Legal Report on Indictment:

Turkey V Nedim Türfent

Şerife Ceren Uysal

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This report was commissioned by PEN Norway as part of their Turkey Indictment Project, 2020. The project examines a series of indictments written by prosecutors in Turkey over the past 5 years, focussing on cases involving the media, civil society figures and human rights defenders. PEN Norway are working with a global team of lawyers and judges to study the compliance of these indictments with Turkish law and international standards. The project is sponsored by the Norwegian Foreign Ministry, Swedish Consulate (Istanbul) and Heinrich Böll Foundation. The project aims to make recommendations that will assist in the reform of the indictment-writing process in order to support the rule of law in Turkey.

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Written by Şerife Ceren Uysal

1 - THE SUBJECT OF ASSESSMENT:

The scope of this assessment is to examine the indictment issued against Nedim Turfent by Prosecutor İlyas Abukan on behalf of the Hakkari Chief Prosecutor on 07.03.2017 with investigation no. 2017/544 and indictment no. 2017/116, comprised of 22 pages, to legal assessment in the scope of Article 170 of the number 5271 Criminal Procedure Law and article 6 of the European Convention on Human Rights.

2 - DETERMINATIONS CONCERNING THE INVESTIGATION AND PROSECUTION STAGE:

- Nedim Türfent was arrested suddenly on 12.05.2016 [1] after publishing a video image of nearly 50 Turkish and Kurdish workers being handcuffed and made to lie on the ground by Special Operations Forces in the Yüksekova district of Hakkari in April 2016, and was charged on 13.05.2016. On the date that the news in question was broadcasted Türfent was working for the Dicle News Agency.
- The indictment against him was issued 9 months and 24 days after his arrest. Türfent was only able to appear before the court over 14 months after his arrest on 14.06.2017.
- According to trial observation reports and lawyers' statements[1] that were publicized on the basis of 19 out of the 20 witnesses whose statements were included in the indictment having changed their initial statements upon trial. The 19 witnesses in question stated that their statements were taken from them at the interrogation stage under duress and/or torture and they were forced to give testimony against Türfent.[2]
- The Hakkari 2nd Criminal Court sentenced Türfent to 8 years 9 months in December 2017 and the sentence was approved by the Supreme Court of Cassation on 21.05.2019. Türfent`s file is still under moderation by the European Court of Human Rights[3].
- On 16.06.2020, 45 organizations, including PEN International , International Press Institute (IPI), Media and Law Studies Association (MLSA) released a joint statement to draw attention

1 See: https://freeturkeyjournalists.ipi.media/tr/nedim-turfent-bir-gazeteci-davasi-onlarca-hukuksuzluk/ (access date: 02.08.2020)

2 a.g.e.

3 See: https://ifex.org/kurdish-journalist-nedim-turfent-passes-1500-days-behind-bars-in-turkey/ (access date: 02.08.2020)

to the trial of Nedim Türfent and they underlined the fact that on the date in question Nedim Türfent had been in custody for 1,500 days.[4]

- Born in 08.02.1990, Nedim Türfent was 26 on the day he was arrested.

3 - ASSESSMENT CONCERNING THE INDICTMENT:

3-1: DETERMINATIONS ON THE GENERAL STRUCTURE AND CONTENT OF THE INDICTMENT:

a - The indictment (excluding the signature section that exceeds the last page) comprises of a total of 22 pages. It is apparent that the crimes alleged include being a member of a terrorist organization and conducting terrorist propaganda.

b - The section starting on page 2 of the indictment until the middle of page 18 contains summary information about the terrorist organization the defendant is accused of being a member of or conducting propaganda for. The name of the defendant is not in any section of the content in these first 18 pages. In addition to this, no connection is made between the defendant and the first 18 pages of the indictment in the remaining sections of the indictment.

The headings that are investigated by the Prosecution in this section are as follows:

- THE ESTABLISHMENT OF THE PKK/ KCK TERRORIST ORGANIZATION YPS (YEKÎNEYÊN PARASTİNA SİVÎL- CIVILIAN DEFENSE UNIONS) UNIONS STRUCTURE:

In this section information is provided about the establishment of the organization in question between 1977 and 2000 and its evolution over the years. The period that is summarized here covers a time that starts before the defendant was even born up to when he was 10 years old.

- A SUPPOSED LONG TERM PEOPLE'S WAR STRATEGY:

This section describes a strategy associated with the organization between the years of 1978 and 2000. The time range again covers a period starting before the defendant's birth until he was 10 years old.

- RURAL BASED URBAN GUERILLAISM:

This section summarizes a book by an individual named Duran KALKAN that was published in 2012. It has not been explained in the indictment whether or not there is a connection between this book or this author and Türfent and why this summary is in the indictment. This section continues with the synopses of other books written by this author.

- SUPPOSED DEMOCRATIC AUTONOMY STRATEGY:

This section states that the organization has made a change in strategy and explains this

4 a.g.e

strategy. Not only is the defendant's name not present in any part of this section but why the summary is in the indictment and whether or not there is any connection with the crimes the defendant is being accused of has not been explained whatsoever.

After these sections, a number of news items about the organization are featured but it is observed that all of these items are irrelevant to the defendant and are completely related to certain periods regarding the concerned organization.

In this sense, it is apparent that the written content of the first 18 pages in this indictment do not establish any kind of connection between the defendant and the crimes the defendant is being accused of.

c - In the middle of page 18 of the indictment, after the phrase *"IN THE SCOPE OF THE INVESTIGATION FILE"* the statements of 20 witnesses, summarized to a paragraph each, are featured. The points that were not considered in the indictment but draw remark in these statements are as follows:

- It is apparent that witness H. Ş. E.`s statement was taken on 21.02.2016, witness E. Ş.'s on 23.03.2016, witness E. D. K.'s on 22.03.2016, witness D. B.'s on 19.03.2016, witness C. G.'s on 20.03.2016, witness Z. A.'s on 16.02.2016, witness M. Ç. V. Y.'s on 14.03.2016, witness U. C. N.'s on 19.03.2016, witness A. S. T.'s on 30.03.2016, witness R. T.'s on 25.03.2020 and witness N. Ö.`s on 05.02.2020. In this respect, it is apparent that 11 out of the 20 witnesses who gave statements during the investigation gave the statements before the date of the crime specified on the indictment as 13.04.2016 and are related to the actions of the defendant before the period in question. It is clear from the content of the remaining witness statements that they have made declarations about the relevant actions before they allegedly took place. In this respect, since the statements cannot technically be accepted as evidence due to not being relevant to the specified crime, they should not be included in the indictment.

- Although it is apparent from the content of the indictment that these witness statements have been taken during the identification stage, the indictment does not provide information about what investigation this identification process was based on or under what conditions it was carried out. This indicates a structural deficiency concerning the indictment. The indictment does not contain any information about the date the investigation started and why it was deemed necessary.

- Furthermore, all of the witnesses' own testimonies give the impression of either having been involved in the various activities of the organization mentioned or that they are the subject of an investigation or proceeding based on this. Some of the witnesses refer to weapons training that they themselves participated in. It is clear from the indictment that some witnesses have code names, however there is no information provided on the legal status of these witnesses, whether or not there is a prosecution or investigation being lodged against them or whether or not they are under any threat of any prosecution. Throughout the entire indictment it is clear that there is no evidence against the defendant other than witness testimonies, and the fact that the Prosecution did not discuss the conditions under which these witness statements were conducted during the identification process, the legal validity of the statements or whether or not the statements were reliable under the conditions they were subjected to, indicates a very significant deficiency.

- Plus, it was observed that 4 of the witnesses stated such remarks as: "a journalist for DİHA [Dicle News Agency]", "DİHA reporter", "he works with the DİHA agency" concerning the defendant, 1 [E. D. K.] said: *"he is a journalist in Yüksekova", 5 said he "conducts press activities", "I saw him doing interviews", "I know him as a journalist"*. But it was determined that in the indictment the Prosecution did not mention that the defendant was a journalist. This also indicates a significant deficiency. This fact gives the impression that evidence in the defendant's favor was not mentioned and only sentences that could be interpreted as being against the defendant were selected and used as the basis for the indictment.

- In the statement of witness 1 [U. C. N.], the following was submitted concerning the identity of the defendant: *"I found out from you right now that the clear identification of the [Individual] was Nedim TÜRFENT"*.

- After inserting the testimonies of 20 witnesses, the indictment continues with the defendant's statement. But in this section only the statement as follows is included: *"To surmise the statement taken from the defendant, he declared that he did not accept the accusations made against him"*. The fact that the evidence submitted by the defendant during the investigation or his defense were not included in the indictment prompts the question as to whether the statement and evidence were subject to consideration.

- The section in which the Prosecution assesses the evidence concerning the defendant in the scope of the indictment consists of only one paragraph on the last page. The following statements were made in this section:

> *"When the entire file is considered all-together, it is clear that the photograph identifications made by witnesses identifying the defendant in the presence of the Public Prosecutor are congruent and consistent, it is apparent that the defendant made contact with organization members, was in the youth structure of the organization, acted on the orders of the organization, provided terror organization members with places to stay, food and clothing, operated as the person in charge of the terrorist organization's media and by these acts showed that he had established an organic tie in complete unity of thought and action with the organization and that this tie was constant, intense and divergent; thus it has been determined that the defendant was a member of the armed terrorist organization from the investigation and identification file dated 13/04/2016 where the defendant is shown using the social media channels of www.facebook.com/qubane?fref=ts, Nedim Türfent (@nturfent) and www.youtube.com/watch?v=ZCoS9mpLB8c to share and praise the acts carried out by the YPS/YPS JİN terrorist organization making it clear that he has indeed committed the crime of doing propaganda for a terrorist organization that he is accused of…"*

The investigation dated 13.04.2016 and detection records as well as the content of the links that are referred to in this section related to the defendant are not included in the indictment. Furthermore, the content of the indictment does not explain how the Prosecution arrived to the conclusion that the defendant "…operated as a person in charge of the terrorist organization's media operations and by these acts showed that he had established an organic tie in complete unity of thought and action

with the organization and that this tie was constant, intense and varied; thus it has been determined that the defendant was a member of the armed terrorist organization …", what actions of the defendant are being referred to, the place and time of these actions; and the causality that is required to be established between action, evidence and the individual, just as the hierarchical structure of the organization and the defendant's position in this hierarchy have not been established in the indictment.

3.2: SCRUTINIZING THE INDICTMENT IN THE SCOPE OF TURKISH CRIMINAL PROCEDURE LAW ARTICLE 170:

Article 170 titled The Duty of Filing a Public Case in Criminal Procedure Law (CPL) 5271 outlines the basic regulations concerning the conditions and elements relevant to the indictment. The assessment in this respect firstly considers whether or not the indictment against Nedim Türfent is included in these elements. As per CPL article 170/3, every indictment must include the identity and attorney information of the defendant. This indictment fulfills the relevant structural requirements.

a. It is also a requirement of the CPL that the indictment include; the identity of the deceased, victim or person suffering from the crime, the attorney or representative of the victim or person suffering from the crime, the identity of the person reporting the crime if there is no objection to disclosing their identity, and the identity of the person filing charges and the date that the charges are filed are included in the indictment. When we examine the indictment in question it is clear that the accused crime is being a member of a terrorist organization and conducting propaganda for the terrorist organization. The crime is not one subject to complaint and it is clear that the investigation is being conducted on behalf of the state within the scope of the indictment. That being said, there is no information in the indictment concerning as to what tip-off launched the investigation.

b. Furthermore, as per CPL 170/3 the crime the defendants are accused of and what articles of which law apply must be written clearly in the indictment. It is observed that in the indictment being scrutinized the alleged crime is membership of a terrorist organization and conducting propaganda for the terrorist organization. It is observed that in terms of applicable law articles Turkish Criminal Law article 314/2 with reference to Turkish Civil Code article 5 is referred to pertaining to organization membership and that TCC article 7/2 is referred to concerning the propaganda charges; thus the pertinent articles and the alleged crimes have been written consistently and there is no deficiency in the indictment in this sense.

c. According to CPL article 170/3, the place, date and time range of the crime being alleged must be included in all indictments. In the indictment in question, it is observed that the date of the crime is provided as

13.04.2016. However, throughout the entire indictment, the place of the crime is only mentioned to be Hakkari-Yüksekova and not detailed any further, and the action of the defendant on 13.04.2016 in regard to the accusation remains unclear.

The fact that the material aspects and conditions of the two accusations in the indictment differ, definitely should be considered when examining the matter of the date of the crime.

First of all, the fact that the date of 13.04.2016 is specified as the crime date in terms of the accusation about organization membership brings up a problem in itself from the aspect of the indictment. Organization membership has to be considered in the scope of an abstract crime in terms of its nature. In this sense, the occurrence of a crime is dependent on the existence of continuity that includes intent-based intensity. Being an organization member requires participation and loyalty. The most important measure of loyalty is continuity. In this aspect, the crime of membership in a terrorist organization against anyone in an indictment that specifies the crime date as a single day indicates a conflict.

Conducting terrorist propaganda is one of many typical crimes. In order to direct the accusation of propaganda, what date the crime was committed, where and with what instruments it has been committed must definitely be specified. In this aspect, if the crime date specified in the indictment is to be accepted in terms of criminal propaganda, this means that in a case filed based on this indictment, the suspect can only be subjected to judgement if there is an action he carried out on the specified date and that this action should be the subject of prosecution.

It has been determined that due to one single date being stated in the indictment pertaining to the date of the crime and no place being mentioned, this creates ambiguity about the accusation being made against the defendant when the entire indictment is examined. The fact that the action and evidence has not been discussed in terms of criminality throughout the entire indictment deepens this ambiguity and makes it highly likely that this will lead to a violation of the right to defense.

d. Another required element in the indictment within the scope of CPL article 170/3 is that the evidence of criminality be clearly documented. These documents are seen to be listed in the indictment scrutinized here:

> *"Defendant statement records, identification from photograph records, interrogation notes, arrest warrants, registration and criminal records and all of the investigation documents".*

While it is apparent that the evidence has been submitted in valid form, the detection record dated 13.04.2016 referred to in the conclusion of the indictment and Facebook and Youtube content are not among the evidence. Furthermore, as shown above, since the testimony of 11 witnesses was taken before the date that is specified as the date of the crime, it can be expected that there must have been an investigation being conducted on the defendant before that date and that this investigation was being conducted due to suspicion based on these documents. Although it could be assumed that these documents were being referred to when citing all investigation documents, the purpose for CPL article 170/3 is not writing the evidence one by one but to ensure that the content is written clearly enough so that

the defendant can understand it and defend themselves. In this sense, the initial evidence that led to the launch of an investigation in the scope of this indictment and the content of the record dated 13.04.2016 that the indictment and the arrest warrant are based on is incomprehensible. Therefore, although it appears that the evidence has been listed in form, it is clear that the requirement mandated by CPL article 170/3 to specify evidence has not been fulfilled.

e. CPL article 170/3 also outlines that whether or not a defendant has been arrested, the date they were taken into custody and the date they were charged must be included in the indictment. The indictment ascribes to the relevant information.

f. In terms of indictments, CPL 170/4 expresses one of the most important regulations. According to the relevant regulations, any indictment requires explaining the events that constitute the alleged crime with relation to existing evidence. It can be seen that the indictment being scrutinized here does not carry the examination or assessment required by this regulation.

Naturally, every indictment will require different intensities and different types of details as per this regulation. However, it can be claimed that there are certain minimal criteria here. For example, in a situation where the defendant is being accused of carrying out terrorist organization propaganda, an indictment must definitely provide,

> - the date that the action or actions of propaganda have been carried out,
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> - the place that these actions have occurred,
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> - the tools with which these actions have been carried out,
>
> - and topics provided.

In terms of organization membership, indictments must present at a minimum the defendant's position in the organization's hierarchy and the relational elements that show they are a member of the organization and within the hierarchical structure.

When we examine the indictment at hand, despite the Prosecution concluding that the defendant was in the youth structure of the organization and expressing this twice in the indictment, not only is there no indication of a single piece of evidence supporting this in the indictment, how this conclusion has been reached and the factual determinations establishing reasonable doubt leading the Prosecution to issue this indictment cannot be followed by the reader. The fact that it is incomprehensible as to how the conclusion has been reached that the suspect was in the youth structure of the organization, even while the witness testimonies submitted against the defendant speak about his press activities, is not an insignificant detail; on the contrary it points to a main issue in terms of the indictment.

It is at this point that the reason for the amendment made to article 174 of CPL 5271 by the Law Amending Criminal Procedure Law no 5353 must be taken into account. It has been stated in this amendment that justification of events and evidence are outlined without the necessity of establishing the connection between the events and evidence, and this can be caused to renege the indictment. The objective of the lawmaker here is to ensure it is clear what evidence the conclusion the indictment reaches is based on and that the presence of reasonable doubt of a crime is presented in lieu of an abstract claim. The duty of the Prosecution is to interpret the case presented together with evidence. Doubt is a natural part of the duty assigned to the institution

of the prosecution, however, the lawmaker has made a distinction here between doubt and reasonable doubt and required that doubt is present to conduct an investigation and that in order for that investigation to be turned into an indictment there must be reasonable doubt. In this sense, proof of reasonable doubt can be considered the most essential duty of Office of Prosecution and indictments.

As per the legal provision previously referred to in this report:

> *"In a number of submitted indictments it has been observed that events have been listed one after the other, people and evidence have not been not connected to the events and discretion on these has been left to the court. With this provision an attempt was made to prevent this. Therefore, the prosecution must submit solid accusations concerning the defendant and defendants. This is a natural result of the indictment being the document that opens a case".* [5]

In this respect, the indictment that is being evaluated appears not to solidly identify the crime and does not meet the requirements of CPL article 170/4.

g. In the scope of CPL 170/5, it has been clearly stated that in the conclusion section of the indictment not only matters against the defendant but also the matters in favor of the defendant must be outlined. It has been determined that this requirement has not been met either. While the defendant's testimony and witness testimonies are listed by name under the evidence, the defense of the defendant and their attorneys have not been included in the indictment text. They have only sufficed to say that the defendant does not accept the accusations. From this aspect it can be said that this indictment is not suitable for review whether or not the evidence in favor of the defendant has been assessed. In the context of CPL 170/5, the issue needing special attention in this indictment is that a significant portion of the witnesses that are being considered the main basis for issuing this indictment, have stated the defendant is a journalist. A portion of the witnesses stated not just that he was a journalist but used clarifications like 'he works at the DİHA news agency' or 'he is a reporter'.

It cannot be claimed that the professions of defendants are significant in the cases of every accusation, but in this indictment, conducting interviews, taking photographs and publishing articles – as a required part of the defendant's profession – have been considered acts that are the basis of the crime and claimed as such, whereas not a single other act has been claimed related to the accusations being made and therefore it is clear that the defendant's profession must be considered. Here, the defendant's profession constitutes indisputable evidence as to the defendant's advantage. The fact that this issue has not been discussed in the indictment makes the legality of the indictment questionable in the context of CPL article 170/5.

h. When we look at CPL article 170/6 we see that it is required to clearly state in the indictment the committed crime in order to assess as to what kind of sentence or security measures set forth by law are required. The indictment we are assessing here has deficiencies in this regard. The prosecution is demanding a punishment in general, but is not describing punishments

5 Özkan Gültekin, Öğretide ve Uygulamada İddianame ve İddianamenin İadesi (The Indictment in Doctrine and Application and Return of Indictment), Seçkin Publications, 2011, p.99

that correspond to the crimes the defendant is being accused of and is referring directly to a general provision without clarifying which of the security measure(s) are applicable in this situation. In this respect, the indictment in question has been determined to constitute far from a fulfillment of the requirements of the CPL article CMK 170/6.

i. Finally, the CPL's article 170 clause 2 needs to be considered in relation to this indictment while taking into account all the assessments made above. According to this regulation, the existence of *"reasonable doubt"* is required in order to file a public case. This provision states that *"the relation between suspicion of a crime and the concept of evidence must be emphasized and the suspicion that a crime has been committed must be based on evidence"*. *In fact, "reasonable doubt is discussed when, according to the evidence at hand, the possibility that the defendant will be sentenced at the end of the trial is more likely than the possibility that they will be exonerated"*.[6] However, in the indictment we are scrutinizing not only in that there is no action with the place, time nor content described in relation to organization propaganda, there is also no direct action described to establish membership of the individual in the organization and the a hierarchal relationship between the individual and the organization to constitute the basis for this crime. Therefore, since the actions that are the basis for the alleged crimes are not clear, it has been determined objectively that there is no discussion to be had of the existence of reasonable doubt.

3.3. EXAMINING THE INDICTMENT IN THE CONTEXT OF INTERNATIONAL LAW:

The examination of the indictment in question in the context of international law should be done based on the principle of fair trial regulated under ECHR article 6 and the United Nations Guidelines Concerning the Role of Prosecutors.

a - When we examine article 6/1 of the European Convention on Human Rights we can clearly see that everyone is entitled to a fair and public hearing within a reasonable time.[7] In the case of Nedim Türfent, he was detained 9 months and 24 days before the indictment was written and he was brought before a judge for the first time in his 14th month of detainment giving the impression that a violation was committed in the very first stage according to ECHR article 6/1.

b - ECHR art. 6/3 outlines the minimum rights of individuals faced with charges. In this context, every defendant must *'be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him'.* As pointed out in the previous article, the fact that the indictment was prepared 9 months 24 days after the defendant was detained shows that Türfent was not informed about the accusations

6 Nur Centel/Hamide Zafer, Criminal Procedure Law, Beta Publishing House, 2008, p. 441

7 European Convention on Human Rights art. 6/1 [first sentence]: In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

against him for 9 months and 24 days. This also creates a risk of violating ECHR article 5/3 because there is no question of this being a reasonable amount of time. The European Court of Human Rights has outlined the waiting period for an indictment preparation in a number of verdicts. In the case of Punzelt v. the Czech Republic [8], the ECHR characterized the period of 8 months that had passed between the indictment being prepared and the first trial date as being 'excessively long'.

Furthermore, as expressed in detail in the examination of the indictment in terms of CPL article 170, whether it was the accusations not being associated with concrete actions, the lack of establishing connections between actions, for which no place and date had been specified, and the evidence, or whether there was no mention of the sentences set forth by law corresponding to the accusations in the conclusion of the indictment, or whether it was the lack of clear identification of some documents listed in the evidence section of the indictment content, it cannot be considered that Türfent clearly understood the scope and nature of the accusations against him. While the indictment language was one spoken and understood by the defendant, the fact that the content did not fulfill the requirements set forth by law leads to the opinion that there may be a violation in the context of ECHR article 6/3.1.

c - The witness testimonies, understood to comprise of the main basis for the indictment, are another heading that needs to be scrutinized in relation to ECHR applications. In a verdict by the ECHR it is stated that: 'The Court emphasizes that using statements given by witnesses to attain immunity or another advantage may create doubt about the fairness of the trial being conducted against the defendants and due to the nature of such statements they are vulnerable to distortion and may be given for the purpose of personal revenge or to acquire advantages being presented to them. Therefore, the risk that a person could be accused and put on trial due to irrelevant and unconfirmed claims must not be overlooked'[9]. The ECHR is originally referring to the trial stage here; but what is expected from the indictment prosecutor here is to conduct an investigation at the initial stage on the situation of witnesses who carry the risk that is referred to by the ECHR. This investigation is an inseparable part of collecting evidence in favor as defined in CPL article 170. This points to a deficiency in the indictment and therefore the investigation phase in this context.

d - The ECHR's verdict on the case of Ecer-Zeyrek v. Turkey is especially significant in terms of the indictment under examination. In this verdict, the ECHR states; "... the committed crime having the quality of "continuation" concludes that the crime in question was committed within a certain period. According to the opinion of the Court, when a person is accused of committing a crime that has the quality of "continuation" the actions constituting the crime must be clearly stated in the indictment as a requirement of the legal security rule'. As specified in the section where the indictment is examined according to CPL article 170, the crime of being an organization member is an abstract crime so the continuation factor is an inseparable part of this crime. Therefore, the ambiguity determined in this indictment is a violation of the legal security rule in ECHR verdicts.

e - Lastly, it is necessary to look at the United Nations Guidelines on the Principles Concerning the Role of Prosecutors as a

8 ECHR Punzelt v. The Czech Republic, Application No. 31315/96, paragraph 81-83, 25.04.2000

9 ECHR. Habran and Dalem / Belgium, Application no: 43000/11 and 49380/11, par. 100, 17.01.2017

whole. The regulations ranging from article 10 to 20, in which the role of Prosecutors in criminal procedures is outlined, is especially significant. According to the concerned Guidelines prosecutors; "take an active role" in filing proceedings for criminal procedure and if they are authorized by law or it is in accordance with local practices, investigating crimes and monitoring the legality of these investigations (...)"[10]. As we can see here monitoring the legality of the investigation has been defined as a judicial role and duty of the office of prosecution. In this respect it should be thought that the indictment prosecutor is directly responsible for the legality of an indictment and the legality of evidence referred to in the indictment.

f - In article 12 of the same Guidelines it states: "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". As frequently emphasized in this report, the fact that 9 months and 24 days went by between the arrest of the defendant and preparation of the indictment, as well as the investigation against the defendant being on a prior date (unknown) although not clearly written in the indictment, shows that the prosecution has not met the requirement of acting expeditiously. In terms of contributing to ensuring due process and the smooth functioning of the criminal justice system, what is expected from a prosecutor in the investigation stage is being meticulous in the legality of evidence, observing reasonable doubt and taking into account the evidence in favor of the defendant as well. The deficiencies identified on this subject have been listed in the section where the indictment is evaluated in the scope of CPL.

g - Article 18 of the Guidelines refers to the need for prosecutors to end an investigation when the accusations are groundless. The requirement of this regulation is to establish reasonable doubt and a connection between the act and the perpetrator supported by sufficient evidence. The deficiencies identified on this subject have been listed in the section where the indictment is evaluated in the scope of CPL.

10 AIHM. Ecer and Zeyrek / Turkey, Application no: 29295/95 and 29363/95, par. 32-37, 27.02.2001

4. CONCLUSION

As explained in detail above, the indictment contains, upon scrutinization, almost none of the properties required of an indictment both in terms of internal legal regulations and in terms of international legislation.

Almost no subheadings have been used in the indictment. The 18 pages devoted to the organization not having any subheadings carries the risk of presenting the defendant in a negative light. Not explaining why this section is included in the indictment is also a similar deficiency. Especially when accusations about organization membership are involved, to the degree that the prosecution supports their own claims and in order to ensure that the factual suspicions they are describing are understood it pays for them to include information about the concerned organizations in the indictment; but this information must be related to the crime and act the defendant is being accused of. For example, if the indictment contained information about the organization's structure and then established a connection between this structure and the defendant, this could have been interpreted as fulfilling a need concerning this stage of prosecution. The fact that there is around 18 pages of content about the organization covering the years between 1977 and 2000 in an indictment against a person born in 1990 cannot be thought to make any kind of contribution to justice.

Given a lack of suitable subheadings, those examining the indictment are forced to search for evidence and actions in the text. A qualified indictment is one which contains actions and evidence separately and connects them to one another clearly.

The greatest deficiency in the indictment is that it contains no actions, and this takes precedence over a sufficient discussion of a number of topics. It is clear as to which legal articles the accusations against the defendant are based in the indictment, but it is not clear which of their actions other than journalistic activities (conducting interviews, taking photographs, etc.) have led to the charges. There is reasonable doubt over what characterizes journalism as membership to an organization or conducting propaganda. As we know, Turkish Civil Code article 7/2 has gained clarification in recent years and in order for the conduct of propaganda to be

lodged articles must contain a call to action such as armed force and violence. Not only are such actions not described but there is no mention in the indictment that the suspect has issued calls for force and violence.

In order to overcome similar problems in the application and in investigation processes that are significant in terms of achieving justice, when this indictment is examined there are a number of points that need to be pointed out. The first of these is that prosecutors fulfilling the requirements of CPL article 170, must outline their cases as required and, in this respect, it should be encouraged that indictments, just like individual application forms in the Constitutional Court, be associated each with a required format. The second is the necessity for first decree court judges to be encouraged to return indictments that do not meet requirements. Use of the return mechanism will not only lighten the judicial load but also serve to encourage more qualified and meticulous preparation of indictments on the part of prosecutors.

Şerife Ceren Uysal

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