# [TR] Conflicting judgments on journalistic freedom

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On 11 January 2018, the Constitutional Court of Turkey ruled upon constitutional complaints that the detention on remand of two journalists, MA and ŞA, for more than 16 months without convincing evidence was a violation of their right to freedom of press/expression and their right to liberty and security. The court rejected the rest of the complaints that they had also been the victims of a violation of their fair trial rights and of ill-treatment.

Constitutional complaint procedure was introduced in Turkey with an amendment in the constitution in 2010. By empowering the Constitutional Court to receive individual applications, the parliament aimed at creating a domestic remedy for human rights violations before the victims directly reached the European Court of Human Rights (ECtHR). The new remedy has been operating as of September 2012. Since then, the Turkish Constitutional Court (TCC) has received thousands of applications alleging breach of various rights in the constitution.

The applicants MA and ŞA were charged with terrorist crimes linked to the failed coup attempt of July 15, 2016. Their cases are pending before the first instance court. They argued before the TCC that they had not used language which may be understood explicitly or implicitly as supporting violence or terrorist organisations. They also denied their alleged link with the coup plotters.

In cases where the TCC finds a violation upon an individual application, the system, as established by parliamentary statute, works as follows: the TCC sends the case file to the original (or final) court for a decision to remedy. The original/first instance/final court is supposed to hold a re-trial hearing to reach a conclusion in line with the TCC’s judgement.

In fact, under the Turkish Constitution (Article 153/6) the TCC’s judgments are binding for judicial, executive and legislative organs; private and public persons; and institutions. In spite of this, the first instance court rejected the release of the applicants and blamed the TCC for overstepping its powers. This unprecedented response from a lower court in a legal system is now being discussed among lawyers in the country. As a result, applicants have now directed their cases to the ECtHR with the argument that the constitutional complaint procedure in their case has proved to be ineffective.

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***Türkiye Anayasa Mahkemesi, Mehmet Hasan Altan Başvurusu (2), 11.01.2018, No: 2016/23672; Şahin Alpay Başvurusu, 11.01.2018, No: 2016/1092. Bkz. Resmi Gazete, 19 Ocak 2018, Sayı: 30306***

*Turkish Constitutional Court, Application of Mehmet Hasan Altan (2), 11.01.2018, No: 2016/23672; Application of Şahin Alpay, 11.01.2018, No: 2016/1092. See Official Gazette, 19 January 2018, No: 30306*

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