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# TURKEY FREE EXPRESSION TRIAL MONITORING REPORT

FINAL REPORT: MARCH 2020

**MLSA**  
Media and Law Studies Association  
Medya ve Hukuk Çalışmaları Derneđi



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Report by  
the International Press Institute (IPI) and  
the Media and Law Studies Association (MLSA)  
based on data collected by MLSA



**FRIEDRICH NAUMANN  
FOUNDATION** For Freedom.  
Türkiye

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# Introduction

Since June 2018 the International Press Institute (IPI) and the Media and Law Studies Association (MLSA) have collaborated on an extensive trial monitoring programme across Turkey to analyse the standards of trial procedures and prosecutions on cases involving freedom of expression in general and journalists in particular.

A pilot programme was conducted from June to December 2018 supported by the Friedrich Naumann Foundation and a first report published in January 2019<sup>1</sup> covering 90 court hearings involving 71 separate trials. Since March 2019 the programme has monitored a further 319 hearings of 169 separate trials and issued five separate reports covering the following periods March-May, June-July, September-October, November-December and January-February (2020). This phase of the programme was supported by the European Commission's Civil Society Support Programme II and the Friedrich Naumann Foundation.

The programme was set up in response to grave concern over the manner in which the Turkish judicial system handles freedom of expression cases, especially those involving journalists. As part of the country's ongoing crackdown on the media, following the failed coup of July 2016, hundreds of journalists have been detained, prosecuted and convicted, in most cases, on terrorism-related charges.

During this period Turkey's courts have systematically ignored domestic and international standards of freedom of expression and the right to a fair trial. Journalistic work is presented as primary evidence against defendants. Dozens of journalists have been subjected to lengthy pre-trial detention and numerous breaches of fair trial rules particularly related to the right to a lawful judge and courtroom conditions have emerged.

The data collected reinforce the argument that Turkish courts are failing to provide an effective domestic remedy for rights violations, the exhaustion of which is a precondition for application to the European Court of Human Rights (ECtHR). Journalists and others targeted for exercising freedom of expression are therefore being denied effective protection of their rights.

This report pulls together the results of the monitoring conducted between February 26, 2019 and March 6, 2020.

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<sup>1</sup> <https://freeturkeyjournalists.ipi.media/turkish-courts-violate-journalists-right-to-fair-trial-new-report-finds/>

# Methodology

IPI and MLSA's Legal Unit designed a methodology to systematically collect data on the extent to which trials concerning the right to free expression fail to meet fair trial standards, with a specific focus on the trials of journalists. Previously, most existing evidence on this topic was anecdotal only. The methodology consists of trial monitoring, observation and reporting.

MLSA trained over 20 trial observers from different professional backgrounds including journalists, civil society professionals and students. The trial observers took part in a full-day trial monitoring training provided by experts from the Bar Human Rights Committee of England & Wales (BHRC).

In order to facilitate the work of the observers and produce a consistent set of objective data, IPI and MLSA's legal unit created an electronic trial monitoring form based on materials published by the Organization for Security and Co-operation in Europe (OSCE).

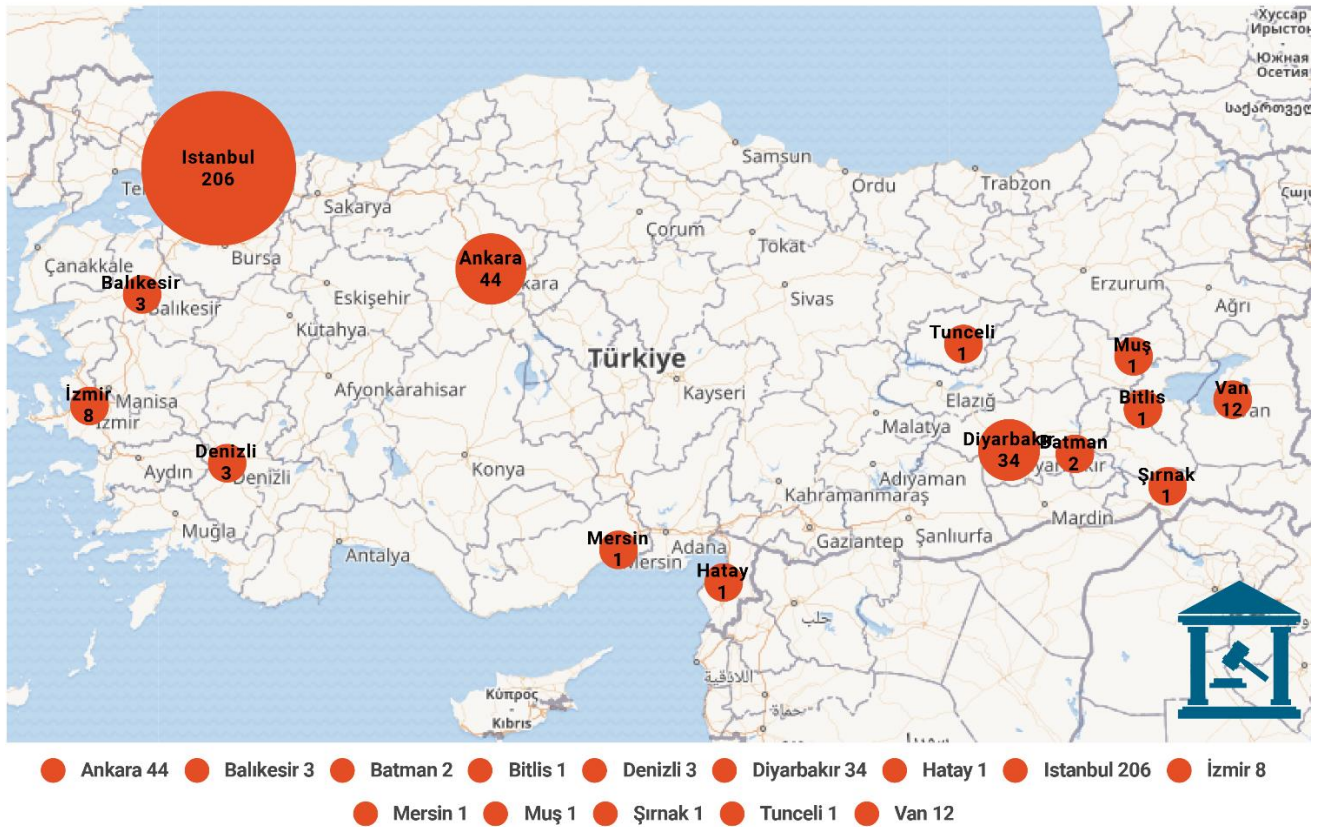
## Overview

The monitors attended 319 hearings covering 169 cases (involving 219 separate charges) between February 26, 2019 and March 6, 2020. The hearings included defendants of different professions, with a focus on journalists but also including academics, writers, lawyers, and others.

In 98 of the 169 cases (around 60 percent) defendants were charged with terrorism-related offenses.

A total of **89 journalists** were convicted during this period. 69 of these, or 78 percent, were for terrorist-related crimes.

Over the course of this period, hearings were monitored in **15** cities by **19** court monitors across Turkey. The breakdown of hearings monitored per city is as follows: Ankara (44), Balıkesir (3), Batman (2), Bitlis (1), Denizli (3), Diyarbakır (34), Erzurum (1), Hatay (1), İstanbul (206), İzmir (8), Mersin (1), Muş (1), Şırnak (1), Tunceli (1), Van (12).



Hearings monitored per city, February 2019 – March 2020

## Key results of trial monitoring

- The majority of defendants on trial in relation to their freedom of expression were charged with terrorism-related crimes.
- In 60 percent (98 out of 169) of cases monitored, defendants were charged with terror-related crimes.
- 89 journalists were convicted during this period. 78 percent (69 out of 89) of convictions of these convictions were for terrorist-related crimes.

- Prosecutors use journalistic work as evidence of terrorism. In 76 percent of terrorism-related cases, the prosecution relies primarily on journalistic work as evidence.
- Terrorism charges are primarily for conducting propaganda for a terrorist organization and membership of a terror organization. Other charges include committing a crime on behalf of a terror organization and establishing a terror organisation.
- There has been a general improvement in the conditions in which trials are taking place with several of the problems identified in the early stages of the trial monitoring showing a marked improvement over the year. These include:
  - The numbers of defendants held in pre-trial detention has gradually fallen.
  - Courtroom conditions have generally improved with monitors reporting adverse conditions in over 50 percent of hearings at the beginning of the year dropping to under 20 percent of hearings by the end.
  - The treatment of defendants by the judges has also improved. Where monitors reported incidents of aggressive or insulting behaviour implying presumption of guilt in over 25 percent of cases at the beginning of the year, by the end this figure had fallen to 6 percent.
  - The use of the video conferencing system SEGBIS for defendants to testify from prison when they had been refused permission to attend their trials, has also dropped significantly. In the first report covering the last six months of 2018, 15 of the 44 hearings monitored (34 percent) used SEGBIS. The monitors recorded 15 hearings over the whole of the last twelve months.
- The right to a lawful judge remains a strong concern with 27 percent of cases having seen a change of at least one member of the judicial panel. In 22 percent of the cases it was the presiding judge who changed.

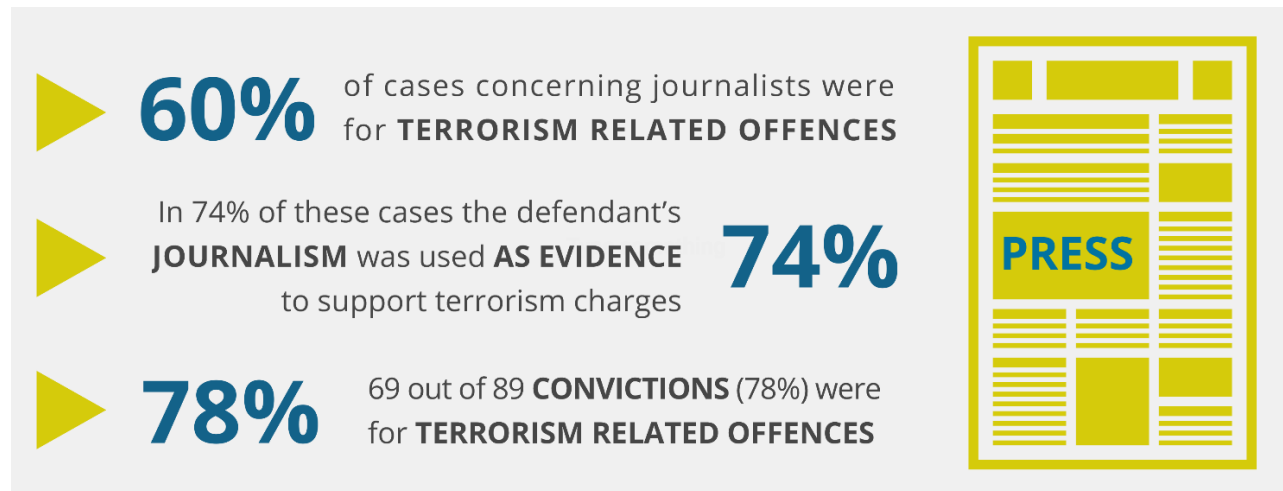
# Analysing the results

## Charges against journalists

Trial monitors have recorded the range of charges levelled against journalists during the course of the programme. The breakdown is summarized as follows.

The most serious charges of committing crimes against the state under Turkish Criminal Law Sections 3 and 5 that can result in maximum life sentences include: Attempting to overthrow the constitutional order (4 cases), Attempting to overthrow the government (1), Disrupting the unity and integrity of the state (2). These have been levelled at Ahmet and Mehmet Altan and Nazlı Ilıcak, who worked for Taraf newspaper, and the 16 defendants charged over organizing the Gezi Park protests, including philanthropist Osman Kavala.

61 percent of journalists faced terrorism-related charges. These include terror propaganda (71 cases); membership of a terrorist organization (38); aiding and abetting a terrorist organization without being a member (11); committing a crime on behalf of a terror organization (3); establishing and managing a terrorist organization (5); disclosing or publishing the identity of officials on anti-terrorist duties (4); and publishing declarations of a terrorist organization (2).



10 percent of the charges were for insulting the Turkish president (22 cases) under Article 299 and another 7 percent (15) related to general insult or slander of public officers.



There were a further eight cases of denigrating the Turkish nation, the republic, the organs and institutions of the state (Article 301).

There were six cases related to publishing illegal information including exposing state secrets (4 cases), confidential information (1) or violation of confidentiality (1).

There are then a range of other charges used against journalists including attending illegal demonstrations (7 cases), inciting public hatred (4 cases), private civil defamation charges (4 cases), failure to publish corrections (2 cases), praising an offense (2 cases), provoking the committing of an offense (2 cases) and one case each of attempting to influence a trial, making illegal recordings, defying the capital markets law, prevention of public duty of an officer, corruption of data, violating the privacy and confidentiality of communication between persons, and breaching the law of publications on the internet in the Wikipedia case.

## Convictions and sentences

The sentences handed down can vary considerably for the same charge and between charges. According to our data, the charge of “aiding and abetting a terrorist organization without being a member” saw 27 convictions with a highest sentence of 126 months a lowest sentence of 26 months and an average of 56 months. The highest sentences were for **Ahmet Altan** (126 months) and **Nazlı Ilıcak** (105 months). Other high sentences went to a number of the journalists in the Cumhuriyet retrial including **Akın Atalay** (97.5 months) **Mehmet Sabuncu** (90 months) and **Ahmet Şık** (90 months)

Terror propaganda saw 27 convictions with a highest sentence of 45 months, a lowest sentence of 3.7 months and an average of 21.7 months. All but one of these convictions were for alleged PKK/KCK related propaganda.



The crime of membership of a terrorist organization saw 13 convictions with a highest sentence of 169 months (14 years) to **Ziya Ataman** and a lowest sentence of 75 months and an average of 105 months.

There were six convictions for insulting the president of which three were suspended prison sentences of between eleven and a half months and 25 and a half months, and three fines between 1.740 TRY and 7.000 TRY.

The seven convictions for denigrating the Turkish nation all resulted in five-month suspended sentences.

The three convictions for failing to publish a correction resulted in fines between 41.600 and 41.666 TRY.

The two convictions for publishing declarations of terrorist organizations both resulted in 10-month suspended sentences, one later converted to a 6.000 TRY fine.

Finally, the conviction for revealing the identity of officials on anti-terrorist duties also resulted in a ten-month suspended sentence.

Of the 89 convictions 69 of them, or 78 percent were for terrorist related offenses.

CHARGES	NUMBER OF CONVICTIONS	AVERAGE SENTENCE
Membership of terror organization	13	105 month
Helping a terror organization	27	56 months
Propaganda for a terror organization	27	22 months
Publishing declarations of a terrorist organization	2	10 months
Insulting a public officer	3	1740 TL (fine)
Insulting the president	6	16 months
Denigrating the Turkish nation	7	5 months
Disclosing identity of official on anti-terrorist duty	1	10 months
Failing to publish a correction	3	41644 TL (fine)
<b>TOTAL</b>	<b>89</b>	<b>224 months</b>

## Journalism as evidence for terrorism offenses

The report's data show that the anti-terrorism law is being used to target journalists for their work. This is made especially clear from the observation that, over the course of the monitoring period, 76 percent of prosecutions have relied primarily on evidenced based on the journalism of the defendant,

their publications, interviews, public statements or contacts with sources. The act of journalism itself has become increasingly criminalized by the judiciary.

These charges are levelled by a state that no longer tolerates critical and competing political beliefs or interests and that is intent on suppressing public debate.

Some defendants are well-known public figures who take up minority rights causes and are a political thorn in the side of the government. Others have been arrested after revealing abuses of Turkey's military against Kurdish communities and then charged and jailed for terror propaganda.

The Özgür Gündem main case involved the prosecution of 49 guest editors who had each volunteered to edit the pro-Kurdish newspaper for a day in the early summer of 2016 before all being charged with terror propaganda. Journalists who worked for media associated with the Gülen movement such as the Zaman or Taraf newspaper are considered by the authorities to be guilty by association with the movement. Only two years prior to the coup attempt, the ruling AKP were close partners to the Gülen movement. After July 2016 anyone associated with the movement became an automatic suspect.

## Pre-trial detention

The numbers of journalists held in pre-trial detention have gradually declined over the past year. While this is welcome, it does not erase the damage already done to those that have lost months and years of their lives needlessly imprisoned. Moreover, the capacity and readiness of the authorities to use pre-trial detention remains very real, as demonstrated below, and acts as a further deterrent to journalists and pressure to self-censor.

Pre-trial detention has been a serious concern in Turkey since 2016 with dozens of journalists held for months and sometimes years before indictments were issued and the first hearings held. The pre-trial detention provision has been grossly abused to take critical journalists off the street while evidence was sought for their alleged crimes. Some appeals went to the Constitutional Court, which in many cases took months before ruling on them despite their evident urgency.

The ECtHR has consistently condemned pre-trial detention in freedom of expression cases as a “real and effective constraint” that leads to self-censorship and can only be justified in cases of hate speech or incitement to violence.

Turkey's Constitutional Court has also made inconsistent rulings on pre-trial detention and freedom of expression cases. In May 2019 it rejected the appeals of 11 defendants in the Cumhuriyet trial while ruling that the detention of three others, including IPI board member Kadri Gürsel, had been a

violation of their liberty, security, and freedom of expression<sup>2</sup>. Meanwhile, lower courts continue to uphold the detention of journalists without sufficient justification according to international standards.

Some prominent examples of pre-trial detention include:

**Ahmet Altan** and **Nazlı Ilıcak** were held for over three years on pre-trial detention between September 2016 and their convictions and release in November 2019. **Mehmet Altan** was arrested with his brother Ahmet but released in June 2018.

The 17 journalists and staff members of Cumhuriyet newspaper were held in pre-trial detention for various periods with **Akın Atalay**, president of the newspaper, for more than 500 days. **Ahmet Şık** was held for 435 days. Their April 2018 convictions for aiding and abetting terrorist organizations were all overturned by the Supreme Court of Cassation in September 2019 though the lower court subsequently decided to maintain the initial convictions during the first hearing of the re-trial held in November 2019.

German national **Deniz Yücel** was held for 12 months in pre-trial detention from February 2017 to February 2018 on charges of espionage before being released and allowed to return to Germany.

**Meşale Tolu** was held for six months in pre-trial detention with her two-and-a-half-year-old son between May and December 2018, and **Adil Demirci** was in pre-trial detention for ten months between Apr 2018 and Feb 14, 2019.

**Max Zirngast** was held in pre-trial detention from September to December 2018 and eventually acquitted in September 2019 when he was allowed to return to Austria.

ETHA editor **Semiha Şahin** and reporter **Pınar Gayip** were in pre-trial detention for 14 months from April 19, 2018 to June 13, 2019, when they were released to house arrest pending trial. The house arrest was lifted on December 11, 2019.

Silvan Mücadele Editor-in-Chief **Ferhat Parlak** was in pre-trial detention for 15 months from April 10, 2018 to July 8, 2019 based on statements from secret witnesses.

**Kibriye Evren** was in pre-trial detention for 13 months from October 9, 2018 to November 12, 2019.

**Ruken Demir** was held in pre-trial detention from November 26, 2019 to March 5, 2020.

Over time the numbers have dropped as a result of the trials' working their way through the system. Eventually, many defendants were either convicted or they were released with travel bans or administrative restrictions imposed on them as their trials continued.

Such was the criticism around the judicial use of pre-trial detention that the authorities felt moved to introduce limits to pre-trial detention as part of the judicial reforms approved by parliament in

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<sup>2</sup> <https://freeturkeyjournalists.ipi.media/turkeys-constitutional-court-gives-contradictory-decisions-on-cumhuriyet-journalists-applications/>

October 2019. These limits, however, change little for journalists in practice as the authorities are still entitled to hold defendants for up to two years in pre-trial detention for terrorist-related crimes, which are the types of charges most journalists face anyway.

Despite the apparent drop in figures, pre-trial detention remains a serious issue that continues to be abused. Osman Kavala, the businessman philanthropist charged with attempting to overthrow the constitutional order for supporting the Gezi Park protests, has been held in pre-trial detention since November 2017. The ECtHR condemned his detention in December 2019<sup>3</sup>. In February 2020, Kavala was found not guilty and momentarily released before being immediately re-arrested to face new charges of political and military espionage and while still held in pre-trial detention.<sup>4</sup>

Nine pro-Kurdish Peoples' Democratic Party (HDP) members were held on pre-trial detention between October 2019 and February 2020 after holding a banned demonstration to mark the seventh anniversary of the founding of the party. They were released four months later and their case is ongoing.

Since the first week of March 2020, six journalists have been held on charges of revealing the identity of an intelligence agent<sup>5</sup>. The journalists had reported on the funeral of the agent killed in Libya and recognized as a martyr by the government. The officer's identity had already been put in the public domain when he was named in parliamentary debates and, perhaps most significant to the case against them, the journalists had not revealed the name of the officer. They had used either his initials or changed his family name. So why are they really being held? The reports had revealed how a "national martyr" was rewarded with an anonymous burial, which embarrassed the government.

The power of pre-trial detention in the hands of a radicalized judiciary remains a potent tool for withdrawing the freedom of critics for months before they get to court.

A more thorough exploration of the use and misuse of pre-trial detention and the rulings of the Constitutional Court can be found in IPI's mission report, "Turkey's Journalist in the Dock: Judicial Silencing of the Fourth Estate"<sup>6</sup>.

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<sup>3</sup> <http://m.bianet.org/english/law/216909-ecthr-release-osman-kavala-immediately>

<sup>4</sup> <https://www.bbc.com/news/world-europe-51550121>

<sup>5</sup> <https://freeturkeyjournalists.ipi.media/turkey-must-release-six-journalists-held-for-reporting-on-libya-casualty/>

<sup>6</sup> <https://ipi.media/journalists-in-the-dock-the-judicial-silencing-of-the-fourth-estate/>

# Further fair trial indicators

## Right to a lawful judge

In 27 percent of the cases monitored at least one of the members of the judicial panel changed during the course of the trial. In 22 percent of the cases it was the presiding judge.

The Turkish Constitution guarantees the right to a lawful judge in Articles 36 and 37. This right stipulates that judges who rule on a specific case should be selected based on objective criteria predetermined by law. This is crucial to ensure judges are not selected to impose a certain outcome. Frequent changes to the panel of judges contravene the principle of the lawful judge. It undermines the security of judges, exposing them to influence or pressure over their rulings, thereby putting the impartiality and independence of courts in jeopardy.

An example of this right's importance was underscored when one of the judges overseeing the Gezi Park trial against Osman Kavala and 15 other defendants was changed in July 2019 after he had expressed an opinion in favour of Kavala's release.

The judge was transferred by the Council of Judges and Prosecutors, which is appointed directly by the president and the AKP-controlled parliament, ensuring the judiciary bends to the will of the governing party.

In most other examples, changes to the panel of judges occurred in later stages of trials, which further slows proceedings as new judges need time to familiarize themselves with the case. Appointments of new judges late in a trial undermines the impartiality of judges that appear to have been appointed to deliver verdicts in cases they are unfamiliar with.

Yeni Asya newspaper Editor-in-Chief **Kazım Güleçyüz** and **Halil İbrahim Özdebak** were sentenced to prison for "terrorist propaganda" at the third hearing by a panel of which one member was appointed just before the last hearing.



There were changes to the panel during the ninth hearing of the “RedHack trial”, where six journalists and media employees are standing trial over the reporting of emails leaked in September 2016 by leftist hacker collective RedHack that were purportedly from the account of then-Turkish Energy Minister Berat Albayrak, son-in-law of President Erdoğan. Three journalists and editors – **Ömer Çelik** from Mezopotamya Agency, **Tunca Öğreten** from the news website Diken and **Mahir Kanaat** from the newspaper BirGün – were held in pre-trial detention for over 300 days. The trial began in October 2017 and all three judges were changed in January 2020.

A judge was also replaced during the 14th hearing of the trial of Özgür Gündem newspaper’s former Editor-in- Chief **Hüseyin Aykol**, former Managing Editor **Reyhan Çapan** and reporters **İslam Tüner**, **Lütfi Yavuzaslan**, **Methi Kaya**, **Hasan Başak** and **Kemal Yakut** for their reporting on the “self-governance” debate in Kurdish provinces in March 2016.

The high incidence of changing judges suggests that this practice is open to abuse.

## Conduct of judges towards defendants

There has been a marked improvement in the conduct of judges towards defendants since our monitoring began. Between July and December 2018 (the pilot phase of the monitoring project) monitors found that the judges were rude or aggressive towards defense lawyers in 20 percent of cases and to defendants in 27 percent of cases.

Such behaviour gives the impression of a presumption of guilt and can amount to a serious breach of fair trial norms.

The numbers have, however, steadily fallen with the last report (January/February 2020) recording four incidents. This included three cases of judges repeatedly interrupting the defense and a fourth case of the judge using the informal you “sen” instead of the formal you “siz” to address the defendant.

Independence and impartiality of the tribunal are institutional requirements enshrined within the concept of the right to a fair trial of Article 6.1 of the Convention, and therefore also under Turkish law. The appearance of independence is one of the four criteria listed by the ECtHR for determining whether the court is independent<sup>7</sup>.

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<sup>7</sup> The ECtHR has listed four criteria used for determination of tribunal’s independence: 1. the manner of appointment and 2. the duration of term of office of judges, 3. the guarantees protecting the judges against outside pressures and 4. appearance of independence.

## Trial video-conferencing facility (SEGBIS)

The use of the video conferencing facility, SEGBIS, had been identified as a serious problem in the 2018 report used in 15 out of 44 hearings monitored (34percent). Defendants were being refused permission to attend their own trials and were required, instead, to testify via SEGBIS from their prisons. This was predominantly used against Kurdish journalists who were imprisoned long distances from the city the trial was conducted in. The problems were often further exacerbated by the poor quality of the connection.

The right to be present at your own trial is fundamental to the principles of a fair trial.

While SEGBIS remains in operation and remains open to abuse the incidence of its use fell significantly over the twelve months with only two hearings using SEGBIS in the last report (January/February 2020).

With the Covid-19 outbreak courts may look to expand the use of SEGBIS, this time as a health measure. While this use of SEGBIS may be justified under the circumstances, any such increased use must nevertheless ensure that all defendants can fully participate in their trial without hindrance, including questioning witnesses. As IPI previously reported, the use of SEGBIS in journalists' cases was marred by technical issues.

## Hearings adversely affected by courtroom conditions

There has also been a marked improvement in courtroom conditions reported by the monitors. During the first half of the year monitors reported problems in over 50 percent of the hearings they attended. These figures have fallen so that in the last two months in only 12 hearings, (20 percent) did monitors report adverse conditions. The most common complaints were that the hall was too small for the public audience and that it was often hard to hear what was said by the judges, prosecutor or lawyers.

Good courtroom conditions are important for the transparency and smooth conduct of the hearings and therefore necessary for fair trials.

## Why apparent improvement in some areas?

This monitoring exercise was set up in response to reports of severe and systematic abuse of the most basic of fair trial principles. The data suggest a significant improvement in some indicators around the professionalism and conduct of trials. There are a number of possible explanations.



The failed military coup and subsequent state of emergency was an extremely tense period and created a hostile climate for those suspected of plotting against the state. The net was cast extremely wide targeting all critical groups seen as a threat to the government and saw a third of judges removed and prosecuted for alleged plot allegiances. This paranoid and febrile atmosphere saw a collapse in trial processes and procedures and systematic breaches of basic fair trial norms.

Three years on, the atmosphere has calmed, the crop of junior and inexperienced judges fast tracked into position have had time to improve their courtroom conduct. This may have contributed to a greater competence and professionalism in the management of court proceedings.

## Judiciary remains compromised

While there are some improvements, it should not be mistaken for the re-emergence of an independent and objective judiciary acting free from influence of political leaders.

First of all, the judiciary has fallen further under the vertical power structure imposed by the president to ensure his interests are served. Most importantly, the constitutional changes of 2017 changed the procedure for appointing the Council of Judges and Prosecutors, which oversees appointments, promotions, discipline and standards across the judiciary. Prior to 2017 it was elected by the judges themselves. Now the 13 members are appointed directly by the President (6 of 13) and the (AKP-controlled) Parliament (7 of 13), thereby ensuring strict discipline and loyalty to the governing powers.

Secondly, the state of emergency has seen the replacement of over a third of the judges with government loyalists, changing the political culture of the judiciary for a generation.

Thirdly, dozens of journalists continue to be sentenced for terrorism-related crimes based on their critical reporting.

Meanwhile there are ample examples of how the courts have become an instrument of the executive and will continue to do so until the vertical power structure put in place by the president is dismantled:

- **Ahmet Altan** after being released for time served following his conviction in November 2019 was returned to prison within the fortnight following a political outcry on the grounds that he was a flight risk.
- The 12 Cumhuriyet staffers who won their appeal in the Supreme Court of Cassation in September 2019 on the grounds of a lack of evidence had that ruling rejected in November by a lower court, which insisted in maintaining the convictions against all but Kadri Gürsel.
- **Osman Kavala's** not guilty verdict, release and then immediate re-arrest on new charges, reveals a state determined to punish a political opponent regardless of the process.

- The six journalists – Oda TV Editor-in-Chief **Barış Pehlivan**, News Director **Barış Terkoğlu**, and **Hülya Kılınç** who is a reporter from Manisa, Turkey; Yeniçağ newspaper columnist **Murat Ağirel**, Yeni Yaşam newspaper Editor-in-Chief **Ferhat Çelik** and Managing Editor **Aydın Keser** — held since March 2020 for revealing the name of an intelligence officer whose name was already revealed by politicians will have their first hearing on June 24, 2020.

## Case studies in different categories of trials

This section provides an overview of some of the most important cases followed during the trial monitoring period, categorizing them as follow:

### Terror-related charges

- PKK/KCK
- FETO
- MLKP
- Propaganda
- Targeting officers working in anti-terror duty

### Offenses against symbols of state sovereignty and reputation of its organs

- Insulting the President (Art 299)
- Denigrating the Turkish Nation (Art 301)

### Pressure on financial and investigative journalism

### Revealing state secrets

## Terror-related charges

Turkey's Anti-Terror Law (law no. 3713) is regularly instrumentalized against journalists and free speech. Terror charges are handled by High Criminal Courts and are among the gravest of charges alongside "offenses against the Constitutional Order." Journalists are predominantly charged with terror-related crimes in order to create the false argument that journalists are jailed for terror activities rather than their journalism. Terror charges against journalists take many forms.



*Terror propaganda and publishing or printing declarations of a terrorist organization are also common charges against journalists. Both charges lack clarity, enabling prosecutors to interpret them in the widest possible sense.*

Article 6/1 incriminates “disclosing or publishing the identity of officials on anti-terrorist duties, or identifying such persons as targets.” Writing the names of military officers, police officers, or even prosecutors have resulted in numerous prosecutions. This article is abused to pressure critical news outlets often despite countless other outlets reporting the same information.

“Terror propaganda” and “publishing or printing declarations of a terrorist organization” are also common charges against journalists. Both charges lack clarity, enabling prosecutors to interpret them in the widest possible sense.

Journalists are also indicted for “membership in a terrorist organization” or “aiding and abetting a terrorist organization without being a member” charges. Three main organizations that the Turkish government defines as terrorist organizations come up regularly in cases against journalists: the Kurdistan Workers’ Party (PKK), Fethullah Terror Organization (FETÖ), and the Marxist-Leninist Communist Party (MLKP). Cases relating to all three organizations are listed in detail below.

## **Kurdistan Workers’ Party (PKK) and the Kurdistan Communities’ Union (KCK)**

Kurdish media is under the most intense scrutiny and pressure. Journalists who work for pro-Kurdish or Kurdish-language media outlets are frequently charged with “membership of a terrorist organization” based on their phone conversations with news sources, demonstrations they attend, buildings they enter as reporters, and their travel to and from Syria. They are predominantly charged for “membership” of the Kurdistan Workers’ Party (PKK) and the Kurdistan Communities’ Union (KCK)” simultaneously. Pro-Kurdish editorial policies that critique Erdoğan’s regime and his war policies are automatically linked to these organizations. Instead of charging these journalists with “aiding and abetting”, the courts attempt to prove that journalists sit in the hierarchy of the organization, often as employees of its “press wing.” Most of the trials are held in Kurdish provinces. Over the course of the past year, MLSA has monitored

PKK/KCK trials in Bitlis, Batman, Diyarbakır, Şırnak and Van. Some of the most striking trials monitored include the following:

Journalist **Kibriye Evren** is standing trial for “membership in PKK/KCK” and “terror propaganda” based on her social media posts (which include sharing of news stories), her visits abroad, secret witness testimonies, and conversations with her news sources. Evren is a reporter for Jin News, a feminist news agency that reports in Kurdish and Turkish. Evren was initially arrested on October 9, 2018 and remained in pre-trial detention for 13 months until the eighth hearing on November 12, 2019, when she was released pending trial with a travel ban. Evren also went on hunger strike organized by Kurdish inmates during her detention. In the sixth hearing Evren presented her main defense statement and said, “I practice journalism with eagerness and love. It pains me that my occupation is used to justify my detention. My journalistic activities are on trial here and my posts are all intended to spread news to the public.” The next hearing is scheduled for July 14, 2020.

Local newspaper Silvan Mücadele’s Editor-in-Chief **Ferhat Parlak** is also charged with “membership of PKK/KCK” based on the editorial policy of the newspaper, his book “Silvan, City of Martyrs” and witness statements that he took part in violent demonstrations against the military. Parlak was arrested on April 10, 2018 and remained in pre-trial detention for 15 months until the first hearing on July 8, 2019. Parlak claimed that both the secret and public witness testimonies against him were incoherent and fabricated by persons attempting to avoid prosecution themselves. Parlak refuted the accusation that he threw a Molotov cocktail while taking photos as impossible and demanded to see the images of him throwing the bomb. “There is a camera in every armored vehicle, if I had really thrown a Molotov bomb, this footage would have appeared.”

Parlak defended Silvan Mücadele’s news coverage and presented evidence of other newspapers doing the same. Multiple witnesses supported Parlak claiming he is only a journalist. The fifth hearing is scheduled for September 21, 2020.

**Uğur Yılmaz**, a local journalist from Bitlis, was sentenced to six years and ten months for “membership of PKK/KCK” in November 2019. Yılmaz has been detained since July 17, 2017. He used to work at the Bitlis Municipality’s Press Bureau and his reporting and social media posts were used as evidence against him. Yılmaz was held in a prison in Elazığ and attended hearings at the Bitlis court via SEGBİS despite repeatedly requesting to appear before the court in person in breach of his basic rights.

A Şırnak court sentenced shuttered Dicle News Agency’s (DİHA) reporter **Ziya Ataman** to 14 years and three months in prison for “membership of PKK/KCK” in September 2019. Ataman was tried as part of a multi-defendant case accused of organizing a bombing based on very thin evidence. During the final hearing, Ataman reminded the court that witness statements against him were taken under torture and later retracted. Ataman also mentioned the memo book that allegedly has his name listed and asked: “If there are 400-500 names in that notebook, then why is it that only a dozen are on trial?”. A lawyer observed that the prosecutor’s final opinion was copy-pasted from the initial police investigation and the same text was used for each defendant. “This is an attempt to fabricate crimes. Most of the defendants’

homes are burnt down. A lawsuit is filed based only on a memo book," the lawyer said. It is common practice that testimonies collected under torture are used as evidence against journalists in PKK/KCK trials.

Mezopotamya News Agency's İzmir correspondent **Ruken Demir** was arrested for "membership of PKK/KCK" on November 26, 2019 following a police raid on her home in İzmir. She remained in pre-trial detention until the first hearing on March 5, 2020 when she was released pending trial. Primary evidence against Demir are her phone conversations with news sources. During this hearing, Demir presented a lengthy defense in which she explained the news story behind each contact and gave the context of these conversations. Demir stated:

"I am accused of 'membership of a terrorist organization,' however there is no solid evidence. In the phone conversations listed in the indictment I introduce myself as a reporter and asked 'Can we report on this? Do you feel comfortable? It is alleged that this and this happened...' In Turkey, 95 percent of the news are identical. The remaining 5 percent of reporters work in constant fear because we know that we will pay a price for this. My news reports on prison conditions, gold mining scandal at the Ida mountains, the climate crisis have all been used as evidence against me". The next hearing is set to for July 7, 2020.

## Fethullah Terrorist Organization (FETÖ)

The Turkish government came up with the term Fethullah Terrorist Organization (FETÖ) in the aftermath of the July 15, 2016 coup attempt to refer to the supporters of exiled cleric Fethullah Gülen. Before the government held Fethullah Gülen responsible for the coup attempt, his movement had been a former close ally of the governing AKP party.<sup>8</sup>

Zaman newspaper, seized in March 2016<sup>9</sup>, was the primary focus of FETÖ investigations against journalists for its open link to Gülen. However, vocal critics of President Erdoğan were also prosecuted for allegedly aiding FETÖ by provoking the public against Erdoğan in an attempt to overthrow the government. Journalists of Cumhuriyet and Sözcü dailies, prominent critics of Erdoğan and the AKP, received heavy sentences for "aiding and abetting FETÖ without being a member".

**Şirin Kabakçı**, former Konya representative of Zaman, was sentenced to six years and three months for alleged "membership of FETÖ."<sup>10</sup> Kabakçı's lawyer protested during the final hearing on Feb 20, that being employed by Zaman does not make you a member of FETÖ and insisted Kabakçı practiced only journalism.

**Harun Çümen** managing editor of Zaman until it was shuttered in July 2016, was sentenced on July 18, 2019, to seven years and six months for "membership of FETÖ" having allegedly assisted FETÖ members

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<sup>8</sup> <https://www.newyorker.com/magazine/2016/10/17/turkeys-thirty-year-coup>

<sup>9</sup> <https://www.bbc.com/news/world-europe-35729114>

<sup>10</sup> <https://www.mlsaturkey.com/tr/sirin-kabakciya-orgut-uyeliginden-6-yil-3-ay-hapis-cezasi/>

to flee abroad. Çümen's lawyer claimed that his client was never interrogated about such allegations and that it was a baseless claim.

Seven journalists were convicted in December 2019 of "aiding and abetting FETÖ/PSS willingly and knowingly" in a high-profile case of staff at the **Sözcü** daily. This was a multi-defendant case where different investigations against Sözcü employees were merged into one major case file with editorial policies and reporting on the government used as evidence. The trial dragged on for 11 hearings. Columnists **Emin Çölaşan** and **Necati Doğru** were sentenced to three years, six months and 15 days; chief web editor **Mustafa Çetin** and Editor-in-Chief **Metin Yılmaz** to three years and four months; web news coordinator **Yücel Arı**, reporter **Gökmen Ulu** and Chief Financial Officer **Yonca Yücekaleli** to two years and one month.<sup>11</sup>

Although "aiding and abetting a terrorist organization" (TPC Article 220/7 used in relation to Article 314/2) is listed under the Turkish Penal Code, it is used in reference to the anti-terror law and is a common terror-related charge used against journalists. This charge frees the prosecution of the responsibility to prove a solid link to the organization and makes it possible to convict journalists by loosely interpreting editorial policies and reporting as "a means to aid the operations/intentions of a terrorist organization."

**Cumhuriyet** staffers were also sentenced on this charge, although the court ruled that they aided multiple terrorist organizations at the same time, including PKK/KCK, FETÖ/PSS and the Revolutionary People's Liberation Party, DHKP-C.

On November 26, 2019 former Taraf daily Editor-in-Chief **Neşe Düzel** and Managing Editor **Bülent Onur Şahin** stood trial for "defying the Capital Markets Law" based on Taraf's reporting on Turkish Airlines (THY) from 2014. Two news stories mentioned in the indictment claimed that THY was in dire financial conditions and relying on illegitimate state funds. The court ruled that there was a lack of jurisdiction and sent the case file back to the İstanbul Chief Prosecutor's Office with a request for a new charge of membership of, and "aiding and abetting a terrorist organization."

It has been argued that Taraf daily had links to FETÖ before it was shuttered. The court argued that Taraf published misleading news on state-owned or otherwise valuable companies in order to devalue them and create a financial crisis in line with FETÖ's goals.<sup>12</sup>

In two new cases journalists are charged with "aiding and abetting FETO" for reporting the tweets of Fuat Avni, an anonymous Twitter account that posted leaks and classified information on the AKP throughout 2014 and 2015 regarding the corruption scandal of 2013.<sup>13</sup> BirGün daily staffers **Bariş İnce**, **Bülent Yılmaz**, **Can Uğur** and **İbrahim Aydın**<sup>14</sup> had their first hearing on November 26, 2019. While online news portal T24's Editor-in-Chief **Doğan Akın**<sup>15</sup> had his first hearing in February 2020. The journalists argue

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<sup>11</sup> <https://www.mlsaturkey.com/tr/sozcu-davasinda-7-gazeteciye-hapis-cezasi/>

<sup>12</sup> <https://www.mlsaturkey.com/tr/taraf-gazetesinin-thy-haberlerine-feto-uyeliginden-yargilama-talebi/>

<sup>13</sup> [https://en.wikipedia.org/wiki/Fuat\\_Avni](https://en.wikipedia.org/wiki/Fuat_Avni)

<sup>14</sup> <https://freeturkeyjournalists.ipi.media/trials-calendar/birgun-newspaper-trial/>

<sup>15</sup> <https://www.mlsaturkey.com/tr/t24-genel-yayin-yonetmeni-dogan-akin-hakim-karsisina-cikti/>

that Fuat Avni's claims were of utmost public interest at the time and that all news outlets, including mainstream media and pro-government ones, reported them. "Journalism is on trial here, I refuse all these charges," Akin said during the first hearing of the case.

## Marxist-Leninist Communist Party (MLKP)

Reporters and editors of the Etkin News Agency (ETHA) are predominantly indicted for terror-related charges linked to the Marxist-Leninist Communist Party (MLKP), an underground Hoxhaist communist party that is often linked to the Socialist Party of the Oppressed (ESP), a legal political party. ETHA news agency has ties to ESP, which the government attempted to criminalize due to their support for Kurdish resistance in Syria. The indictments define ETHA as a news outlet that works in the name of MLKP.

All the MLKP cases monitored in the past year are ongoing. All the journalists who are prosecuted for alleged ties to MLKP have spent time in pre-trial detention. MLKP cases are multi-defendant cases where lawyers, representatives of political parties, union workers, students and journalists stand trial alongside each other for alleged links to the organization. Testimonies of secret witnesses are often used as evidence against journalists in these cases.



Journalist and translator **Meşale Tolu** remained in pre-trial detention with her two-and-a-half-year-old son from May 6 to Dec 18, 2017.

German citizens **Meşale Tolu** and **Adil Demirci** have both been prosecuted in different multi-defendant cases. Journalist and translator Tolu remained in pre-trial detention with her two-and-a-half-year-old son from May 6 to Dec 18, 2017. Demirci was in pre-trial detention between Apr 13, 2018 and Feb 14, 2019. Both are charged with "membership of a terrorist organization" and "terror propaganda." Among the evidence presented against Meşale Tolu are: her attendance in events allegedly organized by MLKP for "terrorist propaganda" such as marches, commemorations and funerals of MLKP members who died while fighting in Kobane, Syria from 2013 to 2016. Specifically, Tolu is accused of attending a march organized for Suphi Nejat Ağırnaslı who died in Kobane in 2014, a wake for German citizen Ivana Hoffman who also died while fighting in Kobane, a demonstration organized by the Socialist Party of the Oppressed (ESP) against state corruption, and the funeral of Yeliz Erbay and Şirin Öter, killed during a police raid on their home.

Defendants were arrested following house raids which allegedly found many digital materials, books, journals and documents relating to "the organization". A journal titled Marxist Theory was specifically

listed in the indictment despite being a legal periodical. A secret witness, who said she did not know Tolu personally, claimed that Tolu is a member of MLKP who regularly attends events organized by the party's women organization, Socialist Women's Council (SKM). The trial is ongoing.

ETHA editor **Semiha Şahin** and reporter **Pinar Gayip** were arrested on April 19, 2018 and remained in pre-trial detention for 14 months before being released to house arrest pending trial on June 13, 2019. The house arrest was lifted on December 11; however, the case is ongoing and the ninth hearing is scheduled for September 9, 2020.

In another multi-defendant case including ESP representatives and lawyers, ETHA editor **İsmnaz Temel** and reporter **Havva Cuştan** were also indicted for "membership of a terrorist organization" and "terror propaganda". Both journalists were arrested on October 26, 2017. Cuştan was released pending trial on July 18, 2018 and Temel on February 14, 2019.

## Terrorist propaganda

Turkey's Anti-Terror Law (law no. 3713) is frequently instrumentalized against journalists and free speech. Article 7 outlines the "terrorist propaganda" charge. Even ordinary citizens are targeted by this article for social media posts, which the law enforcement can track and launch investigations against.

The first instalment of Turkey's Judicial Reform Strategy, which took effect on October 24, 2019, introduced an amendment to this article by adding the phrase: "statements made within the limits of providing information or made with the purpose of criticism cannot be criminalized"<sup>16</sup> While this amendment led to some acquittals in ongoing propaganda trials, journalists especially in Kurdish media were still handed prison sentences and new investigations continue to be launched against journalists under this charge.



The mentality that demands to put me in prison for terrorist propaganda has nothing to do with law or freedom.

- Hasan Cemal, veteran journalist and T24 columnist

The amendment clearly fails to address the problem summarized in an analysis by ARTICLE 19 in 2018 as follows "Article 7 fails to meet international standards on freedom of expression. The definitions of

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<sup>16</sup> Article 13 of the Judicial Strategy Document: <https://perma.cc/G56F-DQBJ>



'propaganda' and 'terrorism' included in this law are so broad as to cover the mere publication of views in support of government opposition, or calling for political, legal, social or economic reform or change in government. This broad provision is regularly abused by the government to target journalists, activists, academics and others criticizing its actions or expressing dissenting views."<sup>17</sup> The amendment that came in October 2019 fell short of ameliorating these broad definitions.

Article (6/2), lists "printing or publishing declarations of terrorist organizations" as a crime. Cumhuriyet daily's former web editor **Atakan Sönmez** was handed a suspended 10-month sentence<sup>18</sup> for allegedly publishing articles that support YPG/YPJ operations in Syria on Cumhuriyet's website. The two articles listed as evidence were: "YPG's statement on the loss endured during the Olive Branch Operation" and "13 academics call for peace in Afrin, including David Harvey and Noam Chomsky."<sup>19</sup>

There were 27 convictions for terror propaganda against journalists and media workers in the hearings monitored by MLSA in the past year. Many more cases remain ongoing. Some of these cases are described below.

Eight staffers of **Van TV**, shuttered by a decree law following the coup attempt in 2016, are charged with "terror propaganda". Anchors **Sibel Eres**, **Kadir Cesur**, **Nahide Aslan**, **Gülsün Altan**; TV programmer **Serdar Altan**, Managing Director **Koçali Özipek** and the channel's co-owners **Gürcan Bayrakçı** and **Nedim Dalga** stand trial based on the content of several news bulletins, including morning news where anchors read headlines from pro-Kurdish newspapers. The sixth hearing was held on February 11, 2020.

In March 2020, Yeni Yaşam daily's Van reporter **Ferdi Sertkal** received a prison sentence of one year and six months based on five Twitter and Facebook posts between 2014 and 2019. The court ruled that the phrase "Şehid namirin" (Kurdish for Martyrs don't die) constitutes terror propaganda on behalf of the PKK.<sup>20</sup> Sertkal's defense claimed that the phrase referred to Kurdish inmates who were on hunger strike and did not praise or incite violence.

Veteran journalist and T24 columnist **Hasan Cemal** was sentenced to three months and 22 days then converted into a judicial fine of 3000 TRY in May 2019.<sup>21</sup> Cemal stood trial for a 2015 column titled "From Silvan: They've accustomed us to sorrow and death..." where he shared his reflections from a trip to the Kurdish province Silvan. In his final defense statement, Cemal said: "Turkey is going through a huge downfall regarding democracy and the rule of law. Me being tried for 'terrorist propaganda' as a 75-year-old man who has been practicing journalism for 50 years is an indicator of this downfall. Throughout my career, I have never been a propagandist. I've written many articles about the Kurdish issue. All of them demand peace. The mentality that demands to put me in prison for terrorist propaganda has nothing to do with law or freedom."

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<sup>17</sup> <https://www.article19.org/resources/turkey-charges-against-filmmakers-violate-right-to-free-expression/>

<sup>18</sup> <https://www.mlsaturkey.com/tr/gazeteci-atakan-sonmeze-ertelemeli-10-ay-hapis-cezasi/>

<sup>19</sup> <https://www.mlsaturkey.com/en/former-cumhuriyet-web-editor-atakan-sonmezs-trial-is-adjourned/>

<sup>20</sup> <https://www.mlsaturkey.com/tr/gazeteci-ferdi-sertkala-1-yil-6-ay-hapis-cezasi/>

<sup>21</sup> <https://www.mlsaturkey.com/en/hasan-cemal-receives-judicial-fine-for-his-column-on-silvan/>

Photojournalist and documentary filmmaker **Çağdaş Erdoğan** was sentenced to one year and eight months for “terror propaganda” in September 2019.<sup>22</sup> Erdoğan was prosecuted for sharing photographs from Kurdish demonstrations, pictures displayed at the art gallery SALT, and retweeting a report by The New York Times. Erdoğan’s lawyer, Veysel Ok, defended the social media posts and photos of Kobane, a Kurdish town in northern Syria, recalling that when the city was attacked by the Islamic State Turkey supported the city by allowing Iraqi peshmerga troops to pass through its territory.

Pro-Kurdish Yeni Yaşam daily’s former Managing Editor **Osman Akin** was handed two different propaganda sentences for news reports. Akin was sentenced to one year and three months in October 2019 and to another one year, six months and 22 days in a separate case in January 2020. Both sentences were suspended. However, Yeni Yaşam’s succeeding Managing Editor **Aydın Keser** was acquitted of “terror propaganda” in February 2020<sup>23</sup> in a trial where he was charged for two news reports on Turkey’s military operation in Syria from November 2019.

The trial where Die Welt’s former Turkey correspondent **Deniz Yücel** faces “terror propaganda” and “inciting public hatred” based on his journalism including an interview he conducted with PKK executive Cemal Bayık is ongoing.<sup>24</sup> Despite the Constitutional Court ruling in June 2019 that Yücel’s right to personal security and liberty, and his right to freedom of expression were violated as part of this charge,<sup>25</sup> the court has refrained from immediate acquittal in this case. In the most recent hearing, the prosecution demanded up to 16 years for Yücel<sup>26</sup> for consecutive “terror propaganda” and “inciting the public to hatred and animosity”. The trial will resume in June 2020, when a verdict is expected.

## Disclosing identity of officers on anti-terror duty

Article 6.1 of Turkey’s anti-terror law (TMK) is used by government and public officials to criminalize journalists’ work. It states that: “those who disclose or publish the identity of officials on anti-terrorist duties, or who identify such persons as targets will be sentenced to prison from one to three years.”<sup>27</sup>

The most significant example was the prosecution of seven journalists - **Ömer Çelik, Çağdaş Kaplan, Hamza Gündüz, Selman Çiçek, A. Vahap Taş, İnan Kızılkaya,** and **Kemal Sancılı** of now shuttered DİHA and Özgür Gündem - for “targeting a military official via press” for naming the commander of a military operation conducted in Diyarbakir’s Sur district.<sup>28</sup>

<sup>22</sup> <https://freeturkeyjournalists.ipi.media/trials-calendar/cagdas-erdogan-2-2-2-2/>

<sup>23</sup> <https://www.mlsaturkey.com/tr/yeni-yasam-yazi-isleri-muduru-aydin-keser-ilk-durusmada-beraat-etti/>

<sup>24</sup> <https://freeturkeyjournalists.ipi.media/ipi-condemns-continued-prosecution-of-turkish-german-journalist-deniz-yucel/>

<sup>25</sup> <https://www.mlsaturkey.com/en/constitutional-court-rules-deniz-yucels-rights-were-violated/>

<sup>26</sup> <https://www.mlsaturkey.com/en/prosecutor-demands-up-to-16-years-in-prison-for-journalist-deniz-yucel/>

<sup>27</sup> <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.3713.pdf>

<sup>28</sup> <https://freeturkeyjournalists.ipi.media/trials-calendar/omer-celik-cagdas-kaplan-hamza-gunduz-4-others-2-2-2-2/>

The prosecution proceeded despite the general commander being a well-known public figure in the region whose identity had already been widely reported by other news outlets. Three years after the charges were filed the Diyarbakır High Criminal Court agreed with the defendants and dismissed all charges. Despite this nominal victory, the journalists had been subjected to three years of baseless prosecution hindering their ability to work and creating a chilling effect on the rest of the media.

Evrensel reporter **Cansu Pişkin** was convicted of “marking the identity of a state official assigned to the fight against terrorism as a target” and handed a 10-month suspended sentence in May 2019. Pişkin had named the public prosecutor in the trial of the Boğaziçi University students for staging an anti-war protest following the Turkish military operation in Afrin, Syria in her April 2018 article.<sup>29</sup> Other news outlets including pro-government Takvim and Sabah newspapers, had also reported the prosecutor’s name. The courts ruled the naming of a public prosecutor bringing terrorism charges against students calling for peace to be a criminal offence.

Most recently the trial against **Seyhan Avşar** of Cumhuriyet daily, and **Necdet Önemli**, managing editor of Sözcü newspaper started on January 9, 2020 for ‘making those involved in the fight against terrorism a target’. Avşar had published an article revealing that the prosecutor in the Sözcü newspaper case had a criminal record.

## Offenses against the symbols of state sovereignty and the reputation of its organs

Two of the most controversial articles of the Turkish Penal Code are Article 299 on insulting the President of the Republic and Article 301 on Denigrating the Turkish Nation, State of Turkish Republic, the Organs and institutions of the State. Similar to the propaganda charge, these articles are frequently used against journalists and ordinary citizens expressing their opinions on social media.

### Insulting the president: Article 299

This article is highly criticized as any criticism towards Erdoğan can lead to an indictment under this charge. The number of cases filed with this charge has skyrocketed by 30 percent in 2018 with over 26,000 criminal investigations conducted under Article 299 in 2018 resulting in 2,462 convictions.<sup>30</sup>

The absurdity of the extent of the article’s misuse is illustrated by the conviction of a 75-year-old man after one of his companions reported him for criticizing Erdoğan in a conversation at a coffeehouse in

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<sup>29</sup> <https://freeturkeyjournalists.ipi.media/trials-calendar/cansu-piskin-2-2/>

<sup>30</sup> <https://www.middleeasteye.net/news/26000-people-investigated-insulting-erdogan-2018>

February 2019. He was sentenced to reading 24 books, including books on the life of Erdoğan and important Islamic figures as well as novels by Orwell, Dostoevsky and Tolstoy.<sup>31</sup>

In March 2020, the judge of Ankara 46th Criminal Court of First Instance made a precedent ruling in a case where a citizen was charged for a tweet that read: “Here’s the election you bought, you demon.” Although initially charged under Article 299, the judge sentenced him to five months in prison under Article 125, for “insulting a public officer for their duty.” The judge claimed that Erdoğan’s neutrality disappeared legally after the constitutional change and he was the head of the executive branch and the leader of the ruling party at the same time. Since this matter was not foreseen in the period when Article 299 was drafted, the judge said that accusations of ‘cheating’ an election should be considered an insult to a public officer, not the president.<sup>32</sup> The prosecution immediately appealed this ruling.

Below are some of the notable instances where this article was used against journalists.

Zaman columnist **Mümtaz’er Türköne** was fined 1.740 TRY for a column he wrote in November 2014 titled “Would he be this bad if he didn’t have to?”<sup>33</sup> The column included the word “necrophilia”. Türköne claimed he did not use this word to insult Erdoğan, but that it was him and members of his cabinet who used this word over and over again to refer to opposition leaders who Erdoğan believed were seeking political benefit from the death of soldiers.

Van-based journalist **Adnan Bilen** was fined 7.000 TRY in November 2019,<sup>34</sup> for several social media posts, including news stories critical of Erdoğan. In his defense statement, he said: “As someone who is both the President of the Republic and the chairman of a political party, he must consider articles and news stories written about him as criticism, not insult.” Bilen received the fine for referring to Erdoğan as “yüz karası,” which can be roughly translated as “being a disgrace to something” and “black sheep.”

Journalist **Faruk Arhan** was initially acquitted of “insulting the president”; however, Erdoğan’s lawyers appealed to the Appellate Court, which overturned the ruling and sentenced Arhan to one year and two months and 17 days in prison for three tweets from 2015 and 2016 criticizing Erdoğan.

Evrensel’s former Managing Editor **Cem Şimşek** was also indicted for a news story<sup>35</sup> on German cartoonists who drew Erdoğan. The court sent the case file over to the court which handles press cases, arguing it fell under their area of jurisdiction. The trial is yet to be resumed at the new court.

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<sup>31</sup> <https://ahvalnews.com/insulting-erdogan/turkish-man-sentenced-read-books-about-erdogan>

<sup>32</sup> <http://www.cumhuriyet.com.tr/haber/mahkemededen-cumhurbaskanina-hakaret-davasinda-emsal-karar-hakaret-genel-baskana-1725966>

<sup>33</sup> <https://www.mlsaturkey.com/tr/cumhurbaskanina-hakaretten-yargilanan-mumtazer-turkoneye-adli-para-cezasi-verildi/>

<sup>34</sup> <https://www.mlsaturkey.com/tr/gazeteci-adnan-bilene-cumhurbaskanina-hakaretten-para-cezasi/>

<sup>35</sup> <https://www.evrensel.net/daily/388606/evrensels-former-managing-editor-cem-simseks-trial-for-insulting-the-president-was-postponed>

Veteran journalist and Diyarbakır-based Free Journalists Initiative (ÖGİ) spokesperson **Hakkı Boltan** is charged with “insulting the president” and “insulting a public officer because of their duty” following statements on clashes in the southeastern city of Cizre between Turkey’s military and Kurdish rebels in 2016. President Erdoğan and then-Prime Minister Ahmet Davutoğlu are the complainants. Boltan claims his statements were calls for support for his colleague Rohat Aktaş, a journalist for Kurdish-language newspaper Azadiya Welat, who was killed<sup>36</sup> after being trapped and injured during the clashes. Boltan also claimed at the hearing on February 4, 2020 that the statement was mistranslated from the original Kurdish in the case file.

Despite its increased use, the past year has seen some acquittals. Former Cumhuriyet reporter **Canan Coşkun** was acquitted in June 2019<sup>37</sup> for a news story published in Cumhuriyet on November 27, 2015 titled “Journalism arrested on Erdoğan’s order” about the arrest orders of Can Dündar and Erdem Gül. Coşkun claimed that as a court reporter she was not responsible for the headline.

Evrensel Editor-in-Chief **Fatih Polat** was also acquitted of this charge in November 2019.<sup>38</sup> Polat stood trial for a column published in Evrensel on May 28, 2017 titled “Do the respondents have anything to say about these allegations regarding the Erdoğan family?” The article referred to Erdoğan’s offshore deals in Malta by using journalist Craig Shaw’s piece titled “President Erdoğan’s family in secret offshore ship deal” as a news source. Local and international journalism organizations presented expert opinions to prove that Shaw’s article was a legitimate news source for Polat to report on.

## Denigrating the Turkish nation: Article 301

Article 301 on “Denigrating the Turkish Nation, State of Turkish Republic, the Organs and institutions of the State” has been one of the most controversial articles of the Turkish Penal Code. Armenian journalist Hrant Dink, assassinated in 2007, as well as renowned novelists Orhan Pamuk and Elif Şafak were charged under this article.

In September 2019, MLSA Co-Director **Veysel Ok** received a five-month suspended sentence where he was charged with Article 301 for an interview he gave to the now shuttered Özgür Düşünce newspaper in 2015 where he criticized the Turkish judiciary, stating that it fails to remain independent. The journalist who conducted the interview, **Cihan Acar**, appeared as a co-defendant and received the same sentence.<sup>39</sup>

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<sup>36</sup> <https://cpj.org/data/people/rohat-aktas/>

<sup>37</sup> <https://www.mlsaturkey.com/en/court-acquits-canan-coskun-for-insulting-the-president/>

<sup>38</sup> <https://www.mlsaturkey.com/tr/gazeteci-fatih-polat-cumhurbaskanina-hakaret-suclamasindan-beraat-etti/>

<sup>39</sup> <https://www.mlsaturkey.com/en/lawyer-veysel-ok-journalist-cihan-acar-given-5-month-suspended-sentence-for-insulting-judiciary/>



Article 301 has been one of the most controversial articles of the Turkish Penal Code. Armenian journalist Hrant Dink, assassinated in 2007, as well as renowned novelists Orhan Pamuk and Elif Şafak were charged under this article.

In November 2019, **İshak Yasul**, **Kenan Kırkaya**, **Özgür Paksoy** and **Selman Keleş** received five month suspended sentences for reports published in *Özgürlükçü Demokrasi* daily in late 2016.<sup>40</sup> The reports covered human rights violations and atrocities that targeted Kurds in Turkey and Syria.

Prosecutions under Article 301 have dropped since an amendment required permission from the Ministry of Justice for its use. The ministry is not always swift in replying to such requests. The court trying freelance journalist **Hayri Demir** and Artı TV Ankara correspondent **Sibel Hürtaş** for 'terror propaganda' and 'inciting the public to hatred and animosity' for criticizing military action in Afrin, Syria, sought the Ministry's permission to add Article 301 to the charges on March 27, 2019.<sup>41</sup> Nine months and two hearings later (July 3 and December 3) and the court has still not received its response. The Ninth hearing is scheduled for June 25, 2020.

## Pressure on financial and investigative journalism

In 2019, investigative journalists continued to be targeted by government officials as well as owners of large private companies often close to the ruling party. It is difficult enough to obtain official information in a highly secretive governance culture and now the private sector has learnt to use the law to intimidate investigative journalists and prevent scrutiny of their finances. The government is particularly sensitive to journalists exposing how public funds are used in the construction and banking systems to strengthen alliances between business and politics.

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<sup>40</sup> <https://www.mlsaturkey.com/tr/ozgurlukcu-demokrasi-davasinda-dort-gazeteciye-5-ay-hapis-cezasi/>

<sup>41</sup> <https://www.mlsaturkey.com/en/court-seeks-ministrys-permission-to-try-journalist-hayri-demir-with-article-301-2/>

In June 2019, six journalists including two Bloomberg reporters, **Kerim Karakaya** and **Fercan Yalınkılıç**, economic expert and presenters for HalkTV **Mustafa Sönmez**, SolHaber news portal columnist **Orhan Aydın** and the founder of TELE1 and its journalists **Merdan Yanardağ**, **Sedef Kabaş** faced investigations over their coverage of the collapse in the value of the Turkish Lira in August 2018. The prosecutor charged them with “defying the law on Capital Markets” and attempting to “undermine Turkey’s economic stability, through spreading misinformation...”<sup>42</sup> They face up to five years in prison. There are an additional 32 defendants in the full indictment.

The state, however, is not the only entity monitoring and chasing journalists’ financial coverage. Private companies close to the government have taken to charging journalists with “defamation” for revealing corruption and other uncomfortable information. Without disputing the facts, they claim huge damages for their reputational damage.



Most of these cases, despite being dropped or eventually overturned, are designed, not necessarily to be won, but to tie up journalists in months of legal battles and to intimidate others from reporting truthful, if embarrassing, revelations.

One of the most striking examples was the prosecution of investigative journalist **Pelin Ünker** who, through the leaked Paradise Papers, revealed the off-shore accounts of politicians and business people including Turkish ministers and their family companies in 2018.<sup>43</sup> The then-Prime Minister Binali Yıldırım and Minister of Finance Berat Albayrak (also Erdoğan’s son-in-law) filed charges of “libel” and “insulting a public official”.

Despite Yıldırım acknowledging the facts outlined in the articles, Ünker was initially sentenced to 13-and-a-half months and a fine of 8.660 TRY (approx. 1200 €) in January 2019. Ünker’s sentence was later reduced to a fine of 7.000 TRY by the Supreme Court of Cassation.<sup>44</sup>

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<sup>42</sup> <https://freeturkeyjournalists.ipi.media/trials-calendar/bloomberg-trial/>

<sup>43</sup> <https://freeturkeyjournalists.ipi.media/ipi-calls-for-charges-against-turkey-paradise-papers-reporter-pelin-unker-to-be-dropped/>

<sup>44</sup> <https://medyascope.tv/2019/05/06/paradise-papers-davasi-istinaf-mahkemesi-gazeteci-pelin-unkerin-hapis-cezasini-bozdu/>

One libel case taken by Albayrak and his brother was eventually dropped, but a separate defamation case on Ünker's Paradise Papers reporting taken by the Albayrak brothers and Ahmet Çalık, top executives of Çalık Holding, demanding 10.000 TRY compensation, is ongoing.<sup>45</sup>

Şenbay Mining Company owners sued investigative finance journalist **Çiğdem Toker** for defamation after she questioned the company's involvement in procurement bids for construction of Istanbul's metro, demanding one million TRY. This case was also dropped.<sup>46</sup>

Most recently Mehmet Cengiz, chair of Cengiz Holdings, demanded one million TRY from Cumhuriyet reporter **Hazal Ocak** for defamation over her article on his luxurious private premises published in October 2019. Cengiz's offshore accounts had also been revealed in the Paradise Papers.<sup>47</sup>

Most of these cases, despite being dropped or eventually overturned, are designed, not necessarily to be won, but to tie up journalists in months of legal battles and to intimidate others from reporting truthful, if embarrassing, revelations. In that sense they are part of a wider global phenomenon of the very rich using the law, through speculative and baseless lawsuits, to silence journalists.

## Revealing state secrets

Similarly, Article 27 of the law on the National Intelligence Agency (MIT) regulates prosecution for those who "disclose the identity, position and activities of an intelligence agent and of his family (paragraph 2) and those who publish this information via press and other means (paragraph 3)" providing for sentences from three to nine years in prison.<sup>48</sup>

Since the first week of March 2020, six journalists—Oda TV Editor-in-Chief **Barış Pehlivan**, News Director **Barış Terkoğlu**, and **Hülya Kılınc** who is a reporter from Manisa, Turkey; Yeniçağ newspaper columnist **Murat Ağirel**, Yeni Yaşam newspaper Editor-in-Chief **Ferhat Çelik** and Managing Editor **Aydın Keser**—have been held on charges of revealing the identity of an intelligence agent. The journalists had reported on the funeral of the agent killed in Libya and recognized as a martyr by the government. The officer's identity had already been put in the public domain when he was named in parliamentary debates and perhaps most significant to the case against them, the journalists had not revealed the name of the

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<sup>45</sup> <https://www.mlsaturkey.com/tr/pelin-unkerin-paradise-papers-haberleri-icin-acilan-tazminat-davasi-nisana-ertelendi/>

<sup>46</sup> <https://t24.com.tr/haber/cigdem-toker-hakkindaki-1-5-milyon-liralik-tazminat-davasinda-dosya-islemden-kaldirildi,844086>

<sup>47</sup> <https://freeturkeyjournalists.ipi.media/trials-calendar/hazal-ocak-alev-coskun/>

<sup>48</sup> [https://www.mit.gov.tr/text\\_site/2937.pdf](https://www.mit.gov.tr/text_site/2937.pdf)



officer. They had used either his initials or changed his family name. The reports had revealed how a 'national martyr' was rewarded with an anonymous burial thereby embarrassing the government.<sup>49</sup>

Academic and columnist **Bülent Şık** was sentenced to one year and three months on September 26, 2019 following a complaint by the Ministry of Health about an article published in Cumhuriyet newspaper in April 2018. The article titled "State hides the list of products poisoning the public, but we are revealing them!" exposed the findings of a ministry-funded research on carcinogen poisons found in agricultural products near industrial areas, which was not published. Şık said in his defense statement that "It was my responsibility to publish as a matter of public interest." He was initially charged with "disclosing official secrets" but was finally sentenced for "disclosure of confidential information in respect of a duty."<sup>50</sup>

**Mehmet Baransu**, correspondent, and **Murat Şevki Çoban**, managing editor, for the now shuttered Taraf daily have been standing trial since 2014 for "obtaining information that, due to its nature, is to be kept confidential for reasons relating to the security, or domestic or foreign political interests of the State" (TPC Art 327) and disclosing such information with the public via the press (TPC Art 329), as well as the law on the National Intelligence Agency (MIT) mentioned earlier. The two journalists faced these charges for three articles: a news report by Baransu titled "The Decision to end Gülen was reached at the National Security Council (MGK) in 2004" from November 18, 2013, an article titled "According to the new document Taraf obtained, profiling practices continued after 2010" on December 2, 2012, and the report titled "The MGK plan is on" published on February 17, 2014.<sup>51</sup>

At the 20<sup>th</sup> hearing, on September 24, 2019, the prosecutor demanded the Anadolu 10th High Criminal Court to rule for a lack of jurisdiction and transfer the case file to another High Criminal Court authorized to handle press cases. However, MIT's lawyers protested and demanded the court to reach a verdict. On the twenty second hearing of the trial, the court ruled for a lack of jurisdiction and the case is yet to begin at a new court.<sup>52</sup> The lack of jurisdiction decision so late in the trial gives the impression the judges would rather refrain from reaching a verdict. The prosecution initially requested up to 50 years in prison for each defendant.

## Judicial reform strategy

In May 2019, the Justice Ministry launched its judicial reform strategy<sup>53</sup> in the form of a 90-page brochure outlining its aims and objectives. While presented as a major effort to improve and deepen the judicial

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<sup>49</sup> <https://freeturkeyjournalists.ipi.media/turkey-must-release-six-journalists-held-for-reporting-on-libya-casualty/>

<sup>50</sup> <https://freeturkeyjournalists.ipi.media/trials-calendar/bulent-sik-2-2/>

<sup>51</sup> <https://www.mlsaturkey.com/en/trial-of-former-taraf-journalists-baransu-and-coban-adjourned-until-september/>

<sup>52</sup> <https://www.mlsaturkey.com/tr/baransu-ve-cobanin-yargilandigi-davada-mahkemenen-gorevsizlik-karari/>

<sup>53</sup> <https://freeturkeyjournalists.ipi.media/turkey-reform-proposals-fall-far-short-of-needed-change/>

performance, in reality it side-steps all of the urgent areas of reform that have been identified by international bodies including the Council of Europe's Venice Commission.

A central aspect of any reform must be judicial independence. In April 2017 constitutional reforms changed the process for selecting the members of the Council of Judges and Prosecutors (HSK) moving from an electoral process by judges to an appointment-based process empowering the president to select six and parliament seven of HSK's 13 members. This system enables the government to effectively handpick the body that oversees the work, selection, promotion and disciplining of judges.

Judicial independence is fundamental to a judiciary's ability to deliver justice. And as this report has shown, in 27 percent of freedom of expression cases at least one member of the judicial panel has been replaced during the course of the trial.

In a meeting with IPI in September 2019 the Justice Ministry claimed that the judicial reform strategy would meet the stated aim of "Improving Independence, Impartiality and Transparency of the Judiciary" by introducing more objective criteria for the appointment, transfer and promotion of judges including geographical guarantees that enable judges to refuse transfers to other locations. It claimed this would help reinforce the principal of immovability of judges and reduce scope for pressuring judges.

Despite that commitment, the reforms around immovability of judges were absent from the first reform package introduced on October 1, 2019. Instead it included the following

***Anti-terrorism law:***

In response to criticism that the definition of spreading terrorist propaganda [via the press] was too vague allowing courts to prosecute journalists on the basis of their journalism, article 7 paragraph 2 of the Anti-Terrorism Law was amended to include the follow:

"Statements made within the limits of providing information or made with the purpose of criticism cannot be criminalized".

While the change appears to acknowledge the problem, the effect is likely to be limited. The term "terrorist propaganda" remains undefined and open to misuse. There is no reference to international standards and the persistent conflation of terrorist propaganda and journalism by the courts is expected to continue.

***Pre-trial detention:***

The new legislation sets the following time limits for pre-trial detention for different crimes:

- Cases under the lower criminal courts: maximum pre-trial detention of six months
- Cases under high criminal courts: maximum detention one year
- Anti-terror legislation: up to 18 months and extendable for another six months.

This reform, however, will do little to improve the situation of journalists, who are targeted most often under anti-terror laws and is in reality a step backwards as it legislates a practice that has been criticized

in the Constitutional Court's rulings<sup>54</sup>. Moreover, it fails to stop prosecutors bringing the most serious charges, without supporting evidence, in order to maximise the length of detention.

The problem is best addressed by improving the definition and scope of terrorism offenses and identifying a clear threshold of evidence before charges are brought and journalists arrested.



In 27 percent of freedom of expression cases at least one member of the judicial panel has been replaced during the course of the trial.

***Right to Appeal:***

Previously, defendants who were sentenced to less than five years had no right of appeal to Turkey's Supreme Court of Cassation, while defendants sentenced to more than five years could appeal. This discrepancy resulted in many journalists with shorter sentences being denied the right to appeal and serving the remainder of their sentences in jail, as in the trial of the Cumhuriyet journalists.<sup>55</sup> The judicial reform package lifted that limitation for certain types of cases, including defamation and terrorist propaganda, both of which commonly feature in journalist cases.

While this is welcome and has seen a number of journalists released as they launch their appeals, the reform did not go far enough to strengthen the application of precedent based on rulings of the Constitutional Court made in line with the ECtHR jurisprudence so that journalists are not charged, detained, prosecuted and imprisoned based on politically motivated or arbitrary application of the law in the first place.

## Conclusions of lawyers strategy meeting

MLSA and IPI conducted a strategy meeting with trial monitors, human rights lawyers and representatives from other Civil Society Organizations (CSO) including the Truth Justice Memory Center and Citizen's Assembly, that carry out trial monitoring projects on February 5, 2020 in Istanbul, to review the results of the trial monitoring programme and make recommendations for future steps.

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<sup>54</sup> <https://freeturkeyjournalists.ipi.media/turkeys-constitutional-court-gives-contradictory-decisions-on-cumhuriyet-journalists-applications/>

<sup>55</sup> <https://freeturkeyjournalists.ipi.media/ipi-welcomes-turkish-court-ruling-freeing-cumhuriyet-journalists/>

The trial monitoring form used is designed to assess the quality of the judicial process and the respect for fair trial principles. It does not examine the evidence, nor the respective arguments of the prosecutor or defendants and therefore cannot assess whether justice has ultimately been served on individual cases. Instead, through the analysis of the data it can identify the trends and weaknesses in basic procedures and systemic failures in the judiciary which were rampant particularly during the post-coup period. As such it provides crucial information that backs up individual case reports that expose the injustices that have been so often handed out in freedom of expression cases.

The meeting made a number of recommendations for the technical improvement of the forms and it was further agreed to develop a tool for assessing the early stages of the judicial process that takes part between the initial launching of investigations and first hearing where numerous human rights violations can occur. This would include the first arrests and interrogations, decisions over pre-trial detention, preparation of the indictments, accessibility of lawyers to the defendants and the indictment and the first hearing which is so important for understanding the nature and origin of the prosecution.

Key problems have arisen around decisions on extended detention, excessive periods required to produce indictments that are often of poor quality, often copied from other indictments, lacking in concrete evidence, and only produced just prior to the first hearings where defendants hear for the first time what they are charged with.

Participants pointed to the problem of state officials influencing investigations by making defamatory statements about suspects and applying political pressure on prosecutors. Public statements about journalists being agents for terrorists or foreign states, for example, are often designed to influence prosecutors preparing indictments and judges prior to verdict in clear breach of the judicial process.

It was recommended therefore that in addition to the documentation of individual hearings, monitors should produce dedicated reports on individual trials to explore in much greater depth and also identify how different types of cases are treated. It was further agreed to explore the development of a common monitoring form with other organizations covering trials on other human rights aspects such as human rights defenders, domestic violence and LGBTI rights.

Defense lawyers from the bars in Istanbul and Van working on freedom of expression cases raised a number of key issues:

Judicial deliberations: the monitoring records when the judges clear the courts to conduct confidential deliberations which occurred in just over half of all hearings. When deliberations do take place it is not possible to know if the prosecutor participates, which would be a serious breach of fair trial procedures, or if they leave the room to the judges. In cases where the court room is not cleared for judicial deliberations the monitors need to be able to distinguish between technical interim decisions such as the postponement of a hearing which can be made in public, and decisions that may affect the outcome of a trial or of the treatment of a defendant that should be made in private.

Evidence: the lawyers recommend monitors assessing the quality of the evidence presented and whether the evidence was properly evaluated by judges in reaching their verdicts. This is very difficult for independent monitors to do without the resources to follow individual cases in detail.

The National Judiciary Informatics System (UYAP) was highlighted as a problematic system that limits the defense lawyers' access to case files. Normally all relevant information to a case is available through the UYAP system, however key documents are often classified which prevent defense lawyers from accessing them and many documents don't get uploaded at all. They are also denied access to documents during the investigation period which renders the defense work very difficult. Although the digitalization of this process is presented as convenient and transparent, lawyers complain that in practice the system is abused in favour of the prosecution.

The lawyers backed the trial monitoring reports and the work of human rights organizations monitoring trials as essential for holding the judiciary to account, providing solidarity for defendants and being able to influence the reform of the judiciary in the longer term. They also encouraged a greater use of the right to intervene in cases through amicus briefs by human rights groups.

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**About the International Press Institute (IPI):** Founded in 1950, IPI is a global network of editors, journalists and media executives dedicated to furthering and safeguarding press freedom, promoting the free flow of news and information, and improving the practices of journalism.

**About the Media and Law Studies Association (MLSA):** MLSA is a Turkish non-profit (registered as Medya ve Hukuk Çalışmaları Derneği) founded in late 2017 to respond to an urgent yet growing need for going back to democracy and normalization in Turkey.



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Spiegelgasse 2/29, 1010 Vienna, Austria | + 43 1 5129011 | [info@ipi.media](mailto:info@ipi.media) | [ipi.media](http://ipi.media)

**@globalfreedia**