

TO THE PRESIDENCY OF THE CONSTITUTIONAL COURT

Case Number: 2008/1 (Party Closure)

RESPONDENT: The Justice and Development Party

APPLICANT: The Supreme Court of Appeals, Chief Public Prosecutor's Office

SUBJECT: Our response to the indictment

DATE: April 30, 2008

PREFACE:

In politics, there may be serious differences between facts and perceptions and the facts can be given varying interpretations depending on political viewpoints. In the field of jurisprudence however, facts, actual situations, concrete incidents and acts must be evaluated in the light of objective norms and rules rather than according to subjective assessments and perceptions.

As can be seen in the indictment, arbitrary attitudes, personal initiatives and subjective behavior result in an estrangement from reality and a misuse of legal standards.

It is obvious that in the field of jurisprudence the misjudging of facts – caused by a misperception of those same facts - results in conclusions that, because of the distorted way in which facts have been perceived, causes irreparable harm to all concerned.

This indictment is not based on the objectivity, causality and rationality which constitute basic characteristics of the legal system. In addition, the most generous view of this indictment is to say that it exhibits the characteristics of a problem in perception. The indictment prepared regarding our party reflects a prejudiced approach which totally turns facts on their head and confuses values and concepts. Moreover, this indictment

actually damages the values that it claims to protect. This indictment is not in any way based on actually occurring events. In fact it seems unconcerned with establishing any link between the indictment and any actual event. There is a serious gap between what the indictment purports and actual facts - indeed this lack of connection is what the indictment itself confirms.

This indictment is a web of contradictions. It is a contradiction to claim that a political party has become a center of anti-secular acts when it has been marching determinedly since its establishment towards the goal of establishing a contemporary society as set out by the founder of our Republic, Mustafa Kemal Ataturk, and when it has been taking all steps necessary for accession to full EU membership, the most important milestone in this march.

In fact, for us, the crux of the issue is displayed in the question as to whether policies that are seeking solutions to problems rather than deepening them serve to enhance and strengthen the basic principles of our constitutional order or aim to weaken them, as is claimed by the Chief Prosecutor.

According to the Chief Prosecutor our efforts to reach this 'grand compromise' constitute a crime although these efforts aim to eliminate the artificial contradictions between demands and needs, rights and freedoms, and secularism, an essential founding element of our state.

It is a serious paradox to describe a political party as a formation incompatible with the characteristics of the Republic, when that party, instead of exalting mere political rivalry has been trying to maintain the values and characteristics of the Republic – those of a democratic and secular constitutional state - as its unifying common denominator in the face of an authoritarian, marginalizing and decomposing political mentality.

It is also a serious contradiction to say that the political project of a political party - which has been exerting efforts to firmly establish democracy and expand the sphere of freedoms with a new political mentality - is incompatible with democracy. It is a situation which defies belief when it is claimed that a political party has an anti-democratic political agenda when that party has been steadfast in defending the interests of the

nation both within and out of the country, and which has been firm in defending and advancing the values of our Republic - human rights, democracy, secularism and supremacy of law.

The biggest contradiction of all is to accuse a political party of having a “secret agenda” and practicing “takiyye”, (the practice of simulation and apparent acceptance of one situation in order to secretly advance a `higher` cause) when since its establishment it has not only officially adopted but actually practiced the principles of transparency and accountability. All the steps we have taken have been taken openly before our country with the single aim of bettering the condition of the nation. **We have never had, nor will we ever have `a secret agenda`. What we have done has always been openly and publicly stated and put into practice.**

The main problem with the indictment against us is that it shows a lack of comprehension of the political philosophy and vision of the AK Party, and graver than that, it actively misconstrues them. The `AK Party` portrayed in the indictment has nothing in common with the AK Party as it actually exists.

The Justice and Development Party emerged with a new mentality and way of doing politics at a time in which the adverse effects of an economic and political crisis were being experienced. Tensions in the relationship of state and religion, and society and the state were being felt intensely. The AK Party developed a Conservative Democratic political identity with the aims of normalizing politics through the placement of politics on a realistic basis while at the same time defusing the effect on Turkish politics of certain areas which had become chronic sources of tension.

The AK Party presented itself within a clear, concrete and well defined framework to avoid any implications of having a ‘secret agenda’ or practicing ‘takiyye’ and to avoid the unnecessary tensions such accusations would produce. The AK Party also distinguished itself by raising the level of political practice by harmonizing its identity with its practice and program.

With the purpose of the normalization of politics in mind, our party has been trying to develop as its central identifying political principle the rejection of a confrontational “politics of identity.”

The AK Party produced policies showing that harmony, not contradiction, exists between the traditional cultural values of Turkey and the aim of establishing a contemporary society. While doing so, the synergy produced by this political perspective as well as the sociological power of the AK Party, was focused on that inherent goal of our Republic, modernization

The AK Party is a centrist party which has received votes from all sectors, in every region, and from all economic and social classes. Our party is the only party which managed to elect deputies from all but one of the 81 provinces in the recent general elections. For this reason, the AK Party has become the guarantee of the unity and integrity of Turkey. It is unimaginable that a political party which has united all levels of society and become the guarantor of social peace, unity and national integrity could be described as a center for anti-constitutional activity.

The AK Party, from the very first, has been extremely careful in acting cautiously on all sensitive national issues.

The emphasis on a unitary, secular and democratic state is the basic political mission of the AK Party.

The AK Party, at every rally leading up to the July 22 elections, emphasized “**one nation, one flag, one country, one state**” and displayed the same sensitive approach while rejecting any discrimination between the various regions of the country.

The mentality and political stance developed by the AK Party towards secularism bears major importance from the point of view of Turkish politics. The AK Party governments, beyond respecting the institutional and practical conditions of secularism within the existing legal framework, provided an important contribution in bringing the vast public of the country to accept integration into the secular state. Our party has been

performing an important mission as secularism is now embraced by a huge population as different levels of society become integrated into the system.

For this reason, **the AK party must be considered a movement which, far from being an anti-secular center, is an organization which actually furthers the social acceptance of secularism.**

In addition, this case has unfortunately started a process which may force our country and nation pay heavy economic and political penalties. In fact, the indictment prepared against the AK Party is based on a mentality which subverts the very democratic life of Turkey, leading as it does, to a questioning of the supremacy of the national will and which gives prominence to allegations rather than realities.

The opening of this case has actually damaged our system of jurisprudence. The thought that justice has become politicized damages the citizens' confidence in the legal system.

With the opening of this case our democracy has been damaged. Parliament is the heart of democracy and political parties are the main veins that carry blood to this heart. The function of pluralist democratic politics is to produce solutions and the closure of parties quite simply emasculates this function. Such a course of action deeply hurts the belief and trust of our nation in democracy.

With this case our country and nation are being damaged. The subverting of political and economic stability would mean a country and people who will become poorer and fall behind. No one should have the right to force Turkey to 'lose' the coming decades.

With this case the integrity of our state is damaged. The manners of thought which aim at damaging the unity and integrity of Turkey and the actions which result from them will try to gain power and grounds during this process.

We definitely do not accept any of the allegations and accusations in this indictment prepared against us. We believe that the indictment has no legitimacy from either a legal or a political aspect.

We consider that such an indictment as this is in fact directed against our nation which had taken our party and the basic values of our nation to its heart. This indictment targets not only the AK Party but is aimed far more at the will of the nation and at democratic politics.

This indictment is based on the assumption that the qualities of the Republic are not adequately defended by our nation and actually questions the loyalty of our nation to its own state and Republic. To accept this unfair assumption is simply impossible as it means a denial of all that our Republic has achieved. Ataturk strongly believed that it was not possible to ensure the survival of the basic principles of the Republic and its reforms without entrusting them to the nation. With this belief in mind, he brought into existence all the elements of the new regime and entrusted them to the democratic will of the Turkish Grand National Assembly. For this reason, it is the TGNA and the Turkish nation as a whole who protect and implement Ataturk's principles and reforms. The Republic of Turkey, with all of its qualities is the possession of our nation and the process of modernization has reached its goal within the context of reaching out to the nation. **It is clear that in the period during which the AK Party has been in power, we have more closely than ever approached the goal of modernization as set out by Ataturk - primarily through the distance that we have covered on the path to full membership in the EU.**

The AK Party which received a very strong democratic mandate in the last election by receiving half of all votes cast, has always defended - and will continue to defend - the right of our nation to live as a more democratic, free and pluralist society, in prosperity and in comfort.

In answering this case which was opened to bring about the closure of the AK Party, our position is not merely to defend our party. In fact, we have done nothing that would require a defense, we have done nothing but serve our nation and state. We have always regarded politics as an instrument to serve the nation. Both our words and

deeds are respectful of human rights and aim to direct our Republic in the direction of becoming an even more democratic, secular and social constitutional state.

Within this context, what we say below should be taken as a comment on history and the age we live in. As the AK Party, we regard the explanations we will make as a fulfillment of the duty and responsibility that we have assumed towards our cherished nation and state.

I. THIS CASE IS POLITICAL, NOT LEGAL

1. In General

The text of the indictment against the AK Party rather than being a legal text is a fiction based on speculative assumptions regarding the future, ignoring the performance of the ruling party and the reality of the country. Opposition parties may resort to such methods to do damage to governments but the judiciary should be based on concrete facts, documents and evidence, not fictional evaluations. It is extremely dangerous to lay the foundation of fictional accounts leading to the closure of a political party on the basis of words utterable by people of virtually any political persuasion and gathered from mere newspaper clippings - the correctness of which has not even been checked. This may have grave consequences. These may lead in turn to even worse consequences if the subject of such accusations is the ruling party which, having a legislative majority, is responsible for the enforcement of the law.

Ruling parties are organizations who use state power through their legislative activities and the enforcement of the law. Their legality is therefore provided for by constitutional and legal mechanisms. This is the reason why no closure cases have been opened against ruling parties in democratic country having party closure provisions in their legislation. Furthermore, in many countries it is impossible to file such cases. For example, according to article 43 of the Constitutional Court Law of the Federal Republic of Germany, only the Federal Assembly (Bundestag), the Federal Senate (Bundesrat) or the Federal Government has the authority to apply to the Constitutional Law Court of the FRG with the claim that a political party is unconstitutional. In cases where such a party is active only within the borders of one of the states, then that state government has the

right to apply to the court. In the same manner, in Romania, article 39 of the Constitutional Court Law allows only the Government, Senate and the President of the Representatives to file a case against a party with the claim such party is unconstitutional.

In Turkey certain constitutional law experts openly state that ruling parties cannot be closed. Prof. Dr. Erdoğan Teziç, well known for his studies on the law regarding political parties, gave a speech at a TÜSİAD (the Turkish Association of Industrialists and Businessmen) panel in 1997 and said the following: “We have to remember; there have been more than 10 parties closed until now and when you analyze the closed parties in Turkey you will find out these parties were either marginal parties or were involved in cases processed by the Constitutional Court just emerging from the 1980 military coup. **It is unthinkable to activate a closing mechanism against a ruling party.**” (TÜSİAD, Siyasi Partiler Yasası, “Demokratik Standartların Yükseltilmesi Paketi”, Tartışma Toplantıları Dizisi-1, Mayıs 1997, s.50). (The Turkish Association of Industrialists and Businessmen, The Political Parties Law, “The Program for the Elevation of Political Standards”, Discussion Meetings Series – 1, May 1997, p. 50)

The closure of a ruling party is an initiative which would result in the paralysis of legislative and executive bodies. This is the reason some internal and external sources described the closure case as a “judicial coup.” The fundamental difference between democracy and other regimes is that governments are changed only through elections. If the government of a country change through methods other than elections and if the fundamental political decisions are made by those not empowered by the legal democratic right of representation or are forced on those who do possess this right by virtue of their democratic election, one can only talk about a bureaucratic regime not about a democracy, even if elections are held regularly.

According to the Constitutional Court, “a democratic state is a form of administration where sovereignty is not exploited by a single person, a group of people or a class for the benefit of a certain class; where free and general elections are the one and only way both of coming to, and losing, power; furthermore, the power to govern is used for the benefit of the entire nation...” (E.1963/173, K.1965/40.K.T.26.09.1965).

In fact, in a constitutional state where effective judicial control exists, one cannot claim that the ruling party poses a threat to the pro-freedom democratic system. Since the government's actions are controlled by constitutional and administrative measures to allow the effective superiority of the Constitution, it is impossible to interpret a closure case against the ruling party as a function of a democratic or constitutional state.

This case is the most ironic case of all time. Accusing a party of being a “center for anti-secular acts” when it has been trying hard to make Turkey a full member of the European Union, and which has been and is taking all the steps necessary to make the country a part of a democratic and secular Europe is unreasonable and irrational. One of the most important modernization projects of our republic, the full membership in the European Union is also one of our essential foreign policy targets. No-one can doubt that the ruling party has taken all necessary steps, with the great sacrifice and effort that this implies, towards the realization of this project.

During the rule of our party, steps have been taken that marked the turning point in the history of Turkey's drive for membership in the EU, a goal which has become Turkish state policy.

A closure case against the ruling party would endanger the EU negotiation process. The statements of EU officials in this regard have been clear ever since the case was first filed.

The destructive effect of the case on our responsibility to complete the negotiations, together with its effect on legislative, executive and judicial powers as a whole, and on the maintenance of political integration is clear. We would like to leave a message to history and future generations: **History and our nation, which is its witness, will not forgive those who obstruct the struggle of our country to build a contemporary society.**

The essence of the indictment is based on the assumption that the democratic change and transformation that our party has been trying to bring about does itself not comply with democracy. To prove this assumption and accusation, statements and addresses made within the context of freedom of expression are given as evidence. Producing such opinions as evidence when they are in fact statements openly adopted by political

parties of varying trends and which are protected under the freedom of expression existing in Turkey is unacceptable. Remarks that anyone can freely say on any occasion cannot be used as evidence against a party when those views are mere expressions of opinions by members of that party.

The AK Party was established and came to power to expand rights and freedoms in Turkey. Since it came to power in 2002 it has been working hard for this purpose, to raise the country to the level of a contemporary society.

2. The Political/Ideological Language of the Indictment

The text of the indictment is written in language disregarding legal usage. The prosecutor's insistent use of the abbreviation 'AKP' for the Justice and Development Party, instead of 'The AK Party' as is written in official documents, is an indication of a political stance.

An office which has the authority to open a court case on behalf of the public should use politically neutral language and restrict claims and allegations to those admissible in law. However, the indictment reflects a political and ideological bias and with that it bears the nature of a political declaration where political prejudices prevail rather than being a legal document. Some examples of this follow:

"Political Islam does not limit itself to the space between man and god; and, in this sense, is totalitarian by claiming to cover the state and social order. Therefore, parties in the Republic of Turkey basing their existence on political Islam have no similarity to Christian Democrat parties in Europe."(p.114)

"This mentality, which sees democracy as a means, has revealed its 'real' intention by hiding behind the "moderate Islam" ideology designed by the central powers of globalization after the 90s for our country and the region; and in speeches uttered by the representatives of the same mentality, as co-presidents of the Greater Middle East Plan (GMEP), on concepts such as human rights, democracy, freedom of religion and conscience, and the right of education, which, in fact, conflict with their fundamental reference, Sharia." (p.117)

“Those who are against the republic and its philosophy of enlightenment are in search of revenge against the secular republic with the support of change in international stability and the unipolarity created by globalism... But, today, opponents of the secular republic have seized the counter revolution opportunity more than ever and this time with the support of international powers... The secular republic is in danger more than ever, because the counter revolutionary factors today are not merely marginal factors but ruling the country” (p.142).

It is sad, and disturbing legally, to see in the indictment exactly the same criticisms uttered by certain marginal political parties, daily newspapers and magazines. Here we do not think it worthwhile to answer the nonsensical political claims of our political opponents. But let us state that our party is known both at home and abroad as a political party which supports human rights, and which works hard for the protection and progress of the Republic as a democratic, secular and pluralist constitutional state and has done so since its establishment. As the AK Party, we have responded to and will continue to respond to such baseless claims in every legitimate way.

We are against use being made of the judiciary in such discussions, as this would take the struggle of political ideas out of their own legal context and carry them into the sphere of law and judiciary which is supposed to maintain neutrality. In a democracy, opposition to the government can be carried out by political parties, non-profit government organizations, media and intellectuals. The judiciary can not/should not be used as a means for political opposition, otherwise a process will commence, that of politicization of the justice system - a system which must maintain neutrality with regard to political views – and this in turn will put the constitutional state and democracy in jeopardy. One of the most important features of the constitutional state is judicial impartiality. Even the slightest doubt regarding the impartiality of the judicial system or of it becoming the spokesman for a particular political idea will damage trust in justice and, in turn, the concept of a constitutional state. This will first act to the detriment of the judicial system. Therefore, it is the duty of the members of the judiciary to be the first to avoid any rhetoric or actions that would lead to such negative attitudes.

Furthermore, politicization of the judiciary would entail a narrowing in the field of democratic politics. In countries where the duty of political opposition has been

assumed openly or covertly by the judiciary, where the judiciary interferes in politics, and where it makes decisions that should be arrived at politically, democracy is under great threat. This situation, called the judicialization of politics, would convert a democratic regime into juristocratic regime, the “rule of judges”. Therefore it is incumbent that all institutions of the judicial system, including that of the office of Chief Public Prosecutor of the Supreme Court of Appeal, should avoid any type of action that would result in our Republic, which is a constitutional state, taking on the appearance of a state under the “rule of judges”.

Moreover, when the language of the indictment is studied, one can see that concepts of political science and international relations are used both randomly and wrongly. The most typical example is the use of concepts of “majority” democracy and “pluralist” democracy. According to the indictment, “actions and statements of Recep Tayyip Erdoğan, president of the Justice and Development Party and other party members that indicate their understanding of democracy as not a pluralist regime but as a “majoritarian regime” are a clear sign of a potential “dictatorship of the majority”(p.156). First of all, the AK Party has never understood democracy as a “majoritarian regime”. Giving emphasis to the concept of “national will” in speeches made primarily by the party president and also by other members of the party does not mean that democracy is understood as being a majority regime. During our rule the utmost efforts have been made to make pluralist democracy function - with all its rules and institutions. Of course, modern democracies are, as a rule, governed by majorities rather than minorities. The name of a regime where the authority to govern rests with a minority is oligarchy, not democracy. While our party is against the interpretation of democracy as the unbounded rule of majority, it is also against the rule of an unrepresentative minority or a particular group.

Yet, in the literature of political science, the model called “majoritarian democracy” is not seen as necessarily leading to a “dictatorship of the majority.” To describe countries like Britain or the Netherlands, which use the “majority democracy” model, as “dictatorships of the majority” is out of the question (Arend Lijphart, *Patterns of Democracy*, New Haven: Yale University Press, 1999).

The indictment also uses the term “positive discrimination” wrongly. According to the indictment, “politics applied towards free use of turbans (this is the term used to refer to women’s head coverings in Turkish - it does not refer to males’), which is a religious symbol, in universities and eventually in all public areas, increasing the number of imam hatip (religious training schools) schools and removing the discrimination against them in the national university entrance exam score calculation are positive discrimination in favor of Islam when the religious beliefs of the majority of the people are considered” (p.115). But, in fact, the term “positive discrimination” means assistance and support to disadvantaged people by the public authority until they reach a level equal with the rest of society. In such a context as this, “positive discrimination” is adopted as a positive corrective policy to develop basic rights and freedom in democratic countries. Yet, freedom of dress in the universities and equal opportunity in the national university entrance exams, which are represented as examples of “positive discrimination” in the indictment, are not privileges offered to these people. On the contrary, such policies which are designed to provide the mentioned freedom and equal opportunity in university entrance score calculations are aimed at restoring to these people rights and freedoms they formerly held and of which they are currently deprived.

The indictment displays another contradiction; while using an anti-globalization and anti-international community rhetoric, the indictment puts emphasis on the European Human Rights Charter which is an important international document. On the one hand the respondent party is accused of becoming a center of anti-secular activity with support from “central powers of globalization” and “directives of unipolarity created by globalization” and the “international supporting powers”, on the other hand the attempt is made to base this claim on European Human Rights Court decisions, which are of course decisions made by an international court.

The indictment states that “after the July 22, 2008 (this should be 2007) general elections the respondent party, encouraged by the election results, started realizing projects including preparation of a constitutional draft and bringing the turban onto the agenda in order to convert society into an Islamic state thus moving against the principle of secularism”. These consecutive claims included in the above sentence lack, what is called in logic, the “**principle of causality**”. An irrelevant interpretation is produced from a fact, or an unrelated fact is shown as evidence of a prejudiced

interpretation. The basic logic of the indictment is based on building **a forced connection between such irrelevant facts and claims.**

Bringing together the fact of a political party's getting a high percentage of votes in general elections with the word "encouraged" is a non judicial, narrow and political approach which contradicts the concept of **"democratic legitimacy."**

On the other hand, the allegation that the AK Party's having a project to convert "society into an Islamic state" is a claim which can neither be expressed on the basis of law nor on the basis of politics. Law demands actual evidence.

The approach which attributes a link between an absolutely unacceptable project which is totally against the constitution and all policies of the AK Party and the AK Party itself, lacks a factual basis. Concepts like "Islamism", "political Islam", "radicalism", "fundamentalism" and such terms do not correspond to the scientific essence and political thought of the AK Party and reveals a serious lack of knowledge.

In the indictment, finding a link between a "political Islam project, which can never be attributed to the AK Party, and work on a new constitution is totally baseless. The need to write a new constitution is a commonly held opinion of many politicians, judicial institutions, academicians, unions and parties of the country. For many years, various political parties and institutions have been working on a new constitution. For example, political parties elected to the National Assembly (1993), the Turkish Association of Industrialists and Businessmen (1992), the Turkish Union of Chambers and Stock Exchange (2000), and the Turkish Union of Bar Associations (2001 and 2007) have all filed new constitution drafts. In the same manner, in 2004 the Constitutional Court itself publicly proposed an amendment to the constitution which would bring about important changes in the field of constitutional judgment.

The AK Party's work on a new constitution is obviously aimed to bring closer to the modern world a country which has a fixed appointment set for negotiations regarding the date of EU access. In fact, it is common knowledge that the constitutional draft referred to above, and which has yet to be given its final form by our party, actually strengthens the principle of secularism compared to our current constitution. Although

strictly keeping to and even strengthening the basic principles of the Republic, the accusation that this constitutional draft is part of a “project to convert society into an Islamic state” is illogical, unreasonable and is ill-intentioned.

As a result, the inclusion in this indictment of concepts such as “radical fundamentalist”, “counter revolutionary”, “political Islam”, “moderate Islam”, “philosophy of enlightenment”, “central powers of globalization”, and “Greater Middle East Project”, all admissible terms in theoretical political discussions, reinforces the suspicion that the case is not opened due to legal but due to political concerns.

Another issue that deepens this suspicion even further is that the indictment makes reference to PM Recep Tayyip Erdogan’s February 12, 2008 AK Party Group meeting conference where he said “He is showing the way to the execution table. Well, we are saying what those who believed in democracy said earlier when they set off on the road. We have started off with these white pieces of cloth. And we are ready to pay the price. We are fine with that”. (p.53) According to the indictment, the Prime Minister, by his descriptive use of “white cloth” which is identified with “shroud or execution shirt”, put emphasis on his determination to transform the state and society and what risks he is ready to take to accomplish this; with his words having a connotation of death and execution, he continued to provoke a part of the public against the secular state” (p.135).

But, with such words, the Prime Minister tried to express his willingness to consider even death to protect the supremacy of the national will and democracy, not, as the Chief Prosecutor claims, that he would even consider death to transform society. This statement is very clear and should be appreciated as setting an example of civic courage.

The Chief Prosecutor, in this context, departed from his legal identity as an impartial man of law acting on behalf of the public and took on a political identity by talking with the language of the opposition. It is a known fact that certain people both inside and outside parliament have been identifying our party with the post-1957 Democrat Party and the current Prime Minister with the late Adnan Menderes and have been threatening us with a similar fate. In the face of such identifications and threats, if the words of a political leader defending himself by saying “We are saying what those who

believed in democracy said earlier when they set off on the road” are interpreted as “provoking a part of the public against secular state”, then this is a clear sign of a political stance and taking sides in politics.

In a political atmosphere where there are people who exalt the May 27 coup and say “people were very enthusiastic” about the execution of Adnan Menderes and his friends and who, by doing so, pave the way for new May 27s, it is incomprehensible that a courageous and determined belief in democracy is criticized. This criticism makes more sense when combined with other political allusions in the indictment.

The use by the indictment of the same accusatory terms such as “counter revolutionary” “majoritarian” and “ attempts seeking revenge against the secular Republic” that were directed against the Democrat Party in the past, by their nature provide support to a certain political campaign. This alone would be enough to show that the indictment is a political text rather than a legal one.

As the AK Party, our position towards this political attitude, has not changed. Despite all these threats, attempts at suppression and at instilling fear, we are saying: **We have done and will continue to do our best for democracy to become rooted in this soil, for our state to grow stronger, for the national will to be exalted, for human rights standards to be elevated, and for our people to live in prosperity, comfort and freedom.**

II. FREEDOM OF POLITICAL PARTIES AND ITS LIMITS IN DEMOCRACIES

1. Democracy and Political Parties

Democracy is a form of rule which bases the legality of the political administration on the approval and representation of voters. Democracy, meaning “rule of the people”, is the only choice of societies who give priority to values such as equality, freedom and pluralism. Basic principles and institutions of modern democracies are, free and regular elections, pluralism, political competition, human rights, a constitutional state and those elected having the right to determine fundamental policies. The main point which distinguishes democracy from other forms of administration is that the voters participate in the process of the formation of decisions and regulations related to them. In other

words, in democracies people are both rulers and the ruled. In democratic countries, conforming to constitutional rules means conforming to one's own will, not to the will of others. In short, people's participation in the political process through their representatives is what gives the administration and its decisions legality. Therefore, political participation is the fundamental principle of democracy.

Thus, political parties have a central role and importance in democracies for they are the primary means for people's participation in the administration. Political parties, by bearing different thoughts and opinions of the public to the political arena, fulfill their functions as people's representatives, political rulers and opposition. Therefore, they are accepted as indisputable elements of political life. Modern democracies are also called "democracies of political parties". Democracy grows with political parties and cannot exist without them. Political parties are institutions which transfer different thoughts and opinions of the public to the political system. In this context, political parties build a connection between the public and political society. While they activate a move from bottom to upper levels by carrying the demands of people to the level of political decision makers, they also act to fulfill these demands through the application of macro politics. This is what makes them the primary means of political participation. Consequently, their existence is assured by international conventions and democratic constitutions.

According to the European Human Rights Court, political parties are vital organizations required for the thorough functioning of democracy. Therefore, all interference with political parties will inevitably affect both the freedom to organize and, eventually, democracy itself. (TBKP/Türkiye, par.25,31). In turn, closing a political party is an extremely heavy sanction that should be applied only in extremely serious situations. (Sosyalist Parti/Türkiye, par.51; ÖZDEP/Türkiye, par.45).

The freedom of political parties is a particular means of making use of freedom of thought and expression, the ineffable notions of pluralist democracy. Each political party has a different party program to solve social and political issues. This is what distinguishes the parties from each other and this is what makes political party freedom meaningful. It would not suit the concept of pluralist democracy if all political parties adopted the same views and almost the same program. The value of the views

defended by political parties lies not in their being right, integrated or correct but rather in their democratic and peaceful expression. The banning of different views may cause danger by turning the political regime into a single-handed oppressing structure by removing from the political regime its characteristics of freedom, pluralism and democracy.

In democracies, political parties address the public with their own programs designed according to their own views and try to come to political power through competitive elections. A political party coming to power as a result of free elections has the authority to apply its party program for the solution of the country's problems within the frame of the principle of the supremacy of democracy and law. In democratic regimes, a government changes only through elections.

Political parties, due to their inevitable position in democracies, are assured judicially. In this context, there are very important protective provisions against abolishing political parties and their closure is subject to quite strict conditions. The closure of a political party as a sanction should be considered as a last choice, to be taken only under exceptional circumstances as such a course of action may remove the essence of the freedom of political parties. It is accepted that a despotic and baseless ban on political parties may cause damage to the essence of pluralist democratic regimes.

When banning political parties in western democracies has taken place, such universal standards were observed. However, in Europe, only three political parties have been banned since 1950. Two of them were in the Federal Republic of Germany and the banning was a consequence of past experience of totalitarian European dictatorships. Of these, the Socialist Reich Party, the Nazi party, was closed down in 1952, while the German Communist Party experienced the same in 1956. Germany action has always been seen as a benchmark in party closures in the application of legal sanctions in Turkey. In Germany, the Federal Government had filed the closure case against the Communist Party in 1951; and the Constitutional Court, although abstaining from closing the party for years with the thought that **it would be more appropriate for a political party to be eliminated as result of a political competition than banning it as result of judicial decision**, had decided to close the Communist Party in the end since it was convinced that the Government would not withdraw its case. (Donald P.

Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany*, Durham&London: Duke University Press, 1989, pp.227-228). Also, it is known that political parties which replaced the mentioned closed parties are now active in the political arena. The only political party that has been closed in Europe in recent years was the Herri Batasuna Party in Spain. This party was closed in 2003 on the grounds that it had organic ties to the separatist terrorist organization, ETA.

As a democratic constitutional state which respects human rights, there is no doubt that Turkey should also respect the universal standards for party closures. In fact, in the 1961 and 1982 Constitutions, it is clearly stated that political parties are indispensable in democratic political life. Although this universal principle has been recognised by our constitutions, in practice, many parties were closed in a manner contrary to the normative closure criteria of democratic systems and international conventions. Thus, the principle that sees political parties as “indispensable” in democracies has been virtually turned on its head. This has put political parties in a situation where they have become, in practice, easily “dispensable”.

In Turkey, since the 1961 Constitution was put into practice, the Constitutional Court has closed down 24 political parties. This does not include political parties that were closed during periods of military intervention. Regarding the number of parties that have been closed, Turkey has an incredible record, yet to be broken among modern democracies. During the period of the 1961 Constitution alone the number of parties closed was higher than the total of parties closed in democratic countries. During the 1981 constitutional period even more party closure decisions were made and the political sphere was further narrowed. Thus, the high number of party closure decisions eliminates the opportunity to produce solutions to the country's problems within the framework of democracy and law and, in turn, to solve problems at all. Banning political parties as a sanction empties of real meaning the concepts of freedom of thought and freedom to establish political parties.

The most clear indication that the practice in Turkey does not comply with universal standards is that all but one of the political party closure decisions by the Constitutional Court have been regarded as violations of the Human Rights Convention by the European Court of Human Rights.

2. Universal Standards in the Banning of Political Parties

While stating the reasons for closure of political parties, the indictment makes reference to the European Convention on Human Rights and the Venice Commission principles; it ignores the fact that the Venice Commission introduced a kind of protection system for political parties by stating that only political parties advocating violence can be closed.

In its report of 2000 regarding the banning and closing of political parties, the Venice Commission, which was convened to establish a common standard of democracy among the countries of the European Council, adopted the following principles:

- A political party asking for an amendment to a constitution through peaceful means does not constitute a sufficient ground for banning or closure of that party.
- Political parties may be banned only if they advocate the use of violence or use violence as a political means to abolish rights and freedoms by destroying the constitutional order.
- Banning or closure of political parties as a sanction should only be used as an exceptional measure and a last resort.
- Before filing a case for party closure, the political party in question should be investigated to determine if it is an actual threat to the free and democratic order or to rights and freedoms and whether such a threat can be dealt with through actions milder than banning or closure.
- Decisions in political party closure cases should be settled through a fair implementation of legal procedures with due regard for all judicial safeguards.

As pointed out above, the Venice Commission states that **political parties may only be closed if they defend violence or use violence for political purposes.**

Furthermore, many articles of the European Convention on Human Rights (ECHR) deal with the subject of political party closure. Essentially, the establishment and activities of

parties as legal bodies is under the protection of article 11. The ECHR sees the freedom of political parties as an extension of the freedom to form organizations.

Political party closure cases are also closely related to the freedom of expression, protected under article 10 of the Convention. Since almost all of the “evidence” submitted in the closure case are statements of party members on various dates, the importance of freedom of expression gains even greater weight in this case.

In addition, possible violations that may occur during the implementation of legal procedures put article 6, which deals with the right to fair trial, in the foreground. When the consequences of the closure decision are considered, the violation of property rights may also gain importance.

Furthermore, the sanctions which would remove members of the party from parliament and prohibit them from becoming members of another party for five years on the grounds that they have been responsible for the closure of a political party may conflict with the ECHR, Protocol I, article 3. The European Court of Human Rights in the case of **Sadak vs. Turkey** (2002) decided that a closure of the applicants’ party resulting in automatic removal of their parliamentary membership was not a proportionate sanction. According to the court, this sanction is not compatible with the essence of the right to be elected and become a member of parliament. This right is protected under Convention Protocol I, article 3; and to disregard it violates the sovereign will of the voters who have elected the applicants to parliament. (par.40).

In the same manner, the European Court of Human Rights, upon the application of Nazlı Ilıcak, Merve Kavakçı and Mehmet Sılay, who had been subjected to a five year ban on becoming members of a political party as result of their party’s closure, decided in 2007 that the right to vote and be elected set out in the Convention had been violated. According to the same decision of the ECHR, the constitution’s provisions that produce consequences such as the removal of parliamentary membership and the five year party membership ban are quite heavy sanctions imposed on the political party members. These serious sanctions imposed on the applicants were found to be out of proportion to the legitimate purposes behind the restrictions.

ECHR case-law regarding limitations on the freedom of political parties has been produced upon the applications filed by the closed political parties in Turkey. The ECHR has clearly defined its principles and standards related to closure of political parties in these decisions. The principles and standards mentioned can be summarized as:

- In decisions regarding political parties, article 11 of the European Convention on Human Rights should be considered together with article 10 which protects freedom of expression.
- The disagreement of political party programs and projects with the constitutional structure and principles of the state does not necessarily mean that they are also undemocratic. In this context, political parties may question the constitutional order and defend different political views.
- The justification of limitation under article 11, paragraph 2 of the Convention related to the freedom of political parties should be interpreted in a restricted and strict fashion.
- Political parties can be closed exceptionally but only according to stringent and imperative criteria.
- All methods used in political party activities should be constitutional and democratic.
- Amendments proposed by political parties must conform with basic democratic principles.
- A political party should not be closed due to statements regarding its status or made in its program; there should be concrete proposals and activities.
- Limitations on political parties must be proportionate to the necessary and legitimate purposes of a democratic society. The closure sanction must meet the criteria of “pressing social need”.

The indictment contains mention of the criteria displayed in the decisions of the European Court of Human Rights on the banning of political parties but it does not show why, in accordance with these criteria, the AK Party should be closed. On the contrary, if the criteria of the European Court of Human Rights had been taken into consideration, this case should not have been opened at all.

According to the European Court of Human Rights, in order to determine whether the “pressing social need” exists which is necessary to close the party, the following three conditions should be present (RP vs. Turkey, Büyük Daire, par.104):

- (1) there should be **strong, convincing evidence showing the existence of a close/inevitable risk of the undermining of democracy** stemming from the existence of the political party
- (2) the acts and statements of the administrators and members of the related political party should be **attributable to the party**
- (3) these acts and remarks **should constitute a whole, clearly showing that the party imagines/designs and defends a societal model which does not comply with the notion of a “democratic society.”**

None of the conditions above are valid in this case and they cannot be because the AK Party does not threaten democracy, instead it is virtually the only address drawing democrats of this country towards itself. Terms that are misused in order to turn this reality on its head and trying to use them to prove the opposite of what they really mean do not qualify as **legal and persuasive evidence** for the ECHR. If unverified newspaper articles, refuted declarations, wrongly translated interviews and fictions, and virtual results produced out of all these are to be accepted as “evidence”, then, under these circumstances, it would be impossible to find a political party which would not constitute a threat to democracy.

Furthermore, the indictment is an effort to show that our party is the continuation of certain other parties of the past. The goal here is apparent. Acting upon the resolution of the European Court of Human Rights regarding one political party, it attempts to give the impression that closure of our party would be in compliance with the Convention. But this is a vain effort. The AK Party was established in 2001 as a totally new political party and it has displayed this not only through its rhetoric but with its actions as well.

The AK Party is not a mere opposition party which has found no opportunity to implement its program. All reforms proposed for and applied to the advancement of the country have been made through fully legal and democratic means in accordance with ECHR criteria. Those AK Party proposals that have been implemented and those it is

committed to implementing are in compliance with the basic principles of democracy. Moreover, that which has been achieved since 2002 has resulted in the unprecedented consolidation of human rights, democracy and supremacy of law. Considering this clear and simple reality, accusing our party of being “antidemocratic” is both illogical and unreasonable. If this accusation is not due to confusion regarding the meaning of concepts, then it must be a product of prejudice and bad intentions.

3. The Banning of Political Parties in Turkey

In Turkey the freedom and limitations of political parties are regulated by the Constitution and by the Law on Political Parties. With the Constitutional amendments of 1995 and 2001, provisions making party closures more difficult were introduced in order to comply with universal standards of protection of political parties. In 1995, an amendment to paragraph 6, article 69 of the Constitution, introduced the condition of “being a center” in party closures on the grounds of actions against provisions of article 68, paragraph 4. In 2001, the condition of “being a center” was added to the sixth paragraph of article 69 which made political party closures on the grounds of their actions more difficult. Moreover, in 2001, the condition of a decision requiring a quorum of a minimum of three of five votes required for court decisions on political party closures was introduced (art.149/1); and instead of imposing party closure as a sanction, a decision, depending on the gravity of the actions being sanctioned, on the partial or full deprivation of State aid to the political party was contemplated.(art.69/7).

The conditions that would result in a political party being considered a center of anti-constitutional actions were clearly defined in the Constitution with the Constitutional amendment of 2001. According to this amendment, a political party would be deemed to have become the center of the subject actions on the condition that “such actions are **consistently performed** by the members of the political party and such actions are indirectly or openly **adopted** by the general congress, or party president or central decision makers or directors of the party or general assembly of the party group in the Turkish National Assembly, or by the board of the party group; or such actions are carried out in a **determined manner** by the party organs mentioned.” (art.69/6).

According to the said regulations, the conditions of intensive performance of anti-constitutional acts by the political party members and adoption of the same by the authorized party organs must be proved according to concrete and open evidence. For example, if members carry out certain acts but party organs do not approve of them, the party shall not be deemed to have become the center of such actions. Again, actions carried out by party authorities not “in a determined manner” do not result in the party being considered as constituting the center of such actions. In other words, the anti-constitutional actions must be performed **frequently and regularly** to fulfill the prerequisites of the condition.

Furthermore, after the Constitutional amendments of 2001, the political parties **cannot be a “center” only because of their statements**. This is because, according to paragraph 6, article 69 of the Constitution, a political party may become a center through “**actions**”. This amendment is also parallel to the amendment made to the fifth paragraph of the introduction to the Constitution. In this context, a limitation is put not on “statement” but on “action”. This change in the Introduction section was made regarding the term “thought and observation” which is replaced with the term “action”. The legal grounds for the proposal of the Constitutional amendment clearly describe the reason for the proposed change to the term “thought and observation” as being that “it directly constitutes a limitation on freedom of thought”.

In addition the amendment of article 90 of the Constitution in 2004 is in the nature of having important consequences with regard to the closure of political parties. The Constitutional Court, while taking up party closure cases, should take into consideration international human rights conventions in addition to relevant provisions of the Constitution and the Political Parties Law, according to article 90 of the Constitution. This is because the Constitutional Court, in exercising control over political parties, functions as a “regular court”. However, according to the indictment, “The decision on political party closures should be handled on the basis of the Law on Political Parties. It should primarily observe the International Human Rights Conventions (IHRC) and the Constitutional provisions should be interpreted according to the IHRC” (p.9).

While international conventions were accepted as equal to domestic law codes until the Constitutional amendment of 2004, when a provision was added to article 90 of the

Constitution that in the event of a conflict arising between the international human rights convention and domestic law codes, the relevant convention provisions would prevail. According to this new provision, “international convention provisions will prevail in conflicts that may arise due to differing provisions of international conventions and domestic law codes on the same subject regarding basic rights and principles duly in force.”

Provisions regarding freedom of expression and the formation of organizations under the European Convention on Human Rights, especially assure the freedom of political parties, and European Court of Human Rights case law deals with the application of these provisions. In cases where a conflict arises between these and domestic law, the Convention provisions and Court case law have priority and prevail.

There are important differences between the decisions of the Constitutional Court on party closures and the case law of the European Court of Human Rights. Therefore, in party closure cases that are processed by the Constitutional Court after the Constitutional amendment of 2004, the ECHR case law must be considered and this alters the previous case law precedents which significantly narrowed the freedom of political parties.

In fact the Constitutional Court in its decision on March 2, 2007 accepted the decisions of the ECHR on political party cases regarding violations as grounds for revision of trial verdicts. In the same decision given by the Constitutional Court, it is stated that **“IT IS WORTHWHILE to accept** the demand for revision of judgment on the closed United Communist Party of Turkey based on the Code of Criminal Procedure no. 5271, dated 4.12.2004, article 311, paragraph 1, section f, according to art. 318 of the same code”.

As is evident in the above explanations, constitutional and judicial amendments made in Turkey to the law on political parties aim to provide a safer basis for the existence of political parties. After these amendments, from the perspective of Turkish jurisprudence, **the closure of a political party can happen only in exceptional situations and as a measure of last resort**. In party closure cases, judicial authorities should take this clear intention of the legislature into consideration – as this intention represents a clear and binding principle in the concept of the supremacy of the Constitution.

III. THE CASE LACKS A LEGAL BASIS

1. In This Case the Conditions for Becoming a “Center” do not Exist

Although closing political parties has become harder with the amendments made to the 1982 Constitution, the application to close the Justice and Development Party contradicts the basic principles of the Constitution. The indictment, notwithstanding its convoluted logic, in no way delineates how a situation occurred where through its actions the party has become a “center”. It presents party members’ statements which are well within the scope of freedom of expression as evidence in order to give the impression that the condition of becoming a “center” has come to pass. For this reason, **the case has taken on the nature of a case concerning freedom of thought rather than one related to the closure of a political party.** In this case the condition of “**becoming a center of acts** against the Constitution” does not exist. The reasons for this are set out below:

- (a) Following the Constitutional amendments on expanding the freedom of political parties and making the closure of parties harder, **it is not possible for political parties to become “centers” just because of statements.** Article 69, paragraph 6 of the Constitution states that for a political party to become a center, the condition of anti-Constitutional actions is pre-requisite. But, no “actions” against secularism can be found among the evidence filed in the case opened against our party.
- (b) The acts that are listed as “acts against secularism” in the indictment do not have the character of being against secularism and this entirely invalidates the thesis **fabricated** in the indictment.
- (c) There is no evidence showing that the “acts” which are said to have been committed by the party members were accepted by the authorized party organs.
- (d) The Constitution lists the following as the authorized party organs: the general congress, or party president or central decision makers or directors of the party or general assembly of the party group in the Turkish National Assembly, or board of the party group. Of the authorized party organs only the President of the party is an “individual”. Other organs are just “committees”. In order to talk about

actions of committees **one must have the related board decisions**. But, in this context, there is not even one party board decision among the evidence submitted in the indictment. Moreover, article 102, paragraph 2 of the Political Parties law foresees that the Chief Prosecutor of the Court of Appeals may ask the party in writing to terminate its relationship with the subject organ, official or board if they commit acts in violation of the related provisions of article 68, paragraph 4 of the Constitution. However, the Prosecutor of the Court of Appeals had never asked our party to do so pursuant to any of the issues that he referred to in the indictment as “acts” according to the Law on Political Parties, art. 102/2. This shows that none of the authorized bodies or boards of our party has committed any acts against the Constitution. In this case only the statements of the AK Party President become a matter of concern. Below we will discuss examples of these statements demonstrating that his remarks are not “against secularism.”

- (e) In general, when statements which are normally accepted within the frame of an individuals’ freedom of thought are uttered by members of political parties, this should not constitute a basis for a party closure case as this is contrary to freedom of expression and freedom of political parties – and freedom of political parties is itself an extension of freedom of expression. **A word which can be spoken openly by anyone can be spoken by politicians before anyone**. In a pro-freedom and pluralist democracy, there is nothing more natural than this. Otherwise, political parties which are established to represent different social views and bring their demands into the political arena will remain functionless.

In the decision in the **İncal vs. Turkey case**, the ECHR has stated that freedom of expression, the basic principle of a democratic society, is **especially vital for political parties and parties’ active members**. Thus, interventions to limit politicians’ freedom of expression should be subject to strict controls and authorities should be more tolerant of politicians’ criticisms (par.46). In the same manner, in the decision in the Castells vs. Spain case, the ECHR stated that **freedom of expression is more important for elected political representatives who express people’s reactions**; therefore, interventions to limit politicians’ freedom of expression must be carried out with exceeding care.(par.42).

In this context, the indictment suggests that “political parties are organizations which must have priority in benefiting from the rights and freedoms provided under a democratic regime. This priority extends the area of activity of political parties” (p.21). Paradoxically, in the same indictment, simplistic and superficial thoughts are expressed as evidence for the claim that party closure is necessary. That such a demand for a party closure based on such expressions of thought has even been made shows what kind of dangers the free democratic regime faces. The indictment, with its peculiar logic, is a document that presents a lesson showing how the essence of freedom of political parties in a democratic country can be removed and how political parties can be divorced from their real function.

In the indictment, almost all of the allegedly anti-constitutional statements and actions of the party members consist of ideas and policies which are in fact to be expected from a democratic party which respects human rights. In fact, the alleged anti-constitutional statements emphasize human rights, democracy, secularism and the constitutional state. Nevertheless, even the expression of ideas not of this character, or not agreeable to everyone must be assessed within the context of “freedom of expression” assured under European Convention on Human Rights.

2. Our Party Has Committed No Acts Nor Used any Rhetoric Against Secularism

2.1 The AK Party’s Understanding of Secularism

One of the basic reasons for the opening of this case is the difference between the understanding of secularism as delineated in the indictment and our party’s understanding of secularism. There may be different views regarding the characteristics of secularism. The indictment regards secularism as a concept with a single dimension and presents it as a “civilized way of life” and a “philosophy of life” that should be adopted by individuals. This approach suggests that secularism is “the last phase in the philosophical and organizational evolution of societies”. Such an interpretation of secularism is based on a rigid “progressive” understanding of 19th century positivism.

In opposition to such an interpretation, the AK Party's understanding of secularism reflects an approach which is in total harmony with contemporary democratic societies. The mentality of secularism as defended by our party never threatens the basic rights and freedoms of others. On the contrary, our understanding foresees the peaceful co-existence of all individuals within the context of their different beliefs and ways of life. Yet the indictment tries to show that our party's democratic and pro-freedom understanding of secularism is actually anti-secular. Some of our party president's statements, such as "secularism is not a religion and should not be presented as an alternative to religion" and "not the individual but the state is secular" are used as evidence on which to base this claim (p.28, 30).

Modern secularism is a political principle which accepts different religions and faiths as a sociological reality and aims at maintaining peaceful co-existence between them. Therefore, secularism takes the state as its addressee rather than the individual. Indeed, secularism, which is an unquestionable and unchangeable principle according to article 2 of the Constitution, is presented as a characteristic of the state. The ban on the exploitation of religion in article 24 of the Constitution aims mainly at preventing attacks on the secular characteristic of the State. Secularism, as one of the basic characteristics of the State, requires an equivalent distance to all faiths and religious opinions in society. Our party's secular understanding has found its meaning in the justification section of article 2 of the Constitution. According to the justification given in this article "Secularism, which never bears the meaning of impiety, means that each individual may believe in any religion or sect and method of worship and may not be subject to discrimination due to his/her religious beliefs."

In this context, secularism is the reflection of the impartiality of the State in state-religion relations, which is a basic principle adopted by modern democracies. Impartiality of the State towards the faiths can only be possible by not basing its political and legal order on the principles of a religion. In a secular system, this indicates a separation between religious affairs and state affairs. In short, the contemporary understanding of secularism requires that the state system not be based on religious rules and also to give assurances of individual freedom of religion and conscience. Throughout our governing of the country, we have never initiated practices that would hamper either one of these two basic principles of secularism, nor do we intend to do so in the future.

Our understanding of secularism is also well explained in our party program. All party members, and particularly our Party President, have always complied with the principles and rules as stated in our party program. Our party president, Mr. Tayyip Erdoğan, has many times stated that “activities outside of or against the party’s nature and program cannot survive within the party”. The following statements are taken from the party program section titled “Basic Rights and Political Principles” (**Annex I**, AK Party Program):

“Freedoms of thought and expression shall be built on international standards and thoughts will be freely expressed and differences shall be accepted as enriching”.

Our party accepts religion as one of the most important institutions of humanity and secularism as an irreplaceable condition for democracy and a guarantee of freedom of religion and conscience. It is a misinterpretation and distortion of secularism to view it as hostility towards religion.”

Secularism, in fact, allows members of all religions and faiths to perform their prayers freely, express and live their religious beliefs and also makes place for those who do not have a faith or religion. In this context, secularism is the principle of freedom and public peace.”

Our party rejects the use and exploitation of the holy values of religion and ethnicity for political purposes. It believes acts and applications which offend religious people and subject them to discriminatory treatment due to their religious understanding and preferences are anti-democratic and against human rights and freedoms. Similarly, exploiting religion for political, economic or other purposes or putting pressure on people on religious grounds is unacceptable.”

None of the acts and rhetoric cited by the indictment in order to show our party as being a center of anti-secular acts is actually anti-secular. For example, the Prime Minister’s words related to a comparison between Turkey and Yugoslavia that “religion is a binding factor in Turkey where 99% of the population is Muslim” are presented as anti-secular

rhetoric (p.29). This sentence is a mere statement on Turkey's sociological and cultural reality to demonstrate that Turkey can never become a second Yugoslavia. There is nothing contradictory to secularism in stating that people living in a country are members of the same religion and have common values and that this set of values is one of the most important elements **uniting** society. Accusations against a political leader who has expressed such unifying factual realities in a country where there are threats against the inseparable unity of the country based on different ethnic identities are incomprehensible. In fact, the Prime Minister's statement is an effort to find a common ground within the modern interpretation of secularism.

The emphasis on "99% of the Turkish population is Muslim" has been used by politicians of various trends, journalists, writers and academicians and accepted as a "sociological fact" in domestic and international scientific papers.

Furthermore, when the Prime Minister's speech being referred to is analyzed within its different contexts, it will be seen that he gave the speech at a time when a number of elements of society were trying to foment a much feared "Alevi-Sunni conflict" and his statements were aimed at having a unifying effect on the citizens and at preventing sectarian conflict. Thus this statement is unrelated to the issue of discrimination between Muslims and non-Muslims. In tens of other statements, the Prime Minister has openly stated that the AK Party is not a "religion oriented party." (**Annex-2**)

In the indictment, another remark attributed to our party's President; "Turks prefer the Anglo-Saxon interpretation of secularism" is also painted as an anti-secular statement (p.34). This claim merely gives a clear example of how irrelevant the arguments in the indictment related to secularism really are. While accusing our party of trying to "convert Turkey into a Sharia state" the indictment also states that we find the Anglo-Saxon interpretation of secularism closer to our own. **This is a contradiction because in none of the Anglo-Saxon countries does a theocratic state system exist.**

Even in France, which implements secularism in the most rigid form in all continental Europe, the concepts of "secularism" and "laicism" are separated. Laicism is a philosophical movement while secularism is a judicial and political principle. While laicism aims at eliminating church influence and religious norms from all areas of activity

in society, secularism limits this elimination only to the working area of the State. However, this distinction is not recognized in Turkey and generally the two concepts are confused with each other and one is used where the other is intended, thus generating one of the main causes of confusion of concepts.

Resolution no. 1202, adopted in 1993, of the Parliamentary Assembly of the Council of Europe, of which we are one of the founding members, reflects the secular understanding which rules over the common ground of Europe. The resolution is titled “Religious Tolerance in Democratic Societies” and projects the following points onto the relationship of the individual and society to religion:

- Religion has an enriching function between the individual and his creator as well as between the individual and the wider world and the society he lives in.
- Western Europe has developed a secular democratic model where different religious faiths live together in tolerance of one another.
- The practice of freedom of religion which is guaranteed under the Universal Declaration of Human Rights (art. 18) and the European Convention on Human Rights (art.9) and originates in human dignity requires a free and democratic society.

Following the above determinations, the Parliamentary Assembly of the Council of Europe made the following recommendations on legal safeguards to the Council of Ministers, the European Community (Union) and member states:

- Regulations must be prepared to cover the freedom of religion, conscience and worship.
- Related arrangements must be made for different religious applications regarding issues such as clothing, food and religious holidays.

As can be seen, the AK Party’s approach to the relationship between religion and individuals and the state is in harmony with the understanding prevalent in European countries. Therefore, claiming that statements reflecting this point of view are against

the principles of secularism simply represents ignorance in understanding modern democracy.

2.2 Secularism, the Headscarf and Freedom of Expression

The most basic argument that the indictment has used while presenting our party as being a party against secularism, concerns remarks and acts regarding allowing the wearing of headscarves in universities. Statements of our party members published in newspapers at different times and the Constitutional amendments accepted by Parliament are also produced as “evidence”.

Our answer to this claim has three facets: Firstly, establishing a connection between the view which advocates freedom for female students to wear headscarves while attending university and secularism is irrelevant. Secondly, independent of the issue of whether or not this view is in compliance with secularism, all of the remarks that are presented to the court as evidence are remarks that everyone can freely voice within the framework of freedom of expression. Thirdly, the constitutional amendment enacted by parliament and other legislative proposals should be attributed to the legislative body, not to our party.

2.2.1 Freedom to Wear Headscarves in Universities is Required by the Right to Individual Autonomy and Freedom

Associating the freedom of to wear a headscarf in higher educational institutions with secularism is incorrect, both conceptually and empirically. Secularism requires an unbiased attitude of the state towards all faiths and views in society. The state is obliged to respect people’s individual preferences under the proviso that they are not harmful to others. When a university student of legal age wants to cover her head due to her individual preferences, preventing her from doing so would mean interference with her freedom and autonomy. The secular state should see adults as autonomous individuals who are mentally competent to decide what is right and what is wrong for themselves and who are thus able to make their own choices. In this context, secularism provides a congenial environment for individuals who have the power to

make their own choices and choose their own life styles and thus be part of a free and pluralist society. Limitations disregarding individual preferences also disregard the fact that society is composed of a rich variety of individuals having different faiths, thoughts and ways of life. In a democratic country which aims to allow diverse groups to be able to live together, the banning of certain types of dress preferred for one reason or another by university students, is a practice that would eliminate pluralism, the desire to live together, tolerance and dialogue. In a secular order, a free dress code in universities is a condition of respect for individual freedom, the principle of equality and the right to make different choices.

The basic ideal of our Republic is to allow all individuals, and in this case especially young girls, to benefit from the opportunities offered by the modern education system. We have to remember that Turkey applies the principle of “uniformity in education and teaching”. Girls wearing headscarves and receiving a state university education will be furnished with contemporary knowledge and thus will be a gain for the Republic. Today, a modern society is built through education of all individuals, especially women. At this point, a real Republican approach requires the re-entry into the modern education system of female students who have been expelled for wearing headscarves. Thus, the previously mentioned layers of society, and the new generations to be raised by them, will be included in the main activities of social life thus preventing their isolation. This will represent an important gain for the modern state order and social life. One should not forget that social layers that cannot be included in a modern education system have weak immunity against certain marginal or radical thought trends. For this reason, wearing their headscarves and participating in the educational system and being furnished with knowledge in conformity with the requirements of modern social structure would not weaken but enhance the principle of secularism.

University education has the secular structure that is the basis of the principle of separation of state and religious affairs. Meeting the modern educational demands of individuals who wear headscarves on the basis of freedom of religion and conscience and who fulfill their duties as citizens is effort spent to integrate society not to divide. To stop radical and marginal thoughts which threaten the modern state order can only be possible through the inclusion of the largest possible layer of society in the education system and optimize this in the light of democratic principles.

In addition, the view that limitations on clothing in universities are a requirement of secularism is also empirically incorrect. It is a fact that in none of the countries where the rule of secularism has been adopted is the wearing of headscarves prohibited in universities. Even in France which has banned the wearing of headscarves in primary and junior high state schools, there is no such ban at the university level. However, the indictment claims that our party's statements regarding this fact are "misleading" and states that "France, which has the largest Moslem population in Europe, has also banned head coverings in schools and public areas" (p.114). In fact, what is "misleading" is not our party's statement but the Public Prosecutor's claim. Wearing a headscarf is only limited in state primary and high schools in France. There is no such restriction at universities.

The **Stasi Commission**, set up in 2003 to reflect on the use of religious symbols, including the headscarf, in educational institutions in France, released a report. A law, passed on February 10, 2004 within the framework of this report, prohibited students in state primary and high schools from wearing clothes and bearing emblems that clearly define the student's religious inclination. The Stasi Commission accepted the necessity to give priority to the right of student to express their religious, political and philosophical beliefs at the university level. **Therefore a headscarf ban does not exist at universities and non-government schools.**

In brief it is an incorrect approach to associate the efforts of a political party which has been working for Turkey's full EU membership and is attempting to lift a ban **which does not exist in any European country**, with opposition to secularism and to regard it as being unconstitutional.

2.2.2 Remarks Regarding Freedom of Dress are Within the Context of Freedom of Expression

According to article 2 of our Constitution, one of the inviolable characteristics of the Republic is the concept of the "democratic state." No amendment of this point may even be proposed. The basis of democracy is freedom of expression. In a place where speech is not free, no one would be free. The European Court of Human Rights, in its

decision in the **Handyside** case where it lays down the principles of freedom of expression, stated the importance of freedom of speech for democracies. The court has emphasized the following which it has later repeated in almost all of its decisions on freedom of expression:

- Freedom of expression is a fundamental foundation of a democratic society; it is one of the basic conditions for the advancement of society and the development of the individual.
- Freedom of expression is a condition of pluralism, tolerance and open-mindedness which are irreplaceable characteristics of a democratic society.
- Free political argument provided by freedom of expression forms the essence of the concept of a democratic society which dominates the Convention.
- Freedom of expression is not only for generally accepted, harmless and minor thoughts and news but also for thoughts and news that are extraordinary, surprising or disturbing and unacceptable to the State or to a part of society.

It is entirely natural that individuals and political parties have different views on freedom of clothing in universities. Our party, on every occasion, has pointed out the fact that the issue should be resolved through societal and institutional consensus without causing any tension. It is known that polls conducted on this issue have shown that approximately 80% of society has expressed views in favor of lifting the ban. In a democratic society the *raison d'être* of political parties is to present peaceful proposals as solutions to societal problems and working towards the implementation of those solutions. Leveling accusations against a political party for doing this is incompatible with a democratic mentality. It would mean asking all parties and politicians to advocate the same view in the political arena which would be impossible in a pluralist democracy. In fact, as with this case, the main goal is to make all political parties accept the interpretation of secularism as it is displayed in the indictment.

But there is more than one political party and they think differently on social issues and present different proposals as solutions. There are and probably will continue to be political parties that defend the headscarf ban in universities. However, our party and many other political parties have voiced the opinion that this ban should be lifted. Such

different views and stances displayed towards social issues are the most important elements making freedom of expression and organization meaningful. The indictment tries to impose an understanding where declaring one's thoughts regarding secularism, and pointing out certain problems regarding the principle of secularism, and even talking about certain issues of secularism are presented as actions against secularism itself.

The ECHR in its decisions on party closures stated that democracy depends on freedom of expression and in this context offers an opportunity to solve the country's problems through dialogue without using violence. According to the Court, banning a political party that discusses the issues of a part of the society publicly and acts in the political arena to find solutions to satisfy the demands of the related parties according to democratic principles cannot be justified. (TBKP vs. Turkey, par.57)

The argument to the effect that our party's views and policies on freedom of clothing in universities contradicts case-law of the Court of Appeals and means that we are disregarding the principle of separation of powers does not have any basis either. Even remarks of the Prime Minister which were intended to defuse tensions and emphasise compromise are used as "evidence" in the indictment: "If it had the quality of an order then it would be applied in all EU countries. There is no ban on headscarves in the universities of Europe or other parts of the world in general. I believe the ECHR has made its decision according to the particular conditions of Turkey. There is no such ban mentioned in the Constitution. There is only an interpretation of the Constitutional Court. If the legislature passes a new law, then the Constitutional Court must revise the situation. This interpretation is not something permanent. We can pass a law. But we do not wish this to cause social tension and wish the situation to be resolved on the basis of freedoms." (p.43)

Such remarks used in the indictment reflect the view that judicial decisions cannot even be criticized. Our party authorities have criticised certain court decisions and in the indictment this is interpreted as "defending a totalitarian approach by virtually rejecting the fact that a pluralist democracy must be based on the principle of separation of powers" (p.135). However, while judicial decisions may be binding in nature this does not mean that they cannot be subject to criticism. In pluralist democracies, political parties especially can criticize those decisions and more importantly they can conduct

activities directed at changing those decisions. It is not possible to think the opposite. When court decisions are considered to be above criticism, the development of law and interpretation of rules in the light of new developments becomes impossible. In turn, while this will make law static it will also make the political parties in a country non-functional.

In fact some members of the judiciary stated that the decisions of the Constitutional Court are open to criticism and that to change them is possible.

For example, in her speech at the 44th anniversary ceremony of the Supreme Court, Ms. H. Tülay Tuğcu, then President of the Constitutional Court, stated the following (**Annex-3**) :

“The final and binding nature of the Constitutional Court decisions does not mean they are beyond criticism. In other words, the responsibility to implement the court decision does not remove the right to criticize it. In a constitutional state, it is natural to criticize court decisions. In cases where court decisions are not taken unanimously, it is obvious that the opinion of a minority of those voting constitutes the opposing opinion. **The right to apply for a revision of cases rejected by the Constitutional Court on the basis of principal cause, after 10 years, is also proof that decisions of the Constitutional Court are open both to criticism and to revision.**

In a constitutional state the analysis of court decisions by academic circles and implementing authorities is necessary and beneficial. There is always the chance that these criticisms will open new horizons to the judiciary.”

The Constitutional Court has given various interpretations regarding the requirement of secularism in closure cases. For example, the Freedom and Democracy Party was closed in 1993 by citing its by-law which stated that “the state will not become involved in religious issues and religion will be left to the religious communities.” (Case no.1993/1. Decision no.1993/2, Date of Decision: 21.11.1993). However, in the case of the Democratic Peace Movement Party in 1996, the demand for closure was based on the clause in the party by-law aiming to relieve the Department of Religious Affairs of the status of a state institution, but this was rejected by the Court. (C. 1996/3, D.1997/3,

dd.22.5.1997). This situation shows that the Constitutional Court interpretation of secularism has been constantly changing and evolving.

Within this context, statements of our party President and members at various dates on permitting the wearing of headscarves in higher education institutions should be evaluated from the aspect of freedom of expression. None of these statements can be considered in a context of non-recognition of the established case laws or rejection of their binding quality. In fact, many political parties have expressed views on this issue and have even made initiatives towards finding a solution to the problem.

The indictment also makes reference to the resolutions of Strasbourg on the headscarf issue in universities and speaks as though the final words have already said on this issue. This view ignores the fact that the European Convention on Human Rights has established only minimum standards for the protection of rights and freedoms and there is always the possibility of the implementation of a higher level of protection by the signatories. According to article 53 of the Convention, “none of the provisions of this convention may limit human rights and basic freedoms that may be provided by the laws of the signing party or another convention that may be signed by her, neither can they be interpreted in such a manner as to create contradictions with such.”

In the ECHR’s decision regarding **Leyla Şahin**, it is stated that there may be different applications in European countries as to “using religious symbols in educational institutions” and there may be different regulations in the various countries on this issue. Consequently, according to the Court, signature countries have wide judicial discretion regarding the setting of legal regulations related to the use of religious symbols (Grand Chamber resolution, par.109).

Thus, after the ECHR’s no-violation decision, there is no obstacle impeding a country in the making of new legal arrangements to protect rights and freedoms. To defend the opposite would mean, for example, to claim that the 10% threshold in Turkish elections, which was found to be not contradictory to the Convention, can never be changed. After the Grand Chamber’s resolution on Leyla Şahin’s case, Mr Rıza Turmen, then ECHR judge, had said that this resolution was no obstacle to removing the headscarf ban in universities: “The ECHR did not find Turkey’s justification for the ban contradictory to the

Convention in Şahin's case. **The resolution cannot be interpreted in the sense that removal of the ban on head coverings is contradictory to the Convention.**"

Moreover, it is impossible to understand how statements to the effect that amendments to articles 10 and 42 of the Constitution should be implemented can be presented as "statements against secularism." For example, Mr Dengir Mir Mehmet Fırat, AK Party Adana deputy, made a speech in February 2008 where he claimed that the ban on headscarves in universities is a violation of the Constitution and said that "whether you like it or not, the Constitution of 1982 is in force and everybody should observe the Constitution" (p.95-96). Mr Burhan Kuzu, Constitutional Committee Chairman, said that "university administrations and the Higher Education Committee will decide about the application. (...) If they say "a constitutional amendment will be sufficient" then they can start the application immediately. But if they say "let's wait" then they can wait for the passing of the additional 17th article". Mr Sadullah Ergin, AK Party Deputy Group Chairman said "in the constitutional state, one must respect the constitution. Now we are expecting the implementing authorities to act according to the regulation". (p.100) Mr Bekir Bozdag, AK Party Deputy Group Chairman, said "Constitutional amendments require application. Nobody has the right to say "I won't apply it" (p.101). All these statements are being interpreted as anti-secular statements.

Yet, to say that the Constitution, which binds together each individual and institution living in this country, must be applied is not against secularism but actually a condition of a constitutional state.

As a consequence, according to universal standards the demand for the closure of a political party merely on the grounds of a difference in the interpretation of secularism is not congruent with the principles of secularism, freedom of expression and freedom of political parties. In fact, our party's understanding of secularism is in accord with that adopted by democratic countries and international agreements. Therefore, the claim to the effect that our party has voided the content of the concept of secularism is totally baseless. Moreover, article 2 of the Constitution referring to secularism together with respect for human rights and a democratic state of law show that the principle of secularism should be considered conjointly with those principles.

2.2.3 Constitutional Amendments That Are Legislative Activities Cannot Be Claimed to Be Anti-Secular

The indictment uses the constitutional amendments passed by parliament on February 9, 2008 as the most important “evidence” against our party. In fact the Chief Prosecutor in an interview with a journalist said that the constitutional amendment is the basic reason for the case opened against our party. **(Annex-4)**

The indictment below refers to articles 10 and 42 of the Constitution:

“In reference to impossibility of wearing head coverings in universities during the period of education on the basis of the principle of the secularism of the Republic of which amendment is impossible and cannot even be proposed; the respondent Party proposes an amendment to the Higher Education Law which would provide permission for the wearing of head coverings in universities that may be annulled by the Constitutional Court, and this party wishes to pave the way for the wearing of head coverings in universities by making an amendment to the Higher Education Law on the grounds of the proposed amendment. The proposal of an amendment to the Higher Education Law is indisputably against the Constitution. The proposal of an amendment to the Constitution is against the Constitution in regards of its target.”

The Turkish National Assembly passed the proposed amendment to articles 10 and 42 of the Constitution on 09.02.2008. After the approval of the President, it was titled Law no. 5735 and put into force with its publication in the Official Gazette on February 23, 2008. (p.133)

A draft bill on the amendment of articles 10 and 42 of the Constitution to allow the wearing of head coverings in higher education institutions has been presented for the approval of the Turkish National Assembly bearing the signatures of parliamentary members of the Justice and Development Party and the Nationalist Movement Party; for a parallel purpose, the additional draft bill on the amendment of the article 17 of the Higher Education Law no.2547, has been presented to Turkish National Assembly, bearing the signatures of seven members of parliament from both parties on 29.01.2008 and 30.01.2008, consecutively. (p.112-113)

First of all, the view that as a principle of secularism the wearing of head coverings in universities must be prohibited is invalid on the basis of our explanations mentioned above. Even if we maintain that such a view is supported by the “decision of refusal based on interpretation” which was taken by the Constitutional Court in 1991, it is difficult to claim that that this decision obstructs Parliament in amending the law or Constitution regarding the same subject. There are many examples where the judicial arm makes regulations regarding the same subject after a law has been annulled by the Constitutional Court.

Secondly, the judgment to the effect that the proposal for the Higher Education law is against the Constitution is also wrong from a legal perspective and it also interferes with the authority of the Constitutional Court to make legal evaluations. First, in our constitutional order, the compatibility of draft laws with the Constitution cannot be analyzed by an organ outside Parliament. In this context, claiming a text which has not yet become a law, and not passed through the Parliamentary phases of commissions and general assembly approval, is “against the Constitution” makes no legal sense.

Thirdly, the view which claims “the proposal which contains an amendment to the constitution is in violation of the Constitution in regards to its scope” is both wrong and also, as stated above, interferes in the sphere of authority of the Constitutional Court. It is wrong because there is no hierarchy among the provisions of the Constitution. Except where there is incorrectness in the form, claiming that one provision of the Constitution is contradictory to another is legally impossible. Our constitution does not accept regulation of amendments to the constitution, on the basis of its principal cause; furthermore, it has limited the regulation of its form only by control over the requirements for proposals, the majority of votes and the condition of urgency (art. 148/2). From this perspective, putting forward the claim that the amendments to articles 10 and 42 of the Constitution, which have been in force since February 23, 2008, are against the principle of secularism **cannot be put forward legally**. In fact, these amendments aim to make individuals equal in benefiting from public services and also enlarging the area of equal opportunity in university education and freedom of education.

On the other hand, establishing a constitution and making amendments to it is a democratic and constitutional authority so important that it cannot be made the subject of a claim. Control of the interpretation of the basic norms coming with this authority can be held only by the Constitutional Court and only on the subject of certain incorrectness regarding its form. Nobody has the right to claim the governing authority given by the Constitution to the Assembly as ruling power be given into the hands of an anti-constitutional action group. It is interesting to see the first such example of this in the history of law and democracy occurring in Turkey.

The ECHR also states that political parties who work to solve social problems can make fundamental amendments to the constitution under certain circumstances. These circumstances are subject to two conditions: 1) the means to realize this aim must be legal and democratic in all aspects. 2) The change itself must be in harmony with basic democratic principles. (Socialist Party vs. Turkey, para 46 and 47; Welfare Party vs. Turkey, par.47; Welfare Party vs. Turkey, Grand Chamber, para. 98).

Fourthly, the amendment proposals to articles 10 and 42 of the Constitution are not the proposals of a specific political party but the proposals of deputies. According to the Constitution it is not possible to bring constitutional amendments to parliament as government proposals. Secret voting in the parliament legally prevents a political party from taking responsibility for such amendments. In fact, the above mentioned amendment's being adopted by parliament with 411 votes, shows that deputies of other political parties other than those of the AK Party also voted in favor of this amendment. Thus, that the signing by deputies, who are exclusively assigned this duty by the Constitution, of a proposal regarding an amendment to the constitution is actually against the Constitution is inconceivable. What deputies of the AK Party and other parties and independent deputies did was merely to make use of their constitutional rights.

Finally, our Constitution openly stipulates how legislative practices in the form of Constitutional and legislative amendments can be controlled. Demanding closure of a political party because of its legislative practices will cripple the parliamentary system which is based on the supremacy of law.

Moreover, legal arrangements regarding freedom of dress in higher education were also made in previous terms. In 1988 and in 1990 parliament made arrangements twice but the ruling party did not face any closure case due those arrangements. In addition, the legislative body has a different legal entity status than do political parties and parties cannot be held responsible legally for their legislative activities. Nevertheless, should laws passed by the legislature be in contradiction to the Constitution, a constitutional judicial review can be started.

3 The AK Party President's Statements Are Within the Framework of Freedom of Expression

The indictment cited 61 "statements" of AK Party President and Prime Minister Recep Tayyip Erdogan as his "acts against secularism" (indictment pages 27-54). When these are studied it is recognizable that they are mostly statements on freedom of dress in universities. Such remarks were made not only by AK Party members but by members of other political parties as well. Yet, although extracted from the whole and included in the indictment in parts, it can clearly be seen that there are continual references made to democracy, secularism, supremacy of law, freedom, compromise, brotherhood and responsibility.

The Prime Minister's remarks saying that whether or not a headscarf is a requirement of religion should be discussed by "religious scholars - the ulema" was regarded as being against secularism is an assessment that is not in accord with good will. However, the Prime Minister's remarks were about the "expert witness" system practiced in our legal system. These statements must be evaluated in the context of the "expert witness" system which is an important element of fair trial in constitutional states. In a secular state, judges should not be expected to be experts on requirements of religion. Asking the opinion of experts about a subject requiring technical knowledge during a trial is not against the principle of secularism

In fact, according to article 136 of the Constitution, the Department of Religious Affairs is a constitutional institution which acts "according to the principle of secularism, free from all political thoughts and views, for the purpose of the solidarity and integrity of the nation". According to the law regarding the establishment and duties of the Department

of Religious Affairs, the department was first established “to conduct affairs regarding Islamic religious beliefs, worship and principles of ethics and to enlighten the people about religious issues”. The Higher Commission of Religious Affairs, which was established according to the same law, made a written statement on 30.12.1980, under resolution no.77, on the headscarf’s place in religion upon the inquiry of Mehmet Özgüneş, a secretary of state.

On the other hand, the most interesting part of the indictment is the comment of Prime Minister Erdoğan on the withdrawal of an amendment to the Higher Education Law saying “we are in no hurry” and his statement “we are responsible people. We see those who have caused the issue to become gangrenous now talking from without, you are falling into their trap, be patient” (p.38). These statements are taken by the Public Prosecutor to be anti-secular actions. According to the Public Prosecutor, the Prime Minister’s withdrawal of a draft bill and his recommendation of patience, and even a comment of his such as, “I sob deep in my heart,” (p.39) are all “against secularism”. This indictment, which aims at interfering with “the sobs of the human heart”, thus makes a “very special contribution” to secularism and the theory of human rights.

The indictment took certain sections of remarks of Prime Minister Erdogan and emphasis was put on certain sentences or words. The statements are not in the nature of being against secularism and also the parts that were not emphasized by the Chief Prosecutor contained many statements supporting “democracy, compromise, human rights, secularism and a state of law.” **Some examples from the indictment** of the Prime Minister’s statements in this regard follow:

“- Thoughts and forming organizations must be respected and opportunities to establish freedoms must be allowed.

-In a secular society, religion is the guarantee of secular administration. Secularism is defined as maintaining the same distance to all faith groups and since such is provided, secularism is, in a way, our insurance.

-Secularism means being at equal distance to all religions. Beliefs are under the safeguard of the state. I am responsible for the protection of the secular order.

-A secular state must assure freedom of religion.

-Discrimination against women is more dangerous and more primitive than racism. We have to fight against all types of discrimination.

-The solution to your problems must be provided not just because we want it but with the participation and reconciliation of all political parties. I do not wish to provide it by ourselves alone since it will create tension. I do not want to cause tension in the country.

-A right cannot be interpreted this way in one part of the world and in another way elsewhere. This is because a right has its origin in justice not in law. Law assures the practice of rights.

-You cannot demolish people's justice with wrong laws.

-Oppressive and conservative approaches deriving from sexual discrimination and which imprison women in private areas and exclude them from the public arena are not civilized approaches.”

There are many more speeches and statements of the Prime Minister, **besides the statements mentioned in the indictment**, which remark on secularism being an indispensable condition of democracy. Some of such statements are as follows:
(Annex-2)

“- We are not a religious party, neither are we extension of other parties.

-We are not an extension of another party. We are not a religion oriented political party either. We are people-oriented.

-The AK Party is the people's party. It is reliable, democratic, honest, and respectful of basic rights and freedoms and protects them. The AK Party is the defender of the silent masses and the weak.

-Our party is not Islamist; the media has tried to locate us within this category.

-Our party sees secularism as an important element of democracy. Secularism forms the administrative structure of this country.

-We never support exploitation of religion by any side in Turkey.

-A particular dimension of secularism is the political authority's keeping equal distance to all faiths and identities in the social arena.

-The AK Party is not following a religion oriented politics and refuses to conduct politics using religion. This would mean exploitation of religion.

-Secularism has to be seen as a way of keeping social diversity safe from conflicts and tension in order to maintain a peaceful and free atmosphere. Our understanding of conservative democracy cherishes tradition but does not reject modern advantages. The AK Party, instead of blindly rejecting tradition or modernity, considers a new synthesis. Defending localism would not necessarily mean rejecting universality; but localism should not turn into fractious absolutism. The AK Party, while giving importance to what is social, to group identity and to civil society does not prioritize an understanding of sectarianism. The AK Party while cherishing religion as a social value does not consider it right to conduct politics on the basis of religion, to convert the state ideology, or to form organizations based on religious symbols. Conducting politics under the guise of religion, to use religion as a means to an end, or to conduct the politics of exclusion in the name of religion damage both social peace, political pluralism and religion itself.

-We are against the EU becoming a 'Christian' club; we are also pointing out that the Islamic world must keep away from forming religion oriented political and economic organizations.

-In an age when dictatorships prevailed, this country built up its Republic throughout the century thanks to Ataturk's foresight and not only did it gain itself a nation state it also set a strong example, sending out important messages both within and without its region. It has achieved its social peace on the bases of democracy, secularism and constitutional principles and presented serious approaches to its immediate neighbors on how modern values can be put into practice. Each and every day the value of this model has been appreciated and even more, it will carry our country into the coming centuries with confidence and strategic advantages. Today, our government stands before the world as a consequential means of influential expression reinforcing these theses.

-We are against the rhetoric and form of organizations who make discrimination between "us" and "them", and who take a particular sect, ideology, political identity, ethnic element or religion as the main body of its politics to in order to stand against other options.

-We would never say things like "why are you dressing in this way, why do you have this style of haircut, why did you wear a coat and trousers". We do not have the right to do so. And where do you get the authority and right to do so?

-Conducting politics in the name of religion, to make religion an ideological tool, dogmatizing religion and following discriminatory politics in the name of religion damage both social peace and political pluralism. But, and maybe worst of all, it would lead to the corruption and estrangement of religion. So, in my opinion this approach means nothing but an attempted conspiracy against religion, democracy and humanity. Converting religion into an ideology, trying to convert society through state power are the worst ills one can commit against society and religion.

-Turkey sets the best example that a country with a Moslem majority population can practice democracy on the basis of secularism and adopt advanced democratic norms.

-In economics, we enjoy a liberal economy. Socially, we are trying to establish social justice. Our state, as determined by our Constitution, is a democratic, secular and social constitutional state. We keep the same distance to all religious beliefs. This is our secular understanding.

-The AK Party rejects all types of fundamentalism, extremism, radicalism, and social engineering; it is not a religion oriented party, it is people-oriented; it predicates the middle way, reconciliation and tolerance.

-All systems are means to a purpose, religions are too. The purpose is the happiness of people. Therefore, let no one try to make religion and systems be used for other purposes.

-We should not let extremist thoughts or radical, marginal movements separate us according to artificial, cultural or religious fault lines; this is important. Let me say this, nobody can identify our party as a religion oriented party. We have said this from the beginning and we take such claims as offensive. Why do we say this? Because, religion oriented parties bring in religious exploitation. Therefore, when we set off on our road we declared that we were not a religion oriented party but a conservative democratic party.”

The speech of the Prime Minister after the July 22, 2007 elections which put emphasis on democracy, unity and integrity, tolerance and pluralism, reflects our party’s perspective which embraces different views. The Prime Minister made the following address, the full text of which has been appended: **(Annex-5)**

-“We had promised to you to embrace Turkey as one and as a whole without making any discrimination. I would like to congratulate all political parties who will be represented in the Assembly in the new period. I call on everybody to act according to the conditions set on this new page. Speaking personally and on behalf of my party, I am not offended. I wish luck to our losing rivals in the future. Our struggle against separatist terror will continue strongly with the support of our nation’s unshakable love for its country. In this long term struggle, we are determined to take all necessary steps whenever necessary. We will continue to fight against all threats

to national security - against gangs in particular - and threats to the citizens' security of life and peace. We will pursue our Republic's modernization targets. We will continue to spend our efforts for economic development and democratic reforms to improve living standards."

4 Similar Remarks to the Ones Noted in the Indictment or Even Stronger Ones Were Made by Various Other Political Leaders

Similar remarks on the place of religion in society, the freedom to wear headscarves and the situation of imam hatip schools that are cited as reasons for demanding the closure of our party - or even other remarks that can be regarded as radical - have been made several times by various political party leaders. Looking at those remarks will show that the indictment prepared against our party was written with bias and prejudice.

Statements of CHP President Deniz Baykal

CHP President Deniz Baykal, referring to religious scholars' comments on the place of headscarves in religion, said the following at his party's parliamentary meeting on February 5, 2008: **(Annex-6)**:

-“There is this concept of covering called “himar” in Islam; the plural form is humur. The argument is whether it is “cover” or “headscarf”. Believers in canon law agree that it should be interpreted as “headscarf”. And, of course, there are religious scholars who claim it should be interpreted as “cover”. Well, what ornaments are intended to be covered; are they just ornamental objects or the human body? There has been an argument about that too. And the general view is that here the human body was meant.

There has been general agreement on this. Another important discussion was on covering the head. If the intended “himar” is a headscarf then it is not a cover. But if headscarf, that is if the covering of the head is intended, then should displaying a lock of hair be interpreted as sin? Should the display of a bit of a lock of hair be

prevented was also a topic for scholars throughout history. There are those who defend “not a lock of hair” be displayed and there are those religion scholars of the Hanafite tradition who defend the view that “hair may be displayed below the ear”. In other words, according to them, women can display their hair below the face line.

Again, there is the discussion about the type of covering to be used during prayer. Common understanding is that a covering is a condition of worship for prayer to be accepted as valid. Many important religious scholars have different views on covering during prayer. For example, the founder of the Hanafite tradition, Abu Hanafi, takes the view that one fourth of a woman’s hair displayed during prayer will not invalidate her prayers.

So he interpreted and understood the Quran.

In the same manner, Abu Yusuf takes the view that half of a woman’s hair displayed during prayer will not invalidate her prayers.

Why am I telling you these things? I am doing this because while there are Islamic scholars who claim the display of even a lock of a woman’s hair is unacceptable there are also other highly esteemed Islamic scholars who claim the opposite”.

CHP President Deniz Baykal’s statements on religious subjects are not limited to the above. The following examples reveal that the leader of the main opposition party has frequently made remarks regarding religion, headscarves and secularism: **(Annex-7)**

“If you say we shall give up secularism for the sake of democracy and freedom, this means you will damage democracy itself. Islam, secularism and democracy form a golden triangle in Turkish society. We have to protect all of them at the same time.” (Milliyet daily, 23.4.2008).

“The natural reflection of religious choice on public order should not cause any problem... That is, no one should hide his religious beliefs in social life, public

life.” (extract from his talk on 31.05.2002, from the “Iskele Sancak” discussion on Kanal 7).

“Some claim democracy is unfit for this geography because Islam is the prevailing religion in the region. We reject this claim. We cannot accept accusations against one billion Moslems based on their beliefs. The great majority of these people have no responsibility for the expansion of terror. They are not responsible for authoritarian regimes, they are the victims. The invalidity of the claim can be considered by looking at the Turkish example. **We have proved that a society with 99% of its population consisting of Moslems can live in a democracy.**” (Extract from his speech at the general assembly meeting of Socialist International on 28.10.2003).

Moreover, the billboard posters prepared before the April 26, 2008 CHP convention carried the statement “**Get out of the way. It is our religion. It is our State. It is our Nation.**” were accompanied by a picture of Deniz Baykal.

Statements of Former Prime Minister Bulent Ecevit

The late CHP and DSP president and former Prime Minister Bülent Ecevit stated the following in his letter titled “The Headscarf Issue” dated December 27, 1981: **(Annex-8)**

“I believe it is a vain effort to tackle the headscarf issue. It is a typical example of closet Atatürkism... They will drop this as well. The only thing to say would be Atatürkism cannot be justified by banning headscarves... Atatürk’s scientific approach, free from all kinds of dogmatism is left aside; all their wrongdoing cannot be covered by banning the headscarf.

Yet, there is a truth which some people are unaware of.

Atatürk did not interfere with women’s clothing. He did not make or enforce any laws on this issue. He found it more appropriate to leave the solution of the issue to time and developments... He allowed all rights and freedoms to women, and provided the related opportunities but never interfered with what they had to

wear.” (Can Dünder and Rıvan Akar, “Ecevit’in 12 Eylül’deki Başörtüsü Uyarısı”, Milliyet, 24.01.2008).

ZAMAN, February 28, 1998 “Turban issue to be solved”

MİLLİYET, March 9, 1998 “Women can cover their heads if they wish”

ZAMAN, May 28, 2004 “Imam Hatip schools are beneficial to Turkey”.

Statements of former Prime Minister Mesut Yılmaz: (Annex-9)

HÜRRİYET, March 4, 1998

“If the headscarf issue is not solved then we can change the regulation”

MİLLİYET, September 11, 1998

“Flexibility regarding headscarves may be provided to employees in government offices”

SABAH, February 16, 1997

“Sharia cannot be walked against, it can only be respected”.

TÜRKİYE, September 18, 1998

“If I had the authority I would allow headscarves”.

MİLLİYET, March 20, 1997

“We cannot give up on religious education”.

SABAH, March 26, 1997

“Religious education cannot be done without”

SABAH, April 3, 1997

“We cannot let imam hatip high schools close down”

CUMHURİYET, March 4, 1998

“We can change the rescript on headscarves if necessary”

ZAMAN, February 26, 1998

“If not provided for by the State, the gap in religious education may be filled by alternatives”

CUMHURİYET, January 27, 1998

ANAP: Headscarves will be supported

ZAMAN, March 3, 1998

“No interference with headscarves”

MİLLİYET, March 3, 1998

“Imam Hatip High school students shall not be forced to uncover their heads”.

MİLLİYET, September 23, 1998

Yılmaz to open Imam Hatip High School

ZAMAN, September 1, 1998

“Enrollment with headscarves will not be a problem”

AKŞAM, July 11, 1998

“Headscarves are not unmodern”

ZAMAN, October 27, 1998

Mesut Yılmaz is meeting with university presidents regarding freedom to wear the headscarf

ZAMAN, October 22, 1998

“If I had the authority I would have solved it.”

TÜRKİYE, March 18, 1998

“If I had the authority I would allow headscarves”

Former president Tansu Çiller’s statements: (Annex-10)

TÜRKİYE, August 4, 1997

“Do not play with this nation’s Quran and flag”.

MİLLİYET, April 7, 1999

“They have played with the call to prayer. They have closed down state schools. They played with the Quran courses. Moreover, they ordered our girls wearing headscarves to be hit at the gates of universities.”

YENİ YÜZYIL, October 23, 1998

“Do not play with my sisters’ headscarves”.

AKŞAM, May 01, 1998

“Wearing headscarves is a natural right”.

MHP President Devlet BAHÇELİ: (Annex-11)

TÜRKİYE, September 8, 1998

“Ending the headscarf drama at the universities is important both for human rights and for the peace of the country”.

HÜRRİYET, 14/12/2007

“Headscarves should be worn in the universities”.

RADİKAL, August 12, 1999

MHP member Şevket Bülent Yahnici: “The unfairness towards Imam Hatip High Schools should be corrected”.

Former Prime Minister and President Süleyman Demirel’s Statements

In the book titled “Islam Demokrasi Laiklik” (Islam, Democracy, Secularism), a collection of interviews with Süleyman Demirel, published in 1991, Demirel stated the following: **(Annex-12)**

“An individual cannot be secular. A state can be secular. An individual can be either a believer or unbeliever. There is no such concept as a secular individual.” (p.258)

“Turkey has perceived secularism as irreligion and made wrong applications. Religion is considered equal to retrogression. The mentality in Turkey in this context has not yet become settled. For me, it is very clear. I cannot think of any thing more improper than considering freedom of religion and conscience as leading to disturbance. I believe religious people are a guarantee of public comfort and peace. No harm can come from people who believe in Allah, who read the Quran and who follow the Prophet” (p.37).

“In essence, if there is no democracy there is no secularism. No democracy, no modern society. So democracy is the basic condition of both secularism and modernism. Neither those who defend secularism nor those who defend modernism should fall into the weakness of reinforcing their views by sacrificing democracy or using democracy for different plans.” (p.80).

“Retrogression, secularism and their limits should be clearly defined. Before claiming “there is” or “there is not”, we should answer “what is there?” and “what is not there?” “Secularism is violated.” Everybody has a different view of secularism. An individual uses his own natural rights or says extremely reasonable things. You claim secularism is being violated. This depends on the person. We have to clarify this as well. In my opinion, secularism should not limit freedom of religion and conscience. You cannot restrict freedom of religion and conscience. Discussions about the claim “secularism is being violated”, in a way, put pressure on the use of freedom of religion and conscience.” (p.88).

“Well, they say religion should not interfere with state affairs in Islam. What is religion going to do to the State? How can it do anything? It does not have an

organization. On the contrary, the State interferes in religious affairs... In Turkey, the affairs associated with the Department of Religious Affairs have not yet been defined; in Turkey the State runs the Religious Affairs organization. So, does religion interfere with state affairs, or, does the State interfere with religious affairs? Secularism is violated! Well, yes, but the State violates secularism by interfering with religious affairs. "(p.89).

"In a democratic country, freedom of religion and consciousness, freedom of worship, freedom of education and freedom of rituals are among the basic rights and freedoms of the individual. I believe secularism has been imposed to protect this freedom, not to interfere with it. It has been imposed in order to prevent interference in the freedom of worship, freedom of consciousness, freedom of rituals and freedom of education. (p.36).

"There will be no peace in Turkey if Turkey cannot solve two issues. One, if each citizen of this country cannot freely say "I am Moslem" there will be no peace in Turkey. If you consider Moslems as an obstruction to advancement, progress and development then you are absolutely mistaken. I know very well that after what I have said now, you will become demagogues saying "this man is exploiting religion". But I cannot keep myself from saying this just because you will start such demagoguery." (p.65).

"There have been four claims in the period 1950-60: One was the claim of exploitation of religion and retrogression. For example, if you talked about "Islam" in the Assembly, you would be accused of being retrogressive. But, Islam is in the foundations of the Republic... and I am the first person who went to Friday prayers by government car." (p.67).

"Islam has regulated both this world and the next." (p.79).

"There is nothing more natural than the application of a religious curriculum in a country where 90% of the population is Moslem. But, many circles ponder whether the country becomes retrogressive if the name of Allah is uttered in Turkey." (p.107).

“History is witness to how countries with no combination of ethics and spiritual values in their foundations faced great difficulties.” (p.107).

“Islam in Turkey is not a danger to the state but a very strong cement for the unity of Turkey and a means for the eternal existence of the Turkish state”. (p.108).

“Freedom of faith is the right of the people of this country. It is not a favour offered by the State, it is their right. Islam was there when Republic of Turkey had not even been born. In fact, it is Islam which survives and sustains it. On April 21, 1920, Ataturk sent a circular order two days before the opening of the Turkish National Assembly, ordering “Read Bukhari Sharifs, say Salavats, read Mevlid, read Quran”. (p.112).

“I believe there is a very wrong attitude towards the headscarf issue. If someone wants to cover her hair, let her do it. Why interfere in her choice? The headscarf has nothing to do with secularism. It is a piece of cloth not banned by law. This has not just started today. It goes way back. Eighty per cent of the Anatolian women cover their hair with hand painted scarves, veils. For example, take my mother. Can we take away her scarf from her? Do we need to? I am not talking about a religious point of view. It is a well thought of piece of cloth. All this has been tried before. Attempts to put away scarves and other costumes have been tried. But were they successful?” (p. 94-95)

“There are various groups. They say “are you going to force us to wear headscarves?” “we do not want to wear headscarves”. Nobody is asking or forcing you to wear headscarves. Nobody should interfere with those who wear them and those who do not.” (p.116-117).

“Imam Hatip Schools are designed not only to train religious officials. Wouldn't it be better if Turkish citizens who are well educated in religion become doctors, engineers, judges?” (p.189-190).

The former president of the Justice Party and the True Path Party, Süleyman Demirel's statements on religious subjects are not only limited to those above. In one of his more recent talks he stated:

“99.9% of Turkey is Moslem. The law of uniform education and teaching was passed in 1924 and promised to take separate measures regarding religious education. At that time, religious education was left to the families. This resulted in a young generation lacking in basic religious knowledge so much so that they could not read the funeral prayer for their dead father. In 1949, religious education was put onto the State agenda. This is when imam hatip schools were opened. Imam hatip schools were not opened to produce imams. They were opened to produce doctors, lawyers and engineers who are well educated in religion.” (His talk on Kanal D, on December 24, 2005, on the “Abbas Güçlü ile Genç Bakış” show).

Such statements have been made not only by above mentioned political leaders but frequently by many other politicians as well. According to the dominating logic of the indictment, it is possible to file closing cases against the parties of the politicians mentioned by listing these and similar statements one after the other, on the grounds that they have become the “center of anti-secular actions”. This situation alone proves that statements presented to the court as “evidence” are of such quality that they could all be easily uttered by people holding very different political views. In fact, all of these statements are covered by freedom of expression and were uttered in the context of finding solutions to the social problems of a democratic country.

5 Defending Children's Freedom of Religious Education Is Not Against Secularism

The indictment evaluates our party officials' remarks that children under the age of 15 should receive Quranic education as being against secularism. First of all these remarks are within the context of freedom of expression as in the headscarf case. Secondly, freedom of religious education for children is safeguarded by the European Convention on Human Rights of which Turkey is a signatory and by the UN Children's Rights Convention.

According to the European Convention on Human Rights, “When fulfilling its responsibilities in the field of education and training the state will respect the right of parents’ to choose to have their children educated according to their own religious and philosophical beliefs.”(Additional Protocol 1, art. 2/2)

According to the Children’s Rights Convention, signatory states are required to observe “the children’s right to freedom of thought, conscience and religion” and “respect parents’ or legal custodians’ rights and duties to advise their children in developing their skills” (art.14).

Moreover the age limit on children receiving Quranic education in Turkey was introduced during the period which has been termed the “February 28 process.” If attempts to lift it are against secularism, then one should admit that all practices before introduction of the age limit were against secularism.

6 Defending a Change in University Entry Eligibility Status for Vocational Schools is not Against Secularism

The indictment stated that certain AK Party members’ bringing up the situation of Imam Hatip Schools and taking up the university entry eligibility issue as reasons for closure. The university entry eligibility issue does not concern only Imam Hatip schools but also involves all Vocational High Schools. In fact, the majority of the speeches cited in the indictment openly state this situation. The situation involving the eligibility rules that have been implemented regarding entering universities does not stem from the Constitution or laws. This practice, which did not exist until 1998, is based on a decision of YOK. (This is the autonomous administrative council governing all university issues) If attempting to eliminate educational discrimination leading to inequality in access to higher education is an act against the Constitution, then this would mean that all other administrations before 1998 should be subject to the same accusation.

Relating the efforts to change the method used in determining university entry eligibility, a method which has caused a decline in the vocational and technical education system in our country to secularism and taking this as a base for justifying the closure of a political party is not compatible with either law or the principle of equal opportunity in education.

The issue of Imam Hatip high schools is also within the periphery of the duties political administrations have within the framework of determining educational policies. As mentioned in the indictment, “secularism is not irreligion”. It is a well known fact that since the beginning of the first years of the Republic, Atatürk was sensitive towards the need for, and had worked on the issue of providing superstition free religious knowledge to our nation. Modern religious education is necessary both to prevent the spread of certain ideas created to exploit religion in a way that may damage social life, and to protect our national unity on the grounds of the characteristics of our geography. Opening the doors to those who want to have sound knowledge about religion means taking away the means held by those who produce ideas and approaches inimical to modern social life and public order.

Many education experts, academicians and politicians of different political views have been voicing the idea that implementing a discriminatory calculation of eligibility for university entrance is wrong. The minutes of the Turkish National Assembly prove that members of parliament of different views have also voiced opinions on the subject.

In the modern world, based on the principle of “equal opportunity,” there should be no contradiction between religious education and the desire to have a vocational education. The state’s closure of this path for those who want to study religious subjects would mean abandoning its citizens to the influence of radical and marginal views. In fact the EU, the most important organization of the modern world, has a comprehensive statute dealing with religious education. Similarly, citizens who want to receive a more intensive religious education should not be barred from equal opportunities in employment and university education. Some AK Party members criticized the “university entry eligibility calculation” only within the framework mentioned. It is completely wrong to produce out of this the claim that the party has become a center of anti-secularism. In fact the curricula of the Imam Hatip schools are determined by the state in total harmony with the principle of secularism. It is difficult to understand how the desire to open the doors of our universities to Imam Hatip high schools on the basis of “equal educational opportunity” can be designated “being an anti-secular center.”

7 The State Initiative to Educate Poor Students in Private Schools is Not Against Secularism

The indictment claims that the Council of State decided to stop the implementation of the regulation for the education of poor students in private schools by the state and that the following law, dated July 31, 2003 and number 4967, was vetoed by the President on the grounds that the structure of the student body that would enter these schools and the teachers there would create opposition to the characteristics of the state and that the initiative of the government was against secularism (p.107).

We have to note that our constitutional system does not have a “veto” mechanism. The President’s refusal and return of the laws in question to parliament is not called “vetoing” but “returning.” It can be understandable that popular newspapers may err in this regard but for an indictment prepared to demand closure of the governing party more care in using the correct legal terminology would be expected.

Furthermore, the government’s initiative for the state educating poor children in private schools has nothing to do with secularism rather it is required by the principles of the social state. A similar arrangement was made by the TGNA during the previous governments’ terms and that law was sent to the Constitutional Court. At that time the Court had decided that the legal provisions added to the Private Education Institutions Law no. 625, which imposed on private educational institutions the duty to educate 10% of their students free of charge, provided that this does not decline below %2 of the number of their students, are not against the Constitution. The Court emphasized the following:

“According to article 2 of the Constitution, the Republic of Turkey is a social state of law. A social state of law is responsible for providing real equality, that is social justice, and to maintain the social balance by protecting the weak. A real state of law is far more valuable if it has an understanding of the social state. The protection of the person can only be accomplished through maintenance of social security and social justice... The requirement of reserving a certain quota of places for successful and needy students in private schools is, besides answering the duty of producing educated people, a result of the responsibility incumbent on the State in article 5 of the Constitution “... preparing necessary conditions for the material and non-material development of people...”. Therefore, this attitude of the State should be interpreted, not as the State

obstructing rights, but the State implementing the principles of the social state.”
(Case no: 1990/4, Resolution No.:1990/6, Date: 12.4.1990).

As can be understood from the justification of the resolution of the Constitutional Court, providing private education to successful but needy students is not against secularism and moreover is a contribution to implementing the principles of the social state. Thus classifying an initiative of our government as an act against secularism is an inexplicable approach to the situation.

8 Votes and Remarks Made Within the Scope of Legislative Immunity cannot be Used as Evidence

Deputies make statements within the framework of legislative immunity which grants this immunity according to the Constitution; therefore, according to the scope of article 83 of the Constitution, it is not appropriate to demand a five-year political ban and annulment of parliamentary rights due to these statements.

Legislative immunity means deputies’ not being held legally responsible for the votes they cast and the ideas they express while conducting their legislative duties.

According to the provision of the Constitution related to legislative immunity “members of the Turkish Grand National Assembly cannot be held responsible for their votes, and statements made while conducting their legislative work in the assembly, for their disclosing and repeating the views outside parliament which they had voiced in parliament unless a contrary decision is taken by parliament upon the proposal of the board of the related session.” (art.83/1)

Legislative work includes general assembly meetings of parliament, committee meetings, group meetings of the political parties and business conducted outside parliament by the parliamentary investigation committees. Whatever the subject and content of it may be, the disclosure of a vote, statement and view is considered to be within the scope of legislative immunity. Since legislative immunity is absolute and continuous, deputies cannot be subjected to any sanction due to their votes or statements either during or after their parliamentary terms.

The purpose of legislative immunity is to keep deputies absolutely free of any responsibility that may arise due to their votes, statements and views they express during parliamentary work. Legislative immunity in democracies is an important principle to ensure deputies can freely express their thoughts without any legal obstacle so that they can participate in legislative activities according to their “free will” with the assurance that neither they personally nor their political party will be subjected to any sanction.

Should deputies become concerned that due to their remarks and the ideas they have expressed their party might be closed, their deputyship be cancelled and that they would be subject to a five year political ban, it is impossible to believe that they would participate freely in legislative activities. As a consequence, this would prevent them from properly performing legislative activities. In other words, if statements of party deputies are used as reasons to close their parties, then legislative immunity would have no meaning in practice.

In addition, disregarding the principle of legislative immunity in political party closure cases would bring about the unequal restriction of a party deputy’s freedom of expression when compared to that of an independent deputy. This, in turn, would result in the special punishment of political parties which are considered to be constituent elements of democratic political life.

For this reason, the five year political ban in article 69 of the constitution and the loss of parliamentary rights provided for in article 84 and the immunity provision in article 83 should be evaluated together and subjected to a harmonized interpretation. **In the final decision, the provision of article 83 should prevail against others as a “special” provision.**

Putting this aside, all of the statements of the deputies of our party that were referred to in the indictment are within the scope of freedom of expression that would not require legislative immunity.

9 Remarks Made Before the Establishment of the Party Would not Bind It

Another peculiarity of the indictment is that it contains remarks that were made before the establishment of the AK Party. These statements, whether being against secularism or not, cannot be said to be binding on the party that has been made the subject of the closure case. Statements and actions attributable to a political party must belong to the period after the said party has been established. In the indictment, without any legal justification, a situation contrary to this is advocated where it states “the dates of the actions subject to the closure case are not important. No matter how much time has passed since the acts, it is possible for them to be based on the point of showing the fact of ‘being a center’ in the indictment (page 22). An approach which makes a political party responsible for statements made by people before the said party was even established is a violation of the concept of a state of law.

Using statements made years before the establishment of a political party as justification to close the party **is clearly against the “law of responsibility” and the principle of “constitutional security”, an element of the constitutional state.** The indictment specifically cites some remarks (p.31-33) made by the Prime Minister years before the establishment of the AK Party to make a psychological impact on the members of the Constitutional Court. Putting aside whether or not those remarks were made, it is obvious that they would not bind a political party that has been established years later. For such statements to be used as reasons for closure is absolutely against the principles of the law of responsibility.

This approach of the indictment reflects an imposition of responsibility on political institutions and politicians from birth to death. It is clear that such an approach, which does not recognize any concept of “time” in law, is against the general principles of law.

Moreover, the speeches made before the establishment of the political party are totally within the framework of freedom of expression. In fact, this was confirmed as a result of a judicial process. For example, regarding the investigation filed concerning a statement by AK Party Deputy Ömer Dinçer, addressed to a scientific symposium in 1995, **years before our party was established**, the Public Prosecutor of the Erzurum State Security Court declared *nole prosequi*. The court decision dated 7.6.2004, emphasized that the statement had been made within the framework of freedom of expression:

“According to article 10 of the European Convention on Human Rights regarding “freedom of expression”, everyone is free to express and explain his/her thoughts and that this comprises freedom of opinion and freedom of communication of news and thoughts free of the interference of authorities regardless of country boundaries. Resolutions made by the European Court of Human Rights related to the application of the Convention provide that all types of ideas which do not contain clear violence or a call to violence, are considered to be within the concept of freedom of thought.

As result of the overall assessment of the speech text published in the periodical “Bilgi ve Hikmet”, Fall/1995 issue no.12, since the said speech does not contain any call to commit a violent act and does not provoke the commission of a crime and is thus considered within the framework of freedom of expression, the crimes listed under the Turkish Commercial Code articles 146/2, 311, 312/1-2 were not found;

Therefore the court declares nole prosequi on the accused regarding the crimes referred to.” (Case no: 2004/128, Decision no: 2004/23, Date: 07.06.2004)

(Annex-13)

In a similar manner, the ideas of Hüseyin Çelik, Minister of National Education, published in his book “Türkiye’de Değişim, Demokrasi ve Aydınlar” (Change, Democracy and Intellectuals in Turkey) are also presented as evidence in the indictment (p.73). However, the article in this book, which is presented as evidence in the case, was published in 1994 in a periodical **years before our party was established**. These views, which have not been subject to legal actions since their publication, and on the grounds of freedom of expression not in contravention of the Constitution, were included in the indictment after Cumhuriyet newspaper published an article about them on 02.10.2003.

10 It is not Possible to Attribute to the Party Statements and Actions of Public Employees Who are Non-members

The indictment holds our party responsible for the acts of public employees. According to it, the actions of officials (such as Undersecretary, Deputy Undersecretary, District Governor, Governor, Sub-Governor, Chief Medical Officer, mayor, school principal etc) who have positions with public duties may be attributed to the political party, since such acts carry the political view and perspective of that party (p.155).

A party or party members, even when they are in power, cannot be held responsible for the statements and actions of public officials who are not party members. Any other approach would not comply with the principle of subjectivity of crimes. If a public employee commits a crime, he/she would be subject to individual criminal or disciplinary investigation. Moreover, there is no anti-secular quality in the statements and acts of the public employees that are referred to in the indictment. In addition, illegal actions of public employees can be controlled through administrative sanction.

For example, in the indictment, statements of the Higher Education Institution (YOK) President regarding the freedom of dress in universities and his letter to the presidents of universities to the effect that Constitutional provisions should be observed in dealing with the issue are referred to as “illegal actions” (p.124) and are considered one of the “anti-constitutional actions” of our party. The YOK President, in accordance with article 6 of YOK law number 2547 is designated by the President. Above everything else, there is nothing illegal in the acts attributed to the YOK President. Moreover, even if there were, the AK Party government cannot be held responsible. Otherwise, the AK Party government would have to be held responsible for the acts of all YOK Presidents who have served during the terms of AK Party governments.

The view that the ruling party should be held responsible for the acts of public employees such as governors and district administrators reflects the mentality of the single party period during which the state was identified with a single party. After 1935, the ruling party in Turkey followed the rule that the party general secretary acted as the Minister of the Interior, chief representatives of provinces as governors, representatives of boroughs as district administrators. Those days have been left behind. In our day, political parties, even if they are in power, cannot be held responsible for the statements and practices of public employees who are not members of the political party. The assignment procedures appointing these officials and their actions after they have been

appointed are subject to legislative inspection. Therefore, legislative investigation is naturally conducted should there be any irregularities in their performance or in the procedures leading to their appointments. Nevertheless, there is nothing which might be considered anti-secular in the statements and actions of the public employees as is claimed in the indictment.

Even if for a moment we thought public employees of the government might be “politically” responsible for their actions and procedures, **the political responsibilities of governments should not be confused with the legal responsibilities of political parties.** The political responsibility of the government can only be dealt with through mechanisms such as a “censure motion” in the TGNA. Elections are another political method for calling governments to public account. However, the control of political parties by the Constitutional Court is a legal procedure and closure is a legal consequence. Thus, it is obvious that issues that fall within the political responsibility of the governments cannot be included in a legal control process peculiar to political parties.

11 The Neutral President Cannot be Included in a Political Party Case

In parliamentary systems, such as the one established in Turkey, heads of state do not have political responsibility. For this reason, it is not possible for the President to be removed from office by the TGNA or any other organ.

When a comprehensive assessment of the meaning of our constitution as a whole is conducted, it is impossible to make a claim on legal grounds for the application of a sanction to a serving President due to the founding principles of the system and legal immunity.

According to our constitution “the President is the head of state and with that title he represents the Republic of Turkey and the unity of the Turkish Nation, safeguards implementation of the Constitution and the harmonious and orderly functioning of State organs” (art. 104/1). The President can only be convicted of high treason upon a decision made with a minimum three fourths of the full number of members, upon the proposal of one third of the full number of members of the Turkish Grand National

Assembly (article 105/3 of the constitution). The term “being convicted of” includes not only the crime in the context of criminal law but also all public sanctions.

In party closure cases, talking about the responsibility of a neutral President is out of the question. According to the Constitution, the ties to his party of the person elected President are cut and he ceases to be a member of the TGNA (article 101/4). Within this framework, Abdullah Gul was elected by the TGNA on August 28, 2007 and his ties to the party were severed. Including the President in the process of a closure case filed after the date mentioned against the political party of which he was once a member and demanding he receive a five year political ban is openly against the Constitution.

Moreover, the acts and remarks that have been attributed to Abdullah Gül in the indictment have nothing to do with secularism. The indictment made the following claims; “a circular order issued by the Ministry of Foreign Affairs, then under the authority of Abdullah Gül, asking our embassies to contact schools established abroad by the religious community leader Fethullah Gülen and to consider them as being within the framework of commercial organizations” and under another circular order “asking the embassies to contact Avrupa Milli Görüş Teşkilatı, on the basis that the organization members contribute to the solution of problems of our citizens living abroad and to the activities regarding national subjects conducted by our foreign missions, although this organization was defined as a “fundamentalist terrorist organization” in the Security Cooperation Agreement signed between Germany and Turkey”. (p. 65-66).

It should be noted right away that in the above mentioned circulars no instructions were given to establish contacts with the above mentioned religious community or organization. As can be seen in the attached copies of the circulars, it is noted that it is within the discretion of the mission heads to contact or cooperate with the above mentioned associations, foundations and schools, respecting both local conditions and in accordance with their activities and behavior.

In fact, our foreign missions act in accordance with the prevailing conventions formed through long periods of experience in the field. In a news article published in Sabah newspaper on 20/4/2003, a copy of which is attached as evidence (**Annex-72**) to the

indictment, it is stated that officials from the Ministry of Foreign Affairs explained that “in the past, when campaigns were conducted abroad against Turkey, circulars were sent to embassies asking them to contact Turkish foundations and Turkish communities in the related countries; but no name of any particular foundation was mentioned in such orders.” Even the news article presented as evidence reveals that such circulars were not something new and that this kind of activity was common practice. **(Annex-14)**.

The mention of certain associations, foundations and organizations by name was due to a legal condition arising from the need of our foreign missions to reply to particular questions.

From the beginning of the 1980s when anti-Turkish activities were on the rise, our embassies, upon the instructions of our governments, organized counter-activities such as meetings, marches, and petitions and letter campaigns. Citizens, associations, foundations and organizations of Turks of all trends living abroad were invited to participate and that they accepted the invitation can be seen in the archives and related files kept at the Ministry of Foreign Affairs and at the embassies. Our embassies sponsor activities and cooperate with these organizations in matters concerning our national interests, especially regarding Armenian allegations and terrorism.

Protecting and promoting the rights and interests of Turkish citizens living abroad, dealing with their problems and contacting these citizens for the purposes mentioned above are among the main duties of the Ministry of Foreign Affairs. This duty is clearly defined in the law regarding the Establishment and Duties of the Ministry of Foreign Affairs. Moreover, the Vienna Convention on Diplomatic Relations, 1961 and the Vienna Convention on Consular Relations, 1963 refer to the protection of the interests of citizens living abroad as among the main duties of every diplomatic mission.

Both circular orders mentioned here were prepared upon the inquiry of certain of our foreign missions. They requested instructions regarding implementation of practices and had some questions on the issues. These they duly conveyed to the Ministry of Foreign Affairs. But contrary to what is claimed in the indictment, no instructions regarding contact and cooperation with these associations, foundations and organizations were given in the circulars mentioned. Moreover, the heads of the missions abroad were

reminded to use their own discretion in the implementation of common practices after conducting an individual assessment of each organization.

Also in the preparation of the mentioned circulars besides other concerns, the need to keep the national interest in mind “to prevent our citizens’ from being drawn towards extremism and prevent them from being exploited by foreign countries” was noted and openly expressed. Thus, **no instructions in the direction of contact or cooperation were given** in the sense claimed in the indictment, rather, our foreign missions were reminded of previously observed common practices regarding our national interests.

In addition, circulars sent to our foreign missions were not limited to these two. Another circular, number 6037, was sent to our foreign missions on June 18, 2003 reminding them of the prevailing practices and their authority to act at their discretion in their possible contacts and cooperation with the organizations mentioned. These circulars were published in certain daily newspapers which led to a number of inaccurate commentaries and interpretations.

Circular number 6037 also noted that organizations which act against our laws in other countries and conduct activities against our state may not benefit from such contacts and cooperation. Although it is directly related to the issue, this circular was not mentioned in the indictment. The Constitutional Court should request a copy of this circular from the Ministry of Foreign Affairs.

Undoubtedly, the main idea in the last circular, as in the two previous ones, was to prevent our citizens both from being drawn towards extremism and being exploited by foreign states.

Thus, it cannot be claimed that our foreign missions first started cooperation and contact with these organizations after receiving the cited circulars. The documents presented in Annex-15 show that for long years our Presidents (Turgut Ozal and Suleyman Demirel), TGNA Chairmen (Mustafa Kalemli and Husamettin Cindoruk), Prime Ministers (Turgut Özal, Süleyman Demirel, Tansu Çiller, Mesut Yılmaz and Bülent Ecevit), Ministers including Foreign Ministers (Şerif Ercan, Ahat Andican, Cumhur Ersumer, Necdet Menzir, Refaiddin Şahin, İstemihan Talay and Enis Oksuz and others), President of

Court of Appeals Mufit Utku, deputies (Murat Sokmenoğlu, Hasan Korkmazcan, Hayri Kozakcioğlu, Yildirim Akbulut, Nevzat Ercan, Masum Türker, Haydar Yılmaz, Lutfullah Kayalar, Onur Oymen and others) as well as various statesmen (Alparslan Türkeş, Retired Major General Prof. Dr. Omer Sarlak, former Air Force Commander, General Halis Burhan and others) visited the above mentioned schools accompanied by our ambassadors, and spoke about, supported and expressed appreciation of their work. For example, in the last paragraph of the news article commenting on the circular in question, published in Cumhuriyet newspaper, page 5, dated September 17, 2003, the visit of former President Süleyman Demirel in 1997 to one of the schools mentioned, the Private Demirel High School in Tbilisi, Georgia, is given coverage.

Also, the claim in the indictment that the “Avrupa Milli Görüş Teşkilatı is mentioned as a “fundamentalist terrorist organization” in the Security Cooperation Agreement between Germany and Turkey” is not true. As may be seen in the copy of the agreement appended to the indictment and submitted as evidence, the title of the agreement mentioned is not “Security Cooperation Agreement” but “Cooperation Agreement between the Republic of Turkey and the Federal Republic of Germany in the Fight Against Crime of Vital Importance Primarily Terrorism and Organized Crime”. Alone, **this incorrect mention of the title of an agreement reveals that due care has not been taken.** Contrary to what is claimed in the indictment, no association, foundation or establishment is referred to as a terrorist organization or fundamentalist or radical religious organization in the provisions of the mentioned agreement.

For this reason, the section of the indictment which claims that the associations and foundations that are mentioned in circular order number 3846 are “fundamentalist terrorist organizations” and which tries to mislead the Constitutional Court is unjustified and totally inaccurate. Nowhere in the Agreement, the title of which is incorrectly presented in the indictment, is the Avrupa Milli Görüş Teşkilatı (European National View Organization) referred to as a “fundamentalist terrorist organization” neither is there any such reference in the justification of the law supporting the approval of the Agreement, as can be seen in the documents attached to the indictment (**Annex-16**).

While taking measures against terror, international organizations publish lists of terrorist organizations. Contrary to what is said in the newspaper clippings attached to the

indictment, the associations, foundations and organizations that are mentioned in the circular orders are not included in those lists. Nor does the Federal Republic of Germany make any claim in this regard. The names of these associations, foundations and organizations are not included in the lists issued by the European Union regarding people and organizations subject to special restrictive measures in the fight against terrorism. **(Annex- 17)**

Given the existence of the circulars mentioned and other related official documents filed and despite the fact that the content of the said circulars are very clear, the presentation of newspaper reports containing evaluations based on unreal accusations as evidence is unacceptable.

It is clear that the remarks made by the President when he was the Foreign Minister were entirely aimed at the establishment of a pro-freedom and democratic society.

In this context, the following caption of the indictment is very interesting:

“Minister of Foreign Affairs Abdullah Gül said at the extraordinary meeting of the TGNA Human Rights Commission convened on the 55th anniversary of the signing of the UN Declaration of Human Rights that the aim is to eliminate torture and terror from hindering freedom of expression and belief and to accomplish that they are determined to apply all related legal regulations, and continued: “we are determined to have freedom of expression and belief: everyone must live according to their beliefs. Everybody must live free from fear and anxiety and in safety; freely express what they think and believe and freely live what they believe in. Freedom of expression and belief, living completely free from torture and terror are our aims. Legal regulations regarding these things will be put to effect.” **(p.67)**.

First of all, in this paragraph, in the line placed before his quoted speech, the reference to him in the caption “their aim is to eliminate torture and terror from hindering freedom of expression and belief” is not thoroughly understood. As is easily understandable from the caption, providing “freedom of expression and belief” and “complete elimination of torture and terror” are already shown among their goals. Probably the message of the speech was misunderstood, so the speech, which is included in the indictment, is

directed at the protection of rights and freedoms, and is one which could and should be uttered by anyone.

If these statements are presented intentionally as evidence, then the situation is even more critical from two points of view. First, the speech was made, as mentioned in the indictment, at the extraordinary meeting of the TGNA Human Rights Commission convened to observe the anniversary of the Universal Declaration of Human Rights. Secondly, the content of the speech well suits the importance and meaning of the day and is a text which can be supported by anyone who cares for basic rights and freedoms. The inclusion of this speech in the indictment confirms once more that the case against our party is actually a case against democracy and freedom of expression.

Another indicator that the indictment was not prepared in good will is the inclusion in the attached evidence of a copy of a front page article from the Posta daily, dated November 28, 1995. Although the columnist of The Guardian newspaper made the relevant correction, Posta did not announce any correction. Cumhuriyet newspaper carried the uncorrected version of the British daily in its pages and did not publish the correction and it was only after this that a court for the correction of the article which had proved to be incorrect was applied for. **(Annex-18)**.

The Chief Prosecutor, as evidence to his indictment, has attached a clipping of the article published 13 years ago in Posta newspaper as evidence instead of the corrected one that by court order was published in Cumhuriyet newspaper on 1.5.2007. This is another indication that the indictment was prepared with malicious intentions.

12 Statements of the TGNA Speaker cannot be Used as Evidence

According to the Constitution “political party groups cannot nominate the speaker”. (art. 94/2). “The TGNA Speaker and vice-speakers cannot participate in the activities of their political parties or party groups either inside or outside parliament; except in fulfillment of their duties they cannot participate in parliamentary discussions. The speaker and vice-speakers chairing discussions cannot cast votes.” (art. 94/6).

The Speaker of the Assembly is considered impartial and cannot participate in party activities. As a consequence of this impartiality he is vested with certain constitutional powers, such as representing the TGNA outside parliament, substituting for the President, submitting his opinion to the President regarding the calling of parliamentary elections, and to personally call the assembly into session or to do so at the written request of one fifth of its members.

Undoubtedly, an Assembly Speaker is a member of a political party but due to his position, the speeches he makes are regarded as being made on his own behalf rather than in the name of his party. For this reason, it is not possible to hold his political party responsible for his speeches. Moreover, the statements of former Parliament Speaker Bülent Arınç that are cited in the indictment as “remarks against secularism” are not against secularism and are within the context of freedom of expression.

In addition, it should be noted that only certain parts of the speeches of former TGNA Speaker Bülent Arınç were included in the indictment, not the speeches in their entirety. For example, in the indictment only a certain part of his talk with the press on 13.11.2005, at the TGNA Sabit Osman Avcı Education Facility has been purposely selected to emphasize his following statements: “Discussions of secularism have always been there, secularism also develops over time. As far as we see looking at places in today’s world where freedom of religion and conscience are generally accepted, it would be impossible to say that secularism is violated in Turkey.” (p.63-64). However, Bülent Arınç in the same conversation made remarks to the effect that in a secular state legal provisions cannot be based on religious rules: “Lawmakers in a secular state cannot impose rules for religious purposes... the Republic of Turkey is a secular, democratic, social state of law. Legislative organs of a secular country cannot base their regulatory rules on the Quran, the Torah or the Bible.”

As can be understood from this, the speeches presented as evidence in the indictment had their meaning distorted by the selection out of context of only those parts supporting the arguments of the prosecutor. If these speeches are evaluated in their entirety, such a case as this would not have been opened at all. As is the case in thousands of speeches made by our party members on different occasions, all of the statements in

the indictment are based on human rights and the democratic, secular and social constitutional characteristics of the Republic of Turkey.

Additionally, the indictment carries a statement of Bülent Arinç, former speaker of Parliament, referring to the late Turgut Özal, 8th President of Turkey. He said they would elect a civilian, religious and democratic president like him. According to the indictment, by adding “religious” which is not mentioned in the Constitution at all, to the characteristics required for the proposed Presidential nominee, Arinç did not refrain from exploiting religion and acting against the principles of a secular state even during his duty as TGNA Speaker” (P.142)

It seems that the Chief Prosecutor confuses sociological and political facts with the provisions of the Constitution. Bülent Arinç made that statement, a common view frequently expressed by people of different political inclinations, in reference to the late President Turgut Ozal. Of course the constitution does not state that “being religious” is one of the conditions for election as President. But at the same time there is no provision stating that the President should be a “civilian” or “democratic” either. Despite this fact, in acting upon a sociological assessment, and establishing links with the “Iranian constitution” we see an example of the creation of confusion and irrelevance that better belongs in works of science fiction.

13 The “Possibility of Violence” Claim in the Indictment is totally a Product of Imagination.

Although none of the evidence in the indictment contains any statement where it would be possible to establish the slightest link with violence or that could be characterized as provocation, an attempt is made to insert violence into the proceedings with a totally forced interpretation and malicious intentions. The effort to show our party is connected to violence stretches the limits of reason and logic.

The indictment states the there is an attempt to force the “conversion of political Islam or “moderate Islamic” model on Turkey to change it into a Sharia state and the use of Islamic terrorism for this purpose is not an unlikely possibility. “Some countries in our region which have been frequently given as examples of being in transitory periods,

have then inevitably turned into fundamentalist religious states” (p.114). It can be clearly observed that this point presented in the evaluation part of the indictment is aimed at influencing the Constitutional Court.

Moreover, while trying to establish a link between the ruling party and violence, an unacceptable and self-contradictory point is also cited “in fact it is obvious that if the opportunity to reach their goal by using the advantages of being in power and by using the democratic system exist, it is unnecessary to resort to violence. The measure of closure, in the final stage is in compliance with law since it is directed towards the prevention of a model which aims to make a call for violence” (p.157).

This remark in the indictment **openly registers the fact that the use of violence is out of the question**. But at the same time it makes a prediction that violence may be used in the coming periods, and for that reason there is a need to close the party. One should not forget that Turkey is a democratic state of law. In democratic states, the control mechanism of governments has already been determined. The possibility of our party resorting to violence is a claim totally based on delusions. In a state of democratic law, asking for the closure of a ruling party, all activities of which are subject to legal control, is unacceptable.

In this context, the following statements in the indictment are also very interesting:

“Submitted evidence proves that articles 10 and 142 of the Constitution have been amended only for the purpose of disturbing the essence of the principle of secularism. Because today fundamentalists have carried their demands further than their demand for the freedom to wear head coverings in public buildings. They have started to say in TV discussions that “those who defend the banning of head coverings shall be tried and punished like Mussolini of Italy”. This situation alone suffices to show the threat awaiting the defenders of the principles of the secular state and secularism in Turkey and displays the element of violence inherent in Sharia”. (p.117)

Now we ask when was this television talk given? And by which party member? When? And on which TV channel? If this talk really took place, was it uttered by someone unconnected to the party but externally directed? Or is imaginary ‘evidence’, which

suffices only to make people laugh, being created to give the impression that the Vienna criteria which accept only violence as criteria in banning parties are present? Although other statements referred to in the indictment are attached to it, why is this remark referred to but not included in the attachments?

As can be seen, the indictment has nothing to do with the facts and is an attempt to produce evidence according to ideological criteria. All statements in the indictment that purport to identify links between our party and violence are speculations and delusions produced in a world of imagination.

In addition, certain media organs claim the existence of, and try to establish imaginary connections between personal views and assessments on the subject of freedom of religion and the secularism of various people unrelated to our party. This does not comply with the condition of goodwill required by the state of law.

Moreover, the indictment mentions **“a great mass of people who remain silent fearing the power of the government** and opposing its actions related to reaching the illegal political model within the framework of the activities of its ruling government. This also makes it easier for the respondent party to reach its goal” (p.158). Regarding these claims, one thinks of the following question: How was “the existence of a great mass of people who remain silent fearing the power of government” determined? We wonder which technological measuring devices were used by the Chief Prosecutor to reach this conclusion. Is the Chief Prosecutor receiving millions of complaints from the “silent masses” on this subject? If so, we wonder why this official, who attaches all types of newspaper articles to the indictment as “evidence”, did not attach these complaints.

Moreover, there is, in fact, a quite noisy opposition to the AK Party, as mentioned in the indictment. They have freely displayed their opposition by using mass communication and democratic platforms, as foreseen by our laws. The July 22, 2007 election results showed that our society does not feel uneasy about our party and the AK Party government, on the contrary, **their satisfaction level is gradually increasing and this has been measured and confirmed by “democratic measuring devices”.**

14 The Foreign Policy of the AK Party Government is Not Unconstitutional

The presentation of the AK Party government's foreign policy as a reason for closure is incomprehensible. It is within the field of responsibility of political governments that come to power through democratic means to determine and implement the foreign policies of their state. Governments are obliged to account for unsuccessful foreign policy preferences and practices to parliament and to the people. However, indicting a government on the basis of its foreign policy preferences is an unprecedented thing. In fact, the policies pursued by the AK Party government in our region and in the Middle East are totally in compliance with the basic characteristics of the Republic and our national interests.

Turkey cannot be expected to remain a mere viewer of what has been happening around her, primarily in Iraq, or as a regional power to turn her back on them. Since 2002, the year we came to power, with the help of the pro-active foreign policy that we have been pursuing, Turkey has become an effective and respected country in its region and in the view of international organizations. The effective foreign policy that we have been pursuing over a vast geography from Iraq to Lebanon, from Russia to the European Union and from Africa to Latin America, has increased confidence in Turkey. As a result of this, Turkey's credibility has increased, international capital has started to favour Turkey, and Turkey has hosted many international meetings, including the NATO summit. Istanbul was selected as Cultural Capital of Europe for 2010. In a short time, an important distance has been covered in the direction of full EU membership. The relations of Turkish businessmen with the wider world have rapidly increased. Turkish companies have started commercial enterprises over a vast geography and Turkey has begun to be acknowledged as one of the most prominent actors of the region.

The governments of the Justice and Development Party have believed that defending our interests depends on opening up to the world and basing our strength on our geography and history rather than isolating ourselves, and have participated effectively in the work conducted by various bodies of the UN, G-8, NATO, OECD, OIC, OSCE, and by various organs of the EU. They have taken the lead in certain initiatives and thus contributed to the establishment of regional and global peace and stability. Within this framework, Turkey was invited to the G-8 meeting in 2004 and worked with the most developed eight countries of the world (USA, U.K., Germany, France, Italy, Japan,

Canada and Russia) on regional and world issues and especially supported the initiatives directed towards maintaining peace and integrity in our region.

In this regard, the AK Party governments, considering regional and global peace as a priority issue for our national interest, have participated in the UN Alliance of Civilizations project as co-chairman with Spain. In the indictment it can be recognised that this has been confused with the Greater Middle East Project. Our government, which believes in the principle that peace and compromise should be maintained between different cultures and nations and not only between national and regional values and universal values, has gained an institutional identification with these principles with its participation such projects. The expansion and support of universal norms of law and democratic institutions will provide both regional peace and stability and the advancement of relations between the Moslem world and Western civilization on peaceful and constructive grounds. Maintaining regional and global security, peace and stability can only be possible with such a foreign policy vision.

As a result, the foreign policy pursued by AK Party governments is totally aimed at safeguarding the higher interests of our nation and the country and although these efforts have been portrayed in the indictment as evidence of anti- secularism, this merely shows how fictitious and far from reality such claims really are.

IV. THE INDICTMENT IS COMPOSED OF WRONG INFORMATION, DISTORTIONS AND FICTION

The first striking thing when you read the indictment prepared against our party is that it has been very badly and carelessly written. Most sections base their justification on newspaper clippings, the correctness of which has not been checked. The indictment was prepared using the method of “**picking**” and “**clipping**” thus disregarding court decisions and cases opened for correction, and without having checked the actual studio recordings of the TV discussions, or the correctness of mostly distorted news articles published in dailies and the intentionally inaccurate articles of certain columnists. Such is its “evidence”. In this way an attempt has been made to create the effect that the indictment is underpinned by folders full of supporting evidence.

Some parts of the indictment contain contradictory, unreal, baseless and legally wrong terms, as will be pointed out below. An indictment prepared by the Chief Prosecutor of the Court of Appeals containing such misrepresentations, distortions and extreme incorrectness gives the impression that there is serious prejudice and suspicion towards our party and that all types of news articles and rumors have been gathered as evidence without checking their correctness.

The indictment is also a **monument to tautological statements**. It is filled with repetitions of certain statements. In this way, acts and statements have been exaggerated and the impression that the preconditions of “intensity” and “determination” that are required by the Constitution for the recognition of “having become a center” has been manufactured.

1. The Prime Minister’s New Straits Times Interview Has Been Distorted

The statement attributed to the Prime Minister, “Turkey, as a modern Islamic state, can be an example for the harmony of civilizations” (p.27) is a typical example of the distortions in the indictment. The interview given by the Prime Minister to the New Straits Times published in Malaysia was published after it had been translated into English.

The relevant pages of the New Straits Times (NST), which are attached to the indictment, were made available by the Malaysian Embassy in Turkey upon the demand of the Star newspaper of the time, and seem to have been submitted to the Chief Prosecutor. **In these pages there is no statement of Prime Minister Erdoğan’s that can be interpreted as meaning “Islamic state”.** The English translation of the part submitted as evidence is as follows: **(Annex-19)**

“NST: What role would Turkey want to play in global affairs as a modern Muslim nation?

Erdogan: Turkey can serve as a model of how Islam and democracy can coexist in a harmonious way. Turkey will prove (Samuel) Huntington wrong when he said that there would be a clash of civilisations. Turkey can show that harmony of civilisations is possible.”

The original Turkish version of this interview is published on the official web site of the Prime Ministry Press Center. The Turkish version of the related part of this interview is as follows: **(Annex-20)**

(Here the Turkish version of the mentioned part of the interview is cited)

This example alone, the presentation of a news article and commentaries without checking their correctness, without translating the English texts and attaching them as annexes to the indictment in a prejudiced way, reveals how far this effort to gather “evidence” against our party can go. Some journalists and some newspapers have tried to contribute to these efforts to gather alleged “evidence”.

The level of sensitivity in using these terms is evident in the following words, also in the indictment, of the Prime Minister which he uttered on another occasion:

“... In our country where 99% are Moslems, let’s not forget or be confused about this: being an Islamic state is one thing and being an Islamic country another. We have to make this distinction very clearly in looking to the future. I would like to invite the members of our organization to act sensitively in this matter...” (p.39)

This statement of the Prime Minister is not against secularism at all but, on the contrary, puts emphasis on the harmony of civilizations and on the idea that religion can be interpreted in a way to contribute to peace and harmony instead of creating conflict and tension between societies. It also says that Turkey, as a modern Islamic country, has achieved this.

2. The Unverified News Reports Have Been Used

The indictment carries a statement of former TGNA Speaker Bülent Arınç, with the wording “the written press reported that a Quran course was opened in the TGNA masjid during his term”, and this is reported in the indictment as being among the “actions and statements against the principles of a secular state.”(p.57)

If the chief prosecutor had conducted an even minor investigation he would have found out that this report was totally fictitious. It was only after a question by CHP Denizli deputy Mehmet Nessar directed to TGNA Speaker Bülent Arınç about “whether it is true that Quran courses have been opened at the masjid the TGNA”, that light was shed upon the matter. The answer dated 3.7.2005 stated that a Quran course had not been opened in the Parliament building and that the authority to open Quran courses lies with the Diyanet (the religious affairs directorate) (**Annex-21**).

3. The Language of the Constitution Has Been Altered

The last paragraph of article 90 of the Constitution is quoted in the indictment but its language has been altered. The last paragraph is quoted in the indictment as follows: “in disputes where international conventions and laws, which are put in force according to a related method, regarding basic rights and freedoms contain different provisions on the same subject then the provisions of the international convention shall prevail” (p.9). But in reality the last paragraph of article 90 of the Constitution is exactly as follows: “in disputes where international conventions and laws, which are duly in force, regarding basic rights and freedoms contain different provisions on the same subject then the provisions of the international convention shall prevail”.

There is a similar mistake in the sixth paragraph of article 69 of the Constitution (p.7). Terms and concepts used in discussions when making quotations from the Constitution may reflect personal choice. There is no rule that everybody will like the style of language used in the Constitution. But, no person or institution outside the TGNA has the right to alter the language of the Constitution. One would expect that at least the language of the constitution would have been kept accurate in an indictment which claims that the ruling party has become a center for anti-constitutional actions.

4. For Procedural Reasons The Main Opposition Party Cannot Have Demanded Review of the Constitutional Amendments

The indictment said that the main opposition party had applied to the Constitutional Court on February 27, 2008 for the annulment of the law amending articles 10 and 42 of

the constitution. (p.133) This statement is both legally and factually wrong. The main opposition party has no authority to apply to the Constitutional Court to demand review of laws related to amendments to the Constitution since, according to article 148 of the Constitution, this authority is given to the President and one fifth of the members of the TGNA. As is known, the current main opposition party's number of seats is not enough to make such an application. Thus they had applied together with some independent deputies and some deputies of other opposition parties for the annulment of the above mentioned law.

5. The Concept of “Religious Community” is not New to the Legal System

The indictment stated that “in paragraph 5, article 2 titled “Taxpayers” of the Corporation Tax Law no. 5520 dated 13.6.2006, “commercial businesses belonging to associations or foundations; continuously active commercial, industrial and agricultural businesses which are not included in the first and second paragraphs of this article and which belong to associations or foundations or affiliated to such and similar foreign businesses are deemed to be commercial businesses of associations or foundations. During the implementation of this law the provision stating “unions are associations and religious communities are foundations” was imposed and thus the term “religious community” entered the law”; this, in turn, is being interpreted as an “action against secularism (p.110-111).

However, the concept of “religious community” is not something new to the law texts (**Annex-22**). The Corporation Tax Law was first passed in Turkey, on 3.6.1949 (KVK (CTL) no.5422, Official Gazette 10.6.1949-7229). In this original text of the Corporation Tax Law, there was a provision stating “unions shall be considered associations and religious communities, foundations during the implementation of this law” (art.1, par.2). On 13.6.2006, when the Corporation Tax Law was revised, some provisions were kept while some were amended. The amendments in the revised version only involve replacing an archaic word meaning “application” with a modern Turkish term for the same and the same kind of terminological change was made for the word “considered”. Moreover, the term “religious community” is also used in articles 10 and 94 of the Tax Procedure Law 1961. Yet, from the point of view of tax law terminology, the term “religious community” in the article does not refer to “religious sects” as the Chief

Prosecutor presumes, but to “communities of religious minorities” mentioned in a number of international conventions that Turkey is signatory to. The purpose of this provision is to provide for taxation of commercial businesses belonging to the communities mentioned.

6. The Clause of “Reserving Space for Prayer for Patients” Has been in Effect for Ten Years

The indictment claims that “article 113 of the draft regulation prepared by the Ministry of Health concerning licensing health institutions foresees reservation of prayer places for the use of patients in first level health institutions” and this is claimed to be an action against the principle of secularism by the government (p.154). It is true that such a provision exists in the regulation draft article 113 in the form “proper places shall be reserved for patients to perform their religious duties in health institutions”. However, to claim that this is against the principle of secularism, one should be ignorant about the national and international arrangements on patients’ rights. There is no need to conduct a great deal of research to find this out. It would be enough to read the Patients’ Rights Regulation, article 38 which has been in effect for a decade, which is referred to in paragraph 2 of the same article where the draft regulation is claimed to be “against secularism”.

Article 38, titled “Performing Religious Duties and Benefiting from Religious Services”, of the Patients’ Rights Regulation as published in the Official Gazette no. 23420 dated 01.08.1998, reads: “Related measures must be taken to provide for patients to perform their religious duties freely in accordance with the conditions of the health corporations and institutions. A religious official of their religion may be invited upon request to provide spiritual support and religious advice to patients provided that such shall not cause failure of service or disturbance to others and shall not interfere with the medical treatment performed by medical personnel. For this, a suitable time and place will be provided at the health institutions and corporations. For patients in pain and without close relatives, whose faiths are known but when they themselves are incapable of expressing it, a religious official of the relevant religion may be called in without the patient’s direct request. Measures to be taken and when and how these rights will be

used shall be provided in the code and principles of conduct of the related individual health institution.

The regulation mentioned, as can be seen from its date, has been put into effect long before our government existed. Therefore, if a provision of a regulation which is not practically put into effect yet foresees the reservation of suitable places for patients' religious activities is seen as "an action against secularism", then how shall we interpret the existence of a provision of a similar regulation in the same area that has been in force for ten years?

Moreover, this arrangement done at the national level is totally in harmony with international standards on patients' rights. Providing religious clergy to support patients at health institutions where such places to perform their religious duties have an arrangement regulated according to health care requirements, are provided in accord with accreditation standards for health institutions, universal declarations on patients' rights and the criteria for international health institutions. There are regulations on this subject in many international documents such as the "Patients' Rights Declaration" of 1981 Lisbon and 1995 Bali published by the World Health Organization, and the Declaration of Improvement of Patients' Rights in Europe of 1994, and the Declaration of Patients' Rights published by the American Hospitals Union.

Our Ministry of Health and the private health sector have caught up with international standards in health care services, in the physical structure of health care institutes, in medical materials, and in regards of health personnel.

In the "Accreditation Standards for Hospitals" published in January 2003 by JCI (Joint Commission International), the accreditation body of the best and most respected health institutes in the world, especially in the US, there are standards such as "the institute must have a defined procedure to deal with the worship needs of the patients and their families or the spiritual or religious needs of the patients"; and, "when a patient or his family wishes to see a religious official or spiritual advisor, the institute must have a defined procedure for meeting this need."

In our country, the Teaching Hospitals of Hacettepe University and Uludağ University, as well as Mesa Hospital, Bayındır Hospital, Acıbadem Hospital, the American Hospital

and about 20 others are accredited by the JCI and these hospitals have defined procedures to cover patients' religious or spiritual needs.

Furthermore, there are "Ethical Committees" composed of experts at the hospitals in countries such as the US, the UK, Germany and Australia; and "Hospital Chaplains" are members of the Committees. Such arrangements in developed countries are considered a condition of human rights and thus patients' rights reflect this.

As a result, this accusation directed against the AK Party related to "patients' rights" has been made without studying national and international legal arrangements and ethical standards **(Annex- 23)**.

7. Only Repetitive Provisions Have Been Deleted from the Council of Educational Policy Council Regulation

The indictment claims that the phrase "to take necessary arrangements to inculcate young people according to the principles of the Republic and to strengthen national education in schools" in article 15 of the Regulation on Council of Educational Policy attached to the Ministry of National Education was deleted on November 8, 2003. (p.107) In fact, the deleted provision was actually mentioned in paragraphs "s" of article 6 and "i" of article 16 of the same regulation. Moreover, these provisions were added to the regulation in question by our government on October 17, 2003. The purpose of the last amendment was to eliminate repetitive statements in the Regulation. Thus the claim that the provision was removed from the regulation is not correct. **(Annex-24)**

8. Personnel Assigned to the Educational Policy Council Are Not Members of a Single Labor Union.

The indictment claims that "33 personnel were assigned to work at the Educational Policy Council, without checking the need for them and were selected from among members of Egitim Bir-Sen, a union known for its activities against the reforms of the Republic (p. 113). However, the truth is that 9 of the assigned teachers are members of

Türk Eğitim-Sen, 4 are members of Eğitim Bir-Sen, and 2 of Eğitim-Sen. The remaining persons are not members of any union (**Annex-25**).

Moreover, the prosecutor's office, a post which must pay more attention to presumptive evidence of "innocence" than anybody else, identified a legally established union as an organization "known for its activities against the reforms of the Republic" which put the state officials who are members of the said union under suspicion. None of this complies with the principles of a state of law.

9. The Allegation of Partisan Staffing is Groundless

The claims of the indictment regarding partisan staffing during our government's term do not reflect reality. These allegations are without concrete evidence. Who is assigned, where and why? What kind of problems do they have with secularism and why are they accused? The answers to these questions cannot be found in the indictment. Accusing people without any concrete evidence is not congruent with the mentality or the legal ethics of a state of law.

On the other hand, all assignments are subject to inspection and security investigation by "the General Directorate of Personnel and Principles" under the Prime Ministry. During the term of our government, the relevant security checks were conducted on the assigned personnel; in particular, the assignment orders of the personnel appointed by triple decree were approved by the ex President, who also appointed the Chief Prosecutor. Moreover, since all assignments are subject to Administrative Judiciary control, there is always the possibility of annulment of acts that are against the constitution and law. While all these points are known, assignments which were carried out in full accordance with the relevant laws and approved by a neutral President most of which have also passed judicial review, have been presented as "partisan staffing"; this does not comply with the mentality of a state of law and good will.

Furthermore, the indictment claims that during the process of "converting the state cadres into an Islamic structure", "many civil servants employed at the Department of Religious Affairs" were assigned to work in other institutions, even in hospital administrations (p.143). As are the others, this claim is baseless as personnel

assignments to the Ministry of Health from other public organizations and institutions are conducted within the framework of the relevant provision stated in the first paragraph of article 74 of Civil Servant Law no. 657 This law regulates the transfer of personnel between state institutions: “subject to this law, civil servants can be transferred between institutions to a post with the same approved class or degree attained or through promotion of degree according to article 68, or from their present class or degree or any class they may gain according to their level of education”.

Within the framework of the provision mentioned, discretionary assignments and transfers between public institutions and organizations were possible in the past and these were done based on certain subjective decisions and purposes other than the requirements of public interest, as was true with other ministries. With Regulation no. 25486, dated 8.6.2004, “on the Assignment and Transfer of Public Employees under the Ministry of Health”, objective criteria for transfer of employees between institutions (art.17) is imposed and for the transfer assignments from other institutions to the Ministry of Health, for first time in Turkey, the lottery method was adopted. In this context, periodic transfer assignments between institutions are done in February and September in the Ministry of Health. The personnel to be listed for such transfer assignments are determined starting from service regions 5 and 6. The lottery is open to all civil servants without any limitation on the type of personnel or institution, in fact, such a restriction is legally impossible.

The Department of Religious Affairs is an affiliated organization of the Prime Ministry according to law no. 633 regarding the Establishment and Duties of the Department of Religious Affairs. It is a public institution and its personnel are civil servants. Therefore, like all civil servants working in public institutions and organizations, Department of Religious Affairs personnel can also apply to the Ministry of Health’s lottery for a transfer assignment between public institutions and if the person’s name is drawn for a position then the related assignment takes place.

The lottery is open to everyone. After vacant positions are announced and applications are received, and lists of preferences are filled out, the drawing of names is performed in the presence of a notary. Since the transfer assignments between public institutions are completed in this fashion, using influence, favoritism, or other non-objective

selection process is physically impossible. Privileged treatment towards any institution or personnel or controlling their applications is out of the question.

Similarly, the appointment of managers to Ministry of Health hospitals is conducted according to provisions of the Regulation on “Change of Personnel Title and Promotion in Ministry of Health Positions”. Personnel meeting the conditions mentioned in the said Regulation may apply for training and for tests for promotion. Assignments take place according to test results.

Personnel who apply for a transfer from other public institutions and organizations to our Ministry are subject to a lottery; management assignments to the hospitals of the Ministry of Health are made according to training and tests for promotion that are open to all applicants. Thus, it is legally impossible to arrange privileged or special treatment for the Department of Religious Affairs employees. The number of personnel assigned to managerial duties through **appointment or assignment from the Department of Religious Affairs during the term of AK Party government was only 6.**

As a result, when compared to earlier governments, the AK Party government has no policy of partisan staffing in public institutions.

10 Inclusion of Statements of Party Members Subjected to Disciplinary Investigation in the Indictment is Not Acceptable.

According to the indictment “political parties’ not criticizing and **not initiating disciplinary investigations** against their members who use rhetoric and manifest behavior that does not comply with the goals and purposes of the party, means that such acts and rhetoric are acceptable to the party (p.25).” Despite this note, the disciplinary investigations of certain of our members conducted by our party in accordance with our party by-laws were ignored. It is inconsistent that statements of party members currently undergoing investigation have been included in the indictment. This demonstrates the prevailing inconsistency and prejudice in the indictment.

Personal statements of certain deputies from our party on the subject of civil servants being free to wear headscarves and also on a number of other subjects are presented as evidence against our party. However, our party has disclosed to the public that it does not approve of such personal views and, moreover, the party has initiated disciplinary procedures and punished those who have made statements contrary to party policies. **(Annex – 26)**

That we have opened disciplinary investigation regarding these remarks, ones that would normally be within the context of freedom of thought and expression, shows how sensitive we are on these issues as a party. For this reason although it was announced to the public that disciplinary investigations had been opened against the people involved and that this announcement was carried in the media, these remarks – for which we are disciplining party members - were presented as evidence against our party; this is incongruent with an attitude of good will.

11. Statements Later Corrected or Found to Be Totally Baseless Are Included as Evidence

The indictment used publicly reported statements of party members, which were later corrected, as evidence. However, the prosecutor who acts on behalf of the public, while basing his indictment on newspaper clippings, should have checked whether or not any corrections had been made with regard to the articles in question. Despite the fact that the same articles appeared in more than one press organ in different forms, the indictment uses only the versions that are more suitable to their purpose; this shows how seriously objectivity has been lost.

In this context, the indictment quotes from AK Party Mardin Deputy Nihat Eri's speech at the TGNA Foreign Affairs Commission meeting in January 2003, complaining that not enough religious education is being given and claiming him to have said: "So, that's how the youngsters fall into the hands of illegal organizations. With the introduction of the Uniform Education and Teaching Law, the religious lodges ("tekke") were abolished. But what was taught at these lodges is not provided by the current system. Thus, people are directed towards false destinations and organizations." (p.77) In reality, the speech was

not as it was stated in this extract and the word “tekke” was never used in the speech. This has been confirmed by the commission chairman. Upon the news appearing in the press, Nihat Eri sent a “corrected” text which found a place in some of the newspapers the next day. The Press Council issued a warning to newspaper correspondents who had not published the corrected text. **(Annex-27)**

Furthermore, although the AK Party Istanbul deputy Egemen Bağış had clearly expressed personal views by saying “these are my views, if you ask about my party’s views, we have not talked about them yet”, they are treated in the indictment as if they were views belonging to the party (p.98). And although Bağış corrected some parts of the speech mentioned and press and media organs published the corrected text on February 7 and 8, 2008, this is not mentioned in the indictment. On the contrary, the speech is taken out of its context and connected to the Merve Kavakcı case (p.124) which is a striking example of the indictment’s fictional dimension. **(Annex-28)**

Another claim in the indictment involves a dialogue between Ayşe Böhürler, AKP Central Administrative Board member and Burhan Kuzu, Parliament Constitutional Committee Chairman. Ayşe Böhürler, after completing the legal background work, defended women’s right to judge for themselves whether or not to wear headscarves and it is claimed in the indictment that Burhan Kuzu answered this with “Do not worry, we will have time for that too”. (p.95)

This claim is baseless. Burhan Kuzu has nowhere made such a remark. Such claims would not have been made in the indictment if TV recordings had been reviewed instead of newspaper articles being cited. Kuzu had corrected the news articles published on this subject and the correction text was published by the editors of the related newspapers **(Annex-29)**.

Again, our party’s Gaziantep deputy Fatma Şahin is claimed to have defended wearing head coverings in public buildings. (p.97). But this statement of Fatma Şahin’s has been distorted in some press organs. Fatma Şahin later declared that she had no thoughts on or anything to do with the issue of public employees wearing head coverings. This was subsequently published in various press organs. **(Annex-30)**. But her later statement is not included in the indictment.

Another claim of the indictment is the alleged statement of Binalı Yıldırım, Minister of Transportation. “Reforms are always agonizing... Historically there has been bloodshed during the implementation of such reforms. We need patience and time. The important thing is not breaking or disturbing anything when doing things, and we are very sensitive about it. And we will continue to walk on our way in this manner.” His speech was published in various press organs and only in one of them was the word “bloodshed” recorded. But this word was not used by any of the other press organs. The official minutes of the association where the speech took place state the same sentence as follows: “Reforms are always agonizing. It is to the benefit of society to implement the reforms peacefully. We have completed some reforms. Some further reforms will be completed in time. We have to do things without breaking or disturbing anything”. **(Annex-31)**

The indictment includes claims against State Minister Mehmet Aydın about his interview published in the Frankfurter Allgemeine newspaper in German, in April 2004. He said “If a woman thinks to cover her head, as a democrat I can say that she has a right to do it. Wearing head coverings may be allowed in public institutions... We have no right to impose our rules on women. Otherwise, we may create a big problem where only a minor one exists”. (p.89). He said these words about the headscarf argument that was current in Germany at that time. The correspondent of the German newspaper asked Mehmet Aydın the following: “There is heated debate on the Islamic headscarf in Germany because of the teacher who came to class with her head covered. Is the hijab (headscarf) a symbol of Islamic extremism?” The statement of Mehmet Aydın as cited in the indictment is itself the answer to this question. This has nothing to do with the problem in Turkey. **(Annex-32)**

On the other hand, another claim in the indictment concerns Ibrahim Halıcı, Konya Seydişehir AKP Mayor. He is claimed to have said “Lord willing, all schools will be imam hatip schools”. (p.105). This claim has been published only in Cumhuriyet newspaper and is not true. This sentence was not included in any of the articles published in the local newspapers on March 30, 2008 regarding Ibrahim Halıcı’s speech. **(Annex-33)**

12. Remarks and Activities Disavowed by Party Officials Are Being Used to Serve as Evidence For the Claim of Being a ‘Center’.

The indictment included remarks that are not supported by the party officials as evidence. Party officials must have approved these acts and rhetoric for them to be used as evidence for becoming a ‘center’ in a closure case. The indictment is unable to present a single item of evidence showing that party officials approved such rhetoric and acts of the party members in question. Moreover, even statements that were openly rejected by party officials have been counted as “evidence”.

For example, remarks of former AK Party Adana Deputy Abdullah Çalışkan were counted as evidence in the indictment (p.90-91). In reality, Vice President Nihat Ergun, who was chairing the board, interrupted the speech and said that the party did not approve of his views. This is not mentioned in the indictment. Nihat Ergun said the following after Abdullah Çalışkan’s speech: **(Annex 34)**

“We are missionary nationalists. We are a missionary party; we are not a party of ideologies. We are not members of a party which forces society to “straighten up”. We accept society as “data”. This is the society we have. We are influenced by this society and at the right time we influence it with our views and thoughts. We are a political party which tries to solve the problems of society and tries to improve it. We are members of a conservative democratic political party, we are young, and we are governing. Conservative parties are not revolutionary parties. Green or red, it doesn’t matter. They are evolutionary parties for gradual change. We are for change, we are renovators. But this renovation does not completely pull up everything by the roots and the renewal is not a revolutionary one. It is a renewal innately evolving and changing in the natural progress of time. This is what we stand for. We believe a sharp renovation cutting off everything from its roots damages society. Instead we are representatives of a conservative democratic evolutionary political party, pioneering a renewal in society, advancing society by influencing each other. Therefore, we are not here to force people to change; we do not enjoy a radical or fundamentalist approach, we accept people as “data” and we believe we have to interact with them and influence each other as we advance. Some fundamentalist parties do not like the way people act, they try to change

it. They believe that if they leave the people to their own devices, they would follow insignificant ideas. Therefore, they always rule them by force. There have been such periods in the history of Turkey. We all know that such periods never gained anything either for society or for politics.

Therefore my friends, politics are a work of patriotism, defending our nation and country and taking it to even higher levels. That is what the AK Party members are doing. (Applause). Mayors, members of boards, provincial board members are all doing the same. That is what we are doing:"

Besides disapproving of the personal views of some party members and mayors which are contradictory to party policy, the AK Party has also issued circulars in order to prevent local administrations acting against party policies. In fact, the AK Party Board of Local Administrations issued a circular to AKP mayors titled "Meetings and Publications with Cultural Purposes" under no. yyon/81.07/2006-1696 on 24.5.2006 when discussions arose over books distributed by AK Party municipalities within the framework of cultural activities. This was noted in the press in May 2006.

The circular issued under the signature of AK Party Vice Chairman and President of Local Administrations, Kocaeli deputy Nihat Ergun, put emphasis on the following:
(Annex-35)

"Recently, some political, social and religious subjects which would invite discussions which may mislead the public and cause misunderstanding, have been circulating in the books, brochures and printed materials published by our municipalities and in cultural meetings, panels and conferences organized by them.

Such activities which are not included among the principal duties of municipalities, as reported in newspaper articles are not approved of by the general administration of our party on the grounds that they do not conform to our party program or the basic principles and aims of our party.

You are kindly requested to take note of the above regarding your conduct of social and cultural activities and publications. With best wishes for the successful accomplishment of your duties.”

This circular was published in many media organizations. It clearly shows how sensitive our party is on such issues. The indictment uses isolated news items, most of the time published in only one particular newspaper, and baseless or distorted articles as evidence; moreover, ignoring this circular, which was published in almost all newspapers, is a clear indication of prejudice and the existence of ulterior motives.

SUMMARY AND REQUEST

When evaluated as a whole, the indictment calls for a political system where parties, who are responsible for voicing the people's pleas, remain indifferent and unresponsive to social and political problems. It is not possible to say that the statements or acts that are put forward in the indictment as "evidence" threaten the pro-freedom, democratic and secular system. On the contrary, demanding closure of a political party on the basis of this so-called "evidence" threatens to carry Turkish democracy to a monophonic and proscriptive dimension.

As explained in detail above, since there are no **anti-secular acts** or even rhetoric that can be attributed to the AK Party, one cannot talk about it being "a center" for acts against secularism but rather about the existence of "**an error of perception based on delusions**" on the part of the state prosecutor. The statements mentioned, which when considered individually do not contradict the principles of secularism, and would certainly not, even were they to be repeated thousands of times, make a political party a center of action against the Constitution.

The AK Party is not the center of actions against secularism but it is a center for people working to serve our country and nation.

In conclusion, we respectively submit to the discretion of the Constitutional Court that the case opened demanding the closure of the AK Party be rejected.

April 30, 2008

Recep Tayyip Erdogan
President
Justice and Development Party

Attachment: 3 folders containing 35 attachments.