Can a Prosecutor Later Judge the Same Case?

The Arıkanoğlu application and the appearance of impartiality

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Author: Abdullah Öztürk

Security Studies and Rule of Law Association (SRL Swiss)

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Security Studies and Rule of Law Association · 15 rue des Savoises
1205 Genève · Switzerland

www.srlswiss.com • info@srlswiss.com

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The separation between prosecution and judgment is one of the simplest safeguards of judicial fairness. A prosecutor may advance accusations; a judge must independently evaluate them. Problems arise when a person who exercised the first function later takes part in deciding a challenge to the proceedings in which those accusations were made. The question is not confined to whether the decision-maker can be shown to harbour personal hostility. It also concerns whether the composition of the deciding body gives the public objective grounds to doubt its impartiality.

Documents relating to Ayhan Arıkanoğlu put that distinction into unusually sharp focus. They place İrfan Fidan's name at two points in a judicial process: on the prosecution side in June 2016 and among the Constitutional Court members deciding Arıkanoğlu's individual application in October 2025. That documented overlap deserves a legal explanation, not a presumption of misconduct and not an assurance that the institutions involved had different names. [1, 2]

A signed indictment and a later constitutional decision

The first record is an extract from an indictment dated 29 June 2016, issued through the Istanbul Chief Public Prosecutor's Office. It identifies the indictment as no. 2016/3082 and lists Ayhan Arıkanoğlu among the suspects. The concluding extract records requests for punishment and detention and ends with the electronic signature of İrfan Fidan, identified as Deputy Chief Public Prosecutor of Istanbul. The accusations in that document remain accusations; citing them here does not imply that their truth was independently established. [1]

An electronic signature is not proof that the signatory personally investigated every allegation or drafted every page. It is, however, an official act attaching his name and prosecutorial responsibility to the submitted document. This is a more specific connection than the mere fact of having previously worked in the prosecution service.

The second record is a decision of the Constitutional Court of Türkiye, First Section, Second Commission, dated 2 October 2025, on individual application no. 2023/48133. It identifies Ayhan Arıkanoğlu as the applicant and lists Yusuf Şevki Hakyemez and İrfan Fidan as the two commission members. The decision deals with complaints concerning the fairness of the criminal trial, the principle

of legality in criminal law, and additional allegations submitted in September 2023. [2]

The commission declared the complaints concerning the trial outcome and legality principle inadmissible as manifestly ill-founded, and the claims raised in the additional submission inadmissible for being out of time. It did not rehear the criminal charges or make a fresh finding of guilt. Nevertheless, an admissibility decision determines whether a rights complaint will receive further constitutional examination. Participation at that stage is not legally irrelevant simply because the decision is procedural. [2]

The overlooked domestic rule: Law No. 6216

The issue has a particularly direct basis in Turkish legislation. Article 59(1)(ç) of Law No. 6216, which governs the Constitutional Court, prevents its president and members from hearing cases or matters in which they have previously acted as a judge, prosecutor or arbitrator, or given evidence as a witness or expert. Article 60 additionally permits a member's recusal where circumstances justify a concern that the member cannot act impartially. These are legal safeguards designed to avoid incompatible roles; they are not simply matters of professional etiquette. [3]

The precise legal issue is therefore whether a constitutional individual application challenging proceedings originating in a criminal prosecution constitutes the same "case or matter" for the purpose of Article 59. One possible objection is that the later constitutional application has a separate docket number, different jurisdiction and a limited review function. Those differences are real and must be analysed. They do not, by themselves, settle the statutory question: constitutional review may still concern the legality or fairness of the very proceedings in which the member previously acted as prosecutor.

If the underlying litigation is the same, the prohibition on participation cannot sensibly be tested solely by whether the file acquired a new number at a later judicial stage. Even if a strict reading of Article 59 were thought not to apply, Article 60 would still require an examination of objectively justified doubts about impartiality. The constitutional guarantee of a fair trial under Article 36 of the Turkish Constitution reinforces the need to take both provisions seriously. [3, 4]

What the European Court of Human Rights actually said

The European Court of Human Rights addressed the movement from prosecution to adjudication in Piersack v. Belgium (1 October 1982). The judge who later presided over the criminal trial had previously headed the prosecution section responsible for the applicant's case. The Strasbourg Court distinguished subjective impartiality—the absence of demonstrated personal prejudice—from objective impartiality, which asks whether the tribunal provides sufficient guarantees to exclude legitimate doubt. The Court found a violation of Article 6 § 1. [5, §§ 28–32]

Piersack did not establish that anyone who has ever served as a prosecutor is forever barred from the bench. On the contrary, the Court expressly rejected such an automatic rule. What mattered was the relationship between the judge's earlier functions and the particular case. It was not necessary to prove personal bias or precisely quantify every earlier intervention. In Arıkanoğlu's matter, the recorded signature on the indictment is a concrete prosecutorial act that makes the question of the earlier connection especially pressing. [1, 5]

The Court later reaffirmed the subjective and objective tests in Micallef v. Malta, emphasising the protection of confidence in the courts and the importance of domestic rules on withdrawal and recusal. The concern of a litigant is relevant, though the decisive question is whether the concern is objectively justified. [6, §§ 93–99]

There is also an important distinction. Piersack concerned a trial court deciding a criminal charge, while the Turkish case concerns a Constitutional Court commission reviewing the admissibility of an individual application. The two procedural settings should not be treated as identical. The European cases supply a framework for impartiality; the application of Law No. 6216 to the specific judicial sequence requires its own domestic-law assessment.

What the available documents establish—and what remains open

Two points can be established directly from the records examined: the 2016 indictment extract bears Fidan's electronic signature, and the 2025 individual-application decision identifies him as a participating member of the two-person commission. The second document records rights complaints arising from criminal proceedings. Together, they give a substantial factual basis for asking why the earlier prosecutorial role did not prevent later participation. [1, 2]

The available Constitutional Court decision is short and does not reproduce the underlying trial-court docket number. It also does not explain whether a recusal issue was raised, whether a withdrawal was considered, or how Articles 59 and 60 were applied. The full individual application, any recusal submissions, and the decisions linking the indictment to the constitutional complaint would allow the procedural connection to be stated with still greater precision. Their absence from the extracts does not erase the issue; it defines the limits of what this article can affirm.

Nor do these documents establish that Fidan acted with personal animus, controlled the commission's other member, or deliberately influenced the outcome. Those allegations would require separate proof. A careful impartiality analysis does not depend on making them. Its central point is the integrity and appearance of the judicial process: whether a person sufficiently connected with an earlier prosecution could properly help determine a later rights complaint concerning that prosecution.

A question of institutional accountability

İrfan Fidan became a member of the Constitutional Court in January 2021 and was elected one of its vice-presidents on 10 March 2026. His later senior office does not change what the 2025 record shows, but it underscores the public significance of a principled explanation of judicial assignment and withdrawal. [7]

The appropriate standard is neither to treat every former prosecutor as disqualified nor to dismiss a documented conflict by pointing to a change of institution. It is to examine the connection to the particular proceedings, apply the statutory restrictions transparently, and ensure that rights complaints are decided by members whose impartiality is not reasonably in question. Courts need not prove the impossible proposition that no one could ever feel suspicious. They must provide a credible answer to doubts grounded in verifiable facts.

A constitutional court is often the last national forum in which a person can seek protection against alleged defects in a criminal trial. That role makes its impartiality more, not less, important. The Arıkanoğlu documents do not themselves constitute a Strasbourg judgment against Türkiye or a complete reconstruction of the case. They do reveal a specific, documented overlap that calls for careful examination under Turkish law and European fair-trial principles. Justice must be independent in substance, but it must also be recognisably independent to those who seek it.

Sources and documentary references

[1] Istanbul Chief Public Prosecutor's Office, indictment no. 2016/3082, 29 June 2016. Selected excerpts showing the cover, Arıkanoğlu's entry in the suspect list, the concluding requests and Fidan's electronic signature. Copy retained in the documentary materials reviewed by SRL Swiss.

[2] Constitutional Court of Türkiye, First Section, Second Commission, Ayhan Arıkanoğlu, individual application no. 2023/48133, decision of 2 October 2025, pp. 1–2. Copy retained in the documentary materials reviewed by SRL Swiss.

[3] Law No. 6216 on the Establishment and Rules of Procedure of the Constitutional Court, Articles 59(1)(ç) and 60. Official source

[4] Constitution of the Republic of Türkiye, Article 36 (right to a fair trial). Official source

[5] European Court of Human Rights, Piersack v. Belgium, no. 8692/79, judgment of 1 October 1982, §§ 28–32. Official source

[6] European Court of Human Rights [Grand Chamber], Micallef v. Malta, no. 17056/06, judgment of 15 October 2009, §§ 93–99. Official source

[7] Constitutional Court of Türkiye, official biographical profile of Vice-President İrfan Fidan (including appointment and election dates). Official source