

TRIAL MONITORING REPORT

November 2021



Norwegian Ministry
of Foreign Affairs



Media and Law Studies Association
Medya ve Hukuk Çalışmaları Derneği

Trial Monitoring Report | November 2021

Introduction

Media and Law Studies Association (MLSA) has been running a trial monitoring program since 2018 in cooperation with numerous international civil society organizations. In the program, freedom of expression trials are monitored to ensure that they are up to international standards of fair trial.

The program continued in November 2021 with the assistance of **the Royal Norwegian Ministry of Foreign Affairs**.

1. Overview of the trials

1.1. The cities where the hearings were held

In November, MLSA monitored **41** hearings of **38** trials in **8** different cities with **10** court monitors.

In this period, the majority of the hearings monitored were held in Istanbul. A hearing was also monitored in Yalova for the first time in the program.

Out of 41 hearings monitored, **3** hearings were the first hearings of that trial.

The city where the hearing was held	Number of hearings
Erzurum	1
Kocaeli	1
Yalova	1
İzmir	2
Ankara	3
Batman	3
Diyarbakır	6
İstanbul	24
Total	41

1.2. Trials by the number of defendants

In this period, **473** people were tried. **18** of the 38 trials monitored in this period were trials with one defendant. Also, there were **17** trials with more than two defendants.

As it was the case in October, in this period, the trials in which the most people are tried were held in Batman and İstanbul. In İstanbul, 52 people were tried on multiple charges in the “Gezi Case” which was recently merged with the “Çarşı Case”. In

Batman, on the other hand, 76 people including journalist Engin Eren and politicians from Peoples' Democratic Party (HDP) were tried. In November, 46 people who were detained when the police attacked the 700th Week Gathering of Saturday Mothers/People and 52 students of Boğaziçi University who protested against the appointment of Melih Bulu to their university by Recep Tayyip Erdoğan also stood trial.

Number of defendants	Number of trials
1 defendant	18
2 defendants	3
4 defendants	3
5 and more defendants	5
20 and more defendants	6
50 and more defendants	3
Total	38

1.3. Defendants by occupation

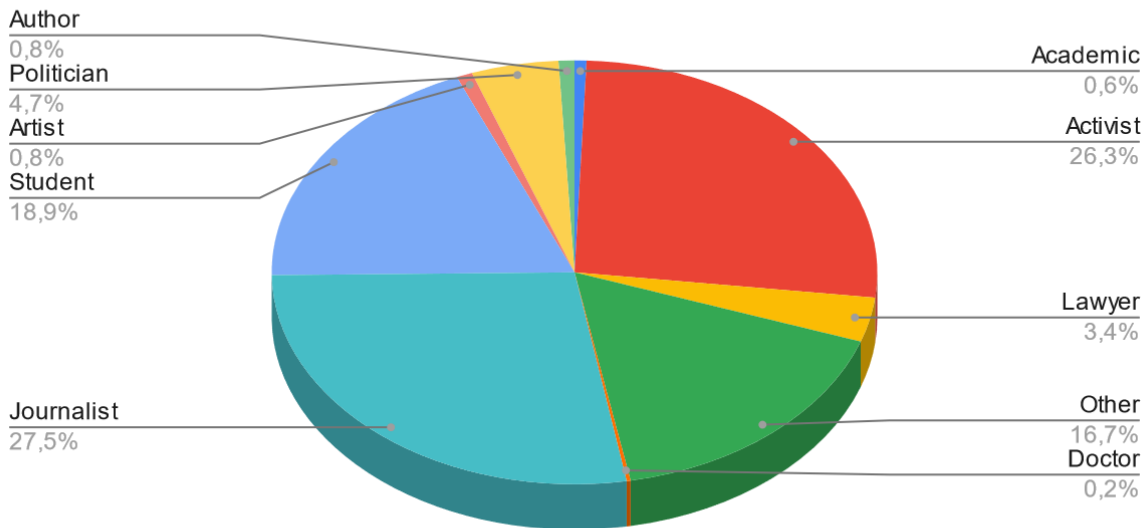
As the hearings of “press trials” which have been going on for a long time were held in November, **130** journalists stood trial in this period. 46 journalists stood trial in the “KCK Press” trial which has been going on for nine years. 22 journalists stood trial in “Özgür Gündem” trial and 14 journalists stood trial in “Özgür Gündem” retrial in November.

After journalists, activists constituted the majority of defendants in November. In this period, **124** activists who had attended protests, marches or press statements stood trial. This group includes citizens who had taken part in protests or marches like Gezi Park Protests or the 2015 protest against the ongoing military operations in Batman. The majority of the people who were detained and prosecuted for attending the 700th Week Gathering of Saturday Mothers/People are also included in this group.

Students constituted the third-biggest group of defendants who stood trial in November. **89** students who had attended protests, marches or press statements against the appointment of Melih Bulu to Boğaziçi University by Recep Tayyip Erdoğan, stood trial in November.

22 politicians also stood trial in November.

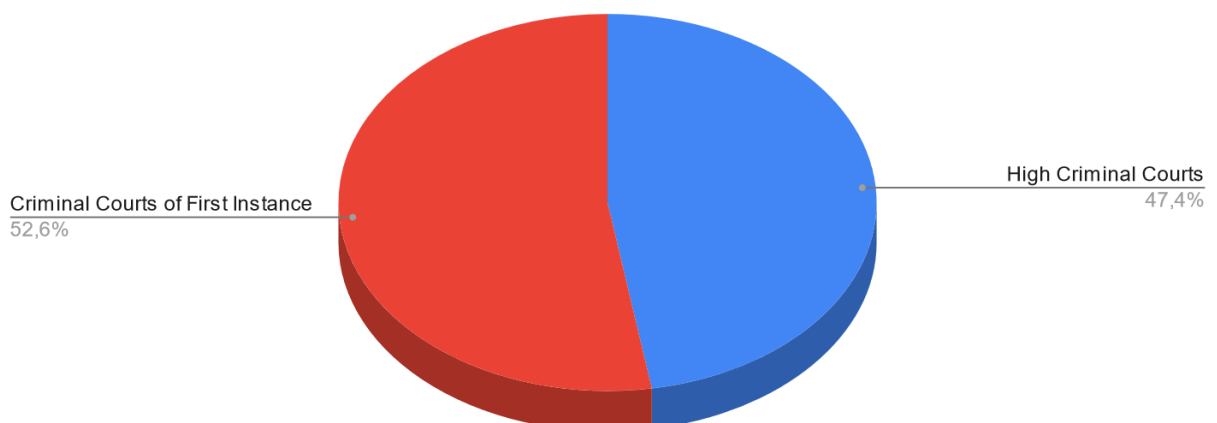
The distribution of the defendants' occupations



1.4. Courts hearing the cases

In contrast to October, the majority of the hearings of the trials where activists, journalists and politicians were tried were held at Criminal Courts of First Instance. **20** cases out of 38 were heard at Criminal Courts of First Instance while **18** were heard at High Criminal Courts.

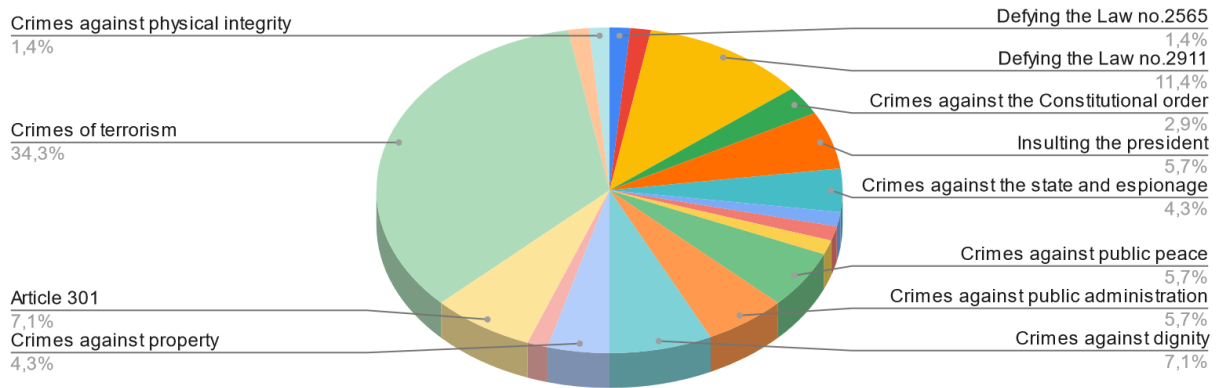
The distribution of the courts hearing the cases



1.5. The charges leveled against the defendants

In 38 trials monitored in November, **70** charges in **19** different categories were leveled against 473 defendants.

The distribution of the categories of charges



In October, the category of crimes of terrorism constituted 48% of the charges leveled against the defendants. In November, however, terrorism related charges constituted **34%** of the charges leveled against the defendants. In addition to charges such as “membership in a terrorist organization” and “making propaganda for a terrorist organization”, journalists also faced “publishing and distributing the publications of a terrorist organization” and “defying the Law on the Prevention of Financing of terrorism” charges in November.

The ratio of “defying the Law on Assemblies and Demonstrations no. 2911” was recorded as **11%**. The ratio of these charges remains the same as in October. In November, the defendants faced “defying the Law no. 2911” charges together with charges in the category of “crimes against public administration” namely the charges of “prevention of duty”. The ratio of these charges was recorded as **6%**.

The ratio of “insulting the president” charges was **6%** in November, compared to 7% in October.

An increase has been recorded for charges in the category of “crimes against dignity”. This category includes “insulting a public official” charges which journalists frequently face. The ratio of this category was **7%** in November, compared to 6% in October.

The ratio of “crimes against public peace” was **6%** in November. This category includes “inciting the public to hatred and hostility” charges which authors and journalists frequently face. However, in November, seven students of Boğaziçi University also faced it because of a picture at a protest exhibition.

In November, the ratio of the charges based on the Article 301 of Turkish Penal Code was **7%**. In this period, journalists and lawyers faced “degrading the Turkish Nation, State of Turkish Republic, the Organs and Institutions of the State” charges per this article.

1.6. Evidence cited

In November, the total number of evidence cited against the defendants was **74**.

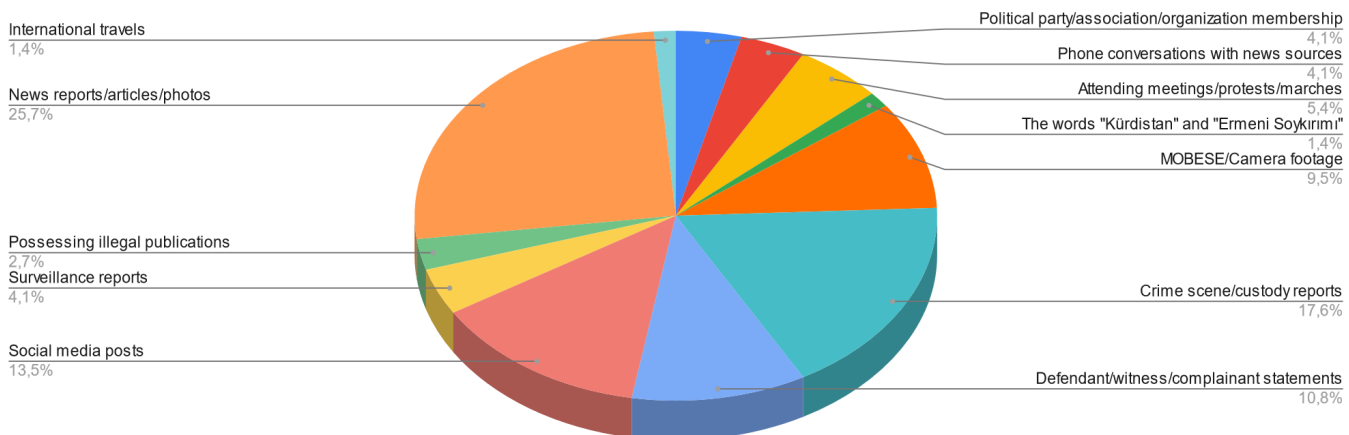
In this period, news reports/articles/photos were cited as evidence against the defendants in **19** cases. Compared to 32% in October, the ratio of this category of evidence was **26%** in November.

The second-biggest category of evidence in this period consisted of evidence which cited against the defendants who faced “defying the Law on Assemblies and Demonstrations no. 2911” charges. The ratio of this category was 8% in October whereas in November, it was recorded as **26%**. This category includes the so-called crime scene and custody reports which constituted **18%** of this category. These reports were often cited as evidence, along with footage from police and/or city surveillance cameras (MOBESE). The ratio of such footage was 3% in October, compared to **5%** in November.

The trend of citing social media posts as evidence against the defendants continued in November. The ratio of social media posts cited as evidence in November was **14%** compared to 20% in October.

In November, the former chair and the members of the executive committee of the Diyarbakır Bar Association stood trial for Article 301 charges. In the indictment of this case, the prosecution cited the utterance of the words “Kürdistan” and “Ermeni Soykırımı [the Armenian Genocide] as evidence against the lawyers.

The distribution of the evidence cited



2. Cases Adjudicated

2.1. Prison Sentences

Case File	Defendant	Sentence	Charges	Occupation
2020/279	Nurcan Yalçın	2 years 1 month	Willingly and knowingly aiding and abetting a terrorist organization	Journalist
2020/279	Nurcan Yalçın	1 year 6 months 22 days	Making propaganda for a terrorist organization	Journalist
2021/59	Erdal Yıldırım	1 year 6 months 22 days	Making propaganda for a terrorist organization	Author
2021/371	Yılmaz Odabaşı	11 months 20 days	Insulting the president	Author
2019/550	Oktay İnce	1 year 2 months 17 days	Insulting the president	Journalist

In trials where Erdal Yıldırım, Yılmaz Odabaşı and Oktay İnce were sentenced to prison, social media posts were the only evidence that the prosecution had cited in its indictment.

2.2. Acquittals

Case File	Defendant	Charges	Occupation
2021/72	Ayşe Kara	Membership in an armed terrorist organization	Journalist
2020/241	Fatih Gönül	Making propaganda for a terrorist organization, membership in an armed terrorist	Journalist

		organizationi	
2020/403	Dindar Karataş	Membership in an armed terrorist organization	Journalist

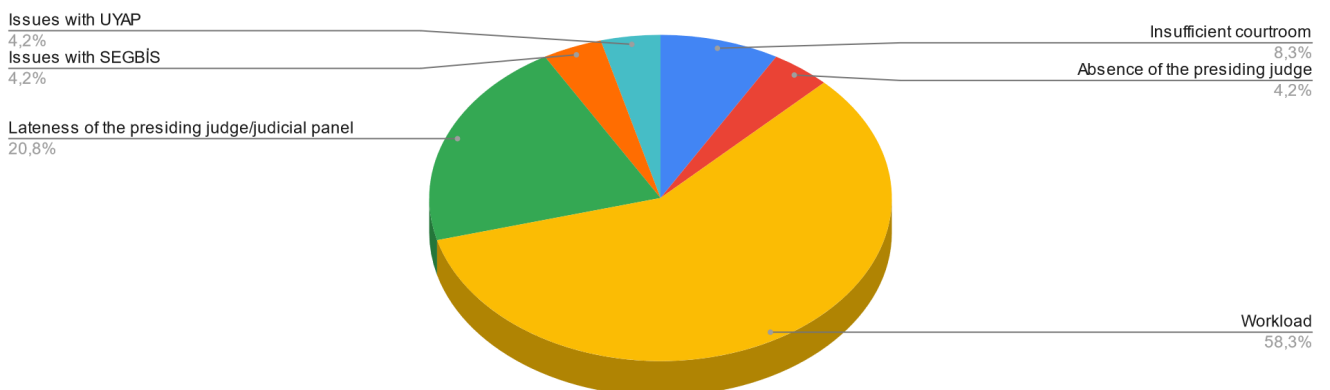
3. The Monitors' Notes on the Right to a Fair Trial

3.1. Punctuality of the hearings

The monitors recorded that **22** out of 41 hearings started late in November whereas **2** hearings started earlier than scheduled. On average, the hearings started an hour late, however two hearings which were held in Istanbul started even more delayed. The hearing of the trial where 38 people stand trial for “economic coup attempt” because of their social media posts commenting on the meltdown of Turkish lira, started four hours late. The hearing of the trial where 52 students of Boğaziçi University started five and a half hours late.

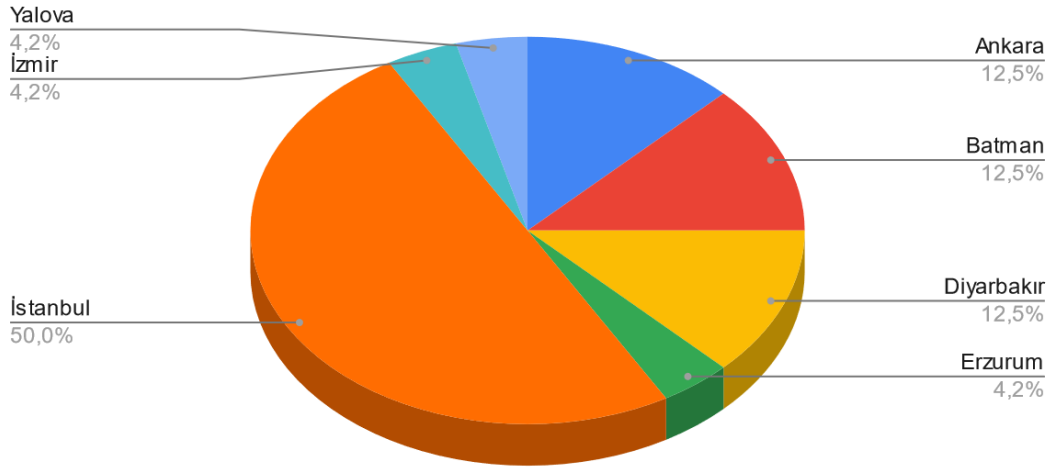
14 of the 24 hearings which started late were delayed because of the workload of the court which heard the case. **5** hearings were delayed because the presiding judge and/or the member(s) of the judicial panels was late. The hearing of the trial where 38 people stand trial for “economic coup attempt” because of their social media posts commenting on the meltdown of Turkish lira, started four hours late because the presiding judge was on leave. The hearing of the trial where 52 students of Boğaziçi University started five and a half hours late because the courtroom was too small and a new one had to be arranged.

The distribution of reasons for the delays



12 of the hearings which started late were held in İstanbul. All **3** hearings which were held in Batman and Ankara started late.

The distribution of the cities with delayed hearings



3.2. The monitors' access to the courtroom

The court monitors recorded that they were denied access to the courtroom on **10** occasions. The monitors were not allowed into the courtroom in **9** hearings in İstanbul and **1** hearing in Yalova.

The most common reason given for the decision to deny access to the courtroom was "COVID-19 restrictions." This reason was given for **4** hearings to which the monitors were denied access. The monitors were denied access to the courtroom on 3 occasions on the grounds that "the courtroom was not big enough". On **2** occasions in which the monitors were denied access to the courtroom, no reason was specified.

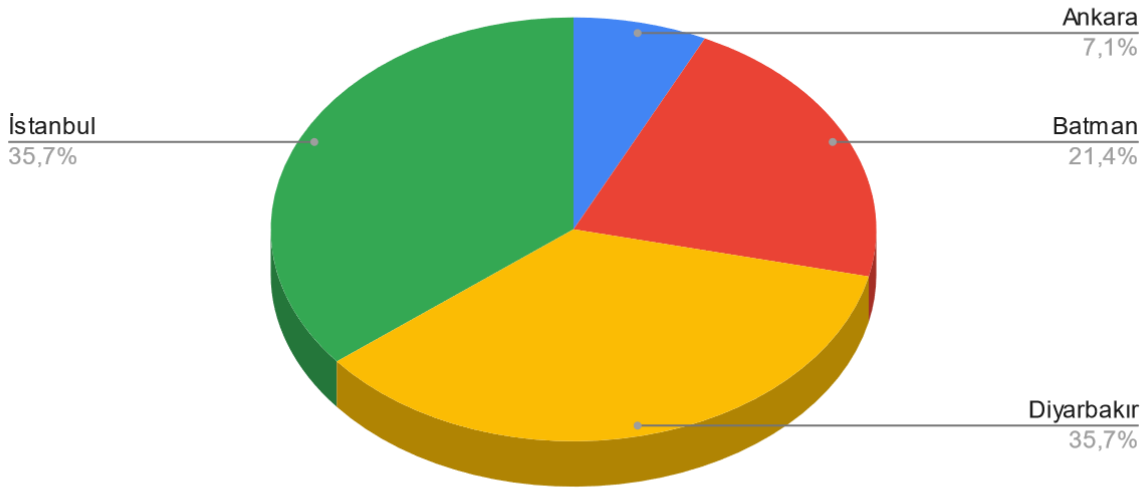
3.3. Changes of the presiding judges

The monitors recorded that out of 38 trials monitored in this period, the presiding judge was changed in **26** of them. Half of the changes recorded in this period were in cases heard at High Criminal Courts while the other half was in cases heard at Criminal Courts of First Instance.

3.4. Changes in the judicial panels

20 trials out of 38 monitored were heard at courts where there was a judicial panel. The monitors recorded that in **14** cases out of 20, there was a change in the judicial panel. **13** of these changes were in judicial panels at High Criminal Courts, while there was only **1** change in judicial panels at Criminal Courts of First Instance.

The distribution of the changes in judicial panels by city



3.5. Pretrial detention

In this period, Osman Kavala and Mehmet Baransu were still in pretrial detention. In addition to Kavala and Baransu, Caner Perit Özen, a student of Boğaziçi University, was also held in pretrial detention.

Mehmet Baransu and Caner Perit Özen were brought to the courthouse for the hearings, however, Osman Kavala was once again not brought to the hearing.

Case File	Defendant	Arrested on	Imprisoned in	Occupation
2021/178	Osman Kavala	01.11.2017	Silivri Prison	Human rights defender, businessperson
2016/218	Mehmet Baransu	02.03.2015	Silivri Prison	Journalist
2021/552	Caner Perit Özen	06.10.2021	Metris Cezaevi	Student

4. Trials Monitored in November 2021

Case File	City
2020/111	İstanbul
2020/208	Diyarbakır
2021/72	Diyarbakır
2018/827	Diyarbakır
2020/279	Diyarbakır
2014/277	İstanbul
2019/342	İstanbul
2021/540	Ankara
2020/241	Ankara
2016/34	İstanbul
2021/59	İstanbul
2021/922	İstanbul
2021/371	Yalova
2017/230	Batman
2016/325	İstanbul
2021/218	İstanbul
2019/550	İzmir
2020/403	Erzurum
2019/647	İstanbul
2020/33	İstanbul
2016/166	İstanbul
2016/34	Diyarbakır
2016/162	İstanbul
2016/106	İstanbul
2016/218	İstanbul
2021/178	İstanbul
2020/3	Diyarbakır
2021/186	İstanbul
2021/212	Kocaeli
2017/408	İstanbul
2021/ 413	İstanbul
2020/096	Batman

2019/616	İstanbul
2014/139	İstanbul
2020/559	İstanbul
2021/552	İstanbul
2021/178	İstanbul
2015/294	Batman