

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

**Legal report on indictment:**

# **Firat Can Arslan**

Author: Heidi Heggdal

Published: 12 December 2024

## 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 29 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)

Additionally, as part of the project, guidelines on indictment writing for prosecutors in Turkey has also been published, and the guidelines can be accessed here: [Guidelines-on-Indictment-Writing-for-Prosecutors-in-Turkey.pdf](https://norskpen.no/wp-content/uploads/2022/03/Guidelines-on-Indictment-Writing-for-Prosecutors-in-Turkey.pdf) ([norskpen.no](http://norskpen.no))

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: Firat Can Arslan

Yazar: Heidi Heggdal

## 1. Introduction

This report assesses the 3-page indictment with the investigation no 2023/56271 and indictment no 2023/2732 issued by Ahmet Faruk Karakuş, the Public Prosecutor of the Chief Public Prosecutor's Office of Diyarbakır, against journalist Firat Can Arslan.

## 2. Summary of Case Background Information

Firat Can Arslan (hereafter referred to as Arslan) is a journalist who works as a correspondent at Mesopotamia News Agency. He is a member of International Federation of Journalists.

An investigation launched by the Chief Prosecutor's office of Diyarbakır in June 2022, resulted in the arrest of 18 Kurdish journalists, 15 of whom remained in pre-trial detention until July 2023. On 24 March 2023, all 18 journalists were indicted for 'being a member of a terrorist organisation'. The first two hearings took place on 11 and 12 July 2023. The hearings were public and observed by several media, journalist and human rights organisations, including PEN Norway.<sup>1</sup>

During the hearing on 11 July 2023, it was revealed that prosecutor Mehmet Karababa, at the Diyarbakır Terrorism Crimes Investigation Bureau, who prepared the indictment against the journalists, is married to the presiding judge Seda Karababa at the Diyarbakır 4<sup>th</sup> Heavy Penal Court, who approved the indictment. On 17 July 2023, by a decree of the Council of Judges and Prosecutors (HSK), Mehmet and Seda Karababa were assigned to Vezirköprü Courthouse. The decree was published according to normal procedure.

“ The prosecutor in the case against Arslan did not perform his duties in line with these requirements. The indictment and the process against Arslan was not fair and balanced and violated both the rights to fair trial and freedom of speech. ”

On 18 July 2023, Arslan posted the following tweet:

*'It has been revealed that the prosecutor Mehmet Karababa, who prepared the indictment of the journalists detained for 13 months, and his wife, the member judge Seda Karababa in the court panel, have had their duty locations changed! The Karababa couple, who were found to be married during the hearing on July 11, have been assigned to Vezirköprü...'*

Because of this tweet, Arslan was arrested on 25 July 2023 on the allegation of committing the crime of 'Targeting Public Officials Fighting Terrorism' according to Article 6/1 of the Anti-Terror Law (TMK). He was placed in pre-trial detention because of alleged 'flight risk'. Arslan was kept in solitary confinement during the entire pre-trial detention period.

Delal Akyüz, a journalist from Mesopotamia News Agency who retweeted and shared Arslan's tweet was detained the same day. The editors Sibel Yüklér (T24) and Evrim Kepenek (Bianet) and journalist Evrim Deniz was also detained on 25 July. All four were released and imposed to judicial control measures after giving statements to the prosecutor.

Arslan's appeal against the arrest dated 31 July 2023 was denied by the court on 9 August 2023. During the regular detention review on 21 August 2023, the court decided to prolong the detention. The indictment was prepared on 25 September 2023 and accepted by the court. At the first hearing, held on 31 October 2023, Arslan was acquitted and released from prison. The court found that no crime was committed.

### 3. Analysis of the Indictment

#### 3.1 Evaluation of the indictment under Turkish law

The Turkish Code of Criminal Procedure (CCP) Article 170 regulates the duty of the public prosecutor and the formal content of an indictment.

CCP Article 170/3 a)-k) describes mandatory formalities of an indictment. The conclusion is that the indictment against Arslan conforms to these formalities.

In the introductory part, the indictment contains the identity of the suspect, the names of the defence counsels, the identity of the victims, the date and place of the offence, date of detention and arrest and that the arrest was according to a warrant, the crime charged and the applicable articles in the law and finally a list of evidence. In addition, it is informed that the indictment involves a detainee. The complainant is described as 'Public Law', which indicates that the criminal investigation was initiated by the prosecution and not by a criminal complaint by the 'victims'. This is within the duty of the prosecutor, unless otherwise is stated in the law. Hence, it is assumed that the investigation started on 21 July 2023, which is the date of the investigation report. Both the identity of the claimant (170/3 – f) and the date of the claim (170/3-g) can then be read out of the indictment.

The descriptive part of the indictment starts with a detailed description of the organisation PKK (the Kurdistan Workers' Party), later named KCK (Kurdistan Democratic Communities Union), with the history, development and an explanation why this organisation is regarded as a terrorist organisation. It is unnecessary to give such a detailed description of PKK/KCK and in addition, it gives an impression of the indictment being biased. It is the duty of the prosecutor to have a neutral and objective approach when investigating crimes, see CCP Article 160, which describes the duty of the prosecutor. See also CCP Article 170/4 where it is clearly stated that information that is irrelevant to the events constituting the alleged offence and the evidence of the offence shall be excluded.

According to CCP article 170/4 the events that comprise the charged crime shall be explained in the indictment in accordance to their relationship with the presented evidence.

The description of the 'Arrested Journalists Case', with the number, content and approval of the indictment of the journalists, in the first paragraph under the headline 'Regarding Suspect Firat Can ARSLAN', seems initially reasonable objective and gives relevant background information to explain the events that comprise

the charges, in line with the requirements in CCP Article 170/4. As mentioned above, this is the case where the prosecutor Mehmet Karababa prepared the indictment that was approved by a panel of judges in which the prosecutor's wife, Judge Seda Karababa, was a member. However, the description of this case could have been shorter and the prosecutor should have refrained from describing the media organizations as *'the media structure of PKK/KCK'*. Furthermore, the last sentence *'...are reported in the news as "Arrested Journalists" by the press and media organs affiliated with the terrorist organization,* gives the impression that only certain media organizations, allegedly affiliated with PKK/KCK, refers to the case as a case against arrested journalists. This is simply not true, as the trial is widely reported on both by national and international media in addition to human rights NGOs as a case of arrested journalists. These descriptions might seem to be minor flaws but when read in connection with the initial long description of PKK/KCK, the impression is that objectivity is lost in this indictment.

The next paragraphs quote the tweet posted by Arslan, describes the connections of the Karababa couple to the 'Arrested Journalists Case' and the 'Decree from Council of Judges and Prosecutors' on the transfer of the Karababa couple. In this part, the indictment is in line with CCP Article 170/4. The description explains the relevant facts and its connection to the evidence (the tweet) mentioned in the indictment. However, as the analysis below will show, no crime is committed.

According CCP Article 170/5 the conclusion section of the indictment shall include not only the issues that are disfavourable to the suspect, but also the issues in his favour. In the indictment, it is mentioned that Arslan and his defence counsels have claimed that Arslan posted the 'Decree of the Council of Judges and Prosecutors' as it was and that this act should be considered to fall within the scope of freedom of press. After the description of Arslan's defence, it is written in the indictment that the decision of HSK contains names, surnames, current working place and the new place the Karababa couple is assigned to. This could indicate that the prosecutor understands the importance of the fact that that the information in the tweet has already been published. Unfortunately, the rest of the indictment bears no signs of a valid legal assessment.

The description in the indictment continues as follow:

*Not included in the decree is the information on the investigations carried out by the prosecutors or the cases in which the judges were a member of the judicial panel.*

Not a word about the fact that this information was also made public before the tweet, as it was revealed in a public hearing in the 'Arrested Journalist Case' and reported on by several media. If it was recognised by the prosecutor that Arslan had only shared information that was already published, the prosecutor would know there was no crime committed.

In the part where the prosecutor tries to connect the tweet to the crime regulated in TMK Article 6/1, the indictment becomes increasingly confusing with a legal assessment so weak that it is hard to believe that a state prosecutor is behind it. TMK Article 6/1 is problematic on many levels. For the analyses of the indictment against Arslan, however, it is not necessary with a broader analysis of this Article.

“ This could indicate that the prosecutor understands the importance of the fact that that the information in the tweet has already been published. Unfortunately, the rest of the indictment bears no signs of a valid legal assessment. ”

Article 6/1 is quoted in the indictment and the following sentence is underlined:

(...) or those who disclose or publish the identities of state official that were assign in fight against terrorism.

Arslan seems to be charged with the offence of having disclosed the names of state officials that fights terrorism. The action that allegedly is a crime punishable by Article 6/1 is described like this:

*The content of the suspect's post intended to form a certain perception among the members or sympathisers of the PKK/KCK terrorist organisation, and clearly stated the name and surname information and the new offices of the Public Prosecutor and the Judge who are in charge of the investigation file and of the trial phase respectively of the file known as "Arrested Journalists" by the press and media organs that are affiliated with the terrorist organisation.*

In other words; Arslan is accused of the intention 'to form a certain perception among member or sympathisers of the PKK/KCK...' What perception did Arslan intend to form? That is not specified. In addition, it is not a crime to create a perception. At least not a crime regulated in Article 6/1 in the Counter-Terrorism Law. This first part of the description of the alleged crime, does not make any sense. The alleged action simply does not fit the offence described in Article 6/1.

It does not get any better with the second sentence, where the prosecutor presents the following conclusion:

*[It is also understood that] In this way the suspect's act extended beyond simply informing the public and caused the information about the judges and prosecutors working within the scope of the relevant investigation and trial file to be known by the PKK/KCK armed terrorist organisation and by the members of the organisation against whom accusations and allegations are made in the files they [the prosecutor and the judge] have been dealing with, and thus caused public officials serving in the fight against terrorism to be targeted.*

Arslan is accused of going beyond simply informing the public and caused the information about the Karababa couple to be known by PKK/KCK. This accusation has no place in a serious legal document.. The information in the tweet was already published, both the new assignment of the Karababa couple and their work with the 'Arrested Journalist Case', hence whoever had an interest in the 'Arrested Journalist Case', was informed of the roles of the Karababa couple.

The following allegation, that this information caused public officials serving in the fight against terrorism to be target is totally unfounded. According to Article 6/1 the offence is *to identify such persons as targets*. This is something else than *cause such persons to be targeted*. Maybe the difference is minor, and lost in translation. However, an explanation of how Arslan's tweet caused the Karababa couple to be targeted is missing. The prosecutor does not even attempt to connect the alleged crime to offenses regulated in Article 6/1. In addition, there is not mention of criminal intent. Did Arslan intent to identify the Karababa couple as targets? As repeatedly described in this analysis, the information about the couple was already published and obviously of public interest.

In addition, it should be mentioned that prosecutors and judges are not '*public officials serving in the fight against terrorism*.' The job of prosecutors and judges is to achieve justice through objective investigation of crimes and fair trials, not to fight against any groups. If their objectivity, neutrality and/ or independence is questioned, this information is of public interest and reporting it serves to ensure justice.

According to CCP article 170/2 the prosecutor should only prosecute in cases where, at the end of the investigation phase, collected evidence constitute sufficient suspicion that a crime has been committed. Clearly, the analyses above show that there was no sufficient suspicion against Arslan for any criminal offense. Furthermore, the indictment is not in line with CCP Article 170/5, as it not objectively include issues that are in favour of Arslan, especially the fact that the information in the tweet was already published.

“ Prosecutors and judges are not ‘public officials serving in the fight against terrorism.’ The job of prosecutors and judges is to achieve justice through objective investigation of crimes and fair trials, not to fight against any groups. If their objectivity, neutrality and/or independence is questioned, this information is of public interest and reporting it serves to ensure justice. ”

The conclusion is that this indictment is seriously flawed and not in line with CCP article 170. The impression is that the prosecutor stretches Article 6/1 in an attempt frame Arslan for a crime that does not exist. It is nothing less than tragic that Arslan was kept in pre-trial detention, in solitary confinement, for 100 days based on this indictment. Not only has the prosecutor totally failed his duty, but the judges in the court who approved the indictment and found grounds for pre-trial detention for this period have also failed to give Arslan a fair and just treatment.

The conclusion that the indictment is not in line with Turkish law is shared by Diyarbakır High Criminal Court who acquitted Arslan on 31 October 2023. The court concluded that based on case laws from the ECtHR and the Court of Cassation, the defendant’s actions were within the bounds of press freedom and did not constitute a criminal act. In the merits the court acknowledged that the identity of the involved individuals was publicly accessible, and the defendant’s post was intended to inform the public. All consistent with the principles of freedom of expression and information. The decision of the Diyarbakır High Criminal Court is the only light in the tunnel in the case against Arslan.

### 3.2 Evaluation of the indictment under International Standards

The Turkish Code of Criminal Procedure (CCP) Article 170, regulating how to write an indictment is actually a very good template. If followed to its letter, the indictments would have met international standards.

Turkey has ratified the ECHR and according to the Constitution of Turkey article 90, ratified international law is taking precedence over national law. This means that if ECHR is violated, so is the Turkish Constitution.

The relevant international standards for this indictment is ECHR article 6 “Right to fair trial” and article 10 “Freedom of Speech”, United Nations Guidelines on the Principles Concerning the Role of the Prosecutors.

The indictment does not comply with the right to fair trial enshrined in ECHR Article 6 ‘Right to fair trial’. The indictment is biased and the prosecutor attempt to prove a crime that is not there. Arslan is not presumed innocent, as prescribed in Article 6. There is also serious doubts about the independence of the court that approved the indictment and found grounds for pre-trial detention based on such a weak indictment.

According to the 2021 statistics of the ECtHR in their annual activity report published on 25 January 2022, Turkey ranked highest for violating the right to freedom of expression. It was responsible for almost a quarter of all applications concerning freedom of expression (9,548 out of 44,250 applications in 2021). However, the freedom of speech and freedom of press are clearly enshrined in the Turkey’s Constitution. And the Constitution is in line with ECHR article 10 that states that 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.*

In the *Lingens* judgment (July 1986), the European Court of Human Rights rules as followed:

*Whilst the press must not overstep the bounds set, inter alia, for the “protection of the reputation of others”, it is nevertheless incumbent on it to impart information and ideas on political issues just as on those in other areas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them*

There can be no doubt that Arslan’s tweet was within the scope of the freedom of expression and the freedom of press. So why did Arslan get arrested for posting this tweet? The fact that Arslan was subjected to the pretrial detention despite there clearly having been no crime committed indicates that this might be one of the cases where the prosecutor overstepping the bounds of the law and acting out of possible anger, a wish for retribution or wish to send out messages to other journalists that would result in a chilling effect upon their work. This is an abuse of power and not in line with neither Turkish law, nor international standards regarding the role of the prosecutor.

According to CCP article 160/2 the prosecutor is obliged to collect and secure evidence in favor and in disfavor of the suspect and *to protect the rights of the suspect*. Instead of protecting the rights of the suspect, the prosecutor in this case violated Arslan’s basic rights.

The United Nations Guidelines on the Principles Concerning the Role of Prosecutors<sup>2</sup>, Article 10 to 20, outline the role of the prosecutors in criminal procedures. According to article 12 the prosecutors shall:

*... in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.*

The prosecutor in the case against Arslan did not perform his duties in line with these requirements. The indictment and the process against Arslan was not fair and balanced and violated both the rights to fair trial and freedom of speech.

UN Guidelines article 13 (a) stated that in the performance of their duties, prosecutors should:

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

It seems apparent that the reason for the criminal prosecution of Arslan is purely political and part of the ongoing fight against journalists and freedom of speech that the Turkish Government has carried out for decades. The indictment is fact a result of political discrimination, and as Arslan himself stated in his defense: ‘It was journalism, and not him, that was on trial’.

According to UN Guidelines art 13 (b) the prosecutor shall:

*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;*

The prosecutor did not assess Arslan’s defence. He did not take in to consideration the fact that Arslan’s tweet reported on public information and did not include any personal commentary or criticism. Instead, the prosecutor speculated on Arslan’s intent and charged him with a non-existent crime. This performance of the prosecutor is also in violation of the standards established in 1995 by the International Association of Prosecutors. These standards intend to ensure ‘fair, effective, impartial and efficient prosecution of criminal offences’ in all justice systems.<sup>3</sup> According to these standards, a prosecutor should only initiate criminal proceedings if ‘a case is well founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such



evidence.' Instead of protect the public interest, and ensure fair and impartial prosecution, the prosecutor initiated a criminal procedure against an innocent man.

The overall conclusion is that the indictment against Arslan has no legal base, according to neither Turkish law, nor international standards. This is so obvious that it must have been apparent for the prosecutor. Consequently, the prosecutor has not performed his duty in a fair and impartial manner, but rather shown poor judgement and a fundamental lack of professionalism. As a result, Arslan was in pre-trial detention and in solitary confinement for 100 days without a legal base. This is the real crime here.

#### **4. Conclusions and Recommendation**

As many of the other indictments that have been evaluated in this project, this indictment should not have been issued. No crime has been committed. The indictment is constructed to appear to fulfill the formal requirements according to Turkish CCP, but the prosecutor fails to connect the actions of Arslan to the alleged crime. It does not seem likely that a prosecutor did not know that the tweet was within the scope of freedom of the press. It is fair to assume that the prosecutor wanted to intimidate and silence Arslan.

In previous recommendations in this project, it is mentioned that the prosecutors should follow CPC Article 170 down to the last letter, as this article in fact gives a good guidance on how to write indictments. This recommendation is still valid. However, when the aim of the prosecutor is mainly to censor the press and intimidate journalists from doing their job, the indictments will never be in line with neither Turkish law, nor international human rights standards.

It is not only the prosecutor who is to blame here. The court approved the indictment and the prosecutor's request for pre-trial detention, even if the judges must have understood that the tweet was not a crime. This shows that there is no protection for journalists against persecution and arbitrary arrest, even if freedom of the press is enshrined in the Turkish Constitution. Hence, the work of the prosecutors is very important, as they are the ones who initiate criminal procedure. On the positive side, the judges that acquitted Arslan, had a sound legal assessment of the indictment and the actions of Arslan. Not only in regards to Turkish law, but also in relation to international human rights standards.

In addition to train prosecutors in how to write indictments, there seem to be a need for knowledge of the role of the prosecutor. A recommendation is therefore that the CCP on the prosecutors role and the more detailed recommendations in the United Nations Guidelines on the Principles Concerning the Role of Prosecutors should be implemented in the training of prosecutors. ■

## **Author**

**Heidi Heggdal is a judge at the Oslo District Court, Norway. She has been deployed to EULEX, European Union's Rule of Law Mission in Kosova as Justice Monitor and she has been working there in last three years.**

**She is a member of the International Commission of Jurists Norwegian Committee for the Independence of Judges, Lawyers and Prosecutors. Heggdal has worked with Turkish cases for years.**

**Endnotes:**

- 1 <https://norskpen.no/eng/pen-norway-observes-kurdish-media-case/>
- 2 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx>
- 3 [https://www.iap-association.org/getattachment/Resources-Documantation/IAP-Standards-\(1\)/IAP\\_Standards\\_Oktober-2018\\_FINAL\\_20180210.pdf.aspx](https://www.iap-association.org/getattachment/Resources-Documantation/IAP-Standards-(1)/IAP_Standards_Oktober-2018_FINAL_20180210.pdf.aspx)