



Think, think...

Freedom of Expression Weekly Bulletin

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What happened last week?

*** The 27th legislative session of the General National Assembly of Turkey (GNAT) officially started after the assignment of a majority of its duties to the President with the enactment of the new Presidential system. GNAT Spokesman Binali Yıldırım had meetings with party leaders represented in the Parliament in his office, not inviting People's Democratic Party (HDP) to the meeting.

*** Speaking at the GNAT Opening Ceremony, President Erdoğan stated, *"The only addressee of execution is the President of the Republic. There is now no guardianship mechanism within the system that poses obstacles against the national will."* The President further signalled for an operation in Sinjar. Indicating his hopes that relations with the US will recover, Erdoğan repeated his claim that the increase in currency rates were a speculation.

*** The Internal Byelaw Draft on the required amendments with the new system was presented to the Parliament with the signature of Yıldırım. The draft involves technical regulations on the adjustment of Constitutional change as well as other regulations to revoke certain monitoring mechanisms on the executive branch of GNAT and to silence the opposition.

*** Erdoğan announced that soldiers in Syria will not withdraw unless an election is held in the country. The President further repeated his message that a referendum may be held on the EU negotiations.

*** *"If they are elected and do the same thing, we will take them off duty as well,"* said Erdoğan on the candidates of the Peoples' Democratic Party (HDP) for local elections. *"I have spoken about this trustee business long ago... I couldn't tell my friends for the last 6-7 years. They've understood me for the past 2-3 years, finally, so we could assign trustees,"* Erdoğan said.

*** The European Parliament decided to cancel the 70-million-Euro fund for aid to Turkey that was frozen last year. This is the first time an EU financial aid for a membership candidate is cut.

*** The third list presented by Turkey to replace previous European Court of Human Rights (ECHR) judge Işıl Karataş was denied by the court as well. Karataş has fulfilled her duty period last year.

*** 2017 monitoring reports of the Court of Accounts identified "frauds" in a majority of 372 public institutions, revealing 'hidden' donations made from public resources to associations and public institutions. The Presidency was revealed to be spending 1.8 million TL daily.

*** Ministry of Treasury and Finance replied to criticisms against their agreement with McKinsey within the new economical programme. *"The consultancy will have no function of execution or authority,"* the Ministry said.

*** Inflation was announced to be 24.52 percent in September, reaching its highest in the last 15 years. Prices of natural gas and electrics increased in October as well, following the increases in August and September.

*** State of Emergency (OHAL) Commission announced that they have evaluated and concluded 36 thousand application files so far. 33,700 applications were denied and only 2,300 were accepted.

*** 84 journalists and press workers stood trial in September. Four journalists were taken into custody, one foreign journalist was arrested and investigations started against three journalists. Eight journalists were sentenced to a total of 24 years and two months of imprisonment; five journalists to 29,210 TL judicial fine in total.

*** Appeal claims of journalists Ahmet Altan, Mehmet Altan and Nazlı Ilıcak, who were arrested following the coup attempt and were sentenced to heavy life imprisonment, were denied. *(Details in the bulletin...)*

*** Murat Şahin, who attacked journalist Can Dündar with a gun in front of a courthouse, was acquitted of the charge of armed threat. *(Details in the bulletin...)*

*** The number of arrested third airport workers reached 34. Dev Construction-Labour Union Chairman Özgür Karabulut was arrested as well.

*** At least 332 curfews were declared in a total of 11 provinces and 50 districts within the last three years, according to the data announced by the Human Rights Foundation of Turkey (TIHV). Diyarbakır has become the province with the highest number of curfews declared with 190.



Court: If there is no praise and incitement to violence, there is no charge of propaganda

Deciding for the acquittal of a citizen, who was on trial due to ‘making illegal organization propaganda’ due to his social media posts on the Afrin Operation, Antalya 10th Assize Court

stated, *“If there is no praise and incitement to violence, there is no charge of propaganda.”*

Deciding for the posts to be evaluated within freedom of expression, the court indicated that illegal organization propaganda can not constitute a crime by itself, that *“for a charge to be evaluated, propaganda of violent or threatening methods of an illegal organization must be made.”* The court further denied the charge of ‘public incitement towards resentment and hostility’ due to the social media posts representing *“opinions that must be tolerated within democratic societies.”*

Here is the content of the related social media posts that the court decided not to be constituting crimes:

* *“War kills, say no to war, we want peace.”*

* *“Air forces have bombed Mabeta district as well, where Alevis are the majority of residents.”*

* *“The Erdoğan regime wants to enter Afrin not to have a benefit for Turkey, but so that Kurds have nothing left. If Afrin was under the administration of Assad, that he calls a murderer, would he act like this? No to the war in Afrin.”*

* *“Our HDP Istanbul Provincial Organization calls everyone to reveal their democratic reaction against the Afrin occupation. War in Afrin means war against the Turkish people.”*

* *“Turkish Armed Forces (TSK) target civilians in Afrin: 7 dead”*



Appeal claims of Nazlı Ilıcak and Altan brothers denied

2nd Criminal Chamber of Istanbul Regional Court approved the heavy life imprisonment verdict sentenced by Istanbul 26th Assize Court against six defendants, including journalists Ahmet Altan, Mehmet Altan and Nazlı Ilıcak, due to ‘attempting to overthrow the

Constitutional order.’ The journalists were arrested following the July 15 coup attempt. All defendants remain arrested within the file except Mehmet Altan, who was released in accordance with the Constitutional Court decree for him. The file will be carried to the Court of Cassation.



Prosecution of former MP Kürkçü starts with 33-year imprisonment claim

The first hearing of the lawsuit filed against Peoples’ Democratic Party (HDP) Honorary Chairman Ertuğrul Kürkçü due to the speech he gave in Mardin in 2012 as he was an MP, as well as four other speeches he gave in

Diyarbakır in the years 2015 and 2016 was held at Diyarbakır 10th Assize Court.

Kürkçü is on trial within the file with an imprisonment claim from a total of 13.5 years up to 33 years due to ‘illegal organization membership,’ ‘illegal organization propaganda,’ ‘public incitement towards resentment and hostility’ and ‘public incitement towards not obeying laws.’

In his defense statement, Kürkçü stated that he was charged due to repeating the opinions he defended at the GNAT as an MP among people in public, and that the indictments are solely

due to making judges tools to pave the way for the arrest of HDP MPs. The next hearing was scheduled to February 6, 2019.



Poet Fadıl Öztürk convicted of ‘illegal organization propaganda’

Poet Fadıl Öztürk was sentenced to 1 year and 10 months of imprisonment in the lawsuit filed against him due to his social media posts as well as his articles published on “artigercek.com” website. Izmir 2nd Assize Court issued the deferment of the announcement of the

verdict for five years. *“It is unacceptable that expression of opinion is considered a crime,”* Öztürk said.



Imprisonment sentence against academic Yiğiter due to ‘insulting Erdoğan’

Ankara 20th Criminal Court of First Instance sentenced Dr. Cenk Yiğiter to 1 year, 5 months and 15 days of undeferred imprisonment due to ‘insulting Erdoğan’ through his social media posts. Yiğiter was previously

dismissed from public service with an emergency decree and is also a signatory of the ‘Peace Petition.’



Court of Cassation approves sentence against journalist Güleş

16th Criminal Chamber of the Court of Cassation approved the imprisonment sentence issued by Elazığ 2nd Assize Court against Dicle News Agency (DIHA) reporter Mehmet Güleş. DIHA has previously been shut down with an

emergency decree.

In the hearing on May 3, the court sentenced Güleş to 6 years and three months of imprisonment due to ‘illegal organization membership’ and to an additional 3 years, 1 month and 15 days of imprisonment due to ‘making illegal organization propaganda’ through his news coverage and social media posts. Lawyer of Güleş, Rasul Tamur, applied for correction

at the 4th Criminal Chamber of Antep Regional Court. However, the court dismissed the application with prejudice. The conclusion of the appeal made on the file finalized the sentence against Güleş.



Prosecution of healthcare workers start due to helping civilians during curfews

The first hearing of the lawsuit filed against 14 healthcare workers attempting to enter Cizre district of Şırnak during the curfew declared on January 30, 2016 to help civilians was held at Mardin 3rd Assize Court due to

‘illegal organization membership and propaganda.’

In their defense statements, the healthcare workers indicated that they attempted to go to Cizre in order to fulfill the necessity of the right to life, which is a basic human right. *“We will continue to help those in need for healthcare... We commit this crime since Hippocrates... We would do it again,”* the defendants stated. The next hearing was scheduled to December 26, 2018.



Court of Cassation considers word “*traitor*” insult

Criminal General Assembly of the Court of Cassation decided that Onur Altinkaynak exceeded the limits of criticism and committed the “crime of insult” by using the word “traitor” for President Erdoğan during a speech in 2013 in Nazilli, Aydın as Erdoğan was the Prime Minister.

In the lawsuit filed against Altinkaynak with the allegation of ‘insulting a public officer due to his duty’ through the related speech, Aydın 2nd Criminal Court of Peace decided that the expressions remained within the limits of freedom of expression and criticism and issued the acquittal of Altinkaynak. However, the Criminal General Assembly of the Court of Cassation evaluated the file following the objection of the Chief Public Prosecutor’s Office of the Court of Cassation, issuing that the expression “exceeds the limits of criticism and freedom of expression; has a denigrating quality that damages social reputation” and constitutes the “crime of insult.”

As it will be remembered, a lawsuit of compensation was filed against President Erdoğan, who used the expressions, *“Low, tyrant, traitor”* directed against academics signing the Peace Petition. In the prosecution, the court issued that the speech was a use of *“the right to expression of criticism and*

opposing view.” Furthermore, in his replying letter presented to the court, Erdoğan showed precedents of the Constitutional Court and the European Court of Human Rights on “freedom of expression and thought” as reference. So, the expression that was considered a “freedom” when Erdoğan used it was considered an “insult” when used against Erdoğan.

The Initiative for Freedom of Expression



Decree issued in lawsuit on armed attack against Can Dündar

Cumhuriyet Daily’s former Editor-In-Chief Can Dündar was attacked with a gun in front of Istanbul Courthouse on May 6, 2016 during the prosecution of the lawsuit against him on the Turkish National Intelligence Trucks. The final decree was issued in

the lawsuit filed against the attack.

Istanbul 28th Criminal Court of First Instance issued the acquittal of defendant Murat Şahin, who opened fire against Dündar and caused the injury of NTV reporter Yağız Şenkal, from the charge of armed threat. Indicating that the crime of injury through shooting has remained at the stage of an attempt, the court issued 4,500 TL judicial fine against the defendant. Şahin has also been sentenced to 10 months of imprisonment and 500 TL judicial fine with “abatement due to good conduct” due to possession of unlicensed arms. Defendants Ergün Celep and Sabri Boyacı, who were charged with instigation in the file, were acquitted.



Investigations against 285 social media users within one week

Ministry of the Interior announced 349 social media accounts were examined between the dates September 24 and October 1, 2018 and investigations were opened against 285 users due to the posts made from these accounts. According to the ministry

announcement, the social media users were charged with ‘illegal organization propaganda,’ ‘insult,’ ‘public incitement towards resentment, hatred and hostility’ as well as ‘intending against the indivisible integrity of state.’



EMEP Provincial Chair acquitted of charges due to social media posts on Afrin

Labour Party (EMEP) Kocaeli Provincial Chairwoman Arzu Erkan was acquitted in the lawsuit filed against her due to sharing her party statement on the Afrin operation through her personal

social media account. Erkan was on trial at Kocaeli 1st Criminal Court of First Instance due to ‘public incitement towards hatred and hostility or denigration.’



RTÜK issues penalty file against news bulletins

In its first meeting of the new broadcasting session, the Radio and Television Supreme Council (RTÜK) issued penalty file against news bulletins on FOX and Tele 1.

The Council issued administrative fines to the channels, evaluating that the reported news are in the quality that would damage Turkey’s reputation. News reported during Fox Main Evening News Bulletin on Mersin City Hospital was sentenced due to its contradiction with the principle, “news can not be broadcasted without being sure of its truth.” Comments in the direction that “Turkey supports organizations like ISIS and Al Nusra” on the show, “18 Minutes” on Tele 1 caused the related administrative fine as well.

On the other hand, an administrative fine was issued against Halk TV due to the replacement shows sent to the channel by RTÜK in accordance with the sanctions against the channel were broadcasted outside of the notified date and time.



European Court of Human Rights convicts Turkey due to lawsuit against exhibition

European Court of Human Rights convicted Turkey of ‘violating freedom of expression and thought’ due to the lawsuit filed against the exhibition, “*War Witnesses Explain*” during 5th Diyarbakır Culture and Arts Festival.

The exhibition presented photographs and short video recordings of interviews with families and relatives of soldiers and PKK members, who lost their lives during clashes. It was later raided by the police and a lawsuit was filed against seven people, who organized the

exhibition. Diyarbakır 4th Assize Court sentenced the defendants to imprisonment varying between 10 months and 24 months due to the expressions “*guerilla*” and “*war*” contained in the exhibition material were ‘illegal organization propaganda.’

The European Court of Human Rights indicated that the expressions in question are not encouragements for violence but rather criticisms against the politics of Turkey in regards to the Kurdish Question, involving a message of peace. The Court sentenced Turkey to pay 5 thousand Euros of moral compensation.



TRIALS OF FREEDOM OF EXPRESSION

- The fifth hearing of the lawsuit filed against former People’s Democratic Party (HDP) Co-Chair Selahattin Demirtaş, who is arrested within the file, after the merging of 31 summaries against him with a claim of imprisonment up to 142 years in total was held at Ankara 19th Assize Court Sincan Penitentiary Institute Campus. The hearing lasted for two days and the claim for summaries within Parliamentary immunity to be determined and an evaluation of Parliamentary speeches to be made were denied by the court council. Demirtaş will remain arrested. The next hearing was scheduled to December 12-14, 2018.
- The interim decree was issued in the lawsuit filed against Boğaziçi University students with the allegation of ‘making illegal organization propaganda’ due to saying, “There is no delight in massacre” as a reply to those distributing “Afrin delights.” The bans on the students’ travelling abroad were removed, exempting them from the hearings. The next hearing was scheduled to March 19, 2019.
- The prosecution of Can Dündar on his news coverage related to the Turkish National Intelligence Trucks continued at Istanbul 14th Assize Court. The court council decided to wait for the results of the actions taken for Can Dündar to be sent back in the country. The next hearing was scheduled to February 19, 2019.
- Academic Dr. Cenk Yiğiter was sentenced to 1 year, 5 months and 15 days of undeferred imprisonment in the lawsuit filed against him with the allegation of “insulting the President.” Yiğiter was previously dismissed from his duty at Ankara University Faculty of Law with an emergency decree.
- The appeal application of six people, including Ahmet Altan, Mehmet Altan and Nazlı Ilıcak, concluded. 2nd Criminal Chamber of Istanbul Regional Court approved the heavy life imprisonment sentence against the defendants due to ‘attempting to overthrow the Constitutional order.’
- Dicle News Agency (DIHA) reporter Mehmet Güleş had been sentenced to 6 years and three months of imprisonment due to ‘illegal organization membership’ through his news coverage and social media post, as well as an additional 3 years, 1 month and 15 days of imprisonment due to ‘making illegal organization propaganda.’ 16th Criminal Chamber of the Court of Cassation approved the verdict against Güleş.
- Dicle News Agency’s arrested reporter Idris Sayılğan was not released in the fourth hearing of the case he is on trial at Muş 2nd Assize Court. DIHA was previously shut down with an emergency decree. The next hearing was scheduled to December 24, 2018.

HEARINGS NEXT WEEK

- The next hearing of the case filed against Özgür Gündem Daily's Co-Editors-In-Chief, Managing Editors and writers including Hüseyin Akyol, Reyhan Çapan and Eren Keskin will be held on October 9, Tuesday, with the allegation of making terrorist organization propaganda due to the expressions quoted in the indictment published on the newspaper's 13.01.2016 issue.
- Prosecutions of academics signing the peace petition, entitled, "We will not partake in this crime," continue. Hearings against the peace academics will be held on October 9-10-11 at Çağlayan Courthouse.
- The next hearing of the case filed against Erol Önderoğlu, Şebnem Korur Fincancı and Ahmet Nesin with the allegation that they have made terrorist organization propaganda through the issues of Özgür Gündem Daily published during the time of their co-editors in chief to support Özgür Gündem will be held on October 9, Tuesday.
- The next hearing of Özgür Gündem Advisory Board Case will be held on October 10, Wednesday at Çağlayan courthouse with defendants including Aslı Erdoğan, Necmiye Alpay, Inan Kızılkaya and other editors-in-chief, owners, writers and advisory board members.
- The hearing of the case filed against Hüseyin Akyol and 12 others due to various articles published on the day they were chief editors for Özgür Gündem Daily, participating in the 'Substitute Editing-In-Chief on Duty' campaign started for solidarity with the shutdown newspaper, will be held on October 10 at Istanbul 14th Assize Court.



TURKEY TODAY

We continue to track developments during the State of Emergency and the Presidential period with our Xtra bulletins. Turkey will continue using the permanent summer-time application after a recent Presidential decree. Our Xtra bulletin on Presidential Decrees was updated this week. On the other hand, we compiled the Statutory Decrees issued within the two-year State of Emergency. [Please click here](#) for Xtra bulletins.



JUDGING THE JUDICIARY

The judiciary in Turkey has never been completely independent and objective. However, it was never as outside of the law and legislation as it is today. As the Initiative for Freedom of Expression, we start judging these judicial processes that force the limits of our imagination with a new section on the Turkey page of our website. Our first file is the case of Atilla Taş and 20 journalists, who were arrested, prosecuted and convicted following the coup attempt without concrete evidence. [Please click here](#) for the verdict and the reasoned decision.