

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE
OF MINISTERS
COMITÉ
DES MINISTRES



Contact: Zoë Bryanston-Cross
Tel: 03.90.21.59.62

Date: 18/10/2022

DH-DD(2022)1103

Document distributed under the sole responsibility of its author, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1451st meeting (December 2022) (DH)

Communication from an NGO (İfade Özgürlüğü Derneği ("İFÖD" – Freedom of Expression Association)) (06/10/2022) in the case of Akdeniz and Others v. Turkey (Application No. 41139/15).

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.

* * * * *

Document distribué sous la seule responsabilité de son auteur, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1451^e réunion (décembre 2022) (DH)

Communication d'une ONG (İfade Özgürlüğü Derneği ("İFÖD" – Freedom of Expression Association)) (06/10/2022) relative à l'affaire Akdeniz et autres c. Turquie (Requête n° 41139/15) **[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.

RULE 9.2 COMMUNICATION

in the case of Akdeniz and Others v. Türkiye (no. 41139/15 & 41146/15)

by

İFADE ÖZGÜRLÜĞÜ DERNEĞİ (İFÖD)

06 October, 2022

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

06.10.2022

Rule 9.2 Communication from İfade Özgürlüğü Derneği (“İFÖD”) in the case of *Akdeniz and Others v. Türkiye* (no. 41139/15 & 41146/15, 04.05.2021).

1. The submission 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 Türkiye.
2. The aim of this submission is to update the Committee of Ministers with regard to the general measures in the case of *Akdeniz and Others v. Türkiye* (no. 41139/15 & 41146/15, 04.05.2021). In this respect, İFÖD will discuss the failure of the Turkish authorities to implement the required general measures deriving from the case of *Akdeniz and Others v. Türkiye* as well as report and address the failure of judicial practice in fully aligning the domestic legal framework concerning the right to freedom of expression and press with the European Court’s case law.

Background

3. The case of *Akdeniz and Others v. Türkiye* concerns the **blanket ban** imposed by the Ankara 7th Criminal Judgeship of Peace covering the printed media, the audio-visual media and the Internet and any publication about the activities of the Parliamentary Investigation Commission established in the Turkish Grand National Assembly to investigate the “17-25 December 2013 corruption allegations” about four former ministers. Relying on article 3(2) of the Press Law No. 5187, the Ankara 7th Criminal Judgeship of Peace **broadened the scope of the Press Law with its decision** which was unpredictable for the applicants and the general public as the decision also included printed and visual material as well as any kind of information published on the Internet. In other words, the ban was akin to a preventive measure which **prohibited the publication of any information, whether damaging or not**, on virtually all the aspects of the ongoing parliamentary inquiry. Two of the applicants were academicians working on human rights related issues, in particular on freedom of expression and the third applicant was a well-known journalist. The applicants claimed that the blanket ban prevented them as public watchdogs to receive information on a matter of significant public interest.
4. In its decision, the European Court referred to the *Halk Radyo and Televizyon Yayıncılık A.Ş.* (“Halk Radyo”, no. 2014/19270, 11.07.2019) and *Yeni Gün Haber Ajansı Basım and Yayıncılık A.Ş. and Others* (“Yeni Gün”, no. 2014/4430, 25.09.2019) decisions of the Turkish Constitutional Court. Both decisions are related to blanket ban decisions subject to article 3(2) of the Press Law No. 5187 as in the case of *Akdeniz and Others v. Turkey*. The European Court, as well as the Constitutional Court, found that article 3(2) of the Press Law No. 5187

did not meet the criteria of foreseeability and clarity.¹ It should be noted that, with the two decisions referred by the European Court, the **Constitutional Court shifted its approach completely from that of the *Mahmut Tanal and Others* majority decision** (no. 2014/18803, 10.12.2014) which involved the **blanket ban** imposed by the Ankara 7th Criminal Judgeship of Peace about the activities of the Parliamentary Investigation Commission. In that decision, all the applications were found inadmissible, as a result of which three applications were made to the European Court which forms the background of *Akdeniz and Others v. Türkiye* decision.

5. The European Court **endorsed the Constitutional Court's conclusion** that article 3(2) of the Press Law had not satisfied the “foreseeability” and “clarity” criteria and that although Article 28 § 5 of the Constitution authorised recourse to a prohibition of publication subject to specific conditions, **there was no legislative provision authorising a ban on publication in the framework of criminal investigations** fulfilling the “foreseeability” and “clarity” conditions. The impugned interference had therefore **lacked any “legal basis”**. In this regard, the European Court decided that Article 10 of the Convention was violated in respect of Banu Güven, the journalist. However, the Court also held that the mere fact that other applicants, in their capacity as academics and popular users of social media platforms, had suffered indirect effects from the measure in question could not be sufficient to qualify them as “victims” within the meaning of Article 34 of the Convention.²

The Government's Action Report

6. On 28.03.2022, the Government submitted an Action Plan for the Committee's 1436th meeting.³ In the Action Plan, the Government stated that as the interim measure expired and the Grand National Assembly of Türkiye published its report on the corruption allegations, the negative consequences of the violation had been redressed. In terms of the **general measures**, referring to the Court's finding in the judgment that the scope of the impugned measure was similar to the *Çetin and Others* (40153/98 and 40160/98); *Ürper and Others* (14526/07) and *Cumhuriyet Vakfı and Others* (28255/07) decisions, the Government requested the case of *Akdeniz and Others* be classified as a clone case under the case of *Cumhuriyet Vakfı and Others*.

İFÖD's Observations

7. First, İFÖD considers that the applicable law in the cases of *Akdeniz and Others* and *Cumhuriyet Vakfı and others* are different, the **former raises new legal issues** and cannot be considered as a clone case as argued by the Government.
8. While, in the first, the blanket ban imposed by the Ankara 7th Criminal Judgeship of Peace relied on article 3(2) of the Press Law No. 5187, in the latter, in the *Cumhuriyet Vakfı and*

¹ *Akdeniz and Others v. Türkiye*, no. 41139/15, 04.05.2021, para. 94.

² *Ibid* 74.

³ See DH-DD(2022)378

Others case, the Ankara 25th Civil Court of First Instance ordered an interim injunction based on article 103 of the Code of Civil Procedure Law No. 1087 which is no longer in force.⁴

9. The interim measure in the *Cumhuriyet Vakfi* case was imposed in a civil law case pursuant to Code of Civil Procedure, whereas in *Akdeniz and Others* the injunction was imposed under the Press Law and, as accepted by the government, was part of a criminal investigation in nature. In addition to this basic difference, the reasoning of the Court differs in *Cumhuriyet Vakfi* and *Akdeniz and Others*. So, although both cases involved measures which concerned future publications whose content had not been known at the time when the ban had been issued, in the case of *Akdeniz and others*, the European Court ruled that **article 3(2) of the Press Law No. 5187 does not meet the requirements of the principle of legality**, whereas, in the case of *Cumhuriyet Vakfi and others*, the Court concluded that the interim injunction ordering a blanket ban to publish news and articles on a subject matter of the proceedings **was not proportionate and necessary in a democratic society**.
10. As a result of the foregoing, İFÖD is of the opinion that the *Akdeniz and Others* judgment **raises new legal issues** and **should not be classified** in the *Cumhuriyet Vakfi and Others* group.
11. Secondly, the **information and data provided** by the Government in its action plan is **inadequate** and **does not reflect accurate information** concerning the application of article 3(2) of Law No. 5187.
12. As indicated above, in the case of *Akdeniz and Others*, the Court endorsed the conclusion of the Constitutional Court, who found that article 3(2) of the Press Law No. 5187 did not meet the criteria of foreseeability and clarity with respect to the publication ban in the context of parliamentary investigations with regards to four former ministers. The Court concluded that the interference at issue lacked a legal basis within the meaning of Article 10 of the Convention and did not afford the applicant sufficient degree of protection required by the rule of law in a democratic society.
13. It should also be noted that the Constitutional Court found article 3 of Law No. 5187 in breach of the principle of legality for the first time in *Halk Radyo* decision⁵ which was delivered on 11.07.2019. The Court basically overruled its *Mahmut Tanal and Others* decision (no. 2014/18803, 10.12.2014) without explicitly stating so. In the *Halk Radyo* decision, the Constitutional Court stated that although article 3 of Law no. 5187 included legitimate reasons to restrict press freedom, the provision did not contain any rules concerning interim measures, authorising judicial authorities to impose bans on publications in the framework of criminal investigations or during trial proceedings.⁶ In other words, the Constitutional Court did not find the relevant provision unconstitutional, but concluded that the provision could not be invoked to impose ban on publications. As a result the provision was not abolished. Although the decisions of the Constitutional Court are binding for all

⁴ *Cumhuriyet Vakfi and Others v. Türkiye* no. 28255/07, 08.10.2013, para. 20.

⁵ *Halk Radyo and Televizyon Yayıncılık A.Ş.*, no. 2014/19270, 11.07.2019.

⁶ *Halk Radyo and Televizyon Yayıncılık A.Ş.*, para. 44.

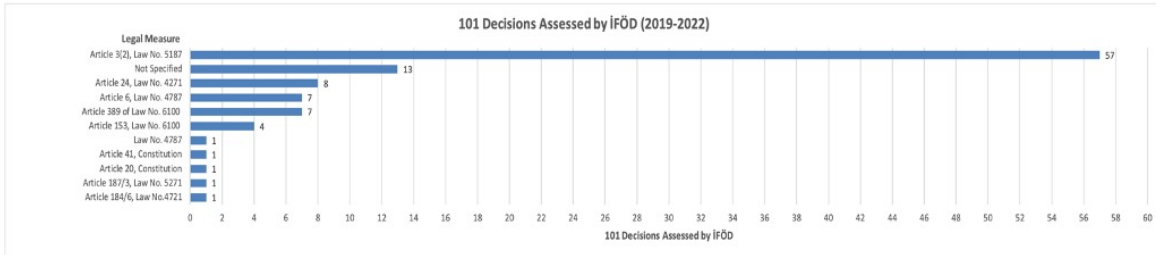
domestic courts, in practice, the **domestic courts may continue to apply any provision even after it is ruled by the Constitutional Court to be in breach of the principle of legality requirements.**

14. Moreover, the Constitutional Court, joined five separate applications in the case of *Yeni Gün* (no. 2014/4430, 25.09.2019) and found violations of Articles 26 and 28 of the Constitution with regards to five separate publication bans issued by different criminal judgeships of peace on matters of public interest including in relation to two separate applications involving the **blanket ban** about the activities of the Parliamentary Investigation Commission established in the Turkish Grand National Assembly to investigate the “17-25 December 2013 corruption allegations” about four former ministers; a **blanket ban** on any news reporting involving **lorries belonging to the intelligence agency MIT** that carried aid for Syria, but were “illegally” stopped en route by gendarmerie during 2014 and a **publication ban** which followed the former Prime Minister Erdoğan’s call upon the media not to report and comment on the **Mosul Turkish Consulate hostage crisis** until the diplomats were freed during 2014. Needless to say, the Constitutional Court followed its approach in its *Halk Radyo* decision and ruled that imposing ban on publications through article 3 of Law No. 5187 **to be in breach of the principle of legality requirements.**
15. As it happened in the case at hand, the domestic courts are still applying article 3 of Law No. 5187 ignoring both the Constitutional Court’s *Halk Radyo* decision as well as the European Court’s caselaw since the Court decided *Akdeniz and Others v. Turkey*. This is merely because the Parliament has not introduced a foreseeable provision authorising judicial authorities to impose ban on publications **for more than three years** since the *Halk Radyo* and *Yeni Gün* decisions of the Constitutional Court.
16. In other words, both high courts found the application of article 3 of Law No. 5187 as a basis for imposing interim measure to ban publications in breach of the principle of legality requirements. Considering the clear finding of the European Court in which ruled article 3(2) of Law No. 5187 did not meet the criteria of foreseeability and clarity, **the domestic courts should avoid applying** this provision since it is in contradiction with Article 10 of the Convention.
17. As mentioned above, even after the Constitutional Court’s clear findings in *Halk Radyo* and *Yeni Gün*⁷ decisions delivered before the European Court’s *Akdeniz and Others* judgment, on 11.07.2019 and 25.09.2019, the domestic courts continued to rely on article 3(2) of Law No. 5187 in their decisions to impose blanket bans on various news and court proceedings. Thus, the circulation of the decisions of the European Court as well as the Constitutional Court decisions with the domestic courts **cannot be considered as an effective general measure.**
18. As it will be demonstrated in this submission, the domestic courts disregard the findings of the Court in **the case of *Akdeniz and Others v. Türkiye* (no. 41139/15)** and continue to issue blanket bans relying on article 3(2) of Law No. 5187. In this respect, *Akdeniz and others*

⁷ Yeni Gün Haber Ajansı Basım and Yayıncılık A.Ş. and Others, no. 2014/4430, 25.09.2019.

illustrates a structural problem arising from the application of article 3(2) of Law No. 5187 and classified as a Leading Case by the Committee of Ministers.

19. İFÖD would like to note that it identified and examined **101 separate blanket ban decisions** issued by **80 separate domestic courts** issued after the publication of *Halk Radyo* and *Yeni Gün* decisions of the Constitutional Court in the Official Gazette on 17.09.2019. (**Annex-I**)
20. In **57 of these decisions, 46 separate domestic courts** relied on article 3(2) of Law No. 5187 while issuing their blanket publication ban covering generally the printed media, the audio-visual media and the Internet. On the other hand, in **31 decisions**, the domestic courts relied on other legal measures to impose blanket ban decisions.⁸ Some of these measures do not clearly stipulate the conditions for imposing such a blanket ban. Finally, İFÖD identified **13 separate blanket ban decisions** issued by **10 separate domestic courts**, which did not refer to any legal measure at all.



21. Thus, unlike what the government argues, domestic judicial authorities continue to impose blanket publication, broadcast and even Internet bans **relying primarily on article 3(2) of Law No. 5187 in 56.44% of the decisions identified by İFÖD and relying on other legal measures in 30.69% of the cases, while referring to no legal measures in 12.87% of the decisions** assessed by İFÖD since the Constitutional Court's decisions in *Halk Radyo* and *Yeni Gün* become public. Some of the decisions identified by İFÖD are also issued after the European Court issued its decision in *Akdeniz and Others v. Türkiye* (no. 41139/15 & 41146/15, 04.05.2021). While the exact number of such decisions are unknown and the Government should provide the details, the domestic courts clearly cannot continue to rely on **article 3(2) of Law No. 5187** to impose blanket bans targeting the media. In other words, subsequent to the Constitutional Court and the European Court decisions, **article 3(2) of Law No. 5187** cannot be the legal basis for such decisions.
22. The sample decisions examined by İFÖD shows that article 3(2) of Law No. 5187 is relied upon in a wide range of subjects including but not limited to divorce cases and criminal investigations on allegations of child sexual abuse, bribery, embezzlement, counterfeiting of official documents, intentional killing and ill-treatment.

⁸ For the relevant articles see articles 24 and 184(6) of Law No. 4721 on Turkish Civil Law, articles 153 and 389 of Law No. 6100 on Civil Procedure Law, article 187/3 of Law No. 5271 on Criminal Procedure Law, article 6 of Law No. 4787 on Establishment, Duties and Proceedings of Family Courts, and articles 20 and 41 of the Turkish Constitution.

23. İFÖD specifically would like to bring the following domestic courts' decisions to the attention of the Committee, all of which have been issued subsequent to the relevant decisions of the Constitutional Court and the last one has been issued after the European Court's decision in *Akdeniz and Others*.
24. Çaycuma Criminal Judgeship of Peace, with its decision no. 2020/14 decided to ban all news reporting as well as content on an investigation of bribery allegations against the officers of the General Directorate of Land Registers of Kastamonu on 15.01.2020 (**Annex-II**). The Çaycuma judge, in its decision, expressed that a blanket ban was necessary for collecting evidence and leading a reliable investigation. According to the judge, the bribery allegations may cause an adverse impact on the officers of the Directorate of Land Registers and their operations. The judge added that ordering a blanket ban was deemed necessary for protecting public order. However, the decision did not refer to the two Constitutional Court decisions and it prohibited the publication of any information, whether damaging or not, on virtually all the aspects of the ongoing investigation.
25. On 20.02.2020, Istanbul 4th Criminal Assize Court issued a blanket ban in relation to the ongoing prosecution of the Kırklareli Governor, Orhan Çiftçi with its interim decision no. 2020/35. (**Annex-III**) According to the media reporting, the governor was charged with threatening, battering, and depriving of her former ex-girlfriend of her liberty.⁹ The Istanbul 4th Criminal Assize Court did not refer to the two Constitutional Court decisions.
26. On 19.03.2020, the Izmir 7th Criminal Judgeship of Peace issued a blanket ban within the scope of the investigation launched following a complaint by Mustafa Koçak, a prisoner, with its decision no. 2020/1242. (**Annex-IV**) Mustafa Koçak was convicted for supplying arms to the murderers of Public Prosecutor Mehmet Selim Kiraz, who was at the time of his death, investigating the murder of 14 years old Berkin Elvan due to the disproportionate use of force by the police forces during the Gezi Park protests in 2013. Following his conviction, Mustafa Koçak began to hunger strike to protest his conviction based on inconsistent statements of a number of confessors. Allegedly, the wardens of the prison interfered with Mustafa Koçak's hunger strike and force fed Koçak.¹⁰ Subsequently, Mustafa Koçak and his family filed a criminal complaint against the prison wardens. Within the scope of the investigation, the public prosecutor requested a blanket ban on the ground that the investigation may be jeopardized and suspect public servants may flee or hide the evidence. The criminal judgeship of peace later accepted the request with the same reasoning. The judge did not refer to the two Constitutional Court decisions.
27. Finike Criminal Judgeship of Peace with its decision no. 2020/358 issued a blanket ban in a case concerning the alleged corruption of hospital staff in the public tenders for procurement

⁹ For more information see BirGün Newspaper, "Imprisonment request for the governor who took his lover to the forest and battered him", 19.02.2020 at <https://www.birgun.net/haber/sevgilisini-ormana-goturup-darp-ettiler-vali-hakkinda-hapis-istemi-288630>.

¹⁰ For further information see Bianet, "Call for an Effective Investigation into Torture of Death Fasting Prisoner Mustafa Koçak", 18.03.2020 at <https://bianet.org/english/human-rights/221565-call-for-an-effective-investigation-into-torture-of-death-fasting-prisoner-mustafa-kocak>

of the Finike State Hospital on 15.06.2020 (**Annex-V**). Similar to the Çaycuma decision, the Finike Criminal Judgeship of Peace did not refer to the two Constitutional Court decisions. By the date of this submission, even after 2 years, it is not possible to receive information on the proceedings related to the culprits.¹¹

28. Bingöl Criminal Judgeship of Peace with its decision no. 2020/968 delivered a blanket ban decision regarding an investigation of a suspect who allegedly committed the offense of embezzlement and counterfeiting of official documents on 09.06.2020 (**Annex-VI**). Relying on article 3(2) of Law No. 5187, the judge stated that the disclosure of the identity of the victim could have a negative impact on the victim and her family, therefore, decided to ban all future news for protecting the victim and his family. However, the judge did not explain why and how the victim and his family may face negative consequences because of the news published on the investigation. The Bingöl judge also did not refer to the two Constitutional Court decisions.
29. Van 2nd Criminal Judgeship of Peace with its decision no. 2020/2823 also ordered a blanket ban in relation to a criminal investigation related to torture and ill-treatment on 13.09.2020 (**Annex-VII**). It is understood from the decision that subsequent to a counter-terrorism operation in which four terrorists and three Turkish soldiers died, the gendarmerie arrested two suspected collaborators of the terrorists. The collaborators claimed that they were beaten by the gendarmerie. Within the scope of the investigation of alleged ill-treatment, the judge decided to order a blanket ban by solely stating that a blanket ban was necessary for the sake of the investigation and for the protection of public order. The Van judge also did not refer to the two Constitutional Court decisions.
30. On 16.10.2020, the Istanbul 8th Criminal Judgeship of Peace ordered a blanket ban in the investigation of the infamous businessperson Sezgin Baran Korkmaz and his 13 other affiliations with its decision no. 2020/4728. (**Annex-VIII**) Both in Turkey and the US, Sezgin Baran Korkmaz is facing charges of money laundering, bribery and fraud. Allegedly Sezgin Baran Korkmaz has also connections with high-ranking state officials.¹² Within the scope of the investigation, on 15.10.2020, the public prosecutor requested a wholesale blanket ban on the ground that the investigation file may cause a negative impact on the commercial reputation of Sezgin Baran Korkmaz and 13 other suspects. Without referring to the two Constitutional Court decisions, the Istanbul 8th Criminal Judgeship of Peace admitted the request by stating that the commercial activities of the suspects having the shares of the company may be damaged by the ongoing investigation.

¹¹ For the limited information on the arrest of the suspect see Antalya Haber, “Hamit Batur detained,” 14.10.2020, at <https://www.mygazete.com/yerel-haber/antalya/antalya-haber-hamit-batur-gozaltina-alindi-iddiasi/123483/>. See further, <http://www.yedigunhaber.com/gundem/yolsuzluk-krizi-belediye-muduru-gozaltina-alindi-h5445.html>.

¹² For more information see BirGün Newspaper, “The assets of SBK Holding and Sezgin Baran Korkmaz were confiscated”, 09.10.2020, at <https://www.birgun.net/haber/sbk-holding-ve-sezgin-baran-korkmaz-in-mal-varliklarina-el-konuldu-318577>.

31. İFÖD would like to stress further that the recent examples are not limited to 2019-2021 dated judgments. One of the most recent blanket bans appeared on 06.07.2022. It was initially reported by the media that a citizen held a doctor responsible for the death of her mother and shot and killed the doctor at the Konya City Hospital.¹³ After murdering the doctor, the perpetrator shot himself and died at the same hospital. Almost immediately, on the same date, Konya 5th Criminal Judgeship of Peace with its decision no. 2022/2826 imposed a blanket ban on all news about the incident (**Annex-IX**). In this decision, the judge relied on article 3(2) of Law No. 5187 and stated that “the purpose of the blanket ban is to maintain national security, public order, and lead an effective investigation.” Except for this statement, the judge did not provide any explanation on how and why the judge deemed it necessary to impose a blanket ban on the incident. The Konya judge did not refer to the two Constitutional Court decisions as well as to the European Court’s *Akdeniz and Others* judgment.
32. More recently, on 24.07.2022, the public was shaken by the incident of a nine years old child who was found locked in a house full of trash according to media reports. The child was in poor condition when he was found by municipal officials.¹⁴ Subsequently, on 28.07.2022, the provincial directorate of family and welfare services requested access blocking for 101 separate news articles and a blanket news ban covering all future news about this incident. Bursa 3rd Criminal Judgeship of Peace with its decision no. 2022/4779 imposed a blanket ban relying on article 3 (2) of Law No. 5187 (**Annex-X**). In its decision, Bursa 3rd Criminal Judgeship of Peace also decided to block access to 101 separate news articles pursuant to article 9 of Law No. 5651 on Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publication. While the decision indiscriminately blocked access to 101 separate news articles without making any distinction between articles that were carefully drafted without revealing any personal details of the child concerned, the decision ambiguously banned all future publications involving this issue by relying on article 3 (2) of Law No. 5187. The Bursa judgeship did not refer to the Constitutional Court’s as well as the European Court’s case-law on article 3 (2) of Law no. 5187. In this regard, the two Constitutional Court decisions, as well as the European Court’s *Akdeniz and Others* judgment, seems to be still ignored by the judiciary and the local courts continue to issue blanket ban decisions regardless of the high court decisions.
33. Thus, even with limited access to the case-law of the domestic courts, İFÖD believes that the sample decisions referred in this submission show that the application of article 3(2) of Law No. 5187 continues not to be in line with the European Court and the Constitutional Court judgments on publication and broadcast ban decisions. In this regard, İFÖD would like to draw the Committee’s attention to the failure of the Turkish authorities to address the problems observed by the European Court as well as by the Constitutional Court.

¹³ For more information see Gazete Duvar, “Armed attack in Konya City Hospital: Doctor and aggressor died,” 06.07.2022, at <https://www.gazeteduvar.com.tr/konya-sehir-hastanesinde-silahli-saldiri-doktor-ve-saldirgan-oldu-haber-1572329>.

¹⁴ For more information see Sözcü, “Child found locked in room for 1 year in trash house,” 24.07.2022, at <https://www.sozcu.com.tr/2022/gundem/cop-evde-1-yildir-odaya-kilitli-cocuk-bulundu-7266930/>

34. İFÖD would like to further note that the Constitutional Court's examination of victim status strays from the European Court. On numerous occasions, the Constitutional Court examined the blanket publication and broadcasting bans regarding the "17-25 December 2013 corruption allegations" about four former ministers. However, as it may be seen from the case-law, the Constitutional Court's consideration of victim status is not foreseeable. In other words, it is not possible to predict under which circumstances the Constitutional Court grants victim status to applicants. The lack of established legal standards in assessing whether an applicant has a victim status causes uncertainty and ambiguity in individual applications brought to the Constitutional Court especially with regards to matters of public interest including but not limited to blanked media bans.
35. In the *Mahmut Tanal and Others decision*,¹⁵ among the applicants of which were also the three applicants of *Akdeniz and Others*, the applicants were the deputies at the Grand National Assembly of Türkiye, journalists, and academicians. However, the Constitutional Court did not grant victim status to any of the six applicants and declared the application inadmissible without examining whether the applicants were directly affected by the publication and broadcasting ban. However, the Constitutional Court, in the *Halk Radyo* decision accepted a media company as a victim and found violations of articles 26 and 28 of the Constitution. The Court, in this decision made a distinction between the applicant media organisation and the applicants in the *Mahmut Tanal and Others* application.
36. However, in *Yeni Gün*,¹⁶ the Constitutional Court joined five separate applications and accepted the victim status of all the applicants who were media organizations, parliamentary deputies, and journalists. In fact, the application of the Sezgin Tanrikulu, an MP for CHP with regards to the blanket publication and broadcasting bans regarding the "17-25 December 2013 corruption allegations" about four former ministers was no different than that of Mahmut Tanal, also an MP for CHP. One of them was not regarded as a victim and his application was found inadmissible, while the other was regarded as a victim and his application resulted with a violation decision in the *Yeni Gün* decision. The same is true for the journalist applicants.
37. Therefore, in both decisions, the applicants had a similar status. Yet, in terms of the victim status, the Constitutional Court did not explain how and why it arrived to different conclusions on exactly the same subject matter in two different applications. The contradiction between the Constitutional Court's two separate judgments was brought to the European Court's attention. The journalist, Banu Güven lodged an application to the European Court after her application to the Constitutional Court was found inadmissible in the case of *Mahmut Tanal and Others*. The European Court accepted her victim status and found a violation of Article 10 in *Akdeniz and Others v. Türkiye*. In this regard, İFÖD would like to point out that the Constitutional Court's case-law on the victim status of the applicants is arbitrary and inconsistent with the European Court's case-law.

¹⁵ See *Yeni Gün Haber Ajansı Basım and Yayıncılık A.Ş. and Others*, no. 2014/4430, 25.09.2019.

¹⁶ See *Mahmut Tanal and Others*, no. 2014/18803, 10.12.2014.

38. Considering all the above, IFÖD believes **no progress has been achieved** with regard to the full enjoyment of freedom of expression and press as protected under Article 10 of the Convention with regards to the implementation of the *Akdeniz and Others v. Türkiye* judgment.

Conclusions and Recommendations

39. The case of *Akdeniz and Others* raises new legal issues and **should not be classified** in the *Cumhuriyet Vakfı and Others* group. As a **Leading Case**, its implementation should be **monitored separately**.

40. As explained in this submission, there has been **no progress achieved** with regard to the application of article 3(2) of Law No. 5187 on Press Law for the full and effective implementation of the case of *Akdeniz and Others*. The authorities have not introduced a foreseeable provision concerning publication bans.

41. Despite the decisions of the Constitutional Court and the European Court, the criminal judgeships of peace continue to invoke article 3(2) of the Law No. 5187 which is still in force while ignoring the judgments of the European Court and the Constitutional Court. Therefore, IFÖD recommends the Committee **to request from the Turkish Authorities to cease application of** article 3(2) of Law No. 5187 in imposing publication bans to comply with the *Akdeniz and Others v. Türkiye* judgment considering that issues arising from the *Akdeniz and Others* case **does not have an isolated nature**.

42. The Committee of Ministers should also ask the government to provide detailed statistical data on whether the domestic courts rely on **article 3 of Law No. 5187** in their decision to impose blanket bans on matters of public interest.

43. IFÖD also **recommends** the Committee to request from the Government to provide examples of recent judicial practices referring to the Court's *Akdeniz and Others v. Türkiye* decision as well as to the two decisions of the Constitutional Court with regards to the application of article 3(2) of Law No. 5187.

44. IFÖD further **recommends** the Committee to continue to supervise the implementation of the judgment of the European Court of Human Rights in the case of *Akdeniz and Others v. Türkiye*.

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

İfade Özgürlüğü Derneği – İFÖD (Türkiye)

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 the freedom of opinion and expression and the right to access and disseminate information and knowledge.

Court	Dossier Number	Date	Year	Legal Measure	Subject matter
Menemen Criminal Judgeship of Peace	2019/1519 D. İ	19.09.2019	2019	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
Neveşehir Criminal Judgeship of Peace	2019/2847 D. İ	22.09.2019	2019	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
İstanbul 14th Family Court	2019/72 E.	24.09.2019	2019	Article 3(2), Law No. 5187	Divorce Cases and Proceedings
Bitlis Criminal Judgeship of Peace	2019/3238 D. İ	24.12.2019	2019	Article 3(2), Law No. 5187	Reckless killing
İstanbul 14th Family Court	2019/807 E.	31.12.2019	2019	Article 3(2), Law No. 5187	Divorce Cases and Proceedings
İnegöl Criminal Judgeship of Peace	2020/27 D. İ	2.01.2020	2020	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
İstanbul 7th Civil Court of First Instance	2019/907 E.	2.01.2020	2020	Article 24, Law No. 4271	Prevention of Attack on Personal rights
Osmaneli Criminal Judgeship of Peace	2020/2 D. İ	6.01.2020	2020	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
İstanbul Anadolu 52nd Criminal Court of First Instance	2019/413 E.	7.01.2020	2020	Not Specified	Sexual Assault
İstanbul 24th Civil Court of First Instance	2019/57 D. İ	7.01.2020	2020	Article 389 of Law No. 6100	Protection of Personal rights
Ceylanpınar Criminal Judgeship of Peace	2020/16 D. İ	8.01.2020	2020	Article 3(2), Law No. 5187	Sexual Assault
Ceylanpınar Criminal Judgeship of Peace	2020/18 D. İ	8.01.2020	2020	Article 3(2), Law No. 5187	Sexual Assault
Pertek Criminal Judgeship of Peace	2020/9 D. İ	9.01.2020	2020	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
İstanbul 7th Family Court	2019/537 E.	9.01.2020	2020	Article 24, Law No. 4271	Best Interest of the Child
Bilecik Criminal Judgeship of Peace	2020/187 D. İ	14.01.2020	2020	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
Çaycuma Criminal Judgeship of Peace	2020/14 D. İ	15.01.2020	2020	Article 3(2), Law No. 5187	Bribery
İstanbul 6th Family Court	2020/25 E.	20.01.2020	2020	Article 3(2), Law No. 5187	Divorce Cases and Proceedings
Germencik Criminal Judgeship of Peace	2020/60 D. İ	22.01.2020	2020	Article 3(2), Law No. 5187	Sexual Assault
İstanbul 2nd Family Court	2020/50 E.	22.01.2020	2020	Article 20, Constitution	Custody
İstanbul 16th Family Court	2020/6 D. İ	29.01.2020	2020	Article 24, Law No. 4271	Protection of Personal rights
İstanbul 26th Civil Court of First Instance	2020/43 E.	30.01.2020	2020	Article 389 of Law No. 6100	Protection of Personal rights
Bakırköy 1st Civil Court of First Instance	2019/393 E.	11.02.2020	2020	Article 3(2), Law No. 5187	Compensation claim for alleged attack on personal rights
Beypazarı 2nd Family Court	2020/110 E.	11.02.2020	2020	Not Specified	Divorce Cases and Proceedings
İstanbul 10th Family Court	2020/103 E.	12.02.2020	2020	Article 6, Law No. 4787	Divorce Cases and Proceedings
İstanbul 4th Assize Court	2020/35 E.	20.02.2020	2020	Article 3(2), Law No. 5187	Insult, Threat, Deprivation of Liberty
İstanbul 3rd Family Court	2020/12 E.	20.02.2020	2020	Article 3(2), Law No. 5187	Divorce Cases and Proceedings
İzmir 11th Family Court	2019/695 E.	24.02.2020	2020	Article 3(2), Law No. 5187	Refusal of paternity
İstanbul 10th Family Court	2020/ 111 E.	24.02.2020	2020	Article 6, Law No. 4787	Divorce Cases and Proceedings
İstanbul 13th Family Court	2020/15 D. İ	25.02.2020	2020	Article 6, Law No. 4787	Not Specified
İstanbul 2nd Family Court	2018/814 E.	5.03.2020	2020	Not Specified	Paternity
İstanbul 11th Family Court	2020/180 E.	6.03.2020	2020	Article 153, Law No. 6100	Separation
Mersin 1st Criminal Judgeship of Peace	2020/1338 D. İ	10.03.2020	2020	Article 3(2), Law No. 5187	Fraud during tender
Mersin 1st Criminal Judgeship of Peace	2020/1457 D. İ	11.03.2020	2020	Article 3(2), Law No. 5187	Not Specified
Alaşehir Criminal Judgeship of Peace	2020/428 D. İ	12.03.2020	2020	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
Alaşehir Criminal Judgeship of Peace	2020/429 D. İ	12.03.2020	2020	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
Beypazarı 1st Family Court	2020/166 E.	16.03.2020	2020	Not Specified	Divorce Cases and Proceedings
İzmir 7th Criminal Judgeship of Peace	2020/1242 D. İ	19.03.2020	2020	Article 3(2), Law No. 5187	Sexual assault, intentional injury of a public officer, torture allegations
İstanbul 7th Family Court	2020/123 E.	31.03.2020	2020	Article 24, Law No. 4271	Best Interest of the Child
Kayseri 1st Criminal Judgeship of Peace	2020/1324 D. İ	3.04.2020	2020	Article 3(2), Law No. 5187	Investigation on suicide
Bakırköy 6th Civil Court of First Instance	2020/210 E.	13.04.2020	2020	Article 389 of Law No. 6100	Prevention of Attack on Personal rights
Beypazarı 1st Family Court	2020/222 E.	14.04.2020	2020	Law No. 4787	Division of Property
İstanbul 1st Family Court	2020/2477 D. İ	17.04.2020	2020	Article 153, Law No. 6100	Protection of Personal rights
Torbalı Criminal Judgeship of Peace	2020/772 D. İ	19.04.2020	2020	Article 3(2), Law No. 5187	Intentional killing
İstanbul 14th Family Court	2020/222 E.	6.05.2020	2020	Article 24, Law No. 4271	Best Interest of the Child
Durağan Criminal Judgeship of Peace	2020/66 D. İ	16.05.2020	2020	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
İstanbul 2nd Civil Court of First Instance	2020/26 D. İ	21.05.2020	2020	Article 389 of Law No. 6100	Divorce Cases and Proceedings
Bingöl Criminal Judgeship of Peace	2020/927 D. İ	2.06.2020	2020	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
Bingöl Criminal Judgeship of Peace	2020/928 D. İ	2.06.2020	2020	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
İstanbul 2nd Family Court	2020/217 E.	2.06.2020	2020	Article 184/6, Law No. 4721	Divorce Cases and Proceedings
Babaeski Criminal Judgeship of Peace	2020/295 D. İ	5.06.2020	2020	Article 3(2), Law No. 5187	Investigation involving Turkish land forces command
Bayburt Criminal Judgeship of Peace	2020/379 D. İ	5.06.2020	2020	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
Bingöl Criminal Judgeship of Peace	2020/968 D. İ	9.06.2020	2020	Article 3(2), Law No. 5187	Embezzlement and Counterfeiting Official Documents
İnegöl Criminal Judgeship of Peace	2020/1703 D. İ	13.06.2020	2020	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
Finike Criminal Judgeship of Peace	2020/358 D. İ	15.06.2020	2020	Article 3(2), Law No. 5187	Corruption
Polatlı Criminal Judgeship of Peace	2020/687 D. İ	16.06.2020	2020	Article 3(2), Law No. 5187	Not Specified
Beypazarı 3rd Civil Court of First Instance	2020/152 E.	3.07.2020	2020	Not Specified	Not Specified
Karşıyaka Criminal Judgeship of Peace	2020/1607 D. İ	13.07.2020	2020	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
İstanbul 13th Family Court	2019/785 E.	13.07.2020	2020	Article 6, Law No. 4787	Not Specified
İstanbul 6th Family Court	2020/376 E.	21.07.2020	2020	Not Specified	Divorce Cases and Proceedings
Bozüyük Criminal Judgeship of Peace	2020/434 D. İ	22.07.2020	2020	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
İstanbul 9th Family Court	2020/276 E.	23.07.2020	2020	Article 6, Law No. 4787	Paternity
Tarsus 1st Criminal Judgeship of Peace	2020/1757 D. İ	27.07.2020	2020	Not Specified	Child Sexual Abuse Investigations
Serik Criminal Judgeship of Peace	2020/911 D. İ	6.08.2020	2020	Article 3(2), Law No. 5187	Intentional killing
İstanbul 16th Family Court	2020/453 E.	12.08.2020	2020	Article 6, Law No. 4787	Divorce Cases and Proceedings
İstanbul 16th Family Court	2020/713 E.	14.08.2020	2020	Article 6, Law No. 4787	Divorce Cases and Proceedings
İstanbul 2nd Family Court	2020/255 E.	20.08.2020	2020	Article 24, Law No. 4271	Best Interest of the Child
Bingöl Criminal Judgeship of Peace	2020/1374 D. İ	26.08.2020	2020	Article 3(2), Law No. 5187	Sexual Assault
İstanbul 16th Family Court	2020/390 E.	26.08.2020	2020	Article 24, Law No. 4271	Protection of Family Property
Beypazarı 1st Family Court	2019/608 E.	1.09.2020	2020	Article 389 of Law No. 6100	Custody
Akyazı Criminal Judgeship of Peace	2020/453 D. İ	3.09.2020	2020	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
İstanbul 2nd Family Court	2020/283 E.	3.09.2020	2020	Not Specified	Divorce Cases and Proceedings
Aydın 1st Criminal Judgeship of Peace	2020/2795 D. İ	4.09.2020	2020	Article 3(2), Law No. 5187	Sexual Assault
Beypazarı 2nd Family Court	2020/593 E.	11.09.2020	2020	Not Specified	Personal relationship with a child
Van 2nd Criminal Judgeship of Peace	2020/2823 D. İ	13.09.2020	2020	Article 3(2), Law No. 5187	Torture, assault, ill treatment
İstanbul 14th Family Court	2020/394 E.	17.09.2020	2020	Not Specified	Divorce Cases and Proceedings
İstanbul 16th Family Court	2020/818 E.	23.09.2020	2020	Article 3(2), Law No. 5187	Divorce Cases and Proceedings
İstanbul 4th Regional Court of Justice	2020/682	24.09.2020	2020	Article 389 of Law No. 6100	Protection of Personal rights
İstanbul 15th Family Court	2020/138 E.	28.09.2020	2020	Article 41, Constitution	Divorce Cases and Proceedings
İstanbul 8th Family Court	2020/477 E.	30.09.2020	2020	Not Specified	Divorce Cases and Proceedings
İstanbul 11th Family Court	2020/474 E.	30.09.2020	2020	Article 153, Law No. 6100	Divorce Cases and Proceedings
Bakırköy 21st Assize Court	2020/306 E.	6.10.2020	2020	Article 187/3, Law No. 5271	Sexual Assault
Silivri Criminal Judgeship of Peace	2020/3345 D. İ	13.10.2020	2020	Article 3(2), Law No. 5187	Not Specified
İstanbul 8th Criminal Judgeship of Peace	2020/4728 D. İ	16.10.2020	2020	Article 3(2), Law No. 5187	Laundering of Assets Acquired from an Offence
İstanbul 11th Family Court	2020/528 E.	16.10.2020	2020	Article 153, Law No. 6100	Division of Property
İstanbul Anadolu 33rd Criminal Court of First Instance	2020/223 E.	22.10.2020	2020	Article 3(2), Law No. 5187	Sexual Assault
Bilecik Criminal Judgeship of Peace	2020/2815 D. İ	25.10.2020	2020	Article 3(2), Law No. 5187	Not Specified
Bursa 12th Family Court	2019/40 E.	27.10.2020	2020	Not Specified	Custody
Malatya 2nd Criminal Judgeship of Peace	2020/4456 D. İ	29.10.2020	2020	Article 3(2), Law No. 5187	Intentional killing
İstanbul 14th Family Court	2020/578 E.	3.11.2020	2020	Not Specified	Divorce Cases and Proceedings
İstanbul 1st Civil Court of Intellectual and Industrial Property Rights	2020/215 D. İ	30.11.2020	2020	Article 389 of Law No. 6100	Protection of Intellectual Property Rights
Hendek Criminal Judgeship of Peace	2020/900 D. İ	9.12.2020	2020	Article 3(2), Law No. 5187	Intentional killing and injury
Malatya 2nd Criminal Judgeship of Peace	2020/5503 D. İ	10.12.2020	2020	Article 3(2), Law No. 5187	Investigation on intentional killing
İstanbul 5th Family Court	2020/1250 E.	11.12.2020	2020	Article 24, Law No. 4271	Cancellation of Land Registry
Bingöl Criminal Judgeship of Peace	2020/2259 D. İ	23.12.2020	2020	Article 3(2), Law No. 5187	Sexual Assault
İstanbul Anadolu 4th Criminal Judgeship of Peace	2021/66 D. İ	7.01.2021	2021	Article 3(2), Law No. 5187	Sexual Assault
Bingöl Criminal Judgeship of Peace	2021/560 D. İ	19.02.2021	2021	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
Kiraz Criminal Judgeship of Peace	2021/106 D. İ	28.02.2021	2021	Article 3(2), Law No. 5187	Child Sexual Abuse Investigations
İstanbul 2nd Court of Intellectual and Industrial Property Rights	2020/344 E.	1.03.2021	2021	Article 3(2), Law No. 5187	Compensation claim for breaching intellectual property rights
Akasaray 1st Criminal Judgeship of Peace	2021/1814 D. İ	9.06.2021	2021	Article 3(2), Law No. 5187	Investigation on suicide
Konya 5th Criminal Judgeship of Peace	2022/2826 D. İ	6.07.2022	2022	Article 3(2), Law No. 5187	Intentional killing
Bursa 3rd Criminal Judgeship of Peace	2022/4779 D. İ	28.07.2022	2022	Article 3(2), Law No. 5187	Best Interest of the Child

DGI

06 OCT. 2022

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH