



# Think, think...

## Freedom of Expression Weekly Bulletin

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### What happened last week?

\*\*\* Istanbul Bilgi University NGO Education and Research Unit employee Yiğit Aksakoğlu was arrested. Aksakoğlu was among the academics and NGO workers taken into custody within the investigation related to Osman Kavala's arrest.

\*\*\* European Court of Human Rights issued that arrested former People's Democratic Party (HDP) Co-Chair Selahattin Demirtaş must be released pending trial. *"European Court of Human Rights decisions do not bind us. We'll make our counter move,"* President Erdoğan said.

\*\*\* Targeting the European Court of Human Rights decision on Demirtaş, President Erdoğan said, *"This isn't freedom; this is directly terrorism-loving."* Further accusing Kavala of being *"the person who provides all kinds of support for terrorist activities,"* Erdoğan stated, *"Those who praise the Gezi Park protests would praise PKK or support FETÖ as well, openly or secretly."*

\*\*\* Alliance negotiations continue between the Justice and Development Party (AKP) and the Nationalist Movement Party (MHP). Following the meeting of Erdoğan and Bahçeli, it was announced that the two parties will collaborate in the local elections as well. MHP allegedly will not present candidates from Istanbul, Ankara and Izmir and asked for AKP's support for their candidates in Adana, Mersin, Isparta, Manisa and Osmaniye.

\*\*\* *"My nation will give the best answer to this country's enemies at the ballot boxes,"* President Erdoğan said. The word *"patriotic"* stood out in Erdoğan's speech, which gave the impression of going into war instead of local elections.

\*\*\* Hamit Yıldırım, who is on trial as the murder suspect in the murder of Musa Anter, became the candidate for nomination from the Justice and Development Party (AKP). Nationalist Movement Party (MHP) Siverek Mayor Candidate Fatih Mehmet Bucak, who was a candidate from AKP in the previous elections, said, *"We are not coming to the elections, but to die."* Bucak further threatened other candidates by saying, *"They should probably already start digging their graves."*

\*\*\* Turkish Armed Forces (TSK) units declared a curfew in Afrin after the joint operation with the Free Syrian Army. Clashes started between groups leaving the Free Syrian Army and the Turkish Armed Forces. The intervention was presented in the Turkish media as *"a peace operation"* against the burglary and plunder in Afrin. However, Syrian sources are in the opinion that Turkey is killing jihadists in Afrin who don't obey their rules.

\*\*\* Republican People's Party (CHP) dismissed Ardahan MP Öztürk Yılmaz from the party after Ardahan's expression, *"Let the prayers be announced in Turkish,"* on a TV show.

\*\*\* The number of scientists convicted due to the "Peace Petition" reached 37.

\*\*\* Ministry of the Interior announced legal actions were taken against 280 people within one week due to their social media posts.

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## **ECtHR: “Release Demirtaş”, Erdoğan: “It does not bind us”**

European Court of Human Rights issued that arrested former People’s Democratic Party (HDP) Co-Chair Selahattin Demirtaş must be released pending trial. “*European Court of Human Rights decisions do not bind us. We’ll make our counter move,*”

President Erdoğan said.

The court decided that articles of the European Convention on Human Rights (ECHR) regulating ‘the right to prosecution within a reasonable time’ and ‘the right to effective application’; issuing all measures to be taken to end Demirtaş’s arrest and sentencing Turkey to a total of 25 thousand Euros of compensation. Demirtaş remains arrested for two years.

The verdict indicated that his long period of arrest before a hearing has caused Demirtaş not to be able to take place in political activities of the Turkish Parliament and that leads to an intervention against freedom of expression and the freedom of election. It was further stated that the extension on Demirtaş’s arrest during the Constitutional referendum on April 16, 2017 as well as Presidential elections on June 24, 2018 has “*sabotaged pluralism*” and “*restricted independent political debates,*” which are in the heart of a democratic society.

Within this scope, Turkey was found guilty for the first time in violating Article 18 of the European Convention on Human Rights. The article states, “*The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.*” With this conviction, the court is handling the political environment in Turkey in terms of democracy and the judiciary; leading to conclusions such as a non-working democracy in Turkey, Demirtaş’s arrest being entirely due to political reasons and that the Turkish judiciary is not independent.

### **Would it bind or not?**

What does it mean that “*it doesn’t bind us*”?

What does it mean that “*the decision will be made by Turkish courts*”?

European Court of Human Rights is a Turkish court as well.

Furthermore, it is a “*Turkish Court*” in the “*highest rank*” and its decisions bind all other courts.

Turkey has become a member of the Council of Europe immediately after its establishment and that is why it is regarded within the status of “*founding member.*”

As the European Convention on Human Rights as well as individual application to the European Court of Human Rights is approved by the GNAT, the court's decrees are equivalent to the laws of the Republic of Turkey; according to Article 90 of the Constitution, the decrees are above all other laws and in cases of conflict, the decrees are applied instead. Article 46 of ECHR, with Turkey's signature under it as well, states a binding liability of the court decrees.

As our proverb states, *"It's not shameful not to know, but not to learn."*

What is more shameful is to consider everyone ignorant and intentionally ignoring facts.

**The Initiative for Freedom of Expression**



## **Erdoğan targets Demirtaş, then Kavala**

After stating that the European Court of Human Rights decree on the immediate release of former People's Democratic Party (HDP) Co-Chair Selahattin Demirtaş *"does not bind them,"* President Erdoğan stated, *"This is not freedom, it's directly terrorism-loving,"* addressing the ECtHR.

Erdoğan further targeted Anadolu Kültür Executive Board Chairman Osman Kavala, who is arrested for a year without an indictment. Without mentioning his name, Erdoğan referred to Kavala with the words, *"Someone who was the financial resource of terrorists during the Gezi Park protests is in prison right now."* Calling Kavala's wealth *"patrilineal,"* Erdoğan described him as *"the person who supports all terrorist activities dividing Turkey."*

"Those who praise the Gezi Park protests would praise PKK or support FETÖ as well, openly or secretly," Erdoğan said. The President accused criticisms on freedom and democracy of "fascism" and the academics, journalists and rights advocates; who make these criticisms, of threatening the country's political and economic independence.



## **Operation against rights advocates: Yiğit Aksakoğlu arrested**

Istanbul Bilgi University NGO Education and Research Unit employee Yiğit Aksakoğlu, from the academics and NGO workers taken into custody within the operation related to Anadolu Kültür Inc. Executive Board Chairman Osman Kavala's arrest, was arrested. 13

people, including Prof. Betül Tanbay and Prof. Turgut Tarhanlı, were released with judicial measures. There are warrants against six more people within the file.

Istanbul Security Directorate has previously made an announcement on the investigation and the rights advocates were claimed to have “*organized and financed the Gezi Park protests*” as well as behaved in a hierarchic order with Kavala.

Journalist Kemal Göktaş indicated that Aksakoğlu was arrested due to ‘attempting to overthrow or to prevent the duties of the government of the Republic of Turkey’ and that the reason for his arrest was his presence in meetings organized after the Gezi Park protests. The content of the meetings are not indicated in the investigation file. However, the judicature issued Aksakoğlu’s arrest due to the meetings’ context being on “*civil disobedience and nonviolent protests.*” Thus, meetings on civil disobedience and nonviolent protests were made reasons for the charge.



## **Prosecutor’s Office remembers freedom of expression when investigated expressions belonged to Interior Minister**

Ankara Chief Public Prosecutor’s Office issued a verdict of non-prosecution of Interior Minister Süleyman Soylu, who targeted Republican People’s Party (CHP) leader Kemal Kılıçdaroğlu with the words, “*dishonoured,*” “*sly,*” “*shameless,*” “*imposter.*” Soylu targeted Kılıçdaroğlu after his expressions on the allegations that President Erdoğan and his relatives have made continuous money transactions to the Isle of Man, also known as the “*tax heaven,*” and threatened Kılıçdaroğlu with the words, “*he will pay for it.*” The Prosecutor’s Office claimed that Soylu’s expressions are within freedom of expression and criticism.

Ankara Chief Public Prosecutor’s Office issued a verdict of non-prosecution of

Thousands of people, from MPs to journalists and social media users, are suspects/defendants due to “insulting Erdoğan” in Turkey with the slightest criticism against the government and public institutions considered as criminal evidence. When the investigated expressions belonged to the Minister of the Interior, the Prosecutor’s Office remembered the scope of freedom of expression.



## **“Peace Academics” on trial**

Dr. Güven Gürkan Öztan and Prof. Gülhan Türkay from Istanbul University, as well as Prof. Mehmet Rıza Türkay from Marmara University and faculty member Ç.A. from Sabancı University were sentenced to 1 year and three months of imprisonment each due to ‘making terrorist organization propaganda’ by signing the “We Will Not Partake In This Crime” of the Academics for Peace. The announcements of the verdicts against three academics were deferred; whereas Prof. Gülhan Türkay indicated that she

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doesn't want a deferral of the sentence against her. Therefore, the court put Türkay under a two-year probation period, deferring the sentence. Thus, 37 convictions were issued so far in the lawsuits filed against 384 academics due to the petition.



### **Journalist Ismail Çoban sentenced to 5-year imprisonment due to 'successive illegal organization propaganda'**

Diyarbakır 7th Assize Court sentenced former Azadiya Welat Editor-In-Chief Ismail Çoban to five years of imprisonment due to 'making illegal

organization propaganda' with 15 news articles and columns published on the newspaper in 2013. Azadiya Welat newspaper was previously shut down with an emergency decree and Çoban was arrested. The expressions, "*Kurdish People's Leader*" and "*PKK leader*" referring to Abdullah Öcalan, as well as other expressions like "*martyr*" referring to PKK members dying in clashes and "*guerilla*" referring to the members used in the articles were shown as evidence to the crime.



### **Prosecution of journalist Ahmet Kanbal starts due to social media posts**

The prosecution of Mezopotamya Agency reporter Ahmet Kanbal started at Izmir 2nd Assize Court due to 'making terrorist organization propaganda' through 31 news articles he shared on his personal social media

account. The journalist is further charged due to the interview he made with Afrika Daily's Editor-In-Chief Şener Levent, who was previously targeted by President Erdoğan due to the headline on the 'Afrin Operation', within the file. The Prosecutor claimed an imprisonment sentence against Kanbal for up to nine years due to attempting to denigrate operations conducted by the Turkish Armed Forces through press/media. The next hearing was scheduled to February 26, 2019.



### **Translator Sebla Küçük acquitted of charges related to Twitter posts**

Translator Sebla Küçük, who was on trial due to sharing news on the Afrin Operation on the social media by

translating them from English sources, was acquitted. Küçük was on trial at Istanbul 35th Assize Court due to ‘making terrorist organization propaganda’ through three posts she translated and shared from foreign news agencies and journalists.



## **Investigation against news article by lawyer criticising prison**

An investigation was started against Adana Bar Association Prison Monitoring Committee Chairman lawyer Tugay Bek due to ‘insulting public officer due to his duty’ through his article published on the August 13,

2018 issue of Evrensel Daily with the title, *“Tarsus, a prison for our grandchildren.”* Bek indicated that he criticized the location of Tarsus Prison Campus; that it was built violating the law on a first-degree irrigable land. *“I believe Tarsus Public Prosecutor’s Office, who I think are key in the identification of the prison’s location and its construction, were disturbed by the rightful criticism that eventually points to them,”* Bek stated.



## **Lawsuit filed against letter sent from prison due to insulting Erdoğan**

A lawsuit was filed against former Turkish Association for Judges and Prosecutors (YARSAV) Chairman Murat Arslan due to ‘insulting the President’. Arslan was arrested within the operations against the Gülen Community and was charged due to the

expressions he used in the letter he sent to his wife from prison with an imprisonment claim for up to 4 years.



## **MHP Deputy Chairman declares historian Ayşe Hür “Turcophobe”**

Nationalist Movement Party (MHP) Deputy Chairman M. Hidayet Vahapoğlu declared historian Ayşe Hür as a *“Turcophobe”* after her Twitter post that states, *“I love you”* in Kurdish. *“I have made countless posts in English on*

*this platform, I’ve never received such criticism from anyone. I’ve written a sentence in*

*Kurdish for the first time, my identity was questioned, I was decided to be a Turcophobe,” Hür said.*



## **Resigned judge Murat Aydın: “There is no more judicial independence inside the judiciary I can defend.”**

Judge Murat Aydın carried Turkish Penal Code (TCK) Article 299 regulating the charge of “*insulting the President*” to the Constitutional Court due to the Article being contradictory

with the Constitution. Aydın was later assigned to Trabzon from Izmir with a Council of Judges and Prosecutors (HSK) decree in 2016. Criticizing that the judiciary has become a “stick” to discipline people, Aydın resigned from his duty. “*As a judge, I think there is no more judicial independence left inside the judiciary that I can defend while remaining a judge. There is no defense of something that does not exist, there could only be a demand for it. Independent judiciary must be demanded, the period of its defense is over,*” Aydın said.



## **Uğur Kaymaz file under impunity for 14 years**

14 years have passed since the death of 12-year-old Uğur Kaymaz and his truck driver father, Ahmet Kaymaz, who were shot dead by the police in front of their house in Kızıltepe district of Mardin. Their death was attempted to be reflected on the media as “*Terrorists in preparation for protest*” with the gun

that was left next to them after being killed with 13 bullets. Despite the long time that passed, the case is still not illuminated.

The lawsuit filed against four police officers concluded with acquittal due to “*self defense*” in Eskişehir, where it was transferred due to ‘security reasons.’ The verdict was later approved by the 1st Criminal Chamber of the Court of Cassation. The file was carried to the European Court of Human Rights and Turkey was sentenced to pay 140 thousand Euros of compensation due to a violation of “the right to life.” Following the ECtHR decree, Human Rights Association (IHD) Mardin applied to Eskişehir 1st Assize Court for retrial. The application was denied without presenting a reason. The file was carried to the Constitutional Court in 2015, and still awaits a verdict.



## TRIALS OF FREEDOM OF EXPRESSION

- The third hearing of 10 people, including journalist İhsan Karakaş, who are on trial due to ‘making illegal organization propaganda’ through making critical posts on the social media against the Afrin Operation of the Turkish Armed Forces (TSK), was held at Istanbul 28th Assize Court in Çağlayan. Announcing their interim verdict, the court denied the claim for the defendants’ travel ban to be revoked. The court further gave up on awaiting expert reports, stating that they will not contribute much to the case file. The file was handed to the Prosecutor to prepare his opinion and the next hearing was scheduled to January 17, 2019.
- The fourth hearing of the lawsuit filed against Evrensel Daily columnist Yusuf Karataş with the allegation of ‘establishing and managing an armed terrorist organization’ was held at Diyarbakır 9th Assize Court. Karataş was arrested on July 27, 2017 within the Democratic Society Congress (DTK) investigation in Diyarbakır due to the events he participated in and was later released following objection on September 22, 2017. Announcing the interim decree, the court revoked the judicial measure verdict against Karataş and decided this measure to continue as a travel ban. The next hearing was scheduled to April 3, 2019 for the deficiencies in the file to be fulfilled.
- Diyarbakır 7th Assize Court sentenced former Azadiya Welat Editor-In-Chief İsmail Çoban to 5 years of imprisonment due to ‘successive terrorist organization propaganda’ through news and articles published on the newspaper. Azadiya Welat was previously shut down with an emergency decree and Çoban is arrested.
- Translator Sebla Küçük was acquitted of the charge of ‘terrorist organization propaganda’ in the first hearing at Istanbul 35th Assize Court due to her social media posts on the “Olive Branch” operation.
- The second hearing of the lawsuit filed against journalist Sertaç Kayar with an imprisonment claim for up to 22.5 years due to various demonstrations, marches, press statements and events he tracked as part of his journalism between the years 2012 and 2014 was held at Diyarbakır 10th Assize Court. The court issued Menderes Öner to be summoned to the court to testify as witness and scheduled the next hearing to April 5, 2019 for the deficiencies in the file to be fulfilled.
- The prosecution of Cumhuriyet Daily’s former economy editor Pelin Ünker continued at Istanbul 2nd Criminal Court of First Instance. A lawsuit has been filed against Ünker by Energy Minister Berat Albayrak, his brother Serhat Albayrak and businessperson Ahmet Çalık due to the news published on the newspaper in November 2017 on “Paradise Papers.” The next hearing was scheduled to February 21, 2019.
- The second hearing of the lawsuit filed against journalists Sibel Hürtaş and Hayri Demir due to their social media posts and reported news on the Afrin Operation was held at Ankara 15th Assize Court on November 22. The next hearing was scheduled to January 22, 2019 at 13:30 for the documents sent from the Anti-Terror Unit (TEM) to be examined.
- Prosecutions of the Academics for Peace continued this week at Istanbul Courthouse in Çağlayan with the charge of ‘terrorist organization propaganda’ due to signing the “We Will Not Partake In This Crime” Petition. Four more academics were sentenced to 1 year and three months of imprisonment each in the hearings this week, with the



announcements of the verdicts deferred. Thus, the number of academics sentenced due to the same charge so far has reached 37.

- The prosecution of Perihan Mağden and İnan Ketenciler, who are on trial due to ‘insulting the President’ through their article, entitled, “Tayyip model of Survivor Island: Semih Öztürk,” was held at Istanbul 2nd Criminal Court of First Instance. The court summoned Mağden to the hearing and issued a warrant. The next hearing was scheduled to February 21, 2019.

## **HEARINGS NEXT WEEK**

- The prosecution of Dicle News Agency (DIHA) reporter Şerife Oruç will continue on November 27, Tuesday at Batman 2nd Assize Court due to ‘illegal organization membership.’ Oruç was arrested on July 5, 2016 and was released in the hearing on July 9, 2018. DIHA was previously shut down with an emergency decree.
- The eighth hearing of the lawsuit filed on the killing of 14-year-old Berkin Elvan by the police during the Gezi Park protests will be held on November 28, Wednesday at Istanbul 17th Assize Court.
- The prosecution of Evrensel Daily’s former Managing Editor Çağrı Sarı will be held on November 28, Wednesday at Bakırköy 2nd Criminal Court of First Instance due to ‘insult’ with the news on the newspaper related to Paradise Papers.
- The second hearing of the lawsuit filed against artist Ferhat Tunç following the personal complaint of Erdoğan will be held on November 28, Wednesday at Büyükçekmece 14th Criminal Court of First Instance. The artist is charged with ‘insulting the President’ with his social media posts.
- The prosecution of publisher Ragıp Zarakolu will continue on November 30, Friday, at Istanbul 3rd Assize Court due to ‘aiding and abetting a terrorist organization’ through a speech he gave at the Political Academy of the Peace and Democracy Party in 2011.
- Prosecutions of the Peace Academics, who are on trial due to ‘terrorist organization propaganda’ by signing the Petition, “We Will Not Partake In This Crime” will continue this week in various courts at Istanbul Courthouse in Çağlayan.