Third Party Intervention

In the Case of Nazım Altıntaş v. Türkiye, no. 12052/20, by

İFADE ÖZGÜRLÜĞÜ DERNEĞİ (İFÖD)

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

İFADE ÖZGÜRLÜĞÜ DERNEĞİ

I. Introduction

1. İFÖD will address the issue of foreseeability of crimes and punishments in its intervention in the case of *Nazım Altıntaş v. Türkiye (no. 2),* (no. 12052/20). This issue arises in the context of the criminal proceedings that resulted in the applicant being sentenced to seven years and six months imprisonment. According to the Court's communication, the applicant was convicted under article 314 of the Turkish Criminal Code ("TCC") as being a member of a terrorist organisation, namely FETÖ/PDY (*Fetullahist Terror Organisation/Parallel State Structure*), and sentenced to seven years and six months imprisonment. The conviction was based on the following evidence: (i) bank account activities, (ii) his subscription to the *Zaman* newspaper, (iii) his social media posts and other interactions thereon, (iv) his donation to the *Kimse Yok Mu* association which is allegedly affiliated with FETÖ/PDY, (v) his own statements indicating that he had attended a few organisational (*sohbet*) meetings.
2. The applicant alleges that his conviction based on his social media posts and other interactions thereon and subscription to a newspaper constitutes a violation of Articles 10 and 7 as this conviction was rendered as a result of an extensive and arbitrary interpretation of the applicable laws. The applicant further claims under Articles 5 § 3 and 6 § 1 of the Convention that the domestic courts' decisions as to his detention as well as his conviction lacked sufficient reasons and an individual assessment in respect of his personal situation.
3. The Court posed four separate questions to the parties. In particular, in question 3, the Court asked whether the applicant's conviction for membership of a terrorist organisation was compatible with the requirements of Article 7 of the Convention, having regard to the acts on which his conviction was based. The Court also asked the parties, in question 4, whether there had been a violation of the applicant's freedom of expression within the meaning of Article 10 § 1 of the Convention as a result of his criminal conviction, inter alia on account of his social media posts and his subscription to a newspaper. If the answer is affirmative, whether this infringement was justified within the meaning of Article 10 § 2.
4. İFÖD contends that **these two questions are closely interlinked**, and that the government's crackdown on dissenting opinions leads to the arbitrary application of criminal law. As such, İFÖD will address both questions together.
5. One of the key indicators of the erosion of the rule of law and the rise of authoritarianism in Türkiye is the Government's growing intolerance of any form of criticism, using the judiciary and criminal law as tools to suppress dissenting voices.
6. In this third-party submission, İFÖD will first provide the Court with detailed information on the interpretation and application of Article 314 of the Turkish Criminal Code ("TCC"). In this context, the specific characteristics of the article will be brought to the Court's attention. Additionally, İFÖD will analyse the current and prevailing interpretation of this offence in the light of the Court's jurisprudence on terrorism-related provisions within the TCC. İFÖD asserts that the offence regulated by Article 314 carries significant implications for the freedom of expression of the accused, given the severe consequences of such convictions in Türkiye. Secondly, this submission will focus on the freedom of expression issues arising from the ambiguous interpretation of Article 314 of the TCC by Turkish judicial authorities.

II. The Foreseeability of Article 314 of the Turkish Criminal Code

7. The principle of foreseeability is a crucial aspect of the legality principle, *nullum crimen sine lege*, enshrined in Article 7 of the Convention. Article 7 states that "no-one shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when it was committed". In its recent *Yüksel Yalçınkaya* judgment, the Grand Chamber emphasized that this guarantee is a cornerstone of the rule of law and occupies a prominent place in the Convention's system of protection. Notably, no derogation from this principle is permissible under Article 15, even in time of war or other public emergency. The Court stressed that Article 7 must be construed and applied to provide effective safeguards against arbitrary prosecution, conviction, and punishment (§ 237).

8. The Court further clarified that Article 7 is not solely concerned with prohibiting the retroactive application of criminal law; it also encompasses the broader principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*). Furthermore, criminal law must not be interpreted expansively to the detriment of the accused, such as by analogy. For an offence to be clearly defined in law, an individual must be able to determine, based on the wording of the relevant legal provision—and, if necessary, with the assistance of judicial interpretation—what acts or omissions could make them criminally liable. The concept of "law" in Article 7 includes qualitative requirements, notably those of accessibility and foreseeability (§ 238).

9. In relation to Article 7 of the Convention, the Court emphasized that the principle of *nullum crimen sine lege* requires that criminal acts be clearly defined by law in advance. However, Article 7 also mandates that these laws be applied in a foreseeable manner. Judicial interpretation is an inevitable aspect of any legal system, including criminal law, even when a legal provision is drafted with clarity. This necessity arises because ambiguous points often needs clarification, and laws must be adapted to evolving circumstances. In fact, in Contracting States, the gradual development of criminal law through judicial interpretation is both accepted and necessary.

10. The Court clarified that Article 7 does not prohibit the progressive clarification of criminal liability through case-by-case judicial interpretation, as long as the resultant development remains consistent with the essence of the offence and is reasonably foreseeable. In other words, individuals must be able to anticipate which actions may constitute a crime, at least with the assistance of legal advice, based on established judicial interpretation. A lack of accessible and foreseeable judicial interpretation can lead to a violation of Article 7, as individuals may not be adequately informed about what actions are criminal (§ 239).

11. Therefore, for a law to be compatible with Article 7, it must not only provide a clear definition of the crimes it addresses but also be applied in a manner that allows individuals to reasonably foresee the legal consequences of their actions.

12. The Court also emphasized the importance of the mental element, or *mens rea*, in the determination of criminal liability under Article 7 of the Convention. It noted that for a measure to be regarded as a penalty within the meaning of Article 7, the principle of accessibility and foreseeability requires the establishment of personal liability on the part of the offender. This means there must be a mental link—*mens rea*—that connects the offender's actions to the criminal conduct, thereby establishing their culpability. Article 7,

therefore, necessitates that punishment be based on the existence of such a mental link that reflects the individual's liability for the offence they physically committed. While certain forms of objective liability, which rely on presumptions of liability, may exist, they must still comply with the Convention. Specifically, these presumptions cannot prevent an individual from exonerating themselves from the accusations. In other words, a presumption of liability should not be so rigid that it obstructs the possibility of proving innocence or lack of intent (§ 242). This requirement safeguards individuals from arbitrary punishments by ensuring that liability must be tied to their mental state and actions, in line with the fundamental principles of justice.

13. In this context, the foreseeability of article 314 of the TCC must be critically evaluated to ensure it meets these standards and does not expose individuals to the risk of arbitrary legal interpretations.

14. Article 314 (1 and 2) of the TCC provides for the offence of membership of an armed organisation:

> "(1) Anyone who forms or leads an armed organisation with the purpose of committing the offences listed in the fourth and fifth parts of this chapter shall be sentenced to a term of imprisonment of ten to fifteen years.
>
> (2) Any member of an organisation referred to in the first paragraph shall be sentenced to a term of imprisonment of five to ten years."
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> Parts four and five of the chapter to which Article 314 (1) refers list offences against State security and against the constitutional order and its functioning.

15. As can be seen, article 314 (2) of the TCC does not itself provide a definition of terrorism or terrorist organisation. Instead, this is defined in the Prevention of Terrorism Act.[1] Under article 1 of that Act, terrorism is described as any criminal act committed by means of force and violence, through methods such as pressure, terror, intimidation, oppression, or threat,

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[1] The relevant provisions of the Prevention of Terrorism Act provide as follows:
Section 1 Definition of Terrorism (as amended by Law no. 4928 of 15 July 2003)
"(1) Terrorism is any kind of criminal act committed by one or more persons belonging to an organisation with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, undermining the territorial integrity of the State and the unity of the nation, endangering the existence of the Turkish State and Republic, weakening or destroying or usurping the authority of the State, eliminating fundamental rights and freedoms, undermining the internal and external security of the State, public order or general health by using force and violence and through one of the methods of pressure, terror, intimidation, oppression or threat."
Section 2 Terrorist Offenders
"(1) Any member of an organisation founded to attain the aims defined in section 1 who commits a crime in furtherance of these aims, individually or together with others, or any member of such an organisation, even if he or she does not commit such crime, shall be deemed to be a terrorist offender."
Section 3 Terrorist Offences
"The offences indicated in Articles 302, 307, 309, 311, 312, 313, 314, 315 and 320, as well as paragraph 1 of Article 310, of the Turkish Criminal Code [no. 5237] are terrorist offences."
Section 7 Terrorist Organisations
"(1) Those who form, lead or become members of a terrorist organisation in order to commit crime [that is] directed at the purposes set out under section 1, by use of force and violence, and by means of pressure, terror, intimidation, oppression or threat, shall be punished in accordance with the provisions of Article 314 of the Turkish Criminal Code..."

in pursuit of any of the objectives listed in the same provision. Furthermore, article 3 of the Prevention of Terrorism Act stipulates that the offences outlined in, among others, article 314 of the TCC are considered terrorist offences. Additionally, article 7 of the Act provides that individuals who become members of a terrorist organization with the intent to commit crimes for the purposes listed under article 1, using force and violence, and through methods of pressure, terror, intimidation, oppression, or threats, shall be punished in accordance with article 314 of the TCC.

16. In the *Yalçınkaya* judgment, the European Court, building on the general observations outlined above, examined the concrete interpretation of article 314 of the TCC as developed through the case-law of the Court of Cassation. The Court assessed whether this provision had been applied in a foreseeable manner in the applicant's case. The Court noted that the legal framework governing the offence of membership in an armed terrorist organisation is complemented by the Court of Cassation's case-law, which provides further clarity on both the elements constituting an armed terrorist organisation and the offence of membership of such an organization (§ 247).

17. According to the Court of Cassation's established case law, for the purposes of the offence set out in Article 314 (2) of the Criminal Code, an "organisation" is not considered an abstract grouping but must have a hierarchical structure. In determining the existence of such an organisation, it is necessary to evaluate whether it possesses or possessed sufficient members, means and equipment to commit the intended offence, as required by article 220 of the TCC. Specifically, it must be established whether the organisation has or had access to a sufficient number of weapons to achieve out its objectives, or the means to acquire such weapons.

18. As determined by the European Court, and in line with the case-law of the Court of Cassation, individuals who **knowingly and willingly subject themselves to the hierarchy of an organisation** established with the aim of achieving political goals through methods of force, violence, and threat, and who surrender their will to the organisation, can be punished for membership. This is contingent on their actions contributing to the aims and interests of the organisation with **continuity, diversity, and intensity**. The Court of Cassation further clarified that the **mental element required for this crime** is "**direct intent and the aim or objective of committing a crime**." Therefore, an individual participating in such an organisation must be aware that **the organisation commits, or aims to commit crimes and must possess specific intent to contribute to that purpose** (§ 248). Furthermore, the European Court emphasized that failure by national courts to comply with the relevant law, or to interpret or apply that law in an unreasonable manner in a particular case, may in itself result in a violation of Article 7 of the Convention.

19. Considering the legal provisions outlined above, and their interpretation by the domestic courts, the European Court concluded that the offence for which the applicant was convicted was codified and defined under Turkish law in according with the principle of legality under Article 7 of the Convention. The Court determined that article 314 § 2 of the TCC, particularly when read in conjunction with the Prevention of Terrorism Act and the case-law of the Court of Cassation, was formulated with sufficient precision to allow an individual to understand, if necessary, with the aid of appropriate legal advice - what acts and omissions would render them criminally liable (§ 249).

20. However, the rigorous application of these principles in individual cases remains a separate issue. It is clear that if provisions like article 314 of the TCC are used to criminalise the exercise of rights protected under the European Convention, they would violate the principle of strict legality enshrined in Article 7 of the Convention. Both the European Court and other Council of Europe bodies have recently emphasized that the broad interpretation of criminal laws, particularly anti-terrorism laws, fails to meet the legality standard required by the Convention. Such unforeseeable interpretations are frequently used to suppress dissent and target critical voices. These laws have resulted in the unjust detention and prosecution of thousands of individuals, including journalists, academics, activists, and even ordinary citizens, on questionable terrorism charges.

21. This issue was already highlighted by the former Human Rights Commissioner of the Council of Europe in 2017, in a memorandum on freedom of expression and media freedom in Türkiye. The Commissioner observed that the space for democratic debate in Türkiye had alarmingly diminished due to several factors. First, there was a marked increase in the judicial harassment of a wide range of societal groups, including journalists, members of parliament, academics, and ordinary citizens. Second, the government's actions had contributed to a reduction in pluralism, leading to widespread self-censorship.[2] The former Commissioner also emphasized that systemic issues in the interpretation and application of the law by judges and prosecutors had consistently undermined freedom of expression and media freedom in Türkiye.[3] In this context, the Commissioner noted the judiciary's long-standing failure to conduct proper contextual analyses of statements to determine whether they fall outside the protection of Article 10 of the European Convention. This failure affected an even broader segment of the population, creating a stronger chilling effect on society as a whole. Furthermore, the Commissioner stressed that the rapid decline in freedom of expression and media freedom in Türkiye has been closely linked to the erosion of the independence of the Turkish judiciary.[4]

22. At the time, the Commissioner called on the Turkish authorities to change course by overhauling criminal legislation and judicial practice by restoring judicial independence, and reaffirming their commitment to protecting free speech. The Commissioner urged the Turkish political leaders to clearly distinguish between terrorist actions and legitimate criticism or dissent, and to demonstrate the responsibility and tolerance expected in a democratic society.[5]

23. It is also worth recalling the Venice Commission's opinion from March 2016 on several provisions of the TCC, including articles 216 (incitement to hatred, degrading a sector of the population or its religious values), 220 § 6 (committing an offence on behalf of a criminal organisation without being a member) and 220 § 7 (aiding and abetting a criminal organisation without being a member), 299 (insulting the President of the Republic), 301 (degrading the Turkish nation or state) and 314 (establishment, command or membership of an armed organisation) of the Turkish Criminal Code. While acknowledging efforts to limit the application of these articles through amendments or case-law of the Turkish Court

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2 Nils Muižnieks, the Commissioner for Human Rights, Memorandum on freedom of expression and media freedom in Turkey, (CommDH(2017)5), 15 February 2017, paras. 122-138 .
3 Ibid., para. 127.
4 Ibid., para. 128.
5 Ibid., para. 136.

of Cassation, the Venice Commission concluded that "the progress made is clearly insufficient. All of the articles covered by this Opinion provide for excessive penalties and have been applied too broadly, penalising conduct protected by the ECHR, in particular Article 10 thereof and related case law, as well as conduct protected by Article 19 of the ICCPR."[6]

24. The Council of Europe's Commissioner for Human Rights clearly highlighted the issue of the overly broad interpretation and application of the criminal law in her 2020 Country Report, stating:

> "However, the Commissioner notes that the problem is not limited to the mere wording of the laws and is determined to a large extent **by the entrenched practice in the Turkish judiciary**, as the extensive work of her Office, the case-law of the ECtHR and the opinions of the Venice Commission clearly show. This is also confirmed by the fact that numerous improvements in the wording of laws in recent years were offset by the judiciary, which kept using other criminal law provisions with exactly the same effects. In particular, the work of the Commissioner's Office on Turkey has consistently pointed to an **overbroad interpretation by the Turkish judiciary of what constitutes terrorism or membership of an armed criminal organisation** despite all the changes over the years."[7] (emphasis added)

25. The Commissioner also noted in her recent memorandum on freedom of expression in Türkiye that, despite the judgments of the European Court of Human Rights and the Venice Commission's opinion on the chilling effect these provisions have on freedom of expression, the Turkish authorities continue to widely use these legal provisions. This persistent use occurs in defiance of the extensive guidance provided by these bodies on the necessary steps to remedy the situation.[8]

26. The Commissioner observed that the Turkish authorities' negative stance toward freedom of expression and media freedom, coupled with a high level of intolerance for legitimate criticism of government actions and elected officials has reached alarming levels. This attitude continues to manifest through systematic pressure and legal actions against journalists, human rights defenders, civil society, and ordinary citizens. As a result, there are staggering levels of self-censorship and a significant erosion of pluralism in the country.[9]

27. The unpredictable and broad interpretation of Article 314 is evident in the sheer number of investigations initiated under this provision. According to statistics from the Ministry of Justice, by the end of 2021, the number of investigations for crimes related to commanding and membership in terrorist organisations under article 314 of the TCC had reached a total of 1,768,530 since 2016. This figure excludes individuals subjected to judicial proceedings

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6 Venice Commission Opinion No. 831/2015 on Articles 216, 299, 301 and 314 of the Penal Code of Turkey, 15 March 2016, para. 123.

7 Dunja Mijatovic, Report Following Her Visit To Turkey From 1 To 5 July 2019 (CommDH(2020)1) 2020, para. 36, available at: https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e

8 Dunja Mijatovic, Memorandum on freedom of expression and of the media, human rights defenders and civil society in Türkiye, (CommHR(2024)16), 5 March 2024, para. 6, available at: https://rm.coe.int/memorandum-on-freedom-of-expression-and-of-the-media-human-rights-defe/1680aebf3d

9 Ibid., para 7.

on charges of aiding terrorist organisations under articles 220 (6 and 7) of the TCC and coup-related charges under articles 309 and 312 of the TCC. Additionally, according to statements from Ministry of Justice officials, the number of people investigated on charges of involvement with 'FETÖ/PDY' had reached 2.2 million by the end of 2022.[10]

28. The expansive application of terror-related charges is also reflected in judgments by the European Court. Following the 15 July 2016 coup attempt, a significant number of journalists were arrested and detained as part of investigations into the media's involvement with the "Gülenist Terror Organization/Parallel State Structure" (FETÖ/PDY). Many of these journalists were convicted of various crimes, such as membership in a terrorist organization under article 314, or aiding terrorist organizations pursuant to article 220 § 7 of the TCC. Almost all of these journalists were charged primarily due to their critical opinions against the Government or the President.

29. Some journalists were also accused based on their employment with media outlets that were legally established and operated freely prior to the coup attempt. At the time of their employment, there were no criminal investigations against these outlets. However, after the coup attempt, these media outlets were retroactively declared to be affiliated with a terrorist organisation and were shut down by emergency decrees issued by the government, without trial or explanation. In these cases, the European Court consistently found violations of Articles 5 § 1 and 10 of the European Convention. The Court ruled that criticism of the government and the publication of information deemed to endanger national interests by a country's leaders should not result in criminal charges for serious offences such as belonging to or assisting an armed terrorist organisation, attempting to overthrow the government or constitutional order, or disseminating terrorist propaganda [11]

30. In the *Sabuncu and others* decision, the Court observed that the judicial authorities had blurred the line between legitimate criticism of the government within the framework of public debate and the justifications used by terrorist organisations for their violent acts. The authorities characterized legitimate criticism directed at the government, in accordance with the right to freedom of expression and press freedom, as acts of assisting terrorist organizations and/or disseminating propaganda on their behalf. This conflation resulted in the unjustified pre-trial detention of the applicants.[12]

31. In the *Atilla Taş* case, concerning the applicant's participation in a rally protesting the appointment of a trustee to *Bugün* newspaper, the Court observed that the Government had not provided any specific evidence to demonstrate that the protest was unlawful or violent. Notably, at the time of the protest, there was no court decision establishing that the newspaper was controlled by a terrorist organisation. The Court found that the applicant's mere participation in a peaceful demonstration organized to protest the appointment of an administrator to a newspaper—perceived as dissident at the time—was insufficient to convince an objective observer that he had committed a terrorist offence. The Court

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[10] Levent Mazılıgüney, "Adalet Olmadan Hürriyet Olur Mu?", Köprü Dergisi, 01.10.2023, https://www.koprudergisi.com/kopru-hukuk-ve-hurriyet-sayi-163/2465/

[11] *Şahin Alpay v. Turkey*, no. 16538/17, 20.03.2018; *Mehmet Hasan Altan v. Turkey*, no. 13237/17, 20.03.2018; *Sabuncu and others v. Turkey*, no. 23199/17, 10.11.2020; *Şık v. Turkey (2)*, no. 36493/17, 24.11.2020; *Atilla Taş v. Turkey*, no. 72/17, 19.01.2021; *Ahmet Hüsrev Altan v. Turkey*, no. 13252/17; 13.04.2021; *Ilıcak v. Turkey*, (No.2), no. 1210/17, 14.12.2021; *Bulaç v. Turkey*, no. 25939/17, 08.06.2021

[12] Sabuncu and others, § 178.

concluded that such a charge was directly related to the applicant's exercise of his rights under the Convention, particularly Articles 10 (freedom of expression) and 11 (freedom of assembly).[13]

32. İFÖD observes that the excessively broad interpretation of article 314 of the TCC by Turkish judicial authorities undermines the principle of legality concerning crimes and punishment. A highly specific offence, which should ordinarily apply to a very limited number of cases, is instead being interpreted with unprecedented breadth. Crimes defined under article 314, which address serious acts such as membership in a terrorist organisation, are intended for narrowly defined circumstances. However, when this offence is interpreted expansively, it undermines the principle of legality by rendering the scope of the crime vague and uncertain, thus blurring the line between lawful conduct and criminal activity.

33. This broad interpretation risks criminalizing legal activities and the exercise of fundamental rights, such as freedom of expression and association, which should be protected under the Convention. The concern is that a rarely applicable crime is being used in a way that could unjustly encompass ordinary, lawful behaviour, leading to significant legal and human rights violations.

34. Punishing legal acts and the exercise of Convention rights not only violates Article 7 of the Convention but also infringes upon other rights such as freedom of expression and association. Therefore, the current case should be evaluated within this context, recognizing the broader implications of such legal practices.

III. Social Media Interactions

35. The Internet, due to its accessibility and ability to store and disseminate vast amounts of information, plays a crucial role in enhancing the public's access to news and facilitating the general spread of information (*Delfi AS v. Estonia* [GC], no. 64569/09, 16.06.2015, § 133). However, while the Internet and social media remain powerful communication tools, the nature of their use means that the information they generate does not always have the same immediacy or impact as broadcast media (*Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, 22.04.2013, § 119). For example, a telephone interview broadcast on an Internet site has a less direct impact on viewers compared to a traditional television programme (*Schweizerische Radio- und Fernsehgesellschaft SRG v. Switzerland*, no. 34142/06, 21.06.2012, § 64).

36. This consideration becomes even more relevant for social media users with limited followers and influence. In the case of *Savva Terentyev v. Russia*, where a blogger was sentenced to prison for offensive comments against police officers, the Court ruled that the applicant's statements could not be seen as an attempt to incite hatred or provoke violence, nor did they pose a clear and imminent danger that would justify the applicant's conviction. The Court particularly emphasized that the applicant was neither a well-known blogger nor a popular social media user and, as such, did not have the influence of a public figure (no. 10692/09, 28.08.2018, § 81). Similarly, in *Melike v. Turkey*, the Court noted that the applicant was not a public figure and it was not demonstrated that her "Likes" on social

[13] Atilla Taş, § 134.

media had been noticed by a significant number of users or had caused any detrimental consequences at her workplace (no. 35786/19, 15.06.2021, §§ 51-53).

37. In contrast to the European Court's approach, national courts in Türkiye frequently consider social media posts and interactions, such as likes and comments on other people's posts—often made by accounts with very few followers and little to no influence—as evidence for serious charges like membership in a terrorist organisation.

38. İFÖD submits that such a broad interpretation of the charge of membership in an illegal organisation, as seen in the *Yalçınkaya* judgment, does not align with the criteria established in the decisions of the Court of Cassation. İFÖD believes that social media posts which do not contain hate speech or incitements to violence, and which have little or no impact on other users, should be protected under the right to freedom of expression.

VI. Subscription to Newspapers

39. Another type of evidence frequently cited by domestic courts in FETÖ/PDY trials is the subscription to certain newspapers and magazines.

40. According to Article 10 of the Convention, the right to freedom of expression includes the freedom to receive and impart information and ideas without interference by public authorities. There is no doubt that access to a newspaper constitutes a form of receiving information and ideas, and subscribing to a newspaper is one means of exercising this right.

41. In *Foka v. Turkey*, the Court held that the confiscation of the applicant's cassettes, paperbacks, diary and map constituted an interference by a public authority with her right to freedom of expression, particularly her right to receive and impart information and ideas (no. 28940/95, 24.06.2008, § 103). Similarly, in *Cengiz and Others v. Turkey*, the Court noted that the blocking of the YouTube platform affected the applicants' right to receive and impart information or ideas (no. 48826/10, 01.12.2015, §§ 52, 53, 55).

42. There is no doubt that interference with the right to receive information and ideas would be far more severe and intense when a person is charged with membership in a terrorist organisation simply for subscribing to a newspaper. However, in recent prosecutions related to membership to terrorist organisations, newspaper and magazine subscriptions have increasingly been treated as significant evidence.[14]

43. İFÖD considers it highly problematic to link subscription to a newspaper or magazine with membership in a terrorist organisation. Given that terrorism is defined under the Prevention of Terrorism Act as any criminal act committed through the use of force and violence, or by methods of pressure, terror, intimidation, oppression, or threat, mere subscription to a newspaper cannot reasonably be categorised as a terrorist act.

VI. Conclusions

44. Considering the foregoing, İFÖD respectfully invites the Court to assess whether the interference with the applicant's freedom of expression and subsequent conviction was foreseeable. As highlighted in this submission, the systemic problem of overly broad interpretation and application of criminal law to suppress critical voices in Türkiye poses a serious threat to the fundamental values of the Convention, namely, democracy, the rule of

[14] See, for example, The Court of Cassation, 16th Criminal Chamber, File no: 2019/2705, Decision No: 2019/6108, Date: 16. C.D. 16.10.2019.

law, and human rights. The retrospective criminalisation of the exercise of fundamental rights undermines foreseeability and violates the principle of *nulla poena sine lege* (no punishment without law), as guaranteed by Article 7 of the Convention. Therefore, the Court should examine whether the applicant could have reasonably foreseen prosecution and conviction under article 314 of the TCC.

45. Furthermore, İFÖD contends that the broad and vague interpretation and application of criminal law, particularly article 314 of the TCC, by the Turkish judiciary, results in arbitrary punishment for legal acts and the exercise of Convention rights, violating multiple Articles of the European Convention on Human Rights, including those protecting freedom of expression, association, and the principle of legality. The principle of legality, a cornerstone of the rule of law, is undermined when criminal laws are interpreted and applied in such an imprecise and arbitrary manner, which creates a chilling effect on civil society and stifles dissent. This expansive interpretation not only impacts the individuals directly involved but also has broader implications for the protection of fundamental rights in Türkiye, weakening the safeguards established by the Convention and the Council of Europe.

46. Therefore, İFÖD urges the European Court to consider these broader systemic issues when evaluating the current case. A ruling that reaffirms the importance of strict adherence to the principle of legality is crucial in addressing these ongoing violations and ensuring that Convention rights are properly upheld in Türkiye. Such a decision would reinforce the protection of fundamental rights and the rule of law, sending a clear message about the necessity of precise and foreseeable legal standards in a democratic society.

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İfade Özgürlüğü Derneği – İFÖD (Türkiye)

Registration Number: 34-235-076

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