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**Rule 9.2 Submission for the case of**  
**ULUSOY AND OTHERS v. Turkey**  
**(Case Number: 34797/03)**

by

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

**November, 2023**

**The Media and Law Studies Association (MLSA)** is a non-profit organization founded in Istanbul (registered as Medya ve Hukuk Çalışmaları Derneği) founded in December 2017 to respond to an urgent and growing need for a return to democracy and normalization in Turkey by providing pro bono legal support to journalists whose freedom of expression is violated.

MLSA's legal unit provides legal representation and counseling services to journalists whose freedom of expression is threatened without considering their affiliations, political views, gender or ethnicity. MLSA legal unit also conducts strategic litigation services where there is a systematic violation of freedom of expression.

MLSA also maintains a trial monitoring program since 2017; the program has monitored more than 2.500 hearings in all over the country. The program monitors cases where the freedom of expression and or freedom of assembly is concerned.

MLSA also maintains Free Web Turkey as an internet freedom watchdog platform in Turkey. The project monitors internet bans in Turkey and report it in yearly reports and also publishes weekly "censorship agendas" in which every week all news about internet censorship is being published on the webpage and on twitter.

MLSA is also maintaining a program to strengthen Turkey's civil society against the legal threats posed after the adoption of new CSO law, it provides legal and administrative training for the members of CSOs and also it provides simulation audits for threatened NGOs.

MLSA's editorial unit is publishing opinion pieces and news articles on different aspects of Turkey's media landscape in cooperation with freelance journalists and provides these journalists a platform to express themselves.

## INTRODUCTION

1. This Rule 9.2 Communication submitted by the Media and Law Studies Association to argues that the supervision of the execution process for the case of **ULUSOY AND OTHERS v. Turkey** (Case Number: **34797/03**) should continue. It aims to counter the Turkish Government's request to conclude the implementation process pertaining to this case. The communication offers an evaluation of Turkey's Action Report dated September 26, 2023, and addresses the ongoing prohibitions against Kurdish theatre plays and concerts.

## CASE SUMMARY

2. The case pertains to the violation of the applicants' right to freedom of expression, stemming from the Governor's Office's refusal to authorize the performance of a theatre play, constituting a violation of Art. 10 of the convention. The applicants were actors in a theatre troupe named Teatra Jiyana Nü (The New Life Theatre). In December 1999, the Ankara Regional Governor's Office denied authorization for the troupe, then on tour, to perform "Komara Dinan Sermola" (The Republic of Mads) in Kurdish. The applicants initiated administrative proceedings to overturn the refusal. The Regional Governor's Office informed the Administrative Court that the play could potentially undermine public order due to the criminal records of the actors, who had been convicted or prosecuted for supporting the PKK (Kurdistan Workers Party). The proceedings culminated in the dismissal of the applicants' request by the Supreme Administrative Court on 27 January 2003. The court, citing potential divisiveness of the Kurdish theatre play, upheld the refusal.
3. The European Court of Human Rights observed that prohibiting the play's staging constituted an infringement on the applicants' right to freedom of expression as outlined in Article 10 of the Convention. The Court remarked, "*it should nevertheless be noted that the grounds of the judgment adopted by the administrative court give the impression that the use of the Kurdish language in the performance of a play constitutes a circumstance that could aggravate the potential disturbance. In this respect, the Court points out that the judge-rapporteur at the Conseil d'Etat (Danıştay) requested that this judgment be overturned, given the absence of a rule providing for a prior ban on the presentation of an artistic work and prohibiting the use of a language other than Turkish in theatrical performances. However, this argument was not accepted by the Turkish courts.*"<sup>1</sup> The Court unequivocally highlighted that the ban was imposed due to the language of the play, not genuine security or public order concerns, or any other legitimate grounds to limit freedom of expression.
4. The problem regarding to this case has two main issues. The first issue is the arbitrary exercise of authority to ban or to postpone public demonstrations by provincial and district governors (vali and kaymakam). The second issue is the deliberate prohibition against Kurdish concerts, plays and cultural events.

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<sup>1</sup> Ulusoy and Others v Turkey (App no 34797/03) ECHR (May 3, 2007) para 52.

## CHANGES IN THE RELEVANT LEGISLATION

5. The government argues that it had adopted the relevant legislation in line with the Court's judgment in the case at stake. The MLSA observes that the amendments to the legislation are ineffective and did not improve the state of freedom of expression on the issue. The real issue remains that the administrative authority to block any form of peaceful assembly being arbitrarily exercised.

### **Article 17 of the Law on Meetings and Demonstration Marches (Law no. 2911)**

6. The Government argues that the amendment of Law Number 2911 (Law and Meetings and Demonstration Marches) narrowed down the legal grounds to ban or to postpone meetings and demonstrations. The government report reads as "*First of all, under the present rules, a postponement decision could only be given for the purposes of national security, public order, prevention of crime, protection of public health and public morals or protection of rights and freedom of others.*"<sup>2</sup>. The main issue and the concern regarding Law No: 2911 is that in its essence, it gives governors an unchecked power to suspend, postpone or ban any meeting and demonstration. It provides no effective protection regarding in the issue in question.
7. The grounds in order to ban the meetings are overlooked by the administrative authorities and they are used as a boilerplate in the decision of the governors. When a decision is made to ban a meeting, the governors usually cite all the legal grounds without elaborating on the cause and they do not feel compelled to justify any of the legal grounds they cite. The only time they were compelled to show their justification is generally when there is a case against the ban but even in such cases, the evidence they suggest is generally inadmissible and circumstantial. In the example of "*Mesopotamia Culture Center's 30th Year Anniversary*"<sup>3</sup> which MLSA litigated and won, the only evidence to prove the likelihood of committing a crime was HDP's (a legally represented political party in Turkey) promotion of the event on its social media accounts.
8. As can be seen in the example; the authorities do not feel compelled to submit any supporting evidence on their evaluation when they ban or postpone any assembly. They cite these legal grounds repeatedly without any justification and evidence. Therefore any regulation regarding the grounds to postpone or to ban any assembly is irrelevant and the amendments would yield no effect on the issue at stake.
9. Arbitrary exercise of authority to ban or postpone the meetings are still under the authority of district and/or provincial governors. The amendment did not change the jurisdiction and the authority of the governors which is the main cause of the issue at stake.
10. The first paragraph of the law which states "*the regional, provincial and district governors can postpone the meetings...*"<sup>4</sup> was not amended. As it will be explained in

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<sup>2</sup> Action report (26/09/2023) - Communication from Türkiye concerning the case of ULUSOY AND OTHERS v. Turkey § 11

<sup>3</sup> See the details on 49. Paragraph.

<sup>4</sup> Article 17 of The Law on Meetings and Demonstration No. 2911, The Official Gazzette 6/10/1983, Issue: 18185

the following paragraphs; the unjustified bans or postponements of assemblies are the results of unchecked authority of governors. Especially in Southern Provinces where the governors are also acting as trustees of municipalities, they have an unchecked power against the Kurdish cultural sphere.

11. The Government also argues that the new amendment reduced the time limit on how long the meetings can be postponed from “*one month*” to “*fifteen days*” but the issue still remains regarding the authority. The time period in which the governor can ban the meeting is irrelevant in general. In most of the cases, the authority to ban and to postpone meetings are being exercised consecutively. As a result, when the fifteen day period ends, like in the case of the Van Governor’s Office, the governors renew the ban for an additional fifteen days. During the time period between January 8, 2019 to January 23, 2020. the Van Governor’s Office banned all kinds of meetings with 26 consecutive bans each effective fifteen days<sup>5</sup>. Such administrative practices render the amendment irrelevant.
12. Although it is relevant to Art. 11 of the convention, the case of Saturday Mothers<sup>6</sup> has been covered important area in Kurdish cultural field to right to seek truth, which is exemplary of prolonged, consecutive and arbitrary ban on peaceful assembly. Every week, the district governor of Beyoğlu bans the meeting in which the Mothers had been doing for the last twenty eight years. Even though the Constitutional Court found in favor of the mothers in two cases<sup>7</sup>, the Governor’s Office perpetuates to ban the protests. MLSA and other human rights defense organizations are monitoring the protests regularly and every week reporting the police violence against the mothers.
13. In essence, the time period where the governors were authorized to ban or postpone the meeting is being circumvented by consecutive bans or postponements and therefore the legal reform in question is ineffective. The real problem still lies on the problem of exercise of arbitrary power of administration.
14. In both arguments, the Government **failed to change and improve** the practice of arbitrary bans on meetings and demonstrations in Turkey and they also failed to provide any effective remedy on the issue.

#### **b. Article 8 of the Anti-Terror Law No: 3713<sup>8</sup>**

15. The government argues that the criminal act of *propaganda against the indivisibility of state*, which was cited in the banning decision in the case, has been annulled with the overriding of the Article 8 of Anti-Terror Law. Even though the aforementioned provision of the law has been indeed annulled, the government fails to inform the department that, following the adoption of the new penal code in 2005; the “*terrorist propaganda*” became an offense under Turkish Penal Code<sup>9</sup> (*Article 220 § 8*).

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<sup>5</sup> <https://tihv.org.tr/arsiv/01-ocak-2019-ile-31-ocak-2020-tarihleri-arasinda-valilik-yasaklari-nedeniyle-kullanilamayan-toplanma-ve-gosteri-yapma-hakki/>

<sup>6</sup> For more information please refer to: <https://www.mlsaturkey.com/en/saturday-mothers-954th-rally-human-rights-groups-report-on-persistent-violations-amid-unlawful-ban>

<sup>7</sup> Turkish Constitutional Court: *Gülseren Yoleri*, B. No: 2020/7092, 29/3/2023, Turkish Constitutional Court *Maside Ocak Kışlakçı*, B. No: 2019/21721, 16/11/2022

<sup>8</sup> Counter-Terrorism Law; Act No: 3713; Official Gazzette 12/4/1991 Issue: 20843

<sup>9</sup> Turkish Penal Code, Law No: 5237, Official Gazzette 12/10/2004, Issue: 25611

16. Aforementioned provision of the new Penal Code reads as follows: “§8 *A person who makes propaganda for an organization in a manner which would legitimize or praise the terror organization’s methods including force, violence or threats or in a manner which would incite use of these methods shall be sentenced to a penalty of imprisonment for a term of one to three years. If the said crime is committed through the press or broadcasting the penalty to be given shall be increased by half.*”. The previous provision regarding the terrorist propaganda was as following: “*No matter what method, purpose or idea is used, written and verbal propaganda, meetings, demonstrations and marches cannot be held, aiming to disrupt the indivisible integrity of the Republic of Turkey with its territory and nation. Those who do this will be sentenced to aggravated imprisonment from 2 to 5 years and an aggravated fine from fifty million to one hundred million liras*<sup>10</sup>.”.
17. So, even though the governors do not feel obliged to recite any other provision of the law than Article 17 of Law no. 2911, the government's argument that the propaganda of a terrorist organization crime has been annulled is untrue. The provision was moved to Turkish Penal Code during the penal law reform in 2005. The fact is, under current circumstances, the amendment and annulment of the anti-terrorism law is irrelevant. Governors do not feel compelled to cite any other provisions of the law apart from the Law on Public Demonstrations.

### c. Article 11 of the Provincial Administration Law (Law No. 5442)<sup>11</sup>

18. Provincial Administration Law (*İl İdaresi Kanunu*) provides broad and mostly unchecked powers to the provincial and district governors to be exercised without legal justification, without providing evidence on the cause and without judicial *ex ante* review. The vague wording of the law allows governors to take administrative measures that would infringe with civil and fundamental rights and the governors are citing these legal authorities as a justification for their exercise of unjust measures. Such regulation fails to fulfill the criteria of foreseeability in a democratic society.
19. Under Article 11§C of the Law, it reads “*The governor shall have the duty, inter alia, to secure peace and security, personal immunity, safety of private property, public well-being and the authority of preventive law enforcement within the provincial borders. (Additional sentence with the Law no 7145 on 25.7.2018) The governor shall take necessary decisions and measures to this end.*”.
20. The amended version of the act is giving unregulated broad powers to the governors to take necessary measures without enumerating what should be these measures, the provision is in contrast with the principle of foreseeability and legality.
21. It should be noted that before the Presidential System adopted in 2018, the governors were generally career administrators who were appointed with the advice of the Interior Minister, consent of the Cabinet and the approval of the President<sup>12</sup>. Today they are appointed at the sole discretion of the president; therefore it should be noted that the

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<sup>10</sup> Article 8 (annulled) § 1 of Counter-Terrorism Law; Act No: 3713; Official Gazette 12/4/1991 Issue: 20843

<sup>11</sup> Provincial Administration Law No: 5442, Official Gazette 18/6/1949, Issue 7236

<sup>12</sup> Law on Provincial Administration (Act No: 5442) - (Published on Official Gazette 18/6/1949; No: 7236: Article 6 (Article annulled 2/7/2018))

position of the governors also changed during the time period and they became more political figures than in the past.

22. Also under Provincial Administration Law Article 32§Ç which regulates the authority of the District Governor (Kaymakam); it provides that one of the tasks of the district governor is “*Ensuring peace and security, personal inviolability and security of property within the borders of the district, Ensuring public welfare and preventive law enforcement authority are among the duties and tasks of the district governor. The district governor takes the necessary decisions and measures;*”. The same legality and unforeseeability problem can be seen in term of district governors in the ongoing legislation as well.

#### **d. Additional 1 Article of the Law on the Duties and Powers of the Police (Law no. 2559)<sup>13</sup>**

23. The Turkish Government argues that with the current wording of the law, the law enforcement lost its power to request the banning of meetings from the local authorities. Despite such amendment, the law enforcement still requests the banning or postponement of the meetings and gets the approval of local authorities.
24. For example, it could be found in the observation reports of Saturday Mothers<sup>14</sup> that the “*desicions to ban assembly*” are actually petitions by the police to the district governors with the approval stamp of the district governor. Hence, in practice, the police is still requesting the banning of the meetings. Hence the amendment on the law is ineffective.
25. It can be seen that the police are still in practice requesting the banning of meetings. For example in 2020, Istanbul Metropolitan Municipality opened the stage of the Municipal Theaters in order to support private theaters that are facing closure due to the coronavirus outbreak. Within the scope of this project, the theatre group “Teatra Jiyana Nû” completed its preparation at the Gaziosmanpaşa Municipal Theatre for the screening of the play “Beru”, the Kurdish adaptation of “Trumpets and Raspberries” by the Nobel Prize-winning novelist Novel Dario Fo, which they had performed many times before. However, the hours before the release, Gaziosmanpaşa District Governorate forbade the play on ground of possible disruption of public order. The petition issued by the Police Commissioner of the Gaziosmanpaşa District to the District Governorate reads as following<sup>15</sup>:

*"It is learned from open sources that IBB City Theatres will host 50 private theatres on their stages in October 2020 and the play BERU. KLAKSON BORIZIN BİRT will be staged by the actors of the private theatre Teatra Jiyana Nû on Tuesday, October 13, 2020 at 20.30 at IBB City Theatres Gaziosmanpaşa Stage (Merkez Mahallesi Ordu Caddesi Gaziosmanpaşa Kültür Merkezi Kaç 3 Gaziosmanpaşa İstanbul): It has been learned from open sources that the play titled KLAKSON BORIZIN BİRT will be staged.*

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<sup>13</sup> Law on the Duties and Powers of the Police; Law No:2559, Official Gazzette Date:14/7/1934, Issue:2751

<sup>14</sup> <https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/cumartesi-anneleri-insanlari-haftalik-gozlem-raporlari/>

<sup>15</sup> <https://yeni1mecra.com/beru-yasagina-tiyatro-orgutlerinden-tepki-en-guzel-adimlardan-biri-baltalanmak-istendi/>

*Pursuant to Article 32/ç of the Provincial Administration Law No. 5444, 'Ensuring peace and security, personal inviolability, security of disposition, public well-being and preventive law enforcement authority within the borders of the district are among the duties and duties of the District Governor. In order to ensure these, the District Governor takes the necessary decisions and measures'.*

*"Since it is evaluated that the theater event to be held may disrupt the general public order, in order to ensure peace and security within the borders of our district, peace and security, personal and inviolability, safety and public well-being, Article 32/ç of the Provincial Administration Law No. 5442 and Article 17 of the Law No. 2911 on Meetings and Demonstration Marches. In line with the provisions of Article 32/ç of the Provincial Administration Law No. 5442 and Article 17 of the Law on Meetings and Demonstrations No. 2911, in order to ensure the peace and security, the inviolability of persons, the security of property, and public well-being, I hereby submit to your tensipler that the theater play named BERU: KLAKSON BORIZAN BİRT by the private theater named Teatra Jiyana Nû be banned indefinitely in all open / closed areas within the borders of Gaziosmanpaşa district<sup>16</sup>.*

Signed

\*\*\* - Police Commissioner Second Class

Approved and Signed

\*\*\* - District Governor"

26. It can be clearly seen as in this example that the change of the law did not amend the practice, still the police are submitting petitions to the district governors to ban such meetings. Therefore the arguments of the government regarding the aforementioned law should be dismissed.

## **LEGAL PRACTICE**

27. The government argues that the administrative courts are able to quash the decisions of the administrative bodies and the legal practice is preventing the arbitrary bans of Kurdish cultural activities that are at stake in this case. The argument of the government is failing to show the real picture on certain grounds for the following reasons:

28. In these kinds of assemblies, time is of the essence. Generally, the companies would have already started to announce their concerts, plays or events and they would already have paid rent for the venue and made the necessary arrangements beforehand and when such a decision to ban the meeting take place; then it would cause serious monetary loss.

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<sup>16</sup> 13.10.2023 dated petition submitted by Gaziosmanpaşa District Police Commissioner to the District Governarate. It can be found in the annex.



29. Administrative Courts in Turkey can hand down stay of execution within fifteen days of petitioning in cases where there is a risk of irreparable harm and high probability of illegality. Therefore, obtaining such motion takes time and they are rarely handed down.
30. When the administrative courts hands down a “*quash the decision*” it is generally too late for it to be implemented. Hence in these types of cases, the role of administrative courts is only to award monetary damages but this does not solve the problem of not allowing Kurdish concerts in Turkey.
31. Also the domestic court decisions are unpredictable; as a part of Turkey’s legal structure, the principle of *stare decisis* does not apply. Decisions of the higher and lower courts are not binding precedent to each other. The judicial outcome in such cases is unpredictable. For example, MLSA won a case against the Kadıköy District Governor’s Office in 2023 in Istanbul Administrative Court, but in an identical case with the same fact patterns in Adana, the request was rejected by Adana Administrative Court in 2022.

## CONTEXTUAL ANALYSIS

32. Following the Coup D’Etat Attempt in 2016 and the practice started in 2019 to appoint trustees to HDP controlled municipalities; the government started to be more restrictive on the Kurdish social sphere. During the state of emergency in 2016, many Kurdish civil society organizations have been banned with state of emergency decrees. This also affected the government’s attitude towards Kurdish art and culture.
33. Bans on Kurdish concerts are issued not only through the cancellation decisions of Governorates or District Governorships, but also through the physical obstruction of singing in Kurdish by law enforcement in places where music is permitted. In one example, the police took the microphone from a citizen singing in Kurdish in a café in Batman, a city with a majority of Kurdish citizens, and [told him that it was forbidden to sing in Kurdish in Batman<sup>17</sup>](#).
34. This spree of pressure indeed increased the obstruction of Kurdish theatre plays and concerts. MLSA’s editorial unit summarized the bans against Kurdish plays and concerts since 2019<sup>18</sup>:
35. On **23 July 2019**; the Kurdish singer Mem Ararat’s concert was banned by the Van Provincial Governor. As a justification the administration made the following press release “*The request to organize a concert with the participation of the artist named Mem Ararat was not deemed appropriate due to the prohibition of all kinds of marches, meetings and events to be organized by real and legal persons in open areas within the geographical borders of Van province for 15 days, effective from 13/07/2019, in accordance with the prohibition decision taken with the approval of the Governor's Office dated 12/07/2019 and 575<sup>19</sup>*”.

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<sup>17</sup> <https://www.gazeteduvar.com.tr/turkiye/2019/09/28/dodanin-mikrofonu-kurtce-sarki-yasak-denilere-elinden-alindi>

<sup>18</sup> Also a summarized list can be found on Bianet: <https://bianet.org/haber/dozens-of-kurdish-concerts-plays-banned-in-turkey-in-three-years-262018>

<sup>19</sup> <https://www.evrensel.net/haber/383535/mem-araratin-van-konseri-yasaklandi>

36. On **28 July 2019**; the Nusaybin District Governorate banned a concert of two Kurdish artists Azad Bedran and Zinar Sozdar; the Governorate made the following announcement “*It is understood that the organizing committee is not mentioned in the documents and the identity information of the people who will give concerts is not given. It is understood that Azad Bedran, one of the artists who will give a concert, has been sentenced to imprisonment due to the concerts he has given, and the other artist Zinar Sozdar has organized concert events in many places on various dates, and that there are various lawsuits against him, and as a result of the examinations made, the requested concert permit was not deemed appropriate*<sup>20</sup>.”
37. On **November 13, 2020**, the Kurdish theater play “Beru” which was scheduled to be performed in Istanbul Metropolitan Municipality’s stage was banned by Gaziosmanpaşa District Governate. In the announcement of the ban; the government argued “*Since it is evaluated that the theater event to be held may disrupt the general public order, in order to ensure peace and security within the borders of our district, peace and security, personal and inviolability, safety and public well-being,..*<sup>21</sup>.” without showing any evidence.
38. On **November 14, 2020**, the same play “Beru” was banned again this time in Şanlıurfa<sup>22</sup>.
39. On **November 15, 2020**; İstanbul Fatih District Governorate banned Özcan Ateş's stand up show Dawiya Dawî (Eninde Sonunda), organized by Peoples' Democratic Party (HDP) Istanbul Youth Assembly as part of the campaign "Let's break addiction and build a new life" at Su Performing Arts Stage<sup>23</sup>.
40. On **October 16, 2021**; the 30th Anniversary Concert of Mesopotamia Cultural Center (MKM) to be held at Bostancı Cultural Center under the title "*Berbang (Tan Vakti)*" was banned by Kadıköy District Governorate. The ban of the concert, which was authorized by the Istanbul Governorate, was justified on the grounds that it would "*jeopardize national security, public order, the possibility of crime, and the rights and freedoms of others*"<sup>24</sup>.
41. On **November 15, 2021**: Keçiören Municipality canceled Kurdish Singer Mem Ararat's concert at the Neşet Ertaş Cultural Center by unilaterally terminating the contract for the hall on the grounds that "*Kurdish music will be performed*"<sup>25</sup>.
42. On **December 05, 2021**: Mardin Provincial Governate banned the Kurdish theatre play titled “Tartuffe” by Amed City Theatre<sup>26</sup>.
43. On **March 06, 2022**; the play, a Kurdish love story woven with mythological elements, “Mem û Zîn” by Şermola Performance, which was scheduled to be staged at the Cizre Municipality Cultural Center, was canceled by the Cizre District Governorate, despite

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<sup>20</sup> <https://www.gazeteduvar.com.tr/turkiye/2019/07/25/nusaybinde-konser-yasagi>

<sup>21</sup> <https://bianet.org/haber/sub-governor-s-office-bans-kurdish-theater-play-to-be-hosted-by-istanbul-city-theaters-232667>

<sup>22</sup> <https://bianet.org/haber/second-ban-on-kurdish-theater-play-beru-234462>

<sup>23</sup> <https://bianet.org/haber/a-sub-governor-s-office-in-istanbul-bans-a-kurdish-play-without-citing-a-reason-253319>

<sup>24</sup> <https://bianet.org/haber/kadikoy-kaymakamligi-mkm-nin-30-yil-etkinligini-yasakladi-251925>

<sup>25</sup> <https://www.gazeteduvar.com.tr/kecioren-belediyesi-mem-ararat-in-konserini-kurtce-sarki-gerekcesiyle-iptal-etti-haber-1542001>

<sup>26</sup> <https://www.gazeteduvar.com.tr/mardin-valiligi-kurtce-tiyatro-oyununu-engelledi-haber-1544351>

the fact that preparations had begun days before and the rent for the hall had been deposited into the municipality's account<sup>27</sup>.

44. On **May 13, 2022**; Kurdish singer Aynur Doğan's concert was canceled by Kocaeli Derince Municipality<sup>28</sup>.
45. On **May 13, 2022**; Amed City Theater's Kurdish play "Don Kîxot", based on Cervantes' famous work, was canceled by the AKP-affiliated Kocaeli Çayirova Municipality<sup>29</sup>.
46. On **May 26, 2022**; Bursa Provincial Governate banned the Kurdish singer Mem Ararat's concert on the grounds of public security. The singer made the following statement: *"The banning of our concert, for which all tickets have been sold, the musicians' plane tickets have been bought, reservations and similar preparations have been completed, just 3 days before the concert, is undoubtedly a divisive decision that injures the conscience of the society."*<sup>30</sup>
47. On **June 7, 2022**; Mersin Provincial Governate banned the Kurdish theater play "Tartuffe" again, the same play was banned by Mardin Provincial Governate on December 5, 2021<sup>31</sup>.

## STRATEGIC LITIGATION OF MLSA ON BEHALF OF MESOPOTAMIA CULTURE CENTER

48. Mesopotamia Culture Center which is the biggest Kurdish cultural organization in Turkey celebrated its 30th anniversary in 2021. The anniversary was going to be celebrated through a concert in Bostancı (Kadıköy-İstanbul) Culture Center on October 16, 2021 with the slogan of "Berbang (the Dawn)". The program was banned by Kadıköy District Governate upon request of Police Commissioner on the grounds that *"would endanger national security, public order, the possibility of crime, the rights and freedoms of others"*<sup>32</sup>.
49. Legal Unit of Media and Law Studies Association took the case within its strategic litigation program and requested annulment of the governor's decision, compensation of moral and monetary damages by filing a petition to Istanbul Administrative Court.
50. The Governorate submitted its response to the case and argued that in HDP (People's Democratic Party) social media promoted the event on its social media accounts. The governorate argued that the HDP's twitter post created the possibility of committing a crime.
51. The court delivered its judgment on July 5, 2023. The 6th Administrative Court of Istanbul quashed the administrative decision to ban the concert; awarded monetary damages, but rejected the request for moral damages<sup>33</sup>.
52. The administrative court noted that the HDP's promotion of the concert on its social media cannot be considered as evidence to prove likelihood of committing a crime.

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<sup>27</sup> <https://www.gazeteduvar.com.tr/cizre-kaymakamligindan-mem-u-zin-yasagi-haber-1555575>

<sup>28</sup> <https://www.diken.com.tr/kocaelinde-akpli-belediye-aynur-dogan-konserini-iptal-etti/>

<sup>29</sup> <https://haber.sol.org.tr/haber/kocaelide-aynur-dogan-konserinden-sonra-kurtce-don-kisot-yasagi-335611>

<sup>30</sup> <https://www.gazeteduvar.com.tr/bursa-valiligi-mem-araratin-konserini-kamu-guvenligi-gerekesiyle-iptal-etti-haber-1566403>

<sup>31</sup> <https://bianet.org/haber/after-adana-mersin-also-bans-kurdish-adaptation-of-moliere-play-262996>

<sup>32</sup> Kadıköy District Police Commissioner's petition submitted to ban the activity.

<sup>33</sup> 05.07.2023 dated Istanbul 6. Administrative Court 2022/145 file no. Judgement.

53. The court further noted that “*Expression except in cases of incitement to violence and undermining the principles of democracy preventive measures to eliminate freedom of science and art and freedom of science and art radical measures undermine democracy. This is why people who have come together for peaceful purposes danger to public order when exercising the right to freedom of expression and freedom of science and art; the state's patience and tolerance of their non-constitutive and non-violent behavior is a requirement of democracy.*”
54. The case is considered as a pilot case to create a precedent against the practice of ban on Kurdish art and culture activities in Turkey. More information can be found on MLSA’s website<sup>34</sup>.

## CONCLUSIONS and RECOMMENDATIONS

55. MLSA observes that the Government is pursuing a political agenda to eliminate Kurdish social sphere from the public and the bans against the aforementioned activities are a result of this political agenda<sup>35</sup>. In all the cases explained in this communication, the Government failed to show any risk against public order, commitment of a crime and public safety. Due to his political agenda, these restrictions are being prescribed for other purposes than those for which they have been prescribed.
56. In light of the information submitted in this communication, MLSA considers that the situation regarding Kurdish concert and theater plays has worsened since the judgment has been handed down. The practice of arbitrarily banning all kinds of Kurdish cultural events became the norm. Considering these facts, **MLSA considers that the supervision of the execution process should continue and Turkey should be invited to adopt the recommendations below:**

- The Law on Meetings and Demonstrations No. 2911 must be amended in a way that the bans or postponements must be obtained through a court order from a magistrate judge and the authorities of governors must be regulated and the measures which they can take must be enumerated and limited.
- The law enforcement’s illegal practice of requesting a ban against meetings and demonstrations within the violation of freedom of expression must be ended.
- The Government should build the capacity of governors’ offices to disclose the legal justifications for restriction of freedom of speech and freedom of artistic expression and provide evidence on such decisions.

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<sup>34</sup> <https://www.mlsaturkey.com/tr/mahkeme-kuertce-konser-yasagini-hukuka-aykiri-buldu> .

<sup>35</sup> World Report 2023: Turkey | Human Rights Watch (hrw.org); Turkey: Freedom in the World 2022 Country Report | Freedom House; Kurdish political representation and equality in Turkey - House of Commons Library (parliament.uk); The State of the Turkish-Kurdish Conflict - Center for American Progress, UK Government, Guidance County Policy and information note: Kurds, Turkey, October 2023, 26.10.2023, <https://www.gov.uk/government/publications/turkey-country-policy-and-information-notes/country-policy-and-information-note-kurds-turkey-october-2023-accessible> ; Deutsche Welle, 17.10.2020, Turkey Bans Kurdish Language play in Istanbul, <https://www.dw.com/en/turkey-bans-kurdish-language-play-in-istanbul/a-55306289> ; Stockholm Center for Freedom, 12.05.2021, Suppression of Kurdish Language in Turkey is reflection of general intolerance towards Kurds: community leader,

- Turkey should be asked to provide detailed information on bans of restriction of freedom of speech and freedom of artistic expression and the legal justifications on such bans.