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Monitoring Judicial Practices in Turkey and
Strengthening EU Human Rights Mechanisms

TURKEY FREE EXPRESSION TRIAL MONITORING REPORT

September 2019

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

MLSA

Media and Law Studies Association
Medya ve Hukuk alıřmaları Derneđi



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Introduction

There continues to be grave concern over the manner in which the Turkish judicial system handles freedom of expression cases, especially those involving journalists. As part of the country's ongoing crackdown on the media, scores of journalists have faced prosecution based primarily on terrorism-related charges. At the time of the writing of this report, 131 journalists are behind bars, either serving a sentence or in pre-trial detention¹.

To analyse the level of protection of the fundamental rights of journalists and others exercising their right to freedom of expression by Turkish courts, the International Press Institute (IPI) and the Media and Law Studies Association (MLSA) are carrying out a comprehensive trial monitoring programme across Turkey supported by the Civil Society Support Programme II. The trial monitoring programme began in June 2018. An initial report published in January 2019 covering 90 court hearings involving 71 separate trials found that Turkish courts systematically ignore domestic and international standards set for securing the right to a fair trial².

The second report published in July and covering court hearings from February 20 until May 31, 2019 confirmed the initial findings³. It showed that Turkey has continued to criminally persecute journalists on the basis of terrorism-related charges for which journalistic work is presented as evidence. Despite this lack of credible evidence, journalists were frequently held in lengthy pre-trial detention. In addition, the data suggested continuing breaches of right to a fair trial during court proceedings related to right to a lawful judge, courtroom conditions, secrecy of judicial deliberations, and publicity of the verdict announcement.



The findings in this present report confirm the continuation of a pattern in which the Turkish judicial system continues to violate fundamental rights to liberty, freedom of expression and fair trial guaranteed in the Turkish Constitution, the European Convention and the jurisprudence of the ECtHR.

¹ For regular updates please check The #FreeTurkeyJournalists platform

² Justice Monitoring Report: Freedom of Expression Trials in Turkey June – December 2018

³ Turkey Free Expression Trial Monitoring Report, July 2019

This Trial Monitoring Report covers the monitoring period between June 1 and July 21, 2019. It aims to raise concerns and awareness about the severity of alleged crimes that journalists are accused of, as well as about the lengthy detentions and fair trials violations. The use of criminal law to target journalists, activists and academics critical of government and to restrict freedom of expression has had a chilling effect in the society.

The findings in this present report confirm the continuation of a pattern in which the Turkish judicial system continues to violate fundamental rights to liberty, freedom of expression and fair trial guaranteed in the Turkish Constitution, the European Convention and the jurisprudence of the European Court of Human Rights (ECtHR). The data collected reinforce the argument that Turkish courts are failing to provide an effective domestic remedy for rights violations, the exhaustion of which is a precondition for application to the ECtHR. Journalists and others targeted for exercising freedom of expression are therefore being denied effective protection of their rights.

Additional trial monitoring reports will be published regularly over the course of the monitoring programme.

Methodology

IPI and MLSA's Legal Unit designed a methodology to systematically collect data that would support already available anecdotal evidence that trials concerning the right to free expression fail to meet the standards of the right to a fair trial, with specific focus on the trials of journalists. The methodology consists of trial monitoring, observation and reporting.

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

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

The dataset in this report covers a total of 42 hearings involving 202 defendants, including 157 journalists, held between June 1 and July 21, 2019.

in Europe (OSCE). It is in the form of a standard electronic template where observers can highlight and comment on the presence or absence of specific criteria in relation to the conduct of a fair trial.

The collection of the data commenced on June 1, 2018 and is ongoing. The dataset in this report covers 42 hearings of 202 defendants, out of which 30 hearings of 157 defendants, held between June 1 and July 21, 2019. The data were collected by 9 observers⁴ at various court instances in five cities: Ankara (5 hearings), Diyarbakır (4), İstanbul (31), Şırnak (1) and İzmir (1). The trials observed were chosen from among freedom of expression-related cases, with a focus on journalist trials. The observers filled in the electronic form, which instantly created an electronic database of their observations, and their answers were reviewed by MLSA editors. The data were further processed using Google Sheets and Tableau software and used as a basis for the present report.

Domestic legal protection

The Turkish legal system guarantees all basic rights and freedoms as enshrined in international treaties, including the right to personal freedom and security in Article 19 and the right to freedom of expression in Article 26 of the Constitution of the Republic of Turkey (the Constitution). In addition, Article 90 of the Constitution gives legally binding force to international treaties that are duly in force. The constitutionality of transposed international treaties cannot be challenged before the Constitutional Court, which means that international treaties take precedence over domestic statutes in the event of conflict, and thus the violation of transposed international instruments means the violation of the Turkish legal order.

Article 13 of the Constitution permits derogation from human rights guarantees only by law. However, the law in question should not violate the “spirit of the Constitution and the requirements of the democratic order of the society and the secular Republic and the principle of proportionality”. In addition, Article 15 allows for partial or full suspension of the exercise of fundamental rights and freedoms in the event of war, general mobilization, a state of siege or a state of emergency, if obligations under international law are not violated. And even under these extraordinary circumstances, there should be no violation of the following basic rights: the individual’s right to life (except where death occurs as a result of acts compatible with the law of war); the right to physical and spiritual integrity; freedom of religion, conscience and thought; the rule that no one may be compelled to reveal his or her beliefs or blamed or accused on account of them; the prohibition of retrospective punishment; and the presumption of innocence.

⁴ Alican Uludağ (5), Eda Narin (5), Barış Kop (4); Elif Akgul (12); Sevda Aydın (1); Deniz Tekin (4); Eylem Sonbahar (8); Çiçek Tahaoğlu (2); external monitor (1).



Pre-trial detention of defendants, and especially its length and weak justification, is one of the many alarming issues highlighted in this report.

Moreover, the European Convention on Human Rights (the Convention) in Article 5 prohibits arbitrary and unjustified deprivations of liberty⁵. There is a vast amount of case law of the European Court of Human Rights (ECtHR) in relation (not only) to Turkey and violations of the right to liberty (Article 5) and freedom of expression (Article 10). Especially relevant for this report is that the ECtHR has repeatedly stated that pre-trial detention in relation to the right to freedom of expression is a “real and effective constraint” on Article 10 of the Convention⁶. In the specific case of pre-trial detention of journalists, the Court has stated that such detention may create a climate of self-censorship for the detained journalist as well as for other journalists carrying out their work⁷. Justifying pre-trial detention in relation to the exercise the freedom of expression would be permissible only “where other fundamental rights have been seriously impaired, for example, in the case of hate speech or incitement to violence.”⁸

Furthermore, the Court in its *Şahin Alpay v. Turkey* ruling noted that criticism of governments and the publication of information about leaders of the country “should not attract criminal charges for particularly serious offences such as belonging to or assisting a terrorist organization, attempting to overthrow the government or the constitutional order or disseminating terrorist propaganda”. This report shows that, despite this ruling, most journalists and activists are charged with such serious offences⁹. The Court also stated that even if such serious charges are brought, pre-trial detention shall be used as a last resort¹⁰. Pre-trial detention of defendants, and especially its length and weak justification, is one of the many alarming issues highlighted in this report.

⁵ *S., V. and A. v. Denmark*, par. 73; *McKay v. the United Kingdom*, par. 30.

⁶ *Şık v. Turkey*, par. 85; *Nedim Şener v. Turkey*, par. 96.

⁷ *Şık v. Turkey*, par. 111; *Nedim Şener v. Turkey*, par. 122.

⁸ *Cumpănă and Mazăre v. Romania*, par. 115.

⁹ *Şahin Alpay v. Turkey*, par. 181.

¹⁰ *Şahin Alpay v. Turkey*, par. 181.

Findings

Defendants and charges

MLSA observers attended 42 hearings (corresponding to 38 case files) in the period from June 1 to July 21, 2019. Altogether, there were 202 defendants, of whom 157 were journalists. In terms of hearings by profession, journalists were defendants in 30 of the hearings, followed by media employees (seven hearings), writers (six hearings) and academics (four hearings), lawyers (three hearings), and architects¹¹ (two hearings)¹².

Across all hearings, the most common charges observed were for terrorist-related offences (present in 36 out of 42 hearings, or 85 percent). Of these, the most widespread were propaganda for a terrorist organization (present in 19 out of 42 hearings) and membership of a terrorist organization (present in 12 out of 42). Other terrorism-related charges were establishment and/or management of an armed organization; knowingly and willfully helping the organization without being part of the hierarchical structure within the armed terrorist organization; and printing and publishing the publications of terrorist organizations.



¹¹ There were two hearings in which the architects were among defendants. In the first, architect and defendant Arat Dink was among the 17 people against whom separate individual cases were opened for “terrorist propaganda” after the defendants had filed criminal complaints in solidarity with defendants in the Academics for Peace case. More information available here. The second hearing is related to a trial around the Gezi Park protests, involving defendants and multiple charges.

¹² In some cases, hearings and case files involve multiple defendants and a mix of professions. For this reason, the numbers stated here do not add up to 42, and the number of defendants is far greater than the number of hearings or case files.

Of the 30 hearings that concerned journalists, in 21 the charges were terrorism-related. The most common charges in these hearings were conducting propaganda for a terrorist organization (present in 11 out of 30 hearings) and membership in a terrorist organization (present in 11 out of 30).

Across all hearings observed, the non-terrorism-related charges were: insulting the president (present in five hearings in general, three of which involved journalists); incitement of hatred and violence (four hearings); humiliation of the Turkish nation, Republic and the state's institutions and organs (three hearings); attempting to abolish the constitutional order (three hearings, one involving journalists); violation of personal rights (two hearings, both involving journalists); and publishing and/or dissemination of information that should remain confidential to protect the security of the state (one hearing, which involved journalists).

Trial monitors observed proceedings at different court levels. Most of the hearings attended were at the level of the High Criminal Court (33 in general, 22 concerned journalists) and the Criminal Court of the First Instance (five hearings, all concerning journalists). The fact that so many journalists are tried before the High Criminal Court, which handles first-instance cases for certain grave crimes, shows that authorities are using the most serious types of criminal charges to prosecute journalists.

Pre-trial detention

Thirty-seven out of the total number of 202 defendants were being tried while in detention (17 hearings). Out of these 37, 34 were journalists. In addition,

- Nineteen defendants, of whom 18 were journalists, were in pre-trial detention for longer than 1 year;
- In 10 hearings defendants faced charges related to terrorism, with nine of these hearings involving journalists;
- Among the evidence used to justify the pre-trial detention of journalists were articles and photos written or published by the defendants (observed in seven hearings); phone calls with sources (observed in four hearings); defendants' social media posts (observed in three hearings); and the fact that a defendant had a secure communications app called ByLock installed on his mobile phone (one hearing)¹³;

¹³ The Turkish authorities have linked ByLock to followers of the Gülen movement, which the Turkish government considers responsible for the July 2016 coup attempt.

37 defendants were being tried WHILE IN DETENTION



92% of them were JOURNALISTS
(34/37)

- Ten of the journalist defendants were held in Silivri prison, a high-security prison near Istanbul designed for perpetrators of the most serious crimes, such as murder. Often, defendants in pre-trial detention are held in solitary confinement¹⁴. According to Turkish law, solitary confinement is reserved for inmates imprisoned for life without parole or convicted of heading terrorist organizations, and prisons can also use solitary confinement as a disciplinary measure¹⁵. Our monitoring indicates that the Turkish authorities do not observe these rules.



These findings confirm that pre-trial detention continues to be applied beyond its legitimate scope in Turkey and in contravention of ECtHR rulings.

¹⁴ For example, a defendant in one of the attended hearings was Osman Kavala, a Turkish businessman and philanthropist arrested in October 2017. The first hearing in his case was held in June 2019.

¹⁵ Aram Ekin Duran, "Turkey holds thousands in solitary in Erdogan's prisons", available online [here](#) .

**19 defendants were in
PRE-TRIAL DETENTION FOR
LONGER THAN A YEAR**



**18 of them were
JOURNALISTS
(95% of the cases)**

In one out of the 42 hearings observed there was an active arrest warrant for the defendant(s) in the trial, which means that they are to be arrested at “first sight” and will be held in pre-trial detention going forward. This is a decrease compared to our report from July, in which active arrest warrants were observed in 11 out of 86 hearings (12 percent).

Travel restrictions

Even if journalists on trial are not tried whilst in detention, the ongoing court proceedings are frequently accompanied by restrictions of their freedoms, such as a ban on travel outside the place of residence or outside the country. Such measures constitute a considerable restriction on journalists’ private and professional lives. Travel bans abroad have been imposed on defendants in nine cases, six of which concerned journalists¹⁶. In addition to travel bans, courts imposed on several defendants the duty to report regularly to a police station (four cases, including two cases of journalists)¹⁷.

Evidence presented

The overall evidence presented in most of the case files (observed in 25 out of the 34 case files for which we have data available) was directly related to the professional occupation of the defendants, such as written and published news stories and articles (observed in 19 cases), social media posts (observed in six), or phone calls with sources (observed in seven). These figures are consistent with the findings presented in our previous report. Statements of witnesses/defendants (observed in 10) constituted another category of common evidence. In addition, the types of evidence also included the signing of a petition (e.g., in the Academics for Peace trial) and the presence of the ByLock secure

¹⁶ Case Nr.: 2018/188, 2019/74, 201/91, 2018/42, 2018/165, 2018/17635, 2019/4769 (karar numarası) + 2019/521 (esas numarası); 2017/100, 2016/106.

¹⁷ Case Nr.: 2019/74, 201/91, 2018/17635, 2019/4769 (karar numarası) + 2019/521 (esas numarası).

communications app on a defendant's phone. The nature of the evidence based on which defendants are facing years of imprisonment including pre-trial detention offers further indication that the ongoing crackdown on Turkish media and civil society is driven by a desire to silence critical voices. The ECtHR has stated repeatedly that governments must tolerate close scrutiny by the press and public, and that journalists or activists should not face prosecution for articles critical of the government and its officials¹⁸.

This problematic use of evidence was concretized in individual hearings observed by MLSA. For example, on June 26 our observers attended a hearing in the case of journalist Beritan Canözer, who is charged with being a member of terrorist organization based solely on articles she has written and witness statements¹⁹. The case was opened three years after the incident for which she is charged. The same day also saw a hearing in the case of journalist Sertaç Kayar in Diyarbakır²⁰. He is charged with establishment of an armed organization based on his articles and communication with sources. On July 3, MLSA observers attending a hearing in case of journalists Sibel Hürtaş, Hayri Demir and others in Ankara²¹. The journalists are charged with terrorism-related crimes and crimes against the state based on their articles and social posts.



¹⁸ *Lingens v. Austria*, § 42, *Castells v. Spain*, § 46.

¹⁹ Case Nr. 2018/835; See more information [here](#).

²⁰ Case Nr. 2018/62; See more information [here](#).

²¹ Case Nr. 2018/165, See more information [here](#) and [here](#).

85% **TERRORISM OFFENCES** were the most common type of charge (85% of hearings)

73% The **evidence** presented in most of the cases (73%) was directly **related to the profession** of the defendants (articles, photographs and social media posts)



Hearing outcomes

Of the 42 hearings observed, nine were final. In four cases the defendants were acquitted, in two cases they were convicted, and in three cases some of the defendants were acquitted and some were convicted. Here are the details of final cases that ended up with convictions for all or some of defendants):

1. In the Özgürlükçü Demokrasi newspaper case, the 23rd High Criminal Court heard the case of eight journalists and employees of the newspaper Özgürlükçü Demokrasi²²: Mehmet Ali Çelebi, İshak Yasul, İhsan Yaşar, Reyhan Hacıoğlu, Hicran Urun, Pınar Tarlak, Ramazan Sola, and Mizgin Pendik. They were charged with making propaganda for a terrorist organization, membership of a terrorist organization and printing and publishing publications of a terrorist organization. The evidence brought by prosecutors consisted of the defendants' journalistic work, mostly published articles²³. Three of the defendants were in pre-trial detention: the newspaper's publisher, İhsan Yaşar, and editors Mehmet Ali Çelebi and Reyhan Hacıoğlu. On the day of observed hearing, they were brought into the courtroom in handcuffs in violation of Turkish law, which states that any handcuffs or other instruments used to bind hands should be removed when a suspect appears before judicial authorities, since these violate the presumption of innocence²⁴.

On June 28, 2019 the court acquitted Pınar Tarlak, Ramazan Sola and Mizgin Pendik. However, it sentenced Hicran Urun, Reyhan Hacıoğlu and İhsan Yasul to three years, one month and 15 days in prison for "aiding a terrorist organization". In addition, Yasul was also sentenced to one year, six months and 22 days in prison for "propagandizing for a terrorist organization." Çelebi was given a jail term of three years and nine months for the same offense. Yaşar was

²² Case Nr. 2018/181; See more information ([in Turkish](#))

²³ See more information at <https://freeturkeyjournalists.ipi.media/trials-calendar/ozgurulukcu-demokrasi-trial-2-3-2-2/>

²⁴ Article 191/1 of the Turkish Criminal Procedural Code

sentenced to 10 months in prison for possessing an unlicensed weapon. The court ordered the release of Hacıoğlu, Çelebi and Yaşar based on time served.

2. On July 18, 2019 Harun Çümen, former managing editor of the newspaper Zaman, was sentenced to seven years and six months prison by the 32nd High Criminal Court for membership in a terrorist organization²⁵. He had been in pre-trial detention for 16 months. The court ordered him to be kept in prison until the sentence is final²⁶. The evidence used against him included his bank account at Bank Asya, Gülen-affiliated bank, his union membership and his journalistic work over past 20 years²⁷. Although the hearing took place in Istanbul, Çümen is held in prison approximately 300 kilometres away in Balıkesir. This distance resulted in the court compelling him to attend his hearing by the SEGBIS video conference system. The jailing of defendants far from their trial location, a common practice according to IPI and MLSA research, and the accompanying use of SEGBIS, results in the denial of defendants' right to appear physically in court and raises serious questions about the right to a fair trial.
3. On July 9, 2019 the Istanbul 35th High Criminal Court sentenced Mehmet Gündem, a journalist and columnist for the newspaper Milliyet, to a deferred prison sentence of six years, 10 months and 15 days²⁸. Mehmet Gündem had been in pre-trial detention for 21 months. He was convicted of a membership in a terrorist organization. The evidence presented in the indictment consisted of articles he wrote, calls with journalistic sources and the presence of ByLock on his phone. He was held in Silivri Prison.
4. On July 5, 2019 the 16th criminal chamber of the Court of Cassation in Turkey ruled in the case of Mehmet Altan, Nazlı Ilicak, Ahmet Altan, Şükrü Tuğrul Özşengül, Fevzi Yazıcı, and Yakup Şimşek²⁹. The Court acquitted journalist Mehmet Altan. It also cleared Ahmet Altan and Nazlı Ilicak of charges related to violating the constitution. However, the court declined to order their release from prison.

Mehmet Altan had been released in June 2019 by an appeals court. The other defendants have been imprisoned for well over two years now. In February 2018, the 26th High Criminal Court of Istanbul had sentenced the Altans, Ilicak and four of their co-defendants to aggravated life

²⁵ See more information [here](#).

²⁶ See more information [here](#).

²⁷ Harun Çümen worked at Zaman newspaper from 1996 until it was shut down on July 27, 2016. During his career at Zaman, Çümen worked first as a financial correspondent, then an editor, and finally the managing editor.

²⁸ Case Nr. 2018/116; see more [here](#).

²⁹ 2019/4769 (karar numarası) 2019/521 (esas numarası); see more info at: <https://freeturkeyjournalists.ipi.media/>

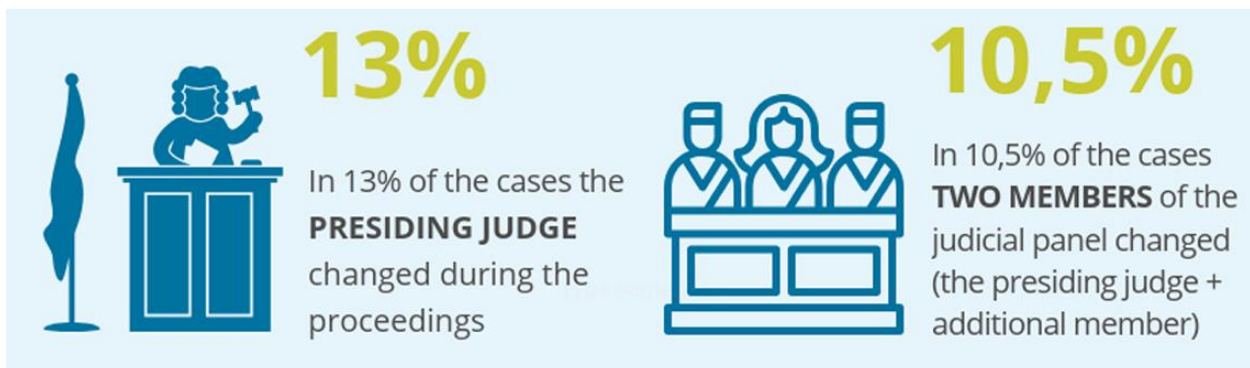
imprisonment for “attempting to overthrow the constitutional order” according to Article 309 of the Turkish Criminal Code (TCK). In October 2018, the Istanbul appeals court overseeing the case then upheld the trial court’s verdict.

The evidence presented in the case consisted of the defendants’ social media posts, written and published articles and phone calls with sources. At the time of the attended hearing, five out of six accused were held in Silivri prison³⁰. Despite his release, Mehmet Altan is prohibited from travelling abroad and has to report to police regularly.

5. On June 19, 2019 the final hearing of filmmaker and activist Kazım Kızıl and 24 other defendants on trial for insulting the president and violating the Law on Meetings and Demonstrations took place³¹. The Izmir 33rd Criminal Court of the First Instance sentenced Kızıl to a one year, three months and 16-day deferred prison sentence for insulting the president, while acquitting him on violating the Law on Meetings and Demonstrations. Kızıl had spent in pre-trial detention for three months before being released during the first hearing of his case.

Right to a lawful judge

In 13 percent of the cases (five out of 38) the presiding judge changed during the proceedings. Likewise, in 13 percent of the cases (five out of 38), a member of the judicial panel changed during the proceedings. These changes occurred despite the fact that the Turkish Constitution guarantees the right to a lawful judge in Articles 36 and 37. This right stipulates that judges who rule on a specific case should be selected based on objective criteria predetermined by law. Frequent changes to the panel of judges contravene the principle of the lawful judge and put the impartiality and independence of courts in jeopardy.



³⁰ Ahmet Altan, Nazlı Ilıcak, Şükrü Tuğrul Özşengül, Fevzi Yazıcı ve Yakup Şimşek
³¹ See more info [here](#).

For example, MLSA observers attended a trial related to the Gezi Park protests involving 16 people, including Osman Kavala. This trial violated the defendants' right to a lawful judge through the sudden decision of the Council of Judges and Prosecutors (HSK) to reorganize the court where the trial is taking place following the first hearing at the end of July 2019. An HSK decree removed a judge from the original judicial panel overseeing the Kavala case after the judge expressed an opinion in favor of Kavala's release. The judge was transferred to a newly established part of the court. The HSK's decision also highlights the problem of judicial independence in Turkey, given that a 2017 constitutional amendment increased the government's influence over the nomination procedure to the Council.

Courtroom conditions

In 55 percent of the hearings (21 out of the 38 for which data on this point are available) MLSA observers noted that the session was adversely affected by at least one of the following conditions of the courtroom:

- Courtroom was too small, not enough space for the audience (13 hearings)
- Hard to hear what the judicial panel said (eight)
- Courtroom too crowded, hard to follow (four)
- Courtroom too hot/too cold (three)
- Poor SEGBIS³² connection, hard to hear (one)
- Observers could not enter the courtroom (one)

Impartiality and (appearance of) independence

Independence and impartiality of the tribunal are institutional requirements enshrined within the concept of right to a fair trial of the Article 6.1 of the Convention, and therefore also under Turkish law. Some of the monitored hearings cast doubt on both of these principles.

First of all, 47 percent of judges' deliberations (19 hearings out of 40 for which data on this point are available³³) did not take place in private but were held in open court with prosecutors, defendants and

³² SEGBIS is a video-conference system that has frequently been used instead of granting journalists the right to appear physically in court, particularly in cases involving Kurdish journalists. More on use of the SEGBIS system in journalists hearings: "Analysis: Use of courtroom video link violates Turkey journalists' rights", available [here](#).

³³ Out of 40 hearings for which data on this point are available are available, the panel did not deliberate in private 19 times. It deliberated in private 15 times and in case 6 cases no decision was taken.

the audience present, which is consistent with our findings presented in July report. Pursuant to Article 227 of the Turkish Criminal Procedure Code, deliberations should take place only among participating judges. In order to guarantee the court's independence and impartiality, no other person may participate in the deliberations even if they have the purpose of consultation.

The appearance of independence is one of the four criteria listed by the ECtHR for determining whether the court is independent³⁴. Our monitors noted in several hearings behaviours that would lead to questioning the court's independence. For example, in the hearing of journalists Mehmet Baransu and Murat Şevki Çoban, the prosecutor and the panel of judges sat at the same level³⁵. In addition, the presiding judge and one member on the panel were sitting closer to the prosecutor than the other member of the panel. Visually it seemed as if the prosecutor was part of the panel of judges.

Defendants' presence in courtroom

During the 42 hearings our monitors attended between June and July 2019, the SEGBIS video conference system was been used only five times. In one case, a reported technical issue prevented its use. This is a marked contrast to our report published in January 2019, in which defendants in 34 percent of the observed hearings were not physically present in the courtroom and were forced instead to submit their defense from prison via SEGBIS. Nevertheless, it is not possible to deduce from these data an improvement in the right of defendants to physically attend their own trials. The use of SEGBIS has in the past correlated with certain types of trials which may be underobserved in certain observation periods.

Use of secret witnesses

Indictments against journalists often contain statements of secret witnesses. For example, our monitors attended the sixth hearing of journalist Kibriye Evren, who is charged with propaganda of and membership in a terrorist organization and has been in detention since October 2018³⁶. The indictment is based on her articles, social media posts and secret witness testimonies. She is facing up to 20 years of imprisonment. Secret witness statements were used also in the indictment of journalist Ferhat Parlak, who is charged for being a member of terrorist organization³⁷. The indictment

³⁴ The ECtHR has listed four criteria used for determination of tribunal's independence:

1. the manner of appointment and 2. the duration of term of office of judges, 3. the guarantees protecting the judges against outside pressures and 4. appearance of independence.

³⁵ Case Nr. 2014/610

³⁶ Case Nr. 2018/827; See more info [here](#).

³⁷ Case Nr. 2019/591

in that case was based on testimony from a secret witness and evidence used in a previous case that ended in acquittal. After the secret witness changed his testimony, Ferhat was released on probation with a travel ban. The trial was adjourned to November 6, 2019.

In principle, the right to a proper defence means that a defendant in a criminal trial must have an effective opportunity to challenge the evidence presented against him or her³⁸. Secret or anonymous witnesses in criminal proceedings are therefore problematic. The European Court of Human Rights, has not rejected use of secret witnesses altogether; rather, it has stated that in exceptional situations in which the life, liberty or security of witnesses may be at stake, the interests of the defence must be balanced against those of the witnesses or victims called upon to testify. Turkish legislation allows for witnesses' identities to be concealed in cases involving terrorism-related charges³⁹. However, in the current context terrorism-related charges are so commonly brought against journalists in particular that building a case against them based on secret witnesses raises justifiable suspicion regarding potential witness manipulation and fabrication and therefore the integrity and accuracy of their testimony.

In any case, domestic authorities must present relevant and sufficient reasons to keep secret the identity of witnesses⁴⁰. In the cases of Evren and Parlak, there was no justification published as to the reason for using secret witnesses

Interpreters

In the 11th hearing of journalist Ziya Ataman and 18 other defendants, held on July 4th at the High Criminal Court in Şırnak, the defence requested the court to provide an interpreter for the next hearing so that the defendants can present their defense statements in Kurdish⁴¹. The court rejected this request, arguing that it is the defence's responsibility. Ziya, and others from Dicle News Agency, are charged with trying to destroy the unity of the country. Nine defendants in the case have been in detention since April 2016⁴². This incident is just one of many examples in which interpreters for Kurdish journalists in criminal proceeding have been denied. Such a denial violates the right to a fair trial according to the Convention's Article 6.3(e), which stipulates the right to have the free assistance of an interpreter, if the defendant cannot understand or speak the language used in the court.

³⁸ See eg. *Asani v. the former Yugoslav Republic of Macedonia*, par. 33.

³⁹ Art. 314 of the Turkish Criminal Code and Art. 58 of the Turkish Criminal Procedural Code
⁴⁰ *Doorson v. the Netherlands*, par. 70; *Van Mechelen and Others v. the Netherlands*, par. 53.

⁴¹ See more [here](#).

⁴² Case Nr. Nr. 2017/567

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

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

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