PEN NORWAY

Legal Report on Indictment:

Nurcan Yalçın

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Published: 17 December 2025

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This report is produced by PEN Norway.

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PEN Norway Turkey Indictment Project

PEN Norway's Turkey Indictment Project began in January 2020 and, with the publication of four reports in 2025—including the present report—it will have produced detailed legal analyses of a total of 37 indictments. These indictments have been examined by an international team of lawyers, academics and judges from across Europe, with a focus on scrutinising criminal proceedings that constitute interferences with freedom of expression in Turkey.

Among the indictments analysed to date are those from major cases such as the Cumhuriyet newspaper trial, the Büyükada human rights defenders' trial, the five-year Gezi Park trial, and the indictment targeting Şebnem Korur Fincancı. Each report examines a single indictment in depth and assesses it in light of Turkey's domestic law and international human rights standards.

As the rule of law in Turkey has weakened since 2016, none of the indictments reviewed have met the procedural safeguards required under domestic law or the guarantees of the right to a fair trial under Article 6 of the European Convention on Human Rights. It has also been strikingly observed that the prosecutors who drafted these indictments did not adhere to internationally recognised guiding principles.

Our reports have been used in numerous court cases as supporting legal reports, expert opinions or other forms of reference, and they have served as an important resource for many human rights lawyers. Likewise, the findings of this project have provided a basis for constructive recommendations regarding the training of prosecutors in Turkey and the improvement of indictment writing to prevent rights violations. The "Guidelines on Indictment Writing for Prosecutors in Turkey", prepared for this purpose, can be accessed here: norskpen.no/wp-content/uploads/2024/03/Guidelines-on-Indictment-Writing-for-Prosecutors-in-Turkey.pdf

Previous reports and compilation volumes can be accessed at:

2020: PEN-Norway_Turkey-Indictment-Project-Report-2020.pdf

2021: PEN-Norway-Turkey-Indictment-Project-Report-2021_Eng.pdf

2022-2024: PEN_Norway_final_report_2025_eng-WEB.pdf

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1. Introduction

This report examines two separate indictments (2020/2462 and 2024/2419) issued by the Diyarbakır Chief Public Prosecutor's Office against Nurcan Yalçın, which were subsequently joined under the same case file. The analysis is limited strictly to the content of these indictments and focuses on the legal sufficiency of the allegations, the evidentiary structure, the formal and substantive features of the indictments, the language and style used, and the basis of the terrorism-related charges brought against the suspect.

In assessing these indictments, the report considers the implications of the charges for fundamental rights and freedoms, with particular attention to freedom of expression and freedom of association under both the Turkish legal system and international human rights standards. Given the scope of the report, the legal framework concerning the offences of disseminating propaganda on behalf of a terrorist organisation, membership of an armed terrorist organisation, and the financing of terrorism is examined in detail, while matters relating to the right to a fair trial are addressed only insofar as they arise at the indictment stage.

In order to meaningfully evaluate the acts imputed to the suspect, it is necessary to set out the political and social context in which the alleged conduct occurred and the indictments were drafted. Accordingly, before proceeding to the legal analysis, the following section briefly outlines background information regarding Nurcan Yalçın, the structure and activities of the Rosa Women's Association, as well as the broader political climate of the relevant period and the current status of the proceedings.

> "Following the coup attempt of 15 July 2016, a state of emergency (SoE) was declared and remained in effect for two years. During this period, the government issued extensive decree-laws (KHKs). Thousands of public officials were dismissed, and numerous associations and media organisations were closed, while hundreds of journalists were arrested or prosecuted."

2. Summary of Case Background Information

2.1 Nurcan Yalçın

Nurcan Yalçın, who faces two separate sets of charges in the consolidated indictments, is a Kurdish journalist. She is actively involved in the women's movement in Turkey. A significant part of her journalistic work focuses on women's struggle, gender equality, and making violence against women visible. Her reporting adopts a critical perspective on the structural problems that enable gender-based violence and on the shortcomings in the protection mechanisms intended to address it.[1]

As the first indictment assigns a central role to the Rosa Women's Association in relation to the allegations against Yalçın, basic information on the association is provided in the following section.

2.2 Rosa Women's Association

The Rosa Women's Association is a women's organisation established in Diyarbakır in 2018. Its stated aims include combating violence against women, carrying out activities to eliminate discrimination against women, developing and implementing projects that promote gender equality, fostering solidarity with women's organisations, supporting ecological forms of living, and promoting and realising a culture of democracy and peace.[2]

To date, the association has carried out a range of activities, including blood donation campaigns, public statements on femicides and violence against women, awareness marches, panel discussions, reporting efforts, and participation in the establishment and coordination of the "Diyarbakır Network for Combating Violence against Women."[3]

2.3 Political Background: Kurdish Resolution Process and the Resumption of Conflict (2012-2015 and beyond)

The first indictment is dated October 2020, and the acts imputed to the suspect span the period between 2015 and 2020. This period marks significant shifts both in the dynamics of the conflict and in the implementation of counter-terrorism legislation in Turkey. Understanding this political context is essential for assessing the allegations presented in the indictments.

In the last months of 2012, indirect talks were initiated between the Turkish state and the PKK with the aim of peacefully ending the long-standing armed conflict. This period, referred to as the "Resolution (peace) Process," was formalised in January 2013 and became public during the Newroz celebrations on 21 March 2013, when PKK leader Abdullah Öcalan called for the organisation's withdrawal from Turkey's borders. Following this development, clashes largely came to a halt between 2013 and 2014.[4] However, the process remained fragile, as the institutional and legal framework for negotiations between government officials and Kurdish political representatives was never clearly defined, and no mechanisms for transparency or accountability were established.

The clashes in Kobane, northern Syria, during the autumn of 2014 deepened social and political tensions within Turkey, and the events of October 6-8, 2014, constituted an important breaking point in the direction of the process. By 2015, the process was severely weakened by the decline in trust between the parties, the upcoming election atmosphere and the re-emphasis on security policies.[5]

The attack carried out by ISIS in the Suruç district of Şanlıurfa on 20 July 2015, which killed 33 civilians, is widely regarded as one of the critical breaking points marking the effective end of the resolution process. From the summer of 2015 onwards, clashes intensified particularly in areas densely populated by Kurds, including urban districts such as Diyarbakır (especially Sur), Şırnak (Cizre and Silopi), Mardin (Nusaybin), Hakkari (Yüksekova) and Batman. These areas experienced prolonged curfews, the use of heavy weaponry and serious human rights violations. Many civilians were killed, seriously injured or displaced. This period profoundly affected not only security policies but also freedom of expression, press freedom, and civil society activities.[6]

Following the coup attempt of 15 July 2016, a state of emergency (SoE) was declared and remained in effect for two years. During this period, the government issued extensive decree-laws (KHKs). Thousands of public officials were dismissed, and numerous associations and media organisations were closed, while hundreds of journalists were arrested or prosecuted. Many of the restrictions introduced during the SoE continued after 2018, leading to a structural narrowing of civic space in Turkey.[7]

After the SoE, judicial processes targeting the Kurdish political movement intensified. During this period, many MPs and local administrators — including People's Democratic Party (HDP) Co-Chairs Selahattin Demirtaş and Figen Yüksekdağ — were arrested, and the appointment of trustees to replace elected mayors became a common practice.[8]

The political and legal climate of 2015, the year of the first alleged offence, and of 2020, when the indictment was issued, reflects this broader atmosphere. This environment created increasing pressure and judicial harassment, particularly for journalists, women's organisations and Kurdish civil society.

2.4 Brief Summary of the Judicial Proceedings:

In the indictment dated October 2020, journalist Nurcan Yalçın was charged with "membership of an armed terrorist organisation" and "terrorist propaganda," on the grounds of her membership in the Rosa Women's Association and her activities within the association, her work within Jinnews, and the posts shared through a Facebook account bearing her name.[9]

On 22 November 2021, the Diyarbakır Assize Court convicted Yalçın, sentencing her to 2 years and 1 month for "knowingly and willingly aiding a terrorist organisation without being a member," and to 1 year, 6 months and 22 days for "terrorist propaganda," imposing a total prison sentence of 3 years, 7 months and 22 days.[10]

This judgment was overturned on the merits by the Diyarbakır Regional Court of Appeal. The regional court held that the first-instance court had failed to consider other investigation and case files concerning Yalçın in a holistic manner and that the evidence needed to be assessed together. Accordingly, it ordered a retrial.[11]

During the retrial, another case file brought against the suspect under the Law No. 6415 on the Prevention of the Financing of Terrorism was merged with the main case. In that file, Yalçın's transfer of 400 Turkish lira (approximately 63 euros) on 22 April 2019 to an imprisoned convict was treated as falling within the scope of "financing terrorism." The prosecution alleged that this act served an organisational purpose.[12]

This report examines both indictments that form the basis of the ongoing criminal proceedings and evaluates them in terms of their content and legal sufficiency. The proceedings against Yalçın remain pending, and the next hearing is scheduled for 3 March 2026. [13]

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3. Analysis of the Indictment

In this section, first, the structure of the indictments, and then the accusations against Nurcan Yalçın are examined within the framework of features such as their legal nature and their connection to the evidence.

3.1 Structure of the Indictments

The first of the two consolidated indictments is 13 pages long. The second indictment consists of only two pages and includes acts alleged to constitute a violation of Law No. 6415 on the Prevention of the Financing of Terrorism. Since the main structural issues are concentrated in the first indictment, the evaluations in this section focus primarily on that document.

The 13-page first indictment provides a long and detailed introduction to the structure, history and objectives of the PKK/KCK (pp. 1-6). This part reflects the official perspective of the state and consists largely of **abstract and general information**. Before reaching the part addressing the accusations against Nurcan Yalçın of membership in an armed terrorist organisation and disseminating propaganda in favour of it, the indictment devotes six pages to vague and generic descriptions and claims concerning the 'terrorist organisation' and the 'KCK' structure, offering no contextual information about the specific charges or the period during which the indictment was drafted.

Starting from page 4, urban councils within the KCK structure are mentioned, and within the "field organisations" of the urban assemblies, the 'Women's Field Structure' is examined under the heading 'Tevgera Jinen Azad'. In this context, the indictment claims that TJA operates under the instructions of the senior leadership of the PKK/KCK and functions as its women's organisation; it further alleges that documents seized during recent operations show that the Rosa Women's Association carried out organisational activities as a continuation of this structure.

On the seventh page, under the heading "Commencement of the Investigation," a yearly planner allegedly bearing the phrase "8th of March, Yearly Planner for 2020–2021 TJA" and the TJA logo—reportedly seized during a search conducted at the premises of the Rosa Women's Association in Diyarbakır pursuant to a decision of the Diyarbakır 1st Criminal Judgeship of Peace - is presented as evidence. The indictment draws various conclusions from the notes in the planner and asserts that it constitutes a publication in which "the activities of the PKK/KCK women's structure, the actions and activities of persons operating within the organisation, and all actions of the PKK/KCK from past to present were listed chronologically, prepared with the aim of sustaining the organisational structure and increasing popular support through media activities."

However, upon examination, although the planner contains notes listed under date headings, it does not constitute a chronological record of PKK/KCK activities as claimed. Rather, the contents mainly concern activities supporting women's participation in social life and events considered significant within the women's movement. In some places, notes appear regarding hunger strikes demanding the lifting of PKK leader Abdullah Öcalan's isolation or events themed around "freedom for Abdullah Öcalan." These contents continue to be listed through page 11 of the indictment.

At the end of page 11, the indictment mentions a banner labelled "TJA" was seized during the search and a notebook containing the phrases "*Anna give me the bracelet so I can wear it, 21 Rosa 21*" was seized. The indictment claims that the wristband mentioned in the text in question is a symbol used by the TJA. However, the indictment does not offer any single explanation about Nurcan Yalçın down until the page 12. In other words, the first 11 pages establish no connection whatsoever between the described matters and Yalçın. Only from page 12 onward does the indictment attempt to link her to the alleged offences, via the claim that her membership in the Rosa Women's Association constituted involvement in the KCK women's field structure. On pages 12 and 13, the indictment lists what it considers evidence supporting the accusations of "disseminating propaganda in favour of a terrorist organisation" and "membership of an armed terrorist organisation." These include the statement of H.Y.'s spouse E.Y. (a suspect in the Rosa Women's Association investigation), Facebook posts allegedly belonging to Yalçın, and a secret witness statement.

This structure shows that, in the 13-page indictment, allegations directly concerning Nurcan Yalçın appear only on the final two pages, and it is in this section that charges under Article 7/2 of the Anti-Terror Law

(ATL), Article 314 of the Turkish Penal Code (TPC), and Article 5 of the ATL are formulated.

The general structure of the indictment is built on broad and abstract descriptions of a "terrorist organisation" and its activities, treating this framework as the basis for the allegations against Yalçın. However, the indictment does not establish specific or legally relevant links between this general information and Yalçın's individual actions. This reflects a common pattern in indictments brought under counter-terrorism legislation and runs contrary to both the letter and spirit of Article 170 of the Code of Criminal Procedure (CCP). Pursuant to Article 170(4) CCP, "the events constituting the charged offence must be explained in relation to the existing evidence" and "information irrelevant to the alleged offence and the evidence shall not be included." In contrast, the indictment fails to establish a clear relationship between the facts of the alleged offence and the evidence, and instead includes extensive information about the KCK that bears no direct relevance to the defendant or the accusations.

A review of the language of the indictment also shows numerous expression problems and inconsistencies. When taken together, these issues indicate that the indictment was drafted in an imprecise and confusing manner in terms of structure, language and content.

> "The first issue to be underlined is that Article 7/2 of the ATL does not punish the disseminating propaganda of a terrorist organisation on its own, as it is considered to fall within the scope of freedom of expression. In order for a propaganda to constitute an offence, it must praise or justify methods involving force, violence or threats or incite the use of such methods."

3.2 The Charges

The first of the two consolidated indictments charges Nurcan Yalçın with two different offences. The first charge, brought under Article 7/2 of the Anti-Terrorism Law (ATL), concerns disseminating propaganda in favour of a terrorist organisation and is based on certain social media posts shared in 2014 and 2015 from a Facebook account bearing her name and surname.

The second charge concerns "membership of an armed terrorist organisation". The basis of this accusation is that Nurcan Yalçın has been a member of the Rosa Women's Association, which is alleged to "operate within the social field structures of the KCK". For this offence, the indictment seeks a sentence pursuant to Article 314 of the Turkish Penal Code (TPC) and Article 5 of the Anti-Terror Law.

In the following pages we offer a legal evaluation of those charges, taking into account the evidence on which the indictment bases its charges.

3.2.1 Disseminating propaganda in favour of a terrorist organization

In the indictment, this accusation was based on posts shared on 10.10.2014, 28.09.2015, and 10.10.2015, and due to the posts being made more than once, it was requested that the sentence be increased by applying the provisions of 'successive offences' under Article 43/1 of the TPC. This means that if the same offence is committed multiple times by the same person at different times under a single criminal intent, the punishment is imposed as for a single offence, but with an increased sentence as provided by law.

In this case, the posts mentioned in the indictment and shared at different times were considered to fall within the scope of the crime

of disseminating propaganda in favour of a terrorist organisation under Article 7/2 of the Anti-Terror Law. According to Article 7/2 of the ATL **"***Any person who* ***disseminates propaganda in favour of a terrorist organisation by justifying, praising or inciting the use of methods constituting coercion, violence or threats*** *shall be liable to a term of imprisonment of one to five years. (...) Expressions of thought intended as criticism and remaining within the bounds of reporting do not constitute a criminal offense***."** Within the scope of this article, the crime of propaganda includes the act of praising or justifying the actions of an organisation or disseminating propaganda of the organisation. Since it is not possible to address all the elements or characteristics of the offense of propaganda within the limits of this report, we will confine the discussion to those findings that are particularly important for the indictment. In this respect, the first issue to be underlined is that Article 7/2 of the ATL does not punish the disseminating propaganda of a terrorist organisation on its own, as it is considered to fall within the scope of freedom of expression. In order for a propaganda to constitute an offence, it must praise or justify methods involving force, violence or threats or incite the use of such methods. These criteria were actually introduced to the article in 2013 by Law No. 6459. The stated rationale for this amendment was to expand freedom of expression and align the article with ECtHR case law.[14]

Indeed, in many of its judgements on violation of freedom of expression in Turkey, the ECtHR has underlined the elements of "force, violence and threats" and held that it was contrary to freedom of expression to punish individuals under Article 7/2 of the Anti-Terror Law for statements that do not incite violence or encourage people to an armed rebellion. Through this amendment, the elements of crime set out in the second paragraph of the Article are redefined and an attempt has been made to align the scope of the offence with ECtHR standards by adding the phrase "in a manner that justifies or praises the methods of force, violence or threats or that encourages resorting to these methods." The aim of the amendment was to ensure that expressions which do not justify, praise or encourage the use of such methods would not be punishable.

In this context, for example, in the **Ceylan v. Turkey** judgment, the ECtHR emphasized that the applicant's article and containing expressions such as "state terror" and "massacre" in addressing the resurgence of violence in Eastern and Southeastern Anatolia—was authored in his capacity as a trade union leader and politician, and despite its harsh tone, it did not incite violence, armed resistance, or rebellion; therefore, that the imposed penalty constituted a violation of freedom of expression.[15] Similarly, in **Erdal Taş v. Turkey,** the ECtHR ruled that even an article describing the actions of a terrorist organisation as "heroic" must be considered within the scope of freedom of expression unless it directly incites violence. The Court stated that views which do not incite violence but which may disturb the public are also protected.[16] In the light of this standard, the suspect's social media posts can be considered as an expression of her anger and reaction against an environment of armed conflict rather than a direct incitement to violence.

In the Yavuz & Yaylalı v. Turkey judgement, the ECtHR ruled that it was a violation of the right to freedom of expression for the applicants to be sentenced for disseminating propaganda in favour of a terrorist organisation under Article 7/2 of the ATL for chanting slogans such as "the murderer state will be held to account, martyrs of revolution are immortal, long live revolutionary solidarity, we paid the price, we will make them pay the price" during a demonstration to commemorate MKP (Maoist Communist Party) members killed in a clash with security forces in Tunceli Ovacık district in 2005. In this judgment, the Court stated that the applicants' reaction to the deaths could not be regarded as incitement to violence, but only as criticism of a security operation conducted by the public authority.[17]

As evidence for this offence, the indictment cites the defendant's posts shared on her personal Facebook account. A review of the contents of the social media posts shows that Nurcan Yalçın shared the following:

- On 28/09/2015, a photograph of a member of an organisation holding a long-barrelled weapon taken at a cemetery,

- On 10/10/2014, a photograph of members of the terrorist organisation holding long-barrelled weapons with the comment "Your heart was too big even for the mountains of Lice but now the fascists imprisoned you between walls",

- On 10/10/2015, a text that said "The massacre of the blood-sucking vampires today was not enough

and now they are attacking the sise martyrdom of the district (sic. tn.) with warplanes. What can be expected from a State that cannot tolerate the martyrs of a people? What you've done today is a sign of your weakness and shows how despicable you are. One day you will surely drown in the blood you have spilt."

Considering the elements of the offence set out in Article 7/2 of the ATL and the ECtHR's case law on this matter, it is evident that the Facebook posts cited in the indictment contain photographs of armed individuals and strong political messages criticising state violence. Freedom of expression also protects speech that is discomforting, harsh and critical of government policies. It is evident that these posts, while certainly open to interpretation and potentially deemed controversial and provocative by various groups, offer no basis to support the claim that **either the photographs or the language employed directly serve to justify, praise, or incite recourse to the methods of the PKK/KCK involving force, violence, or threats.** Moreover, should one recall the background context given above regarding the period when these posts were shared, it must be noted that they occurred during a very intense period of conflict following the termination of the resolution process. In order for an action to qualify as propaganda, it must support the organisations objectives in a manner that would pose a direct and tangible threat and possess the potential to disrupt public order. Whether the posts meet this standard should be assessed in context and with consideration of the defendant's intent. The indictment fails to offer such a contextual analysis, nor does it cite to any additional facts or events that would justify interpreting Nurcan Yalçın's statements as incitement to violence or encouragement of armed rebellion, rather than as political criticism or a reaction to events. For this reason, there is no legal basis for initiating a public prosecution based on the offense stipulated in Article 7/2 of the ATL. In other words, the indictment failed to provide any justification for a legal interference on freedom of expression in a democratic society. Yet, more importantly, it is noteworthy that this shortcoming—so often referred to in the ECtHR's case law concerning freedom of expression and has repeatedly led to violation judgements against Turkey—is not even mentioned, even though the reasoning for the amendment made to Article 7/2 of the ATL has been clear on this issue. The indictment, however, contains no justification whatsoever in this regard for the offence charged against Nurcan Yalçın. This situation reveals that the indictment fails to consider even the text of the law, much less the ECtHR case law, which is a matter of grave concern.

"It is noteworthy that this shortcoming—so often referred to in the ECtHR's case law concerning freedom of expression and has repeatedly led to violation judgements against Turkey—is not even mentioned, even though the reasoning for the amendment made to Article 7/2 of the ATL has been clear on this issue. The indictment, however, contains no justification whatsoever in this regard for the offence charged against Nurcan Yalçın."

3.2.2 Membership of an armed terrorist organisation

As stated in the previous evaluations concerning the structure of the indictment, the legal framework of the indictment is constructed around the definition of "organisation" and the act of "membership". This section analyses the grounds for the accusation against Nurcan Yalçın in light of the articles of law cited as applicable articles and the claims put forward within the scope of the indictment, how the concepts of "organization" and "membership" are addressed and applied to the incident in the indictment, and its compliance with the legislation, the case law of local courts, and ECtHR standards.

In the indictment, Articles 314/2 of the TPC and 5 of the ATL are cited as the provisions applicable to the charge of "membership of an

armed terrorist organisation" against Nurcan Yalçın. In fact, the offence of "establishing an organisation for the purpose of committing crimes" is regulated under Article 220 of the TPC. Article 314 of the TPC applies only to armed organisations established for the purpose of committing "certain" crimes. These are the offences in the fourth and fifth chapters titled "Crimes Against the Security of the State" and "Crimes Against the Constitutional Order and the Functioning of this Order". Article 5 of the ATL,[18] entitled "Increase of Sentences," also refers to Article 3 of the same law and deems the offense stipulated under Article 314 of the TPC to be a "terrorism offense." This means that if the acts of "establishing, leading and being a member of an armed organisation" stipulated under Article 314 are committed within the definition of "terrorism", they will be considered to fall within the scope of the ATL.[19] Accordingly, the offence charged against Nurcan Yalçın should be considered as "membership of an armed terrorist organisation".

The TPC and the ATL do not provide a definition or criteria for the offence of membership of an organisation. However, in its case law the Court of Cassation has pointed out some criteria for membership of an organisation. Considering that the principles concerning the offense of establishing an organization for criminal purposes under Article 220 of the TPC apply to Article 314 of the TPC, the Plenary Criminal Division of the Court of Cassation ruling from April 3, 2007, which listed the essential criteria that criminal organizations must possess under Article 220 of the TPC, will prove useful for interpreting Article 314.[20] Accordingly, the group must have at least three members; there must be a strict or loose hierarchical connection between the members of the group. An abstract connection between the members is not sufficient; the members must have a common intention to commit an offence. The group must possess continuity; the structure of the organization, the number of its members, and its tools and resources must be adequate/suitable for the commission of the intended crimes.

Again, according to the Court of Cassation rulings; taking part in the hierarchical structure of an organisation means having an organic bond with the organisation. For the crime of being a member of an armed group to materialize, it is necessary to establish an organic link with the organization and to undertake actions and activities that require continuity, variety, and intensity.[21] Membership in an organization necessitates that the will to join be demonstrated through tangible actions and that this willingness involve continuous engagement.[22] At its 106th plenary session on 11 and 12 March 2016, the Venice Commission adopted an opinion on Articles 216, 299, 301 and 314 of the TPC. Accordingly, the Venice Commission firstly recommends the strict application of the criterion set out in the case-law of the Court of Cassation, which requires that the acts attributed to the defendant must be assessed in terms of their "continuity, diversity and intensity" in order to see whether those acts prove that the defendant has any "organic relationship" with the organisation or whether his or her acts may be considered as committed knowingly and wilfully within the "hierarchical structure". A loose application of these criteria may lead to problems in relation with the principle of legality, in particular under Article 7 ECHR. Secondly, domestic courts should not rely exclusively on the expression of an opinion in different ways when determining whether the defendant is a member of an armed organisation. In circumstances where the sole evidence is focused on the style of expression, a conviction for membership in an armed organization will constitute an interference with the defendant's freedom of expression. The necessity of the aforementioned interference must be scrutinized within the concrete circumstances of each case, based on the criteria—particularly on the criteria of "incitement to violence—stipulated in the case law of the European Court of Human Rights.[23]

In **Imret v. Turkey,** the ECtHR underlined that membership of an organisation allegedly linked to a terrorist organisation can result in criminal liability only if the individual possesses concrete intent that the organisation supports or incites violence (for example, carrying out an act indicating that the organisation supports acts of violence).[24] Similarly, in the Işıkırık v. Turkey, ECtHR stated that the existence of a criminal purpose on part of an organisation is not sufficient for every form of contact with that organisation to automatically constitute a crime, and that individual intent must also be proven separately.[25]

The first line of the indictment refers to the actions of the "terrorist organization named PKK" and states that following the capture and sentencing of PKK leader Abdullah Öcalan, supporters of the organisation operating abroad decided to develop new policies, and in this context, established the "Koma Civaken Kurdistan" under the abbreviation KCK. The indictment then continues with the "Evaluation of the KCK Charter", and presents this charter as an "instrument of crime", proceeding from the assumption that concepts such as democratic, communitarian, confederal and regulations on local governments in this charter directly constitute terrorist offences.

Nurcan Yalçın's connection to the KCK is based on only a few points. The first of these is her membership of the Rosa Women's Association. According to the anonymous witness statements in the file, Nurcan Yalçın is a journalist and "*works for an agency that shares news of the PKK/KCK terrorist organisation in a way that favoured the organisation*", "*serves the organisation under the name of TJA and Rosa Women's Association*" **and** "*carries out the organisation's instructions*", "*was involved in the organisation called Rosa and that she was a senior leader there*". The indictment also cites as evidence the fact that Nurcan Yalçın's Social Security Institution (SGK) enquiry revealed that she was registered in the company "Jin News Agency Printing Publishing Advertising Construction and Cleaning Services", one of the media organs allegedly serving the PKK/KCK.

Finally, the statement given to the police by **E.Y., the spouse of H.Y., who is a suspect in the Rosa Women's Association investigation**, that her husband went to Diyarbakır and started working with associations that "serve the terrorist organisation in its urban structure" and "carry out activities in favour of the terrorist organisation under the pretext of women being victimised", and that they had many arguments because of this, was added to the file as evidence. However, the indictment does not explain why this statement is included, and it is clear that it has no direct relevance to Nurcan Yalçın.

> "The indictment alleges that the defendant "behaved as a KCK citizen". This is a highly abstract claim that is based on an unclear legal definition. A mere conviction that an individual shares or supports the organisation's goals cannot, by itself, warrant a serious accusation like 'membership.' Membership requires organisational commitment and structural integration in a legal sense."

Nurcan Yalçın rejected these allegations and the statement of the anonymous witness and she stated that she worked as a cameraman at Lizge Prodüksiyon, that she had nothing to do with the organisations named KJA and TJA, that she was a member of the Rosa Women's Association because she wanted to support the work on violence against women and that she did not remember working at the Jin News agency.

In the light of the above pieces of information, an evaluation of the offence of "membership of an armed terrorist organisation" that Nurcan Yalçın is charged with shows us the following:

- **Her Membership of Rosa Women's Association:** The indictment defines the Rosa Women's Association as the direct extension of the KCK's "social field" structure. However, **the concrete organizational link** between the association as a legal entity, its objective (combating violence against women), and its legal activities, and this structure has not been sufficiently established. The mere fact that the association operates as a lawful non-governmental organisation does not constitute sufficient evidence to automatically deem its members part of an armed organisation. It must be demonstrated that membership implies a conscious participation in the armed wing or the executive structure of the organisation. No evidence satisfying these standards is presented in the indictment to indicate that the Rosa Women's Association concretely endorsed violence or that the defendant had such an intention. One of the elements relied upon by the prosecution to argue that Rosa Women's Association is an extension of the organisation is the statement given by E.Y., the spouse of H.Y., who is indicated as a suspect in the investigation on account of activities allegedly carried out within Rosa Women's Association. In this statement, E.Y. says that her husband left home to take part in organisational activities and that she is very worried about this. This statement, which

has no connection with Nurcan Yalçın yet is cited extensively in the indictment, constitutes another example of non-compliance with Article 170/4 of the Code of Criminal Procedure. At the same time, it strikingly illustrates the weakness of the allegation that Rosa Women's Association is an "extension" of the organisation, given that the prosecution attempts to fill this gap through the testimony of an abandoned spouse, who does not even mention the name of Rosa Women's Association once.

- **Behaving as a "KCK Citizen":** The indictment alleges that the defendant "behaved as a KCK citizen". This is a highly abstract claim that is based on an unclear legal definition. A mere conviction that an individual shares or supports the organisation's goals cannot, by itself, warrant a serious accusation like 'membership.' Membership requires organisational commitment and structural integration in a legal sense. In Zarakolu v. Turkey (Application no: 15604/12), the ECtHR, in assessing terrorism charges against a publisher, stated that mere support for a particular political line or the fact that their publications are appreciated by certain circles does not make the individual liable for the offences of those groups.[26]

In short, the indictment falls short of establishing a concrete and legal connection between "KCK" and Nurcan Yalçın's individual actions, as alleged in the indictment. This situation risks categorizing legitimate activities protected under of **freedom of thought, association, and expression** as criminal acts merely on the grounds that they are also pursued by groups designated as 'terrorist organizations.'

3.2.3 The Offence of "Terrorist Financing":

In the second of the consolidated indictments (Indictment No. 2024/2419), Nurcan Yalçın is charged with the offence of Violation of the Law No. 6415 on the Prevention of the Financing of Terrorism. The indictment refers to Article 4 of this law which defines terrorist financing as follows: Any person who provides or collects funds for a terrorist or terrorist organisations with the intention that they are used or knowing and willing that they are to be used, even without being linked to a specific act, in full or in part, in perpetration of the acts that are set forth as crime within the scope of Article 3 shall be punished by imprisonment for a term of five to ten years, provided that his/her act does not constitute another offence requiring a heavier punishment. Article 3 of the Law includes "terrorist offences" within this scope. Accordingly, the offence charged against Nurcan Yalçın is providing direct or indirect financial resources to a terrorist organisation. The indictment criminalises the fact that the defendant sent money to two persons in prison (pp. 14-15).

The indictment states that the suspect sent 400 TL to Songül Aşıla on 22/04/2019, and 300 TL to Kibriye Evren on 05/11/2018. Since Kibriye Evren is a friend of Yalçın and the indictment acknowledges this friendship, no separate accusation was brought with regard to that transfer; in practice, the allegation of terrorist financing is based solely on the 400 TL (approximately 63 euros) sent to Songül Aşıla. However, no concrete evidence has been presented in this regard. Therefore, no connection can be established between Nurcan Yalçın's act of sending money and the offence of terrorist financing. The fact that the recipients of the money had been convicted as members of an organisation is not sufficient, on its own, for any material assistance sent to them to be automatically considered "terrorist financing." The indictment does not establish any coherent causal link as to how a small amount such as 63 euros, moreover sent to a person in prison, could have financed terrorism. Small sums sent to a friend or acquaintance in prison to meet personal needs cannot, in the ordinary course of life, constitute the elements of the offence of terrorist financing. This situation creates the impression that an artificial link is being forced between the material element (the act) and the mental element (intent) of the offence.

3.3 An assessment of the evidence and the structure of the evidence on which the accusations are based

One of the weakest links of the indictment is the structure of evidence. The quality and reliability of the evidence incriminating the accused raises serious doubts.

3.3.1 Statement by an Anonymous Witness (p. 12)

- ***An unidentified witness:*** The identity of the anonymous witness with the pseudonym "ZS35SN58UV52PG10" is not known to the Defence. This makes it impossible to question the

witness' credibility, impartiality, motivations and possible personal relationship with the suspect. This undermines one of the most fundamental guarantees of the right to defence — the right to confront and question witnesses.

- ***The Abstract Nature of the Allegations:*** The witness statement contains general allegations such as "she is one of those persons who served the organisation", "she carries out the instructions of the organisation", "she was a senior leader", none of which include a concrete date, place, act, or objective fact. According to the established case law of the Court of Cassation, an anonymous witness statement cannot form the sole basis of a conviction; it must be supported by concrete, external, and objective evidence. Statements lacking specific dates, locations, or acts have weak probative value.

Within this framework, the European Court of Human Rights (ECtHR) has repeatedly underlined that basing a conviction solely or decisively on anonymous witness statements violates the principle of equality of arms. As the Court stated in *Doorson v. the Netherlands*:[27]

> *Even when counterbalancing procedures are found to compensate sufficiently the handicaps under which the defence labours, a conviction should not be based either solely or to a decisive extent on anonymous statements.*

Since the defence does not know the identity of the witness, it cannot cross-examine them, test their account, or expose inconsistencies. For this reason, under ECtHR standards such testimony must be treated with extreme caution and assigned limited evidentiary value.

In the present case, the anonymous witness statement is both devoid of concrete content and plays a decisive role in constructing the indictment. This constitutes a violation of the ECtHR's "sole or decisive evidence" standard and gives rise to serious concerns regarding the right to a fair trial.

3.3.2 Social Media Posts:

The indictment disregards the political and social context (e.g., the heavy conflict atmosphere of fall 2015) of the social media posts. Harsh political commentary is portrayed as disseminating propaganda in favour of an organisation.

It remains unclear whether the posts were shared with the **intent** to praise or legitimize the organisation, or simply to express outrage and reaction over unfolding events. Nor does it identify which specific expressions allegedly praised or encouraged violence. This distinction is crucial as the proof of the mens rea of the offence.

3.3.3 TJA Planner and Documents of the Association (pp. 7-11):

The TJA planner and notebooks seized from the association contain information on the chronological history of the women's movement, its activities and its solidarity with prisoners. However, even according to the indictment, these materials do not contain any concrete instructions, plans or calls for acts of violence that constitute terrorist offences. The indictment cites these documents as evidence of an ideological alignment with the organisation but fails to demonstrate how such alignment – absent any concrete act, instruction, or incitement - constitutes a criminal offence.

3.3.4 Evidence on Terrorist Financing (p. 14-15):

The small amount of money involved (400 TL) and the fact that it was sent to a person in prison strongly support the possibility that the transfer was a personal act of assistance. The prosecution provides **no concrete evidence** that the funds were channelled to the organisation's resources or to any armed activities. The mens rea of the offence—the "intent to finance terrorism"—has been assumed entirely hypothetically.

No causal link is established between the act of sending 400 TL and the financing of terrorism. That a recipient has previously been convicted as a member of an organisation is not, on its own, sufficient to classify any financial assistance as "terrorist financing."

Small-scale monetary transfers sent to a detainee or acquaintance to meet basic personal needs do not satisfy the elements of this offence. This suggests an artificial attempt to construct a connection between the act (actus reus) and the intent (mens rea) of the alleged crime.

4. Conclusion and Recommendations

The indictments issued against Nurcan Yalçın contain serious legal and evidential deficiencies. They appear to rely largely on the following methods:

1. **A Vague and Overbroad Definition of Crime:** The indictment found it challenging to establish a direct and concrete link between a general and abstract structure such as the "KCK system" and the individual actions of the accused. Therefore, an ideological and structural alignment was considered to be sufficient to bring charges. This situation contradicts the requirement that individual intent must be proved by concrete evidence, which the ECtHR underlined in its **İmret and Işıkırık** judgements. This situation is also a typical example of the failure to establish an explanatory link between the criminal act and the existing evidence, which is highlighted in the Guidelines on Indictment Writing for Prosecutors in Turkey prepared by PEN Norway[28] (C-2: Failure to provide sufficient detail regarding the offensive action in the indictment).

2. **Weakness of the Evidence:** Anonymous witnesses, personal and biased statements, decontextualised social media posts and financial transactions that do not meet the elements of the offence constitute an inadequate and unreliable basis for the criminal sanctions the prosecutor requested.
   As stated by Pen Norway in its Guidelines on Indictment Writing (C-3: Omission of exculpatory evidence in indictments), the exculpatory evidence such as the suspect's identity as a journalist and the legality of her activities within the association were systematically ignored in the indictment.

3. **The Risk of Criminalisation of Freedom of Thought and Association:** Membership in women's associations, strong criticisms of a political nature, and minor financial aid to incarcerated individuals are being categorized as terror offenses, which carries the risk of creating a chilling effect on legitimate civil society activities and political opposition. Such an approach threatens to punish individuals based exclusively on their views or affiliations.

This situation directly corresponds to the examples within the Pen Norway Guidelines on Indictment Writing which examines the indictments that impose arbitrary restrictions on freedom of expression.

For these reasons, it is concluded that the indictments forming the basis of the criminal proceedings against Nurcan Yalçın do not comply with fundamental rights and freedoms under national law, nor with Turkey's obligations arising from international human rights

"it is concluded that the indictments forming the basis of the criminal proceedings against Nurcan Yalçın do not comply with fundamental rights and freedoms under national law, nor with Turkey's obligations arising from international human rights treaties to which it is a party—particularly with regard to freedom of expression, freedom of association, and the right to a fair trial."

treaties to which it is a party—particularly with regard to freedom of expression, freedom of association, and the right to a fair trial.

In light of the findings of this report, the following recommendations are made regarding both the specific case against Nurcan Yalçın and broader indictment practices:

1. **Refraining from issuing terrorism charges that are not supported by concrete evidence:**
   The accusations of "membership of an armed terrorist organisation," "disseminating propaganda in favour of a terrorist organisation," and "terrorist financing" brought against Nurcan Yalçın are not supported by evidence demonstrating an organic link to an organisation, an intent to encourage violence, or a conscious aim to finance terrorist activities. Prosecutorial authorities should refrain from categorising acts that fall within the scope of freedom of expression and freedom of association as terrorism offences, in line with ECtHR and Court of Cassation jurisprudence.

2. **Avoiding the use of anonymous witnesses and vague statements as decisive evidence:**
   Anonymous witness statements and personal accounts that are vulnerable to conflicts of interest should not be relied upon as the sole or decisive basis for a conviction. Such statements should only be taken into consideration if they are supported by clearly demonstrated, verifiable, and concrete evidence. Otherwise, fundamental guarantees—such as the right to defence, the principle of equality of arms, and the right to a fair trial—are seriously undermined. This same standard must also be applied at the indictment stage.

3. **Including exculpatory evidence and contextual information in indictments:**
   Indictments should not be constructed solely around incriminating elements; they must also present facts in favour of the suspect—including journalistic activity, lawful association membership, legitimate work in the field of women's rights, and the political and social context of the relevant period. This is necessary to meet the requirement of "clarity and completeness" under Article 170 of the Code of Criminal Procedure, as well as the principle of objectivity.

4. **Applying counter-terrorism legislation in a manner consistent with freedom of expression and freedom of association:**
   The Anti-Terror Law and Law No. 6415 must be interpreted in accordance with the ECtHR's requirements concerning "force, violence and threats," as well as the principles of legality and proportionality. Peaceful and critical expressions, association activities, and forms of civil solidarity should not be expanded into the scope of terrorism offences. This is essential not only for addressing the structural problems seen in similar cases, but also for ensuring compliance with Türkiye's international human rights obligations.



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Endnotes:

1 Nurcan Yalçın's case adjourned: Court does not lift travel ban - Expression Interrupted
2 https://rosakadindernegi.org/
3 https://bianet.org/haber/rosa-yi-tutuklayip-tum-kadinlara-mesaj-vermek-istiyorlar-225124
4 "Turkey's PKK Conflict: The Death Toll", International Crisis Group (ICG), https://www.crisisgroup.org/europe-central-asia/turkiye/turkeys-pkk-conflict-death-toll.
5 "A Sisyphean Task? Resuming Turkey–PKK Peace Talks", International Crisis Group (ICG),Europe Briefing N°77 Istanbul/Brussels, 17 December 2015, https://www.crisisgroup.org/europe-central-asia/turkiye/b077-sisyphean-task-resuming-turkey-pkk-peace-talks.
6 See "Report on the Human Rights Situation in South-East Turkey", United Nations Human Rights Office (OHCHR), February 2017 https://www.refworld.org/reference/countryrep/ohchr/2017/en/116077; "Sokağa Çıkma Yasakları [On the Curfews]", Türkiye İnsan Hakları Vakfı (TİHV, Human Rights Foundation of Turkey), https://tihv.org.tr/sokaga-cikma-yasaklari/.
7 United Nations Office of the High Commissioner for Human Rights (OHCHR) – "Report on the Impact of the State of Emergency on Human Rights in Turkey, including an update on the South-East", March 2018 https://www.refworld.org/reference/countryrep/ohchr/2018/en/120660. Ayrıca Bkz. Council of Europe – Commissioner for Human Rights – "Memorandum on the Human Rights Implications of the Measures Taken under the State of Emergency in Turkey", October 2016. https://www.refworld.org/reference/countryrep/coechr/2016/en/113238. "Turkey: Crackdown on Kurdish Opposition", Human Rights Watch (HRW), 20.03.2017, https://www.hrw.org/news/2017/03/20/turkey-crackdown-kurdish-opposition. Özellikle medyaya ve gazetecilere yönelik müdahaleler açısından bkz. Human Rights Watch (HRW) – "Silencing Turkey's Media: The Government's Deepening Assault on Critical Journalism", December 2016. https://www.hrw.org/report/2016/12/15/silencing-turkeys-media/governments-deepening-assault-critical-journalism. OHAL ve sonrasındaki dönemde sivil toplum üzerindeki demokratik gerileme etkileri için bkz. Freedom House – "Freedom in the World 2018: Turkey" https://freedomhouse.org/country/turkey/freedom-world/2018. Türkiye İnsan Hakları Vakfı (TİHV) – "2016 Yılı İnsan Hakları Raporu", yayımlanma tarihi 2017. (https://tihv.org.tr).
8 Demirtaş v. Turkey (No. 2), European Court of Human Rights (EctHR), Application no. 14305/17, Grand Chamber Judgment, 22 December 2020. (https://hudoc.echr.coe.int/eng?i=001-207173). Ayrıca bkz. "Memorandum on the Human Rights Implications of the Measures Taken under the State of Emergency in Turkey", Council of Europe, Commissioner for Human Rights, October 2016 (https://www.coe.int/en/web/commissioner/-/turkey-memorandum-on-the-human-rights-implications-of-the-measures-taken-under-the-state-of-emergency).
9 Gazeteci Nurcan Yalçın'a 3 yıl 7 ay hapis cezası
10 a.g.e
11 Gazeteci Nurcan Yalçın'ın davası yeniden görüldü
12 a.g.e.
13 Nurcan Yalçın's case adjourned: Court does not lift travel ban - Expression Interrupted
14 In the Preamble of the "Law Amending Certain Laws in the Context of Human Rights and Freedom of Expression" this has been explained as follows:
"This draft law aims to amend relevant provisions in various laws that could cause violations of rights protected by the ECHR, and to eliminate situations that could potentially end up in a violation, in order to fulfil the principles of upholding human rights and resolving relevant shortcomings within our domestic law, and to improve our country's standing regarding cases before the ECtHR." Similarly, the preamble of the relevant article states: "The ECtHR holds that statements which do not incite violence fall within the scope of freedom of expression, and therefore finds it contrary to freedom of expression to punish individuals under Article 7/2 of the Anti-Terror Law for statements that do not incite of violence or encourage people to an armed rebellion. Through this amendment, the elements of crime set out in the second paragraph of the Article are redefined and the scope of the offence is aligned with ECtHR standards by adding the phrase "in a manner that justifies or praises the methods of force, violence or threats or that encourages resorting to these methods." For the report of the expert commission on Law No. 6459, see https://www.tbmm.gov.tr/Yasama/KanunTeklifi/f72877be-df67-037b-e050-007f01005610.
15 Ceylan v. Turkey, No. 23556/94, §38, 8 July 1999.
16 Erdal Taş v. Turkey, No: 77650/01, §38, 19 December 2006.
17 **Yavuz & Yaylalı v. Turkey, Application no. 12606/11, § 52, 17 December 2013. See also Savgın v. Turkey, Application no. 13304/03, § 45, 2 February 2010 and Gerger v. Turkey (Grand Chamber), Application no. 24919/94, § 50, 8 July 1999.**
18 Article 5 of the ATL, titled "Increase of Sentence" is worded as follows: "Penalties of imprisonment and fines imposed according to the respective laws for those committing crimes as described in Articles 3 and 4 above shall be increased by one half. In doing so the penalties may exceed the maximum penalty for that or any other crime. However aggravated life imprisonment is ruled instead of life imprisonment. Should increase of sentence, because of committing offence within activity/ies of organization, is set forth in relevant article; the increase of sentence is applied in accordance with sentence only in this article. However, increase of sentence cannot be less than 3/2 of sentence. The provisions of this article shall not apply to children."

19 Article 1 of the ATL defines terrorism as “any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat.” According to Article 2 of the ATL, “Any person, who, being a member of organisations formed to achieve the purposes [mentioned in the previous article], in concert with others or individually, commits a crime in furtherance of these aims, or who, even though does not commit the targeted crime, is a member of the organisations, is defined as a terrorist offender.”

20 Plenary Criminal Division of the Court of Cassation, M. 2006/10-253, R. 2007/80.

21 The Penal Department no. 16 of the Court of Cassation, ruling no. 2015/3344 M., 2015/926 R. dated 30.04.2015.

22 “Silahlı Örgütlenme Suçu”, Tülay KİTAPÇIOĞLU YÜKSEL, Ankara Üniversitesi Hukuk Fakültesi Dergisi, 72 (1) 2023, s. 314.

23 Opinion on articles 216, 299, 301 and 314 of the Penal Code of Turkey, adopted by the Venice Commission at its 106th plenary session (Venice, 11-12 March 2016), https://www.coe.int/en/web/venice-commission/-/cdl-ad-2016-002-e.

24 İmret vs. Türkiye (No 2), No: 57316/10, § 42-43, 10 July 2018.

25 Işıkırık vs. Türkiye, No: 41226/09, § 82-83,14 November 2017.

26 Zarakolu vs. Türkiye, No:15064/12, § 84-85, 15 September 2020.

27 ECtHR, Doorson / Hollanda, App. No: 20524/92, 26 March 1996, § 76

28 Guidelines-on-Indictment-Writing-for-Prosecutors-in-Turkey.pdf