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Point Zero of a Trial: The Indictment

PEN Norway's Turkey Indictment Project

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Turkey Indictment Project by PEN Norway

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Caroline Stockford, PEN Norway's Turkey Adviser, leads the project. Aşkın Duru is the Turkish coordinator for the project.

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Point Zero of a Trial: The Indictment

The judicial process in Turkey is in more dire straits than at any point in history. In a time when even the European Convention on Human Rights and the Constitution are wholly disregarded, the survival of individuals and institutions is seen as an achievement in itself: there are politicians, representatives of civil society, and journalists who are still in jail despite the decisions of the ECtHR and the Constitutional Court of the Republic of Turkey. It appears that freedom of expression and freedom of assembly have been almost suspended.

The powers of the judiciary, which are supposed to protect us against all kinds of unfair coercion and arbitrariness, especially those exercised by the power holding the monopoly of violence, has itself become the locus of injustice and arbitrariness. Political detentions, case files lacking any kind of evidence, and trials not abiding by even the most basic procedural provisions have now become the tools that determine our social life according to the whims of the power. Let's put one of these tools – the "indictment" as the "birth certificate" of unjust cases – under scrutiny and see whether revealing the results will make any positive impact on the public debate. Certainly, any effort made to rectify injustice and arbitrariness will not be in vain. If knowing the "matter" before us is indispensable in the search for rights and justice, it is necessary for us to discuss the "indictment".

Introduction: The Importance of Indictments

An indictment is a document containing allegations; it is prepared within the "investigation" process that is carried out by the prosecution, it alleges a criminal act, and the prosecution phase of a trial begins with the admission of this document by the court. Hence, the indictment is also the legal document that separates the two stages of the trial *viz* investigation and prosecution. A person charged with a crime is referred to as a "suspect" until this document is prepared, then, with the admission of the indictment, s/he becomes a "defendant."

In the criminal trial, an investigation is the series of actions taken by the public prosecutor being "informed of a fact that creates an impression that a crime has been committed, either through a report of crime or any other way ... [to] immediately investigate the factual truth in order to make a decision on whether to file public charges or not." (Criminal Procedure Code, hereinafter CPC, Article 160/1). Let's read the provision carefully: a) An investigation is not the action taken when he is "informed of that a crime has been committed" but when he is "informed of a fact that creates an impression that a crime has been committed"; b) Investigation aims to search for the "truth", not the "crime."

At this stage, the public prosecutor is in charge, who, on behalf of the public, “considers” whether a crime has actually been committed. “He is in charge”, because “he is obliged, through the judicial security forces, who are under his command, to collect and secure evidence in favor and in disfavor of the suspect, and to protect the rights of the suspect” (CPC, 160/2). The public prosecutor is impartial to the suspect as he is charged with the task of finding out whether the crime was actually committed. Let’s be careful again; he is impartial to the “suspect”, not to the “criminal allegation.” He should be uncompromising against the possibility that the crime may have been committed, and shall ensure that the person protected by the presumption of innocence is not deprived of his rights and freedoms considering the possibility that the suspect may not have committed the crime. Therefore, he is given a wide range of powers and great responsibilities, too.

If the prosecutor reaches “a sufficient suspicion that the crime has been committed” as a result of the investigation he carried out through a wide range of researches and examinations, he shall prepare an indictment (CPC, 170). “In cases where at the end of the investigation phase there is no evidence with sufficient gravity to justify the suspicion which is required to open a public claim, or there is no legal possibility of prosecution, then the public prosecutor shall render a ‘decision on no ground for prosecution.’“ (CPC, 172). With the finalisation of the decision on no ground for prosecution (i.e. with the expiration of the objection period or the rejection of the objections), the case will be closed until new evidence or a new suspicion arises. However, in case that the investigation ends in the first form, i.e. the indictment is prepared, a new stage will commence. An indictment finalises the investigation phase and initiates the prosecution phase. It shows the destination of the route followed by the prosecutor by that time, and the map to be followed during the prosecution thereafter. Once the allegations are clear, the defendant is to prove that the alleged act has never been committed, or he did not commit it, or even if it is committed, it cannot be considered a crime. Therefore, an indictment constitutes point zero in a criminal trial that consists of investigation and prosecution.

Content of the Indictment

From the simple explanation above, it can be easily inferred what should be the content of an indictment: The suspected act that amounts to a crime, the evidence showing that this act has been committed, the details (identity, residential address, etc.) of the person who is “suspected” of having committed the crime, information about the victim(s), if any, of the act, the evidence that create the impression that the crime has been committed, etc.

In the Turkish law, the elements that should be included in an indictment are listed in Article 170/3 of the Criminal Procedure Code:

a) The identity of the suspect,
b) His defense counsel,
c) Identity of the murdered person, victim or the injured party,
d) The representative or legal representative of the victim or the injured party,
e) In cases, where there is no danger of disclosure, the identity of the informant,
f) The identity of the claimant,
g) The date the claim had been put forward,
h) The crime charged and the related Articles of applicable Criminal Code,
i) Place, date, and the time period of the charged crime,
j) Evidence of the crime,
k) Explanation of whether the suspect is in detention or not, and if he is arrested with a warrant, the date he was taken into custody and the date of his arrest with a warrant, and their duration.

Furthermore, in the fourth paragraph of the article includes the provision that "the events that comprise the charged crime shall be explained in the indictment in accordance to their relationship to the present evidence"; likewise, the fifth paragraph clearly states that not only the issues that are unfavourable to but also those that are in favour of the suspect should be included.

According to Article 174 of the Law, the indictments produced in violation of the provisions of Article 170 or without collecting evidence that would have a bearing on to prove the crime with certainty, or without applying the procedures falling under the provisions of "the settlement of the case on the payment of the fine", or "mediation" are to be returned to the public prosecutor's office within the scope of the "return of the indictment" provisions.

Apparently, the foregoing are all regulations related to the theme of an indictment.

"Quality" of an Indictment

It may have been seen that the "content" provided in the Criminal Procedure Code is not pursuing the aim of ensuring the quality of indictments. Here, indictments are regulated according to their technical components but, in relation to enhancing the quality, the prosecutor is charged with the obligation to only explain" the events that comprise the charged crime ... in accordance to their relationship to the present evidence." As a matter of fact, the justification of Article 170 states that the law "adopts the principle of *legality* in terms of initiating a public prosecution, i.e., it obligates the public prosecutor to file a public action in case of sufficiently strong doubt." In other words, "if the collected evidence, traces, artifacts, and signs, in the opinion of the aforementioned, are qualified and sufficient to require the initiation of a public prosecution, that is, if the bases in question are such that the suspicion is at the level of 'sufficiently strong doubt', a public action will be filed."

Under Article 172 of the CPC, “In cases where at the end of the investigation phase there is no evidence with sufficient gravity to justify the suspicion which is required to open a public claim, or there is no legal possibility of prosecution, then the public prosecutor shall render a “decision on no ground for prosecution.” In other words, there is a very small margin of appreciation for the prosecutor not to initiate a public action. However, although this does not directly constitute the subject of this paper, there are many examples where the prosecutor’s offices have “covered up” the cases without starting an investigation or proceeding with the prosecution process, especially in terms of crimes allegedly committed by public officials. This situation, which is conceptualised as “impunity” in the literature, essentially means a violation of the “state’s obligation to investigate effectively” as provided by both the Constitution and the European Convention on Human Rights. In other words, if the initiation of unjust prosecutions with incomplete, inadequate and so to speak “low quality” indictment is a violation of rights, the failure to prepare an indictment as a result of incomplete and/or inadequate investigations is also a violation of rights in cases of criminal charges against the state and public officials. (For a review on the matter according to the decisions of Constitutional Court, see. Şirin, 2019). Şirin draws attention to six criteria used by the Constitutional Court and the European Court of Human Rights in checking whether an investigation is effective or not:

> “First, the investigation should be initiated ‘ex officio and promptly’.
> Second, the investigation should be conducted in an ‘impartial and independent’ manner.
> Third; ‘effective evidence’ must be collected in the investigation.
> Fourth, the investigation should be completed ‘with due diligence and promptness’.
> Fifth, the investigation must be ‘transparent and open to public scrutiny’.
> Sixth, if the investigation leads to the conclusion that a person is guilty, the perpetrator should be imposed a ‘deterrent punishment’ (Şirin, 2019: 1582).

Resources referring to the quality of the indictments and the actions of prosecution include the opinions, recommendations, and reports of Council of Europe Commission for the Efficiency of Justice of Europe (CEPEJ) and the Consultative Council of European Prosecutors (CCPE).

In the document “Measuring the quality of justice” (CEPEJ (2016) 12) adopted at the CEPEJ meeting in 2016, the criteria related to judges and prosecutors are falling under the following headings: competence, impartiality, ability to communicate with the parties, time available and clarity of decisions. In other words, prosecutors’ being sufficiently knowledgeable, being impartial in their actions, developing good communication with their interlocutors, finalising their actions within a reasonable time, and making a decision comprehensible by everyone will show that they carry

out a quality and effective activity. Hence, we can expect a similar level of quality from indictment processes.

CCPE's opinions 9 (2014), 10 (2015), 11 (2016) and 12 (2017) are about prosecution activities. The main idea that dominates all of these opinions is the notion that the activities based on prosecution actions and decisions should be carried out in a qualified, impartial, and ethical manner to protect the fundamental rights and freedoms including and prioritizing the rule of law, an effective and efficient judiciary action, personal security, and the right to a fair trial.

For example, in accordance with the opinion no. 9 (2014) submitted to the Council of Europe Committee of Ministers; "prosecutors should ... [behave] impartially and with objectivity. They should thus strive to be, and be seen as, independent and impartial, should abstain from political activities incompatible with the principle of impartiality ... their work is based on the principle of transparency. In fulfilling their duties, prosecutors must respect the presumption of innocence, the right to a fair trial, equality of arms, separation of powers, independence of the courts, and binding final court decisions." Prosecutors should only make a prosecution order based on solid evidence reasonably believed to be reliable and acceptable. Prosecutors should act strictly but fairly. Likewise, according to the opinion no. 10 (2015), "Prosecutors, regardless of their role in the investigations, should ensure that their actions are in accordance with the law and in particular, respect the following principles: equality before the law; impartiality and independence of prosecutors; the right of access to a lawyer; the right of the defense to full disclosure of all relevant material; the presumption of innocence; equality of arms; the independence of courts; the right of an accused to a fair trial."

CCPE's opinion no. 11 (2016) is exclusively about the evaluation of the work of prosecutors. Concerning this point, work of prosecutors during the trial of a case is expected to be objective and impartial, comprehensive and detailed, based on reasoning and be reasoned, and clear and, open to exchange of information and cooperation in accordance with paragraphs 48 to 57.

We can say that CCPE's regulations, recommendations, and evaluation criteria regarding prosecution activities apply also to the indictments. In fact, the merits of a "high quality" indictment depend on the quality of the evidence. Therefore, whether there is sufficient evidence showing that the alleged act has been committed and there is sufficient evidence relating it to the perpetrator, and whether these pieces of evidence are obtained by respecting the rights under the right to defense is a fundamental issue while the indictments are being evaluated.

Recent History of Turkey as an "Indictment"

Even just charging a person or a group with a criminal act can have some irreversible consequences. If this is done through an official document such as an indictment or by an official authority such as the prosecutor's office, it may result in the person in question being a party in the proceedings and, in some cases, facing violations of rights even if he is eventually acquitted. In this sense, the ECtHR's *Akçam v. Turkey* decision is an important jurisprudence indicating that solely the existence of the threat of prosecutorial investigation may lead to violation of rights. The applicant Altuğ Taner Akçam, writer, historian, and researcher, was investigated on the basis of a complaint in 2006 due to the articles he had written in a newspaper, and the prosecutor's office decided non-prosecution in 2007. There was another complaint about the same articles in 2007 and the prosecutor's office made yet another decision of non-prosecution. Upon Akçam's application to the ECtHR, the Court considered the investigation conducted twice a violation of the right to freedom of expression under Article 10 of the Convention, even though the investigations resulted in non-prosecution decisions.

However, despite the existence of various criteria by which we can measure the quality of investigations and indictments, academic assessments as well as human rights advocacy activities related to the work of judiciary and courts often focus on the final outcome, that is, the court process and, essentially, their decisions. Despite numerous observation and monitoring activities carried out in Turkey, due to the confidentiality of the investigation phase, it is extremely difficult to conduct researches on actions taken prior to the prosecution phase. In addition, there is a very limited number of analyses on the indictments (for an academic study analyzing the indictments, see Gire, 2015).

However, as has been explained so far, indictments are the starting points of the prosecution processes. Moreover, in a political atmosphere where the legal system can be manipulated as a political tool; -as the case is in Turkey- given the fact that prosecutors do not have the same guarantees in particular as judges do have; the prosecutorial perception that leads to confuse this office's responsibility to act on behalf of the public with its function as the legal representative of the government *per se*, indictments may become a tool for a fundamental intervention to political and social life.

Indeed, Turkey's recent history has witnessed "operations", which had been carried out under the name of prosecutorial investigation and even a portion of which had been resulted in indictments; even if some of them has ended with acquittal decisions, they had radically changed the political and social structure of the country. For example, a series of lawsuits known publicly as "Ergenekon" beginning from 2007: the 1st, 2nd, and 3rd Ergenekon indictments, Poyrazköy indictment, indictment

for the attempted assassination to Admirals, Kafes [The Cage] indictment, Islak İmza [wet-ink signature] indictment, Erzincan indictment, ÇYDD (the Association for Supporting Contemporary Life) indictment, Şile excavations indictment, Gölcük indictment, Oda TV indictment, etc. This was a process symbolised by the republic prosecutor named Zekeriya Öz. In 2012, the indictment of the KCK Istanbul Main Case was prepared. Among the indictments examined within the scope of this project are Büyükada indictment of 2017, Deniz Yücel indictment of 2017, Gezi Park (Osman Kavala) indictment of 2019, and the 2020 indictment against news coverage on MİT (National Intelligence Organization) members. Likewise, the indictment against the Progressive Lawyers Association was prepared in 2013, and the Özgür Gündem Newspaper indictment in 2016, the Cumhuriyet Newspaper indictment in 2017, and the Peace Academics indictment in 2018. Furthermore, beginning from around 2015, there has been more than ten indictments against Selahattin Demirtaş. Finally, yet another indictment was issued against him in 2020. From 2014, when Recep Tayyip Erdogan, the President of the Republic, took office, until the end of 2019, 63,041 citizens faced charges of insulting the President of the Republic, 9,554 of whom were convicted of charges. For the sake of a simple comparison with the presidents before Erdoğan, 248 citizens faced charges during Abdullah Gül's office, 168 citizens during Ahmet Necdet Sezer's office, 158 citizens during people Süleyman Demirel's office, 207 citizens during Turgut Özal's office, and 340 citizens during the post-military-coup office of Kenan Evren.

The fact that in the last fifteen years, especially the "indictments" regarding political and social issues, somehow turned those who took a critical and dissident attitude towards the government into defendants, shows how prosecutorial investigations can be used as part of a political agenda. In other words, considered together with above-mentioned the criticisms of "impunity" in crimes allegedly committed by public officials, there are "types of crimes" or "persons" who are "especially" preferred by the prosecutors. These investigations are often turned into "indictments"; furthermore, it is doubtful whether these indictments meet the basic criterion "the events that comprise the charged crime shall be explained in the indictment in accordance to their relationship to the present evidence" as stipulated by the Criminal Procedures Code, let alone universal standards.

When the indictments become a tool of political intervention, the rewards their authors become a "political" not a "legal" one, too. In this context, we observe that Istanbul Chief Public Prosecutor İrfan Fidan and his deputy Hasan Yılmaz have played an important role in the preparation of the recent indictments, although they did not individually put their signatures under each of them. İrfan Fidan has been elected as a member of the Supreme Court by the General Assembly of Council of Judges and Prosecutors on 27 October 2020. He participated in the election for the Supreme Court quota membership of the Constitutional Court without participating in a single file interview, and in the voting held on 17 December 2020, he received the

highest number of votes because the others withdrew their “candidacy,” thus he was at the top of the list submitted to the President of the Republic. Just before this “operation”, his deputy Hasan Yılmaz was appointed as the Deputy Minister of Justice.

However, even if we look at the recent violation decisions of the Constitutional Court and the ECtHR regarding the lawsuits filed by them or under their “surveillance” in the Istanbul Courthouse, we can see how “unsuccessful” these two prosecutors were in terms of securing justice: the Constitutional Court found violation/s in its judgements on Can Dündar-Erdem Gül, Mehmet Altan, Şahin Alpay, Enis Berberoğlu, Atilla Taş, and Füsun Üstel and others (Academics for Peace) cases; the ECtHR, on the other hand, found violations in its judgements on Mehmet Altan, Osman Kavala, Cumhuriyet Newspaper and Ahmet Şık cases. Apparently, the criterion of “success” can be different for law and for the political power. The promotion of Fidan and Yılmaz, who were seen as absolute failures by law but “very successful” by the political power are two examples of this. Perhaps more importantly, it is necessary to see how inconsistent these promotions are with the government’s judiciary reform claims. Could İrfan Fidan be appointed to the Constitutional Court to stop the detection of the violations that he himself caused? Can the quality of indictments be improved by rewarding and promoting the authors of low-quality indictments?

PEN Norway “Turkey Indictment Project”

PEN Norway “Turkey Indictment Project” aims to have national and international lawyers and human right experts examine the indictments of twelve cases especially related to freedom of expression, freedom of the press, and freedom of assembly in Turkey in recent times, and to analyse their compliance with national legislation as well as with international standards. In this context, reports on the indictments of Nedim Türfent, Berzan Güneş, Gezi Park (Osman Kavala), Pelin Ünker, Deniz Yücel, MİT members news coverage, Büyükada, and Cumhuriyet Newspaper cases have been published.

The primary concern of the cases discussed is the right to freedom of expression and freedom of press. As a matter of fact, Nedim Türfent has been charged because of a news report he made (See Uysal, 2020a). Berzan Güneş is a journalist and the indictment against him is related to especially his journalistic activities (See Fondi and Beck, 2020a). An indictment was prepared against Pelin Ünker for her news report on the children of the then Prime Minister (See Heggdal, 2020). During the investigation, Deniz Yücel was only asked about the articles he published on *Die Welt* and he was detained for a year, ten months being under severe isolation (Uysal, 2020b). Likewise, indictments were issued against journalists Aydın Keser, Barış Pehlivan, Barış Terkoğlu, E.E., Erk Acarer, Hülya Kılınç, Mehmet Ferhat Çelik, and Murat Ağırel in the case related to MİT (national intelligence) members news

coverage (See Uysal, 2020c). The case against the journalists of the Cumhuriyet Newspaper was filed with an indictment that features the word “news” (“*haber*”) 662 times and that accuses news reporting and journalism in itself (see Fujita, 2020).

On the other hand, among the cases regarding the rights to organise, assembly and demonstration, the Büyükada case (see. Fondi and Beck, 2020b) and the Gezi Park (Osman Kavala) case (see Dent, 2020) stand out.

In all but one of the files, there were people taken into custody and arrested. Some defendants were detained for more than 1000 days (see Dent, 2020 and Uysal, 2020a). The only evidence in almost all of the proceedings is related to the news coverage, tweets, or joining a demonstration or meeting that proves to be entirely legal. However, almost all of them include criminal charges of “propaganda of a terrorist organisation “, “membership to a terrorist organisation”, “aiding a terrorist organisation” or even “attempting to overthrow the government.” On the other hand, all the reports highlight that, in the face of such grave criminal charges, the indictments lack concrete evidence corresponding to these accusations.

The length of the indictments varies from 3 to 657 pages. However, the indictments, be they three-page or longer than five hundred pages, instead of showing the relation between the acts of the defendants with the elements of the alleged crime, list the acts of the organisation for whom aid or propaganda acts were allegedly performed. Therefore, in almost all cases, the prosecution strives to emphasise how “evil” the organization is, instead of showing the “fact” that the person on trial has committed the crime. Naturally, this does not constitute a good example of legal reasoning.

Although the indictments are apparently prepared in a relatively short time considering the general practice in Turkey, some attributed acts date back five or six years. For example, a file involves tweets posted in 2014 (see Fondi and Beck, 2020a). This shows that the indictments are prepared for the purpose of creating an opinion about the person on trial based on retrospective searches.

None of the indictments were found adequate by the authors of said reports. The following expressions used in the evaluations are striking:

- “In general, the form of the indictment and the presentation of important facts and details are not satisfactory… It is not clear why Taner Kılıç was included in the indictment” (Fondi and Beck, 2020b: 10-11).
- “It is seen that [the document] details many themes that are not directly related to the investigation file and includes numerous bulky quotations. This makes it significantly difficult to read and understand the indictment” (Uysal, 2020c: 7).

- “It is seen that the first page of the indictment fails to show a link between the written content and the suspect and the accusations against him (Uysal, 2020b: 7).
- “It does not contain a succinct statement of facts. It also does not clearly state the applicant’s criminal responsibility for the facts at the center of the Gezi events or criminal acts committed there. It is basically a compilation of evidence some of which have only limited influence on the crime in question “(Dent, 2020: 8).
- “The indictment is poorly written does not meet the main purpose that should be in any indictment, that is, it does not allow the defendant to understand the criminal charges, the legal justification of the charge in question, and the relevant evidence supporting the charge” (Heggdal, 2020: 6).
- “This document is lacking in details regarding the most important points of the indictments. One of the major flaws of the present indictment in terms of Turkish Law is that it cannot provide information on the exact date and time of the crime committed, which leads to uncertainty about exactly what the defendant was accused of” (Fondi and Beck 2020a: 5).
- “The section starting from page 2 of the indictment to the middle of page 18 contains summary information about the organisation of which the suspect is alleged to be a member or to make propaganda. There is no reference to the name of the suspect in any part of this first 18-page” (Uysal, 2020a: 4).
- “There is a risk that the political color of the indictment will adversely affect the fairness of the trial” ... “In the case in question, the indictment does not even provide, let alone adequate, a reasonable justification for suspecting that any of the defendants have committed a crime” (Fujita, 2020: 6, 28).

The findings are generally concluded stating that the text evaluated does not count as an indictment at all. Some reviewers stated that had the indictment been issued in their country, it would have been absolutely rejected.

As has been already stated, there is actually no regulation within the scope of Article 170 of the Criminal Procedure Code to ensure the “quality” of an indictment. Apart from this finding, most of the reports show that even the requirements of Article 170 have not been met. For at least a few reports contain recommendations that prosecutors should comply with the requirements of Article 170. “The fulfillment of the requirements of CPC Article 170 by the prosecutors should be defined as an obligation and in this sense, the indictments should be associated with a mandatory format just like the Constitutional Court’s individual application form” (Uysal, 2020b: 27). “CPC Article 170 should be completely abided by. If this is achieved, the indictment will provide the defendant with sufficient information” (Heggdal, 2020: 17).

Almost all of the reports point out that the indictments make political references falling out of the scope of the trial. This, in turn, reinforces the doubt that the indictments are being used as a tool of political intervention, as we have argued earlier. The statements of government representatives about the persons on trial appear in newspapers, some of which are echoed back to the indictments. In some cases Ministers, Prime Ministers, or even members of the government as a whole are appearing as plaintiffs. Again, there are statements made by the government representatives regarding some of the files while the trial still continues.

The reports are generally concluded with the recommendation that the indictments should be prepared to be briefer, more to the point, or even in the format of a mere form, and the prosecutors should show more clearly how they operate the legal proceedings, that is, how they establish the relationship between the perpetrator and the act in the concrete case, and which elements of the crime correspond to this.

Conclusion: "*J'Accuse!*"

Based on the results of the PEN Norway indictment project, we have to reach the conclusion from this study, which defines indictment as the point zero of the proceeding, that the proceedings in Turkey "end before starting." As in the saying "a bad beginning makes a bad ending," the judicial process in Turkey does not begin and resume as a "judging/reasoning process" and unfortunately the decision eventually made are not "judgments" but "edicts."

Though a trial process should consist of arguments that will "convince" the parties of the trial and the public, and a decision should be reached through them. What makes the trial fair is not that the sentence passed "punishes a criminal", but that it establishes a comprehensible relationship between the act, suspect, and the elements of the crime as stipulated by law. An indictment is a text that brings this before the court. When the indictments are not of this nature, it is not possible to call the "performance" taking place in courtrooms an actual trial.

Another important point, which is not possible to demonstrate in this study, is that the indictments in fact consist of "police enquiry reports." In most cases, if not all, indictments are but copied and pasted police reports. To the point that typos, mistaken locations and dates, mixed up facts, logical errors, etc. are transferred directly from police reports to indictments and then to the final decision of the court. There are thousands of files flooded with misspelled or skipped names and inconsistencies because the indictments are prepared just by changing names on the previous indictments.

Turkey has a strong tradition and experience of human rights movements, however we can consider it a shortcoming that indictments have not been exclusively analysed in this way before. However, it is understandable that the indictment process is seen as a "missing" link from the very beginning. The acceptance that prosecutorial indictments are used as a form of judicial harassment, particularly in relation to acts contrary to the interests of the current government rather than the law, seems to make the civil society and human rights defenders consider the approach that indictments could be corrected as a naivety. However, when showing that a biased, incomplete, and inconsistent indictment can be appealed with a counter-claim, Emile Zola called it out very clearly when he declared: "*J'Accuse!* [I accuse!] "

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