

Freedom of Expression Cases in Turkey

TRIAL MONITORING

PROGRAM

REPORT

2023

1 September 2022 - 1 September 2023



Norwegian Embassy
Ankara



Almanya'nın Türkiye'deki
Dış Temsilcilikleri
Die Deutschen
Auslandsvertretungen
in der Türkei



FRIEDRICH NAUMANN
FOUNDATION For Freedom.
Türkiye



Freedom of Expression Cases in Turkey

TRIAL MONITORING PROGRAM REPORT

2023

No room for protest, journalists tagged “terrorists”



Norwegian Embassy
Ankara



Almanya Federal Cumhuriyeti
Başkonsoloslugu
Istanbul



FRIEDRICH NAUMANN
FOUNDATION For Freedom.
Türkiye

This report has been prepared with the contributions of **The Embassy of the Kingdom of Norway in Ankara** and **The Consulate General of the Federal Republic of Germany in Istanbul** and **The Friedrich Naumann Foundation for Freedom Türkiye Office**.

ABOUT THE MEDIA AND LAW STUDIES ASSOCIATION (MLSA)

Media and Law Studies Association (MLSA) is a civil society organization working in the field of freedom of expression since 2018. MLSA provides pro-bono legal assistance to those whose freedom of expression is violated, especially journalists, media members and human rights defenders, and represents them in national and international legal processes. MLSA carries out advocacy activities through regular submissions to international organizations, especially the Committee of Ministers of the Council of Europe, and aims to build the capacity of journalists, lawyers and civil society organizations by organizing workshops on freedom of expression. MLSA also monitors internet freedom and censorship in Turkey through the Free Web Turkey project. It also provides legal and institutional support to associations and foundations through its civil society capacity building program. In addition, MLSA's website offers a space for journalists to publicize their work by publishing articles from independent journalists.

MLSA has also been running the largest trial monitoring program in Turkey since 2018 and publishes regular reports. MLSA's Trial Monitoring Program, as part of which 1,500 hearings have so far been monitored, is a resource for a large number of media outlets and human rights organizations.

Veysel Ok

Co-Director

Evin Barış Altıntaş

Co-Director

Batıkan Erkoç

Projects and Grants Manager

Semra Pelek

Trial Monitoring Project Coordinator

Eylem Sonbahar

Istanbul Correspondent

Deniz Tekin

Diyarbakır Correspondent

Emine Özhasar

Legal Unit Coordinator

Sena Özcanlı

Communication and Events Coordinator

Gülhan Çorlu

Finance Coordinator

Metin Yener

Office Manager

Ali Safa Korkut

Free Web Turkey Project Coordinator

Fatih Aydın

Attorney at Law, Legal Unit

Muhammed Ünsal

Attorney at Law, Legal Unit

Gökтуğ Berber

Project Assistant

The views and data shared in the report are solely those of **MLSA**. They do not in any way represent the views of the **Embassy of the Kingdom of Norway in Ankara, Consulate General of the Federal Republic of Germany in Istanbul and Friedrich Naumann Foundation for Freedom Türkiye Office**.

TABLE OF CONTENTS

| | |
|---|-----------|
| Introduction | 5 |
| Method | 5 |
| Abbreviations | 6 |
| Highlights | 7 |
| Comparison of Case Monitoring Program Data by Year | 9 |
| Overview of Cases | 10 |
| Distribution of Cases by Province | 10 |
| Breakdown According to the Type of Court Where the Cases Were Heard | 11 |
| Who was on Trial? | 12 |
| From Gezi Trial to Constitutional Crisis | 17 |
| Grounds for Prosecutions and Lawsuits | 19 |
| Documentary Filming Becomes 'Reconnaissance' | 21 |
| What were they accused of? | 21 |
| Table of Charges Filed | 25 |
| A New Tool of Pressure on Freedom of Expression: Censorship Law | 26 |
| An Overview of Freedom of Expression Cases Based on 'Types' of Crimes | 30 |
| Evidence Used Against the Defendants | 33 |
| Overview of Evidence of "Membership of a Terrorist Organization" | 35 |
| Increase in Pretrial Detentions | 37 |
| List of Detainees on Trial in Monitored Cases | 37 |
| Concluded Cases: 37 Sentence, 59 Acquittal | 40 |
| Acquittal Verdicts for the Defendants | 41 |
| Imprisonment Sentences During the Monitoring Period | 44 |
| Constitutional Court Cancels the Deferral of the Announcement of the Sentence | 45 |
| Judicial - Criminal Fines | 52 |
| Compensation | 52 |
| Other Findings Related to the Right to a Fair Trial | 53 |
| Time Problems in Hearings | 53 |
| Physical Problems in Courtrooms | 54 |
| Monitors' Trial Notes in the Context of Right to a Fair Trial | 55 |

Introduction

This report presents the findings of the Media and Law Studies Association's (MLSA) trial monitoring program on freedom of expression cases, which has been running since 2018, during the judicial year between September 1, 2022 - September 1, 2023.

Freedom of expression, which is one of the cornerstones of a democratic society, has always been a target of governments and has required constant efforts to protect it. In addition to creating an archive and database, trial monitoring consists of identifying, recording and monitoring the actions of public authorities that violate freedom of expression in order to protect freedom of expression, raise public awareness through civil society, promote legal reforms and instill confidence and courage in both those on trial and the public.

The data used in the report was collected through a trial observation form filled out by court monitors, mostly journalists with training and experience in trial monitoring. The form, which the observers completed after each hearing, was developed with the guidance and recommendations of organizations such as the Organization for Security and Cooperation in Europe (OSCE), Amnesty International, the International Committee for Jurists and the Solicitors International Human Rights Group (SIHRG).

The aim of this program is to record compliance with national and international standards and possible violations in the context of the right to a fair trial, which is recognized as an inalienable human right by many international conventions and treaties to which Turkey is a party, particularly the 1948 Universal Declaration of Human Rights, the 1950 European Convention on Human Rights (ECHR) and the 1966 United Nations Covenant on Political and Civil Rights, and to reveal the current situation in cases involving the freedoms of the press, assembly and expression.

MLSA's trial monitoring program is the most comprehensive trial monitoring program in Turkey to analyze trial procedures and standards of hearings.

Method

Monitors attending the hearings fill out a form based on the trial monitoring guidelines published by the Organization for Security and Cooperation in Europe (OSCE) and adapted to Turkish conditions. The data obtained from the forms were analyzed to reach the findings presented in this report.

The report is based on the collection of data from **464 hearings** in **233 freedom of expression cases** monitored between **1 September 2022** and **1 September 2023**.

Abbreviations

| ABBREVIATION | EXPLANATION |
|--------------|--|
| OSCE | The Organization for Security and Co-operation in Europe |
| ECtHR | European Court of Human Rights |
| ECHR | European Convention of Human Rights |
| AYM | Turkish Constitutional Court |
| f. | Paragraph |
| HAGB | Judicial deferment |
| m. | Article of the law |
| MLSA | Media and Law Studies Association |
| TCK | Turkish Penal Code |
| TMK | Counterterrorism Act |

Highlights of the Report's Findings

Within the scope of MLSA's **Trial Monitoring Program**, between **1 September 2022 - 1 September 2023**, 233 cases were monitored in **20 provinces** and **1646** people were tried in these cases.

In 32 trials 116 defendants were sentenced to 217 years, 8 months 20 days imprisonment.

In 17 journalism cases, 23 journalists **were sentenced to 67 years, 8 months, 12 days** in prison. In **6 cases, 12 defendants were sentenced to a judicial fine of 75,126 TL**, while in **59 cases** the defendants were acquitted.

Most targeted: students, activists, journalists and politicians

The most targeted group in the cases monitored under the program were students: **655 (37%) of the total** 1646 defendants who appeared before courts in this period were students. This was followed by **activists** -- a category defined as people who took to the streets to exert their right to protest for various reasons -- **activists** who accounted for **329 (20%) of the suspects**.

In terms of the number of defendants, journalists were the third most targeted group. **314 journalists -- 19% of all defendants -- were on trial**. However, they were the group which faced the *highest* number **of cases: 314 journalists** were tried as defendants in a total of **154 (67%) cases, 133 (57%)** of which were filed due to journalistic activities. This is because students and activists were usually prosecuted en masse, particularly in multi-defendant cases initiated in response to protests.

In terms of number of suspects targeted, the fourth group was politicians, who accounted for **241 (14.6%)** of all the defendants.

Journalistic activities: terrorism

The most common accusation in journalism cases **was terrorism charges with 43%**. Journalists were charged with the **terrorist organization propaganda** in 29 cases, **terrorist organization membership** in 15 cases and targeting **an official who worked as part of counterterrorism efforts** in 10 cases.

Journalists were mostly sentenced for **membership in a terrorist organization** and **propaganda on behalf of a terrorist organization**. Journalists were sentenced to a total of **28 years and 9 days** for **membership in a terrorist organization** and **15 years, 6 months and 28 days** for **propaganda**.

Right to protest effectively forbidden

'**Violation of the Law on Meetings and Demonstrations no 2911**', used against groups demonstrating or marching to exert their right to protest, was **one of the most frequent accusations**. Of the total number of cases **21.5% (50 cases)** were filed due to peaceful demonstrations. In two cases, a total of **41 defendants were sentenced to 22 years, 11 months and 25 days** in prison.

Students, women and LGBTI+ persons were the most prosecuted for their protests. Students were prosecuted in a total of **24 cases, 15 of them for their peaceful protests**. The other most

prosecuted groups for their peaceful protests were women, who were prosecuted in **five** cases, and LGBTI+ persons, who were prosecuted in **four** different cases.

The cases filed for peaceful demonstrations included accusations other than violating Law No. 2911. For example, Boğaziçi students were charged with **"obstruction of means of transportation"** for preventing the university president's car from leaving the campus during a protest against presidents appointed to the university by the government. **"Injury" charges were brought against human rights defenders for allegedly pushing a police officer** during a protest against murders of women. However, it was the human rights defenders at the protest, who were actually **beaten and detained by the police**.

Terror related charges remain widespread

Terrorism charges accounted for **28 percent** of the total charges. The most common terror charges were: **terrorist propaganda (14%), membership in a terrorist organization (9%), targeting public officials who took part in the fight against terrorism (4%).**

32 defendants were sentenced to a total of **102 years, 7 months and 28 days** on the charge of **"knowingly and willingly aiding an organization"**. **Five defendants were sentenced to 31 years, 3 months and 9 days** in total for **membership of an armed terrorist organization"**. **14 defendants were sentenced to a total of 29 years 9 months and 8 days** on the charge of **"making terrorist organization propaganda"**. Four defendants were sentenced to 11 years and 3 months in total for **"committing crimes on behalf of a terrorist organization without being a member of the organization"**.

The practice of journalists' news reports and social media posts as evidence of "terror" crimes continued. Of the **90 different pieces of evidence presented as evidence of terrorist organization membership, 20 (22%)** were **journalists' published news reports** and **11 (12%)** were **social media posts**.

'Censorship law' in courtrooms

A concerning legal development in 2022 was the censorship law, adopted in October, which criminalizes **"deliberately spreading misinformation."** This was used extensively against journalists. During the reporting period, two cases on this charge were heard.

Outside the courtrooms during this time, at least **26 journalists were investigated, 6 journalists were detained** and at least **4 journalists were arrested** for the disinformation offense introduced by the law during the past year.

The first journalist to be investigated, arrested and sentenced was **Sinan Aygöl**, a journalist defended by MLSA. Aygöl was sentenced to **10 months in prison**. The Constitutional Court rejected the application for the annulment of the law.

Pre-trial detention up by 150 percent

During the reporting period, 30 defendants were tried in pre-trial detention, 29 of them were journalists. The 11 Kurdish journalists who were arrested in Ankara October 2022 and 15 Kurdish journalists arrested in Diyarbakır in June 2022 were kept in prison for lengthy periods.

While 12 people were tried in pre-trial detention in the cases monitored in the last period between September 2021 and July 2022, **30 people were tried in pre-trial detention during the period covered by this report, representing a 150% increase.**

Comparison of Case Monitoring Program Data by Year

| Indicators | June - December 2018 | February 2019 - March 2020 | June - December 2020 | January - July 2021 | September 2021 - July 2022 | September 2022 - September 2023 |
|--|-------------------------|-------------------------------|-------------------------|------------------------|-------------------------------|------------------------------------|
| Number of journalists and media workers in prison | 148 | 95 | 66 | 60 | 59 | 39* |
| Number of cases monitored | 71 | 169 | 132 | 98 | 210 | 233 |
| Number of hearings monitored | 82 | 319 | 195 | 147 | 446 | 464 |
| Number of defendants in pre-trial detention in cases monitored under the program | 44 | 53 | 6 | 3 | 12 | 30 |
| Number of journalists on trial in cases monitored under the program | 70 | 98 | 277 | 225 | 318 | 314 |
| Rate of terrorism charges | 72% | 61% | 46% | 58% | 38% | 28% |
| Ratio of insult (TCK 125) charges to total charges | - | 7% | 5% | 17% | 7% | 13% |
| Rate of charges of insulting the President (TCK 299) | 7% | 10% | 10% | 25% | 10% | 8% |
| Rate of charges of insulting the organs of the state (TCK 301) | - | - | 0,50% | 1% | 4% | 4% |
| Rate of charges of inciting people to hatred and hostility (TCK 216) | - | - | 5% | 3% | 3% | 4% |
| Total prison sentences (years) | - | 18 | 52 | 21 | 299 | 217 |
| Number of cases resulting in acquittal | 12 | 6 | 17 | 16 | 51 | 59 |

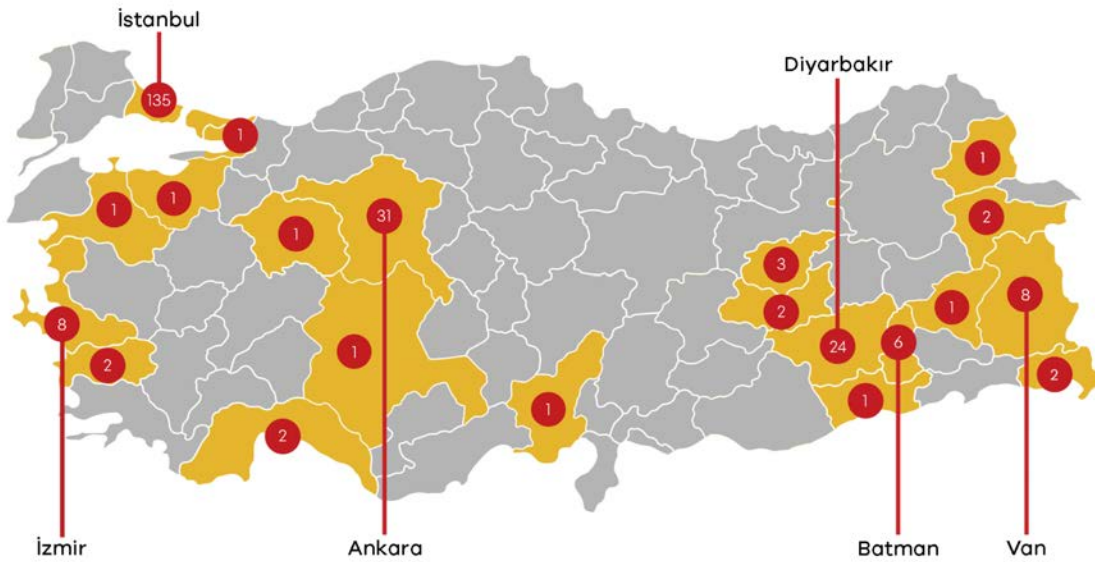
*The number of journalists and media workers in prison does not represent the average of the report period, but the number of those in prison as of the printing date of the report.

Overview of Cases

This report is based on data from 464 hearings **held** within the scope of **233 freedom of expression cases** involving **1646** people, monitored by the Media and Law Studies Association (MLSA) in **20 provinces** between **1 September 2022 and 1 September 2023**.

More than half of the cases (58%) were filed in **Istanbul (135 cases)**. This was followed by Ankara with **13% (31 cases)** and **Diyarbakır with 10% (24 cases)**. Other provinces where cases were followed were Van (8 cases) and İzmir (8 cases), Batman (6 cases), Tunceli (3 cases), Hakkari (2 cases), Elazığ (2 cases), Aydın (2 cases), Antalya (2 cases), Ağrı (2 cases). Mardin, Konya, Kocaeli, Eskişehir, Eskişehir, Bursa, Bitlis, Balıkesir, Adana (1 case each).

Distribution of Cases by Province



| Province | Case Number |
|------------|-------------|
| İstanbul | 135 |
| Ankara | 31 |
| Diyarbakır | 24 |
| İzmir | 8 |
| Van | 8 |
| Batman | 6 |
| Tunceli | 3 |
| Ağrı | 2 |
| Antalya | 2 |
| Aydın | 2 |

| Province | Case Number |
|-----------|-------------|
| Elazığ | 2 |
| Hakkari | 2 |
| Adana | 1 |
| Balıkesir | 1 |
| Bitlis | 1 |
| Bursa | 1 |
| Eskişehir | 1 |
| Kocaeli | 1 |
| Konya | 1 |
| Mardin | 1 |

Breakdown According to the Type of Court Where the Cases Were Heard

More than half of the cases in this period (135 cases, 58%), were filed in **criminal courts of first instance**, which are tasked with handling cases related to charges such as "insult", "slander" or "opposition to Law No. 2911 on Meetings and Demonstrations", which carry a prison sentence of 10 years or less.

37% of the cases (86 cases) were heard in **high criminal courts**, which are tasked with handling cases involving charges that carry a prison sentence of more than 10 years, mainly "terrorism" offenses.

During the monitoring period, 4% of the cases (10 cases) were heard in the **civil courts of first instance** in charge of handling cases related to assets and personal assets, and one case was heard in the **commercial court of first instance**. Within the scope of the program, one case was heard at the **regional court of justice** (court of appeal).

| Type of the Court | Case Number |
|--|-------------|
| Criminal Court of First Instance | 135 |
| High Criminal Courts | 86 |
| Civil Court of First Instance | 10 |
| Regional Court of Appeal (Court of Appeal) | 1 |
| Commercial Court of First Instance | 1 |
| Grand Total | 233 |

Who was on Trial?

| Defendant Group | Defendants | Percentage |
|-----------------|------------|------------|
| Student | 655 | 39.79% |
| Activist | 329 | 19.99% |
| Journalist | 314 | 19.08% |
| Politician | 241 | 14.64% |
| Lawyer | 49 | 2.98% |
| Worker | 37 | 2.25% |
| Artist | 9 | 0.55% |
| Architect | 5 | 0.30% |
| Documentarian | 3 | 0.18% |
| Writer/Poet | 2 | 0.12% |
| Academician | 2 | 0.12% |

In the **233** freedom of expression cases involving **1646 defendants** monitored during the judicial year covered by the report, **students, journalists and activists/right defenders** were the three most frequently prosecuted groups.

Students and activists were tried collectively in multi-defendant trials, especially in cases related to demonstrations.

During this period, **655** students were prosecuted, representing 40% of the **total number** of defendants. However, all these defendants were tried in **24 cases**, accounting for only **10%** of the total.

In the category of **activists**, including women, LGBTI+, environmentalists and other rights-seeking groups, **329 defendants** (20% of the total number of defendants) were tried. However, all these defendants were also tried in **36 cases**, representing **15%** of the total.

More politicians on trial

Politicians, who were tried in 23 different cases (10% of the total number of cases) for different actions or statements, constituted 15% of the total number of defendants with 241 defendants. **In terms of profession**, 49 lawyers were tried in 8 different cases. Other groups on trial were identified as follows: **workers** (37 defendants in 1 case), **artists** (9 defendants in 9 cases), **architects** (5 defendants in 1 case), **documentary makers** (3 defendants in 2 cases), **poets/writers** (2 defendants in 2 cases), **academics** (2 defendants in 2 cases).

Selahattin Demirtaş Acquitted of "Opposition to 2911"

In the hearing held on June 6, 2023, the court acquitted former HDP Co-Chair **Selahattin Demirtaş** on charges of "violating Law No. 2911 on Meetings and Demonstrations" based on a rally held in Batman in 2016.



**"Police Attack on Women on March 8
is News Not Only in Turkey, but Everywhere in the World"**

"We journalists are already facing a huge clamp of intimidation, and now we are being prosecuted on 2911 grounds while covering these protests. Police brutally attacking women who take to the streets against violence against women is news not only in Turkey but all over the world."

Journalist Buse Söğütlü

For participating in the March 8 Feminist Night March, she was charged with violating the Law on Meetings and Demonstrations.

Journalists accounted for **314 defendants**, **19%** of the total number of defendants. The **154** different cases involving journalists correspond to **66%** of the total number of cases monitored during the monitoring period. Of these cases, **55% (133 cases)** were filed solely for journalism. In this period, journalists were, for example, detained during protests they were covering for news reporting and later tried together with activists; in the remaining 21 cases, journalists were also charged with such offenses. It can be said that journalists are also among the most frequently prosecuted groups in the trials of other groups for the news they cover.

Distribution of Cases by Defendant Groups

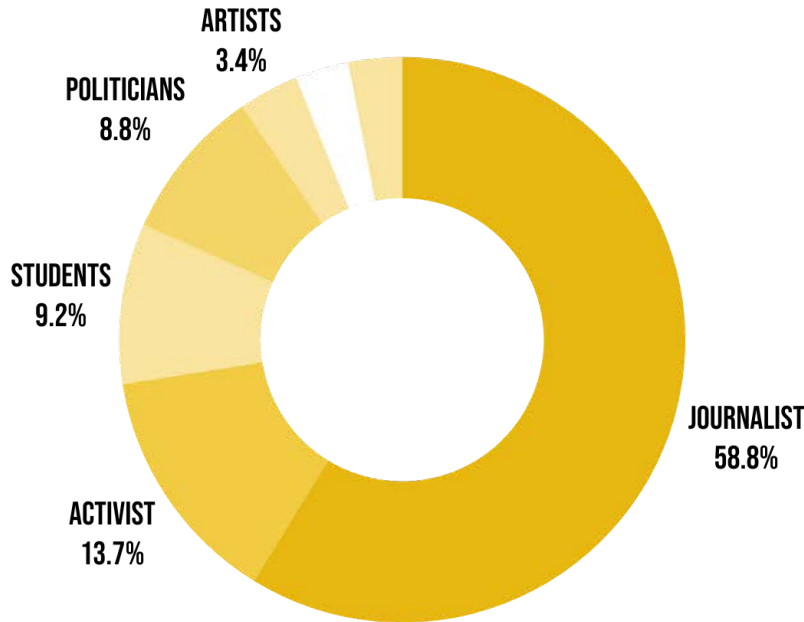
| Defendant Group | Number of Cases | % ¹ |
|-----------------|-----------------|----------------|
| Journalist | 154 | 58.78% |
| Activist | 36 | 13.74% |
| Student | 24 | 9.16% |
| Politician | 23 | 8.78% |
| Artist | 9 | 3.44% |
| Lawyer | 8 | 3.05% |
| Documentarian | 2 | 0.76% |
| Writer/Poet | 2 | 0.76% |
| Academician | 2 | 0.76% |
| Worker | 1 | 0.38% |
| Architect | 1 | 0.38% |

The majority of the cases monitored under the program are those in which journalists were on trial. Journalists were on trial in more than 50% of the total cases. This is followed by activist cases with 36% and student cases with 10%.

Considering the number of cases and the number of defendants, **655 students were tried in 24 cases. 329 activists, constituting 20% of the defendants, were tried in 36 cases ('15%')**. A total of **241 politicians were tried in only 23 cases**. This shows that students, activists and politicians are mainly tried in multi-defendant cases. Especially in cases involving social protests and demonstrations, many of the trials were multi-defendant.

Multi-defendant trials create serious problems, particularly in terms of the right to a trial within a reasonable time and the principles of the individuality of the offense. Multi-defendant trials, when coupled with the workload of the courts, cause significant violations of the right to a fair trial.

¹ Among the 233 cases monitored under the program are mixed cases. In these cases, more than one group of defendants are tried together. When evaluating the figures, it should be taken into account that more than one social group is involved in the same case.



DISTRIBUTION OF THE CASES ACCORDING TO DEFENDANT GROUPS

**'According to the Indictment, I'm a So-Called Journalist,
So I Deceived Everyone'**

"The indictment refers to us as 'so-called reporters' and 'so-called journalists'. Since there is no evidence for the charges, our journalism has been criminalized. Look, there are many professional organizations here, they all support us. But according to the indictment, I am a 'so-called' journalist. So I fooled my family, my professors, my relatives, my colleagues, associations, but not the investigators? This is an illogical analogy. I also followed the October 10 trial in your court. It was a very heavy trial, it lasted for days and nights. According to the summary, both working for royalties and working for a salary were criminalized."

Deniz Nazlım

From his defense at Ankara 4th High Criminal Court on May 16, 2023.

Deniz Nazlım is one of the 11 journalists arrested on October 29 as part of the investigation launched by the Ankara Chief Public Prosecutor's Office on October 20, 2022. Eleven journalists working for the Mesopotamia News Agency (MA) and JinNews in Ankara are on trial for "membership in an illegal organization".

İmamoğlu Sentenced to 2 Years and 7 Months in Prison for "Insulting a Public Official"

Istanbul Metropolitan Municipality (İBB) Mayor **Ekrem İmamoğlu** was put on trial for "insulting" members of the Supreme Election Board (YSK). The court sentenced İmamoğlu to 2 years, 7 months and 15 days in prison and ruled that he be deprived of certain rights, including the right to engage in politics, in accordance with Article 53/1 of the Turkish Penal Code.

The eighth hearing of the lawsuit filed against İmamoğlu due to "insulting a public official" was held at Istanbul Anatolian 7th Criminal Court of First Instance. While İmamoğlu did not attend the hearing, his lawyers were present at the hearing where police officers with shields were waiting in front of the courtroom. A limited number of journalists were admitted to the hearing, which was also attended by many MPs, mayors and Erinc Sağan, President of the Union of Turkish Bar Associations. İmamoğlu's case is currently on appeal.

'They Use the Judiciary to Show the Stick'

"It was the Izmir Bar Association that said the opening of the judiciary cannot take place in the Presidential Palace, defended peace against war, and opposed hate speech against LGBTI+ individuals. They are wagging their fingers at society with your decision. We are facing a government that says 'Take this, take this, take this' to anyone who speaks on the streets. What makes me sad is that they used the judiciary to show us the stick every time. I really miss an understanding of the judiciary that would say to the administration, to the power, 'get out of here'. I would like to end with these lines: 'It's not over yet, that fight continues and will continue.'"

Former President of Izmir Bar Association Özkan Yücel

April 24, 2023, from his defense in the trial held at Izmir 1st High Criminal Court

A lawsuit was filed against Özkan Yücel, **former President of Izmir Bar Association, and 10 board members** for the statement titled **"In spite of hate, long live life"** shared by Izmir Bar Association on its official website on April 25, 2020, against the sermon of Ali Erbaş, President of Religious Affairs, on April 24, 2020, which contains hate speech against LGBTI+'s, on the grounds of "publicly insulting religious values adopted by a section of the public". At the first hearing of the case held at Izmir 1st High Criminal Court on **April 24, 2023**, the court acquitted all defendants on the grounds that the elements of the imputed crime did not occur.

From Gezi Trial to Constitutional Crisis



Photo: Hayri Demir

In addition to journalists, 241 politicians were put on trial during this period. It is noteworthy that the trial of lawyer Can Atalay, who was arrested in the 'Gezi Park Case', was not suspended even though he was elected as an MP from the Workers' Party of Turkey (TİP) in the May 14, 2023 general elections. Can Atalay's 18-year prison sentence, handed down by the Istanbul 13th High Criminal Court on April 25, 2022, was upheld by the 3rd Criminal Chamber of the Court of Cassation on September 28, 2023; Atalay was an elected MP at the time.

"I wish we could reach the day when there are no prisons"

"I can say that I learned very little in prison that I didn't already know. Directly observing the length of detention in political cases and the 'problem of prisoners whose execution is burned' will never leave my mind. Also, since there are prisons, I wish we could reach the days when there are no prisons. Can't it be in a certain period of time, in a way that won't cause people to lose their health? I won't stop pursuing the answer to this."

TİP MP Can Atalay, convicted in Gezi Trial
Cumhuriyet newspaper, June 26, 2023

The Constitutional Court reviewed Atalay's individual application after the Court of Cassation upholding the decision. On October 25, 2023, the Constitutional Court ruled with a majority of votes that Atalay's 'right to be elected and to engage in political activity' and 'right to personal liberty and security' had been violated and ordered the local court to "suspend the execution of the conviction and release him from prison". The Istanbul 13th High Criminal Court's failure to comply with this decision and the 3rd Criminal Chamber of the Court of Cassation's filing of a criminal complaint against the members of the Constitutional Court that ruled in violation of the decision in Atalay triggered an unprecedented constitutional crisis in Turkey's history.

The Constitutional Court has not issued any statements on the issue. The new individual application filed due to the non-implementation of the Constitutional Court's decision was discussed by the relevant section of the Constitutional Court on December 13, 2023. The application was sent to the General Assembly of the Constitutional Court for deliberation (which is reviewed on the same day as this report comes out).



Photo: Hayri Demir

MLSA Legal Unit: Article 153 of the Constitution is Violated

"The reason why the decision is considered a constitutional crisis is that, for the first time in Turkey, there is such a conflict between two high courts.

The Court of Cassations is clearly questioning the position of the Constitutional Court, seeking to truncate its authority.

The decision, without a doubt, is a clear violation of Article 153 of the Constitution. Article 153 of the Constitution stipulates that 'the decisions of the Constitutional Court [...] are binding on the legislative, executive and judicial organs, administrative authorities, real and legal persons'. However, the Court of Cassation ruled that the Constitutional Court's decision should not be followed, rendering this provision of the Constitution ineffective."

Grounds for Prosecutions and Lawsuits

In terms of the grounds for the prosecution, **journalism and reporting activities** were the most common grounds for prosecution **with 133 cases**, constituting **57%** of the total cases.



Photo: *BirGün*

Prosecutor: Pride is a Constitutional Right!

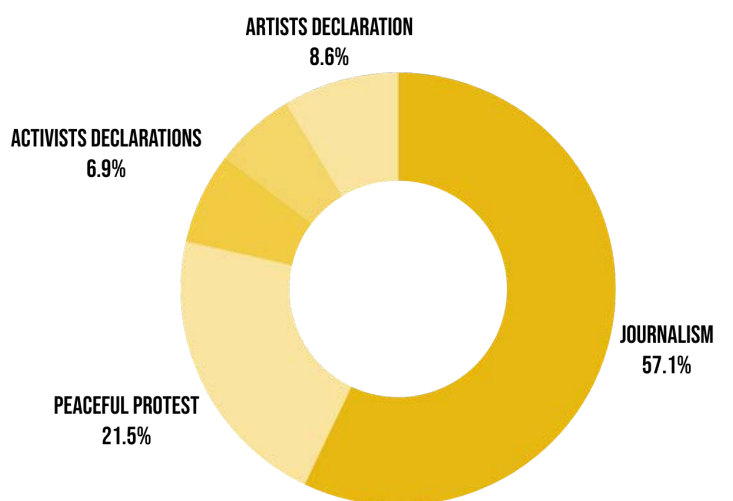
During the trial of eight individuals detained during the Pride Parade in Eskişehir, who were charged for violating the **Law No. 2911 on Meetings and Demonstration Marches**, the prosecutor stated in the hearing held on June 8, 2023, that there was insufficient evidence to prove 'the police made an audible warning.'

Emphasizing the protestors' 'constitutional right,' the prosecutor requested the acquittal of all defendants. On June 15, at the hearing, the defendants were acquitted.

Journalistic activities were followed by **peaceful demonstrations**, which were the subject of 50 different cases. Peaceful protests and demonstrations accounted for 21% of the total number of cases filed.

Especially in cases filed solely on the basis of news reports or journalistic investigations, journalistic activities were subject to various accusations. **Terror-related crimes were the most common category of accusations leveled against journalists.**

| Grounds/Reasons | Cases | % |
|--|-------|--------|
| Journalism / Reporting | 133 | 57.08% |
| Peaceful Demonstration | 50 | 21.46% |
| Activist (Rights Defender) Statement | 16 | 6.87% |
| Politician / Party Statement or Activity | 14 | 6.01% |
| Artist / Writer / Poet Statement | 9 | 3.86% |
| Professional Organization Statement | 6 | 2.58% |
| Other | 2 | 0.86% |
| Filming of a Documentary | 2 | 0.86% |
| Student Statement | 1 | 0.43% |



DISTRIBUTION OF THE LAWSUITS FILED ACCORDING TO THEIR SUBJECT MATTER

The breakdown of those who were prosecuted for exercising their civil right to protest during the period was as follows: 18 cases (8%) against protests that had different themes, 15 cases (6%) against student protests, 5 cases (2%) against women's protests, 4 cases (2%) against LGBTI+/Pride Week protests, 3 cases (1%) against mayors appointed by the government², 2 cases (1%) against Saturday Mothers' protests and one case against a press statement made by a professional union in Van.

| Distribution of Prosecuted Peaceful Demonstrations by Subject | |
|---|----|
| Various Rights Demands | 18 |
| Student Action | 15 |
| Women's Rights | 5 |
| LGBTI+ people | 4 |
| Protests against gov't appointed "trustee" mayors | 3 |
| Saturday Mothers | 2 |
| Professional Organization | 1 |
| Workers | 1 |
| Environmentalists | 1 |

The 16 lawsuits filed for the statements of activists and rights defenders accounted for 7% of the total number of lawsuits. The statements or activities of politicians or political parties were the subject of 14 lawsuits (6%). This was followed by 9 cases (4%) for statements made by artists, writers and poets and 6 cases (3%) for statements made by professional organizations. The 2 lawsuits filed against documentary filmmakers (1%) and 1 lawsuit filed against student statements were at the bottom.

² Referring to "trustees" appointed by the government to replace elected mayors in Kurdish cities

Documentary Filming Equated with ‘Reconnaissance’



Documentary filmmaker Sibel Tekin was first detained in a raid on her home on **16 December 2022**. She was then arrested on charges of "membership in a terrorist organization". An investigation was launched against her on the grounds that her filming for the documentary "**Life Beginning in Darkness**" on Turkey switching to permanent daylight savings' time was actually a "reconnaissance mission for an (armed) organization". Arrested on December 17, Tekin was released on January 30, 2023.

The prosecutor argued Tekin's camera was old and low-resolution, citing this as evidence that reconnaissance was carried out on behalf of an armed organization.

The prosecutor described making a video in the early hours or the days as "unusual". The prosecutor questioned Tekin during the hearing: "Before shooting a documentary, a script is usually drafted. Have you written such a script?" Tekin's trial continues.

Sibel Tekin's Indictment:

Prosecuted for membership in an illegal organization, no organization specified

The indictment claims that Tekin is affiliated with various organizations, but does not specify which organization he is a member of, and demands that he be sentenced for "**membership in an armed organization**". The indictment also requested that the sentence be increased by half in accordance with Article 5 of the Anti-Terror Law (TMK). The case against Tekin continues at Ankara 26th High Criminal Court.

Accusations leveled against the defendants

In the 233 cases monitored during this period, the defendants were charged with a total of **329** different allegations under different provisions of the Turkish Penal Code (TCK) and the Anti-Terror Law (TMK). Eleven of these allegations consisted of "attack on personal rights or damage to commercial reputation", which were filed in the civil or commercial courts of first instance. The remaining allegations involved criminal provisions in various laws.

The most common charges were "opposition to Law No. 2911 on Meetings and Demonstrations" with 14% (47 times), "making propaganda for a terrorist organization" under Article 7/f.2 of the Anti-Terror Law with 13.9% (46 times), "insulting a public official" under Article 125/f.3 of the TCK with 9% (30 times), and "membership of an armed terrorist organization" under Article 7/f.2 of the Anti-Terror Law with 9% (30 times).

^Whoever demands to exercise their rights meets with a lawsuit'

"Workers, women, students, LGBTI+'s, lawyers... Whoever wanted to assert their rights and demonstrate faced bans, interventions and even lawsuits. Predominantly under Law No 2911... This case is a threat not only to the struggle against the disappeared, but also to the freedom of assembly and demonstration of the whole society."

Human Rights Association (İHD) Istanbul Branch Chair & Attorney Gülseren Yoleri

In **28 cases (9%)**, the defendants were accused of **"insulting the president"** under Article 299 of the Turkish Penal Code (TCK) - an article, which the European Court of Human Rights (ECtHR) said is against Article 10 of the Convention, which protects freedom of expression. In one of the noteworthy judgments of the ECtHR, *Vedat Şorli v. Turkey* with application number 42048/19, it was stated that this offense regulated under Article 299 of the TCK clearly violates Article 10 of the ECHR and, in line with the opinion of the Venice Commission, the repeal of this article would be a solution.

In 15 cases (5%) during this period, the offense of "denigrating the nation, the state and its organs"³ under Article 301 of the TCK -- which was found by ECtHR ruled as lacking foreseeability, as it *"contains overly broad and vague phrasing"* -- was the grounds for prosecution.

During the monitoring period, defendants in 17 cases (5%) were charged with "resisting an officer" under Article 265 of the TCK ; 15 cases (5%) with "simple insult"⁴ under Article 125/1 of the TCK ; 14 cases (4%) with "inciting or insulting the public to hatred and hostility" under Article 216 of the TCK ; 12 cases (4%) with "revealing/disseminating or targeting the identity of persons who took part in the fight against terrorism" under Article 6/f.1 of the Anti-Terror Law.

³ Denigrating the Turkish Nation, the State of the Republic of Turkey, the institutions and organs of the State

⁴ While the first paragraph of Article 125 of the Turkish Penal Code, which regulates the crime of insult, regulates the simple form of the crime, the third paragraph considers the commission of the crime against a public official as an aggravating factor. The report analyzed the two provisions separately.



Photo: Anadolu Ajansı (AA)

Fırat Can Arslan Becomes First Journalist Arrested for Targeting Public Officials in the Fight Against Terrorism for Sharing Official Gazette

Mezopotamya Agency Reporter Fırat Can Arslan, who shared a screenshot from the Official Gazette's website which was an announcement of the appointment of M. K., (the prosecutor who prepared the indictment against 18 journalists, 15 of whom were arrested in Diyarbakır,) and of his spouse S.K., (who was among the judges in the trial of the same journalists) became the first journalist to be arrested on charges of targeting a public official involved in counterterrorism efforts under the Anti-Terror Law.

In 11 civil lawsuits (3%) filed in civil courts of first instance and commercial courts of first instance, **"attack on personal rights or damage to commercial reputation"** was alleged.

In 9 cases (3%), the accusation of **"wittingly and willingly aiding an (armed) organization"** as regulated under Article 220/f.7 of the TC was used. In 10 cases (3%), the accusation of "slander" as regulated under Article 267 of the TCC; in 6 cases (2%), the accusation of "unlawfully giving or obtaining personal data" as regulated under Article 136 of the TCC; and in 5 cases (2%), the accusation of "praising crime and criminals" as regulated under Article 215 of the TCK were leveled at the defendants.

In 4 cases, defendants were charged with "damaging public property" under Article 152. During the monitoring period, "protecting an offender (Article 283)", "printing or publishing the publications of terrorist organizations" under Article 6/f.2 of the Anti-Terror Law and "deprivation of liberty" under Article 109 of the Turkish Penal Code were charged in three cases each.

In this period, charges of "violating the Law No. 2565 on Military Prohibited Zones and Security Zones", "kidnapping or detaining transportation vehicles" under Article 223 of the TCK , "incitement to commit crime" under Article 214 of the TCK , "establishing and/or leading an armed organization" under Article 7/f.1 of the Anti-Terror Law, "obtaining information related to the security of the state" under Article 327 of the TCK and "insulting the signs of sovereignty of the state" under Article 300 of the TCK were also brought against the suspects in two cases each.

The least common charges were "committing a crime on behalf of an organization without being a member of an armed organization (Article 220/f.6)", "disclosing information that should remain confidential (Article 330)", "not publishing corrections and replies (Article 18 of the Press Law)", "disclosing information on the security and political interests of the state (Article 329)" and "disrupting the unity and territorial integrity of the state (Article 302)".

Accusations stemming from the new "censorship law," which formally criminalizes "publicly disseminating misleading information" (TCK 217/A), which was adopted in October 2022 and has been described as a "censorship law", appeared for the first time in two cases during this monitoring period.

In one of these two cases, journalist Sinan Aygöl, who was arrested in December 2022 for his reporting on allegations of sexual harassment of a girl in Bitlis-Tatvan and later released, was sentenced under the year-long censorship law. Aygöl was the first journalist to be investigated, the first to be arrested, the first to be sentenced and the first to make an individual application to the Constitutional Court through the MLSA Legal Unit.

The second case monitored during this period was the trial of journalist Ruşen Takva for his post on the armed attack on Fatih Özbek, the provincial chairman of the Hakkari Nationalist Movement Party (MHP). Takva was acquitted in his trial held after the trial monitoring period.

The charge of "publicly sharing misleading information" is discussed in detail on the following pages.

Why are there charges of injury or deprivation of liberty if the protests are peaceful?

In the list of charges leveled against the defendants in the monitoring period, some charges stand out as they seem to contradict the concept of "peaceful demonstrations". Could this really mean that the protesters acted aggressively ? Did they really hold anybody hostage? The context of such accusations suggests that this is really not the case.

In one case, six women and LGBTI+ protesters were charged with "**damaging public property**," because **a vase** in the building of the Istanbul Provincial Directorate of Family and Labor Social Services was broken. They were demonstrating outside the directorate on July 7, 2020, in defense of the Istanbul Convention.

In another example, a police officer filed a claim for "**simple injury**" in a case against 15 women protestors who condemned women's murders in 2021. The officer claimed that one of the protesters had pushed him. However, the protesters were beaten and manhandled during their detention by the police.

Table of Charges Filed

| Accusations | | |
|---|----|--------|
| Violation of Law No. 2911 on Meetings and Demonstrations | 47 | 14.29% |
| Making terrorist organization propaganda (TMK 7/2) | 46 | 13.98% |
| Insulting a public official (TCK 125/3) | 30 | 9.12% |
| Membership in an armed terrorist organization (TMK art.7/f.1) | 30 | 9.12% |
| Insulting the President (TCK 299) | 28 | 8.51% |
| Resisting to prevent the execution of a duty (TCK 265) | 17 | 5.17% |
| Insult (TCK 125/1) | 15 | 4.56% |
| Denigrating the state and its organs (TCK 301) | 15 | 4.56% |
| Inciting or insulting the public to hatred and hostility (TCK 216) | 14 | 4.26% |
| Disclosing/disseminating/targeting the identity of persons who took part in the fight against terrorism (TMK 6/1) | 12 | 3.65% |
| Attack on personal rights and damage to commercial reputation | 11 | 3.34% |
| Slander (TCK 267) | 10 | 3.04% |
| Knowingly and willingly aiding an organization (TCK 220/7) | 9 | 2.74% |
| Unlawfully giving or obtaining data (TCK 136) | 6 | 1.82% |
| Praising crime and criminals (TCK 215) | 5 | 1.52% |
| Damage to public property (TCK 152) | 4 | 1.22% |
| Printing or publishing publications of terrorist organizations (TMK 6/2) | 3 | 0.91% |
| Protecting an offender (TCK 283) | 3 | 0.91% |
| Deprivation of liberty (TCK 109) | 3 | 0.91% |
| Injury (TCK 86) | 2 | 0.61% |
| Hijacking or detention of means of transportation (TCK 223) | 2 | 0.61% |
| Incitement to commit a crime (TCK 214) | 2 | 0.61% |
| Establishing and/or leading an armed organization (TMK 7/1) | 2 | 0.61% |
| Publicly disseminating misleading information (TCK 217/A) | 2 | 0.61% |
| Obtaining information related to the security of the state (TCK 327) | 2 | 0.61% |
| Denigrating the signs of state sovereignty (TCK 300) | 2 | 0.61% |
| Violation of Law No. 2565 on Military Prohibited Zones and Security Zones | 2 | 0.61% |
| Committing a crime on behalf of a terrorist organization without being a member | 1 | 0.30% |
| Disclosing confidential information (TCK 330) | 1 | 0.30% |
| Failure to publish the correction and reply (Article 18 of the Press Law) | 1 | 0.30% |
| Disclosing information on the security and political interests of the state (TCK 329) | 1 | 0.30% |
| Disrupting the unity and territorial integrity of the state (TCK 302) | 1 | 0.30% |

A New Tool of Pressure on Freedom of Expression: Censorship Law



"We are journalists" - Photo: Bilal Seçkin

The regulation prepared by the AKP and MHP with the claim of "combating disinformation", but described as a "censorship law" by the opposition and press organizations, became a leading topic in the field of freedom of expression during this monitoring period.

With this regulation, an article criminalizing "publicly disseminating misleading information" was added to the Turkish Penal Code, resulting in information and news that the government doesn't approve of, to be considered as "disinformation". Internet news websites were brought under the regulation of the Press Law, and regulations on social media companies were also included in this law.

The Bill on the Amendment of the Press Law and Certain Laws was submitted to the Presidency of the Grand National Assembly of Turkey on May 26, 2022, with the signatures of AKP and MHP MPs. On October 13, 2022, the bill was approved by the General Assembly of the Parliament with AKP and MHP votes, and entered into force on October 18 after being published in the Official Gazette. Journalists, professional organizations and civil society organizations pointed out that the law would be used as an element of pressure on the media. The bill, which became law despite all objections,

brought about important debates and developments during the period covered by this monitoring period.

Press Law Now Covers Internet News Websites

With the amendment, online news websites were also included in the scope of the Press Law. As such, many of the obligations that newspapers and press organizations are subject to have been extended to online news websites. In order to be recognized as an internet news website, these websites must now notify the chief public prosecutor's office. The regulation also paves the way for journalists working for online news websites to obtain press cards. In return, online news websites will be obliged to archive all content they publish for two years to be submitted to the Chief Public Prosecutor's Office when necessary.

The four-month period granted to print media by the law to file a lawsuit will start from the date of the complaint, not from the date of publication. In other words, a news website may be subject to lawsuits for the current news it publishes on a daily basis, as well as for the news it published in previous years.

Social Media Affected by the Law

With the law, the Information Technologies Authority (BTK) and the Press Advertisement Agency (BİK) will be able to access any user's data from instant messaging applications. Companies that do not share information will face fines of up to 30 million TL and bandwidth throttling of up to 95%.

Press Cards Now in the Directorate of Communications

The law also regulates to whom and by whom press cards will be issued. Ten of the 19 members of the Press Card Commission are appointed by the Presidential Communications Directorate. *The commission's mission is to "evaluate the applicant's qualifications, professional work, works and awards and decide whether he/she can carry a press card or not"*, which has led to increased criticism of the state's issuance of press cards.

Sword of Damocles: Public Dissemination of Misleading Information

The most important change brought by the law is the offense of "publicly disseminating misleading information" regulated under Article 217/A of the Turkish Penal Code.

Publicly Disseminating Misleading Information

Article 217/A- (Amendment: 13/10/2022-7418/29 Art.) (1) Anyone who publicly disseminates false information concerning the internal and external security, public order and public health of the country with the sole intention of creating anxiety, fear or panic among the public, in a way that is capable of disrupting public peace, shall be punished with imprisonment from one year to three years.

(2) If the perpetrator commits the offense by concealing his real identity or within the framework of the activities of an organization, the penalty imposed according to the first paragraph shall be increased by half.

The most criticized aspect of the law is the definition of "false information". This is because the text of the article is rather vague on what constitutes disinformation. The vagueness of the provision raises serious concerns that it might lead to arbitrary practices.

First Lawsuit Filed Against Sinan Aygöl

Following the adoption of regulation, the first investigation was opened against journalist Sinan Aygöl in December 2022. The grounds for the investigation were his reporting on the sexual assault on a minor in Tatvan, a district of Bitlis province. Aygöl's defense was undertaken by the MLSA Legal Unit. On February 28, 2023, the Tatvan Criminal Court of First Instance sentenced the journalist to 10 months in prison for this crime, making Aygöl the first journalist to be sentenced for "disinformation". Aygöl's appeal to the regional court of appeal was rejected and his case is currently under appeal. MLSA filed the first individual to the Constitutional Court against Aygöl's detention under Article 217/A.

To date, at least 26 journalists have been investigated, six have been detained and four have been arrested.

"Most recently, T24 writer Tolga Şardan was arrested on November 1 for his article titled *"What's in the 'judicial report' submitted by the National Intelligence Agency to the Presidency?"*. After five days of detention, journalist Şardan was released on November 6.

Constitutional Court Rejects Annulment Request

Following the adoption of the law, the Republican People's Party (CHP) applied to the Constitutional Court for a stay of execution and annulment of the law. Legal experts evaluated the law as contrary to the provisions of the Constitution regulating freedom of thought and expression and freedom of the press. Emphasizing that the law is not predictable, they called for its annulment as a direct restriction on freedom of expression.

Defenders of the law argued that four conditions must be met for the crime to be punishable. According to this view, in order to be punishable under the disinformation law, the act must be committed with the sole purpose of creating anxiety, panic and fear among the public; the information must be related to internal or external security, public order or public health; the information must be false; and it must be disseminated in a manner likely to disturb public peace. However, legal experts emphasize that in reality arrests and punishments have been made without these elements and that the law has been used uncontrollably as a tool of repression against independent media.

The MLSA Legal Unit also issued a letter to the members of the Constitutional Court on November 4, demanding the law's annulment.

Letter from MLSA to the Members of the Constitutional Court: Cancel the Censorship Law!

"...It is the duty of the media literate readership to judge which news is true and which is false. It is not acceptable for judges, prosecutors or the administration to decide whether a news story is true or false, neither in accordance with the principles of journalism nor in a democracy with a free opposition media. If there is a falsehood, the addressee will deny it. It cannot be left to prosecutors to refute or confirm it..."

Journalists and Professional Organizations: “This Law Must Be Annulled”

Journalists and professional journalism organizations held a rally in front of the Constitutional Court on November 8, the day the Supreme Court was due to hear the annulment of the law.

The Media and Law Studies Association also took part in the rally with journalists and representatives of professional organizations. Journalists' Association, Journalists' Union of Turkey (TGS), DİSK-Basın İş, Contemporary Journalists Association (ÇGD), Press Council of Turkey, as well as representatives of professional organizations such as Union of Turkish Bar Associations (TBB), Union of Chambers of Turkish Engineers and Architects (TMMOB) and many politicians and journalists attended the rally. In their statements, they emphasized that the law must be annulled to protect the right to information for 85 million people.

The Constitutional Court announced its decision on November 8. The Court rejected the annulment request by six votes to eight. The decision was met with reaction from professional organizations. The reasoned decision had not yet been published at the time of this report's publication.

An Overview of Freedom of Expression Cases Based on 'Types of Crimes'

In order to determine the most common category of accusations for which individuals were put on trial in the monitored period, we divided the accusations into general groups according to their types.

The data collected as part of the program showed that during the monitoring period, individuals were most often prosecuted for **"terrorism crimes"**. In 103 (32%) of the **233 freedom of expression cases monitored**, individuals were prosecuted for **"terrorism" crimes regulated under the Anti-Terror Law**.

Terrorism crimes are defined under the Anti-Terrorism Law as *"explaining or targeting the identity of public officials who have taken part in the fight against terrorism"* (TMK art.6/f.1), *"printing and publishing the publications of terrorist organizations"* (TMK art.6/f.2), *"membership to an armed terrorist organization"* (TMK art.7/f.1), *"publishing propaganda in favor of terrorist organizations"* (TMK art.7/f.2) and other terrorist crimes listed in the TMK.

The second most common category of offense in the monitored cases was **opposition to Law No. 2911 on Meetings and Demonstrations**; in **47 (15%) cases** individuals were charged with this offense.

"Crimes against honor"⁵ and **"crimes against the signs of the sovereignty of the State and the dignity of its organs"⁶** ranked third; in **45 cases (14%)** each, charges falling under this category were the

primary charges against the accused. These were followed by **"crimes against public peace"** (**23 cases, 7%**); **"crimes against the reliability and functioning of public administration"** (**17 cases, 5%**); **compensation cases** (**12 cases, 4%**); **"crimes against the judiciary"** (**11 cases, 3%**); **"crimes against private life and privacy"** (**6 cases, 2%**).

The categories of crimes that accounted for approximately 1% of the data were as follows: **"crimes against property"** (4 cases), **"crimes against state secrets and espionage"** (4 cases), **"crimes against liberty"** (3 cases), **"crimes against means of transport or fixed platforms"** (2 cases), **"crimes against bodily integrity"** (2 cases), **"crimes against the security of the state"** (1 case).

Students Protesting President Charged for "Detention of Transportation Vehicles"

In October 2021, Boğaziçi students were charged with "kidnapping or detaining transportation vehicles" (TCK 223) and "deprivation of liberty" for allegedly blocking the passage of the university president's office vehicle during a protest against the appointment of a trustee rector in front of Boğaziçi University rectorate building.

⁵ **Insults** and **insult to public officials** are regulated under this category.

⁶ The offenses of **insulting the President of the Republic and denigrating the State, the nation or the institutions and organs of the State** are included in this group.

⁷ **The crimes of inciting the public to hatred and hostility and publicly disseminating misleading information** are included in this category.

Head of Bread Producers Union charged with insulting the President

Bread Producers Union President Cihan Kolivar was among those who were prosecuted for "insulting the President". Kolivar, who was investigated for insulting the President for saying "Bread is the staple food of stupid societies" in a program on Habertürk, was arrested on November 9, 2022. The lawsuit filed against Kolivar, who was released eight days later upon the objection of his lawyer, continues at Istanbul 17th Criminal Court of First Instance.

In the second lawsuit filed on February 10, 2023 against journalist **Sedef Kabaş**, who was arrested on January 22, 2022 for "insulting the president" on the grounds of a proverb she uttered in a program broadcast on TELE1 and released after 49 days, upon the complaint of President Recep Tayyip Erdoğan's lawyers, her social media posts were cited as criminal evidence. In the indictment, 25 separate posts made by Kabaş on her Twitter account were considered as evidence of the crime of "insulting the president". Among these,

are 25 retweets by Kabaş. For example, İYİ Party Chairperson Meral Akşener's use of the term "inane" in a tweet directed at President Erdoğan is also among the evidence.

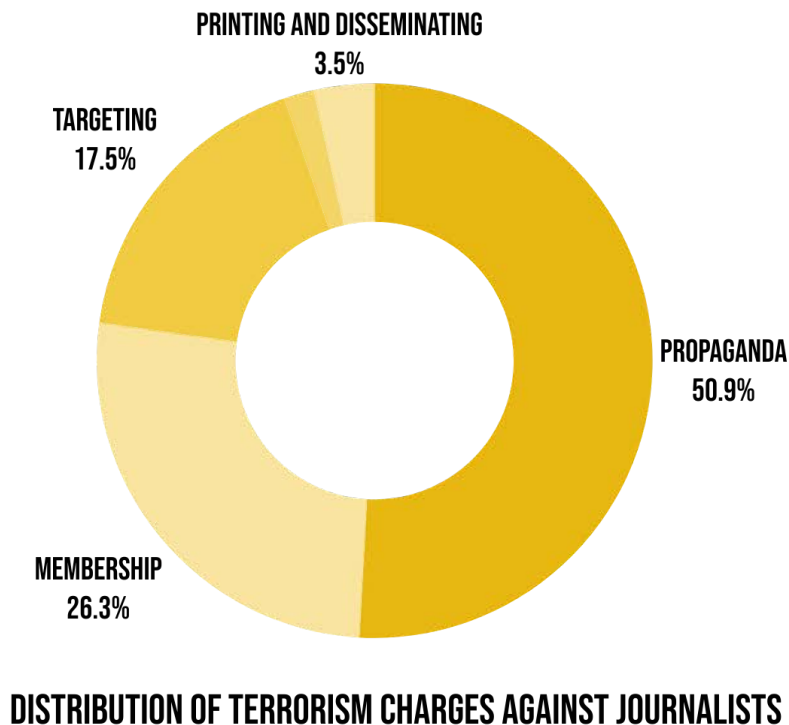
| Crime Category | Number of Cases |
|--|-----------------|
| Terrorism Offenses | 103 |
| Law No. 2911 on Meetings and Demonstrations | 47 |
| Crimes Against Honor | 45 |
| Crimes against the Signs of Sovereignty of the State and the Dignity of its Organs | 45 |
| Offenses against Public Peace | 23 |
| Crimes against the Reliability and Functioning of Public Administration | 17 |
| Crimes against Justice | 13 |
| Damage to commercial reputation and violation of personal rights | 11 |
| Crimes against Private Life and Privacy | 6 |
| Crimes against Assets | 4 |
| Crimes against State Secrets and Espionage | 4 |
| Crimes against Liberty | 3 |
| Other | 3 |
| Offenses against Bodily Integrity | 2 |
| Offenses against Vehicles or Fixed Platforms | 2 |
| Crimes against State Security | 1 |

Journalistic Activities Treated as Both "Crime" and "Terrorism"

In **133 cases** filed for journalism, the most common accusations were "**terrorism offenses**". In 43% of these cases (**57 cases**) journalists were charged with **terror-related offenses**. The most common charges were "**making propaganda for a terrorist organization (TMK 7/2)**" (**29 cases**) and "**membership of an armed terrorist organization**" (**15 cases**).

| Terrorism Charges against Journalists | |
|--|-----------|
| Making terrorist organization propaganda (TMK 7/2) | 29 |
| Membership in an armed terrorist organization (TMK art.7/f.1 - TCK 314/2) | 15 |
| Disclosing/disseminating/targeting the identity of people who took part in the fight against terrorism (TMK art.6/f.1) | 10 |
| Knowingly and willingly aiding an organization (TCK 220/7) | 1 |
| Printing or publishing publications of terrorist organizations (TMK 6/2) | 2 |
| Total | 57 |

In the indictments, journalistic activities, news reports and social media posts were frequently evaluated as **terrorist organization propaganda**. Journalists whose cases were monitored as part of the program were **most often accused of making terrorist organization propaganda** due to their news reports.



Evidence Used against the Defendants

In **233 freedom of expression cases** monitored during the reporting period, **21** accusations in **453 different types of evidence** were based on indictments.

Of this evidence, **119** consisted of the testimonies of individuals.

The defendant's news content/photos/writings were used in 96 cases, **social media posts** in 68 cases, **interviews or statements such as television speeches** were used in 27 cases. In addition, **meetings/demonstrations/marches/press releases** attended were used in at least 43 cases.

Membership in an association or the institution they work for was used as evidence of illegal organization membership in 7 cases. Secret witness statements were also used as evidence against the defendants in 7 cases.



Photo: Mesopotamia Agency

'I am being avenged for Kemal Kurkut photos'

"After publishing the photographs of Kemal Kurkut, there was no pressure I was not subjected to. The secret witness they produced became reckless enough to say that Kemal Kurkut was a 'member of an illegal organization' and that I 'took the photos on the instructions of the organization'. But instead of condemning this recklessness, the court sentenced me. Obviously, even sentencing was not enough to avenge the photographs that exposed the official lie, and now I am being tried again in the same court, this time in pre-trial detention. A witness has been fabricated again, this time called an 'open witness'."

Abdurrahman Gök

From an interview he gave to MLSA while being held in Diyarbakır High Security Prison No. 1.

Secret witness statements as evidence

In a total of 7 cases, secret witness statements were used as evidence. Regarding this practice, which is contrary to the principles of the publicity of the trial and the discussability of the evidence, the Constitutional Court stated in its decision on Rıza Barut Application dated 28.12.2021 that *".....Therefore, it is not possible to accept the abstract secret witness statement, which does not contain information about the place, time, person and action and does not give the judicial authorities the opportunity to control in this sense, as a strong indication."* (para: 74)" and stated that these abstract secret witness statements should not be used as a basis for the verdict.

| Evidence | # |
|--|----|
| News content/photo/article | 96 |
| Social media posts | 68 |
| Law enforcement investigation | 56 |
| Accused statements (investigation phase) | 49 |
| Attended meeting/demonstration/march/press release | 43 |
| Crime scene/detention reports | 33 |
| Statements | 27 |
| Statements of the complainant | 18 |
| Mobese/Camera footage | 12 |
| Denunciation/criminal complaint against the defendant | 9 |
| Witness statements | 8 |
| Technical-Physical Surveillance reports | 7 |
| News notes or interviews with sources | 7 |
| Secret witness statement | 7 |
| The organization suspect works for/the party or association suspect is a member of | 7 |
| Investigation permission from the Ministry of Justice | 2 |
| Possession of banned publications | 1 |
| Social media posts | 1 |
| Travel information | 1 |
| Money transactions | 1 |

Overview of Evidence of "Membership of a Terrorist Organization"

In 30 of the 233 cases monitored, the defendants were charged with "membership of a terrorist organization" (TMK art.7/f.1- TCK 314/2). In 30 cases, 94 different pieces of evidence were presented. Almost all of this evidence consisted of news reports, speeches, writings, statements and social media posts of the defendants.

| Evidence Presented in Cases Charged with Membership of an Organization | Cases |
|---|-------|
| News articles/articles/publications/photographs | 20 |
| Social media posts | 11 |
| Membership of association/political party/ organization, institution where he/she works | 9 |
| Crime scene/detention reports | 9 |
| Attended meeting/demonstration/march/press release | 8 |
| Technical-physical surveillance reports | 8 |
| Statements | 6 |
| Secret witness statement | 5 |
| Telephone interviews with news sources | 5 |
| Witness statements | 5 |
| Mobese/camera footage | 4 |
| Denunciation/criminal complaint against the defendant | 3 |
| Financial transactions | 1 |

The use of journalists' news articles and social media posts as evidence for membership of a terrorist organization, which is one of the most common accusations against journalists, constitutes a violation of the right to freedom of expression under Article 10 of the European Convention on Human Rights.



JINNEWS' News Language Cited as Criminal Evidence

Safiye Alağaç, News Director of Jin News, was detained along with 15 other journalists as part of an investigation by the Diyarbakır Chief Public Prosecutor's Office and arrested on 16 June 2022 on charges of "being a member of an illegal organization". The investigation file was separated and a lawsuit was filed against Alağaç on the same charge.

The indictment cited **news visuals and headlines published in Jin News, news language, editorial policy, and the ban on access to the agency's website as evidence of the crime**. At the first hearing of the trial held at Diyarbakır 5th High Criminal Court on June 15, 2023, Alağaç was released with a ban on leaving the country. The case is still ongoing.



**Social Media Post Cited as Evidence of
"Repeated Propaganda for an Illegal Organization"**

An indictment was issued against Jin News reporter **Beritan Canözer** on 31 January 2022 on the allegation of "chained illegal organization propaganda" based on her social media posts from 2014 and 2015. Canözer was sentenced to **3 years, 1 month and 15 days in prison** at the fourth hearing held at Diyarbakır 4th High Criminal Court on November 17, 2022.

Increase in Pretrial Detentions

In the six trials held during the period covered by the report, **30 people, including 29 journalists, were tried in pre-trial detention**. The main reason for the increase in pre-trial detentions was that the trials of journalists arrested in Diyarbakır and Ankara in 2022 were also held during this period.

List of Detainees on Trial in Monitored Cases

| File Number | Detainees on Trial | Accusations | Release Date | Number of Detainees | Duration |
|-------------|--|---|--------------|---------------------|------------|
| 2022/158 | Former Taraf writer Mehmet Baransu | Obtaining information related to the security of the state (TCK 327), Disclosing information related to the security and political interests of the state (TCK 329) | Not released | 1 | 9 years |
| 2022/434 | TMA ⁸ President Şebnem Korur Fincancı | Making terrorist organization propaganda (TMK 7/2), Membership of an armed terrorist organization (TCK 314/2) | Jan 11, 2023 | 1 | 2.5 months |
| 2023/113 | Jin News News Director Safiye Alağaç | Membership in an armed terrorist organization (TCK 314/2) | Jun 15, 2023 | 1 | 12 months |
| 2023/24 | Ankara 11 journalists | Membership in an armed terrorist organization (TCK 314/2) | May 16, 2023 | 11 | 7 months |
| 2023/28 | Journalist Sezgin Kartal | Membership in an armed terrorist organization (TMK art.7/f.1 - TCK 314/2) | Jun 22, 2023 | 1 | 5 months |
| 2023/69 | Diyarbakır 15 journalists | Membership in an armed terrorist organization (TMK art.7/f.1 - TCK 314/2) | 12 Jul 2023 | 15 | 13 months |

With the exception of Mehmet Baransu, who has been in prison since 2015, the average length of imprisonment was 9 months. The 15 journalists imprisoned in Diyarbakır for 13 months were the longest held during this reporting period.

⁸ Turkish Medical Association

Diyarbakır 15 Journalists Released

Social media posts are among the evidence against 18 journalists on trial in Diyarbakır for "illegal organization membership". Dicle Fırat Journalists Association (DFG) Co-Chair **Serdar Altan**, JINNEWS Director **Safiye Alagaş**, Xwebûn Newspaper Editor-in-Chief **Mehmet Ali Ertaş**, Mezopotamia Agency (MA) editor **Aziz Oruç**, journalists **Zeynel Abidin Bulut**, **Ömer Çelik**, **Mazlum Doğan Güler**, **İbrahim Koyuncu**, **Neşe Toprak**, **Elif Üngür**, **Abdurrahman Öncü**, **Mehmet Şahin**, **Lezgin Akdeniz**, **Suat Doğuhan**, **Ramazan Geciken** and press worker **Remziye Temel** were arrested on 16 June 2022 on charges of "being an illegal organisation member". Journalists **Esmer Tunç**, **Mehmet Yalçın**, **Gülşen Koçuk**, **Kadir Bayram** and **Feynaz Koçuk** and **İhsan Ergülen**, who took part in a street interview, were released on judicial control conditions.

Diyarbakır Chief Public Prosecutor's Office prepared an indictment against 18 journalists and media workers due to "illegal organization membership". The files on journalists **Safiye Alagaş**, **Gülşen Koçuk**, **Feynaz Koçuk** and **İhsan Ergülen** were separated. Journalists' news programs, Social Security Institution records, phone calls with colleagues, secret witness testimonies, news archives, books they read, records of their entries and exits abroad, social media posts, press statements they attended, news they wrote, and interviews they gave to the press were included in the indictment as criminal evidence. In the first hearing of the case held at Diyarbakır 4th High Criminal Court on July 11 and 12, 2023, 15 journalists and press workers were released after 13 months in detention. The court issued a travel ban for the released journalists.

These results point to a recent trend and increase in pre-trial detention. In the period **June - December 2018**, the number of defendants under pretrial detention was **44**, while this number increased to **53** in the period **February 2019 - March 2020**. In the period **June - December 2020**, this number decreased significantly to **6**. In **January - July 2021**, the number of defendants in pre-trial detention decreased to **3**, but increased again to 12 in **September 2021 - July 2022**. In the period covered by this report, **30 people were in pre-trial detention**, a **150% increase** compared to the previous period.

'We Pay the Price for Our Profession'

"I was detained unjustly because of my news reports. I was arrested unjustly and unlawfully, saying 'Why did you make this news, why did you take this video?' We are being labeled as terrorists. We are paying the price for our profession and journalism. They ask us why we don't report tabloid news. But when there is a truth, it is impossible not to write about it."

Aziz Oruç

From his defense statement at the first hearing of the trial against 18 journalists in Diyarbakır on July 12, 2023.

It should also be taken into consideration that there are other detainees, such as Selahattin Demirtaş, whose trials were not held during this period.

In addition, during the reporting period, there were detentions and arrests of journalists that turned into trials. Therefore, the trend of pre-trial detention can be expected to continue. For example, **Merdan Yanardağ**, who was arrested for criticizing the conditions of Abdullah Öcalan's execution in a program broadcast on TELE1 TV, was released after the trial monitoring report; this case will only be included in the statistics of the next report. Similarly, it should not be forgotten that journalists **Dicle Müftüoğlu**, **Sedat Yılmaz**, **Abdurrahman Gök** and **Mehmet Şah Oruç**, who were arrested before the May elections and whose trials were therefore outside the reporting period, are also in pre-trial detention.

Concluded Cases: 37 Convictions, 59 Acquittals

During this period, 99 of the 233 cases **were concluded**. In 59 of these cases, a total of **260 defendants were acquitted**, while in **32 cases**, a total of **217 years, 8 months and 20 days** of imprisonment was imposed on 116 defendants. In 6 cases, a total of **75.126 TL** was imposed on 12 defendants in judicial fines, while in 2 civil cases, three defendants were ordered to pay **35.000 TL non-pecuniary damages**.

| Verdict | Case | Defendants | Total |
|----------------------------------|------|------------|---------------------------------|
| Imprisonment | 32 | 116 | 217 years, 8 months and 20 days |
| Acquittal | 59 | 260 | - |
| Criminal Fine⁹ | 6 | 12 | 75.126 TL |
| Compensation | 2 | 3 | 35.000 TL |

'They Want to Get Rid of Us'

"They want to get rid of the Turkish Medical Association, they want to get rid of me a lot. If the death penalty is introduced, only then will this happen. You cannot scare us by putting us in four walls. As Nazım said, that wall of yours is too much for us!"

Şebnem Korur Fincancı

From the December 24, 2022 defense.

⁹ In a case involving four defendants, 3 defendants were sentenced to 10 months imprisonment each and one defendant was sentenced to a judicial fine.

Acquittal Verdicts for the Defendants

| File Number | Cause of Action | Case Subject | Number of Accused | Court Name |
|-------------|--|--|-------------------|--|
| 2012/335 | Professional statement organization | Izmir Bar Association Religious Affairs Case - Inciting or insulting the public to hatred and hostility (TCK 216) | 11 | Izmir 1st High Criminal Court |
| 2018/122 | Journalism | Mikail Tunçdemir, Ferhat Duman - Making propaganda for a terrorist organization (TMK 7/2) | 1 | Van 5th High Criminal Court Court |
| 2018/269 | Journalism | Adil Demirci - Membership in an armed terrorist organization (TCK 314/2) | 4 | Istanbul 25th High Criminal Court |
| 2018/949 | Journalism | Road blockage case - Making propaganda for a terrorist organization (TMK 7/2) | 5 | Diyarbakır 4th High Criminal Court |
| 2019/237 | Journalism | Engin Korkmaz - Insulting the President (TCK 299) | 1 | Antalya 19th Criminal Court of First Instance |
| 2019/716 | Peaceful Demonstration - Other | Selahattin Demirtaş (Batman Newroz) | 1 | Batman 2nd Criminal Court of First Instance |
| 2020/240 | Journalism | Case on Illegal Building on the Bosphorus - Disclosing/disseminating/targeting the identity of people who took part in the fight against terrorism (TMK 6/1) | 4 | Istanbul 26th High Criminal Court |
| 2020/96 | Peaceful Demonstration - Trustee Protest | Batman Trustee Protest Trial | 28 | Batman 1st Criminal Court of First Instance |
| 2021/133 | Peaceful Demonstration - Other | Mothers for Peace (Leyla Güven support action) | 7 | Istanbul 23rd High Criminal Court |
| 2021/201 | Professional statement organization | Ankara Bar Association Religious Affairs Case - Insult (TCK 125/1), Insulting a public official (TCK 125/3) | 12 | Ankara 16th High Criminal Court |
| 2021/212 | Peaceful Demonstration - Other | Kocaeli Boğaziçi Support Protest (Kocaeli Labor and Democracy Forces Platform) | 17 | Kocaeli 5th Criminal Court of First Instance |
| 2021/298 | Journalism | Barış Barıştıran - Making propaganda for a terrorist organization (TMK 7/2) | 1 | Diyarbakır 8th High Criminal Court |
| 2021/380 | Peaceful Demonstration - Other | Bakırköy Prison Protest Case | 13 | Istanbul 23rd High Criminal Court |
| 2021/387 | Journalism | Journalist Alican Uludağ- Disclosing/disseminating/targeting the identity of people who took part in the fight against terrorism (TMK 6/1) | 1 | Ankara Regional Court of Appeals 22nd Criminal Chamber |
| 2021/510 | Journalism | Görkem Kınacı - Inciting or insulting the public to hatred and hostility (TCK 216) | 1 | Bakırköy 21st Criminal Court of First Instance |
| 2021/540-D | Journalism | Velat Öztekin - Insulting the President (TCK 299) | 1 | Diyarbakır 7th Criminal Court of First Instance |
| 2021/837 | Artist/Writer/Poet statement | Ilyas Salman - Denigrating the state and its organs (TCK 301) | 1 | Istanbul Anadolu 54th Criminal Court of First Instance |
| 2021/885 | Peaceful Demonstration - Labor Action | DEV-Tekstil May Day Action | 40 | Büyükcemece 10th Criminal Court of First Instance |
| 2021/948 | Peaceful Demonstration - LGBTI+ / Pride Action | 2021 Pride Week (Cihangir Case) | 7 | Istanbul 18th Criminal Court of First Instance |
| 2022/152 | Journalism | Journalist İnci Aydın - Disclosing/disseminating/targeting the identity of people involved in the fight against terrorism (TMK 6/1) | 1 | Aydın 2nd High Criminal Court Court |
| 2022/1557 | Journalism | Levent Gültekin - Insulting the President (TCK 299) | 1 | Istanbul 23rd Criminal Court of First Instance |

| File Number | Cause of Action | Case Subject | Number of Accused | Court Name |
|-------------|--|--|-------------------|---|
| 2022/1620 | Politician/Party statement or activity | Eren Erdem - Insulting the President (TCK 299) | 1 | Istanbul Anatolia 63rd Criminal Court of First Instance |
| 2022/163 | Journalism | Görkem Kınacı, Uğur Şahin, Uğur Koç - Insulting a public official (TCK 125/3), Slander (TCK 267) | 3 | Beykoz 6th Criminal Court of First Instance |
| 2022/180 | Politician/Party statement or activity | AABK Founding President Case - Making propaganda for a terrorist organization (TMK 7/2) | 1 | Istanbul 23rd High Criminal Court |
| 2022/1897 | Journalism | Mustafa Sönmez - Insulting the President (TCK 299) | 1 | Istanbul Anatolia 38th Criminal Court of First Instance |
| 2022/1919 | Peaceful Demonstration - LGBTI+ / Pride Action | Eskisehir Pride March | 8 | Eskisehir 4th Criminal Court of First Instance |
| 2022/193 | Journalism | Ferhat Parlak - Membership in an armed terrorist organization (TCK 314/2) | 1 | Diyarbakır 11th High Criminal Court |
| 2022/197 | Activist (rights defender) definition | Rights defender Aslı Saraç - Making propaganda for a terrorist organization (TMK 7/2) | 1 | Ankara 28th High Criminal Court |
| 2022/21 | Journalism | Cafer Solgun - Insulting a public official (TCK 125/3) | 1 | Tunceli 2nd Criminal Court of First Instance |
| 2022/215 | Professional statement organization | Diyarbakır Bar Association Armenian Genocide Case - Denigrating the state and its organs (TCK 301) | 11 | Diyarbakır 11th High Criminal Court |
| 2022/23 | Activist (rights defender) definition | Fatin Kanat - Making propaganda for a terrorist organization (TMK 7/2) | 1 | Ankara 25th High Criminal Court |
| 2022/249 | Journalism | Ceylan Şahinli - Making propaganda for a terrorist organization (TMK 7/2) | 1 | Ankara 20th High Criminal Court |
| 2022/251 | Journalism | Akın Gürlek targeting case - Disclosing/disseminating/targeting the identity of people who took part in the fight against terrorism (TMK 6/1) | 2 | Istanbul 34th High Criminal Court |
| 2022/27 | Peaceful Demonstration - LGBTI+ / Pride Action | 2021 Istanbul Pride March (Mis Street) | 19 | Istanbul 60th Criminal Court of First Instance |
| 2022/286 | Activist (rights defender) definition | Özlem Yılmaz - Disclosing/disseminating/targeting the identity of people who took part in the fight against terrorism (TMK 6/1) | 1 | Izmir 21st High Criminal Court |
| 2022/287 | Journalism | Journalist Nazlan Ertan - Disclosing/disseminating/targeting the identity of people involved in the fight against terrorism (TMK 6/1), Insulting a public official (TCK 125/3) | 1 | Izmir 21st High Criminal Court |
| 2022/324 | Peaceful Demonstration Women's Action | Ankara Istanbul Convention Protest | 8 | Ankara 53rd Criminal Court of First Instance |
| 2022/33 | Artist/Writer/Poet statement | Rüstem Avcı - Insulting a public official (TCK 125/3) | 1 | Nazimiye Criminal Court of First Instance |
| 2022/340 | Activist (rights defender) definition | Eren Keskin - Disclosing/disseminating/targeting the identity of people who took part in the fight against terrorism (TMK 6/1) | 1 | Izmir 18th High Criminal Court |
| 2022/344-AT | Activist (rights defender) definition | Lawyer Aryen Turan - Knowingly and willingly aiding an organization (TCK 220/7) | 1 | Izmir 18th High Criminal Court |

| File Number | Cause of Action | Case Subject | Number of Accused | Court Name |
|--------------|---|---|-------------------|--|
| 2022/348 | Journalism | Hayri Tunç - Inciting or insulting the public to hatred and hostility (TCK 216) | 1 | Istanbul 42nd Criminal Court of First Instance |
| 2022/356 | Journalism | Nişmiye Güler - Making propaganda for a terrorist organization (TMK 7/2) | 2 | Istanbul 27th High Criminal Court |
| 2022/380 | Journalism | Nazan Özcan - Insult (TCK 125/1), Slander (TCK 267) | 1 | Istanbul 34th Criminal Court of First Instance |
| 2022/410 | Activist definition (rights defender) | Büyükada case - Membership of an armed terrorist organization (TCK 314/2), Knowingly and willingly aiding an organization (TCK 220/7) | 4 | Istanbul 35th High Criminal Court |
| 2022/42-Z | Journalism | Zübeyde Sarı - Inciting or insulting the public to hatred and hostility (TCK 216) | 1 | Bakırköy 24th Criminal Court of First Instance |
| 2022/422 | Journalism | Ender İmrek - Insulting the President (TCK 299) | 1 | Bakırköy 44th Criminal Court of First Instance |
| 2022/468 | Journalism | Mustafa Kömüç - Insulting a public official (TCK 125/3) | 1 | Istanbul Anatolia 1st Criminal Court of First Instance |
| 2022/514 | Journalism | Sezgin Kartal - Insult (TCK 125/1) | 1 | Istanbul 24th Criminal Court of First Instance |
| 2022/525 | Journalism | Onur Öncü - Insulting a public official (TCK 125/3) | 1 | Küçükçekmece 22nd Criminal Court of First Instance |
| 2022/529 | Activist definition (rights defender) | Veli Saçılık - Denigrating the state and its organs (TCK 301) | 1 | Ankara 3rd Criminal Court of First Instance |
| 2022/543 | Activist definition (rights defender) | Öztürk Türkoğlu - Denigrating the state and its organs (TCK 301) | 1 | Ankara 24th Criminal Court of First Instance |
| 2022/543-IST | Journalism | Journalist Fırat Fıstık, Ozan Buz - Unlawful provision or seizure of data (TCK 136) | 2 | Istanbul 46th Criminal Court of First Instance |
| 2022/56 | Activist definition (rights defender) | Efkan Bolaç - Insulting the President (TCK 299) | 1 | Istanbul 52nd Criminal Court of First Instance |
| 2022/585 | Activist definition (rights defender) | Hanife Yıldız - Insulting a public official (TCK 125/3) | 1 | Istanbul 48th Criminal Court of First Instance |
| 2022/640 | Journalism | Alican Uludağ - Insulting a public official (TCK 125/3) | 1 | Ankara 67th Criminal Court of First Instance |
| 2022/74 | Journalism | Çağrı Sarı, Arif Koşar - Denigrating the state and its organs (TCK 301) | 2 | Istanbul 2nd Criminal Court of First Instance |
| 2022/840 | Peaceful Demonstration Saturday Mothers | - Saturday Mothers/People of Saturday Cemetery of the Orphans Trial | 14 | Küçükçekmece 1st Criminal Court of First Instance |
| 2023/243 | Journalism | Ruşen Takva - Publicly disseminating misleading information (TCK 217/A) | 1 | Hakkari 1st Criminal Court of First Instance |
| 2023/38 | Journalism | Doğan Akın - Insulting a public official (TCK 125/3) | 1 | Istanbul 2nd Criminal Court of First Instance |

Imprisonment Sentences in Cases

In **32 cases, 116 defendants** were sentenced to **217 years, 8 months and 20 days**. In 21 cases, deferral of the announcement of the verdict (HAGB) was applied for 40 defendants. The Constitutional Court annulled the deferral of the announcement of the verdict on August 1, 2023.

Imprisonment Sentences During the Monitoring Period

Three defendants were sentenced to a total of 2 years, 7 months and 25 days in two trials over the statements of human rights defenders.

In three trials for **peaceful demonstrations** on different issues, 43 defendants were sentenced to a total of 104 years, 7 months and 18 days in prison.

In one of the cases related to student actions, 30 defendants were sentenced to a total of 16 years, 8 months.

In 18 cases for journalistic activities, 26 defendants were sentenced to 68 years, 4 months and 27 days in total.

In one case, 1 defendant was sentenced to 2 years, 8 months and 15 days in total.

In two cases, 2 defendants were sentenced to 1 year and 8 months in total for making a statement by an artist, writer or poet.

In three cases, 3 defendants were sentenced to 3 years, 2 months and 15 days in total for their statements/activities as politicians or party members.

Constitutional Court Cancels the Deferral of the Announcement of the Sentence



"Constitutional Court" - Photo: Bilal Seçkin

As can be seen in the data in this report, in some cases the courts decided to defer the announcement of the verdict (HAGB). The deferral of the announcement of the verdict (**HAGB**), **which is regulated under Article 231 of the Code of Criminal Procedure**, is applied when the penalty imposed on the defendant as a result of the trial is imprisonment for two years or less or a judicial fine. The court's deferral of the announcement of the verdict does not prevent the announcement of the conviction; it means that the verdict does not have any legal consequences for the defendant.

However, during this monitoring period, the Constitutional Court annulled the legal regulation on HAGB on August 1, 2023. According to the decision published in the Official Gazette, Trabzon 2nd Criminal Court of First Instance applied to the Supreme Court for the annulment of the deferral of the announcement of the verdict in a criminal case filed on charges of "intentional injury" and "resisting to prevent the execution of duty", claiming that the deferral of the announcement of the verdict was unconstitutional. In the application, it was stated that the decision to defer the announcement of the verdict did not provide adequate redress for the victims, led to the exemption of the perpetrators

from punishment and the state failed to fulfill its obligation to protect and develop the material and moral existence of individuals, and that this was contrary to Article 17 of the Constitution.

In the Constitutional Court's decision, it was stated that in cases involving allegations of ill-treatment, if the HAGB deferral is applied, the defendant does not receive an enforceable sentence and the victim is not provided with adequate and effective compensation.

In order to receive a deferral, the defendant must first accept this decision. If the defendant agrees to the HAGB deferral, they have to give up their right of appeal. Courts usually defer the announcement of the verdict without obtaining the defendant's consent. In the Constitutional Court's decision, it was pointed out that there is no legal regulation on when the defendant's declaration of will regarding the acceptance of the HAGB deferral will be asked, and it was stated that "This situation puts the defendant, who has not yet been convicted, in a vulnerable situation against the existence of the threat of conviction and forces him to waive his right to appeal in advance, which has not yet arisen."

Table of Cases Sentenced to Imprisonment

| Dosya No. | Cause of Action | Defendants | Sanık Sayısı | Total duration |
|-----------|--|--|--------------|--------------------------------|
| 2015/294 | Peaceful Demonstration - Other | Batman Live Shield Protest Trial | 31 | 98 years, 8 months and 28 days |
| 2018/185 | Other | ETHA Journalists Trial | 5 | 12 years, 6 months and 10 days |
| 2019/292 | Journalism | Van Medical Chamber Statement Case | 1 | 2 years, 9 months and 22 days |
| 2020/236 | Activist (rights defender) definition | Kemal Işıktaş Case | 1 | 7 months and 15 days |
| 2020/294 | Journalism | Hatice Sahin Case | 1 | 6 years and 3 days |
| 2020/33 | Journalism | Sadiye Eser and Sadık Topaloğlu Case | 2 | 12 years and 6 days |
| 2020/41 | Journalism | Journalist Rojda Oğuz news follow-up (This trial of 6 defendants was monitored only from the perspective of the journalist defendant). | 1 | 1 year 6 months 22 days |
| 2021/1170 | Politician / Party statement or activity | Sırrı Süreyya Önder Case | 1 | 5 months |
| 2021/12 | Journalism | Zaman Newspaper Trial | 4 | 11 years and 3 months |
| 2021/247 | Journalism | Çetin Kurşun Case | 2 | 13 years and 3 months |
| 2021/418 | Politician/Party statement or activity | Ekrem Imamoglu Case | 1 | 2 years, 7 months and 15 days |
| 2021/431 | Activist (rights defender) definition | "Insulting the president" case against three defendants | 2 | 1 year, 11 months and 10 days |
| 2021/443 | Journalism | Mehmet Emin Kurnaz Case | 2 | 1 year, 11 months and 10 days |
| 2021/477 | Journalism | Doğan Ergün and İzel Sezer Case | 2 | 2 years and 9 months |
| 2021/479 | Journalism | İsmail Arı Case | 1 | 1 year and 8 months |
| 2021/695 | Peaceful Demonstration - Student Action | Bosphorus Car Case | 30 | 16 years and 8 months |
| 2022/14 | Politician/Party statement or activity | Çağlar Demirel Case | 1 | 5 months |

| Dosya No. | Cause of Action | Defendants | Sanık Sayısı | Total duration |
|-----------|---------------------------------------|---|--------------|-------------------------------|
| 2022/158 | Journalism | Rabia Önver Trial | 1 | 1 year 6 months 27 days |
| 2022/202 | Journalism | Kadri Esen Case | 1 | 1 year 3 months |
| 2022/211 | Artist/Writer/Poet statement | Ahmet Telli Trial | 1 | 10 months |
| 2022/236 | Journalism | İsmail Çoban Case | 1 | 1 year 6 months 22 days |
| 2022/262 | Journalism | Van Helicopter Prosecutor Trial | 2 | 2 years and 6 months |
| 2022/292 | Journalism | Mehmet Güleş Case | 1 | 1 year 9 months 25 days |
| 2022/316 | Artist/Writer/Poet statement | Gülşen Çolakoğlu Case | 1 | 10 months |
| 2022/434 | Professional statement organization | Şebnem Korur Fincancı Trial | 1 | 2 years, 8 months and 15 days |
| 2022/51 | Journalism | Beritan Canözer Trial | 1 | 3 years 1 month 15 days |
| 2022/564 | Journalism | Can Ataklı Trial | 1 | 5 months and 25 days |
| 2022/7 | Peaceful Demonstration - Other | Van October 10 Protest Trial | 1 | 8 months |
| 2022/76 | Peaceful Demonstration - Other | Dersim We Can't Make a Living Protest Trial | 11 | 6 years, 3 months and 25 days |
| 2022/80 | Journalism | Nurcan Yalçın Case | 1 | 2 years and 6 months |
| 2023/89 | Journalism | Sinan Aygül Case | 1 | 10 months |
| 2022/60 | Activist definition (rights defender) | Van Dedeoğulları Banner Case | 3 | 2 years and 6 months |

Total number of prison sentences imposed

217 Years 8 Months 20 Days

Items with the Longest Imprisonment Sentences

The three crimes with the highest number of prison sentences in terms of duration were **"assisting a terrorist organization"**, **"membership in a terrorist organization"** and **"terrorist propaganda"**. In the decisions issued in this period:

32 defendants were sentenced to a total of **102 years, 7 months and 28 days** for **"knowingly and willingly aiding an armed terrorist organization"**. **5 defendants** were sentenced to **31 years 3 months and 9 days** in total for **"Membership of an armed terrorist organization"**. 14 defendants were sentenced to 29 years 9 months and 8 days in total for **"making propaganda for a terrorist organization"**. 4 defendants were sentenced to 11 years and 3 months in total for "committing crimes on behalf of a terrorist organization without being a member of the organization".

At this point, it should be noted that the ECtHR, in its judgment dated 14.11.2017 with application number 41226/09 *Işıkırık/Turkey*, found the provision "committing a crime on behalf of a terrorist organization without being a member of a terrorist organization" in paragraph 6 of Article 220 of the TCK problematic in terms of legal foreseeability and fairness and recommended that it be amended or abolished.

Regarding the subsequent charges, 3 defendants were sentenced to a total of 4 years and 5 months imprisonment for "unlawful transfer or seizure of data". 1 defendant was sentenced to a total of 2 years, 7 months and 15 days imprisonment for "insulting a public official (TCK 125/3)".

Although acquittals were issued in six cases, on the basis of the sentences, 2 defendants were sentenced to a total of 2 years and 6 months in prison for "revealing/disseminating or targeting the identity of people who took part in the fight against terrorism".

Other articles that followed in this period were as follows:

2 defendants on the charge of **"Demeaning the Turkish nation, the Republic of Turkey, the institutions and organs of the state"** were sentenced to a total of **10 months in prison**.

1 defendant was sentenced to **7 months and 15 days in total** on the charge of **"praising crime and criminal"**.

1 defendant was sentenced to a total of **10 months** for **"publicly disseminating misleading information"**.

5 defendants were sentenced to a total of 3 years, 9 months and 25 days on the charge of "inciting or insulting the public to hatred and hostility".

1 defendant was sentenced to **8 months in total** on the charge of **"resisting to prevent the execution of duty"**.

4 defendants were sentenced to a total of **3 years 10 months and 20 days** for **"insulting the President"**.

41 defendants were sentenced to a total of **22 years 11 months and 25 days** on the charge of **"opposing the Law No. 2911 on Meetings and Demonstrations"**.

Distribution of Imprisonment Sentences in All Monitored Cases by Offense

| Accusation | Number of Cases | No. defendants | Total Penalty |
|---|-----------------|----------------|--|
| Violation of Law No. 2911 on Meetings and Demonstrations | 2 | 41 | 22 years, 11 months and 25 days |
| Insulting the President | 2 | 4 | 3 years, 10 months and 20 days |
| Resisting to prevent the performance of a duty | 1 | 1 | 8 months |
| Inciting or insulting the public to hatred and hostility | 3 | 5 | 3 years, 9 months and 25 days |
| Publicly disseminating misleading information | 1 | 1 | 10 months |
| Insulting a public official (TCK 125/3) | 1 | 1 | 2 years, 7 months and 15 days |
| Knowingly and willingly aiding the organization | 2 | 32 | 102 years, 7 months and 28 days |
| Membership in an armed terrorist organization | 3 | 5 | 31 years, 3 months and 9 days |
| Praising crime and criminals | 1 | 1 | 7 months and 15 days |
| Making terrorist organization propaganda | 10 | 14 | 29 years, 9 months and 8 days |
| Not being a member of a terrorist organization but committing a crime on behalf of the organization | 1 | 4 | 11 years and 3 months |
| Disclosing/disseminating or targeting the identity of people who took part in the fight against terrorism | 1 | 2 | 2 years and 6 months |
| Denigrating the Turkish nation, the Republic of Turkey, institutions and organs of the state | 2 | 2 | 10 months |
| Unlawfully transferring or obtaining data | 2 | 3 | 4 years and 5 months |
| Grand Total | 32 | 116 | 217 YEARS, 8 MONTHS AND 20 DAYS |

During this period, 23 journalists were sentenced to a total of **67 years, 8 months and 12 days** imprisonment in 17 cases. Journalists were mostly convicted for "membership in an armed terrorist organization".

The three charges for which journalists received the highest sentences were "**membership of an armed terrorist organization**" (28 years and 9 days), "**making propaganda for a terrorist organization**" (15 years, 6 months and 28 days) and "**committing a crime on behalf of a**

terrorist organization without being a member of a terrorist organization" (11 years and 3 months).

Distribution of Prison Sentences Given to Journalists According to Crimes

| Articles Imposing Prison Sentences on Journalists | Duration |
|---|---------------------------------------|
| Membership in an armed terrorist organization | 28 years and 9 days |
| Making terrorist organization propaganda | 15 years, 6 months and 28 days |
| Not being a member of a terrorist organization but committing a crime on behalf of the organization | 11 years and 3 months |
| Unlawfully transferring or obtaining data | 4 years and 5 months |
| Disclosing/disseminating or targeting the identity of people who took part in the fight against terrorism | 2 years and 6 months |
| Knowingly and willingly aiding the organization | 2 years and 6 months |
| Insulting a public official (TCK 125/3) | 1 year and 20 days |
| Publicly disseminating misleading information | 10 months |
| Inciting or insulting the public to hatred and hostility | 5 months and 25 days |
| Insulting the President | 1 year and 20 days |

During this period, 23 journalists were sentenced to a total of **67 years, 8 months and 12 days** in prison in 17 cases. Journalists were mostly convicted of "**membership in an armed terrorist organization**". Journalists were sentenced to 28 years and 9 days in prison for alleged membership in an armed terrorist organization. This was followed by 15 years 6 months and 28 days for making propaganda for a terrorist organization and 11 years and 3 months for committing crimes on behalf of a terrorist organization without being a member.

In total, journalists were sentenced to **59 years, 9 months and 28 days in prison for terrorism offenses**.

Judicial and Monetary Fines

In this period, 15 people, including six politicians and eight journalists, were sentenced to a total of 75,126 Turkish Liras in judicial fines. While these cases were mostly filed against journalistic activities, the most common charges were "inciting the public to hatred and hostility" or "insulting", "insult" and "violating Law No. 2911 on Meetings and Demonstrations".

| File No. | Case Reason | Case Description | Fine Amount | Defendants |
|--------------|--|--------------------------------------|------------------|------------|
| 2021/259 | Journalism | Bilal Erdoğan complaint | 8.720 TL | 4 |
| 2021/477 | Journalism | Dogan Ergun, Izel Sezer | 240 TL | 2 |
| 2022/42 | Journalism | Reyhan Çapan | 41.666 TL | 1 |
| 2022/60 | Activist (rights defender) definition | Van Dedeoğulları Banner Case | 6.000 TL | 1 |
| 2022/645 | Politician/Party statement or activity | Cengiz Çandar | 4.500 TL | 1 |
| 2022/76 | Peaceful Demonstration - Other | Dersim We Can't Make a Living Action | 14.000 TL | 3 |
| Total | | | 75.126 TL | 12 |

Compensation

| File No. | Accused | Criminal offense | Amount |
|--------------|--|---------------------------|------------------|
| 2022/148 | Mehmet Kızmaz and Cumhuriyet newspaper | Attack on personal rights | 15.000 TL |
| 2022/368 | Furkan Karabay | Attack on personal rights | 20.000 TL |
| Total | | | 35.000 TL |

A total of 35,000 Turkish Liras in compensation was awarded to journalists on the grounds that they had attacked their personal rights during this period.

In the moral damages lawsuit filed by the Turkish Youth Foundation (TÜGVA) against journalist Mehmet Kızmaz and Cumhuriyet newspaper due to the news article titled "Ensar, TÜRGEV, TÜGVA are like parallel terrorist organizations", the court ruled that Kızmaz and Cumhuriyet pay TÜGVA 15 thousand TL in compensation.

In the non-pecuniary damages lawsuit filed by President Erdoğan's former lawyer Mustafa Doğan İnal against Gerçek Gündem editor Furkan Karabay, the court ordered Karabay to pay a fine of 20 thousand TL. On August 11, 2022, journalist Furkan Karabay had made a post on his social media account criticizing the working style of some lawyers without naming them.

Other Problems Related to the Right to a Fair Trial

Delays in Start of Hearings

Of the **464** hearings monitored in this period, **346 (75%)** started late and only **10** started earlier than planned. The number of those that started on time was **108 (23%)**.

The most common reason for the late start of hearings was the workload of the courts (58%), with 23% citing the lateness of the presiding judge or panel as the second most common reason (23%).

Distribution of Reasons for Late Start of Hearings

| Reason for Late Start | Number of Hearings |
|---|--------------------|
| Court workload | 202 |
| Delay of the presiding judge/tribunal | 82 |
| Bringing forward other files | 18 |
| SEGBIS problems | 17 |
| Lawyer's excuse | 6 |
| Change of judge/committee | 5 |
| Earthquake | 4 |
| Late return of arrested journalists from prison | 3 |
| Judge's leave of absence | 2 |
| Defendant's lawyer late for the hearing | 2 |
| UYAP problem | 2 |
| Delay due to other files | 1 |
| Late start of the trial due to lack of participants | 1 |
| Delay of defendants | 1 |

Late Starters Violate Right to Fair Trial

"The delayed start of hearings has a significant impact on the right to a fair trial and procedural economy. The principle of procedural economy aims to ensure that the proceedings are conducted within a reasonable time and in an orderly manner and that unnecessary expenses are not incurred. The principle of procedural economy and the right to a fair trial are directly related to the principle of procedural economy and the right to a fair trial when a hearing is canceled or postponed after hours of waiting in front of the court. As a matter of fact, the setting of a new hearing date is a financial burden in every sense.

In addition, the continuous postponement of hearings for arbitrary reasons that are not material to the merits of the case and the late announcement of judgments frustrate individuals and undermine the trust in justice of those who somehow find their way to the courthouse.

The postponement of proceedings without a reasonable reason (such as judges interrupting the hearing to make phone calls or taking a coffee break with a visitor), or postponing proceedings after hours of waiting or without starting them at all, is directly related to the violation of the right to a fair trial under Article 6 of the European Convention on Human Rights."

MLSA Legal Unit

Physical Problems in Courtrooms

Observers were not allowed to enter the courtroom in **24 of the hearings monitored**. In addition, **technical problems** occurred in 134 hearings. These physical problems in the courtrooms caused problems for observers, defendants and others present in the courtroom.

In 36 hearings, observers had difficulty **hearing what was being said**. In **16 hearings, it was difficult to follow the proceedings due to the crowded courtroom**. In 53 hearings, **the small size of the hall** caused problems for the audience. In 6 hearings, **SEGBIS connection had problems**.

Monitor Notes in the Context of the Right to a Fair Trial

It was observed that the presiding judge or the judge changed even in the first hearing during **which the defendants were to present their defense. Among the cases in which these changes were made at the first hearing were the trials of journalist Şerife Oruç at Batman 2nd High Criminal Court Court; Ramazan Akoğul at Diyarbakır 4th High Criminal Court Court; Ayşegül Doğan at Diyarbakır 9th High Criminal Court Court; Ziya Çiçekçi at İstanbul 33rd High Criminal Court Court; and Beritan Canözer at Diyarbakır 4th High Criminal Court Court.**

The trial of **Şerife Oruç**, a reporter for the Dicle News Agency (DİHA), which was shut down by a state of emergency decree, on charges of "being a member of an illegal organization" since 2016 has been repeatedly postponed pending the outcome of an investigation in Diyarbakır. The Diyarbakır Chief Public Prosecutor's Office sent a letter to the court between the hearings of the case at Batman 2nd High Criminal Court, stating that the investigation file against Oruç on suspicion of "disrupting the unity and territorial integrity of the state" as regulated in Article 302 of the Turkish Penal Code **is open and that the execution of the arrest warrant issued for Oruç's testimony within the scope of the investigation is awaited.** The court hearing the case has been requesting **the investigation file for more than three years.** Since the file, which is a "holding" factor for the case, is not sent to the court, the trial is not completed within a reasonable time.

A similar case was recorded in the trial of **Ramazan Akoğul**, former reporter for the Dicle News Agency (DİHA), which was shut down by a state of emergency decree, on charges of "illegal organization membership" at Diyarbakır 4th High Criminal Court Court. Although the court requested the investigation file on Akoğul from the **Dicle Chief Public Prosecutor's Office in 2018, the prosecutor's office did not respond to the court's request.** Therefore, the right to be tried within a reasonable time was violated.

In the first hearing of the trial of Safiye Alağaç, News Director of Jin News, who is accused of "inciting feelings of violence and blaming the state" through the news published in Jin News, held at Diyarbakır 5th High Criminal Court, **police from the security forces monitored the trial**, despite the fact that there was no court order to take security measures. This was recorded as a violation of the right to a fair trial.

On January 10, Working Journalists' Day, before the first hearing of the trial of Karşı Mahalle reporter **Sezgin Kartal**, whose house was raided and detained in the morning hours, on charges of "membership in a terrorist organization" at İstanbul 22nd High Criminal Court, the press statement that was planned to be held in front of the courthouse was banned by the Kağıthane District Governorate. 23 people who wanted to make a statement were detained. **People who wanted to follow the hearing were prevented from entering the hall and were told that this was a "police order".**

In the trial of **18 journalists** in Diyarbakır, the rights to a fair trial, freedom of the press and defense were violated. The fact that the prosecutor who prepared the indictment is the wife of a member of the Diyarbakır 4th High Criminal Court Court panel, where 18 journalists are on trial, was recorded as a violation of the right to a fair trial. During the first hearing of the trial on July 11, 2023, defendant lawyers requested the recusal of the judge, who is the wife of the prosecutor, but this request was

rejected by the court. The presiding judge banned journalists and observers from taking notes with their phones and computers in the courtroom; freedom of the press was violated. The Presiding Judge frequently interrupted journalists and lawyers during their defense statements, which was reported as a violation of the right to defense.

In the trial of **Kadri Esen**, Concessionaire of Xwebûn Newspaper, at Diyarbakır 10th High Criminal Court on the charge of "making illegal organization propaganda" due to a post he made on his social media account, the court did not consider the post made by the defendant, who is a journalist, as journalism. Furthermore, despite the Constitutional Court's annulment on February 19, 2020 of the provision authorizing the police to conduct "virtual patrols" as unconstitutional, the court accepted the police's "virtual patrols" as "evidence".

In the lawsuit filed against **15 women and LGBTI+** who participated in a demonstration against femicides in Ankara with the allegations of "violating the Law No. 2911 on Meetings and Demonstrations", "resisting to prevent the execution of duty" and "simple injury", the banner with the **LGBTI+ flag was considered as "criminal evidence"**. In the second hearing of the case, held at Ankara 66th Criminal Court of First Instance, in which three riot police officers filed a complaint on the grounds that "women beat them", **11 riot police officers wearing protection vests were waiting at the door of the courtroom.**

The first hearing of the case against Human Rights Association (IHD) Ankara Branch Co-Chair **Fatin Kanat** on the charge of "making propaganda for an illegal organization" was held on April 19, 2022 at Ankara 25th High Criminal Court. Although the evidence related to the press statements and demonstrations in 2018 and 2019 was collected and the defendant completed his defense in the first hearing, the second hearing was postponed to September 6, 2022, extending the trial period. In the meantime, Mehmet Tevfik Gerçek, one of the members of the panel, was appointed as the Presiding Judge of Küçükçekmece High Criminal Court by the summer decree; a temporary panel arrived for the second hearing. The temporary panel said that they could not examine the file and decided to send the case, in which all evidence had been collected and the defense had been heard, to the prosecutor's office to prepare its opinion on the merits, and adjourned the hearing to October 19. On October 19, during the third hearing, the prosecutor changed. The prosecutor expressed his opinion on the merits and demanded a sentence for Kanat. The trial lasted 8 months despite the evidence in the file being completed during the investigation phase. The court ruled for Kanat's acquittal, stating that "Although a public lawsuit was filed against the defendant with the demand of punishment for 'making propaganda for a terrorist organization', it was concluded that the elements of the crime did not occur".

On November 17, 2022, Diyarbakır 4th High Criminal Court sentenced journalist **Beritan Canözer** to 3 years, 1 month and 15 days in prison on the grounds of the posts on her social media account, which she said did not belong to her. Although Canözer insisted in her defense that the social media account she was accused of **did not belong to her, the court panel and the prosecutor asked for an additional defense without taking this into account** and the prosecutor did not take Canözer's defense into consideration in his opinion on the merits.



Media and Law Studies Association
Medya ve Hukuk alıřmaları Derneęi



Norwegian Embassy
Ankara



Almanya'nın Trkiye'deki
Dıř Temsilcilikleri
Die Deutschen
Auslandsvertretungen
in der Trkei



**FRIEDRICH NAUMANN
FOUNDATION** For Freedom.
Trkiye