



Think, think...

Freedom of Expression Weekly Bulletin

(Issue 41/18, 19 October 2018)

What happened last week?

*** President Erdoğan announced a future operation against mukhtars. Immediately afterwards, Ministry of the Interior announced the dismissal of 259 mukhtars. The dismissal of local elected executives had started with trustees being assigned to municipalities allowed by an emergency decree.

*** “*We are exterminating the illegal organization militants inside the judicial organization, it’s not done yet,*” Erdoğan said, referring to the ‘FETÖ’ operations.

*** The first budgetary proposal of the Presidential Government System was presented at the GNAT. Budget expenses for next year are expected to be 960.0 billion TL and budget incomes as 880.3 billion TL. The government is increasing the Private Consumption Tax (OTV) and the bill is expected to be voted at the Parliamentary General Assembly in December.

*** The scope of rewards for informers were extended with an omnibus bill that recently passed the Parliament. Those who help in uncovering crimes or in obtaining evidence within the fight against terrorism will also be rewarded.

*** As allegations increase on Saudi journalist Jamal Khashoggi having been killed in Saudi Arabian General Consulate in Istanbul, the police searched the consulate building. Consulate General Mohammad Utaybi left Turkey shortly before the police search. Lawyers criticized the consulate search being done after receiving permission and that the Consulate General was allowed to leave the country. Making a statement on the matter 16 days later, Istanbul Chief Public Prosecutor’s Office announced the ongoing legal procedures. Questions increase on why the murder is not yet illuminated.

*** Following the release of U.S. citizen pastor Andrew Brunson, the U.S. Dollar currency dropped to the lowest levels within the past two months against the Turkish Lira.

*** Turkish Statistical Institute (TUIK) announced the unemployment rate in Turkey by July 2018 as 10.8 percent. There are 88 thousand more unemployed citizens in Turkey compared to July 2017, with 3 million 531 thousand people in July 2018.

*** Businessman and rights advocate Osman Kavala is deprived of his freedom for one year and the indictment on his case is still yet to be prepared.

*** The reasoned decision was announced in the convictions of six people, including journalists Ahmet Altan, Mehmet Altan and Nazlı Ilıcak with the allegation of “*preparing a social platform for the military coup.*” The defendant lawyers stated, “*The Constitutional Court and the European Court of Human Rights issued ‘lack of criminal evidence’ on the file, whereas Istanbul 26th Assize Court and the Istanbul Regional 2nd Criminal Chamber issued ‘aggravated life imprisonment’ on the same file.*”

*** President Erdoğan withdrew his complaint against the students who remained under arrest for a month due to the cartoon, “*Kingdom of Tayyips.*” Human Rights Watch demanded all cases of “insulting the President” to be abated.

*** One more “*Peace Academic*” was sentenced to deferred imprisonment for one year and three months.

*** The number of people who faced legal procedures due to their social media posts reached 1329 between the dates September 10 and October 16, 2018.

*** Operations were conducted against journalists and politicians in nine provinces with Diyarbakır as center. 25 of those taken into custody during the operations were arrested, including journalist Kibriye Evren and Peoples' Democratic Party (HDP) Diyarbakır Provincial Co-Chair Mehmet Şerif Çamçı.



HRW: End prosecutions for ‘insulting President’

President Erdoğan withdrew his criminal complaint against four university students, who were on trial due to the cartoon, “*Kingdom of Tayyips.*” Human Rights Watch (HRW) launched a written statement and demanded an end for prosecutions due

to ‘insulting the President.’

HRW indicated that the withdrawal of Erdoğan’s complaint is a positive and pleasing development for the students, whereas this does not resolve the larger issue that concerns thousands of lawsuits violating freedom of expression. “*The government should stop this mockery of human rights and respect people in Turkey’s right to peaceful free expression,*” stated the organization.

“*‘Insulting the president’ should not be a crime... Decisions by prosecutors and courts to start or drop cases should not rest on the word of the president,*” said Benjamin Ward, Europe and Central Asia acting director at Human Rights Watch.



“Peace Academics” on trial

Academics continued to stand trial at Istanbul Courthouse due to signing the petition, “*We will not partake in this crime!*” of the Academics for Peace.

Asst. Prof. Dr. B.C.B. from Koç University was sentenced to 1 year and three months of imprisonment in the third hearing of the case at Istanbul 36th

Assize Court; the sentence was deferred. The number of academics standing trial reached 340 and the number of convicted academics reached 28 with the prosecutions this week.



Prosecution of journalist Uğur Yılmaz starts after 16 months in prison

The prosecution of journalist Uğur Yılmaz, who is arrested for 16 months, started at Bitlis 2nd Assize Court. The court decided for Yılmaz to remain arrested and scheduled the next hearing to December 11.

The journalist had been arrested on July 17, 2017 due to the press statements and marches he was tracking for news information as well as his social media posts while working at Bitlis Municipality's Press Unit. A lawsuit was then filed against the journalist with a claim of imprisonment for up to 25 years due to 'illegal organization membership' and 'making illegal organization propaganda.'



Lawsuit against journalist Yasin Kobulan due to 'illegal organization propaganda'

A lawsuit was filed against Mesopotamia Agency (MA) reporter Yasin Kobulan due to 'making successive illegal organization propaganda.' The journalist faces an

imprisonment claim for up to 13 years due to sharing the news on violations during curfews through his social media account. The first hearing of the case will be held on December 26 at Istanbul 30th Assize Court.



Lawsuit against news on pastor Brunson

A lawsuit was filed against Cumhuriyet Daily reporters Alican Uludağ and Duygu Güvenç within Turkish Penal Code (TCK) Article 301 due to their news coverage on U.S. citizen pastor Brunson.

The journalists are charged with "denigrating the government of the Republic of Turkey and its institutions" due to the news

article published on the newspaper's July 26 issue with the title, "As the hostage diplomacy falls." The first hearing of the case will be held on December 20 at Istanbul 2nd Criminal Court of First Instance.



Investigation against journalist due to 'attempting to influence fair trial' after reporting child abuse case

An investigation was opened against Hürriyet Daily columnist Melis Alphan due to 'attempting to influence fair trial' through her column, published on

February 3, 2018 with the title, "The mother who desperately seeks justice: 'Please help so that other children are not hurt!'" Reporters Without Borders (RSF) Turkey Representative journalist Erol Önderoğlu reacted against the investigation, saying, "It is a duty of journalism to follow judicial culture on behalf of the public in cases of child abuse."



Compensation against Can Dündar due to 'insulting Erdoğan'

Journalist Can Dündar will pay 10 thousand TL moral indemnity to President Erdoğan due to his columns published on Cumhuriyet Daily in 2014. Istanbul 16th Civil Court of First

Instance issued two columns of Dündar published on the newspaper in July 2014 as well as the article series published in August 2014 with the title, "The father of Friend," attack personal rights of President Erdoğan.

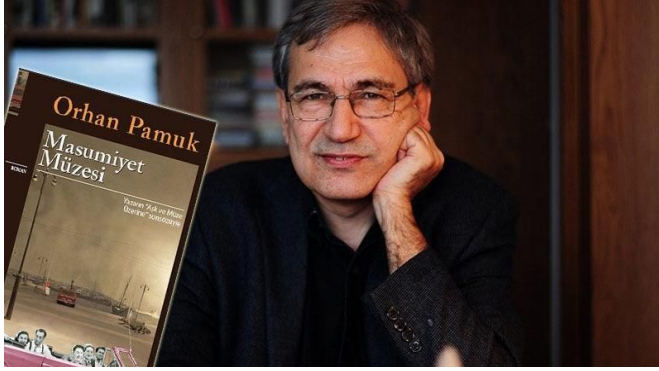


Child arrested after torture due to 'insulting Atatürk'; police facing investigation

Y.S. had been taken into custody in Kocaeli due to "damaging a bust of Atatürk" and sharing a video of the action on the social media, together with H.Ç. who filmed the video. The two children were arrested by the court they

were taken to at Gebze Courthouse and were sent to prison. According to the announcement of the Chief Prosecutor's Office, the children will stand trial with imprisonment claims for up to three years in accordance with the Law Concerning Crimes Committed Against Atatürk.

Y.S. was tortured under custody by being taken to the backyard of the security building by the police officers and left waiting on one foot, forced to make a soldier salute to an Atatürk bust. The police officer in the visuals asked the child twice, “*What are you?*” and the child responds, “*I’m a son of a b...*” The visuals ended with the kick of the police officer, directed against the child. The visuals stirred reactions and an ‘administrative’ and ‘judicial’ investigation was opened against police officer A.Ş. However, there is no news released on his suspension from duty; so he is probably still on duty.



Investigation against teacher over suggesting book of Orhan Pamuk to students

An administrative investigation was opened against a high school Turkish Literature teacher in Istanbul over suggesting the novel, “*The Museum of Innocence*” by Orhan Pamuk to the

students.

Beyoğlu District Directorate of National Education used the expression, “The content that is identified with expert opinion to be inappropriate for students...” in the investigation file sent to the teacher, referring to the novel of the Nobel-winner author. The teacher is summoned to make a defense within the investigation. “*I’m facing an investigation due to suggesting a book as a teacher of literature and I might actually be penalized,*” the teacher said.



Racist attack against Amedspor in Sakarya

In the 2nd League game between Sakaryaspor and Amedspor, players of Amedspor were exposed to a racist attack. Before the game began, the song, “*I will die for you, my Turkey*” was played with visuals of military operation displayed on the giant screen. After the

game ended, Sakaryaspor fans attacked Amedspor players in the dressing room. Amedspor Chairman Nurullah Edemen indicated that the incidents were acts of provocation and that they will file criminal complaints against whoever is responsible.



Mayor acquitted of ‘insulting Erdoğan’

Republican People’s Party (CHP) member and Tekirdağ Süleymanpaşa Mayor Ekrem Eşkinat was acquitted of the charge of insulting President Erdoğan. Eşkinat was on trial with an

imprisonment claim for up to seven years at Tekirdağ 2nd Criminal Court of First Instance due to a speech he gave in 2017 during the CHP Süleymanpaşa District Congress.



Access ban against news on ‘corruption’

An access ban was brought on the news covering the allegations of Republican People’s Party (CHP) Deputy Chairman Aykut Erdoğan on irregularities regarding the third airport construction.

The news, containing details on the press meeting organized by Erdoğan on the matter in the party’s headquarters, was banned to access with a replacing statement by the Union of Access Providers.



Court of Cassation verdict on insulting Erdoğan: “Negative criticism must be tolerated”

The Court of Cassation decided that the advertisement ban issued on Sözcü Daily following President Erdoğan’s complaint is against the law. The verdict

indicated that the President “*must tolerate discomforting negative criticism.*”

Following Erdoğan’s complaint, Press Advertising Agency (PAA) had decided for all official advertisements to be cut and banned from Sözcü Daily for five issues due to insulting the President in the headline on the issue of June 24, 2015. Küçükçekmece 4th Civil Court of First Instance, on the other hand, issued that the related news and headline remain within press freedom, that it is of the quality of criticism; therefore issued the sanction ban to be revoked due to lack of intent of insult.

As the court decree was final, it was not supposed to be brought to the Court of Cassation; whereas the Ministry of Justice interfered. The Ministry requested the Chief Prosecutor’s Office of the Court of Cassation to demand “*reversal for the sake of law,*” also known as an extraordinary legal remedy. Then the Prosecutor’s Office applied at the 4th Civil Chamber of the Court of Cassation; whereas the court denied the application. In the reasoned decision of the chamber indicated that one of the principles in accordance with Article 10 of the European Convention of Human Rights, with established case-law of the European Court of Human Rights, is freedom of expression.



Constitutional Court issue on protest against cyanide

The Constitutional Court (AYM) issued that the right to meeting and demonstration of six life advocates were violated with the deferred imprisonment sentences issued against them for five months each due to the protest organized in Fatsa against cyanide. The court

further issued retrial and for 1000 TL moral compensation to be paid to each applicant.

Applicants have stood trial at Fatsa 2nd Criminal Court of First Instance due to the march organized on January 25, 2015 and were convicted due to violating the Law on Meetings and Demonstrations No. 2911. *“A peaceful demonstration or press statement must not be exposed to the threat of administrative sanction, as principle,”* the court stated and indicated that the fact that the march was extended from the identified location does not change the quality of peacefulness of the demonstration.



Constitutional Court finds no right violation in application of child penalized due to hanging posters for concert

The Constitutional Court (AYM) found the penalty fine sentenced against a 16-year-old in Tunceli due to hanging posters to announce a concert of Grup

Yorum in accordance with the Constitution. The court defended that freedom of expression is not violated with the penalty and indicated that the local administration has deciding authority on the matter. *“It must be accepted as reasonable to expect that hanging posters is bound to permission,”* the court stated.

Tunceli Governorate had sentenced 2,750 TL penalty fine against the applicant due to hanging posters without permission and thereby violating the Law of Misdemeanor. The application made for the reversal of sentence has also been denied by Tunceli Criminal Judicature of Peace due to ‘posters being hung against the law, outside of the location determined by the local administration.’



TRIALS OF FREEDOM OF EXPRESSION

- In the prosecution of 27 people, including ETHA reporter and translator Meşale Tolu and her husband Socialist Party of the Oppressed (ESP) Central Executive Council

member Suat orlu, the ban against orlu from travelling abroad was removed. The next hearing was scheduled to January 10, 2019.

- The first hearing of the lawsuit filed against arrested journalist Uęur Yılmaz due to “making terrorist organization propaganda” and “terrorist organization membership” was held at Bitlis 2nd Assize Court. Yılmaz was not released and the next hearing was scheduled to December 11.
- In the prosecution of human rights advocate and columnist Nurcan Baysal due to “public incitement towards resentment and hostility” at Diyarbakır 7th Criminal Court of First Instance, the court allowed more time for the preparation of defenses and scheduled the next hearing to February 14, 2019.
- Prosecutions of the academics, who signed the petition, “We will not partake in this crime” of the Academics for Peace, continued with hearings this week. One more academic was sentenced to 1 year and three months of imprisonment due to ‘making terrorist organization propaganda’ and the number of convicted academics reached 28. Prosecutions of the academics will continue next week.
- The 16th hearing of the lawsuit filed against former Taraf Daily columnist Mehmet Baransu and the newspapers former News Director Murat Şevki oban was held at Anatolian 10th Assize Court due to “obtaining confidential information concerning the security of state and revealing these documents through press.” The court scheduled the next hearing to December 12 in order for deficiencies in the file to be compensated and for defendants to be present in the next hearing.
- Prosecutions of Perihan Maęden, Tunca ğreten, Mehmet aęlar Tekin and Orhan Şahin within the lawsuit filed against them due to ‘insulting the President’ was held at Istanbul 2nd Criminal Court of First Instance. The defendants are charged due to the publication of an interview made with Perihan Maęden on the September 14, 2015 issue of Diken and Yurt Daily. The next hearing was scheduled to December 27 to await the registration of newspaper officials.

HEARINGS NEXT WEEK

- The lawsuit of propaganda concerning movie “Bakur” will continue prosecution on October 23, Tuesday at Batman 2nd Assize Court, starting at 14:00.
- The third hearing of the lawsuit filed against Evrensel Daily’s Tunceli reporter Kemal zer, who is arrested since September, will be held on October 24, Wednesday at Tunceli 1st Assize Court.
- The hearing of the lawsuit filed against artist Ferhat Tun due to a social media post he made on the April 16 referendum will be held on October 26, Friday, at Bykekmece 4th Criminal Court of First Instance.
- The prosecution of former Peoples' Democratic Party (HDP) MP Levent Tzel will continue on October 25, Thursday at Diyarbakır 5th Assize Court within the lawsuit filed against him due to “armed terrorist organization membership” related to his Democratic Society Congress (DTK) visit in 2012, the speech he gave following the protest banned by Diyarbakır Governorate and his participation in Newroz celebrations of 2011.



TURKEY TODAY

We continue to track developments during the State of Emergency and the Presidential period with our Xtra bulletins. This week, we prepared a table bringing the Presidential and Semi-Presidential systems in three countries (U.S., France and Russia) together with the system in Turkey; comparing similarities and differences. As the “*Turkish-style Presidential system*” is debated in the country, what was often argued was that “*it did have examples in other countries.*” Let’s see, if it is indeed so...

[Please click here](#) for the “*Comparison Table.*”



JUDGING THE JUDICIARY

The second file in which we judge judicial processes that force the limits of our imagination is the file of Teacher Ayşe and her supporters... Ayşe Çelik was put on trial due to ‘making illegal organization propaganda’ just because of saying, “Do not let children die.” She was further sentenced to imprisonment and entered prison with her newborn baby. Then the execution of her sentence was postponed and she was released. As teacher Ayşe was preparing to be imprisoned once again on October 31 together with her baby, the execution was postponed once again by Diyarbakır Chief Public Prosecutor’s Office until April 17, 2019. We judged all unlawfulness within the file from the beginning to the end (from the investigation phase until the finalized verdict) and issued our verdict. For we know that no conscience can be at peace when teacher Ayşe is under threat of imprisonment. We call the Constitutional Court, as the only authority left to issue a stay of execution, to immediately stop this legal massacre.

[Please click here](#) for the reasoned decision of the “*Shadow Court.*”