegations of the use of chemical weapons, an on-site investigation by an independent committee is necessary. Prof Korur said in the live broadcast: "I have examined it before. Obviously, one of the toxic gases that directly affects the nervous system has been used. There is a wide range of chemical weapons. Although their use is prohibited, unfortunately, we see them being used in conflicts. The implementation of international treaties and the code of conduct for an investigation when such an allegation arises within the scope of the Geneva Convention prohibiting the use of chemical weapons and the principles of the Minnesota Protocol need to be addressed."[1]

4. Following the statement, Korur was targeted first by the pro-government media and its spokespersons,[2] and then by President Erdoğan of the Justice and Development Party ("AKP") and Devlet Bahçeli, the Chairman of the Nationalist Movement Party ("MHP").

5. Shortly after the broadcast, on 24 October, Erdoğan said about Korur, against whom an investigation was launched, and the TMA, of which Korur is the Central Council President, *"The judiciary has taken action against the President of the Medical Association who slandered the cross-border operations carried out by our Turkish Armed Forces. We will also carry out our work on the name Turkish Medical Association, and if necessary, we will ensure that the name is changed by legal regulation. I believe that the fact that such a person, who speaks in the language of a terrorist organisation and slanders her country and its army, is at the head of an institution whose name begins with Turkish, disturbs every member of our nation. According to the results of the investigation carried out by our Ankara Chief Public Prosecutor's Office and the decisions of the courts, necessary steps will be taken regarding both the person and the institution. In that regard, during our cabinet meeting, we instructed our relevant ministers to accelerate the legislative work on the transition to a new structure in professional organisations, especially the Medical Association. We are determined to purge the supporters of terrorist organisations, who have turned professional organisations into the trumpet of their ideological obsessions, and to delimit these structures on activities in line with their founding purposes*."[3]

6. On 25 October, Bahçeli said, *"On 23 October 2022, sworn enemies of Türkiye took the stage again at a conference organised by the hostile organisation called Dayanışmanın Sesi Association in Cologne, Germany. In the conference, the President of the Turkish Medical Association claimed that those who were imprisoned for being affiliated with terrorist organisations had their rights violated and stated that she was behind the lie about the chemical weapons. I exclude honourable Turkish physicians. I consider it of historical importance that the most severe criminal sanctions be applied and ensured against the president and the executives of the Turkish Medical Association, that the doors of the association be locked, and that our doctors be liberated by abolishing the compulsory membership requirements to this institution. There can't be the word "Turkish" in the name of an anti-Turk association. It is a sensible thing that those who throw chemical weapons allegations at*

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1 Diken, "Hedef gösterilen Fincancı: Sözlerim çarpıtıldı, topluma gözdağı veriliyor", 21 Ekim 2022, https://www.diken.com.tr/hedef-gosterilen-fincanci-sozlerim-carpitildi-topluma-gozdagi-veriliyor/

2 Evrensel, "İktidar medyası bu kez Şebnem Korur Fincancı'yı hedef gösterdi", 21 Ekim 2022, https://www.evrensel.net/haber/472819/iktidar-medyasi-bu-kez-sebnem-korur-fincanciyi-hedef-gosterdi

3 Gazete Duvar, "Erdoğan, TTB Başkanı Fincancı'yı hedef aldı: Bu ismin değişmesini sağlayacağız", 24 Ekim 2022, https://www.gazeteduvar.com.tr/erdogan-amasradan-alinan-dersler-isiginda-tum-madenler-inceleniyor-haber-1586258

Turkish soldiers with the mouths of traitors and oppressors, such as the President of the TMA and others, should be deprived of Turkish citizenship and condemned to be stateless."[4]

7. On 25 October, Minister of National Defence Hulusi Akar said about Prof. Korur*: "There are no chemical weapons in the inventory of the Turkish Armed Forces. There is no such thing. In fact, their aims and intentions are obvious. When the terrorist organisation entered the process of collapse and started to suffer great losses, they tried to resort to slander and defamation as a way out. They are trying to defame the success of the Turkish Armed Forces and create a blur in people's minds. In that regard, our country, the sons of the motherland, the constitutional institutions should clearly show their attitude.*"[5]

8. On 27 October, Minister of Justice Bekir Bozdağ announced that legislative work had begun on the regulation regarding the Turkish Medical Association. Bozdağ stated that once the draft is completed, it will be presented to President Recep Tayyip Erdoğan and the presidential cabinet. Bozdağ said, "Now we are working on this. We are making a new draft regarding both the Turkish Medical Association and the Chambers of Architects and Engineers. It is not acceptable for our nation and our state that the Turkish Medical Association to serve under a roof that insults the name 'Turk', is hostile to the Turkish nation and the state of Türkiye, and uses the word 'Turk' in the advantage of terrorist organisations."[6]

9. With a document dated 20/10/2022 of the General Directorate of Legal Services of the Ministry of National Defence, a criminal complaint was filed against Korur on the grounds that the President of the Central Council of the Turkish Medical Association, Rasime Şebnem Korur, made propaganda for the PKK armed terrorist organisation and an investigation was initiated by the Ankara Chief Public Prosecutor's Office Terrorism Crimes Investigation Bureau under Investigation No. 2022/235179.

10. On 26.10.2022, an arrest warrant was issued for Prof. Korur, who returned to Türkiye from Germany despite the smear campaign against her in the press and public opinion after the publication subject to the offence and the targeting of high-level politicians. On 27.10.2022, following her interrogation by the prosecutor on 27.10.2022, an arrest warrant was issued by the Ankara 3rd Criminal Judgeship of Peace on 27.10.2022 with the decision numbered 2022/1236 D. İş and she was sent to Sincan Prison.

C. The Lawsuit for the Shutdown of the Turkish Medical Association

11. The Public Prosecutor, who conducted the investigation against Prof. Korur and prepared the indictment dated 09.11.2022, prepared the lawsuit numbered 2022/26 on 26.10.2022 with the request to terminate the duties of the Responsible Bodies of the TMA and to elect new ones in their place within the scope of Additional Article 2/2 of the Turkish Medical Association Law No. 6023. The case is still pending at the Ankara 31st Civil Court of First Instance.

12. The investigation carried out against Prof. Korur and the statements she made in the publication subject to the offence were included in the lawsuit demanding the dismissal of the responsible bodies of the TMA. The relevant part of the dossier is as follows: *"...a criminal investigation was initiated against the defendant Rasime Şebnem Korur, who was elected as the president of the Central Council of the Turkish Medical Association in 2022 and is still actively serving as the president. According to*

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4 Evrensel, "AKP iktidarı ve ortakları TTB'yi ne zaman, neden ve hangi sözlerle hedefe koydu?", 26 Ekim 2022, https://www.evrensel.net/haber/473110/akp-iktidari-ve-ortaklari-ttbyi-ne-zaman-neden-ve-hangi-sozlerle-hedefe-koydu

5 Yeni Şafak, "TSK'nın başarısı karalanıyor", 26 Ekim 2022, https://www.yenisafak.com/gundem/tsknin-basarisi-karalaniyor-3866451

6 Bianet, "Bekir Bozdağ: TTB ve TMMOB ile ilgili yeni bir hazırlık yapıyoruz", 27 Ekim 2022, https://m.bianet.org/bianet/insan-haklari/269118-bekir-bozdag-ttb-ve-tmmob-ile-ilgili-yeni-bir-hazirlik-yapiyoruz

the complaint document, some members of the armed terrorist organisation were neutralised within the scope of the operations carried out by the Turkish Armed Forces against the PKK armed terrorist organisation and the activities carried out to ensure the national security and public order of the country. It was found that on 19/10/2022, the defendant made a live connection to Medya Haber TV, which broadcasts over the internet, with the words "ŞEBNEM KORUR FİNCANCI / TMA CENTRAL COUNCIL PRESIDENT" on the screen, in which the defendant stated that the Turkish Armed Forces used banned chemical weapons by using poisonous, chemical, toxic gases in the content of the video and that she made statements to the main news announcer using the background picture "Guerrillas were massacred with chemical weapons in Zap.". The judicial process against the defendant was initiated by the Ankara Chief Public Prosecutor's Office and ... it was understood that the defendant's words were used in illegal activities that are outside the purpose of the activity of the Professional Chamber of the Turkish Medical Association and the powers and duties given to her by the defendant's presidential title; and that administrative measures should be taken, members of the Presidency of the Central Council of the Turkish Medical Association and the current President of the Central Council Rasime Şebnem Korur should be dismissed from their posts in accordance with paragraph 2 of the additional article 2 of the Turkish Medical Association Law, and a decision should be taken on the election of a new president and members of the central council in place of the defendants".

II. Criminal Case

13. The Trial Monitoring Report prepared by the İfade Özgürlüğü Derneği (İFÖD- Freedom of Expression Association) aims to inform the public about the investigation against Prof. Şebnem Korur, a prominent scientist and human rights defender, substantiated on her advocacy and scientific activities as well as criminal prosecution phase and the court hearings held at the Istanbul 24th Assize Court. The report also aims to provide legal evaluations of Korur's conviction, which constitutes instrumentalization of the judiciary for political pressure. As will be seen below, the judicial proceedings against Korur began immediately after she was targeted by the government and pro-government media and were carried out in line with the said authorities' statements. İFÖD followed the case, which stands as an example of the restrictions on the freedom of expression of those who express their critical views and comments about Türkiye's cross-border operations from the perspective of human rights law.

14. İFÖD monitored the trial of Prof. Şebnem Korur before the Istanbul 24th Assize Court with case number 2022/434 since the first hearing on 23.12.2022, in which the bill of indictment was accepted.

15. İFÖD Legal Team attended all of the hearings and hasobserved the proceedings. İFÖD Legal Team evaluated the whole of the process and made observations based on the submissions and comments made by the attorneys of the defendant and the entirety of the legal documents found in the case file.

A. Investigation Phase and the Bill of Indictment

16. A criminal complaint was filed against Rasime Şebnem Korur, Chairperson of the Central Council of the Turkish Medical Association, within the scope of the complaint dated 20/10/2022 by the Ministry of National Defence ("MoND") General Directorate of Legal Services and an investigation was initiated by the Ankara Chief Public Prosecutor's Office Terrorism Crimes Investigation Bureau with the investigation number 2022/235179.

17. In the criminal complaint petition submitted by the Ministry of National Defence, it was claimed that Korur's actions constituted the crimes of publicly disseminating misleading information as regulated in Article 217/A of the Turkish Penal Code, inciting the public to hatred and hostility as regulated in Article 216, slander as regulated in Article 267, denigrating the institutions and organs of the Republic of Türkiye as regulated in Article 301, and finally making terrorist propaganda as regulated in Article 7/2 of the Anti-Terrorism Law.

18. On 26 October 2022, Korur was interrogated by the police and the prosecutor. Following her interrogation by the prosecutor, Korur was referred to the criminal judgeship of peace with a request for her arrest and an arrest warrant was issued by the Ankara 3rd Criminal Judgeship of Peace on 27.10.2022 with the decision dated 27.10.2022 and numbered 2022/1236 D. İş.

19. In the bill of indictment of the Ankara Chief Public Prosecutor's Office Terrorism Crimes Investigation Bureau dated 09/11/2022 and numbered 2022/235179, it was stated that "The interview she made on Medya Haber TV was in the form of a live broadcast and within the scope of the main news programme that can reach a very large audience and a comprehensive broadcast on an international scale. Korur used the title of the President of the Central Council of the Turkish Medical Association in the said live connection and shared an official title legally given to her by the State of the Republic of Türkiye for the purposes of propaganda of the terrorist organisation by using it on Medya Haber TV, which is one of the media broadcasting tools of the PKK armed terrorist organisation. Her statement constitutes a criminal act within the scope of the second sentence of article 7/2-2 of the Anti-Terrorism Law, the statement constitutes a more severe form of the offence as "the offence is committed through the press and broadcasting". Although Korur claimed that she was not aware of the screenshots aired on television because she was connected via Skype connection, the programme in question provides communication in the form of video or audio calls. In the live broadcas images of Medya Haber TV, which is the press organ of the PKK armed terrorist organisation, it is clearly seen that Korur is looking at a certain screen while wearing headphones. On the other side of the screen, the anchorman of Medya Haber TV, about whom there is a search warrant by law enforcement units, is also looking at the screen in a way to see Korur. From the case file, it is understood that the Skype connection was not made only by voice. If this was the case, connections could have been made as "live telephone connections", but within the scope of the available evidence, it is understood that the connection was made via video conference. In the live connection screenshots in question, there are many pictures of members of the PKK armed terrorist organisation; it is understood that the members of the said organisation were neutralised by the Turkish Armed Forces in the Zap section in the northern region of Iraq. The background, which was done with organisational motive and with the intention of making propaganda by using the background picture as "Guerrillas were massacred with chemical weapons in Zap."; Korur, within the scope of the aforementioned picture, text and the live connection, knew that the propaganda of the PKK armed terrorist organisation was being made by the anchorman on the news broadcast. Although it was alleged that Korur had previously watched a video of the PKK armed terrorist organisation in the "Northern region of Iraq" by watching a video in a similar way, which was not known where, when and by whom it was taken, again not shown in the live connection, but only to be compatible with the word Zap as a place; Korur made a medical diagnosis and diagnosis only through a video of an unknown origin, which is incompatible with her title as a forensic medicine expert, but similarly, she made statements in the live connection to encourage the necessary examinations by going to the scene of the incident by referring to international institutions, organisations and documents such as human rights, IPPNW, Minnesota Protocol; Korur both made a statement that "toxic, chemical, poisonous gases were used" by simply watching a video, which was shot without going to the scene of the incident, without knowing where and how it was shot, and which was served with the motive of making terrorist organisation propaganda, and made contradictory statements at the end of the live connection that the situation in question should be examined at the scene of the incident within the scope of the Minnesota Protocol. So she gave an opinion about an important issue, that should be examined at the scene of the incident, only by watching a video. It was stated that the expression of the said opinion through a channel named Medya Haber TV, which is directly linked to the PKK armed terrorist organisation, through a live connection with pictures of members of the PKK armed terrorist organisation in the background and in a live connection where the news was reported as "massacred" contradicts with the statement of Korur, which was given to avoid the charges concerning the crime of terrorist

organisation propaganda and all these constitute a strong criminal element for the investigation file" and demanded her punishment.

B. Prosecution Phase

1. First Hearing

20. The first hearing of the case against Prof. Korur was held on 23.12.2023 at Istanbul 24th Assize Court. The hearing was monitored by the press, bar associations, foreign and local civil society representatives, MPs and politicians. The request to move to a larger courtroom due to the large crowd was rejected without justification. Another procedural objection, the objection to the decision limiting Korur to three defence lawyers, which was notified to Korur in prison the day before the hearing, was also rejected without any justification. The request for the names of lawyers who were present in the courtroom as observers to be recorded in the minutes of the hearing was accepted.

21. The hearing proceeded with Korur talking about the physical and emotional pain she suffered from travelling for 6 hours in handcuffs, despite the fact that she was the only detainee in the transport vehicle in which she was brought from prison in Ankara to the hearing in Istanbul and that she was accompanied by armed security guards in an armoured vehicle. Korur started to present her "statements and not defence", as she called them.

22. The request for intervention in the case submitted by the Ministry of National Defence was rejected. Despite the rejection, the president of the court allowed the Ministry of National Defence attorneys to sit in the counsel chairs in the courtroom. Korur's counsel presented their defence.

23. The prosecution presented its closing statement on the merits of the case, in which it requested Korur to be sentenced. In the final opinion, the assumptions regarding the Skype connection in the bill of indictment were repeated, and in addition to the repetition of the bill of indictment, it was stated that "the defendant actively participated in the propaganda of the PKK armed terrorist organisation within the scope of the aforementioned picture, article and live connection, participated in the propaganda of the so-called use of chemical weapons. An allegation put forward by the organisation in order to defame the fight of the Turkish Armed Forces against terrorist organisations through images that do not reflect the truth, it is not clear where and when they were taken and served by the organisation, and Korur continued the propaganda through the press and broadcast as an expert. The defendant said in the said broadcast: "I have examined it before. Obviously, one of the toxic gases, chemical gases, or poisonous gases that directly affect the central nervous system has been used. There are a wide variety of chemical weapons. Although their use is prohibited, unfortunately, we see that prohibited weapons are used in conflicts.", the defendant made a statement in the main news live broadcast of Medya Haber TV channel, which has direct contact with the PKK armed terrorist organisation, by showing the members of the PKK armed terrorist organisation in the background with the title of guerrilla and with long-barreled weapons. "The terrorist organisation by showing the self-defence and protection activities of the Turkish Armed Forces against the indivisible integrity of the country as an illegal action and the use of chemical weapons; commits the crime of "incitement, justification for or instigation to the violent acts of terrorist organisations" under paragraph 2 of Article 7 of the Anti-Terrorism Law, that the interview the defendant conducted on Medya Haber TV was a live programme and within the scope of the main news broadcast that could reach a certain audience and was a comprehensive broadcast on an international scale. It has been understood that the defendant committed the act of making propaganda for the PKK armed terrorist organisation by using the title of the President of the Central Council of the Turkish Medical Association, which is an official title legally given to her by the State of the Republic of Türkiye, on Medya Haber TV, which is one of the means of press and broadcasting of the PKK, and thus, since the crime was committed through the press within the scope of Article 6/1-g of the Turkish Penal Code, it is understood that the 2nd sentence of the 2nd paragraph of Article 7 of the Anti-Terrorism Law is applicable to the defendant. Thus, the

defendant should be sentenced pursuant to the 1st and 2nd sentences of the 2nd paragraph of Article 7 of the Anti-Terrorism Law and Articles 53/1, 63 of the Turkish Penal Code". The prosecutor also requested the court to decide on the continuation of her detention.

24. After the closing statement of the prosecution, the hearing was deferred for an hour. After the statements regarding the detention decision were presented, the court decided to continue the pre-trial detention and to give time for the submission of comprehensive defences on the merits. The next hearing was scheduled for 29.12.2022.

2. Second Hearing

25. On 29.12.2022, the second hearing started with the rejection of the requests of the Ministry of National Defence to intervene, the limitation of three defence counsels and the request to move to the large hall. During the hearing, the defence submitted their arguments on the prosecution's closing statement. In addition, the defence requested the recusal of the panel on the grounds that it was not impartial. The request for recusal of the panel was rejected on appeal.

3. Third Hearing

26. On 11.01.2023, the second hearing of the trial resumed with the Istanbul 25th Assize Court's decision on the rejection of the request for recusal of the panel of judges. The final verdict was declared at the hearing. Prof. Şebnem Korur was sentenced to a total of 2 years, 8 months and 15 days imprisonment for the crime of making propaganda for a terrorist organisation and Korur was released.

4. Decision

27. In the 107-page reasoned judgment, the court's assessment of the merits consists of only one paragraph. The judgement included the indictment, Korur's statements to the police and the prosecutor, full transcription of the hearing recordings of the three hearings recorded via SEGBİS, the public prosecutor's closing statement on the merits and the court's reasoning. The court's reasoning on the conviction was as follows: "The manner in which the offence was committed (the use of the title of President of the Central Council of the Turkish Medical Association, which is an official title legally given to the defendant by the State of the Republic of Türkiye), the importance and value of the subject matter of the offence, the weight of the defendant's intention (committing the offence during the main news live programme of Medya Haber TV channel, which has direct contact with the PKK armed terrorist organisation, while showing the members of the PKK armed terrorist organisation in the background with the title of guerrillas, who were dressed as soldiers and had long-barreled weapons) and the place and time of the offence (committing the offence in the main news and comprehensive broadcast on an international scale that can reach certain audiences in the form of a live link via Medya Haber TV)" were taken into account.

III. Legal Analysis

A. Procedural Considerations

1. House Search and Detention Order

28. Following the initiation of the investigation against Korur, a petition was submitted by the defence lawyers on 21 October 2022, stating that Korur would be in Türkiye as of Monday 24 October 2022, and that their client was ready to give a statement at a time deemed appropriate by the prosecutor. The prosecutor's office decided to provide a copy of the case file, to register the defence counsels, and to evaluate the request for interrogation at a later date. Although Korur returned to Türkiye and stated that she was ready to give her statement, on 26 October 2022 at 06:00 her door was knocked on by Ankara and Istanbul Police Departments' Anti-Terrorism Bureaus and the prosecutor's orders

regarding her detention and house search pursuant to Article 91/2 of the Code of Criminal Procedure were served.

29. Article 91/2 of the Code of Criminal Procedure states that "Detention is subject to the necessity of the measure in terms of the investigation and the existence of concrete evidence indicating the suspicion that the person has committed an offence." Although Korur's lawyers have stated that she is ready to testify within the scope of the investigation against her, the detention decision is unlawful as it cannot be said that it was necessary for investigative purposes. The detention and house search orders issued against Korur without a judge's approval are also unlawful in light of the Turkish Constitutional Court's case-law.

30. In the Constitutional Court's *Hasan Akboğa* decision, since the crimes of *being a member of an armed terrorist organisation and knowingly aiding the organisation*, for which the applicant's arrest was ordered, are among crimes for which severe criminal sanctions are envisaged in the Turkish legal system, it was evaluated that the severity of the penalty envisaged in the law for the alleged crimes was one of the indications that pointed to the possible flight of the accused and it was decided that there was no violation of the right to liberty and security of the applicant (*Hasan Akboğa* [GK], App. No: 2016/10380, 27/3/2019, § 61). The charge against Korur is the crime of making propaganda for a terrorist organisation and the penalty for the crime is imprisonment from 1 year to 5 years according to article 7/2 of the Anti-Terrorism Law, while the penalty for the crime of membership in an armed terrorist organisation, which was evaluated in the Constitutional Court's decision, is imprisonment from 5 years to 10 years under article 314/2 of the TCC. Moreover, Korur's lawyers made a personal application for Korur to be brought to the prosecutor's office and Korur, who was abroad, returned to Türkiye voluntarily even though she was aware of the investigation. For the reasons explained, it is not possible to say that the detention and house search warrants issued against Korur by the prosecutor within the scope of "circumstances that require promptness" fulfil the conditions stipulated in the law.

31. In its *Burhan Gülseven* judgment, the Constitutional Court stated that the purpose of the arrest of the applicant, for whom there is strong evidence that he has committed a crime, was to ensure that the investigation proceedings are carried out without disruption and the material truth is revealed (*Burhan Gülseven*, App. No: 2019/41753, 5/10/2022, § 38; *Hülya Kar* [GK], App. No: 2015/20360, 27/2/2019, § 20). As the statements made by Korur are an expression of thought within the scope of freedom of scientific and academic expression and should not be classified as illegal, it cannot be said that the measures applied were required by strong evidence for any crime. Similarly, it is not possible to say that the detention and house search orders applied to Korur had a legitimate aim. The only and decisive evidence relied upon throughout the proceedings was Korur's statements on live broadcast and it is not possible to state that the detention and house search orders served the purpose of revealing the material truth.

32. On 26 October 2022, Korur was detained in a "dawn operation", her house was searched and she was taken into a detention vehicle. Major news channels such as A Haber, Akit, Sözcü, TRT News, Sözcü, TRT News attempted to create a negative public perception of Korur by broadcasting the search of Korur's house and filming the confiscated materials. The book written by Bejan Matur titled *Dağın Ardına Bakmak* ("Looking Above the Mountain") found in Korur's house, antique bullet cartridges inherited by Korur's family and Kalashnikov bullets that Korur bought to teach her students in forensic medicine classes were presented as evidence of her ties with terrorist organisations.

33. The European Court of Human Rights has stated that measures of protection under criminal procedural law do not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful arrest or detention and does not entail the use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances *(Erdoğan Yağız v. Türkiye*, no. 27473/02, 06.03.2007, §§ 40-48). In the *Erdoğan Yağız* judgment, it was

accepted that the handcuffing of the applicant, a general practioner, at his workplace and in front of his family had aroused in him a strong sense of humiliation and shame, particularly in view of his professional duties. In the Court's view, even in the absence of a public element, it is clear that the treatment could have caused the victim to feel humiliated in his own eyes. The applicant's feelings of humiliation were considered to have been aggravated by the public nature of the treatment and the Court held that there had been a violation of the prohibition of ill-treatment.

34. According to the decisions of the Constitutional Court, an assessment can be made within the scope of the prohibition of ill-treatment if the security measures applied to a person are exposed (*Mustafa Kamil Çolak*, App. No: 2016/75236, 8/9/2020, § 35). The State's obligation to respect the individual's right to protect and improve her/her material and moral existence, which is guaranteed under Article 17 of the Constitution, requires that the right should not be interfered with in the first place. In order for a treatment to fall within the scope of the third paragraph of the aforementioned article, it must reach a minimum degree of severity and whether the minimum threshold is exceeded must be evaluated by taking into account the circumstances of each case. In other words, the minimum threshold is relative, and whether the minimum threshold is exceeded or not must be assessed for each case individually, taking into account the characteristics of the case; such as the context, factors such as the duration of the treatment, its physical and mental impact, and the applicant's gender, age and state of health , among other things (*Kazım Aksoy* [2], B. No: 2015/8409, 4/7/2019, §§ 35, 36; *Tahir Canan*, B. No: 2012/969, 18/9/2013, § 23).

35. As detailed above, Korur was unlawfully detained and her house was searched. In the process leading up to the orders, Korur was targeted by government officials at the highest level. Considering the unlawfulness of the protection measures taken against Korur, her position in the national and international scientific community, her age, her active work as a physician, her role as a human rights defender, the fact that her house was entered at dawn with a procedure called "dawn operation", the fact that the videos and photographs taken in her private sphere during her detention and house search were widely broadcasted on television and the internet by media organisations closely linked to the government, it is considered that the minimum threshold for the prohibition of ill-treatment should be accepted to have exceeded.

36. Pursuant to Article 119 of the Code of Criminal Procedure, searches conducted with the order of a public prosecutor must be conducted in cases that require promptness. Within the scope of the investigation against Korur, the 5-day period between the complaint petition and the search warrant cannot be considered a case requiring promptness in which it was impossible to obtain a judge's approval. Moreover, the fact that Korur returned to Türkiye voluntarily and her readiness to testify, and the procedural steps taken by her lawyers who have received copies of the case file show that there were no grounds for detention such as the danger of destruction of evidence, etc. The unlawful search warrant and the broadcasting of Korur's house and her detention at dawn on national channels constitute a violation of the right to respect for private life.

37. Following her detention, after the end of her statement to the police at 01:00 a.m., she communicated with her defence lawyers until 02:00 a.m. Following the end of her meeting with her lawyers at 02:00, Korur was taken out of custody at 05:00, her defence lawyers were notified at 06:00 in the morning that the Public Prosecutor was present in his office at 06:30 for interrogation. After a long and tiring process, Korur's statement was taken by the prosecutor immediately after only 3 hours of rest. In this regard, as stated by the defence lawyers at the prosecutor's office, it is considered that the procedure was carried out in violation of Article 148 of the Code of Criminal Procedure. Article 148 of the Code of Criminal Procedure is titled "Prohibited procedures in interrogation and statements" and states that "The statement of the suspect and the defendant must be based on his/her free will. Physical or psychological interventions such as ill-treatment, torture, medication, fatigue, deception, force or

threats, use of certain tools, etc. cannot be used to prevent this. Statements obtained through prohibited methods cannot be considered as lawful evidence even if they are given with consent."

38. Korur's statement was taken under Article 301 of the Turkish Penal Code and Article 7/2 of the Anti-Terrorism Law. Although prior authorisation at the ministerial level is required in order to take a statement under Article 301 of the Turkish Penal Code, the prosecutor took Korur's statement under Article 301 of the Turkish Penal Code in violation of the procedural requirements. At the prosecutor's office, Korur's statements were taken under these two articles, but after being reminded of the procedural requirements during the interrogation, the prosecutor framed the referral for arrest under Article 7/2 of the Anti-Terrorism Law.

2. Delimitation to three lawyers

39. Prior to the first hearing at the Istanbul 24th Assize Court, the decision to limit Korur's representation to three defence lawyers was communicated to her in prison. The justification for the decision was as follows: "Upon the petitions dated 02/11/2022 and 13/12/2022 by the defence counsel stating that the defendant will be represented by a large number of defence counsels, our court's decision dated 19/12/2022 was taken in accordance with the right of the defendant to a fair trial, the principle of procedural efficiency and Article 149/2 of the Code of Criminal Procedure, which states: "In the investigation phase, a maximum of three lawyers may be present during the interrogation. (Additional sentence: 3/10/2016-KHK-676/1 Art.; Adopted as is: 1/2/2018-7070/1 Art.) In the prosecutions carried out with regard to crimes committed within the framework of the activities of an organisation, a maximum of three lawyers may be present at the hearing". As there is no prohibition of analogy in the Code of Criminal Procedure, it is understood that the regulation can be applied by default in the trial for the crime of making propaganda for a terrorist organisation, which is of a lesser nature in terms of the envisaged sanctions, and that the defendant can continue to enjoy all her rights within the scope of the right to a fair trial. In accordance with Article 149/2 of the Code of Criminal Procedure, it has been decided to notify the defendant that she would defend herself in the hearing with three lawyers of her choice which she can notify our court and that other defence counsels can submit written petitions to our court. This decision has been notified to the defendant and the serving document has been sent to our court."

40. The objections of the lawyers that the defence attorneys had a division of labour in presenting their defence and that the limitation of three defence lawyers could not be applied in the context of the offence of making terrorist organisation propaganda were rejected without justification. Although the crime of making propaganda for a terrorist organisation is not a crime committed in the course of any organisation's activities and it was not alleged during the trial that Korur committed the crime in the course of any organisation's activities, the application of the exception rule was a clear violation of Korur's right to a fair trial. Although the court's decision mentions that there is no prohibition of analogy in criminal procedure, the primary condition *sine qua non* for analogy in law is the existence of a legal gap. In the preamble of the first version of Article 149 of the Criminal Procedure Code before it was amended by the Decree Law No. 676, it was stated that "The article recognises that the suspect or defendant may benefit from the assistance of one or more lawyers at every stage of the investigation and prosecution phases, and unlike some Western countries' legal systems, it does not impose a limitation on the at the prosecution phase in terms of the number of lawyers." However, in 2016, with Decree No. 676, an exception to the rule was introduced and the number of defence counsels was also limited at the prosecution stage. Introduced after the 15 July *coup* attempt, the amendment of the provision was made with terrorist organisations in mind, one of the facts that led to the declaration of a state of exception (*Hamza Uluçay*, App. No: 2017/23465, 14/9/2021, § 50).

41. As stated in the Constitutional Court's *Ahmet Aslan* decision, "the perpetrator of the crime of terrorist organisation propaganda can be anyone. In this context, the perpetrator's citizenship status does not

matter, nor is there any condition related to her/her position in the terrorist organisation, such as being a founder, manager or member of the terrorist organisation." (*Ahmet Aslan*, App. No: 2021/23949, 6/10/2022, § 49). As can be seen, there is no requirement for the offence to be committed within the scope of a terrorist organisation's activity. Considering that the reason for the limitation of three lawyers is the efficiency of the procedure and the prevention of prolonged proceedings, there is no need to apply the exception in the proceedings conducted vis-a-vis a single defendant.

42. Considering that there is no accusation that Korur was a member of a terrorist organisation and that she was accused of making propaganda for a terrorist organisation due to her statements within the scope of the freedom of expression, it is clear that limiting her right to defence with three lawyers is against the law and the guarantees of the right to a fair trial protected under the Constitution and the ECHR.

3. The Letter from the Ministry of Justice – Recusal of the panel of judges

43. On 12.12.2022, before the first hearing, a letter from the General Directorate of Prisons and Detention Houses of the Ministry of Justice to the Chief Public Prosecutors' Offices in Bakırköy, Istanbul and Ankara appeared in the case file. The letter stated that Korur should be sent to Istanbul under high-level security measures for the hearing and that if the second hearing was postponed to a date within the next 10 days, she should be held in Bakırköy Women's Prison, otherwise, she should be sent to Ankara, Sincan. At the first hearing, a decision was taken to extend Korur's detention and the hearing was indeed postponed to 6 days later. This was perceived by the defence lawyers as a bias and a request was made for the recusal of the panel of judges. Considering the targeting of Korur by high-level politicians and public officials since the beginning of the investigation, especially in conjunction with the smear campaign conducted by media organisations closely linked to the government, it was stated that the panel of judges was not independent in taking the decision on the continuation of Korur's detention. In accordance with Article 24 of the Code of Criminal Procedure, it was requested that the panel be dismissed due to reasons that cast doubt on its impartiality.

44. At the hearing, the request was rejected by the panel, open to an objection procedure, as it was considered that the request was not made in due time as per Article 31/1-a and c of the Code of Criminal Procedure and that it was intended to prolong the proceedings. As a result, after the rejection, only statements regarding the detention status could be submitted. The appeal against the rejection of the recusal request was also refused by the Istanbul 25th Assize Court between the second and third hearings. The request for the recusal of the panel was made within the scope of Article 24/2 of the Code of Criminal Procedure, which reads as follows: "The recusal of the judge may be requested until the end of the hearing or examination for reasons that subsequently arise or become known. However, the request must be made within seven days after the reason for recusal is learnt." Considering that the reasons that cast doubt on the court's impartiality were learnt at the hearing when the panel decided to extend Korur's detention in line with the letter from the Ministry of Justice and that the recusal was requested during the next hearing, which took place six days apart, it is not possible to say that the grounds for the rejection of recusal claims were in accordance with the law.

B. Assessment of Anti-Terrorism Law Article 7/2

45. Article 7/2 of the Anti-Terrorism Law No. 3713, as amended by Law No. 6549, regulates the punishment of persons who make propaganda for terrorist organisations in a way that legitimises or praises the methods of terrorist organisations involving force, violence or threat, or encourages the use of such methods.

46. In the article, it is stated that statements that "legitimise or praise methods of force, violence or threats, or encourage resort to such methods" can be punished within the scope by referring to the case law of the ECtHR. In addition, the Constitutional Court, in its judgments *Zübeyde Füsun Üstel and others*,

also known as the Academics for Peace Application, *Ayşe Çelik* and *Sırrı Süreyya Önder* stated that the offence cannot be considered as an abstract danger offence and that it must be shown that the acts of the accused cause a certain degree of danger bearing in mind the specific circumstances of each case. In addition to that, the Constitutional Court seeks the existence of special intent for the crime to occur. In other words, as long as an expression does not contain incitement to violence, does not advocate resorting to acts of violence, does not justify terrorist acts in order to achieve the goals of its supporters and does not encourage violence by causing a feeling of hatred against certain individuals, it cannot be punished solely because it is related to a terrorist organisation.

47. In a number of applications, the ECtHR has found violations of Article 10 of the ECHR in respect of applicants convicted under Article 7/2 of the Anti-Terrorism Law. The ECtHR summarised the extensive and broad case-law in its recent *Özer v. Türkiye (3*) judgment (no. 69270/12, 11/02/2020). In the case-law of the ECtHR, it is seen that two types of violation decisions are given in applications regarding the crime of making propaganda for a terrorist organisation. These judgements are rendered as a result of an examination in two aspects: Procedural and substantive.

i) Procedural Aspects

48. In the first type of applications, the ECtHR found that the national authorities had failed to provide satisfactory justification or relevant and sufficient reasoning to justify the applicants' conviction and, in particular, had failed to make adequate explanations as to whether the articles, statements or acts in dispute could be regarded as a call to the use of violence, armed resistance or insurrection or as constituting hate speech in view of their content, the context in which they were written and their potential for causing harm. The national authorities failed to carry out a proper examination of all the criteria laid down and applied by the Court in cases concerning freedom of expression, or to strike a fair balance between the applicant's right to freedom of expression and the legitimate aims pursued, in accordance with the criteria set out in its case-law (see, for examples, *Özer v. Türkiye (3)*, § 31).

49. On the other hand, in *Hatice Çoban v. Türkiye* (no. 36226/11, 29.10.2019) the Court held that, in the field of procedural safeguards, which are factors to be taken into account when it comes to assessing the proportionality of an interference with the exercise of the right to freedom of expression guaranteed by Article 10 of the Convention (*Baka v. Hungary [GC]*, no. 20261/12, 29.03.2016, § 161), the national courts had failed to respond to the applicant's claims concerning the reliability and accuracy of the content of the main item of evidence which they had accepted as the basis for convicting her (*Baka/Hungary [GC]*, no. 20261/12, 29.03.2016, § 161), therefore, the national courts did not fulfil their duty under Article 10 of the Convention, which is based on striking a balance between the different interests at stake.

50. The Turkish Constitutional Court, in numerous judgements in line with the case-law of the ECtHR, has stated that interference with the freedom of expression without justification or with a justification that does not meet the criteria set out by the Constitutional Court would violate Article 26 of the Constitution. In order for an interference with freedom of expression to be considered compatible with the requirements of the democratic society, the justifications put forward by the public authorities must be relevant and sufficient (see, among others, *Kemal Kılıçdaroğlu*, B. No: 2014/1577, 25/10/2017, § 58; *Bekir Coşkun [GK]*, B. No: 2014/12151, 4/6/2015, § 56). The Court has repeated this approach in cases where sentences were imposed for terrorist propaganda (*Zübeyde Füsun Üstel and others [GK]*, B. No: 2018/17635, 26/7/2019, § 120; *Sırrı Süreyya Önder [GK],* B. No: 2018/38143, 3/10/2019, § 60; *Ayşe Çelik,* B. No: 2017/36722, 9/5/2019, § 40; *Figen Yüksekdağ Şenoğlu and others,* B. No: 2016/39759, 30/3/2022, § 66).

51. It is considered that the final verdict of Korur, which was based on the closing statement of the prosecutor which was a verbatim repetition of the statements in the bill of indictment prepared in the

investigation phase, does not meet the criterion of relevant and sufficient justification, as laid down by the ECtHR and the Constitutional Court.

52. First of all, it should be noted that Korur's defence that she only saw the host of the broadcast via Skype connection during the broadcast in question and that it was not possible for her to see the images and statements served on the broadcast screen, was not taken into consideration throughout the entire investigation and prosecution. The court did not investigate the accuracy and reliability of the main evidence, which was constructed in the bill of indictment based on speculation and repeated in the conviction verdict, and the defence of Korur and her defence lawyers to the contrary was rejected without any relevant and sufficient justification. Moreover, as Korur is Türkiye's most renowned forensic expert and a human rights defender, her views on the images in question would be protected to a higher degree in a democratic society than the statements of any other person, and strong grounds for interference must be provided. In the trial against Korur, in the balancing between the freedom of scientific expression, which is a special aspect of freedom of expression and protected by a separate article in the Constitution, and the purpose of the intervention, the conclusion reached against freedom of expression must be justified in the light of the principles laid down by the Constitutional Court and the ECtHR.

53. Another important point to be noted is that the perception in the bill of indictment and concluding statement of the prosecutor that Korur made a diagnosis by means of video footage has been consistently rejected by the defence, but no adequate and relevant justification has been shown in the judgement for the similar assessment of the court. The scientific and legal reasons for disregarding the explanations and defences put forward by Korur and her defence lawyers on issues such as suspicion in forensic science, the importance of findings, the necessity of independent committees to take part in examinations at the crime scene, the differences between preliminary diagnosis and diagnosis, and the obligations to comply with the procedures stipulated in international conventions and protocols have not been explained in the reasoned decision. It is a requirement of scientific research and interpretation in general as well as the methods of forensic medicine in particular that scientific opinions and preliminary diagnoses do not have to be entirely free from controversy and proven to be accurate.

54. The statement made by Hulusi Akar, Minister of National Defence, at the General Assembly of the Grand National Assembly of Türkiye regarding the allegations on which Korur's opinion was sought, was repeatedly conveyed to the committee by Korur and her defence counsel but was not discussed in the decision. Speaking on 9 December 2022 at the General Assembly of the Turkish Grand National Assembly, Akar said, "*We formed a committee on 24 November, despite everything. The delegation went, made examinations and measurements. They compiled all of these, gathered them, brought them to the Ministry of Health laboratories. We now have the report that there are no chemicals in any of them.*" As can be seen from the statement, although it was not carried out by an independent committee in accordance with the conventions and protocols to which Türkiye is a party, an investigation was initiated by the ministry due to the seriousness of the allegations, and the work of the committee was shared with the public in the parliament, the most important platform for political debate. The fact that the findings made by Korur that the preliminary diagnostic stage of suspicion requires further investigation was taken seriously by the armed forces and resulted in an audit is the *raison d'être* of scientific research and debate. The fact that the local court ignored these facts and left the defence unanswered shows that the interference with freedom of expression was in violation of procedural guarantees.

i) On the Merits

55. In the second type of applications, the ECtHR has itself examined the writings and statements in dispute which formed the basis for the sentencing of the applicants, as well as other acts alleged against

the applicants. In these cases, the Court found that the writings, statements and acts in question, even if taken as a whole, were sometimes hostile and contained harsh criticism of the state authorities or views which could be regarded as favourable to certain illegal organisations, their leaders or members, did not constitute an indication of the use of violence, while recognising that they cannot be regarded as containing calls for armed resistance or insurrection or as constituting hate speech. Although the tone and hostility of the language were important elements to be taken into account, the Court concluded that they could not incite violence by inculcating a deep and irrational hatred against particular persons (for examples see *Özer v. Türkiye (3)*, § 29).

56. The balance to be struck between violence and expression has been laid down in the ECtHR's 1999 judgments against Türkiye and the subsequent case-law *(Erdoğdu and İnce v. Türkiye*, no. 25067/94, 08.07.1999, § 50; *Başkaya and Okçuoğlu v. Türkiye*, no. 23536/94, 08.07.1999, § 62; *Sürek v. Türkiye (no. 4)*, no. 24762/94, 08.71999, § 57; *Sürek v. Türkiye (no. 2)*, no. 24122/94, 08.07.1999, § 34; *Yalçın Küçük v. Türkiye*, no. 28493/95, 5.12.2002, § 38; *Erdoğdu v. Türkiye*, no. 25723/94, 15.6.2000, § 61-62). According to the ECtHR, an expression cannot be banned merely because it is a statement of a terrorist organisation or because it relates to a terrorist organisation unless it contains incitement to violence, i.e. it advocates resorting to acts of violence or bloody revenge, justifies acts of terrorism in order to achieve the objectives of its supporters, and can be interpreted as encouraging violence by causing deep and irrational hatred against certain individuals *(Gözel and Özel v. Türkiye*, nos. 43453/04 and 31098/05, 6.07.2010, § 56).

57. Furthermore, the Constitutional Court summarised its case-law on terrorist propaganda in its judgment *Sırrı Süreyya Önder [GK]* (B. No: 2018/38143, 03.10.2019). According to the jurisprudence of the Constitutional Court, which is in alignment with the ECtHR jurisprudence explained above, with the amendment made to Article 7 of Law No. 3713, the crime of making propaganda for a terrorist organisation is no longer an act that can be interpreted broadly to cover any and all types of expressions, and the crime is defined as legitimising, praising or encouraging the use of violence and threatening methods of the terrorist organisation. As stated by the Constitutional Court, "The Court of Cassation has also stated many times that in Turkish law, not all expressions of thought in connection with terrorism, but only the propaganda for terrorist organisations in a way that legitimises, praises or encourages the use of force, violence or threatening methods of terrorist organisations is regulated as a crime (see. *Zübeyde Füsun Üstel and others*, § 25-26; *Meki Katar [GK]*, B. No: 2015/4916, 03.10.2019, § 51; *Sırrı Süreyya Önder [GK],* B. No: 2018/38143, 03.10.2019, § 64; *Çağla Aydın and others*, B. No: 2016/1837, 09.07.2020, § 101).

58. According to the Constitutional Court, encouraging the use of force, violence or threatening methods of a terrorist organisation is the dissemination of a message to the public that will lead to the danger of committing one or more crimes or with the intention of provoking the commission of terrorist crimes. In the crime of propaganda for a terrorist organisation, the aim is to advocate for the organisation's methods involving force, violence or threat with a certain intensity in order to encourage others to do the same (*Sırrı Süreyya Önder*, § 63).

59. It has been pointed out by the Constitutional Court that the acceptance of propaganda offence as an abstract danger offence has the potential to put pressure on constitutional rights and freedoms, especially the freedom of expression. For this reason, in order for a propaganda activity to be punishable, it must be shown that it causes a certain degree of danger in the specific circumstances of a case (*Zübeyde Füsun Üstel and Others*, § 84; *Ayşe Çelik*, § 47; *Sırrı Süreyya Önder*, § 64; *Çağla Aydın and Others*, § 103; *Meki Katar*, § 53; *Baver Mızrak*, B. No: 2015/19280, 09.01.2020, § 47).

60. The ECtHR applies a three-pronged test when assessing whether an expression constitutes hate speech or a call to violence. The test consists of assessing the statements according to; a) by whom, in what

context and by what means it was conveyed, b) whether it contains a call to violence, c) whether it is likely to cause violence (*Erkizia Almandoz v. Spain*, no. 5869/17, 22.06.2021, § 40).

a) By whom, on what subject and in what form the word was spoken

61. As the ECtHR established in *Castells*, national courts should refrain from punishing criticism of state authorities *(Castells v. Spain*, no. 11798/85, 23.04.1992, § 42). In the article,which was the subject of the application, Castells criticised the policies of the Spanish Government in relation to the Basque region of Spain, which had been the scene of armed conflict for many years, and the Basque question. The ECtHR found that the statements of Castells were within the limits of freedom of expression and criticism.

62. *In Dmitriyevski v. Russia*, the ECtHR (no. 42168/06, 29.01.2018) found that the convictions of the applicant in relation to two articles containing severe criticism of Russia's Chechnya policies violated his freedom of expression. In the judgment, the ECtHR continued its case-law that freedom of expression on political issues can only be restricted in the presence of very strong reasons (§ 95) and that criticism of the government is entitled to the highest level of protection (§ 96). As can be seen, the ECtHR has protected criticism of the policies of public authorities at the highest level, especially in regions where there are ethnically motivated problems or even armed conflicts. Indeed, in its recent judgement in *Selahattin Demirtaş (2)/Türkiye*, the ECtHR recognised the need to assess the context of expression. In the aforementioned judgment, the ECtHR concluded that the applicant's "statement that they would make a statue of Abdullah Öcalan" could not be characterised as incitement to violence, taking into account that the statement was made during the Peace Process in which the armed conflict had ended in the country and a permanent solution to the Kurdish problem was sought (no. 14305/17, 22.12.2020, § 333). The ECtHR followed a similar approach in the recent *Erkizie Almandoz v. Spain* (no. 5869/17, 22.06.2021). It held that the punishment of a former politician, who had attended an event organised to commemorate ETA militants killed in armed conflict, for a speech he made at the event entitled "Long live the fighters of the past and present" was a violation of freedom of expression, taking into account the context in which the speech was made.

63. Every statement must be considered within the context and circumstances of the period in which it was conveyed. The fact that the chemical weapons allegations had a wide repercussion in public opinion at the time of Korur's statement and that the Minister of National Defence itself brought the issue to the agenda and discussed it in the General Assembly of the Parliament is an indication that the issue was a current and political issue. As stated by Korur, the images in question were interpreted by experts at different scientific conferences and delegations were formed and sent to the region to discuss the issue with scientists.

64. In addition, it is without question that Korur's identity as a prominent scientist should also be taken into consideration. According to the Constitutional Court, freedom of science, as one of the oldest and deep-rooted areas of freedom, is a result of the tendency to think, wonder, search and act accordingly, which is at the core of human dignity and value. Humanity will only be able to establish the correct information if this freedom exists *(Hasan Mor*, B. No: 2019/20996, 25/5/2022, § 29). Therefore, it should be recognised that the guarantees of freedom of expression are not limited to expressions and information that are accepted to be objectively true (*Mutia Canan Karatay*, B. No: 2018/6707, 31/3/2022, § 33). As a matter of fact, freedom of science is specifically regulated in Article 27 of the Constitution. According to the said article, everyone has the right to freedom of learning, teaching, explanation, dissemination and research.

65. Freedom of scientific expression, which is a sub-branch of freedom of expression, guarantees that scientists can freely carry out their work or disseminate their scientific works and that this is not interfered with by the state or any other person. Therefore, the state has negative and positive

obligations vis-à-vis freedom of scientific expression (*Hasan Mor*, B. No: 2019/20996, 25/5/2022, § 23).

66. As a matter of fact, in the Constitutional Court's decision in *Zübeyde Füsun Üstel and others [GK]* (No: 2018/17635, 26/7/2019), it was stated that "The opinions expressed by academics remain under the protection of freedom of expression even if they are not related to their own research areas, professional expertise and competence, or are controversial or unpopular" (§ 111). Considering that Korur's statements were on a subject falling within the scope of her own field of expertise, it is clear that she should benefit from the protection of freedom of scientific expression. Moreover, the Constitutional Court has also found that controversial and disturbing views on sensitive and political issues are also under the protection of the right to freedom of scientific expression (§ 112).

67. As explained above, the statements in question, made by Korur, a forensic medicine expert who has undertaken important tasks in her field throughout her life, are part of a debate on the question of the conduct of public authorities' actions in a transparent manner and in compliance with international law. Penalising a scientist for expressing critical views in the media on the basis of a link to terrorist organisations that is not based on concrete evidence is contrary to the principles set out in the case-law of the ECtHR and the Constitutional Court. Since in the case-law of the ECtHR, even the use of much more severe expressions, which are not scientific opinions, to criticise the state and the government is protected within the scope of freedom of expression, it should be accepted that Korur has exercised her right to freedom of expression as of the case in which she is being tried.

b) Incitement to Violence

68. The mere fact that an expression is harsh, criticises the government or is even partisan does not mean that it incites violence. The ECtHR has therefore considered statements to the effect that "Kurdistan is a colony annexed to the Turkish State, that the Turkish State is the oppressor that oppresses Kurdistan 'politically, militarily, culturally and ideologically', that it has 'a policy of racist denial' against the Kurds in the development of the 'fascist movement' *(Başkaya and Okçuoğlu v. Türkiye*, § 64), romanticising the aims of the Kurdish movement, even saying that 'it is time to settle accounts' and that 'the real terrorist is the Republic of Türkiye' *(Sürek (no. 4)*, § 56), condemning the 'military solution' involving the state's 'dirty war against the guerrillas' and even 'open war against the Kurdish people' (*Erdoğdu v. Türkiye*, § 62), saying that 'Kurdistan is burning' and describing what is happening as 'genocide' (*Şener v. Türkiye*, no. 26680/95, 18.7.2000, § 44), saying that the state had committed a 'massacre' or describing the conflict as a 'war' (*Karkın v. Türkiye*, no. 43928/98, 23.9.2003)" were not considered as calls for violence and were considered to be within the limits of freedom of expression.

69. As seen in many examples in the case-law of the ECtHR, even much more severe expressions and accusations against the state have not been considered as incitement to violence. Similarly, in *Gümüş and Others v. Türkiye* (no. 40303/98, 15.03.2005), the Court held that the punishment of the applicants for publishing a press release criticising the operations of the security forces in Cizre, Nusaybin and Şırnak during the Newroz celebrations in 1992 violated their freedom of expression. The Court stated as follows: "The Court considers that certain passages in the statement, which were clearly negative, painted an overly negative picture of the Turkish State and, as such, gave the statement a hostile tone, but that they did not incite violence, armed resistance or insurrection and were not hate speech. According to the ECtHR, this is a fundamental factor in assessing the necessity of the measure." (§ 18). The Court ruled that criticism of the state cannot be penalised, no matter how strong the language used, unless it incites violence or contains hate speech. It is also clear that the tone of speech alone cannot be decisive and even insults against the State cannot be criminalised (*Özgür Gündem v. Türkiye*, no. 23144/93, 16.3.2000, § 60).

70. At first glance, it can be seen that the expressions used by Korur do not contain incitement to violence. As clearly stated in the case-law of the ECtHR, even very severe criticism of military operations is within the scope of freedom of expression. As stated by Korur, when she met with her colleagues from the IPPNW Anti-Nuclear Physicians group in Germany, she found out that the group had gone to northern Iraq to conduct research on chemical weapons allegations, but that they had been denied access to the relevant areas by the northern Iraqi administration and that a report had been prepared by the IPPNW on the issue. It is not possible to accept that Korur's statements incited any person to violence since she stated that she, as an expert, had sufficient suspicion to investigate the allegations of the use of illegal weapons and that they should be investigated according to the treaties to which Türkiye is a party.

c) The Probability of Words Leading to Violence

71. The last aspect of the basic formula summarised by the ECtHR in the *Gözel and Özer* quasi-pilot judgment is the probability of the statements leading to violence. The Court "is of the opinion that an expression cannot be prohibited merely because it is a statement of a terrorist organisation or because it relates to a terrorist organisation unless it contains incitement to violence, i.e. it does not advocate resort to acts of violence or bloody revenge, does not justify acts of terrorism in order to achieve the aims of its supporters, and cannot be interpreted as encouraging violence by arousing deep and irrational hatred against certain persons." (*Sürek v. Türkiye (no. 1) [GC]*, no. 26682/95, *Gözel and Özer v. Türkiye*, nos. 43453/04 and 31098/05, *Faruk Temel v. Türkiye*, no. 16853/05, 01.02.2011, *Öner and Türk v. Türkiye*, no. 51962/12, 31.03.2015, *Gül and Others v. Türkiye*, 08.06.2010, no. 4870/02, § 41-45)

72. It is clearly stated in the case-law of the ECtHR that statements made in a media organ considered to be linked to a terrorist organisation cannot be punished solely for this reason. In the absence of any evidence that an actual danger of violence had arisen as a result of Korur's statements, the conviction is contrary to the case-law of the ECtHR.

C. With regard to the prohibition of abuse of limitations

73. Pursuant to Article 18 of the ECHR, the restrictions permitted under the Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed. The principles regarding the application of the article and the standards of proof are set out in the ECtHR Grand Chamber judgment of *Merabishvili v. Georgia* (no. 72508/13, 28.11.2017, § 287-317).

74. Accordingly, for there to be a violation of Article 18, there must be a right or freedom subject to the restrictions permitted by the Convention. However, Article 18 will not apply to all restrictions on rights and freedoms that do not fully meet the requirements of the Convention, but only if the rights and freedoms are restricted on the basis of a purpose other than those set out in the Convention and if this purpose constitutes the actual basis of the restriction.

75. A purpose not regulated in the Convention, as enshrined in the article, can be constructed in two ways. In the first case scenario, rights and freedoms are restricted only on the basis of a purpose not regulated in the Convention. Secondly, the purpose not regulated in the Convention coexists with a legitimate purpose regulated in the Convention. In such a case, a particular assessment is made in cases where the restriction is essentially based on a legitimate purpose and the public authorities obtain other advantages at the same time, and in cases where the legitimate purpose is used to conceal the purpose not foreseen in the Convention and the prohibited purpose is dominant. In this respect, it will be imperative to conclude that there has been a violation of Article 18 if the illegitimate aim not regulated by the Convention predominates.

76. In assessing this, the ECtHR abandoned its earlier jurisprudence that clear and incontrovertible direct evidence of a violation of Article 18 must be provided by the applicant. According to the Court, no special standard of proof is required. In assessing the alleged violation of Article 18, circumstantial evidence, such as information on the main events, their context and consequences, statements and reports by international organisations, non-governmental organisations or the media, and judgments of national and international courts will be taken into account (*Merabishvili v. Georgia*, §§ 316-317).

77. To this end, for instance, it was also significant for the Court that the charges against Mr Kavala followed speeches made by the President of the Republic on 21 November and 3 December 2018, as noted by the Court in *Kavala v. Türkiye* (no. 28749/18, 10.12.2019, § 229). The Court noted that it could not ignore the fact that, when these two speeches were made, the applicant, who had been in detention for more than a year, had still not been formally charged by the prosecution. In addition, it noted that there was a correlation between, on the one hand, the explicit accusations made against the applicant in these two speeches and, on the other hand, the wording of the charges in the bill of indictment, which was drawn up some three months after the speeches in question.

78. Similarly, in *Selahattin Demirtaş v. Türkiye (No. 2) ([BD]* no. 14305/17, 22.12.2020, § 426), the ECtHR noted that after the end of the Peace Process and, for example, the President's speeches on 28 July 2015 in which he stated that "the leaders of that party [*HDP*] should pay a price", there was an increase in the number and speed of criminal investigations concerning the applicant.

79. In the case of Korur, firstly, it can be said that the judicial proceedings against Korur were influenced by the targeting statements of political actors and high-level bureaucrats. As a matter of fact, although the broadcast subject to the offence, in fact, reached a very small audience, Korur's statements entered the public agenda after the statements of politicians and government officials. In addition, the judicial authorities have taken action against Korur's role in the Turkish Medical Association and the entire structure of the professional organisation, including e.g. its name, and its executive committee. It is possible that the court's disregard of the evidence presented in favour of Korur at the prosecution stage against the accusations in the bill of indictment, which was based on certain assumptions, and the conviction verdict based on these assumptions may be seen as a violation of the presumption of innocence and the prohibition of abuse of limitations.

IV. Conclusion

80. As explained in detail in this report, throughout the proceedings against Şebnem Korur, there have been many grave and unlawful interferences with her right to a fair trial and freedom of expression.

81. The report stated that the detention order issued against Korur was unlawful and that the live broadcast of the search of her house violated her right to respect for private life. Although an investigation permit was not requested from the Ministry of Justice under Article 301 of the Turkish Penal Code, her statement was taken at the prosecutor's office for the offence regulated under that article. In summary, the guarantees of the national criminal procedures and the right to a fair trial were not observed during the investigation phase. No factual assessment was made as to how and in what manner Korur committed the offences stated in the bill of indictment, and her punishment was demanded on the basis of assumptions and perceptions.

82. Throughout proceedings, the defences and requests of Korur and her lawyers were not taken into consideration. The request for recusal of the panel of judges, submitted at the second hearing based on solid grounds, was rejected on the grounds that consisted of a repetition of the relevant article in the Criminal Procedure Law. Finally, Korur was convicted based on guesses and assumptions about her statement. Moreover, there was the final verdict did not contain relevant and sufficient reasons for her conviction. Throughout the trial process and in the final verdict, the jurisprudence of the ECtHR and the Constitutional Court was disregarded. The fact that Korur is a prominent scientist whose

statements are protected at a higher level has been systematically and unlawfully ignored. As explained above, it has been observed that the Istanbul 24th Assize Court did not conclude an assessment in accordance with the standards and principles set out in the case-law of the ECtHR.

83. The trial monitored within the scope of this report constitutes one of the many examples of pressure, censorship and silencing through the judiciary by targeting opposition journalists, politicians, rights defenders and academics in Türkiye. The impact of the judgment against Korur is not limited to her as an individual but has the capacity to lead to the diminishing and silencing of dissenting voices in the public sphere. This trial and Korur's conviction undermine the most fundamental principles and guarantees of human rights, as well as the independence of the judiciary and faith in the rule of law in Türkiye.

V. Sources

a) Decisions and Judgments

i) European Court of Human Rights

Başkaya and Okçuoğlu v. Türkiye, no. 23536/94, 08.7.1999.

Sürek v. Türkiye (no. 1) [GC], no. 26682/95, 08.07.1999.

Faruk Temel v. Türkiye, no. 16853/05, 01.02.2011.

Öner and Türk v. Türkiye, no. 51962/12, 31.03.2015.

Gül and Others v. Türkiye, no. 4870/02, 08.06.2010.

Sürek v. Türkiye (no.2), no. 24122/94, 08.07.1999.

Sürek v. Türkiye (no.3), no. 24735/94, 08.07.1999.

Sürek v. Türkiye (no. 4), no. 24762/94, 08.07.1999.

Yalçın Küçük v. Türkiye, no. 28493/95, 05.12.2002.

Erdoğdu v. Türkiye, no. 25723/94, 15.06.2000.

Gözel and Özer v. Türkiye, nos. 43453/04 and 31098/05, 06.07.2010.

Dmitriyevskiy v. Russia, no. 42168/06, 29.01.2018.

Castells v. Spain, no. 11798/85, 23.04.1992.

Özer v. Türkiye (no. 3), no. 69270/12, 11.02.2020.

Hatice Çoban v. Türkiye, no. 36226/11, 29.10.2019

Selahattin Demirtaş (2) v. Türkiye, no. 14305/17, 22.12.2020.

Erkizie Almandoz v. Spain, no.5869/17, 22.06.2021.

Şener v. Türkiye, no. 26680/95, 18.07.2000.

Karkın v. Türkiye, no. 43928/98, 23.09.2003.

Gümüş and Others v. Türkiye, no. 40303/98, 15.03.2005.

Özgür Gündem v. Türkiye, no. 23144/93, 16.03.2000.

ii) Constitutional Court

Ayşe Çelik, App. No: 2017/36722, 09.05.2019.

Zübeyde Füsun Üstel and Others, App. No: 2018/17635, 26.07.2019.

Sırrı Süreyya Önder, App. No: 2018/38143, 03.10.2019.

Bekir Çoşkun, App. No: 2014/12151, 04.06.2015.

Hasan Mor, App. No: 2019/20996, 25.05.2022.

Mutia Canan Karatay, App. No: 2018/6707, 31.03.2022.

Kemal Kılıçdaroğlu, App. No: 2014/1577, 25.10.2017.

Figen Yüksekdağ Şenoğlu and others, App. No: 2016/39759, 30.03.2022.

b) News Articles

- Diken, "Hedef gösterilen Fincancı: Sözlerim çarpıtıldı, topluma gözdağı veriliyor", 21 Ekim 2022, https://www.diken.com.tr/hedef-gosterilen-fincanci-sozlerim-carpitildi-topluma-gozdagi-veriliyor/
- Evrensel, "İktidar medyası bu kez Şebnem Korur Fincancı'yı hedef gösterdi", 21 Ekim 2022, https://www.evrensel.net/haber/472819/iktidar-medyasi-bu-kez-sebnem-korur-fincanciyi-hedef-gosterdi
- Gazete Duvar, "Erdoğan, TTB Başkanı Fincancı'yı hedef aldı: Bu ismin değişmesini sağlayacağız", 24 Ekim 2022, https://www.gazeteduvar.com.tr/erdogan-amasradan-alinan-dersler-isiginda-tum-madenler-inceleniyor-haber-1586258
- Evrensel, "AKP iktidarı ve ortakları TTB'yi ne zaman, neden ve hangi sözlerle hedefe koydu?", 26 Ekim 2022, https://www.evrensel.net/haber/473110/akp-iktidari-ve-ortaklari-ttbyi-ne-zaman-neden-ve-hangi-sozlerle-hedefe-koydu
- Yeni Şafak, "TSK'nın başarısı karalanıyor", 26 Ekim 2022, https://www.yenisafak.com/gundem/tsknin-basarisi-karalaniyor-3866451
- Bianet, "Bekir Bozdağ: TTB ve TMMOB ile ilgili yeni bir hazırlık yapıyoruz", 27 Ekim 2022, https://m.bianet.org/bianet/insan-haklari/269118-bekir-bozdag-ttb-ve-tmmob-ile-ilgili-yeni-bir-hazirlik-yapiyoruz