COUNTER INDICTMENT

Full text translation of Oran's defense

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INTRODUCTION

Distinguished Judge, I have not understood at all why this case was filed.

1) One day a yellow [official] envelope was delivered to the Faculty which stated that I was appointed to the Prime Ministry's Advisory Council on Human Rights (ACHR) as human rights expert academician.

And I was given a regulation Art. 5 of which defined the assigned task as follows: "*To provide opinion, recommendation, suggestions, and draft reports on development and protection of human rights*".

We took it seriously and established 13 working groups and I was assigned to be the head of one of these. I wrote the Minority Rights and Cultural Rights Report (hereafter referred to as "*Report*") and my colleagues contributed in and approved it. We submitted it to the ACHR and following a 1,5-year discussion it was approved and accepted by 24 votes against 7, with 3 abstentions.

Now the Public Prosecutor which issued the indictment (hereafter referred to as (*Public Prosecutor's Office*) files a lawsuit against me and the then President of ACHR Prof. Kaboglu and demands 5 years.

Why? Is it because we have fulfilled our task drafting a report which does not include any expression of insult, any invitation to violence, which is based on latest scientific data on human rights and sociology?

We know that there is no punishment in this country for those who do not do their job. However, asking for punishment for those who do their job is a little weird. So to say I have not understood why this case was filed.

2) Secondly, I could not actually understand at all how this case could be opened through such an indictment.

a) First of all I have given my statement for 2 hours when the investigation was launched. I have explained for exactly 2 hours the content of the report, what it said, why it was drafted, and what it all meant and what it did not mean. I think I have this naive side of mine so I thought the Public Prosecutor's Office summoned us to appear in the court in order to learn about and clarify certain details.

Apparently that was not the case. The Public Prosecutor's Office had taken every detail from "Dear Informant Citizens" however not a single line from me. Not even a single word from an explanation of 2 hours? Apparently I was summoned just for the sake of formality.

In this case why have I given my statement? I wish I had rejected giving statement just like my "accomplice" Prof. İbrahim Kaboglu had done. Then I would not have spent the time I needed to spare for my students and my wife.

b) Besides its partiality the file is as facetious as it could be. My attorneys will talk about this so I'm saving time and not elaborating on this issue. However there is a document dated July 1, 2005 and no. 2004/98063 in the file which I can not skip because it describes the file so well.

A document signed by the Chief Public Prosecutor says; "*The suspects had past records of selling pornographic CDs."* Names of the suspects are not mentioned. A researcher who would review these files years later in order to write a Ph.D. dissertation would normally think that Prof. Oran and Prof. Kaboğlu were the "suspects" of selling those CDs. This is the kind of file that the Public Prosecutor's Office basis its indictment on.

Therefore at the expense of diverting the suspicions on my "accomplice" Prof. Kaboğlu I hereby, as a precaution, declare that I am not the "pornographic CD seller".

c) Public Prosecutor's Office presents to your court a pile of pages full of groundless allegations based on this file. It invents offences not included in the Turkish Penal Code (TPC). I will explain all of them one by one. But first, that let me mention the following:

I believe that Public Prosecutor's Office has misunderstood the matter.

Firstly there is an incident; a burglary or report-writing incident.

Then the prosecution issues an indictment to claim that "This is an offence". This indictment is a *thesis* as it is clear from its name.

Against this indictment the perpetrator presents a defense in order to prove that "This is not an offence". This is a *counter-thesis.*

But what does Public Prosecutor's Office do in this case? It attempts to disprove our scientific Report throughout the entire indictment and tries to draft a *counter-report* claiming that the content of the Report is erroneous and that is not the way to write it.

This just cannot be done; this is contrary to the nature of things. If it were a burglary case then would the indictment say: "No, breaking into houses is not possible in day-time, it should be at night; from the window not from the door; what the burglar did is wrong!"?

The Office of the Public Prosecutor can not do it, not merely because it is not a scholar but simply because this is a Public Prosecutor. A Prosecutor is obliged to claim and prove the offence. He can not attempt to produce a counter-report. But this is what he has attempted to do in our case.

Therefore Distinguished Judge, I can not give a statement here in the form of a usual defense.

Defending myself would be the gravest humiliation under such circumstances.

Therefore I'm here to reflect the anti-democratic ideology represented by the Public Prosecutor's Office in a *counter-indictment*.

I will do it for two reasons Distinguished Judge.

1) First of all I owe this to myself. I have been teaching my students at the Faculty of Political Science for 37 years to stand against anti-democratic understanding; I can not ridicule myself at this age of mine. My students would not admit me to the class.

2) Secondly I owe this to Turkey. Because this indictment has degraded the Republic of Turkey vis-à-vis the world even before the case started.

Let me explain the reason bullet by bullet.

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This is everything but an Indictment. Let's take it through with the letter "I".

1) This is not an "indictment" (*Iddia-name,* here *name* meaning "text") but an *Icat-name* (invention). Obviously: Finding something that already exists is called "discovery", and finding something that does not exist is called "invention". In this document, uncommitted crimes and non-existing intentions are invented. I will explain all of them, one by one.
2) Therefore, this document is only an *Itham-name* (imputation). In order for it to be an indictment, it also has to be an *Ispat-name* (proof). It does not even attempt to prove any of its allegations.
3) Moreover, in its current state, this document is an *Istihare-name* (oneiromancy); it is as if it was prepared by lying down to sleep for divine guidance and seeing in that dream the informers.
4) This is an *Iftira-name* (calumniation), because a document can defame the accused only this much. I will explain it all.
5) Your Honour, please lend your attention; for all of us here, this is a document of *Istihza-name* (ridicule) and *Igfal-name* (deception). In other words, by producing such a compilation that is far from a touch of seriousness even, after 10 months of preparation, the Office of the Public Prosecutor openly mocks all of us here and attempts to deceive this mechanism. I will explain them one by one with examples.
6) This text which is devoid of even the tiniest bit of legal basis has occupied me, a person who dedicates all his time to his students and research, needlessly for months. In recent years, indictments of this sort have stolen tens of thousands of hours of hundreds of journalists, academicians and thinkers in Turkey.

   These hours are different from the hours of those who play backgammon at the coffee houses. Therefore, this is not an indictment but an *Israf-name* (waste). It terribly wastes the intellectual resources of this country which are already scarce.
7) Lastly, Distinguished Judge, maybe the most saddening thing for the Prosecution and the Republic of Turkey is that this is an *Itiraf-name* (confession). I will also reveal this clearly.
8) In sum, Distinguished Judge, this is not an indictment. This is a *pseudo-indictment*.

This is why I will expose it by reading a *Counter-Indictment*.

My method is as follows:

I will address the issues directly related to my field of expertise, leaving some of the issues in particular those concerning the issue of procedure to my "accomplice" Prof. Kaboğlu, and some others to the expertise of my attorneys.

The accused and the complainant should be equal in terms of opportunities. This is the most fundamental principle of trials particularly in penal law. Public Prosecutor's Office charges me with non-existent offences on the basis of non-accountability for claim. Then, non-accountability for defence provides me with the opportunity to gravely criticize the indictment. I will make full use that. The weapons should be equal.

I will do it based on theoretical grounds, providing tangible examples, on the contrary to what the Public Prosecutor's Office has done.

ABOUT THE PSEUDO- INDICTMENT

Let's start from the beginning and go over the pages one by one.

First Issue

In page 2, it is stated that "*the Report was made public by B. Oran*". The same allegation is repeated in page 4.

This Report has been through discussions and voting that took 1,5 years. The media was there in every second of these phases. How can you leak to the media a Report that was prepared and voted in front of them? What kind of logic is this?

If the Public Prosecutor's Office wrote this down without knowing how the process functions, then what kind of an indictment-writing is this?

Besides, how does the Public Prosecutor's Office prove this empty allegation? It doesn't. And if it can't, then this [indictment] is nothing but an *Iftira-name* (calumniation).

Second Issue

In page 4, it is stated that, "*Except that it meets its expenses, the Prime Ministry does not have any relation or link with the Council*."

As I mentioned at the beginning of my speech, Article 6 of the Decree on the Establishment of the ACHR stipulates that "All its expenses shall be met from the budget of the Prime Ministry", even its name is "Advisory Council on Human Rights Advisory of the Prime Ministry".

Now, if this Council is not affiliated to the Prime Ministry then which organisation is it linked to? To a foreign Embassy? To the electricity network TEDAŞ (Turkish Electricity Distribution Company)? To the water network ASKI (Ankara City Water)?

With this allegation, the Public Prosecutor's Office turned the document it prepared into *Istihza-name* (ridicule), in an act of *Igfal-name* (deception) that openly aims to deceive us all.

If it is assumed that this is indeed the objective of the Public Prosecutor's Office, then this enters the domain of personal liability.

If such an objective cannot be proved, then we would have to accept the fact that he is unable to fulfil his duties because he does not understand what he reads. And this would mean that there is an official liability falling on the authorities who appointed him to that position and did not release him from there.

Third Issue

The indictment takes up the remarks we made about the Lausanne Treaty.

First of all, I'd like to raise a question: Why is the indictment criticising my scientific analysis of the Lausanne Treaty? Is this indictment a document of international law or is it a text of criminal law?

The duty of the Office of Public Prosecutor is to quote the relevant articles of the Turkish Penal Code in case it finds an offence in my scientific report. How can it write an anti-thesis against the Report? Is that its duty? Is it equipped for that?

It would have been much better for the Office of the Public Prosecutor if it hadn't done that, because by doing so it reveals the fact that it lacks information on two fundamental issues that we teach to the sophomores at the Political Science Faculty during the spring semester:

1) Contrary to what is known by the Office of the Public Prosecutor, the "existence of a Minority" and "the status of a Minority" are two different issues.

The "existence of a Minority" is a sociological fact. It is not in the power of the State to accept or to deny this. If in a country, there is a non-dominant group that differs from the majority in various aspects and considers such differences to be an inseparable part of its identity, then international standards agree on the fact that there exists a minority in that country. At this point, State claims are unimportant.[1]

The "status of a minority" is a legal situation. Here, the sole authority lies with the State. It is up to the State to grant or to deny "minority status" to those it wishes. In other words, it freely grants or denies minority rights.

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[1] "*3.Some State parties which claim that they do not discriminate on ethnic, linguistic or religious grounds, claim in an unfair manner that there are no minorities in their country because of this very reason*" and "*5.2 The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria*". Office of the High Commissioner for Human Rights, General Comment no.23: The Rights of minorities (Art.27), 08/04/94. CCPR/C/21/Rev.1/Add.5, General Comment no.23 (www.unhchr.ch/tbs/doc.nsf/(Symbol)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument).

Also see: "*2. It appears from the periodic reports submitted to the Committee under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, and from other information received by the Committee, that a number of States parties recognize the presence on their territory of some national or ethnic groups or indigenous peoples, while disregarding others. Certain criteria should be uniformly applied to all groups, in particular the number of persons concerned, and their being of a race, colour, descent or national or ethnic origin different from the majority or from other groups within the population*", Office of the High Commissioner for Human Rights, General Recommendation no.24: reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples (Art.1): 27/08/99. Gen.Rec.No.24. (General Comments) (www.unhchr.ch/tbs/doc.nsf/(Symbol)/9ce4cbfde77a452a8025684a0055a2d0?Opendocument)

I thank my friend Professor Patrick Thornberry for his valuable assistance.

By the way, again contrary to what is known by the Office of the Public Prosecutor, in Turkey this status has been defined in two separate conventions not only one. It has been granted to:

a) all non-Muslim citizens in Turkey through Articles 37 and 44 of the Lausanne Peace Treaty of 24 July 1923;

b) the "Christian Turkish citizens whose mother tongue is Bulgarian" through paragraph 2 of Article A of the Additional Protocol to the Turkey-Bulgaria Friendship Agreement of 18 October 1925.

In other words, by saying "*there are no ethnic, religious and linguistic minorities in Turkey other than those defined in the Lausanne Treaty*" actually The Public Prosecutor's Office is merely referring to the "status of minorities", which is wrong even in this format as it excludes the 1925 Agreement.

2) But the main mistake of the Public Prosecutor's Office can be explained as follows: They are making judgments on the "existence of minorities" by saying "there are no other minorities in Turkey".

It is understandable –to a certain extent- that the Public Prosecutor's Office does not know the rule stipulating that; "*The existence of a minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.*". The UN Rules whose reference has been cited in the footnote no.1 above were developed in the 1990s. One of them dates back to 1994 and the other to 1999. So, if you look at the registration number of the Distinguished Public Prosecutor it seems that he graduated some 30 years ago and such information was not available when he was studying at the Law School. Therefore, it is understandable that he is not aware of them.

But, the fact that he did not inquire about them when he was demanding 5 years of imprisonment for each of the two university professors is incomprehensible. He could have asked it to the professor he summoned to his office for statement-taking and who gave his statement and made explanations for 2 hours. He could have said, "Why did you write it in this way? Is there a background to it?" If not, what is the purpose in taking statements?

Let's assume that he did not notice at that moment, then he should have asked about it at the stage of writing it down.

Our Dear Informant Citizens would not know about these things. Professors who follow up international instruments on a daily basis and who teach them every year would know about this.

<u>Fourth Issue</u>

We come across a much graver mistake in page 5. According to the indictment: "*All citizens in Turkey who are outside of the scope of the mentioned elements, who have played a role in the establishment of this State and who are within these borders are essential, dominant elements of this State and not minorities*".

I would like to ask the same question once again: Why are there such remarks about who the elements of the State are in this indictment? Is it a crime to say these things? And under which articles do they fall?

Let's continue. Distinguished Judge, this is actually an incredibly catastrophic statement. By saying "*these elements*" the The Public Prosecutor's Office is referring to the non-Muslim

citizens of the Republic of Turkey" and by saying "…*who are outside of the scope of the mentioned elements*", he is defining the Muslim citizens!

In other words, without any hesitation the Public Prosecutor's Office is openly considering the Muslim citizens of Turkey "*the essential, dominant elements of the State*", and the remaining non-Muslim citizens "*subsidiary"* elements. That is to say, he is labelling the non-Muslims as "*non-dominant*", second *class* elements.

I wonder if The Public Prosecutor's Office is aware of the fact that he himself is committing the crime of separatism that he charged us with without showing any evidence? Isn't this "*openly inciting a part of the population which has a different race or religion to breed hatred and enmity against the other (TPC Art.216/1)*"?

What happened to the notion of "*The sovereignty unconditionally belongs to the Nation*"? Or is it that, according to the Office of the Public Prosecutor our citizens with a different religion are not part of this sovereign nation? Then what kind of a nation, sovereignty and moreover, what kind of humanitarianism is this?

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Of course, what I will tell you now will be even more unpleasant for the Prosecution:

I wonder if the Office of the Public Prosecutor itself is aware that this separatist attitude stems from the fact that the Millet System is still continuous in its mind?

The Millet System was introduced in 1454 and officially abolished in 1839 with the *Tanzimat*. This System divided the Ottoman subjects into two groups: *Millet-i Hakime*, that is the Muslims, and *Millet-i Mahkume* that is the non-Muslims[2] who were the second-class subjects.

Just in case, I will open a parenthesis here right away, because the Prosecution who apparently has no familiarity whatsoever with these issues may now think that "*mahkume*" means "condemned woman". Here, the terms "*hakime*" and "*mahkume*" come from the Arabic root "*hükm*" and the former means "the one who makes the judgment", and the latter means "the one for whom judgement is made". The first one is the subject. The second one is the object; it does not mean "condemned", and here I close the parenthesis.

It is beyond lamentable that a prosecutor of the Turkish Republic can use the Millet System, which was the main pillar of the Ottoman Empire abolished on November 1st 1922 by the Great National Assembly of Turkey, as the main pillar of his official indictment. I don't know what should be done about it, I really cannot say.

Fifth Issue

Let us talk about another grave issue.

On top of page 5, the indictment claims that article 39/4 of the Lausanne covers only non-Muslim citizens of the Republic of Turkey. However in our Report, we had indicated that it included "all nationals of the Republic", and brought along rights to all of them. In fact, I had detailed them to the Office of the Public Prosecutor for 2 hours.

Now I repeat my question: Why does the coverage of Lausanne with respect to nationals concern the indictment? According to which article of the TPC does analysing Lausanne constitute an offence?

[2] Bilal Eryılmaz, *Osmanlı Devletinde Millet Sistemi* (The Millet System In the Ottoman Empire), Istanbul, Agaç Yayincilik, March 1992, p.13.

But let us pause for a little while here; the mistake is not as small as to be corrected with small jack-knives like that in the Bektashi joke.

Let us first read the article 39/4: "*No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings."*

Now, for the sake of law, what does "*any Turkish national*" mean? Does it mean "non-Muslim Turkish citizen"? Couldn't those who had written the Treaty have written so if they had wanted it to be understood that way? Didn't they know how to write?

But here we are facing a real serious problem Distinguished Judge. If the Public Prosecutor's Office has not written this under the influence of the Dear Informer Citizens, -which by itself would be quite grave - then there are only two possibilities:

1) Either he did not understood what he has read,

2) Or the Public Prosecutor's Office is a victim of -what the political science calls as- "ideological blindness" or "ideological horse-blinkers", which constitutes a more serious situation for us and everyone else.

I will be extremely open:

The ideology of the Public Prosecutor's Office is its own business. This ideology may aim at restricting human rights -and particularly the freedom of expression- as much as possible; and as far as we see, it is the case here. However, this ideology cannot be reflected in the official indictment; this should not have been the case.

This is abuse of duty.

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Again I must give a small pause here: This is extremely important. I cannot switch to another issue before handling this one. It will be a long parenthesis:

First of all, let me note that our Report is an ideological output. It is a product of a democratic ideology, which considers human rights superior to anything else. Article 5 of the ACHR has assigned us a duty, and said: "*,…draft reports and conduct studies with the objective of improving human rights*", and it is what we had done.

We have done it from a certain perspective; i.e., from the viewpoint of human rights ideology. Is there anyone who can claim the opposite? Is there anyone out there with a scientific opinion who could say concepts of "perspective" and "ideology" are different from one another?

Since we want to study the very broad sociologic relationship between "the current status" and "the status that should be", our Report is as ideological as possible.

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Yet the Prosecution, a jurist examining the very clear and narrow relationship between "available Report" and "available law", can never and in no way should draft an ideological indictment. Moreover, apart from being ideological, this Indictment is also emotional.

To put in other words, the prosecution can only write something this:

"Your Honor, as demonstrated by such and such evidence, the author of the Report has uttered this and that sentences. When considered from the style and general context of the

Report, these sentences openly violate paragraph X of the Article X of the TPC which penalizes insult and defamation, and instigation to crime and violence. The jurisprudence of our Court of Cassation is also along the same lines. And there are no law articles that can enable these sentences to be considered as criticism. I hereby demand that he be sentenced under so and so Article".

That is all he can do. Yet, as I will soon demonstrate from A to Z, in his 10.5-page indictment drafted against our 7-page Report it says: "Well, the fact that the Author has written this while such and such country does this and that shows that he has ill intentions, what if he said about the minorities causes chaos, what if it breaks up the country, what if it divides the nation" etc., etc....

The only thing the prosecution has left unsaid is "God forbid! What if it pierces his eye". My Distinguished Judge, these are grave, even hilarious things. This indictment is an unlawful occupation. It needlessly occupies all of us. It is a document of occupation (*Isgal-name*).

I will return to this "intention" issue a moment later in more detail and by means of the *Zanardelli Report.*

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What if the Office of the Public Prosecutor approached the issue with the justification of "saving the country"? Well, then it has done an inexcusable mistake. Let me explain it at once:

Jurists cannot set themselves to save the country. Just like the armed forces or the security forces, or universities.

A country is protected collectively, through cooperation. A country is protected by the armed forces towards outside [dangers] and by the security forces towards inside [dangers]. For instance, Ministry of Education and universities protect the country against ignorance; the judiciary against injustice.

The judiciary cannot set itself to saving the country. If it does, then this is how it will end up.

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Oh, what prosecutors have we seen to this day who tried to save the country!

There was a military prosecutor in 1980s, in his indictment he said:

"*In the East it snows, then it freezes; and when stepped on, this snow produces khart-khurt sounds. The word Kurd has derived from this, so there is no such group as Kurds*". There was the military coup, so we said we understand. We said to ourselves: "This prosecution has not heard the joke about Hayri the Duck".

Then there was another one in 1970s, who, in his indictment, enlightened all of us:

"*The words Turk (*Türk*) and Kurd (*Kürt*) are a combined common value made up of the assembly of the same letters*.[3]" He taught us all that the same letters, T, Ü, R and K are the same letters aligned differently and therefore that the Kurds are in fact Turks.

As if this was not enough, the same military prosecutor was able to say in his indictment the following, which I will read verbatim as it is quite hard to believe:

"*The Turkish nationalism is never racist in accordance with our Constitution. On the contrary, instead of an abstract racist view, it accepts an idealist, progressive, unifying*

[3] Indictment dated 23.10.1971, no.1971/160 (1971/130); Merit No: 1971/144 (1971/33-30), Decree No: 1971/100. See. *DDKO Dava Dosyası-1* (DDKO Case File-1)-, Ankara, Komal Yayınları, 1975, p.22.

national racism based on the unity of having the same culture and the same destiny."[4] And there was the military coup, so like it or not, we said okay, we understand.

But in 2006, we do not understand any more. Thank God, there is no military dictatorship now. There is a Turkey that goes forward on the democratic path to EU.

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Now let us voice an issue that will give comfort to the Office of the Public Prosecutor, and let us close the parenthesis:

Well, there exists a pendulum in every country. This pendulum swings between two ends, one being "Human Rights State", and the other "National Security State".

When the pendulum swings towards the latter, the Human Rights State come to an end, it is destroyed.

But when it swings towards the former, the National Security State does not come to an end, it is not destroyed. On the contrary, it gains strength. For the fact that in countries where human rights are weak, people are "compulsory citizens". When they feel their sub-identities are respected they feel they are "voluntary citizens".

A State founded on compulsory citizenship can collapse any moment. Just like the Berlin Wall, may god forbid. You cannot station a bayoneted-guard next to every single citizen.

A State founded on voluntary citizenship is peaceful. It can sleep with his deaf ear up in peace and comfort.

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Leave everything aside.

If the Public Prosecutor's Office had, before writing the indictment, taken a glance at the *Tanzimat Ferman* which is the first constitutional document that have carried Turkey to this day, it would have sufficed for it. Likewise, this *Ferman* of 1839 says the very same thing I said about the pendulum, but with different words:

"*Who indeed can, even if his character is against violence, refrain himself from resorting to violence and hence bring harm to his country and state when his life and honour are in danger? Whereas, in an opposite situation, if this person is in complete security in that sense, he will not abandon loyalty and all his actions will be targeted to the well being of his country and his brothers*."

Yet, as far can be seen, the prosecution has only read the denunciation petitions of Dear Informer Citizens before writing the indictment.

I close the parenthesis here and return again to Article 39 of Lausanne.

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There is a need for some technical information on this issue to avoid both the Office of the Public Prosecutor and other prosecutors from repeating the same grave mistake in other cases.

No one in Turkey has ever read the Lausanne Treaty; but of course, they know it by heart. Therefore there is a lot of information to provide, but here I will only elaborate on those that are absolutely necessary.

[4] *ibid*, p.24

It would only be choosing the easy way if one considers that Section III of the Lausanne Treaty ("Protection of Minorities", arts. 37-44) only talks about the rights of minorities. Such easy ways may be seriously misleading because this section introduces rights for four different groups:

a) Non-Muslim citizens of the Republic of Turkey,

b) Everyone inhabiting in Turkey,

c) All citizens of the Republic of Turkey,

d) Citizens of the Republic of Turkey speaking languages other than Turkish.

This article 39 embodies four of these groups; it is an article similar to a laboratory because the subject of the:

- first paragraph is the rights of (a),

- second paragraph is the rights of (b),

- third and fourth paragraphs are the rights of (c),

- fifth or the last paragraph is the rights of (d).

This is also the case for almost all of the remaining articles of Section III. That is to say, although the title is "Protection of Minorities", the rights of not only the minorities but also all citizens of the country -further, all residents of the country- have been inserted into this Section. In short everyone's rights have been enshrined here; in technical terms, "human rights" have been positioned in this Section.

Why? There are a few reasons for this, which I have noted in three of my books. I will only mention about two of them here in order to respect your time:

1) The first time "human rights" was ever inserted in an international document was in 1945 through UN Constitution. This means that when Lausanne was signed in 1923, these rights did not exist in international documents even as concepts. However, the concept of "minority rights" has been in international treaties at least since the Vienna Treaty of 1606. Therefore this Section III, which also includes human rights, was titled "Protection of Minorities".

2) The term "minority" is not a specific (special) but a generic (general) term. When the specific terms of an international treaty are interpreted, their meanings prevailing during the signature of the treaty are taken into consideration. But when generic terms are interpreted, their meanings are determined in the light of all developments that have taken place in international law since the signature of that treaty.

In this sense, in 1978 International Court of Justice rejected Greece's claim in the court case lodged against Turkey with respect to Aegean Continental Shelf. It said that the term "disputes concerning the territorial status" as mentioned by Greece was a generic term, and should therefore be interpreted not on the basis of its meaning in 1928 but that in 1978 (verdict paragraph 77-80). Therefore, although the concept of "human rights" was not in the international jargon in 1923, the term "minority rights" will now -in 2006- be taken up so as to express also the concept of "human rights", which it has become a part of.

For instance, Article 39/2 of the Lausanne reads as follows: "*All the inhabitants of Turkey, without distinction of religion, shall be equal before the law*." Now I wish I could spot the one who would interpret this as "minority rights" since it does not even speak about "majority"

here. It does not even talk about "nationals" but about the rights of "all those that inhabit in Turkey", may it be a foreigner, or a national.

Did you happen to know that this article 39/4 was the proposal of the Delegation of Ankara Government at the Lausanne Conference?

Did you ever think that, if Art. 39/4 were implemented, that is to say, if the State had not been violating this article until today, we would not be having this silly problem concerning radio-TV broadcasts in "languages other than Turkish"?

Have you ever thought that if there were no such problems, the Kurdish nationalism would not have gained strength? [5]

Sixth Issue

I need to explain this point in more detail. But do not worry you will not be bored. I have given the clues above already.

The indictment on page 5 says; "*Again, a word on the practice of the French State …. will reveal the intent included in the report*."

Distinguished Judge, how come our "intent" interests the indictment? Where does the Public Prosecutor's Office get this authority, from which legal text? From where?

Let me explain where it does *not* get this authority from:

1) First of all comparison by analogy in penal law is not permissible. Therefore it can not get this authority from any text of penal law.

How can it be possible to outline the "intent" of a Report by looking at the practice of a state or how can a similar expanding interpretation be provided while Art. 2 of TPC prohibits comparison by analogy even among the provisions of law?

2) More importantly: as Dr. Sami Selçuk, honorary president of the Court of Cassation, wrote, penal law does not deal with the purposes, objectives, intents or motives of individuals.

Does not the Public Prosecutor's Office know about this? There are two possibilities:

a) This principle might have been recently introduced in the new TPC and our jurists might not have penetrated into it yet.

But, no sir. This principle is defined 120 years ago in the *Zanardelli Report* on the Italian Penal Law which is the source for our penal law, as follows: "*Investigating the internal motives of individual actions is not the task of the penal justice*". [6]

120 years is enough to learn about this.

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[5] See the following three books for this information on the Lausanne Treaty: *Türk Dış Politikası Kurtuluş Savaşından Bugüne Olgular, Belgeler, Yorumlar ((Turkish Foreign Policy – Facts, Documents, Comments since the War of Independence),* Ed. B.Oran, Vol. I, 10th edition, Istanbul, Iletisim Publications, 2005, pp.225-231; B.Oran, *Türkiye'de Azınlıklar – kavramlar, teori, Lozan, iç mevzuat, içtihat, uygulama (Minorities in Turkey – concepts, theory, Lausanne, domestic legislation, jurisprudence, implementation)*, 3rd edition, Istanbul, Iletisim Publications, 2004, pp.61-80; B.Oran, *Küreselleşme ve Azınlıklar (Globalization and Minorities)*, 4th Edition, Ankara, Imaj Publications, 2001, pp.152-162.

[6] Sami Selçuk, *Özlenen Hukuk / Yaşanan Hukuk* (Desirable Law, Existing Law), Ankara, Yeni Türkiye Yayınları, 2002, s.206, dn.15.

b) Or the Public Prosecutor's Office knows about this principle and he is doing it deliberately…

These will be judged by your Court. However, I will not leave this matter of intent here. I will come back to this point.

3) The actual point I would like to make here is even graver.

Public Prosecutor's Office, as I mentioned before, is delivering opinions on topics of international law which obviously is not one of its *forte* and is putting the Turkish Republic in a difficult position. Let's see how:

a) Provides misinformation.

Firstly it says that France did not sign European Charter for Regional or Minority Languages. France signed it in 1999. It has even included a "statement of interpretation". It then brought before the Constitutional Council the issue of whether there was a need for any constitutional amendment prior to ratification. Upon decision by the Council ratification was postponed.

Initialling, signing, ratification, transposition are all different processes.

b) Provides even more misinformation on the practice in France:

For example talking about France's reply to European Council's ECRI, it refers to statements such as: "*All citizens in France are equal before the law without any discrimination based on ethnic origin, race and religion. Minority is alien to the French law."*

What all these examples have to do with the indictment? What does it try to write? Are these its responsibilities?

First of all this reference is incomplete. And just like everything that is incomplete it is wrong. It hides certain things.

As the indictment puts forward, France has in fact said; "*Concept of minority is alien to the French law*." However the indictment hides the very fact that "minority rights" are not at all alien to French law. Let's clarify this point:

I have mentioned above: Since the Public Prosecutor's Office does not make any difference between "existence of minority" which is a sociological concept, and "status of minority" which is a legal matter; it is unaware of the fact that linguistic and religious minorities in France are granted minority rights. In order to keep up the Jacobin appearances the French Republic rejects the "concept of minority" with one hand and it grants full "minority rights" with the other hand.

Let me prove what I have said through examples because mine is not an indictment but a statement of proof (*ispat-name*). This is how I promised at the very beginning of this counter-indictment and I will keep my promise till the very end.

Rights of Linguistic Minorities in France

Let me clarify this first: In order to provide a comparison with Turkey I will hereby describe only the Metropolitan France which is French land in Europe as we know it. Otherwise if I include the "*Outre-mer*" as the French call it, where minority rights are practiced much more prominently and commonly, then those who consider France to be a centralist unitary state might get a heart attack. For example in New Caledonia, French is not the first language but the second; but I won't elaborate on it more.

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At this point the indictment brings forward information picked up here and there, which are naturally wrong.

Concept of "Langues de France"

Article 2 of the French Constitution is as follows: "*The language of the Republic is French"*.

This much should be pleasing for the Prosecution because it reminds us the statement of "*Its language is Turkish*" in article 3/1 of our Constitution, referring to the Turkish State.

However there is in France something else that the Prosecution does not know and would not be pleased to know: The concept of "*Les Langues de France*". If we had that concept in Turkey it would be "Languages of Turkey".

The public institution[7] under the French Ministry of Culture and Communication, and which was previously known as "*Délégation Générale à la langue française*" and changed into "*Délégation Générale à la langue française et aux langues de France*" in October 16th, 2001 defines this concept as follows:

"*Concept of "Languages of France" refers to regional or minority languages traditionally spoken by French citizens in the Land of the Republic, and which are not official languages of any other state*."

The number of these regional and minority languages is more than 75 including the Overseas Lands. Number of those in the Metropolitan France only is 16 and they are divided into "Regional Languages" and "Non-territorial languages".

There are 10 "Regional" Languages of France: Alsacien, Basque, Breton, Catalan, Corsican, Western Flemish, Moselle Francique, Francoprovencial, Languages of Oïl, Languages of Oc (occitan) *[Alsacien, basque, breton, catalan, corse, flamand occidental, francique mosellan, francoprovençal, langues d'oïl, parlers d'oc ou occitan.]*

There are 6 "non-territorial" languages; Dialectal Arabic, Western Armenian, Berbère, Judeo-Spanish, Roman (gypsy), Yiddish (Jewish) *[arabe dialectal, arménien occidental, berbère, judéo-espagnol, romani, yiddish.]*[8]

It is completely free to speak, write, publish, produce arts etc. in these languages.

"Deixonne" Law on Teaching Local Languages and Dialects effected in 1951 stipulated that education in Breton, Basque, Catalan and Occitan was permitted (article 10) and the said Law also identified the universities where these languages could be subject of education and research (article 11).

Corsican[9], through the decree of January 16, 1974 and Alsacien, the minority language spoken in Alsace-Moselle, through an administrative decree (*arrêt*) of May 30, 2003 were

[7] Délégation Générale à la langue française et aux langues de France, *Le Corpus juridique des langues de France*, Etude réalisée par Violaine Eysséric, Paris, Avril 2005, s.67.

[8] *Les langues de France: un patrimoine méconnu, une réalité vivante*, web site of French Ministry of Culture and Communication : www.culture.gouv.fr/culture/dglf/lgfrance/lgfrance_presentation.htm

[9] www.languefrancaise.net/dossiers/dossiers.php?id_dossier=45

included among the languages that could be subject of education (*l'objet d'un enseignement*)[10].

Distinguished Judge, the Office of the Public Prosecutor might not know about this either. Because if you look at the dates given, these are developments that took place after his graduation from the Law School. However to be unaware of the scientific developments is not an excuse just like being unaware of the law is not an excuse either. If it were an excuse, then not asking for learning is certainly not.

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Let me open a parenthesis here and give brief information on Alsace-Moselle region as well as the minority language spoken there. I'm sorry that some people will get gooseflesh but it is not me to blame. I'm not the one who gave France as an example for comparison with Turkey.

Located at the German border of France this region, just as Alexandretta (*Hatay*) which was separated from Turkey between 1918-39 and then returned back or Kars-Ardahan which were under Russian rule between 1878-1918, is a part of Alsace-Lorraine which was given to Germany following the foundation of Germany in 1871 and upon defeat of France by Germany was returned to France in 1918.

This region where the below-mentioned privileges for minorities are applicable, is composed of the entire province of Alsace and the Moselle division of the province of Lorraine.

According to linguists the language spoken here is not a separate one but a dialect of German. Despite this fact, as I mentioned above, this dialect is accepted as a minority language within the scope of "Languages of France" and enjoys all privileges granted. As I will be explaining shortly, in this region of France people speak this language in their public and private lives and, though it might be difficult to believe, they practise German law.

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Let me remind once again to avoid any mistakes: We are talking about France which the indictment points out to Turkey as the best example of unitary state.

Provided that it is stipulated by the municipality regulation, dialect of Alsace is used at the municipalities.

Associations established in the region use Alsacian as well in their activities. In 1993 Colmar Court of Appeals, in a case filed on the grounds that general assembly of an association was held in Alsacian, rejected the cancellation of general assembly decisions. From then on it is considered that there are no barriers to using Alsacian in the associations.

Although "Toubon" Law of August 4, 1994 on the Use of French Language stipulates that French is compulsory in education, business transactions and public services, Alsacian is not prohibited in public offices in Alsace either. As a matter of fact, Art. 21 of the said Law is as follows: "*Provisions of this law hereunder can not be applicable to regulatory documents on the local languages of France and can not constitute barriers to the use of these languages*."[11] Therefore it was agreed that verbal use of the local language in the public offices of the region is not prohibited and this is the actual implementation.

[10] *Corpus*…, s.18.
[11] *Corpus*…, s.68.

In the region, posters for election campaigns and propaganda have been printed in French and German since 1919. [12]

Since the circular of August 10th, 1979 and no. 1619 this language, in addition to French, may be used on the highway road signs[13]. In Alsace, names of streets are in both languages in the historical sites of Strasbourg.

State of Affairs in the Judiciary

This state of affairs is simply chocking for us.

Presidential decrees of 1919, 1922 and 1928 stipulated that French, German or local dialect (Alsacien) could be used for defence in the courts.

According to the said decrees based on the parties' statements that their French is inadequate, public notary documents can be issued in Alsacien.

If the judge agrees, parties at the court can directly communicate in the minority language. Because according to Art. 23 of new Code on Legal Procedure; "*If the judge is competent on the language spoken by the parties he does not have to hire an interpreter*"[14].

State of Affairs in Education

State of affairs in education is even more striking: These minority languages are taught in private and public schools.

In private schools starting from the kindergarten it is free to teach anyone interested these languages spoken by a total of 250.000 students in entire France according to 2002 data of the Ministry of Education.[15] It is even possible for kindergartens and primary schools to adopt these languages in Basque and Alsace-Moselle as the medium of education; there is no legal barrier against that. Same is applicable in the secondary education. Some schools conduct education only in these languages.

State provides financial contribution in this system. For example Basque is financed 70% by the State and 30% by the parents in the region[16].

In public schools or in schools contracted by the State these subjects are limited to two hours a week just like foreign language lessons.

In accordance with administrative decision of July 31st, 2001, half of the subjects are taught in French and the other half in minority language in "bilingual" type of schools at all levels (kindergarten, primary and secondary)[17]. In these types of schools there is a separate section

[12] Interview with Assoc. Prof. Samim Akgönül at Max Bloch University in Strasbourg, January 10, 2006.

[13] *Corpus…*, s.71.

[14] *Corpus…*, s.71 ve 79.

[15] *Le Monde* , 04.10.2005.

[16] www.uoc.es/euromosaic/web/document/basc/fr/i3/i3.html#3.1

[17] *Corpus…*, s.18.

called “regional languages”. Thus some schools in Alsace-Moselle provide training in German (Alsacien) and French half and half.

This is the case till the university. It is possible to attend Literature and Regional Languages Department at the university.

There are higher education institutions in some regions which provide education merely in the minority language like *L’Institut d’Etudes Basques* in Bayonne. [18]

Needless to say that these subjects are included in the regular class hours everywhere in France.

State of Affairs in Culture and Arts

Privileges enjoyed by regional and minority languages are not limited merely to the field of education. These languages are preserved and promoted in culture, training and education. They are financed by the French State in various fields such as music, books, theatre, ethnological heritage, archive, museum, movies.

For instance “Library of Languages of France” programme is established in order to provide loans for libraries that admit books written in these Languages of France or research books on these languages, and also to provide financial incentives for the printing houses that would publish books in these languages. There is a division of labour in France: Ministry of National Education is responsible for the protection and development of French and Ministry of Culture and Communication for that of “Languages of France”[19].

I wonder if you have noticed that I have not at all mentioned about the Corsican; I’ll be able to do it when I explain the autonomous administrative status of the Island. Let me say this much only: Corsican has been taught since 1974 at the primary and secondary schools as well as at the Corte University established in 1980. According to 1998 data 85% of the primary school students in the island learn Corsican in schools particularly in eleven “bilingual” schools.

Religious Minority Rights in France

Contrary to the claim by the Public Prosecutor’s Office there are religious minorities in France as well.

The subject of religion has followed a standard path after the Law of 1905 which separated Church and State.

Except for the Alsace-Moselle region. For example:

- Compulsory or elective lessons of religion can not be taught in any primary and secondary public school anywhere in France. (However these schools are closed on Wednesdays so that parents can provide religious classes for their children, but on Saturdays schools are open. Private schools decide on their own about religious subjects.)

[18] www.uoc.es/euromosaic/web/document/basc/fr/i3/i3.html#3.1

[19] *Les langues de France: un patrimoine méconnu, une réalité vivante*, web site of French Ministry of Culture and Communication: www.culture.gouv.fr/culture/dglf/lgfrance/lgfrance_presentation.htm

However, lessons of religion are compulsory in the primary and secondary public and private schools in Alsace-Moselle region. Yet parents can decide which of the religious subjects (Catholic, Protestant, Jewish, or Ethics) their children would select. [20]

- Religious leaders are not paid or appointed by the government anywhere in France. They live on the donations of believers. They are not included in the State protocol either.

However, in this region religious leaders of three religions and sects recognised in France (Catholicism, Protestantism, Judaism) are public servants paid by the government and are granted lodging by the *commune*. The President of the Republic appoints the archbishop selected by the Catholic congregation. Same is applicable for the two recognised Protestant churches. The chief rabbi selected by the Jewish congregation is approved by the governor. Beside the rabbis, the *sacrificateur* and the circumciser (*mohel*) too are paid by the government. All religious leaders are included in the State protocol.

- There are no religious cemeteries anywhere in France; all cemeteries are managed by the municipality and people of different religions are buried together; it is forbidden to separate them. For example Yılmaz Güney is buried in Père Lachaise cemetery in northern Paris along with all other deceased.

However in this region cemeteries are religious cemeteries and they belong to the religious edifice next to them. Therefore there are specific build-in Muslim burial areas "Muslim squares" in these cemeteries in Alsace-Moselle[21].

I would like to add so that the Public Prosecutor's Office makes no further mistakes: Ministry of Interior in "secular" France "that rejects the concept of minority", is at the same time the Minister of State responsible for Religious Affairs. Though symbolic to a great extent in all regions other than Alsace-Moselle, these officially recognised faiths are under the actual and official auspices of the interior minister, in other words, of the State. This situation constitutes a religious privilege (additional rights) for religions and sects in this region, both financially and in terms of State protocol.

Legal and Administrative Minority Rights in France

I continue to dwell on the Metropolitan France, always excluding the Overseas Territories in order not to harm the health of some people:

In France that rejects the concept of "minority" two minorities enjoy legal/administrative minority rights in their regions: Alsace-Moselle region and Corsica island.

"Religious and ethnic rights", "special representation rights", "special administrative rights": These are three group of rights demanded by minorities. I won't elaborate on theory and take your time. It is included in my text book which the Prosecution claims to have read; just let me comment on the conclusion only:

The third among these demands, "special representation rights", is the most serious of all and nation-states do not like to grant them.

Why not? Because it means self-administration of the minority and therefore its isolation from the "nation". In such cases the minority either takes the decisions on certain issues on its own, or extends it and practices this autonomy in a territorial manner in a specific region.

[20] Jean-Luc Valens, "Le maintien d'un droit local en Alsace-Moselle", Quand la France se nomme diversité, Partie 2, *Problèmes politiques et sociaux*, no.909, Février 2005, s.46-47.

[21] Interview with S.Akgönül.

What I mention here about Alsace-Moselle and Corsica is the most radical form of the most serious of these demands. There is a great deal of additional legal rights in Alsace-Moselle and direct administrative minority rights in Corsica. Let's see:

1) Alsace-Moselle[22]:

a) Following the return of Alsace-Lorraine to France in 1918, French penal code in Alsace-Moselle was immediately put into effect. However, some of the local codes from the German Law were maintained. The French Court of Appeals had to gloss this matter which is extremely strange for us, declaring that "*These codes have become French codes.*".

The Court was very wise to do that. It is thanks to such pragmatic wisdom that there is no minority problem in Alsace-Lorraine today.

b) Since Germany has started industrialisation earlier than France it has proceeded its time in terms of social security measures. Following the transfer of the region to France these legal rules were also maintained. For example in this region an additional social security system is in effect where the insured pays a contribution of 10% instead of 20%.

c) In 19th century Germany the mayor held a fundamental administrative office. Even after the transfer of the region to France, authorities of the mayors in Alsace-Moselle were larger than those of other mayors in France. The situation was balanced only after the Law on Local Administrations of 1982 went into effect.

d) Associations in the region are subject to several articles of German Civil Code. For example an association established in accordance with the local law can function as a profit-making organisation.

Here is one more example that will make you say "Now that is too much": certain codes in effect in Alsace-Moselle such as the Code on Local Associations, are not even translated into French. They are maintained in German. In 1975 the Court of Appeals rejected an application made on the grounds that this code was in German.

The French Court of Appeals in a March 10th, 1988 decision stated: "*Law of June 1st, 1924 which maintains in effect certain local legal texts in German, does not condition their practice to their being published in French.*" So certain laws applied in France today are only in German.

Let's continue: legal privileges of the region were approved by the Constitutional Council in France which "rejects the minorities"; the Council did not consider these privileges to be at variance with the principles of "indivisibility of the Republic" or "equality of citizens".

[22] For further information on legal minority privileges in Alsace-Moselle see *Le Guide du Droit local: le droit applicable en Alsace et en Moselle de A à Z*, Paris, Publications de l'Institut du Droit Local/Ecomica, 2002. For further information on minority rights in France see Norbert Rouland, Stephane Pierre-Caps, Jacques Poumarede, *Droit des minorités et des peuples autochtones*, Paris, Presses Universitaires de France, 1966, p.307-345.

2) Corsica[23]:

We have come to the example that will surprise and disappoint the most the Office of the Public Prosecutor. I think it will regret forever for giving France as an example for comparison. Because Corsica island is a unit subject to separate territorial administration.

Its special status inspired by different laws practiced in Overseas Lands is somewhere between Metropolitan France and these Overseas Lands and it is the only example of its kind in France.

I won't take much of your time here either. I won't touch upon the changes Corsica went through with the Laws of 1982, 1991 and 2002. I will only give a picture of its current state. Corsica has its own legal existence, Assembly, and executive body.

a) Territorial Collectivity of Corsica:

The Island, named as "Corsica Territorial Collectivity" (*Collectivité Territoriale de Corse),* is managed under a special status granted in 1991. Think of the Marmara or Avsa islands being administered this way.

The powers accompanying this status covers all fields one can think of: economy, development, financial affairs, agriculture, forestry, tourism, energy, housing, any kind of transport, education, higher education, research, professional qualifications, construction of schools of any type, environmental arrangement, environmental protection, local development, development of Corsican culture and language, art, culture, protection of historic structures which do not belong to the State, etc.

All these fields are administered by offices which used to be of "national" nature, but now they are undertaken by local administrations that have "territorial" status.

b) Assembly of Corsica:

Since 1982, the problems of the Island are debated and concluded by the "Assembly of Corsica", elected by the Corsicans for a term of 6 years. This Assembly holds two regular annual meetings which may last for 3 months each. It can also hold extraordinary meetings. This Assembly of 51 members makes its own internal status, adopts the budget and development plans of Corsica, and also supervises the "Executive Council" which I will explain later.

Before adopting bills and decrees that concern Corsica, the French Parliament has to consult the Assembly of Corsica. The assembly answers in one month; under urgent circumstances this term may be shortened to 15 days upon the request of the Governor of Corsica.

The Assembly is empowered to make amendment proposals to the French Government with respect to laws and arrangements that concern Corsica.

In case the Assembly can not function any more, French Government can dissolve it through a Cabinet decree. In that case assembly elections can be launched in 2 months. Within this period Executive Council undertakes the current proceedings and its decisions are implemented subject to approval by the Governor of Corsica.

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[23] For references for minority privileges in Corsica see: Le Statut particulier de la Corse, www.corse.pref.gouv.fr/scripts/display.asp?P=COstatut; Collectivité Territoriale de Corse, www.corse.fr/institution/assemblee/?id=1&id2=47 ; Présentation du statut de la Collectivité Territoriale de Corse, www.eurisles.com/Textes/presentation/PresStatut_CTC_FR.html ; Vie Publique.FR – Découverte des institutions, La Corse, www.vie-publique.fr/decouverte_instit/approfondissements/approf_083.htm ; La collectivité territoriale de Corse, www.corse.pref.gouv.fr/scripts/display.asp?P=COloi91legis .

Discussions in the Assembly usually take place in French; however some members may prefer to speak in Corsican. [24]

The Assembly took a decision in June 26, 1992 which declared Corsican as the official language of the entire Island (Article 1). This decision also stipulated that Corsican, "the language of the Corsican people", and French, "the official State language" would be the two official languages of the Corsican Assembly (Article 2). According to Article 5 students at all levels would have Corsican language courses maximum 3 hours a week. However, there has been no implementation and since then this decision had no consequences.[25]

c) Executive Council:

The executive council is composed of a chairperson and 6 members, selected from among the members of the Corsican parliament. The council is in charge of administrating the Corsican Territorial Collectivity in every field, and function particularly in fields like economic, social, educational and cultural development as well as environmental arrangements.

The president and members of the Assembly can attend Parliamentary sessions and meetings. The assembly can overthrow the Council through a vote of non confidence. But before this happens, in order to avoid any gaps, the political groups at the Assembly ought to have reached an agreement over a new Executive Council.

The president of the executive council represents Corsican Territorial Collectivity. He is the disburser of the Island, presents an annual report to the Assembly, is empowered to bring any kind of proposal to the PM of France concerning public services in the Collectivity.

Economic, Social and Cultural Council of Corsica serves as a consultative body to the Assembly.

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To sum up, Distinguished Judge, the Corsican Island is like a state within a state.

Alsace-Moselle is also a state within a state. It allows the use of German, the language of its historical enemy, at the court houses. It has a multi-legal system. This is unbearable for even the most tolerant nation-states.

There is no mistake in analogy, but this is just like validating Arabic language and Syrian Law in Hatay, and Russian language and Muscovite Law in Kars and Ardahan. This is the kind of country which the indictment quotes as an example for Turkey.

Seventh Issue

Let us go on.

The Office of the Public Prosecutor makes another assertion in page 5; this page is a very productive one indeed.

This is also completely ideological. It says:

"*In the Report there is a new definition and application of minority other than the one accepted by Lausanne. This would lead to chaos.*" Further, it continues:

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[24] www.transcript-review.org/section.cfm?id=232&lan=fr

[25] www.tlfq.ulaval.ca/ax1/europe/corsemotion.htm

"This would also bring about a result which would jeopardize the unitary structure of the state, integrity of the country, and indivisible integrity of the nation."

For the sake of law, I ask: It says it would cause chaos, destroy integrity. It again mentions an intent, a possibility. What do all these mean? What kind of criminal law is this?

When one says "It's cloudy" should we immediately conclude that it might rain, a lake might emerge, birds might come, and bird flue develop?

Let us go on. The Office of the Public Prosecutor mentions these important arguments in only 3.5 lines, but does not elaborate on them. Of course, it does not prove them by giving examples from our Report.

Although we published our Report 17 months ago, Turkey has not yet encountered such hazards. I don't know what might happen in 17 years.

But I do know that the Prime Minister Erdogan is constantly using the terminology and method of the Report to keep the Kurds happy: In Hakkari and elsewhere he said that all the sub-identities be they Kurdish, non-Muslim, Turk, Circassian etc. should be respected and that they are under the supra- identity of being a Citizen of Turkey. What else was there to say? Who in Turkey knew about the notions of sub and supra identity before our Report?

But let's continue to elaborate on the arguments of the indictment, show how incorrect they are and prove them wrong by giving examples from the Report. Let us show the Office of the Public Prosecutor how an indictment should not be written.

1) First of all, just where did we propose a new definition of minority in our Report? Which sentence or which paragraph? There is no such sentence or paragraph…

Then, how can the Office of the Public Prosecutor see a thing which does not exist? The reason is that because it wears ideological eyeglasses it cannot see certain things. In addition, it does not know the difference between the "existence of minority" which is a sociological phenomenon and the "status of minority" which is a legal category.

Distinguished Judge, in our Report we did not say that Lausanne should not be implemented or should be amended. On the contrary, we argued that it is not implemented and that it should be. This is exactly what we wrote in our Report.

We have doubts whether the Office of the Public Prosecutor read the Report or forgot it because its investigation took exactly 10 months.

2) The Office of the Public Prosecutor wrote that we jeopardize the "unitary structure of the State and the integrity of the country" in our Report.

Let me ask the same question again: In which line and with which words did we do that? If the Office of the Public Prosecutor is unable to answer this question, it would set forth an unfounded claim. If an ordinary man had done what the Office of Public Prosecutor did, s/he would be called a "slanderer." This is why this indictment has from the very beginning been nothing but an *Iftira-name* (calumniation).

Distinguished judge, we did exactly the contrary:

a) The Report does not want to change the unitary structure of the State and it does not even include the word "unitary" as this is none of our business.

In addition, although I don't want to linger over this subject, I really don't know where to start to correct in this indictment. The indictment uses the word "unitary" in a wrong way and confuses it with the concept of centralism; furthermore, it also confuses centralism with the indivisibility. These are completely different subjects. Let me explain:

The US is not a unitary but a federal State. However it is not divided at all. Look at Iraq's current situation; it was not federal but unitary.

In both federal and unitary State structures, democracy and dictatorship can be seen. For example, the USSR was a federation but there was no democracy. Spain is not a federation but a unitary state but is one of the most tolerant democracies of the world. Last month Mr. Aguado, No. 2 general of the Spanish Land Forces, attempted to intervene in democracy; he was sentenced to house arrest first and then dismissed from his post. He will be retired in March.

b) Further still, I'm bored of telling these, I hope you don't get bored of listening to me, our Report does not include either the words federal or confederal even once. So, what is this all about? But that's what the indictment argues.

In the Report, we defended the indivisibility of the State / homeland because we base our arguments on the discipline of international relations which argues that if the States of the World are re-structured according to ethnic and linguistic lines, this will go on like mitosis division.

Here is what we wrote in the Report word by word: the Report p.3, subtitle 3: "*The indivisible integrity of the State with its territory is profoundly natural and is an indisputable issue all around the world*."

Now, what is wrong with this sentence? Which part of our Report divides the country / homeland? This indictment is a statement of slander, is it not? Why is it so? What are we doing here? What are we summoned here for?

3) The Office of the Public Prosecutor mentions the "integrity of the nation."

Distinguished Judge, political science rules that State / Homeland is "undivided" and nation is "united". Just like independence is an attribute of the State, just like freedom is an attribute of the nation. The nation is free, the State is independent.

"Undivided" refers to a whole without any parts and attachments. There is no nation which is not made up of parts, except maybe for Iceland, Korea, Portugal, and maybe one more. All nations are made up of different ethnic and religious groups. Even Japan is not homogenous.

You cannot render a nation a "whole" by denying the existence of these groups. On the contrary you just tear it up and put it into pieces as each part has its own original personality, in other words, sub-identity. People cannot put up with the denial of their sub-identity. They rebel. People rebel when you give them a wrong tea cup; why wouldn't they rebel when their identities are denied.

These various sub-identities might create "unity" only if there is a supra identity that embraces all of them and that does not reflect any particular ethnical – religious identity. That is why if you reduce nation into "oneness" you destroy the unity. Oneness is enemy to unity.

No one can write an indictment without knowing these. If you do, the result is inevitably like this.

4) I am thrilled when I read some parts of the indictment. It's as if the Office of the Public Prosecutor's Office develops new laws and theories. It says the following – I'm trying to correct the sentence a little bit:

"*As the country has a central / unitary structure physically, people who live there have also a unitary structure*." It says this for our Constitution.

The indictment starts writing a "Constitutional Law" book this time. But a completely wrong one. I don't know where to start as there are too many mistakes:

a) Again, it confuses centralism with unitary structure. I've given sufficient information on this issue.

b) Secondly, by writing "*Turkish Republic is a unitary state with its country and nation"* it applies the adjective of unitary to the nation, which is in fact an attribute of the State.

Distinguished Judge, let me explain this way:

In cases of freedom of expression, your colleagues in Strasbourg reject any case if defendant State argues and proves that "*national security* of the country" and / or "territorial integrity of the country" is at stake.

However, when defendant State defends itself by arguing that "*integrity of the nation* is at stake", plaintiff wins the case and gets compensation according to Art.10 of the European Convention of Human Rights.

The reason is the following: When the issue is to limit individual rights, the notion of the "integrity of nation" is alien to European countries, although the first two concepts are respected there. Such a concept cannot be accepted because if it were, there would be no democracy. In the second half of the 19th century the definition of democracy was "the will of the majority", and this definition became "respect for sub-identities" in the second half of the 20th century. We are in the 21st century now.

5) This indictment quotes the famous Article 2 of the Spanish constitution and does it with great imprudence. I don't know what to say about it. Let me cite you the said article and explain it:

"*The Constitution is built on the indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards; it recognizes and guarantees the right to autonomy of all the nationalities and regions of which it is composed, and solidarity amongst them all."*

Let me ask the question again: When we discuss whether our Report constitutes a crime – which should not be discussed due to freedom of expression – why the Spanish constitution? The indictment at this point starts writing a "Comparative Politics" textbook this time.

Besides, it would be extremely reasonable if I myself had quoted this Article, as this 3-line Article completely disproves the arguments of the Office of the Public Prosecutor but confirms mine in 2 points:

a) Please pay attention: the adjective used for nation is "unity". The adjective used for homeland is "indivisible". Just like I said two seconds ago, word for word. I don't understand at all why the Office of the Public Prosecutor included this Article which in fact disproves its arguments.

I can't really believe that the indictment goes on as follows:

"*As you can see, the Spanish Constitution, just like the Constitution of Republic of Turkey, mentions the principle of the indivisibility of nation*."

Would it be an exaggeration if I said that the Office of the Public Prosecutor is making fun of us? This is not an indictment but a statement of mockery.

b) Please pay attention again: After semicolon, Article 2 of the Spanish Constitution states that the nation is made up of autonomous nationalities and regions.

What did I say above? I gave a much lighter version of the same statement: I said that the nation is made up of various ethnical and religious sub-identities. Some call themselves Turks, some Muslims, some Kurds, some Alevis, etc. The Spanish Constitution takes a huge step further and says that the nation is made up of nationalities and autonomous regions which are guaranteed by the constitution itself.

Heaven forbid, if we had repeated this Article in our Report, in other words, if we had said that in Turkey the nation should be made up of autonomous nationalities and regions, what in the world would happen to us? The answer is very simple indeed: We would be separatists.

I will return to this point later. But before ending this issue, I have to show you what kind of Spain is cited by the Prosecution so that the Indictment is displayed for your eyes[26].

- Art. 2 of the Constitution was saying: "*The Spanish nation is composed of Autonomous Nationalities and Autonomous Communities*".

- Constitutional Article 3/2: "*Autonomous Communities can use their own languages along with Spanish."* What we mean by Spanish here is the language of the Castilian region.

- Constitutional Article 4/2: "*Along with the Spanish flag, autonomous communities shall be able to hoist their own flags on their public buildings*."

- Constitutional Article 69/5: "*The Spanish Parliament is composed of two chambers. Autonomous communities are represented at the Senate in accordance with proportional representation principle*."

- Constitutional Article 87/2: "*Autonomous Communities shall have their respective assemblies, which -in addition to governing their own communities- may submit Bills to the Spanish Parliament*."

- Constitutional Article 133/2: "*Assemblies of the Autonomous Communities shall be empowered to levy taxes*."

These autonomous communities have their specific statutes. For instance let us have a look at the Autonomy Statute of the Basque Country, dated 1979. [27]

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[26] I thank my assistant Elçin Aktoprak for the fundamental information she provided concerning Spain (*European Minorities and Turkey* her Ph.D thesis in writing). Also see: www.spainemb.org/information/constitucionin.htm ; http://www.lehendakaritza.ejgv.euskadi.net/r48-2312/en/contenidos/informacion/concierto_economico/en_467/concierto_i.html ; Pedro Ibarra ve Igor Ahedo, "The Political Systems Of The Basque Country: Is A Non-Polarized Scenario Possible In The Future?", *Nationalism and Ethnic Politics*, Vol. 20, 2004, p. 355-386.

[27] www.lehendakaritza.ejgv.euskadi.net/r48-448/en/contenidos/informacion/estatuto_guernica/en_455/adjuntos/estatu_i.pdf

- Article 17: To ensure order in the autonomous territory, there shall be an autonomous police force. The command of the police forces shall lie with the Government of the Basque Country. State security and armed forces are competent in cases with extra- or supra-Community nature (like entry into and exit from the State, foreigners, customs, airports, smuggling etc.)

- Article 38/1: "*The laws of the Basque Parliament shall be subject to the control of the Constitutional Tribunal concerning their compliance with the Constitution only*."

- Article 40: "*Basque Country shall have its own autonomous treasury and budget. In order not to distort the inter-regional balance in Spain, a portion of the budget shall be transferred to the central government to meet general expenses*."

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Now let us come to Spain for the practice concerning mother tongue and education of mother tongue. I will only cite examples from the Basque Country and Catalonia:

Basque Country: [28]

Since the 1982 law, 4 models have been implemented in the Basque Country:

Model A) The curriculum is in Spanish, some subjects are in Basque (*Euskara*).

Model B) Spanish and the Basque Language are used 50-50.

Model D) The curriculum is in Basque.

Model X) The curriculum is in Spanish.

In this system, the student can choose any model s/he wants. The most commonly used two models are models B and D.

Model X appears to be fading away since in certain areas it is necessary to know the Basque language to find a job. On the other hand, the number of those who only speak Basque is almost none.

Catalonia: [29]

The Catalan language has been taught at primary schools in the Autonomous Community of Catalonia since 1978. After 1982, tests on Catalan language were also included in the university examination. Since the Language Law of 1983, it is decided that at least one course will be taught in Catalan.

In Catalonia, Catalan is the official language along with Spanish (Article 3 of the Autonomy Statute for Catalonia, dated 1979).

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[28] Estibaliz Amorrortu, "Bilingual Education in the Basque Country: Achievements and Challenges after Four Decades of Acquisition Planning", www.rci.rutgers.edu/~jcamacho/363/amorrortu.pdf

[29] Jude Webber ve Miguel Strubell i Trueta, "The Catalan Language: Progress Towards Normalisation", The Anglo-Catalan Society Occasional Publications, 1991. http://www.anglo-catalan.org/publications/acsop/07The_Catalan_language/pdf/issue07.pdf

The Catalan language - the "own language of Catalonia"- is the official language of all Generalitat[30], Catalan Territorial Administration, Local Administration, and all official departments of the Generalitat. Catalan and Spanish will be used as official languages by the Administration (Language Law of 1983, article 5).

The documents that will be conveyed by the Generalitat to other official departments within Catalonia will be in Catalan language. The documents that will be sent outside of Catalonia will be in Spanish or -where necessary- in the official language of that administration (Decree dated 1987 and numbered 254, article 5).

All announcements, minutes and relevant documents that concern the meetings of local administration departments will be in Catalan, and no translation will be provided (Law dated 1987 and numbered 8, article 2).

Judges, public prosecutors, other employees at courts, parties of court cases and their representatives can use the official language of the Autonomous Community in writing and verbally. The court documents drafted in the official language of an autonomous community are valid without further need for translation into Spanish (Organic Law dated 1985 and numbered 6, articles 2, 3, and 4).

The names of official places in Catalonia will only be in Catalan, except for Vall d'Aran (Language Law of 1983, article 12).

Catalan is the language of education at all levels. In primary education, children can choose between Catalan or Spanish, but they are obliged to learn them both (Language Law 1983, Article 14).

I just finished introducing a summary of the Spanish example given by the Office of the Public Prosecutor for indivisibility of nation. I think this summary is sufficient.

Eight Issue:

The Office of the Public Prosecutor on page 7 accuses us of using the term "*Türkiyeli*" (people of/from Turkey, citizen of Turkey) rather than "Turk" as a supra-identity.

Later it said, "*Turk is used to indicate the citizenship and it is not used in racial context*."

There are so many things here to say but again I don't know where to begin. The best would be referring to them one by one:

1) Why is the Office of the Public Prosecutor concerned with the proposal in our Report to use "*Türkiyeli*" rather than "Turk" as the supra-identity? I could not understand this at all. This is not a crime in Turkey. If it is a crime, then I would like to learn in which paragraph of which article of which law this is considered a crime.

The indictment does not refer to these at all. It only alleges that what we said is wrong. This is what the Office of the Prosecutor writes in its "Counter-Report."

If there is freedom of expression in this country, I can propose any term I like for any concept I like as long as it does not contain an insult or violence.

[30] "Generalitat" is a concept representing the administration of Catalonia in general. It is used to cover the parliament, the president and the whole government. For this structure, see www.gencat.net/generalitat/eng/guia/mapainstit.htm

Am I interfering with the Office of the Public Prosecutor because it is not using "*Türkiyeli*"? Am I filing a criminal complaint against him with the demand of a 5-year imprisonment?

I'm not, because I believe that one cannot interfere in anyone else's freedom of expression – as I keep repeating, as long as it does not incite to crime or violence or involve an insult -- and I won't allow anybody to interfere with mine.

I won't, because I know that this is in line with the laws of the Republic of Turkey. I'm sure that at the end of this case, the Office of the Public Prosecutor too, will learn.

2) He claims that in Turkey the term "Turk" is not used in the racial context.

What is this analysis doing in this indictment? Does an indictment write theses? A Constitutional Law thesis?

The indictment is saying completely incorrect things. In fact it is very seldom that one comes across so many wrongs put together in a single text. We wrote in the Report, and I explained to him in length, but it must have been in vain:

Leave aside the fact that the term "Turk" is alienating for those who are not Turks or who do not consider themselves a Turk in this country. I'm saying one more time clearly, the term "Turk" in this country is used both as the name of the supra-identity and also as the name of the dominant ethnic/cultural group.

You can simply open the 24-volume Meydan Larousse Dictionary and Encyclopaedia, which is the largest dictionary ever published in Turkey. Volume 19, page 471. Under the term "*Türk*," the first sentence says: "*A person of Turkish race*." As simple as that.

But I don't think this is a simple thing. If the term "Turk" is not the name of an ethnic group, then the Public Prosecutor's Office must answer the following four questions:

a) What does "*Domestic foreigners (Turkish citizens)*" mean? This term was used in the "Regulation For Protection Against Sabotages" dated December 28, 1988, as it listed which categories were most likely to carry out sabotages.

If this did not mean non-Muslim citizens, then what did it mean? Didn't the Office of the Prosecutor claim that the term "Turk" was used for citizenship only?

b) What does "*of Turkish origin and of Turkish citizenry*" mean? This term is used to describe the characteristics of the Deputy Principal to be assigned by the Education Ministry to a foreign or minority private school, as listed in Article 24/2 of the Law Number 625 still in force now.

Once you say "*of Turkish citizenry*" why do you repeat it by saying "*of Turkish origin*"? Did not the indictment claim that the term "Turk" was used for citizenry only?

c) What does "*Turkish citizen with foreign nationality*" mean? This term was used in the Istanbul Administrative Court Number 2 decision, dated April 17, 1996. Whom did the court mean when it used this term? It was our Greek Orthodox citizens.

Didn't the indictment claim that the term "Turk" was used to indicate citizenship only? Has anybody in this court room or in entire Turkey heard of a more weird "legal" term than this? A person is either a foreigner or a citizen.

d) What does "*Foreigners are not permitted to acquire immovable property in Turkey*" mean? This sentence is from the Court of Cassation Grand Chamber dated May 8, 1974. Who did the Court of Cassation have in mind while using it? It used it for the administrators of the Balikli Greek Orthodox Hospital Foundation established by our Greek Orthodox citizens.

Didn't the indictment claim that the term "Turk" is used to indicate citizenship only?

I'm passing this since there are many more things in the indictment.

3) Again about the supra-identity, the Public Prosecutor's Office's Office gives examples from some countries. It says very interesting things.

It says, "*In Spain, the State calls its citizens Spanish* [Ispanyol] *and not 'from Spain'* [Ispanayali]*"*."

Has an ethnic group called "Spanish" been discovered in Spain that I don't know about? If the answer is negative, what is the difference between "Spaniard" and "Spanish" or "from Spain"?

The Office of the Public Prosecutor said, "*The State of France calls its citizens French and not of/from France*."

Sorry, but what is the difference between the two? Or was an ethnic group called "Frank" that I did not know about was discovered in France recently?

In fact the Ottomans used to call the citizens of France "*Fransevi*" and this is the very same word with "*Fransiz"* (French)

He claimed, "*The State of England calls its citizens English and not of/from England*."

Distinguished Judge, this is really one of the peaks of the indictment. It is such a highlight that it dazzles one's eyes since the term "English" used by the Prosecutor's Office is not used by the people in England. Since Wales united under one parliament with England in 1707, the people in England says "*I'm British*." Since 300 years.

I did not call this indictment an *Icat-name* (invention) for nothing. I recommend that anyone travelling abroad and stopping by England never ask a citizen of England on the street "Are you English?" Because if they do not realize that you are a foreigner who does not know the land at all, they can make you suffer dearly. Because unless he belongs to the English ethnic group, this person would harshly respond: "No, I'm Scottish/Welsh/Irish!" Because for the Irish, Welsh and Scottish elements of this country, being called an Englishman is a pure insult and may lead to major incidents.

In this country all sub-identities are united under the British supra-identity. "English" is a mistaken term that some in Turkey think is the supra-identity of that country. It is used to indicate the sub-identity of those who are of English origin only.

Indeed using the sub-identity is not in the interest of the English-origin people because they are afraid to provoke people of other sub-identities. Asking a person "Are you English?" in that country is the same as asking a man on the street in Turkey "Are you a Kurd, an Alevi?" Indeed it is much worse.

Also in the indictment this country is referred to as England but its name is the United Kingdom of Great Britain and Northern Ireland. If it had used only Great Britain or only United Kingdom it still would be acceptable, but England does not work. Don't listen to those who are chanting "*England, England*" in soccer games. Those are The Skinheads.

Indeed the most comprehensive encyclopaedia published in Turkey was AnaBritannica (Encyclopaedia Britannica) and in volume 11, p. 571 it says the following in the first sentence of the entry "England": "*The prominent country of the Great Britain and the United Kingdom of the Northern Ireland*." The encyclopaedia article continues: "*One cannot talk about the Constitutional existence of England…. Scotland and Wales have their own ministries and Northern Ireland is autonomous in its domestic affairs, England does not have its own rights or institutions. Official statistics on foreign trade, tax and defence are part of the statistics of the United Kingdom. The only institution that is English is the Anglican Church*."

Then how can people, who lack even this encyclopaedic information, put forward convictions, introduce examples, introduce rules and then demand 5-year imprisonment for us for writing an academic report?

I'll not continue since there is a lot more to talk about. Let me just say the following and thus we will mention something that the Office of the Public Prosecutor said right among all these wrongs.

His last example is correct. In fact the German state calls its citizens German (*Alman)* and not of/from Germany *(Almanyalı)*.

There are two ways to nation-building:

1) French Method
2) German Method

The first one is also called "territorial method" or "Renan method". Indeed the term "*Turkiyeli*" in our Report is a pure reflection of this method. The second one is the German Method. It is also called the "Blood Method."

I don't know whether explaining this much is enough.

Let me finish this point by saying: The situation in Germany is not like before anymore. As the number of people from Turkey only has reached 2.5 million, as the number of minorities and foreigners increased in Germany, the German State had to dilute the Blood Method. For example, now not only those born to German parents but those who were born on German soil (territorial method) can get citizenship as well.

Here the important question is:

What do we call a Turk who assumes German citizenship by applying or by being born there? Do we call him a "German Turk?"

Indeed, there cannot be such thing as a Bulgarian Turk but a Turk of Bulgaria, not a Greek Turk but a Turk of Greece. What kind of a response would you get if you call, say, a Turk who emigrated from Bulgaria to Turkey a "Bulgarian Turk?" Indeed these people strongly protested Fikret Bila, the Ankara representative of daily *Milliyet* for using the term "Bulgarian Turk" in his column.

Here, Distinguished Judge, for all these reasons, one cannot say Turkish Armenian but Armenian of Turkey, not Turkish Greek but Greek of Turkey, not Turkish Kurd but a Kurd of Turkey.

But *Türkiyeli* suits just fine. Just like Iranian, Iraqi, Syrian, Laotian, American, Thai, Austrian, Canadian, Chinese etc.

Yes, Chinese. In China there is no ethnic group called Chinese. The name of the ethnic group that constitutes 95% of the people is the "*Han*" group. "Chinese" is the supra-identity of this country that was drawn by the territorial method. Just like the term *Türkiyeli*.

Leaving everything aside, I wonder whether the Office of the Prosecutor has ever thought of the following:

In case the Greek Parliament said: "If the word Turk is not an ethnic term, then in our country, too, everybody is Greek because this is not an ethnic term either." What if, God forbid, Greece introduces an "Article 66" [of the Turkish Constitution] to its Constitution and says: "Everybody who is tied by citizenship to the Greek state is a Greek"? What will then happen to the 120,000 Western Thrace Muslim Turks? Are they going to become "Greek"?

More interestingly: When we keep saying: "There is no Kurdish issue but a Southeast issue," or, when we tell people who call themselves Kurds: "No, you are not Kurds, you are Southeasterners (*Güneydogulu*)" we think we are saving the country from getting divided. Then are we dividing the country when we talk on a bigger scale and use the term "*Türkiyeli*"? Is it not very clear that then and only then we are actually saving the country? What kind of a double standard is this? What are we doing with logic?

This is all what the Report was about, Distinguished Judge.

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I earlier said that I would come back to the "intent" issue. I come now because the Office of the Public Prosecutor invents an intent on every page. As I repeatedly said before, a jurist cannot question intent. He has no such authority. In the indictment p. 8, it says:

"*While proposing to use the term 'Turkiyeli' rather than the term 'Turkish' in the Report, indeed it was not noticed that the name of the country, in other words the name Turkey, has an ethnic connotation. Was it not noticed or is it too early to make such a warning yet?"*

How can a man of law say such a thing? Making such a warning requires great courage for two reasons:

1) While saying "*Is it too early to make such a warning yet?*" the Office of the Public Prosecutor openly tries to mean the following: "The report writers actually wanted to name this country Kurdistan but since they don't have the courage to do so now, for the time being they are satisfied with the term '*Türkiyeli*.' When the time comes, they will suggest Kurdistan as well."

Should I here remind of the Zanardelli Report again?

This is abuse of duty. No one is allowed to do that. At the end of my remarks, we will certainly return to this.

2) The second reason may be more interesting. The indictment claims that the term "*Turkiyeli*" has an ethnic connotation.

Again we are in the world of symbols, projections, probabilities, dangers, dangers, dangers. But the only missing thing is criminal law itself.

Fine, but didn't the Office of the Public Prosecutor repeatedly say that the term "*Türk*" had no ethnic meaning at all? If the term "Turk" does not have an ethnic meaning, then "*Türkiyeli*" won't either. How can a person and a man of law be in such a contradiction with himself between pages 7 and 8 of the same text?

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To sum up, we introduced the term "*Türkiyeli*" for the sake of this country. And we did something very good. This is the only concept that embraces all citizens of the Republic of Turkey without making any discrimination. We are all *Turkiyeli* here.

Those who like it will use it, and those who don't won't. But one cannot interfere with those who use it.

Can anybody say something to a person who says "I'm a Turk?" If he says he is a Turk, that is it.

But what if he does not? What if he cannot? What if he is not a Turk or considers himself a Turk? What shall we do? Kill him? Or shall we force him to say that he is a Turk? Let me ask The Public Prosecutor's Office, which one should we do? The first one, the second, which one?

Turk or *Turkiyeli*. This country will discuss and come to a decision over time. How can the indictment attempt to restrict our freedom of expression? From which article of which law does it draw this authority?

Is the Public Prosecutor's Office opening a case against us because it did not or could not open cases against the bullies who tore our scientific and official Report in front of TV cameras?

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On this issue the indictment also refers to Ataturk. Fine. In fact I, too, wanted to come exactly to this. Let me ask the Public Prosecutor's Office's now: Does it think that it was us who introduced the term "*Turkiyeli*" for the first time in Turkey?

Let me inform him: That person was Ataturk. Was the Public Prosecutor's Office aware of this? Please listen to the following articles:

"*Article 12: Except for exceptional circumstances in Turkey the Turkiyelis are free to travel.*"

"*Article 13: Education is free. Every Turkiyeli is eligible to take public and private education."*

"*Article 14: Schools and all such institutions are subject to supervision and inspection of the State. The education of the Turkiyeli must be in unity and order.*"

"*Article 15: All Turkiyelis are eligible to establish all types of companies to be involved in commerce, industry and agriculture in line with laws and regulations.*"

What are these? From where were they taken?

The date was July 1923. This is the first draft Constitution amending some articles of the 1921 Constitution and mentioning, for the first time, that the administrative form of the State is a "republic". In Mustafa Kemal Pasha's own handwriting. [31]

If there is separatism in saying "*Turkiyeli*", it was first initiated by Mustafa Kemal. I'm not making a comment; I'm only presenting this to the attention of the Office of the Public Prosecutor.

Ninth Issue

Let us come to the section in our Report concerning the Constitutional Court.

I believe the Office of the Public Prosecutor is making injustice to us when he claims that we presented the Constitutional Court as an obstacle in front of democracy. We did the same with the Court of Cassation, the administrative courts and the Council of State as well. We stated that some decisions by these institutions were discriminatory and thus were hurting democracy in Turkey. How come did the Office of the Prosecutor miss these points? Is this not neglect of duty?

[31] *Türkiye Cumhuriyeti İlk Anayasa Taslağı* (First Constitutional Draft of the Republic of Turkey), İstanbul Boyut Yayın Grubu, Ekim 1998. This draft was discovered by Can Dündar's team as they were conducting a research at the Cankaya Palace Library for a documentary film; it was conveyed to me by my "accomplice" professor Ibrahim Kaboglu.)

Distinguished Judge, I'm an academician. I can say anything I like without insulting or inciting to crime or violence. I can make any criticism I like. This is why I get a salary from the State.

I did not commit a crime. But the indictment here commits 3 crimes:

1) Abuse of duty. Criticizing the Constitutional Court decisions is not a crime. The Office of the Public Prosecutor attempted to silence criticism only because it did not suit his ideology. This is a crime. Also, this is pure dictatorship mentality.

2) Neglect of duty. If these comments were denigrating the Constitutional Court, then why were they published in the Supreme Court's 2003 "Constitutional Law" periodical, pages 61-93? The Office of the Public Prosecutor should have filed a lawsuit against this Court also. This is neglect of duty.

3) Denigration of the Constitutional Court. My remarks, which were interpreted as denigrating the judicial organs of the State, were quotes that I took from the paper that I read in the presence of the President and members of the Constitutional Court on April 25th, 2003, at the symposium organized to the honor of the 41st anniversary of the Court.

Now the Office of the Public Prosecutor seems to say, "You, Constitutional Court. This person humiliated you. You are not even aware of it. What kind of carelessness is this? I'm immediately saving your honor and filing a lawsuit."

So the Constitutional Court did not get the message but only the Public Prosecutor's Office did? So the Constitutional Court was unable to make a complaint all these years? Is the Public Prosecutor's Office acting as a caretaker of the Court?

Tenth Issue

Distinguished Judge, finally let me say why I call this pseudo-indictment an *Itiraf-name* (document of confession).

1) The Office of the Public Prosecutor says at the end (p.10): "*This text has great similarities with the provisions on minorities of the Sèvres Treaty that put our country under occupation. In the face of such a resemblance, one should not find it strange that one falls for the Sevres paranoia.*"

The last sentence is the climax of the indictment: "*In the face of such a resemblance, one should not find it strange that one falls for the Sevres paranoia."* This is an unbelievable sentence Distinguished Judge. This is a sentence that would tremendously ridicule not only the Public Prosecutor's Office, but anybody in Turkey. The Office of the Public Prosecutor, also reflecting the general atmosphere of the entire indictment, finds itself close to the Sevres paranoia!

Of course this is up to him. I personally would not want to say, not even think of, such a thing. The indictment does so.

2) On the other hand, the indictment accuses our Report of resembling the minority provisions of the Sèvres Treaty.

Let me repeat. Even if for a moment this should be the case, why would this be a matter for the indictment? The Sèvres Treaty was made in 1920 and was buried in history in 1923. Even if there might be resembling sentences with such historical text, why does this bother the Office of the Public Prosecutor? Who says this is a crime?

But this is such a case that I won't drop it here with only this much. Here there is an invention again. I'm asking the Public Prosecutor's Office: Which sentence of the Report resembles which provision of the Sèvres Treaty on minorities? I want him it cite one single article. One single article.

It cannot. If it could, it would have already done so in the indictment.

Then there are only two possibilities:

1) The Public Prosecutor's Office read the Sèvres Treaty's articles on minorities but could not find any resemblances to our Report. That was why he did not cite any articles.

2) The Public Prosecutor's Office was so much affected by the Sèvres Paranoia environment that it did not have the courage to read the Treaty, but, since the Report was lso very repellent, the Office thought it would be similar to the scary Sevres Treaty, therefore the Office found it correct to simply claim that one "resembles" the other.

I'm leaving it up to the esteemed court to decide which possibility is stronger. But let me draw the attention of the esteemed court to the fact that the Office kept repeating such void allegations throughout the indictment.

It claimed that the Report resembled Sevres but the indictment is mute when we ask which sentences resembled which articles.

It claimed that the Report introduces a new minority definition but the indictment remains mute when we ask in which sentence this was proposed.

It is claimed that the Report was endangering the unitary structure and integrity of the country but the indictment remains mute when we ask in which sentence this was implied.

It is claimed that the Report was committing a crime by introducing the term "*Turkiyeli*" rather than "*Türk*" as the supra-identity, but when we ask which article of which law makes this a crime, the indictment remains mute.

It is claimed that the Report was denigrating the Constitutional Court but when we asked in which sentence and with what word have we done so, the indictment remains mute.

It is claimed that the Report was inciting animosity and hatred among people but when we ask with which sentence we did that, the indictment remains mute.

We are all tired now. I will not give any more examples.

Because of all this, this is not an indictment but a *pseudo-indictment*. This style of indictment in our country was left behind back in the military coup periods.

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For all these reasons, Distinguished Judge, this pseudo-indictment reminded me of great novelist Yasar Kemal's "Akcasaz'in Agalari" series. It reminded me of what Mr. Dervis said in the "*Demirciler Carsisi Cinayeti*" (Murder in the Ironsmith Market) story.

Dervis Bey had Akkoyunlu Mustafa Bey's brother killed. Mustafa Bey is a feudal lord in Cukurova (Cilicia) just like himself. In response, Mustafa Bey should have Dervis Bey himself killed because the latter has no brother.

Since Dervis Bey never leaves his house, Mustafa Bey can not get him killed. So instead, he gets somebody burn the heap of grain of one of Dervis Bey's laborers.

Upon this incident Dervis Bey says, "*You are not going to starve. Everybody will be paid for his damages. I'm not complaining about this. My complaint is that I did not deserve such a rival. I feel sorry for this."*

I do not feel sorry for all the time that I could have devoted to my students and to my wife. I feel sorry that such an indictment was written against me. I think that I'm qualified to be subject to a better indictment. I believe that I deserve better than a document which tries to undermine a scientific thesis but which puts itself in a worse situation in every step.

I believe that I deserve a better indictment than this indictment, which invents both the action and the law, and later wants me to be prosecuted according to those inventions.

If the criminal theory has lost its fundamental basis so much in this country, and if the elements of crime have been hurt so much, then I'm afraid there is nobody who can do anything and there is no place left to take refuge.

But I cannot accept that there is none left. There must be some, and this counter-indictment should be a proof of that.

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So that no other indictment attempts to do something similar again, I demand that the Office of the Public Prosecutor be punished in a way it deserves. I want to list the crimes he committed in this indictment and I want to file the following criminal complaint against it:

With this indictment many articles of laws were violated by ignoring the rule of law that respects human rights as stipulated in Constitutional Article 2 and in line with the principles of a democratic state.

1) Academic freedom and autonomy as described in the Constitution and in Art.15/3 of the 1966 UN International Covenant on Economic, Social, and Cultural Rights were violated and the interests of the State were undermined.

2) The lawsuit filed violated the freedom of expression which is under the guarantee of the Constitution and of the European Convention.

3) The TPC was violated by the indictment because it attempted to make analogies and also because it questioned the "intent".

4) The court was denigrated because of a very carelessly prepared file.

5) Europe, the main objective of the Republic of Turkey has been portrayed as an enemy. This indictment and this case will be used as a major obstacle to prevent Turkey's entry into the EU. From this angle too the basic interests of the State of Turkey were hurt.

6) The indictment was written with the logic of *Millet-i Hakime* (Dominating Nation). It divides the nation in two and tries to revitalize the basic order of the Ottoman Empire that collapsed.

7) The indictment abused its duty by putting forward alternative ideological theses known to be ultra-nationalist.

8) The indictment neglected its duty by not filing in certain lawsuits against us.

9) The indictment denigrated the Constitutional Court, a judiciary organ of the State.

10) By stating that the term "*Turkiyeli*" incited people to hatred and animosity and that it is a divisive term, the indictment insulted M.K. Ataturk who first used it in four separate articles in the first draft Constitution in July 1923.

11) By attacking the freedom of expression the indictment attempted to eliminate the democratic State based on that freedom.

12) The indictment committed the crime of separatism by dividing the nation into basic (Muslim) and secondary (non-Muslim) elements.