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## **Turkey's journalists in the firing line for 'targeting officials'**

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**F**or long years, Turkey's Anti-Terror Law No. 3713 (ATL) has been heavily criticised for its vagueness and excessive scope of application. Dozens of violation judgements by the European Court of Human Rights (ECtHR) eventually led to a change in Article 7§2 of the Law but in practice any dissident and/or critical expression against the government is still broadly prosecuted under this article. The law contains another provision that frequently summons journalists to courts: That is the first paragraph of Article 6 of Law No. 3713 entitled "Disclosure and Publication". The phrasing of the paragraph in question is as follows:

Those who announce or publish that a crime will be committed by terrorist organisations against persons, in a way that makes it possible to identify these persons, whether or not by specifying their names and identities, or those who disclose or publish the identities of state officials that were assigned in fight against terrorism, or those who mark persons as targets in the same manner shall be punished with imprisonment from one to three years.<sup>1</sup>

As the phrasing of the article suggests, the Article is an eclectic regulation that defines multiple acts as offences at the same time. But more importantly, it is too vague and gives a lot of room for interpretation. Facing criticisms since its entry into force, this Article is currently weaponised especially against journalists who report or write articles on trials of public interest.

“ Journalists prosecuted under Article 6§1 of the Anti-Terror Law often share a common trait: they either write columns on the judicial system in Turkey or report on cases generated considerable public interest. Such accusations are usually based on the allegation that a mere mention of the name of a prosecutor or a judge in a news report constitutes the act of marking officials as targets for terrorist organisations. ”

## More journalists are tried under ATL Article 6§1 in 2023

A revision within the Ministry of Justice's system for publishing judicial statistics made it impossible for the public to access to the exact number of investigations and prosecutions according to the type of offence. Although the Ministry presented this as a revision in its reporting policy<sup>2</sup>, it in fact has become yet another obstacle to transparency. Statistical data crucial for analysing the connection between the political regime in Turkey and the judiciary are no longer publicly disclosed.

However, many press and journalist organisations in Turkey have multiple open databases to facilitate the monitoring of their colleagues' trials. A comparative analysis of these data from different sources reveals that there has been an increase in the number of criminal investigations and prosecutions under Article 6§1 in 2023.

According to these sources, in the three-year period between 2020 and 2022, the number of journalists on trial for the offence of "targeting officials" was 22, while by the end of November 2023, that number has already reached 20. It's easy to surmise that these numbers only scratch the surface of the true picture. This is because the aforementioned databases contain information exclusively about journalists who are more closely associated with various professional organisations. Many journalists such as internet journalists or local journalists, who work outside of these networks may not be included in this data.

Another notable observation is that journalists prosecuted under Article 6§1 of the Anti-Terror Law often share a common trait: they either write columns on the judicial system in Turkey or report on cases generated considerable public interest. Such accusations are usually based on the allegation that a mere mention of the name of a prosecutor or a judge in a news report constitutes the act of marking officials as targets for terrorist organisations. While the names of judges and prosecutors from all courts are readily available on the internet, it is plain absurd that reporting on these individuals is subject to prosecution. Even more absurd is the explicit reference by Article 6§1 of the ATL to "state officials that were assigned in the fight against terrorism". It is both a legal error and a problematic political approach that could potentially undermine the independence of the judiciary to consider a prosecutor or a judge as a state official who was assigned in the fight against terrorism. Claiming that a judge, by virtue of the character of the court they are assigned to, is automatically considered a state official who is assigned to fight against terrorism goes against the presumption of innocence in all proceedings conducted within that court.

## Journalists covering the judiciary at risk

As part of the PEN Norway Turkey Indictment Project, we analysed an indictment against **Canan Coşkun** on charges of targeting state officials.<sup>3</sup> The news report<sup>4</sup> that led to the prosecution of Canan Coşkun was published in Cumhuriyet Newspaper and was about a police operation that resulted in the arrest of 14 lawyers. Coşkun faced prosecution for incorporating the testimony of a contentious witness, pivotal to the investigation, into her news report, which was devoid of commentary and comprised factual accounts. In other words, the indictment against Coşkun defined this "witness" as a person fighting against terrorism. Coşkun was sentenced to 2 years and 3 months of imprisonment at the first instance court and then acquitted on appeal. However, this was not the only case in which Coşkun was put on trial for "targeting state officials". Coşkun had previously been put on trial for a news report on the criminal investigation into the death of Berkin Elvan, who was shot during the Gezi Park protests. Coşkun covered an important development in the related criminal investigation concerning the identification the perpetrator and she was put on trial despite the fact that her report<sup>5</sup>, which was about the court defence of the police officer who allegedly shot Elvan, omitted the surname of the officer.

The third case against Canan Coşkun on the same charge was filed after she posted on Twitter<sup>6</sup> (now X) her news report<sup>7</sup> published by the news website Diken. The content of the Twitter post in question was as follows:

*The evidence in the DIAYDER indictment, reviewed by the Istanbul 14th High Criminal Court headed by Akın Gürlek, the same judge who sentenced Selahattin Demirtaş, Canan Kaftancıoğlu, Sırrı Süreyya Önder and ÇHD lawyers to prison, dates back 16 years. Details in the report:*

This investigation paved the way for Coşkun's trial which took many months and was initiated with a criminal complaint issued by Akın Gürlek, who was a judge at the time and is currently the Deputy Minister of Justice and a natural member of the Council of Judges and Prosecutors (HSK). As a result, an indictment was issued against Coşkun on 12 April 2022. It was the same judge who had previously sentenced Coşkun to 2 years and 3 months of imprisonment. While Coşkun was acquitted at the end of this trial, she was not the first nor the last journalist to face charges for the same offense with comparable criminal complaints.

For a journalist, it is evident that facing repeated trials for the same offense can have profoundly corrosive effects. When we asked Coşkun about the impact of these trials on her, she stated that she has long felt ensnared in a spiral of trials:

"One trial follows the next. Lately, the number of court cases around the allegation of "targeting state officials" has increased so much that our colleagues and I find ourselves exchanging acquittals and reasoned judgements. Nevertheless, the prosecutors continue to seek punishment. Recently, journalist Ayça Söylemez was put on trial for reporting about the sentence given against me by former judge Akın Gürlek. All the journalists Gürlek issued criminal complaints about have been acquitted so far. Söylemez submitted all the relevant judgements to the court, but the prosecutor continued to ask for a sentence."

As mentioned in Coşkun's statement to PEN Norway, the case against Ayça Söylemez is ongoing. The indictment against Ayça Söylemez is based on her column titled "Talented Mr. Judge" published in Birgün on 18.02.2020.<sup>8</sup> Söylemez's first hearing was held in November 2023 and was adjourned to 19 March 2024, following the prosecutor's opinion that Söylemez be sentenced to imprisonment.

The indictment against Söylemez contains the following statements:

After all these explanations, it is understood that the suspect Ayça SÖYLEMEZ mentioned the victim, who was the president of the assize court in charge of anti-terrorism on the date of the incident, by name in the content of the internet news article titled talented mr judge published on [https://www.birgun.net/net/amp/haber/yetenekli-hakim-bey-288416?\\_\\_twitter\\_impression=true](https://www.birgun.net/net/amp/haber/yetenekli-hakim-bey-288416?__twitter_impression=true) internet; disclosed the cases he had handled in the course of her duty; that the content of the article subject to the investigation was in the nature of targeting and exposing the state officials to the armed terrorist organisations, as described by the Article 6 of the Law No. 3713; and that as it is the suspect has committed the act of targeting Akın GÜRLEK as a person who fought against terrorism under legal protection.

The highlight in this excerpt from the indictment is the claim that Söylemez disclosed the cases handled within the scope of an official duty. This kind of disclosure is virtually impossible in Turkey, given that the appointments of judges and prosecutors are published on the internet once they are confirmed, making this information readily accessible to the public. Which means the courts and all the judges serve in them is information that can be accessed on the internet. At the same time, it is publicly known that it was the same judge who handed down the sentences in all the cases of lawyers such as of the Association of Contemporary Lawyers, Şebnem Korur Fincancı, Sırrı Süreyya Önder, Canan Coşkun, Canan Kaftancıoğlu, Selahattin Demirtaş, Atilla Taş, Murat Aksoy, etc. which were handled by different or the same courts. All these trials were conducted in full public view, dozens of news reports and articles were written about them, and most of them were monitored by international non-governmental organisations. Moreover, it is the same judge who declared Can Dündar, another journalist, a fugitive and ordered the seizure of his real estate. He also did not implement the Constitutional Court's ruling on the release of then-imprisoned MP Enis Berberoğlu. As such, it is quite normal for these trials or the judgements rendered in these trials to be discussed in public.

When we asked Ayça Söylemez what she thought about the ongoing trial, she stated the following:

*"As I stated in court, the prosecutor's argument of 'disclosure' is invalid from the outset, because all the statements and information in my article, which I wrote years ago and which is the subject of the accusation, are based on statements made in the hearings of cases already followed by the public. In other words, I am accused of a very basic journalistic activity such as reporting newsworthy*

*statements made in a public trial. The accusation of 'marking the state officials as targets' is also completely baseless, nobody is marked as a target in the article, nor is there any name of an organisation or a direct accusation against the person in question."*

A few years before Coşkun and Söylemez, on 23 March 2020, an indictment had been issued against journalist Buse Söğütlü on charges of marking people as targets. After a 2-year trial, Söğütlü was acquitted of this charge in February 2022.<sup>9</sup>

### **Trials aim to impede the right to criticise and be informed**

Eren Keskin, Nazlan Ertan, Mansur Çelik, Derya Saadet, Yağmur Kaya, Rabia Çetin, Fırat Can Arslan, Dilan Balat, İsmail Saymaz, Gökçer Tahincioğlu, Furkan Karabay, Faruk Eren, Sibel Yüklér, Delal Akyüz, Evrim Deniz, Evrim Kepenek, Yıldız Tar and probably many other journalists whose names we have omitted here have been charged with the same offence. While a considerable number of trials against journalists under Article 6§1 of the ATL have currently ended in acquittals, it would be premature to conclude that there is no lingering risk of punishment or detention for journalists. In November 2023, journalists **Ferhat Çelik** and İdris Yayla<sup>10</sup> were sentenced to 1 year and 3 months of imprisonment for the same offence. Fırat Can Arslan<sup>11</sup> became the first journalist in Turkey to be arrested under Article 6§1 of the ATL. Although he was later acquitted at the first trial, Arslan was held in pre-trial detention from July 2023 to 31 October 2023.

The common pattern in these proceedings is especially notable. In the case of Fırat Can

## **Buse Söğütlü: These cases are the sword of Damocles.**

Söğütlü underlined that the trials under Article 6§1 of the ATL are conducted to silence journalists, adding that:

In recent years, we observe that lawsuits filed with this accusation have been hanging over journalists like the sword of Damocles. Neither "assigned in the fight against terrorism" nor "marking as targets" are adequately explained in the accusation part of the indictment. This lack of clarity results in the possibility that nearly every news report, where journalists exercise the public's right to be informed and write about public officials, may fall under the purview of this accusation. However, journalism is partly about bringing to light the actions and conduct of public officials that go beyond their duties and about informing the public about them.

In an atmosphere where we are confronted with new judicial scandals every day -and this is even acknowledged by some figures in the ruling party- journalists are impeded from reporting on public officials whose names are associated with scandals, which sends a very clear message: Journalists and the profession of journalism are not safe, and only the journalistic activities carried out within the limits set by the government are acceptable.

Moreover, the overly long judicial processes, which sometimes can last for years, itself works as a punishment regardless of how the case is concluded. You don't have to sentence the journalist after this accusation; judicial control "measures" such as a ban on leaving the country are already applied throughout the trial, subjecting journalists to a threatening process in various ways. And as the people in question are "powerful" public officials, there are concerns based on concrete incidents that they intervene or may intervene in the trials, which turn the trial process into an obnoxious one from the very beginning. For example, in the case in which I was on trial for allegedly marking Akın Gürlek as a target, Gürlek himself was still an assize court judge and sent a letter to the case file, claiming that I "was continuing to commit the offence". Gürlek, who was a "powerful assize court judge" at the Çağlayan Courthouse, had already decided that I had committed a crime! "Luckily" I was acquitted and Gürlek's conduct, which could be perceived as an "intervention", was ineffective, but the fact that he could do that is extremely dangerous, regardless of its impact on the result.

“ The criminal legislation in Turkey resembles a minefield for journalists. Hanging over the journalists, that sword of judicial threat naturally affects all aspects of social life. Journalism as a profession is directly related to the public’s right to be informed, and the pressure and judicial harassment in this field has consequences for a wider society. ”

Aslan (and of Evrim Deniz, Sibel Yüklér, Evrim Kepenek, Delal Akyüz too), for example, 18 journalists in Diyarbakır are currently facing trial for reporting on the fact that the prosecutor of the indictment and one of the judges who heard the first hearing of the case were married. However, in a case of this importance, the fact that the prosecutor of the indictment and the person who would decide on the acceptance or dismissal of the indictment and then conduct the judgement were married was obviously newsworthy.

In the case against **Eren Keskin**<sup>12</sup> (and against Nazlan Ertan<sup>13</sup>, Derya Saadet<sup>14</sup> too), Keskin was accused of marking the prosecutor as a target for terrorist organisations on the grounds that Keskin stated that the investigation into the case of Deniz Poyraz, who lost his life in the attack on the HDP building in İzmir, was not carried out effectively, and criticised the prosecutor who conducted this investigation for drafting an indictment in which the prosecutor characterised the words of Poyraz’s father as terrorist propaganda. Even if Keskin and other journalists are acquitted in June 2023, this acquittal does negate the profound impact of the trial.

While there are more instances to consider, even the limited number of examples given here demonstrates that journalists in Turkey are discouraged from writing on certain subjects, from sharing factual information with the public, and that the aim of the trials has been to keep such information behind closed doors.

The criminal legislation in Turkey resembles a minefield for journalists. Hanging over the journalists, that sword of judicial threat naturally affects all aspects of social life. Journalism as a profession is directly related to the public’s right to be informed, and the pressure and judicial harassment in this field has consequences for a wider society. It is also concerning that in most cases analysed in this article, judges or prosecutors were the ones advocating for the penalisation of expressions safeguarded by both the Constitution of Turkey and the European Convention on Human Rights. Although it is often ignored in the judicial practice in Turkey, the international codes of professional principles oblige both the prosecutors and judges to protect human rights.

The fact that there are many structural problems in the judiciary in Turkey and that there is therefore an urgent need for a structural transformation is currently a major topic of debate within various institutions. Any realistic democratic transformation should start by putting an end to the criminalisation of expression. ■

Endnotes:

- 1 [mevzuat.gov.tr/mevzuatmetin/1.5.3713.pdf](http://mevzuat.gov.tr/mevzuatmetin/1.5.3713.pdf)
- 2 [On the Revision Policy \(adalet.gov.tr\)](http://adalet.gov.tr)
- 3 [Microsoft Word - Canan Coşkun\\_TİP\\_TR\\_Final-1.docx \(norskpen.no\)](http://norskpen.no)
- 4 [14 lawyers of Nuriye and Semih arrested \(cumhuriyet.com.tr\)](http://cumhuriyet.com.tr)
- 5 [Policeman alleged to have shot Berkin Elvan did not remember his place of duty \(cumhuriyet.com.tr\)](http://cumhuriyet.com.tr)
- 6 Canan Coşkun's tweet in question: <https://x.com/canancoskun/status/1476280037406121988?s=20>
- 7 The report: [DIAYDER indictment based on 'anti-terrorism' inspection against Metropolitan Municipality of Istanbul accepted - Diken](http://diken.com.tr)
- 8 [Talented Mr. Judge \(birgun.net\)](http://birgun.net)
- 9 [Journalist Buse Söğütlü acquitted after 2 years and 7 hearings \(bianet.org\)](http://bianet.org)
- 10 [Court of appeal upholds sentences against journalists Çelik and Yayla for 'marking as targets' \(mlsaturkey.com\)](http://mlsaturkey.com)
- 11 [Journalist Fırat Can Arslan acquitted \(gazeteduvar.com.tr\)](http://gazeteduvar.com.tr)
- 12 [Jail demand for Eren Keskin for "legally criticising the prosecutor" \(bianet.org\)](http://bianet.org)
- 13 [Journalist Nazlan Ertan charged with 'defamation' and 'marking as a target' for retweeting \(mlsaturkey.com\)](http://mlsaturkey.com)
- 14 [Journalist's 'retweet' acquitted \(bianet.org\)](http://bianet.org)