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**Rule 9.2 submission  
for the cases of**

**Öner and Türk Group of Cases (Appl. No. 51962/12)**

**Nedim Şener Group of Cases (Appl. No. 38270/11)**

**Altuğ Taner Akçam Group of Cases (Appl. No. 27520/07)**

**Artun and Güvener Group of Cases (Appl. No. 75510/01)**

by  
**Media and Law Studies Association  
(MLSA)**

**January, 2025**

**Media and Law Studies Association (MLSA)** is a non-profit organization founded in Istanbul (registered as Medya ve Hukuk Çalışmaları Derneği) in December 2017 to respond to an urgent and growing need for a return to democracy and normalization in Turkey by providing legal support to journalists whose freedom of expression is violated.

MLSA's legal unit provides legal representation and counselling services to journalists whose freedom of expression is threatened without considering their affiliations, political views, gender or ethnicity. MLSA legal unit also conducts strategic litigation services where there is a systematic violation of freedom of expression.

MLSA also has maintained a trial monitoring program since 2017; the program has monitored more than 2.500 hearings all over the country. The program monitors cases concerning freedom of expression and/or freedom of assembly.

MLSA also maintains Free Web Turkey as an internet freedom watchdog platform in Turkey. The project monitors and reports on internet bans in Turkey every year, and also publishes weekly "censorship agendas" in which all news about internet censorship is published each week on the webpage and Twitter.

MLSA is also running a program to strengthen civil society in Turkey against legal threats following the adoption of a new law on CSOs, providing legal and administrative training for the members of CSOs and conducting simulation audits of threatened NGOs.

MLSA's editorial unit publishes opinion pieces and news articles on different aspects of Turkey's media landscape in cooperation with freelance journalists and provides a platform for journalists to express themselves.

## INTRODUCTION

1. This communication is submitted in view of the upcoming 1521<sup>st</sup> meeting of the Committee of Ministers in March 2025 according to Rule 9.2 of the Rules of the Committee of Ministers (“the Committee”). Media and Law Studies Association (MLSA) addresses the growing concerns regarding violations of freedom of expression and freedom of the press in relation to the respective groups of cases; it aims to inform the Committee of Ministers about developments since the 1521<sup>st</sup> meeting with regard to the aforementioned interim resolution.
2. This communication addresses the persistent failure of the authorities to fully and effectively implement the judgments in the aforementioned groups of cases and provides evidence that the systematic violations which gave way to these rulings persist.

## GROUP CASES

3. The groups of cases mainly concern unjustified and disproportionate interferences with freedom of expression on account of criminal proceedings initiated against the applicants under various articles of the Turkish Penal Code or Anti-Terror Law for having expressed opinions that did not incite hatred or violence, and the consequent chilling effect on society as a whole (violations of Article 10).
4. **Öner and Türk Group of cases** (Appl. No. 51962/12) concerns unjustified convictions based on Article 6/2 (printing of statements made by a terrorist organization) and 7/2 (propaganda in favor of a terrorist organization) of the Anti-Terror Law No. 3713, Article 215 (praising an offense or an offender), and Article 216 (provoking the public to hatred, hostility, denigrating a section of the public) of Turkish Penal Code No. 5237.
5. **Nedim Şener Group of cases** (Appl. No. 38270/11) concerns pre-trial detention of journalists on serious charges without relevant and sufficient reasons based on Articles 309-314 (offences against the Constitutional order and its functioning) and 220 (establishing organisations for the purpose of committing crimes) of the Turkish Penal Code No. 5237. It further concerns violations of the right to liberty and the right to freedom of expression due to applicants’ unlawful pre-trial detention.
6. **Altuğ Taner Akçam Group of cases** (Appl. No. 27520/07) concerns prosecutions based on Article 301 (degrading the Turkish Nation, State of Turkish Republic, the Organs and Institutions of the State) of Turkish Penal Code No. 5237, which the Court found not to meet the “quality of law” requirement in view of its “unacceptably broad terms.”.
7. **Artun and Güvener Group of cases** (Appl. No. 75510/01) concerns unjustified interferences with the applicants’ right to freedom of expression on account of their criminal

convictions based on Articles 125 (insulting) and 299 (insulting the President) of Turkish Penal Code No. 5237.

8. **İşıkırık Group of Cases** (Appl. No. 41226/09) concerns criminal sanctions imposed on the applicants on account of the exercise of their right to freedom of expression or assembly based on Article 220/6 (committing an offence on behalf of an organization without being a member) and 220/7 (aiding and abetting an organization without belonging to its structure) of the Turkish Penal Code.
9. In its 1521st meeting, the Committee urged the authorities to provide detailed statistical information, in particular on the application of paragraphs 6 and 7 of Article 220 and Articles 6 and 7 of the Anti-Terrorism Law, with details on the type of conduct concerned. The Committee also stressed that the information submitted by the civil society organizations on the application of the aforementioned legislations paints a worrying picture<sup>1</sup>.
10. This communication is based on **MLSA's 2024 Justice Monitoring Report** which included findings of the 281 freedom of expression and journalism cases monitored by MLSA monitors in 2024 judicial year (September 1, 2023 – July 20, 2024).
11. The report stipulates that in 281 freedom of expression cases and 614 hearings monitored, 1856 individuals stood trial including 366 journalists (making almost 20 percent of all defendants). As of the publishing of the report 21 journalists were imprisoned. Currently, there are 30 journalists behind bars and four journalists are under house arrest<sup>2</sup>.
12. Violations of the right to a fair trial were documented in 68.4% of the hearings MLSA observed. Problems included delayed hearings, interruptions during defense statements, denial of the right to speak for defendants, and inadequate courtroom conditions. The presence of police officers in courtrooms was also noted as a concern.

## GENERAL MEASURES

### Öner and Türk Group of cases

13. **The Öner and Türk Group of cases** concerns unjustified convictions based on Article 6§2 (printing of statements made by a terrorist organization) and 7§2 (propaganda in favour of an illegal organization) of the Anti-Terror Law No. 3713, Article 215 (praising an offence or an offender), and Article 216 (provoking the public to hatred, hostility, denigrating a section of the public) of Turkish Penal Code No. 5237.

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<sup>1</sup> CM/Del/ Dec ( 2024)1492/H46-36 para 7

<sup>2</sup> <https://www.mlsaturkey.com/tr/cezaevindeki-gazeteciler-ve-medya-calisanlari-listesi>

14. The Turkish Government's 11.01.2024 dated action plan under the Öner and Türk Group of cases group claimed that legislative measures have been taken and amended to further guarantee the right to freedom of expression in relation to the relevant articles. However, the Court in these cases did not criticize the wording of these articles, but found that the judicial authorities had failed to conduct an appropriate analysis of the content of the impugned articles or of the context of their publication, with a view to establish, as a whole, whether they had called for the use of violence, armed resistance or rebellion, or that they had amounted to hate speech. The systematic problem is not the wording of the articles as the Court reiterates.

### **Article 7/2 of Anti-Terror Law**

15. Regarding Article 7/2 of Anti-Terror Law implementation, the focus is mainly on the application of this article by domestic courts. The European Court of Human Rights has observed that domestic courts have failed to appropriately analyze the acts and/or statements of the applicants. This includes a failure to establish whether their actions constituted calls for violence, armed resistance, or rebellion, or amounted to hate speech.
16. According to the wording of Article 7/2 of Anti-Terror Law, the criteria of the crime is the act of disseminating propaganda in favor of terrorist organizations only by justifying, praising or encouraging the use of methods that contain coercion, violence or threat. Although the amendment was made in 2013 and added "*by justifying, praising or encouraging the use of methods constituting coercion, violence or threats*" to the article, the judicial organs' practice of keeping the prior interpretation (propaganda without justifying, praising or encouraging the violence) is the sole reason to be punished.
17. Propaganda for a terrorist organization was one of the most charged offence on the report. 162 defendants were charged with the offence including 56 journalists<sup>3</sup>. Eight defendants charged with Article 7/2 of Anti-Terrorism Law were convicted<sup>4</sup>. The report shows that the offence continues to be a tool for the judiciary to prosecute journalists and those expressing their freedom of expression.
18. Some of the example cases are as following in the latest judicial year are as following;
19. Journalist Merdan Yanardağ was charged with 'making propaganda for a terrorist organisation' and 'praising crime and criminal' for the remarks he used in a program on TELE1 channel, where he was the editor-in-chief, to express the view that AKP was preparing a new solution process with PKK leader Abdullah Öcalan. The verdict was announced on 4 October 2023 at the first hearing of the case held at Istanbul 30th High

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<sup>3</sup> MLSA Justice Trial Monitoring Report 2024, page 10

<sup>4</sup> MLSA Justice Trial Monitoring Report 2024, page 48

Criminal Court. The court sentenced Yanardağ, who had been under arrest for 101 days, to 2 years and 6 months in prison and released him<sup>5</sup>.

20. The verdict in the case against journalist Neşe İdil, defended by MLSA, for her social media posts on the Kobani offensive was announced on 20 February 2024 by Istanbul 22nd High Criminal Court. İdil was sentenced to 1 year and 3 months in prison for 'making propaganda for an illegal organisation'. The announcement of the verdict was deferred<sup>6</sup>.
21. The verdict was announced on 28 March 2024 in the lawsuit filed against Pinar Gayıp, editor and co-owner of Etkin News Agency (ETHA), and Mehmet Acettin, co-owner of the agency, on the criminal complaint filed by lawyer Sezgin Keleş on the grounds of 'making terrorist organisation propaganda under the guise of journalism' about the news published in ETHA News Agency but not related to Keleş, at Istanbul 2nd Criminal Court of First Instance. The court sentenced Pinar Gayıp to 6 months and 7 days of imprisonment on the grounds that she committed the offence of 'denigrating the Turkish nation, the state of the Republic of Turkey and the institutions and organs of the state' in repeatedly. The court postponed the sentence on the grounds that Gayıp would not commit the offence again and decided that she would be subject to 1 year of supervision. Mehmet Acettin was sentenced to 7 months and 15 days for the same charge. It was decided not to postpone the sentence on the grounds that Acettin had more than one conviction for intentional offences<sup>7</sup>.
22. In addition to the arbitrary use of 'terrorist propaganda' charge to stifle freedom of expression against journalists in Turkey. The charge of 'revealing/disseminating or targeting the identity of persons who took part in the fight against terrorism' continues to be used against journalists. According to the report, the charge has been used in 15 cases. MLSA also wishes to remind that the first ever arrest of a journalist under the aforementioned charge was in 2023 with the imprisonment of Fırat Can Arslan for posting the appointment of a prosecutor in a public case to another city.

## Nedim Şener Group of Cases

23. **Nedim Şener Group of cases** (Appl. No. 38270/11) concerns pre-trial detention of journalists on serious charges without relevant and sufficient reasons based on Articles 309-314 (offences against the Constitutional order and its functioning) and 220 (establishing organizations for the purpose of committing crimes) of the Turkish Penal Code No. 5237. It further concerns violations of the right to liberty and the right to freedom of expression due to applicants' unlawful pre-trial detention.
24. In the latest Action Plan, it is asserted that journalistic activities cannot be *per se* subject to an investigation in Turkey. Furthermore, it is claimed general measures are taken in respect

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<sup>5</sup> MLSA, Justice Trial Monitoring Report 2024 page 38

<sup>6</sup> MLSA, Justice Trial Monitoring Report 2024 page 39

<sup>7</sup> MLSA Justice Trial Monitoring Report 2024 page 40

of the Article 5 violation in conjunction with Article 10 of the Convention (Paragraph 449-450). However, the Action Plan does not provide any positive examples to support its claims.

25. Turkey is still one of the biggest jailors of journalists<sup>8</sup>. When the report was launched, there were 21 journalists imprisoned, the detention against the journalists started to rise significantly leading up to more than 28 journalists as of January 2025.
26. During the monitoring period, journalists were charged with 'membership of a terrorist organisation', 'making terrorist propaganda', 'targeting people involved in the fight against terrorism' or 'disseminating misleading information to the public', known as the 'censorship law'. While some journalists are still in pre-trial detention, the duration of their pre-trial detention ranged from 5 days to 9 years and 3 months.
27. At the beginning of this monitoring period on 1 September 2023, 30 journalists and media workers in Turkey were in pre-trial detention or imprisoned after for their journalistic activities. By November 2024, a total of 43 journalists, including convicted journalists, were held behind bars in prisons on various allegations. Some of those arrested were released during this period. In October, when this report was prepared, according to MLSA data, a total of 21 journalists were still being held in prisons on remand or in prison.
28. Dicle – Firat Journalists Association (DFG) Co-Chair Dicle Müftüoğlu and Mesopotamia News Agency editor Sedat Yılmaz were imprisoned on May 3, 2023 in an investigation against Kurdish media prior to the national elections on May 14, 2023. Both individuals were charged with membership to a terrorist organization. The prosecution laid their news articles and conversations with their news sources as criminal evidence. Mr. Yılmaz was released after 230 days<sup>9</sup> and Ms. Müftüoğlu was released after 306 days<sup>10</sup>. Mr. Yılmaz acquitted on February 29, 2024 and Ms. Müftüoğlu was acquitted on November 24, 2024<sup>11</sup>.
29. New legislative and judicial practices were put in place to continue judicial harassment against journalists. The judiciary employs international travel bans<sup>12</sup>, house arrests<sup>13</sup> and travel restrictions within residential areas<sup>14</sup> as preventative measures pending trial. In February 2024, three journalists were put under house arrest effectively rendering their work as journalists impossible. Koray Kesik<sup>15</sup>, a documentary filmmaker, was arrested in May 2024 and he was put under international travel ban. Journalist Erdoğan Alayumat on the

other hand was banned from leaving his residential area after his 24 days arrest in May 2024.

### **Altuğ Taner Akçam Group of cases**

30. **The Altuğ Taner Akçam Group of cases** (Appl. No. 27520/07) concerns prosecutions based on **Article 301** (degrading the Turkish Nation, State of Turkish Republic, the Organs and Institutions of the State) of Turkish Penal Code No. 5237, which the Court found not to meet the “quality of law” requirement in view of its “unacceptably broad terms.”.
31. MLSA would like to point out that the amendments made to Article 301 of the Turkish Penal Code are not sufficient and that ambiguous expressions remain in the article. Despite the regulation that “expressions of an opinion for the purpose of criticism do not constitute a crime” in paragraph 3, MLSA’s trial monitoring data shows that prosecutors continue to resort to Article 301 of the Turkish Penal Code to prevent all kinds of criticism against the government and state institutions and first instance courts continue to try and even sentence those who exercised their freedom of expression<sup>16</sup>.

### **Artun and Güvener Group of cases**

32. **The Artun and Güvener Group of cases** (Appl. No. 75510/01) concerns unjustified interferences with the applicants’ right to freedom of expression on account of their criminal convictions based on **Articles 125** (insulting) and **299** (insulting the President) of Turkish Penal Code No. 5237.
33. In their latest Action Plan, the authorities claimed that “the authorisation of the Minister of Justice to conduct an investigation into an offence regarding Article 299 was adopted as a filtering measure” and that “implementation of the mechanism in practice has improved in the recent years” and thereby eliminated the concerns regarding this article (para. 490).
34. According to the Report, 38 journalists (out of 101 total defendants) were charged with ‘insult against a public official (Turkish Criminal Code Article 125/p.3). 35 journalists (out of 53 defendants) were charged with ‘regular insult’ (TCC – Article 125/p.1) and 24 journalists (out of 63 defendants) were charged with insulting the president (TCC – Article 299)<sup>17</sup>. The findings of the report shows that the insult charges are frequently used to target independent media to stifle freedom of expression.
35. The report also showed that many public officers and figures such as ministers, governors, police chiefs took place in SLAPP lawsuits. For a detailed analysis please refer to the report submitted with the communication.

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<sup>16</sup> MLSA, Trial Monitoring Program Report 2023, p. 22.

<sup>17</sup> Ibid, Justice Monitoring Report 2024 page 17



36. The report also underscores the involvement of state officials as complainants. In 107 trials where Turkish President Recep Tayyip Erdoğan, state officials, or police officers were plaintiffs, 230 individuals were tried. Journalists constituted 64% of the defendants in these cases.

### **Işıkırık Group of Cases**

37. **The Işıkırık Group of Cases** (Appl. No. 41226/09) concerns criminal sanctions imposed on the applicants on account of the exercise of their right to freedom of expression or assembly based on **Article 220/6** (committing an offence on behalf of an organisation without being a member) and **220/7** (aiding and abetting an organisation without belonging to its structure) of the Turkish Penal Code. The European Court found in some cases examined under this group that **Article 220 § 6** of the Criminal Code was not “foreseeable” in its application since it did not afford the applicants legal protection against arbitrary interference under Articles 10 and 11 of the Convention.
38. The Constitutional Court in the Hamit Yakut (no. 2014/6548, 10 June 2021) pilot judgment, which was delivered in the context of individual application proceedings, held that Article 220 § 6 of Law no. 5237 did not meet the requirements of the quality of law. It therefore found a violation of Article 34 of the Turkish Constitution (corresponding Article 11 of the ECHR). In its judgment, the Constitutional Court considered that the violation in question had derived from a structural problem, and it thus transmitted the judgment to the Parliament for a solution.
39. Journalists were particularly targeted for their news stories and commentary. Among 187 defendants charged with "membership in an armed (terrorist) organization," 64.2% were journalists.
40. The Parliament passed the exact same provision in early 2024. MLSA submitted a Rule 9.2. Communication regarding the enactment of the legislation for further details<sup>18</sup>.

### **CONCLUSIONS AND RECOMMENDATIONS**

54. The structural problems in this group of cases remain of a systemic nature, current and go beyond the specific circumstances of these cases, despite the few positive judgments by first-instance courts.
55. Though in their Action Plan, the authorities portray that the problems stem from the application of these articles. However, it is the articles themselves that are the sources of ongoing problems.

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<sup>18</sup> Rule 9.2 - Communication from an NGO (Media and Law Studies Association (MLSA)) (23/02/2024) concerning the case of Isikirik v. Turkey (Application No. 41226/09)

56. Given the arguments set out above, MLSA kindly requests the Committee to continue the supervision on the execution of the Öner and Türk, Şener, Akçam, Artun and Güvener, Işıkırık groups of cases under the enhanced procedure on a frequent basis and to:

- Request the authorities to revise their action plan so that they address structural problems arising from the legislative frameworks as identified by the ECtHR in these groups of cases.
- Urge the authorities to provide detailed statistical information, in particular on the application of paragraphs 6 and 7 of Article 220 and Articles 6 and 7 of the Anti-Terrorism Law, with details on the type of conduct concerned.
- Insist that the authorities provide up-to-date and detailed statistics on criminal investigations and prosecutions related to freedom of expression and the press (in particular, detailed data on the lengths of trials, numbers of investigations and prosecutions under Articles 6/2 and 7/2 of the Anti-Terror Law), and provide comments on these statistics. .
- Reiterate its call for strong high-level political messages from the authorities in which they express that they respect and stand behind the decisions of higher courts, underline the value of freedom of expression, and call on and appraise judges and prosecutors on the application of criminal law in compliance with the right to freedom of expression.
- Considering the absence of progress in the implementation of these groups of cases, as well as the repeated and extensive use of these legal provisions in order to target journalists, media employees and other persons exercising freedom of speech, the Chair of the Committee should send a letter to the Minister of Justice of Turkey regarding the non-implementation of these groups of cases.
- Instruct the Secretariat to prepare a draft interim resolution regarding this group of cases if the Turkish authorities fails to provide information in accordance with the decisions of the Committee in the time of the next evaluation of this group of cases.