



**İFADE ÖZGÜRLÜĞÜ DERNEĞİ**  
**TRIAL MONITORING REPORT**  
**THE CASE OF MUSTAFA KÖMÜŞ**  
**Article 125 (3) of the TCC**

**Introduction**

1. This trial monitoring report is prepared by İfade Özgürlüğü Derneği (‘İFÖD’ – Freedom of Expression Association), a non-profit and non-governmental organization that aims to protect and foster the right to freedom of opinion and expression in Turkey. In this report, İFÖD based its observations on standards set out by the European Court of Human Rights' case law regarding the right to fair trial and right to freedom of expression and press as protected by articles 6 and 10 of the European Convention on Human Rights.
2. In June 2019, the allegation that Berat Albayrak, then Minister of Finance and Treasury, was having an affair with model and actress Özge Ulusoy, the runner-up of Miss Turkey 2003 (Miss Turkey 2003), came to the fore.
3. Berat Albayrak is the son-in-law of President Erdoğan and also served as a senior bureaucrat at different levels. Berat Albayrak was elected as a Member of Parliament of Istanbul (henceforth “MP”) for the Justice and Development Party in the 25th, 26<sup>th</sup>, and 27th terms of the Turkish Grand National Assembly. In the following period, he served as Minister of Energy and Natural Resources between 2015-2018 and Minister of Treasury and Finance between 2018-2020.
4. A photograph published on social media soon became the subject of public debate. In the article, it was claimed that Berat Albayrak and Özge Ulusoy were seen on a yacht. Subsequently, it was reported in the press that Berat Albayrak and President Erdoğan's son Burak Erdoğan had a fight due to the allegation that Berat Albayrak and Özge Ulusoy were having an affair.
5. On a website known as Ekşi Sözlük ([www.eksisozluk.com](http://www.eksisozluk.com)), users expressed their views on this matter by opening a title named “Allegations on Berat Albayrak – Özge Ulusoy Affair”. The website operates in the form of members opening titles on topics of their own choosing and commenting under these titles. Issues that are on the public agenda are often discussed among users. The allegation of Berat Albayrak and Özge Ulusoy having an affair was also discussed by many users in a short period of time.
6. On 21.06.2019, another title named ‘*Title on Albayrak-Özge Ulusoy Removed*’ was opened on Ekşi Sözlük. Under this title, users expressed their opinions on the access blocking decision regarding the allegation on Berat Albayrak and Özge Ulusoy were having an affair. The first post made under this title was the announcement of the access blocking decision.

*"Allegations on Berat Albayrak-Özge Ulusoy Having an Affair" on Ekşi Sözlük was removed upon the request of Minister of Treasury and Finance Berat Albayrak. Access ban was imposed on the title "Berat Albayrak-Özge Ulusoy relationship allegation" on Ekşi Sözlük. Once users click on the title a warning states that "It has been decided to block access to the content of this title in accordance with the decision of the İstanbul Anadolu 1st Criminal Judgeship of Peace dated 18.06.2019 and decision numbered 2019/4832 upon the request of Berat Albayrak." appear on the webpage.*

7. Under the heading, the decision of Istanbul Anadolu 1st Criminal Judgeship of Peace was announced. The decision with the docket number 2019/4832 and dated 18.06.2019 was issued upon the request of Berat Albayrak. Due to the access ban, the content titled *"Allegations on Berat Albayrak Özge Ulusoy Having an Affair "* cannot be accessed.
8. Regarding the access block on Ekşi Sözlük, Birgün Newspaper published an article titled "Berat Albayrak-Özge Ulusoy title in Ekşi Sözlük removed" on 21.06.2019 via <https://www.birgun.net/haber/eksi-sozluk-teki-berat-albayrak-ozge-ulusoy-basligi-kaldirildi-259466> URL address. In the article, Birgün Newspaper announced to its readers that the title opened on Ekşi Sözlük was blocked upon Berat Albayrak's request. The article contains an image of the Ekşi Sözlük page where the access ban decision was announced. The article is as follows:

*"The title 'Allegations on Berat Albayrak – Özge Ulusoy Affair' on Ekşi Sözlük was removed upon the request of Minister of Treasury and Finance Berat Albayrak."*

*"An access ban was imposed on the title "Allegations on Berat Albayrak – Özge Ulusoy Affair" of Ekşi Sözlük.*

*Once users click on the title, a warning stating "it has been decided to block access to the content in this title in accordance with the decision of the İstanbul Anadolu 1st Criminal Judgeship of Peace dated 18.06.2019 and numbered 2019/4832 upon the request of Berat Albayrak." appears on the webpage.*

9. In the above-mentioned article, users were informed about Berat Albayrak's request for an access ban on the allegation that he and Özge Ulusoy were having an affair, and the access ban decision dated 18.06.2019 delivered by Istanbul 1st Anatolian Criminal Judicature of Peace within the scope of 2019/4832 file. In the article, only the title of the blocked content was mentioned and except that, there was no statement on the alleged affair between Berat Albayrak and Özge Ulusoy.
10. On 24.06.2019, Berat Albayrak, through his lawyers, filed a criminal complaint to the Istanbul Public Prosecutor's Office against Mustafa Kömüş, Internet Editor of Birgün Newspaper, and

Uğur Koç, Managing Editor of the newspaper. In the criminal complaint, it was claimed that the article published on the website of Birgün Newspaper was based on false information. The complainant claimed that the officials of Birgün Newspaper had acted with the intention to accuse and humiliate Berat Albayrak and that the article had been made for the purpose of spreading an unfounded allegation on the Internet. For these reasons, Berat Albayrak's lawyers stated that their client's personal rights were violated and that the article could not be considered within the scope of freedom of expression. The lawyer further requested a public lawsuit to be filed against the officials of Birgün Newspaper for the crime of publicly insulting a public official as stipulated in Article 125 (3) of the Turkish Criminal Code.

11. On 18.09.2019, Istanbul Chief Public Prosecutor's Office issued an indictment against Birgün Newspaper's journalists Mustafa Kömüş, Uğur Koç, and İbrahim Aydın for the above-mentioned article. Subsequently, on 19.09.2019, the indictment was accepted by the Istanbul 2<sup>nd</sup> Criminal Court of First Instance. The journalists were charged with insulting a public official under the criminal case before Istanbul 2<sup>nd</sup> Criminal Court of First Instance with docket number 2019/502. The trial came to a conclusion at the fourth and final hearing dated 19.11.2020. Istanbul 2<sup>nd</sup> Criminal Court of First Instance acquitted the journalists of Birgün Newspaper, Mustafa Kömüş, Uğur Koç, and İbrahim Aydın. Complainant Berat Albayrak appealed against the acquittal of the journalists. By the date of this trial monitoring report, the appeal has not been ruled and the case is pending before the appeal court.

## **1. Background**

12. İFÖD was monitoring the trial of Mustafa Kömüş, Uğur Koç, and İbrahim Aydın before the Istanbul 2<sup>nd</sup> Criminal Court of First Instance with the docket number 2019/502, following the acceptance of the indictment from the first hearing on 05.12.2019.
13. İFÖD's legal team monitored each hearing and made observations on the judiciary. However, considering the measures taken by World Health Organization, except for the third hearing on 08.09.2020, İFÖD's legal team could not attend the hearings in person. İFÖD legal team contacted the lawyers of the defendants to discuss the trial, their views and the case file, evaluated the documents and made observations on the case.
14. In the fourth and final hearing of the case, the defendants were acquitted. The complainant Berat Albayrak filed an appeal against the acquittal decision on 25.12.2020. Following the appeal filed by Berat Albayrak, the case file was sent to the Istanbul Regional Court of Appeals. The case is pending as of the date of this trial monitoring report.

## **2. Investigation Stage and Indictment**

15. The investigation began with Berat Albayrak's complaint on 24.06.2019. Berat Albayrak claimed that he was allegedly insulted by the article published by Birgün Newspaper under Article 125 of the Turkish Criminal Code.
16. The Public Prosecutor investigated Mustafa Kömüç, Uğur Koç, and also the franchise holder İbrahim Aydın. On 28.09.2019, Mustafa Kömüç and Uğur Koç were interrogated by the Istanbul Chief Public Prosecutor's Office. In his statement, Mustafa Kömüç argued that the article subject to the lawsuit did not consist of any statement that may cause damage to Berat Albayrak's personal rights and that the article was only about the blocking of access to the content on Ekşi Sözlük. Added that due to his duty as a minister, therefore, he is a public figure, the article was newsworthy. In his statement, Uğur Koç argued that the article conveyed the court decision and that there was no expression in the article that could be considered as defamation. The attorney of the suspects stated that the article should be accepted within the scope of freedom of expression.
17. On 02.09.2019, the attorney of the suspects also submitted a comprehensive defense to the investigation file on behalf of suspect İbrahim Aydın. The attorneys stated that the article was in accordance with the law. In addition, the attorney argued that the objective elements of the crime of defamation did not occur in the present case and the article should be considered within the scope of freedom of expression. The attorney requested the public prosecutor to give a decision of non-prosecution.
18. On 18.09.2019, the Public Prosecutor prepared an indictment in which he argued that *"...Subject to the investigation and as stated in the complaint, bringing up the allegations that are unfounded and untrue, even in an indirect way by including the photographs of the complainant cannot be accepted as a severe criticism or within the scope of freedom of expression and press. Following the complainant's request for an access ban to the article by stating it is unfounded and removal of this article, it is not acceptable to make another news about the same issue. The complainant has no obligation to tolerate this article. Even if the complainant is a public official or a celebrity, it is not possible to consider the publication of the allegations about the complainant's private and family life that the authenticity of which was not verified and even stated to be untrue by the complainant, within the scope of freedom of the press and freedom of expression. Since the complainant is serving as the Minister of Treasury and Finance, it must be accepted that these publications are of a nature to damage the honor and dignity of the complainant..."* The public prosecutor requested the suspects be convicted for the offense of publicly insulting a public official as stipulated in Article 125 of the TCC.

### **3. Prosecution Stage**

#### **a) 1st Hearing Dated 05.12.2019**

19. The first hearing of the case was held on 05.12.2019. In the first hearing, the defendants were interrogated. The defendants stated that the article was about the removal of a title on Ekşi Sözlük by a court decision. The defendants demanded their acquittal. The defense counsel stated that the article was within the scope of freedom of expression and requested time to prepare a written defense. The counsel of complainant Berat Albayrak requested to participate in hearings and repeated their complaint against the defendants. The Istanbul 2<sup>nd</sup> Criminal Court of First Instance accepted the request for the participation of the complainant Berat Albayrak's attorney and gave the defendants time to prepare their defense until the next hearing.

#### **b) 2nd Hearing Dated 27.02.2020**

20. At the second hearing, the defendants were present in person and were represented by their defense counsel.
21. The defense counsel declared that the article that was published in Birgün Newspaper and also subject to the proceedings was blocked access by 25.06.2019 dated judgment of the Istanbul Anadolu 8<sup>th</sup> Criminal Judgeship of Peace with the docket number 2019/5143. The defense counsel also stated that they had filed an individual application to the Constitutional Court due to the rejection of their appeal against the access blocking decision. The defense counsel added that the decision of the Constitutional Court is important for the case at hand and requested the decision to be awaited.
22. The Istanbul 2<sup>nd</sup> Criminal Court of First Instance decided to request the case file of the Istanbul 8th Criminal Judgeship of Peace with docket number 2019/5143 in order to examine the access ban decision. The Istanbul 2<sup>nd</sup> Criminal Court of First Instance also decided to write a notice to the Constitutional Court regarding whether an individual application has been made to the Constitutional Court by the defendants. The next hearing of the case was scheduled for 07.05.2020.

#### **c) 3rd Hearing Dated 08.09.2020**

23. Due to the Covid-19 pandemic, the Court decided to hold the third hearing of the case on 08.09.2020. At the third hearing of the case at the Istanbul Criminal Court of First Instance No. 2 on 08.09.2020, the judge of the Court was changed.
24. The Constitutional Court answered the Istanbul 2<sup>nd</sup> Criminal Court of First Instance and confirmed that the defendant's attorney had filed an individual application. The Constitutional Court stated the application was pending before the Court. The judge asked the prosecution

whether the extension of investigation was requested. In response, the prosecutor requested time to write his opinion on the merits.

25. The defendant's defense counsel expressed that the individual application before the Constitutional Court is identical to the impugned article subject to the case. The defendants' counsel added that if the Constitutional Court rules that the access ban decision has violated the applicants' right to freedom of expression, the case will be devoid of merits. Therefore, the decision of the Constitutional Court should be awaited. The defense counsel requested that in case the Court would decide not to wait until the Constitutional Court rule on the individual application, the defendants should be given time to prepare their defense against the opinion of the Public Prosecutor.
26. According to the Court, the individual application would not shed light on the merits of the case at hand, and it rejected the defense counsel's request to wait for the decision of the Constitutional Court. The Court decided to deliver the case file to the prosecutor for him to prepare an opinion.

**d) 4th Hearing Dated 07.10.2021**

27. The defendants and complainant were represented by their lawyers at the fourth hearing.
28. During the hearing, the Public Prosecutor submitted his opinion. The Public Prosecutor requested acquittal of the defendants on the grounds that evidence and indications lacked reasonable suspicion. The counsel of the complainant challenged the opinion of the Public Prosecutor and requested the defendants be punished. The defense counsel agreed with the Public Prosecutor in his opinion in favor of acquittal, however, the defense counsel requested acquittal on a different ground than the Public Prosecutor. According to the defense counsel, the article was on a court decision, and therefore, it has a factual basis. In this regard, for the defense counsel, the article should be considered within the scope of freedom of expression and press, and therefore, the objective elements of the offense did not occur in the present case. In his last remarks, the defense counsel expressed that there is no definition of defamation in the Turkish Criminal Code that is stipulating an offense of publishing news to bring an issue back to the public agenda. In this regard, for the defense counsel, bearing in mind the principle of legality, one cannot argue that the conduct constitutes an offense. The defense counsel requested the acquittal of his clients.
29. At the fourth hearing, the court decided on the merits and acquitted the defendants.

**4. Decision and Appeal Procedure**

30. On 07.10.2021, in accordance with the Public Prosecutor's opinion, the Istanbul 2<sup>nd</sup> Criminal Court of First Instance acquitted the defendants. The Istanbul 2<sup>nd</sup> Criminal Court of First Instance referred to the criteria set by the Court of Cassation, the Constitutional Court, and the



European Court of Human Rights on freedom of expression and press. The Istanbul 2<sup>nd</sup> Criminal Court of First Instance acquitted the defendants. The reasoning of the Court is as follows: “ ... the defendants were in charge of the *Birgün Newspaper, its website, and social media accounts. In the article with the heading " Title on Albayrak-Özge Ulusoy Removed", the photographs of the complainant, who was the Minister of Treasury and Finance, and a woman named Özge Ulusoy were included. It was also understood that the article was on an access ban that had been imposed on the title "Allegations on Berat Albayrak – Özge Ulusoy Affair" of Ekşi Sözlük, and a warning on the webpage stating that "it has been decided to block access to the content in this title in accordance with the decision of the İstanbul Anadolu 1st Criminal Judgeship of Peace appears on the webpage. It is seen that the title and content of the article do not contain any comments or allegations. The impugned article was on the decision to block access to the news about the complainant. Although the article may be disturbing for the complainant, the expressions used are not at a level that can be considered as they cause damage to the honor, dignity, and respect of the complainant. The article should be accepted within the limits of freedom of expression and press. For all these reasons, it is seen that the objective elements of the offense do not occur in the present case..."*

31. On 25.12.2020, the attorney of the complainant appealed against the decision. In his appeal, the attorney claimed that the article was not serving any public interest, and added that the impugned article was defamatory and damaged Berat Albayrak’s reputation. The attorney further claimed that the article was published with bad intentions and was carrying the purpose of misleading public opinion. The complainant’s attorney argued that the acquittal of the defendants was unlawful and requested the rescission of the decision.

##### **5. Article 125 (3) of TCC, “Insulting the public officials due to their duties” in the Light of ECHR Decisions**

32. In the case at hand, Berat Albayrak filed a criminal complaint against the impugned article of *Birgün Newspaper*. Berat Albayrak claimed that he was allegedly insulted in public due to his civil service pursuant to Article 125 (3) of the TCC. The relevant provision was examined in the ECHR’s *Ömür Çağdaş Ersoy v. Turkey*, (no. 19165/19, 15.06.2021) decision. The ECHR’s examination is as follows:

*“... it is understood that Article 125 subparagraph 3 a) of TCC also applies when the insulting words are spoken against elected politicians who are considered public officials by the authorities in question within the meaning of this provision, such as a prime minister, who holds a position of responsibility. The Court firstly notes that this practice does not appear to be in line with its previously recalled case-law. According to the case-law, the limits of acceptable criticism are broader for a politician whose political identity is targeted than for an ordinary citizen.*

*The Court recalls in this connection that it has previously held that enhanced protection for defamation/insult by special legislation is, in principle, incompatible with the spirit of the Convention (Colombani and Others v. France, no. 51279/99, § 69, ECHR 2002 V, Otegi Mondragon, § 55 and Önal v. Turkey (no.2), no. 44982/07, § 40, 02.07.20199). Moreover, while it is entirely legitimate for person representing state to be protected by the competent authorities as guarantors of institutional public order, the Court recalls that the dominant position occupied by these institutions requires the authorities to exercise restraint in the use of the criminal remedy (Otegi Mandragon, § 58)”. (Ömür Çağdaş Ersoy v. Turkey, no. 19165/19, 15.06.2021, § 58)*

33. Contrary to the standards set by the Constitution and the ECHR, the application of article 125 (3) of TCC that is stipulating the offense of insulting a public official and anticipating a more severe penalty than the offense of insult, means a privilege for all politicians. In this case, a conflict arises between the general principle of protecting the expressions used against politicians and the application of article 125 (3) of TCC. As in the case at hand, a criminal provision granting more protection to a minister than an ordinary citizen on the ground of considering him as a public servant is in clear contradiction with the findings in the ECtHR’s *Ömür Çağdaş Ersoy* decision. The ECtHR found that protecting public officials may be legitimate under certain circumstances, but extending this protection to politicians would be a violation of the right to freedom of expression.
34. Considering ECHR’s finding on similar incidents, the application of Article 125 (3) in a way that grants privilege to politicians is in clear contradiction with the Court’s case-law and in violation of Article 10 of the Convention. Since Article 125 (3) of the Criminal Code is in contradiction with the Convention, according to Article 90 of the Turkish Constitution, it cannot be applied by domestic courts According to Article 90 of the Constitution, “*In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.*” According to the Constitutional Court, “*In accordance with Article 90 (5) of the Turkish Constitution, international agreements are part of our legal system and they are enforceable just like laws. In accordance with the same paragraph of the relevant article, in the case of a conflict between law and international agreements on fundamental rights and freedoms, in practice, the provisions of the agreement shall prevail. This principle means a subtle abrogation and it eliminates the law that is in conflict with a convention on fundamental rights and freedoms.* (Sevim Akat Ekşi, no. 2013/2187, 19.12.2013, § 45; Neşe Aslanbay Akbıyık, no. 2014/5836, 16.04.2015, § 45; Gülsim Genç, no. 2013/4439, 06.03.2014, § 41). Therefore, the implementation of Article 125 (3a) of the TCC in favor of politicians would be contrary to the Constitution.



## **6. Considerations in Terms of Freedom of Expression**

35. A fair balance has to be struck between the competing interest of the right to respect private life and the right to the freedom of the press. In this regard, it must be ascertained that a fair balance has been struck between personal rights as protected by Article 17 of the Constitution and the freedom of expression and press as protected by Articles 26 and 28 of the Constitution. (*Von Hannover/Germany (no.2) [BD]*, 40660/08 ve 60641/08, 7/2/2012, para. 99).
36. The criteria laid down for assessment of a fair balance between the competing interest of right to freedom of expression and personal rights are as follows; (a) Contribution to a debate of general interest (b) How well known is the person concerned and what is the subject of the report? (c) Prior conduct of the person concerned (d) Content, form, and consequences of the publication (e) Circumstances in which the photos were taken (f) Severity of sanction (*Axel Springer AG/Germany, [BD]*, no. 39954/08, 7/2/2012; *Von Hannover/Germany (no. 2) [BD]*, no. 40660/08 ve 60641/08, §§ 108 *AYM İlhan Cihaner (2)*, B.No: 2013/5574, 30/6/2014, § 74; *Kadir Sağdıç*, B.No: 2013/6617, 8/4/2015 [GK], § 36).
37. First, in light of these criteria, considering Berat Albayrak's political career and ministerial duties, it is clear that he was a high-level politician at the time. In accordance with the ECHR's case-law, when Berat Albayrak becomes a subject of articles and criticism, his limits of acceptable criticism should be wider compared to a private individual. (*Lingens/Austria*, no. 9815/82, 08.07.1986, para. 42; *Von Hannover/Germany*, no. 59320/00, 03.06.2004 § 64). In addition, the impugned article that Berat Albayrak complained about is mainly on his request for an access ban for a title opened in Ekşi Sözlük. Bearing in mind there is an access ban decision ordered by Istanbul Anatolian 1<sup>st</sup> Criminal Judgeship of Peace with a docket number 2019/4832 on 18.06.2019, the article was substantially true. There is no doubt that it is in the public interest to impart information on Berat Albayrak's request for an access ban on articles about himself. Indeed, Berat Albayrak is a public figure, therefore, there is a public interest in keeping informed about his work and actions.

### **a) Admission of the Indictment**

38. The duties of the prosecutor are listed in article 160 of Law no 5271 of the Turkish Criminal Procedure Code as follows: “*As soon as the public prosecutor is informed of a fact that creates an impression that a crime has been committed, either through a report of crime or any other way, she/he shall immediately investigate the factual truth, in order to make a decision on whether to file public charges or not.*” and “*In order to investigate the factual truth and to secure a fair trial, the public prosecutor is obliged... to collect and secure evidence in favor and in disfavor of the suspect, and to protect the rights of the suspect.*” At the end of the investigation phase, collected evidence constitutes sufficient suspicion that a crime has been committed, then the public prosecutor shall prepare an indictment. (Turkish Criminal Procedure Code Article 170 (2)).

39. The prosecutor, among its other obligations, shall lead an investigation of the facts, and according to article 170 (5) of the Turkish Criminal Procedure Code, “*The conclusion section of the indictment shall include not only the issues that are unfavorable to the suspect but also issues in his favor.*” However, in the indictment drafted on 18.09.2019, the prosecutor did not make any evaluation of the facts that may be in favor of the suspects. In this regard, the prosecutor did not discuss whether the article was concerning the complainant's civil service. The prosecutor did not refer to the above-mentioned jurisprudence of ECtHR on whether Article 125 (3-a) of the TCC may be implemented in favor of the politicians. Added that the prosecutor did not make any assessment on a fair balance struck between the right to freedom of the press and personal rights as criteria laid down by the jurisprudence of the Constitutional Court and the ECHR.
40. In the case at hand, the Public Prosecutor prepared its indictment based on Berat Albayrak's complaint and interrogation of the defendants. It was observed that the Public Prosecutor failed to examine the content of the impugned article. Likewise, the prosecutor did not make any observations on whether the article published on the website of Birgün Newspaper was having the purpose of announcing an access ban decision to its readers. Notwithstanding, in the indictment, there was not any sign of research or evidence that may be in favor of the suspects.
41. According to the case-law of both ECHR and the Constitutional Court, any investigation carried out or criminal proceedings based on the acts that shall be considered within the scope of freedom of expression, by itself, cause a chilling effect and this constitutes an interference to the freedom of expression. (*Altuğ Taner Akçam v. Turkey*, no: 27520/07, 25.10.2011 § 68.; *Dilipak v. Turkey*, 29680/05, 15.09.2015 §§ 44-51). It should also be taken into account that the judicial authorities are under the obligation to respect case-law of the ECHR and the Constitutional Court.

**b) Considerations of the Proceeding from the Perspective of Chilling Effect**

42. According to the case-law of the ECHR, even initiating an investigation and carrying out prosecutions for actions that should be considered within the scope of freedom of expression constitutes an interference with the right to freedom of expression. The threat of investigation and prosecution of journalists may deter journalists from expressing their opinions on matters of public interest and may result in the press refraining from reporting on issues of public interest. It is clear that this causes the press to abstain from performing its duties that are guaranteed by the freedom of press and expression, and thus it creates a chilling effect. On many occasions, the ECHR stated that the threat of sanctions that may result from exercising the right to freedom of expression and press may discourage people from making similar statements in the future. In this regard, the ECHR found that it may cause a chilling effect and ruled that the right to freedom of expression and press was violated. (*Lombardo and others v.*



*Malta*, no., 24.04.20077333/06, § 61, *Association Ekin/Fransa*, no. 39288/98, 18.01.2000 ve *Aktan v. Turkey*, no. 20863/02, 23.09.2008, §§ 27-28)

43. In the case at hand, three officials of Birgün Newspaper were prosecuted for publishing an article on a decision delivered by a criminal judgship of peace. The article was basically reporting the judge's decision. Although the journalists were acquitted, nearly 4 years have passed since an investigation was initiated against them. Since the complainant has appealed against the acquittal decision, the case is pending and the journalists are still under the threat of being convicted.

## 7. References

### a) Case-Law

#### i. European Court of Human Rights

Ömür Çağdaş Ersoy v. Turkey, no. 19165/19, 15.6.2021

Von Hannover v. Germany (no. 2) [GC], 40660/08 and 60641/08, 7/2/2012

Axel Springer AG v. Germany, [BD], no. 39954/08, 7/2/2012;

Von Hannover v. Germany (no. 2) [GC], nos. 40660/08 and 60641/08, §§ 108

Lingens v. Austria, no. 9815/82, 08.07.1986, para. 42

Altuğ Taner Akçam v. Turkey, no: 27520/07, 25.10.2011

Dilipak v. Turkey, 29680/05, 15.09.2015

Lombardo and Others v. Malta, no., 24.04.20077333/06

Association Ekin v. France, no. 39288/98, 18.01.2000

Aktan v. Turkey, no. 20863/02, 23.09.2008

#### ii. Constitutional Court

Ali Kıdık, no. 2014/5552, 26.10.2017

Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others, no. 2018/14884, 27.10.2021

Sevim Akat Ekşi, no. 2013/2187, 19.12.2013

Neşe Aslanbay Akbıyık, no. 2014/5836, 16.04.2015

Gülsim Genç, no. 2013/4439, 06.03.2014

İlhan Cihaner (2), no. 2013/5574, 30/6/2014

Kadir Sağdıç, no. 2013/6617, 8/4/2015

### b) News

Birgün Newspaper, "An access ban was imposed on the title "Allegations on Berat Albayrak – Özge Ulusoy Affair" of Ekşi Sözlü", 21.06.2019, Available at <https://www.birgun.net/haber/eksi-sozluk-teki-berat-albayrak-ozge-ulusoy-basligi-kaldirildi-259466>, Accessed on 20.04.2022.

### c) Articles

Y. Akdeniz & O. Güven, EngelliWeb 2020: Fahrenheit 5651: The Burning Effect of Censorship, Freedom of Expression Association Publications, August 2021, Available at [https://ifade.org.tr/reports/EngelliWeb\\_2020\\_Eng.pdf](https://ifade.org.tr/reports/EngelliWeb_2020_Eng.pdf).