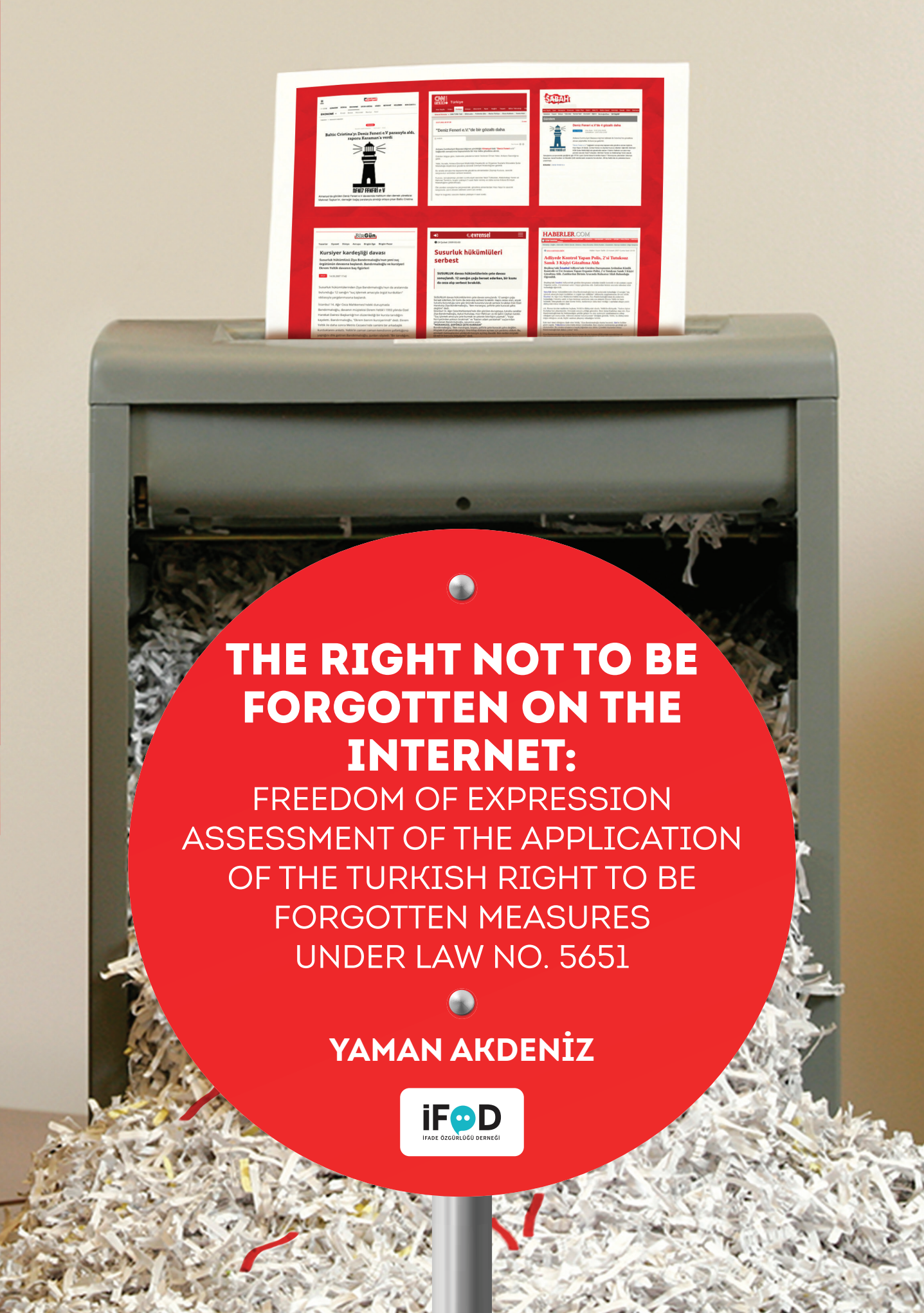

THE RIGHT NOT TO BE FORGOTTEN ON THE INTERNET:

FREEDOM OF EXPRESSION ASSESSMENT OF THE APPLICATION OF THE TURKISH RIGHT TO BE FORGOTTEN MEASURES UNDER LAW NO. 5651

YAMAN AKDENİZ

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Kingdom of the Netherlands

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• RESEARCH •

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İFADE ÖZGÜRLÜĞÜ DERNEĞİ

Freedom of Expression Association and the Right (Not) To Be Forgotten Report

The Freedom of Expression Association ("İfade Özgürlüğü Derneği - IFÖD"), based in Istanbul, was established in August 2017. The Association focuses on the prevention and elimination of violations of the right to freedom of expression without any discrimination based on language, religion, race, gender, sexual orientation, gender identity, age, disability, political affiliation, and other grounds. In this respect, the association was founded with the purpose of providing legal assistance to those whose right to freedom of expression has been violated or is at risk of being violated; conducting projects including research, training, and national and international cooperation projects; and promoting solidarity for the purpose of safeguarding the right to freedom of expression of the people affected.

Since its foundation, the Freedom of Expression Association has published the 2018,[i] 2019[ii], 2020[iii] and 2021[iv] EngelliWeb annual reports on the ongoing Internet censorship in Türkiye. This report focuses on the scorching and destructive effect of the amendments made to the Law No. 5651 as a result of increasing pressure, especially in 2020 and during the COVID-19 pandemic and Internet censorship practices, which have been increasing gradually along with these amendments. The aim of this systematic study and report is to ensure that the scorching effect and damage of censorship are not completely erased from the collective memory and to document the extent of censorship.

While the annual EngelliWeb reporting continues within İFÖD, it has been observed and identified that in recent years, individuals increasingly request that their futures not be negatively affected by news or published content related to events caused by themselves or third parties in their past, with reference to their right to be

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i The Freedom of Expression Association, EngelliWeb 2018: An Assesment Report on Blocked Websites, News Articles and Social Media Content from Turkey, June 2019: https://ifade.org.tr/reports/EngelliWeb_2018_Eng.pdf.

ii EngelliWeb 2019: An Iceberg of Unseen Internet Censorship in Turkey, July 2020, https://ifade.org.tr/reports/EngelliWeb_2019_Eng.pdf.

iii EngelliWeb 2020: Fahrenheit 5651: The Scorching Effect of Censorship, August 2021, https://ifade.org.tr/reports/EngelliWeb_2020_Eng.pdf.

iv EngelliWeb 2021: The Year of the Offended Reputation, Honour and Dignity of High Level Public Personalities, December 2022, https://ifade.org.tr/reports/EngelliWeb_2021_Eng.pdf.

forgotten. These requests have been frequently evaluated as violations of personal rights under article 9 of Law No. 5651 by criminal judgeships of peace and the judgeships issued decisions of access blocking and content removal involving such news articles and content.

Therefore, this new study will evaluate what the right to be forgotten means, how it is addressed in the case law of the Court of Cassation, the Constitutional Court, and the European Court of Human Rights, the approach of criminal judgeships of peace, the problems that arise in practice, and the impact of decisions and implementation on freedom of expression and the press, especially on Internet news archives. Along with this evaluation, the conflict between the protection of privacy and personality rights, guaranteed under Article 8 of the European Convention on Human Rights, and the equally important right to freedom of expression and the press, guaranteed under Article 10 of the Convention, will also be assessed.

When the brief history of the right to be forgotten is considered, its origin dates back to a judgment of the Court of Justice of the European Union in 2014.[v] In the implementation following this judgment, upon the requests of individuals, it is ensured that links to news articles and content about them that cannot be found from search engines if they are evaluated within the scope of the right to be forgotten. In other words, news articles and content about them that are considered to fall within the scope of the right to be forgotten are removed from the search engines results.

The short history of the right to be forgotten in Türkiye and its integration into Turkish law began with the judgments issued by the General Assembly of Civil Chambers of the Court of Cassation in June 2015[vi] and subsequently by the Constitutional Court in March 2016,[vii] followed by a judgment issued by the General Assembly of Criminal Chambers of the Court of Cassation in October 2018,[viii] 24 judgments issued by the 19th Criminal Chamber of the Court of Cassation mainly on access blocking practices, and four more judgments issued by the 7th Criminal Chamber of the Court of Cassation after the closure of the 19th Criminal Chamber until the finalisation of this report. In addition to a total of 30 judgments issued by the Court of Cassation, the Constitutional Court issued a total of eight judgments on the right to be forgotten.[ix] As will be evaluated in this report, these judgments of the Constitutional Court are generally related to access blocking decisions issued by criminal judgeships of peace under article 9 of Law No. 5651 on violations of personal rights.

In this context, the "**prima facie violation**"[x] approach, which the Constitutional Court established in October 2017 which should be applied in principle in relation to access blocking decisions issued on the grounds of violation of personal rights, will also be part of this assessment. As the criminal judgeships of peace ignored this prin-

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v *Google Spain SL, Google Inc. v. Spanish Data Protection Agency, Mario Costeja Gonzales*, C-131/12, 13.05.2014.

vi General Assembly of Civil Chambers of the Court of Cassation, no. 2015/1679, 17.06.2015.

vii N.B.B. Application, No. 2013/5653, 03.03.2016.

viii General Assembly of Criminal Chambers of the Court of Cassation, no. 2018/490, 30.10.2018.

ix N.B.B. Application, No. 2013/5653, 03.03.2016; N.B.B. (2) Application, No. 2014/17143, 01.03.2017; G. D. (2) Application, No. 2014/1808, 04.10.2017; Asım Bayar and Veysel Bayar Application, No. 2014/4141, 04.10.2017; Aslı Alp and Şükrü Alp Application, No. 2014/18260, 04.10.2017; G. Y. Application, No. 2014/16026, 05.10.2017; Fahri Göncü Application, No. 2014/17943, 05.10.2017; C. K. Application, No. 2014/19685, 15.03.2018

x Ali Kıdık Application, No. 2014/5552, 26.10.2017.

cipled approach of the Constitutional Court, the Court, in a subsequent judgment on the application of Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others ("**Diken and Others**"), issued a pilot judgment almost four years after establishing the "prima facie violation" approach and identified "**structural problems**" in article 9 of Law No. 5651 on violations of personal rights.[xi]

This report considers article 9 of Law No. 5651 as the starting point of problems involving the right to be forgotten and as mentioned above the Constitutional Court identified structural problems with regards to this provision. However, until the July 2020 amendments, **there was no direct reference to the right to be forgotten within the scope of article 9**, the text of the article **generally related to violations of personal rights**, and the only sanction that could be decided by the criminal judgeships of peace based on violations of personal rights was to block access to the news article and other Internet content. On the other hand, with the February 2014 amendments, the legislator also made it possible to **block access to content on grounds of violations of privacy** with the newly added article 9/A to Law No. 5651, but in practice, article 9/A is rarely used and requests are usually submitted under article 9, which operates more swiftly.

Following the amendments made by the Turkish Grand National Assembly in July 2020, in addition to the access blocking sanction, the sanctions of removal of news articles and content from publication and non-association of the names of the requesters with the search engines results were added to article 9 of Law No. 5651. However, there is still no direct reference to the right to be forgotten in the amended text of the article.

Within the scope of this report, the right to be forgotten decisions issued by criminal judgeships of peace in 2020 and 2021 will be evaluated. Within the scope of the EngelliWeb report, a total of **3.173 separate decisions** issued in 2020 by **369 different criminal judgeships of peace** across Türkiye on the basis of article 9 of Law No. 5651 were identified and analyzed. When these decisions were analyzed, a total of **224** decisions issued by **105 different criminal judgeships of peace** in 2020 regarding the right to be forgotten were identified. Similarly, approximately **3.504 access blocking and/or content removal decisions** issued in 2021 by **386** criminal judgeships of peace across Türkiye on the basis of article 9 of Law No. 5651 were identified and analyzed. In 2021, a total of **324** decisions issued by **133 different criminal judgeships of peace** regarding the right to be forgotten were identified. Therefore, a total of **548 decisions** issued by **174** different criminal judgeships of peace in 2020 and 2021 were identified and analyzed within the scope of this study.[xii]

With these decisions, while a total of **10.441 news articles and other content** were requested to be blocked or removed, **access to 8.865 news articles and other content was blocked** and **1.048 news articles and other content were removed**. In total, **sanctions were imposed on 9.913 (94.94%) news articles and other content**,

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xi Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, R.G. 07.01.2022-31712.

xii Within the scope of this study, a total of 548 right to be forgotten decisions issued in 2020 and 2021 by criminal judgeships of peace were evaluated, in which sanctions were imposed and the requests were either accepted or partially accepted. However, it should be noted that the requests rejected by the criminal judgeships of peace and the relevant decisions cannot be identified directly.

while **requests submitted for only 528 (5.06%)** news articles and content **were rejected**. The **548** decisions identified were evaluated individually within the scope of this study. The requests together with the news articles and other content subject to the requests, the reasons and the legal evaluations of the criminal judgeships of peace have been examined and categorized together with the results of the decisions and measures taken. Additionally, the status of the requesters, the date of publication of the news and other content and whether there is a public interest in their publication have also been evaluated separately.

It should be noted that news articles and content subject to the right to be forgotten requests **did not contain any violation of personal rights or violation of the law at the time of their publication**. Therefore, such requests may only be considered favourably in cases where **there is no superior public interest**, and especially in **exceptional cases** where ordinary citizens have the right to "**control their past**" and "**to request that certain issues erased from their past and forgotten**." However, the right to be forgotten may not prevail for news and content that involves factual reporting and contributes to a public debate related to the general interest, or for news that continues to be of public and societal interest and remains relevant, particularly if the existence and publication of news in the press archives is considered to serve a superior public interest in the context of freedom of expression and the press. Whether this balance is observed and maintained and how the right to be forgotten is handled especially by criminal judgeships of peace, is shared with the public in this study together with numerous different examples.

This study prepared by Professor **Yaman Akdeniz** (Professor, Faculty of Law, Istanbul Bilgi University), will evaluate how the right to be forgotten is applied by the criminal judgeships of peace for the purpose of "protecting personal rights" within the scope of Law No. 5651. The study will evaluate further the requests, whether the judgeships referred to the judgments of the Court of Cassation, the Constitutional Court and the European Court of Human Rights in their decision-making processes, and therefore whether they took into account the relevant case-law. In this context, the jurisprudence of the Court of Cassation, the Constitutional Court and the European Court of Human Rights will also be analyzed for compatibility assessment.

Furthermore, the report will also examine in detail whether the judgeships took into account freedom of expression and freedom of the press in cases where the sanctions imposed by the judgeships targeted media organisations, newspapers and online media as content providers. The report will also scrutinize whether the judges were sensitive to the removal of news and content with political implications about events, issues and persons of public interest from press archives, and whether the right to be forgotten was used as a separate **censorship mechanism**.

This report was prepared as part of a project funded by the Human Rights Program of the Dutch Government, under the framework of the activities of the Freedom of Expression Association. We would like to express our sincere gratitude to the **Lumen database**[xiii] for its indirect but significant contribution to the preparation of this study. We would also like to thank Expert Researcher **Ozan Güven** for his significant

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xiii See https://www.lumendatabase.org/

contribution for the identification of the decisions included in the study and for making them suitable for analysis and preparing the visuals used in the report. We also extend our gratitude to our student intern **Hivda Avcı** who identified and compiled the judgments of the Court of Cassation on the right to be forgotten for analysis. Finally, we would like to express our endless thanks to Dr. **Can Cemgil** for patiently reading the final version of the study from beginning to end, for his substantial assistance with the complex translation of this report to English and for his valuable contributions throughout the project. We would also like to thank **Emine Ayhan** for the initial translation of this report into English.

Contents

THE RIGHT TO BE FORGOTTEN

IMPLEMENTATION OF THE RIGHT TO BE FORGOTTEN IN TURKISH LAW

List of Tables, Screenshots and Figures

THE RIGHT TO BE FORGOTTEN

BRIEF HISTORY AND DEFINITION OF THE RIGHT TO BE FORGOTTEN

With the launch of the first website in August 1991, the World Wide Web (www) started to develop very rapidly: a total of two billion websites have been created throughout its 31-year history and it is estimated that there are more than 400 million active websites at present. With the rapid development of the Internet, the emergence of web 2.0-based social media services and especially the development of search engines (e.g. Yahoo started to offer web directory services in 1994 and Google started to offer search engine services in 1998) users acquired access to all kinds of news and information very easily. In Türkiye, many newspapers and magazines have started to publish online since late 1996. For example, Milliyet (newspaper) archives going back to May 1950 can be accessed free of charge, while Cumhuriyet (newspaper) archives with all its newspapers and supplements dating back to 1924 can be accessed online for a nominal fee.

With the transfer of existing newspaper archives to the digital environment, the development of Internet journalism, the creation of alternative news portals establishing their own archives, millions of news articles and content have started to be accessible in the digital environment for the last three decades. Since a large portion of these news articles and content are of historical significance and public importance, it can be said that they have archival value of their own even if they were published many years ago. While some may argue that news articles and content related to political events and public figures may lose their relevance over time, it can be contended that their archival value remains significant and never diminishes. Despite the passage of time since their initial publication, such content can continue to serve the public interest and benefit, particularly in terms of providing historical context and per-

spective. Doubtlessly, it is true that political events and public figures often dominate news coverage in the press and on the Internet. However, it is important to acknowledge that not all articles and content fall under these categories. There are also news articles and content that focus on everyday citizens in the digital archives. For instance, the Susurluk Accident, which surfaced in November 1996 as one of the most significant political scandals in the history of the Republic of Türkiye, continues to garner public interest. As a result, there is compelling public interest for the ongoing inclusion of news articles and other content about this scandal in public and digital press archives. Similarly, there is no doubt that ongoing publication of news articles and content related to the failed coup attempt of 15 July, 2016, is of superior public interest. In contrast, news articles about traffic accidents, suicide cases, tabloid divorce news, petty crimes, or administrative sanctions for non-payment of tax debts that were published in the 1990s may not hold the same level of ongoing public interest or relevance. Therefore, it is reasonable to assume that online archives containing such news should not turn be transformed into some sort of "**virtual criminal record**."[1]

Accordingly, the need for the right to be forgotten emerged in the mid-2010s as ordinary citizens found themselves struggling with personal news and information which continued to be available on the Internet and online archives for years and easily accessible through the search engines. For instance, individuals who had divorced have moved on and remarried, those who committed minor crimes have served their sentences, have been rehabilitated, and reintegrated into society and they do not want to be permanently labeled as "criminals," "thieves," or "fraudsters" for the rest of their lives. Similarly, some news articles and other content, though relevant at the time of their publication, can become outdated after many years. For example, even if those charged with a "fraud offence" were acquitted long ago, outdated news of the proceedings initiated against them can still appear online. This report will provide more examples, but there is no doubt that **the right to be forgotten is essential concerning news and information related to ordinary citizens**. However, when it comes to news about events of public interest or significant political events, it is crucial to remember that there is superior public interest and archival significance in continued publication, regardless of the amount of time that has passed since the initial publication of such news and content.

In the context of the Internet, the right to be forgotten, particularly for ordinary citizens refers to their ability to request the removal of news and other content from online archives that pertains to their person which were published on legal grounds and contained factual and accurate information at the time of their publication. The requests may also include the anonymization or complete deletion and/or removal of their names from search engine directories, so that they cannot be easily accessed through search engines based on their name, due to the significant amount of time that has passed since the occurrence of that particular event. In 2014, the Court of Justice of the European Union's ("CJEU") decision on Google[2] resulted in the practical implementation

1 *Hurbain v. Belgium*, no. 57292/16, 22.6.2021, § 110; *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018, § 106.

2 The Court of Justice of the European Union, *Google Spain SL, Google Inc. v. Spanish Data Protection Agency, Mario Costeja Gonzales*, C-131/12, 13.05.2014.

of the right to be forgotten, which involves the removal of relevant news articles and content from search engine indexes upon request, preventing them from being listed in search engines again. Since 29.05.2014, Google received 1.312.735 right to be forgotten requests. As a result, Google has been asked to remove 5.114.885 URL addresses from its search engine index.[3] Google states that it has met 50.8% of these requests.

In addition to the CJEU's decision on the right to be forgotten, Article 17 of the European Union General Data Protection Regulation ("GDPR"), published in 2016 and entered into force in May 2018, includes the right to erasure ("right to be forgotten"). The Committee of Ministers of the Council of Europe has also issued a recommendation on search engines, stating that deindexing and delisting practices should be carried out transparently within a narrow scope.[4] In this context, upon receiving a right to be forgotten application search engines are expected to assess whether the information requested to be removed is "inaccurate, inadequate, irrelevant or excessive" and whether there is a public interest in making this information available through search engines when determining the results to be deindexed and delisted.

In Türkiye, both the Court of Cassation[5] and the Constitutional Court[6] have developed a legal framework for the right to be forgotten taking into account the decision of the CJEU. However, there is a noticeable difference between Türkiye and Europe in the application of the right to be forgotten, especially in relation to requests made under article 9 of Law No. 5651. While criminal judgeships of peace in Türkiye mainly block access to news articles and other content, the July 2020 amendments to Law No. 5651 have extended the sanctions to include the removal of news articles and content from publication and the prevention of their association with search engines. As a result, the **Turkish practice of the right to be forgotten differs significantly from that of Europe**, where the **focus is primarily on removing** Internet addresses of news articles and content **from search engine indexes** subsequent to the CJEU decision. This difference is strikingly reflected in Türkiye's approach of **blocking and removing completely** news articles and other content which are considered within the scope of the right to be forgotten **but inevitably destroying Internet archives**.

According to the General Assembly of Civil Chambers of the Court of Cassation with the right to be forgotten

> "it is ensured that **the future of the person is prevented from being negatively affected by her own will** or **due to an event caused by a third person**. The individual's ability **to shape his/her future by getting rid of the negative effects** of their past is not only for the benefit of the individual, but also its effect on the improvement of the quality of the society is indisputable. The right to be forgotten is expressed as the right to request that the negative events in the digital memory be **forgotten after a while** and the **deletion and prevention of the dissemination of personal data** that they do not want others to know **unless there is superior public interest**."[7]

3 See https://transparencyreport.google.com/eu-privacy/overview?hl=en (28.08.2022).
4 The Committee of Ministers of the Council of Europe, Recommendation, CM/Rec(2012)3.
5 General Assembly of Civil Chambers of the Court of Cassation, no. 2015/1679, 17.06.2015.
6 N.B.B. Application, No. 2013/5653, 03.03.2016.
7 General Assembly of Civil Chambers of the Court of Cassation, no. 2015/1679, 17.06.2015. See also 19th Criminal Chamber of the Court of Cassation, no. 2017/5325 05.06.2017; General Assembly of Criminal Chambers of the Court of Cassation, no. 2018/490, 30.10.2018.

The Constitutional Court, first addressed the right to be forgotten in 2016 in its General Assembly judgment on the **N.B.B. Application**.[8] The Constitutional Court, stated that the main goal of the right to be forgotten is to **prevent individuals from being associated with past behaviours that were reported in the news and have not yet been proven untrue**. This is especially important given that news and opinions published on the Internet often involve the use and processing of personal data. In other words, the objective here is to prevent access to personal data or news in the relevant news archives on the Internet so as to ensure that people forget the past actions of the relevant individuals."[9] However, the Constitutional Court also emphasized that the right to be forgotten must be balanced with the principle of freedom of the press and cannot be applied to all sorts of content in online newspaper archives. According to the Constitutional Court, the decision to remove an Internet news article subject to the right to be forgotten should be made on a case-by-case basis, taking into account various factors such as the duration of the news item online, its relevance to current events, its validity as historical data, its contribution to the public interest (the public value of the news, the potential aspect of the news which may offer an insight into the future) and whether the person involved is a public figure or political figure. Additionally, the Court highlighted the importance of distinguishing between factual reporting and value judgments when considering removal requests and considering the public interest in the relevant data.[10]

In this context, the Constitutional Court emphasized that there are various methods which can be adopted to address the right to be forgotten, such as **deleting personal data** linking the news article in the archive to the individual, **anonymizing the news article, or blocking access to some portion of the content**. Therefore, the Constitutional Court acknowledged that the "access blocking" sanction in article 9 of Law No. 5651 can serve as a means to uphold the right to be forgotten.[11] However, following its judgment on the N.B.B. Application, the Constitutional Court gave priority to freedom of expression and freedom of the press in five consecutive judgments issued during October 2017 with regards to the rejection of requests to block access to online news archives within the scope of the right to be forgotten. The Constitutional Court stated in these judgments that the news value required to keep the news subject to the applications easily accessible in the archives continues to be relevant in social terms. As a result, the **conditions that would warrant an assessment within the scope of the right to be forgotten did not arise**. As a result the Court found the applications inadmissible, as the allegations of violation of the applicants' right to protection of honour and reputation were clearly baseless.[12]

Immediately after these judgments, in October 2017, the Constitutional Court once again addressed the issue of access blocking measure in its judgment on the Ali Kıdık Application.[13] The Court emphasized that the access blocking sanction, as stip-

8 N.B.B. Application, No. 2013/5653, 03.03.2016.
9 N.B.B. Application, No. 2013/5653, 03.03.2016, § 43.
10 N.B.B. Application, No. 2013/5653, 03.03.2016, § 50.
11 N.B.B. Application, No. 2013/5653, 03.03.2016, §§ 51-52.
12 G. D. (2) Application, No. 2014/1808, 04.10.2017; Asım Bayar and Veysel Bayar Application, No. 2014/4141, 04.10.2017; Asli Alp and Şükrü Alp Application, No 2014/18260, 04.10.2017; G. Y. Application, No. 2014/16026, 05.10.2017; Fahri Göncü Application, No. 2014/17943, 05.10.2017.
13 Ali Kıdık Application, No. 2014/5552, 26.10.2017, §§ 62-63.

ulated in article 9 of Law No. 5651, **should remain as an exceptional remedy** and cannot be applied to all types of news and articles. Within this framework, the Constitutional Court maintained that the access blocking decisions can only be issued by the criminal judgeships of peace within the scope of article 9 of Law No. 5651 in cases where there is a clear and **prima facie violation of personal rights**[14] without the need for further examination. The Court deemed the access blocking and/or removal of content sanctions subject to article 9 as a protection measure which is only possible as a result of an uncontested lawsuit "only in circumstances where violation of personal rights is so obvious that it can be recognized at first sight and it is necessary to swiftly remedy the damage."[15] The Constitutional Court recognized the obligation to make a prima facie violation assessment as a prerequisite for maintaining a fair balance between the need to quickly protect personal rights and freedom of expression and freedom of the press.[16] The Constitutional Court has so far referred to the Ali Kıdık judgment and the principle of prima facie violation in 16 different applications[17] and the Ali Kıdık judgment issued by the Constitutional Court in **October 2017** is binding on the criminal judgeships of peace.

In its judgment on the right to be forgotten with regards to **C. K. Application** in **March 2018** the General Assembly of the Constitutional Court evaluated the claim that the right to protection of honour and reputation was violated due to the rejection of the requests to block access to the content of some news articles listed in search engines and in **Internet news archives**.[18] In its judgment on the C. K. Application, the General Assembly of the Constitutional Court referred to its judgment on the N.B.B. Application, which is directly related to the right to be forgotten, but **applied the principles** set out in its judgment on the Ali Kıdık Application[19] and ruled that the application was inadmissible as the allegations manifestly lacked ground. Although the Constitutional Court stated that the news articles for which access blocking was requested were published in 2004, it also emphasized that the decision failed to demonstrate "**the urgency to promptly and efficiently address the interference with the applicant's honour and reputation through a non-adversarial process**."[20]

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14 K. Gözler, "Kişilik Haklarını İhlal Eden İnternet Yayınlarının Kaldırılması Usûlü ve İfade Hürriyeti: 5651 Sayılı Kanunun 9'uncu Maddesinin İfade Hürriyeti Açısından Değerlendirilmesi" [Procedure of Removing the Internet Publications Violating Personal Rights and the Freedom of Expression: Evaluation of Article 9 of Law No.5651 in Terms of the Freedom of Expression], Rona Aybay'a Armağan (Legal Hukuk Journal, Special Issue, December 2014), Istanbul, Legal, 2014, Volume I, pp.1059-1120: http://www.anayasa.gen. tr/5651.pdf.

15 Ali Kıdık Application, No. 2014/5552, 26.10.2017, § 83.

16 Ali Kıdık Application, No. 2014/5552, 26.10.2017, § 63.

17 Kemal Gözler Application (No: 2014/5232, 19.04.2018); Miyase İlknur and Others Application (No: 2015/15242, 18.07.2018); A.A. Application, (No: 2014/7244, 12.09.2018); Yeni Gün Haber Ajansı Basın ve Yayıncılık A.Ş. Application, (No: 2015/6313, 13.09.2018); IPS Communication Foundation Application (No: 2015/14758, 30.10.2018); Özgen Acar Application, (No: 2015/15241, 31.10.2018); IPS Communication Foundation Application (2) (No: 2015/15873, 07.03.2019); Barış Yarkadaş Application (No: 2015/4821, 17.04.2019); Medya Gündem Dijital Yayıncılık Ticaret A.Ş (3) Application (No: 2015/16499, 3.07.2019); Education and Science Workers' Union (Eğitim-SEN) Application (No: 2015/11131, 4.07.2019); Kemalettin Bulamacı Application (No: 2016/14830, 4.07.2019); Kerem Altıparmak and Yaman Akdeniz Application (3) (No: 2015/17387, 20.11.2019); Kerem Altıparmak Application (No: 2015/8193, 27.11.2019); Kemal Gözler Application (2) (No: 2015/5612, 10.12.2019); Aykut Küçükkaya Application (No: 2014/15916, 09.01.2020); Medeni Özer Application (No: 2017/15421, 30.09.2020).

18 C. K. Application, No. 2014/19685, 15.03.2018.

19 Ali Kıdık Application, No. 2014/5552, 26.10.2017, §§ 62-63; C. K. Application, No. 2014/19685, 15.03.2018, §§ 29-33.

20 C. K. Application, No. 2014/19685, 15.03.2018, § 41.

The General Assembly of the Constitutional Court did not provide an explanation as to why it did not consider the "right to be forgotten decision and principles" in the N.B.B. Application **when applying the Ali Kıdık principles.** Instead, the Court opted for a change in its case-law and held that the "**prima facie violation**" principles established in the Ali Kıdık judgment should be applied to all requests under article 9, including archival news articles and content. This means that, the Constitutional Court's judgment on the C. K. Application regarding Internet news archives and the right to be forgotten is a continuation of its judgment on the Ali Kıdık Application, rather than its judgment on the N.B.B. Application.

In 2018, this time, t**he General Assembly of Criminal Chambers of the Court of Cassation**, published a judgment,[21] that only took into account the judgment of the Constitutional Court in the N.B.B. Application.[22] The General Assembly did not consider the Constitutional Court's judgment in the Ali Kıdık Application,[23] which resulted in an actual change in case-law, or the C.K. Application,[24] which directly related to Internet news archives and the right to be forgotten and where the Constitutional Court preferred to apply the Ali Kıdık criteria. In this judgment, the General Assembly of Criminal Chambers of the Court of Cassation established that in order to determine whether an Internet news item falls within the scope of the right to be forgotten or not, factors such as the content of the publication, its duration, contemporary relevance, public relevance, public interest in the publication, whether it contains factual information or value judgments, and whether the person subject to the news is a politician or a celebrity should be examined for each specific case.[25]

It is worth noting that the Constitutional Court's judgment on the **N.B.B. Application** was issued on **03.03.2016**, **the Ali Kıdık judgment** on **26.10.2017**, and the **C. K. Judgment** on **15.03.2018**. The judgment of the General Assembly of Criminal Chambers of the Court of Cassation was instead issued on **30.10.2018**. However, these two later judgments were **overlooked, unnoticed** or not **taken into account** by the General Assembly of Criminal Chambers of the Court of Cassation, and as a result, the principles of "prima facie violation" set out in the Ali Kıdık judgment were not reflected in its judgment dated 30.10.2018. Similarly, the Constitutional Court's rulings that news items should be included in Internet archives due to their social significance, even if they are not up-to-date, were not reflected in the judgments of the Court of Cassation, specifically in the subsequent judgments of the 19th Criminal Chamber and the 7th Criminal Chamber after the 19th Criminal Chamber was abolished. Therefore, it can be said that **the judgments of the Court of Cassation are not in line with the current jurisprudence of the Constitutional Court.**

Moreover, the EngelliWeb project of the Freedom of Expression Association has identified and assessed the implementation of the Ali Kıdık judgment of the Turkish Constitutional Court by criminal judgeships of peace.[26] While the criminal judgeships

21 General Assembly of Criminal Chambers of the Court of Cassation, no. 2018/490, 30.10.2018.
22 App. No. 2013/5653, 03.03.2016.
23 Ali Kıdık Application, No. 2014/5552, 26.10.2017.
24 C. K. Application, No. 2014/19685, 15.03.2018.
25 General Assembly of Criminal Chambers of the Court of Cassation, no. 2018/490, 30.10.2018.
26 EngelliWeb 2019: An Iceberg of Unseen Internet Censorship in Turkey, July 2020, https://ifade.org.tr/reports/EngelliWeb_2019_Eng.pdf; EngelliWeb 2020: Fahrenheit 5651: The Scorching Effect of Censorship, August 2020, https://ifade.org.tr/reports/EngelliWeb_2020_Eng.pdf

of peace are required to apply the "prima facie violation" assessment criteria, adopted in the Ali Kıdık judgment, the project found that only **11‰** of the decisions and a small number of access blocking decisions referred to this judgment during 2019. This rate increased to **62‰** in 2020. Furthermore, the project found that a prima facie violation assessment was only made in **22** (**3‰**) of the **69** decisions referring to the Ali Kıdık judgment in **2019** and in **65** (**20‰**) of the **197** decisions referring to the Ali Kıdık judgment in **2020**. In **2021**, only in **90** (**25‰**) of the **229** decisions referring to the Ali Kıdık judgment, a prima facie violation assessment was made. This is clearly **not a coincidence** and demonstrates that criminal judgeships of peace largely ignore the Ali Kıdık judgment and 16 subsequent similar judgments issued by the Constitutional Court since October 2017. As a result, the Ali Kıdık judgment has not resolved the problems with the enforcement of article 9 and the Constitutional Court continued to ignore the structural problems related to article 9 in 2020. In the nearly four years since the publication of the Ali Kıdık judgment in the Official Gazette, the prima facie violation approach has become part of the structural problems rather than resolving them.[27] It is clear that article 9 of Law No. 5651, which does not impose any obligation to assess whether there is a prima facie violation or not, does not does not **meet the quality requirement** of Article 13 of the Constitution and cannot be considered a law in the material sense.

Finally, in October 2021, the General Assembly of the Constitutional Court issued a pilot judgment in the application of Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others ("**Diken and Others**") due to the "structural problems" identified in article 9 of Law No. 5651 which pertains to violations of personal rights. The Court found that the current rule in article 9 lacked basic guarantees for the protection of freedom of expression and freedom of the press, and consequently, the Court ruled that articles 26, 28, and 40 of the Constitution had been violated in the nine combined applications before it.[28] The Constitutional Court stated that even if the rule in article 9 provides a legitimate reason for restriction based on the purpose of protecting personal rights, the rule does not "describe how the criminal judgeships of peace will exercise this authority,"[29] that the current rule and structure were not "suitable to prevent arbitrary and disproportionate interferences"[30] and that indefinite restrictions were a heavy-handed intervention tool. Therefore, the Court concluded that the applicants' rights protected by articles 26 and 28 of the Constitution had been violated and that **the violation stemmed directly from the law,** as the law lacked basic guarantees for the protection of freedom of expression and freedom the press.[31] To resolve this

27 See further International Commission of Jurists, *The Turkish Criminal Peace Judgeships and International Law Report*, 2018, https://www.icj.org/wp-content/uploads/2019/02/Turkiye-Judgeship-Advocacy-Analysis-brief-2018-TUR.pdf; Venice Commission, *Opinion on the Duties, Competences and Functioning of the Criminal Peace Judgeships*, No. 852/2016, 13 March 2017, https://www.venice.coe.int/webforms/documents/default. aspx?pdffile=CDL-AD(2017)004-tur; Venice Commission, *Opinion on Law No. 5651 on Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publication ("the Internet Law")*, No. 805/2015, 15 June 2016, https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)011-e.

28 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, Official Gazette 07.01.2022- 31712.

29 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 131.

30 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 132.

31 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 133.

structural problem, the Court informed the Turkish Grand National Assembly of its judgment and postponed the examination of similar applications for a year from the date of publication of its judgment in the Official Gazette which will expire on 06.01.2023. In June 2022, the Constitutional Court announced that 334 different applications were included within the scope of the pilot judgment.[32] The pilot judgment of the Constitutional Court will also affect the applications made under article 9 of Law No. 5651 concerning **the right to be forgotten**.

While all this jurisprudential turmoil continues, criminal judgeships of peace continue to base their decisions on the right to be forgotten requests made under article 9 of Law No. 5651, citing primarily the N.B.B. Application[33] judgment of the Constitutional Court and the June 2015 judgment of the General Assembly of Civil Chambers of the Court of Cassation,[34] as will be seen in this report. Similarly, the General Assembly of Criminal Chambers of the Court of Cassation in the case files submitted with a request for reversal in favour of the law, tends to rely heavily on the Constitutional Court's judgment on the N.B.B. Application[35] and the aforementioned 2015 judgment of the General Assembly of Civil Chambers of the Court of Cassation.[36] As a result, the Constitutional Court's judgment in the Ali Kıdık[37] and the C. K.[38] applications, which directly concern Internet news archives and the right to be forgotten, and in which the Constitutional Court applied the Ali Kıdık criteria, are **completely ignored** by the criminal judgeships of peace and relevant chambers of the Court of Cassation.

So far as the jurisprudence of the European Court of Human Rights is concerned, the European Court began to consider the right to be forgotten in the context of the right to privacy guaranteed under Article 8 of the European Convention on Human Rights and the right to freedom of expression guaranteed under Article 10 by reference to the Court's competing rights principles.[39] In cases involving news articles and content that is of public interest, the Court has held that the public interest in such matters is not limited to the date of publication of the article and current events but may extend to the past, **including the Internet archives** of news outlets. Furthermore, the Court has recognized the important role that media organizations play in enabling the dissemination of information through the archives they provide on the Internet.[40]

According to the Court, the maintenance and public availability of Internet archives is a critical secondary dimension of the **"watchdog"** role of the press and online archives are generally considered to fall within the scope of the protection af-

32 See https://www.anayasa.gov.tr/media/8051/pilotkararlar01.pdf
33 N.B.B. Application, No. 2013/5653, 03.03.2016.
34 General Assembly of Civil Chambers of the Court of Cassation, no. 2015/1679, 17.06.2015.
35 N.B.B. Application, No. 2013/5653, 03.03.2016.
36 General Assembly of Civil Chambers of the Court of Cassation, no. 2015/1679, 17.06.2015.
37 Ali Kıdık Application, No. 2014/5552, 26.10.2017.
38 C. K. Application, No. 2014/19685, 15.03.2018.
39 See *Fuchsmann v. Germany*, no. 71233/13, 19.10.2017; *M.L. AND W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018; *L.B. v. Hungary*, no. 36345/16; *L.B. v. Hungary* (GC), no. 36345/16, 09.03.2023; *Hurbain v. Belgium*, no. 57292/16, 22.6.2021 (This application was referred to the Grand Chamber on 11.10.2021); *Biancardi v. Italy*, no. 77419/16, 25.11.2021.
40 *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018, § 89.

forded by Article 10.[41] Accordingly, the Court emphasizes the **importance of online archives** and their protection under Article 10, as the public does not only have the right to receive news and information on a current issue, but also **the right to conduct retrospective research**.[42] In this context, according to the **Fifth Section of the European Court**, news articles and other content which include allegations of a German businessman's involvement in gold smuggling, embezzlement and organized crime are of public interest and continue to contribute to public interest even if a long period of time has passed over these allegations.[43] Moreover, according to the Court, a complaint cannot be lodged under Article 8 of the Convention if a person suffers **a loss of reputation as a foreseeable consequence of his or her own actions** such as committing acts that entail criminal sanctions.[44] The Court emphasized in its *M.L. and W.W. v. Germany* judgment[45] that it is an important part of the work of the press to include the names of the persons who are the subjects of the news, especially in news about criminal cases that are of close public interest, with reference to its *Fuchsmann v. Germany* judgment.[46] Therefore, in such cases, there may be a continuing public concern and public interest, and it is considered that this interest does not diminish over time and that the inclusion of such news in online archives falls within the scope of freedom of expression and freedom of the press. The fact that the investigations or trials have been completed, or that the punishment process has been completed and the applicants have been released does not necessarily diminish the public interest in such news.

However, the nature of the crime committed in the past is also an important factor to consider and the European Court has cautioned against online archives becoming a kind of **"virtual criminal record."** In the *Hurbain v. Belgium*[47] application the issue at hand was the publication of a news article by *Le Soir* newspaper from 1994 reporting a fatal traffic accident. The article, which was also available in the online archive of the newspaper, included the full name of a person named G. who was identified as the individual responsible for causing the accident, which resulted in the death of two people and the injury of three others. The individual in question requested anonymization of his name in the online archive of the newspaper, citing the right to be forgotten.

According to **Third Section of the European Court**, this application concerns the "**right to be forgotten online**." According to the Court, this can be considered as a "**fresh disclosure**" and the principles of the European Court of Justice's right to be forgotten judgment on Google can be applied to the *Le Soir* newspaper.[48] According to the

41 *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018, § 90; *Times Newspapers Ltd v. UK, (nos. 1 & 2)*, nos. 3002/03 and 23676/03, 10.03.2009, §§ 27 and 45; *Węgrzynowski and Smolczewski v. Poland,* no. 33846/07, 16.07.2013, § 59.

42 *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018, §§ 101-102.

43 *Fuchsmann v. Germany,* no. 71233/13, 19.10.2017, §§ 37-39. See also *Times Newspapers v. UK (nos. 1 and 2)*, nos. 3002/03 and 23676/03, § 45, ECHR 2009.

44 *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018, § 88; *Axel Springer AG v. Germany* [BD], no. 39954/08, 07.02.2012, § 83.

45 *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018.

46 *Fuchsmann v. Germany,* no. 71233/13, 19.10.2017, § 37.

47 *Hurbain v. Belgium*, no. 57292/16, 22.6.2021.

48 *Hurbain v. Belgium*, no. 57292/16, 22.6.2021, § 15.

Court, the *Le Soir* article was indexed by search engines and therefore easily found when it was searched as it was published without anonymization and without the "**no index**" tag. According to the Court, the applicant served his sentence, was rehabilitated and reintegrated into society. According to the Court, "after the commission of a criminal offence and while the trial is ongoing, a hitherto unknown person may acquire a degree of notoriety, that notoriety may also decline with the passage of time".[49] In this respect, the right to be forgotten, in some cases, can afford individuals the chance to become unknown or anonymous again. The passage of time is a crucial element in this regard. In the *Hurbain v. Belgium* case, the European Court ruled that there is no reason to re-expose a person, such as G., who is not a public official, politician, or public figure, after almost two decades. In this context, according to the ECtHR, there is no justification for the re-exposure of G., who is not a politician, public official or public figure, after nearly 20 years. Moreover, the domestic court in Belgium did not order the complete removal of the *Le Soir* article, but requested the anonymization of the applicant's name subject to the right to be forgotten.

The European Court clarified that it was not the news article itself that was affected by the judgment, but its accessibility in the *Le Soir* Internet archive. Consequently, the Court concluded, by a majority vote, that there had been no violation of the applicant's right to freedom of expression and freedom of the press protected under Article 10 of the Convention. The Court emphasized that the domestic courts had taken a balanced decision, taking into account both G.'s right to privacy and the media organization's right to freedom of expression. Moreover, the Court clarified that this judgment and its conclusion did not impose an obligation on media organizations to systematically and permanently check their archives.[50]

Different chambers of the European Court of Human Rights have adopted varying approaches to balancing conflicting rights in cases concerning the Internet and press archives. While Grand Chamber judgments on this matter are still pending, the Court emphasized in its *M. L. and W.W. v. Germany*[51] judgment that certain criteria used in previous case-law, such as the contribution to a debate of public interest, the degree of celebrity of the person targeted, the subject matter of the news, and the previous conduct of the person concerned, the content, form, and consequences of the publication, as well as the conditions under which any accompanying photographs were taken may be less significant than other factors. Moreover, the Court drew attention to the fact that the news items subject to the application are often available in Internet archives and can be found easily through search engines, which increases the potential harm caused to privacy rights. As such, the Court emphasized, **the higher risk of harm from content and communications on the Internet** as opposed to print media in particular with regards to the right to privacy. This is particularly true given the significant role played by search engines in disseminating information.[52]

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49 *Hurbain v. Belgium*, no. 57292/16, 22.6.2021, § 110; *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018, § 106.

50 *Hurbain v. Belgium*, no. 57292/16, 22.6.2021, § 134.

51 *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018, § 95.

52 *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018, § 91; *Delfi AS v. Estonya* [BD], no. 64569/09, 16.06.2015, § 133.

In this context, the ECtHR also recognised that **media organizations** and **search engines have different obligations when it comes to the right to be forgotten**. Therefore, different **criteria** and **considerations** may apply **with varying results** on whether the right to be forgotten request is made to a media organization or a search engine. In general, when the right to be forgotten requests are made to media organizations, it will involve balancing the right to privacy against the freedom of expression and freedom of the press (ECHR, Article 10). On the other hand, when a request is made to search engines, the assessment will be primarily focused on individuals' right to the protection of their personal data (ECHR, Article 8), since search engines enable access to personal information which can be used for profiling purposes by third parties. Thus, different criteria and considerations may apply depending on whether the request is made to a media organization or a search engine.

The ECtHR also emphasized that there are different sanctions in the applications made to the Court within the scope of the right to be forgotten. So far, the Court has generally not favoured complete deletion and removal of news articles and content from press archives. In this context, in *M.L. and W.W. v. Germany* judgment, the Fifth Section stated that the **anonymization** of a news item is a less harmful alternative to freedom of expression than its complete deletion and removal. However, the Court also noted that the choice of whether or not to anonymize a news item is entirely within the scope of freedom of the press and that Article 10 leaves this choice and decision to media organizations and journalists.[53] However, in *Biancardi v. Italy* judgment,[54] the **First Section** noted that the obligation to "**de-index**"[55] can be imposed not only on search engines but also on publishers, newspapers and press archives.[56] In this application, the Court did not find a violation of freedom of expression, as the applicant's old article was not removed from the press archive's index promptly, and no tag was added to prevent search engines from finding it. The **First Section**, while ruling that the applicant's freedom of expression was not violated, stated that the domestic court orders were deemed to impose a reasoned restriction on the applicant's freedom of expression, considering that the applicant violated the right to privacy of the persons subject to the news. The Court took into consideration the fact that these judgments did not include the sanction of removing the applicant's news article from the Internet or even anonymizing it.

It was stated in the **First Section** judgment of *Biancardi v. Italy*[57] that the Axel Springer criteria cannot be applied to applications concerning the "**right to be forgotten online**" and special attention should be paid to three different criteria. According

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53 *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018, § 105; *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, no. 931/13, 27.06.2017, § 186.

54 *Biancardi v. Italy*, no. 77419/16, 25.11.2021.

55 The European Court also drew attention to the problem of terminology in this regard, stating that the terms "**de-indexing**," "**de-listing**" and "**de-referencing**" are often used synonymously, and that the purpose of indexing in this context is for search engines to crawl websites and index the pages within the websites, so that when the words in the index are searched, the results are displayed by ranking them by setting certain criteria. Therefore, according to the ECtHR, these terms are used synonymously and is understood as the exclusion of certain results (on the basis of the name of the person) from the list of results displayed by search engine operators. See. *Biancardi v. Italy*, no. 77419/16, 25.11.2021, § 54.

56 *Biancardi v. Italy*, no. 77419/16, 25.11.2021, § 51.

57 *Biancardi v. Italy*, no. 77419/16, 25.11.2021.

to the First Section, **first of all**, **the length of time for which the article was kept online** should be assessed, taking into account the purpose of processing the data concerning persons subject to the article at that time. **Secondly**, the **sensitiveness** of the data subject to the article should be assessed. **Thirdly**, **the gravity of the sanction imposed** on the applicant media outlet should be assessed.

In 2021, following the judgments in *L.B. v. Hungary*[58] by the **Fourth Section** and *Hurbain v. Belgium*[59] by the **Third Section**, the applicants requested their applications to be referred to the Grand Chamber of the European Court. Their refferal requests were successful. The hearing of *L.B. v. Hungary* before the Grand Chamber took place on 03.11.2021 and the hearing of *Hurbain v. Belgium* on 09.03.2022. While the Grand Chamber of the European Court decided the *L.B. v. Hungary* application holding fifteen votes to two, that there has been a violation of Article 8 of the Convention,[60] the *Hurbain v. Belgium* is pending before the Grand Chamber as of this writing. On the other hand, in the more recent **First Section** judgment of *Biancardi v. Italy*,[61] the applicant did not request a referral before the Grand Chamber and this judgment became final. Therefore, it can be said that different approaches to the right to be forgotten have emerged among the 1st,[62] 3rd,[63] 4th,[64] and 5th[65] sections of the European Court. Thus, with *Hurbain v. Belgium*,[66] the Grand Chamber could set out the criteria to be applied by all sections of the court with regards to applications for the right to be forgotten but the Grand Chamber did not consider issues surrounding the right to be forgotten in its *L.B. v. Hungary*[67] judgment in March 2023. In these critically important judgments, it is expected that the Grand Chamber will consider and decide in principle how press archives should be protected under Article 10 of the Convention and how a balance will be struck in relation to applications brought by ordinary citizens under Article 8 of the Convention, including the responsibility and role of search engines and different sanctions to be applied such as de-indexation and anonymization.

On the other hand, while applications regarding the right to be forgotten have been the subject of evaluation before the Grand Chamber of the ECtHR and the ECtHR has been ruling on this issue since 2017, **none of the above-mentioned judgments** have been taken into consideration or referred to by the Constitutional Court, the Court of Cassation or the criminal judgeships of peace. In this context, although the judgments of the ECtHR are binding on Türkiye subject to Article 90 of the Constitution, **the relevant case-law of the ECtHR has never been taken into account when developing the local jurisprudence on the right to be forgotten in Türkiye**. The legal basis of the right to be forgotten in Türkiye and especially its implementation under

58 *L.B. v. Hungary*, no. 36345/16, 12.01.2021; *L.B. v. Hungary* (GC), no. 36345/16, 09.03.2023.
59 *Hurbain v. Belgium*, no. 57292/16, 22.6.2021.
60 *L.B. v. Hungary* (GC), no. 36345/16, 09.03.2023. The Grand Chamber, while finding a violation of Article 8 of the Convention, did not consider issues related to the right to be forgotten.
61 *Biancardi v. Italy*, no. 77419/16, 25.11.2021.
62 *Biancardi v. Italy*, no. 77419/16, 25.11.2021.
63 *Hurbain v. Belgium*, no. 57292/16, 22.6.2021. This application was referred to the Grand Chamber on 11.10.2021.
64 *L.B. v. Hungary*, no. 36345/16, 12.01.2021; *L.B. v. Hungary* (GC), no. 36345/16, 09.03.2023.
65 *Fuchsmann v. Germany*, no. 71233/13, 19.10.2017; *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018.
66 *Hurbain v. Belgium*, no. 57292/16, 22.6.2021.
67 *L.B. v. Hungary*, no. 36345/16, 12.01.2021; *L.B. v. Hungary* (GC), no. 36345/16, 09.03.2023.

article 9 of Law No. 5651, the decisions of the criminal judgeships of peace, the Court of Cassation and the Constitutional Court can only be evaluated in light of the binding ECtHR judgments.

This report focuses on the "right to be forgotten" and identified **548 decisions** made by criminal judgeships of peace under article 9 of Law No. 5651 during 2020 and 2021. These decisions relate to requests made for the removal or blocking of access to **10.441** news articles and other content. Sanctions were imposed on **9.913** (**94.94%**) of the requested content, while only **528** (**5.06%**) were rejected. The report will evaluate these decisions in light of relevant jurisprudence, assessing whether the criminal judgeships of peace are following the established case law of the Court of Cassation, the Constitutional Court, and the European Court. Additionally, the report will address the dangers faced by Internet press archives and the problems related to freedom of expression and freedom of the press, particularly in relation to news articles and content of public interest.

THE LEGAL BASIS OF THE RIGHT TO BE FORGOTTEN IN TÜRKİYE

The right to be forgotten is not explicitly defined in either Turkish law or the Constitution. However, the Constitutional Court has acknowledged that although the right to be forgotten is not explicitly mentioned in the Constitution, the Court also stated that the state is responsible for providing individuals with the opportunity to move on from past events that are no longer relevant and prevent others from accessing such information by reference to **articles 5, 17 and 20 of the Constitution**.[68] The provision of the opportunity to '**turn a new page**' is also supported by the Personal Data Protection Authority. According to the Authority, while the right to be forgotten is not conceptually included in Turkish legislation, there are mechanisms available to protect this right and that "there is no need to define it as a separate right."[69]

According to Article 5 of the Constitution, among the fundamental aims and duties of the State is to ensure the welfare, peace and happiness of individuals and society; to remove political, economic and social obstacles that restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of social state governed by rule of law and justice; and to provide the necessary conditions for the development of the individual's material and spiritual existence. Article 17 of the Constitution stipulates that "Everyone has the right to life, the protection and development of his/her material and spiritual existence." Article 20 of the Constitution states that "Everyone has the right to demand respect for his/her private and family life" and paragraph 3 of Article 20,[70] states that "Everyone has the right to demand the protection of his/her personal data. This right includes being informed of, having access to and **re-**

68 N.B.B. Application, No. 2013/5653, 03.03.2016, § 47.

69 Personal Data Protection Authority, Decision No. 2020/481, 23.06.2020. See also Criteria to be Considered in the Evaluation Regarding the Delisting Search Results from the Index Made Through Search Engines with Name and Surname of People. See https://www.kvkk.gov.tr/SharedFolderServer/CMSFiles/68f1fb19-5803-4ef8-8696-f938fb49a9d5.pdf

70 Supplementary paragraph: 7/5/2010-5982/2 md.

questing the correction and deletion of his/her personal data." When these provisions of the Constitution are read together, it can be argued that the right to be forgotten finds its counterpart in the Constitution, as affirmed by the Constitutional Court.

During 2014, the legislator amended article 9 of Law No. 5651 entitled "content removal and access blocking" and re-defined the sanctions related to "**violation of personal rights**." The amendment also introduced article 9/A, which permits **content to be blocked based on privacy concerns**. Subsequently, Law No. 6698 on the Protection of Personal Data also came into force in April 2016[71] which through article 7 grants individuals the right to have their personal data deleted upon request if there are no longer any reasons to process their personal data.[72]

Taking all these points into account, the Constitutional Court maintains that, "failure to recognize the right to be forgotten results with an interference with the individual's right to lead a dignified life and to exercise moral independence which are fundamental for the development of one's spiritual existence, as personal data, which is easily accessible through the Internet and retained for extended periods, can cause others to form prejudicial views of individuals."[73]

Nevertheless, the right to be forgotten **is not an absolute right in this context**. According to the Constitutional Court "a balance must be struck in accordance with the criteria set out in the case-law of the Constitutional Court" between the right to the protection of honour and reputation guaranteed under paragraph 1 of Article 17 of the Constitution and the freedom of the press and freedom of expression guaranteed under articles 28 and 26, respectively in relation to the Internet news archive. However, the Court emphasized that "**in the case of archived past events**, **the balance of conflicting rights should be interpreted differently** than in the case of news about current events."[74]

Similarly, in the subparagraph (c) of article 28 of the Law No. 6698 on the Protection of Personal Data, exceptions to the processing of personal data for artistic, historical, literary, or scientific purposes, or **within the scope of freedom of expression**, are defined, provided that they do not violate national defense, national security, public security, public order, economic security, privacy of personal life or personal rights or do not constitute a crime. The Data Protection Authority has also emphasized the importance of freedom of expression and the accessibility of press archives to the public, particularly in terms of the monitoring role of the press and highlighted the need to strike a balance in line with specific criteria between the right to protection of honour and reputation guaranteed by the Constitution and the freedom of the press and freedom of expression.[75]

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71 Official Gazette, Issue No: 29677, 07.04.2016

72 Article 7(1), Law No. 6698: Although it has been processed in accordance with the provisions of this Law and other relevant laws, personal data shall be deleted, destroyed or anonymized by the data controller ex officio or upon the request of the data subject in the event that the reasons requiring its processing are no longer valid. See also Article 8(1) of the **Regulation on Deletion, Destruction or Anonymization of Personal Data** (Official Gazette, Issue No: 30224, 28.10.2017): Deletion of personal data is the process of making personal data inaccessible and non-reusable in any way for the relevant users.

73 N.B.B. Application, No. 2013/5653, 03.03.2016, § 47

74 N.B.B. Application, No. 2013/5653, 03.03.2016, § 66.

75 Personal Data Protection Authority, Criteria to be Considered in the Evaluation Regarding the Delisting Search Results from the Index Made Through Search Engines with Name and Surname of People, https://www. kvkk. gov.tr/SharedFolderServer/CMSFiles/68f1fb19-5803-4ef8-8696-f938fb49a9d5.pdf

As mentioned earlier, this report will evaluate whether the balance between conflicting rights has been established or not in the context of the "right to be forgotten" based on an assessment of **548 decisions** issued by **174 different criminal judgeships of peace** in 2020 and 2021 within the scope of article 9 of Law No. 5651.

SANCTIONS UNDER ARTICLES 9 AND 9/A OF LAW NO. 5651

Immediately after the December 17-25, 2013 corruption investigations, amendments to the Law No. 5651 were planned through a new Omnibus Amendment Legislative Proposal. This legislative proposal was sent to the Parliamentary Plan and Budget Committee, and the Committee merged 42 separate Laws and Decree Laws, including amendments to Law No. 5651, into a single legislative proposal comprising of 125 articles and submitted it to the General Assembly on 16.01.2014. The Law No. 6518 was enacted in February 2014. As a result of these amendments, two additional access blocking measures were introduced to the Law No. 5651.

Amendments to article 9 of Law No. 5651 entitled "removal of content from publication and blocking of access," allowed access to content to be blocked in order to prevent "**violation of personal rights**." Furthermore, the newly introduced article 9/A enabled the blocking of access to content to protect "**personal privacy**." These amendments also necessiated the establishment of the **Association of Access Providers** ("ESB") subject to article 6/A. Article 6/A states that any access blocking decision issued with regards to "violation of personal rights" should be notified directly to the Association for further action and any notifications made to the Association in this context shall be deemed to be made to access providers as well.

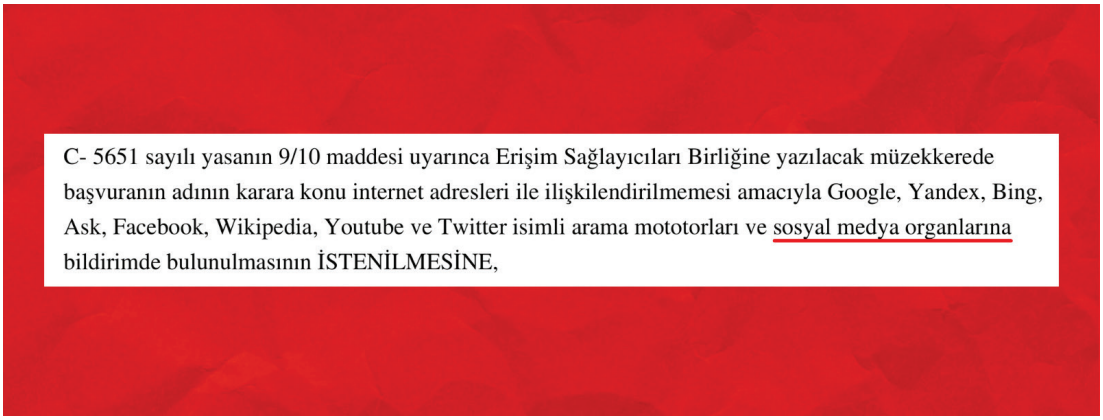
Furthermore, on 29.07.2020, the Law No. 7253 brought about significant changes to the Law No. 5651. One of the most notable changes is the addition of a new "**content removal**" sanction to article 9. Furthermore, an entirely new provision was also introduced and paragraph 10 of article 9 now allows individuals to request the "prevention of association of their names with websites subject to decisions under article 9". This therefore means that individuals who claim that their personal rights have been violated can now request from criminal judgeships of peace the removal or access blocking of relevant content, as well as preventing the association of their names with websites that fall under the scope of this article through the search engines.

With these changes and amendments, within the context of article 9 of the Law No. 5651, real persons, legal entities, public institutions and organizations may apply for **content removal** and/or **access blocking** by asserting that their personal rights have been violated. These requests shall be reviewed within 24 hours by criminal judgeships of peace. The judges shall issue the decisions under this provision mainly by **removing the content** and/or **blocking access** to a specific publication/section (in the form of URL, etc.) in relation to the alleged personal rights violation. In exceptional cases and when necessary, judges may also decide to issue a blocking decision for the whole website if the URL based restriction is not sufficient to remedy the alleged individual violation. In that case the judges are required to justify access blocking to the entire website with a reasoned decision. Decisions of **content removal** and/

or **access blocking** and/or **non-association of applicants' names with the relevant websites**, issued by criminal judgeships of peace subject to article 9 are directly notified to the Association of Access Providers ("ESB") for further action in accordance with article 9.[76] In terms of decisions regarding the non-association of URLs with the applicants' names, criminal judgeships of peace must specify **which search engines shall be notified** .[77] ESB will then notify the relevant search engines specified by the judgeships.

70 separate decisions were issued by the criminal judgeships of peace involving search engines from 29.07.2020 until the end of 2021. **48** of these decisions were issued by **24** separate judgeships in **2021**. Judgeships ruled that search engines **Google** (41 decisions), **Yandex** (37 decisions), **Bing** (31 decisions), **Yahoo** (30 decisions), **Yaani** (4 decisions), **DuckDuckGo** (3 decisions), and **Baidu** (2 decisions) shall not associate the names of those who submit requests with the news articles and content specified in the relevant decisions. Judgeships also ruled that **despite not being search engines**; the platforms **Twitter** (5 decisions), **YouTube** (4 decisions) and **Wikipedia** (4 decisions); the website **Ask** (3 decisions); the web browser **Mozilla** (2 decisions); and **Facebook** (1 decisions) shall not associate the names of those who submit requests with the news articles and content specified in the relevant decisions. Even though the law requires judgeships to state the **search engine to be notified** by the Association, **six** decisions did not state any search engine.

Screenshot 1: Notification to Search Engines


C- 5651 sayılı yasanın 9/10 maddesi uyarınca Erişim Sağlayıcıları Birliğine yazılacak müzekkerede başvuranın adının karara konu internet adresleri ile ilişkilendirilmemesi amacıyla Google, Yandex, Bing, Ask, Facebook, Wikipedia, Youtube ve Twitter isimli arama mototorları ve sosyal medya organlarına bildirimde bulunulmasının İSTENİLMESİNE,

While **Twitter**, **Facebook**, and **YouTube** are considered "**social network providers**" within the scope of Law No. 5651, **Mozilla** is a popular and well-known web browser. **Wikipedia** is an online encyclopaedia, and the website **Ask** has not had a search engine function for nearly 10 years. Therefore, to put it in the jargon of criminal judgeships of peace, decisions against Twitter, YouTube, Mozilla, Wikipedia, and Ask were issued "**in violation of the procedure and the law**" as these platforms and browsers are not search engines.

76 Law No. 5651, Article 9(5).
77 Law No. 5651, Article 9(10); Annex: 29.07.2020-7253/5 Art.

Furthermore, subject to article 9(9) of the Law No. 5651, if a concerned individual submits a request to the ESB for blocking access to content that has already been subjected to a content removal and/or access blocking decision by a criminal judgeship of peace in relation to a personal rights violation claim under article 9, the Association can issue a subsequent "**administrative**" decision. Thus, in such a scenario, the ESB has the authority to issue a content removal and/or access blocking decision based on the previous decisions made by the criminal judgeships of peace.

Moreover, individuals who believe that their **right to privacy** has been infringed by online content may request the blocking of access to such content by applying directly to BTK in accordance with the legal procedures laid out in article 9/A of Law No. 5651. Article 9/A **does not provide for the removal of content** or for the **disassociation of names** from the news articles or content subject to the request. The President of BTK can enforce the access blocking sanction with respect to the specific publication/section, image, or video (in the form of URL, etc.) that violates the right to privacy.

After access to the content is blocked by the President of BTK, those who request access blocking shall apply to criminal judgeships of peace within twenty-four hours to request the implementation of 9/A through a decision. Criminal judgeships of peace are required issue their decision within forty-eight hours on whether the Internet content has violated the right to privacy and must directly submit their decision to BTK. If a decision is not issued within forty-eight hours, the blocking measure will automatically be removed and become void.[78] Additionally, in circumstances where it is considered that delay would entail a risk of violation of the right to privacy, access blocking shall be carried out by BTK upon the direct instructions of the President of BTK.[79]

In practice, it appears that the legal procedure prescribed by article 9/A has not been widely utilized, as individuals claiming a violation of their right to privacy have instead opted to lodge requests under article 9 of Law No. 5651, within the framework of violation of personal rights. The provision was also not included in the amendments to Law No. 5651 introduced with Law No. 7253 on 29.07.2020. Another factor to the low usage of article 9/A is the complexity of the procedure formerly required by the BTK for its enforcement.[80] While the intention of the legislator in enacting article 9/A was to ensure an **expedited process** for violations of the right to privacy, BTK required individuals to submit **relevant violation request forms** in person or by mail. As a result, a total of only 214 orders, including 112 in 2015, 93 in 2016, and just 9 in 2017, were issued by criminal judgeships of peace upon requests from citizens subject to article 9/A. Today, individuals can submit applications for violations of the right to privacy through the e-government system, but there is no data on the efficiency of this system.[81] Consequently, as will be demonstrated in this study, right to be forgotten requests are typically made within the scope of article 9 for violation of personal rights, and the practice has developed in this direction.

78 Law No. 5651, Article 9/A(5).
79 Law No. 5651, Article 9/A(8).
80 See https://www.ihbarweb.org.tr/ohg/
81 See https://www.turkiye.gov.tr/btk-ozel-hayatin-gizliliginin-ihlaline-yonelik-bireysel-basvuru

IMPLEMENTATION OF THE RIGHT TO BE FORGOTTEN IN TURKISH LAW

CONSTITUTIONAL COURT'S JUDGMENTS AND EVALUATION ON THE RIGHT TO BE FORGOTTEN

Previous sections of this report explained the meaning of the right to be forgotten, its legal basis in Turkish law, the principles and jurisprudence developed by the Court of Cassation, the Constitutional Court and the ECtHR in summary. In this section of the report, the Constitutional Court as well as the Court of Cassation jurisprudence will be assessed in detail and the **548** decisions related to the right to be forgotten issued by and criminal judgeships of peace especially during the years 2020 and 2021 will be analyzed with examples.

As mentioned previously, the General Assembly of the Constitutional Court evaluated the right to be forgotten for the first time in 2016 in its **N.B.B. Application** judgment.[82] The case involved a total of three news articles, two published in 1998 and one in 1999 about an incident in which the applicant was sentenced to a judicial fine as a result of a criminal proceeding conducted against him for alleged drug use. The articles were also available on the Internet archive of a nationally published newspaper. The applicant requested the removal of these news articles on 02.04.2013, and when they were not removed, he requested the removal of these news articles on 18.04.2013 within the scope of article 9 of Law No. 5651, entitled "Removal of content from publication and the right to reply" before it was amended by Law No. 6518 on 06.02.2014. In its decision dated 22.04.2013,[83] the Istanbul 36th Criminal Court of Peace

82 N.B.B. Application, No. 2013/5653, 03.03.2016.
83 Istanbul 36th Criminal Court of Peace (closed), no. 2013/314, 22.04.2013.

(closed) stated that the "request to remove the content of the article from publication should be accepted as *the article subject to the request is outdated, is not newsworthy, there is no public interest in keeping it in the public domain, and as such, it comprises information damaging the private life of the applicant, which results in violation of personal rights in terms of enabling anyone who wants to access information on the applicant's private life easily*." Upon the objection of the newspaper, the Istanbul 2nd Criminal Court of First Instance decided to annul the decision of the Istanbul 36th Criminal Court of Peace on 28.05.2013.[84]

The Constitutional Court deemed it appropriate to evaluate the application under the first paragraph of Article 17 of the Constitution in connection with the third paragraph of Article 20 of the Constitution. According to the Constitutional Court, the publication of news on the Internet is also related to the right to protection of personal data.[85] Personal information and data, personal development, family life, etc. are also within the scope of the right to privacy protected under Article 20 of the Constitution. In this context, according to the Constitutional Court, when Article 20 and the "right to the protection and development of one's spiritual existence" under Article 17 of the Constitution are evaluated together, "it should be taken into account that the said provision is not only binding over public authorities but also over real and legal persons."[86] However, while stating that personal data can only be processed by law or with the explicit consent of individuals, the Constitutional Court also stated that this is not an absolute right and that it is clear that "a news report made within the scope of the freedom of expression and the press as defined in the Constitution will be an exception to the aforementioned limits."[87] Therefore, according to the Constitutional Court, the main issue is

> "to prevent that the individual be remembered with behaviours that have been a news subject in the past and have not yet been claimed to be untrue. For the news and ideas uploaded to the Internet within the scope of freedom of expression and freedom of the press often entails the use and processing of personal data. In other words, the objective here is to prevent access to personal data or news in the relevant news archives on the Internet so as to ensure that people forget the past actions of the relevant individuals."[88]

According to the Constitutional Court, as a result of the development of the Internet and the easy access to Internet news archives, all kinds of news about individuals can be easily accessed and an environment that does not allow news about people to be forgotten has been created. The Court recognized that this situation may cause individuals to be persistently confronted with their past actions that they do not wish to be reminded of. However, "with the effective use of the Internet by the press, the balance between freedom of expression and freedom of the press and the protection of honour and reputation"[89] has been disrupted in favour of the former

84 Istanbul 2nd Criminal Court of First Instance, no. 2013/235, 28.05.2013
85 N.B.B. Application, No. 2013/5653, 03.03.2016, § 38.
86 N.B.B. Application, No. 2013/5653, 03.03.2016, § 42.
87 N.B.B. Application, No. 2013/5653, 03.03.2016, § 43.
88 N.B.B. Application, No. 2013/5653, 03.03.2016, § 43.
89 N.B.B. Application, No. 2013/5653, 03.03.2016, § 46.

and "it has become imperative to re-establish a fair balance between both fundamental rights."[90] The Constitutional Court has stated that the restoration of this balance can only be possible "by the recognition of the right of individuals to be forgotten in terms of honour and reputation."[91]

Although the Constitutional Court stated that the right to be forgotten is not explicitly provided in the Constitution, the Court by reference to **articles 5, 17 and 20 of the Constitution**, clearly emphasized that "the state has a responsibility to provide the individual the opportunity to '**turn over a new page**' by preventing others from learning about certain news articles and other content concerning events of their past, which have long since lost their relevance."[92] Otherwise, according to the Constitutional Court, the "failure to recognize the right to be forgotten perpetuates a permanent interference with the right to lead a dignified life and the moral independence necessary for the development of one's spiritual existence, as personal data, which is easily accessible through the Internet and which can be retained for a long time, may lead others to form prejudices about individuals."[93]

However, the Constitutional Court also emphasized that the right to be forgotten **cannot be applied to all sorts of content in online newspaper archives**, and that such requests **must be balanced with the principle of freedom of the press**. According to the Constitutional Court, in this case, in order for an Internet content to be removed from the Internet within the scope of the right to be forgotten, the content of the publication should be evaluated on a case-by-case basis in terms of:[94]

i. its content;
ii. the duration of the publication;
iii. its potential outdatedness;
iv. its invalidity as historical data;
v. its contribution to the public interest (the societal value of the news, the potential aspect of the news that offers an insight into the future);
vi. whether the person subject to the news is a politician or a well known person of public interest;
vii. the subject of the news or the article;
viii. whether the news contain facts or value judgments in this context;
ix. the public interest in the relevant content.[95]

The Constitutional Court also emphasized that various methods can be adopted, such as **the deletion of personal data** associated with the requesting individual in the news archive, **anonymization of the news, access blocking of some portion of the news content**. In this context, the Constitutional Court has also recognized that the "**access blocking**" sanction in article 9 of Law No. 5651 as amended by Law No. 6518

90 N.B.B. Application, No. 2013/5653, 03.03.2016, § 46.
91 N.B.B. Application, No. 2013/5653, 03.03.2016, § 46.
92 N.B.B. Application, No. 2013/5653, 03.03.2016, § 47.
93 N.B.B. Application, No. 2013/5653, 03.03.2016, § 47.
94 N.B.B. Application, No. 2013/5653, 03.03.2016, § 50.
95 N.B.B. Application, No. 2013/5653, 03.03.2016, §§ 51-52.

can be used as a measure for the right to be forgotten,[96] therefore, also acknowledging that news removed from the archives would also constitute an interference with freedom of the press.

Finally, the Constitutional Court held that "a balance must be struck in accordance with the criteria set out in the case-law of the Constitutional Court" between the right to the protection of honour and reputation guaranteed under paragraph 1 of Article 17 of the Constitution and freedom of expression and the freedom of the press guaranteed under articles 26 and 28 of the Constitution, in relation to the Internet news archives where news articles and content about individuals are published. However, the Court noted that "in the case of archived past events, it should be considered reasonable to interpret the balancing of conflicting rights differently than in the case of news about current events."[97]

In applying these principles to the case in question, the Constitutional Court held that the events in question were archival news articles concerning the arrest of the applicant while using drugs and the criminal proceedings which followed, were 14 years before the date of the application and approximately 17 years before the date of the decision. The applicant did not claim that these news articles were false or fabricated. The applicant stated that his private and professional life was negatively affected and his reputation was damaged due to the fact that the news articles were still in the archive and easily accessible on the Internet.[98]

The Constitutional Court stated that the news articles no longer had the social news value necessary to justify their continued accessibility in the Internet archive, nor they offered an insight into the future."[99] Furthermore, given the nature of the news articles on drug use, it was not necessary for them to remain easily accessible on the Internet for historical, statistical or scientific purposes. The Court also took into consideration the age and outdated nature of the news articles and the fact that they were published 14 years ago and the fact that the applicant was not a public figure or media personality. Therefore, the Court evaluated the contested news articles within the scope of the right to be forgotten[100] and concluded that the applicant's right to protection of honour and reputation was violated.[101]

The Constitutional Court applied the **N.B.B. Application** judgment criteria for the right to be forgotten (duration of publication, its outdatedness, its contribution to the public interest, whether the subject of the news article is a politician or a well known person of public interest, whether the news article is formulated on facts or value judgments and whether there is public interest in its publication) in seven different subsequent applications.[102]

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96 N.B.B. Application, No. 2013/5653, 03.03.2016, 61. See also. *Wegrzynowski and Smolczewski v. Poland*, no. 33846/07, 16.07.2013, § 59; *Times Newspapers Ltd v. UK* (No. 1 and 2), nos. 3002/03 and 23676/03, 10.03.2009, §§ 27, 45.

97 N.B.B. Application, No. 2013/5653, 03.03.2016, § 66.

98 N.B.B. Application, No. 2013/5653, 03.03.2016, § 67.

99 N.B.B. Application, No. 2013/5653, 03.03.2016, §§ 72-73.

100 N.B.B. Application, No. 2013/5653, 03.03.2016, § 74.

101 N.B.B. Application, No. 2013/5653, 03.03.2016, § 75.

102 N.B.B. (2) Application, No. 2014/17143, 01.03.2017; Asli Alp and Şükrü Alp Application, No. 2014/18260, 04.10.2017; Asım Bayar and Veysel Bayar Application, No. 2014/4141, 04.10.2017; G. D. (2) Application, No. 2014/1808, 04.10.2017; G. Y. Application, No. 2014/16026, 05.10.2017; Fahri Göncü Application, No. 2014/17943, 05.10.2017; C. K. Application, No. 2014/19685, 15.03.2018.

First of all, in its General Assembly judgment in the **N.B.B. (2) application**, the Constitutional Court stated that the news that was requested to be forgotten was the same as the news articles which were the subject of the General Assembly judgment in the **N.B.B. application**, but were related to the legal process involving the availability of news articles in the Internet archive of a different newspaper.[103] Dismissing the application, the Constitutional Court ruled that "the applicant can request the competent judicial authorities to block access to the content again by referring to the General Assembly judgment of the Constitutional Court in the N.B.B. Application."[104] While the Constitutional Court grounded its "decision of dismissal" on the fact that the news content was related to the same subject, it did not consider the fact that it was the Internet archive of a different newspaper and a different but similar legal process as a reason for violation.

During October 2017, the Constitutional Court decided on five different applications on the right to be forgotten **within 48 hours**.[105] Among these applications, the G. D. (2) Application, the Asım Bayar and Veysel Bayar Application and the Asli Alp and Şükrü Alp Application were decided by the Second Section of the Constitutional Court on **04.10.2017**, while the G. Y. Application and the Fahri Göncü Application were decided by the First Section of the Constitutional Court on **05.10.2017**. The common point of these applications is that the Constitutional Court did not issue any violation judgment in any of them.

In the **G.D. (2) Application**, the Second Section of the Constitutional Court evaluated the alleged violation of the right to protection of honour and reputation due to the rejection of the requests to block access to the content of the news articles in the Internet news archives of the national newspapers **Milliyet** and **Radikal**.[106] The news articles covered the criminal proceedings against **former Mayor Gürbüz Çapan** over allegations of corruption during his term in office at Esenyurt Municipality. The Second Section of the Constitutional Court considered this claim and found that the news articles in question were **first published** on **25.05.2009**, approximately five years prior to the application to the Constitutional Court (11.02.2014). The articles also reported that the court sentenced the applicant, who was the **brother of the former Mayor**, to ten months imprisonment for being a member of a criminal organization.[107] However, the first trial verdict was reversed on appeal by the 5th Criminal Chamber of the Court of Cassation, a retrial was held at Istanbul 9th Criminal Assize Court and Gürbüz Çapan was sentenced to five years imprisonment for "establishing an organization with the aim of committing crime and taking bribes." The court also decided to dismiss the case against him for "bid rigging" due to the statute of limitations.[108]

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103 N.B.B. (2) Application, No. 2014/17143, 01.03.2017.

104 N.B.B. (2) Application, No. 2014/17143, 01.03.2017, § 20.

105 G. D. (2) Application, No. 2014/1808, 04.10.2017; Asım Bayar and Veysel Bayar Application, No. 2014/4141, 04.10.2017; Asli Alp and Şükrü Alp Application, No. 2014/18260, 04.10.2017; G. Y. Application, No. 2014/16026, 05.10.2017; Fahri Göncü Application, No. 2014/17943, 05.10.2017.

106 G. D. (2) Application, No. 2014/1808, 04.10.2017.

107 G. D. (2) Application, No. 2014/1808, 04.10.2017, § 10.

108 See DHA, "Esenyurt eski Belediye Başkanı Gürbüz Çapan'a, belediye başkanlığı dönemindeki yolsuzluk iddialarına ilişkin yargılandığı davada 'suç işlemek amacıyla örgüt kurmak ve rüşvet almak' suçundan 5 yıl hapis cezası verildi," ["Former Esenyurt Mayor Gürbüz Çapan sentenced to 5 years in prison for corruption during

The applicant stated that the court decision mentioned in the news articles was reversed by the 5th Criminal Chamber of the Court of Cassation upon appeal. The applicant argued that the lawsuit filed against him was dismissed due to statute of limitations during re-trial; therefore he was not convicted of any criminal offense. Yet, his applications for the removal of these news articles were rejected by the Büyükçekmece 3rd Criminal Court of Peace, and the appeal against this decision was also rejected by the Büyükçekmece 6th Criminal Court of First Instance. Both courts evaluated the news in question **within the scope of freedom of the press**, taking into account the rules of "**factuality, current relevance, public interest and social interest, and the intellectual connection between the subject matter and the expression**" and both courts also took into account the material fact that a verdict of conviction issued by a court decision existed at the time of news reporting even though that decision was not yet final. The applicant, on the other hand, applied to the Constitutional Court claiming that his honour and reputation had been tarnished by the news, which portrayed him as a criminal in the eyes of society.

The Second Section of the Constitutional Court took into consideration the General Assembly's judgment in the N.B.B Application as well as the principles set out by the General Assembly in that judgment. The Court stated that the news articles involving the applicant were published in 2009 and were **of archival quality**, and that the news articles published at the time were not disputed.[109] The Constitutional Court considered that the purpose of the news articles was "to **inform the public** about the investigation and prosecution of a politician who served as the mayor of Esenyurt and his family members, including the applicant, for acts allegedly committed during his term as mayor."[110] No doubt, such news articles were in public interest. The Constitutional Court acknowledged that the verdict against the applicant was reversed by the 5th Criminal Chamber of the Court of Cassation, and subsequently the case against the applicant was dismissed due to statute of limitations during re-trial. The Constitutional Court took into account the time elapsed after the news articles were published, but ruled that the application was inadmissible due to manifest lack of grounds, determining that **despite the time that had elapsed**, "it cannot be said that the news has lost its newsworthiness and public interest considering the identities of the persons involved in the news articles."[111]

The Constitutional Court, by taking into account the principles of the N.B.B judgment, considered "the subject matter of the news and its content, the time elapsed since its initial publication and the date on which the criminal proceedings were ultimately concluded." Within this context, the Court decided that the news value for the easy accessibility of the news article in the archives still exists. Therefore, the conditions that would require the articles to be evaluated within the scope of the

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his term"] 04.09.20212, https://web.archive.org/web/20120906234850/http://www.dha.com.tr/ esenyurt-eski-belediye-baskani-gurbuz-capana-5-yil-hapis_359074.html; Anadolu Ajansı, "Yargıtay, Çapan'ın cezasını onadı," ["Court of Cassation upholds Çapan's sentence,"] 05.02.2014, https://www.aa.com.tr/tr/turkiye/yargitay-capanin-cezasini-onadi/185740.

109 G. D. (2) Application, No. 2014/1808, 04.10.2017, 31. 109 G. D. (2) Application, No. 2014/1808, 04.10.2017, 31. 110 G. D. (2) Application, No. 2014/1808, 04.10.2017, 34. 111 G. D. (2) Application, No. 2014/1808, 04.10.2017, § 34.

110 G. D. (2) Application, No. 2014/1808, 04.10.2017, § 31.

111 G. D. (2) Application, No. 2014/1808, 04.10.2017, § 34.

right to be forgotten have not been met.[112] The Court has ruled that freedom of expression and freedom of the press and the public's right to receive news outweigh the right to be forgotten in this case.

In the **Asım Ayar and Eysel Ayar Application**, the Second Section of the Constitutional Court evaluated the alleged violation of the right to protection of honour and reputation due to the rejection of their request to block access to a news article entitled "Mimar ile Mühendis Yumruk Yumruğa" ["Architect and Engineer Fist to Fist"] which was published on 16.02.2007. At the time of their request, the article was also accessible in the online news archive of the **Hürriyet** newspaper.[113] According to the news article which was the subject of the application, an argument stemming from a business relationship between Veysel Bayar, who was the Deputy Chairman of the Municipal Assembly of the Justice and Development Party ("AKP") in the Melikgazi district of Kayseri province at the time of publication, and Y. Ç., a mechanical engineer and member of the district executive board of the True Path Party ("DYP"), escalated into a physical altercation. The article reported that both Veysel Bayar and his brother Asım Bayar were taken in for questioning at the police station and that the investigation into the incident was ongoing at the time of the publication of the news article.[114]

The applicants applied to the Kayseri 5th Criminal Court of Peace (closed) for the removal of the news article, claiming that nearly seven years had passed since its publication, that the news article was outdated, but that their honour and reputation had been tarnished by its continued presence in the Internet archive. The Court rejected their request on the grounds that Law No. 5651 "does not contain a provision on the removal of outdated news from the Internet." The Kayseri 3rd Criminal Court of First Instance rejected their appeal against this decision on the grounds that "the publication subject to the appeal was newsworthy, intended to inform the public and it did not contain any statements which may pose a violation of the rights of the persons mentioned."

The Second Section of the Constitutional Court took into consideration the General Assembly's judgment in the N.B.B Application as well as the principles set out by the General Assembly in that judgment. The Court stated that the news article involving the applicants was published in 2007 and was of archival quality, and that the content of the article was not disputed. The Constitutional Court considered that the purpose of the news article was "to **inform the public** about the dispute that arose between the architect Veysel Bayar, who had a political identity at the time of publication and the mechanical engineer Y. Ç. who also had a political identity, regarding a business dispute and subsequent events.[115]

The Second Section of the Constitutional Court, in its judgment on both the Asım Bayar and Veysel Bayar and the G.D. (2) applications, emphasized that the news articles in dispute still have a social value and should continue to remain easily accessible through the archives, considering the subject matter, content, and the time

112 G. D. (2) Application, No. 2014/1808, 04.10.2017, § 34.
113 Asım Bayar and Veysel Bayar Application, No. 2014/4141, 04.10.2017.
114 Asım Bayar and Veysel Bayar Application, No. 2014/4141, 04.10.2017, § 7.
115 Asım Bayar and Veysel Bayar Application, No. 2014/4141, 04.10.2017, § 25.

elapsed since their publication and the finalization of the criminal proceedings. The Court concluded that the conditions necessary to be evaluated under the right to be forgotten were not met,[116] and therefore, the freedom of expression, freedom of press, and the public's right to information prevail. As a result, the Court declared the applications inadmissible due to a manifest lack of grounds. Moreover, in contrast to the G.D. (2) Application, the Court determined that the news article subject to the complaint was still available through the news archive at the time of the Court's judgment but the **personal data of the applicants and other persons mentioned in the news report were concealed**.[117]

The Second Section of the Constitutional Court issued yet another judgment on the right to be forgotten on the same day in the application of **Asli Alp and Şükrü Alp**, which is also about an archival news item, this time related to a murder committed in **2009**.[118] According to the Constitutional Court, the news report about the murder case portrayed the deceased and the perpetrator's wife as having an affair, which was presented as the motive for the murder. The news headlines also emphasized the relationship between them. The details of the incident were based on the statements of the defendants and eyewitnesses during the criminal investigation and prosecution stages.[119] The murder case was tried at the Kahramanmaraş 2nd Criminal Assize Court, which resulted in Şükrü Alp being sentenced to ten years imprisonment for murder. However, Asli Alp was acquitted due to a lack of clear, convincing, and sufficient evidence to convict her. The decision was upheld by the 1st Criminal Chamber of the Court of Cassation in 2012.

On 15.09.2014, the applicants filed a request to block access to the above mentioned news article with the Adana 5th Criminal Judgeship of Peace. They argued that the news article had become outdated, and they wanted to move on erasing the traces of this past incident, but their personal rights were being violated by the continued publication of the news article. However, the judgeship rejected their request, stating that the publication of news about public figures and those involved in political and administrative life was of **public interest** and had news value. Furthermore, the judgeship found that the content of the publications was within the limits of legality and within the scope of freedom of the press. The applicants appealed against this decision, but their appeal was also rejected by the Adana 1st Criminal Judgeship of Peace. The applicants then took their case to the Constitutional Court, claiming that their right to protection of honour and reputation had been violated.

According to the Constitutional Court, the purpose of the news article was to inform the public and the applicants did not claim that the news articles were untrue or fabricated at the time of its publication. Therefore, similar to its judgments in relation to the G. D. (2), Asım Bayar and Veysel Bayar and Asli Alp and Şükrü Alp applications, the Second Section of the Constitutional Court considered "the subject matter of the news and its content, the time elapsed since its initial publication and the date on which the criminal proceedings were ultimately concluded. Within this context,

116 Asım Bayar and Veysel Bayar Application, No. 2014/4141, 04.10.2017, § 27.
117 Asım Bayar and Veysel Bayar Application, No. 2014/4141, 04.10.2017, § 27.
118 Asli Alp and Şükrü Alp Application, No. 2014/18260, 04.10.2017.
119 Asli Alp and Şükrü Alp Application, No. 2014/18260, 04.10.2017, § 26.

the Court decided that the news value for the easy accessibility of the news article in the archives still exists. Therefore, the conditions that would require the articles to be evaluated within the scope of the right to be forgotten have not been met.[120] The Court, similar to its previous judgments ruled that freedom of expression and freedom of press and the public's right to receive news and access information outweigh the right to be forgotten in this case. Therefore, the Court ruled that the application was inadmissible due to manifest lack of grounds.

The First Section of the Constitutional Court reviewed the **G. Y. Application** on **05.10.2017**, which also involved the right to be forgotten. The applicant claimed that his right to protect his reputation and honor was violated due to the refusal to block access to continuing presence of news and comments about a senior municipality employee on certain Internet news sites, blog pages (www.gazetemiz.com and Blogspot), and through a social media account (Facebook).[121] The Constitutional Court noted that the news articles and comments in question were of archival quality and were published between 28.06.2010 and 14.02.2014. In terms of content, the news articles and comments were generally related to the applicant's duties within the Izmir Metropolitan Municipality and his political life, and included critical statements about the applicant.[122]

The applicant lodged a request for blocking access to these news articles and social media content on the grounds that they did not reflect the truth was. However, his request was rejected by the Izmir 2nd Criminal Judgeship of Peace on 20.08.2014. According to the judgeship, the content subject to the application have the elements of factual accuracy, current relevance and intellectual relevance. Furthermore, the judgeship stated that there was coherence among the articles, and there was public interest in their publication. The applicant's appeal against the decision was rejected by the Izmir 3rd Criminal Judgeship of Peace.

According to the Constitutional Court, the purpose of the news articles and content was to inform the public. In its judgment, the First Section of the Constitutional Court considered the General Assembly's judgment in the N.B.B Application and the principles set out by the General Assembly as well as the publication date of the news content. The Court determined that the news articles and content "have not lost their relevance and public interest."[123] Similar to the judgments of the Second Section, the First Section took into account, "the subject matter of the article and its content and the time elapsed since the first publication" and concluded that "the social news and information value that makes it necessary to keep the news subject to the applications easily accessible in the archives continues. So, within his context, **the conditions that would necessitate an evaluation within the scope of the right to be forgotten did not arise**."[124] Furthermore, the First Section emphasized that the right to freedom of expression and of the press as well as the right of the public to receive information outweighed the applicant's right to protection of honor and reputation. As a result, the application was inadmissible *due to a manifest lack of grounds*.

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120 Asli Alp and Şükrü Alp Application, No. 2014/18260, 04.10.2017, § 28.
121 G. Y. Application, No. 2014/16026, 05.10.2017.
122 G. Y. Application, No. 2014/16026, 05.10.2017, § 29.
123 G. Y. Application, No. 2014/16026, 05.10.2017, § 31.
124 G. Y. Application, No. 2014/16026, 05.10.2017, § 31.

Additionally, the news articles in the archives of internet news sites, which contained factual information at the time of publication, were different from the news articles in question.

However, the First Section did not consider certain allegations made about the applicant in news articles such as "Dede Zora Giriyor" ("Grandpa is getting into trouble"), "Büyük Şehrin Yeni Yıldızı" (The New Star of the Big City" and "Kocaoğlu Yemeklere Şap Koydursun" ("Kocaoğlu Should Add Alum in the Food") within the scope of the principles of conflicting rights. In this context, the Court did not provide any explanation as to why freedom of expression and freedom of the press outweighed the right to protection of honour and reputation or whether the news articles contained "value judgments."[125] Compared to the judgments of the Second Section the day before, the First Section's judgment on the G. Y. Application differed in that the Second Section judgments involved continuing publication of news articles through the Internet news sites, which contained factual information at the time of publication. On the other hand, the news articles and content which was the subject of the G. Y. Application arguably involved undisputed factual information. That is why it was not clear why the assessment of the Court was limited to the "right to be forgotten" and not extended to other aspects of competing rights.

On the same day as the G. Y. Application, the First Section of the Constitutional Court decided on another right to be forgotten application, the **Fahri Göncü Application**, on **05.10.2017**. The applicant claimed that the news article entitled "Yargıtaydan polise gözaltı uyarısı" ("Warning of detention from the Court of Cassation to the police") published in 2003 on the Internet archive pages of **Hürriyet** newspaper violated the applicant's right to protection of honour and reputation.[126] Yet again, the Constitutional Court found that the news article was of **archival quality** and that it did not contain any false or disputed information. The contested article was about the principles that law enforcement officers must follow during the implementation of the detention measure.[127] According to the contested news report, the 4th Criminal Chamber of the Court of Cassation, while evaluating an appeal of the Şişli 5th Criminal Court of First Instance related to the crimes of "slander," "maltreatment of individuals" and "deprivation of liberty," took into account the principles that law enforcement officers must comply with and "reversed the acquittal decision of the first instance court against the law enforcement officer on the grounds that the release of a person after being detained for twenty hours without any reason for detention and without even interrogation would constitute a crime of deprivation of liberty."[128] The article also stated that the applicant was tried and acquitted by the Şişli 5th Criminal Court of First Instance, and that the Court of Cassation upheld the acquittal of the applicant.

The applicant applied to the Bakırköy 5th Criminal Judgeship of Peace on 21.08.2014 with the request to block access to the news article in question, claiming that his

125 See Kadir Sağdıç Application No. 2013/6617, 08.04.2015, 36; İlhan Cihaner (2), Application No. 2013/5574, 30.06.2014, § 42.
126 Fahri Göncü Application, No. 2014/17943, 05.10.2017.
127 Fahri Göncü Application, No. 2014/17943, 05.10.2017, § 26.
128 Fahri Göncü Application, No. 2014/17943, 05.10.2017, § 26.

honour and reputation had been tarnished. The judgeship evaluated the news article published in Hürriyet within the scope of freedom of the press and rejected the request on the grounds that the article was intended to inform the public. The applicant's appeal against this decision was also rejected by the Bakırköy 1st Criminal Judge of Peace.

In its judgment, the First Section of the Constitutional Court took into consideration the General Assembly's judgment in the N.B.B Application, as well as the principles set out by the General Assembly in that judgment. The Constitutional Court ruled that the news articles in question despite being published almost 11 years prior to the applicant's request, still **retained its current relevance and public interest** as noted in the G. Y. Application in terms of shedding light on the approach adopted by an appellate authority on a problem related to personal liberty and security,.[129] Furthermore, the Constitutional Court noted that it was clear that the news article in question was **not "directly targeting the applicant,"** contained **no value judgments**, and rather contained information about the acquittal and appeal decisions.[130] While evaluating whether the news article about the applicant contained a "value judgment" in the Fahri Göncü decision, the First Section "**forgot**" to make the same evaluation in its judgment on the G. Y. Application. This **omission** is notable indicating inconsistency in the court's approach.

Finally, the Constitutional Court emphasized that the news article subject to the application continued to be published in the archives of Hürriyet, but that the personal data of the applicant was deleted in a way that only the initial of the applicant's surname appeared in the news article in the archives. Consequently, the Constitutional Court ruled that "the news and information value that makes it necessary to render the news subject to the applications easily accessible in the archives continues". So, in this context, **the conditions that would necessitate an evaluation within the scope of the right to be forgotten did not arise**."[131] In this context, the Court ruled that the right to freedom of expression and of the press and the right of the public to receive information outweighed the applicant's right to protection of honor and reputation. As a result, the application was inadmissible *due to manifest lack of grounds*.

THE ALI KIDIK JUDGMENT AND THE PRIMA FACIE VIOLATION PRINCIPLES OF THE CONSTITUTIONAL COURT

As explained in detail previously, in early October 2017, the Constitutional Court ruled that five applications involving the right to be forgotten with regards to the continuing availability of news articles in the Internet archives lacked sufficient grounds and were thus inadmissible. However, in its **Ali Kıdık judgment**[132] dated 26.10.2017, the Court clarified that access blocking decisions issued subject to article 9 of Law No.

129 Fahri Göncü Application, No. 2014/17943, 05.10.2017, § 28.
130 Fahri Göncü Application, No. 2014/17943, 05.10.2017, § 28.
131 Fahri Göncü Application, No. 2014/17943, 05.10.2017, § 29.
132 Ali Kıdık Application, No. 2014/5552, 26.10.2017.

5651 are not penal or administrative sanctions, but rather protection measures.[133] The Court stressed that the access blocking procedure prescribed by article 9 is not a legal remedy for all kinds of articles or news articles, but it **must be an exceptional legal remedy**. In this context, the Constitutional Court stated that access blocking decisions subject to article 9 of Law No. 5651 may be issued by criminal judgeships of peace only in circumstances where **violations of personal rights can be recognized at first sight**[134] without the need for further investigation. The Court outlined three criteria which must be met cumulatively within the scope of the obligation to make a prima facie violation assessment in order to issue an access blocking and/or content removal decision subject to Article 9, as a protective measure:[135]

i. The unlawfulness of the content must be evident;
ii. The untruthfulness of the content must be evident;
iii. The necessity of expeditiously remedying the harm must be indispensable

Therefore, the sanctions under article 9 of Law No. 5651 may only be imposed exceptionally by the criminal judgeships of peace in cases where the unlawfulness and untruthfulness are evident, and the necessity of quickly remedying the harm is essential.

The Constitutional Court recognized that **a prima facie violation assessment** is a prerequisite for maintaining a fair balance between the need to swiftly protect personal rights and freedom of expression and freedom of the press.[136] The Constitutional Court has so far referred to the Ali Kıdık judgment and the principle of prima facie violation in 16 different applications.[137] The Ali Kıdık judgment issued by the Constitutional Court in October 2017 is binding on the lower courts including criminal judgeships of peace. Therefore, criminal judgeships of peace are required to make a prima facie violation assessment when reviewing and deciding on requests involving access blocking and/or content removal made subject to article 9 of Law No. 5651. The prima facie doctrine is also required to be applied in the assessment of appeals against decisions of criminal judgeships of peace.[138]

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133 A.A. Application, No: 2014/7244, 12.09.2018, § 20.

134 Kemal Gözler, "Kişilik Haklarını İhlal Eden İnternet Yayınlarının Kaldırılması Usûlü ve İfade Hürriyeti: 5651 Sayılı Kanunun 9'uncu Maddesinin İfade Hürriyeti Açısından Değerlendirilmesi" [Procedure of Removing the Internet Publications Violating Personal Rights and Freedom of Expression: Evaluation of Article 9 of the Law No.5651 in Terms of Freedom of Expression], Rona Aybay'a Armağan (Legal Hukuk Journal, Special Issue, December 2014), Istanbul, Legal, 2014, Volume I, pp.1059-1120. http://www.anayasa.gen.tr/5651.pdf.

135 Fetullah Gülen Application (2), No. 2014/11499, 22.09.2016, § 24.

136 Ali Kıdık Application, No. 2014/5552, 26.10.2017, § 63.

137 Kemal Gözler Application, (No: 2014/5232, 19.04.2018); Miyase İlknur and Others Application (No: 2015/15242, 18.07.2018); A.A. Application, (No: 2014/7244, 12.09.2018); Yeni Gün Haber Ajansı Basın ve Yayıncılık Inc. Application, (No: 2015/6313, 13.09.2018); IPS Communication Foundation Application (No: 2015/14758, 30.10.2018); Özgen Acar Application, (No: 2015/15241, 31.10.2018); IPS Communication Foundation Application (2) (No: 2015/15873, 07.03.2019); Barış Yarkadaş Application (No: 2015/4821, 17.04.2019); Medya Gündem Dijital Yayıncılık Ticaret A.Ş (3) Application (No: 2015/16499, 3.07.2019); Education and Science Workers' Union (Eğitim-SEN) Application (No: 2015/11131, 4.07.2019); Kemalettin Bulamacı Application (No: 2016/14830, 4.07.2019); Kerem Altıparmak and Yaman Akdeniz Application (3) (No: 2015/17387, 20.11.2019); Kerem Altıparmak Application (No: 2015/8193, 27.11.2019); Kemal Gözler Application (2) (No: 2015/5612, 10.12.2019); Aykut Küçükkaya Application (No: 2014/15916, 09.01.2020); Medeni Özer Application (No: 2017/15421, 30.09.2020).

138 Ali Kıdık Application, No. 2014/5552, 26.10.2017, § 63.

In the judgment on the **C. K. Application** of **15.03.2018**, the Constitutional Court considered a violation claim involving the right to protection of honour and reputation due to the rejection of the requests to block access to news articles listed in search engines and in Internet news archives.[139] According to the Constitutional Court, the articles, which covered the rise and tragic death of a model who won a beauty contest in 2001 and her dramatic death in 2004, were of historical significance.[140] Some of the information in them was based on the model's diary and the criminal proceedings involving her death.[141] The articles also mentioned the applicant, who was a well-known person and the owner of the modeling agency to which the model was affiliated. It was reported that the applicant was first heard as a witness and then as a suspect in the investigation into the death of the model, that there was a connection between the model and the applicant's assistant, and that the applicant's wife, also a well-known person, died of a drug overdose.[142]

The applicant applied to the Istanbul 2nd Criminal Judgeship of Peace on 30.09.2014 with the request to block access to the content, claiming that news articles about both the deceased model and her deceased spouse appeared in the searches made by the applicant's name in Internet search engines, and that her honour and reputation were tarnished due to the continuing availability of these news articles. The judgeship decided to reject the request for blocking access on the grounds that the news articles subject to the application were not offensive and damaging to the personal rights of the applicant and that the request would limit the public's right to receive information on matters of public interest. The appeal against this decision was also rejected by the Istanbul 3rd Criminal Judgeship of Peace.

The Constitutional Court referred to its earlier judgment on the N.B.B. Application, but instead applied the General Assembly's later judgment on the **Ali Kıdık Application**, which was issued in October 2017.[143] The Court, therefore, preferred to apply the **principles it set out in the Ali Kıdık judgment**. Referring to the Ali Kıdık judgment, the General Assembly reminded that the **decision of access blocking and/or removal of content** as a result of an adversarial proceeding "is possible only in circumstances where unlawfulness and violation of personal rights are so obvious that they can be recognized at first sight and when necessary to swiftly remedy the harm caused."[144] The Constitutional Court ruled that the news articles requested to be blocked were published in 2004, but the applicant was not able to demonstrate that the requirement to eliminate the interference with her honour and reputation could be fulfilled "**without adversarial proceedings, without delay and expeditiously"**.[145] The Constitutional Court also stated that "as a result of the examination of the news content, no grave situation could be found, which requires the implementation of the measure of blocking access to the content."[146] The Constitutional Court also noted

139 C. K. Application, No. 2014/19685, 15.03.2018.
140 C. K. Application, No. 2014/19685, 15.03.2018, § 38.
141 C. K. Application, No. 2014/19685, 15.03.2018, § 38.
142 C. K. Application, No. 2014/19685, 15.03.2018, § 38.
143 Ali Kıdık Application, No. 2014/5552, 26.10.2017, 62-63; C. K. Application, No. 2014/19685, 15.03.2018, § 29-33.
144 C. K. Application, No. 2014/19685, 15.03.2018, § 40.
145 C. K. Application, No. 2014/19685, 15.03.2018, § 41.
146 C. K. Application, No. 2014/19685, 15.03.2018, § 41.

that there exists other effective legal remedies to which the applicant may resort, and the applicant can, for instance, file a civil adversarial lawsuit and claim. The Constitutional Court found that the applicant did not resort to other means of protection that are more effective than the sanction of blocking access, and therefore the condition of exhaustion of all available legal remedies had not been met. The Constitutional Court found the application inadmissible by a majority of 14 to 2 votes.[147]

Constitutional Court member Hasan Tahsin Gökcan joined the majority decision with a different rationale. He stated that the right to privacy protects material and spiritual personal values, such as honor, reputation, name, and picture, body, etc., and that the case subject to this application was evaluated within the framework of Article 17/1 of the Constitution, which is of a general nature, instead of Article 20, which is the standard norm.[148]

In their dissenting opinion, members Hicabi Dursun and Muammer Topal reminded the Constitutional Court's judgment on the N.B.B. Application and the right to be forgotten. They argued that the qualities of the application should also be taken into account when examining whether the applicants have resorted to all other remedies as could be expected of them in terms of exhaustion of remedies.[149] In this context, they stated that it was necessary to determine whether the removal of content and blocking of access before the criminal judgeships of peace was an available and effective remedy that could offer a reasonable chance of success and provide a solution in terms of complaints that the right to honour and reputation was not protected. In this context, the applicant's complaints regarding the violation of article 17 of the Constitution were not manifestly groundless.[150]

In conclusion, until its 26.10.2017 judgment on the Ali Kıdık Application, the General Assembly of the Constitutional Court applied the "judgment and principles on the right to be forgotten" it adopted in its judgment of 03.03.2016 on the N.B.B. Application to five different applications but did not find a violation in any of these applications.[151] In its General Assembly judgment on the C. K. Application, which was the first application that may be considered within the scope of the right to be forgotten after the Ali Kıdık judgment, the General Assembly preferred to apply the principles set out in the Ali Kıdık judgment. The General Assembly **did not explain** why it did not take into consideration the "principles on the right to be forgotten" adopted in the N.B.B. Application while it choose to apply the Ali Kıdık principles. Since the judgment on the C. K. Application, the Constitutional Court has not re-evaluated the issue of the "right to be forgotten" as of this writing.

147 C. K. Application, No. 2014/19685, 15.03.2018, § 43.
148 C. K. Application, No. 2014/19685, 15.03.2018, Hasan Tahsin Gökcan, Different Reasoning, § 10.
149 S. S. A. Application No. 2013/2355, 07.11.2013, § 28.
150 C. K. Application, No. 2014/19685, 15.03.2018, Hicabi Dursun and Muammer Topal, Dissenting Vote Rationale.
151 G. D. (2) Application, No. 2014/1808, 04.10.2017; Asım Bayar and Veysel Bayar Application, No. 2014/4141, 04.10.2017; Asli Alp and Şükrü Alp Application, No. 2014/18260, 04.10.2017; G. Y. Application, No. 2014/16026, 05.10.2017 ve Fahri Göncü Application, No. 2014/17943, 05.10.2017.

THE CONSTITUTIONAL COURT'S PILOT JUDGMENT REGARDING ARTICLE 9 OF LAW NO. 5651

In October 2021, the General Assembly of the Constitutional Court issued a landmark pilot judgment in its Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others ("**Diken and Others**") judgment, identifying "**structural problems**" in article 9 of Law No. 5651 regarding violations of personal rights. The Court ruled that articles 26, 28, and 40 of the Constitution were violated in the nine combined applications.[152] According to the reasoned decision of the Constitutional Court published in the Official Gazette on 07.01.2022, although there exists a legal provision in the formal sense (article 9 of Law No. 5651), "the purpose, scope, and limits of the law allowing the intervention must be determined with **sufficient clarity**" for it to be a valid law in the substantive sense.[153] The Constitutional Court noted that while article 1 of Law No. 5651 outlines its purpose and scope as relating to "certain crimes committed on the Internet," article 9 does not specify that the "**access blocking procedure is limited to Internet publications that constitute a crime**".[154] Moreover, the Court found that no threshold has been established for the severity of the wrongful act against personal rights that would warrant the use of this procedure.[155]

Furthermore, the Constitutional Court has found that all the four different methods of access blocking under Law No. 5651 (articles 8, 8/A, 9, and 9/A) "**appear to be of a precautionary nature"**.[156] While article 9 provides for the issuance of decisions as a precautionary measure to protect personal rights, it does **not require the initiation of a criminal investigation** or prosecution **against the publishers of the content** in question following the access blocking decision. Nor does it impose an obligation on individuals who request the blocking of access on the grounds of personal rights violations to pursue civil or criminal proceedings against those responsible.[157] As a result, **an independent and autonomous mechanism** emerges, and "since **subsequent adversarial proceedings are not envisaged**, this remedy is not designed as a means for the proper functioning of the proceedings in the main case, which is of a provisional nature, but rather as an **autonomous means that constitutes a formally final judgment**."[158]

In evaluating the decisions of the criminal judgeships of peace that were subject to the nine different combined applications, the Constitutional Court found that none of these decisions met the "requirement of eliminating unlawful interference with the complainants' honour and reputation due to Internet publications without an adversarial proceeding, and without delay and expedition".[159] Furthermore, none of the decisions issued by the judgeships demonstrated a fair balance between the conflict-

152 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, R.G. 07.01.2022-31712.
153 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No.2018/14884, 27.10.2021, § 93.
154 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 98.
155 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 98.
156 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 100.
157 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 101.
158 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 101.
159 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 115.

ing rights.[160] The Court noted that the decisions of the judgeships contained general statements that were not specific to the circumstances of the individual cases, and it was not clear "how the Internet publications subject to the complaint violated personal rights in a way that was immediately apparent".[161]

The Constitutional Court observed that the problems identified in the decisions of the judgeships were also **present in the appeal decisions** of the criminal judgeships of peace which considered the objections against the initial decisions. The criminal judgeships of peace, rejected appeals with brief one-sentence reasonings, usually stating that there was "no violation of law in the decisions of the courts of first instance," without evaluating the compliance of the decisions with the doctrine of **prima facie violation** as required by the Constitutional Court. Moreover, with these short decisions, they did not address the objections raised in full. As a result of the finalized decisions, the news articles and content were **blocked and/or removed for an indefinite period of time**.[162] Hence, the Constitutional Court found that such interference with freedoms of expression and of the press cannot be characterized as proportionate, as "decisions taken as a precautionary measure without sufficient and relevant reasoning have an indefinite effect."[163]

As a result of all these considerations, the Constitutional Court concluded that "a formal rule producing all the effects of a final judgment and having an indefinite effect must necessarily contain certain safeguards against arbitrary and disproportionate interventions."[164] However, the Court found that article 9 of Law No. 5651 and the relevant practice lacked the procedural safeguards of procedural law,[165] as well as strict and effective control mechanisms.[166] Therefore, the unclear boundaries and scope of the legal provision created an **extensive discretion field for the judicial authorities**, making it at the very least challenging, if not impossible, to obtain any outcome from the objections and appeals against the blocking decision.[167]

According to the Constitutional Court, while article 9 may provide a legitimate reason for restricting content to protect personal rights, it fails to provide clear guidance on how criminal judgeships of peace should exercise this authority.[168] Furthermore, the current rule and structure do not effectively "**prevent arbitrary and disproportionate interferences**",[169] and **indefinite restrictions are a heavy-handed intervention tool**. As a result, the Court found that the applicants' rights protected by articles 26 and 28 of the Constitution had been violated, and that this violation was directly attributable to the law's lack of basic safeguards for the protection of freedom of expression and freedom of the press. Therefore, the Court concluded that the violation stemmed directly from the law itself.[170]

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160 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 115
161 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 115.
162 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 116.
163 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 118.
164 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 121.
165 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 124.
166 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 125.
167 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 129.
168 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 131.
169 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 132.
170 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 133.

Similarly, the Court ruled that the applicants' right to "**effective remedy**" guaranteed under Article 40 of the Constitution, in conjunction with Article 26 of the Constitution, had also been violated.[171] In response, the Court submitted its judgment to the Parliament and made several recommendations.[172] Furthermore, the Court decided **not to implement the pilot judgment for a period of one year**[173] allowing time for the Parliament "to reconsider the existing structure" and to "eliminate the provisions of the law that led to the violation or to amend the relevant provision in a way to avoid new violations."[174]

Although the Turkish Grand National Assembly is not obligated to comply with the Court's judgment identifying structural problems with the law, the Court will resume to assess applications for access blocking and content removal related to personal rights violations after **07.01.2023** at the earliest. Until this date, the Court will not evaluate any pending applications or any applications that will be lodged with the Court subsequent to the publication of its pilot judgment in the Official Gazette. The Constitutional Court announced that it **included 334 different applications within the scope of its pilot judgment** in June 2022.[175]

Considering all these together, the pilot judgment of the Constitutional Court will also affect individual applications to be lodged under article 9 of Law No. 5651 regarding the right to be forgotten. Therefore, until **07.01.2023** the Constitutional Court will not rule on any existing applications related to **the right to be forgotten** or the applications which will be lodged after the publication of its pilot judgment.

171 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 140-146.
172 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 137.
173 See https://www.anayasa.gov.tr/media/8051/pilotkararlar01.pdf
174 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 152.
175 See https://www.anayasa.gov.tr/media/8051/pilotkararlar01.pdf

THE COURT OF CASSATION'S APPROACH TO THE RIGHT TO BE FORGOTTEN AND THE EVALUATION OF ITS PRINCIPLED JUDGMENTS

As mentioned previously in this report, the Court of Cassation's approach to the right to be forgotten appears to be incompatible with the with the precedent set by the Constitutional Court and its principled judgments. The General Assembly of Civil Chambers of the Court of Cassation issued its principled judgment on the right to be forgotten on **17.06.2015**, while the **General Assembly of Criminal Chambers of the Court of Cassation** issued its principled judgment on the right to be forgotten on **30.10.2018**.[176] In between these two judgments, the 19th Criminal Chamber of the Court of Cassation issued a judgment on the right to be forgotten on **05.06.2017**.[177] More importantly, the Constitutional Court issued three different principled judgments setting precedent on the right to be forgotten during this time. As mentioned in the previous section, the Constitutional Court issued its judgment on the **N. B. B. application** on **03.03.2016**,[178] its judgment on the **Ali Kıdık application** on **26.10.2017**,[179] and its judgment on the **C. K. application** on **15.03.2018**.[180]

Despite these judgments of the Constitutional Court, the General Assembly of Criminal Chambers of the Court of Cassation, in its principled judgment on the right to be forgotten, **referred only** to the judgment of the General Assembly of Civil Chambers of the Court of Cassation and the judgment of the Constitutional Court on the **N. B. B. application**, without considering judgments of the Constitutional Court on the **Ali Kıdık application** and the **C. K. application**. Furthermore, the General Assembly of Criminal Chambers of the Court of Cassation did not refer to the judgment[181] on the right to be forgotten, which was previously issued by the 19th Criminal Chamber of the Court of Cassation in June 2017 nor reflect it in its own precedent setting judgment. In other words, the Court of Cassation did not take into account the necessity

176 General Assembly of Criminal Chambers of the Court of Cassation, no. 2018/490, 30.10.2018.
177 19th Criminal Chamber of the Court of Cassation, no. 2017/5325, 05.06.2017.
178 N.B.B. Application, No. 2013/5653, 03.03.2016.
179 Ali Kıdık Application, No. 2014/5552, 26.10.2017.
180 C. K. Application, No. 2014/19685, 15.03.2018.
181 19th Criminal Chamber of the Court of Cassation, no. 2017/5325, 05.06.2017.

of "demonstrating **the requirement to eliminate interference to the honour and reputation of the applicants without adversarial proceedings, without delay and expeditiously"**[182] in applications made within the scope of the right to be forgotten, and did not incorporate this into its jurisprudence. Similarly, according to the Constitutional Court, the measures set out in article 9 of Law No. 5651 regarding the decision of **access blocking and/or removal of content** are only feasible in cases where, as a result of uncontested lawsuits "**the unlawfulness and violation of personal rights is so obvious that it can be recognized at first sight, and it is necessary to remedy the damage expeditiously**."[183] However, this approach has not been reflected in the judgments of the 19th Criminal Chamber Court of Cassation or in the judgments of the 7th Criminal Chamber of the Court of Cassation after the former was disbanded.

Within the scope of this study, firstly, the judgment of **the General Assembly of Civil Chambers of the Court of Cassation** of 17.06.2015 and the judgment of **the General Assembly of Criminal Chambers of the Court of Cassation** of 30.10.2018 on the right to be forgotten will be examined. Moreover a total of 24 judgments, including the first right to be forgotten judgment of the 19th Criminal Chamber of the Court of Cassation issued in June 2017 and the 23 judgments issued subsequently, as well as a **total of 28 judgments** on the right to be forgotten, including four judgments issued by the 7th Criminal Chamber of the Court of Cassation, after the disbandment of the 19th Criminal Chamber will also be assessed.

THE RIGHT TO BE FORGOTTEN JUDGMENT OF THE GENERAL ASSEMBLY OF CIVIL CHAMBERS OF THE COURT OF CASSATION

The 2015 judgment of the General Assembly of Civil Chambers of the Court of Cassation on the right to be forgotten was issued before the above-mentioned judgments of the Constitutional Court. The General Assembly defined the right to be forgotten as follows:

> "...the right to be forgotten and the storage or retention of personal data to the extent necessary and for the shortest period of time actually constitute the framework of the right to protect personal data. The basis of both rights lies in ensuring that the individual can freely dispose of their personal data, plan for the future without being hindered by the past, and prevent the use of personal data against them. The right to be forgotten, ensures that **past events caused by the individual's own will** or by a third person **do not negatively affect** the person's **future**. The individual's ability to shape their future by **getting rid of the negative effects of their past** not only benefits the individual but also has a positive effect on society's improvement and quality. The right to be forgotten can be expressed as the right to request that the negative events in digital memory be forgotten **after a certain period** and **the deletion and prevention of dissemination of personal data** that the individual does not want others to know, **unless there is superior public interest**.[184]

182 C. K. Application, No. 2014/19685, 15.03.2018, § 41.
183 C. K. Application, No.2014/19685, 15.03.2018, § 40.
184 General Assembly of Civil Chambers of the Court of Cassation, no. 2015/1679, 17.06.2015.

Based on this definition, the General Assembly of Civil Chambers of the Court of Cassation has identified the right to be forgotten as the right to request the deletion of personal data, specifically concerning the protection of personal data and the erasure of negative past experiences. The General Assembly of Civil Chambers of the Court of Cassation has recognized that the right to be forgotten provides individuals with the **ability to control their past** by removing specific data from their past that they do not want to be **remembered** or **retained**. Additionally, the right to be forgotten places an **obligation on recipients** to take **necessary measures to prevent** certain data from being remembered or recollected by third parties.[185]

The General Assembly of Civil Chambers stated that the right to be forgotten not only "includes the right of individuals **to compel third parties to delete content about them**, such as photographs and Internet diaries" but also the right to "request the **removal of information** about their past penalties or any information or photographs that **may cause negative judgments about them**." Therefore, the General Assembly emphasized that this right protects the person's privacy by preventing their future from being negatively impacted by a past event caused by their own will or by a third party. However, the General Assembly did not provide an explanation about when the **"public interest" would take precedence** or make any principled evaluations in this respect.

It is important to note that the Court of Cassation General Assembly of Civil Chambers based its conclusion on a specific case regarding the inclusion of the full name of a **victim** of sexual assault, in a law book (Turkish Criminal Code with Commentary and Application) without a pseudonym, resulting from abuse of power in public duty or service relationship. Despite the victim's objection, the name was included and remained easily accessible to the public for four years. In its judgment the General Assembly of Civil Chambers of the Court of Cassation expanded the right to be forgotten beyond the digital environment, stating that it also applies to "personal data easily accessible to the public."

THE RIGHT TO BE FORGOTTEN JUDGMENT OF THE GENERAL ASSEMBLY OF CRIMINAL CHAMBERS OF THE COURT OF CASSATION

In its 2018 judgment, the General Assembly of Criminal Chambers of the Court of Cassation failed to consider the Constitutional Court's judgments on the **Ali Kıdık** and the **C. K.** applications, as well as the judgment of the 19th Criminal Chamber of the Court of Cassation in **June 2017**.[186] Instead, the General Assembly of Criminal Chambers of the Court of Cassation referred to the General Assembly of Civil Chambers of the Court of Cassation judgment and the Constitutional Court judgment on the **N. B. B. application**. The General Assembly of Criminal Chambers pointed out that the right to be forgotten is not clearly regulated in the Constitution and laws of Türkiye. Having evaluated the digital archives, the General Assembly of Criminal Chambers also noted that the Internet environment provides "easy access to even archived in-

185 See also 19th Criminal Chamber of the Court of Cassation, no. 2017/5325 05.06.2017.
186 General Assembly of Criminal Chambers of the Court of Cassation, no. 2018/490, 30.10.2018.

formation that can only be identified through special efforts of researchers or enthusiasts" and that it does not offer "the opportunity to forget news or unwanted issues."

The General Assembly of Criminal Chambers of the Court of Cassation recognized the possibility of taking certain measures within the scope of Law No. 5651 and based on the proportionality criteria in Article 13 of the Constitution. However, the General Assembly also emphasized that it would not be appropriate to expect the right to be forgotten "to be applicable to all types of Internet news." In this framework, the General Assembly referred to the Constitutional Court's 2016 judgment[187] on the N.B.B Application and stated that the determination of whether an Internet news article falls within the scope of the right to be forgotten, depends on a case-by-case examination of the following factors:[188]

i. Duration of publication;
ii. Current relevance;
iii. Public interest and public concern
iv. Presence of facts or value judgments
v. Whether the person subject to the news is a political figure or well known person;

In making this evaluation, the General Assembly of Criminal Chambers of the Court of Cassation's only considered the Constitutional Court's judgment on the N.B.B. Application,[189] without taking into account the more recent judgment on the Ali Kıdık Application,[190] in which the Constitutional Court changed its case-law, and the subsequent judgment on the C.K. Application,[191] where the Court preferred to apply the Ali Kıdık criteria. Moreover, the 19th Criminal Chamber of the Court of Cassation's right to be forgotten judgment from June 2017 was also not taken into account. As a result, the General Assembly of Criminal Chambers of the Court of Cassation's judgment is **not fully consistent** with the Constitutional Court's recent jurisprudence on prima facie violations, as well as the Court's considerations that news found in Internet archives, even if outdated, should continue to stay in the archives if there is a public interest element present.

Within the scope of this report, **24 judgments on the right to be forgotten** issued by **the 19th Criminal Chamber of the Court of Cassation** were identified with **21 of these judgments** issued **after the judgment of the General Assembly of Criminal Chambers of the Court of Cassation**. Only one of the judgments referred to the Ali Kıdık judgment of the Constitutional Court, and none of the judgments referred to the C. K. judgment. Therefore, it is observed that the judgments of the Court of Cassation are not fully in line with the current jurisprudence of the Constitutional Court.

187 Application No. 2013/5653, 03.03.2016.
188 General Assembly of Criminal Chambers of the Court of Cassation, no. 2018/490, 30.10.2018.
189 Application No. 2013/5653, 03.03.2016.
190 Ali Kıdık Application, No. 2014/5552, 26.10.2017.
191 C. K. Application, No. 2014/19685, 15.03.2018.

THE RIGHT TO BE FORGOTTEN JUDGMENTS OF THE 19TH CRIMINAL CHAMBER OF THE COURT OF CASSATION

The 19th Criminal Chamber of the Court of Cassation evaluated the right to be forgotten for the first time in a judgment on **05.06.2017**, in response to a request to issue a **judgment non obstante veredicto** (to set aside the judgment) subject to article 309 of the Code of Criminal Procedure made by the Ministry of Justice.[192] The initial request in the case was made to block access to news articles published in **Milliyet** and **Hürriyet** newspapers in **2007** with headlines such as "Manken olmak için geldiler, fuhuş batağına düştüler" ("They came to be models, they fell into the quagmire of prostitution"). The request was rejected by the Izmir 1st and 2nd Criminal Judgeships of Peace and the decision became final. In the Ministry of Justice's request to issue a judgment non obstante veredicto, it was argued that the applicants have been acquitted, and that the decisions became final in 2015.

The 19th Criminal Chamber of the Court of Cassation, addressed the issue of whether news articles published nearly a decade ago violate the personal rights of the applicants. In its judgment, the Court stated that the news articles did not contain any derogatory, humiliating or insulting statements about the suspects, other than information about the judicial investigation procedures. Therefore, issue that must be addressed is whether **news articles published approximately 9 years ago infringe upon** the "**personal rights**" of the applicants, whether the outdated nature of the news articles has any bearing on the matter, and even if they are no longer current, whether access to the news articles, which merely report **facts without commentary** can be blocked.

The 19th Criminal Chamber of the Court of Cassation also considered the case-law of the European Court and the Constitutional Court broadly and referred to the Constitutional Court's judgment on the N. B. B. application,[193] and examined the right to be forgotten in the context of personal data protection. First of all, the Court found that the **news articles did not** contain an attack or **violate the personal rights of the applicants at the time of their publication** and therefore could be evaluated within the scope of freedom of expression and freedom of the press. However, considering that the applicants were acquitted and nine years had passed, the Court stated that the news articles had **lost their relevance** and it was no longer important whether they met the criteria of "**truth and accuracy**." The Court emphasized that the trial process was over, and since the **news did not reflect the acquittal**, it could create a **misperception in society**.

The 19th Criminal Chamber of the Court of Cassation assessed the news articles pertaining to the application **in terms of public interest** and found that their presence in the press archives **does not serve any function** such as reminding or evaluating the news statistically in the name of public interest, **nor does it contribute to**

192 19th Criminal Chamber of the Court of Cassation, no. 2017/5325, 05.06.2017. Article 309 of the Code of Criminal Procedure provides that "Where the Ministry of Justice has been informed that a judge or court has delivered a judgment that has become final without coming under the scrutiny of the Court of Cassation, it may issue a formal order to the Chief Public Prosecutor requiring him to ask the Court of Cassation to set aside the judgment concerned [to issue a judgment non obstante veredicto]."

193 N.B.B. Application, No. 2013/5653, 03.03.2016.

the public memory. In this context, since the individuals featured in the news are neither **elected politicians or appointed public officials**, nor artists or intellectuals aiming to represent or enlighten society, information regarding their criminal pasts is not in the public interest.

After evaluating all the criteria together, it was concluded that the persistent mention of the applicants' names in association with terms such as "**organization, prostitution and human trafficking**" violated their honour and dignity. Finally, the archiving of such old information, that they were detained for these charges would constitute unauthorized processing and publication of personal data and damage the applicants' personal rights. Therefore, the decision of the Izmir 2nd Criminal Judgeship of Peace to reject the request for access blocking was reversed.[194]

It should be noted that the judgment of the 19th Criminal Chamber of the Court of Cassation preceded the Constitutional Court's five consecutive judgments on the right to be forgotten during October 2017 and the Ali Kıdık judgment issued in the same month. As will be assessed further below, along with this judgment, the 19th Criminal Chamber of the Court of Cassation issued a total of 24 judgments on the right to be forgotten, many of which emphasized the importance of considering **the protection of freedom of expression and the press** in judgments related to the right to be forgotten.[195]

One of these judgments was issued by the 19th Criminal Chamber of the Court of Cassation in **February 2021**. The judgment concerned news articles reported on a serious injury sustained by the applicant, who had received treatment abroad for an extended period. The Court acknowledged that the news conveyed a specific event related to the applicant and that the request to remove the news articles was made in **2020**, only two years after their publication, indicating that they were not outdated. Furthermore, the Court considered that the applicant was the daughter of a prominent family, was a well-known model in the society, and therefore was a public figure and that the public's interest in the news was ongoing. The concrete facts presented in the news were accompanied by information and comments gathered after a tragic event the applicant had experienced. For these reasons, the Court concluded that the request did not fall within the scope of the right to be forgotten.[196]

In another similar judgment in **February 2021**, the 19th Criminal Chamber of the Court of Cassation Cassation evaluated that the period of four years elapsed after the initial publication of a news article was not long enough to consider a violation of personal rights within the scope of the right to be forgotten as the news article was still relevant and up-to-date.[197] However, in another judgment, also issued in **February 2021,** the 19th Criminal Chamber, considered a news article about a drug seizure in Mersin in **2005**, in relation to which the applicant was acquitted in **2008**. The Court found that there was no longer any public interest in the outdated news and that continuing to publish it violated the applicant's personal rights even though the reported incident was a judicial event that could be of interest to the general public, that the

194 19th Criminal Chamber of the Court of Cassation, no. 2017/5325, 05.06.2017.
195 See for example 19th Criminal Chamber of the Court of Cassation, no. 2021/2772, 10.03.2021.
196 19th Criminal Chamber of the Court of Cassation, no. 2021/1703, 17.02.2021.
197 19th Criminal Chamber of the Court of Cassation, no. 2021/1701, 17.02.2021.

news articles were within the scope of freedom of expression and freedom of the press at the time of their publication. However, it was concluded that since the public case against the applicant resulted in acquittal and the news became outdated, there was no longer public interest in the continuing availability of such old news to the public **after 14 years**.[198] Similarly, in a judgment issued in **November 2019**, the 19th Criminal Chamber of the Court of Cassation considered a news article published **15 years ago** entitled "Ahtapot Çetesi" (Octopus Gang). The Court found that the news article described a current event of public interest and that the applicant had been tried and convicted for membership in the criminal organization. Since the judgment was upheld and finalized, it was considered to have ongoing news and information value, which justified its continued publication in the Internet archive without violating the applicant's personal rights. Thus, the Court concluded that the "right to be forgotten" did not apply in this case.[199]

In another judgment issued in **February 2021**, the 19th Criminal Chamber of the Court of Cassation rejected a request to block access to news articles regarding the prosecution of the applicant in 2015 for violence against women, sexual harassment, defamation, invasion of privacy and recording of personal data. The news articles were published after the applicant had been invited as a speaker to the Ankara Bar Association International Congress of Law, and the Court found that there was a factual basis for the information contained in the articles. The Court stated that the news articles reported on a public case filed against the applicant, and that the information was conveyed based on statements from non-governmental organizations consisting of lawyers. The Court noted that the press had provided full credit and basis for the information, and had not distorted the facts in an unfounded, purposeful, or malicious manner. The Court further concluded that the news articles had contributed to a debate on the applicant, which was of public interest, and were within the limits of freedom of the press.[200]

In **March 2021**, the 19th Criminal Chamber of the Court of Cassation issued another judgment rejecting another request to issue a judgment non obstante veredicto (to set aside the judgment) subject to article 309 of the Code of Criminal Procedure made by the Ministry of Justice concerning the right to be forgotten. The judgment pertained to a request for blocking access to news articles from **July 2020**, which reported that four individuals including the applicants were arrested in connection with an investigation into the alleged rape of a foreign masseuse. The articles mosaicked the faces of the applicants and abbreviated their initials to protect their identities and there were no offensive statements targeting their personal rights. The Court stated that the news reports were based on concrete facts related to a criminal investigation that had been transferred to the judicial process. Moreover, the public case filed against the applicants in 2019 resulted in an acquittal verdict in 2020. Subsequently, the applicants applied to the criminal judgeship of peace and requested that access to these news articles be blocked in the context of the right to be forgotten.[201]

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198 19th Criminal Chamber of the Court of Cassation, no. 2021/1700, 17.02.2021.
199 19th Criminal Chamber of the Court of Cassation, no. 2019/14002, 11.11.2019.
200 19th Criminal Chamber of the Court of Cassation, no. 2021/1235, 08.02.2021.
201 19th Criminal Chamber of the Court of Cassation, no. 2021/2773, 10.03.2021.

The 19th Criminal Chamber of the Court of Cassation concluded that the news articles in question provided information about an ongoing investigation at the time by the judicial authorities, and that they were therefore within the scope of freedom of the press. There was also no evidence of malicious intent in the way the news was presented, as measures were taken to prevent the identification of the individuals involved. As there was still a public interest in the accessibility of the news articles concerned, they were not deemed outdated. Therefore, it was decided that the necessary conditions to issue an access blocking decision within the framework of the right to be forgotten were not met.

Finally, in **March 2021**, the 19th Criminal Chamber of the Court of Cassation issued a judgment on a news article published in **2018**, which referred to a criminal investigation and MASAK [Financial Crimes Investigation Board] reports. The judgment stated that the news article was based on concrete facts, current at the time of publication, and within the scope of freedom of the press. Although the claimant was acquitted in 2019, the judgment did not clarify if the acquittal was final, and the news article contained allegations of fraud against a public bank, making it of public interest and justifying its open access and continuing availability.[202]

It is observed that the judgments of the 19th Criminal Chamber of the Court of Cassation issued during 2021 were consistent in terms of balancing conflicting rights, especially in terms of freedom of expression and freedom of the press, and that the Court made an evaluated public interest in relation to the continuing availability of news articles through the Internet archives. Although the 19th Criminal Chamber did not consider the Constitutional Court's Ali Kıdık and C.K. judgments, similarities in its judgments and evaluations were noted.

It was also found that **71** of the **548** criminal judgeships of peace decisions subject to this report referred to the June 2017 judgment of the 19th Criminal Chamber of the Court of Cassation. However, the extent to which criminal judgeships of peace follow the Court of Cassation's case law will be evaluated separately in this report.

THE RIGHT TO BE FORGOTTEN JUDGMENTS OF THE CRIMINAL CHAMBERS OF THE COURT OF CASSATION AND THEIR EVALUATION

A total of 28 judgments on the right to be forgotten were assessed, including 24 judgments issued by the 19th Criminal Chamber of the Court of Cassation and four judgments issued by the 7th Criminal Chamber of the Court of Cassation after the 19th Criminal Chamber was disbanded. All the 28 judgments involve rejection of claims of "violation of personal rights" concerning certain online news articles and access blocking decisions by various criminal judgeships of peace. They are brought to the attention of the criminal chambers of the Court of Cassation by way of requests to set aside the judgments (issue judgments non obstante veredicto) subject to article 309 of the Code of Criminal Procedure by the Ministry of Justice pursuant to the finalized decisions of the criminal judgeships of peace.

202 19th Criminal Chamber of the Court of Cassation, no. 2021/2772, 10.03.2021.

Subject to article 309 of the Code of Criminal Procedure, "where the **Ministry of Justice** has been informed that a judge or court has delivered a judgment that **has become final** without **coming under the scrutiny of the Court of Cassation**, it may issue a formal order to the Chief Public Prosecutor requiring him to ask the Court of Cassation to set aside the judgment concerned."[203] The Ministry of Justice may act ex officio, or the request for setting aside the judgments may also be submitted to the Ministry of Justice by persons who claim that their "personal rights have been violated" within the scope of article 9 of Law No. 5651 and whose requests have been rejected by the criminal judgeships of peace. The Ministry shall evaluate the request for setting aside the judgments and decide whether or not to apply for this extra-ordinary remedy. If the Ministry of Justice applies for this remedy, the Chief Public Prosecutor's Office of the Court of Cassation submits the reasons for the request to the relevant criminal chamber of the Court of Cassation.[204] Subject to article 309, if the relevant criminal chamber of the Court of Cassation deems the reasons put forward to be appropriate, it may set aside the judgment.[205] If the decision is reversed, the relevant criminal judgeship of peace "shall issue a new decision re-considering its initial decision."[206] Judgeships cannot resist if their initial decisions has been set aside subject to article 309.[207]

Although the number of requests made to the Ministry of Justice under Article 9 of Law No. 5651 and the number of appeals made by the Ministry to set aside the judgments subject to article 309 of the Code of Criminal Procedure, as well as the number of decisions appealed ex officio, are not publicly known, it has been confirmed that between November 2016 and April 2021, 28 requests regarding the "right to be forgotten" were brought to the attention of the Court of Cassation. Subsequently, between November 2017 and December 2021, relevant chambers of the Court of Cassation issued 28 judgments in response to these requests.

The judgments issued by the 19th and 7th Criminal Chambers of the Court of Cassation were evaluated separately in terms of the content of the news items subject to the request for setting aside the judgments subject to article 309. **Figure 1** illustrates that among the 24 judgments of the 19th Criminal Chamber of the Court of Cassation, ongoing public interest was determined in 11 of the news items, partial public interest in one, public interest at the time of publication in nine, and no ongoing public interest in two judgments subject to the request for setting aside the judgments. On the other hand, following the disbandment of the 19th Criminal Chamber of the Court of Cassation in 2021, only one of the four judgments of the 7th Criminal Chamber of the Court of Cassation with a request for setting aside the judgments was found to have ongoing public interest in terms of news articles, while the content of the news articles subject to the other three judgments was unclear, therefore no evaluation could be made.

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203 Code of Criminal Procedure, 309(1).
204 Code of Criminal Procedure, 309(2).
205 Code of Criminal Procedure, 309(3).
206 Code of Criminal Procedure, 309(4)(a).
207 Code of Criminal Procedure, 309(5).

Figure 1: Right to be Forgotten Judgments of the 19th and 7th Criminal Chambers of the Court of Cassation (2016-2021)

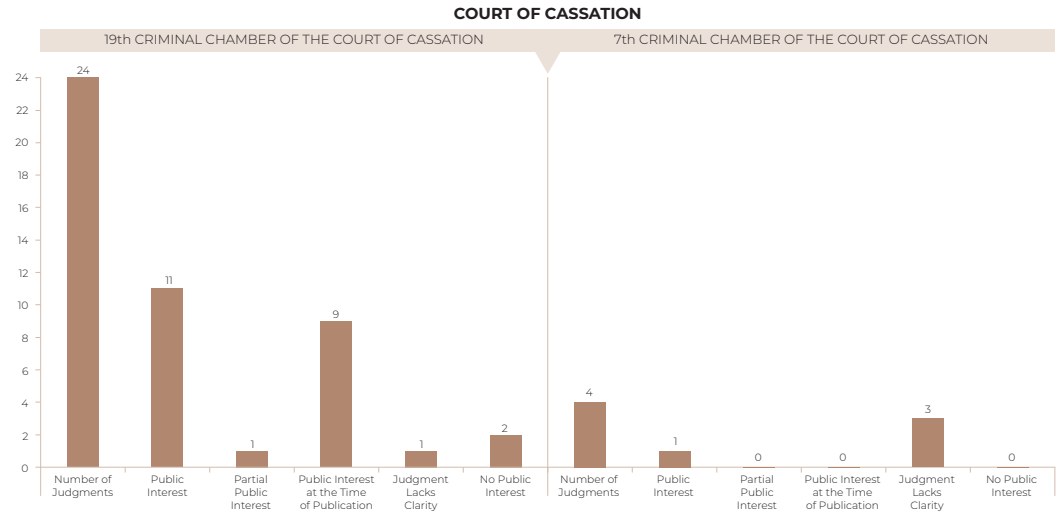
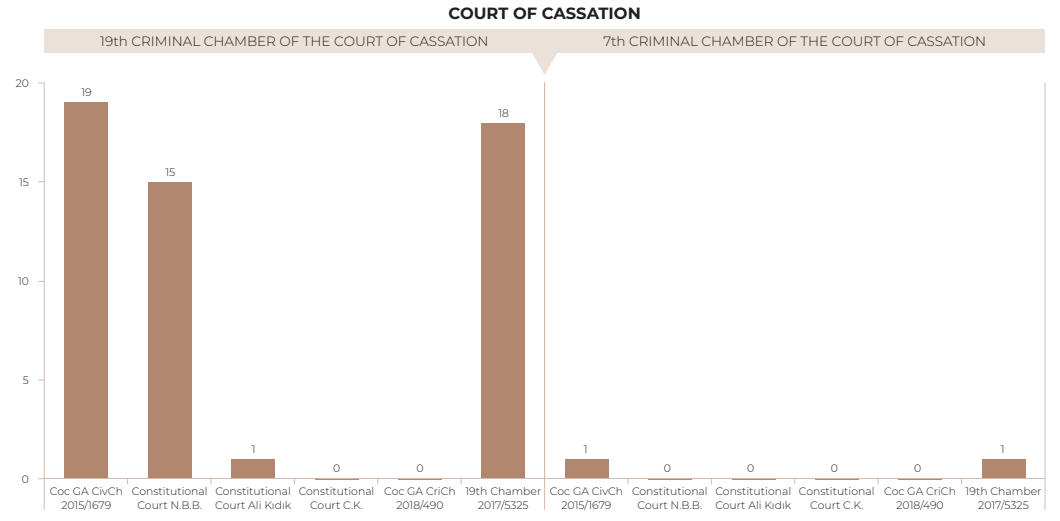


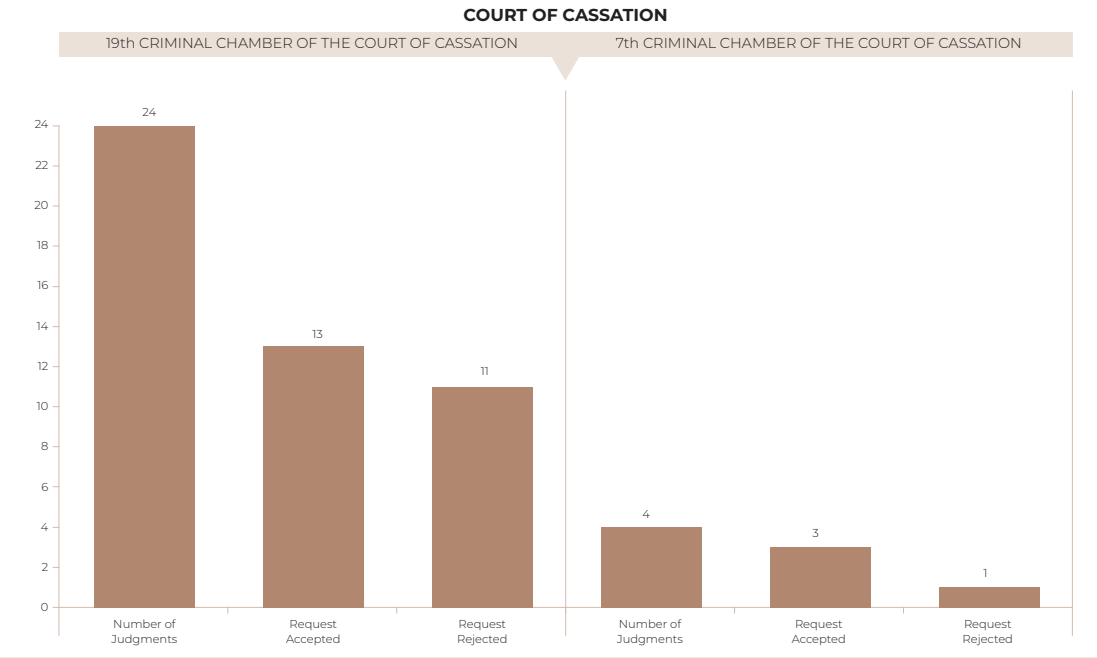
Figure 2: Number of Citations of the Judgments of the Court of Cassation and the Constitutional Court in the Judgments of the Criminal Chambers of the Court of Cassation



This study further analyzed whether the judgments of the 19th and 7th Criminal Chambers of the Court of Cassation referred to the judgments of the General Assembly of Civil Chambers of the Court of Cassation, of the Constitutional Court and of the General Assembly of Criminal Chambers of the Court of Cassation. **Figure 2** illustrates that 19 out of 24 judgments of the 19th Criminal Chamber referred to the judgment of the General Assembly of Civil Chambers of the Court of Cassation, 15 judgments referred to the Constitutional Court's N.B.B. judgment, and only one judgment

referred to the Constitutional Court's Ali Kıdık judgment. However, the judgment of the Constitutional Court on the C. K. Application was not cited in any judgment of the 19th Criminal Chamber. Additionally, there was no reference to the judgment of the General Assembly of Criminal Chambers of the Court of Cassation in the judgments issued by the 19th Criminal Chamber. Nonetheless, it was observed that 18 of the judgments of the 19th Criminal Chamber referred to the judgment of the 19th Criminal Chamber from 05.06.2017.[208] In the four judgments issued by the 7th Criminal Chamber of the Court of Cassation during 2021, only one referred to the judgment of the General Assembly of Civil Chambers of the Court of Cassation, and none of them referred to the Constitutional Court's N.B.B., Ali Kıdık, and C. K. judgments or the judgments of the General Assembly of Criminal Chambers of the Court of Cassation. Finally, the judgment of the 19th Criminal Chamber from June 5, 2017, was cited in only one of the four judgments of the 7th Criminal Chamber of the Court of Cassation.

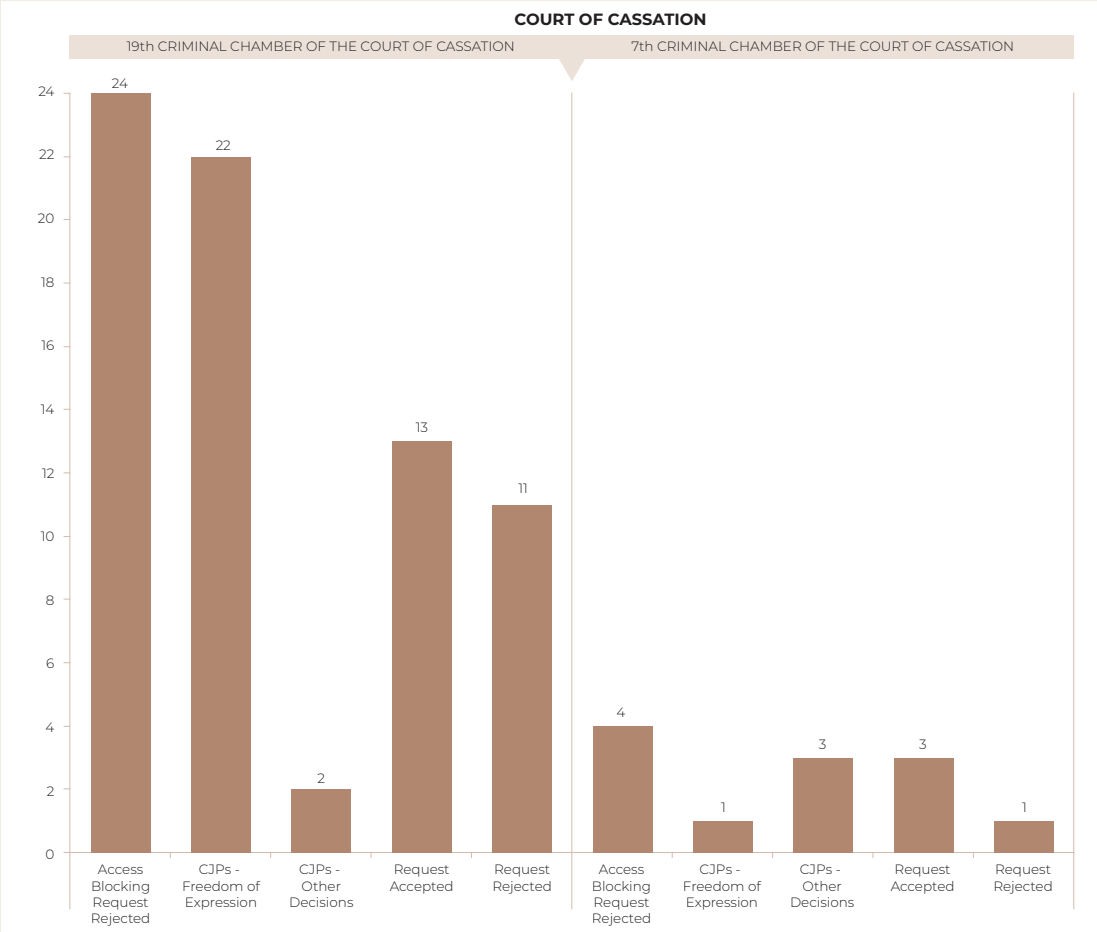
Figure 3: Court of Cassation Judgments Non Obstante Veredicto



As a result of this evaluation, **Figure 3** demonstrates that the 19th Criminal Chamber of the Court of Cassation accepted 13 of the 24 requests for judgments non obstante veredicto, that is, setting aside the initial decisions of the criminal judgeships of peace and rejected 11 of them. On the other hand, the 7th Criminal Chamber of the Court of Cassation accepted three out of four requests and rejected one request. Therefore, in total, the Court of Cassation reversed 16 of the 28 finalized right to be forgotten requests that were initially rejected by the criminal judgeships of peace.

208 19th Criminal Chamber of the Court of Cassation, no. 2017/5325, 05.06.2017. 71 separate decisions of criminal judgeships of peace referring to this decision were also identified as part of this study.

Figure 4: Rejected Access Blocking Decisions of the Criminal Judgeships of Peace & Court of Cassation's Judgments Non Obstante Veredicto



Upon evaluating the decisions of the criminal judgeships of peace subject to requests made for setting aside the judgments by the 19th Criminal Chamber of the Court of Cassation, it becomes apparent that in 22 of the 24 cases where the right to be forgotten requests were rejected, the judgeships evaluated the news articles and content in question within the scope of freedom of expression and freedom of the press. Only in two cases were the requests rejected on different grounds, as can be seen in **Figure 4**. However, as previously mentioned, the 19th Criminal Chamber of the Court of Cassation accepted 13 of the 24 requests for setting aside the judgments and overturned the decisions of the criminal judgeships. Upon examination of the decisions of the criminal judgeships of peace subject to the four judgments before the 7th Criminal Chamber of the Court of Cassation, it is evident that in only one instance the right to be forgotten was rejected on the grounds of freedom of expression and freedom of the press, while in the other three decisions the requests were rejected on different grounds.[209] Ultimately, the 7th Criminal Chamber of the Court of Cassation ac-

209 Among the decisions of the criminal judgeships of peace which are subject to the review of the 19th and 7th Criminal Chambers of the Court of Cassation are decisions that were dismissed on procedural grounds as well

cepted three out of four requests for setting aside the judgments and overturned the decisions of the criminal judgeships of peace.

Upon evaluating the judgments of the Court of Cassation on the right to be forgotten, it becomes apparent that the case files that are brought before the relevant chambers of the Court of Cassation through the request for setting aside the judgments subject to article 309 of the Code of Criminal Procedure No. 5271. It is noteworthy that the Court of Cassation did not take into account the Constitutional Court's C. K. judgment on the right to be forgotten, which is a continuation of the Ali Kıdık judgment. However, it is observed that the Court of Cassation frequently evaluates conflicting rights in its judgments, and especially in terms of press archives, freedom of expression and freedom of press are given importance and taken into consideration.

as those in which the right to be forgotten requests were rejected on the grounds of technical impossibility of using the secure "https" protocol on social media platforms.

EVALUATION OF THE RIGHT TO BE FORGOTTEN DECISIONS OF THE CRIMINAL JUDGESHIPS OF PEACE

This part of the report aims to evaluate the right to be forgotten decisions issued by the criminal judgeships of peace in Türkiye between 2020 and 2021. The EngelliWeb report project identified and analyzed a total of **3.173 separate access blocking and/or removal decisions** issued by **369 criminal judgeships of peace** across Türkiye in 2020 subject to article 9 of Law No. 5651. Among these, 224 decisions were related to the right to be forgotten and were issued by 105 different criminal judgeships of peace. Similarly, in 2021, **3.504 separate decisions** issued by **386 criminal judgeships of peace** across Türkiye subject to article 9 of Law No. 5651 were identified and assessed, out of which **324 decisions** were related to the right to be forgotten issued by **133 different criminal judgeships of peace**.

Therefore, **a total of 548 decisions** on the right to be forgotten were issued by **174 different criminal judgeships of peace** during 2020 and 2021. These decisions were examined and evaluated in detail and the results are presented in this part of the report. As illustrated in **Figure 5**, **a total of 10.441 news articles and other content were requested to be blocked and/or removed** during this period. Among them, **5.685** requests were made in 2020 (see **Figure 6** for details), and **4.756** were made in 2021 (see **Figure 7** for details). During both 2020 and 2021, the majority of the requests were made for **news from media organizations** totalling 8.069 URLs. There were also **704** requests for content in the "other" category,[210] **614** requests for tweets,

210 The "Other" category consists of Instagram content, Vimeo and DailyMotion videos, URL addresses of some micro-blogging services such as Wordpress, Ekşi Sözlük posts and some other content.

Figure 5: Breakdown of Type of URL Addresses Subject to Right to be Forgotten Decisions: 2020-2021

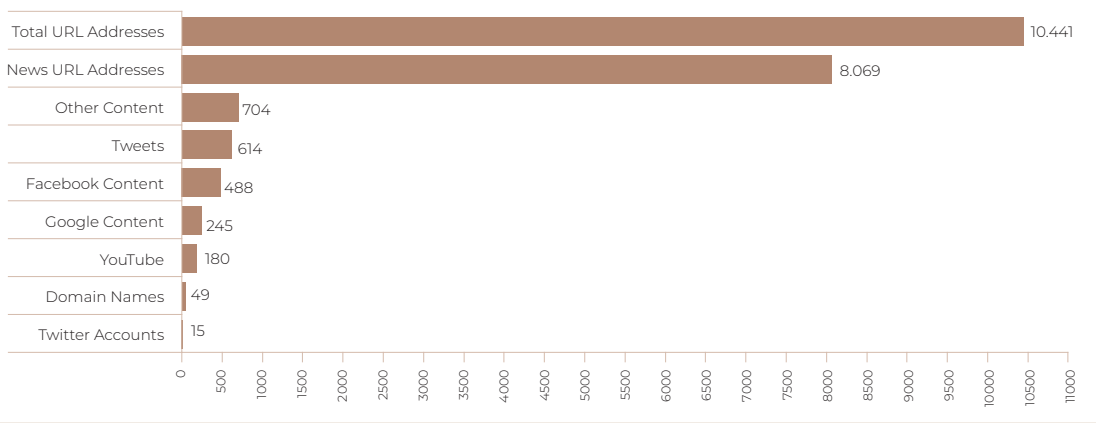
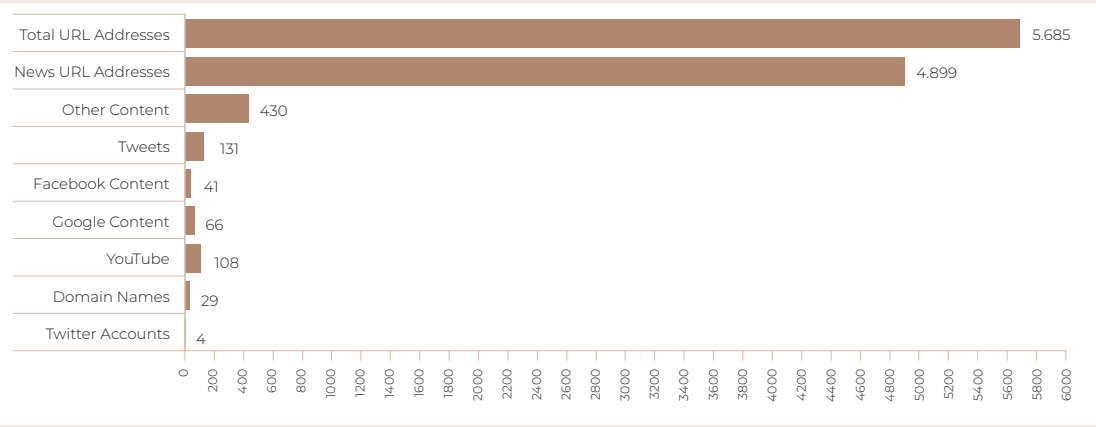


Figure 6: Breakdown of Type of URL Addresses Subject to Right to be Forgotten Decisions: 2020



488 requests for Facebook content, **245** requests for Google addresses,[211] **180** requests for YouTube videos, **49** requests for domain names, and **15** requests for Twitter account addresses.

As can be seen in **Figure 8**, in 2020 and 2021, a total of **10.441** Internet addresses were requested to be blocked or removed. Out of these, **8.865** news and other content were blocked while **1.048** news and other content were ordered to be removed. Therefore, during 2020-2021, sanctions were imposed for **9.913 (94.94%)** of the requested content, and only **528 (5.06%)** of the requests for news and other content were rejected by the criminal judgeships of peace.[212]

211 Google addresses mainly include URL addresses for search engine results and URL addresses for other applications such as Google Maps.

212 Within the scope of this study, a total of 548 right to be forgotten decisions issued in 2020 and 2021 by criminal judgeships of peace were evaluated, in which sanctions were imposed and the requests were either accepted or partially accepted. However, it should be noted that the requests rejected by the criminal judgeships of peace and the relevant decisions cannot be identified directly.

Figure 7: Breakdown of Type of URL Addresses Subject to Right to be Forgotten Decisions: 2021

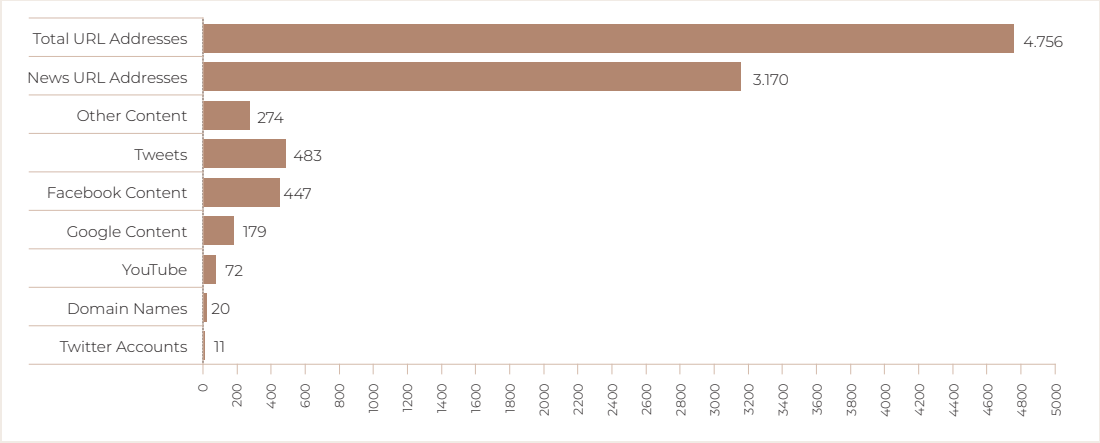
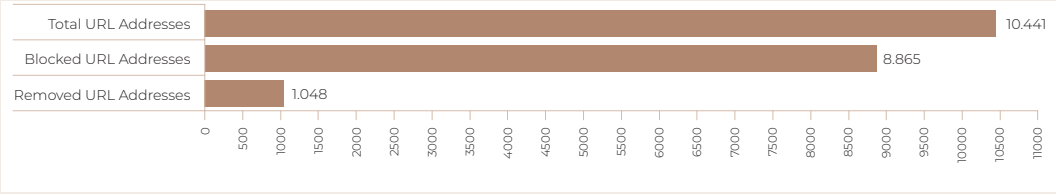


Figure 8: Number of Blocked and Removed URL Addresses Subject to Right to be Forgotten Decisions: 2020-2021



Upon analyzing the years 2020 and 2021 separately, it becomes evident that the majority of the sanctions regarding the right to be forgotten relate to **access blocking**, as illustrated in **Figure 9** and **Figure 10**, even after the July 2020 amendments which introduced the removal of content sanction in addition to the access blocking measure. Therefore, the number of content removal decisions remained relatively low.

Upon examining the **548 decisions** issued by **174 different** criminal judgeships of peace during 2020 and 2021, it is clear from **Figure 11** that the majority with **492** decisions involved the acces blocking sanction. Moreover, **42** decisions involved the access blocking as well as the content removal sanction, **seven** decisions imposed access blocking, content removal, and non-association of the applicants' names with the news articles and content through search engines. Finally, five decisions imposed access blocking and the non-association of the applicants' names with the news articles and content through search engines, while only two decisions involved the content removal sanction.

As illustrated in **Figure 12**, subsequent to the July 2020 amendments, a 35% increase was observed in content removal sanctions, as well as an increase of 73% was observed in access blocking sanctions. In terms of the total number of decisions, a **69% increase** in the right to be forgotten decisions was observed in **2021** (324 decisions) compared to **2020** (224 decisions).

Figure 9: Number of Blocked and Removed URL Addresses Subject to Right to be Forgotten Decisions: 2020

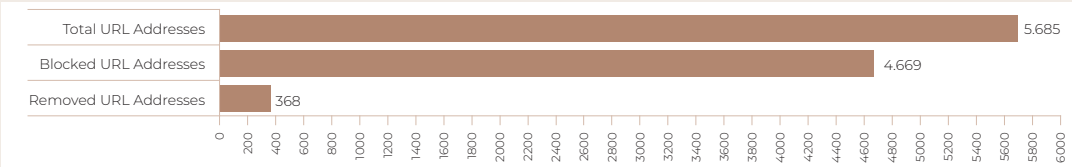


Figure 10: Number of Blocked and Removed URL Addresses Subject to Right to be Forgotten Decisions: 2021

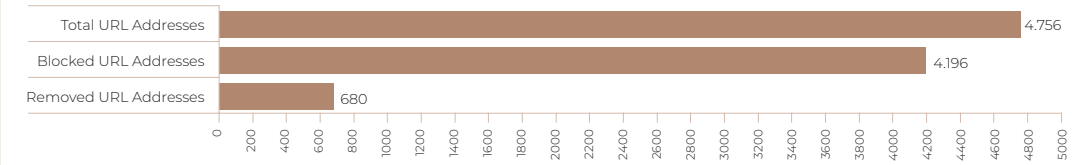
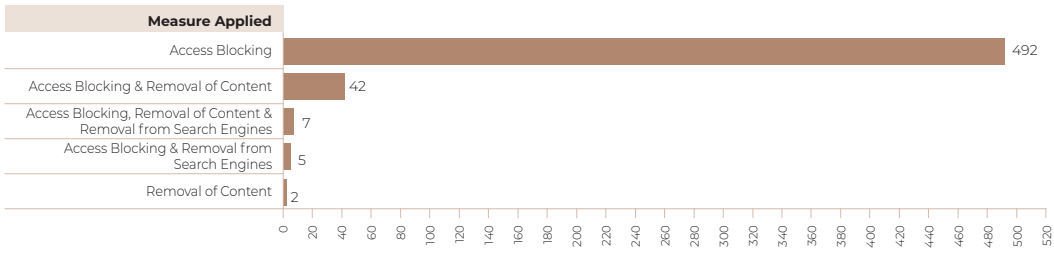


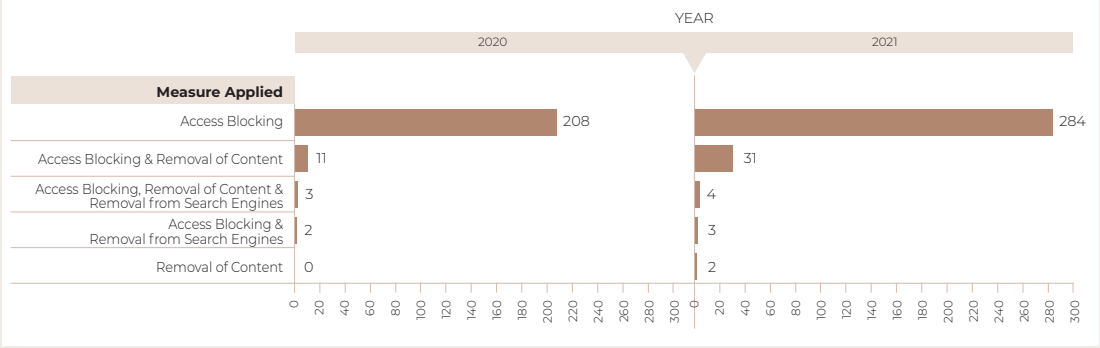
Figure 11: Measures Applied by the Criminal Judgeships of Peace in their Right to be Forgotten Decisions: 2020-2021



Upon evaluation of all the data, it becomes apparent that access blocking was predominantly applied. However, it was also observed that considerable number of media organizations removed the news subject to the decisions from their Internet archives and news sites, irrespective of the nature of the sanction. In other words, regardless of the nature of the sanction, it is observed that a large portion of the **8.865 blocked news and other content** was removed, especially by the news websites even if the criminal judgeships of peace had only decided to block access and even if there was no legal obligation to remove such content.

This report undertook a detailed analysis of the **548** right-to-be-forgotten decisions issued by the criminal judgeships of peace for the years 2020-2021. Each decision was individually examined and categorized, and its accompanying reasoning, legal evaluation, the nature of the requests, and the sanctions issued were assessed. Furthermore, the report examined the initial date of publication of the news articles and other content, and their subject matter to determine whether there was public interest in their continuing publication. Finally, the report also examined the social status and professional occupations of the applicants, whether they are legal per-

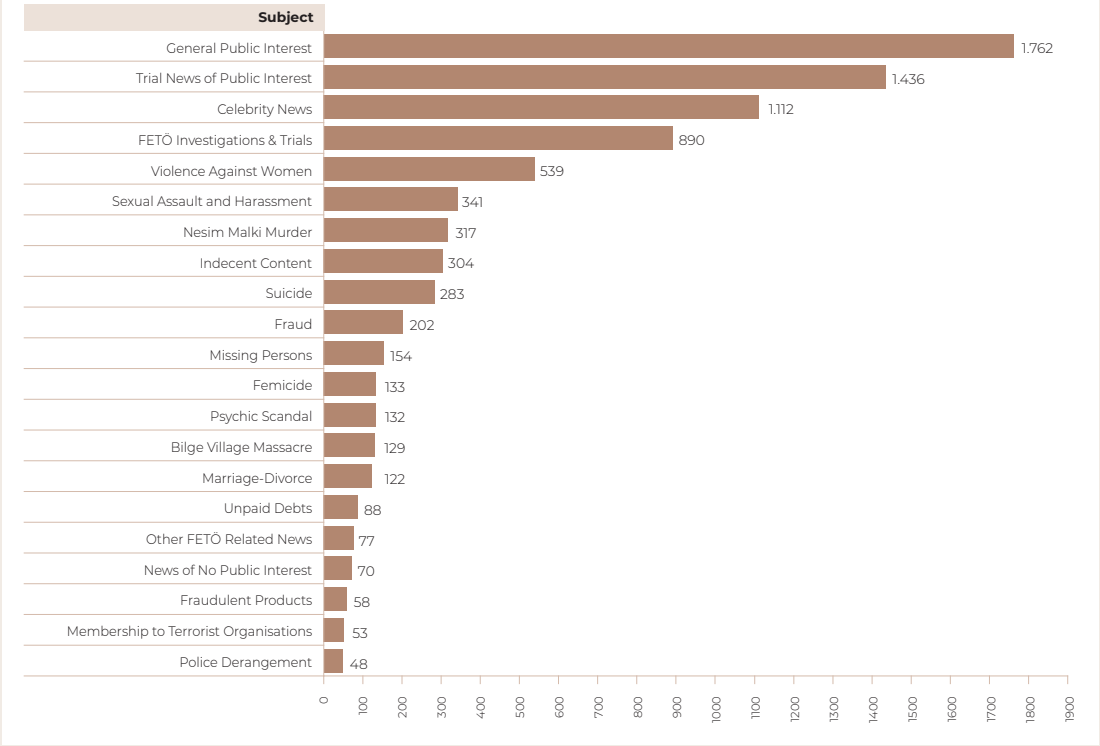
Figure 12: Annual Breakdown of Measures Applied by the Criminal Judgeships of Peace in their Right to be Forgotten Decisions: 2020-2021



sons, public officials, or ordinary citizens. This comprehensive approach allowed for a more thorough and nuanced understanding of the right to be forgotten decisions and their impact on the public interest as well as freedom of expression and freedom of the press in relation to Internet archives.

As previously mentioned, a total of **548** decisions issued by **174** different criminal judgeships of peace in 2020 and 2021 resulted in sanctions against **9.913** news and other content. **Figure 13** categorizes these sanctions, showing that the category of

Figure 13: Subject Matter and Total Number of URL Addresses Blocked with Right to be Forgotten Decisions: 2020-2021

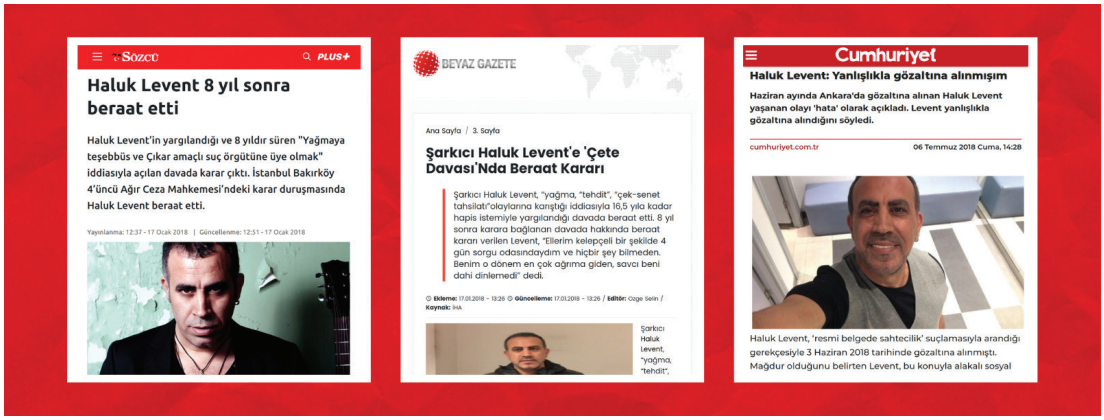


"news of public interest" had the highest number of blocked or removed content with 1.762 Internet addresses. The category of "**trial news of public interest**" ranked second with **1.436** Internet addresses, followed by "**magazine news**" with **1.112** Internet addresses. "**FETÖ investigation and trial news**" ranked fourth with **890** Internet addresses, while "**violence against women related news**" ranked fifth with **539** Internet addresses, and "**harassment and sexual assault news**" ranked sixth with **341** Internet addresses.

A decision of the Ankara 1st Criminal Judgeship of Peace on 28.01.2020 imposed sanctions on the largest number of Internet addresses, blocking access to 393 different news articles and content categorized as "**trial news of public interest**."[213] The request for the sanction came from artist Haluk Levent. Although the blocked news items were about the artist's detention in 2010-2011 and his trial on charges of "attempted looting and membership to a criminal organization for profit," the judgeship ruled that "the published news are outdated, but were still on the Internet, and posed an attack on the personal rights of the applicant, causing damage to his dignity."

As is widely known, Haluk Levent was acquitted in January 2018 after the trial. However, the Ankara 1st Criminal Judgeship of Peace blocked news articles about the trial including news reports in Sözcü and Cumhuriyet newspapers reporting Haluk Levent's acquittal and the conclusion of the trial.[214] It is important to note that trial news about public figures often have historical significance and archival value and are of public interest. Therefore, it is not reasonable to classify such news articles as a violation of personal rights or consider them within the context of "right to be forgotten."

Screenshot 2: News articles blocked by the Ankara 1st Criminal Judgeship of Peace



213 Ankara 1st Criminal Judgeship of Peace, no. 2020/1077, 28.01.2020.

214 See Sözcü, "Haluk Levent 8 yıl sonra beraat etti" [Haluk Levent was acquitted after 8 years], 17.01.2018, https://www.sozcu.com.tr/hayatim/magazin-haberleri/haluk-levent-8-yil-sonra-beraat-etti/

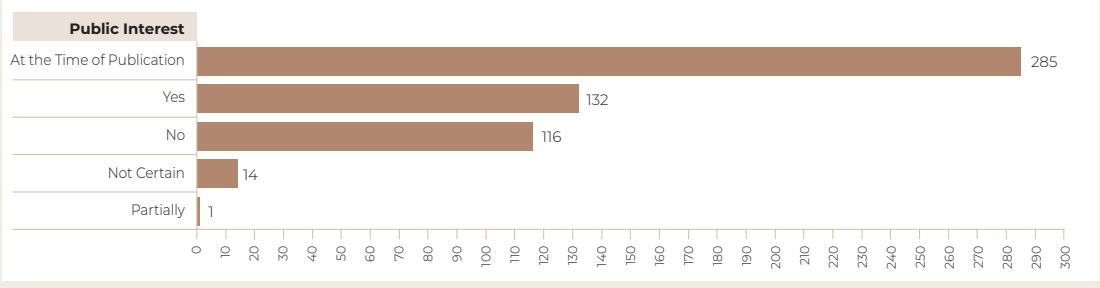
ANALYSIS AND EVALUATION OF NEWS ARTICLES REGARDING PUBLIC INTEREST

To begin with, this report analyzed 548 decisions related to the right to be forgotten and scrutinized the news content subject to these decisions to assess whether there is public interest in the publication of these news items and content.

In other words, the analysis of the news content subject to the right to be forgotten decisions focused on whether they had a contribution to the public interest and debate. The Constitutional Court recognizes that in democratic societies, the press has a crucial role in informing the public, shaping public opinion, providing access to diverse perspectives and opinions, and holding those in positions of power accountable through news coverage, information dissemination, critical analysis, and value judgments on matters of public interest.[215] In this context, even if some news articles and other content were published in the past, there may be continued and superior public interest with such news despite the passage of time. Even if such news and content may be outdated, their historical and social value continue reflecting the past and shedding light to the future. In balancing the right to be forgotten with freedom of expression and freedom of the press, the Constitutional Court emphasized the importance of protecting news archives, and by reference to ECtHR judgments, stated that the watchdog role of the press is to render archives accessible to the public and it is clear that archives are within the scope of freedom of expression and freedom of the press.[216]

Figure 14 displays the findings of our analysis on the **548 right to be forgotten decisions**. Among these decisions, it was found that **132** of them were related to news articles and other content that still had an ongoing public interest. The existence of public interest at the time of the publication of news and other content were identified in **285** decisions. However, there was no ongoing public interest in their continuing publication. No public interest was identified in the news articles and content sanctioned within **116** decisions While it was determined that there was **partial pub-**

Figure 14: Public Interest Assessment of the 2020-2021 Right to be Forgotten Decisions



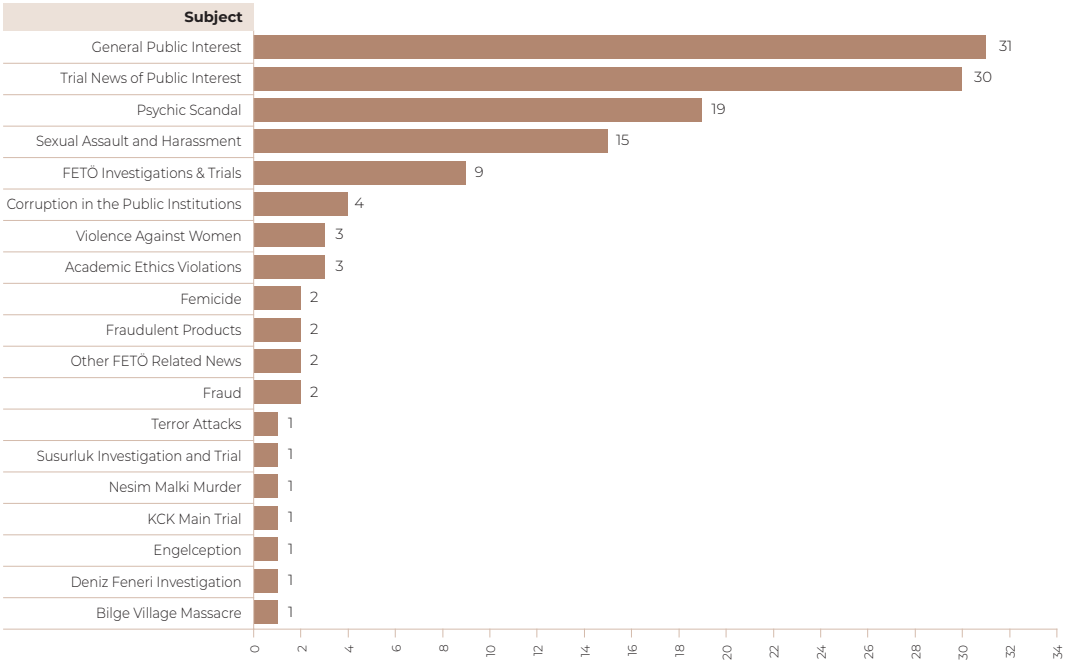
215 The Constitutional Court, no. 2017/76, 15/03/2017, § 18. See also General Assembly of Criminal Chambers of the Court of Cassation, no. 2018/490, 30.10.2018.

216 N.B.B. Application, No. 2013/5653, 03.03.2016, 61. See also *Wegrzynowski and Smolczewski v. Poland*, no. 33846/07, 16.07.2013, § 59; *Times Newspapers Ltd v. UK* (No. 1 and 2), nos. 3002/03 and 23676/03, 10.03.2009, §§ 27, 45.

lic interest in the news articles and content subject to only one decision, 14 decisions could not be evaluated due to the inability to analyze their content or understand their subject matter from the decisions.

Figure 15 shows that decisions were issued on various types of news articles and other content that fall under the category of news articles and other content that are in the public interest to be published. These include news of general public interest (31 decisions), trial news of public interest (30 decisions) and FETÖ investigations and trials news (30 decisions). Other types of news subject to decisions include FETÖ related news, harassment-sexual assault news, violence against women and femicide related news, news about corruption, fraud, academic ethics violations, preferential treatment in the public sector and counterfeit products.

Figure 15: Subject Matter of Public Interest News and the Number of Right to be Forgotten Decisions: 2020-2021



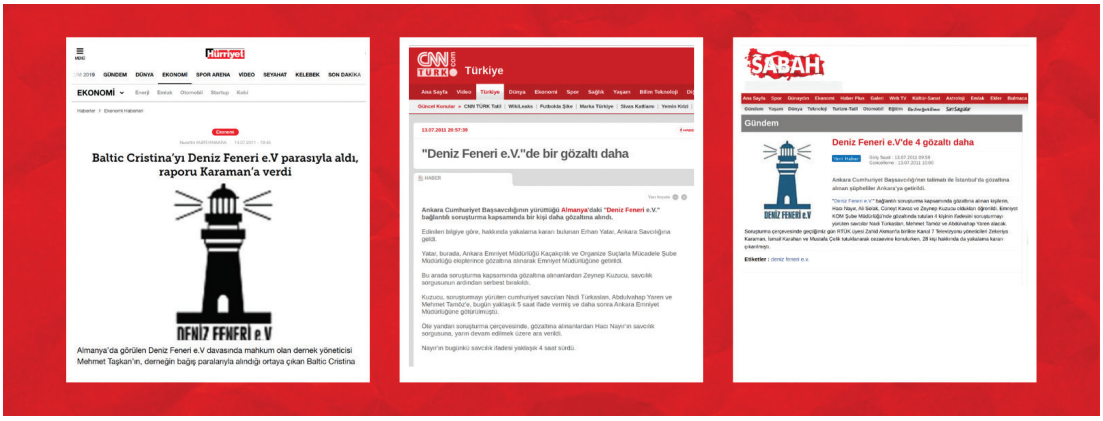
However, it is also observed that some news articles covering ongoing public interest issues and therefore having archival value, such as the **Deniz Feneri investigation**,[217] **Nesim Malki murder**,[218] the **Susurluk investigation and case**,[219] **KCK Main**

217 Access to 18 different news articles and content related to the Deniz Feneri Investigation and related trials was blocked with the non-reasoned decision of the Istanbul 10th Criminal Judgeship of Peace, no. 2020/4962, 11.20.2020.

218 Access to 317 news articles and content related to the murder of Nesim Malki and the investigation and the related murder trial was blocked by the decision of the Istanbul 6th Criminal Judgeship of Peace, no. 2020/5611, 31.12.2020.

219 Access to 11 news articles and content about the Susurluk investigation and related case was blocked by the non-reasoned decision of the Hendek Criminal Judgeship of Peace, no. 2021/640, 18.08.2021.

Screenshot 3: Blocked news articles on the Deniz Feneri investigation



Screenshot 4: Blocked news articles on the Nesim Malki murder

Screenshot 5: Blocked news articles on the Susurluk case

Screenshot 6: Blocked news articles on the KCK Main Case

Case,[220] **Bilge Village massacre**[221] and the **Psychic Scandal** in Ayvalık[222] have also been subject to the right to be forgotten decisions. In such cases, judgeships have granted the right to be forgotten requests mainly based on the considerations that the news articles were "old" and "outdated." However, the continued public interest in these news items regardless of their publication date, their contribution to the public interest, their significant archival value, and their importance in terms of freedom of expression and freedom of the press were not adequately taken into consideration, nor was any explanation provided by the criminal judgeships of peace as to why the right to be forgotten was granted. Although many decisions appear to lack reasoning, it is worth noting that a significant number of decisions do contain template reasoning.

As illustrated in **Figure 16**, a total of **132 right to be forgotten decisions** were issued with regards to news that is in the public interest, resulting in sanctions on **3.687 news articles and other content**. Categorically, "**trial news of public interest**" ranked first with **1.180** Internet addresses blocked or removed. While "**news of public interest**" ranked second with **697** Internet addresses, "FETO related **investigation news**" ranked third with **475** Internet addresses, "**violence against women related news**" ranked fourth with **418** Internet addresses and "**Nesim Malki murder related news**" ranked fifth with **317** Internet addresses.

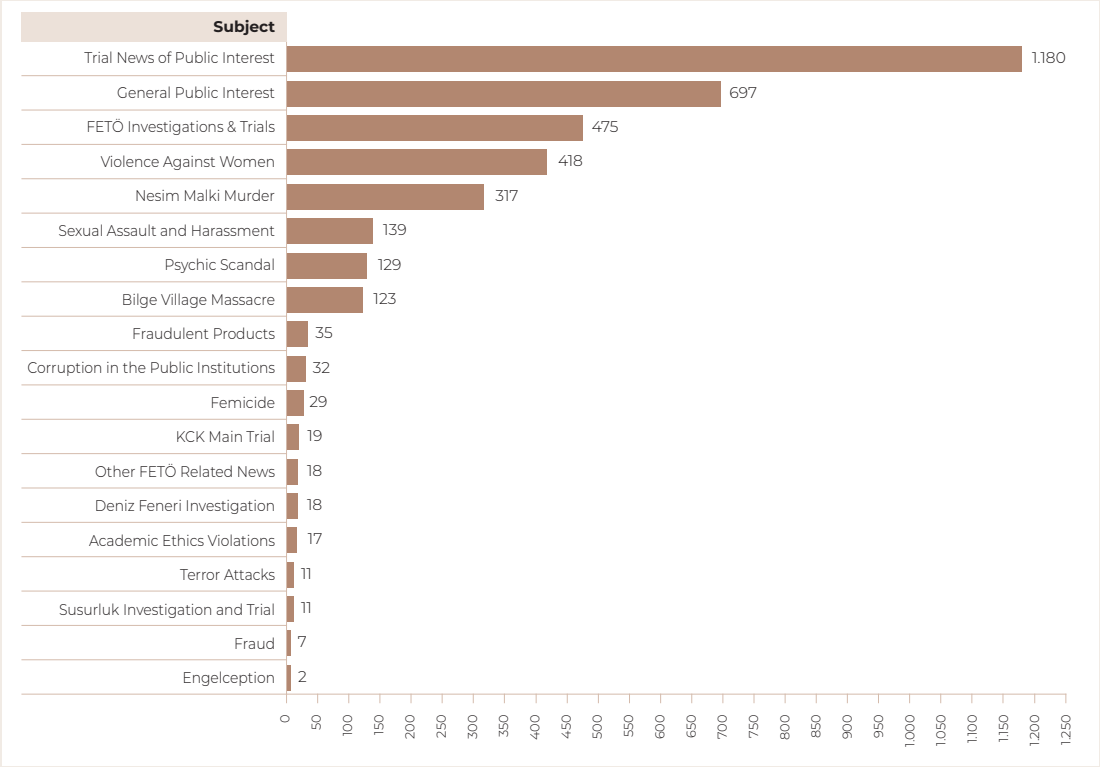
Figure 17 reveals that the news articles and other content subject to the right to be forgotten decisions issued during 2020 and 2021 **do not comply** with the condition set by the Court of Cassation and the Constitutional Court that "negative events of

220 Access to 19 news articles and content related to the KCK Main Case was blocked by the decision of the Konya 1st Criminal Judgeship of Peace, no. 2021/5868, 31.12.2021.

221 Access to a total of 129 news articles and content related to the Bilge Village massacre (a massacre during an engagement ceremony in Bilge village of Mazıdağı district of Mardin on 04.05.2009 in which approximately 44 people were killed) was blocked by two decisions of the Mazıdağı Criminal Judgeship of Peace, no. 2019/222, 17.01.2020 and no. 2019/223, 17.01.2020.

222 Access to 132 news articles and content related to a "psychic scandal" in Balıkesir Gömeç was blocked by 20 non-reasoned decisions of the Ayvalık Criminal Judgeship of Peace in 2021, all of which contained short evaluations.

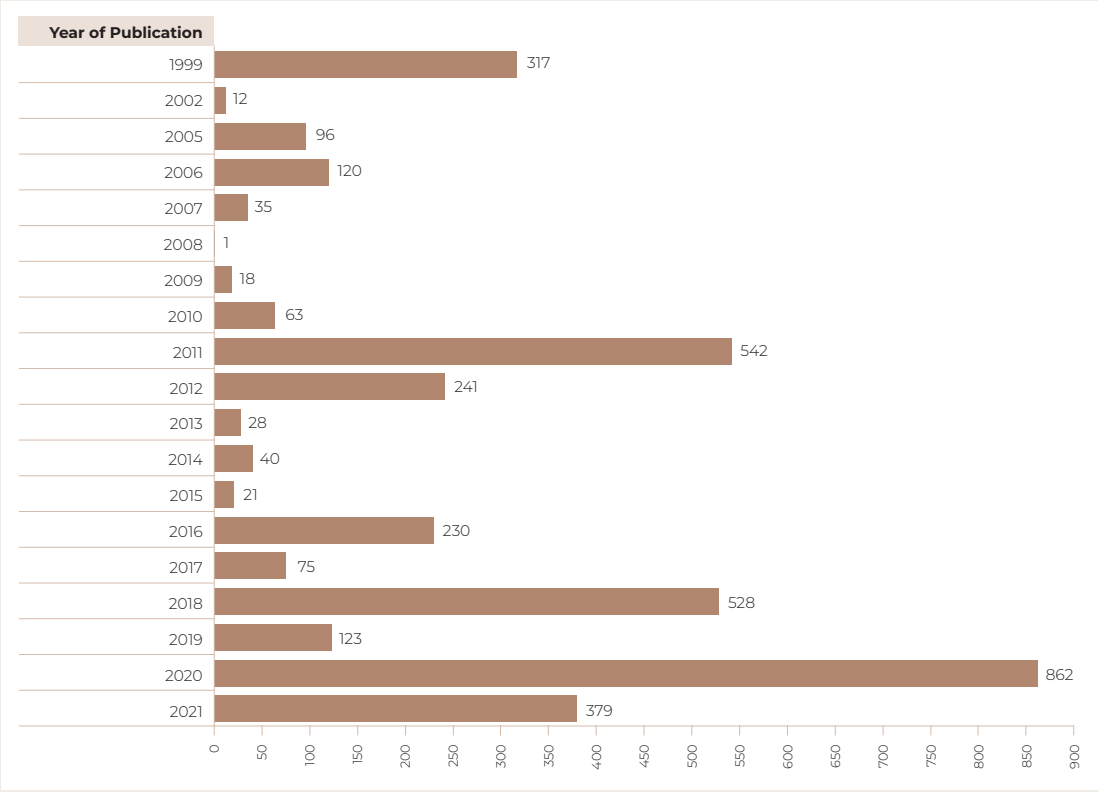
Figure 16: Total Number of News and Content (URL Addresses) with Public Interest Element Blocked by Right to be Forgotten Decisions: 2020-2021



the past in digital memory must be forgotten after a period of time unless there is a superior public interest element present."[223] The 132 decisions of criminal judgeships of peace resulted in the sanctioning of **3.687** news articles and other content, including **379** from 2021 and 862 from 2020. This **strongly indicates** that the right to be forgotten decisions did not necessarily concern news articles and content from the past but also included those which were recently published. In other words, a number of "right to be forgotten" decisions were issued in the same years in which the news articles and other content were published. Therefore, it is **unreasonable** to claim that news articles from **2020 and 2021** which are **of public interest**, are **outdated** or **irrelevant**. Some of the decisions in this context were issued "**at lightning speed**" to protect the right to be forgotten. For example, Istanbul Anatolia 7th Criminal Judgeship of Peace decision to block journalist Metin Cihan's tweet took only **24 hours** after its publication on 19.10.2021, by reference to the applicant's "right to good reputation and **the right to be forgotten**."[224]

223 General Assembly of Civil Chambers of the Court of Cassation, no. 2015/1679, 17.06.2015.
224 Istanbul Anatolia 7th Criminal Judgeship of Peace, no. 2021/5779, 20.10.2021.

Figure 17: The Publication Year of the Total Number of News and Content (URL Addresses) with Public Interest Element Blocked by Right to be Forgotten Decisions: 2020-2021



Among the news articles sanctioned in 2021 but which were published in 2020 are 52 news articles and other content about **Canan Kaftancıoğlu**, the Istanbul Provincial Chair of the CHP, being threatened on Twitter by Mustafa Bilgehan Akıncı, the son of former Nationalist Labor Union Confederation President Ömer Faruk Akıncı. While Mustafa Bilgehan Akıncı's request was initially rejected by the Silivri Criminal Judgeship of Peace,[225] on appeal, the Çorlu 1st Criminal Judgeship of Peace decided to remove 52 news articles and other content from publication on 26.11.2021[226] despite the fact that the news articles were published in 2020 and were still relevant during 2021.

While lifting the decision of the Silivri Criminal Judgeship of Peace, Çorlu 1st Criminal Judgeship of Peace, without evaluating the content of the threatening news articles, issued its decision in general terms that the request was within the scope of **the right to be forgotten.** With its decision, the judgeship decided for the removal of 52 news articles that were published in various newspapers and news websites, including in BirGün, Cumhuriyet, Sözcü, Artı Gerçek, Gazete Duvar, T24 and Karar. In its decision, the judgeship stated that the news articles "do not quality as historical data or have news value, **do not contribute to public interest**, and therefore, should be evaluated within the scope of the right to be forgotten, since the event in question and the

225 Silivri Criminal Judgeship of Peace, no. 2021/4580, 10.11.2021.
226 Çorlu 1st Criminal Judgeship of Peace, no. 2021/4069, 26.11.2021.

related news articles do not hold any current value as of the decision date and a "decision of non prosecution" was issued [by the relevant Prosecutor's Office responsible for the criminal investigation]."

The Çorlu 1st Criminal Judgeship of Peace decision did not explain why the previous decision of the Silivri Criminal Judgeship of Peace was wrong and should be revoked or offer any explanation regarding the significance of the news articles and content in terms of freedom of expression and freedom of the press. Furthermore, the decision did not address the fact that the incident subject to the news articles was caused by the applicant's own behavior, or why factual reports about the threatening of a female politician and public figure should be removed from publication and archives at a time when the issue of violence against women was criticized and discussed widely in Türkiye. The decision of the Çorlu 1st Criminal Judgeship of Peace therefore raises more questions then answers and is a bad example in terms of the application of the right to be forgotten principles.

Screenshot 7: News articles blocked by the Çorlu 1st Criminal Judgeship of Peace

On the other hand, it is observed that 317 different trial news articles about the Nesim Malki murder published between 1999 and 2011, which is of great interest to the public, were blocked on 31.12.2020 by a decision of the Istanbul 6th Criminal Judgeship of Peace upon the request of Şükrü Elverdi. Elverdi was convicted for the premeditated murder of Nesim Malki and was the subject of an international arrest warrant while he was a fugitive in the Netherlands.[227] The judgeship's decision stated that the news articles were about the arrest of **the applicant** in 2011, **who was the perpetrator** of a murder that occurred in 1995. The judgeship also considered that **almost 10 years passed over the publication** of the news articles by citing the Court of Cassation's precedential judgments **which allow the right to be forgotten to be applied if more than seven years have passed since the incident**. Therefore, according to the judgeship, **the news articles are outdated** due to the passage of time and there is **no public interest** in their ongoing publication. Finally, it was argued by the judgeship that that the applicant should be provided the opportunity to establish a new life, and

227 Istanbul 6th Criminal Judgeship of Peace, no. 2020/5611, 31.12.2020.

that it was **understood that his sentence had been executed**. By reaching this conclusion, the judgeship, referred to **similar judgments in the established jurisprudence of the Constitutional Court regarding the right to be forgotten** and concluded that the **legal conditions** specified in article 9 of Law No. 5651 had been met.

However, in reaching this decision, the judgeship incorrectly evaluated and summarized the principled judgments of both the Court of Cassation and the Constitutional Court with generalized statements, and did not make any evaluation in terms of freedom of expression and freedom of the press. Therefore, without any weighing process, it was concluded that there was no public interest in the publication of the news articles. However, there is a superior public interest in the ongoing presence of the news articles in the Internet archives of the press about a complex trial process that lasted nearly 12 years regarding a murder that is of close interest to the public.

Therefore, the claim that there is **no superior public interest** in the ongoing publication of news articles about the Nesim Malki murder and the inclusion of these news in the archives is inconceivable. In this context, the right to be forgotten is not an absolute right. As mentioned above, the Constitutional Court has previoulsy ruled that the news articles first published in **2009** on the criminal proceedings against **former Esenyurt Mayor Gürbüz Çapan** regarding allegations of corruption in the municipality during his term as mayor were of archival quality and that it was not claimed that the news articles at the time of their publication were untrue or violated any personal rights.[228] In fact, according to the Constitutional Court, the purpose of such news articles is to inform the public of matters of public interest.[229] The Constitutional Court also took into account the time elapsed over the publication of the news articles, but despite the time elapsed, the Constitutional Court ruled that the application was inadmissible due to its manifest lack of grounds,[230] determining that "when the identities of the persons subject to the news articles are taken into consideration, it cannot be said that the news lost its relevance and public interest."[231] This evalua-

Screenshot 8: News articles blocked by the Istanbul 6th Criminal Judgeship of Peace

228 G. D. (2) Application, No. 2014/1808, 04.10.2017, § 31.
229 G. D. (2) Application, No. 2014/1808, 04.10.2017, § 31.
230 G. D. (2) Application, No. 2014/1808, 04.10.2017, § 34.
231 See also Fahri Göncü Application, No. 2014/17943, 05.10.2017.

tion of the Constitutional Court applies to a large extent with regards to the news articles on the Nesim Malki murder.

In the category of trial news of public interest, the Korkuteli Criminal Judgeship of Peace blocked in August 2020 access to 28 news articles and related content regarding former national wrestler **Recep Çakır**, who is currently imprisoned for sexual assault. The judgeship issued its decision on the grounds of violation of Recep Çakır's right to be forgotten and personal rights.[232] Following the reactions in the public and social media, **Google** lodged an appeal against this decision arguing that three different Google owned **Blogspot** pages should be protected within the scope of freedom of expression and freedom of the press, and that they did not "contain insult or slander or any elements that may cause a violation of personal rights that may lead to damage" Çakır's reputation. Google also argued that the content of the pages cannot be evaluated within the scope of the right to be forgotten. Korkuteli Criminal Judgeship of Peace accepted Google's objection and lifted its access blocking **for all the Internet addresses subject to its decision**.[233] In its reasoning, the judgeship referred to the Constitutional Court's judgment on the N.B.B. Application,[234] and stated that it was deemed necessary to accept the objection since the act subject to the news was "about a crime that had been established by a finalized court order and was of general public interest."

In this context, in its judgment on the Asli Alp and Şükrü Alp Application, the Constitutional Court acknowledged that the purpose of the news articles on a murder committed in 2009 was to inform the public and that the applicants did not claim that the news articles were untrue or fabricated. The Constitutional Court, considered various factors including the "subject matter and the content of the article, the time elapsed since the initial publication and the date of the final verdict of the criminal proceedings". Based on these factors, the Court concluded that the articles still had news value, therefore the historical significance and social value continued and there was no need to evaluate them within the scope of the right to be forgotten.[235] The

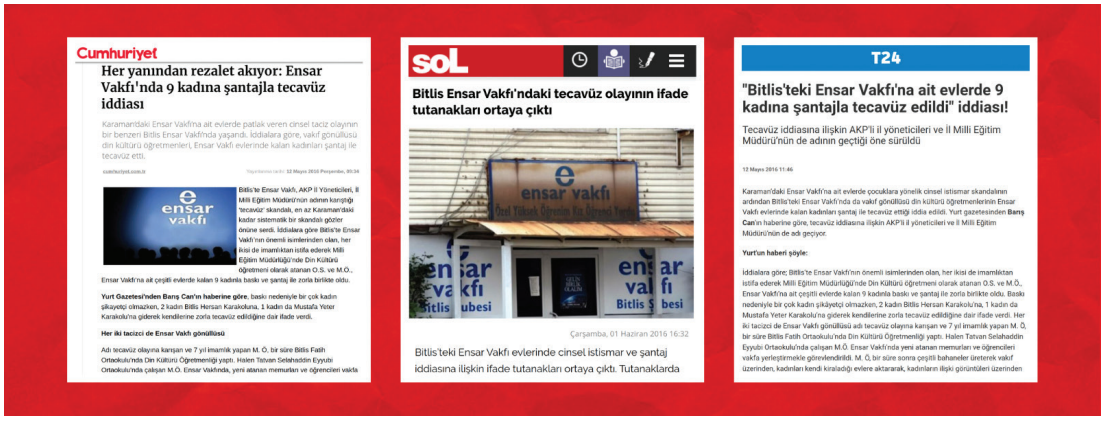
Screenshot 9: News articles blocked by the Korkuteli Criminal Judgeship of Peace

232 Korkuteli Criminal Judgeship of Peace, no. 2020/344, 13.08.2020.
233 Korkuteli Criminal Judgeship of Peace, no. 2020/357, 19.08.2020.
234 N.B.B. Application, No. 2013/5653, 03.03.2016.
235 Asli Alp and Şükrü Alp Application, No. 2014/18260, 04.10.2017, § 28. See also Fahri Göncü Application, No. 2014/17943, 05.10.2017.

news articles about Recep Çakır, who is serving time for sexual assault, also fail to meet the criteria for evaluation within the scope of the right to be forgotten.

Another example of trial news of public interest involves an access blocking decision issued by the Çorlu 2nd Criminal Judgeship of Peace in January 2020. The decision involved 20 news articles and other content published in 2016, covering allegations of blackmail and rape of women staying in the houses of the Ensar Foundation in Bitlis by religious culture teachers who were volunteers of the foundation.[236] This followed the revelation of the scandal of sexual abuse of 45 children in the houses of the Ensar Foundation in Karaman. Despite a decision of non-prosecution being issued at the end of the criminal investigation against the applicant, there is still public interest in the ongoing publication of the news and in their continued presence in the news archives. In terms of such news articles and other content, rather than blocking or removal sanctions, anonymization of the names of the persons subject to the request may be a more balanced approach in terms of the right to be forgotten and freedom of expression and freedom of the press. The sanctioning of news of public interest as a whole, and thereby removing almost all news articles on a particular subject or topic of public interest by content providers and media outlets constitutes a violation of freedom of expression and freedom of the press, as well as the public's right to access information.[237]

Screenshot 10: News articles blocked by the Çorlu 2nd Criminal Judgeship of Peace

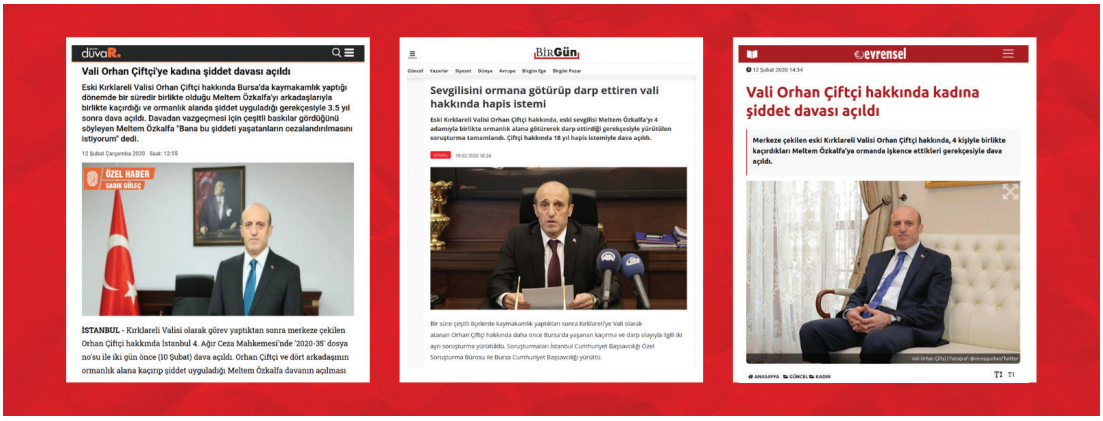


Another important example in the **category of trial news of public interest** is the blocking of access to 53 news articles published about the completed investigation against the former Kırklareli Governor Orhan Çiftçi for allegedly taking his ex-girlfriend to the woods with four men and having her beaten by them and the related indictment against Çiftçi with the demand of 18 years imprisonment. The request to block access to such news was made by Orhan Çiftçi and his request was granted by the Ankara 1st Criminal Judgeship of Peace in April 2020.[238] The decision cited an interim decision of the Istanbul 4th Criminal Assize Court (docket no. 2020/35) of 20.02.2020 which prohibited the publication, use, and dissemination of news and in-

236 Çorlu 2nd Criminal Judgeship of Peace, no. 2020/302, 28.01.2020.
237 Fahri Göncü Application, No. 2014/17943, 05.10.2017.
238 Ankara 1st Criminal Judgeship of Peace, no. 2020/3108, 09.04.2020.

formation related to the 2017 incident subject to the trial, including on social media, Internet media, and all kinds of press and media tools, until a verdict is rendered. The Ankara 1st Criminal Judgeship of Peace justified its decision by stating that the news subject to Çiftçi's request was outdated and its continued presence on the Internet in its current form constitutes an attack on personal rights, causing damage to the dignity and reputation of the applicant, his family, and his close social circle.

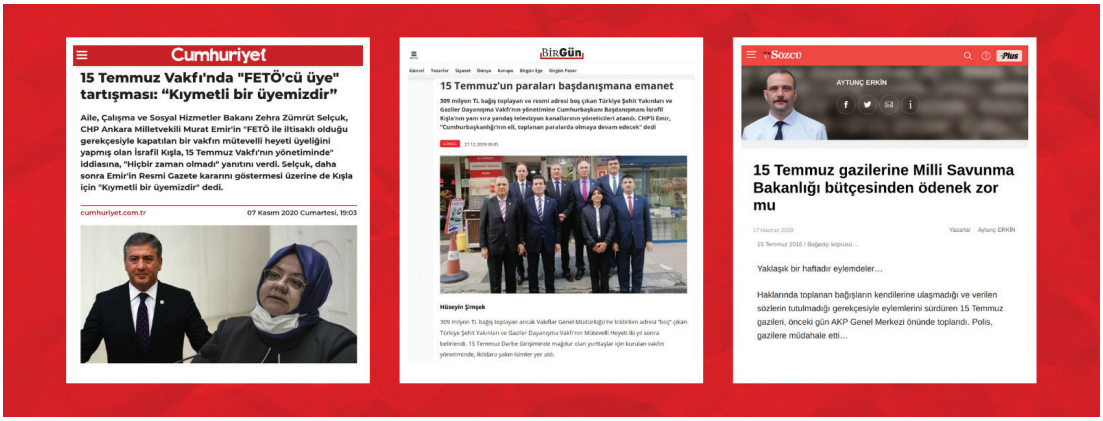
Screenshot 11: News articles blocked by the Ankara 1st Criminal Judgeship of Peace



However, despite the fact that the Ankara 1st Criminal Judgeship of Peace considered "an incident from 2017" **as outdated** in its decision and pointed to the existence of a controversial publication ban decision with regards to the Istanbul 4th Criminal Assize Court's decision of 20.02.2020 and the news to be published after that date, it is worth noting that one of the articles, by Gazete Duvar's entitled "Vali Orhan Çiftçi'ye kadına şiddet davası açıldı" ("Governor Orhan Çiftçi faces violence against women lawsuit") published on 12.02.2020 was also blocked by the decision.[239] In other words, Gazete Duvar's article was current and cannot be regarded as outdated and more importantly it was **published before the interim decision** of the Istanbul 4th Criminal Assize Court. Similarly, a news article by BirGün, entitled "Sevgilisini ormana götürüp darp ettiren vali hakkında hapis istemi" ("Jail demand for the governor who took his lover to the woods and had her beaten") which was among the news articles blocked by the Ankara 1st Criminal Judgeship of Peace was published on 19.02.2020.[240] In other words, the BirGün article is also current and published prior to the publication ban issued by the Istanbul court. There is therefore no question that both news articles are current and fall undoubtedly under the category of trials related to "violence against women" and are of public interest, and it is not possible to say that **the conditions that would necessitate an evaluation within the scope of the right to be forgotten occurred**.[241]

239 Gazete Duvar, "Vali Orhan Çiftçi'ye kadına şiddet davası açıldı," 12.02.2020, https://www.gazeteduvar.com.tr/gundem/2020/02/12/vali-orhan-ciftciye-kadina-siddet-davasi-acildi
240 BirGün, "Sevgilisini ormana götürüp darp ettiren vali hakkında hapis istemi," 19.02.2020, https://www.birgun.net/haber/sevgilisini-ormana-goturup-darp-ettiren-vali-hakkinda-hapis-istemi-288630
241 Fahri Göncü Application, No. 2014/17943, 05.10.2017, § 29.

Screenshot 12: News articles blocked by the Artvin Criminal Judgeship of Peace



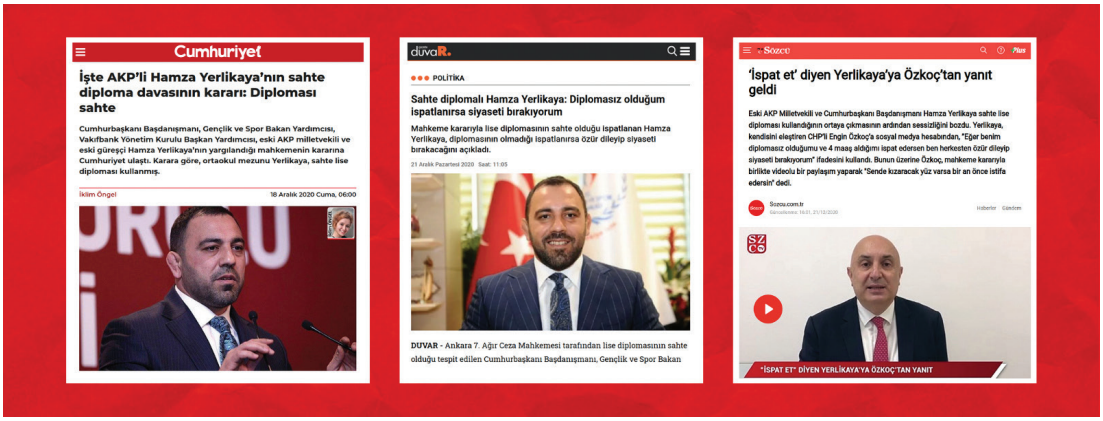
One more example in the **category of news articles of public interest** subject to a blocking decision involves certain news articles published in **Cumhuriyet**, **BirGün**[242] and **Sözcü** in 2019 about **İsrafil Kışla**, AKP 26th term Artvin MP and Chief Advisor to the President, in relation to the funds collected and entrusted to the chief advisor for families of those who lost their lives during the failed coup attempt on 15.08.2016. These news articles, as well as a tweet by CHP MP **Murat Emir** on the same topic, were blocked by the Artvin Criminal Judgeship of Peace on 12.11.2020.[243]

Despite evaluating the request within the framework of the right to be forgotten, the judgeship did not provide any explanation or reasoning for accepting the request. In its judgment, the judgeship simply copied and pasted the Court of Cassation's judgments on right to be forgotten without clarifying how the conditions that **would necessitate the evaluation of the news** articles published **five days before the date of the request** had been met. The judgeship did mention an incident in which the applicant's finger was broken during an argument with a civilian police officer who had asked to see his ID, but **this incident** was **unrelated to the Cumhuriyet**, **BirGün** and **Sözcü news articles or the allegations contained** within them. Needless to state, these news articles are clearly of public interest and access blocking sanction therefore cannot be justified under the right to be forgotten.

Yet another example in the category of news that is in the public interest involves access blocking to 125 Internet addresses, including news articles published in **Cumhuriyet**, **Gazete Duvar** and **Sözcü** newspapers, tweets, and YouTube videos, relating to the allegation that **Hamza Yerlikaya**, one of the Chief Advisors to the President, Deputy Minister of Youth and Sports, Deputy Chairman of Vakıfbank, former AKP deputy and former wrestler, **used a fraudulent high school diploma** to gain admission to a sports associate's degree program. Bakırköy 1st Criminal Judgeship of Peace on 28.12.2020 decided to block access to all such news and content on the grounds that the personal rights of Hamza Yerlikaya were violated.[244]

242 See BirGün, "BirGün'ün haberine erişim engeli" (Access ban on BirGün's news report), 13.12.2020, https://www.birgun.net/haber/birgun-un- haberine-erisim-engeli-326395
243 Artvin Criminal Judgeship of Peace, no. 2020/977, 08.12.2020.
244 Bakırköy 1st Criminal Judgeship of Peace, no. 2020/6242, 28.12.2020.

Screenshot 13: News articles blocked by the Bakırköy 1st Criminal Judgeship of Peace



The Bakırköy 1st Criminal Judgeship of Peace evaluated the request within the scope of the right to be forgotten, stating that the news articles related to **an incident that occurred 25 years ago**, and the related trial was 19 years ago (2001), making the content of the articles "obviously outdated." However, the judgeship **failed to acknowledge** that the applicant was a chief advisor to the President, and the articles were published **not 19 years ago, but in December 2020,** just 10 days before the request was made. In other words, the judgeship did not consider the public interest as well as freedom of expression and freedom of the press inherent in the publication of recent news about a public figure, a famous politician who has been convicted of forging official documents using a fraudulent high school diploma. Even though Yerlikaya's sentence was postponed and suspended, this was not discussed at all in the decision. In terms of public interest considerations, Bakırköy 1st Criminal Judgeship of Peace treated the applicant as a private citizen concluding that "the easy accessibility of the news published on the Internet about the applicant, who does **not have a political or media personality**, damages his reputation." The decision of the Bakırköy 1st Criminal Judgeship of Peace does not conform to the Constitutional Court and the Court of Cassation's judgments on the right to be forgotten. The fact that the publication is old **does not necessarily warrant evaluation** under the right to be forgotten, especially when the news pertains to a public figure's criminal conduct.

News of ongoing public interest may not only pertain **to current news, but also to past news items that are old but still have historical significance and archival value**. For instance, during 2020, 66 news articles about the "**Yargıya Neşter**" operation (Scalpel to the Judiciary) was blocked with the subsequent decisions of the Istanbul 3rd Criminal Judgeship of Peace in August 2020[245] and the Istanbul 12th Criminal Judgeship of Peace in September 2020.[246] However, the Scalpel to the Judiciary operation which was frequently covered in the press in 2004 and 2005 with allegations of bribery involving judges and prosecutors in Ankara, received extensive media coverage for many years, and even continued to be frequently covered until 2018 and still holds public interest value.

245 Istanbul 3rd Criminal Judgeship of Peace, no. 2020/3028, 12.08.2020.
246 Istanbul 12nd Criminal Judgeship of Peace, no. 2020/3365, 02.09.2020.

Screenshot 14: News articles blocked by the Istanbul 3rd Criminal Judgeship of Peace

In its decision, the Istanbul 3rd Criminal Judgeship of Peace reasoned "that even though the news articles in question were newsworthy at the time of their publication, 16 years have passed since then. The applicant was also **acquitted of the allegations** in the news articles by the Ankara 11th Criminal Assize Court's decision no. 2005/76). Therefore, the judgeship emphasized that the continued publication of these articles on the Internet infringes on the personal rights of the applicant, and it is natural for the applicant not to want to be associated with them. In light of these factors, the judgeship concluded that the applicant's request access blocking to the articles was justified within the scope of the right to be forgotten.

Similarly, in its decision, the Istanbul 12th Criminal Judgeship of Peace acknowledged that finding the balance between the right to be forgotten, the protection of personal data and personality rights, and the freedom of the press to report news and the freedom of expression was at the heart of the problem. The judgeship stated that "the news content subject to the request is related to private life and is **outdated**" and that "the applicant wants these news and comments related to his **private life** to be erased from the public memory." The judgeship recognized that "the presence on the Internet of the old news and comments related to the applicant violates the right to be forgotten and, consequently, the applicant's privacy." Moreover, the judgeship stated that the news articles on the operation "**Yargıya Neşter**" "do not play a significant role in public life and there is no strong public interest in the relevant information, which would pose a superior public interest." Therefore, there exists the legal interest of the individual in the privacy of his personal data and in the non-disclosure and non-dissemination of any information belonging to himself without his consent and in the inaccessibility of this information by others, in short.

These two decisions related to the operation "Yargıya Neşter", have raised important questions regarding the balance between the right to be forgotten, the protection of personal data and personality rights, and freedom of the press. It is clear that the news articles subject to the decisions are trial news and are not directly related to the "private life" of the applicant. It is worth noting that despite the decisions, the

news articles **have ongoing public interest** and historical significance, even if the trial resulted in acquittal for this particular applicant. It is therefore necessary to carefully consider the implications of blocking access to such news articles, particularly with regard to freedom of expression and freedom of the press. It is further observed that among the blocked news articles, there were also those related to the acquittal verdict which was referred to in the decision of the Istanbul 3rd Criminal Judgeship of Peace. However, having said that, the acquittal verdict of the Ankara 11th Criminal Assize Court, was later reversed by the Court of Cassation and a retrial was held. It is therefore unclear how these developments may have affected the content of the blocked articles, as some of them were removed after the decisions were made and therefore could not be assessed for the purpose of this study. One notable article that was blocked by both decisions was well known journalist **Faruk Bildirici**'s article entitled "**Müftünün Nasihatı mıydı**" ("Was it The Mufti's Advice") published on 09.07.2020.[247]

Screenshot 15: News articles blocked by the Istanbul 12nd Criminal Judgeship of Peace

While Faruk Bildirici's article included primarily reader criticism of news articles on Zonguldak Mufti Rüstem Can's statement on women's swimming attire and that "women should swim in a way that their bodies are not seen by other women," his article also included a "Blocked of the Week" section. In this section of his article, Bildirici mentioned an access blocking decision on the grounds of violation of personal rights to a news article entitled "The prosecutor said it was a criminal organization, they were all released" published 14 years ago and related to the "Yargıya Neşter" operation. The name of the above mentioned applicant was also included in this section of the article. The inclusion of the name of the applicant in this long article resulted in a disproportionate blocking of access to the entire article. However, the judgeship did not take this issue into consideration in their evaluation of more than twenty news items.

247 See https://farukbildirici.com/muftunun-nasihati-miydi/

It is important to note that the **blocking of news on matters of public interest has news value in itself**, and the decisions of criminal judgeships to block access are frequently reported and discussed by the public. Studies evaluating and analyzing these decisions are also conducted and published by organizations such as the Freedom of Expression Association[248] as well as other non-governmental organizations.[249]

Among the news articles that are in the public interest for their continuing availability through the Internet archives lies also an article entitled "Depremden ders alınmadığının kanıtı... müteahhit Külliye'ye nasıl girdi" ("Evidence that no lessons were taken from the earthquake... How did that contractor get into the Presidential Complex [Presidential Palace]") published by OdaTV in November 2020. No doubt, the article was blocked by the Istanbul Anatolia 9th Criminal Judgeship of Peace in July 2021 as a result of a request made by **Hamza Cebeci** after he was appointed as an advisor to the President.[250] The news article discussed the 7.2 magnitude earthquake in Düzce on 12.11.1999, which resulted in the loss of 845 lives. It highlighted that one of the buildings that collapsed in the earthquake was constructed by Hamza Cebeci, and 20 people died in that building. The article also noted that despite being sentenced to imprisonment, Cebeci rose in the ranks.[251]

Screenshot 16: News articles blocked by the Istanbul Anatolia 9th Criminal Judgeship of Peace

248 The Freedom of Expression Association, EngelliWeb 2018: An Assesment Report on Blocked Websites, News Articles and Social Media Content from Turkey, June 2019: https://ifade.org.tr/reports/EngelliWeb_2018_Eng.pdf; EngelliWeb 2019: An Iceberg of Unseen Internet Censorship in Turkey, July 2020, https://ifade.org.tr/reports/EngelliWeb_2019_Eng.pdf; EngelliWeb 2020: Fahrenheit 5651: The Scorching Effect of Censorship, August 2021, https://ifade.org.tr/reports/EngelliWeb_2020_Eng.pdf; EngelliWeb 2021: The Year of the Offended Reputation, Honour and Dignity of High Level Public Personalities, December 2022, https://ifade.org.tr/reports/EngelliWeb_2021_Eng.pdf.

249 Media Research Association, Impact of Social Media Law on Media Freedom in Turkey Monitoring Report, February 2022, https://medarder.org/wp-content/uploads/2022/02/Impact-of-Social-Media-Law-on-Media-Freedom-in-Türkiye-Monitoring-Report-2.pdf; Media and Law Studies Association, Free Web Turkey: 2021 Annual Report, June 2022, https://www.freewebTürkiye. com/wp-content/uploads/2022/06/freeweb2021-turkce-son_compressed.pdf.

250 Istanbul Anatolia 9th Criminal Judgeship of Peace, no. 2021/3996, 30.07.2021.

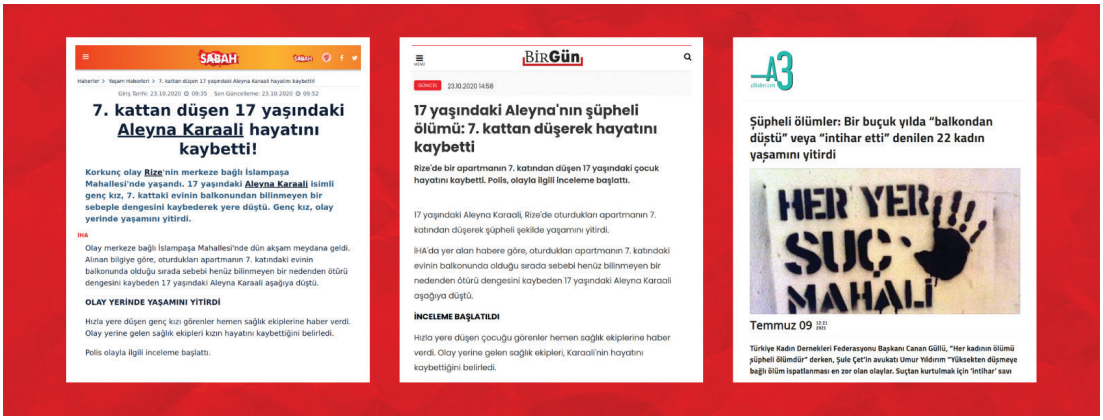
251 According to news reports, Hamza Cebeci is recognized as the contractor responsible for constructing the Işık Apartment Building which collapsed and killed 20 people in the Düzce earthquake of 12.12.1999. Cebeci received a 10 months of imprisonment from the Düzce Criminal Assize Court as a result of his culpability. In his defence, he claimed that was a contractor who conducted business in exchange for apartments and stated "

The Istanbul Anatolia 9th Criminal Judgeship of Peace granted the request for the right to be forgotten request based on the argument that the news articles concerning the 1999 earthquake event had violated the personal rights of the applicant and were outdated, thus falling within the scope of the right to be forgotten.

However, **the news article published by OdaTV** on 03.11.2020 is a **current and relevant piece of journalism** as it questions the criminal past of Hamza Cebeci, who was appointed as an advisor to the President of the Republic. Such public scrutiny of high-level political appointments by the press falls within the ambit of freedom of expression and freedom of the press, and is in the public interest. Therefore, the decision of the Istanbul Anatolia 9th Criminal Judgeship of Peace to grant the right to be forgotten in relation to this news article is flawed, incomplete, and arbitrary. The OdaTV article should have been considered to be of public interest since it reveals important information related to the safety of buildings and the accountability of contractors and the subsequent role they play in public service. Undoubtedly, the blocking of such news articles raises concerns regarding the freedom of the press and the public's right to receive information.

Another example in the category of news of public interest being censored involves the case of Aleyna Karaali's suspicious death in Rize in October 2020, which resulted in the Rize Criminal Judgeship of Peace blocking access to 87 news articles reporting her death from prominent news outlets such as BirGün, T24, Tele1, Yeni Çağ and Cumhuriyet in November 2021.[252] The request was made by the Karaali family and although the judgeship acknowledged that the news articles did not contain negative comments, the request was still deemed lawful within the scope of the right to be forgotten.

Screenshot 17: News articles blocked by the Rize Criminal Judgeship of Peace



If I had committed to building only three floors, I would not have been able to do business." It was later discovered that he built a seven-story apartment building instead of three. See Marmara Yerel Haber, "Düzce depreminde 20 kişiye mezar olan apartmanın müteahhidi Hamza Cebeci, Darülacezenin başına getirildi" (Hamza Cebeci, the contractor of the apartment building which entombed 20 people in the Düzce earthquake, was appointed as the head of Darülaceze Institution), 13.08.2015, https://www.marmarayerelhaber.com/Duzce-haberleri/3983-Duzce-depreminde-20-kisiye-mezar-olan-apartmanin-muteahhidi-Hamza-Cebeci-Darulacezenin-basina-getirildi.

252 Rize Criminal Judgeship of Peace, no. 2021/3798, 02.11.2021.

In its decision, the Rize Criminal Judgeship of Peace argued that the news articles published in 2020 about the death of the Karaali family's child are not related to the family members themselves. However, according to the decision, considering the nature of the information in the news articles, including the identity of the family members and the deceased, as well as the use of their names and photographs, it is evident that the articles could harm the family's reputation in society and affect their social lives. While the news articles may no longer be current, and they may have become archival in nature, the judgeship maintained that the right to be forgotten should take precedence over freedom of the press. In this case, the judgeship concluded that blocking access to the news articles was a fair balance between the rights of the applicants and the freedom of the press, given the absence of public interest in the ongoing publication of the content. Nevertheless, the suspicious circumstances surrounding Karaali's death and the public's interest in seeking justice and uncovering the truth about the incident make the censorship of these news articles unjustified and a violation of freedom of the press and the public's right to information.

Adding insult to injury, the Rize Criminal Judgeship of Peace also blocked access to a number news articles entitled "Türkiye'de 1.5 yılda 'balkondan düştü' veya 'intihar etti' denilen 22 kadın hayatını kaybetti" ("22 women died in Türkiye in 1.5 years, who were said to have 'fallen from a balcony' or 'committed suicide',") which featured statements made in July 2021 from Canan Güllü, the President of the Turkish Federation of Women's Associations, and Umur Yıldırım, the lawyer representing the family of Şule Çet who died suspiciously in 2018 after falling from the 20th floor of a plaza in Ankara. Aleyna Karaali's name was also included among the names of 22 women whose deaths were recorded as "suspicious" in the news articles and statements. The blocking of access to these news articles also became a subject of news in the press and came to the agenda again.[253] However, the Rize Criminal Judgeship of Peace did not consider the ongoing public interest, the public's right to information and the freedom of the press in relation to suspicious deaths and femicides, and its decision to block access to 87 news articles was criticized in the press.

Screenshot 18: News articles blocked by the Rize Criminal Judgeship of Peace

253 T24, "'Son 1,5 yılda 22 kadın şüpheli bir şekilde hayatını kaybetti' haberine erişim engeli" [Access to news on "22 women died suspiciously in the last 1.5 years' blocked"] 21.02.2022, https:// t24.com.tr/haber/son-1-5-yilda-22-kadin-supheli-bir-sekilde-hayatini-kaybetti-haberine-erisim-engeli,1016306.

While it is frequently seen in the EngelliWeb reports and announcements of the Freedom of Expression Association news on access blocking is also frequently blocked and censored. It was also determined that sanctions were imposed on news about access blocking within the scope of the "right to be forgotten." For instance, Opsan Orijinal Sac Parça Sanayi ve Ticaret A.Ş., requested the blocking of a news article entitled "Opsan patronu iş cinayetinden değil iş cinayeti haberinden rahatsız" ("Opsan boss is disturbed not by workplace homicide but the news of workplace homicide") as well as a related Facebook page. The request was granted by the Bakırköy 4th Criminal Judgeship of Peace in June 2020.[254] The article reported on the death of a subcontracted worker at Opsan on 27.11.2016 by getting stuck in a machine. The reporting of this incident on the Facebook page of the Metal Workers Union (MİB) with the title "Opsan'da iş cinayeti" ("workplace homicide at Opsan") was published together with the report that the lawyer acting for the Opsan Factory requested the removal of this news article in September 2019, three years after the incident and a notice was published on 28.09.2019 by the MİB about the whole incidence. On 13.11.2019, following the blocking of MİB's notice, Bakırköy 4th Criminal Judgeship of Peace also blocked access to Kızıl Bayrak and the related Facebook page, which reported on the blocking request. This case is just one example of blocking further access to news reporting of access blocking decisions of public interest.

Screenshot 19: News articles blocked by the Rize Criminal Judgeship of Peace

In detail, the judgeship's decision stated that the first access blocking request was rejected by Bakırköy 3rd Criminal Judgeship of Peace. However, the decision further stated that the links subject to the request did not qualify as news, the deceased worker was not reported as news, and some posts targeted the personal rights of the applicant company. In light of these factors, the decision evaluated that the article's subject matter belonged to 2016, and the news had therefore become outdated, falling within the scope of the right to be forgotten. The Judgeship's decision also referred to two previous access-blocking decisions issued by the Bakırköy 3rd Criminal Judgeship of Peace regarding previous news. It was observed that the same news was

254 Bakırköy 4th Criminal Judgeship of Peace, no. 2020/2473, 22.06.2020.

republished differently in the posts that were requested to be blocked, and when the previous access-blocking decision was taken into account, it became clear that the content violated the presumption of innocence, and thus, the applicant's personal rights. However, decision of the judgeship did not address the "news value of the blocking decision" issued in 2019 and this was not discussed in the judgeship's decision.

Among the news articles that are in the public interest for their continuing availability through the Internet archives also include **access blocking decisions issued as a result of requests by judges**. For instance, in October 2018, the Silivri Criminal Judgeship of Peace Judge Görkem Bayraktutan issued an arrest warrant against lawyer Ömer Kavili. Subsequently, after his appointment to the Denizli 2nd Criminal Judgeship of Peace, he requested access blocking to a tweet[255] published by **Ömer Kavili** together with the news article entitled "HSK, Avukat Kavili'nin tutuklanmasına ilişkin inceleme başlattı" ("HSK launched investigation into the arrest of Attorney Kavili") published in Cumhuriyet.

As may be recalled, on 04.10.2018, during a hearing held at the Silivri Prison branch of the Istanbul 28th Criminal Assize Court, Ömer Kavili, while representing 25 people, including members of Grup Yorum (a protest music band), had a procedural dispute with the presiding Judge Ersin Özaslan, who ordered Kavili to leave the courtroom. When Kavili protested the judge's order, he was forcefully removed from the courtroom. Subsequent to a criminal complaint filed against him by the presiding judge, Kavili was arrested on 05.10.2018. The arrest warrant issued by the former Silivri Criminal Judge of Peace Görkem Bayraktutan stated that Kavili's actions were aimed at discrediting the judiciary and the courts, undermining confidence in justice, and diluting the case he was defending through reverse psychology to prove himself right in the case by showing his client and himself as victims. It also noted that Kavili's actions had caused public outrage due to their news value, and that there was a possibility he may flee or obscure evidence.[256] In the news article of Cumhuriyet it was reported that Mehmet Yılmaz, Deputy Chief of the Council of Judges and Prosecutors (HSK) announced that an investigation had been initiated against Süleyman Erturan, the prosecutor who requested the arrest of lawyer Ömer Kavili, and Görkem Bayraktutan, the judge who ordered his arrest.

255 See https://twitter.com/omerkavili/status/1180356167261917184

256 Bianet, "Ömer Kavili'yi Tutuklayan Hakim Hakkında Suç Duyurusu" ["Criminal Complaint Against the Judge Who Arrested Ömer Kavili]", 16.10.2018, https://m.bianet.org/bianet/hukuk/201732-omer-kavili-yi-tutuklayan-hakim-hakkinda-suc-duyurusu. This news report of Bianet was also blocked on 17.06.2022 with the decision no. 2022/4123 of the Denizli 2nd Criminal Judgeship of Peace upon the request of Görkem Bayraktutan.

Screenshot 20: News articles blocked by the Denizli Criminal Judgeship of Peace

The Denizli 1st Criminal Judgeship of Peace, which reviewed and granted Bayraktutan's right to be forgotten request in June 2021, stated that the news articles and other content subject to the request cannot be considered within the limits of freedom of expression and opinion, as guaranteed by the Constitution and the European Convention on Human Rights.[257] According to the judgeship, the publications go beyond criticism and are intended to defame and humiliate the applicant in the eyes of the public, damaging public trust in the judiciary and the impartiality of judicial organs due to the applicant's profession as a judge.

The publication of news articles regarding the arrest of a lawyer and the investigation initiated by the HSK against the judge who issued the arrest warrant is vital to the public interest. There is no doubt that the news is both current and factual, and it is essential that freedom of expression and the press remain protected. More worryingly, it is unjustifiable to assume that the statements made by Mehmet Yılmaz, the HSK deputy chairman, were intended to defame and humiliate the judge who issued the arrest warrant. The decision to prioritize the right to be forgotten in this instance has led to the censorship of news articles that are of public interest.

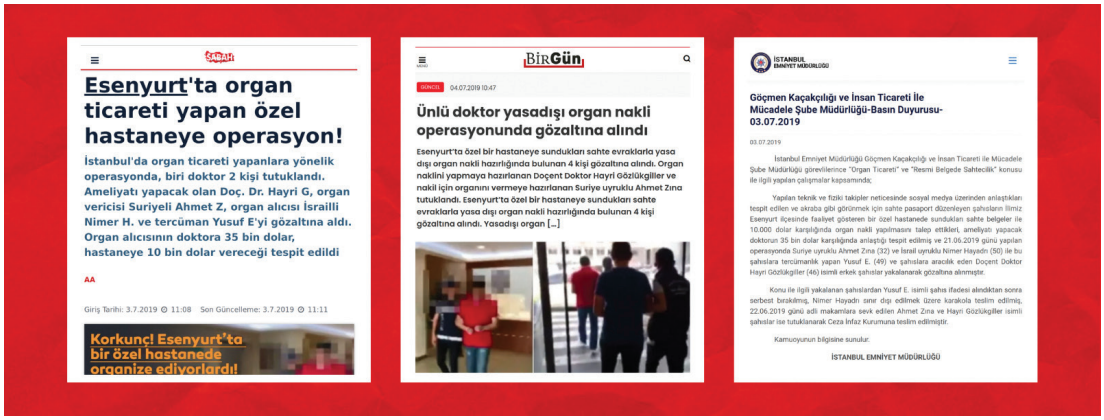
Another example of non-political news of public interest involved access blocking and removal of 26 news articles and content related to an **illegal organ transplantation operation** in Istanbul in July 2019 conducted by the Istanbul Provincial Directorate for Security, Department of Anti Migrant Smuggling and Human Trafficking teams. In May 2021, without providing any reason, the Küçükçekmece 1st Criminal Judgeship of Peace blocked and removed these news articles and content subject to a request lodged by Assoc. Prof. Hayri Gözlükgiller who was detained and arrested for being involved in the illegal organ transplant operation.[258] Despite the factual background of the operation, Gözlükgiller requested the blocking and removal of news articles published by newspapers and news websites such as Sabah, Habertürk, NTV, Milliyet, Yeni Şafak, T24 and BirGün within the scope of the right to be forgotten. In its decision, the Küçükçekmece 1st Criminal Judgeship of Peace claimed that the news articles were

257 Denizli 1st Criminal Judgeship of Peace, no. 2021/3871, 14.06.2021.
258 Küçükçekmece 1st Criminal Judgeship of Peace, 2021/3369, 28.05.2021.

outdated since a long time passed over their publication, and had **no news value** or **public interest**, and therefore the news articles have the nature of damaging the personal rights of the applicant and falls within the scope of the right to be forgotten.

The decision of the Küçükçekmece 1st Criminal Judgeship of Peace is problematic for several reasons. Firstly, the fact that the applicant had been arrested during the organ transplant operation was not taken into account. Additionally, the outcome of the investigation or trial was not mentioned or considered and even the web page containing **the official statement** made by the Istanbul Directorate for Security, Department of Anti Migrant Smuggling and Human Trafficking on "Organ Trafficking" and "Forgery of Official Documents" was blocked by the same decision and **ordered to be removed.**[259] In other words, the Küçükçekmece 1st Criminal Judgeship of Peace imposed sanctions on a page belonging to the Istanbul Directorate for Security. Therefore, neither the right of the press to report on an illegal organ transplant operation that concerns the public, the right of the public to receive such information nor the fact that the official statement made by the Istanbul Directorate for Security was among the content requested to be sanctioned were taken into consideration. While it is evaluated that the incident became **outdated** in the intervening two years, this does **not mean that the conditions that would necessitate the evaluation of the news about the incident within the scope of the right to be forgotten have been met**. In other words, the decision was issued solely based on the assumption that the news articles were outdated and therefore lacked news value or public interest. Furthermore, the blocking of an official statement by the Istanbul Directorate for Security leads to the conclusion that the practice regarding the right to be forgotten allows for arbitrariness, that judges do not carefully examine the lists of requests and approve requests with template decisions.

Screenshot 21: News articles blocked by the Küçükçekmece 1st Criminal Judgeship of Peace

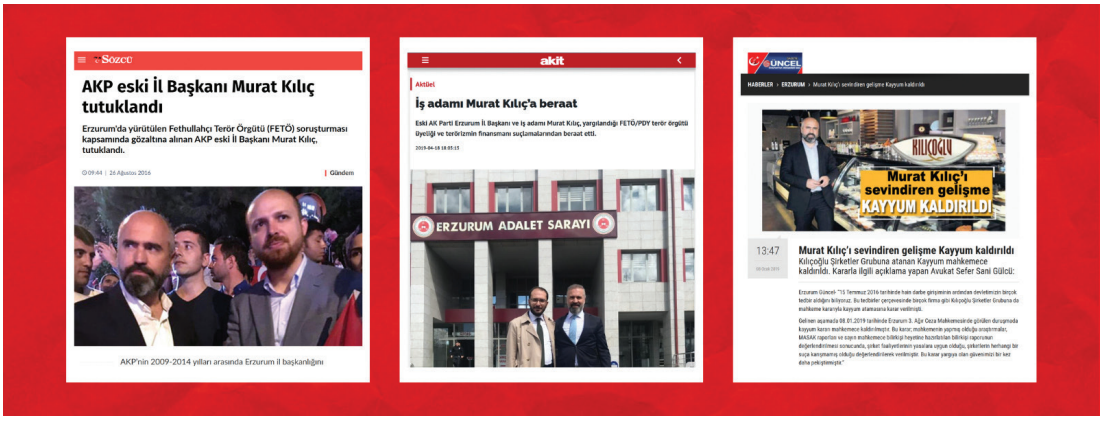


259 Istanbul Directorate for Security, Department of Anti Migrant Smuggling and Human Trafficking Officials' Statement on "Organ Trafficking" and "Forgery of Official Documents," 03.07.2019, https://www.istanbul.pol.tr/gocmen-kacakciligi-ve-insan-ticareti-ile-mucadele-sube-mudurlugu-basin-duyurusu-03072019. Similarly, access to the same website was blocked once again on 29.06.2022 with the Küçükçekmece 1st Criminal Judgeship of Peace decision no. 2022/6508.

This study has identified numerous instances of news articles and content in the category of "**news on FETÖ investigations and trials**" after the 15.07.2016 coup attempt which were sanctioned with the right to be forgotten decisions. Given that the coup attempt led to thousands of arrests, detentions, investigations, and trials, it is undeniable that these matters are of significant public interest. Therefore, there is superior public interest in the media's right to report on these investigations and proceedings, particularly since they cover a critical period in Türkiye's political history. In fact, it can be argued that the inclusion of these news items in press archives could also shed light on the future and be of historical importance.

The completion of investigations or trials, as well as decisions of non-prosecution or acquittal, may trigger the "right to be forgotten" for news articles in this category only in circumstances where it outweighs freedom of expression and freedom of the press. The mere passage of a short period of time is not sufficient for the right to be forgotten to prevail. Therefore, while assessing such requests, the identity of the applicants, whether they are political or public figures should also be considered as part of the evaluation process. However, several decisions of criminal judgeships of peace have arbitrarily prioritized the right to be forgotten in this category, ignoring all these considerations. For example, in February 2021, the Ankara West 2nd Criminal Judgeship of Peace blocked access to a total of 45 news articles, including articles published in Yeni Akit, Cumhuriyet, Sözcü, Hürriyet, Evrensel, BirGün and Yeni Çağ, regarding the arrest and subsequent detention of former AKP Erzurum Provincial Chairman Murat Kılıç in relation to the coup attempt of the Fetullahist Terrorist Organization.[260]

Screenshot 22: News articles blocked by the Ankara West 2nd Criminal Judgeship of Peace



The decision of the Ankara West 2nd Criminal Judgeship of Peace stated that the applicant had been acquitted in a trial approximately five years ago.[261] Therefore, the news items related to the case lost their current relevance and cannot be evaluated within the scope of freedom of expression and freedom of the press as it is no longer important whether the news met the criteria of "truth and accuracy" at the time of initial publication. The judgeship argued that keeping such news accessible might

260 Ankara West 2nd Criminal Judgeship of Peace, no. 2021/765, 03.02.2021.
261 Erzurum 3rd Criminal Assize Court, no, 2019/171, 18.04.2019

lead to misperceptions by the public and could give the impression that the news was true and accurate in the past. Moreover, the judgeship stated that the availability of the news about the detention and arrest of the applicant in a judicial process that resulted in acquittal does not serve the function of remembering the news in the future for the public interest or for statistical evaluation. The judgeship concluded that this information could only be kept on record by certain state organs.

The judgeship argued that, the news about the applicant's negative experiences in the past could be easily accessed by the public at any time, and this could harm the applicant's personal rights, honour and dignity and therefore, the request should be evaluated within the scope of the right to be forgotten. While it is true that such requests should be evaluated for political or public figures and the historical significance of such news should certainly be taken into consideration, as this example shows, criminal judgeships of peace easily issue decisions on the grounds of the right to be forgotten for news that met the criteria of "truth and accuracy" at the time of publication. Moreover, among the sanctioned news articles, there are news articles reporting the trial and acquittal of Murat Kılıç.

Cases in which **legal entities** have utilized the "right to be forgotten" in order to prevent news that is of public interest to remain in Internet archives have also been identified in this study. One such example was the request made by BESA İnşaat A.Ş. which is owned by Salih Bezci, the President of Ankara Chamber of Commerce. The company claimed that a Sözcü news article entitled "Valiliğin ÇED raporu tepki çekti" (Governorship's Environmental Impact Report drew reaction)[262] as well as some other content published in April 2020 violated their right to be forgotten. This request was partially granted by the Aksaray 1st Criminal Judgeship of Peace in June 2021 resulting in the blocking of access to the mentioned content.[263] The Sözcü article reported on the demolition order issued for a touristic facility built by BESA İnşaat A.Ş. in Muğla's Bodrum district, as well as the company's application to the Muğla Governorship and the Ministry of Environment and Urbanization for a new project. The reporting also highlighted the reaction of environmental activists to the Governorship's decision that "no Environmental Impact Report is required" for the filling area built in the sea by BESA İnşaat A.Ş. The judgeship, therefore, concluded that "the relevant company would be damaged."

However, the judgeship, partially rejecting the request, did not find the same justification for other news articles whose addresses were not specified. The judgeship stated that these articles did not lose their current relevance or public interest over time, and therefore did not meet the criteria for evaluation under the right to be forgotten by considering the subject, content and the time that passed over their first publication and information value that necessitates them to be easily accessible in the archive. There is no doubt that reporting on an environmental impact report which drew reaction from the public and environmental activists is undoubtedly in the public interest, and such news articles do not lose their relevance in less than a year.

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262 Sözcü, "Valiliğin ÇED raporu tepki çekti," 19.04.2020, https://www.sozcu.com.tr/2020/gundem/valiligin-ced-raporu-tepki-cekti-5759079/

263 Aksaray 1st Criminal Judgeship of Peace, no. 2021/1787, 08.06.2021.

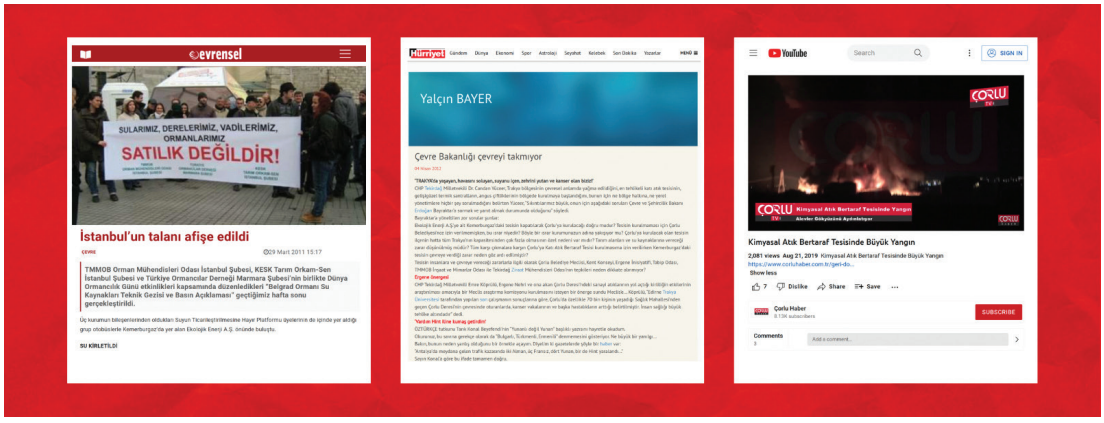
Screenshot 23: News articles blocked by the Aksaray 1st Criminal Judgeship of Peace

Similarly, it has been identified that a total of four different requests were lodged by Ekolojik Enerji A.Ş. in 2020 and 2021, and access to 59 different news articles and content was blocked with a single decision issued by the Bakırköy 1st Criminal Judgeship of Peace and with three separate decisions issued by the Bakırköy 4th Criminal Judgeship of Peace within the scope of the right to be forgotten. The news articles that were the subject of the requests covered **environmental damage caused by the company** as well as reports on chemical waste and fires that occured between 2010 and 2017. In explaining its reasoning in carbon copy decisions, the Bakırköy 4th Criminal Judgeship of Peace stated that the "news in question was related to an event that took place approximately 7-9 years ago and thus has lost its current relevance as of the date of the application." According to the judgeship, there is no justification that necessitates easy access to this information on the Internet for statistical and scientific purposes. Finally, as the applicant does not have a political or media personality, the easy accessibility of the news published on the Internet damages the reputation of the applicant.

The judgeship found that the news articles published by several outlets including Hürriyet, Milliyet, Evrensel and Cumhuriyet should be considered within the scope of the right to be forgotten and access to these news articles should be blocked in order to protect the applicant's honour and reputation.[264] In a subsequent decision, not only were the removal of the articles ordered but also Google, Yandex, Yahoo and Bing search engines were notified to prevent the news subject to the decision and the requesting company's name from being associated with search results.[265]

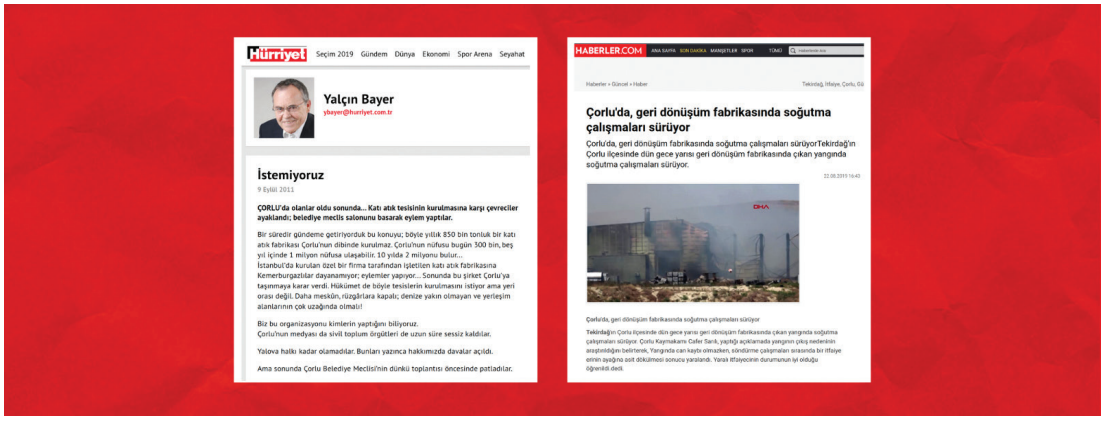
264 Bakırköy 4th Criminal Judgeship of Peace, no. 2021/461, 14.01.2021.
265 Bakırköy 4th Criminal Judgeship of Peace, no. 2021/1101, 09.02.2021.

Screenshot 24: News articles blocked by the Bakırköy 4th Criminal Judgeship of Peace



As can be seen in the screenshots, Yalçın Bayer's environmental columns published in different dates in Hürriyet were blocked and removed subsequent to the decisions of the Bakırköy 1st and 4th Criminal Judgeships of Peace. However, news articles, especially those related to environmental damage, are of public interest and have historical significance and therefore, should not be considered within the scope of the right to be forgotten. Despite this, with carbon copy decisions, the judgeships concluded that these news items "do not have either an ongoing social news value which is necessary to make them easily accessible in the archive or the quality of shedding light on the future." However, it cannot be claimed that news articles about the environment in general or the particular news articles requested by a company known for environmental damage for many years, ever become outdated or lose their public interest.

Screenshot 25: News articles blocked by the Bakırköy 4th Criminal Judgeship of Peace



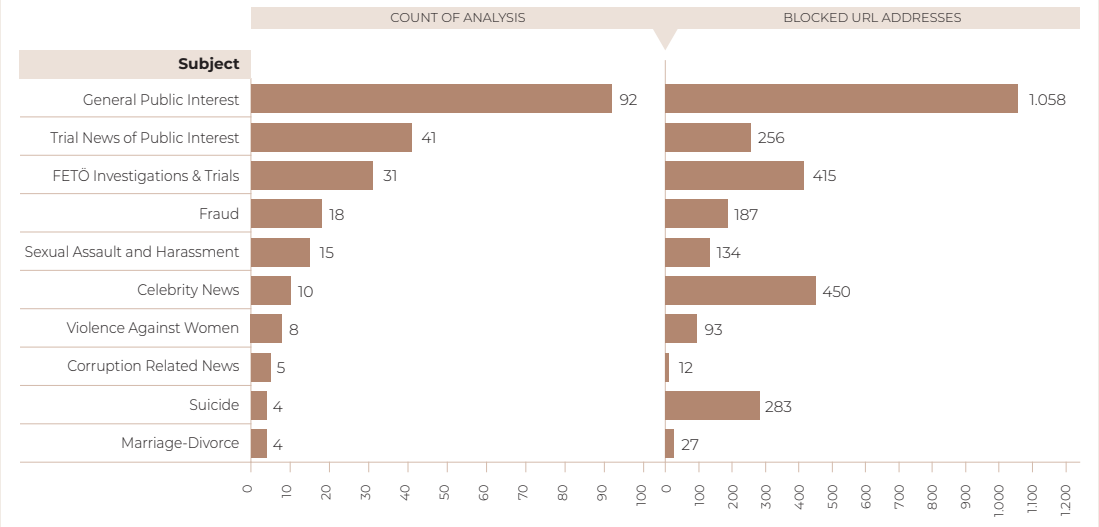
These examples demonstrate that, news articles of significant public interest, historical and archival quality have been frequently subjected to arbitrary sanctions supposedly due to violations of personal rights and the right to be forgotten. Regrettably, the current legal practice which heavily rely on sanctions such as access blocking which leads to the removal and therefore disappearance of news articles with

high historical significance. This practice is concerning, especially when it comes to news articles related to judicial processes, as they provide valuable sources for further research and are essential for the freedom of expression and the press. However, the current legal regime does not prioritize for the preservation of news articles with archival significance. Making matters worse, the criminal judgeships of peace disregard the jurisprudence of the Court of Cassation and the Constitutional Court, particularly in terms of news of public interest and the preservation of news with archival significance.[266]

SUBJECT-WISE DISTRIBUTION OF NEWS ARTICLES AND OTHER RELEVANT CONTENT OF PUBLIC INTEREST BASED ON THEIR PUBLICATION DATE

It was determined that out of **548** right to be forgotten decisions analyzed in this report, **285** were related to news and content that were of **public interest at the time of their publication**, resulting in sanctions imposed on **3.885** different news articles and content. **Figure 18** shows that, **92** of the decisions were related to news of public interest at the time of publication with sanctions imposed on **1.058** news articles and other content. Some examples of news articles in this category include various news on fraud, assault and extortion, missing and disappeared persons, self-immolation attempts by citizens, reports on martyrs, armed assaults, reports on Adnan Hoca cases, news on a fake MİT (National Intelligence Organization) member, and content such as "allegations of sex in a helicopter" for which the Directorate General for Security requested sanctions.

Figure 18: Subject Matter of Public Interest News At the Time of Their Publication Date, the Number of Right to be Forgotten Decisions & the Number of Blocked URL Addresses: 2020-2021



266 G. D. (2) Application, No. 2014/1808, 04.10.2017; Asım Bayar and Veysel Bayar Application, No. 2014/4141, 04.10.2017; Asli Alp and Şükrü Alp Application, No. 2014/18260, 04.10.2017; G. Y. Application, No. 2014/16026, 05.10.2017; Fahri Göncü Application, No. 2014/17943, 05.10.2017; C. K. Application, No. 2014/19685, 15.03.2018.

In this category, **trial news that were of public interest at the time of publication** ranked second with **41** decisions and sanctions imposed on **256** news articles and content. Examples of news articles in this category cover a range of topics such as murder, injuries and threats, investigations and trials on allegations of fraud, well as reports on divorce cases and bribery scandals. Notable examples of such news articles include reports on the infamous Şarampol Operation in 2008, which involved the alleged rigging of bids for road construction and repair tenders, and which resulted in the prosecution of 46 people accused of damaging the state through conspiracy.[267] In this category, news related to investigations and trials regarding FETO (Fethullahist Terrorist Organization) are in third place with **31** decisions and sanctions applied on **415** news articles and other content.

Screenshot 26: News articles blocked by the Ankara 7th Criminal Judgeship of Peace

It can be argued that these news articles are still **of public interest** and **were particularly relevant at the time of their publication.** Additionally, there is an ongoing public interest in these issues. Examples of news articles in this category include reports on fraud (18 decisions and 187 Internet addresses), cases of harassment and sexual assault (15 decisions and 134 Internet addresses) and news on violence against women (8 news items and Internet addresses).

As an example, in the category of **FETÖ investigations and trials news** evaluated within the scope of the right to be forgotten, the Ankara 3rd Criminal Judgeship of Peace blocked access to 43 news articles related to the detention of retired colonel Gürsel Yüce, the aide of former Chief of the General Staff of the Turkish Armed Forces General Yaşar Büyükanıt and the trial process that ended in acquittal in February 2021.[268] Following his acquittal, Gürsel Yüce criticized the media for judging him a "FETÖ member" and not reporting his acquittal.[269] The decision of the Ankara 3rd Criminal Judgeship of Peace stated that the applicant was acquitted, and that the

267 See Cumhuriyet, "Şarampol' operasyonu," 30.10.2008, https://www.cumhuriyet.com.tr/haber/sarampol-operasyonu-19006. Ankara 7th Criminal Judgeship of Peace, no. 2021/9351, 04.08.2021.
268 Ankara 3rd Criminal Judgeship of Peace, no. 2021/1978, 19.02.2021.
269 Sözcü, "O yaver aklandı, Sözcü'ye konuştu," 23.01.202, at https://www.sozcu.com.tr/2021/gundem/o-yaver-aklandi-sozcuye-konustu-6224794/

news articles on the judicial proceedings subject to the request were "outdated, and their ongoing online publication would not contribute to the progress and development of society, or have any effect on the public interest such as engraving it in the **public memory**." The judgeship considered these news articles to be damaging to the reputation and dignity of the applicant, without making any evaluation regarding freedom of expression and freedom of the press, or the importance of preserving these news articles in press archives.

Screenshot 27: News articles blocked by the Ankara 3rd Criminal Judgeship of Peace

Similarly, in March 2021, the Istanbul Anatolia 8th Criminal Judgeship of Peace exercised the right to be forgotten and blocked access to Evrensel's news article entitled "'Sendika haram' dedi, işçiyi ölüme gönderdi" ("He said 'Union is haram," and sent the worker to his death") published on 25.12.2014.[270] The article reported on a workplace homicide that took place in the İskefe Leather Factory in Tuzla located in the Leather Industrial Zone. It was noted that, at the time, the Istanbul Muftiate had brought up the practice of "reading of khutbah (sermon)" as a precaution against

Screenshot 28: News articles blocked by the Istanbul Anatolia 8th Criminal Judgeship of Peace

270 Istanbul Anatolia 8th Criminal Judgeship of Peace, no.2021/1878, 17.03.2021.

workplace homicides. The article also highlighted that the factory boss used to ask the workers "Do you know how to pray?" before hiring them, but had prevented unionization by saying that "Union is haram, it is a sin."

Although the request to the Istanbul Anatolia 8th Criminal Judgeship of Peace was lodged on behalf of İskefe Deri Sanayii ve Ticaret A.Ş., thus on behalf of a legal entity, the judgeship evaluated the legal entity as a real person and stated that Evrensel's news article reported events that occured seven years ago, therefore the outdated news article falls within the scope of the right to be forgotten. According to the judgeship, the article violated the **confidentiality of the private life of applicants** and could potentially harm their honour, dignity and respectability. Furthermore, the decision was written in stereotypical language, stating that the outdated news article should be removed from the Internet "in order for the applicant to **open a clean slate in his life** and **build a new future**, that the individual has **the right to freely shape his past and future**, and that personal rights and right to privacy are more important than the freedom to receive and give information." In other words, the judgeship used a stereotypical formula for a legal entity which is rather suitable for a real person.

It is evident that some individuals who have been **mentioned as victims** in news articles subject to the right to be forgotten decisions have made such requests, and in some cases, these requests may be considered legitimate considering the time that has elapsed since the initial publication. In these circumstances, it may be possible to find more balanced solutions that take into account the rights to freedom of expression and the press, as outlined in European Court judgments. These solutions may include removing the names of the applicants from the news articles or anonymizing the content by removing personal information. Additionally, it may be appropriate to ensure that news articles with historical significance cannot be easily found through search engines. Undoubtedly, this would be a preferable method rather than the complete removal of the articles from the Internet archives. However, as mentioned previously, the Turkish law currently does not provide these alternative measures.

On the other hand, it is observed that some **requests were lodged by individuals who have committed serious crimes such as intentional homicide**. For instance, a criminal judgeship of peace issued a decision in 2021 that evaluated news articles published between 2002 and 2006 about a person who killed his wife and was sentenced to 20 years and 10 months imprisonment within the scope of the right to be forgotten on the grounds that the articles "violated the personal rights of the applicant and posed a danger of disruption for his commercial business" and that the applicant "served his sentence."[271] In such a case, the question then arises whether it is appropriate to evaluate news articles about femicide, especially cases that result in lengthy prison sentences, within the scope of the right to be forgotten after 15 years. In other words, can it be claimed that such news has no historical significance or that its historical significance has expired? Rather than imposing total sanctions on such news, a balance between the right to be forgotten and freedom of expression and freedom of the press can be achieved by removing the names of the perpetrators from the news articles or by anonymizing them rather than blocking access or completely removing such content from the Internet archives.

271 Samsun 1st Criminal Judgeship of Peace, no. 2021/6458, 08.10.2021.

In some cases, the right to be forgotten requests were made by **perpetrators** who wish to **forget** and **erase their past crimes from the public record**, even if the **victim wants the incident to remain in the public consciousness**. An example of this occurred in January 2020, when the Tokat 1st Criminal Judgeship of Peace granted a request to block access to nine news articles from 2015 reporting on an incident in the province of Turhal.[272] The articles detailed how M. C., former Deputy Mayor of Turhal Municipality had shot N. A. and how the injuries caused her to be paralyzed. The allegation was that M. C. Shot N. A. because she did not reciprocate his love. The claimant was sentenced to seven years and six months imprisonment for the crime. In the decision, the judgeship stated that the news articles published in BirGün, Sabah, Milliyet and Yeni Asır had no current news value today and fell within the scope of violation of the right to be forgotten of the applicant. The judgeship decided to accept the request because the news articles were outdated and cannot be considered within the scope of the freedom to inform. Although the applicant's name was anonymized at the time of the request, access to the news article published in Sabah was still blocked without considering its archival significance.

Screenshot 29: News articles blocked by the Tokat 1st Criminal Judgeship of Peace


SABAH

GALERİ SPOR GÜNAYDIN GÜNDEM EKONOMİ YAŞAM DÜNYA

Hayallerimi yıktı

Giriş Tarihi: 22.1.2015

N[redacted] A[redacted], "Eski patronum yüzünden tekerlekli sandalyeye mahkum oldum. Daha fazla ceza almalı" dedi

Tokat'ta 2 yıl önce dönemin Turhal Belediye Başkan Yardımcısı M.C. aşkına karşılık vermediği iddiasıyla silahla ateş ederek omzundan vurduğu İzmirli N[redacted] A[redacted], omurilik felci oldu. M.C, 4.5 yıl hapse

Otel İşletmeciliği Bölümü öğrencisi iken yerel bir gazetede muhabirlik yapmaya başlayan N[redacted] A[redacted]'ın hayalleri 2 yıl önce yarım kaldı. Evli ve iki kız çocuğu babası M.C, çalıştığı gazeteye ortak oldu. İddiaya göre İzmirli N[redacted] A[redacted]'a olan aşkına karşılık bulamayan M.C, silahıyla ateş ederek genç kızı vurdu. Kurşun N[redacted] A[redacted]'ın omuzumdan girdi, sol akciğerimi parçaladı, oradan da omurliğimi parçaladı. Genç kız omurliği felci olarak tekerlekli sandalyeye mahkum kalırken hakim karşısına çıkan M.C, 4.5 yıl hapis cezasına mahkum oldu. Cezayı az bulan A[redacted], itiraz ederek kararı temyize götürdü. Yargıtay'ın kararını bekleyen N[redacted] A[redacted], kendisinin ömür boyu hapis hayatı yaşayacak olmasına karşılık M.C'ye 4.5 yıl hapis cezası verilmesini kabullenemediğini ifade etti. A[redacted], M.C'nin 13 ay tutuklu yargılandıktan sonra tutuksuz yargılandığını ve şu anda da dışarda yargı süreci devam ettiği için serbest olduğunu ifade etti.

"DAHA 24 YAŞINDAYIM"

Her genç kız gibi hayalleri olduğunu ancak saniyeler içinde yaşadığı talihsiz olay ile hayalinin bittiğini belirten A[redacted], "Okuyup bir yerlere gelebilmek hayalimdi. Her genç kız gibi gelinlik giyebilmek, evlenmek hayalimdi. Fakat bütün hayallerim bir anda saniyeler içinde gitti" dedi. M.C'nin 'paralel yapının içinde' yer aldığını öne süren A[redacted], 'Kemik erimem aşırı ilerledi. Akciğerim sürekli beni rahatsız ediyor. Bel ağrılarım var. Benim bu rahatsızlığımın bir tedavisi varsa devlet büyüklerimden rica ediyorum, bana sahip çıksınlar. Bir tedavisi varsa beni lütfen tedavi ettirsinler. Çünkü ben daha 24 yaşındayım" dedi.

As clearly explained previously, article 9 of Law No. 5651 includes access blocking and/or content removal sanctions. As a result of decisions issued by criminal judgeships of peace, news articles and other content are often removed from publication and archives. However, it is argued that even if there is no ongoing public interest in the publication of certain news, there may still be a public interest in including them in press archives, particularly for historical research purposes. For example, during the Covid pandemic, statements made by Sedat Peker, who is a controversial organized crime leader and political figure, received significant media coverage. As Peker has become a vocal critic of the Turkish government and has made allegations of corruption against high-level officials, including the former interior minister and the chief prosecutor, news articles about him from the past became a subject of attention and research. As old statements and information started to re-circulate, this led to

272 Tokat 1st Criminal Judgeship of Peace, no. 2020/278, 31.01.2020.

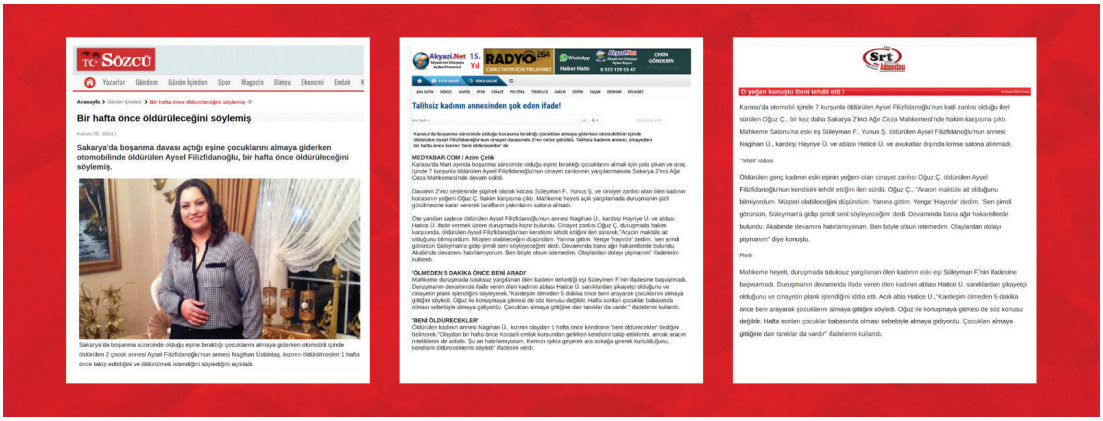
the issuing of access blocking decisions. For example, in February 2021, the Istanbul Anatolia 10th Criminal Judgeship of Peace blocked access to some of these older news articles published in Hürriyet, Cumhuriyet, and Milliyet, following a request made by a former police commissioner mentioned in the articles.[273] While the judgeship deemed these news articles as "outdated," the judgeship failed to consider their archival and historical significance with respect to freedom of expression and freedom of the press. In the current period, all news about Sedat Peker are of public interest and have research value since they illuminate a dark period in Türkiye's history.

Similarly, news articles on unsolved cases of femicide are of ongoing public interest, providing insight into the persistent issue of femicide impunity and holding archival significance. Hence, the press has the right to report on unsolved cases of femicide and the public has the right to receive such news and access information. For instance, the 2014 murder of Aysel Filizfidanoğlu, who had predicted her death a week before she was shot and killed in her car, remains unsolved. However, news articles covering her murder as well as the related judicial process were blocked access with a decision of the Karasu Criminal Judgeship of Peace in April 2020.[274] In its decision, the judgeship deemed the news articles published at the time of the murder irrelevant as the legal process had been completed and sufficient time had passed since their initial publication. According to the judgeship, it was no longer important whether the "outdated news articles" met the criteria of "truth and accuracy" as the judicial process regarding the murder was completed. However, the judgeship failed to consider the importance of the news articles in terms of freedom of expression and freedom of the press. Despite the unknown identity of the perpetrator(s) and impunity for violence against women and femicide, the news articles on violence against women and femicides, the news articles were blocked, disregarding their archival significance and ongoing public interest.

Screenshot 30: News articles blocked by the Istanbul Anatolia 10th Criminal Judgeship of Peace

273 Istanbul Anatolia 10th Criminal Judgeship of Peace, no. 2021/666, 05.02.2021.
274 Karasu Criminal Judgeship of Peace, no. 2020/194, 02.04.2020.

Screenshot 31: News articles blocked by the Karasu Criminal Judgeship of Peace



More importantly, it is asserted and crucial to recognise that there is an **ongoing historical significance and public interest of trial news in general**. Specifically, with regards to trial news related to issues of public concern such as investigations and trials related to FETÖ, cases of harassment, sexual assault, and violence against women, it is **important to keep in mind** that not only does the public have the right to access news and information about current events, but the European Court of Human Rights has emphasized that the public also has the **right to conduct retrospective research**. Therefore, it is essential to **prioritize the maintenance of online archives** and **their preservation** in accordance with Article 10 of the Convention.[275]

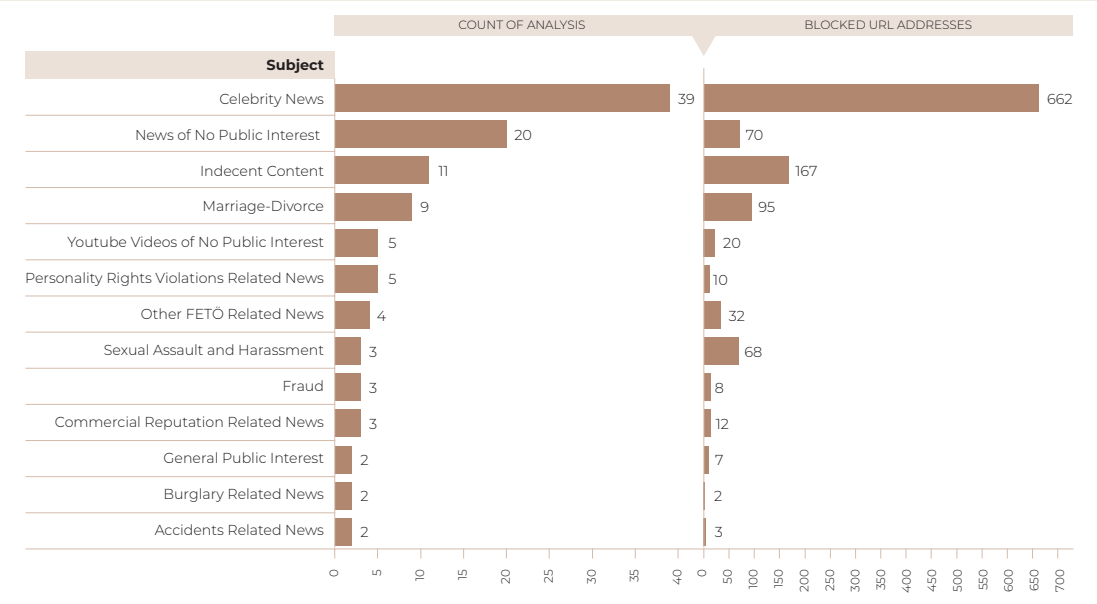
DISTRIBUTION OF NEWS ARTICLES AND CONTENT: CATEGORISATION BY NON-PUBLIC INTEREST SUBJECTS

In **116** of the **548** right to be forgotten decisions analyzed in the report, it was determined that there was no public interest in the publication of these news articles and content. Sanctions were imposed on **1.169** different news articles and other content with these 116 decisions. As illustrated in **Figure 19**, the majority of these cases involving **39** decisions were related to old-fashioned "magazine news," which accounted for **662** of the sanctioned news articles and other content. Among the news articles and other content sanctioned in this category, news on love stories, marriage proposals, nuptials, weddings and blessing for marriages, which are usually associated with the world of magazines are found. Unsurprisingly, it is common for separation and divorce to be cited as the common reasons for such right to be forgotten requests. The second most common type of case in this category, with **20 decisions** was related to old news articles that were no longer of public interest, which led to sanctions on **70** news articles and other content. Examples included news about a "chair fight" occurred in a bar in 2008, some articles on alleged extramarital affairs

275 *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018, § § 101-102.

and articles with titles such as “they could not hold their friend after they threw him in the air.” One of the reasoned requests in this category involved the accidental sharing of a person’s photo on social media platforms with the caption “wanted for raping a 13-year-old girl.” The applicant stated that he was unable to walk in the streets because of the false accusations against him. His request was accepted within the scope of the right to be forgotten even though the request should have been accepted just by reference to violation of his personal rights as the information shared on the social platforms was blatantly false and therefore defamatory. As clearly stated in this report, the right to be forgotten is usually associated with news and content accuracy and truthfullness of which is not subject to dispute. Therefore, the right to be forgotten should not have been considered as a legal remedy to resolve this justified claim.

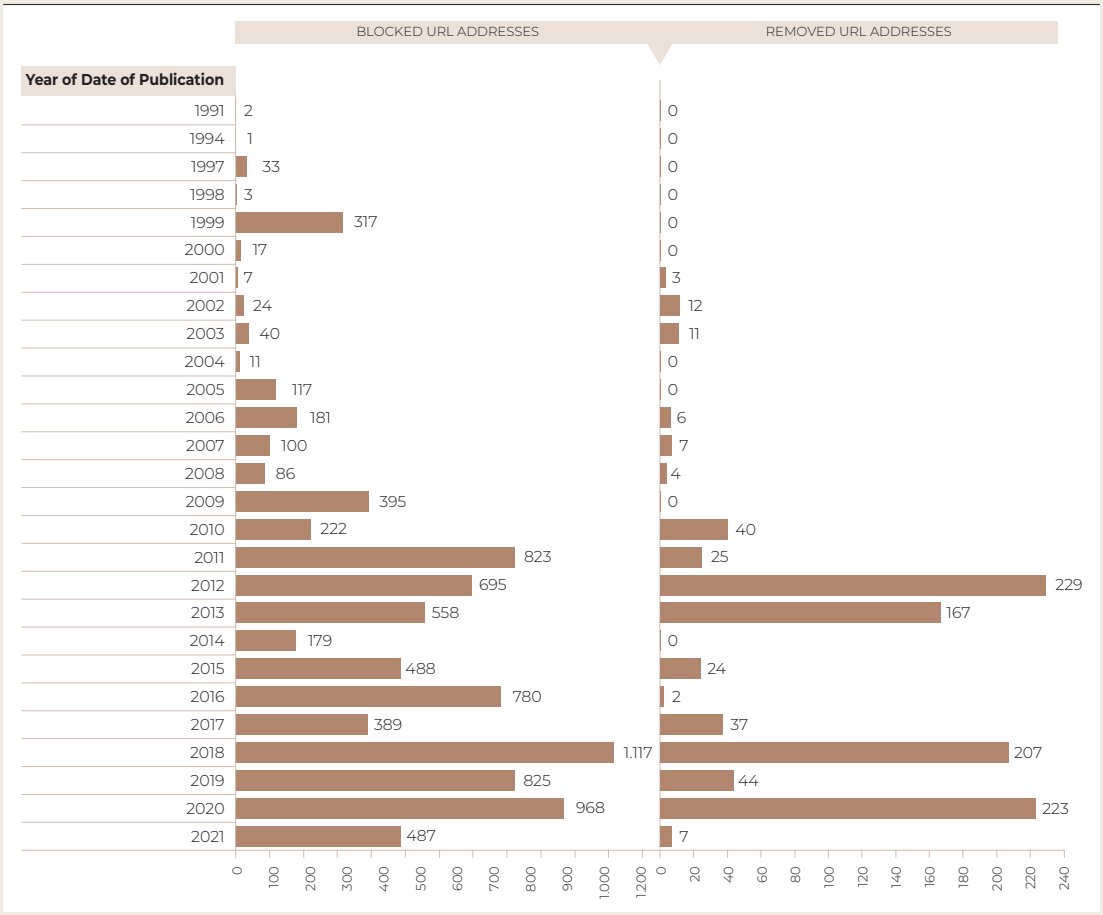
Figure 19: Subject Matter of News of No Public Interest, the Number of Right to be Forgotten Decisions & the Number of Blocked URL Addresses: 2020-2021



ANALYSIS OF THE PUBLICATION YEARS OF SANCTIONED NEWS AND CONTENT IN 2020-2021

The report presents an analysis of **548** decisions and reveals that **9.913** news articles and other content were sanctioned and blocked out of **10.441** news articles and other content which were requested for removal or blocking. The analysis also includes an evaluation of the years of publication of the news articles subject to right to be forgotten requests and sanctions. As illustrated in **Figure 20**, the sanctioned news articles and other content span over three decades, ranging from 1991 to 2021.

Figure 20: The Publication Year of the Total Number of News and Content (URL Addresses) Blocked and Removed with Right to be Forgotten Decisions: 2020-2021



The data presented in **Figure 17** shows that the publication dates of news articles and other content subject to right to be forgotten requests lodged in 2020 and 2021 do not comply with the condition set by the Court of Cassation and the Constitutional Court, which states that "negative events from the past should be forgotten in the digital memory after a certain period unless there is a superior public interest."[276] Out of the **9.913** sanctioned news articles and other content, **4.304** (**43.41%**) were published **within the last five years**, between 2017-2021. Moreover, 1.685 news articles and other content were published during **2020** and **2021**, coinciding with the issuance of right to be forgotten decisions by criminal judgeships of peace. In other words, **477** news articles and other content related to **28** separate decisions issued by criminal judgeships of peace during 2020 were published in the same year. Similarly, **494** news articles and other content related to 67 different criminal judgeships of peace decisions issued during 2021 were also published in that year. Furthermore, **714** news articles and content related to 12 different decisions issued by criminal judgeships of peace in 2021 were published in 2020.

276 General Assembly of Civil Chambers of the Court of Cassation, no. 2015/1679, 17.06.2015.

Therefore, the report reveals that in numerous right to be forgotten decisions issued during 2020 and 2021, criminal judgeships of peace did not take into consideration one of the most important criteria required by the Court of Cassation, the Constitutional Court and the European Court in relation to the right to be forgotten decisions. Unequivocally, they failed to consider the criteria of being accurate, not violating personal rights and even serving the public interest at the time of their publication. They often relied on the time that has passed since the publication or archiving of news and content. However, it is not possible to claim or suggest that **recent news articles, the publication of which is in the public interest**, remained in the past or that a long time passed over their first publication.

ASSESSING THE ADHERENCE TO CONSTITUTIONAL COURT AND COURT OF CASSATION JUDGMENTS IN THE RIGHT TO BE FORGOTTEN CASES

As already mentioned, the report provides a comprehensive evaluation of the **548 right to be forgotten decisions** issued in 2020 and 2021. Out of the **10.441 news articles and other content** requested to be removed or blocked, **9.913** were sanctioned. The report also examined the legal basis of these decisions and assessed whether the criminal judgeships of peace provided reasoning for their decisions. Moreover, the report also analyzes whether these decisions were in line with the judgments of the Court of Cassation, the Constitutional Court, and the European Court of Human Rights and whether the criminal judgeships of peace referred to the principled judgments of the high courts. The report specifically focuses on whether the judgeships took into consideration the principles of the freedom of expression and freedom of the press within the scope of conflicting rights, particularly in cases where newspapers and online media were involved. In this context, the report also evaluates whether the criminal judgeships of peace referred to the right to be forgotten in general; significant legal precedents, such as the General Assembly of Civil Chambers of the Court of Cassation's first judgment on the right to be forgotten issued in 2015,[277] the Constitutional Court's N.B.B. judgment of 2016,[278] which is directly related to the right to be forgotten. Of course, the report also evaluated whether the judgeships referred to other subsequent and equally important judgments of the Constitutional Court[279] such as the October 2017 Ali Kıdık judgment[280] and its "prima facie violation" approach to be applied in principle in access blocking decisions issued under Law No. 5651 on the grounds of violation of personal rights, as well as the General Assembly of the Constitutional Court' March 2018 C. K. judgment[281] with reference to the Ali Kıdık judgment, regarding Internet archives and the right to be forgotten. Finally, it was also assessed whether the judgeships referred to the General Assembly of Crim-

277 General Assembly of Civil Chambers of the Court of Cassation, no. 2015/1679, 17.06.2015.
278 N.B.B. Application, No. 2013/5653, 03.03.2016.
279 G. D. (2) Application, No. 2014/1808, 04.10.2017; Asım Bayar and Veysel Bayar Application, No. 2014/4141, 04.10.2017; Asli Alp and Şükrü Alp Application, No. 2014/18260, 04.10.2017; G. Y. Application, No.2014/16026, 05.10.2017; Fahri Göncü Application, No. 2014/17943, 05.10.2017.
280 Ali Kıdık Application, No. 2014/5552, 26.10.2017.
281 C. K. Application, No. 2014/19685, 15.03.2018.

inal Chambers of the Court of Cassation's October 2018 judgment on the right to be forgotten[282] and the 19th Criminal Chamber of the Court of Cassation's June 2017 judgment on the right to be forgotten.[283]

To begin with, it is important to note that only a small fraction of the decisions issued by criminal judgeships of peace during 2020 and 2021 in relation to the right to be forgotten took into account the relevant judgments of the Constitutional Court. Specifically, out of the **548** decisions made, only **79** (14.41%) referred to the Constitutional Court's judgment on the N.B.B. Application,[284] while a significant majority of **469** (85.59%) did not refer to it. Even worse, a mere **13** (2.38%) of the **548** decisions referred to the Ali Kıdık judgment,[285] with the rest of the **535** decisions (97.62%) failing to make any reference to it. Shambolically, **none of the 548 decisions** referred to the Constitutional Court's judgment on the C.K. Application,[286] and no reference was found to the European Court's judgments on the right to be forgotten in any of these decisions.[287]

While criminal judgeships of peace generally ignore the judgments of the Constitutional Court, the June 2015 decision of the General Assembly of Civil Chambers of the Court of Cassation on the right to be forgotten, which was issued **before** the Constitutional Court's **N.B.B. and Ali Kıdık judgments**,[288] was referred to in **160 (29.20%)** out of **548** decisions, whereas it was not referred in **388 (70.80%)** decisions. On the other hand, the October 2018 judgment of the General Assembly of Criminal Chambers of the Court of Cassation[289] was not referred to in any of the **548** decisions. However, it was determined that the June 2017 judgment of the 19th Criminal Chamber of the Court of Cassation on the right to be forgotten[290] was referred to in **71 decisions** of the criminal judgeships of peace.

Analysis of the **548** decisions issued by criminal judgeships of peace during **2020** and **2021** showed that a small percentage of these decisions referred to the relevant judgments on the right to be forgotten. In fact, only **five decisions** referred to the Constitutional Court's N.B.B. and Ali Kıdık judgments together as well as the judgment of the General Assembly of Civil Chambers of the Court of Cassation, while only **four decisions** referred to all of these judgments in addition to the judgment of the 19th Criminal Chamber of the Court of Cassation. **55 decisions** referred jointly to the Constitutional Court's N.B.B. judgment and the judgment of the General Assembly of Civil Chambers of the Court of Cassation. Only **22 decisions** cited jointly the Consti-

282 General Assembly of Civil Chambers of the Court of Cassation, no. 2018/490, 30.10.2018.
283 19th Criminal Chamber of the Court of Cassation, no. 2017/5325, 05.06.2017.
284 N.B.B. Application, No. 2013/5653, 03.03.2016.
285 Ali Kıdık Application, No. 2014/5552, 26.10.2017.
286 *Fuchsmann v. Germany*, no. 71233/13, 19.10.2017; *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018; *L.B. v. Hungary*, no. 36345/16; *L.B. v. Hungary* (GC), no. 36345/16, 09.03.2023; *Hurbain v. Belgium*, no. 57292/16, 22.6.2021 (This application was referred to the Grand Chamber on 11.10.2021); *M.L. v. Slovakia*, no. 34159/17, 14.10.2021; *Biancardi v. Italy*, no. 77419/16, 25.11.2021.
287 *Fuchsmann v. Germany*, no. 71233/13, 19.10.2017; *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018; *L.B. v. Hungary*, no. 36345/16; *L.B. v. Hungary* (GC), no. 36345/16, 09.03.2023; *Hurbain v. Belgium*, no. 57292/16, 22.6.2021 (This application was referred to the Grand Chamber on 11.10.2021); *M.L. v. Slovakia*, no. 34159/17, 14.10.2021; *Biancardi v. Italy*, no. 77419/16, 25.11.2021.
288 General Assembly of Civil Chambers of the Court of Cassation, no. 2015/1679, 17.06.2015.
289 General Assembly of Criminal Chambers of the Court of Cassation, no. 2018/490, 30.10.2018.
290 19th Criminal Chamber of the Court of Cassation, no. 2017/5325, 05.06.2017.

tutional Court's N.B.B. judgment and the judgments of the General Assembly of Civil Chambers of the Court of Cassation and the 19th Criminal Chamber of the Court of Cassation. **59 decisions** referred to the judgments of the General Assembly of Civil Chambers of the Court of Cassation and the 19th Criminal Chamber of the Court of Cassation but did not mention any of the judgments of the Constitutional Court. In **351 out of the 548 decisions**, neither the judgments of the Constitutional Court nor those of the Court of Cassation on the right to be forgotten were referenced. In other words and most worryingly, **64 percent of the 548 decisions** on the right to be forgotten issued by criminal judgeships of peace during 2020 and 2021 were issued without any reference to the judgments of the Constitutional Court and the Court of Cassation on the right to be forgotten.

The gravity of the situation lies in the fact that criminal judgeships of peace have been causing severe and long-lasting harm to freedom of expression and freedom of the press as well as the public's right to information by issuing decisions that ignore the judgments of the Constitutional Court and the Court of Cassation on the right to be forgotten. These decisions either summarize the high court judgments in overly general terms or fail to implement them properly. In this context, the legal reasoning behind the right to be forgotten decisions and whether the decisions issued by criminal judgeships of peace are reasoned or not will be evaluated in the following section.

EVALUATION OF REASONED DECISIONS IN THE RIGHT TO BE FORGOTTEN CASES

Article 36 of the Constitution mandates that courts have a duty to effectively examine the grounds, claims, and evidence presented by the parties for the protection of constitutional rights.[291] This includes the right to a fair trial, which entails the right to a reasoned decision.[292] Thereby, the third paragraph of article 141 of the Constitution imposes an obligation on the courts to write their **decisions with reasons**, stipulating that "the decisions of all courts shall be written with a justification.[293] Therefore, it is essential that all courts of law, including criminal judgeships of peace provide well-reasoned decisions when considering cases involving the right to be forgotten in order to protect the fundamental rights of individuals and ensure a fair and just legal process equally weighing other fundamental rights such as freedom of expression and freedom of the press.

A decision should include elements that are relevant to the nature and circumstances of the case at hand. If the claims and defences explicitly raised during the proceedings have a direct impact on the outcome of the case, the courts must provide a reasonable justification for their decisions on both procedural and substantive issues.[294] Failure to address such claims that affect the outcome of the case would re-

291 Sebahat Tuncel Application, No. 2014/1440, 26.02.2015, 58; Sencer Başat Application, No.2013/7800, 18.06.2014, 30; ECHR, *Dulaurans v. France*, no. 34553/97, 21.03.2000, § 33.

292 Abdullah Topçu Application, No. 2014/8868, 19.04.2017, § 75.

293 Vedat Benli Application, No. 2013/307,16.05.2013, 30; Ahmet Sağlam Application, No. 2013/3351, 18.09.2013, § 49.

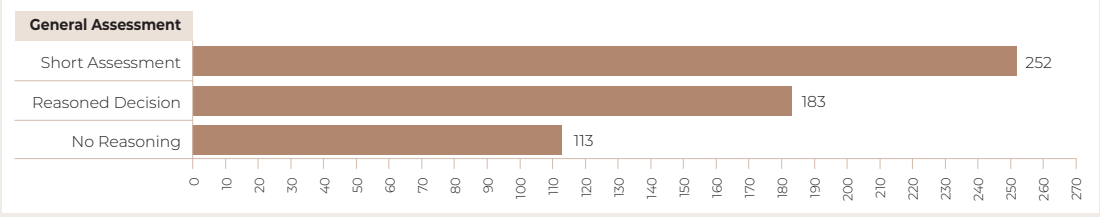
294 Sencer Başat Application, No. 2013/7800, 18.06.2014, § 35.

sult in a violation of the right to a reasoned decision.[295] Moreover, as stated by the Constitutional Court, "it is not possible to effectively use the legal remedies against a decision whose reasoning is unknown, and it cannot be expected that the examination to be carried out in the mentioned legal remedy will be effective."[296]

In assessing the justifiability of restrictions on freedom of expression, it is crucial that the decisions of the courts of first instance contain **adequate reasoning on the issue**. This is an **indispensable element of a democratic social order,** as well as a consequence of the requirement of reasoned decisions under **articles 36 and 141 of the Constitution** and **Article 6 of the ECHR**.[297] In its **pilot judgment** on the Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others, the Constitutional Court criticized the decisions of the criminal judgeships of peace under article 9 of Law No. 5651, stating that "none of the decisions" demonstrated the required elimination of unlawful interference with the applicant's honour and reputation caused by Internet publications without adversarial proceedings, delay and expeditiously. The Court found that the decisions lacked a fair balance between conflicting rights, as they contained only general statements independent of the case's circumstances. Therefore, it was unclear how the judgeships had determined that the Internet publications violated personal rights in a way that can be obviously understood at first glance."[298]

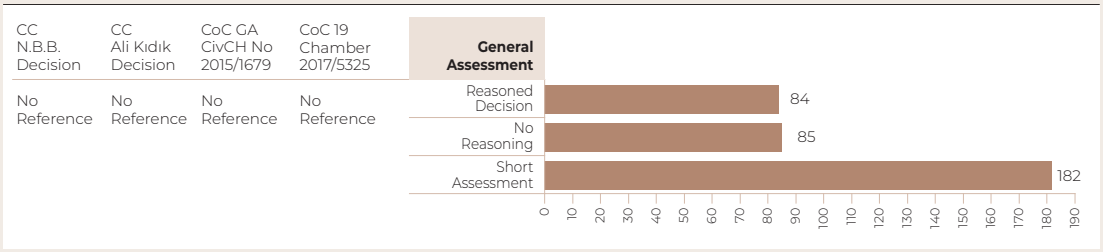
Having assessed 548 decisions made by criminal judgeships of peace and taking into account the aforementioned considerations, it was revealed that only **183** of these decisions had reasonable justifications, as shown in **Figure 21**. On the other hand, **252** decisions had only brief evaluations and **113** decisions **lacked any reasoning** at all. In some of the non-reasoned decisions, it was difficult to understand why the applications were evaluated within the scope of the right to be forgotten and the nature and content of the news items were also unclear. Furthermore, it was evident that the balance between freedom of expression, press freedom, and personal rights was not observed. Finally, the "prima facie violation" assessment that the Constitutional Court mandated in the Ali Kıdık judgment was not implemented by criminal courts of peace.[299]

Figure 21: Right to be Forgotten Decisions 2020-2021: Legal Assessment



295 Ruşen Melih Nebigil Application, No. 2014/2037, 17.07.2018, § 24-29.
296 Vesim Parlak Application, No. 2012/1034, 20.03.2014, § 34.
297 Medya Gündem Dijital Yayıncılık Ticaret A.Ş. Application, No. 2013/2623, 11.11.2015, § 21; Ahmet Sağlam Application, No. 2013/3351, 18.09.2013, § 49
298 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, § 115.
299 Application No: 2014/5552, 26.10.2017, § 63.

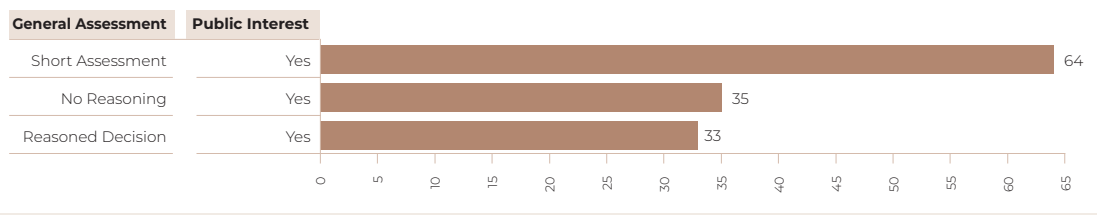
Figure 22: Number of CJP Decisions Not Referring to the Decisions of the Constitutional Court and the Court of Cassation: 2020-2021



Moreover, out of the **113** decisions analyzed, **83** did not make any reference to the judgments of the Constitutional Court and the Court of Cassation regarding the right to be forgotten. As can be seen in **Figure 22**, **182** of the **252** decisions containing a brief evaluation were also issued without any reference to the judgments of the Constitutional Court and the Court of Cassation on the right to be forgotten. Out of the **183** decisions that were deemed to have a reasonable justification, **84** decisions did not refer to the relevant judgments of the Constitutional Court and the Court of Cassation on the right to be forgotten.

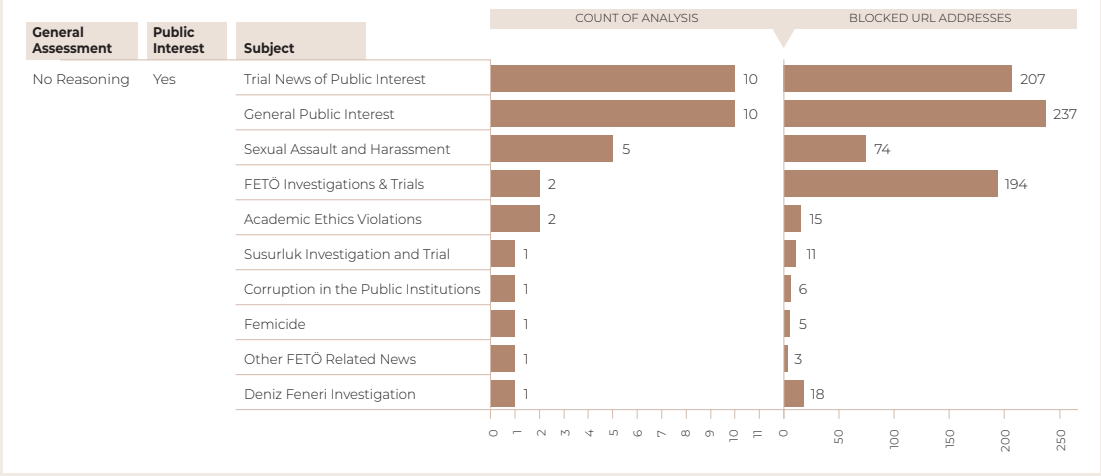
Within the scope of this study, 132 decisions related to news articles and other content of ongoing public interest were identified. Further scrutiny of these **132** decisions revealed that **35** decisions were issued without any justification, **64** contained only short evaluations, while only **33** of them were reasoned decisions as can be seen in **Figure 23**. This indicates a significant lack of attention given to the obligation to provide adequate reasoning in court decisions, especially in cases of ongoing public interest.

Figure 23: 2020-2021 Right to be Forgotten Decisions Involving Public Interest Content: Legal Assessment



As illustrated in **Figure 24**, the number of news articles and other content sanctioned with non-reasoned decisions amounts to **777**. Among those sanctioned news articles, there are some that are generally of public interest due to their subject matter, such as trial news of public interest, FETÖ investigations and trials and news on harassment and sexual assault. Furthermore, news on the Deniz Feneri investigation, certain academic ethical violations, the Susurluk case, abuse related news, as well as news on corruption in the public sector and femicides were also among the articles that were subjected to non-reasoned decisions.

Figure 24: Number of Blocked Public Interest Content (URL Addresses) with Right to Be Forgotten Decisions involving No Legal Justification: 2020-2021



An instance that highlights the issue of non-reasoned decisions is the blocking of access to **182** news articles on the detention of the owner of Elvan Gıda by the Ankara 1st Criminal Judgeship of Peace in June 2020. The decision involved no justification other than stating that the news articles were "outdated". The judgeship failed to explain why the articles were deemed outdated and how they were evaluated within the context of the right to be forgotten, especially considering the short period of only two years since their initial publication.[300]

Screenshot 32: News articles blocked by the Ankara 1st Criminal Judgeship of Peace

As emphasized by the European Court in its *Cumhuriyet Foundation v. Türkiye*[301] judgment, **the obligation to issue reasoned decisions is of particular importance**

300 Ankara 1st Criminal Court of Peace, no. 2020/4035, 19.06.2020.
301 *Cumhuriyet Foundation v. Türkiye*, no. 28255/07, 08.10.2013.

when restricting freedom of expression. It is evident that decisions issued solely by reference to the relevant articles of law, without detailed reasoning, without discussion on essential elements that may affect the outcome and without demonstrating the requirement to remove the alleged violation without an adversarial trial, without delay and expeditiously, constitute a violation of a fair trial.[302] Such arbitrary decisions will significantly impact media organizations and the underlying reasons for restricting freedom of expression and press will remain unclear. Therefore, arbitrary interventions in these fundamental freedoms will not only violate the freedom of expression and press[303] but also the right to a reasoned decision, which is protected by articles 36 and 141 of the Constitution and article 6 of the ECHR.

302 *Commersant Moldovy v. Moldovia*, no. 41827/02, 09.01.2007, § 36-38.
303 *H v. Belgium*, no. 8950/80, 30.11.1987, 30, 53; *Georgiadis v. Greece*, no. 21522/93, 29/05/1997, §§ 41, 43.

FINAL ASSESSMENT AND OVERALL CONCLUSION

The February 2014 and July 2020 amendments have effectively transformed article 9 of Law No. 5651, which pertains to the "violation of personal rights," into a censorship mechanism in practice. The Freedom of Expression Association's EngelliWeb reports reveal that a large majority of the requests made subject to this article are granted by criminal judgeships of peace, leading to the blocking and/or removal of thousands of news articles and other content.[304]

Within this context, it was found that **28.474** news articles (URLs) were blocked and **22.941** news articles (URLs) were removed or deleted subject to **5.986 separate decisions** issued by **509** separate judgeships for the purposes of "protecting personal rights" subject to article 9 of the Law No. 5651 **from 2014 to 2021**. Moreover, as explained in detail in this report, the Constitutional Court identified structural problems in article 9 of Law No. 5651.[305] Despite the structural problem identified, article 9 has not been annulled and remains still in force. In an effort to resolve the issue, the

304 The Freedom of Expression Association, EngelliWeb 2018: An Assesment Report on Blocked Websites, News Articles and Social Media Content from Turkey, June 2019: https://ifade.org.tr/reports/EngelliWeb_2018_Eng.pdf; EngelliWeb 2019: An Iceberg of Unseen Internet Censorship in Turkey, July 2020, https://ifade.org.tr/reports/EngelliWeb_2019_Eng.pdf; EngelliWeb 2020: Fahrenheit 5651: The Scorching Effect of Censorship, August 2021, https://ifade.org.tr/reports/EngelliWeb_2020_Eng.pdf; EngelliWeb 2021: The Year of the Offended Reputation, Honour and Dignity of High Level Public Personalities, December 2022, https://ifade.org.tr/reports/EngelliWeb_2021_Eng.pdf

305 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, R.G. 07.01.2022-31712. See also Yaman Akdeniz, "Anayasa Mahkemesi'nin sözde pilot kararı" (The so-called pilot decision of the Constitutional Court), Diken, 12.01.2022, https://www.diken.com.tr/anayasa-mahkemesinin-sozde-pilot-karari/

Constitutional Court notified the Turkish Grand National Assembly and postponed the consideration of individual applications within the scope of article 9 for one year, until 07.01.2023, for those applications submitted before as well as after the pilot judgment. As of the translation date of this report into English (**April 2023**), the Grand National Assembly has not considered the Constitutional Court's recommendation and the Constitutional Court is yet to enforce its pilot judgment.

While this standstill and the so-called resolution process continued, criminal judgeships of peace continued to issue decisions subject to article 9 even after the pilot judgment.[306] Although this report primarily focused on the general and structural problems related to article 9 and criminal judgeships of peace, the report was also prepared to draw attention to another aspect of the general and structural problems. Therefore, the emergence and reflection of the **right to be forgotten** in Turkish law, as well as its implementation by criminal judgeships of peace with the evolving case-law and its impact on freedom of expression and freedom of the press have been the focus of this study.

Although article 9 of Law No. 5651 does not directly address the "right to be forgotten," the right to be forgotten is recognized in practice and case-law. Furthermore, the Constitutional Court acknowledges that the sanctions under article 9 of Law No. 5651 can be used as a measure for the right to be forgotten.[307]

In this context, it is important to note that the news articles and other content subject to the right to be forgotten requests are those which did **not violate any personal rights or laws at the time of their publication**. This means that, the news articles and other content requested to be forgotten did not infringe upon personal rights during their publication. Therefore, requests for the right to be forgotten **should be treated differently** from claims that directly violate personal rights. In cases where **there is no overriding public interest**, requests submitted for news articles and other content **that are not false** and **do not directly infringe** upon personal rights **may only be granted in exceptional cases** where ordinary citizens have the right to "**control their past**" and "**request the erasure** of news related to certain matters from their past that they want to forget."

However, it is important to note that the right to be forgotten does not override the public interest in cases where the news articles and content contain factual information, contribute to public debate, or remain relevant to the public and society. Therefore, in terms of preserving freedom of expression and freedom of the press, there may be instances where the right to continue publication of news articles in press archives outweighs the right to be forgotten.

The extent to which criminal judgeships of peace maintain this balance was analyzed in this study based on **548** right to be forgotten decisions issued by **174** different criminal judgeships of peace between **2020** and **2021** on the basis of article 9 of Law No. 5651.[308] The study found that access to **10441** news articles and content was

306 See https://ifade.org.tr/engelliweb/

307 N.B.B. Application, No. 2013/5653, 03.03.2016, § 51-52.

308 Within the scope of this study, a total of 548 right to be forgotten decisions issued in 2020 and 2021 by criminal judgeships of peace were evaluated, in which sanctions were imposed and the requests were either accepted or partially accepted. However, it should be noted that the requests rejected by the criminal judgeships of peace and the relevant decisions cannot be identified directly.

requested to be blocked or removed, and sanctions were imposed on **9.913** (**94.94%**) of these news articles and other content. In other words, this means that thousands of news articles and content which did not violate any personal rights at the time of publication were removed from the Internet press archives.

It was determined that out of **548** right to be forgotten decisions **132** decisions involved news articles and other content that were still **in the public interest to be published**. As a result, sanctions were imposed on **3.687** news articles and other content. **285 decisions** related to news articles and other content which **served the public interest** or **concern the public** at the **time they were published**. However, no public interest has been identified regarding the news and content subject to **116** decisions. Categorically, in terms of the news articles that are in the public interest to be published, "**trial news of public interest**" ranked first with **1.180** blocked or removed Internet addresses, followed by "**news of public concern**" with **697** Internet addresses, "**FETÖ investigations and trials**" with **475** Internet addresses and "**news of violence against women**" with **418** Internet addresses.

Within the scope of this study, it was determined that news articles on issues of public interest such as the **Deniz Feneri investigation**,[309] **Nesim Malki murder**,[310] the **Susurluk investigation and related cases**,[311] the **KCK Main Case**,[312] which hold significant archival value and continue to be of interest to the public, have been subject to right to be forgotten requests, and sanctions were imposed on them. Similarly, sanctions were imposed on news articles on investigations and trials such as the "**Yargıya Neşter**" operation[313] and the **Şarampol Operation**,[314] which were frequently in the public eye at the time these operations were conducted. They were, therefore, also affected by the right to be forgotten decisions issued by the criminal judgeships of peace.

In cases where the right to be forgotten requests concern news articles of high public interest, judgeships judgeships tend to evaluate the news articles and other relevant content as "**old**" or "**outdated**." However, **regardless of their publication date**, the continued public interest in such articles, their contribution to the public interest, their significant archival value and their importance for freedom of expression and the press are not considered in the judgeships' evaluations, nor are the reasons why the right to be forgotten outweighed freedom of expression and freedom of the press explained.

The study also revealed that a **significant number of right to be forgotten deci-**

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309 Subject to the non-reasoned decision of the Istanbul 10th Criminal Judgeship of Peace, no. 2020/4962, 11.20.2020, access to 18 different news articles and other content related to the Deniz Feneri investigation and trials was blocked.

310 Subject to the decision of the Istanbul 6th Criminal Judgeship of Peace, no. 2020/5611, 31.12.2020, access to 317 news articles and other content related to Nesim Malki murder and the investigation and murder trial was blocked.

311 Subject to the non-reasoned decision of the Hendek Criminal Judgeship of Peace, no. 2021/640, 18.08.2021, access to 11 news articles about the Susurluk investigation and case was blocked.

312 Subject to the decision of the Konya 1st Criminal Court of Peace, no. 2021/5868, 31.12.2021, access to 19 news articles and other content related to KCK Main Case was blocked.

313 Istanbul 3rd Criminal Judgeship of Peace, no. 2020/3028, 12.08.2020; Istanbul 12th Criminal Judgeship of Peace, no. 2020/3365, 02.09.2020.

314 See Cumhuriyet, "'Şarampol' operasyonu," 30.10.2008, https://www.cumhuriyet.com.tr/haber/sarampol-operasyonu-19006. Ankara 7th Criminal Judgeship of Peace, no. 2021/9351, 04.08.2021.

sions lacked proper reasoning, and many of them contained template reasonings. Out of the 548 decisions issued by criminal judgeships of peace, 113 lacked reasoning and 252 included only short evaluations, leaving only 183 decisions with reasonable justification. It is concerning that some non-reasoned decisions did not clarify the reasons for evaluating the applications within the scope of the right to be forgotten, nor did they explain the nature and content of the news articles subject to the application. Additionally, it appears that criminal judgeships of peace did not establish a balance between freedom of expression and press freedom and personal rights, as required by the Constitutional Court's Ali Kıdık judgment, and did not carry out the "prima facie violation" evaluation.[315] Moreover, it is **alarming** that **84** of the **183** decisions that were deemed to have a reasonable justification were issued without any reference to the judgments of the Constitutional Court and the Court of Cassation on the right to be forgotten. The study found that news articles related to trials of public interest, investigations on FETÖ, harassment and sexual assault, Deniz Feneri investigation, academic ethical violations, Susurluk case, corruption in the public sector and femicide news were among the news items subject to such non-reasoned decisions. Shockingly, these decisions resulted in the removal or blocking of **777** news articles and other content.

Considering the striking examples provided in this study, the unignorable fact is that criminal judgeships of peace can seriously and permanently damage both freedom of expression and freedom of the press as well the Internet press archives. It is evident that these decisions are not simply about "**material facts**" but rather involve the destruction of "**the consequences of reporting the truth**." Moreover, as the European Court of Human Rights clearly stated, the loss of reputation from one's own actions, such as committing criminal acts, cannot be used as a reason for a complaint under Article 8 of the Convention or in the context of claiming personal rights.[316] Despite this important detail, it is clear that criminal judgeships of peace do not take it into account when assessing claims and issuing their decisions.

It is important to note that trial news of public interest, as well as news related to unsolved murders, harassment and sexual assault, violence against women and corruption and irregularities in the public sector, should not only be accessible to the public at the time of publication but also in the future. The European Court of Human Rights recognizes the public's **right to conduct retrospective research**, which emphasizes the **significance of online archives** and their **preservation** under Article 10 of the Convention.[317] According to the European Court, the public's interest in such matters is not limited either to the date of publication of news items and articles or to current events, but may also extend to the past, and therefore includes Internet archives.[318] In this context, it is vital to remember that the public's right not to forget or even to remember the past, the fact that past events may be the subject of scientific

315 Application No. 2014/5552, 26.10.2017, § 63.

316 *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018, 88; *Axel Springer v. AG Gemany* [BD], no. 39954/08, 07.02.2012, § 83.

317 *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018, § § 101-102.

318 *Fuchsmann v. Germany*, no. 71233/13, 19.10.2017, § 37-39. See also *Times Newspapers v. UK* (nos. 1 and 2), nos. 3002/03 and 23676/03, § 45, ECHR 2009.

research as well as of research and studies by the press,[319] civil society[320] and public opinion surveys[321] and the vital importance of Internet archives in terms of creating and preserving historical records about the past should not be forgotten. News and data about the past are also closely linked to accountability and the citizens' right to hold the state accountable. Thus, for example, retrospective studies and databases on the problem of impunity for serious human rights violations in the 1990s[322] and on enforced disappearances and impunity can only be feasible with the preservation of archives on the past.

On the other hand, it is important to note that while online archives should preserve the past, they should not turn into a "**virtual criminal record**" for individuals who have served their sentence and seek reintegration into society.[323] Therefore, it should not be inferred from these considerations that a person who committed a crime in the past and has a criminal record can never claim the right to be forgotten. Therefore, it is crucial to consider important criteria, such as the identity of the person who committed the crime, the nature of the crime, the archival significance of the news, and the right to know and conduct retrospective research when evaluating the right to be forgotten in these cases. In light of these criteria, news articles about the Nesim Malki murder, a case of significant public interest, should not have been evaluated within the scope of the right to be forgotten, as they still retain their relevance and public interest. Nevertheless, as mentioned earlier in this report, **317** different articles published between **1999 and 2011** about the **Nesim Malki murder**,

319 For example, the news articles on the **murder of journalist Ferhat Tepe**, Bitlis correspondent of Özgür Gündem newspaper, the parliamentary minutes of the Turkish Grand National Assembly (TBMM) and 56 Internet addresses with archival significance were blocked with the decision of the Ankara 8th Criminal Judgeship of Peace, no. 2018/101, 18.12.2018 on the grounds that the personal rights of Korkmaz Tağma, the Tatvan Brigade Commander of the time, who was allegedly responsible for the murder, were violated. Access to the news articles, including those written by journalists Çiğdem Toker, Mehveş Evin and Faruk Arhan, became possible after only the Constitutional Court found a violation on **Çiğdem Toker's article entitled "Why was the Ferhat Tepe file closed?"** in its decision on Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application (No: 2018/14884, 27.10.2021, R.G. 07.01.2022-31712). Despite the violation decision, for example, Çiğdem Toker's article **disappeared** from the archives, because Cumhuriyet newspaper had already removed the article from its archives after the access blocking decision but did not re-publish it after the Constitutional Court decision. See also Yaman Akdeniz, "Korkutucu ve vahim bir sansür vakası" (An alarming and grave case of censorship), Diken, 28.01.2019, https://www.diken.com.tr/korkutucu-ve-vahim-bir-sansur-vakasi/ and Yaman Akdeniz, "Meclis tutanağını erişime engelleyen hakimlere kim 'Dur' diyecek" (Who will say 'Stop' to the judges who blocked access to parliamentary minutes), Diken, 07.02.2019, https:// www.diken.com.tr/meclis-tutanagini-erisime-engelleyen-hakimlere-kimse-dur-demeyecek-mi/.

320 Between December 2020 and September 2022, 18 separate decisions were issued in relation to the Freedom of Expression Association's announcements on access blocking or content removal decisions that are of public concern within the scope of the EngelliWeb project. See https://ifade.org.tr/tag/ifod/.

321 For example, with the decision of the Cizre Criminal Judgeship of Peace no. 2019/2341, 24.10.2019, access to the Cizre Incidents Investigation Report published by Hafıza Merkezi (03.09.2015, https://hakikatadalethafiza.org/wp-content/uploads/2016/05/2015.9.3_Tihv-Ihd_CizreRaporu.pdf) was blocked on the grounds of "violation of personal rights" of Ahmet Adanur, former Cizre District Governor and Mayor. Similarly, access to the Academic Rights Violations 2020 Media Scan Report published by the İsmail Beşikçi Foundation (https://www.ismailbesikcivakfi.org/uploads/files/PDF/AHI_IBV_RAPOR.pdf) was blocked on the grounds of violation of personal rights by the Rize Criminal Judgeship of Peace with the decision no. 2021/2246, 08.07.2021.

322 Emel Ataktürk Sevimli, Esra Kılıç, Gülistan Zeren, Melis Gebeş ve Özlem Zıngıl, "1990'lı Yıllardaki Ağır İnsan Hakları İhlallerinde Cezasızlık Sorunu: Kovuşturma Süreci" (The Problem of Impunity for Serious Human Rights Violations in the 1990s in Turkey: The Prosecution Stage), Hafıza Merkezi, November 2021, https://hakikatadalethafiza.org/wp-content/uploads/2021/11/CezasizlikKovusturmaSureci.pdf

323 *Hurbain v. Belgium*, no. 57292/16, 22.6.2021, 110; *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28.06.2018, § 106.

were sanctioned within the scope of the right to be forgotten, as a judgeship evaluated that "the news articles were old and outdated and that there was no public interest."[324] The Constitutional Court, on the other hand, stated in relation to some corruption news from 2009 that "it **cannot be said that the news has lost its relevance and public interest**, taking into account the identities of the individuals covered in the news"[325] and emphasized that the news had historical and archival significance and that it was not claimed that the content of the news article contained inaccurate or false information.[326] However, the Constitutional Court's evaluations and principled approach regarding the right to be forgotten[327] were completely disregarded by the criminal judgeships of peace when evaluating news concerning the **Nesim Malki murder** and similar other news that closely concern the public.

In Europe, the right to be forgotten is primarily practiced in line with the Court of Justice of the European Union's judgment, which involves the **removal of** Internet addresses **from search engine indexes**. However, other alternative solutions, such as anonymizing news articles in press archives or preventing search engines from finding and indexing news items that are subject to right to be forgotten claims, are still being debated before the European Court of Human Rights. It remains to be seen how these alternative solutions will balance the right to freedom of expression with the right to privacy, depending on the criteria to be set by the Grand Chamber of the European Court in the near future.[328]

Additionally, the European Court noted that the **obligations of media organizations** that first publish news articles subject to right to be forgotten claims **may differ from those of search engines** that facilitate access to the content. Therefore, when right to be forgotten requests **are made to media organizations**, the **result may differ from that of search engines**. Undoubtedly, requests to media organizations may affect freedom of expression and press freedom (ECHR, Article 10), while those made to search engines are closely related to the protection of personal data, as it concerns information that can be accessed parties through search engines and used by third parties for profiling purposes (ECHR, Article 8).

As a result, it is observed that the **practice in Türkiye** regarding the right to be forgotten **is strikingly different from that in Europe**. Rather than removing Internet addresses from search engine indexes, the dominant practice in Turkey involves blocking access to news articles and other content that falls within the scope of the right to be forgotten, as well as removing them from publications and archives, resulting in their **complete eradication**.

Regrettably, the application of article 9 of Law No. 5651, which the Constitutional Court has **identified as having structural problems**, is frequently used to destroy news articles and other content from press archives, even if they did not violate per-

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324 Istanbul 6th Criminal Judgeship of Peace, 2020/5611, 31.12.2020.

325 G. D. (2) Application, No. 2014/1808, 04.10.2017, § 34.

326 G. D. (2) Application, No. 2014/1808, 04.10.2017, § 31.

327 N.B.B. Application, No. 2013/5653, 03.03.2016; N.B.B. (2) Application, No. 2014/17143, 01.03.2017; G. D. (2) Application, No. 2014/1808, 04.10.2017; Asım Bayar and Veysel Bayar Application, No. 2014/4141, 04.10.2017; Asli Alp and Şükrü Alp Application, No. 2014/18260, 04.10.2017; G. Y. Application, No. 2014/16026, 05.10.2017; Fahri Göncü Application, No. 2014/17943, 05.10.2017; C. K. Application, No. 2014/19685, 15.03.2018.

328 *Hurbain v. Belgium*, no. 57292/16, 22.6.2021 (This application was referred to the Grand Chamber on 11.10.2021).

sonal rights at the time of publication.[329] This has **transformed the right to be forgotten into another form of censorship**, with article 9 constantly being abused in practice, resulting in the censorship of news articles and other content even if they do not violate personal rights.

Moreover, this issue is not limited to the right to be forgotten, as thousands of decisions have been issued regarding claims of personal rights.[330] The fact that the Constitutional Court identified "structural problems" in article 9 of Law No. 5651, far from rendering a solution to the problem, can be likened to trying to treat a gangrenous leg with tincture of iodine without amputating it.

In an era of increasing pressure on freedom of expression and the press in Türkiye, with rising sanctions and challenges facing journalists and media organizations, it is essential not to forget the critical role they play in informing and enlightening the public.

This study carries a risk of becoming the subject of multiple right to be forgotten requests and decisions. However, it was prepared with the consciousness of this risk, aiming to inform the public and prevent important news articles and other valuable content of great interest to the public from being forgotten. The Freedom of Expression Association will continue its research on the right to be forgotten and expand this study retrospectively by adding 235 right to be forgotten decisions issued in 2019 and prospectively by adding approximately 300 right to be forgotten decisions determined to have been issued in 2022. The findings will be made public with a subsequent report. The Association hopes to contribute to a more informed public discourse on this critical issue and to advocate for the protection of freedom of expression and the press as well as the Internet archives.

329 Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, No. 2018/14884, 27.10.2021, R.G. 07.01.2022-31712.

330 The Freedom of Expression Association, EngelliWeb 2018: An Assesment Report on Blocked Websites, News Articles and Social Media Content from Turkey, June 2019: https://ifade.org.tr/reports/EngelliWeb_2018_Eng.pdf; EngelliWeb 2019: An Iceberg of Unseen Internet Censorship in Turkey, July 2020, https://ifade.org.tr/reports/EngelliWeb_2019_Eng.pdf; EngelliWeb 2020: Fahrenheit 5651: The Scorching Effect of Censorship, August 2021, https://ifade.org.tr/reports/EngelliWeb_2020_Eng.pdf; EngelliWeb 2021: The Year of the Offended Reputation, Honour and Dignity of High Level Public Personalities, December 2022, https://ifade.org.tr/reports/EngelliWeb_2021_Eng.pdf

Within the scope of ***The Right NOT to be Forgotten on the Internet: Freedom of Expression Assessment of the Application of the Turkish Right to be Forgotten Measures under Law No. 5651*** report of the İfade Özgürlüğü Derneği (İFÖD - Freedom of Expression Association), it has been observed and identified that in recent years, individuals increasingly request that their futures not be negatively affected by news or published content related to events caused by themselves or third parties in their past, with reference to their right to be forgotten. These requests have been frequently evaluated as violations of personal rights under article 9 of Law No. 5651 by criminal judgeships of peace and the judgeships issued decisions of access blocking and content removal involving such news articles and content even though they did not contain any violation of personal rights or violation of the law at the time of their publication. Therefore, such requests may only be considered favourably in cases where there is no superior public interest, and especially in exceptional cases where ordinary citizens have the right to "control their past" and "to request that certain issues erased from their past and forgotten."

This study prepared by Professor Yaman Akdeniz (Professor, Faculty of Law, Istanbul Bilgi University), evaluates how the right to be forgotten is applied by the criminal judgeships of peace for the purpose of "protecting personal rights" within the scope of Law No. 5651. The study evaluates further the requests, whether the judgeships referred to the judgments of the Court of Cassation, the Constitutional Court and the European Court of Human Rights in their decision-making processes, and therefore whether they took into account the relevant case-law. In this context, the jurisprudence of the Court of Cassation, the Constitutional Court and the European Court of Human Rights is also analyzed for compatibility assessment. Furthermore, the report also examines in detail whether the judgeships took into account freedom of expression and freedom of the press in cases where the sanctions imposed by the judgeships targeted media organisations, newspapers and online media as content providers. The report also scrutinizes whether the judges were sensitive to the removal of news and content with political implications about events, issues and persons of public interest from press archives, and whether the right to be forgotten was used as a separate censorship mechanism.

The extent to which criminal judgeships of peace maintain this balance was analyzed in this study based on 548 right to be forgotten decisions issued by 174 different criminal judgeships of peace between 2020 and 2021 on the basis of article 9 of Law No. 5651. The study found that access to 10.441 news articles and content was requested to be blocked or removed, and sanctions were imposed on 9.913 (94.94%) of these news articles and other content. In other words, this means that thousands of news articles and content which did not violate any personal rights at the time of publication were removed from the Internet press archives.

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