

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

**Legal Report on Indictment:  
Ümit Büyükdağ**

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## PEN Norway Turkey Indictment Project

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

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

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

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

Previous reports and compilation volumes can be accessed at:

2020: [PEN-Norway\\_Turkey-Indictment-Project-Report-2020.pdf](http://PEN-Norway_Turkey-Indictment-Project-Report-2020.pdf)

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*This report was prepared in cooperation with Lawyers for Lawyers*



**Lawyers for Lawyers (L4L)** is an independent and non-political lawyers' organisation which aims to promote the independent functioning of lawyers and the legal profession across the world in accordance with internationally recognized norms and standards. We support lawyers who are at risk as a result of discharging their professional duties and seek to protect them from threats, risks and reprisals, strengthen their international recognition and protection in laws, policies and practices, and empower them to fulfil their role as essential agents of the administration of Justice. Lawyers for Lawyers was granted special consultative status with the UN Economic and Social Council in July 2013.

# Legal Report on Indictment: Ümit Büyükdağ

Authors: Maxwell Goddard & Ryan Bestford

## 1. Introduction

This report presents a legal analysis of the indictment filed against Lawyer Ümit Büyükdağ. The indictment arose following a criminal complaint by the Investigation Bureau for Terrorism Offences at the Chief Public Prosecutor's Office of Adana. This analysis is conducted as part of PEN Norway's Turkey Indictment Project, authored by two lawyers affiliated with the Greater Manchester Immigration Aid Unit and working in collaboration with PEN Norway and Lawyers for Lawyers.

We begin with a summary of the case brought against Ms Büyükdağ. The Prosecutor's allegations stem from statements made during her defence of her client, Funda Buyruk—a fellow lawyer and elected official in Turkey. Although we take the position that the allegations against Ms Buyruk are irrelevant to those made against Ms Büyükdağ, the indictment includes references to them and they are, therefore, addressed briefly in this analysis.

It is important to note that Ms Büyükdağ was acquitted on 28 March 2025. However, the acquittal decision has not become final; the case is currently before the Regional Court of Appeal. Nonetheless, this report and the analysis remain relevant in light of the chilling effect such prosecutions may have on the right to legal representation and the broader right to a defence. At the heart of this case lies the fundamental principle that lawyers must be free to advocate for their clients without fear of retaliation or prejudice by the prosecuting authorities. This report also touches on the right to a fair trial and freedom of expression, particularly in cases involving allegations of terrorism.

“ This report and the analysis remain relevant in light of the chilling effect such prosecutions may have on the right to legal representation and the broader right to a defence. At the heart of this case lies the fundamental principle that lawyers must be free to advocate for their clients without fear of retaliation or prejudice by the prosecuting authorities. ”

Our analysis underscores the essential distinction between a lawyer and their client to safeguard the right to effective legal representation. This principle applies equally to those representing individuals and those representing the state. While the criminalisation of speech—such as alleged insults directed at public officials—falls outside the scope of this report, we note that its relevance in democratic societies is a matter of ongoing debate.

With these considerations in mind, the report examines the procedures followed before and after the indictment, as well as the content of the indictment itself. We assess these processes under Turkey’s domestic legal framework and in light of international legal standards.

We conclude with a set of best practice recommendations drawn from our findings, aimed at strengthening protections for legal professionals and ensuring access to justice for all parties.

## 2. Case Summary

### 2.1 The Lawyer

Ümit Büyükdağ is a practising lawyer based in Adana since 1993 and a member of the Adana Bar Association. From 2010 to 2012, she served on the Internship Committee and the Women’s Rights Committee, and from 2012 to 2014, she was a member of the Bar Association’s Board of Directors. Since 2010, she has also been actively involved with the Lawyers’ Rights Center.

Ms Büyükdağ is affiliated with the Progressive Lawyers Association (Çağdaş Hukukçular Derneği, ÇHD). She served on the Association’s Executive Board from 2020 to 2024 and is currently a member of its International Relations Committee and the Adana branch board. She has also served as the association’s Secretary General and Deputy President. Political and associative engagement by lawyers is consistent with Article 12 of Turkey’s Attorneyship Law. Nonetheless, many members of ÇHD - including its honorary president, Selçuk Kozağaçlı - are currently imprisoned in Turkey.

These details illustrate Ms Büyükdağ’s prominent and longstanding involvement in Turkey’s legal community.

### 2.2 The Client

On 27 June 2022, Funda Buyruk—deputy mayor of Seyhan and member of the Peoples’ Democratic Party (HDP)—was arrested as part of a broader investigation by the authorities of Turkey. The indictment indicates that she was accused of membership in the PKK/KCK (Kurdistan Workers’ Party/Kurdistan Communities Union).

Upon learning of Ms Buyruk’s detention, Ms Büyükdağ and several colleagues attended her residence during a police search. They were informed of a 24-hour lawyer restriction order preventing contact between Ms Buyruk and her legal counsel. There was an unjustified delay in providing Ms Büyükdağ with a copy of the order, which, when eventually obtained, revealed that both the detention and the restriction orders had been issued two days before the arrest - an example of the procedural irregularities characterising this case.

### 2.3 The Alleged Offence

On 7 July 2022, ten days after Ms Buyruk’s arrest, Ms Büyükdağ attended her client’s interrogation. At approximately 5 a.m., she delivered a one-hour defence statement on behalf of Ms Buyruk. During this statement, Ms Büyükdağ remarked:

*...since my client is a lawyer, she refused to give a statement at the police station. The prosecutor acted fraudulently in the final report of my client’s statements and did not fully record what my client actually said...*

Following this, although Ms Buyruk was referred to the Criminal Court of Peace with a request for arrest, a criminal complaint was also filed against Ms Büyükdağ herself by the prosecutor who took Ms. Buyruk's statement. The Prosecutor alleged that her statement impugned their honour, dignity, and prestige by accusing them of acting fraudulently.

## 2.4 The Indictment Process

On 8 July 2022, the Investigation Bureau for Terrorism Offences submitted a complaint accusing Ms Büyükdağ of insulting a public prosecutor.

On 11 January 2023, the Adana Public Prosecutor's Office conducted a preliminary inquiry and sent a summary of the case to the Ministry of Justice. Under law of Turkey, investigating lawyers for actions arising from their professional activities requires prior authorisation from the Ministry.

Permission to investigate was granted on 12 April 2023. On 15 June 2023, the Prosecutor's Office requested further permission to prosecute, which was approved on 26 October 2023. The indictment was then submitted to the Adana High Criminal Court on 20 November 2023 and accepted on 13 February 2024.

## 2.5 Court Hearings

Two hearings followed.

- The first hearing took place on 26 September 2024. Ms Büyükdağ reiterated her request for the use of SEGBIS, Turkey's audio-visual information system for recording legal proceedings.
- The second hearing, on 13 December 2024, allowed Ms Büyükdağ to expand on her defence. She emphasised the broader context of her statements, clarifying that her comments were criticisms of the justice system, not personal attacks.

Her defence included:

- Objections to the restriction order being issued before detention;
- Breaches of confidentiality by law enforcement and the media;
- Failure to provide emergency medical assistance during detention;
- Lack of oversight and accountability regarding the conduct of the police.

She concluded:

*Throughout this process, we've encountered numerous procedural irregularities that not only impede the defence but also undermine the legal rights of those detained. Our struggle is to ensure that these rights are respected—not just for the sake of our clients, but for the integrity of the legal system itself.*

“The factual circumstances are, in essence, straightforward. During her defence of Ms. Funda Buyruk, Ms. Büyükdağ stated that the public prosecutor had “acted fraudulently” in drafting the final report of her client's statements. Yet the indictment refers twice to the charge against Ms. Buyruk—namely, membership of the PKK/KCK armed terrorist organisation—despite the fact that these allegations are wholly irrelevant to the indictment against Ms. Büyükdağ.

”

## 2.6. Outcome

On 28 March 2025, Ms Büyükdağ was acquitted of all charges. However, the decision is not final, and the case is still before the Court of Appeal upon the application of the complaining prosecutor.

## 3. Analysis of the Indictment

### 3.1 Introductory Remarks

As outlined above, Ms. Ümit Büyükdağ was indicted for the offence of insult under Article 125 of the Criminal Code of Turkey. Subsection (3) of that article provides that where the insult is directed at a public official in the course of their duties, the penalty shall not be less than one year's imprisonment. The gravity of the charge, therefore, should not be understated.<sup>1</sup>

Despite the seriousness of the allegation, the indictment appears unnecessarily convoluted. The factual circumstances are, in essence, straightforward. During her defence of Ms. Funda Buyruk, Ms. Büyükdağ stated that the public prosecutor had “acted fraudulently” in drafting the final report of her client's statements. Yet the indictment refers twice to the charge against Ms. Buyruk—namely, membership of the PKK/KCK armed terrorist organisation—despite the fact that these allegations are wholly irrelevant to the indictment against Ms. Büyükdağ. We contend that this repetition seeks to conflate the lawyer with her client and prejudicially associate Ms. Büyükdağ with the accusations against Ms. Buyruk.

Crucially, the indictment does not explain why Ms. Büyükdağ's statement qualifies as an insult. There is no indication that the prosecutor objected to or denied the statement at the time. Indeed, while the prosecutor found occasion to record the alleged insult, they failed to fully and accurately record the client's actual statements—ironically reinforcing the very allegation made by Ms. Büyükdağ.

Under Article 128 of the Criminal Code, a defence is available where a statement is made in the course of a judicial or administrative defence and is based on actual and material facts. If this condition is met, no penalty shall be imposed.<sup>2</sup> This was the legal foundation of Ms. Büyükdağ's defence, and given her ultimate acquittal, it appears the court found her statement justified under this provision.

While the charges against Ms. Büyükdağ's client are not directly relevant to the indictment, they provide essential context for the defence in which the impugned statement was made. Her remarks were part of a **robust legal defence in a terrorism case**, which naturally invites heightened scrutiny and critique of prosecutorial conduct.

The timeline of the proceedings also raises serious concerns. Although the complaint was filed on **8 July 2022**, Ms. Büyükdağ was not acquitted until **28 March 2025**—a delay of nearly 32 months. Such prolonged legal uncertainty is likely to have a chilling effect, deterring other lawyers from fully and fearlessly representing clients in politically sensitive cases. We note that similar charges against defence lawyers continue to be brought in Turkey, particularly under the pretext of insult.

The indictment against Ms. Büyükdağ contributes to a broader chilling effect on lawyers in Turkey, particularly those handling politically sensitive cases. This undermines the institutional integrity of the legal profession, as highlighted in *Kudeshkina v. Russia*.<sup>3</sup>

### 3.2 Evaluation of the Indictment in Light of Turkey's Domestic Law

The prosecution of Ms. Büyükdağ was carried out pursuant to Articles 58 and 59 of the Attorneyship Law, which govern the investigation and prosecution of lawyers for offences committed in the course of their professional duties.

Under Article 58:

*“Investigations against attorneys arising from their professional duties shall be conducted by the public prosecutor in the relevant jurisdiction, with the permission of the Ministry of Justice.”<sup>4</sup>*

Thus, the public prosecutor acted within their authority in initiating the investigation.

Article 59, however, sets out a more stringent timeline and procedural safeguards. Specifically:

*“The public prosecutor must submit the indictment to the competent high criminal court within five days of receiving permission from the Ministry of Justice.”<sup>5</sup>*

Although the Ministry of Justice granted permission to prosecute on 26 October 2023, the indictment was not submitted to the Adana High Criminal Court until 20 November 2023—well beyond the five-day requirement. No explanation is provided for this delay, and on the face of the documentation available, the indictment appears to have been submitted *out of time*, in breach of Article 59.

“ The indictment fails to assess whether Ms. Büyükdağ’s criticism was factually accurate or made in good faith. It simply quotes the statement without analysis. Notably, the public prosecutor does not deny the allegation that the report misrepresented Ms. Buyruk’s statements. If the claim of fraudulent conduct is not denied, it becomes difficult to assert that the statement was baseless or malicious. ”

Moreover, the impugned conduct—the alleged insult—occurred in Adana, yet the indictment was inexplicably filed with the High Criminal Court of Tarsus. No justification for this departure from the ordinary jurisdictional rule is provided in the indictment.

Under Article 125(1) of the Criminal Code:

*“A person who attributes an act or fact to another person in a manner that may offend that person’s honour, dignity or prestige, or who attacks their honour, dignity or prestige by swearing, shall be punished for insult.”<sup>6</sup>*

Subsection (3)(a) enhances the penalty where the insult is made against a public official in connection with their official duties.<sup>7</sup> However, the indictment does not clearly articulate how Ms. Büyükdağ’s statement constitutes an insult under this definition. There is no evaluation of intent, nor any analysis of the linguistic context in which the term “*fraudulent*” was used.

In addition, Article 127 requires that for accusations constituting an insult, the truth or falsity of the underlying statement must be evaluated.<sup>8</sup> The indictment fails to assess whether Ms. Büyükdağ’s criticism was factually accurate or made in good faith. It simply quotes the statement without analysis. Notably, the public prosecutor does not deny the allegation that the report misrepresented Ms. Buyruk’s statements. If the claim of fraudulent conduct is not denied, it becomes difficult to assert that the statement was baseless or malicious.

Finally, Article 128 grants immunity for statements made in the context of legal defence, provided they are based on real and material facts.<sup>9</sup> Yet the indictment makes no attempt to explain why Ms. Büyükdağ’s remarks fail to meet this standard. Instead, it obscures the matter by focusing on allegations against Ms. Buyruk, further suggesting an improper attempt to conflate the lawyer with her client.

### 3.3 Evaluation of the Indictment in Light of International Standards

#### United Nations Basic Principles on the Role of Lawyers (1990)

The Basic Principles on the Role of Lawyers (adopted on 7 September 1990) set out essential guarantees for the functioning of lawyers. Under Principle 16, governments are obligated to ensure that lawyers:<sup>10</sup>

- can perform all professional functions without intimidation, hindrance, harassment, or improper interference;
- are able to consult with their clients freely;
- are not subjected to prosecution or sanctions for actions taken in accordance with professional duties, standards, and ethics.

### **Application to Ms Büyükdağ**

Ms Büyükdağ was lawfully appointed as defence counsel for Ms Buyruk during a police interview. Her professional duties included defending her client robustly and raising concerns about procedural irregularities – including the omission of material client statements from the prosecutor’s report. The decision to indict Ms Büyükdağ for making such a statement directly contravenes Principle 16 and constitutes an improper interference with the right to legal defence.<sup>11</sup>

Principle 20 reinforces that lawyers enjoy civil and criminal immunity for statements made in good faith in the course of legal proceedings.<sup>12</sup> Ms Büyükdağ’s comment – that the prosecutor had “acted fraudulently” – was a professional assertion made in defence of her client. This statement falls squarely within the protections envisaged by Principle 20, assuming good faith and relevance. Criminalising such statements risks rendering defence counsel unable to present their client’s case effectively, thereby undermining the right to legal representation.

In *Nikula v. Finland* (App. No. 31611/96), the ECtHR held that the criminal conviction of a lawyer for criticising a prosecutor in court violated Article 10 of the ECHR. The Court emphasised that lawyers must be able to comment on the administration of justice without fear of sanction.<sup>13</sup>

In this case, the State of Turkey failed to comply with its international obligations by threatening Ms Büyükdağ with criminal sanctions – including a minimum one-year prison term – for statements made in her capacity as a defence lawyer.

### **Council of Europe Recommendation No. R(2000)21 on the Freedom of Exercise of the Profession of Lawyer**

This Recommendation similarly emphasises the independence of the legal profession. Principle I (1) states that all necessary measures must be taken to respect, protect, and promote the freedom of lawyers to practice their profession without improper interference. Principle I(4) reiterates that lawyers should not suffer any sanctions or pressure when acting in accordance with professional standards.<sup>14</sup>

### **Application to Ms Büyükdağ**

The indictment of Ms Büyükdağ represents an overt act of state interference. It improperly penalises a lawyer for fulfilling her professional responsibilities and defending her client’s rights. The threat of criminal punishment in such circumstances chills legitimate legal advocacy and contradicts these Council of Europe standards.

### **Draft Council of Europe Convention for the Protection of the Profession of Lawyer (2023)**

Though not yet ratified, the Council of Europe Convention for the Protection of the Profession of Lawyer reflects a growing consensus on the need to protect legal professionals from undue state pressure.

- Article 9(4) obligates states to ensure that lawyers are protected from physical threats, harassment, intimidation, or improper interference.
- States are required to refrain from engaging in such acts and to investigate any such incidents properly.<sup>15</sup>

### **Application to Ms Büyükdağ**

Nothing in Ms Büyükdağ’s indictment suggests that these obligations were taken into account. On the

contrary, the proceedings appear to target her precisely for performing her professional duties in defence of a client accused of a serious offence. The repeated reference in the indictment to her client's alleged affiliation with the PKK/KCK – a charge irrelevant to the insult allegation – suggests an attempt to associate Ms Büyükdağ with her client's purported crimes, in direct violation of international norms (see Principle 18 of the UN Basic Principles).<sup>16</sup>

### **Explanatory Notes to the Convention**

The Explanatory Notes to the Convention reinforce the importance of immunity for lawyers' statements made during proceedings, provided those statements are made in good faith and grounded in a factual basis. They underscore that legal advocacy – even if critical or forceful – must be protected unless it involves falsehoods, threats, or abusive conduct.

Crucially, Paragraph 47 of the Explanatory Notes affirms that:

*"Lawyers should not incur civil and criminal liability merely for having presented their clients' version and view of the events..."<sup>17</sup>*

### **Application to Ms Büyükdağ**

In Ms Büyükdağ's case, the alleged insult consisted of challenging the accuracy of a public prosecutor's report – a matter clearly within the scope of adversarial legal defence. There is no evidence that the statement was abusive or made in bad faith. The indictment fails to consider the legal and factual basis for her remarks and omits any discussion of the immunity afforded to lawyers under international standards.

Her statement, which questioned the omission of her client's testimony from the prosecutor's report, was based on factual observations and made in the course of legal representation. As such, it was both relevant and made in good faith.

### **Broader International Human Rights Obligations**

The harassment and prosecution of Ms Büyükdağ – and similar actions against other defence lawyers in Turkey – violate key provisions of international human rights law. These include:

- Article 19, 22, and 14 of the International Covenant on Civil and Political Rights (ICCPR), protecting freedom of expression, association, and the right to a fair trial.<sup>18</sup>
- Articles 10, 11, and 6 of the European Convention on Human Rights (ECHR), providing analogous protections.<sup>19</sup>

The cumulative effect of these prosecutions is to undermine both the independence of the legal profession and the fair trial rights of defendants, particularly in politically sensitive or high-profile cases.

### **Application to Ms Büyükdağ**

The indictment of Ms Büyükdağ falls short of international standards that protect lawyers from prosecution for performing their professional duties. Her conduct – raising procedural concerns in the defence of her client – was in line with recognised duties and ethics. By criminalising her advocacy, authorities of Turkey have breached international legal norms, including those set out by the UN, the Council of Europe, and binding human rights treaties. Such actions represent not only an attack on the individual lawyer but a broader threat to the rule of law and access to justice in Turkey.

As a party to the European Convention on Human Rights and the ICCPR, Turkey is under a binding obligation to ensure the independence of the legal profession and prevent any form of intimidation or harassment of lawyers performing their duties (Articles 6 and 10 ECHR;<sup>20</sup> Articles 14 and 19 ICCPR).<sup>21</sup>

## 4. Conclusion and Recommendation:

In light of the serious concerns raised by the indictment of Ms Büyükdag and its implications for the independence of the legal profession, access to justice, and fair trial rights in Turkey, the following recommendations are made:

1. Ensure full respect for the immunity of lawyers for statements made in good faith in the course of their professional duties.
2. Cease all forms of harassment, intimidation, or retaliation against lawyers based on their professional activities.
3. Sign and ratify the Council of Europe Convention on the Protection of the Profession of Lawyer.
4. Publicly reaffirm the independence of the legal profession and the right of lawyers to act without fear of reprisal, including in politically sensitive or unpopular cases.
5. Train law enforcement and judicial authorities on international standards governing the role and rights of defence lawyers, ensuring understanding of the principles of non-interference, good faith immunity, and professional independence.

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Maxwell is active in Green Party politics, acting as Policy and Scrutiny Coordinator for the Manchester Green Party and sits on the International Committee of Young Greens England and Wales. He also mentors aspiring human rights lawyers through Young Legal Aid Lawyers and the University of Law.

His previous publications include At the Frontlines of Immigration Law (Notes From Below), an analysis of how government policy and media rhetoric shape the working conditions of immigration lawyers in the UK.

### Ryan Bestford

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**Endnotes:**

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- 2 Republic of Turkey, *Turkish Penal Code* [Türkiye Ceza Kanunu], Law No. 5237, Article 128.
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