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Contact: John Darcy  
Tel: 03 88 41 31 56

Date: 31/01/2020

### DH-DD(2020)92

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Meeting: 1369<sup>th</sup> meeting (March 2020) (DH)

Communication from a NGO (The Freedom of Expression Association (İfade Özgürlüğü Derneği - IFÖD)) (22/01/2020) in the cases of Altug Taner Akcam v. Turkey (27520/07), Nedim Sener v. Turkey (38270/11) and Oner and Turk v. Turkey (51962/12) and response from the Turkish authorities (30/01/2020) (appendices in Turkish are available at the Secretariat upon request)

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1369<sup>e</sup> réunion (mars 2020) (DH)

Communication d'une ONG (The Freedom of Expression Association (İfade Özgürlüğü Derneği - IFÖD)) (22/01/2020) relative aux affaires Altug Taner Akcam c. Turquie (27520/07), Nedim Sener c. Turquie (38270/11) et Oner and Turk c. Turquie (51962/12) et réponse des autorités turques (30/01/2020) (des annexes en turc sont disponibles auprès du Secrétariat sur demande) **[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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DGI

22 JAN. 2020

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

## **RULE 9.2 COMMUNICATION**

**in the Öner and Türk Group of Cases (no. 51962/12); Akçam Group of Cases (no. 27520/07) and Şener Group of Cases (no. 38270/11) v. Turkey**

**by**

**İFADE ÖZGÜRLÜĞÜ DERNEĞİ (İFÖD)**

**22 January 2020**

An independent non-governmental organization in defending and promoting freedom of expression



DGI Directorate General of Human Rights and Rule of Law  
Department for the Execution of Judgments of the ECtHR  
F-67075 Strasbourg Cedex  
FRANCE

22.01.2020

**Rule 9.2 Communication from İFÖD in the Öner and Türk Group of Cases (no. 51962/12); Akçam Group of Cases (no. 27520/07) and Şener Group of Cases v. Turkey (no. 38270/11).**

1. The aim of this submission is to update the Committee of Ministers concerning the legislative and executive developments with respect to the ongoing lack of full and effective implementation of general measures in Öner and Türk group cases (no. 51962/12). Despite the amendments made in relevant provisions and some positive developments in judicial practice, structural problems observed in this group of cases by the European Court are still continuing. The submission is prepared by İfade Özgürlüğü Derneği (İFÖD – Freedom of Expression Association), a non-profit and non-governmental organization aims to protect and foster the right to freedom of opinion and expression in Turkey.

**Background**

2. In 2018 the Committee of Ministers decided to continue examination of the problems in the context of a new group dealing with certain criminal law aspects which impact on freedom of expression, under the cases of Bayar (no. 55060/07), Güler and Uğur (no. 31706/10 ve 33088/10), Öner and Türk (no. 51962/12), Döner and Others (no. 29994/02), and Müdür Duman (no. 15450/03), in addition to the Nedim Şener and Altug Taner Akçam groups.<sup>1</sup>
3. The Committee of Ministers decision is spot on, as freedom of expression problem in Turkey requires a holistic approach. As the Court's jurisprudence illustrates, amelioration of certain provisions has not solved the structural problems in the Turkish law relating to freedom of expression. The judicial authorities have replaced the amended or abolished provisions with new ones to punish peaceful expression of ideas. Therefore, an amendment and results following such amendment in law might be misleading when considered in isolation. It is therefore necessary to examine the practice of the Turkish authorities concerning different provisions to assess whether the amendments in reality and in practice produced positive results.
4. **The Öner and Türk group** of cases (no. 51962/12) comprise of 32 cases<sup>2</sup> involving unjustified interferences with freedom of expression, in particular through criminal proceedings, and the consequent chilling effect. The Committee, in its 1324<sup>th</sup> meeting in September 2018, recalled that the question of the general measures required in response to the shortcomings found by the Court in the Incal group of cases will be continued to be examined within the framework of the Öner and Türk group and decided to close the cases examined under Incal group, where the individual measures were taken.<sup>3</sup>
5. The **Akçam group** of cases comprise of 14 judgements structural and complex problems concerning violations of the applicants' right to liberty and security and right to freedom of expression (violations of Articles 5 and 10, of the Convention) on account of prosecutions/convictions or the real risk of prosecution under the Turkish Criminal Code (in its Akçam judgment under Article 301, former Article 159 of the TCC). In *Dink v. Turkey* the Court concluded that Article 301 lacked the “**quality of law**” requirement in view of its “**unacceptably broad terms**” which “**still resulted in a lack of foreseeability as to its effects**”. The government

<sup>1</sup> CM/Del/Dec(2018)1324/22, 20 September 2018

<sup>2</sup> See classification of new judgments, 1331st meeting, 4-6 December 2018; 1340th meeting, 12-14 March 2019; 1348th meeting, 4-6 June 2019 and 1362nd meeting, 3-5 December 2019.

<sup>3</sup> See Resolution, CM/ResDH(2018)356, 1324th meeting.



- informed the Committee of Ministers that due to legal amendments following the Dink case uncertainty of the provision had been remedied.<sup>4</sup>
6. In its 1324<sup>th</sup> meeting on September 2018, the Committee of Ministers, finding these amendments inadequate and application of these measures disproportionate to the strict exigencies of the situation by reference to the Mehmet Altan and Şahin Alpay cases, invited the Turkish authorities to consider further legislative amendments in line with the Court's judgment notably in the *Akçam* case.
  7. In its most recent submission,<sup>5</sup> the Government reiterated its previous claims relating to the amendments made in Article 301 of the Criminal Code. In addition, the government stated that a new procedural right had been introduced by Law No. 7188. Under this provision, regardless of its duration, convictions under certain crimes including Article 301 of the TCC could be appealed before the Court of Cassation following the completion of the proceedings by the District Court of Appeals.<sup>6</sup> The Government also reported that due to an amendment made in the Criminal Procedural Law in 2017, public prosecutors should issue a non-prosecution decision without commencing a criminal investigation if convinced that the complaint lodged has no basis.<sup>7</sup> It is obvious that these procedural amendments are not directly related to Article 301 and should not be regarded as part of "further legislative amendments" asked by the Committee of Ministers. Furthermore, the government did not provide specific statistics in relation to Article 301 in relation to the application of the Article 158 of the Code of Criminal Code with regards to "non prosecution decisions" and ignored the Committee's request to provide further sample decisions to demonstrate that public prosecutors examine the content of the complaint at hand before finding it unsubstantiated.
  8. The **Şener group** comprises of 3<sup>8</sup> judgements concerning violations of the applicants' right to liberty and security and right to freedom of expression on account of detention on remand of the applicant investigative journalists, charged under Articles 314 and 220/7 of the Turkish Criminal Code with aiding and abetting a criminal organization by having been involved in the production of publications criticizing the government and/or serving as propaganda for a criminal organization.
  9. In its 1324<sup>th</sup> meeting on September 2018, the Committee of Ministers stated that the common feature of these two cases was a structural problem that constituted chilling effect on the applicants' and other journalists' willingness to express their views on matters of public interest with disproportionate custodial measures violating Articles 5 and 10 of the Convention.
  10. The Government informed the Committee of Ministers about the developments relating to this case in June 2018.<sup>9</sup> No legal amendment affecting these cases was reported by the government. The Government submitted that various educational programs aimed at raising awareness in judiciary and four decisions delivered by the Constitutional Court in which the Strasbourg criteria applied were sufficient to fully implement the Şener group of cases.
  11. By taking into account the serious and continuing nature of the problems in the area of freedom of expression in Turkey, the Committee decided to continue to examine the Şener group of cases.

#### **Legislative developments: Akçam Group**

12. In its decision relating to the Akçam group, the Committee of Ministers noted that the amendments made in Article 301 had not removed the concerns raised by the Court in the Akçam and other judgments listed in this group. In response, the Government claimed that the

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<sup>4</sup> DH-DD(2017)699, 20.6.2017.

<sup>5</sup> DH-DD(2020)36, 16.01.2020.

<sup>6</sup> DH-DD(2020)36, 16.1.2020, para. 40.

<sup>7</sup> Ibid, para. 38.

<sup>8</sup> The case of Mehmet Hasan Altan (no. 13237/17) was added to the Şener Group with the classification of new judgments procedure on the Committee's 1331st meeting, 4-6 December 2018.

<sup>9</sup> DH-DD(2018)669, 27.6.2018.



authorization power given to the Minister of Justice under the provision had produced positive results and investigations concerning Article 301 sharply dropped due to this new condition. As noted above, the Government alleged that two general amendments made in the Criminal Procedural Law would also reduce the number of investigations and convictions brought under Article 301.

13. It is submitted that **filtering measures presented by the government fail to guarantee the full enjoyment of freedom of speech** and Article 301 still creates a climate of self-censorship whereas remains a threat to become subject to detention and criminal prosecution.
14. The Government presented different sets of statistics in its 2017 (DH-DD(2017)699) and 2020 (DH-DD(2020)36) Action Plans. Indeed, 2017 Action Plan provides non-prosecution and convictions/acquittals data, whilst 2020 Action Plan only presents percentage of the authorization given by the Minister of Justice under Article 301. In other words, the actual numbers are not provided by the government to assess further its claims. Furthermore, the Ministry of Justice does not reveal the total number of investigation requests as well as how much of these requests were approved or not even subject to freedom of information requests subject to Law No. 4982 (see **Annex I**).
15. This is not surprising, considering the rising numbers of new prosecutions and convictions brought under this provision. As can be observed in the statistics provided (see **Annex II**), in 2018 public prosecutors initiated 9555 article 301 investigations compared to 1983 in 2014. Since the Akçam case was decided in 2012, a total of 29.695 article 301 investigations were initiated and only in 12.005 investigations “non-prosecution” decisions were issued. Furthermore, while only 207 prosecutions took place in 2014, 915 prosecutions took place in 2018, almost quadrupling in 4 years. Conviction rates have also increased significantly. In 2014, only 16 people were convicted whilst conviction of 22 others were suspended (HAGB). In 2018, 216 people were convicted and 256 other convictions were suspended.
16. There is no doubt that unlike what the government suggests, prosecutors have invoked Article 301 more than ever to silence critiques against the government and state institutions increasingly since 2014.
17. It should also be noted that **the Constitutional Court has not delivered any decisions concerning Article 301 so far**. This is partly due to the recent Legislative Reform amendment presented by the Government as a positive development. Following the introduction of court of appeals in July 2016, the Criminal Procedural Law provided that convictions that were less than five years imprisonment should not be taken to Court of Cassation. As convictions rendered under Article 301 fell within this category, convictions finalized at court of appeals were taken to the Constitutional Court. However, with Law No. 7188 the right to appeal to the Court of Cassation was recognized retroactively. Following this development, applications pending before the Constitutional Court for more than 3 years have been found inadmissible by the Constitutional Court on the ground that these applications did not exhaust all available remedies. Since all cases pending before the Constitutional Court have been sent back to the Court of Cassation, it will take few more years before the Constitutional Court has the “opportunity” to introduce its standards concerning Article 301.

#### **Nedim Şener Group**

18. Nedim Şener and Ahmet Şık were imprisoned under Article 220, paragraph 7 and Article 314 of the Turkish Criminal Code on the ground that they had aided and abetted terrorist organisations. The Court concluded that Article 220, paragraph 7 of the Turkish Criminal Code does not meet the quality of law requirement of Article 10 in Daş (no. 36909/07) and Article 11 in Bakır and Others (no. 46713/10), Imret (2) (no. 57316/10) and judgments. IFÖD submitted a separate Rule 9 submission discussing the implementation of these judgments. Therefore, **this submission will only deal with prosecution of journalists in general**. For specific information about the legality



of Article 220/7, IFÖD's submission relating to Işıklı Group should be examined (See **Annex III**).

19. Despite the Committee of Ministers' request and the Court's judgments, there have been no fundamental legislative developments concerning Articles 220 and 314 of the Criminal Code. There has been a total of 1.232.304 criminal investigations regarding Article 314 between the years 2014 and 2018 according to the Judicial Statistics of the Ministry of Justice (See **Annex II**). Individuals that have been indicted under Article 314 of the Turkish Criminal Code reached its peak in 2017. Over 1 million individuals (1.056.779) were subjected to a criminal investigation between 2016-2018 and 830.521 were prosecuted. Over 600.000 prosecutions are either continuing or pending while the 2019 statistical data is not available yet. The same is true for those charged for terrorist propaganda. Between 2010-2018, a total of 123.390 terror propaganda cases were completed. 33.083 persons received criminal sentences and a separate 8016 received suspended sentences, with 61.490 receiving various other penalties. 20.801 (16%) persons were found not guilty.
20. The Government provided a comparative table of imprisoned journalists in its 2016 Action Plan.<sup>10</sup> However, 2018 Action Report does not provide a similar list.<sup>11</sup> This is due to tremendous rise in the number of imprisoned journalists in Turkey.
21. As widely observed by interstate institutions as well as international NGOs, freedom of expression and freedom of media have been one of the most affected areas within the last five years in Turkey. In 2016, Reporters Without Borders (RSF) ranked Turkey 151<sup>st</sup> of 180 countries in their World Press Freedom Index. In 2017, Turkey ranked 155<sup>th</sup> following 157<sup>th</sup> in 2018 and 2019. Similarly, Freedom House classified Turkey as a 'partly free' country ranking it 156<sup>th</sup> in its 2016 media freedom index with a 20-point decrease in score compared to 2010. In April 2017, it was announced that Turkey had fallen to 163<sup>rd</sup> in the global index. In January 2018, Turkey was ranked 154<sup>th</sup> and classified as 'not free' for the first time. Finally, in the most recent Freedom in The World 2019 Report, Turkey's total score was 31 out of 100 points and continued to be in the "not free" category.<sup>12</sup>
22. The deepening human rights crisis with an erosion of rule of law and democracy framework was established by the Human Rights Watch's World Report 2020. The Report, in relation to Turkey, stated that "executive control and political influence over the judiciary has led to courts systematically accepting bogus indictments, detaining and convicting without compelling evidence of criminal activity individuals and groups the government regards as political opponents."<sup>13</sup> It was also emphasised that an estimated 119 journalists and media workers are in pretrial detention or serving sentences for offences such as "spreading terrorist propaganda" and "membership of a terrorist organization" crimes whereas great numbers of journalists who are also facing similar criminal charges are not detained or yet in prison.
23. The problem relating to freedom of expression is evident not only in reports published by NGOs but also in reports issued by interstate oversight mechanisms.<sup>14</sup> In particular, the CoE Commissioner for Human Rights' *Memorandum on Freedom of Expression and Media Freedom in Turkey* published in February 2017, stated that "journalists have been among the most affected

<sup>10</sup> DH-DD(2016)1024, 26.9.2016.

<sup>11</sup> DH-DD(2018)669, 27.6.2018.

<sup>12</sup> <https://freedomhouse.org/report/freedom-world/2019/turkey>

<sup>13</sup> <https://www.hrw.org/world-report/2020/country-chapters/turkey>

<sup>14</sup> See in particular the Preliminary conclusions and observations by the UN Special Rapporteur on the right to freedom of opinion and expression to his <sup>15</sup>visit to Turkey, 14-18 November 2016: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20891> and The Council of Europe's platform to promote the protection of journalism noted that Turkey has the highest number of alerts and that a large part of these involve imprisonment of journalists. Of the 626 alerts provided in the database, 123 involve Turkey and 69 are classified as Level 1 alerts. Platform to promote the protection of journalism and safety of journalists: <http://www.coe.int/en/web/media-freedom/all-charts>





by the various forms of judicial harassment” and also that “detention is the most visible and chilling form that this harassment has taken.”<sup>15</sup> The Memorandum also noted that “the exceptional nature of remands in custody, and the need to provide clear legal reasoning in cases where they are necessary are not embedded in the practice of the Turkish judiciary.” It goes on to say that **many Turkish judges still continue to use the list of catalogue crimes in the Code of Criminal Procedure as grounds for detention without a careful examination of the remaining conditions of detention.** Similarly, the Venice Commission noted that without individualized decisions, and without the possibility of timely judicial review, “membership” of terrorist organizations charges and arrests without relevant and sufficient reasons, instead of restoring democracy may further undermine it.<sup>16</sup>

24. Although all sectors of the society have been affected from these developments, generally the journalist but particularly the Kurdish media has received one of the largest blows. Although the total number of jailed journalists varies according to different reports, there is no doubt that Turkey is “the world’s largest prison for journalists”. According to the Council of Europe’s Platform to promote the protection of journalism and safety of journalists, **currently 105 journalists are in detention.**
25. According to data collected by İFÖD from different sources, **at least 100 journalists have been on trial either for being a member of PKK or for making its propaganda** (see Annex IV). Out of 100 individuals, 92 of them have been detained at pre-trial stage. At least 79 of those individuals have been charged merely due to the institution they worked for. 14 journalists from daily Azadiya Welat and 22 journalists from Dicle News Agency (DİHA) were charged with membership to terrorist organisation or terror propaganda on the ground that they had worked for these institutions, apart from other evidence. Amongst 100 those who have been convicted (29) so far received varied prison sentences from 1 year 2 months to aggravated life imprisonment with only one receiving “not guilty” verdict.
26. Finally, not only permanent staff of the Kurdish media but also those who acted in solidarity with them have been the victim of these draconian measures. The 38 Editors-in-Chief on Watch for Özgür Gündem have been facing charges of terror propaganda and publishing and spreading statements of terrorist organizations subject to articles 7(2) and 6(2) of the Anti-Terror Law No. 3713 since 2016.

#### **Öner and Türk group of cases:**

27. The latest action plan of the Turkish Government concerning the Öner and Türk group of cases was submitted in January 2020. This particular group mainly concern Articles 215 and 216 of the Turkish Criminal Code and Articles 6/2 and 7/2 of Anti-Terrorism Act. The Government noted in its action plan that amendments had been made in relevant provisions to bring them in line with the Convention standards. The Government also provided various statistics, claiming that prosecutions under these provisions have been reduced in recent years.
28. However, the statistics provided in the government’s action plan do not include exact number of prosecutions and convictions, but only percentages. This method is misleading for several reasons explained below. Firstly, while the total number of prosecutions and convictions considerably increase, their percentage might decrease depending on the total number of prosecutions and convictions in each year. As can be observed from the list provided by İFÖD, this is what has happened in recent years. For instance, while only 669 persons were convicted under Article 7/2 of Anti-Terror Law in 2014, 6.162 persons were convicted in 2017. If explained in percentages, increase in convictions are close to 1000%, which is not included in the Government’s Action Plan.

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<sup>15</sup> CommDH (2017)5, para. 79.

<sup>16</sup> Venice Commission, CDL-AD (2017)007.



29. Another critical problem is that the percentage of freedom of expression-based conviction rendered under one legal provision may seem to decrease, whereas the conviction rate of another provision may reach its peak in passing years. The crimes that the prosecutors rely on for prosecuting speech related cases vary considerably for example compared to pre 15 July, 2016 Coup Attempt period and after. Therefore, a holistic approach is required to assess further the government's claims. The reason behind is that the interference on freedom of expression on account of prosecutions/convictions are prescribed under various provisions of the Criminal Code and Anti-Terrorism Act which lack foreseeability and precision. For example, while prosecutions brought under Article 215 of the Criminal Code decreased, a substantial increase has taken place in prosecutions based on terror propaganda and membership charges since 15 July, 2016. Therefore, various terrorism provisions are continuously used to create a hostile environment for journalists.

### **Constitutional Court: An Effective Remedy in Journalists' Cases?**

30. As in other action plans, in Öner and Türk, Akçam and Şener Action Plans, the Government presents individual application to the Constitutional Court as an effective remedy to implement the Strasbourg standards. The Committee itself also cautiously welcomed the Constitutional Court's judgments in Şahin Alpay and Mehmet Hasan Altan cases.<sup>17</sup>
31. However, a closer examination shows that the Constitutional Court's jurisprudence concerning journalists is not consistent and in most cases in contradiction with the Strasbourg case law. For instance, although Mehmet Hasan Altan and his brother Ahmet Altan jointly applied to the Constitutional Court in relation to the same dossier that they were detained, the Constitutional Court separated their applications without any explanation and delivered its decision in relation to Ahmet Altan's application almost one and a half years later. The same can be said for the Nazlı Ilıcak application to the Constitutional Court. Although the facts were almost identical in all three cases, the Court only found violation in Mehmet Altan's application, while finding no violation in Ahmet Altan and Ilıcak applications. It is also worth noting that during the one and a half years period the European Court also did not issue judgments in relation to Ahmet Altan and Nazlı Ilıcak. In fact while the European Court is yet to issue any applications involving journalists since the Mehmet Altan and Şahin Alpay decisions, the Court did not also explain in its Mehmet Altan decision why his application was separated from his brother, Ahmet Altan's application which was lodged jointly.
32. According to a list prepared by İFÖD (see **Annex V**), the Constitutional Court has delivered decisions in 34 applications brought by journalists who were deprived of liberty due to terror charges. Out of 34 decisions it found violations only in 9 cases. It found 12 applications inadmissible and found no violations in 13 others.
33. It is therefore submitted that the effectiveness of the Constitutional Court in journalists' cases can only be evaluated after a comprehensive analysis of its case law and whether the lower courts follow its decisions or not.

### **Conclusions and Recommendations**

34. There has been **no progress achieved** with regard to the provision of an adequate legislative framework that enables the protection of Article 10 and full and effective implementation of Öner and Türk; Şener and Akçam group of cases.
35. As noted above, since the last meeting in which the current groups of cases were reviewed by the Committee of Ministers, no noticeable amendment has been made in relevant provisions. Previous amendments introduced **have not produced the results suggested by the Government** either.

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<sup>17</sup> 1324th meeting (18-20 September 2018) – Notes





- İFÖD considers that structural problems observed by the Court and the Committee of Ministers remain and has not been properly addressed by the Turkish authorities.
36. Recent amendments made in the Turkish Criminal Code and Anti-Terror Law **do not meet the Committee of Ministers' requirement** of fully aligning with the Court's case law in terms of foreseeability and necessity in a democratic society standard.
  37. The Government **should be asked to provide detailed data** about the implementation of relevant provisions of the Criminal Code and Anti-Terror Law. As the government arbitrarily changes the methodology of collecting statistics in each and every action plan, it becomes impossible to detect the real effect of measures. It should also be noted that **the Ministry of Justice stopped publishing detailed statistics involving speech related crimes** in this submission through its Judicial Statistics since 2017. It is considered, therefore, that the Committee of Ministers **should request regular updates and detailed data** on the judicial practice of freedom of expression-based investigations, prosecutions and convictions.
  38. The **government should also be asked to provide examples** where persons have been convicted under the relevant provisions. The government provides some examples of best practice whilst in thousands of other examples peaceful expression of ideas are sanctioned. Without a comparative analysis, examples of best practice could be misleading.
  39. The same observation can be made about the jurisprudence of the Constitutional Court. As noted, the Constitutional Court, in majority of the cases concerning journalists, has not found violation. **A comprehensive analysis of these cases is necessary** to decide whether the Constitutional Court can provide remedy in those cases.
  40. The Öner and Türk; Şener and Akçam group of cases **should remain under enhanced procedure** and given the close connection between freedom of expression and media as foundational pillars of a democratic society, the Committee of Ministers should review the Öner and Türk; Şener and Akçam group of cases in frequent and regular intervals concerning the legislative general measures.
  41. The Committee of Ministers should also carefully examine the introduction of retrogressive measures under Judicial Reform.

İFADE ÖZGÜRLÜĞÜ DERNEĞİ  
Osmanağa Mah. Hasırcıbaşı Cad.  
No:24/4 Kadıköy/İSTANBUL  
Kadıköy V.D. 4700644051  
Kütük No: 34-235/076

İfade Özgürlüğü Derneği – İFÖD (Turkey)

Web: <https://ifade.org.tr> Twitter: @ifadeorgtr

**İfade Özgürlüğü Derneği (İFÖD)** has been set up formally in August 2017 protect and foster the right to freedom of opinion and expression. The Association envisions a society in which everyone enjoys freedom of opinion and expression and the right to access and disseminate information and knowledge.

## Annex II

### Statistics\*

<b>TCC 301</b>						
<b>Year</b>	<b>Public Prosecution</b>	<b>Conviction</b>	<b>Acquittal</b>	<b>Suspension of the pronouncement of the judgment</b>	<b>Others</b>	<b>Total</b>
2014	207	16	45	22	55	138
2015	317	28	26	32	47	133
2016	561	91	59	73	70	293
2017	834	166	79	139	179	563
2018	915	216	138	256	214	824

### TCC 301

<b>Year</b>	<b>Investigation</b>	<b>Non-prosecution</b>
<b>2010</b>	1110	575
<b>2011</b>	714	382
<b>2012</b>	1459	894
<b>2013</b>	1256	578
<b>2014</b>	1983	924
<b>2015</b>	2210	1085
<b>2016</b>	7106	2562
<b>2017</b>	6126	2198
<b>2018</b>	9555	3764
<b>Total</b>	31519	12962

<b>TCC 314</b>						
<b>Year</b>	<b>Public Prosecution</b>	<b>Conviction</b>	<b>Acquittal</b>	<b>Suspension of the pronouncement of the judgment</b>	<b>Others</b>	<b>Total</b>
2014	5362	1641	1118	123	17110	19992
2015	13409	3336	2437	162	4945	10880
2016	34595	4049	3036	338	6798	14221
2017	133505	36927	6096	692	24471	68186
2018	85888	108412	23970	4455	43165	180002

**TCC 314**

<b>Year</b>	<b>Investigation</b>	<b>Non- prosecution</b>
<b>2010</b>	16532	2298
<b>2011</b>	17869	2065
<b>2012</b>	28513	6140
<b>2013</b>	21128	5953
<b>2014</b>	55058	7081
<b>2015</b>	36425	7443
<b>2016</b>	155014	15531
<b>2017</b>	457423	65308
<b>2018</b>	444342	145419
<b>Total</b>	1232304	257238

\*These statistics were obtained from Judicial Statistics of the Ministry of Justice

Annex IV

Name/Surname	Media Association	Alleged Crime	Pre Trial Detention	Conviction	Sentence
Cebraıl Parılı	Anadolu Ajansı	Membership to PKK/KCK Terror Organisation	Detained		
Perihan Kara	ANF		Not Detained		
Ali Aşık	Azadiya Welat	Committing Crimes on behalf of a Terrorist Organisation	Detained		
Ali Konar	Azadiya Welat	Membership to PKK/KCK Terror Organisation	Detained	Convicted	7 Years and 15 Days
Arap Turan	Azadiya Welat	Membership to PKK/KCK Terror Organisation	Detained		
Ferhat Çiftçi	Azadiya Welat	Membership to PKK/KCK Terror Organisation	Detained	Convicted	
Hamit Dilbahar	Azadiya Welat	Membership to PKK/KCK Terror Organisation	Detained	Convicted	
Hayati Yıldız	Azadiya Welat	Membership to PKK/KCK Terror Organisation	Detained		
İlker İlkan	Azadiya Welat	Membership to PKK/KCK Terror Organisation	Detained		
İsmail Çoban	Azadiya Welat	Terror Propaganda	Detained	Convicted	5 Years
Nuri Yeşil	Azadiya Welat		Detained	Convicted	1 Year and 7 months
Seyithan Akyüz	Azadiya Welat	Managing an armed terrorist organisation - PKK/KCK		Convicted	12 Years
			Detained		
Şirin Çoban	Azadiya Welat	Membership to PKK/KCK Terror Organisation and Terror Propaganda	Detained		
Zeynel Abidin Bulut	Azadiya Welat		Detained		
Ferit Toprak	Azadiya Welat-Özgür Gündem	Membership to PKK/KCK Terror Organisation	Detained		
Nizamettin Yılmaz	Azadiya Welat-Özgür Gündem	Membership to PKK/KCK Terror Organisation	Detained		
Serkan Aydemir	Bitlis Aktüel Gazetesi	Membership to PKK/KCK Terror Organisation and Terror Propaganda	Detained		
Ahmet Şık	Cumhuriyet	Terror Propaganda and Aiding and Assisting a Terror Organisation	Detained		
Can Dündar	Cumhuriyet	Various Alleged Crimes	Search and Detention Order		
Haydar Ergül	Demokratik Modernite	Membership to PKK/KCK Terror Organisation	Detained		
Arafat Dayan	Demokratik Ulus	Terror Propaganda	Detained		
Ergin Doğru	Dersim	Membership to PKK/KCK Terror Organisation	Detained	Convicted	10 Years
Deniz Yücel	Die Welt	Terror Propaganda	Detained		
Ömer Çelik	DİHA	Terror Propaganda	Detained		
Nedim Türfent	DİHA	Membership to PKK/KCK Terror Organisation	Detained	Convicted	8 years and 9 Months
Abdulkadir Turay	DİHA	Membership to PKK/KCK Terror Organisation	Detained	Convicted	9 Years
Abdullah Kaya	DİHA	Aiding and Assisting a Terror Organisation	Detained		
Erdem Mühirci	DİHA	Membership to PKK/KCK Terror Organisation	Detained		
İdris Sayılğan	DİHA	Membership to PKK/KCK Terror Organisation	Detained	Convicted	7 Years and 15 Months
İdris Yılmaz	DİHA	Terror Propaganda	Detained		
Kamuran Sunbat	DİHA	Membership to PKK/KCK Terror Organisation	Detained	Convicted	12 Years
Mazlum Dolan	DİHA	Membership to PKK/KCK Terror Organisation	Detained		
Mehmet Güleş	DİHA	Membership to PKK/KCK Terror Organisation and Terror Propaganda		Convicted	9 Years and 4 Months
			Detained		
Şahabettin Demir	DİHA	Terror Propaganda	Detained		4 Years
Serhat Yaruk	DİHA		Detained		
Şerife Oruç	DİHA	Membership to PKK/KCK Terror Organisation	Detained		
Uğur Akgül	DİHA	Terror Propaganda	Detained	Convicted	2 Years and 6 Months
Ziya Ataman	DİHA	Membership to PKK/KCK Terror Organisation	Detained	Convicted	14 Years and 3 Months
Berivan Altan	DİHA	Terror Propaganda	Not Detained		
Gökhan Öner	DİHA	Membership to PKK/KCK Terror Organisation and Terror Propaganda			10 Months
			Detained		
Meltem Oktay	DİHA	Terror Propaganda	Detained	Convicted	2 Years and 4 Months
Sıddık Damar	DİHA	Terror Propaganda	Detained		2 Years and 6 Months
Arif Aslan	DİHA	Membership to PKK/KCK Terror Organisation	Detained		
Selman Keleş	DİHA	Membership to PKK/KCK Terror Organisation	Detained		
Erdoğan Alayumat	DİHA	Membership to PKK/KCK Terror Organisation	Detained	Not Guilty	

Sezgin Kartal	Sosyalist Dayanışma Dergisi	Terror Propaganda	Detained		1 Year and 6 Months
Adil Demirci	ETHA	Terror Propaganda and Membership to MLKP-ESP Terror Organisation	Detained		
Ali Sönmez Kayar	ETHA	Membership to MLKP-ESP Terror Organisation	Detained		
Havva Cuştan	ETHA	Membership to MLKP-ESP Terror Organisation	Detained		
İsminaz Temel	ETHA	Membership to MLKP-ESP Terror Organisation	Detained		
Meşale Tolu	ETHA	Terror Propaganda and Membership to MLKP-ESP Terror Organisation	Detained		
Pınar Gayıp	ETHA	Terror Propaganda and Membership to MLKP-ESP Terror Organisation	Detained	Convicted	
Semiha Şahin	ETHA	Terror Propaganda and Membership to MLKP-ESP Terror Organisation	Detained	Convicted	
Ulaş Sezgin	ETHA	Terror Propaganda and Membership to MLKP-ESP Terror Organisation	Detained		
Mehmet Anıl	ETHA	Membership to MLKP-ESP Terror Organisation	Detained		
Yusuf Karataş	Evrensel				
		Founding or managing an armed terrorist organisation	Detained		
Kemal Özer	Evrensel	Membership to a Terror Organisation	Detained		
Erdal Süsem	Eylül Dergisi	Membership to TKP/ML Terror Organisation	Detained	Convicted	Life Imprisonment
Loup Bureau	Freelance	Membership to YPG Terror Organisation	Detained	Not Guilty	
Çağdaş Erdoğan	Freelance	Membership to PKK/KCK Terror Organisation and Terror Propaganda	Detained		
Mehmet Dursun	Freelance	Membership to PKK/KCK Terror Organisation	Detained		
Ahmet Altan	Haberdar				
		Crimes Against the Government	Detained	Convicted	Aggravated Life Imprisonment
İshak Karakaş	Halkın Nabızı Gazetesi	Terror Propaganda	Detained		
Ceren Taşkın	Hatay Ses	Terror Propaganda	Detained		
Gurbet Çakar	Hevi Kadın	Membership to PKK/KCK Terror Organisation and Terror Propaganda	Not Detained	Convicted	
Aysel Işık	Jinha	Membership to PKK/KCK Terror Organisation and Terror Propaganda	Detained		
Zehra Doğan	Jinha	Terror Propaganda	Not Detained	Convicted	2 Years and 9 Months
Mehmet Çakmakçı	Medyascope	Membership to PKK/KCK Terror Organisation	Detained		
Fatma Ölmez	Mersin Radyo Ses	Membership to PKK/KCK Terror Organisation and Terror Propaganda	Detained		
Berzan Güneş	Mezopotamya	Terror Propaganda	Detained		
Seda Taşkın	Mezopotamya	Terror Propaganda and Aiding and Assisting a Terror Organisation	Detained		7 Years and 6 Months
Erol Zavar	Odak	Anayasal Düzeni Yıkma Teşebbüs	Detained	Convicted	Life Imprisonment
Mizgin Çay	Radyo Karacadağ	Membership to PKK/KCK Terror Organisation	Detained		
Sadık Demir	Radyo Karacadağ	Membership to PKK/KCK Terror Organisation	Detained		
Salih Erbekler	Radyo Karacadağ	Membership to PKK/KCK Terror Organisation	Detained		
Salih Turan	Sputnik	Terror Propaganda	Detained	Convicted	1 Year and 2 Months
Kemal Demir	TV 10	Membership to PKK/KCK Terror Organisation	Detained		
Veli Büyüksahin	TV 10	Membership to PKK/KCK Terror Organisation	Detained		
Veli Haydar Güleç	TV 10	Membership to PKK/KCK Terror Organisation	Detained		
İbrahim Uygur	Urfada Bugün	Terror Propaganda	Detained		
Hülya Emeç	DİHA	Denigrating and Publicly Defaming the Turkish Nation	Not Detained	Convicted	6 Months
Ayhan Demir	Van-Çaldıran	Membership to PKK/KCK Terror Organisation	Detained		
Aslı Ceren Aslan	Özgür Gelecek	Membership to PKK/KCK Terror Organisation	Detained	Convicted	6 Years and 10 Months
Togay Okay	Özgür Gelecek	Membership to PKK/KCK Terror Organisation	Detained		
Ayşe Düzkan	Özgür Gündem	Terror Propaganda	Detained	Convicted	18 Months

İnan Kızılkaya	Özgür Gündem	Membership to PKK/KCK Terror Organisation and Terror Propaganda	Detained		
Kemal Sancılı	Özgür Gündem	Membership to PKK/KCK Terror Organisation and Terror Propaganda	Detained		
Murat Çelikkán	Özgür Gündem	Terror Propaganda	Not Detained	Convicted	18 Months
Reyhan Çapan	Özgür Gündem	Terror Propaganda	Not Detained	Convicted	18 Months
Hüseyin Aykol	Özgür Gündem	Terror Propaganda	Detained	Convicted	3 Years and 9 Months
Hülya Karakaya	Özgür Halk	Membership to PKK/KCK Terror Organisation	Detained		
Rabia Özkaya	Özgür Halk	Terror Propaganda	Detained		
Fahrettin Kılıç	Özgür Toplum	Membership to PKK/KCK Terror Organisation	Detained		
Hicran Urun	Özgürlükçü Demokrasi	Aiding and Assisting a Terror Organisation	Detained	Convicted	3 Years and 1 Month
İshak Yasul	Özgürlükçü Demokrasi	Aiding and Assisting a Terror Organisation	Detained	Convicted	3 Years and 1 Month
Reyhan Hacıoğlu	Özgürlükçü Demokrasi	Aiding and Assisting a Terror Organisation	Detained	Convicted	3 Years and 1 Month
Mehmet Ali Çelebi	Özgürlükçü Demokrasi	Aiding and Assisting a Terror Organisation	Detained	Convicted	3 Years and 9 Months
Semiha Mete	Özgürlükçü Demokrasi	Membership to PKK/KCK Terror Organisation and Terror Propaganda	Detained		
Serkan Erdoğan	Özgürlükçü Demokrasi	Membership to PKK/KCK Terror Organisation and Terror Propaganda	Detained		
Sedat Sur	Özgürüz	Terror Propaganda	Detained	Convicted	11 Months and 20 Days



<b>Detained Journalist's Name</b>	<b>Article</b>	<b>Individual Application Number to the Constitutional Court</b>	<b>Date</b>	<b>Court's Ruling</b>
Ahmet Hüsrev Altan	TCC 220, 309, 311, 314 and ATA 1, 2, 3	2016/23668	3.05.2019	Non-violation of the Article 19, 26, 28 of the Constitution
Ahmet Kadri Gürsel	TCC 220, 311, 312, 314 and ATA 1, 2	2016/50978	2.05.2019	Violation of the Article 19, 26, 28 of the Constitution
Ahmet Şık	TCC 220, 311, 312, 314 and ATA 1, 2	2017/5375	2.05.2019	Inadmissability (Article 19, 26, 28 of the Constitution )
Akın Atalay	TCC 220, 311, 312, 314 and ATA 1, 2	2016/50970	2.05.2019	Non-violation of the Article 19, 26, 28 of the Constitution
Ali Bulaç	TCC 220, 311, 312, 314 and ATA 1, 2	2017/6592	3.05.2019	Violation of the Article 19, 26, 28 of the Constitution
Atilla Taş	TCC 220	2016/30220	29.05.2019	Violation of the Article 19 and non-violation Article 26, 18 of the Constitution
Ayşe Nazlı Ilıcak	TCC 220, 311, 312, 314 and ATA 1, 2	2016/24616	3.05.2019	Non-violation of the Article 19, 26, 28 of the Constitution
Ayşenur Parıldak	TCC 314 and ATA 3, 5	2017/15375	28.11.2018	Inadmissability (Article 19, 26, 28 of the Constitution )
Bayram Kaya	TCC 314 and ATA 5	2017/26981	28.11.2017	Inadmissability (Article 19, 26, 28 of the Constitution )
Bülent Utku	TCC 220, 311, 312, 314 and ATA 1, 2	2016/50971	2.05.2019	Non-violation of the Article 19, 26, 28 of the Constitution
Can Dündar	TCC 220, 314, 328, 330	2015/18567	4.12.2016	Violation of the Article 19, 26, 28 of the Constitution
Deniz Yücel	TCC 216 and ATA 7	2017/16589	28.05.2019	Violation of the Article 19, 26, 28 of the Constitution
Erdem Gül	TCC 220, 314, 328, 330	2015/18567	4.12.2016	Violation of the Article 19, 26, 28 of the Constitution
Gültekin Avcı	TCC 220, 314 and ATA 7	2015/17921	10.01.2019	Non-violation of the Article 19 and inadmissability of the Article 26, 28 of the Constitution
Güray Tekin Öz	TCC 220, 311, 312, 314 and ATA 1, 2	2016/50971	2.05.2019	Non-violation of the Article 19, 26, 28 of the Constitution
Hacı Musa Kart	TCC 220, 311, 312, 314 and ATA 1, 2	2016/50971	2.05.2019	Non-violation of the Article 19, 26, 28 of the Constitution
Hakan Karasinir	TCC 220, 311, 312, 314 and ATA 1, 2	2016/50971	2.05.2019	Non-violation of the Article 19, 26, 28 of the Constitution
Hidayet Karaca	TCC 314 and ATA 7	2015/144	14.07.2015	Inadmissability (Article 19, 26, 28 of the Constitution )
Hidayet Karaca	TCC 312	2015/7254	12.12.2018	Inadmissability (Article 19 of the Constitution )
Hidayet Karaca	TCC 309, 312, 314	2016/6966	10.01.2016	Inadmissability (Article 19 of the Constitution )
Kenan Baş	TCC 314 ATA 3, 5	2017/17411	29.11.2018	Inadmissability (Article 19, 26, 28 of the Constitution )
Mahir Kanaat	TCC 314 and ATA 3, 5	2017/12653	30.10.2018	Inadmissability (Article 19, 26, 28 of the Constitution )
Mehmet Baransu	TCC 220, 326, 327, 329	2015/7231	17.05.2016	Non-violation of the Article 19, 26, 28 of the Constitution
Mehmet Baransu	TCC 314, 326, 327, 329 and ATA 3, 5	2016/11380	26.12.2018	Inadmissability (Article 19, 26, 28 of the Constitution )
Mehmet Murat Sabuncu	TCC 220, 311, 312, 314 and ATA 1, 2	2016/50969	2.05.2019	Non-violation of the Article 19, 26, 28 of the Constitution
Mümtazer Türköne	TCC 314	2017/17839	27.11.2019	Non-violation of the Article 19, 26, 28 of the Constitution
Murat Aksoy	TCC 220, 311, 312, 314 and ATA 1, 2	2016/30112	2.05.2019	Violation of the Article 19, 26, 28 of the Constitution
Mustafa Kemal Güngör	TCC 220, 311, 312, 314 and ATA 1, 2	2016/50971	2.05.2019	Non-violation of the Article 19, 26, 28 of the Constitution
Mustafa Ünal	TCC 314 and ATA 3, 5	2017/21149	28.11.2018	Inadmissability (Article 19, 26, 28 of the Constitution )
Önder Çelik	TCC 220, 311, 312, 314 and ATA 1, 2	2016/50971	2.05.2019	Non-violation of the Article 19, 26, 28 of the Constitution
Şahin Alpay	TCC 220, 309, 311, 312, 314 and ATA 1, 2, 3, 4	2016/16092	11.11.2018	Violation of the Article 19, 26, 28 of the Constitution
Şahin Alpay	TCC 220, 309, 311, 312, 314 and ATA 1, 2, 3, 4	2018/3007	15.03.2018	Violation of the Article 19 of the Constitution
Vahit Yazgan	TCC 314/2	2016/65902	15.11.2018	Inadmissability (Article 19 of the Constitution )
Yakup Şimşek	TCC 312 and ATA 1, 2, 3, 5	2017/36064	25.12.2018	Inadmissability (Article 19, 26, 28 of the Constitution )

Ankara, 29 January 2020

**THE TURKISH GOVERNMENT'S SUBMISSION  
IN RESPONSE TO THE RULE 9.2 COMMUNICATION OF İFÖD**

**Öner and Türk v. Turkey Group (no. 51962/12)**

**Altuğ Taner Akçam v. Turkey Group (no. 27520/07)**

**Nedim Şener v. Turkey Group (no. 38270/11)**

**I. INTRODUCTION**

1. The Turkish authorities would like to make the following explanations in response to the submission of *İfade Özgürlüğü Derneği (İFÖD)* with respect to the *Öner and Türk* (no. 51962/12), *Altuğ Taner Akçam* (no. 27520/07) and *Nedim Şener* (no. 38270/11) groups of cases.

2. At the outset, the Action Plans submitted to the Committee of Ministers in January 2020 in respect of the *Öner and Türk*, *Altuğ Taner Akçam* and *Nedim Şener* groups of cases, comprise Turkey's actions regarding the issues raised in the communication of *İFÖD*. The Turkish authorities reiterate their submissions in this regard.

3. In this submission, the authorities would like to clarify the following issues raised in the communication of *İFÖD*.

4. As general measures, the Turkish authorities have taken a number of measures aiming at preventing similar violations. These measures include, in particular, legislative amendments, introduction of an effective individual application before the Constitutional Court and measures on the publication, the projects and awareness raising activities, and dissemination of the judgments of the European Court of Human Rights ("the Court").

**II. LEGISLATIVE AMENDMENTS**

**A. *Öner and Türk* Group (no. 51962/12)**

5. The authorities would like to reiterate that the Court found that the implementation of the legal provisions by national courts in practice was problematic rather than the wording of the said provisions in the judgments of the *Öner and Türk* group of cases. The Court also highlighted that the national courts did not provide adequate or relevant reasoning in their decisions.

6. Turkey has taken significant steps in recent years so as to eliminate the deficiencies and to provide additional safeguards in the field of freedom of expression.

**1. The offence of disseminating propaganda in favour of an illegal organisation (Article 7 § 2 of the Prevention of Terrorism Act (Law no. 3713))**

7. At the outset, the authorities would like to state that the first sentence of Article 7 § 2 of the Law no. 3713 was amended on 30 April 2013 by the Law no. 6459. As per the amendment, the act of making propaganda of terrorist organizations by justifying or praising or inciting their methods has been recognized as an offence only if they contain violence, force or threat (see §§ 20-21 of the Action Plan of the *Öner and Türk* group of cases).

**2. Printing and publishing the declarations and statements of terrorist organizations (Article 6 § 2 of the Law no. 3713)**

8. Turkey also amended Article 6 § 2 of the Law no. 3713 with the Law no. 6459. As per this amendment, the act of printing and publishing leaflets and statements may be penalized as long as those of which justify or praise or incite the terrorist organizations' methods. Moreover, those methods must be containing violence, force or threat. In this way, the applicability of the said provision has been narrowed down (see §§ 22-23 of the Action Plan of the *Öner and Türk* group of cases).

**3. Praising an offence or an offender (Article 215 of the Turkish Criminal Code (Former Article 312 § 1))**

9. Article 215 of the Turkish Criminal Code ("TCC") was also amended with the Law no. 6459. Article 215 of the TCC was revised and a new criterion, namely providing that an expression is to cause an imminent and clear danger to the public order, was added in line with the case-law of the Court (see §§ 24-25 of the Action Plan of the *Öner and Türk* group of cases).

**4. The latest amendments introduced on 17 October 2019 with the Law no. 7188**

10. The authorities would also like to reiterate a very recent legislative amendment made with the Law no. 7188 on 17 October 2019.

11. With this amendment, a new sentence was added into Article 7 § 2 of the Law no. 3713. According to this amendment, expressions of thought that do not exceed the limits of reporting or for the purpose of criticism shall not constitute a crime (see §§ 26-27 of the Action Plan of the *Öner and Türk* group of cases).

12. The Turkish authorities would also like to recall the amendment introduced with the Law no. 7188. With the said amendment, convictions under certain crimes including Article 215 of the TCC and Article 6 §§ 2 and 4 and Article 7 § 2 of the Law no. 3713, could

be appealed before the Court of Cassation following the completion of the proceedings by the District Court of Appeals. This new provision will further ensure the conformity of the case-law in similar cases.

**B. *Altuğ Taner Akçam* Group (no. 27520/07)**

13. The Turkish authorities would like to repeat that Turkey has amended Article 301 of the TCC before *Altuğ Taner Akçam* judgment<sup>1</sup>, in order to further narrow down the application of the said provision and accordingly further improve freedom of expression.

14. In 2008, the relevant legal provision, Article 301 of the TCC, was significantly amended to ensure that the individuals' freedom of expression was not restricted due to this provision. In this respect, a safety clause, which clearly indicates that the expression of an opinion for the purpose of criticism did not constitute an offence, was added in Article 301 of the TCC. The decisions provided in the Action Plan of the *Altuğ Taner Akçam* group of cases prove that the Turkish Judiciary has aligned its case-law in line with the said amendment.

15. With the new amendment, the term "Turkishness" was replaced by "Turkish nation" and what is the concept of Turkish nation was explained by the lawmaker in the reasoning of the law. Thus, the elements of the offence have been specified. In addition to this, the upper limit for the sentence prescribed by the law has been reduced from three years to two years imprisonment.

16. Furthermore, the authorisation of the Minister of Justice to conduct an investigation into an offence regarding Article 301 was adopted as a filtering measure. Firstly, if the public prosecutor's office considers that the expression concerned does clearly fall within the scope of freedom of expression, it can issue a non-prosecution decision without seeking an authorisation of the Minister of Justice. This means that the first filter mechanism is the public prosecutor's offices.

17. If the public prosecutor's office considers that the alleged act may fall within the scope of Article 301 of the TCC, then the public prosecutor's office will seek authorisation of the Minister of Justice. This authorisation requirement prevents the conduct of unnecessary investigations about the activities considered to fall within the scope of freedom of expression. This means that the second filter mechanism is the authorisation of the Minister of Justice.

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<sup>1</sup> The authorities would like to underline that in *Altuğ Taner Akçam* judgment, the domestic proceedings were completed with a non-prosecution decision in 2007 (before the legislative amendments explained above).

18. The authorities would also like to give further information on the principles followed by the Ministry of Justice within the context of the authorisation proceedings concerning Article 301 of the TCC.

19. The authorisation proceedings are conducted by the Directorate General for Criminal Affairs of Ministry of Justice. In accordance with the information provided by the Directorate General for Criminal Affairs, the sources used within the context of the authorisation proceedings include, among others: Articles of the Constitution and the Convention related to freedom of expression; the case-law of the Court, the Constitutional Court and the 16<sup>th</sup> Criminal Chamber of the Court of Cassation; the Progress Reports published by the European Union; and Recommendations of the Committee of Ministers.

20. The criteria applied for rejecting and granting the authorisation are determined in a detailed manner. The authorisation is rejected if the expressions concerned fall within the scope of freedom of expression. For example, the permission to carry out an investigation is rejected for expressions which do not incite to violence or which concern topics regarding the general public interest and political discourses.

21. Detailed information, especially the criteria applied within the context of the authorisation proceedings, and sample decisions in respect of the authorisation proceedings are provided in “the Additional Info Note” for the *Altuğ Taner Akçam* group of cases submitted on 29 January 2020.

22. The Turkish authorities would like to state another legislative amendment made in Article 158 of the Code of Criminal Procedure (“CCP”). With this amendment in 2017, it was adopted that public prosecutors shall issue a decision of non-prosecution without commencing a criminal investigation if convinced that the complaint lodged has no basis. Therefore, individuals are no longer obliged to answer charges before public prosecutors on each occasion a complaint is lodged against them.

23. The Turkish authorities would also like to recall the amendment introduced with the Law no. 7188 which entered into force on 17 October 2019 (see § 12 above). This amendment is also applicable for the offence defined in Article 301 of the TCC.

24. Details of legislative amendments are indicated in §§ 24-42 of the Action Plan of the *Altuğ Taner Akçam* group of cases.

**C. Nedim Şener Group (no. 38270/11)**

25. At the outset, the authorities would like to recall that the measures aimed at preventing similar violations under Article 5 § 3 have been taken within the framework of the

*Demirel* (no. 39324/98) case. The Committee of Ministers decided to close this case in November 2016 (see Resolution CM/ResDH(2016)332, 1270th meeting).

26. The Committee of Ministers took into account the below-mentioned legislative amendments, namely amendments made in the CCP (2012) and the Law no. 3713 (2014) which limited the maximum length of detention to five years for most serious crimes and broadened the scope of measures alternative to detention. Also, the amendments of the CCP in 2013 allowed challenging the lawfulness of detention on remand in an adversarial procedure. According to this new procedure, the courts shall decide on extension of detention on remand after hearing a detainee or his/her legal representative and in their presence. Introduction of the right to compensation for unlawful detention on remand in the CCP was also welcomed by the Committee of Ministers.

27. In addition to the above-mentioned amendments, Turkey has taken an additional step to reduce the length of detention. With the Law no. 7188 dated 17 October 2019, the period of detention on remand during the investigation period was reduced (see § 11 of the Action Plan of the *Nedim Şener* group of cases).

28. Detailed information related to the general measures in respect of Article 5 of the Convention is indicated §§ 6-15 of the Action Plan of the *Nedim Şener* group of cases.

### **III. CASE-LAW OF THE TURKISH JUDICIARY**

29. Detailed information and sample decisions of the public prosecutor's offices, the first instance courts, the District Courts of Appeals, the Court of Cassation and the Constitutional Court are indicated in §§ 30-68 of the Action Plan of the *Öner and Türk* group of cases.

30. Detailed information and sample decisions of the public prosecutor's offices, the first instance courts, the District Courts of Appeals, the Court of Cassation and the Constitutional Court are indicated in §§ 43-57 of the Action Plan of the *Altuğ Taner Akçam* group of cases.

31. In the communication, *İFÖD* asserted some criminal proceedings. The authorities would like to note that the Action Plans are only related to the judgments of the Court included in the *Öner and Türk*, *Altuğ Taner Akçam* and *Nedim Şener* groups of cases. For this reason, the authorities would not like make a remark on the proceedings which are not included in the said groups of cases.

32. The statistics stated in the communication of *İFÖD* as Annex 2 could lead to make false assessment as well as misinterpretation of Articles 301 and 314 of the TCC since



these provisions are not particularly related to the right to freedom of expression and freedom of assembly. The first list submitted as Annex 4 by *İFÖD* in the communication is a speculative data obtained from unofficial sources. The authorities would like to note that the convicts who materially aid a terrorist organisation might be sentenced according to the related Articles of the TCC.

33. Related statistics and percentage are given in the Action Plans of these groups of cases.

34. The authorities would also like to reiterate the remedy of individual application before the Turkish Constitutional Court. The Court has examined the effectiveness of the remedy of individual application with the Constitutional Court in its decision in the case of *Hasan Uzun v. Turkey* and the Court indicated that the individual application to the Constitutional Court should be considered as an effective remedy in respect of all decisions that had become final after 23 September 2012.

35. The authorities recall that the Constitutional Court analyses the individual applications before it in accordance with the circumstances of the case and in the light of the Constitution and the Convention and the case-law of the Court and the Constitutional Court, and establishes its decisions.

#### **IV. PROJECTS AND AWARENESS RAISING ACTIVITIES**

36. The Turkish authorities would like to reiterate the explanations stated in the Action Plans in respect of the Judicial Reform Strategy and the preparation of a new Human Rights Action Plan.

37. As indicated in the Action Plans, the main objectives set out in the document can be listed as follows strengthening the rule of law, protecting and promoting rights and freedoms more effectively, strengthening the independence of the judiciary and improving impartiality, increasing the transparency of the system, simplifying judicial processes, facilitating access to justice, strengthening the right of defence and efficiently protecting the right to trial in a reasonable time. Furthermore, the right to freedom of expression is one of the most important headings under the Judicial Reform Strategy. The Judicial Reform Strategy aims to raise the standards applied by the courts in freedom of expression cases to the European Convention standards.

38. The authorities also indicate that the preparation of a new Human Rights Action Plan is underway within the scope of the Judicial Reform Strategy.

39. It is also noteworthy to state that the pre-service and in-service trainings of the judges and public prosecutors are enlarging with the Justice Academy. The Turkish authorities would like to highlight that human rights law and more specifically the case-law of the Court are included in the training of the judges and public prosecutors.

## **CONCLUSION**

40. The Turkish authorities kindly invite the Committee of Ministers to take into consideration the above-mentioned explanations within the scope of the execution of the *Öner and Türk*, *Altuğ Taner Akçam* and *Nedim Şener* groups of cases.

41. Furthermore, the Turkish authorities would not like to speculate on the claims raised in the communication that are not subject to any current application or judgment of a violation.