



## **Third Party Intervention**

**In the Case of İdris Sayılğan v. Turkey (no. 53887/18)**

**by**

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## I. Introduction

1. İFÖD will address in its intervention in the case of Sayılğan v. Turkey (no. 53887/18) the issue of journalism covering the Kurdish problem in Turkey. It is submitted that bearing in mind the systematic and widespread threat over the Kurdish journalists in Turkey as well as journalists covering Kurdish issues, a criminal prosecution conducted against a Kurdish journalist cannot be assessed in isolation.
2. As observed by interstate institutions as well as international NGOs, the state of human rights, the rule of law and independence of the judiciary **deteriorated** drastically within the last five years in Turkey. Freedom of expression and freedom of the media have been one of the most affected areas during this deterioration.
3. In 2016, Reporters Without Borders (RSF) ranked Turkey 151<sup>st</sup> of 180 countries in their World Press Freedom Index. In 2017, Turkey ranked 155<sup>th</sup> and 157<sup>th</sup> in 2018. Similarly, Freedom House classified Turkey as a ‘partly free’ country ranking it 156<sup>th</sup> in its 2016 media freedom index with a 20point decrease in score compared to 2010. In April 2017, it was announced that Turkey had fallen to 163<sup>rd</sup> in the global index. In January 2018, Turkey was ranked 154<sup>th</sup> and classified as ‘not free’ for the first time. Finally, in the most recent Freedom in The World 2019 Report, Turkey’s total score was 31 out of 100 points and continued to be in the “not free” category. The country report indicated that “*the government has cracked down on NGOs since the coup attempt, summarily shutting down at least 1,500 foundations and associations and seizing their assets. The targeted groups worked on issues including torture, domestic violence, and aid to refugees and internally displaced persons (IDPs). NGO leaders also face routine harassment, arrests, and prosecutions for carrying out their activities.*”<sup>1</sup>
4. The crisis of rule of law and human rights in Turkey was also portrayed by the Rule of Law Index prepared by World Justice Project. While Turkey’s overall score was 0.46 and ranking was 80<sup>th</sup> in 102 countries in 2015 Index, in 2019 Index Turkey’s overall score has fallen to 0.42 points and its ranking became 109<sup>th</sup> out of 126 countries. In the category of fundamental rights, Turkey’s score was 0.32 and ranked 122<sup>nd</sup> out of 126 countries. The lowest score was 0.06 in the sub-category of no improper government influence in the category of criminal justice. This finding of World Justice Project clearly shows that there is a widespread perception among both lawyers and lay people that government has improper influence over the criminal processes.<sup>2</sup>
5. The problem relating to freedom of expression is evident not only in reports published by NGOs but also in reports issued by interstate oversight mechanisms.<sup>3</sup>

<sup>1</sup> <https://freedomhouse.org/report/freedom-world/2019/turkey>

<sup>2</sup> <https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2019-Single%20Page%20View-Reduced.pdf>

<sup>3</sup> See in particular the Preliminary conclusions and observations by the UN Special Rapporteur on the right to freedom of opinion and expression to his visit to Turkey, 14-18 November 2016: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20891> and The Council of Europe’s platform to promote the protection of journalism noted that Turkey has the highest number of alerts and that a large part of these involve imprisonment of journalists. Of the 626 alerts

In particular, the CoE Commissioner for Human Rights' *Memorandum on Freedom of Expression and Media Freedom in Turkey* published in February 2017, states that "journalists have been among the most affected by the various forms of judicial harassment" and also that "detention is the most visible and chilling form that this harassment has taken."<sup>4</sup> The Memorandum also noted that "the exceptional nature of remands in custody, and the need to provide clear legal reasoning in cases where they are necessary are not embedded in the practice of the Turkish judiciary." It goes on to say that **many Turkish judges still continue to use the list of catalogue crimes in the Code of Criminal Procedure as grounds for detention without a careful examination of the remaining conditions of detention.** Similarly, the Venice Commission noted that without individualized decisions, and without the possibility of timely judicial review, "membership" of terrorist organizations charges and arrests without relevant and sufficient reasons, instead of restoring democracy may further undermine it.<sup>5</sup>

6. Although the pressure on press in Turkey is wider than ever due to developments following the failed coup attempt in July 2016, **the restriction imposed upon journalism concerning the Kurdish issue has even older roots.** Recent developments have exacerbated already the dire situation. As the present application is concerning a journalist who reported about the conflict between the State and the illegal armed organisation PKK and the other Kurdish related issues, this intervention will first examine the ECtHR standards relating to the issue. The intervention then will assess briefly the new methods used by the respondent government to silence media on this particular subject. This assessment is relevant to the Court's questions involving whether the applicant's freedom of expression has been breached (Q4) and whether his deprivation of liberty has a purpose other than envisaged by article 5 of the Convention in breach of Article 18 (Q5).

### **Journalism covering the Kurdish Issue: The Turkish Cases Before the Court**

7. Generally speaking, Turkey has always been one of the most restrictive countries among Council of Europe member states in terms of media freedom and freedom of expression. Of the total of 777 judgments in which the ECtHR has found a violation of freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) between 1959 to 2018, Turkey ranks first with 321 judgments (41% of all violations) and is followed by Russia with 53, France with 38 and Austria with 35.
8. The main themes in cases of freedom of expression brought before the ECtHR against Turkey are terrorism and violence. Indeed, the majority of the ECtHR's judgments concerning Turkey involve individuals convicted for disseminating propaganda on behalf of a terrorist organisation;<sup>6</sup> publishing content or books or disseminating public messages that incite hatred or hostility, or glorify crime or

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provided in the database, 123 involve Turkey and 69 are classified as Level 1 alerts. Platform to promote the protection of journalism and safety of journalists: <http://www.coe.int/en/web/media-freedom/all-charts>

<sup>4</sup> CommDH (2017)5, para. 79.

<sup>5</sup> Venice Commission, CDL-AD(2017)007.

<sup>6</sup> Articles 6 and 7 of the Anti-Terrorism Law.

criminals;<sup>7</sup> and for denigrating and publicly defaming the Turkish nation, the Republic of Turkey, the Grand National Assembly of Turkey or the moral personality of the state, its institutions and the Turkish Armed Forces.<sup>8</sup> A second set of judgments involve individuals automatically convicted for publishing the statements of a terrorist organisation<sup>9</sup> with total disregard to the context or content of such statements. The Court also delivered judgments in cases where the applicants had been charged for committing crimes on behalf of a terrorist organisation or aiding and abetting a terrorist organisation.

9. A common denominator of all these cases is **the overly broad definition of concepts of terrorism and connection to terrorist organisations by the judiciary**. The vast majority of the cases brought to the Court by journalists in the 90s and 2000s were relating to journalistic activities concerning the conflict that took between the State forces and PKK.
10. The Kurdish issue remains one of the long-lasting political problems in Turkey. According to the Court “the public has the right to be informed of different perspectives on the situation in south-east Turkey, irrespective of how unpalatable those perspectives appear to the authorities. The Court is not convinced that, even against the background of serious disturbances in the region, expressions which appear to support the idea of a separate Kurdish entity must be regarded as inevitably exacerbating the situation”.<sup>10</sup> The Court also reiterates that news reporting based on interviews or declarations by others, whether edited or not, constitutes one of the most important means whereby the press is able to play its vital role of “public watchdog”. The punishment of a journalist for assisting in the dissemination of statements made by another person would seriously hamper the contribution of the press to the discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so.<sup>11</sup>
11. However, journalists do not have an unfettered discretion while covering terrorism related news. The Court applies a balancing test to determine the connection between speech and violence, taking into consideration the person making the speech and the medium used. This balancing approach requires a test based on the formula “cannot be said to incite violence or construed as inciting violence”.<sup>12</sup> It follows then in the cases relating to terrorism, the Court **seeks for a connection between the speech and incitement to violence**. Although cases brought against Turkey at the ECtHR concerning the violation of Article 10 are based on different criminal provisions, they are similar in that they all involve statements that disturb the State and the society at large, mostly criticising the government’s anti-terrorism practices and its policies about the Kurdish issue, sometimes praising and legitimising an organisation, its activities or its leader. However, the Court **repeatedly finds that** it is not acceptable to impose criminal sanctions based solely on the statement itself.

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<sup>7</sup> Article 312 of the former Criminal Code and Articles 215 and 216 of the current Criminal Code.

<sup>8</sup> Article 159 of the former Criminal Code and Article 301 of the current Criminal Code.

<sup>9</sup> Article 6(2) of the Anti-Terrorism Law.

<sup>10</sup> Özgür Gündem v. Turkey, no. 23144/93, 16.3.2000, para. 70.

<sup>11</sup> *Kuliš v. Poland*, no. 15601/02, § 38, 18 March 2008

<sup>12</sup> *Sürek v. Turkey* (no. 1) [GC], no. 26682/95, para. 62.

12. The mere fact that an expression is harsh and critical of the government and even one-sided does not necessarily mean that it amounts to incitement. In this regard, the ECtHR has found various statements to fall within the acceptable limits of freedom of expression including those such as, Kurdistan having been annexed as a colony by the Turkish State; the portrayal of the Turkish State as an oppressor of “Kurdistan” in “political, military, cultural [and] ideological” terms; the “racist policy of denial” *vis-à-vis* the Kurds being instrumental in the development of the “fascist movement”;<sup>13</sup> the romanticizing of the aims of the Kurdish movement by saying that “it is time to settle accounts”; referring to the Republic of Turkey as a “terrorist state”;<sup>14</sup> the condemning of the “*military action*” of the State which includes the State’s “dirty war against the guerrilla” and the “open war against the Kurdish people”;<sup>15</sup> saying that “*Kürdistan is burning*” and “describing events as genocide”;<sup>16</sup> claiming that the State is engaging in “massacre” or defining the conflict as “a war”.<sup>17</sup>
13. According to the Court, although criticism directed at both sides would indicate that the statements are not an incitement, the one-sided nature of the expression is not sufficient reason to justify its incrimination. On the contrary, national authorities have an obligation to give sufficient weight to the public’s right to be informed of a different perspective on the situation in south-east Turkey, irrespective of how unpalatable that perspective may be for them.<sup>18</sup> In its recent judgment in the case of *Yavuz and Yaylalı*, the ECtHR has pointed out that **the fact that information is one-sided is not sufficient reason on its own for limiting freedom of expression.**<sup>19</sup>
14. The State’s margin of appreciation is even more narrowed in cases relating to press due to importance of press in democratic societies.<sup>20</sup> However, this margin is wider if the expression is inciting to violence to public servant or certain part of society.<sup>21</sup>
15. With **regard to interviews made by journalists**, the Court concluded that merely the identity of the person who had been interviewed is not enough to sanction a journalist. As long as there is no explicit incitement to violence, a message stating that the organisation will keep resistance in the interview does not justify criminal prosecution of the journalist.<sup>22</sup> In another example, a journalist had an interview with a soldier who claimed that there had been bias and enmity against the Kurds in military which led systematic illegal conduct against them. Considering that the

<sup>13</sup> *Başkaya and Okçuoğlu v. Turkey*, no. 23536/94, 08.7.1999,, para. 64.

<sup>14</sup> *Sürek v. Turkey (no. 4)*, no. 24762/94, 08.7.1999,, para. 56

<sup>15</sup> *Erdoğan v. Turkey*, no. 25723/94, 15.6.2000, para. 62.

<sup>16</sup> *Şener v. Turkey*, no. 26680/95, 18.7.2000, para. 44.

<sup>17</sup> *Karkın v. Turkey*, no. 43928/98, 23.9.2003.

<sup>18</sup> *Şener v. Turkey*, para. 45.

<sup>19</sup> *Yavuz and Yaylalı v. Turkey*, no. 12606/11, 17.12.2013, para. 51; *Güler and Uğur v. Turkey*, no. 31706/10, 2.12.2014, para. 52. For a similar judgment, see, *Yağmurdereli v. Turkey*, no. 29590/96, 04.06.2002, para. 52.

<sup>20</sup> *Buran v. Turkey*, no. 984/02, 17.6.2008, para. 33.

<sup>21</sup> *Hocaoğulları v. Turkey*, no. 77109/01,07.03.2006, para. 36.

<sup>22</sup> *Sürek and Özdemir v. Turkey*, no. 23927/94, 08.07.1999, para. 61; *Korkmaz (3) v. Turkey*, no. 42590/98, 20.12.2005, para. 25.

otherwise could be proved, the Court held that criminal law measures must apply only in exceptional conditions.<sup>23</sup>

16. Domestic courts also relied on the publication of statements of PKK representatives to punish journalists. However, if the reasoning lacks the incitement to violence element, such a decision also violates Article 10.<sup>24</sup> In *Demirel and Ateş (3)*, with regards to the statement made by the leader of the PKK, the Court held that “it considers that the article in question had a newsworthy content since it provided, however one-sided, historical information about an organisation which has since 1985 waged armed opposition against the State, its background, place in the leftist movements and persons involved and an insight into the psychology of the person who was the driving force behind it”.<sup>25</sup>
17. As state officials that take part in anti-terror operations can also be the perpetrator of gross human right violations, measures that impose restrictions on anti-terror operations can also lead impunity to grow. Domestic decisions that ignore this effect of restrictions are in contradiction with Article 10.<sup>26</sup>

### **New Methods To Silence Journalism on the Kurdish Issue**

18. As noted above the pressure in the Kurdish media is not a new phenomenon. The Prevention of Terrorism Law was used for the suspension of the publication and distribution of several periodicals during the 1990s and 2000s. In *Ürper and Others v. Turkey*, the Court held that Article 6(5) of the Prevention of Terrorism Law lead a systematic problem that had to be addressed under Article 46 of the Convention.<sup>27</sup> This provision was finally abolished in 2012 by Article 105 of Law no 6352.
19. Systematic pressure on the Kurdish media was also well reported in the case of *Özgür Gündem v. Turkey*. The leading newspaper and its workers were physically attacked and systematically harassed by judicial authorities.<sup>28</sup> The case shows how difficult to report on the Kurdish issues in Turkey.
20. Therefore, the fate of media covering the Kurdish issue has never been bettered despite temporary improvements. Although the Kurdish media benefited temporarily from the atmosphere of freedom during the peace process (2013-2015), the end of the process brought even more pressure on it.
21. The Turkish authorities’ methods to silence the Kurdish media have changed and enriched following the collapse of peace process in 2015. Not only has the government developed new methods to impose full blackout to the Kurdish media but also criminal law sanctions inflicted upon the pro-Kurdish journalists have

<sup>23</sup> *Ali Erol (2) v. Turkey*, no. 47796/99, 27.11.2005, para. 33.

<sup>24</sup> *Kanat and Bozan v. Turkey*, no. 13799/04, 21.10.2008; *Yıldız and Taş (2) v. Turkey*, no. 77642/01, 19.12.2006; *Yıldız and Taş (3)/Turkey*, no. 477/02, 19.12.2006; *Yıldız and Taş (4) v. Turkey*, no. 3847/02, 19.12.2006; *Çapan (2) v. Turkey*, no. 29849/02, 26.4.2007.

<sup>25</sup> *Demirel and Ateş (3) v. Turkey*, no. 11976/03, 9.12.2008, para. 26.

<sup>26</sup> *Ergin and Keskin (1) v. Turkey*, no. 50273/99, 16.6.2005. Note also *Falakoğlu and Saygılı v. Turkey*, no. 11461/03, 19.12.2006.

<sup>27</sup> *Ürper and Others v. Turkey*, no. 14526/07, 20.10.2009, para. 51-52.

<sup>28</sup> *Özgür Gündem v. Turkey*, no. 23144/93, 16.3.2000.

become severer. Unlike the 90's, journalists are often charged with the crime of membership to terrorist organisation rather than with terror propaganda charges. Therefore, to understand the main motive behind the systematic pressure on journalism concerning the Kurdish issue, İFÖD will attempt to present a full picture of the situation. Below, different aspects of crack down on Kurdish media will be elaborated.

### **Closure of Newspapers and Media Outlets**

22. Even before the state of emergency declared after the coup attempt on July 2016, following the intensified armed conflict in South East Turkey, new measures were imposed on the Kurdish media. As will be seen below, criminal prosecutions against editors-in-chief on watch of Özgür Gündem newspaper started in that period. In the same period, İMC, one of the most popular news TV channels, was taken out of TURKSAT satellite arbitrarily due to a criminal investigation initiated by a prosecutor in Ankara.<sup>29</sup>
23. However, the government imposed a new and even more effective measure against media outlets during the state of emergency. Although the government had declared state of emergency as a reaction to the coup attempt, in a short while it extended the scope of the measures of state of emergency to all terrorist organisations or bodies, entities or groups which are decided by the National Security Council to have acted against the national security of the State.
24. During the state of emergency period, the government issued 32 state of emergency decrees. Decrees brought the shutdowns of **179 media outlets** (53 newspapers, 34 TV stations, 37 Radio stations, 20 magazines and 6 news agencies). Furthermore, 29 publishing houses were shut down.
25. Although the Kurdish media was not involved with the coup attempt at any stage, they became the main target of this new wave of censorship. As can be seen from the list provided (**Annex-I**), at least 13 Kurdish media outlets, including the leading news agencies, were directly shut down by state of emergency decree lists. In addition to this, pursuant to Article 2 (4) of Decree no. 668 the relevant Minister was given power to appoint a Commission which could recommend to shutdown radios, television stations, newspapers, magazines, printing houses and distribution channels. 12 more Kurdish TV channels were shut down by the decision of a minister based upon the recommendation made by this Commission. With these decisions, no media outlet that could provide different perspectives on the situation in south-east Turkey left.
26. Media outlets that were shut down directly by a decree had no remedy to invoke as the Constitutional Court held unanimously that it did not have the jurisdiction to review the decree-laws issued under the state of emergency.<sup>30</sup> Television

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<sup>29</sup> The Ankara Public Prosecutor's Office initiated an investigation against the İMC on the ground that in some programmes terrorist propaganda had been made (no. 2015/122047). The Prosecutor Office submitted a letter informing the Satellite Company owned by the State about the investigation on 24.2.2016. In two days time İMC TV was taken out of the TURKSAT Satellite.

<sup>30</sup> See recent decisions of the Constitutional Court on decree laws: E.2016/166, K. 2016/159, 12.10. 2016; E. 2016/167, K.2016/160, 12.10. 2016; E. 2016/171 K. 2016/164, 2.11.2016; E. 2016/172 K. 2016/165, 2.11. 2016.

stations shut down by the decision of the Minister, on the other hand, had the opportunity to challenge this decision before administrative courts. However, two years after this challenge it became clear that administrative courts would not entertain these cases, as they consider that even media outlets that were not included in state of emergency decree lists must apply to State of Emergency Inquiry Commission established after the closures. For instance, the İMC TV's case which was taken to an administrative court following the decision of the minister, is still pending before the Inquiry Commission as the administrative court refused to examine their case and forced them to apply to the Inquiry Commission.<sup>31</sup>

27. Indeed, following the requests of the Venice Commission and the Secretary General of the Council of Europe in January 2017, the government established a new commission entitled State of Emergency Inquiry Commission to receive applications from public servants and media outlets that had been directly affected by State of Emergency Decrees.
28. The Venice Commission in its Report on the Measures Provided in the Recent Emergency Decree Laws with Respect to Freedom of the Media recommended to the Inquiry Commission that cases concerning liquidated media outlets should be among those which are given priority treatment. The Venice Commission's recommendation was based on two significant reasons: "First, every such decision affected a large number of individuals (especially employees and owners of the media outlet). Second, and most importantly, those cases have a political dimension which transcends the particular interests of the owners/employees of the legal entities concerned. If free media in Turkey are effectively silenced over a prolonged period of time, the very foundation of the democratic state governed by the rule of law is affected".<sup>32</sup>
29. This forecast, unfortunately, turned out to be true. Not a single decision about the Kurdish media has been delivered by the Inquiry Commission so far.

#### **Internet Censorship Targeting Kurdish Media and News**

30. In March 2015, a new blocking provision, namely **Article 8/A**, with the title of "*Removing content and/or blocking access in circumstances where delay would entail risk*", was added to the Law No. 5651. Under Article 8A, in circumstances **where delay would entail risk**, removal or blocking of such Internet content in order to protect the right to life or security of life and property, national security and protection of public order, prevention of crimes or for the protection of public health may also be requested from the President of BTK **by the Office of the Prime Minister** between the dates of 27 March 2015 until 2 July 2018, and then **by the Office of the President of Turkey** as the Prime Ministry has been closed down after the June 2018 General Elections. Article 8/A started to be used as a politically silencing tool especially after the general elections of **7 June 2015**.

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<sup>31</sup> Ankara 4th Administrative Court held that the claimant had to brought an application to the Inquiry Commission. (27.06.2018, 2017/350, E. 2018/1633 K.) Appeal against this decision was denied by the Ankara Administrative Court of Appeal.

<sup>32</sup> Venice Commission, Report on the Measures Provided in the Recent Emergency Decree Laws with Respect to Freedom of the Media , CDL-AD(2017)007, Opinion No. 872 / 2016, para. 89.



Article 8A based orders usually target Kurdish and left-wing news websites as well as several social media accounts and content associated with Kurdish journalists and activists. Between 22 July 2015 and as of now **358 separate 8/A decision were issued** by 10 different Ankara based criminal judgeships of peace blocking access to over 10,000 Internet addresses among which approximately 2000 websites, 3000 Twitter accounts, 2200 tweets and 660 news articles.<sup>33</sup> With these decisions, websites such as Dicle News Agency, Azadiya Welat, Özgür Gündem, Rudaw, RojNews, ANF, Jin News are regularly and repeatedly blocked access to from Turkey together with government opponent news websites such as Sendika.Org and SiyasiHaber.Org.

### **Criminal Measures**

31. The Turkish Penal Code and Prevention of Terrorism Law in particular with their overly broad definition of terrorism, place overly restrictive limitations on the exercise of the right to freedom of expression protected by the Convention. Despite tens of decisions of the Court concerning anti-terror legislation in Turkey, the situation in Turkey has not been ameliorated, on the contrary gradually deteriorated.
32. Particularly, arbitrariness of provisions of the Turkish criminal law concerning membership to terrorist organisations has been identified both by the Venice Commission, the Human Rights Commissioner of the Council of Europe<sup>34</sup> and this Court.
33. Article 220 of the Turkish Criminal Code, which concerns to membership to criminal organisations, not only punishes membership to criminal organisations but also committing a crime on behalf of an organisation (220/6) or aiding and abetting an organisation (220/7). The Venice Commission noted that even after certain amendments clarifying these provisions, a real risk to breach freedom of expression remained. Therefore the Venice Commission recommended that “In paragraphs 6 and 7 of Article 220 (Establishing organisations for the purpose of committing crimes) (in conjunction with Article 314), the sentence “although he is not a member of that organisation, shall also be sentenced for the offence of being a member of that organisation.” should be repealed. In case this sentence in paragraph 6 and 7 is maintained, the application of Article 220 in conjunction with Article 314 should be limited to cases which do not involve the exercise of the rights to freedom of expression and assembly”.<sup>35</sup>
34. The Court also has observed that when the applicant had been convicted for membership to a terrorist organisation for merely due to his/her statements there was an interference with the applicant’s right to freedom of expression.<sup>36</sup>

<sup>33</sup> See further İFÖD, EngelliWeb 2018: An Assessment Report on Blocked Websites, News Articles and Social Media Content from Turkey, July 2019, at [https://ifade.org.tr/reports/EngelliWeb\\_2018\\_Eng.pdf](https://ifade.org.tr/reports/EngelliWeb_2018_Eng.pdf)

<sup>34</sup> CommDH(2012)2, following the visit to Turkey on 10 to 14 October 2011.

<sup>35</sup> Opinion on Articles 216, 299, 301 and 314, CDL-AD(2016)002, 15.3.2016, para. 128.

<sup>36</sup> Yılmaz and Kılıç v. Turkey, no. 68514/01, 17.7.2008, para. 58; Gül and Others v. Turkey, no. 4870/02, 08.06.2010, para. 34.

35. Recently, in *Işıkırık v. Turkey*, the Court concluded that Article 220 (6) of the Criminal Code was not “foreseeable” in its application since it did not afford the applicant the legal protection against arbitrary interference with his right under Article 11 of the Convention.<sup>37</sup> The Court reached the same result about Article 220 (7) of the same Code in *İmret (2) v. Turkey*<sup>38</sup> and *Bakır and Others v. Turkey*.<sup>39</sup>
36. However, despite the judgments of the Court and other international criticism, resort to criminal law provisions concerning membership to terrorist organisations and terrorist propaganda has significantly increased in recent years, particularly following the coup attempt. There are serious concerns about the consistent application of “continuity, diversity and intensity” test that applies to the acts of the accused in order to see whether those acts prove that the suspect has any “organic relationship” with the organisation.
37. Individuals that have been indicted under Article 314 of the Turkish Criminal Code reached its peak in 2017. Over 1 million individuals (1.056.779) were subjected to a criminal investigation between 2016-2018 and 830.521 were indicted. Over 600.000 prosecutions are either continuing or pending. The same is true for those charged for terrorist propaganda. Between 2010-2018,<sup>40</sup> a total of 123390 terror propaganda cases were completed. 33083 persons received criminal sentences and a separate 8016 received suspended sentences, with 61490 receiving various other penalties. 20801 (16%) persons were found not guilty.
38. Although all sectors of the society have been affected from these developments, generally the journalist but particularly the Kurdish media has received one of the largest blows. Although the total number of jailed journalist varies according to different reports,<sup>41</sup> there is no doubt that Turkey is “The world’s largest prison for journalists”.<sup>42</sup> According to the Council of Europe’s Platform to promote the protection of journalism and safety of journalists, currently 105 journalists are in detention.
39. According to data collected by İFÖD from different sources, at least 101 journalists have been on trial either for being a member of PKK or for making its propaganda. (**Annex-II**) Out of 101 individuals, 94 of them have been detained at pre-trial stage. At least 78 of those individuals have been charged merely due to the institution they worked for. 14 journalists from daily *Azadiya Welat* and 22 journalists from *Dicle News Agency (DİHA)* were charged with membership to terrorist organisation or terror propaganda on the ground that they had worked for

<sup>37</sup> *Işıkırık v. Turkey*, no. 41226/09, 14.11.2017, para. 70. See also *Zülküf Murat Kahraman v. Turkey*, no. 65808/10, 16.7.2019.

<sup>38</sup> *İmret (2) v. Turkey*, no. 57316/10, 10.7.2018, para. 59.

<sup>39</sup> *Bakır and Others v. Turkey*, no. 46713/10, 10.7.2018, para. 69.

<sup>40</sup> Statistical data is not available for 2018.

<sup>41</sup> European Federation of Journalists reported in February 2019 that there were 157 journalists in prison in Turkey (<https://europeanjournalists.org/turkey-journalists-in-jail/>), while the Committee to Protect Journalists claim that at least 68 journalists were jailed at the same time (<https://cpj.org/blog/2019/02/eu-turkey-release-jailed-journalists.php>). According to International Press Institute this number stands at 130: <https://freeturkeyjournalists.ipi.media/tr/>.

<sup>42</sup> <https://www.amnesty.org/en/latest/news/2019/05/turkey-the-worlds-largest-prison-for-journalists/>. Also see <https://www.economist.com/graphic-detail/2019/01/16/turkey-leads-the-world-in-jailed-journalists>.

- these institutions, apart from other evidence. Amongst 101 those who have been convicted (34) so far received varied prison sentences from 1 year 2 months to aggravated life imprisonment with only 2 receiving “not guilty” verdicts.
40. Finally, not only permanent staff of the Kurdish media but also those who acted in solidarity with them have been the victim of these draconian measures. The 38 Editors-in-Chief on Watch for Özgür Gündem have been facing charges of terror propaganda and publishing and spreading statements of terrorist organizations under the articles 7(2) and 6(2) of the Anti-Terror Law No. 3713.<sup>43</sup>

## **Conclusion**

41. As set out above, İFÖD considers that recent developments in Turkey concerning the Kurdish journalists stand with deep contrast with the standards developed by the Court in the last two decades in cases brought against Turkey. In the early freedom of expression cases brought against Turkey, the Court evaluated the anti-terror legislation of it and concluded that national authorities had not respected their obligation to give sufficient weight to the public’s right to be informed of a different perspective on the situation in south-east Turkey. However, even at the time when the Court reached that conclusion the level of sanctions imposed on the Kurdish media was not as excessive as now. As the information we have provided in this intervention shows, different methods to silence Kurdish media are utilised by the government. All alternative and different perspectives regarding the Kurdish issue are sanctioned.
42. Criminal cases against Kurdish journalists can only be rightly understood against this background including that of the applicant, İdris Sayılğan.

**21.10.2019**

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**İfade Özgürlüğü Derneği (İFÖD)** has been set up formally in August 2017 protect and foster the right to freedom of opinion and expression. The new Association envisions a society in which everyone enjoys freedom of opinion and expression and the right to access and disseminate information and knowledge.

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<sup>43</sup> In a separate case, which is known as the Özgür Gündem main trial, Özgür Gündem Consultant Board members Necmiye Alpay, Aslı Erdoğan, Ragıp Zarakolu, Filiz Koçali, Eren Keskin, Editors-in-Chief Zana Kaya, İnan Kızılkaya, Kemal Sancılı and Bilge Oykut are also standing trial.