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Legal report on indictment:

Veysel Ok

PEN Norway Turkey Indictment Project

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PEN Norway Turkey Indictment Project

At PEN Norway, we are studying journalist and civil society-related cases from the last six years in Turkey by examining the foundation document of the case: the indictment.

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Caroline Stockford, PEN Norway's Turkey Adviser, leads the project and lawyer Şerife Ceren Uysal is the Indictment Reports Supervisor.

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1.) Introduction

This evaluation report is part of the Turkey Indictment Project established by PEN Norway. The scope of this legal report is to examine the indictment issued against the lawyer Veysel Ok by the Istanbul Chief Public Prosecutor's Office on 11 August 2016 with investigation no. 2016/47844 and indictment no. 2016/25212 in light of Turkey's domestic laws and international human rights laws in order to ascertain whether the indictment complies with these standards. Section 2 of the report includes a brief summary of the case background information. Section 3 presents the legal analysis of the indictment. Section 3.2 evaluates the indictment against Turkey's domestic law focusing on Article 170 of the Turkish Criminal Procedure Code (TCPC) and on Article 301 of the Turkish Penal Code (TPC). Section 3.3 assesses the indictment in light of international standards, specifically Articles 6, 7, 10 and 18 of the European Convention on Human Rights (ECHR), the United Nations (UN) Guidelines on the Role of the Prosecutors and the UN Basic Principles on the Role of Lawyers. The report concludes, in section 4, with recommendations on what can be done to improve the quality of the indictment.

2.) Summary of Case Background Information

Veysel Ok is a well-known lawyer from Turkey who focuses on freedom of speech and press freedom. He started his career as a lawyer for Taraf newspaper. In 2017, he co-founded the Media and Law Studies Association (MLSA), a non-profit organisation based in Turkey which provides pro-bono legal support to journalists. The main goals of MLSA are to offer legal protection to journalists who are punished for expressing their thoughts, to promote the right to information and to promote rights of minority groups.[1] MLSA aims to represent journalists from different backgrounds, from the investigation phase to the trial before the European Court of Human Rights (ECtHR).[2]

As a lawyer, Veysel Ok has been working on various cases that are or were politically sensitive in Turkey's current political climate. Among others, he represented Deniz Yücel, Ahmet Altan, Mehmet Altan, Şahin Alpay, Nedim Türfent and Erol Önderoğlu.

Veysel Ok was awarded the Thomas Dehler medal for his work in advocating for the right to freedom of speech and the rule of law in Turkey in 2019. The same year, he also received the

[1] "About", MLSA, accessed May 17, 2021, https://www.mlsaturkey.com/en/about/.
[2] See, for instance: *Mehmet Hasan Altan v. Turkey* [2018] application no. 13237/17 (ECtHR) and *Ahmet Husrev Altan v. Turkey*[2021] application no. 13252/17 (ECtHR).

Bulut Öncü Courage Award. Additionally, in 2020, he was given the Index for Censorship Freedom Speech Award.

On 11 August 2016, Veysel Ok was indicted and accused of insulting the judiciary of Turkey, as criminalized under Article 301 of the TPC. The indictment is based on a statement that Veysel Ok gave in an interview conducted by the journalist Cihan Acar who worked for the Özgür Düşünce Newspaper. Cihan Acar was indicted as well.

In the interview, that was published on 25 December 2015, Veysel Ok expressed his views about the judiciary in Turkey. He criticized the situation and underlined the importance of free speech and the independence of the judiciary. He mainly focused on the role of the Criminal Judgeships of Peace and criticized their way of functioning. Among other things, he stated:

> "Previously, judges could hold varying opinions. There was a possibility of being tried by judges who valued freedoms. But now all members of the judiciary come in a single colour. We see judges serving at the Criminal Judgeships of Peace. They are deaf to defence statements or objections. Where the loyalties of these judges lie is clear. Nothing changes the result, because the decisions are pre-ordered. Either those in power give orders to the judicial authorities before the investigation, or attack the defendant via the government press".[3]

Following this interview, President Recep Tayyip Erdoğan's legal representatives filed a complaint against Veysel Ok on 29 December 2015. To initiate an investigation into violation of Article 301 TPC the special permission of the Ministry of Justice is required. This permission was given on 29 July 2016.[4]

The first court that was involved with the Veysel Ok case was the İstanbul 37th Criminal Court of First Instance. The first hearing was held on 19 September 2017. Between this first hearing and 22 November 2018, Veysel Ok needed to appear in court several times for hearings related to jurisdictional disputes. There were changes in the presiding judge, due to recusals, and requests to intervene by President Erdogan's Office. The case shuffled between the İstanbul 37th High Criminal Court and the İstanbul 2nd Criminal Court of First Instance. On 22 November 2018, the 10th hearing was held. In this hearing, the İstanbul 37th Criminal Court of First Instance ruled that the case fell outside its jurisdiction and referred it to the İstanbul 2nd Criminal Court of First

[3] "Veysel Ok", Lawyers For Lawyers, 2021, accessed April 20, 2021, https://lawyersforlawyers.org/en/lawyers/veysel-ok-2/.
[4] "Indictment no. 2016/25212" (2016) (English translation) (hereinafter "Indictment no. 2016/25212").

Instance. On 21 March 2019, the İstanbul 2nd Criminal Court of First Instance held a hearing on the merits of the case.[5]

In his defence statement, Veysel Ok said:

> "I still think the same way on the Criminal Courts of Peace. I do not think these judgeships are lawful. This is not an idea I hold alone, many lawyers, jurists think the same way. The Venice Commission's report on this issue is in the case file. I made this criticism as a lawyer and am a part of the justice system myself. The criticism cannot be treated as an insult". [6]

On 12 September 2019, the İstanbul 2nd Criminal Court of First Instance delivered its ruling. The court convicted Veysel Ok and imposed a suspended sentence of six months' imprisonment, which was reduced to a suspended sentence of five months due to his behaviour during the hearings.[7]

3.) Analysis of the indictment

3.1 Introductory Remarks & Formalities

The indictment accuses lawyer Veysel Ok of "Publicly insulting the State's Judicial Organs".[8] Article 301 TPC is referred to as the relevant penal provision. The indictment is rather short and takes up a little over one page. The indictment starts with formalities, such as the place, the date and time period of the alleged crime, the date when claims were put forward, the description of the crime and the evidence of the offence. It makes sense to commence with these formalities, as this is an effective way to clarify the most essential elements of the accusations made against the defendant.

Unlike many other indictments in freedom of speech cases in Turkey, this indictment is rather short. Nevertheless, the indictment is difficult to comprehend. The indictment is poorly written and does not fulfil the basic purpose of an indictment, namely to give the defendant an understanding of the accusation, the legal basis and the relevant evidence that supports it.

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[5]"Trial of Veysel Ok outside the jurisdiction of court, says new judge", MLSA, accessed April 20, 2021, https://www.mlsaturkey.com/en/trial-of-veysel-ok-outside-the-jurisdiction-of-court-says-new-judge/; "Journalist's Lawyer Veysel Ok Prosecuted", Lawyers for Lawyers, accessed April 20, 2021, https://lawyersforlawyers.org/en/journalists-lawyer-veysel-ok-prosecuted/.
[6]"Trial Observation Report – Turkey Case: Trial of Veysel Ok (Lawyer) and Cihan Acar (Journalist)", Tony Fisher, accessed June 4, 2021, https://eldh.eu/wp-content/uploads/2019/07/Veysel-Ok-Report.pdf, 3.
[7]*Case No. 2018/277*, (Istanbul 2nd Criminal Court of First Instance 2019), https://cfj.org/wp-content/uploads/2020/01/Turkey-vs.-Veysel-Ok-Judgement.pdf, 5.
[8]Indictment no. 2016/25212.

Firstly, the issue date of the indictment is mentioned at the end. It would be preferable to mention this date at the beginning together with the formalities. Secondly, it is preferred that the statement of Veysel Ok included in the indictment is clearly marked. The indictment now includes one quotation mark at the beginning of the quote, but it is not entirely clear where the quote ends. Presumably, the indictment refers to the following quote:

> "in the past, there were judges who had different opinions and there was a higher possibility of being tried by Judges who pay attention to freedoms, yet members of the judiciary are now uniform; there was a higher possibility of being tried by Public Prosecutors and Judges who pay attention to freedom of expression. Yet, the key difference of this period is that members of the judiciary are uniform now. Almost all members of the judiciary, whom I met in the last 2 years, are uniform and have the same view. We see the Criminal Peace Judgeships. Neither defence nor appeal work in cases before these judgeships. Currently, journalists are continuously appearing before 12 Criminal Courts of Peace. These judges' social media posts and sympathies are clear. In this respect, one's defence never influences decisions no matter how efficient and up-to-date they are. … Because there are pre-determined and the decisions are pre-ordained in these cases, … the Executive either orders the judicial authorities in advance or targets [them] in the press. Then, the judiciary enforces the order".[9]

Additionally, we note that the procedural aspects of the case are included in the actual indictment, such as the information that "there is still time to launch a court case considering the time passed while the file was exchanged with the Ministry of Justice".[10] It is recommended to separate the procedural aspects from the substantive aspects of the accusation.

3.2 Evaluation of the Indictment under Turkey's Domestic Law

3.2.1 The Requirements of Article 170 TCPC

Article 170 TCPC prescribes the duty of the prosecutor and the content of the indictment. Section 3 of this Article prescribes that an indictment shall include the following aspects:

> "a. The identity of the suspect,
>
> b. His/her defence counsel,
>
> c. Identity of the murdered person, victim or the injured party,

[9] Ibid.
[10] Ibid.

d. The representative or legal representative of the victim or the injured party,
e. In cases, where there is no danger of disclosure, the identity of the informant,
f. The identity of the claimant,
g. The date that the claim had been put forward,
h. The crime charged and the related Articles of applicable Criminal Code,
i. Place, date and the time period of the charged crime,
j. Evidence of the offence,
k. Explanation of whether the suspect is in detention or not, and if he/she is arrested with a warrant, the date he/she was taken into custody and the date of his/her arrest with a warrant, and their duration".[11]

The indictment conforms to the requirements in Article 170/3 TCPC in respect of most of the formalities. It clearly sets out the identity of the suspect, the date and the place of the crime. There is no mention in the indictment as to whether the suspect has been in detention or not. As Veysel Ok was not in detention, the lack of information on this matter is not important to the overall evaluation of the indictment. The crime charged, described as "Publicly insulting the State's Judicial Organs", and the related articles applicable (Article 301 and 53 TPC) are set out in the introductory section.

Article 301 TPC reads as follows:

"1. A person who publicly degrades Turkish Nation, State of the Turkish Republic, Grand National Assembly of Turkey, the Government of the Republic of Turkey and the judicial bodies of the State shall be sentenced to a penalty of imprisonment for a term of six months to two years.
2. A person who publicly degrades the military or security organisations shall be sentenced according to the provision set out in paragraph one.
3. The expression of an opinion for the purpose of criticism does not constitute an offence.
4. The conduct of an investigation into such an offence shall be subject to the permission of the Minister of Justice".[12]

Elements of this offence seem to be, in this case, "publicly", "degrades" and "judicial bodies of the State". The indictment refers to the newspaper that "has statements that amount to insulting

[11]Criminal Procedure Code of the Republic of Turkey (2009), Article 170 (hereinafter "TCPC").
[12]Penal Code of Turkey (2004, amended 2016), Article 301 (hereinafter "TPC").

the President, the State's institutions and organs".[13] Therefore, there is no clear link between the elements of the offence and the wording in the indictment, which could be seen as a violation of Article 170/3-h TCPC. The prosecutor has drafted the indictment as a story and not in accordance with the legal rules of procedure that should have been followed.

An important requirement of Article 170 TCPC is the "evidence of the offence".[14] The list of evidence in the indictment is presented as follows:

> "Copy of Özgür Düşünce [Free Thought] newspaper, Mr Cihan Acar's statement, the Ministry of Justice's Directorate-General for Criminal Affairs' letter that grants interrogation permission, registers of persons and criminal records, and the scope of the whole investigation document".[15]

It is the duty of the prosecutor to connect the evidence to the alleged crime, as mentioned in Article 170/4 TCPC, which prescribes that "the events that comprise the charged crime shall be explained in the indictment in accordance to their relationship to the present evidence".[16] The list of evidence does not fulfill its purpose entirely. Firstly, it would be clearer if the date of the newspaper and the letter of the Minister was included. Secondly, the evidence refers to "Mr Cihan Acar's statement", which does not directly link Veysel Ok to the crime. The lack of this link leaves the defendant in ignorance of the crime he has committed and of the evidence that supports the allegation.

Furthermore, the conclusion of the indictment does not include the issues that are both favourable and unfavourable to the suspect, as prescribed by Article 170/5 TCPC. The indictment explicitly states that "there was no chance to take the suspect's defence".[17] In the defence statement, Veysel Ok refers to other individuals (e.g. journalists) who share his opinion. From that point of view, he regards this comment solely as criticism and not as an insult. It could be a mitigating factor if other individuals or bodies share his ideas.

The indictment does not include any reference to intent. However, it can be argued that such a reference should have been included due to the exception in Article 301/3 TPC. Article 301/3 TPC explicitly states that the expression of an opinion for the "*purpose of criticism*" does not

[13]Indictment no. 2016/25212.
[14]TCPC, Article 170/3/j.
[15]Indictment no. 2016/25212.
[16]TCPC, Article 170/4.
[17]Indictment no. 2016/25212.

constitute an offence.[18] The prosecutor should have at least explained in the indictment why the statement of Veysel Ok was not made for the purpose of criticism but for the purpose of degrading/insulting. This inherently touches upon the intent of Veysel Ok. Moreover, the concluding section does not refer to a punishment or measure that is foreseen. This is in violation with Article 170/6 TCPC.[19]

Lastly, the indictment refers to the periods or prescribed terms in which cases of crimes related to the press should be opened. Article 26 of the Press Law prescribes that:

> "1. It is essential that cases of crimes entailing the use of printed matter or other crimes mentioned in this law should be opened within a period of four months for daily periodicals and six months for other printed matter. This period begins with the delivery of the printed matter to the Office of the State Chief Prosecutor.
>
> 2. If the material is not submitted, the beginning date of the above-mentioned periods is the date when the Office of the State Chief Prosecutor ascertains the action which constitutes the crime. However, these periods cannot exceed the periods stipulated by Article 102 of the Turkish Penal Code.
>
> 3. The period for the case to be opened against individuals who had material published despite the objection of the responsible editor and the editor working beneath him/her begins when the decision acquitting the responsible editor and the editor working beneath him/her becomes final.
>
> 4. If the responsible editor discloses the identity of the owner of the publication, the period for the case to be opened against the owner of the publication begins with the date when the disclosure is made.
>
> 5. The period to open a case concerning crimes the legal proceedings of which are based on complaints begins when the date the crime is committed is ascertained, provided that the prescription envisaged by the law is not exceeded. Regarding crimes for which permission or a decision to open a public case is needed, the period to open a case ends when the application is made. This process cannot exceed four months".[20]

According to this Article, the case against Veysel Ok should have been opened within 4 months after the 'application', as mentioned in Article 26/5 of the Press Law, was made. It is not clear on which date this application was made. The indictment mentions that the 'permission' to open the case was granted on 29 July 2016. However, given the lack of information on the application

[18]TPC, Article 310/3 (emphasis added).
[19]TCPC, Article 170(6).
[20]Press Law (2004 amended in 2012), Article 26.

date, it is impossible to verify whether the process for this permission did not exceed four months. This is a serious defect in the indictment. It is also not clear why the indictment indicates that the date of a possible court case began on 11 April 2016 with reference to Article 26/4 of the Press Law. In this case, Veysel Ok's identity was known from the very beginning. Therefore, the defence that the government used for the delay in handling this case is not applicable.

3.2.2 Criticism on Article 301 TPC from a National and International Point of View

Article 301 TPC has been subject to significant discussions in Turkey and in the international human rights community since it was regulated.[21] The "Venice Commission`s Opinion on articles 216, 299, 301 and 314 of The Penal Code of Turkey" dated 11-12 March 2016, includes the following interesting information:

> "Article 301 has been repeatedly criticised internationally and domestically. During the 2010 Universal Periodic Review of Turkey, five States (Armenia, Cyprus, France, Spain, and the United States of America) explicitly recommended that Turkey remove or revise Article 301. The OSCE Representative on Freedom of Media noted that Article 301 (in its original wording) was open to various interpretations and could be used to chill public debate. Amnesty International in its recent report, wrote that even after the 2008 amendment, "Article 301 continues to constitute a direct and impermissible limitation to the right to freedom of expression despite some cosmetic reform. (...) The only conclusion compatible with Turkey's international obligations is (...) its repeal". Freedom House, in its 2015 Report on Freedom of Press in Turkey, added that "very few of those prosecuted under Article 301 receive convictions, but the trials are time-consuming and expensive, and the law exerts a chilling effect on speech".[22]

Amnesty International launched a campaign against this article in 2013, called "[e]nd it, don`t amend it". In the announcement of their campaign, they referred to one of their own reports and stated that:

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[21]Ronan Ó Fathaigh, "The Chilling Effect Of Turkey'S Article 301 Insult Law", *European Human Rights Law Review* 24, no. 3 (2019); Bülent Algan, "The Brand New Version Of Article 301 Of Turkish Penal Code And The Future Of Freedom Of Expression Cases In Turkey", *German Law Journal* 9, no. 12 (2008); "Turkey: Article 301: How The Law On "Denigrating Turkishness" Is An Insult To Free Expression" (repr., Amnesty International,2006), accessed April 20, 2021, https://www.amnesty.org/download/Documents/76000/eur440032006en.pdf.

[22]"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)" (Strasbourg: Venice Commission, 2016), accessed April 20, 2021, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)002-e., para 82 (hereinafter "Venice Commission Opinion").

> "Article 301 of the Turkish Penal Code has long been one of the most problematic articles as far as freedom of expression is concerned. Up until 2008, the article criminalized "denigrating Turkishness". Reforms replaced "denigrating Turkishness" with "denigration of "the Turkish nation, the state of the Republic of Turkey, the Turkish Parliament (TBMM), the government of the Republic of Turkey and the legal institutions of the state" and added the additional requirement of the authorisation of the Minister of Justice before prosecutors could initiate proceedings. Neither of these ostensible safeguards has been sufficient for the ECtHR to find the article compatible with the right to freedom of expression as protected in the European Convention on Human Rights".[23]

In 2007, 21 members of the International Freedom of Expression Exchange (IFEX) demanded the abolishment of Article 301 TPC.[24]

In a report dated 12 July 2011, the former Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, expressed his concerns over Article 301 TPC:

> "Following his visit to Turkey in 2009, the Commissioner expressed his concern regarding Article 301, notwithstanding an amendment adopted in 2008 which led to a decrease in the number of proceedings brought under this article. On 14 September 2010 the Court delivered its judgment in the case of *Dink v. Turkey* in which it found a violation of Article 10 of the ECHR on account of Hrant Dink's conviction based on Article 301. The Court held that Hrant Dink's conviction for denigrating Turkish identity prior to his murder did not correspond to any "pressing social need" which is one of the major conditions on which interference with one's freedom of expression may be warranted in a democratic society. The Commissioner considers that the amendment adopted in 2008, which subjects prosecution to a prior authorization by the Ministry of Justice in each individual case, is not a lasting solution which can replace the integration of the relevant ECHR standards into the Turkish legal system and practice, in order to prevent similar violations of the Convention".[25]

As can be inferred from the statement above, Article 301 TPC has been amended in 2008. The amendments were implemented in order to bring the article in line with the standards designated

[23]"Article 301: End It, Don'T Amend It" (Amnesty International, Human Rights In Turkey, 2013), accessed April 20, 2021, https://humanrightsturkey.com/2013/04/03/article-301-end-it-dont-amend-it/.
[24]"Declaration Demanding Abolishment Of Turkey'S Article 301" (Freemuse, 2007), accessed April 20, 2021, https://freemuse.org/news/declaration-demanding-abolishment-of-turkeys-article-301/.
[25]Thomas Hammarberg, "Report By Thomas Hammarberg Commissioner For Human Rights Of The Council Of Europe Following His Visit To Turkey From 27 To 29 April 2011" (repr., Strasbourg: Council of Europe, 2011), accessed April 20, 2021,https://rm.coe.int/16806db752, para 17.

by the ECtHR.[26] The amendment focused on three major issues: first, the concept of "Turkishness" and "Republic" have been replaced by "Turkish Nation" and the "Republic of Turkey"; second, the maximum limit of imprisonment that could be imposed in the case of conviction was reduced and the aggravating circumstances were removed from the article; and third, the permission of the Ministry of Justice to initiate prosecution for acts deemed to be criminal under Article 301 was introduced.[27]

Nevertheless, human rights organisations and the ECtHR underlined that these amendments did not make any difference in terms of the interference of Article 301 on freedom of speech. In 2011, the Court in the *Altuğ Taner Akçam v. Turkey* judgment underlined that replacing the term "Turkishness" by the "Turkish nation" did not make any difference in the interpretation of these concepts. According to the Court, Article 301 is so vague that it does not meet the "quality of law". Its unacceptably broad terms do not allow for foreseeability of its effects and violate the freedom of expression.[28]

The case of *Altuğ Taner Akçam v. Turkey* recognised the chilling effect that Article 301 TPC, as an overbroad criminal provision, creates on the right to freedom of expression on matters of public interest. Furhermore, it established that an interference with Article 10 ECHR can be found even when the applicant is no longer subject to criminal prosecution.[29]

Subsequently, the Court, in *Dilipak v. Turkey,* laid down the principle that an applicant, in this case a journalist, may claim to be a victim of a violation of Article 10 ECHR where considerably lengthy criminal proceedings have a chilling effect on the applicant's desire to express his opinion on matters of public interest, even when proceedings are eventually discontinued. *Altuğ Taner Akçam* and *Dilipak* are both built upon the acknowledgement of the "vulnerable nature" of expression on matters of public interest.[30]

Already in *Dilipak*, in 2015, Judge Pinto de Albuquerque, in his concurring opinion, stated that

> "the Court made it crystal-clear in paragraph 95 of the Altuğ Taner Akçam judgment that the notorious Article 301 had to be reformed, no changes were made. This time the Turkish legislature cannot ignore the fact that the Court has found the mere existence of

[26]Bülent Algan, "The Brand New Version of Article 301 of Turkish Penal Code and The Future of Freedom of Expression Cases in Turkey", 2239.
[27]Ibid., 2240-2250.
[28]*Altuğ Taner Akçam v. Turkey* [2011] application no. 27520/07 (ECtHR), paras 92-95; "Prosecution Of A Publisher For 'Denigration' Of Turkey Violated Article 10", (Strasbourg Observers, 2018), accessed April 27, 2021, https://strasbourgobservers.com/2018/10/29/prosecution-of-publisher-for-denigrating-turkey-violated-article-10/.
[29]*Altuğ Taner Akçam v. Turkey*, paras 68, 81.
[30]Ibid., para 81; *Dilipak v. Turkey* [2015] application no. 29680/05 (ECtHR), para 72.

> such a criminal-law threat intolerable, even in the absence of a subsequent conviction. In the light of the systemic effect of the present judgment within the Turkish legal system and the large number of legal suits brought against journalists, the Turkish legislature must instigate a reform of the Criminal Code and the Military Criminal Code with a view to removing from these texts all obstacles to freedom of expression. In particular, *it must abolish Article 301 of the Criminal Code or replace it with a criminal provision criminalising assaults on the reputation of State bodies created strictly as a bulwark against a clear and imminent threat to national security*".[31]

To this purpose, Judge Pinto de Albuquerque advocated that the time had come for the Court to take a clearer position and to "issue an injunction to the respondent State under Article 46."[32]

In 2018, in the case of *Fatih Taş v. Turkey* (No.5), the Court adopted Judge Pinto de Albuquerque's concurring opinion from *Dilipak* and held that amending Article 301 TPC by bringing it in conformity with the Court's case law would "constitute an appropriate form of execution" of the Court's judgment and a mean to end the violations found; thus, it applied Article 46 ECHR.[33]

By applying Article 46 ECHR the Court explicitly indicated the individual measure, subject to supervision of the Committee of Ministers, that Turkey should adopt to end the violation of Article 10 ECHR. The application of Article 46 ECHR shows the Court's concern on the creation of a climate of censorship through Article 301 TPC; and therefore, demands Turkey to amend the Article in compliance with ECtHR standards.[34]

3.3 Evaluation of the Indictment under International Standards

According to Article 90 of the Constitution of the Republic of Turkey, international law takes precedence over national law.[35] Turkey has ratified the European Convention of Human Rights (ECHR) in 1954. Citizens of Turkey are therefore directly protected, through the Constitution, by the fair trial standards enshrined in Article 6 ECHR and the freedom of speech under Article 10 ECHR.

Other relevant international standards can be found in the United Nations (UN) "Guidelines on

[31]*Dilipak v. Turkey* Judge Pinto de Albuquerque's Concurring Opinion [2015] application no. 29680/05 (ECtHR), para 15 (emphasis added).
[32]Ibid. para 1.
[33]Ronan Ó Fathaigh, "The Chilling Effect Of Turkey'S Article 301 Insult Law", 8-9.
[34]Ibid., 10; "Prosecution Of A Publisher For 'Denigration' Of Turkey Violated Article 10", (Strasbourg Observers, 2018).
[35]Constitution of the Republic of Turkey, Article 90.

the Role of Prosecutors",[36] and the standards set out by the International Association of Prosecutors on the principle of fair trial regulated under the ECHR.[37] Additionally, and specifically applicable to this case are the UN Basic Principles on the Role of Lawyers.[38]

3.3.1 Article 6 ECHR

The ECtHR guide on Article 6 ECHR includes several relevant starting points to assess whether the indictment is in accordance with the right to fair trial.[39] First of all, Article 6/3-a prescribes that everyone charged with a criminal offence has the right to be informed promptly, in a language which he/she understands and in detail, of the nature and cause of the accusation against him/her.[40]

The Guide on Article 6 ECHR includes the following information:

> "Article 6/3-a points to the need for special attention to be paid to the notification of the "accusation" to the defendant. Particulars of the offence play a crucial role in the criminal process, in that it is from the moment of their service that the suspect is formally put on written notice of the factual and legal basis of the charges against him (*Pélissier and Sassi v. France* [GC], § 51; *Kamasinski v. Austria,* § 79). Article 6 § 3 (a) affords the defendant the right to be informed not only of the "cause" of the accusation, that is to say, the acts he is alleged to have committed and on which the accusation is based, but also of the "nature" of the accusation, that is, the legal characterisation given to those acts (*Mattoccia v. Italy*, § 59; *Penev v. Bulgaria*, § § 33 and 42).The information need not necessarily mention the evidence on which the charge is based (*X. v. Belgium*, Commission decision; *Collozza and Rubinat v. Italy*, Commission report).
>
> Article 6/3-a does not impose any special formal requirement as to the manner in which the accused is to be informed of the nature and cause of the accusation against him/her (*Pélissier and Sassi v. France*[GC],§53; *Drassich v. Italy*,§34; *Giosakis v. Greece* (no.3),§29).

[36]"Guidelines On The Role Of Prosecutors Adopted By The Eighth United Nations Congress On The Prevention Of Crime And The Treatment Of Offenders, Havana, Cuba, 27 August to 7 September 1990" (1990) (hereinafter "Guidelines On The Role Of Prosecutors").
[37]"Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors Adopted by the International Association of Prosecutors on the Twenty Third Day of April 1999" (1999) (hereinafter "Standards of Professional Responsibility").
[38]"Basic Principles on the Role of Lawyers Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990" (1990) (hereinafter "Basic Principles").
[39]"Guide on Article 6" (Council of Europe, European Court of Human Rights, 2014) (hereinafter "Guide on Article 6").
[40]"Convention for the Protection of Human Rights and Fundamental Freedoms", (adopted 4 November 1950, entered into force 3 September 1953), Article 6(3)(a) (hereinafter "ECHR").

> In this connection, an indictment plays a crucial role in the criminal process, in that it is from the moment of its service that the defendant is formally put on written notice of the factual and legal basis of the charges against him or her (*Kamasinski v. Austria*,§79).The duty to inform the accused rests entirely on the prosecution and cannot be complied with passively by making information available without bringing it to the attention of the defence (*Mattoccia v. Italy*,§65; *Chichlian and Ekindjian v. France*, Commission report,§71)."[41]

Although the indictment is written in Turkish, which is a language that Veysel Ok understands, the indictment is difficult to comprehend. This is due to the long and complicated sentences which are separated by a comma. The format makes it hard to unravel the actual content. The incomprehensible language and the failure to connect the alleged crime to the evidence leave the defendant in ignorance about the crime he is accused of. It is not clear which part of the statement made by Veysel Ok amounts to a violation of Article 301 TPC. This makes the preparation for the defence difficult.

Article 6/2 ECHR reflects the presumption of innocence.[42] The way in which the indictment is set up seems to violate this principle. The indictment includes the information that "due to the limited time, namely not to miss the statute of limitations, there was no chance to take the suspect's defence".[43] This seems to indicate that the indictment violates the presumption of innocence. In addition, the indictment ends with the statement that "it is concluded that he committed the crime", which violates of the presumption of innocence.[44]

3.3.2 Article 7 ECHR

From Article 7 ECHR it can be inferred that offences and penalties must be accessible and foreseeable. Given the presence of vague terms in Article 301 TPC, such as "degrade" or "denigrate", it can be argued that this indictment violates Article 7 ECHR, because the elements of the crime are not clearly mentioned or linked to evidence. Additionally, critics argue that the terms *tahkir* (to insult) and *tezyif* (to deride), which are reflected in Article 159 former TPC (law no: 765), are not synonyms of the word *aşağılamak* (to denigrate/degrade).[45] Moreover, the scope of the terms such as "the Republic of Turkey" is unclear. If a statement is made against the Kurdish identity, this would probably not be covered by Article 301 TPC, even though the

[41]Guide on Article 6, paras 234-238.
[42]ECHR, Article 6(2).
[43]Indictment no. 2016/25212.
[44]Ibid.
[45]Ronan Ó Fathaigh, "The Chilling Effect of Turkey'S Article 301 Insult Law"; Bülent Algan, "The Brand New Version of Article 301 of Turkish Penal Code and The Future of Freedom of Expression Cases in Turkey".

Kurds are legally part of the Republic of Turkey. It can therefore even be argued that Article 301 TPC in itself violates Article 7 ECHR. Due to the vagenuess of the terms it is difficult to foresee when Article 301 TPC is violated.

3.3.3 Article 10 ECHR

The right to freedom of expression is enshrined in Article 10 ECHR. This article reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".[46]

The press is seen as a fundamental watchdog in a democratic society, which the ECtHR highly values and protects.[47]

> "[…] the impugned interference must also be seen in the context of the essential role of the press in ensuring the proper functioning of a political democracy (see among many other authorities, the Lingens v. Austria judgment of 8 July 1986, Series A, no. 103, p. 26, § 41, and the above-mentioned *Sürek (No. 1)* judgment, § 59). While the press must not overstep the bounds set, inter alia, for the protection of vital State interests, such as national security or territorial integrity, against the threat of violence or the prevention of disorder or crime, it is nevertheless incumbent on the press to impart information and ideas on political issues, including divisive ones. Not only has the press the task of imparting such information and ideas, the public has a right to receive them. Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders (see the above-mentioned Lingens judgment, p. 26 §§, 41-42)".[48]

[46]ECHR, Article 10.
[47]"Guide on Article 10" (Council of Europe, European Court of Human Rights, 2020) (hereinafter "Guide on Article 10"), sections V-VI.
[48]*Şener v. Turkey* [2000] application no. 26680/95 (ECtHR), para 41 (emphasis added).

This is relevant for the analysis of the indictment, as the statement at hand was published in a newspaper.

Furthermore, in the ECtHR Guide on Article 10 ECHR, specific mention is made of the status of actors in the justice system and their freedom of expression in the context of judicial proceedings.[49] In particular:

> "Where the Court points out the importance, in a State governed by the rule of law and in a democratic society, of maintaining the authority of the judiciary, it also emphasises that the proper functioning of the courts would not be possible without relations based on consideration and mutual respect between the various protagonists in the justice system, at the forefront of which are judges and lawyers (*Morice v.France*[GC],§170)".[50]

> "The specific status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts. They therefore play a key role in ensuring that the courts, whose mission is fundamental in a State based on the rule of law, enjoy public confidence (*Morice v.France*[GC], §§ 132-139; *Schöpfer v. Switzerland*, §§29-30; *Nikula v. Finland*,§45; *Amihalachioaie v. Moldova*,§27; *Kyprianou v. Cyprus*[GC], §173; *André and Another v. France*,§42; *Mor v. France*,§42; and *Bagirov v. Azerbaijan*, §§ 78 and 99). For members of the public to have confidence in the administration of justice they must have confidence in the ability of the legal profession to provide effective representation (*Morice v.France*[GC],§132; *Kyprianou v. Cyprus*[GC],§175)."[51]

> "Whilst they are subject to restrictions on their professional conduct, which must be discreet, honest and dignified, they also enjoy exclusive rights and privileges that may vary from one jurisdiction to another –among them, usually, a certain latitude regarding arguments used in court (*Morice v.France*[GC],§133; *Steur v. the Netherlands*,§38)".[52]

It is, however, clear that lawyers cannot be equated with journalists:

> "Their respective positions and roles in judicial proceedings are intrinsically different.

[49]Guide on Article 10.
[50]Ibid., para 425.
[51]Ibid., para 426-427.
[52]Ibid., para 429.

> Journalists have the task of imparting, in conformity with their duties and responsibilities, information and ideas on all matters of public interest, including those relating to the administration of justice. Lawyers, for their part, are protagonists in the justice system, directly involved in its functioning and in the defence of a party (*Morice v.France*[GC], §§148 and 168)".[53]

An interesting and relevant precedent is the case of *Morice v. France.*[54] This case shows that the freedom of expression of lawyers should be kept broad. In this case, a lawyer named Morice was convicted for criminal defamation. He criticized judges who presided a case he was litigating in a newspaper interview. Specifically, Morice had mentioned that the investigating judges in the case engaged in "conduct which [was] completely at odds with the principles of impartiality and fairness".[55] The decision of the ECtHR refers to Opinion no. (2013) 6 on the relations between judges and lawyers, adopted by the Consultative Council of European Judges (CCJE), dated 13-15 November 2013, which reads – in so far as relevant in this respect:

> "Judges and lawyers must be independent in the exercise of their duties, and must also be, and be seen to be, independent from each other. This independence is affirmed by the statute and ethical principles adopted by each profession. The CCJE considers such independence vital for the proper functioning of justice.
>
> The CCJE refers to Recommendation CM/Rec (2010)12, paragraph 7, which states that the independence of judges should be guaranteed at the highest possible legal level. The independence of lawyers should be guaranteed in the same way".[56]
>
> "The CCJE accordingly considers it necessary to develop dialogues and exchanges between judges and lawyers at a national and European institutional level on the issue of their mutual relations. The ethical principles of both judges and lawyers should be taken into account. In this regard, the CCJE encourages the identification of common ethical principles, such as the duty of independence, the duty to sustain the rule of law at all times, co-operation to ensure a fair and swift conduct of the proceedings and permanent professional training. Professional associations and independent governing bodies of both judges and lawyers should be responsible for this process.
>
> ...

[53]Ibid., para 430.
[54]*Morice v. France* [2015] application no. 29369/10 (ECtHR).
[55]Ibid., para 47.
[56]Ibid., para 60.

Relations between judges and lawyers should always preserve the court's impartiality and image of impartiality. Judges and lawyers should be fully conscious of this, and adequate procedural and ethical rules should safeguard this impartiality.

Both judges and lawyers enjoy freedom of expression under Article 10 of the Convention. Judges are, however, required to preserve the confidentiality of the court's deliberations and their impartiality, which implies, inter alia, that they must refrain from commenting on proceedings and on the work of lawyers.

The freedom of expression of lawyers also has its limits, in order to maintain, as is provided for in Article 10, paragraph 2 of the Convention, the authority and impartiality of the judiciary. Respect towards professional colleagues, respect for the rule of law and the fair administration of justice – the principles (h) and (i) of the Charter of Core Principles of the European Legal Profession of the CCBE – require abstention from abusive criticism of colleagues, of individual judges and of court procedures and decisions".[57]

With regards to the level of protection accorded to authorities when the matter in question concerns public interest, the Court clarified the following:

"Moreover, as regards the level of protection, there is little scope under Article 10/2 of the Convention for restrictions on political speech or on debate on matters of public interest (see *Sürek v. Turkey* (no. 1) [GC], no. 26682/95, § 61, ECHR 1999-IV; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 46, ECHR 2007-IV; and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 90, 7 February 2012). Accordingly, a high level of protection of freedom of expression, with the authorities thus having a particularly narrow margin of appreciation, will normally be accorded where the remarks concern a matter of public interest, as is the case, in particular, for remarks on the functioning of the judiciary, even in the context of proceedings that are still pending in respect of the other defendants (see *Roland Dumas v. France*, no. 34875/07, § 43, 15 July 2010, and *Gouveia Gomes Fernandes and Freitas e Costa v. Portugal*, no. 1529/08, § 47, 29 March 2011). A degree of hostility (see *E.K. v. Turkey*, no. 28496/95, §§ 79-80, 7 February 2002) and the potential seriousness of certain remarks (see *Thoma v. Luxembourg*, no. 38432/97, § 57, ECHR 2001-III) do not obviate the right to a high level of protection, given the existence of a matter of public interest (see *Paturel v. France*,

[57] Ibid.

no. 54968/00, § 42, 22 December 2005)".[58]

With respect to the aim of maintaining the authority and impartiality of the judiciary, the Court emphasized that restrictions of freedom of expression on this basis were reserved for "gravely damaging attacks that [were] essentially unfounded," not comments like those made by the defendant".[59]

In the Court's words, the objective of supporting the judiciary could not have:

> "the effect of prohibiting individuals from expressing their views, through value judgments with a sufficient factual basis, on matters of public interest related to the functioning of the justice system, or of banning any criticism of the latter. In the present case, Judges M. and L.L. were members of the judiciary and were thus both part of a fundamental institution of the State: they were therefore subject to wider limits of acceptable criticism than ordinary citizens and the impugned comments could therefore be directed against them in that capacity".[60]

The ECtHR held that France had violated Article 10 ECHR.[61]

In the *Mustafa Erdoğan and others v. Turkey* case the Court provided further guidance regarding the extent to which criticism of the judiciary can be accepted. The Court noted that "issues concerning the functioning of the justice system constitute questions of public interest, the debate on which enjoys the protection of Article 10" and "[t]he press is one of the means by which politicians and public opinion can verify that judges are discharging their heavy responsibilities in a manner that is in conformity with the aim which is the basis of the task entrusted to them".[62] Nevertheless, the protection of Article 10 does not include speech delivered with the intent to insult.[63]

> "In this connection, the Court reaffirms that the courts, as with all other public institutions, are not immune from criticism and scrutiny. In particular, a clear distinction must be made between criticism and insult. If the sole intent of any form of expression is to insult a court, or members of that court, an appropriate sanction would not, in principle, constitute a violation of Article 10 of the Convention (see *Skałka v. Poland*, no. 43425/98, § 34, 27 May 2003)".[64]

[58]Ibid., para 125.
[59]Ibid., para 128.
[60]Ibid., para 168.
[61]ibid para 178.
[62]*Mustafa Erdogan et al v. Turkey* [2014] application. nos. 346/04 & 39779/04 (ECtHR), paras 40-41.
[63]Ibid., paras 44-45.
[64]Ibid., para 44 (emphasis added).

In *Sviridov v. Kazakhstan*, the Human Rights Committee found a violation of Article 19 of the International Covenant on Civil and Political Rights (ICCPR). The defendant, a human rights defender, was fined for showing a sign that read: "[i] demand a fair trial for Mr. Zhovtis!"[65] The defendant, after attending Mr. Zhovtis' trial, documented many violations of the right to fair trial and wrote them on the website of his organisation. According to the Human Rights Committee, Article 19 ICCPR protects an individual's right to share "opinions on matters of human rights such as the right to a fair trial";[66] and that the State had therefore "interfered with the author's right to freedom of expression and to impart information and ideas of all kinds".[67] Hence, Article 19 ICCPR protects opinions that relate to the right to fair trial. The present indictment presents Veysel Ok's concern regarding judicial impartiality and independence in Turkey which closely relate, if not match, with the fundamental requirements of the right to fair trial. Therefore, his criticism should be protected by his right to freedom of expression, both under Article 10 ECHR and under 19 ICCPR.

In the specific case of Veysel Ok, various aspects of the freedom of press and expression are combined. First of all, as a lawyer, he should enjoy a high level of protection while expressing himself at trial or in the context of his activities as a defence lawyer. Although the statement that he made can be seen outside of this context, Veysel Ok still acted from the central position in the administration of justice as an intermediary between the public and the courts. In line with the case law of the ECtHR, his statement is important for the public in order to have confidence in the ability of the legal profession to provide effective representation. By being critical of the judicial system, Veysel Ok is trying to gain confidence and fulfilling his duty in this respect. The indictment at face value therefore can be seen to violate the freedom of expression as laid down in Article 10 ECHR.

3.3.4 Article 18 ECHR

Article 18 ECHR reads as follows: "The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed".[68] This article limits the use of restriction on rights and empowers the Court to investigate whether criminal prosecutions have been perverted into instruments of suppression

[65] *Sviridov v. Kazakhstan* [2017] U.N. Doc. CCPR/C/120/D/2158/2012 (Human Rights Committee), paras. 2.1-2.4.
[66] Ibid., para 10.2.
[67] Ibid., paras 10.2 – 10.5.
[68] ECHR, Article 18.

going beyond the surface of measures that could apparently seem legitimate.[69] Article 18 has an auxiliary function, meaning that it is a non-autonomous provision, that can only be invoked in conjunction with another Convention right, which has to be a qualified right subject to restrictions. However, a violation of Article 18 can still be found regardless of whether the right that was invoked in connection with it was not violated.

As it emerged from two recent cases from the ECtHR, *Demirtaş v. Turkey (no. 2) [GC]* and *Kavala v. Turkey,* the Court observed an ongoing pattern of oppression of political dissent, human rights defenders, journalists and lawyers in Turkey. In both cases the Court found a violation of Article 18 ECHR.

In *Demirtaş, the Court stated that*

> *"*it has been established beyond reasonable doubt that the applicant's detention, especially during two crucial campaigns relating to the referendum and the presidential election, pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate, which is at the very core of the concept of a democratic society".[70]

This judgment highlights the ulterior purpose behind Demirtaş's deprivation of liberty and the Court ordered his immediate release providing "an unequivocal solution to the protracted political crisis in Turkey concerning the fate of Selahattin Demirtaş and other opposition politicians and dissidents in general".[71] The significance of the Grand Chamber judgment cannot be understated, it sends a powerful and clear message to the Government of Turkey that has the duty to recognise and protect the freedoms that political dissidents enjoy in a democratic society governed by rule of law.

Similarly, in *Kavala*, the Court concluded that the "restriction of the applicant's liberty was applied for purposes other than bringing him before a competent legal authority" and that

> "the prosecution's attitude could be considered such as to confirm the applicant's

[69]Helmut Satzger, Frank Zimmermann, Martin Eibach, "Does Art 18 ECHR grant protection against politically motivated criminal proceedings? Rethinking the interpretation of Art 18 ECHR against the background of new jurisprudence of the European Court of Human Rights", EuCLR 4, no. 3 (2014), 106-112.

[70]*Selahattin Demirtaş v. Turkey (No. 2)*[2020] application no. 14305/17 (ECtHR), para 437

[71]"A Judgment to Be Reckoned with: Demirtaş v. Turkey (no. 2) [GC] and the ECtHR's Stand Against Autocratic Legalism" (Strasbourg Observers, 2021), accessed May 10, 2021, https://strasbourgobservers.com/2021/02/05/a-judgment-to-be-reckoned-with-demirtas-v-turkey-no-2-gc-and-the-ecthrs-stand-against-autocratic-legalism/; Başak Çalı, "The Whole Is More than the Sum of its Parts The Demirtaş v Turkey (No 2) Grand Chamber Judgment of the ECtHR" (Verfassungsblog, 2020), accessed May 10, 2021, https://verfassungsblog.de/the-whole-is-more-than-the-sum-of-its-parts/.

> assertion that the measures taken against him pursued an ulterior purpose, namely to reduce him to silence as an NGO activist and human-rights defender, to dissuade other persons from engaging is such activities and to paralyse civil society in the country".[72]

As it has been observed by many, the targeted harassment of human rights defenders in Turkey is part of

> "a wider practice of arbitrary detentions and abusive prosecutions of journalists, elected politicians, lawyers, and other perceived government critics. This practice has been well-documented in many reports by the Council of Europe, the European Union, and human rights organizations".[73]

Considering the broader context in which the indictment against Veysel Ok was issued, we can see a pattern of oppression of dissent in Turkey that provokes a chilling effect on the right to freedom of expression and causes the deterioration of the rule of law. Therefore, it could be argued that the indictment against him was issued with the purpose of silencing him as a prominent figure advocating for the right to freedom of speech and freedom of press in Turkey.

3.3.5 UN Guidelines on the Role of Prosecutors

Principles 10 to 20 in the UN Guidelines on the Role of Prosecutors (UN Guidelines) outline the role of the prosecutors in criminal procedures.[74]

According to Principle 12 UN Guidelines:

> "prosecutors shall in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system".[75]

Due to the potential violation of the terms and time periods set in the Press Law, and the jurisdictional disputes, it can be stated that the process was not in line with the basic standards for prosecutors set out in these Guidelines. In particular, it cannot be inferred from the indictment

[72]"Turkey: Release Osman Kavala" (International Commission of Jurists, 2020), accessed May 10 2021, https://www.icj.org/turkey-release-osman-kavala/; *Kavala v. Turkey* [2020] application no. 28749/18 (ECtHR), paras 224-230.
[73]"Turkey: Release Osman Kavala"; "Submission by Human Rights Watch, the International Commission of Jurists, and the Turkey Human Rights Litigation Support Project" (Human Rights Watch, 2020), accessed May 10, 2021, https://www.hrw.org/node/376936/printable/print.
[74]Guidelines on the Role of Prosecutors.
[75]Ibid., 12.

that due process was ensured, as the indictment clearly states that "there was no chance to take the suspect's defence". This statement could be included as an excuse with reference to the statute of limitations. However, such a statute should not be a legitimate reason to draft an indictment that violates national and international law.

Principle 13/a of the UN Guidelines states that in the performance of their duties, prosecutors should:

> "Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination".[76]

It seems apparent that the reason for the criminal prosecution of Veysel Ok is that the subject of his statement was the judicial body, an organ of the State. Furthermore, the criminal investigation was initiated by a letter from the President's Office. This indicates that the indictment is lacking impartiality and could be the result of political discrimination.

According to Principle 13/b of the UN Guidelines the prosecutor shall:

> "protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect".[77]

The prosecution of Veysel Ok can be seen as a violation of the protection of the public interest, namely that the public is informed about judicial issues. Furthermore, the indictment lacks objectivity and does not pay attention to circumstances that were favourable to Veysel Ok.

The International Association of Prosecutors, which was established in 1995, has issued a set of standards to ensure "fair, effective, impartial and efficient prosecution of criminal offences" in all justice systems.[78] According to these standards, a prosecutor should only initiate criminal proceedings if "a case is well-founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence."[79] The fact that there is no evidence whatsoever on mitigating factors and that the indictment includes that there was no chance to take the suspect's defence, could indicate that these standards were violated.

[76] Ibid., 13(a).
[77] Ibid., 13(b).
[78] Standards of Professional Responsibility, 1.
[79] Ibid., 4(2)(d).

3.3.6 UN Basic Principles on Role of Lawyers

In analysing the indictment, attention must finally be paid to the UN Basic Principles on the Role of Lawyers.[80] Firstly, principle 16 includes that:

> "Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics".[81]

Additionally, principle 23, "Freedom of expression and association", merits close consideration:

> "Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession."[82]

In light of these Articles and given the above analysis, the statement of Veysel Ok included in the indictment would merit protection instead of prosecution.

4.) Conclusions and Recommendations

In the Netherlands, the defence would argue an indictment with similar flaws to be void. The prosecutor has the possibility to file a motion to amend the indictment at any time during the proceedings to restore any defects. The prosecutor is usually granted considerable leeway to file these motions, which are easily granted by the court. However, if such a motion is not filed or denied and the court rules that the indictment is void, this would imply that the indictment is invalid (either in whole or in part). This is a final decision, which ends the prosecution and means that no ruling on the merits of the case will be provided. The prosecutor cannot initiate a new

[80] Basic Principles.
[81] Ibid., principle 16.
[82] Ibid., principle 23.

proceeding for the same crime, due to the *ne bis in idem* principle (which prohibits being prosecuted twice for the same offence).

To improve the quality of the indictment, the following steps can be taken:

- Keep the wording of the indictment simple and brief, so that the content of the indictment is easier to understand. Although it is common (and inevitable) for indictments to include complicated, legal language, the wording in the indictment against Veysel Ok is particularly vague;
- Mention the issue date of the indictment at the beginning together with the formalities;
- Include paragraphs in the indictment as to make its content logical and comprehensible. Avoid long sentences that are solely separated by commas;
- Clearly mark the evidence in the indictment, i.e., the statement of Veysel Ok, and include the date of the pieces of evidence;
- Include each element of the alleged crime in the indictment and connect each piece of evidence to one or more elements of the alleged crime;
- Include evidence that is in favour of the suspect;
- Avoid any conclusions about the criminal liability of the suspect in the indictment (i.e "it is concluded that he committed the crime");
- Include which punishment and measure of security are foreseen;
- In cases in which the Press Law is involved, clearly indicate the dates that are relevant for the prescribed periods in which a case must be opened;
- Evaluate whether the indictment is in line with ECHR rights, such as the right to a fair trial, among which the right to be presumed innocent, and the right to freedom of press;
- Evaluate whether Article 301 TPC is in line with ECHR rights, such as the right to freedom of expression and the right to only be punished for an offence when this is foreseeable.

In conclusion, the flaws in the indictment of Veysel Ok cause serious concern for the guarantees of fairness and transparency of judicial proceedings in Turkey, as protected by the European Convention on Human Rights. We therefore urge the Ministry of Justice of the Republic of Turkey to take our recommendations into consideration, not only by abolishing or reviewing the wording of Article 301 TPC, which is to be targeted strictly against clear and imminent threats to national security, but also by training public prosecutors about the conditions set out in Article 170 TCPC.

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Lawyers for Lawyers ("L4L") is an independent and non-political Dutch foundation that seeks to promote the proper functioning of the rule of law by pursuing freedom and independence of the legal profession. Lawyers for Lawyers was granted Special Consultative status with the UN Economic and Social Council in July 2013.