

**To Members of the Constitutional Court;**

In 2022, the law known as the "Disinformation Law" has been hovering over the free media like the sword of Damocles since its enactment. The Constitutional Court should put a stop to this and put an end to this tutelage over journalists.

The law subject to the case to be heard by your Court establishes the **"Crime of Publicly Disseminating Misleading Information"** with the provision *"(1) Anyone who publicly disseminates **untrue information** concerning the internal and external security, public order and public health of the country, with the sole intention of creating anxiety, fear or panic among the public, in a way that is conducive to disrupting public peace, shall be punished with imprisonment from one year to three years."*

Article 26 of the Constitution states that *"Everyone has the right to express and disseminate his thoughts and opinions, individually or collectively, by speech, writing, pictures or other means. This freedom includes the freedom to receive and impart information or ideas without interference by official authorities. ..."* and *"Freedom of expression and dissemination of thought"*; Article 28 states that *"The press is free and cannot be censored. ..."* protects the "freedom of the press". However, this law, the constitutionality of which will be reviewed by your court, violates both the letter and the spirit of both provisions of the Constitution and should be annulled.

Article 10 of the European Convention on Human Rights provides that *"Everyone shall have the right to freedom of opinion and expression. This right shall include freedom of opinion and the freedom to receive and impart information and ideas without interference by public authorities and regardless of frontiers."* it protects both freedom of expression and freedom of the press. *Handyside v. the United Kingdom (1976)* sets out the most fundamental principle regarding freedom of the press: *"in a democratic society, freedom of expression applies not only to information which is pleasing, but also to information which is unwelcome, shocking or disturbing to the State"*. However, the new type of offense introduced by this law completely abolishes this fundamental principle; it criminalizes journalistic activities that the state does not accept as *"true"*.

*"information contrary to the truth"*, which constitutes the subject of the offense, violates both the Constitution and the European Convention on Human Rights in terms of the principle of legal foreseeability. The universal rules of journalism are based on fact-checking the news and sharing the information closest to the truth. However, the type of crime created by the law creates a legally unpredictable type of crime by making untrue information the subject of the crime. Which information is untrue is left entirely to the discretion of judges and prosecutors. There is no criterion on how the untruthful information will be determined. This is contrary to the principle of foreseeing the legal consequences of the perpetrator's act, which is one of the most fundamental principles of criminal law.

The disinformation law is also contrary to the European Convention on Human Rights and the Constitution in terms of the principles of proportionality and least restrictive measure. The law provides for a prison sentence of up to three years and a prison sentence of up to four and a half years in cases of *"concealment of true identity or under the cover of organizational activity"*. These restrictive measures contravene the principle of *ultima ratio*.

Article 13 of the Constitution states that "*Fundamental rights and freedoms may be restricted without prejudice to their essence ... . They cannot be contrary to the words and spirit of the Constitution, the requirements of the democratic social order and the secular Republic, and the principle of proportionality.*" The provision renders laws that eliminate the essence of the fundamental rights as unconstitutional. As such, this law directly eliminates the essence of freedom of expression. It is the duty of the media literate readership to appreciate which news is true and which is false. Judges, prosecutors or the administration deciding whether the news is true or false is neither compatible with the principles of journalism nor acceptable in a democracy with a free opposition media. If there is a falsehood, the addressee will deny it. It cannot be left to prosecutors to confirm or deny it.

To date, the "crime of publicly disseminating inflammatory information" under Article 217/A of the Penal Code has been used against journalists at least 13 times. Journalist Sinan Ayg l was first detained in December 2022. He had reported on the sexual abuse of a child in the Tatvan district of Bitlis. Ayg l was also the first journalist to be convicted under the law. Journalist Ru en Takva was prosecuted under the same article in December 2022 for a news article he shared on Twitter as a claim. He was acquitted in September 2023. Journalists who worked with difficulty in the region during the earthquake period were also investigated with 217/A.

Every day, local media members anxiously check whether their news stories have been refuted by the governorate or district governor's office. In such a situation, local media allows local administrators to act without the supervision of free media.

The annulment of this law, which abolishes freedom of expression and criminalizes the professional activities of journalists, will be a relief for journalists and free media, and will also raise hopes for the future of democracy in Turkey.

Therefore, as a requirement of democracy, Article 217/A of the Penal Code must be annulled; all journalists currently undergoing investigation and prosecution must be freed from this pressure. The Constitutional Court, as required by the Constitution, should annul this law that abolishes the essence of freedom of expression and freedom of the press.

**Media and Law Studies Association (MLSA)**