Third Party Intervention

In the Case of Feryal Delfin Gündüz v. Turkey (No. 51522/20)

by

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

I. Introduction

1. İFÖD will address in its intervention in the case of Feryal Delfin Gündüz v. Turkey (no. 51522/20) implications **on the freedom of expression of** the prosecution of academics under Anti-Terror Law. It is understood from the case file that the applicant is an academic who signed the Academics for Peace petition entitled "We Will Not Be a Party to This Crime" in January 2016. The petition was initially signed by 1.128 academics across Turkey. This petition condemned the conditions surrounding the operations carried out by the Turkish security forces in the south-east region of the country. The petition also called on the authorities to put an end to the massacres, deliberate exiles, curfews and human rights violations that they claimed were taking place in the region and called the authorities to engage in peace negotiations.

2. The applicant, like hundreds of academics who signed the declaration was indicted and prosecuted on grounds of **disseminating terrorist propaganda** under Article 7 § 2 of the Anti-Terrorism Law No. 3713. In March 2019 she was found guilty by the Istanbul 37th Criminal Assize Court and sentenced to one year and six months imprisonment. The sentence was suspended. The Court considered that the content of the contested petition was such as to legitimize, glorify and encourage the methods of violence and threat of the PKK, carried out the propaganda of this organization and went beyond the limits of freedom of expression. Her appeal was dismissed. She lodged an individual application with the Constitutional Court in May 2019 arguing that her freedom of expression was violated.

3. On 26.07.2019, the Constitutional Court, in its decision involving *Zübeyde Füsun Üstel and Others* (App. No: 2018/17635) found that the rights to freedom of expression of nine applicants who signed the Academics for Peace petition had been violated in relation to their criminal conviction similar to that of the applicant. Subsequent to this decision, in November 2019, the applicant's criminal proceedings was re-opened by reference to the Constitutional Court's decision and the applicant was acquitted by the Istanbul 37th Criminal Assize Court.

4. On 29.04.2020, the Constitutional Court declared the applicant's individual application **inadmissible** for non-exhaustion of available remedies, without explaining which remedy the applicant failed to exhaust.

5. Relying on **Articles 6 and 13 of the Convention**, the applicant complains of the decision of inadmissibility that the Constitutional Court issued concerning her individual application while the Court found violation of the rights to freedom of expression of other applicants to the Court who also signed the Academics for Peace petition. The applicant complains in this regard of the inadmissibility decision without sufficient reasoning and without clarification as to the remedy which she had to exhaust. Moreover, relying on **Article 10 of the Convention**, the applicant alleges that the criminal proceedings brought against her for having co-signed the petition, violates her right to freedom of expression as the petition only criticized the government policies and called for the restoration of peace.

6. The Court asked the parties whether the proceedings before the Constitutional Court was fair within the meaning of Article 6 § 1 of the Convention and whether the Constitutional Court fulfilled its obligation to give reasons for its decision and to respond to the applicant's complaints under the Convention.[1] The Court further asks whether the decision rendered by the Constitutional Court be considered arbitrary or manifestly unreasonable having regard to the reasoning it contains regarding the complaints presented by the

[1] *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I.

applicant in her individual application.[2] The Court also asks whether there was an infringement of the applicant's freedom of expression within the meaning of Article 10 § 1 of the Convention by reason of the criminal proceedings instituted against her[3] and if so was this interference prescribed by law and necessary, within the meaning of Article 10 § 2.[4] Finally, the Court asked, having regard to the content of the petition co-signed by the applicant, the context in which this petition took place, its capacity to harm, and the circumstances of the case and whether the national courts carried out in their decisions sufficient consideration and proper balancing of the interests at stake in the light of the criteria set out and implemented by it in cases relating to freedom of expression.[5]

7. As will be discussed below, the case of the prosecution of Academics of Peace reflects some general problems about the application of Article 7 § 2 of the Anti-Terrorism Law No. 3713 concerning dissemination of terrorist propaganda. However, the prosecution of academics who signed the petition entitled "We Will Not Be a Party to This Crime" also presents a **unique problem** that has not been seen in any other freedom of expression cases. The peace petitioners have been prosecuted under a single indictment drawn up by the İstanbul Public Prosecutor's Office. Despite the requests of lawyers these cases have not been merged in a single file. Signatories were indicted individually, even though the indictment was almost the same in each case. The cases were initially distributed among 18 different assize courts in İstanbul, later extending to 10 other cities as well.[6] The decision not to merge hundreds of identical cases created two critical problems. Firstly, although the indictment charged the signatories with "making propaganda for a terrorist organization", some courts continued the cases under article 220 § 7 the Criminal Code accusing defendants of knowingly and willingly aiding and abetting a terrorist organisation without being a part of its hierarchical structure, whilst some other courts requested permission from the Ministry of Justice under article 301 of the Criminal Code (129 such requested were lodged) which concerns the denigration of the State of the Republic of Turkey. As a result, individuals charged with the same act were prosecuted and convicted under different provisions of the national legislation. Secondly, as in total 822 peace petitioners were prosecuted, every each of 18 Assize Courts in İstanbul had to try on average 40 identical cases. In other words, a criminal court after convicting the first defendant continued to prosecute others and ended the latter with copy & paste identical judgments.

8. As will be discussed, the deliverance of identical judgments by a court on the same issue raises serious problems under Article 6 of the Convention. However, as noted by the Court in *Cumhuriyet Vakfı and Others v. Turkey*, obligations imposed on the state parties under Article 6 of the Convention also offers an important procedural safeguard against arbitrary interferences with the rights protected under Article 10 of the Convention (*Cumhuriyet Vakfı and Others v. Turkey*, no. 28255/07, 08.10.2013, § 68). The Court asked to the parties in the present case, having regard to the content of the petition co-signed by the applicant, the context in which this petition took place, its capacity to harm,

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2 *Moreira Ferreira v. Portugal* (no. 2) [GC], no. 19867/12, § 83, 11.07.2017.

3 *Erdoğdu v. Turkey*, no. 25723/94, § 72, ECHR 2000-VI, *Dilipak v. Turkey*, no 29680/05, § 50, 15.09.2015, *Ergündoğan v. Turkey*, no 48979/10, § 26, 17.04.2018, *Selahattin Demirtaş v. Turkey* (no. 3), no. 8732/11, § 26, 09.07.2019, *Ali Gürbüz v. Turkey*, nos. 52497/08 and 6 others, §§ 59-69, 12.03.2019, and *Kaboğlu and Oran v. Turkey* (no. 2), no. 36944/07, §§ 115-116, 20.10.2020.

4 *Faruk Temel v. Turkey*, no 16853/05, §§ 53 57, 01.02.2011, *Belge v. Turkey*, no. 50171/09, §§ 31, 34 and 35, 06.12.2016, and *Özer v. Turkey* (no. 3), no 69270/12, §§ 24-33, 11.02.2020.

5 *Gözel and Özer v. Turkey*, nos. 43453/04 and 31098/05, § 51, 06.07.2010 and *Mart and Others v. Turkey*, no. 57031/10, § 32, 19.03.2019.

6 See http://www.tihvakademi.org/wp-content/uploads/2019/03/BULTEN03.2108ENG.pdf

and the circumstances of the case, have the national courts carried out in their decisions sufficient consideration and proper balancing of the interests at stake in the light of the criteria set out and implemented by it in cases relating to freedom of expression. IFÖD, therefore, considers that one of the decisive factors in responding this question is whether the defendants were provided procedural protection that they had been entitled to enjoy by virtue of their rights under Article 10.

9. Having this unique feature of the case in mind, the intervention will first discuss whether deliverance of identical judgments by criminal courts in different cases can meet Convention standards under Articles 6 and 10 **(Section II**). The submission will then provide information about the application of Article 7 § 2 of the Anti-Terrorism Law No. 3713 concerning disseminating terrorist propaganda (**Section III**). In the final section, the submission will discuss whether the prosecution of peace petitioners, regardless of the acquittal at the end, might violate Article 10 of the Convention. (**Section IV**).

II. Impartiality of the Court as A Safeguard to Protect Freedom of Expression

10. The Court has stated that the existence of "impartiality", for the purposes of Article 6 § 1, might be determined and also according to an objective test, that is, ascertaining whether the judge offered sufficient guarantees to exclude any legitimate doubt about the case).[7]

11. The Court has also consistently held that "in deciding whether there is a legitimate reason to fear that a particular court lacked independence or impartiality, the standpoint of the accused is important without being decisive. What is decisive is whether his doubts can be held to be objectively justified".[8]

12. As to the objective impartiality test, when applied to a body sitting as a bench, it means determining whether, quite apart from the personal conduct of any of the members of that body, there are ascertainable facts which may raise doubts as to its impartiality. In this respect, even appearances may be of some importance.[9]

13. In *Kyprianou*, the Court discerned two possible situations in which the question of a lack of judicial impartiality arises. **The first** is functional in nature: "where the judge's personal conduct is not at all impugned, but where, for instance, the exercise of different functions within the judicial process by the same person, or hierarchical or other links with another actor in the proceedings, objectively justify misgivings as to the impartiality of the tribunal, which thus fails to meet the Convention standard under the objective test". **The second** is of a personal character and "derives from the conduct of the judges in a given case. In terms of the objective test, such conduct may be sufficient to ground legitimate and objectively justified apprehensions as in Buscemi, but it may also be of such a nature as to raise an issue under the subjective test and even disclose personal bias. In this context, therefore, whether a case falls to be dealt with under one test or the other, or both, will depend on the particular facts of the contested conduct".[10]

14. As to the first situation; the fact that the trial judge already took role in the criminal proceedings in the same case does not automatically cause an impartiality problem. The decisive factor is whether the judge had already had to deal with the substance of the case

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7 See, among many other authorities, *Bulut v. Austria*, judgment of 22.02.1996, Reports 1996-II, p. 356, § 31.

8 *Findlay v. the United Kingdom*, judgment of 25.02.1997, Reports of Judgments and Decisions 1997-I, § 73 and *Incal v. Turkey*, judgment of 9.06.1998, Reports 1998-IV, § 71.

9 See *Castillo Algar v. Spain*, 28.10.1998, § 45, Reports 1998-VIII, and *Morel v. France*, no. 34130/96, § 42, ECHR 2000-VI.

10 *Kyprianou v. Cyprus*, no. 73797/01, 15.12.2005, § 119.

at an earlier stage of the proceedings.[11] In *Piersack v. Belgium*, the presiding judge handling the case had been the head of section B of the Brussels public prosecutor's department, which was responsible for the prosecution instituted against Mr. Piersack.[12] The Court concluded that Article 6 was violated.

15. In cases where in a judge who had taken part in a decision quashing an order dismissing criminal proceedings subsequently sat in the hearing of an appeal against the applicant's conviction, the Court concluded that there had been a violation of Article 6.[13]

16. Last but not least, in *Karakoç and Others v. Turkey*, the Court held that considering that the reasons developed to justify the applicants' pre-trial detention hardly differ from those used in the judgment on the merits, the applicants had reasonable suspicion about the impartiality of the Court.[14]

17. In criminal cases, the mere fact that a judge has already ruled on similar but unrelated criminal charges or that he or she has already tried a co-accused in separate criminal proceedings is not, in itself, sufficient to cast doubt on that judge's impartiality in a subsequent case. It is, however, a different matter if the earlier judgments contain findings that actually prejudge the question of the guilt of an accused in such subsequent proceedings.[15] For similar reasons the Court concluded that Article 6 of the Convention was violated in *Ferrantelli and Santangello v. Italy*[16] and *Davidsons and Savins v. Latvia*.[17]

18. As to the second category; there are cases where judges express their views about cases in public. *In Buscemi v. Italy*, the Court stated that the fact that the President of the court publicly used expressions which implied that he had already formed an unfavourable view of the applicant's case before presiding over the court that had to decide it clearly appears incompatible with the impartiality required of any court, as laid down in Article 6 § 1 of the Convention.[18] *In Vardanyan and Nanushyan v. Armenia*, the presiding judge insisted on the applicant to accept the friendly settlement proposal. The Court considered that presiding judge's use of language during the hearing was clearly capable of raising a legitimate fear that the first applicant's refusal to accept a friendly settlement offer might have an adverse influence on the Chamber's consideration of the merits of his case.[19]

19. No doubt, the prosecution of academics under Anti-Terror Law for signing the Academics for Peace petition entitled "We Will Not Be a Party to This Crime" is different from these precedents, but not less concerning. 822 peace petitioners were prosecuted before 18 different Assize Courts in İstanbul. Signatories were indicted individually, even though the indictment was almost the same in each case. These 18 Assize Courts decided in all cases one by one. In the first verdict, the relevant Court convicted a petitioner for disseminating terrorist propaganda under Article 7 § 2 of the Anti-Terrorism Law No. 3713. Then the very same court delivered the identical judgment in other cases. It is obvious that once a court concluded that the petition constituted a crime under Article 7 §

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11 *Hauschildt v. Denmark*, no. 10486/83, 24.05.1989, § 48.

12 *Piersack v. Belgium*, no. 8692/79, 01.10.1982, § 31.

13 *Oberschlick v. Austria* (no. 1) judgment of 23.05.1991, Series A no. 204, pp. 13 and 15, §§ 16 and 22; *Castillo Algar v. Spain*, no. 28194/95, 28.10.1998, § 49.

14 *Karakoç and Others v. Turkey*, no. 27692/95, 15.10.2002, § 60.

15 *Poppe v. Netherlands*, no. 32271/04, 24.3.2009, § 23.

16 No. 19874/92, 07.08.1996, §§ 54-59; *Rojas Morales v. Italy*, no. 39676/98, 16.11.2000, § 33.

17 No. 17574/07, 7.1.2016, § 55.

18 No. 29569/95, 16.9.1999, § 68.

19 No. 8001/07, 27.10.2016, § 82.

2 of the Anti-Terrorism Law No. 3713, other defendants had no chance to change this finding. Furthermore, courts delivered their verdicts without questioning the motivation of different individuals.

20. In *Kyprianou*, the Court mentioned two situations in which lack of judicial impartiality may arise. The case of prosecution of peace petitioners fits to both situations. Under the first situation, the exercise of different functions within the judicial process by the same person, or hierarchical or other links with another actor in the proceedings, objectively justify misgivings as to the impartiality of the tribunal, which thus fails to meet the Convention standard under the objective test. The case of a court that delivers identical judgments about the same facts is more alarming than the case of a judge that had already had to deal with the substance of the case at an earlier stage of the proceedings. The second situation mentioned in *Kypriaonu* is about personal bias of judges. In this category, the Court included cases where the earlier judgments contain findings that actually prejudge the question of the guilt of an accused in such subsequent proceedings. Even some statements expressed in public is enough for the Court to conclude that the requirement of impartiality was violated. In the case of peace petitioners, Assize Courts did much more than this and convicted some defendants with some very harsh evaluations. Other defendants whose case were still pending before these courts had every reason to believe that they had no chance to change the position of Assize Courts. This concern was confirmed by identical judgments.

21. İFÖD is of the opinion that under these circumstances, it is difficult to state that national courts, having regard to the content of the petition co-signed by the applicant, the context in which this petition took place, its capacity to harm, and the circumstances of the case, have carried out in their decisions sufficient consideration and proper balancing of the interests at stake in the light of the criteria set out and implemented by it in cases relating to freedom of expression.

22. Obligations imposed on the state parties under Article 6 of the Convention also offers an important procedural safeguard against arbitrary interferences with the rights protected under Article 10 of the Convention. The State Party is under the duty to organise its judicial system in a way to provide safeguards to protect rights and freedoms under the Convention. IFÖD invites the Court to take this feature of the prosecution into consideration whilst examining the applicant's complaints under Article 10.

III. Application of Article 7 § 2 of the Anti-Terrorism Law No. 3713

23. As of today, the Court has decided in 132 cases concerning Article 6 § 2 and 7 § 2 of the Turkish Anti-Terrorism Law (**Annex I**). In 117 of them, the Court has concluded that Article 10 of the Convention had been violated. Five cases were ended with a friendly settlement, ten of them were found inadmissible. Only in two cases, the Court found no violation after examining the merits of the case.

24. As a result, the government has amended Article 7 § 2 of the Anti-Terrorism Law six times.[20] In each amendment, explanatory reports of these laws underscored that the amendment was made to meet the Convention standards.

25. In this section, rather than summarising what has already been said in different reports, İFÖD will inform the Court about recent developments concerning the implementation of Article 7 § 2 of the Anti-Terrorism Law.

[20] This Law was amended by Laws nos. 4744, 4963, 5532, 6459, 6638 and 7188.

26. In its Action Plan of 07.04.2021, concerning the implementation of Öner and Türk group of cases, the Government repeated its previous submissions and stated once again that the amendments made in the relevant provisions (Articles 6/2, 7/2 of the Anti-Terrorism Act and Article 215 of TCC) brought them in line with the Convention standards. However, the Committee of Ministers already stated that "legislative amendments are insufficient to bring about such a change of culture" even though the Committee welcomed the amendments made in October 2019 to Article 7 of the Anti-Terrorism Law. The Committee, in its most recent meeting, strongly urged the authorities to consider further legislative changes of the Criminal Code and the Anti-Terrorism law to clarify that the exercise of right of freedom of expression does not constitute an offence.[21]

27. The Constitutional Court in a series of recent cases where the applicants had been convicted under Article 7 of the Anti-Terrorism Law concluded that the criminal sanction imposed on the applicant violated their freedom of expression.[22]

28. However, for two reasons, these precedents do not solve the structural and systematic problem caused by the application of Article 7 of the Anti-Terrorism Law. **Firstly**, considering that tens of thousands of people have been prosecuted under this provision, the Constitutional Court's few violation judgments are far from redressing the structural problem. Indeed, in many other cases brought to its attention, the Constitutional Court has found applications inadmissible on different grounds. Some of those cases are still pending before the European Court. According to data obtained from HUDOC, at least 176 conviction cases involving the disseminating of terrorist propaganda subject to Article 7/2 of the Anti-Terrorism Law have been communicated to the Government by the Court. 31 of these cases have been communicated between 2019 and 2021 (six cases in 2019, eighteen cases in 2020 and seven cases in 2021).

29. Thus far, İFÖD has submitted seven third party interventions to these communicated cases, arguing that the application of the provision was not in compliance with the European Convention and other international human rights standards. These submissions consist of *Gültekin v. Turkey* (no. 34161/19),[23] *Sama v. Turkey* (no. 38979/19),[24] *Üçdağ v. Turkey* (no. 23314/19),[25] *Gümüş v. Turkey* (no. 44984/19),[26] *Demirtaş v. Turkey* (no. 13609/20),[27] *Doğan v. Turkey* (no. 17461/20)[28] and *Özdemir v. Turkey* (no. 41482/19).[29] As these applications and submissions show, even the Constitutional Court does not implement the European Court's jurisprudence consistently in the dissemination of terrorist propaganda cases.

30. **Secondly**, as observed by the Committee of Ministers in its very last meeting "notwithstanding the good practice of the higher courts, in particular the Constitutional

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21 Interim Resolution CM/ResDH(2021)110, adopted by the Committee of Ministers on 9.06.2021 at the 1406th meeting of the Ministers' Deputies.

22 Zübeyde Füsun Üstel and others application [GK], B. No: 2018/17635, 26.07.2019; Sırrı Süreyya Önder Application [GK], No: 2018/38143, 03.10.2019; Ayşe Çelik Application, B. No: 2017/36722, 09.05.2019. Note also the earlier cases of Abdullah Öcalan [GK], B. No: 2013/409, 25.6.2014; Fatih Taş [GK], B. No: 2013/1461, 12.11.2014 and Mehmet Ali Aydın [GK], B. No: 2013/9343, 4.6.2015 in which the Court found violation of freedom of expression. The Court does not cite or refer to these cases in its more recent decisions.

23 Available at https://ifade.org.tr/reports/IFOD_ECtHR_MN_Gultekin_Third_Party_Intervention.pdf

24 Available at https://ifade.org.tr/reports/IFOD_ECtHR_Cebrail_Sama_Third_Party_Intervention.pdf

25 Available at https://ifade.org.tr/reports/IFOD_ECtHR_Resul_Ucdag_Third_Party_Intervention.pdf

26 Available at https://ifade.org.tr/reports/IFOD_ECtHR_Suphi_Gumus_Third_Party_Intervention.pdf

27 Available at https://ifade.org.tr/reports/IFOD_ECtHR_Selahattin_Demirtas_Third_Party_Intervention.pdf

28 Available at https://ifade.org.tr/reports/IFOD_ECtHR_Recep_Ozdemir_Third_Party_Intervention.pdf

29 Available at https://ifade.org.tr/reports/IFOD_ECtHR_Helin_Dogan_Third_Party_Intervention.pdf

Court, the prosecutors and lower courts continue to apply the criminal law without ensuring the respect for freedom of expression."[30]

31. The jurisprudence of the Constitutional Court has not been implemented even in identical cases. Selahattin Demirtaş and Sırrı Süreyya Önder, two former members of the Parliament, were prosecuted on the ground that their speeches made in Newroz celebrations on 17.03.2013 constituted propaganda in favour of a terrorist organization under Article 7/2 of the Anti-Terrorism Law. Both politicians were convicted by the İstanbul 26th Criminal Assize Court on 07.09.2018. Demirtaş was sentenced to 4 years and 8 months imprisonment and Önder was sentenced to 3 years and 6 months imprisonment by the same court judgment. Judgment of the İstanbul 26th Assize Court was approved by the 2nd Criminal Chamber of the İstanbul Regional Court of Appeal on 04.12.2018 and became final.

32. Both, Demirtaş and Önder lodged separate individual applications to the Constitutional Court on 31.12.2018. With regards to the application of Önder, the Constitutional Court ruled that the right to freedom of expression of Sırrı Sürreya Önder had been violated on 03.10.2019. Following this decision, the proceedings before the İstanbul 26th Criminal Assize Court was reopened. On 04.10.2019, the Assize Court ordered the acquittal of Sırrı Süreyya Önder in accordance with the judgement of the Constitutional Court.

33. However, Demirtaş' individual application to the Constitutional Court was handled separately then that of Önder's and the Constitutional Court found his application inadmissible ruling that the applicant should have exhausted the new remedy introduced with Law No. 7188, after the application was submitted. Demirtaş, following the decision of the Constitutional Court appealed to the Court of Cassation against the decision of 2nd Criminal Chamber of the İstanbul Regional Court of Appeal. However, on 26.04.2021, the Court of Cassation approved the regional court's decision on his imprisonment. Despite the Constitutional Court's decision in the Sırrı Süreyya Önder case, which was about another speech made on the same date, the Court of Cassation did not follow the same legal reasoning with respect to the appeal of Selahattin Demirtaş.

34. Whilst the Constitutional Court held that 3 years 6 months imprisonment of Mr. Önder was in violation of the Constitution, the Court of Cassation concluded that 4 years 8 months imprisonment of Mr. Demirtaş, one of the harshest penalties ever decided under this provision, was proportional. It is quite difficult to predict why and how those courts have reached such different conclusions as both speeches were delivered under the same conditions and had similar content. At the least, this contradiction shows the inconsistency in the implementation of Article 7(2) of the Anti-Terror Law.

35. In another politically sensitive case, recently, lower courts and the Court of Cassation ignored the jurisprudence of the Constitutional Court and the European Court. In. Mr. Ömer Faruk Gergerlioğlu, a former MP for HDP and a human rights defender, was prosecuted under Article 7/2 of the Anti-Terror Law because he shared an online news from a popular news website with the headline "*PKK: If the state takes a step, peace will come in 1 month*" which included a PKK statement that indicated how the Government should take a step. Sharing this article with its headline and URL address, Gergerlioğlu stated that "This call should be evaluated thoroughly." Neither the reporter of the news

[30] Interim Resolution CM/ResDH(2021)110, Execution of the judgments of the European Court of Human Rights, Öner and Türk group (Application No. 51962/12), Nedim Şener group (Application No. 38270/11), Altuğ Taner Akçam group (Application No. 27520/07) and Artun and Güvener group (Application No. 75510/01) v. Turkey, Adopted by the Committee of Ministers on 9 June 2021 at the 1406th meeting of the Ministers' Deputies,

and the editor of the website, nor others who shared it have been prosecuted. Surprisingly, no blocking decision was ordered either and the article remains accessible as of today. The only person who was prosecuted for this was Mr. Gergerlioğlu who was chosen due to his political identity.

36. Therefore, despite 132 judgments of the Court and 6 amendments made in the law IFÖD is still of the opinion that 7/2 of the Anti-Terrorism Act lack foreseeability and precision as stipulated by the Convention and the Court's case-law.

IV. Does the Victim Status of Peace Petitioners End With Their Acquittal?

37. The declaration titled "We Will Not Be a Party to This Crime"[31] was shared with the public by Academics for Peace on 11.01.2016. The declaration was initially signed by 1.128 academics. By 20.01.2016, the number of signatures reached 2.212. Immediately after the declaration was published, numerous government officials and President Recep Tayyip Erdoğan in particular, targeted the signatories as "supporters of terrorism".

38. After these statements, universities rapidly launched disciplinary proceedings against the signatory academics. While some faculty members were suspended from their positions following the launch of proceedings, others were dismissed by the public and private (foundation) universities which employed them. Academic teaching staff who were on assignment in other countries were called back to their universities based on the proceedings against them.

39. In addition to the administrative proceedings initiated at universities, Chief Public Prosecutors in many provinces launched criminal investigations. 822 academics were prosecuted on grounds of "disseminating terrorist propaganda" under Article 7 § 2 of the Anti-Terrorism Law.

40. Following the coup attempt on the evening of 15.0.2016, which killed 240 and injured thousands, the Government of the Republic of Turkey decided to declare a State of Emergency on 21.07.2016. Under the State of Emergency, a total of 406 signatories among other academics were expelled without due process from their institutions through State of Emergency Decrees (known in Turkish as KHK), which cannot be appealed in a court of law. Their passports were cancelled indefinitely and they were denied for lifetime the right to work in any academic institution and the public sector in general. As of today, their cases are pending before the State of Emergency Inquiry Commission.

41. On 26.07.2019, the Constitutional Court, in its decision involving *Zübeyde Füsun Üstel and Others* (App. No: 2018/17635) found that the rights to freedom of expression of nine applicants who signed the Academics for Peace petition had been violated in relation to their criminal conviction similar to that of the applicant. In that judgment, the Constitutional Court observed that the petition falls within the category of **academic freedom**. However, despite this clear finding, the State of Emergency Inquiry Commission has not delivered a single decision about the peace petitioners. In other words, the Constitutional Court's judgment has not been fully implemented for almost two years and the decision does not rectify what has happened to the academics including the applicant for signing the Academics for Peace declaration. In other words, their dissent and criticism of the government continues to be punished and the Constitutional Court's "violation for some approach" as well as the subsequent "not guilty" verdict stand alone does not rectify the situation. This is why the consideration of this application presents a **unique problem** that has not been seen in any other freedom of expression cases.

[31] https://barisicinakademisyenler.net/node/62

42. Having said that, this Court has accepted that criminal prosecutions would have a chilling effect on freedom of expression of a person concerned, even in the absence of a final conviction.[32] In *Dilipak v. Turkey*, lengthy criminal proceedings that were ultimately discontinued did not remove the applicant's victim status.[33] Similarly in *Altuğ Taner Akçam v. Turkey* the fact of being threatened with criminal prosecution owing to complaints lodged under Article 301 of the Turkish Criminal Code (denigrating Turkishness, a vague concept) conferred on the applicant the status of victim of interference in freedom of expression.[34] Furthermore, the sanctions imposed on the applicant are much more serious than in the cases of *Sorguç v. Turkey*[35] and *Kula v. Turkey*[36] both of which dealt with sanctions and chilling effect on academic freedom.

Conclusion

43. The Contracting States are in principle free to choose the means whereby they will comply with the Convention. However, if the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it. If this is not possible the State should provide other remedies to redress the damage caused by the violation. Having this jurisprudence and continuing suffering of the peace petitioners in mind, İFÖD is of the opinion that unless all consequences connected to the violation of freedom of expression are not removed the victim status of academics that signed the petition does not end. İFÖD invites the Court to examine the complaints of the applicant from this perspective.

44. Finally, considering the foregoing, İFÖD kindly invites the Court to consider whether separate prosecution of signatories violated their right to be tried by an impartial court and whether Article 7/2 of the Turkish Anti-Terror Law meets the requirement of foreseeability.

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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.

32 *Nikula v. Finland*, no. 31611/96, ECHR 2002-II, § 54.
33 No. 29680/05, 15.09.2015.
34 No. 27520/07, 25.10.2011, §§ 70-75.
35 *Sorguç v. Turkey*, no. 17089/03, 23.06.2009, § 35.
36 *Kula v. Turkey*, no. 20233/06, 19.06.2018, § 38.