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**THE AUTHORITARIAN  
SURVEILLANCE IN  
TÜRKIYE**

**AND HUMAN RIGHTS  
IMPLICATIONS**

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**SOLIDARITY WITH OTHERS  
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# The Authoritarian Surveillance in Türkiye and Human Rights Implications

## What is ByLock?

### Background information

ByLock was an i-message app that allowed its users to upload for communicating through both written and voice messages.<sup>1</sup> The online application was launched by a Turkish-American citizen in 2014 and was commercially accessible via major online software stores, including the App Store and Google Play until it was deactivated later 2014.<sup>2</sup> The variations of the application were provided through other platforms that are considered less secure, mainly targeting Android, Windows Phone and Blackberry users.<sup>3</sup>

### Criminalization of ByLock under the Turkish Law

In 2016, the Turkish Government faced a failed coup attempt.<sup>4</sup> The Government held Fethullah Gülen and his followers responsible for planning this coup and declared them as a terrorist organization in the aftermath of the failed coup.<sup>5</sup> However, Western countries, including the

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<sup>1</sup>Auchard , E., and Pamuk , H. (2016, August 3). *Coup plotters' use of "amateur" messaging app helped Turkish authorities map their network*. <https://www.reuters.com/article/idUSKCN10E1UP/>. <https://www.reuters.com/>.

<sup>2</sup>Gokce, Y. (2018). The bylock fallacy: An in-depth analysis of the Bylock investigations in Turkey. *Digital Investigation*, 26, 81–91. <https://doi.org/10.1016/j.diin.2018.06.002>; See also Auchard , E., and Pamuk , H. (2016, August 3). *Coup plotters' use of "amateur" messaging app helped Turkish authorities map their network*. <https://www.reuters.com/article/idUSKCN10E1UP/>. <https://www.reuters.com/>.

<sup>3</sup>Auchard , E., and Pamuk , H. (2016, August 3). *Coup plotters' use of "amateur" messaging app helped Turkish authorities map their network*. <https://www.reuters.com/article/idUSKCN10E1UP/>. <https://www.reuters.com/>.

<sup>4</sup>European Commission. (2016). Key findings of the 2016 Report on Turkey. [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_16\\_3639](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_16_3639).

<sup>5</sup>European Commission. (2016). Key findings of the 2016 Report on Turkey. [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_16\\_3639](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_16_3639).

United States where Fethullah Gülen resides,<sup>6</sup> the EU,<sup>7</sup> and the UN bodies such as the OHCHR<sup>8</sup> have been in disagreement with the Turkish Government regarding the involvement of him or anyone related to him in the failed coup. To preserve an objective standpoint, this publication will refer to him and his proponents as the “Gülen Movement”, in accordance with the reference style of the OHCHR.<sup>9</sup>

After this coup attempt, the Turkish agencies detected many proponents of the Movement who used ByLock.<sup>10</sup> Since then, the usage of the application was criminalized under Article 314(1) of the Turkish Criminal Code as an act of terrorism and the members of the Gülen Movement have been arrested.<sup>11</sup> Since 2016, the National Intelligence Agency (“MİT”) has prepared lists to identify the users of ByLock.<sup>12</sup>

On September 26, 2017, the Criminal Chambers of the Court of Cassation ruled that a person’s involvement with an act of terrorism under Article 314(1) of the Turkish Penal Code can be derived from their mere usage of this application irrespective of the content of their communication.<sup>13</sup> The Court emphasized that as ByLock has been used by many of the members of the Gülen Movement, and it appears to be specifically designed for them, any involvement of a person with this application, which may be detected through technical means alone, establishes a link between this user and the Movement beyond any reasonable doubt.<sup>14</sup> As being a member of the Gülen

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<sup>6</sup>CRS reports. (2017, April 10). <https://crsreports.congress.gov/>.

<sup>7</sup>Karadeniz, T., and Gumrukcu, T. (2017, November 30). *EU says needs concrete evidence from Turkey to deem Gulen Network as terrorist* | reuters. EU says needs concrete evidence from Turkey to deem Gulen network as terrorist. <https://www.reuters.com/article/idUSKBN1DU0DU/>.

<sup>8</sup>OHCHR. (2018, March). *UN Human Rights Office*. Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East. <https://www.ohchr.org/>.

<sup>9</sup>OHCHR. (2018, March). *UN Human Rights Office*. Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East. <https://www.ohchr.org/>.

<sup>10</sup>Auchard, E., and Pamuk, H. (2016, August 3). *Coup plotters’ use of “amateur” messaging app helped Turkish authorities map their network*. <https://www.reuters.com/article/idUSKCN10E1UP/>. <https://www.reuters.com/>.

<sup>11</sup>Turkish Criminal Code No. 5237, Art. 314(1), accessible via <https://www.mevzuat.gov.tr/mevzuatmetin/1.5.5237.pdf>.

<sup>12</sup>Turkut, E., and Yıldız, A. (2024, March). *Bylock prosecutions and the right to fair trial in Turkey: The ECtHR Grand Chamber’s ruling in Yüksel Yalçınkaya v. Türkiye*. Statewatch. <https://www.statewatch.org/publications/reports-and-books/bylock-prosecutions-and-the-right-to-fair-trial-in-turkey-the-ecthr-grand-chamber-s-ruling-in-yuksel-yalcinkaya-v-turkiye/>.

<sup>13</sup>Court of Cassation, E. 2017/16-956, K. 2017/370.

<sup>14</sup>Federazione Italiana Diritti Umani. *Third Party intervention by Italian Federation for human ...* Third party intervention by Italian Federation for Human Rights under Article 36 of the European Convention on Human Rights

Movement is a crime itself in Türkiye, and as mere downloading of ByLock itself is considered as an evidence for being a member of this Movement, any person can be determined as a terrorist under Article 314(1) of the Criminal Code for merely downloading ByLock which was publicly available through AppStore and Google Play in 2014 even in the absence of any other link between the person and Movement.<sup>15</sup>

## The case of Yüksel Yalçınkaya

In 2021, the ECtHR rendered a judgment in *Yüksel Yalçınkaya v Türkiye* regarding the legality of ByLock-related arrests under the ECHR. Yüksel Yalçınkaya was a teacher in the city of Kayseri. Due to his suspected affiliation with the Movement, he was suspended from the civil service as a result of the state of emergency.<sup>16</sup> Subsequently, he was dismissed from service by Legislative Decree no. 672 owing to the suspicion of his affiliation with the Movement.<sup>17</sup> The Kayseri Security Directorate conducted inquiries to determine whether there are actual links between him and the Movement.<sup>18</sup> According to the findings of the Directorate, Yüksel Yalçınkaya was identified as a ByLock user, in addition to his membership in the trade union “Aktif Eğitimciler Sendikası” and “Kayseri Voluntary Educators Association” (*Kayseri Gönüllü Eğitimciler Derneği*),<sup>19</sup> which were deemed to be a part of the Movement.<sup>20</sup> Yüksel Yalçınkaya was in communication with other detected members of the Movement on ByLock,<sup>21</sup> and he was eventually arrested, his phone seized by the police among some other materials.<sup>22</sup>

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(‘ECHR’) Application no. 14894/20, Gültekin Sağlam against Turkey. <https://fidu.it/wp-content/uploads/THIRD-PARTY-INTERVENTION-BY-FIDU-logo-12.10.2021.pdf>.

<sup>15</sup>Federazione Italiana Diritti Umani. *Third Party intervention by Italian Federation for human ...* Third party intervention by Italian Federation for Human Rights under Article 36 of the European Convention on Human Rights (‘ECHR’) Application no. 14894/20, Gültekin Sağlam against Turkey. <https://fidu.it/wp-content/uploads/THIRD-PARTY-INTERVENTION-BY-FIDU-logo-12.10.2021.pdf>.

<sup>16</sup>*Yüksel Yalçınkaya v. Türkiye* (App. no [15669/20](#)) 26 September 2023, para 24.

<sup>17</sup>*Yüksel Yalçınkaya v. Türkiye* (App. no [15669/20](#)) 26 September 2023, para 16 and 24.

<sup>18</sup>*Yüksel Yalçınkaya v. Türkiye* (App. no [15669/20](#)) 26 September 2023, para 25.

<sup>19</sup>*Yüksel Yalçınkaya v. Türkiye* (App. no [15669/20](#)) 26 September 2023, para 27 and para 53.

<sup>20</sup>*Yüksel Yalçınkaya v. Türkiye* (App. no [15669/20](#)) 26 September 2023, para 27.

<sup>21</sup>*Yüksel Yalçınkaya v. Türkiye* (App. no [15669/20](#)) 26 September 2023, para 27.

<sup>22</sup>*Yüksel Yalçınkaya v. Türkiye* (App. no [15669/20](#)) 26 September 2023, para 30.

During the interrogations brought against him, he denied having any links to the Gülen Movement or having provided any monetary help in the form of donations.<sup>23</sup> He mentioned that he terminated his membership with the Aktif Eğitimciler Sendikası in 2016, and he only has an account at a Bank supported by the Movement only due to a school project conducted jointly with the Ministry of Education in 2014. It was necessary to open an account with the said bank to receive his remuneration, which he explained as a condition for his participation in the project rather than support for the movement.<sup>24</sup> He also clarified that his involvement with the Kayseri Voluntary Educators Association stemmed from his interest in their activities in various cultural and educational contexts to be able to socialize.<sup>25</sup> Throughout his involvement with these institutions, he was unaware of their affiliation with the Movement.<sup>26</sup> In particular, he clarified that he had never heard of the application ByLock until the police informed him that he was a user of the application.<sup>27</sup> Although he was classified as a ByLock user, with his IP address indicated by the police on a report including other users of ByLock, the report did not provide any further intelligence regarding how this information was gathered in the first place.<sup>28</sup>

In 2017, he was accused of terrorism under Article 314(2) of the Criminal Code by a bill of indictment against him filed by the prosecutor, among other individuals.<sup>29</sup> There, the prosecutor's office indicated that although the applications such as Skype, Tango, WhatsApp, Viber, Line and KakaoTalk were used for encrypted communication, members in critical positions were using ByLock, which was specifically developed for their use.<sup>30</sup> Among his membership with the mentioned institutions, his use of ByLock was the decisive evidence for his conviction.<sup>31</sup>

His lawyer challenged the grounds of the allegations brought against him, emphasizing that these institutions were legally instituted.<sup>32</sup> The lawyer also challenged the data concerning ByLock,

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<sup>23</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 31 and 57.

<sup>24</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 31 and 57.

<sup>25</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 57.

<sup>26</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 33.

<sup>27</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 31.

<sup>28</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 34.

<sup>29</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 37.

<sup>30</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 50.

<sup>31</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 273.

<sup>32</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 58.

arguing that it could not constitute evidence as they were unlawfully gathered. Additionally, it was unclear how the raw data was incorporated into the case file from a technical point of view, and it was technically inadequate, and unable to be inspected.<sup>33</sup> The lawyer also requested an extension of the investigations concerning how the ByLock data belonging to Yüksel Yalçinkaya was obtained and deciphered technically.<sup>34</sup> The prosecutor rejected this argument by referring to certain reports confirming Yüksel Yalçinkaya's use of the application, which included his IP address.<sup>35</sup> In March 2017, he was sentenced to six years and three months of imprisonment.<sup>36</sup>

The sentencing court ruled that although membership in an organization or a trade union could not, in itself, constitute evidence, membership in more than one entity affiliated with the Movement had been established, in addition to the use of the communication tool, ByLock.<sup>37</sup> Yüksel Yalçinkaya appealed this decision and mentioned that the evidence regarding the use of ByLock is deceptive, considering that an IP address can be allocated to several individuals.<sup>38</sup> Additionally, he argued that the application was downloaded from open sources some 500.000 to 1 million times, and the referred reports lack any judicial examination as to who downloaded the application for the Movement and who downloaded it for other reasons.<sup>39</sup>

The appeal court, upon receiving his case, ordered an expert report by a digital forensic expert based on all the information and records available in the case file. This report once again addressed the use of the application by Yüksel Yalçinkaya.<sup>40</sup> Although his lawyer once again argued that this expert report was unlawfully obtained and requested a fresh report from a committee of three experts,<sup>41</sup> the court rejected this request.<sup>42</sup> Furthermore, the appeal court reiterated that although the application was publicly available in 2014, after it was no longer accessible to the public, members of the Movement resorted to downloading of the application through USB keys, memory

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<sup>33</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 58.

<sup>34</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 59.

<sup>35</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 60.

<sup>36</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 63.

<sup>37</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 70.

<sup>38</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 73.

<sup>39</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 74.

<sup>40</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 80.

<sup>41</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 81.

<sup>42</sup> *Yüksel Yalçinkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 82.

cards, or Bluetooth.<sup>43</sup> Therefore, the appeal court remained steadfast in its judgment that the application served as a special server for the Movement.<sup>44</sup> Yüksel Yalçınkaya later brought this issue to the Court of Cassation,<sup>45</sup> maintaining his argument that the gathered evidence should be investigated for possible manipulation.<sup>46</sup> However, the Court of Cassation denied his request, upholding his conviction.<sup>47</sup>

The ECtHR established in this case that the applicant's conviction was based on "expansive and unforeseeable interpretation of the domestic law."<sup>48</sup> Moreover, the ECtHR underlined that the liability stemming from using an application such as ByLock was based on an assumption of constituent elements for committing a crime, making Yüksel Yalçınkaya's conviction arbitrary.<sup>49</sup> Referring to his conviction based on his use of ByLock, considering all elements of how evidence was collected against him, the ECtHR declared a breach of Art. 6(1) of the ECHR,<sup>50</sup> establishing a violation of the right to a fair trial. The ECtHR further established that there is conviction without law under Art. 7 of the ECHR for the expansive and unforeseeable interpretation of the law by the domestic authorities.<sup>51</sup> Furthermore, the corroborative offenses brought on the indictment addressing his membership with two "Aktif Eğitimciler Sendikası" and "Kayseri Voluntary Educators Association" (*Kayseri Gönüllü Eğitimciler Derneği*) were found to interfere with his right to freedom of association under Article 11, for which there were no valid justifications by the Turkish government.<sup>52</sup>

## Evaluation

In conclusion, the case of Yüksel Yalçınkaya serves as a poignant example of how the Turkish judicial system frequently prioritizes political motives over safeguarding the fundamental rights of its citizens. This tendency is alarmingly evident in the courts' willingness to sacrifice principles

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<sup>43</sup> *Yüksel Yalçınkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 87.

<sup>44</sup> *Yüksel Yalçınkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 87.

<sup>45</sup> *Yüksel Yalçınkaya v. Türkiye* (App. no 15669/20) 26 September 2023, paras 89-93.

<sup>46</sup> *Yüksel Yalçınkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 97.

<sup>47</sup> *Yüksel Yalçınkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 98.

<sup>48</sup> *Yüksel Yalçınkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 300.

<sup>49</sup> *Yüksel Yalçınkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 300.

<sup>50</sup> *Yüksel Yalçınkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 356.

<sup>51</sup> *Yüksel Yalçınkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 271.

<sup>52</sup> *Yüksel Yalçınkaya v. Türkiye* (App. no 15669/20) 26 September 2023, para 384-387.

of fair trial in their pursuit of maximizing convictions, even for actions deemed lawful at the time. Such a trend poses a significant threat to societal freedom, as it instills a chilling effect wherein individuals may hesitate to engage in basic social activities, such as downloading less popular applications or participating in cultural and social organizations. This apprehension stems from the overarching aim of the regime to maintain control and stifle dissent within Turkish society by establishing restrictive precedents. It is imperative for both domestic and international stakeholders to remain vigilant and advocate for the preservation of justice and civil liberties in Turkey.

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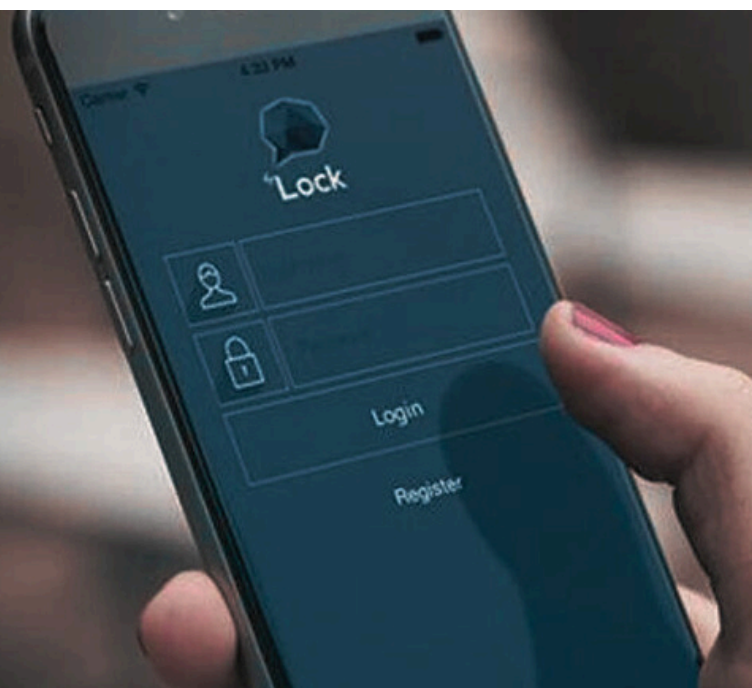
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