

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

**Legal Report on Indictment**

# **Diyarbakır - Trial of Kurdish Journalists**

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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.

With this in mind, we continue to work with leading human rights lawyers globally to study indictments in the cases of journalists, civil society actors and lawyers and will continue to make recommendations for training of judges and prosecutors and for the continuing improvement of the indictment writing process in Turkey.

The importance of this work was demonstrated in 2022 when the defendants in the Gezi Park trial were all convicted and jailed for long sentences based upon facts in an alarmingly inadequate and flawed indictment. The project continues in 2023.

All reports can be accessed via our website: [www.norskpen.no](http://www.norskpen.no)  
And the two final reports of 2020 and 2021 are available at:

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

2021: [https://norskpen.no/wp-content/uploads/2022/03/PEN-Norway-Turkey-Indictment-Project-Report-2021\\_Eng.pdf](https://norskpen.no/wp-content/uploads/2022/03/PEN-Norway-Turkey-Indictment-Project-Report-2021_Eng.pdf)

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

# Diyarbakır - Trial of Kurdish Journalists

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## 1. Introduction:

This study focuses on the 728-page indictment with the investigation no. 2022/3879 and indictment no. 2023/928 issued by Ahmet Şahin, the Public Prosecutor of Diyarbakır on 24.03.2023 against 18 Kurdish press workers.

## 2. Summary of Case Background Information:

The legal process leading to the indictment began with a police raid on the residences of 21 press workers on 8 June 2022. In addition to their residences, media organs such as Pel Yapım, Piya Yapım, Ari Yapım and head office of Jin News in Yenişehir district were also raided. Many items of equipment and digital materials were seized during the raids. Items belonging to journalists such as video cameras, digital cameras and external memory sticks were labelled as “materials that belonged to the terrorist organisation” and displayed under the banner of the Counter-Terrorism Unit of the Diyarbakır Police Headquarters. Under an extended period of detention, the journalists were kept in Diyarbakır Police Headquarters for 8 days. At the end of which a pre-trial detention was imposed on all 15 journalists.

The indictment was issued 9 months after the operation and for 9 months the imprisoned journalists remained unaware of the charges filed against them and the evidence supporting those charges. In July 2023, 13 months after their arrest, the journalists were released on bail following the first hearing.

“Items belonging to journalists such as video cameras, digital cameras and external memory sticks were labelled as “materials that belonged to the terrorist organisation” and displayed under the banner of the Counter-Terrorism Unit of the Diyarbakır Police Headquarters. At the end a pre-trial detention was imposed on 15 journalists.”

This is an ongoing trial that PEN Norway is following.<sup>1</sup> The trial in question has been characterized by multiple human rights violations from the outset of the investigation phase and we hope that an analysis of its indictment within the framework of domestic and international human rights laws will be a valuable archival resource for uncovering the escalating repressive patterns in Turkey particularly in relation to the Kurdish press.

### 3. Analysis of the Indictment:

Summarizing a 728-page indictment poses various challenges. As will be explained below, those challenges are primarily due to the extensive detail and repetitive content in the indictment, which is not directly relevant to the accusation, the suspect, or the act in question. Because the nature of the indictment necessitates sifting through a heap of extraneous information to discern the specific accusations and to be able to make a defence. Even based on this first observation, it can be argued that the indictment contains some extraneous content which obstructs the effective exercise of the right of defence.

As is typical in indictments involving a large number of suspects, the indictment includes personal identification information of the suspects until the beginning of page seven. This section contains the information that is typically found in an indictment issued under Article 170/3 of the Code of Criminal Procedure (CCP).

The heading “Evidence” covers all suspects, and the following sub-headings are given here:

1-Image Detection, 2-Suspect Statement, 3-Face Recognition System Report, 4-Investigation Documents<sup>2</sup>, 5-Criminal Record Report and Full Contents of the Case File

This part of the indictment accuses all the defendants of being members of a terrorist organisation under the Turkish Penal Code (TPC Art. 314/2) and Counter-Terrorism Law (CTL Art. 5/1) based on the same applicable articles.

On page 7 of the indictment, the section that follows the personal identification details of the suspects was labelled as ‘INDEX’ by the prosecution. This 7-page section serves as a ‘table of contents’ for the indictment.

Considering the length of the indictment, this section can be said to be useful. Because it makes it easier for the researcher to understand which section of the indictment contains the evaluations between the suspects, evidence and the acts.

The first part of the indictment provides a summary of the organisation of which the journalists are alleged to be members; the second part of the indictment is entitled “The Beginning of the Investigation and the Investigation on the Companies”. The second part lengthily describes the media structure of the organisation and proceeds to examine the partnership structure of Sterk TV and Medya Haber TV, their funding sources and the contents of the programmes the news channels broadcast. This section suggests that the Prosecutor marked certain content broadcast by the relevant channels as “content linked with the organisation”.

The section on the evidence attributed to the suspects, however, starts after page 346 of the indictment. The Prosecutor’s effort to establish a relationship between the suspects and the case only begins halfway through the indictment.

As of page 684, the evidence previously listed for each suspect is now evaluated individually. It is possible to say that the indictment formally fulfils the requirements of Article 170 of the CCP but as explained below, a legal review shows that its statements are biased and legally questionable. It should be noted, however, that due to its content and the reasoning behind it, the indictment disregards Articles 160 and 170 of the CCP in many aspects.

### 3.1. The analysis of the indictment (and the investigation) within the scope of CCP Article 160:

Turkey's Criminal Code of Procedure's (CCP) Article 160 prescribes the duties of the public prosecutor. According to the law, as soon as the public prosecutor is informed of a fact that creates an impression that a crime has been committed, either through a report of crime or any other way, she or he shall investigate the factual truth, in order to make a decision on whether to file public charges or not. This means, first of all, that there must be an initial suspicion in order to proceed with an investigation.

An examination of the indictment against 18 Kurdish journalists, however, shows that the Prosecutor of the investigation has no grounds for any suspicion other than the assumption that *"Kurdish journalists who create content for Kurdish news agencies are indiscriminately members of the organisation"*.

Under the title "companies subject to the investigation", the Prosecutor states that "the companies Pel Yapım Production, Ari Yapım Production and Piya Yapım Production create content for STERK TV and MEDYA HABER broadcasting organs that are aligned with the organisation." And based on the assumption that the aforementioned companies and media organs are "the organs" of the terrorist organisation, an inference is made that journalists working or creating content for these media organs are terrorists. As regards those companies, the indictment mentions certain issues that could be the subject of labour law or commercial law but it merely superficially touches the issues concerning criminal law. As far as can be understood from the indictment text, all these assumptions of the Prosecutor could only be based on the statements made by anonymous or named witnesses who were "invited" to testify by the Anti-Terror Units one after the other. It is only these witnesses, heard every other day, who speak of the organisation's relationship with Company A or accuse a journalist of membership. However, it is important to note that the statements of those anonymous witnesses were taken after the investigation had begun. In other words, those statements cannot technically be the source of the initial suspicion as defined in Article 160 of the CCP. Given that there are no links between the suspects in the case and the organisation beyond the statements made by these witnesses, there seems to be no reasonable basis for launching an investigation against journalists prior to obtaining the statements from these witnesses. Most of these witness statements were taken in December 2022, but the police operation that resulted in the journalists' pre-trial detention had taken place in June 2022. In short, it is possible to claim that in issuing the indictment, the investigating prosecutor preferred to proceed from the suspect to the evidence rather than the other way around.

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### 3.2. The analysis of the indictment within the scope of CCP Article 170/1:

In the reports prepared as part of the PEN Norway Turkey Indictment Project, it was not generally considered necessary to provide an analysis in relation with the Article 170/1 of the CCP. Article 170/1 of the CCP stipulates that "The duty to file a public prosecution rests with the public prosecutor." In other words, an indictment filed with the signature of the prosecutor will, in principle, be deemed to have complied with Article 170/1 of the CCP. An important detail in this

indictment, however, has made it necessary to conduct a dedicated assessment under Article 170/1 of the CCP. When describing the operations carried out within the scope of the investigation, the indictment says “our Directorate of Counter-Terrorism Unit” 51 times and “our directorate” 10 times. For example:

- **Indictment, p. 210:** *“The assessment shows that; ... the archive records of our directorate have two entries about the person in question...”*

Nonetheless, had it been prosecutor’s own words, the sentence would need to be structured as follows:

- *“The assessment shows that; ... the archive records of the Directorate of Counter-Terrorism of Diyarbakır Police Headquarters have two entries about the person in question...”*

In a total of 61 passages in the indictment, there are sentences that clearly and indisputably demonstrate that the “identification and assessment” in question belonged to the relevant Directorate of Counter-Terrorism Unit. Furthermore, none of these sentences were cited; instead, they were all integrated into the body of the indictment. For example:

- **Indictment, p. 351:** *(The following sentence is under the heading “statements in which the suspect’s name is mentioned.”) “(...) when Hamit AKBAL, who declared that he worked at the workplace in question, was summoned to our Directorate of Counter-Terrorism Unit with the aim of obtaining detailed information;”*
- **Indictment, p. 490:** *“it was understood that the person did not have a UYAP record and that there was no judicial investigation conducted by the directorate of our unit,”*

In short, it can be established beyond any doubt that many sections of the indictment were copied and pasted directly from the police reports and that the basis of the indictment is the police report prepared by the Directorate of Counter-Terrorism Unit. Thus, it is important to highlight that the indictment only meets the formal requirements of Article 170/1 of the CCP, raising significant doubts about whether it was prepared by the Prosecutor personally.

### **3.3. The analysis of the indictment within the context of CCP Article 170/4:**

An assessment in the context of Article 170/4 of the CCP makes it clear once again that the indictment was copied and pasted from the police report prepared by the Police Headquarters. As is known, as a result of a recent amendment to the CCP, it is now a rule that information unrelated to the events forming the basis of the alleged crime and to the evidence pertaining to that crime cannot be incorporated into the indictment. Nonetheless, the entire indictment displays a profound lack of awareness regarding this regulation. The indictment consists of hundreds of pages of information, including descriptions of the organization, content claimed to be intra-organizational communication that does not reference the suspects, business records from trade registries, and detailed accounts of individuals who are not even involved in the case. What is striking about this is that it shows a lack of adherence to Article 170/4 of the CCP which was specifically designed to tackle the persistent habit of drafting indictments in this manner in Turkey.

### **3.4. Violations of the Presumption of Innocence and the Right to Respect for Private Life:**

In the context of Article 170/4 of the CCP, a noteworthy point in the indictment needs to be addressed separately. The indictment names another journalist, who is not a suspect in this investigation, a total of 30 times, providing their full identity details. In accordance with the presumption of innocence and the principle of respecting private life, the journalist’s name will not be disclosed in this report.

The indictment not only disclosed the identity, private life, and professional activities of this journalist, but they are also repeatedly referred to as a suspect 30 times. A fact that once again reinforces the feeling that one is reading a police report rather than an indictment.

This could have been considered a material error, had the indictment not mentioned the name of the journalist concerned a total of 30 times and had they not been referred to as a suspect each time. It

“ It is absurd to label individuals working for a company as members of a terrorist organisation if that company is established in accordance with a country’s laws, and if there is no court ruling designating it as an affiliate of that terrorist organization. Furthermore, accusing a person in such a manner for an act not classified as an offence in the Turkish Penal Code or in any other domestic legislation is, in straightforward terms, a clear violation of the principle of legality. ”

points to a problem that goes far beyond a material error, however, since the indictment persistently violates the rights of a journalist, who is outside the scope of the investigation, including his right to private life and to enjoy the presumption of innocence, both of which are protected by the European Convention on Human Rights and the Constitution of the Republic of Turkey. Pursuant to Article 160 and other articles of the CCP, the authority to conduct a criminal investigation is exclusively vested in the public prosecutor. Therefore it’s noteworthy that the investigation in question is permitted to be put entirely under the direction of the law enforcement authorities, and in some cases, to be conducted by law enforcement personnel themselves. In this context, it’s crucial to underline that not only was Article 170/4 not adhered to, but the rights protected by the ECHR and the Constitution were also flagrantly violated in the case of another journalist who was not part of the investigation.

### 3.5. Does the indictment establish reasonable doubt in accordance with Article 170/2 of the CCP?

Page 346 of the indictment is titled “Offences and Acts the Suspects are Charged with”. For each suspect, identical subtitles are introduced, and nearly identical conclusions are drawn. There are certain differences in the evidence and assessments of press workers who perform professions such as cameramen and press workers who create content for the programmes. This report analyses only the cases of first two suspected journalists in the indictment. The suspect Abdurrahman Öncü is a cameraman. The other suspect Aziz Oruç is the presenter of a programme called Sokağın Sesi (The Voice of the Streets). Our assessment of whether the indictment has considered the element of “reasonable doubt” will be based on the evidence and findings the indictment presents concerning these two press workers.

Firstly, the indictment analyses the insurance records of Abdurrahman Öncü and identifies his employment records in the companies in question. These companies were established under Turkish law and currently have active records. However, the prosecutor considers even employment as a cameraman within these companies, let alone involvement in creating news content, as evidence of his membership in the organization. The indictment found no company registration for the other suspect, Aziz Oruç.

Following that, the indictment contains a very interesting sentence regarding Öncü: *“The police search conducted in the production companies found no evidence that directly mentioned the name of the suspect, but the suspect was involved in all the content produced in the production agencies due to his activities as a cameraman...”* A simplified version of the sentence would give a better idea about the intended meaning: “Being a cameraman in this company is considered an offence, even if no evidence related to the suspect is found.” It is absurd to label individuals working for a company as members of a terrorist organisation if that company is established in accordance with a country’s laws, and if there is no court ruling designating it as an affiliate of that terrorist organization. Furthermore, accusing a person in such a manner for an act not classified as an offence in the Turkish Penal Code or in any other domestic legislation is, in straightforward terms, a clear violation of the principle of legality.

In the section of the indictment dedicated to evidence assessment, there are certain findings that should be considered in favour of both suspects. For example, in Öncü's case, the indictment clearly states that "[the investigation] found no direct instruction sent directly to the suspect from the unit that the organisation claimed to be its press centre, the suspect's name was not mentioned in any instruction or report, no organisational action or activity in which the suspect participated and no statement of the suspect containing an element of crime were found". It also states that no criminal elements were found in electronic devices such as hard discs and laptops seized during the search of the suspect's house, but that the content of some photographs or videos "may contain criminal elements". Finally, the indictment states that an open-source search was conducted about the suspect which yielded no findings of a criminal offence.

As regards Aziz Oruç, the indictment states that "there are no wiretap recordings, no criminal elements found in the open archive search, and there is no document or information about him in the searches conducted in the companies". This being the case, it becomes even more essential to scrutinise the legal grounds for Oruç and Öncü's more than a year-long detention and their ongoing trial, as well as the "evidence" that resulted in their being accused of belonging to an illegal organisation. Because it is obvious that the prosecutor did not consider the exculpatory evidence as required by Article 170/5 of the CCP but based his assessment merely on the evidence he thought was inculpatory.

A review of the inculpatory evidence in the case of Öncü shows that the indictment refers to two telephone conversation records of the suspect. The transcriptions of those conversations reveal that one of them is about uploading the recordings of a programme to a server and the other whether a required article has been written. In other words, both conversations fall directly within the realm of journalistic activities and do not include any additional commentary. In short, the content of these conversations, which are typical in a professional context, should be viewed in favour of Öncü. However, they have been presented as inculpatory evidence in the indictment.

Other inculpatory evidence against Öncü consists of statements of two former employees of the company and an anonymous witness, who apparently visited the Directorate of Counter-Terrorism Unit one day apart and mentioned Öncü's name, and of occasional phone calls between Öncü and other suspects in the file. In Öncü's case, this is all the evidence about a person who was under pre-trial detention until the first hearing. The prosecutor failed to prove that Öncü had received instructions from the organisation, to reveal any statement, telephone conversation or public action that contained an element of crime, nor did he find any evidence in Öncü's residence to prove his links to the organisation.

To summarise, the "evidence" that raised enough suspicion for the investigating prosecutor to issue an indictment accusing Öncü for being a member of an illegal organization and requesting his pre-trial detention from the court consists of the following:

- Witness statements saying, "*The company is owned by the organisation and that person was a cameraman there,*"
- Telephone conversations of Öncü with his colleagues.

In the case of Aziz Oruç, the indictment completely overlooks the exculpatory evidence and instead dedicates pages to a content analysis of street interviews focusing Oruç's questions and the corresponding answers. A review of Oruç's statements to the Prosecutor's Office shows that all of the questions asked to him were related to his street interviews or to his written interviews published by the Mezapotamya News Agency.

While in Öncü's case, the prosecutor proceeded with the assumption that "the employees of Company X are terrorists," in Oruç's case his conclusion was based on the assumption that "Oruç conducted these interviews under the instructions of the organisation".

The criminal offence of membership of a terrorist organisation under Article 314 of the TPC is an offence that has been the subject of frequent ECtHR and Constitutional Court reviews, Venice Commission reports and the Court of Cassation decisions. Therefore, upon reviewing these pieces of evidence consecutively any legal expert will immediately conclude that there is no basis to accuse the journalists



in question of membership of an organisation. However, the indictment came to a very different conclusion and both journalists were held in pre-trial detention for more than a year.

The indictment's assessment of the evidence summarised here begins on page 691. The -so to speak- crucial sentence in the indictment's assessment of Öncü is as follows:

*"(...) [it is concluded that] the suspect also works in the same workplace, so it is contrary to the ordinary course of events that he does not have an idea about this organisation (...)"*

However, the quality of the "organisation" referred to in this sentence is not explained in a manner that is convincing and based on the evidence. Even if it is assumed for a moment that an organisation such as that alleged by the prosecutor does really exist, it becomes evident that in Öncü's case, the prosecutor has completely disregarded the principle of individual criminal responsibility. The prosecutor disregarded that, in order to establish the responsibility of the suspect, he had to prove the facts concerning the suspect. And he relied on a proposition that in a situation where a company is established with the goal of committing an offence, every single person working in that company under an employment contract can be accused of committing the offence in question, a proposition that is -in Prosecutor's own words- contrary to the ordinary course of events.

In the case of Oruç, the indictment's assessments focus mainly on the street interviews conducted by Oruç and it alleges, as stated above, that these interviews were conducted under the instructions of the organisation. The full wording of the sentence in question is as follows:

*"(...) [it is concluded that] in this context, the presenter of the programme called Sokağın Sesi [The Voice of the Streets] is the suspect Aziz ORUÇ and that the program is produced/shot in the production company, that the format of the programme is conducting street interviews where the suspect conducts interviews with citizens on the street by asking them questions, but as will be explained, both the questions asked and the preferred topics are completely organisation-related in terms of their contents (...)"*

A review of the topics chosen for the street interviews and listed in the indictment with the allegation of organisational content, shows that those topics cover subjects such as the economic crisis, the condition of ill prisoners, linguistic pressures on Kurdish language in the context of February 21st World Mother Language Day, and the nation's cross-border operations.

At this point, it is useful to recall the elements of Article 314 of the TPC: First of all, the elements in the legal definition of the offence must be knowingly and intentionally committed. In other words, it should be noted that this offence cannot be committed without the element of intent. The intent refers to the knowing and intentional commission of the elements in the legal definition of the offence. In this case, the prosecutor must first establish that the journalist knowingly and willingly committed an offensive act. Otherwise, the presence of the element of intent cannot be asserted. In the case of Öncü, it is clear that the element of intent cannot be established with the prosecutor's suggestion that "he has a job with social security benefits and, moreover, if he is a cameraman, he knows what the job is about and wants to do it".

In fact, the Constitutional Court, in paragraph 39 of its judgement dated 18.01.2022 on journalist Cemil Uğur's application, makes it clear why this indictment should not have been written. The Constitutional Court ruled that Cemil Uğur's right to personal liberty and security was violated and the Court put it as follows:

*"In the light of the elements in the file, the applicant is essentially accused of taking part in the press structure of the PKK/KCK terrorist organisation and of making news that constitutes a propaganda promoting the organisation. However, the investigation file presented no evidence linking the applicant to the PKK/KCK terrorist organisation. The arrest warrant failed to establish the existence of such a link either. Although the arrest warrant claimed that organisational publications were produced at the agency where the applicant worked, no news attributable to the applicant was mentioned. It cannot be said that the fact of working within such an agency is a robust indicator of guilt regarding a terrorism-related accusation if the content of the news reports produced by the*

*applicant is disregarded. On the other hand, the investigating authorities failed to show any specific findings or information that could suggest that the applicant had reported on the instructions of the PKK terrorist organisation. It is clear that the applicant is an employee of the news agency in Van and cannot be held responsible for all the news reported by the agency.”<sup>3</sup>*

#### 4. Conclusions and Recommendations:

As it is, the indictment’s character can be summarised as follows:

- The indictment violated the right to respect for the private life of a journalist who was not among the suspects and was written in violation of the presumption of innocence.
- The indictment ignored and excluded tens of pieces of exculpatory evidence in relation to the suspects.
- The indictment does not contain any evidence that establishes even the minimal link between the suspects and the organisation.
- A number of findings indicate that a significant portion of the indictment has been directly copied and pasted from the law enforcement reports.
- The main argument of the indictment in the case of certain suspects is that employment in agencies and firms assumed to have affiliations with the organisation is enough to raise a substantial suspicion of being a member of the organisation. In the case of journalists who directly produced programmes or reported news, the indictment deemed it sufficient to assume that they acted on the instructions from the organisation.

It is clear that the above list should be read and reread with certain other facts in mind, such as: 1) The journalists identified as suspects in this indictment have been in pre-trial detention for more than a year. 2) Every year in Turkey there are dozens of police operations, detentions and arrests targeting Kurdish media workers employed in similar news agencies. For example, according to Reporters Without Borders’ data (RSF) 25 Kurdish journalists were arrested in the first half of 2022.<sup>4</sup>

As the established case law of the ECtHR states, an indictment plays a very important role in the criminal process. Because from the moment the indictment is served, the defendant officially learns the factual and legal basis of the accusations against them in writing.<sup>5</sup> As we have frequently emphasized in the reports prepared as part of this project, it is already inevitable that an indictment failing to meet the requirements of the CCP violates the rights outlined in Article 6 of the ECHR. It should be noted that an incompetent indictment infringes upon many fundamental rights and freedoms, especially the presumption of innocence and the right to defence.

“ This legal analysis revealed that the main issue with this indictment was the prosecutor’s determination to draft it despite the lack of evidence to establish reasonable doubt. What stands out as particularly interesting is that this extensive indictment completely omits the concepts of freedom of expression, freedom of the press and the right to be informed. ”

This legal analysis revealed that the main issue with this indictment was the prosecutor's determination to draft it despite the lack of evidence to establish reasonable doubt. What stands out as particularly interesting is that this extensive indictment completely omits the concepts of freedom of expression, freedom of the press and the right to be informed. Again, the prosecutor did not discuss the elements of Article 314/2 of the TPC and not even once in the indictment did he feel the need to refer to the case-law of the Court of Cassation, the Constitutional Court or the judgments of the European Court of Human Rights. In short, the indictment is rich in irrelevant details but falls short in presenting a legal argument. Therefore, the problem is once again the disregard of fundamental rights and freedoms, stemming from a political motivation to punish the suspects without a suspicion supported by evidence.

Prepared by the ECtHR on Article 18 of the ECHR, the Guide on Article 18 defines the concept of "ulterior purpose" as follows:

*"An ulterior purpose is a purpose which is not prescribed by the relevant provision of the Convention and which is different from that proclaimed by the authorities (or the one which can be reasonably inferred from the context).*

*The notion of ulterior purpose is related to that of "bad faith", but they are not necessarily equivalent in each case."*<sup>6</sup>

*The Court has distanced itself from its previous approach which consisted in applying a general rebuttable assumption that the national authorities of the High Contracting States have acted in good faith and in focusing its scrutiny on proof of bad faith. Instead, it aims at an objective assessment of the presence or absence of an ulterior purpose, and thus of a misuse of power.*

The Guide explains the considerations the Court will give weight to when assessing violations of Article 18 of the ECHR as follows:

*"In the first place, whether the authorities attached the utmost importance to their actions targeting a specific individual or a group; and whether a given case belongs to an established pattern of misuse of power by the respondent State."*<sup>7</sup>

It is known that the government authorities have persistently refuted the figures released by human rights organisations regarding the number of imprisoned journalists, often using the argument that "they are not journalists" or "they are not in prison for journalism". In a striking example, Murat Alparslan, a Justice and Development Party member of parliament addressed the Turkish Grand National Assembly during a debate in July 2023, around time when the journalists mentioned in this indictment appeared before the judge for the first time. His remarks strikingly encapsulate the government's stance on the Kurdish press and the media workers. Following his assertion that the TV channels where journalists present and host programs disseminate propaganda for the organisation and legitimise its actions, Alparslan continued with the following remarks:

*"In short, no member of the press is imprisoned for doing their duty as such. Many of the people we call 'imprisoned journalists' today were apprehended with machine guns in their backpacks instead of cameras."*<sup>8</sup>

It is a well-known fact that Kurdish press, media organs and websites have been shut down many times. A hypothetical research for that single journalist who works for Kurdish media outlets in Turkey but does not have a history of any criminal proceedings would most probably end up revealing the systematic judicial harassment Kurdish press workers are now facing. This consistent pattern of infringing upon freedom of the press, freedom of expression, and the right to be informed has persisted unchanged for decades.

In summary, over the years the judicial practice in Turkey has chosen to legally harass the Kurdish press and Kurdish journalists in a systematic way, primarily with the goal of suppressing Kurdish media, even if it comes at the cost of violating freedom of expression and freedom of the press.

As such, a fundamental observation that has been made in many previous reports is also valid with respect to this indictment: This indictment should never have been issued. The indictment clearly violates the principle of legality, the presumption of innocence, freedom of the press, freedom of

## About the author

**Şerife Ceren Uysal is a human rights lawyer who had formerly practised in Istanbul. Since 2015, Ceren Uysal has been one of the managers of the central office of the Progressive Lawyers Association and was awarded the Dr. Georg Lebiszcak Freedom of Expression Award in Austria in December 2016. She is currently pursuing a masters degree on Gender Studies at the University of Vienna, focusing on gender issues in the context of human rights law. Ceren is also the co-secretary general of the European Association of Lawyers for Democracy & World Human Rights (ELDH) and the Legal Advisor of PEN Norway in Turkey.**

expression, the principle of respect for private life and even the right to defence and the right to a fair trial because of its unnecessarily long, scattered narrative and its accusations that appear to have been copied and pasted from a police report.

On the other hand, the prosecutor's determination to overlook exculpatory evidence while simultaneously avoiding a discussion of the elements of the offence indicates that the indictment was crafted regardless of the "conclusion reached in the investigation".

This is the reason why we think any suggestion to improve the indictment with reference to the CCP will fall flat, and such an effort will have to settle for pointing out the "legal ideal" alone. It is clear that there is political motivation to suppress the Kurdish press and media, and as the driving force behind this indictment, this motivation needs to change.

## Endnotes

- 1 PEN Norway's report on the first hearing: [PEN Norway observes Kurdish media case - PEN Norway \(norskpen.no\)](https://norskpen.no)
- 2 The original document contains various typos and errors that are kept intact in the Turkish version of this report.
- 3 To access the full judgement: Constitutional Court of the Republic of Türkiye
- 4 Turkey: 25 journalists imprisoned in half a year | RSF
- 5 ECtHR, Kamasinski vs. Austria, 1989, § 79
- 6 Guide on Article 18 - Limitation on use of restrictions on rights (coe.int) (paras. 29, 30, 31)
- 7 Guide on Article 18 - Limitation on use of restrictions on rights (coe.int) (para. 45)
- 8 [Kurdish journalists debate in Parliament: No machine guns found - Yeni Yaşam Newspaper | Yeni Yaşam \(yeniyaşamgazetesi5.com\)](https://yeniyaşamgazetesi5.com)