

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

**Legal Report on Indictment**

**Aryen Turan**

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## PEN Norway Turkey Indictment Project

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

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

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

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

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

# Legal Report on Indictment

# Aryen Turan

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## 1. Introduction

This report is a part of PEN Norway's Turkey Indictment Project. Its purpose is to examine the indictment against Lawyer Aryen Turan which was issued by the Izmir Chief Public Prosecutor's Office on November 7, 2022, with investigation no. 2022/150348 and indictment no. 2022/6350. The evaluation will be conducted in accordance with Turkey's domestic law and international human rights law to determine whether the indictment adheres to these standards. The report is divided into four sections. Section 1 introduces the report (this section). Section 2 provides a brief summary of the background information on the case. Section 3 presents a legal analysis of the indictment. Section 3.2 assesses the indictment in light of international standards: Articles 6, 10, and 18 of the European Convention on Human Rights (ECHR) and the UN Basic Principles on the Role of Lawyers. Section 3.3 briefly draws attention to the relationship between domestic law and international law. Finally, section 4 offers a brief conclusion.

“Aryen Turan was not informed about the criminal charge against her. Even though there is no official restriction on examining the documents related to Turan's accusation, the examination was effectively restricted.”

## 2. Summary of Case Background Information

Aryen Turan is a lawyer registered with the Izmir Bar Association. She is a member of Board of Directors of the Izmir Branch of the Association of Lawyers for Freedom.<sup>1</sup>

Under Article 37 of the Regulation on the Law of Advocacy of the Union of Bar Associations of Turkey, Aryen Turan, as a member of

the Board of Directors, has the right to speak at General Assemblies of the İzmir Bar Association. Aryen Turan exercised this right at the Assembly of the İzmir Bar Association on 22 and 23 October 2022, where she read a text to the Assembly. During her speech, she addressed issues within the judiciary, the legal profession, and human rights violations in Turkey. Additionally, she briefly mentioned the existing reports of the Turkish Armed Forces (TSK) using chemical weapons in its transborder operations.<sup>2</sup>

A small group of lawyers protested against Aryen Turan after her speech, mainly due to her allusion to an independent investigation into the allegations of Turkey's military operations' use of chemical weapons. Furthermore, she was targeted by various media outlets, and it was learned from the press that a criminal investigation was initiated. On November 3, 2022, Turan was detained by the İzmir Anti-Terror Branch Teams.<sup>3</sup>

Though there was no warrant for a search and seizure, Turan's cellphone was seized. Moreover, Turan's family nor her lawyers Türkan Aslan Ağaç and Ali İhsan Güven, whose names were provided to the police by Turan, were notified about her detention. Aryen Turan was not informed about the criminal charge against her. Even though there is no official restriction on examining the documents related to Turan's accusation, the examination was effectively restricted.<sup>4</sup>

On November 4, 2022, Turan was taken to the public prosecutor's office and her statement on the allegation of aiding and abetting the PKK organization was taken. The İzmir Chief Public Prosecutor's Office prepared an indictment against Turan, which was subsequently transferred to the 18th High Criminal Court in İzmir. The indictment was issued 7 November 2022. The court accepted the indictment and opened a public case.<sup>5</sup>

The indictment accuses Lawyer Aryen Turan of "Aiding and Abetting the Organization Knowingly and Willingly [PKK/KCK]". The applicable articles referred to in the indictment are Article 314/2 of the Turkish Penal Code (TPC) by the implication of the Articles 220/7 and 314/3 of the TPC no. 5237, Article 5/1 of the Anti-Terror Law no. 3713, and Articles 63, 53/1 and 58/1 of the TPC.<sup>6</sup>

### 3. Analysis of the Indictment

#### 3.1 Introductory Remarks and Formalities

Although the indictment is lengthy, it lacks a clear and concise summary of the facts. The indictment starts with formalities, such as the place, the date and time period of the alleged crime, the description of the offence, the time spent under detention and the evidence of the offence. The following pages contain a collection of various texts about the organization PKK/KCK and references to media publications posted by the organization and organizations that support it.<sup>7</sup> This descriptive section concludes with a statement that was released by the Turkish Armed Forces on October 20, 2022, which states that the accusations regarding the use of chemical weapons are "baseless and untrue".

The specifics of the case of Aryen Turan are only addressed from page 6 of the indictment. The indictment notes that Turan's statements were "in line" with the media publications previously outlined. To support this claim, transcripts of Turan's speech posted on YouTube, a transcript of her speech at the İzmir Bar's General Assembly, and her statement made on November 4, 2022, are presented.

The statement that Turan is being prosecuted for is quoted on page 7 of the indictment, and reads:

*"In national and international media, information is being published that Turkey is using chemical weapons in military operations, despite the fact that it is prohibited by the international conventions. However, no explanation has been given by the authorities to date, other than denying it and stating that it is being investigated."*

As to these statements, the Indictment holds that Aryen Turan "voiced the claim that Turkish Armed Forces used chemical weapons during its operations and thus committed the offence of willingly and knowingly aiding and abetting the PKK/KCK armed terrorist organization with the aim of ensuring the operations against the organization are terminated."<sup>8</sup>

### 3.2 Evaluation of the Indictment under International Standards

Article 90 of the Constitution of the Republic of Turkey states that international law has the force of the domestic law, but in case of dispute, international conventions shall prevail. Therefore, all organs of the Turkey are bound by international law, among which international treaties to which Turkey is a State Party. This means that organs of Turkey, among which the judiciary, when carrying out their functions in a domestic context, are obliged to give effect to international law.

Turkey has been a State Party to the European Convention of Human Rights (ECHR) since 1954. Therefore, all citizens of Turkey are protected by the standards that are set out in the Convention. The ECHR establishes a minimum set of standards which must be secured to those within the jurisdiction of each contracting State.

#### 3.2.1 Article 10, ECHR: Freedom of Expression

Article 10/1 of the ECHR states:

*“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”*

The article enshrines the right to freedom of expression, which allows individuals to hold opinions without interference by the State. This right has been recognized as one of the essential foundations of a democratic society and a prerequisite for personal fulfillment and societal progress<sup>9</sup> which underpins the protection of other rights.<sup>10</sup>

To conduct a comprehensive assessment of Turan’s right to freedom of expression, it is necessary to analyze the statements for which she is being charged and the context in which she delivered them.

As mentioned above, Turan’s alleged offense centers around one comment she made in her speech at the General Assembly of the İzmir Bar Association on 22 October 2022. Her statement, as quoted in the indictment, reads:

*“In national and international media, information is being published that the Turkish State is using chemical weapons in military operations, despite the fact that it is prohibited by the international conventions. However, no explanation has been given by the authorities to date, other than denying it and stating that it is being investigated.”*

This statement is a factual statement, stating i) that (international) media have reported the possible use of chemical weapons; ii) that the use of chemical weapons is prohibited by international law; iii) that no explanation has been given about these reports by the government. Furthermore, the statement is very general in nature and therefore not of a controversial nature, based on facts that are available to anyone. Their truth can be easily verified – as will be demonstrated below.

“ Turkey has been a State Party to the European Convention of Human Rights (ECHR) since 1954. Therefore, all citizens of Turkey are protected by the standards that are set out in the Convention. The ECHR establishes a minimum set of standards which must be secured to those within the jurisdiction of each contracting State. ”

It must be emphasized that Turan's statement did not make any direct accusations, but rather alluded to the media's publication of information about the Turkey's alleged use of chemical weapons. By stating that "information is being published", no value judgements regarding the allegations of the use of chemical weapons was made. On the contrary, Turan merely asserted that such statements are currently unproven. Finally, she was simply drawing attention to the fact that the authorities have given no explanation to date about the publications about the use of chemical weapons. This part of her statement is supported by the facts, as Turkey had given little explanation about this issue at the moment the speech was made.

Furthermore, Turan's statement should be contextualized within the wider public discourse on the use of chemical weapons, which is a significant and pressing issue both nationally and internationally. Turan's speech merely reflects a part of the current discourse, information, and views propagated in various news articles and reports. Several news articles and reports have made similar statements. One example is the British BBC, which has reported about cases similar to that of Turan.<sup>11</sup> Another example is the Nordic Research and Monitoring Network, which published an article on September 12, 2022, reporting that Russia had accused Turkey of planning to equip drones with chemical weapons.<sup>12</sup> Finally, in September 2022, the international NGO *International Physicians for the Prevention of Nuclear War* (IPPNW) published a report of an independent investigation carried out in Northern Iraq, which compiled various pieces of evidence that could indicate the use of chemical warfare agents that are in violation of the Chemical Weapons Convention. The report concluded by urgently appealing to the international community to facilitate an independent international fact-finding mission.<sup>13</sup> None of these media outlets can be said to support terrorist activities, or any other activities detrimental to Turkey. All these news articles and reports contain only factual information, some of which similar to the statements issued in Turan's speech.

Finally, it is essential to consider why Turan included this statement in her speech. As per Article 76/1 of the Law on Lawyers, bar associations have a key responsibility to identify and report activities that are in violation to their core purposes and functions, and they must ensure the implementation of the rule of law. As a member of the İzmir Bar Association, speaking at the Bar's General Assembly, Turan had the duty to fulfill these responsibilities.<sup>14</sup>

As such, Turan's comments can be reasonably interpreted as an attempt to inform and contribute to a public discourse on threats to the rule of law, rather than to incite hatred or violence. This is supported by the fact that both Turan and the association have expressed that the intentions of the speech were to inform the bar association's administration about the reports on the use of chemical weapons, with the aim of working together to find solutions.<sup>15</sup>

The protection of the right to freedom of expression varies depending on the context in which it is exercised. In the case of lawyers, the ECtHR has recognized that they play a crucial role in the administration of justice, and thus, their right to freedom of expression is accorded special consideration and protection.<sup>16</sup> The ECtHR case law on Article 10 ECHR outlines that lawyers play a key role in ensuring that the courts, whose mission is fundamental in a State based on the rule of law, enjoy public confidence and recognizes the unique position of lawyers in the administration of justice. Lawyers are key actors in the justice system, directly involved in its functioning.<sup>17</sup>

For example, in the seminal case of *Morice v. France*<sup>18</sup> the ECtHR elaborated on the high level of protection that is accorded to lawyers:

*"The specific status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts (...) Lawyers are thus entitled, in particular, to comment in public on the administration of justice, provided that their criticism does not overstep certain bounds. Those bounds lie in the usual restrictions on the conduct of members of the Bar, as reflected in the ten basic principles enumerated by the CCBE for European lawyers, with their particular reference to "dignity", "honor" and "integrity" and to "respect for ... the fair administration of justice" (...).*

*The question of freedom of expression is related to the independence of the legal profession, which is crucial for the effective functioning of the fair administration of justice. It is only in exceptional*

*cases that restriction – even by way of a lenient criminal penalty – of defense counsel’s freedom of expression can be accepted as necessary in a democratic society.”<sup>19</sup>*

In the *Morice* case, the ECtHR emphasized that restrictions of the right to freedom of expression were reserved for “gravely damaging attacks that are essentially unfounded”, which had not been made in the case.<sup>20</sup>

Furthermore, when the matter in question concerns public interest, it is established case law of the ECtHR that:

“ The statements of Aryen Turan for which she was prosecuted are statements of fact of a very general nature, based on widely reported facts that are available to anyone, of which the truth can be easily verified. At no point this statement overstepped the bounds outlined in the professional code of the CCBE. Neither was her factual statement a “gravely damaging and essentially unfounded attack”.

*“[A] high level of protection of freedom of expression, with the authorities thus having a particularly narrow margin of appreciation, will normally be accorded where the remarks concern a matter of public interest (...). A degree of hostility and the potential seriousness of certain remarks do not obviate the right to a high level of protection, given the existence of a matter of public interest.”<sup>21</sup>*

As outlined above, the statements of Aryen Turan for which she was prosecuted are statements of fact of a very general nature, based on widely reported facts that are available to anyone, of which the truth can be easily verified. At no point this statement overstepped the bounds outlined in the professional code of the CCBE. Neither was her factual statement a “gravely damaging and essentially unfounded attack”. Finally, Turan was speaking in her capacity as a lawyer, regarding a matter of public interest and with a goal to improve the administration of justice.

It follows from the above that her statements were fully covered by the freedom of expression as protected by Article 10/1 of the ECHR. Therefore, the present indictment and prosecution are a direct violation of this right by Turkey.

Article 10/2 of the ECHR sets out the circumstances under which States may restrict the right to freedom of expression. Three assessment criteria are used to determine whether such restriction does not violate the right to freedom of expression. A restriction must be “prescribed by law”, it must pursue “a legitimate aim” within the meaning of Article 10/2, and, lastly, a restriction must be “necessary in a democratic society”.

In the majority of cases, it is the latter question that determines the outcome of a given case.<sup>22</sup> In its case law, the ECtHR has developed the autonomous concept of whether the interference is “proportionate to the legitimate aim pursued”. As a general principle, the “necessity” of any restriction must be convincingly established, and the restriction must be relevant, sufficient, and proportionate to its intended purpose.

In the 2017 *Beslan School Siege* case, the ECtHR held that States have the right to take preventative measures to prevent terrorism or the incitement of violence. However, States must discharge these obligations in a manner that respects human rights and the rule of law, including the freedom of expression.<sup>23</sup> Thus, the principles regarding freedom of expression also apply to measures taken to

safeguard national security and public safety as part of counter-terrorism efforts. To impose limitations based on national security, the perceived risk must not be theoretical or vague. The risk must involve at least a “reasonable risk of serious disturbance” to the public order in a democratic society. Only then can a restriction on freedom of expression be deemed reasonable and lawful.

To determine this, the ECtHR “look[s] at the interference in the light of the case as a whole to determine whether the restriction is proportionate, including the content of the impugned statements and the context in which they were made”.<sup>24</sup> For crimes of expression to be prosecuted it is essential to establish a direct connection between the words spoken and the actual and intended harm or risk posed. If there is no reasonable relationship between the individual’s expression and the alleged harm or risk, then the link is too remote to establish individual responsibility.<sup>25</sup>

Also relevant to the present case is the case of *Ali Gürbüz v. Turkey*.<sup>26</sup> It also involved restriction of the freedom of expression and prosecution under Turkey’s Anti-Terrorism Law no. 3713. In this case, Mr Gürbüz had criminal proceedings brought against him for publishing statements by the leaders of organizations characterized as terrorist under Turkey’s domestic law. These messages did not call for any violence, armed resistance or uprising, and did not constitute any hate speech.

The ECtHR held that if a State initiates criminal proceedings against individuals for publishing statements, without considering the content of these statements or their contribution to public debate, they can be seen as attempting to use criminal law to (systematically) suppress such publications. The ECtHR stated that that is incompatible with the freedom to receive or impart information and ideas.<sup>27</sup> Therefore, the court decided that the impugned measure did “not meet a pressing social need, that it was by no means proportionate to the legitimate aims sought to be achieved and that, therefore, it was not necessary in a democratic society.”<sup>28</sup> Consequently, the ECtHR held that Turkey had violated Article 10 of the ECHR.

The case law outlined above may be applied to the case of Aryen Turan. In the first place because her case is very similar to the case mentioned above and the established case law of the ECtHR can serve as a precedent in the present case. In the second place, that is even more so as Turan is not a media professional but a lawyer, for which when the content is related to the legal issues the threshold for restricting their freedom of expression is even higher.<sup>29</sup>

It follows from the above, and it is submitted here, that the restriction of the freedom of expression of Aryen Turan by the authorities of Turkey was not permitted by Article 10/2 of ECHR.

### 3.2.2 Article 18, ECHR: Limitation on Use of Restrictions on Rights

Article 18 ECHR reads as follows:

*“The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed”.*

Article 18 has an auxiliary function, meaning that it can only be invoked in conjunction with another Convention right. However, a violation of Article 18 can still be found regardless of whether the right that was invoked in connection with it was violated.

Examples are to be found in *Demirtaş v. Turkey* (no. 2) [GC] and *Kavala v. Turkey*. In these cases the ECtHR observed an ongoing pattern of oppression of political dissent, human rights defenders, journalists and lawyers in Türkiye. In both cases the Court found a violation of Article 18 ECHR.

In *Demirtaş*, the Court stated that:

*“[I]t has been established beyond reasonable doubt that the applicant’s detention ... pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate, which is at the very core of the concept of a democratic society.”<sup>30</sup>*

The significance of the Grand Chamber judgment cannot be overstated, it sends a powerful and clear



message to governments that have the duty to recognize and protect the freedoms that political dissidents enjoy in a democratic society governed by rule of law.

Similarly, in *Kavala*, the Court concluded that the “restriction of the applicant’s liberty was applied for purposes other than bringing him before a competent legal authority” and that:

*“[T]he prosecution’s attitude could be considered such as to confirm the applicant’s assertion that the measures taken against him pursued an ulterior purpose, namely to reduce him to silence as an NGO activist and human-rights defender, to dissuade other persons from engaging in such activities and to paralyse civil society in the country.”<sup>31</sup>*

As it has been observed by many, the targeted harassment of human rights defenders in Turkey is part of a wider practice of arbitrary detentions and abusive prosecutions of journalists, elected politicians, lawyers, and other perceived government critics. This practice has been well- documented in many reports by the Council of Europe, the European Union, and human rights organizations.<sup>32</sup>

Considering the broader context in which the indictment against Aryen Turan was issued, we can see a pattern of oppression of dissent in Turkey that provokes a chilling effect on the right to freedom of expression and causes the deterioration of the rule of law. It is argued here that her indictment was issued with the purpose of silencing her as a prominent figure advocating for human rights and the rule of law in Turkey.

### 3.2.3 Article 6, ECHR: Right to a Fair Trial

Article 6 of the ECHR provides for the right to a fair trial. This right is a fundamental human right and is essential to establishing a rule of law. The article sets out various guarantees to ensure that everyone charged with a criminal offence is given a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The ECtHR has formulated several relevant starting points to assess whether the indictment is in accordance with the right to fair trial.<sup>33</sup> First of all, Article 6/3-a prescribes that everyone charged with a criminal offence has the right to be informed promptly, in a language which he/she understands and in detail, of the nature and cause of the accusation against him/her.

Two aspects of the rights under Article 6 are relevant to this case. Firstly, every person is entitled to access the documents relevant to their case, to be informed about the charge against them and to have legal representation. Secondly, the guide on Article 6 addresses the defendant’s right to be informed not only of the “cause” of the accusation, that is to say, the acts he is alleged to have committed and on which the accusation is based, but also of the “nature” of the accusation, that is, the legal characterization given to those acts. The duty to inform the accused rests entirely on the prosecution and cannot be complied with passively by making information available without bringing it to the attention of the defense.<sup>34</sup>

Aryen Turan’s rights and guarantees under Article 6 ECHR were violated by the authorities in the following instances.

First, Aryen Turan was not informed about the criminal charge against her. In addition, her lawyers, whose names were given to the police by Aryen Turan, were not informed by the authorities that Turan had been arrested and detained. Also, no documents pertaining to her arrest were given to Aryen Turan or to the lawyers that were allowed to visit her during her arrest.

Second, even though Aryen Turan understands the Turkish language in which the indictment is written, due to the poor organization and contents of the indictment it is very difficult to comprehend the actual content. The largest part of the indictment contains general descriptions of the PKK/KCK organization and its media posts but fails to effectively connect the alleged crime with the evidence. This leads to the defendant being unaware of the nature of the crime she is accused of. Furthermore, no sufficient legal or factual grounds are given to prove that Aryen Turan has committed the alleged crime.

### 3.2.4 UN Basic Principles on Role of Lawyers

In analysing the indictment, attention must be paid to the UN Basic Principles on the Role of Lawyers.

The United Nations Basic Principles on the Role of Lawyers (the “UN Basic Principles”)<sup>35</sup> is an instrument developed within the framework of the United Nations in 1990. It is the only international instrument which sets out principles that underlie and safeguard the practice of the legal profession.<sup>36</sup>

The UN Basic Principles do not create legal obligations in the same vein as a treaty would. However, some of these principles are binding on States by virtue of the interpretation (by regional tribunals) of human rights treaties, as well as through binding domestic case law.

The UN Basic Principles refer to a broad range of issues, such as entry into the profession and access to counsel. However, some of its most important and often cited principles (Principles 16-18, 23 and 24) refer to the independence of the legal profession, understood as the ability of lawyers to practice their profession without intimidation, hindrance, harassment, or improper interference. Of these core principles, the following are especially relevant in the present case.

Principle 16, on the “Guarantees for the functioning of lawyers”, states that:

*“Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) ...; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics”.*

By prosecuting Aryen Turan for a statement made while carrying out her professional tasks, the authorities have violated this Principle 16.

Principle 22, on the “Guarantees for the functioning of lawyers”, states that:

*“Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.”*

The seizure of the mobile telephone of Aryen Turan violated this Principle 22, as it constituted a direct infringement of the confidentiality between her and her clients and peers.

Principle 23, “Freedom of expression and association”, merits close consideration:

*“Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or*

“ Even though Aryen Turan understands the Turkish language in which the indictment is written, due to the poor organization and contents of the indictment it is very difficult to comprehend the actual content. The largest part of the indictment contains general descriptions of the PKK/KCK organization and its media posts but fails to effectively connect the alleged crime with the evidence. ”

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**Lawyers for Lawyers ("L4L")** is an independent and non-political Dutch foundation that seeks to promote the proper functioning of the rule of law by pursuing freedom and independence of the legal profession. Lawyers for Lawyers was granted Special Consultative status with the UN Economic and Social Council in July 2013.

*form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession."*

As argued extensively in this report, the authorities have grossly violated the freedom of expression of Turan. In doing so, this Principle 23 was also violated.

In the light of these Articles and given the above analysis, the statement of Aryen Turan included in the indictment would merit protection instead of prosecution.

### 3.3 Evaluation of the Indictment under Turkey's Domestic Law

An examination of Article 170 and other relevant provisions of the Code of Criminal Procedure in Turkey shows that the written regulations on indictments and investigations are in line with international law. Similarly, the protection of lawyers and the obligation of prosecutors to protect human rights apply to all States, including Turkey, where the rule of law must prevail. As such, it is not possible to expect that an indictment that does not coincide with international law is in compliance with Turkey's domestic law. Moreover, the fact that the indictment includes many details other than Aryen Turan's act (her speech and its relation to the offence), which are irrelevant to the case, points to an additional violation in the context of Turkey's domestic law. Again, the fact that the indictment does not include any assessment that Aryen Turan's speech at the general assembly of the bar association was part of her professional activity as a lawyer shows that the prosecutor did not fulfil his responsibility to compile the facts in favor of the suspect.

## 4. Conclusion and Recommendations

In light of the foregoing, we conclude that the criminal charges brought against Aryen Turan fail to comply with Turkey's obligations under international and European human rights law, in particular the right to freedom of expression. As such, the charges constitute an unlawful restriction on the right to freedom of expression under article 10 of the ECHR. It follows that, should Aryen Turan be convicted, her conviction would equally constitute an unnecessary interference with the right to freedom of expression. Also, this indictment and the procedure violate articles 6 and 18 of the ECHR. Moreover, this indictment contravenes the UN Basic Principles on the Role of Lawyers.

In the light of all these considerations, the most fundamental recommendation that can be given to the judicial authorities of Turkey would be to adopt the application of international law to which Turkey is a party as a priority principle, regardless of the characteristic of the case before them. ■

## Endnotes:

- 1 PEN Norway, "Background Information on the Indictment of Aryen Turan" (PEN Norway, February 16, 2023).
- 2 Ibid.
- 3 Ibid.
- 4 Ibid.
- 5 Ibid.
- 6 Ibid.
- 7 *K.H v Aryen Turan*, No. 2022/6350, High Criminal Court of Ankara, November 7, 2022.
- 8 Ibid. p. 9-10.
- 9 *Dichand and Others v Austria*, no 29271/95, Judgment of 26 February 2002, par. 37; *Handyside v. United Kingdom*, 7 Eur. Court H.R. 413 (1976).
- 10 "Guide on Article 10 of the European Convention on Human Rights Freedom of Expression" (Council of Europe, ECtHR 2022) (hereinafter "Guide on Article 10").
- 11 "Turkey doctors' chief sentenced over call for chemical weapons inquiry", <https://www.bbc.com/news/world-europe-64236416>.
- 12 Abdullah Bozkurt, "Russia Accused Turkey of Planning to Equip Bayraktar Drones with Biological/Chemical Weapons - Nordic Monitor," [nordicmonitor.com](https://nordicmonitor.com/2022/09/russia-accused-turkey-of-planning-to-equip-bayraktar-drones-with-bio-chemical-weapons/), September 12, 2022, <https://nordicmonitor.com/2022/09/russia-accused-turkey-of-planning-to-equip-bayraktar-drones-with-bio-chemical-weapons/>.
- 13 Josef Savary et al., "Is Turkey Violating the Chemical Weapons Convention? An Independent Investigation into Possible Violations of the Chemical Weapons Convention in Northern Iraq Is Urgently Needed," September 2022, [https://www.ipnw.de/commonFiles/bilder/Frieden/2022\\_IPPNW\\_Report\\_on\\_possible\\_Turkish\\_CWC\\_violations\\_in\\_Northern\\_Iraq.pdf](https://www.ipnw.de/commonFiles/bilder/Frieden/2022_IPPNW_Report_on_possible_Turkish_CWC_violations_in_Northern_Iraq.pdf).
- 14 PEN Norway, "Background Information on the Indictment of Aryen Turan" (PEN Norway, February 16, 2023).
- 15 Ibid.
- 16 Sarah Maguire, Ishaani Shrivastava, "Freedom of Expression and Its Relationship with the Right to Respect for Private Life and the Right to a Fair Trial," March 2017, [https://rolplatform.org/wp-content/uploads/2018/03/free\\_expression\\_guide-eng.pdf](https://rolplatform.org/wp-content/uploads/2018/03/free_expression_guide-eng.pdf).
- 17 "Guide on Article 10", par. 468 ff.
- 18 *Morice v. France*, no. 29369/10, Judgment of 23 April 2015 [GC].
- 19 Ibid. par 132-135.
- 20 Ibid. par 168.
- 21 Guide on Article 10, par. 488-492.
- 22 Ibid.
- 23 *Tagayeva and Others v. Russia*, no. 26562/07, Judgment of 13 April 2017.
- 24 Ibid.
- 25 Ibid.
- 26 *Ali Gürbüz v. Turkey*, no. 52497/08, Judgment of 12 March 2019.
- 27 Ibid. par. 77.
- 28 Ibid. par 78
- 29 See *Morice v France*, discussed above.
- 30 *Selahattin Demirtaş v. Turkey* (No. 2), no. 14305/17, Judgment of 22 December 2020, par. 437.
- 31 *Kavala v. Turkey*, no. 28749/18, Judgment of 10 December 2019, par. 224-230.
- 32 "Turkey: Release Osman Kavala"; "Submission by Human Rights Watch, the International Commission of Jurists, and the Turkey Human Rights Litigation Support Project" (Human Rights Watch, 2020), <https://www.hrw.org/node/376936/printable/print>.
- 33 "Guide on Article 6" (Council of Europe, ECtHR, 2014) (hereinafter "Guide on Article 6").
- 34 Ibid.
- 35 <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>.
- 36 At a regional level in Europe, recommendations issued by the Committee of Ministers of the Council of Europe "on the freedom of exercise of the profession of lawyer" specifically address the legal profession" (<https://www.coe.int/en/web/cdcj/cj-av>).