

P E N N O R W A Y

Legal report on indictment:

Canan Coşkun

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 report assesses the 2-page indictment with the investigation no. 2017/134371 and indictment no. 2018/2814 issued by Edip Şahiner, the Public Prosecutor of Istanbul on 05.04.2018 against the journalist named Canan Coşkun.

2.) Summary of Case Background Information

On September 12, 2017, several lawyers who were members of the Progressive Lawyers' Association and undertaking their professional activities under the People's Law Office were detained after a police raid on their offices and homes. Taken to the courthouse on 20 September 2017, fourteen of the lawyers were arrested and transferred to various prisons. The arrest of the lawyers was met with a public reaction both in Turkey and in the international legal circles and the problems encountered by the legal profession in 2017 and beyond were widely discussed.ⁱ

The police operation against the lawyers has generated considerable interest among the public in Turkey. This was because the arrested lawyers were defending the victims in socially important cases such as the Soma Mine Disaster Case, Berkin Elvan Case, Hasan Ferit Gedik Case, which were closely followed by the democratic public. Moreover, almost all of them were lawyers of Nuriye Gülmen and Semih Özakça.ⁱⁱ Gülmen and Özakça were two of the hundreds of thousands of individuals who were dismissed from their public office. As individuals who initiated and maintained for hundreds of days the protest known as Yüksel Resistance, Gülmen and Özakça were well-known by the local and global public.ⁱⁱⁱ It provoked another reaction when Gülmen and Özakça were detained just days before the trial against fourteen of their lawyers began.

Canan Coşkun was a court reporter working for the Cumhuriyet newspaper on 20.09.2017 and she had been following the ongoing legal proceedings regarding the arrest of the aforementioned lawyers in Istanbul Caglayan Courthouse. On the same day, her report titled "14 Lawyers of Nuriye and Semih were arrested"^{iv} was published in the Cumhuriyet newspaper. The news report in question generally provided information about the questions asked during the statement taken by the prosecutor, mentioned the presence of a witness with an explicit name who formed the basis of the questions and accusations raised by the prosecutor and finally included information that 2 lawyers were released while 14 were arrested as a result of the proceedings.

Upon the publication of the news report, Public Prosecutor's Office of Istanbul launched an investigation against Coşkun and issued the indictment in question on 05.04.2018. The indictment, in accordance with the Counter-Terrorism Law (CTL) Article 6/1, charged Coşkun with marking the state officials that were assigned in fight against terrorism as targets.

The proceedings began when the 26th Assize Court of Istanbul approved the indictment. She mounted her defence during the first hearing held on 06.06.2018. In her defence, she said that she was a court reporter for Cumhuriyet newspaper and that the news report in question was related to an investigation of public interest. Stating that the report was based on the

statement records obtained from the lawyers in the courthouse, Coşkun said that the detained lawyers were asked questions regarding the lawsuits of Dilek Doğan, Hasan Ferit Gedik and Berkin Elvan, which she then reported as news. She also said that the name of the witness who had been allegedly marked as a target was explicitly written in the statement records and that if he were an anonymous witness, the records would have used his nickname instead which she would have used in her news report. She demanded herself be acquitted and said that she did not accept the allegation that the investigation had been compromised by her report and that no reporters were prosecuted for such a common practice of writing the prosecutor's name in the news report.^v

The prosecutor of the court presented his opinion as to the merits of the case during the second hearing which took place on 10.07.2018. In his opinion, the prosecutor demanded that Coşkun be punished on the grounds that a restriction order had been in place regarding the investigation reported by Coşkun and thus her report compromised the objective of the investigation, that the witness and his family had been exposed and marked as a potential target for the terrorist organizations and that Coşkun committed the alleged offence by exposing the name of a person who benefited from the effective remorse and contributed to the uncovering of the activities of the terrorist organization. Coşkun and her lawyers submitted their statements against the opinion of the prosecutor during the hearing held on 19.07.2018. Following the defences, the Court sentenced Coşkun to a prison sentence of 2 years and 3 months and no abatements were granted on the grounds that she had no remorse for the offence she committed.

An appeal was filed by Coşkun's lawyers against her conviction. The 2nd Chamber of the Regional Criminal Court of Appeal of Istanbul ruled to acquit Coşkun after its appellate review with merits no. 2018/2220 and order no. 2020/81. The reasoning of the Court contained the following statement:

As set out by the Article 6/1 of Law no. 3717, the offence of marking somebody as a target could only take place if certain individuals are marked as a target for terrorist organizations. An evaluation of the content of the article and the website where it was published as a whole reveals that the text cannot be considered to fall within the scope of marking somebody as a target. The defendant was convicted with a written justification without regard for the fact that the article should have been viewed within the scope of the press as an indispensable element of a democratic society and of its functions of providing information, criticism and interpretation, and within the scope of the freedom of expression set out by the Article 26 of the Constitution and the Article 10 of European Convention on Human Rights...

To conclude, Coşkun was acquitted by the order of the Court of Appeal. But the majority of the lawyers mentioned in Coşkun's news report were convicted and are still in prison as a result of the criminal investigation launched against them. One of them, Att. Ebru Timtik died on 27.08.2020 as a result of the hunger strike she began with the demand for "the recognition of the right to a fair trial for all." The witness Berk Ercan who was allegedly marked as a target by Coşkun, acted as a "witness" against 344 individuals more than 200 of whom were prosecuted and arrested.

There is another detail about Coşkun's trial process. Akın Gürlek, the presiding judge of the Court who sentenced Coşkun to 2 years and 3 months imprisonment, acted as one of the judges of the Criminal Court of Peace during the investigation phase when the witness Berk Ercan, who was allegedly marked as a target by Coşkun, made a statement to benefit effective remorse. Again, Akın Gürlek undertook the prosecution against Berk Ercan in his capacity as the presiding judge of the 26th Assize Court of Istanbul as well. As another interesting detail, Akın Gürlek was the presiding judge of the 37th Assize Court that heard the trial against the lawyers in question, which resulted in a severe conviction ruled against them. Another journalist, Buse Söğütlü, is still on trial under the same allegations with Canan Coşkun, namely marking Akın Gürlek as a target for terrorist organizations, based on her posts on Twitter criticizing Akın Gürlek.^{vi}

3.) Analysis of the Indictment

3.1. Evaluation of the Indictment under the Code of Criminal Procedure:

The indictment in question consists of 2 pages in total. As previous reports have noted, the brevity of an indictment alone cannot be a subject of criticism. Since the essence of the indictment in question is only a news report written by Canan Coşkun, it is only natural that the indictment is short. The simplicity of an event and the fact that it can be summarized and explained in a few paragraphs, however, does not exempt an indictment from the requirements of the Code of Criminal Procedure Article 170 which is subtitled "The Duty of Filing a Public Prosecution". The legal function of the indictment involves much more than summarizing an event. As legal texts, the indictments must include details about the alleged crime that could be linked with the incident in question, a definition of that crime together with its elements, the specific actions of the suspects that constituted the crime, the relationship between the evidence and the crime and finally, the exculpatory evidence. A text without such elements cannot be regarded as an indictment in the legal sense of the term, even if it contains an allegation.^{vii}

3.1.1 The Indictment's Battle with the Evidence

In accordance with the CCP Article 170/3, an indictment should contain information about the identity of the suspect, the defendant and the charged crime, as well as the applicable articles of the law. The indictment contains all those elements. The date and the location of the crime are clearly stated in the indictment as well. Indictment's biased and sloppy take on the evidence is what impairs it in the context of CCP Article 170/3.

According to CCP Article 170/3, the evidence of the charged crime must be clearly written in the indictment. The following documents are listed under the evidence section on the first page of the indictment: "The allegation, the suspect's defence, the incident and investigation report, the suspect's register and criminal record, and the scope of whole investigation document." This could be regarded as a formal breakdown of all the evidence; but clearly, one cannot claim that this way of composing an indictment fulfilled the requirements in CCP Article 170/3.

First of all, among all the evidence, there is no mention of the news report by Coşkun. Furthermore, the restriction order (the one for the investigation reported by Coşkun) mentioned in the indictment and the order of the Magistrate's Court on Duty of Istanbul to block access to the website, which is also claimed to have been taken on the basis of this restriction order, were not listed among the evidence. The indictment's language used when dealing with the restriction order and the order to block access to the website is so superficial that it raises suspicions about whether it was written by a member of legal profession or not. For example, the indictment mentions an order by the Magistrate's Court on Duty of Istanbul only in passing. Which Magistrate's Court was on duty at the time? What was the date and merits number of the order? It is clear that a decision cannot be referred to without this information.

As can be seen, the only problem with the evidence section is not whether all the "items" were properly listed or not. What is striking at this point is the prosecutor's attitude against the news report written by Canan Coşkun. The prosecutor quoted only one paragraph from the report whereas it contains 12 paragraphs. The prosecutor claims that the content of the report constituted a crime and that Coşkun marked as targets the prosecutor of the lawyers' case and the person who testified against the lawyers. For that very reason, it does not make any sense why the indictment did not include the full content of the report or did not discuss exactly which sentences of it constituted the crime of marking people as targets.

The paragraph of the report in question quoted by the indictment is as follows:

It is determined that a news reports published on the weblink http://cumhuriyet.com.tr/haber/turkiye/827875/Avukatlar_savilik_sorgusunda_Neden_Nuriye_ve_Semih_in_avukatligini_yaptiniz.html reads "The prosecution added into the lawyers's case file the witness statement of a prisoner named Berk Ercan. In his testimony, Ercan said 'they have been involved in publicly prominent cases such as Berkin Elvan, Dilek Doğan, Hasan Ferit Gedik, Sabancı Assassination and the cases about Nuriye Gülmen and Semih Özakça who are on a hunger strike', which were then used in prosecution's charges against the lawyers..."

It can be seen that in this paragraph Coşkun did not provide any descriptions of Berk Ercan except for the sentence "the witness statement of a prisoner named Berk Ercan", she did not point to Ercan's family, neither did she make any guiding comments that mark Ercan as a target.

Following the quote, however, the prosecutor somehow came to the following conclusion:

It is understood that a news report was published in a way to compromise the objectives of the prosecution, despite the existence of a "Restriction Order" within the scope of the file no. 2017/10567 under the Public Prosecutor's Office and that Berk Ercan who was referred to as a witness in the file and Ercan's family were exposed and marked as targets for terrorist organizations.

The completely objective tone of the paragraph quoted by the indictment and that it contained no comments raised the question of how the prosecutor came to the inference above. This makes it essential to analyse the piece by Coşkun in its entirety through the lens of this inference (the claim that the report exposed Berk Ercan and his family and marked them as targets for terrorist organizations).

- A review of the report shows that the first 4 paragraphs of this 12-paragraph report did not include Berk Ercan's name.
- Paragraph 5 is the paragraph quoted in the indictment.
- Paragraph 6 contained Berk Ercan's name once again in the following sentence: "In his allegations, the Prosecutor Tuncay referred to Ercan's testimony who said "[the lawyers] were trying to be present as defenders during the prosecution and court stages" of the investigations against the terrorist organization."
- Ercan's name is mentioned again in paragraph 7. The phrasing is as follows: "When the lawyers pointed out that the individuals, once they were detained due to the emergency laws, were forced to spend time in custody during the period between the collection of their statements and their transfer to the courthouse, which was an arbitrarily determined and illegal practice, the Prosecutor Tuncay, again based on Ercan's testimony, included these statements in the file as if they constituted an offence."
- Finally, Ercan's name is mentioned in paragraph 8 for the last time. And here, the phrasing is as follows: "That the lawyers formed delegations on events that have become topical matters for the country such as natural disasters, workplace accidents, incidents of terrorism that took place in Sur, Cizre, Silvan, Rehanlı, Soma and Ermenek was assumed, by the prosecutor, to constitute an offence, again based on the testimony of witness Ercan."
- It is clear that the report contained no other sentences about the witness Ercan.

As such, it is clear that none of these sections, including paragraph 5 quoted by the prosecutor, contained a single statement that could lead to the conclusion that Berk Ercan was marked as a target. The prosecutor claims that Coşkun exposed not only Berkan Ercan himself but also his family and marked them as targets for terrorist organizations. However, Ercan's family has not been mentioned even once in the news report. The report did not include a photo of Ercan or his family either. We believe this was the reason why the prosecutor preferred to not to quote the report in its entirety. Because as it is, the content of the news report favours Canan Coşkun who fulfilled the requirements of her profession as a court reporter. As such, the prosecutor either assumed an ill motive or was completely carried away by his intention to punish Coşkun without seeking a proper basis to do so.

As such, it is impossible to claim that an indictment is written in accordance with CCP Article 170/3 when the evidence is only superficially listed, no exculpatory evidence is considered and no access to evidence is provided.

Once the relationship between the indictment and the evidence is described as a battle, it would even make less sense to expect this indictment to have been written in accordance with CCP Article 170/4. As is known, CCP Article 170/4 tasks the prosecutors with explaining the events that constituted the alleged offence in relation with the existing evidence. As the report did not contain any remarks that marked as targets Berk Ercan, nor his family nor the prosecutor who was in charge of the investigation, it is effectively impossible for it to fulfil the requirements in CCP Article 170/4.

After all the evaluations, it can easily be concluded that an evaluation of the indictment in accordance with the CCP Article 170/2 demonstrates that the prosecutor did not make any effort to support the reasonable doubt with evidence. It doesn't hurt to make

even a clearer remark. In fact, Coşkun's report is clear enough to dispel any doubts the prosecutor may have entertained. And if there is no evidence, there is not a reasonable doubt. Therefore, there should not have been an indictment issued. Unfortunately, it was issued and approved by the court and Canan Coşkun was sentenced to a severe sentence of 2 years and 3 months of imprisonment even though she was acquitted by the court of appeal.

3.1.2: The Indictment's Battle with the Counter-Terrorism Law Article 6/1:

Article 6/1 of the Counter-Terrorism Law is so ambiguous and eclectic that it deserves a separate study. The wording of the article makes it almost impossible to understand the quality of the criminal act or acts and the elements of the offences set out by it; meanwhile the broken Turkish used in the text does not make it easier. Therefore, it can be argued that the article as it is, paves the way for the incompetent and ambagious indictments to be issued, such as the one in question.

CTL Article 6/1 is as follows:

Those who announce or publish that a crime will be committed by terrorist organisations against persons, in a way that makes possible that these persons can be identified, whether or not by specifying their names and identities, or those who disclose or publish the identities of state officials that were assigned in fight against terrorism, or those who mark persons as targets in the same manner shall be punished with imprisonment from one to three years.

The actual practice aside, an analysis of the text of the article in question reveals that it sets out a number of offences. These offences can be listed as follows:

- Those who announce or publish that a crime will be committed by terrorist organisations against persons, in a way that makes possible that these persons can be identified, whether or not by specifying their names and identities,
- Those who disclose or publish the identities of state officials that were assigned in fight against terrorism in a way that makes possible that these persons can be identified, whether or not by specifying their names and identities,
- Those who mark persons as targets in the same manner

These three separate offences, defined under the same article, raises many questions in terms of criminal law technique. The definition of the first offence makes it impossible to understand what kind of a legal interest it provides a protection for. Will it be considered a crime if a journalist writes a news report based on the information that somebody could be potentially targeted by terrorist organizations? What's the justification for that? If the intention is to work up to the offence set out by the Article 6/1 of CTL through the allegation that the actual intention of the journalist was to praise an offender or to disseminate propaganda of a terrorist organization, then what is the difference between this offence and the laws already in force on the same issues?

The second offence set out by the Article raises another question. To whom does the definition of "state officials that were assigned in fight against terrorism" refers? Neither the CTL nor the

other legislations include a clear definition in this regard. Article 15 of CTL is the only one that offers something helpful. This article which sets out the appointment of a lawyer mentions “Turkish Armed Forces staff, persons in charge of the local authorities, intelligence and law enforcement officers and other personnel that are in charge of fight against terror.” A prosecutor who is defined as an official who prosecutes the defendants and brings them before the judge in order to defend the rights of the public and to enforce the law on behalf of and in favour of the public, and a witness who has been on a trial (and even convicted) and benefiting from the provisions on effective remorse: Can they be both classified as “other personnel that are in charge of fight against terror”?

Only the third of the offences set out in the Article has a relative clarity: Marking persons as targets... In terms of the language used here, it should be noted that there is an ambiguity that contradicts the basic principles of the criminal law. Because the wording of the article makes it impossible to determine for sure whether the term “persons” refers to the “state officials in charge of fight against terror” or not. However, among the offences set out by the Article 6/1 of the CTL, the wording of this last offence can be said to be relatively more lucid. At least it is clear that the element of this offence is “marking somebody as a target”.

But what are the offences that Coşkun is charged with? A review of the 2-page indictment reveals the following respective charges:

- Marking as targets the people who are in charge of fight against terrorism,
- Compromising the objectives of the investigation against the lawyers,
- Exposing Berk Ercan and his family and marking them as targets for terrorist organizations,
- Explicitly mentioning the names of the prosecutor of the investigation and the suspect of the case who benefited from effective remorse and contributed to the uncovering of the activities of the organization,

An analysis of the offences that Coşkun is charged with reveals that indictment is alarmingly unfounded and lacks any internal consistency. A review of the prosecutor’s first charge reveals that he somehow merged the second and third offences of the Article 6/1 of CTL and preferred to use the phrase “the person who is in charge of fight against terror.” In other words, according to the prosecutor, “the person” described in the third offence of the Article 6/1 of CTL has a descriptive adjective. This means, for the prosecutor, it would be enough if the person is in charge of fight against terror even if he/she is not a state official. A point of concern is the prosecutor’s understanding of “being in charge of fight against terror”. According to the prosecutor who issued the indictment, the prosecutors are automatically classified as persons who are in charge of fight against terror as individuals who have to act on behalf, and in favour, of the public. The prosecutor even assumes that a person can acquire the status of a person who is in charge of fight against terror if he/she is on a trial or convicted on a similar charge and testifies in order to benefit from effective remorse. The prosecutor's reasoning is absurd. Neither domestic law nor international law imposes such a responsibility on prosecutors. In a functioning legal order, the prosecutor is obliged to investigate whether even the acts carried out by the state with the aim of fighting terrorism violate basic rights and freedoms of the citizens. The prosecutor’s responsibility is not to fight terrorism but to protect

fundamental rights and freedoms along with the public interest. The prosecutor displays his scant understanding of the relevant legal mechanism when he assumes a person to be in charge of fighting terror if he/she is benefiting from the effective remorse.

It is unquestionably clear that the second and third charges brought by the prosecutor against Coşkun are entirely unfounded. It is clear that the investigation against the lawyers has not been compromised. Because the lawyers are still under arrest since the publication of the news report. This way of interpreting the news about an ongoing investigation that is of public interest is nothing but a violation of the freedom of press and people's right to receive information. The claim that Berk Ercan and his family were exposed and marked as targets is particularly ridiculous. How was Ercan's family marked as a target while the report did not even mention anything about the family? In what sentence did the offence of marking them as targets take place specifically? The prosecutor did not even attempt to elucidate these allegations properly, probably because he assumes that his only obligation is "to fight terrorism."

The fourth criminal charge is merely a combination of the first three charges into one single amalgam. Unfortunately, it lacks reason and consideration too. Hundreds of stories about Can Tuncay, the prosecutor who is leading the investigation against the lawyers, have already been published, including in the mainstream media, before Canan Coşkun's report was published. Tuncay was the prosecutor of the Ahmet-Mehmet Altan investigation, Büyükada investigation and many mass investigations unfolded in the aftermath of the military coup attempt. Naturally Coşkun was not the first reporter who explicitly mentioned the name of the prosecutor. Moreover, the mainstream media had published and broadcasted many news stories that exalted Tuncay, or opposition media that criticised his practices whereas Coşkun's report treated him neutrally.

As a result, since even a simple research could reveal that none of the prosecutor's accusations against Coşkun were properly substantiated, what the prosecutor had to do was not issue this indictment in accordance with the Article 170 of the CCP. However, the fact that this indictment was issued despite its logical inconsistencies is the manifestation of the prosecutor's assumption that issuing this indictment was part of his duty to fight terrorism as a prosecutor.

3.2. Evaluation of the Indictment under the International Law:

An indictment that failed to fulfil the requirements of the CCP Article 170 cannot possibly comply with the right to a fair trial under Article 6 of the ECHR. Moreover, existence of such an indictment that lacks sufficient evidence to support a reasonable doubt leads to a violation of the presumption of innocence by itself.

The prosecutor's scepticism towards the freedom of expression itself is indicated in his purposeful effort to put a journalist on trial because of a news story that was clearly in the public interest and with an identifiable source, and in his biased willingness to find justifications for such a trial.

As underlined throughout this evaluation report, one of the main problems in this indictment is the prosecutor's incongruous approach towards the alleged mission of "being in charge of fight against terror." To better understand whether the prosecutors have such a duty, it is

essential to refer to the United Nations Guidelines on the Role of the Prosecutors. This guideline clearly defines the role of prosecutors in criminal procedures.

According to Section 11 of the UN Guidelines:

Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

Section 12 contains the following statement:

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.

It is clear that neither those principles nor the guideline in general impose such a duty of fighting terrorism on the prosecutors. On the contrary, Section 12 reminds prosecutors of their obligation to safeguard the human rights and Section 13/b underlines the obligation of prosecutors to protect the public interest, act objectively and pay attention to any relevant situation, regardless of whether it is to the benefit or detriment of the accused.

The most important section of the guideline in terms of the indictment in question is the Section 14. Accordingly, prosecutors shall not initiate or continue prosecution when an impartial investigation shows the charge to be unfounded. In fact, the principle underlines that they must make every effort to stay proceedings. Unfortunately, the legal findings above reinforce the impression that the prosecutor of the indictment made a deliberate effort in the opposite direction.

The problem is not just the prosecutor's self-determined duty to fight terrorism. It is his sense of entitlement to ignore the fundamental rights and freedoms during the performance of his duty, which is as problematic as his attempt to assume such a duty that does not exist in any legal order and contradicts the essence of the prosecution as a profession.

The prosecutor's assumptive view of his own powers to eliminate the freedom of press and accordingly, the freedom of expression is indicated in his determination to fabricate a crime out of a court reporter's report which was prepared in accordance with the universally accepted principles of journalism on a matter of public interest and did not contain almost a single subjective remark.

Accusing a journalist of a crime the element of which is "marking a person as a target" without the need to show a single evidence is a violation of the freedom of expression under both domestic law and the Article 10 of ECHR. But this also reveals that the relevant regulations are undervalued, unimplemented and willingly ignored.

4.) Conclusions and Recommendations

This indictment should not have been issued in any way. Many other reports of this project wrote similar sentences before. But the indictment in question makes it an imperative to repeat the sentence once again. No legal reasoning could be employed to provide an explanation why this indictment came to be issued, especially considering the offence of marking somebody as a target did not take place, no evidence was offered and thus no tangible and comprehensible charges could even be laid.

It has once again become essential to refer to the Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System. Article 7 of the relevant Recommendation lays out a basic framework for what needs to be done. That article says that training is both a duty and a right for the public prosecutors before their appointment as well as on a permanent basis and then goes on to list the topics of such a training.^{viii}

The prosecutors who fail to distinguish between their duty as prosecutors and the duties of the counterterrorism personnel should closely study the following articles of the Recommendation:

24. In the performance of their duties, public prosecutors should in particular;
 - a. carry out their functions fairly, impartially and objectively;
 - b. respect and seek to protect human rights, as laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms;
 - c. seek to ensure that the criminal justice system operates as expeditiously as possible.
25. Public prosecutors should abstain from discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, health, handicaps or other status.
26. Public prosecutors should ensure equality before the law, and make themselves aware of all relevant circumstances including those affecting the suspect, irrespective of whether they are to the latter's advantage or disadvantage.
27. Public prosecutors should not initiate or continue prosecution when an impartial investigation shows the charge to be unfounded.

The fact that such an indictment could be issued can be considered to be the clear evidence of the fact that none of the above-mentioned principles have been applied.

As referred previously, the Venice Commission Report on the Independence of the Judicial System (494/2008), Part II titled as The Prosecution Service is of utmost importance.^{ix} Subtitled "Qualities of Prosecutors", the 15th paragraph of the report states that the prosecutors must act fairly and impartially, and goes on to emphasize that it is not the prosecutor's function to secure a conviction at all costs but that she must put all the credible evidence available before a court.

The indictment in question establishes that it is essential to foster an environment of judicial independence in Turkey where prosecutors would recollect the distinction between the duty of prosecutors and the duty of counterterrorism personnel.

About the author

Şerife Ceren Uysal is a human rights lawyer from Istanbul. An executive board member of the Progressive Lawyers Association since 2015, Ceren Uysal was awarded the Dr.Georg Lebiszczak Prize for Freedom of Speech in Austria in 2016 December. She is researching at the Gender Studies Master Program of the University of Vienna, focusing on gender issues within the context of human rights law, and is currently the co-secretary general of The European Lawyers for Democracy and World Human Rights (ELDH). In 2021, Ceren is working as Indictment Reports Supervisor for PEN Norway

ⁱ For more information on this topic, please see: Uysal, Şerife Ceren, "State of Emergency, Every Numbers that goes into the Records is a Human Life", Liga Befund 2017, Austria

<http://www.liga.or.at/site/assets/files/1889/2017.pdf>, Council of Bars and Law Societies of Europe's statement dated 05.04.2018:

https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Statements/2018/EN_HR_20180405_PR_0618.pdf, Lawyers on Trial Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey report

published by Human Rights Watch on 10.04.2019: <https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey>

ⁱⁱ Gülmen was an academic and Özakça a teacher. Together with other public workers who had been dismissed like them, Gülmen and Özakça had initiated a protest in Yüksel Street in Ankara, demanding that the unlawful dismissals be cancelled and they be reinstated. Their all attempts to make press statements were intervened by the police, they were subjected to repeated detentions and the mistreatment and torture they have experienced made it to the news dozens of times. When it became impossible even to exercise their democratic right to make a press statement, Gülmen and Özakça began a hunger strike.

ⁱⁱⁱ For detailed information on the subject: <https://pen-international.org/news/turkey-academics-on-hunger-strike-detained>, <https://bianet.org/english/human-rights/192937-gulmen-ozakca-on-300th-day-of-hunger-strike>

^{iv} To access the full story on the indictment: <https://www.cumhuriyet.com.tr/haber/nuriye-ve-semihin-14-avukati-tutuklandi-827875>

^v <https://www.amnesty.org.tr/icerik/canan-coskun-dava>

^{vi} For more information: <https://bianet.org/english/law/232698-journalist-on-trial-with-the-lights-on>

^{vii} Uysal, Şerife Ceren, Hikmet Tunç Kumli indictment evaluation report, PEN Norway Indictment Project 2021, pp. 5-6, <https://norskpen.no/eng/wp-content/uploads/2021/10/PEN-Norway-Turkey-Indictment-Project-Hikmet-Kumli-Tunc-14-October-2021-ENG.pdf>

^{viii} The training topics in the Recommendation are as follows:

- a. the principles and ethical duties of their office;
- b. the constitutional and legal protection of suspects, victims and witnesses;
- c. human rights and freedoms as laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms, especially the rights as established by Articles 5 and 6 of this Convention;
- d. principles and practices of organisation of work, management and human resources in a judicial context;
- e. mechanisms and materials which contribute to consistency in their activities.

^{ix} <https://www.hsk.gov.tr/Eklentiler/Dosyalar/e0a67151-fb8b-4c6c-a095-af118c918072.pdf>