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Legal report on indictment

Reyhan Çapan, Hüseyin Aykol, Emire Eren Keskin

PEN Norway's Turkey Indictment Project

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Published: 4 February 2021

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The Turkey Indictment Project is funded by the Norwegian Ministry of Foreign Affairs, Consulate General of Sweden in Istanbul and the Heinrich Böll Foundation.

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1. Introduction

In the June 2015 elections the AKP (Justice and Development Party) lost its parliamentary majority and the opponent party HDP (People's Democracy Party) passed the election threshold of 10% for the first time in years. Hence, without a two-third majority President Erdoğan's plans for a constitutional change could not be implemented.

As a result of unsuccessful attempts to form a coalition government, new elections were called for in November 2015. The period between June and November 2015 was a turbulent one, with a number of terrorist attacks carried out in various cities. Addressing these terrorist attacks in one of his speeches, President Erdoğan claimed that if AKP could get 400 chairs in the parliament – restoring its absolute majority – incidents like these would never happen. His statement was widely criticised and thematised in many newspapers including *Özgür Gündem*.

Özgür Gündem was a newspaper published between 1992 – 1994 and again between 2011 – 2016. Political difficulties increased and resulted in over 150 investigations against the newspaper under the Anti-Terror Law and Articles 301 and 299 of the Turkish Penal Code in 2016 alone. The majority of these investigations were followed by indictments accusing authors, editors and members of the consultant board of various offences.

Our analysis is centered around an indictment, which was issued in response to the article dated September 8, 2015 commenting on the above-mentioned statement of the president. At the time Reyhan Çapan was *Özgür Gündem's* editor-in-chief, Hüseyin Aykol and Emire Eren Keskin were co-editors-in-chief and are therefore named as defendants. All of them were and still are subject to numerous other criminal cases and have been sentenced to multiple years in prison in the past.

Upon complaint of President Erdoğan, an investigation was launched and an indictment was issued. Because of the article's headline as well as some sections

within the text, the three journalists were accused of “insulting the president” and “making propaganda for a terrorist organisation”.

The indictment was accepted by the 13th High Criminal Court in Istanbul, the proceedings are still ongoing. The 19th hearing will take place on February 24, 2021.

2. Analysis in terms of Turkish Law

2.1. Structure and Formalities, Art. 170 (3) Turkish Criminal Procedure Code

The indictment consists of four pages and is divided into two sections. The first part is a general one, providing information about the case such as details about the complainant and plaintiff, the three suspects, the alleged crimes, the applicable articles as well as the collected evidence. This section is followed by two pages of continuous text under the heading “The Investigation Report was Examined”. The layout of the indictment is kept simple, no more sections could be identified.

To comply with Turkish law an indictment has to contain a wide range of elements. These elements are clearly listed in Art. 170 (3) Turkish Criminal Procedure Code (CPC) and should be included in the document as exhaustively as possible.

The indictment mentions President Erdoğan as plaintiff with additional information about his lawyer. According to the document, the investigation was launched upon his complaint.

It also specifies the identity of the three suspects and correctly names their defence counsel on the first page. Right after the general section, however, the prosecutor mixed up the names of two of the suspects. It seems to be a small, only formal mistake, nevertheless, it allows the reader to draw conclusions on the prosecutor’s accuracy and diligence when drafting the indictment. This mistake is a result of carelessness within the drafting process and could easily be avoided.

In compliance with Art 170 (3) CPC the indictment states “making propaganda for a terrorist organisation” and “insulting the president” as the charged crimes, referring to Art. 299 (1) and (2) Turkish Penal Code, Art. 7 (2) Anti-Terror Law and Art. 53 (1) Turkish Penal Code. This information is essential for the defendants as it helps them to understand the allegations and prepare a suitable defence. It therefore should be laid out in as much detail as possible. In regards to the place and date of the alleged crime, however, the prosecutor decided to keep it imprecise on page one by only mentioning “2015, Istanbul”. This general information is only specified on the next page through the prosecutor’s explanations of his findings in regards to the issue of the newspaper *Özgür Gündem* from September 8, 2015. In light of the requirement of a fair and transparent judicial process, including exact details about the alleged crimes in the beginning of the indictment is essential.

As formally required, the indictment is addressed to the Assize Court in Istanbul and is signed by the Prosecutor for the Republic along with the date of issue November 26, 2015. Because of its position at the end of the text body, the date of issue is not immediately noticeable, even though it plays a crucial role to the timeline of the judicial proceedings and should therefore be clearly displayed.

Furthermore, according to Art. 170 (3) CPC the evidence should be clearly stated. On page two of the indictment as the last subcategory of the general section, evidence is listed as follows: “Accusation, defence, and the scope of the whole investigation document”. This “list of evidence” does not give any specifics on the *pieces* of evidence the indictment is based on. Up to this point we do know what the accusations are (“making propaganda for a terrorist organisation” and “insulting the president”) but we have not been given any information on the scope of the defence statements nor any other investigation documents. The indictment is clearly based on a newspaper article, which should be mentioned as a piece of evidence, citing its place and date of publication. Contrary to the formulation “the scope of the whole investigation document”, the reference to specific documents, photos, witnesses etc. would ensure fair-process in terms of Art. 6 European Convention of Human Rights (ECHR).

In conclusion, the incomplete presentation of the evidence was the only significant deficiency found in terms of Art. 170 (3) CPC. The prosecutor should have further elaborated on the evidence list, instead he fell short of explaining his abstract references in violation of Turkish law. Other than that, a majority of the necessary formal details were provided and quite a clear layout was chosen.

Even though the indictment is short, minor careless mistakes have slipped in, resulting in an impression of a hurried and careless working method. Producing a well-structured, detailed indictment without avoidable mistakes should be of high priority for a prosecutor. An indictment plays a crucial role for a fair and transparent criminal process, as from the moment it is served the defendants are formally given notice about the allegations against them.

2.2. Evidence, Art. 170 (4) Turkish Criminal Procedure Code

Art. 170 (4) CPC states that the events, which comprise the charged crime, shall be explained in the indictment in accordance to their relationship to the present evidence.

Starting on page two, the prosecutor describes the circumstances which lead to the accusations. He is referring to the newspaper *Özgür Gündem* with its report about President Erdoğan's speech on September 8, 2015. The following parts are cited as evidence:

1. The Palace is going crazy (headline)
2. On the day that there are heavy casualties in Oremar, the palace – which put an end to the peace process for the sake of the presidency – admitted that it waged the war for 400 MPs.
3. The palace is dragging the country to a bloody cliff for its prosperity.
4. The report is appalling, the war that Erdoğan, who overthrew the peace table to be the President, waged against the people on 24 July and led the country to a circle of fire. More than 100 children, women and young people were executed, hundreds of special force officers and soldiers lost their lives in the Palace's

war and more than 50 guerrillas lost their lives in the defensive war. The statements shock [the country]; Erdoğan makes statements, which shock the whole of Turkey, on the day there are heavy casualties on the soldiers in Oremar. He says: had there been 400 MPs, none of this would have happened. Erdoğan's statements, which underline there would be more bloodshed, appalled the whole society, there quick reactions to his statements.

5. Erdoğan: Dishonest!
6. HPG [Peoples' Defence Force] announces that TSK [Turkish Armed Forces] asked for a ceasefire through villagers by referring to photos of a crushed military vehicle – resulting from a terrorist attack – called 'Scorpion' that killed soldiers, who became martyrs. The TSK asked for a ceasefire to get the corpses of soldiers from areas under the control of HPG.

Unfortunately, the various parts are not separated from each other for example by use of paragraph, but instead make up one big section. This in fact makes it difficult to understand where one citation finishes and another one starts. Adding to the confusing presentation of the evidence is the fact that the exact same paragraph is repeated word for word a second time. Only after having read the indictment multiple times, it becomes apparent what the prosecutor tried to do: The first big paragraph comprises all the evidence (citations 1 – 6). Then, the prosecutor seemed to follow the pattern of firstly isolating the various citations, secondly commenting on them and lastly linking the citations to the alleged crimes, which in fact is a logical approach in theory. In practice, however, the reader has difficulties filtering the evidence and the prosecutor's lack of explanations is baffling. In our opinion, the text can be broken down as follows:

Citations 1-6: General paragraph with evidence

Citations 1-4: linked to the allegations of "insulting the president" and "making propaganda for a terrorist organisation"

Citation 5: linked to the allegation of "insulting the president"

Citation 6: linked to the allegation of “making propaganda for a terrorist organisation”

Each of the sections are commented by the prosecutor giving short details as to why he thinks the citations amount to sufficiently convincing evidence to support the accusations. However, his explanations are kept quite short and basic and do not constitute sufficient and justified legal arguments.

First of all, in the instance of citations 1-4, the prosecutor did not comment on specific sentences but generally declared “the news” to be an insult to the president’s honour, dignity and respect. He did not further elaborate on the definition of an “insult”.

Moreover, the prosecutor argued that by describing the situation as “guerrillas lost their lives in the defensive war” (evidence), the journalists committed the offence of “making propaganda for a terrorist organisation” (accusation). This harsh allegation comes alongside following explanation: “it describes the members of an armed terrorist organisation or PKK as guerrillas and considers PKK’s terrorist attacks an action within the scope of legitimate defensive war” (explanation). No further arguments are given and it’s left to the reader to fill the gaps, that are left behind by the uncomplete depiction of the prosecutor’s thought process. For a legal argument and a clearly demonstrated link between evidence and accusation, a prosecutor should not miss out on elaborating on his interpretations of words like “guerrilla” or “member of a terrorist organisation”.

Secondly, the prosecutor claims that citation 5 – as a shorter version of a quote by the President himself – is used in an insulting way, suggesting that Erdoğan is dishonest. Even though the prosecutor is explaining the original quote by Erdoğan, he still is implying that the reduced depiction is deliberately used as an insult. Thereby, the presumption of innocence principle is ignored. In connection with the original quote the prosecutor, especially in case of doubt, should have come to the conclusion that the statement in fact is merely a shorter presentation of the longer statement by Erdoğan.

Last but not least, in regards to citation 6 the prosecutor claims that the report about an allegedly demanded ceasefire by TSK “presents the violent, coercive and threatening actions of the armed terrorist organisation as legitimate”. The line of argumentation is not comprehensible and seems to be far-fetched in regards to the mere information about an event. The citation in question does not present any evidence to demonstrate an act of propaganda, the prosecutor did not consider it necessary to further explain his accusations. Additionally, the prosecutor’s comment that the citation in question “describes the Turkish Armed Forces as weak” is irrelevant in regards to the accusations and seems to be used to appeal to negative emotions in respect to the three suspects.

In conclusion, the prosecutor tried to explain the evidence in relation to the alleged crimes. Even though the line of argumentation cannot be followed, the intent to meet the standards set by Turkish law is noticeable. We, however, strongly urge that a clearer layout is followed in the future to help the defendants understand the content of the allegations. It would be helpful to discuss the different accusations separately from each other, instead of dealing with all of it in the same paragraph. As to the prosecutor’s approach to linking the evidence to the charged crimes, we are particularly surprised about the lack of legal arguments and reasoning.

2.3. Sufficient suspicion, Art. 170 (2) Turkish Criminal Procedure Code

When analysing this indictment, the way of proceding was a rather unusual one from an Austrian perspective. The Austrian Criminal Code does not recognise the offence of “Insulting the President”, rather only offers a general article in relation to “Insult”. This offence can only be investigated based on a complaint by the affected person. In relation to presidents or other officials the prosecutor can act without a preceding complaint but still needs permission from the official in question.

Even though the possibility of opening criminal proceedings in similar cases does exist in Austria, the majority of instances are dealt with through civil law suits with the aim of reparations for damages. A clear tendency to refrain from applying

criminal law can be witnessed not only in Austria but also other European countries in response to various decisions of the European Court of Human Rights (ECtHR).

In that respect, the Venice Commission in March 2016 found: “The developments in Europe indicate that there is an emerging consensus that states should either decriminalise defamation of the Head of State, or limit this offence to the most serious forms of verbal attacks against heads of States while at the same time restricting the range of sanctions to those not involving imprisonment.”[1]

This “European consensus” on limiting the offence to only the most serious forms of verbal attacks should have been taken into consideration by the prosecutor in the investigation phase. After a thorough (and correct) assessment of the freedom of press against the personal right of the president (see below), the prosecutor should have come to the conclusion that the evidence is not sufficient to prepare an indictment in accordance with Art. 170 (2) CPC.

In this respect, the second accusation of “making propaganda for a terrorist organisation” proves to be baseless as well. In light of the fatal absence of legal arguments, we could not observe the necessary compliance with Turkish law.

3. Analysis in terms of International Law

3.1. Freedom of Expression and Freedom of the Press

This case and its indictment causes particular concern in regards the Right to Freedom of Expression and Freedom of the Press, as protected by Art 10 European Convention on Human Rights (ECHR) as well as Art 19 International Covenant on Civil and Political Rights (ICCPR). In our evaluation process on this indictment, we have

[1] Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey, Venice Commission no. 831/2015 (15 March 2016) para. 57

positively noticed that the prosecutor showed initial awareness on the conflicting issue, as there is a clear section where he establishes his understanding of the limits of the Freedom of the Press. Since his line of argumentation presumably reflects the general position of prosecutors in Turkey regarding the Freedom of Expression and the Freedom of Press, we are going to discuss the arguments made in the indictment and assess them in terms of international standards.

To give some context, the prosecutor starts off by immediately clarifying that Freedom of the Press is not limitless, and pointing out a legal obligation to not attack personal rights. Personal rights are protected against attacks under Articles 24 and 25 of the Turkish Civil Code as well as under the Turkish Constitution. The prosecutor then goes on to argue that in cases where Freedom of the Press conflicts with personal rights, the least protected one shall be considered of superior value, while the main criterion for choosing the right one shall be the public interest.

When dealing with competing rights, international human rights standards refer to the margin of appreciation doctrine as an instrument to balance individual rights with national interests in order to resolve any potential conflicts. As the ECtHR clarified already in 1968, the margin of appreciation must be derived from "a just balance between the protection of the general interest of the community and the respect due to fundamental human rights while attaching particular importance to the latter"[2]. This balance, of course, has to be based on the values of a democratic society, namely plurality, tolerance and freedom. Restrictions on the Freedom of Expression and the Freedom of the Press as stipulated in Art 10 (2) ECHR are only permissible if there is a compelling social need, otherwise any limitation would run the risk of appearing as censorship.

The prosecutor argues in the indictment, that in order for the right to freedom of speech to be acknowledged, a news outlet's criticism or value judgment must meet

[2] Belgian Linguistic Case (No. 2), No. 1 EHRR 252 (23 July 1968) para 5

the criteria of being real and newsworthy, it must lie within the scope of public interest and public attention, and provide an intellectual connection with its means of expression. He further states, that the press should objectively perform its function and denies that the *Özgür Gündem* is doing so.

In this context, there seems to be a distorted understanding of "objectivity". A media outlet covering a political speech, even if it is held by President Erdoğan himself, is fulfilling its purpose as social watchdog by providing the public with information. While doing so, the value of the published information can not be measured depending on whether or not it condones or condemns the content of the speech nor can it lead to denying the news article's status of objectivity. After all, the ECtHR has stated in 2004 that "the national margin of appreciation is circumscribed by the interest of democratic society in enabling the press to exercise its vital role of 'public watchdog'"[3].

Even more alarming are the prosecutor's assumptions, that *Özgür Gündem* is acting against public interest by covering a widely criticised speech by President Erdoğan. On the contrary, Art 10 ECHR includes the "right to receive and impart information and ideas without interference by public authority and regardless of frontiers". The ECtHR reconfirmed this in 2014 by stating: "The Court has consistently recognised that the public has a right to receive information of general interest. Its case-law in this field has been developed in relation to press freedom, the purpose of which is to impart information and ideas on such matters. The Court has emphasised that the most careful scrutiny on its part is called for when measures taken by the national authorities may potentially discourage the participation of the press, one of society's 'watchdogs', in the public debate on matters of legitimate public concern."[4].

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[3] Cauvy and others v France, No. 64915/01 (29 September 2004) para 67

[4] Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v. Austria, No. 39534/07 (28 February 2014) para 33

Therefore a newspaper does not violate public interest by publicly criticising a politician.

The prosecutor states however, that if an article includes any unnecessary or non-beneficial statements, is written in a “provocative style“ that causes the feeling of hostility or scepticism, if the reporter chose a wording that is insulting or offending, or if the article includes any unnecessary or non-beneficial statements, the content would not justify these forms of expression, and the newspaper article in question would therefore be against the law. Evaluating this statement on the basis of international human rights standards, can only lead to quoting the following passage of a 1976 ECtHR judgment: "Freedom of expression [...] is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population"[5]. The prosecutor’s conclusion that a “provocative“ newspaper article justifies legal action against the newspaper’s staff is therefore baseless. The function of any press includes the creation of forums for public debate[6]. Causing scepticism is a necessary element for fulfilling that purpose and can therefore not be an indicator of legal violation. Regarding the fact, that the prosecutor is denying the newspaper *Özgür Gündem* their rights in terms of Freedom of the Press on grounds of ‘including any unnecessary or non-beneficial statements’ in their article, it will be discussed separately in Chapter 3.2.

In the indictment’s last sentence, the prosecutor announces that the news covered by the article in question, is “not real“. Without taking position about the content of the article, it must be noted that it does certainly cover a real speech by President Erdoğan. It is also true, that in this speech he mentioned terror attacks that took place in 2015 and claimed that if he could get 400 chairs in the parliament, these

[5] Handyside v United Kingdom, No. 5493/72 (07 December 1976) para 49

[6] Társaság a Szabadságjogokért v. Hungary, No. 37374/05 (14 July 2009) para 27

incidents would never happen. He also did claim that families of some soldiers are dishonest. The prosecutor did not deny any of the content of Erdoğan's speech, as cited in the article. His objections were solely concerning the way it was contextualised. When the newspaper *Özgür Gündem* published its article about the speech, it used headlines like "the palace goes crazy" and included a picture of the president and the words "Erdoğan: Dishonest!". The article then referred to Erdoğan statement about soldier's families. It also criticised the palace's handling of the situation, which cost many people their lives on 24 July 2015 and stated in this context, that Erdoğan overthrew the peace table to be the president. These statements are certainly harsh value judgements, but nonetheless the article covers real events. To deconstruct this last part of the indictment, we will refer once more to the ECtHR: „In the Court's view, a careful distinction needs to be made between facts and value-judgments. The existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof."[7] Since it is impossible to prove the "realness" of value judgments, the prosecutor's requirement can not be fulfilled. Justifying a restriction of the Freedom of Expression and the Freedom of the Press on these grounds therefore infringes Article 10 ECHR.

Regarding the crime of insulting the president, as stipulated by Art. 299 (1) Turkish Penal Code, we want to point out that while prevailing law must be respected, it is once again necessary to balance individual rights with national interests in accordance with the margin of appreciation. President Erdoğan's personal rights need to be carefully weighed against the right for Freedom of Expression and Freedom of the Press.

To count as an insult, a statement expressing clear disregard or contempt is generally sufficient, but only if the insulted person did not cause such a judgement by his or her behaviour. Appropriate criticism of dishonouring behaviour is not insulting.

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[7] Lingens v Austria, No. 9815/82 (8 July 1986)

In order to legitimately limit the Freedom of Expression, the protection of a person's honour must meet the standard requirement of being necessary for a democratic society. Additionally, certain public figures like politicians are required to tolerate a general restriction on their protection of honour, as they are subjects of increased public interest and must therefore also expose themselves to much harsher criticism by the public, than private individuals.

3.2. Guidelines on the Role of Prosecutors

Finally, we will discuss an issue that we briefly touched on above. The prosecutor argues that the newspaper *Özgür Gündem* is not legitimised to enjoy protection of their rights to Freedom of the Press as guaranteed within the Freedom of Expression in Art. 10 ECHR and Art. 19 ICCPR. His reasoning for this, is that they were including unnecessary and non-beneficial statements in their article.

The reader of this indictment is left to wonder, *who exactly* a newspaper article has to be beneficial for, in order to not be perceived as "unnecessary". The answer to this lies once again in the media's function as public watchdog. The legitimacy of a news article can therefore certainly not be undermined by arguing that there is no benefit in the article, just because it perhaps does not benefit a desired side. The fact that in this case one side is represented by this indictment's plaintiff President Erdoğan himself, must not have an influence on what kind of newspaper article is viewed as "beneficial" or else "unnecessary". A prosecutor of legal integrity needs to be able to separate any political sympathies or loyalties he might carry for the President from his understanding of justice and handling of a fair trial. In this case however, the prosecutor is refusing to acknowledge the newspaper's legitimacy and deems it justified to restrict their rights in terms of Freedom of the Press under the claim that the news article included unnecessary and non-beneficial statements. For lack of additional argumentation by the prosecutor, his reasoning leads to the conclusion that he considers any newspaper article to be generally unnecessary if it does not benefit the president. In this context, we want to point towards the United Nation's Guidelines on the Role of Prosecutors, which lay out a set of standards to ensure a

fair, impartial and efficient prosecution of criminal offences in all justice systems. In this context we want to particularly point out principles 13 (a), 13 (b) and principle 14:

13. In the performance of their duties, prosecutors shall:

(a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;

(b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

As the prosecutor of this indictment stated initially, Freedom of the Press is not limitless. This, in its core is correct. But in order to restrict a media outlet's protection under Freedom of the Press, the reasons for these restrictions need to be legitimate according to Art. 10 (2) ECHR and Art. 19 (3) ICCPR. It most certainly does not suffice for a newspaper article to not benefit a certain side. After all, it still benefits its purpose as public watchdog and the prosecutor is therefore required, under international law, to acknowledge the journalist's rights protected by Art. 10 ECHR and Art. 19 ICCPR.

3.3. Fair Trial and Presumption of Innocence

Throughout the indictment we noticed a recurring issue with properly linking evidence to accusations. This becomes especially clear with the lack of explanation as to why the defendants are being charged with the crime of "making propaganda for a terrorist organisation", Art 7(2) Anti-Terror Law. As discussed in more detail above, the indictment only touches on this accusation twice.

To briefly recap, firstly, the prosecutor quotes a section of the newspaper article that criticises the death of more than a hundred children and women, hundreds of special

force officers and soldiers, and more than fifty guerrillas. He then constructs his accusations based on the word “guerrillas” by assuming that it is meant to describe members of an armed terrorist group, he then goes on to conclude that the article’s authors are therefore considering terrorist attacks an action within the scope of legitimate defensive war, which he then sets equal with making propaganda for a terrorist organisation. Secondly, the prosecutor refers to the allegedly demanded ceasefire by TSK. According to him, mentioning this in the article, “presents the violent, coercive and threatening actions of the armed terrorist organisation as legitimate”. He fails to offer any explanation as to how he made that connection or came to this conclusion, only adding that this “describes the Turkish Armed Forces as weak”, which further contributes to the reader’s confusion.

Both statements and his subsequent lines of argumentation for charging the defendants with “making propaganda for a terrorist organisation”, are inconclusive at best. Failing to properly link evidence to accusations and still insisting to continue the prosecution, does not only stand in clear conflict with principle 14 of the UN Guidelines on the Role of Prosecutors, it additionally heavily violates Art. 6 (2) ECHR, presumption of innocence. Without this essential core function of a fair trial as guaranteed by Art. 6 ECHR, a judicial system can not appropriately protect and uphold the law within a democracy.

4. Conclusion and Recommendations

In conclusion, the present indictment does not entirely meet international nor national standards. As has been elaborated in detail above a number of deficiencies could be detected.

First of all, even though the indictment seems very well structured, the layout of the individual text bodies leads to difficulties in understanding the allegations. The prosecutor did not use a sufficient number of paragraphs and headlines, which made it harder to understand the allegations without misconceptions.

Secondly, the prosecutor included a majority of the formal necessities in accordance to Turkish law, however, the absence of a comprehensive list of evidence constitutes an obvious and significant failure. Abstract references do not provide the necessary detail and are therefore inadequate to present the evidence. Furthermore, the accusations were not presented with the required detail and legal reasoning. Therefore, the indictment should have never been issued.

Thirdly, the prosecutor's approach regarding Freedom of Expression and Freedom of the Press has strayed far from the international understanding of these rights, and their legitimate limitations. Any scope of possible interpretation regarding the margin of appreciation has been transgressed and the line of argumentation displayed in this indictment does not hold. In this context we would like to leave the last word to the ECtHR, who put it precisely to the point with the following statement:

„The Court considers that it would be fatal for freedom of expression in the sphere of politics if public figures could censor the press and public debate in the name of their personality rights, alleging that their opinions on public matters are related to their person"[8]

Therefore, we strongly urge the process of criminal prosecution in Turkey to be reviewed and improved. Following steps could be taken:

1. Drafting an indictment should always be in line with Art. 170 (3) CPC. We recommend that after finishing a first draft, the prosecutor should check if all the details prescribed by law were considered and can be found in the document. It might help to read the document from the point of view of the defendant to make sure that it is comprehensible and clear.

[8] Társaság a Szabadságjogokért v. Hungary, No. 37374/05 (14 July 2009) para 37

2. A clear format and headlines are absolutely essential and do not only help the defendants to understand the allegations, but could also be of importance to a prosecutor to develop a good and straightforward line of argumentation.

3. Regular awareness and legal training are of utmost importance. The prosecutors should always take into consideration the international standards and should be trained in applying the margin of appreciation doctrine when balancing individual rights with national interests.

4. Once again, we need to stress the importance of acknowledging the presumption of innocence as stipulated in Art. 6 ECHR. As an essential core function of a fair trial, it is also an irreplaceable element of any legitimate democracy. Unfortunately, this indictment has shown that the presentation of accusations based on correct legal arguments seems to pose the most difficulties when drafting the indictment.

5. Furthermore, we urge the authorities to reassess their understanding of national interests, especially in the context of the true purpose of free press and media for a democratic society.