

**P E N
N O R W A Y**

Legal Report on Indictment

Abdurrahman Gök

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PEN Norway Turkey Indictment Project

PEN Norway's Turkey Indictment Project has been running since January 2020.

During that time, with an international team of judges, lawyers and academics we studied 25 indictments in cases involving freedom of expression. These include the prominent Cumhuriyet newspaper trial, the Büyükada human rights defenders' trial and the five-year Gezi Park trial.

Each report takes a single indictment and compares it to Turkey's domestic law and to international law. The deepening crisis in the rule of law in Turkey since 2016 has meant that not one indictment has yet met domestic procedural standards or the tenets set out in Article 6 of the European Convention on Human Rights, concerning the right to a fair trial.

With this in mind, we continue to work with leading human rights lawyers globally to study indictments in the cases of journalists, civil society actors and lawyers and will continue to make recommendations for training of judges and prosecutors and for the continuing improvement of the indictment writing process in Turkey.

The importance of this work was demonstrated in 2022 when the defendants in the Gezi Park trial were all convicted and jailed for long sentences based upon facts in an alarmingly inadequate and flawed indictment. The project continues in 2023.

All reports can be accessed via our website: www.norskpen.no
And the two final reports of 2020 and 2021 are available at:

2020: <https://norskpen.no/wp-content/uploads/2021/06/PEN-Norway-Turkey-Indictment-Project-Report-2020.pdf>

2021: https://norskpen.no/wp-content/uploads/2022/03/PEN-Norway-Turkey-Indictment-Project-Report-2021_Eng.pdf

The project is conceived and led by PEN Norway's Turkey Adviser, Caroline Stockford and the indictment reports are supervised by PEN Norway's Legal Adviser on Turkey, human rights lawyer Şerife Ceren Uysal.

Legal Report on Indictment

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1. Introduction:

This study focuses on the 21-page indictment with the investigation no. 2020/40374 and indictment no. 2020/2303 issued by Ahmet Şahin, the Public Prosecutor of Diyarbakır on 24.09.2020 against the journalist named Abdurrahman Gök.

Between 2020 and 2021 a total of 22 indictments issued against journalists and civil society actors were analysed within the scope of PEN Norway's Turkey Indictment Project. All the legal reports critically point out that the relevant indictments did violate both domestic and international legal standards. Each analysis highlights a different problem. In some indictments, the cause-and-effect relationship that should be present in such a legal text was regarded to be absent, whereas in others, the political motivations are considered to have supplanted legal arguments. In some indictments, however, the analysis revealed that even the purely technical requirements of the Code of Criminal Procedure (TCCP) Article 170 were not fulfilled and these indictments are considered to be very unsuccessful as a result of their material errors.¹

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“ The indictment issued against journalist Abdurrahman Gök, differs in certain aspects from the aforementioned 22 indictments. Although a holistic legal analysis demonstrates that this indictment too failed to fulfil legal requirements, it nevertheless had a section where the evidence was evaluated, which separated it from the indictments that were analysed previously. ”

¹ PEN Norway's final reports for the years 2020 and 2021 compile the Legal Reports on Indictments and could be accessed through the following links: [PEN-Norvec.pdf \(norskpen.no\)](https://norskpen.no), [PEN-Norvec-Iddianame-Projesi-2021_Tr.pdf \(norskpen.no\)](https://norskpen.no)

indictments. Although a holistic legal analysis demonstrates that this indictment too failed to fulfil legal requirements, it nevertheless had a section where the evidence was evaluated, which separated it from the indictments that were analysed previously. Even the fact that an indictment could receive a positive comment because it contained an evaluation of evidence should be considered as just another indicator of the extremely low quality of the indictments in Turkey.

2. Summary of Case Background Information:

Journalist Abdurrahman Gök began his studies at the Department of Journalism at the Communication Faculty of Ege University in 2002 and started to practice journalism in 2004 while he was still a student. Gök started to perform various duties such as reporter, editor and regional news director at Dicle News Agency (DİHA) in 2004, and also worked as a war correspondent in countries such as Iraq, Iran and Syria. Today, Gök is still working as an editor at the Mesopotamia News Agency. In addition to his journalism, he is also known for his documentary titled *Border and Death [Sınır ve Ölüm]*.

The judicial process that resulted in Gök's conviction to imprisonment actually started with the "Newroz" Spring celebrations in Diyarbakır in 2017. On March 21, 2017, Kemal Kurkut, a 23-year-old participant in the Newroz celebrations in Diyarbakır, was shot and killed by security forces in front of everyone. As Gök was at the site to observe the Newroz celebrations, he documented the moment of Kurkut's murder with 28 photos he took during the incident. The photographs Gök took were engraved in the popular memory and won him the special jury award in Metin Göktepe Journalism Awards. Since 2017, those photos seem to have caused a spate of criminal investigations launched against him. However, the photographs fulfilled another function. Right after Kurkut was shot dead, the Governorate of Diyarbakır had claimed that Kurkut was a suspected suicide bomber. However, the photographs taken by Gök refuted those claims as the photographs showed Kurkut running away, with his upper body naked. In other words, his photographs have essentially become the evidence of an extrajudicial execution.

In answer to the Prosecutor's summons, on March 29, 2017, Gök went to the Diyarbakır Public Prosecutor's Office, and within the scope of the investigation on Kurkut's death, he gave his testimony as a witness and submitted to the file the 28 photographs documenting the last 50 seconds of Kurkut's life.

The activist's death and the legal proceedings that ensued deserve more extensive analysis and examination. For the purposes of this report, however, it is sufficient to note for now that the police officer who was on trial for Kurkut's murder was acquitted, but Gök's journalistic activities as a whole have since been subject to many trials. A few weeks after the incident, the Chief Public Prosecutor's Office of Ankara initiated a criminal investigation on the grounds that there was a criminal complaint filed against Gök. As part of this investigation, on April 20, 2017, Gök's house was searched, and his statement was taken. However, a decision not to prosecute was ultimately made.

A few months later, a Twitter post by Gök about the United Nations' report on the basements of Cizre. The report was focusing on the alleged burning alive by the Turkish security forces of Kurdish civilians who had been taken refuge in a basement during the curfew that was going on in Cizre. And posting about this report became the subject of an investigation and another decision not to prosecute was made once again.

The investigations did not stop there. After a while, Gök was called to have his statement taken again. This time, it seemed that the investigation was prompted by phone taps conducted on his phone between 2012 and 2014. After a series of questions about the news he shared with other journalists, his phone calls and the reports he wrote, a decision not to prosecute was the outcome of this file too.

On October 9, 2018, Gök's house was raided once again and he was detained. Also detained along with Gök were the journalists Semiha Alankuş, Lezgin Akdeniz, Mehmet Akdoğan, Cihan Solmaz and Esra Solin Dal, who used to work in different news agencies. Following his statement to the prosecutor's office, Gök was released after three days. As a sequel of this detention on 09 October 2018, the indictment that this report will analyse was issued on 24.09.2020. In the indictment, Gök was accused of making propaganda for and being a member of a terrorist organization.

Following the approval of the indictment by the 5th High Criminal Court of Diyarbakır, the first hearing was held on February 23, 2021. In the hearing, the travel ban on Gök was lifted but the court ruled that the anonymous witness would be heard between the two hearings, not at an actual hearing, as has been customary in Turkey. The court must have concluded that the full contents of the case file was satisfactory enough, on June 3rd, it sent the case file to the prosecutor so that he could prepare his opinion on the merits.

In the hearing held on September 30, the judicial panel changed. The Public Prosecutor claimed that the photos shared by Gök on January 18, 2017 and November 1, 2018 on his social media account corresponded to a propaganda for an (terrorist) organization, and he requested the court to file a criminal complaint with the Chief Public Prosecutor's Office of Diyarbakır about these social media posts. Eventually, the Court filed a criminal complaint and a lawsuit was filed over these two photographs. At the hearing on January 20, 2022, this new case was consolidated with the ongoing case. At the hearing dated March 31, 2022, the prosecutor's opinion was pronounced. The prosecutor requested that Gök be acquitted on charges of membership in a terrorist organization, but demanded that he be punished on charges of making successive propaganda for a terrorist organization.

During the final hearing on June 30, the Court ruled that journalist Gök was not proven guilty of membership in an armed terrorist organization and therefore acquitted him of the charge, but also ruled that he be sentenced to 1 year, 6 months, and 22 days of imprisonment on charges of making successive propaganda for a terrorist organization. That the Court stated, in its reasoned judgement, that Gök's defence was "disregarded because its aim was to evade the accusations" will be a phrase to be remembered for years in Turkish legal history.

Gök's case was upheld by the Court of Appeal on 12 January 2023. His lawyers announced that they will appeal to the Court of Cassation.

“ That the Court stated, in its reasoned judgement, that Gök's defence was “disregarded because its aim was to evade the accusations” will be a phrase to be remembered for years in Turkish legal history. Gök's case was upheld by the Court of Appeal on 12 January 2023. His lawyers announced that they will appeal to the Court of Cassation. ”

3. Analysis of the Indictment:

3.1. Summary of the Indictment:

It is necessary to provide an overview of the structure and content of the indictment in order to make this report understandable for the reader. The indictment contains various subheadings, albeit without systematic organization. At least the subtitles make it easier to follow the content.

The first 11 pages provide general information about the organization called Kurdistan Communities Union (KCK) but do not make any references to Gök himself. The titles in this section are as follows:

- KCK/TD (Kurdistan Democratic Union² / Turkey Desk),
- KCK Convention,

² Even KCK means the Kurdistan Communities Union, in the indictment it is written as above.

- Structural Changes in KCK Structure,
- KCK Organizational Systematic and its Higher Leadership,
- General Presidency Council of KCK,
- Provincial Organizations in KCK Methodology,
- KCK / Turkey (Democratic Society Confederation),
- KCK/TD (Kurdistan Communities Union / Turkey Desk),
- Central Press Committee on the Ideological Sphere
- Meya-Der (Mesopotamia Association of the Relatives of the Disappeared),
- Solidarity Association for the Families of Prisoners and Convicts,

It is usual for the indictments to contain information about the structure of the organization if membership to a terrorist organization is among the offences charged to a person. However, this information must be linked with the person who is charged with relevant offences. Obviously, the suspect cannot be linked with the terrorist organization through the mere fact that a terrorist organization has a media unit, and the suspect is a journalist. It is unclear at any point in the indictment against Gök why references to Meya-Der, the Solidarity Association for the Families of Prisoners and Convicts, and other similar institutions that were claimed to be sub-units of the terrorist organization were included in the indictment. As such, the first 11 pages of the indictment are reminiscent to the indictments of Nedim Türfent, Ahmet Altan, Can Dündar and others, which were evaluated within the scope of this project.

This section is followed by another one entitled “START OF THE INVESTIGATION” in capital letters. Following a single-paragraph explanation, this section provides an evaluation of the evidence. The following subheadings are included in the evidence evaluation section:

- wiretaps,
- statements about him,
- demonstrations in which he was involved,
- open intelligence research on him,
- criminal complaints issued against him

Although it is not possible to agree with the way the prosecutor assessed the evidence, it is precisely this positive aspect that distinguishes the indictment from the indictments examined within the scope of PEN Norway’s project. Among the indictments analysed within the scope of the project, this one stands out as it clearly recorded and evaluated the evidence, though it still lacked a satisfactory methodology, essential information about the acquisition of the evidence, and an evaluation of its legality. However, political motivations and a desire for punishment continued to influence the assessment.

Following this section, the prosecutor of the indictment again avoided using subheadings and tried to establish a link between the alleged offence and the evidence in an attempt to seek Gök’s punishment. Here, even though the section contained logical inconsistencies as it tried to establish a strained link between the accusation and the evidence using cliched phrases, the prosecutor tried to do what should legally be done in an indictment.

In this context, as will be elaborated upon later, it might be argued that we are presented with a legal document that was drafted with political motivations in mind, but also attempted to technically fulfil the expectations of an indictment.

3.2. The analysis of the indictment (and the investigation) within the scope of TCCP Article 160:

TCCP Article 160 prescribes the duties of the public prosecutor. According to the law, as soon as the public prosecutor is informed of a fact that creates an impression that a crime has been committed, either through a report of crime or any other way, she or he shall immediately investigate the factual truth, in order to make a decision on whether to file public charges or not. This article of the law, which merely repeats a well-known fact, is particularly significant. Here is how the indictment against Gök justified the investigation under the subheading “starting an investigation”:

“ TCCP Article 160 refers to the process before the drafting of an indictment, and says; “you cannot investigate without an initial suspicion”, which means “you cannot start collecting inculpatory or exculpatory evidence without initial suspicion”. This means that a prosecutor must have an initial suspicion before attempting any legal action against a person, let alone writing an indictment. ”

Upon receiving the information that the activities carried out by the KCK/TD (Kurdistan Communities Union / Turkey Desk), which was established to coordinate the units that operate within the country on behalf of the terrorist organization named PKK/KCK and to organize all kinds of terrorist actions in line with the orders of the organization, is coordinated from inside our province, that the province of Diyarbakır has become the alleged centre of KCK/TD activities and that certain individuals have been operating within the aforementioned unit, those individuals were caught and detained after an operation that was carried out within the scope of the investigation number 2018/5079 by the Chief Public Prosecutor’s Office of Diyarbakır (The Investigation Bureau of Terrorist Crimes). It has been assessed that the suspect has been operating within the PRESS AND PUBLICATIONS COMMITTEE UNDER THE COORDINATION OF KCK/TD INSTITUTIONS, and the evidence obtained about him is as follows; (...)

The indictment starts to list and evaluate the evidence after this paragraph, but it is this paragraph that rendered the indictment legally insufficient. Because the reasons that caused the prosecutor to start this investigation and collect any inculpatory or exculpatory evidence about Gök under TCCP Article 160, remain unclear throughout the indictment. The prosecutor had two simple questions to answer:

- - What is the connection between journalist Gök and the investigation numbered 2018/5079 referred to here?
- - What is the source of the “suspicion” that led to the assessment that “the suspect has been operating within the PRESS AND PUBLICATIONS COMMITTEE UNDER THE COORDINATION OF KCK/TD INSTITUTIONS”?

The fact that the indictment did not answer these two questions means that the relevant investigation and the indictment that comes out as a result invert the entire logic of criminal investigation. This is because TCCP Article 160 refers to the process before the drafting of an indictment, and says; “you cannot investigate without an initial suspicion”, which means “you cannot start collecting inculpatory or exculpatory evidence without initial suspicion”. This means that a prosecutor must have an initial suspicion before attempting any legal action against a person, let alone writing an indictment. As

the subject of the criminal procedure, the suspect has the most fundamental right to be informed about the source of this suspicion. The fact that the prosecutor failed to explain why an investigation was launched against Gök in the indictment, strengthens the plausibility of the allegations frequently voiced by both Gök and his lawyers and press organizations in Turkey that “this investigation was a revenge against Gök who took photographs of Kurkut and published them to expose an act that the government wanted to cover up”. In this sense, the contents of the indictment raise less questions about why the indictment was drafted than why an investigation was launched against Gök in the first place.

3.3. The analysis of the indictment within the scope of TCCP Article 170:

A table that summarizes the function of the TCCP articles in a criminal investigation can illustrate the relationship between the indictment and the TCCP.

Article	Subject	Explanation	Current Indictment
TCCP Article 160	Initial suspicion	No investigation can be launched without an initial suspicion, otherwise the process will be crippled from the beginning.	As explained in detail above, the “initial suspicion” that would lend legal credibility to this investigation against Gök cannot be found in the indictment.
TCCP Article 170/1	The indictment must be prepared by the Public Prosecutor.	Otherwise, the indictment will be null and void. Despite observations indicating that police records often become indictments, as long as the indictment bears the signature of a prosecutor, it will be deemed to have been written by him.	The indictment has the prosecutor’s registry number and signature, and this criterion has been met.
TCCP Article 170/2	An indictment cannot be written without a reasonable doubt.	If the indictment lacks reasonable doubt, even if all other elements are present, it may be questionable whether the document meets the technical requirements for an indictment.	This point will be dealt with below.
TCCP Article 170/3	Mandatory information to be included in the indictment (identity, date, place, etc.)	Considered as the formal elements of an indictment, these information may vary in importance depending on the specifics of the case. For example, the date of the alleged offense may be important enough to determine whether a lawsuit can be filed. Therefore, this is an essential criteria that must be met.	The requirements of this article have been fulfilled.

TCCP Article 170/4	The events that comprise the charged crime must be explained in the indictment in accordance to their relationship to the present evidence and information that is not related either with the charged crime or the evidence must be excluded.	This requirement, which pertains to the right not to be labelled as a criminal and the right to defence, is crucial for an effective indictment.	Events and evidence – The requirements under Article 170/2 have been fulfilled, and in this sense, the evidence has been clearly listed and the title of evaluation has been opened, although the issue of reasonable doubt needs to be discussed further. It is noted that no information was presented to determine the legality of certain evidence. In comparison to many others, the indictment in question is a successful but still incomplete one.
TCCP Article 170/5	The conclusion section of the indictment must include not only the issues that are unfavorable to the suspect, but also issues in his favor.	The prosecutor's duty is to bring a public lawsuit and this Article ensures that he/she does not fulfil his/her duty with a "purely punitive reason" and is an important tool to measure the objectivity of the prosecutor. In this respect, this regulation is an important criterion to measure the efficiency of the indictment, as it will also reveal whether objectivity is replaced by groundless punishment.	The only aspect of the indictment that favours the suspect is the lack of criminal evidence discovered during the search of his house. The inclusion of this fact is a welcome remark that sets this indictment apart from many others previously analysed. However, the fact that the suspect was a journalist was ignored at every stage of the indictment.
TCCP Article 170/6	At its conclusion section, the indictment must clearly state which punishment and measure of security as foreseen by the related Law is being requested to be inflicted.	It is one of the criteria of an effective indictment as regulated in the law, but its absence does not completely cripple an indictment.	The requirement of this article has been fulfilled.

The table above can be thought of as a report card. And apart from the disputed case of initial suspicion, the main problem revolves around the issue of whether the indictment was based on reasonable doubt. If there is sufficient suspicion, the indictment could relatively be considered as a very effective legal text that complies with the legal requirements (that is, omitting the evaluation regarding the initial suspicion). Otherwise, all of the other achievements of the indictment would become ineffectual and the justification for drafting an indictment would be lost.

As such, the indictment has to be evaluated with that in mind.

As summarized above, the indictment explained the evidence about Gök, recorded the content of the evidence if not the sources, and the evidence was evaluated by the prosecutor. In the conclusion, the prosecutor deemed these pieces of evidence as providing reasonable doubt that the offense of membership in a terrorist organization and/or propaganda for a terrorist organization was committed.

First of all, under the title of telephone wiretaps, the indictment assessed the records of the communication in question. The first phone record consisted of a series of text messages with an unknown person. In the message, the unidentified person asked Gök to share with him one of the refugee photographs he took, and Gök accepted. After providing some information about the PKK/KCK press and broadcasting structure, the Prosecutor made the following assessment about the conversation:

It has been concluded that the suspect took part in the organization called the Press and Broadcasting Committee within the PKK/KCK terrorist organization.

The reader, however, is unable to follow the path that led to this conclusion. An unidentified person (this person may be an NGO employee, another journalist – we have no information on this matter, neither does the prosecutor, as can be seen from the indictment) asks for a photograph from a journalist, who has also made a documentary on the border areas. We do not know where that photograph would be used. A “reasonable doubt”, namely, a suspicion backed by evidence is essential to reach the same conclusion as the prosecutor, that the person sending the message was a member of a terrorist organization and that the photographs would be used to make propaganda for a terrorist organization. Moreover, we need to understand what kind of propaganda content the photographs of refugees would be used for. However, the indictment’s assessment against Gök was made without any need to discuss all these matters. For the reader, a natural extension of Gök’s identity as a journalist, that is, a messaging content that was normally in his favour was turned into evidence against him.

In the second phone call, the caller wanted to get information from Gök about a news report recently published by news agencies and asked what the abbreviated name of an institution (legal or illegal, that anyone who worked as a journalist in the region could know) stood for. Gök told them the agency and the full name of the institution. That was the entire conversation. The prosecutor came to the following conclusion, which should worry us all:

It is concluded from the content of the conversation that the suspect was in contact and linked with foreign organizations acting in line with the goals of the terrorist organization.

The reader still asks, nervously, “How was this conclusion reached?” and her question is left unanswered. Because knowing what the abbreviation of an organization stood for was considered as the evidence of being in contact and linked with that organization.

That was followed by another long conversation of Gök’s. It is evident in this conversation that Gök, as a journalist was talking, very enthusiastically, about a news report they had prepared, that he submitted the news report, and it was important to him to disseminate it. In this conversation, he openly used the phrase “we have prepared the news report”. He was excited about the news, because he thought that in the report some of the images, they accessed using Google Earth, refuted the statements made by the Turkish Armed Forces. For a journalist, each moment when she or he

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reveals the truth must be exciting. The prosecutor, on the other hand, concluded that this conversation was an evidence of Gök's participation in the Press Committee once again. However, the most effective conclusion to reach should be the possibility that Gök's news may annoy some institutions within the state mechanism...

In the next conversation, Gök asked the person he called if he/she was on duty, and when he found out that he/she was not, they engaged in small talk. And the subject of the last meeting was again clearly about a digital news report. With these conversations, the prosecutor again arrived at the same conclusion but without explaining why and how.

That's what all "phone wiretaps in this case" are about. In short, they are all conversations that neatly fall within the scope of the professional activities of a journalist, coherent with the natural flow of life and they are journalism oriented.

Then the indictment moved on to the second category of evidence. Under the heading "Statements About Him", presented are the statements of an anonymous witness named "Sabır". Sabır said the following:

"PHOTO NO. 89: I know this person as Abdurrahman GÖK. I learned his actual identity information as Abdurrahman GÖK (TC:) in here from you. He is one of the members of the organization responsible for the Press and Broadcasting field of the KCK, which was established in line with the views of Abdullah ÖCALAN, the leader of the PKK/KCK terrorist organization, and which was organized almost as a parallel state structure of the PKK/KCK terrorist organization, which is the umbrella structure of the Terrorist Organization. He ensures that news reports containing propaganda for the PKK/KCK terrorist organization are published and broadcast on TV channels, newspapers, journals, radio channels and websites that work on the basis of making propaganda of the PKK/KCK terrorist organization and sees that the content they publish or broadcast helps create feelings of hatred and resentment in the people against the state in line with the interests of the PKK/KCK terrorist organization."

The average reader fails once again to understand how Sabır's words could raise reasonable doubt. Because Sabır's narrative did not contain a single concrete fact. As such, it did not present any facts that Gök could refute. If we try imagine such a statement as an equation, we can think of it this way:

Statement of the secret witness named Sabır versus the Statement by Gök

When the equation is so simple and there are no facts to support the statement of one of the parties (Sabır) or to give grounds for reasonable doubt, then, in accordance with the right not to be labelled as a criminal, emphasis must be shifted on the statement of the other party (Gök's), without him having to prove anything. But this was not what the prosecutor did. On the contrary, in the conclusion section of the indictment, we get to learn that the doubt the prosecutor found reasonable enough as a basis upon which to write the indictment were the statements of the person named Sabır, the origin of whose importance and credibility we will never know or get to learn. The prosecutor says the following:

Considering the entire scope of the file, especially the statements given by the anonymous witness SABİR on 19/01/2018 and the conversations in the phone wiretaps, the press release by the suspect broadcasted on the TV channel under the guidance of the terrorist organization, the social media posts by the suspect obtained from open sources and his international travel records...

The telephone wiretaps and the statements of the witness named Sabır have already been evaluated above and have been found to be insufficient to serve as the basis of a reasonable doubt. But when we consider the rest of the evidence, it is clear that they are even weaker than the first two. For example, the indictment itself acknowledged that what the prosecutor called a press statement was in fact was not. It was a speech delivered by Gök at a forum organized as part of the Kurdish Journalists' Day. We get this information from the indictment without further research. There, Gök made an impressive speech entirely about the problems faced by journalists and he explained his take on the profession. In other words, there was no press release and we can clearly understand from the evidence assessment

section of the indictment that the prosecutor also knew that it was not a press release. Of course, it is not an offence to make a press statement, but the conclusion part of the indictment misrepresented a speech given in a legal forum where the person was an invited speaker, which adds to our doubts about the actual intention of the prosecutor in drafting the indictment.

All the evidence, which was allegedly obtained from open sources, consist of Gök's social media posts... And even more interestingly, all these social media posts contain only news-related content. International travel records mentioned at the end show that Gök entered and exited in and out of Iraq "legally" seven times in 2015 and 2016.

If we return to the table above we will see that the prosecutor's task is to evaluate the issues in the suspect's favour. For some reason, however, the prosecutor of this indictment ignored the fact that Gök was working as a war correspondent in Iraq at that time.

Another issue that the prosecutor omitted in the conclusion was the search conducted in Gök's residence. In this search, newspapers with 85 different issue dates and digital material were "seized". As stated in the indictment; "The analysis of digital materials revealed no crime or criminal elements". In the conclusion section of the indictment, however, the prosecutor did not feel the need to point that out.

Ultimately, all the evidence under consideration supports Gök's defense, which is summarized in a single line in the indictment:

In his defence, the suspect declared that he was not involved in an illegal act and that he was working within the scope of his journalistic activities.

At this stage, we have no choice but to go back to the table above and write that the indictment in question failed to fulfil the requirements of TCCP Article 170/2. Again in the same column, the consequences of failing to fulfil the requirements of the relevant regulation are clearly stated: "If the indictment lacks reasonable doubt, even if all other elements are present, it may be questionable whether the document meets the technical requirements for an indictment."

To summarize, the indictment was written as a result of the investigation that was carried out without initial suspicion and apparently have lasted for at least 2 years and it clearly violates TCCP Article 170/2 as it demands, without reasonable doubt, that Gök be punished for being a member of a terrorist organization and making propaganda for it.

3.4. Analysis of the indictment in the context of international law and regulations on the role of prosecutors:

As stated in the case-law of the ECtHR, indictments play a crucial role in the criminal process; because it is from the moment of its service that the defendant is formally put on written notice of

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the factual and legal basis of the charges against him.³ As we have previously noted in other legal analysis reports, an indictment that does not comply with the requirements of TCCP Article 170 is more likely to violate the right to a fair trial prescribed by Article 6 of ECHR. It is certainly possible, during the trial stage, to prevent these potential violations from occurring. However, one should note that an incompetent indictment infringes upon many fundamental rights and freedoms, especially the presumption of innocence and the right to defence. Especially considering the year of the detention was in 2018, the year the indictment was issued was 2020 and the year verdict was handed down was 2022 (additionally, a prison sentence is under appeal as of now), it becomes clear that we are talking about a person who has been under the threat of punishment for at least 4 years and the extent of the problem can be more fully understood.

The legal analysis conducted in accordance with domestic law revealed that the main issue with this indictment was the prosecutor's determination to issue it despite the lack of sufficient evidence to establish reasonable doubt. In the indictment, the prosecutor referred to freedom of expression with a single sentence and stated, without any justification, that Gök's actions should not be considered as falling under the protection of freedom of expression. However, he did not even feel the need to talk about freedom of the press, for example. It is understood that the prosecutor "does not recognize" Gök as a journalist.

Frankly, the way the indictment was structured once again points to a political motivation that dismissed the requirement of doubt and was bent on punishing the defendant. A review of the subjects dealt within Gök's news reports mentioned in the indictment reveals that Gök did not prefer to engage in an uninvolved type of journalism. The news reports he wrote about Kurkut and the photographs he took led to a criminal action against a police offence that would otherwise go down as an operation to neutralize a suicide bomber, even though the final verdict in the case in question was not satisfactory. In many of his stories, Gök has covered the problems faced by refugees. The phone conversation quoted in the indictment showed that Gök had been preparing a news report that refuted the official statements of the Turkish Armed Forces. This whole spectacle raises the question of whether it is actually this type of unyielding journalism itself that the prosecutor wanted to see punished. Also quoted in the indictment, the following statements by Gök during his speech at the forum were certainly thought-provoking:

You the press workers, the broadcasting labourers who are trying to inform us at the cost of their lives on the battlefields, I too congratulate your Kurdish journalists day. Honestly, my topic is a difficult one. Because as Kurdish journalists and journalists in Kurdistan, you all face with pressures. That's why it's hard for me to talk about the topic in front of all of you. (...) For years, the politics has been getting harsher and harsher, and the level of oppression is escalating day by day. Journalists are the ones who suffer the most from these pressures. I mean, this has always been the case since the emergence of publications. If a journalist has taken on the burden of publishing the truth, the prices she'd pay got higher and heavier.

The main issue here is the prosecutor's motivation to punish the suspect, which did not stem from doubt, and his disregard for fundamental rights and freedoms. It should also be noted that if this conclusion, which is but a strong doubt for now, is accurate, then it is highly likely that the indictment and the proceedings that followed it may have violated Article 18 of the ECHR.

In this context, kept in mind should be the UN Guidelines on the Role of the Prosecutors Principle 12, which we have been frequently citing within the scope of the project. According to that principle;

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 can comfortably be claimed that the Prosecutor completely ignored Principle 12, given that the indictment has an attitude that seeks to restrict the freedom of expression. Principle 13/b of the same

3 ECHR, Kamasinski vs. Austria, 1989, § 79

Guidelines should absolutely be kept in mind. According to this principle, the prosecutors shall protect the public interest, act with objectivity, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect. The prosecutor's choice to ignore the evidence in favour of the suspects means that he chose to act in opposition to the principle referred to above. It must also be noted that the prosecutor who drafted the indictment in question acted against the Article 14 of the Guidelines as well. 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 Human Rights Manual for Prosecutors prepared by the International Association of Prosecutors includes the following statements:

Public prosecutors apply the law and see that it is applied. By doing so, the public prosecutor operates not on his or her own behalf nor on behalf of any political authority, but on behalf of society, and must therefore observe two essential requirements: on the one hand, the rights of the individual and, on the other, the necessary effectiveness of the criminal justice system, for which the public prosecutor is partly accountable.⁴

Unfortunately, with his attitude that disregarded freedom of the press and freedom of expression, the prosecutor not only failed to fulfil these two basic requirements, but also reinforced the impression that he was acting on behalf of the political authority with a direct motivation to see the defendant punished.

4. Conclusions and Recommendations

This conclusion section will not reiterate the critical comments that were previously offered in the earlier sections. However, it will suffice to state that there is a pattern here. Over the past few months, numerous rights defenders, journalists, and opposition politicians such as, among others, Şebnem Korur Fincancı and Ekrem İmamoğlu have faced indictments or court sentences as a result of their statements, interviews, and social media posts. The newly enacted disinformation law is bent on forcing every dissident individual in Turkey to practice self-censorship. Can steps be taken to prevent the drafting of such indictments, which, by the mere fact that they are written, so clearly infringe upon the freedoms of expression and press and undermine the right to a fair trial? Indeed, this is one of the basic questions to be asked about the judicial system of Turkey. In fact, this question has been answered many times.

As we have underlined before, having prosecutors work with a fixed template will not solve all the content-related problems in the indictments, but it will at least serve as a benchmark for the prosecutors to examine the content they produce and the conclusions they reach.

It has once again become essential to mention Article 7 of the Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System. As underlined by the Recommendation, pre-vocational and in-service training of prosecutors is both a right and a duty for prosecutors.⁵ Again, Article 27 of the Recommendation stipulates that the prosecutors should

4 See: <https://www.iap-association.org/Resources-Dokumentation/IAP-Human-Rights-Manual>

5 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.

not continue prosecution when an impartial investigation shows the charge to be unfounded.

In this context, an important resource could be the aforementioned and highly comprehensive Human Rights Manual for Prosecutors by the International Association of Prosecutors.

As stated by the United Nations guide on The Status and Role of Prosecutors, the rule of law cannot be upheld, nor can human rights be protected, without effective prosecution services that act with independence, integrity and impartiality in the administration of justice.⁶

However, as we all know, these recommendations will not be enough to solve the structural problem of indictments. It is evident that a shift must occur in the authoritarian and anti-democratic political climate that encourages or emboldens prosecutors to draft such indictments or reassures them when they transform such accusations into indictments.

6 https://www.unodc.org/documents/justice-and-prison-reform/HB_role_and_status_prosecutors_14-05222_Ebook.pdf

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