

Contact: Ireneusz Kondak
Tel: 03.90.21.59.86

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Meeting: 1521st meeting (March 2025) (DH)

Communication from an NGO (“İFÖD” - Freedom of Expression Association) (10/02/2025) in the Artun and Guvener group of cases v. Turkey (Application No. 75510/01).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1521^e réunion (mars 2025) (DH)

Communication d'une ONG (“İFÖD” - Freedom of Expression Association) (10/02/2025) dans le groupe d'affaires Artun et Guvener c. Turquie (requête n° 75510/01) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



DGI

10 FEV. 2025

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

RULE 9.2 COMMUNICATION

in the Artun and Güvener Group of Cases (no. 75510/01) v. Turkey

by

İFADE ÖZGÜRLÜĞÜ DERNEĞİ (İFÖD)

11 February 2025

An independent non-governmental organization specialized in defending and promoting freedom of expression



DGI Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECtHR
F-67075 Strasbourg Cedex
FRANCE

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Rule 9.2 Communication from İfade Özgürlüğü Derneği (“İFÖD”) in the Artun and Güvener Group of Cases (no. 75510/01) v. Turkey

1. This submission is prepared by **İfade Özgürlüğü Derneği** (“İFÖD” – Freedom of Expression Association), a non-profit and non-governmental organization dedicated to protecting and promoting the right to freedom of opinion and expression in Türkiye.
2. The purpose of this submission is to update the **Committee of Ministers** on the general measures concerning the *Artun and Güvener* Group of Cases (no. 75510/01) v. Turkey. In this context, İFÖD will examine the **excessive use of Article 299 of the Turkish Criminal Code** (“TCC”) and analyse its application by judicial authorities, highlighting ongoing concerns regarding freedom of expression and the failure to implement necessary reforms.

Background

3. The Artun and Güvener Group of Cases concerns interferences with the applicants’ **right to freedom of expression** due to their **criminal convictions for insulting the President of Türkiye** (Article 299 of the TCC) or **public officials** (Article 125/3 of the TCC).
4. On **11 January 2024**, the **Government** submitted a new **Action Plan** for the Committee’s **1492nd meeting**. In the **Action Plan**,¹ the **Government** referenced various judicial decisions concerning the application of **Article 299 of the TCC**, asserting that there is **no issue regarding the implementation of the European Court’s judgments** and that **abolishing Article 299 is unnecessary**.
5. After reviewing the Action Plan, at its 1492nd meeting, the Committee of Ministers called on the Turkish authorities to **consider further legislative amendments** to the **Criminal Code** and the **Anti-Terrorism Law**, particularly articles 125 § 3 and 301 of the Criminal Code, to **ensure that the exercise of freedom of expression does not constitute an offence**. The Committee also **urged the authorities to abrogate article 299 of the Criminal Code**² and to **provide statistical data on the application of articles 125/3 and 299 within the criminal justice system**.

¹ DH-DD(2024)39

² 1492nd meeting, 12-14 March 2024 (DH)



6. Prior to this submission, **iFÖD** made **four previous submissions** highlighting the issues arising from the **application of Article 299 of the TCC**. In its most recent submission, **iFÖD** focused on the cases of **prominent journalist Dr. Sedef Kabaş** and other individuals prosecuted for **insulting the President**. In this submission, **iFÖD** will analyse the **current application of Article 299 in Türkiye**, with a particular emphasis on the **problems associated with statistical data** and the **proportion of judgments issued under this article**.

iFÖD's Observations

Developments after the Submission of the Action Plan

7. In its **Action Plan**, the Government references **several cases** related to **article 299** of the Turkish Penal Code (TCC), asserting that judicial rulings align with the European Court of Human Rights (ECtHR) jurisprudence. However, **with the exception of one case**, it remains **unclear whether these verdicts are final**. Notably, only the **3rd Criminal Chamber of the Court of Cassation's judgment** rendered on **14 June 2023** is final. Yet, even in this case, the **Court of Cassation** failed to reference the *Vedat Şorli v. Turkey* judgment or engage with the **substantive concerns** raised by the ECtHR regarding **article 299 of the TCC**.³
8. **iFÖD's review of the Constitutional Court and Court of Cassation databases** confirms that **neither court** has ever **cited or engaged with** the *Vedat Şorli* judgment. More notably, **no domestic court** has **acquitted a defendant** by directly applying **ECtHR case law** in this context. Furthermore, **national courts have systematically disregarded defence counsels' references** to the *Vedat Şorli* judgment. The Government's cited decisions do not deviate from this **consistent pattern of non-implementation**.
9. Despite the Government's Action Plan, **prosecutions for insulting the President continue at an alarming rate**. Thousands of individuals in **Türkiye** have faced prosecution under article 299 of the TCC since the submission of the last **Action Plan**. As demonstrated by the examples below, **a significant portion of these trials** targeted expressions that **fall squarely within the scope of political speech** and should be protected under **freedom of expression**.
10. The case of **Dilrubha Kayserilioğlu**, widely followed by the public, **exemplifies the systemic issues surrounding the implementation of article 299 of the Criminal Code**. In the summer of 2024, during a street interview about blocking access to the Instagram platform, Ms. Kayserilioğlu stated:

"In the middle of the 21st century, if we abandon the parliamentary system and hand over the Republic of Türkiye to a single individual, he will treat it as if it were his personal property or stable. His own Instagram account openly publishes Friday messages. And there are even those who support this: 'Of course, he will use it; of course, he will unblock it.' This may be misunderstood or lead to other interpretations. I am not concerned at all."
11. Following these remarks, she was **taken into custody and held in pre-trial detention for 17 days**. Subsequently, a lawsuit was filed against her on charges of **provoking the public to**

³ 3rd Criminal Chamber of the Court of Cassation, Docket No: 2021/13041 Decision No: 2023/431, 14.06.2023



hatred and hostility under article 216 of the TCC, as well as **insulting the president** under article 299. Ultimately, Ms. Kayserilioğlu was **convicted and sentenced to 11 months and 20 days in prison** for insulting the president, with the **pronouncement of the judgment suspended**.⁴

12. **The accusation of insulting the President has not been limited to adults**; as in previous years, **children have also faced similar criminal proceedings in 2024**. For instance, a **16-year-old boy was detained** for allegedly swearing as President Erdoğan's motorcade passed. Following his detention, a **lawsuit was filed against him under Article 299 of the TCC** for insulting the president. Initially, judicial control measures were imposed on him, though they were later lifted. **His trial remains ongoing**.⁵
13. In addition to these examples, numerous artists⁶, actors⁷, politicians⁸, and journalists⁹ **continue to face prosecution solely for expressing criticism of the President of Turkey, his policies, and political statements**. Recent media reports consistently highlight the widespread and systematic use of **article 299 of the TCC** as a tool to **punish and silence dissent** in Türkiye.
14. **On 01.06.2023, the Constitutional Court annulled the provision regulating the suspension of the pronouncement of judgments** (No: 2022/120, 2023/107), ruling that it was insufficient to prevent arbitrary practices by public authorities and had a **chilling effect** on fundamental rights and freedoms, particularly **freedom of expression** and the **right to assembly**. However, **the Parliament reenacted this rule** and incorporated it into the **Criminal Procedure Code**, ensuring its continued application.
15. This provision remains widely used in cases concerning **freedom of expression**, particularly in prosecutions for **insulting a public official** (article 125/3-a of the Criminal Code) and **insulting the President** (article 299 of the Criminal Code). Its persistence raises significant concerns regarding **the protection of freedom of expression** and **compliance with the European Court's judgments**. While such decisions carry no formal consequences if no

⁴ Medyascope, “*The Sentence for Dilruba Kayserilioğlu Has Been Announced*”, 31.10.2024, Available at: <https://medyascope.tv/2024/10/31/dilruba-kayserilioglu-verilen-ceza-belli-oldu/>

⁵ Cumhuriyet Newspaper, “*Erdoğan Intervenes: 16-Year-Old Put on Trial for Insulting the President*”, 19.11.2024, Available at: <https://www.cumhuriyet.com.tr/siyaset/erdogan-mudahil-oldu-16-yasindaki-cocuga-cumhurbaskanina-hakaret-davasi-2270453>

⁶ T24 Newspaper, Gökçer Tahincioğlu, “*Genco Erkal: Tried for Insulting the President at 83, Defended Nature, Democracy, and Freedom of Expression*”, 31.07.2024, Available at: <https://t24.com.tr/yazarlar/gokcer-tahincioglu-yuzlesme/83-yasinda-cumhurbaskani-na-hakaretten-yargilandi-dogayi-demokrasiyi-ifade-ozgurlugunu-savundu,45840>

⁷ DHA, “*Istanbul – İlyas Salman Faces 4 Years and 8 Months in Prison for 'Insulting the President'*”, 05.11.2024, Available at: <https://www.dha.com.tr/yerel-haberler/istanbul/istanbul-ilyas-salmana-cumhurbaskanina-hakar-2527160>

⁸ Anadolu Ajansı, Başar Akbulut Yazar, “*President Erdoğan Files Criminal Complaint and Lawsuit Against CHP Leader Özel*”, 01.11.2024, Available at: <https://www.aa.com.tr/tr/gundem/cumhurbaskan-erdogandan-chp-genel-baskan-ozel-hakkinda-suc-duyurusu-ve-tazminat-davasi/3381815>

⁹ Bianet, “*Journalist Levent Gültekin Sentenced to 11 Months in Prison for 'Insulting the President'*”, 19.03.2024, Available at: <https://bianet.org/haber/gazeteci-levent-gultekin-e-cumhurbaskanina-hakaretten-11-ay-hapis-cezası-293225>



further offences are committed within a **five-year period**, they undoubtedly **suppress dissent** by discouraging criticism of the President and fostering **self-censorship** during this time.

16. **iFÖD holds the view that the current case law fails to provide any effective legal safeguards** in the application of **article 299 of the TCC**. Similarly, in light of the aforementioned **rulings of domestic courts**, it is evident that Turkey's judicial practice **is neither well-established nor capable of offering effective protection** for critical or dissenting opinions. A few selective positive decisions **cannot be considered an improvement in case law**, nor do they reflect a meaningful shift in judicial practice. As underscored by both **the European Court and the Committee of Ministers**, the **only effective remedy for the systemic breach caused by the persistent application of article 299 of the TCC is its complete abolition**.
17. In light of Article 90 of the Turkish Constitution, which explicitly states that in cases of conflict between international agreements on fundamental rights and freedoms and domestic laws, the provisions of international agreements shall prevail, article 299 of the TCC should no longer be applied by domestic courts as it is in direct contradiction with Article 10 of the ECHR. However, despite this clear constitutional mandate, domestic courts and judicial authorities **continue to blatantly disregard both** the ECtHR's judgment in *Vedat Şorli* and the supremacy of international human rights law enshrined in Article 90 of the Constitution.
- Problems Related to Statistics**
18. In 2022, the government **altered the methodology for compiling crime statistics** without providing any justification or explanation. As a result, from that year onwards, it has become **impossible to track** the number of individuals **investigated, prosecuted, convicted, or acquitted under Article 299 of the TCC**. This lack of transparency **obscures the true scale of prosecutions** under this provision and **hinders independent oversight** of its application.
19. In the **last Action Plan submitted by the Turkish Authorities on 11 January 2024**, the Government provided statistical data from the **Judicial Statistics** ("Adalet İstatistikleri"), published by the General Directorate of Judicial Record and Statistics under the Ministry of Justice. However, as the **Committee has previously noted**, these statistics **do not allow for meaningful analysis or research** due to their lack of specificity.
20. Crucially, the **statistical data is no longer transparent**, as it **fails to categorize offences separately** for each article of the Turkish Criminal Code. In other words, critical information—such as the **number of investigations, prosecutions, convictions, acquittals, and dismissals** for **each specific offence**—is **no longer provided** in a disaggregated manner. This lack of clarity severely restricts independent oversight and **prevents an accurate assessment of the extent to which article 299 continues to be applied**.
21. For instance, **since 2022, it has become impossible to obtain separate statistical data** on criminal investigations initiated under articles 299, 300, and 301 of the Turkish Criminal Code. Instead, these offenses have been **grouped together under a single "Articles 299-301"**



category,¹⁰ making it impossible to determine the number of cases specific to each provision. As a result, statistical data on investigations, prosecutions, and convictions under Article 299 can no longer be accurately tracked.

22. This methodological change, introduced in the **2022 Judicial Statistics report**, not only obscures the extent of the application of article 299 but also disrupts historical data analysis, preventing any meaningful comparison with previous years. The lack of disaggregated data significantly hinders transparency and independent oversight, further complicating efforts to assess compliance with the European Court's judgments.
23. The Committee of Ministers has raised concerns regarding this new statistical methodology. During its 1492nd meeting, the Committee urged the Turkish Government to provide detailed and disaggregated data on the application of certain provisions within the criminal justice system, including articles 6 § 2 and 7 § 2 of the Anti-Terrorism Law and Articles 215, 216, 220 § 7, 314, 125 § 3, 299, and 301 of the Criminal Code. The Committee specifically requested data covering the past five years, with details on the type of conduct prosecuted, in order to assess how these provisions are being applied in cases involving the right to freedom of expression.
24. This lack of transparency creates greater secrecy rather than ensuring accountability and significantly hinders the ability of iFÖD and other NGOs to scrutinize judicial statistics effectively. The absence of disaggregated data prevents meaningful analysis of trends and evaluation of the judicial system's compliance with human rights standards. Therefore, the Government should be requested to provide detailed and specific statistics on the application of articles 125/3 and 299 of the Criminal Code, allowing for a comprehensive assessment of how these provisions are being implemented in practice.
25. Despite the Government's efforts to obscure the real numbers, it remains possible to estimate that tens of thousands of investigations have been initiated under article 299 of the TCC since 2022. According to the **Judicial Statistics for 2023**, there were 53.583 pending investigation files at Public Prosecutor's Offices in Türkiye related to **articles 299, 300, and 301** of the TCC.¹¹ Given statistical trends from previous years, it is reasonable to assume that the majority of these investigations are linked to **article 299**.
26. Similarly, in **2023**, prosecutors concluded investigations in **22.270 cases** related to **articles 299, 300, and 301**. Of these, **7.302 cases resulted in non-prosecution decisions**, while **6.646 cases proceeded to prosecution**.¹² At the same time, **17.183 cases** under these provisions were pending before first-instance criminal courts.

¹⁰ See p. 68 of the Judicial Statistics 2023 at https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22042024115644ADalet_ist-2023CALISMALARI59.pdf

¹¹ Republic of Türkiye, Ministry of Justice, Judicial Statistics, 2023, p. 68., available at: <https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/1042024101742Adilet%20%C4%B0statistikleri%202023.pdf>

¹² Ibid, p. 72.



27. In the same year, first-instance criminal courts rendered decisions in 5,678 cases under articles 299, 300, and 301. Of these, 1,631 cases resulted in convictions, 1,613 cases ended in acquittals, and 1,950 cases were subjected to the postponement of the announcement of judgments.¹³
28. These figures clearly demonstrate that article 299 continues to be systematically applied despite the ECtHR's ruling in *Vedat Şorli v. Türkiye* and the Committee of Ministers' calls for its abolition. The widespread and persistent use of this provision confirms its role as a tool to suppress dissent and restrict freedom of expression in Türkiye.
29. Although separate statistics for article 299 of the TCC are not available, the cumulative figures indicate that tens of thousands of individuals are investigated each year, and thousands are prosecuted and convicted for insulting the President. Despite this widespread use, the Turkish Constitutional Court has not issued a single decision concerning article 299 since the ECtHR's *Vedat Şorli judgment* in 2021. This continued judicial inaction underscores the failure of domestic courts to address the systemic issues identified by the European Court, further entrenching the chilling effect on freedom of expression in Türkiye.

Conclusions and Recommendations

30. There has been no progress achieved with regard to the provision of an adequate legislative framework that enables the protection of Article 10 and full and effective implementation of the *Artun and Güvener* group of cases.
31. No progress has been made toward establishing an adequate legislative framework to ensure the protection of Article 10 and the full and effective implementation of the **Artun and Güvener group of cases**. The absence of necessary legal reforms continues to obstruct compliance with the European Court's judgments, further entrenching restrictions on freedom of expression in Türkiye.
32. The Turkish authorities deliberately disregarded the structural problems observed by the Court and the Committee of Ministers arising from the text and application of article 299 of TCC.
33. The Turkish authorities have deliberately ignored the structural issues identified by the European Court and the Committee of Ministers concerning both the text and application of article 299 of the TCC. Despite repeated calls for reform, no meaningful steps have been taken to address these fundamental problems, further entrenching restrictions on freedom of expression in Türkiye.

iFÖD urges the Committee of Ministers

34. To call on the Turkish authorities to provide transparent and disaggregated statistical data on the application of article 299 of the TCC. Such data is essential to enable the Committee

¹³ *Ibid*, see pages 95 and 100.



of Ministers and civil society to effectively monitor and assess developments regarding this provision and its impact on freedom of expression.

35. To request the Turkish Government to provide a **detailed explanation** on the implementation of the **European Court's observations on general measures under Article 46**, as outlined in the **Vedat Şorli judgment**. Ensuring compliance with these measures is essential to addressing the **structural problems** arising from the **continued application of article 299 of the TCC**.
36. To maintain the **Artun and Güvener group of cases under the enhanced procedure**, given the **persistent structural problems** regarding the application of article 299 of the TCC.

İFADE ÖZGÜRLÜĞÜ DERNEĞİ
Osmanağa Mah. Hasırcıbaşı Cad.
No:24/4 Kadıköy/İSTANBUL
Kadıköy V.D. 4700644051
Kütük No: 34-235/076

İfade Özgürlüğü Derneği – İFÖD (Turkey)
Web: <https://ifade.org.tr> Twitter: @ifadeorgtr

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