

**SUBMISSION TO THE COUNCIL OF EUROPE COMMITTEE OF MINISTERS:  
NEDIM SENER V. TURKEY (NO. 38270/11) GROUP OF CASES  
BY AMNESTY INTERNATIONAL**

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## **SUBMISSION TO THE COUNCIL OF EUROPE COMMITTEE OF MINISTERS: NEDIM SENER V. TURKEY (NO. 38270/11) GROUP OF CASES**

This briefing is submitted in accordance with Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments, in advance of the 1369th (Human Rights) meeting of the Ministers' Deputies on the execution of judgments.

Considering Turkey's obligations under the European Convention on Human Rights, as well as other provisions of international human rights law, Amnesty International seeks to assist the Committee of Ministers in its evaluation of the general measures that the Turkish government has taken to date to comply with the judgments of the European Court of Human Rights in the Nedim Sener v. Turkey group of cases.

Amnesty International would like to share with the Committee of Ministers its concerns about the continuing suppression of the right to freedom of expression through lengthy and punitive pre-trial detention along with prosecutions based on a broad interpretation and application of anti-terrorism legislation and other criminal law provisions.

### **ACTION REPORT AND COMMUNICATIONS SUBMITTED BY THE GOVERNMENT**

In its last decision on the Nedim Sener Group of cases, dated 18-20 September 2018, the Committee of Ministers "invited the authorities to implement further, extensive, training measures to ensure that prosecutors and lower instance courts consistently apply the case law of the Constitutional Court, which follows the reasoning of the European Court and which is binding on them", referring to the two lower courts' initial refusal to implement the Constitutional Court's decisions in the cases of Sahin Alpay and Mehmet Altan.

The action report provided by the Government on 21 June 2018<sup>1</sup> indicates a long list of projects and training-based activities which were conducted regarding violations of Article 10 with a short reference to the Demirel case regarding Article 5 violations, stating that no further action is required, and that the Government has already taken all the necessary measures in preventing similar violations. Similarly, the latest communication of the Government dated 27 January 2020 continues this approach by providing information about training related projects<sup>2</sup>.

Contrary to the Government's submission, Amnesty International would like to highlight that the main structural problems within the Turkish criminal justice system, which gave rise to the violations found in the Nedim Sener group of cases, continued to deteriorate, resulting in not only violations of the right to liberty and security and the right to freedom of expression, including access to information, but also of the right to freedom of peaceful assembly of those who are perceived to be critical of the Government. Such violations result both from the definition of crimes in domestic law, and their arbitrary application. The ongoing crisis regarding the executive exerting pressure on the courts continues to seriously limit the independence and impartiality of the judiciary. Despite Article 90 of Turkey's Constitution providing that "*international agreements duly put into effect have the force of law*", as observed in dozens of cases, Turkish courts are clearly reluctant to uphold the country's human rights obligations or implement the relevant judgments of the European Court of Human Rights.

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<sup>1</sup> [http://hudoc.exec.coe.int/eng?i=DH-DD\(2018\)669E](http://hudoc.exec.coe.int/eng?i=DH-DD(2018)669E)

<sup>2</sup> See paragraphs 21-27, [http://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)64E](http://hudoc.exec.coe.int/eng?i=DH-DD(2020)64E)

In this respect, since July 2016 vast numbers of journalists, academics, human rights defenders, and activists were subjected to harassment through the misuse of the criminal justice system, including arbitrary pre-trial detentions and prosecutions in the name of “national security” or “counter terrorism”. Prosecutions of individuals solely for expressing their views have often proceeded without credible evidence and without fair trial guarantees. Amnesty International is of the opinion that the Turkish Government’s reform, in the form of action plans, reports and legislative changes, all disregard the main structural problems weakening the judiciary and will not prevent further violations.

Having examined the action report on the previous human rights action plan (2015) presented by the Government in June 2018, the various communications submitted by the Government of Turkey and the list of trainings and projects purportedly addressing Article 10 violations, and while welcoming any attempt to strengthen the capacity of the judiciary to prevent human rights violations in Turkey, it is crucial to distinguish between provisional and protective measures deriving from the Court’s principles and the established case-law.

Following the 15 July 2016 coup attempt and the declaration of the state of emergency, authorities have used prolonged and punitive pre-trial detentions to target individuals exercising their right to freedom of expression in a manner perceived to be critical or in opposition to the Government. While this cannot be simply a result of a lack of knowledge of the European Convention on Human Rights (ECHR), serious concerns are raised in this respect. A considerable number of awareness and training projects for the judiciary that were outlined in the action report were carried out before or around 2016.

**However, between July 2016 and December 2019, over 3,900 judges and prosecutors, consisting of nearly a quarter of the Turkish judiciary, have been dismissed. This means that many members of the judiciary who were trained no longer remain in their posts and raises the question of how effective such trainings can be in a judiciary lacking guarantees of independence and impartiality. Moreover, the judiciary has repeatedly failed to implement the Constitution of Turkey which already provides for greater protection of human rights.**

The necessity of independence and impartiality of the judiciary is highly relevant to identify violations of Article 5 and Article 10 ECHR, particularly in the context of overly broad and arbitrary use of anti-terrorism laws. While applying anti-terrorism laws and other legal provisions listed below in any criminal investigation that involves limiting the exercise of the right to freedom of expression or in pre-trial detention decisions (and pre-trial detention continuation decisions thereof) the principles set out in the Court’s established case-law are routinely not being implemented regardless of the persistent objections of defense lawyers citing the Court’s relevant case-law.

## **ABUSIVE PROSECUTIONS AND ARBITRARY DETENTIONS OF JOURNALISTS AND HUMAN RIGHTS DEFENDERS**

### **LEGAL PROVISIONS THAT DIRECTLY CONTRAVENE THE RIGHT TO FREEDOM OF EXPRESSION**

Turkey’s criminal laws contain many provisions that are too vague and restrict the exercise of the right to freedom of expression beyond permissible restrictions under international human rights law and standards. Amongst the articles of Turkey’s Criminal Code which Amnesty International has examined and found to be incompatible with the right to freedom of expression are:

- Article 301, which criminalizes denigration of “the Turkish nation, the state of the Republic of Turkey, the Turkish Parliament (TBMM), the government of the Republic of Turkey and the legal institutions of the state;”
- Article 318, which criminalizes alienating the public from military service;
- Article 215, which criminalizes praising a crime or a criminal;
- Article 216/2 that criminalizes “denigrating section of the population on grounds of social class, race, religion, sect, gender or regional difference”;
- Article 216/3 that criminalizes “denigrating the religious values of a section of the population;”
- Article 125 that criminalizes attribution of an “act or fact to a person in a manner that may devalue that person’s honour, dignity or prestige or attacks someone’s honour, dignity or prestige by swearing” and
- Article 299 which criminalizes insulting the President.

Countless individuals are subject to abusive prosecutions under these laws and are convicted simply for expressing opinions that the authorities deem unacceptable. These provisions must be either repealed or amended so that they comply with Turkey’s human rights obligations.

Other provisions in the Anti-Terrorism Law and Criminal Code that constitute serious criminal offences are applied to acts protected under the right to freedom of expression. Examples include the abusive application of Article 7/2 of the Anti-Terrorism Law on “propaganda for a terrorist organisation”, Article 6/2 of the Anti-Terrorism Law on “printing or publishing of declarations or statements of terrorist organizations”, offences against the state, such as Article 309 of the criminal code on “attempting to overthrow the constitutional order”, Article 312 of the criminal code “attempting to overthrow the government or, through force and violence, the authorities from exercising their functions”, which have been applied in contravention of international human rights law and standards.

Article 7/2 of the Anti-Terrorism Law, on “propaganda for a terrorist organization”, was amended with the judicial reform package adopted by the Turkish Parliament in October 2019, which added the qualification that “statements made within the limits of providing information or made with the purpose of criticism cannot be criminalized”. This vague wording, which still leaves the prosecuting authorities a wide margin to interpret what falls within its remit, is unlikely to remedy the arbitrary application by the prosecuting authorities of Article 7/2. Following the amendments, Article 7/2 continues to be used to prosecute and convict people for verbal and written statements, social media posts, participation in peaceful protests or other similar activities that do not amount to incitement to violence.

These criminal law provisions are abused in order to harass and silence journalists, human rights defenders and others seen as critics of the government rather than in pursuit of any legitimate aim to protect national security or public order. Investigations and prosecutions under these articles are commonly used as a pretext to hold individuals in arbitrary detention, leading to violations of Article 5 of the ECHR. Amongst the most prominent examples is the case of civil society leader Osman Kavala who has been held arbitrarily in pre-trial detention for over two years. On 10 December 2019, the European Court of Human Rights issued its ruling that Osman Kavala’s rights under Articles 5.1, 5.4 and 18 of the Convention had been violated and he should be immediately released. On 18 February 2020, the lower court ruled for the acquittal and release of Osman Kavala.

However, he was detained on the same day due to a new arrest warrant for another investigation conducted against him for allegedly “attempting to disrupt the constitutional order”, concerning the July 15 coup attempt. As of 19 February 2020 he was still detained and waiting to be transferred to the court.

Other examples include former journalists and executives of the *Cumhuriyet* daily newspaper who were kept in pre-trial detention for varying periods (the editor in chief Murat Sabuncu and journalist Ahmet Şık each had been in detention for more than 17 months and Cumhuriyet Foundation Executive Board Chair Akin Atalay was not released until the final hearing held almost 18 months later), and those who engaged in solidarity with the now closed Kurdish daily *Özgür Gündem* newspaper. The author and former newspaper editor, Ahmet Altan, and veteran broadcaster, Nazlı Ilıcak, were held in pre-trial detention for over three years from 2016 before being convicted for “attempting to overthrow the constitutional order” – a verdict that was overturned on appeal. At the end of their retrial in November 2019, they were both found guilty of the lesser but equally baseless charge of “knowingly and willingly assisting a terrorist organization” and released from prison pending appeal. Ahmet Altan was imprisoned once again after the prosecutor appealed the decision to release him.

While some of these prosecutions end in eventual acquittals of the accused, as outlined in the government’s submission to the Committee of Ministers dated 23 August 2017,<sup>3</sup> the investigation and prosecution of peaceful dissenting expression is routine and punitive in nature, and on its own has a chilling effect on the exercise of the right to freedom of expression of the individuals concerned as well as in wider society. The fact that many individuals have been – and continue to be – imprisoned on remand or under sentence, for months or years, simply for conduct protected by the rights to freedom of expression and peaceful assembly, strongly contributes to this chilling effect.

## **OVERLY BROAD AND ARBITRARY APPLICATION OF THE CRIMINAL CODE AND ANTI- TERRORISM LEGISLATION TO SUPPRESS FREEDOM OF EXPRESSION**

In its decision adopted at its 1324<sup>th</sup> meeting (18-20 September 2018), the Committee of Ministers “welcomed the revocation of the state of emergency and urged the authorities to take rapidly more concrete and results-oriented measures to ensure that the relevant legislation, in particular the Criminal Code and the Anti-Terrorism Law, is not interpreted broadly, in breach of Convention rights, so that criminal proceedings are not initiated against individuals for expressing views which do not incite violence or hatred and, in particular, that such individuals are not subjected to detention...”

Since then, vaguely worded anti-terrorism laws have continued to be used to prosecute the expression of non-violent opinions.

The definition of “terrorism” in Turkey’s Anti-Terrorism Law is overly broad, vague and lacks the level of legal certainty required by international human rights law. Fundamentally, it defines “terrorism” by its political aims rather than its tactics, leaving the definition rife for misuse. For example, Article 6/2 of the Anti-Terrorism Law which criminalizes “printing or publishing of declarations or statements of terrorist organizations”, also includes vague concepts of threat and coercion without specifying, in respect of these, a link to violence. As such, Article 6/2 allows for

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<sup>3</sup> [http://hudoc.exec.coe.int/eng?i=DH-DD\(2017\)895E](http://hudoc.exec.coe.int/eng?i=DH-DD(2017)895E)

the prosecution of individuals for publishing statements that do not amount to incitement to violence.

Provisions criminalizing membership of a terrorist organization have also led to abuses, such as Article 314 on “Membership of a terrorist organization”, Article 220/6 and 220/7 of the Turkish Criminal Code. Such provisions allow the state to punish individuals as if they were members of a terrorist organization, simply because they advocate political ideas that may be shared by groups the authorities describe as “terrorist”. This happens even in cases when the individuals have not themselves advocated violence, hatred or discrimination, and are not linked to any direct involvement in or support for violent acts.

Courts have used Article 220/6 as the basis for imposing increased sentences for supposedly criminal activity with no convincing evidence, either of the commission of a recognizably criminal offence or any demonstrable link to a “terrorist organization”. As with membership cases, the evidence presented for having committed a crime “in the name of an organization” frequently amounts to nothing more than participation in peaceful protests, or the defendant’s writings and social media posts with no link to violence.

Article 220/7 of the Turkish Criminal Code criminalizes assisting a terrorist organisation. The Article is often used to prosecute conduct protected by the rights to freedom of expression, association and peaceful assembly. Indeed, decisions to prosecute under Article 220/6 or 220/7 often appears arbitrary, with the same behaviour sometimes prosecuted under one, sometimes under the other – and sometimes under Article 314. As with prosecutions under Article 220/6, when prosecutors seek to convict a person under Article 220/7 they often do not provide evidence demonstrating a link to a “terrorist organization”, nor do they attempt to prove that the accused was engaged in the commission of any criminal offence.

On account of the broad wording of Article 7/2 of the Anti-Terrorism Law “Making propaganda for a terrorist organization” and the prevailing attitudes of prosecutors and judges, the application of this Article frequently fails to distinguish between supporting ideas or political aims which are shared by a proscribed organization and are protected by the right to freedom of expression from statements that incite hostility, discrimination or violence which must be prohibited under Article 20 of the International Covenant on Civil Political Rights. In cases reviewed by Amnesty International, Article 7/2 has been used to prosecute non-violent opinions in violation of the right to freedom of expression.

On 31 January 2020, twenty-seven students of Boğaziçi University were sentenced to 10 months in prison for “making propaganda for a terrorist organization” for their participation in a campus protest against Turkey’s military operation in Afrin, northern Syria, and chanting anti-war slogans, in January 2018. During the protest, they held a banner that read “Invasion, massacre cannot be marked with Turkish delight” referring to a rival student group who distributed Turkish delight on campus in support of the operation. In April 2018, the conviction of 13 Cumhuriyet journalists and executives under the Anti-Terrorism Law relied on nothing more than their journalistic work as evidence and they were sentenced to between two-and-a-half and eight years and one month in prison. In July 2018, six out of the 11 defendants in the case of the Zaman newspaper, closed down by executive decree in July 2016, were convicted and sentenced to between eight-and-a-half and ten-and-a-half years in prison for ‘membership of a terrorist organization’ without any credible evidence.

## **PRE-TRIAL DETENTION USED AS *DE FACTO* PUNISHMENT RATHER THAN A LAST RESORT TO PURSUE A LEGITIMATE AIM**

Lengthy pretrial detention without credible and sufficient evidence of wrong doing is routinely used to punish individuals perceived as opposing the government. As of December 2018<sup>i</sup>, the total number of detainees in prison without charge or pending trial was 57,000, over 20 percent of the total prison population<sup>4</sup>. Around 44,690 people were then detained in connection with “terrorism” related charges<sup>5</sup>. This number included journalists, political activists, lawyers, human rights defenders, civil servants and others who have been pursued by the authorities due to their perceived political affiliation. The crackdown has vastly exceeded the legitimate purpose of investigating and bringing to justice those responsible for the 2016 coup attempt.

The Law of Criminal Procedures (No. 5271) currently allows maximum pre-trial detention periods ranging from one and a half years to seven years depending on the type of alleged crime. Article 18 of the judicial reform package adopted by the Turkish Parliament in October 2019 amends Article 102 of this law by lowering pre-trial detention limits. According to this provision, maximum pre-trial detention periods range from six months to two years depending on the offence.

These periods, however, fail to address the current reality that people are held in punitive pre-trial detention without evidence of criminal acts. The ECHR sets out one circumstance in which people may be deprived of their liberty under Article 5.1 of the Convention. One permissible ground for arrest under the European Convention is to bring someone before the competent legal authorities on a reasonable suspicion of having committed an offence. The European Court has ruled that a reasonable suspicion justifying an arrest exists when there are “facts or information which would satisfy an objective observer that the person concerned may have committed the offence”.<sup>6</sup>

Both the ECHR and the ICCPR provide safeguards against prolonged pre-trial detention, which are being systematically violated by Turkey.

## **INDEPENDENCE OF THE JUDICIARY**

The UN Human Rights Committee, the body mandated with interpreting the International Covenant on Civil and Political Rights, has stated that the requirement of independence refers to the appointment of judges, their security of tenure, conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from the executive.<sup>7</sup>

Judges represent a special category of public servants, whose independence is guaranteed at the constitutional and international levels<sup>8</sup>. Therefore, any dismissals within the judiciary or the regulatory bodies of the judiciary such as Council of Judges and Prosecutors (CJP), should be subjected to particularly exacting scrutiny, even in times of a serious public emergency. Such dismissals not only affect human rights of the individual judges concerned, they may also weaken the judiciary as a whole.

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<sup>4</sup> Figures were provided at the plenary of Turkey’s Parliament on 13 December 2018 in relation to 2019 budget of the Directorate General for the Prisons and Detention Centres by the member of Parliament, İbrahim Yurdunuseven, representing the AKP.

<sup>5</sup> The figure was listed by Ministry of Justice, Abdülhamit Gül, at the plenary of Turkey’s Parliament on 13 December 2018.

<sup>6</sup> Ilgar Mammadov v. Azerbaijan, § 88; Erdagöz v. Turkey, § 51; and Fox, Campbell and Hartley v. the United Kingdom § 32.

<sup>7</sup> Human Rights Committee, General Comment 32, para. 19.

<sup>8</sup> see Article 14.1 of the ICCPR, Article 6.1 of the ECHR.



The Venice Commission<sup>9</sup> reiterates that every decision ordering the dismissal of a judge needs to be individualized and reasoned, must refer to the verifiable evidence and that the procedures before the CJP have to respect at least minimal standards of due process.

## **THE CRIMINAL JUDGESHIPS OF PEACE**

Moreover, the structure and the functioning of the Criminal Judgeships of Peace have been subject to criticism since their establishment in 2014. International human rights organizations<sup>10</sup> and international bodies including the Venice Commission<sup>11</sup> criticized Turkey for the threat to the independence and impartiality of the judiciary posed by the judgeships and stated that they do not function in compliance with international human rights law and standards.

The Criminal Judgeships of Peace were established in 2014 replacing the criminal courts of peace. They have the power to decide on protective measures during the investigation phase (e.g. to issue search, arrest and detention warrants or permitting wire-taps for the interception of communication), to decide on removal of the content and blocking of access to Internet websites or closing them down, to decide on the merits on traffic offences and to review the decisions of public prosecutors on non-prosecution.

However, the judicial review mechanism against the decisions of Criminal Judgeships of Peace do not meet requirements for independence and impartiality. According to Article 268 of the Code of Criminal Procedure of Turkey, decisions of the Criminal Judgeships of Peace can only be reviewed by another Criminal Judgeship of Peace of the same district with the following number.

This horizontal and “closed-circuit” appeals mechanism does not allow the decisions to be reviewed by a higher court (in a higher authority), rather allowing the decisions to be reviewed between “colleagues” who share the same experience and expertise. This poses a clear threat to Article 5.4 of the ECHR which secures the right to actively seek judicial review of detention.

## **CASES**

### **AHMET ALTAN**

Ahmet Altan and Nazlı Ilıcak have spent over three years in pre-trial detention in prison, solely based on their critical writings and broadcast media commentary. The first trial in the case of Ahmet Altan, Mehmet Altan, Nazlı Ilıcak and three others concluded with their conviction for ‘attempting to overthrow the constitutional order’ and sentences of life imprisonment without the possibility of parole in February 2018. In July 2019, the Supreme Court of Appeals overturned their conviction, ruling Mehmet Altan’s acquittal and the retrial of Ahmet Altan and the other four defendants on the lesser charge of ‘aiding a terrorist organization without being its member’.

On 4 November 2019, all five defendants were convicted with Ahmet Altan sentenced to ten-and-a-half years in prison and journalist Nazlı Ilıcak to eight years and nine months. Both were released

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<sup>9</sup> Draft Opinion on the Measures Provided in the Recent Emergency Decree Laws with Respect to Freedom of the Media [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2017\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2017)006-e)

<sup>10</sup> <https://www.icj.org/wp-content/uploads/2019/02/Turkey-Judgeship-Advocacy-Analysis-brief-2018-ENG.pdf>  
<https://www.icj.org/turkey-system-of-criminal-peace-judges-not-independent-or-impartial-says-new-joint-briefing-paper/>  
<http://www.platformpi.org/wp-content/uploads/CPJreport.pdf>

<sup>11</sup> <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282017%29004-e>

pending their appeals by the Istanbul Heavy Penal Court No. 26, subject to foreign travel bans. The court ruled to continue the detention pending appeal of the other three defendants. Mehmet Altan who was also prosecuted in the same trial, was acquitted by the court, in line with the Supreme Court of Appeals ruling in his case.

The prosecutor appealed against Ahmet Altan's release pending appeal on 6 November. On 8 November, the Istanbul Heavy Penal Court No. 26 rejected the prosecutor's request for Ahmet Altan's return to prison, referring it to the Heavy Penal Court No. 27, which then accepted the prosecutor's appeal on 12 November. While Ahmet Altan's lawyers were not informed of the decision, it was leaked to pro-government media. Ahmet Altan was taken into police custody the same evening from his home in Istanbul.

Ahmet Altan's detention gives every appearance of being politically motivated, arbitrary, and incompatible with the right to liberty under Article 5 of the ECHR. The European Court of Human Rights has held<sup>12</sup> that arbitrariness can arise where there has been an element of bad faith on the part of the authorities. His continued arbitrary detention in prison is a serious violation of his rights. Both the Turkish Presidency and Parliament sought to make representations arguing against the decision to release Altan – a move designed to put political pressure on the court. The reasons given by the judge at the Heavy Penal Court No. 27 to cancel Altan's release included that his activities *"influenced many sympathisers through the news"* and that *"those who were interrogated for the same crime but fled the country have engaged in discourse and lobbying against our country,"* grounds that are both unfounded and lack legitimacy as reasons to deprive someone of liberty. The judge further castigated Altan for refusing to show remorse for a crime he did not commit.

## **DENİZ YÜCEL**

*Die Welt* journalist Deniz Yücel was detained without charge in February 2017 on allegations of "making propaganda for a terrorist organisation" and "inciting enmity and hatred". He remained in prison for a year without any charge.

The indictment was only two-and-a-half pages long, citing articles that the journalist wrote for the German press outlet *Die Welt*, a book written by Fetullah Gülen which was seized in search of Yücel's home, and a number of HTS records showing him to have had calls with individuals allegedly affiliated with the PKK as evidence to both crimes, and seeking up to 18 years in prison.

In June 2019, the Constitutional Court ruled unanimously that his pre-trial detention had been unlawful, in violation of his right to liberty and security as well as his right to freedom of expression. The case is still ongoing.

## **THE CUMHURİYET PROSECUTION**

In April 2018, 13 Cumhuriyet journalists, executives and other staff members were convicted of "assisting a terrorist organisation whilst not being a member" and for "propaganda of a terrorist organisation" and handed prison sentences of between two years and six months and eight years and one month. The convictions were based on 106 news articles, investigative stories and 149 tweets criticizing the government, all part of journalistic work protected under the right to freedom

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<sup>12</sup> Case of Mehmet Hasan Altan v. Turkey, Application no. [13237/17](#), 10 September 2018.

of expression. The newspaper's accountant was accused of having the messaging application ByLock on his phone. In May 2019, the Constitutional Court found that the rights of former editor Murat Sabuncu, former journalist Ahmet Şık, newspaper's former lawyer Bülent Utku and former executive Akın Atalay had not been violated, despite a lack of any credible evidence to support terrorism charges against them, but did find in favour of former Cumhuriyet columnist Kadri Gürsel, ruling that his rights to liberty and security and freedom of expression were violated. In September 2019, the Supreme Court of Appeals ruled to suspend the sentences of seven of the 13 former Cumhuriyet staff and overturned the convictions of the remaining five. At their retrial in November 2019, the first instance court ruled against the Supreme Court of Appeals' decision in the case of all but one of the defendants, columnist Kadri Gürsel who's acquittal was upheld. The remaining 12 former journalists, executives and other Cumhuriyet staff were convicted of "aiding a terrorist organization without being its member".

### **ÖZGÜR GÜNDEM SOLIDARITY CAMPAIGN PROSECUTIONS**

Murat Çelikkhan was among 100 human rights defenders, journalists and other prominent civil society actors who participated in the solidarity campaign for the now closed Kurdish daily newspaper *Özgür Gündem* in 2016, to protest against the authorities' misuse of the criminal justice system to harass the newspaper's journalists by taking turns to be its symbolic editor for one day. Murat Çelikkhan was convicted and sentenced to 18 months in prison, of which he served over two months before he was conditionally released. Of those who took part in the solidarity campaign, 50 have been subject to criminal investigation and 38 were prosecuted for articles published in the paper on the days they were taking part in the campaign. They were charged under the Anti-Terrorism Law for "making propaganda for an armed terrorist organization" (Article 7/2) and "printing or publishing statements by terrorist organizations" (Article 6/2). Of the 34 prosecutions, seven were acquitted while 27 were sentenced to a total of 293 months, 15 days in prison and 67,000 TL judicial fines.

### **OSMAN KAVALA**

Osman Kavala, a prominent civil society leader, and 15 other civil society figures were accused of 'attempting to overthrow the government or prevent it from performing its duties' for their alleged role in 'directing' the Gezi Park protests of 2013 and faced charges punishable with life imprisonment without parole. In addition, the prosecutor held the defendants responsible for crimes allegedly committed by protesters across Turkey during the mass protests. No evidence was presented to connect the defendants to any of these alleged crimes. Kavala has been in pretrial detention since November 1, 2017, allegedly on suspicion that he organized the Gezi Park protests in Istanbul in 2013 and was involved the July 15, 2016 attempted military coup.

The indictment in the case was accepted on 4 March 2019 by the Istanbul Heavy Penal Court No.30 after more than two years of Osman Kavala's pre-trial detention. The 657-page indictment purports to show that the 16 defendants, who include people working in the arts, education, and peaceful civic activism, conspired to organize and finance the 2013 Gezi Park protests, which spread to cities across Turkey. Their trial began on 24 June 2019.

The European Court of Human Rights concluded, in its judgment<sup>13</sup> delivered on 10 December 2019, that there had been a violation of Osman Kavala's rights under Article 5.1 ECHR on account of the lack of reasonable suspicion that he had committed an offence; Article 5.4, on account of the lack of a speedy judicial review by the Constitutional Court; and Article 18 of the Convention taken in conjunction with Article 5.1, finding that Osman Kavala's extended detention had the ulterior motive of reducing him to silence. The Court ruled that Kavala be released immediately.

Notwithstanding, in the fourth trial hearing on 24 December 2019, the Turkish court ruled that the prolonged pre-trial detention of Osman Kavala should continue on the ground that it had not received the translated version of the ECtHR's judgment. However, the Minister of Justice Abdülhamit Gül had publicly claimed that the translated judgment had been delivered to the court a day before the hearing.

In the next hearing on January 28, 2020, defence lawyers demanded that the three-judge panel of the Heavy Penal Court No. 30 recuse themselves for not implementing the ECHR ruling. However, the court not only rejected the requests but also dismissed the audience from the courtroom and did not allow lawyers inside after having left the courtroom to protest the courts' interim decisions. Osman Kavala and other defendants had to submit their defence statements in the absence of their lawyers, in violation of their fair trial rights, including the right to a defence. In its interim decision, the court ruled to extend the detention and deposited the case file to the prosecutor to submit his opinion. In February 2019, the prosecutor requested an aggravated life sentence for the three defendants including Osman Kavala and 15 to 20 years for seven defendants. The Prosecutor further requested the separation of the case of six defendants on the grounds that the arrest warrants could not be executed.

Finally, in the last hearing held on February 18, 2020 the court announced its verdict and ruled the separation of the case of seven defendants who are abroad, the acquittal of remaining nine defendants including Osman Kavala along with a decision to release him. However, Osman Kavala was re-arrested soon after this decision due to another investigation conducted against him, allegedly for attempting to disrupt the constitutional order concerning the July 15 coup attempt. As of 19 February, he was still in detention.

## **THE BÜYÜKADA PROSECUTION**

Taner Kılıç, Amnesty International Turkey's Honorary Chair, has been tried alongside İdil Eser, the organization's former Turkey Director and nine other human rights defenders (Veli Acı, Günal Kurşun, Özlem Dalkıran, Nalan Erkem, İlknur Üstün, Şeyhmus Özbekli, Nejat Taştan, Ali Gharavi and Peter Steudtner), on baseless allegations of 'membership of a terrorist organization' for which they could face up to 15 years in prison. All 11 human rights defenders have been released on bail as the trial against them continues at the Istanbul Heavy Penal Court No. 35. In nine separate hearings, the prosecution has failed to produce any credible evidence of the charges levelled at them. Kılıç spent 432 days (over 14 months) in pre-trial detention until his release on 15 August 2018 after the authorities finally acknowledged that they had no basis for the allegation that he had downloaded the "ByLock" messaging application which, according to state claims, "was used for communications by the FETO (Fethullahist Terrorist Organisation)".

Despite having produced no credible evidence to substantiate the charges, in November 2019 the state prosecutor requested convictions against Taner Kılıç for 'membership of a terrorist

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<sup>13</sup>Case of Kavala vs Turkey, (Application no. [28749/18](#)), 10 December 2019.

organisation'and against Idil Eser, Özlem Dalkıran, Günel Kurşun, Veli Acu and Nejat Taştan for 'assisting a terrorist organisation without being its member'. The Prosecutor requested that the court acquits Nalan Erkem, İlknur Üstün, Şeyhmus Özbekli, Ali Gharavi and Peter Steudtner. At a hearing on 19 February , the judge decided to adjourn the trial to 3 April 2020, when a verdict is expected.

### **SELAHATTIN DEMİRTAŞ**

In November 2018, the European Court of Human Rights<sup>14</sup> ruled that the former co-chair of the Peoples' Democracy Party (HDP), Selahattin Demirtaş should be released. The Court found Turkey in violation of Article 18 together with Article 5.3 of the Convention and that Demirtaş' detention was aimed at 'stifling pluralism and limiting freedom of political debate' and that he ought to be released as a matter of urgency. However, President Erdogan's publicly dismissed the European Court's ruling, stating "this [decision] does not concern us. We make our move in response and finish this work" and, on 13 December 2018, the Ankara 19th High Criminal Court ordered Demirtaş' continued detention. He has now been imprisoned since November 2016. The Istanbul Court of Justice 2nd Criminal Chamber rejected, on 4 December 2018, Demirtaş' appeal against his conviction by the Istanbul 26th Assize Court in another case, confirming his sentence for four years and eight months. The Court had found that Demirtaş made "propaganda for an armed terrorist organization" during a speech he gave during Newroz (Kurdish New Year) celebrations of 2013. A Grand Chamber judgment is expected.

## **ABUSIVE PROSECUTIONS IN THE CONTEXT OF DISSENT REGARDING TURKEY'S MILITARY OPERATIONS IN SYRIA**

### **THE 2018 AFRIN OPERATION**

On 20 January 2018, Turkey began a military offensive in Afrin directed at the People's Protection Units (YPG), an armed group linked to the PKK, a proscribed organization in Turkey. When individuals, including human rights defenders and journalists, expressed opposition to the military offensive, they were faced with a smear campaign in the media spearheaded by senior members of the government and the President. Statements by officials were followed by anonymous threats and intimidation, as well as criminal investigations and the detention of hundreds of people for social media posts and other public statements critical of the Turkish military operation. According to the Ministry of the Interior,<sup>15</sup> by 26 February 2018 845 people had been detained for social media posts, 643 people were subject to judicial proceedings and 1,719 social media accounts were under investigation in connection with Afrin.

One stark example of this intolerance of dissent was the treatment meted out to the Turkish Medical Association (TTB), a professional body of 83,000 physicians, representing some 80% of all doctors in Turkey. On 24 January 2018, the TTB issued a statement calling for an end to the Turkish military operation in Afrin. The President's public accusation of 'treason' directed at the doctors who signed the petition was swiftly followed by a police raid on the morning of 30 January of the TTB headquarters and the homes of TTB Chair Raşit Tükel and 10 other members of the TTB Central Council. They were accused of "making propaganda for a terrorist organization" and "inciting the

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<sup>14</sup> CASE OF SELAHATTİN DEMİRTAŞ v. TURKEY (No. 2), (Application no. 14305/17).

<sup>15</sup> <https://www.aa.com.tr/en/todays-headlines/31-terrorists-neutralized-in-turkey-over-past-week-/1073906>; <http://bianet.org/english/freedom-of-expression/194659-ministry-of-interior-845-people-detained-due-to-olive-branch>

public to hatred and enmity”. In May 2019, the trial ended with the conviction of all eleven doctors, with ten sentenced to one year and eight months and another to three years, three months and 22 days. The convictions remain pending on appeal.

### ***THE 2019 OPERATION PEACE SPRING<sup>16</sup>***

On 9 October 2019, Turkey’s president Recep Tayyip Erdoğan announced that the Turkish Armed Forces had started an offensive named “Operation Peace Spring” in north-east Syria. The purpose of the military operation was described as establishing a 32-km deep “safe zone.” Following the government crackdown on opposition to the previous Afrin military operation, widespread self-censorship and a climate of fear prevailed regarding criticism of “Operation Peace Spring” with critical voices instead remarking that it was impossible to make any criticism. Even so, during the two weeks’ long military operation, hundreds of people involved in activism on Kurdish rights and politics were taken into police custody and at least 24 people were remanded in prison custody pending the outcome of criminal investigations. These include members of the Kurdish-rooted leftist opposition People’s Democratic Party (HDP), including members of Parliament, party activists and local government representatives as well as journalists and others. While some of the detained individuals were targeted explicitly for expressing views on the military offensive interpreted as opposition to the government, in other cases the absence of any reference to the “Operation Peace Spring” suggests that the military offensive was also used as a pretext to escalate an ongoing crackdown on dissent in the context of Kurdish rights and politics. According to an announcement on the website of the Ministry<sup>17</sup> of Interior, over 500,000 people were interrogated, and 152 people were detained during the police operation targeting dissent over “Operation Peace Spring”. According to the statement<sup>18</sup>, 839 social media accounts were investigated during the Operation.

In one of the files examined by Amnesty International, which is representative of many of the criminal cases brought for social media posts, an individual detained for sharing other people’s social media posts such as “...Rojava [the name given referring to the then Kurdish administered autonomous area in northern Syria] will win, No to War,” “AKP-MHP fascist coalition ... is trying to reinvent its politics through hatred against the Kurds. This dirty war against Rojava will not bring anything but death to the peoples of the Middle East” and “...Raise your voice against fascism. #GiveVoicetoRojavaforPeace...” This individual was subjected to an overseas travel ban and required to report to a police station twice a month.

On 13 October 2019, HDP co-chairs in two Istanbul districts (Küçükçekmece and Şişli) Hüseyin Fidanboy and Mutlu Öztürk, and seven other HDP members were detained by police for ‘organizing, leading and participating in an unlawful meeting and demonstration’ and ‘making propaganda for a terrorist organization’. On 14 October, they were remanded in pre-trial detention by the Istanbul Peace Criminal Judgeship No.1 on grounds that ‘they chanted slogans including ‘murderous State, long live the resistance in Northern Syria, long live the Kobani [a city in northeast Syria] resistance’; ‘attempting to create support against the Turkish army’s Operation Peace Spring and providing support to the terrorist organization YPG’; ‘considering the timing of the protest, it did not come under the right to freedom of expression, that there is strong suspicion that the protest was aiming at legitimizing the violent actions of the terrorist organization’; ‘that the protest taking place in a densely populated area created the possibility of arousing the population’; ‘considering the strong suspicion of guilt, the length of the sentence envisaged in the law, the fact that the investigation is ongoing, that there is a risk of pressure on witnesses, pre-trial detention is proportionate’. Hüseyin

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<sup>16</sup> <https://www.amnesty.org/download/Documents/EUR4413352019ENGLISH.pdf>

<sup>17</sup> <https://www.icisleri.gov.tr/81-ilde-es-zamanli-turkiye-guven-huzur-uygulamasi-gerceklestirildi>

<sup>18</sup> <https://www.aa.com.tr/tr/baris-pinari-harekati/baris-pinari-harekatina-kara-propagandadan-24-kisi-tutuklandi/1615477>

Fidanboy, Mutlu Öztürk and five other men were taken to Silivri high security prison, and two women were remanded in Bakırköy prison, both in Istanbul, pending trial.

## **CONCLUSION**

Criminal proceedings are still routinely initiated against individuals in Turkey for expressing views which do not incite violence or hatred, and those individuals are still subjected to detention, in some cases despite rulings of the European Court of Human Rights calling for their immediate release. The chilling effect to freedom of expression identified by the Court in various judgments should be a matter of grave concern for Turkey and for the Committee of Ministers.

Amnesty International is concerned with the ongoing prolonged pre-trial detentions, broad interpretation and arbitrary application of the criminal law and anti-terrorism legislation that unduly restrict the exercise of the right to freedom of expression. Violations of the right to liberty and security, and the right to freedom of expression are likely to continue unless abusive legislation is repealed or amended, and concrete steps are taken to guarantee the independence and impartiality of the judiciary.

Amnesty International believes that the commitments undertaken by the Turkish government in its Communications to the Committee of Ministers for the execution of the Nedim Sener group of cases fail to address the systemic roots of the violations identified by the Court. Clearly, without effective measures the same violations will continue to take place in Turkey, as per the current reality.

## **RECOMMENDATIONS**

Turkey must end the use of arbitrary pre-trial detention to punish those who exercise their right to freedom of expression and peaceful dissent. It should drop abusive criminal charges and prosecutions and release imprisoned human rights defenders, politicians and journalists who have been imprisoned simply for exercising their rights, including Osman Kavala, Selahattin Demirtaş and Ahmet Altan.

**Turkey must repeal or amend legislation that is not in line with international human rights law and standards, in particular with the European Convention on Human Rights, in particular:**

- Repeal Articles 301, 318, 215, 125, 220/6 and 299 of the Criminal Code;
- Repeal Article 6/2 of the Anti-Terrorism Law;
- Amend Article 216 of the Criminal Code (Incitement to hatred or hostility) by repealing paragraphs 2 and 3 so as to ensure that only advocacy of hatred constituting incitement to hostility, discrimination or violence is prohibited;
- Further amend Article 7/2 of the Anti-Terrorism Law to ensure that only advocacy of hatred constituting incitement to hostility, discrimination or violence is prohibited;
- Amend the definition of terrorism in Article 1 of the Anti-Terrorism Law in line with the definition proposed by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

**To ensure the independence and impartiality of the Judiciary, Turkey must:**

- Repeal Article 26 of Law no. 7145, which allows authorities to dismiss judges and prosecutors for further three years after the end of state of emergency if they are assessed to have been members of, or acted in union or were in contact with “terrorist organizations” or structures or groups that the National Security Council has decided are engaged in activities against national security;
- Reform the structure of Council of Judges and Prosecutors (CJP) and take the necessary measures, including legislative changes, to provide transparency in appointments and dismissals of judges and prosecutors, and enable judicial review against all decisions of the CJP;
- Ensure that the role and functioning of Criminal Judgeships of Peace does not undermine judicial independence.



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**EUROPEAN INSTITUTIONS OFFICE  
AVENUE DE CORTENBERGH/ KORTENBERGH LAAN 71  
1000 BRUSSELS, BELGIUM**

**REFERENCE: B1986  
18 FEBRUARY 2020  
WWW.AMNESTY.EU**

## CONTACT US



[eio@amnesty.org](mailto:eio@amnesty.org)



+32 (0)2 5021499

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