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THE CUMHURİYET TRIAL AND THE EUROPEAN COURT OF HUMAN RIGHTS

Leading lawyer in Cumhuriyet case describes experience of bringing landmark case to Strasbourg, which has still not issued ruling

This is the last in a series of four articles exploring the role of the European Court of Human Rights in defending media freedom in Turkey.

In this final report, IPI speaks to leading Turkish lawyer Tora Pekin about his role in taking the Cumhuriyet journalists' cases to the European Court of Human Rights – and his frustrations about the Court's continued failure to reach a verdict.

Of all the serious violations against media freedom in Turkey over the last few years, one case stands out in particular: the Cumhuriyet trial. In late 2016, more than a dozen different journalists and executives at the leading secular newspaper were charged with various terrorism offences.

The case generated global outrage over the crackdown on press freedom under Turkish President Recep Tayyip Erdoğan and symbolized the ruthless campaign to silence critics of the Turkish government and its policies.

As one of the few remaining critical voices left in Turkey, the Istanbul-based daily had maintained strong independence in an increasingly state-controlled media environment.

After the 2016 failed coup attempt, the authorities used the situation to launch a wide-scale [assault on dissent](#), jailing critics, closing newspapers and cracking down on independent media outlets. Cumhuriyet was high on the list of targets.

On October 31, 2016, 13 of the newspaper's staff were arrested in [early-morning police raids](#) on their homes. Seventeen employees out of an initial 20 defendants were charged with various terrorism offences and abuse of authority. While three were acquitted during the first trial period, among those [convicted](#) were some of Turkey's best known journalists and commentators, including Cumhuriyet's Editor-in-Chief, Murat Sabuncu; columnist and IPI Executive Board member Kadri Gürsel; and cartoonist Musa Kart.

Turkish authorities accused them of supporting a range of groups with vastly different ideologies it has labelled terror organizations, including the Kurdistan Workers' Party (PKK), the left-wing Revolutionary People's Liberation Party-Front, and the Islamist movement led by U.S.-based cleric Fethullah Gülen, whom Ankara accuses of masterminding the failed coup.

Among the lawyers in what become known as the "Cumhuriyet trial" was Tora Pekin, a Turkish defense attorney. He was involved in the case from day one and took the legal battle all the way to Turkey's Constitutional Court and the European Court of Human Rights (ECtHR). He spoke to IPI about his role in the Cumhuriyet trial and the ongoing applications at the Strasbourg-based Court.



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Legal battle begins

As one of the lead lawyers for the group, his team first applied for individual remedy before Turkey's Constitutional Court, claiming the defendants' constitutional rights had been violated.

"After three months, the Constitutional Court had still not reviewed them, which meant we could take the cases to the European Court claiming Turkey's top court does not constitute an effective domestic remedy", Pekin explained.

With this hurdle passed, the first application to the ECtHR was made in March 2017 on behalf of Cumhuriyet's editor-in-chief, Sabuncu, and another 9 other applicants while they were still in pre-trial detention. Another was made individually on behalf of Cumhuriyet journalist Ahmet Şık.

Pekin and his team alleged the journalists' right to article 10 (freedom of expression), article 5 (right to liberty and security) and article 6 (right to a fair trial) had been breached by the Turkish state during their arrest and detention.

The legal team argued the fact that it took prosecutors nine months to produce an indictment, paired with the lack of convincing evidence, showed that their arrest and trial was politically motivated.

A complex procedure

"These applications were a complex and at times frustrating process, Pekin told IPI. Firstly, he said, the Court does not allow applications to be updated and "deficiencies" eliminated after they've been submitted, meaning applications could be rejected at the very first stage. Secondly, he added, decisions to reject cases are published without a detailed explanation why.

"I believe these two issues mean that people are prevented from using their right to access to judicial system", he said. "Rectifiable issues in procedure should not overrule the access to the right. Because everyone has the right to access to an efficient and result-seeking judicial system."

However, due to the severity of the issue and its wider implications for press freedom, the cases were fast-tracked through the Court, Pekin added. "The ECtHR, taking into consideration the Cumhuriyet applications as well as other journalists' applications from Turkey, changed its own regulations in June 2017 to give priority status to applications of journalists", he explained.

With their cases fast-tracked, teams of lawyers at the Court soon began examining the cases and gathering evidence. The ECtHR first reached out to the Turkish government to respond to a set of questions pertaining to the rights violations complaints raised in the application, Pekin said.

Specifically, the Court requested defenses from the Turkish authorities over their continued imprisonment of the Cumhuriyet staff and responses to allegations of violation of the journalists' right to liberty and security and freedom of expression. However, the Ministry of Justice repeatedly requested time extensions in order to prepare its case.

A long wait

This time delay and the number of months taken to review the cases in Strasbourg proved a real frustration for the team, Pekin said. “Despite the Court’s recent regulation on taking up the cases of journalists faster in ‘priority’ status, it still takes a long time for it to rule, and therefore the impact of these rulings decreases drastically.”

During this waiting period, IPI and 13 other press freedom organizations submitted [third-party interventions](#) to the Cumhuriyet cases among others. The submissions, which followed requests to the Council of Europe (CoE) Commissioner of Human Rights and to the United Nations Special Rapporteur on Human Rights, provided detailed legal analyses of the principles at stake in each of the cases and urged the ECtHR to ensure that the detentions were “subject to the strictest scrutiny”.

Finally, Pekin said, the Turkish government gave responses to the European Court applications in December 2017. “Although the government was granted a quite long time to give first defense/replies to these applications, they twice asked for an extension, which were both accepted by the Court”, he added. “This meant it took about nine months to get government replies.”

“While asking for the extension, the government has always claimed it’s because the cases are highly extensive files”, he explained. “However, the government eventually gave very similar replies to all applications, which proved that it had an obvious intention to stall the process.”

Finding of violations

By March 2018, with still no judgement from the ECtHR, the trial in the Turkish courts was approaching its end. On April 25, 2018, more than a year and a half after their arrest, the verdict finally came. In a devastating result for Pekin’s legal team, 14 Cumhuriyet staff members were convicted of terrorism-related crimes.

A subsequent appeal filed by the legal team was rejected by the Istanbul Regional Court of Appeal, upholding the ruling to jail Cumhuriyet’s journalists in February 2019. The ruling meant some of the staff, who had already served some of their sentences in pre-trial detention, were sent back to prison.

The final challenge by Pekin’s team in Turkey was heard at the Constitutional Court. In May 2019, the Court [ruled](#) that the arbitrary arrest and detention of nine journalists from Cumhuriyet did not violate their rights to liberty and free expression while finding rights violation in Gürsel’s

application. The reasoning behind the Constitutional Court's differentiation in these cases is unclear and has been highlighted as a sign that the Court is itself unable to guarantee fair hearings. This failed appeal exhausted the last domestic remedy available in Turkey.

Waiting for justice

Although no journalist tried in the Cumhuriyet case is currently behind bars, the ECtHR is now the final hope of justice, Pekin said. "We are still waiting for the final rulings by Court", he said, pointing to a major shortcoming of the ECtHR.

"I do accept the fact that the Court has an extensive workload, there is an increase in the number of countries where the diversion from human rights norms is growing like Turkey. However, I still see it as a priority that the Court should act on swiftly on journalists'.

"This is because freedom of expression is the key or assurance to all freedoms. Just like the spine in a human body for fundamental rights. If there is no freedom of expression and press freedom, media cannot act as the fourth estate and if it cannot then there is no possibility to protect any freedoms and rights."



The continued existence of judges arresting journalists in Turkey, holding them in prison for months and years despite ECtHR rulings is the biggest threat to democracy.

Tora Pekin, a Turkish defense attorney

A faster decision-making process was even more urgent when you look at Turkey's current trajectory, he added. "The current government's tolerance towards free media and criticism is absolutely zero", he said. "In short, Turkey's administration has declared a war on all journalists and those who report on social media - and the judiciary is the tool of this war. In order to reach the solution, one first needs to see this concrete problem."

In addition, he added, this slow process of cases through the Strasbourg Court meant that all too often, its rulings are no longer effectively taken seriously by Turkey and other states. "The only way for ECtHR rulings to have their full impact is to have the Court rule faster on applications", he added.

“The continued existence of judges arresting journalists in Turkey, holding them in prison for months and years despite ECtHR rulings is the biggest threat to democracy. In order for ECtHR ruling to have a bigger and positive impact, it is a must that applications really be reviewed in priority.”

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